



JAMES SORENSEN
COMMUNITY DEVELOPMENT
DIRECTOR

KURT BRADBURN
MAYOR

MATTHEW HUISH
CHIEF ADMINISTRATIVE OFFICER

MEMORANDUM

February 10, 2021

To: Board of Adjustment
From: Community Development Department
Subject: Rozenfeld Variance Request
3802 E Catamount Ridge Way
[Community #30 - Granite]

BOA01172022-006252
4.45 Acres
R-1-15, SAO Zone

HEARING NOTICE: *This item has been noticed to property owners within **500** feet of the subject area and on the City and Utah Public Notice websites.*

PROPERTY CASE HISTORY	
History	Summary
Little Cottonwood Lane Part A Annexation	Little Cottonwood Lane Part A Annexation effective date 4/22/2015.
Little Cottonwood View Estates Subdivision	The Little Cottonwood View Estates Subdivision was recorded at the Salt Lake County Recorder's Office on 12/03/1996. Subject property is Lot 8 of the Subdivision. It was reviewed and approved under the County's FCOZ ordinance (similar to SAO zone).

REQUEST

Yuri Rozenfeld ("**Applicant**"), representing the property owner Ying Li Peng, filed a request with the Sandy City Board of Adjustment for a variance from Section 21-15-4(a)(1)(a) and 21-15-4(a)(2)(a) of the Sandy City Land Development Code. The property is located at 3802 E Catamount Ridge Way (*see the attached **Vicinity Map***). The Applicant has the property, Lot 8 of the Little Cottonwood View Estates Subdivision (*see the attached **Subdivision Plat***), under contract to purchase and the owner has authorized him to make this request in his behalf. He is requesting to construct a new home within a hillside slope in excess of thirty percent (30%) grade, which is classified as a lot within the Sensitive Area Overlay Zone (*see attached **Applicant's Variance Request Letter & Materials***). The Sandy City Land Use Development Code prohibits the construction of a dwelling upon areas of thirty percent (30%) grade or greater slope, unless the Board of Adjustment grants a variance.

BACKGROUND

History

This property, along with a larger surrounding area, was annexed into Sandy City as part of the Little Cottonwood Lane Part A Annexation in 2015. Prior to this annexation, this parcel was created as part of Little Cottonwood View Estates Subdivision in Salt Lake County under their ordinances. This parcel was deemed to be a buildable lot under the County's FCOZ requirements. It was recorded with the Salt Lake County Recorder's Office on December 3, 1996, recorded as Lot 8 of that plat.

Size of Parcel

The subject Lot is approximately 4.45 acres (193,739 square feet). The underlying zone is R-1-15, which requires a minimum of 15,000 square feet for each single-family home.

Adjacent Area

This site is located in the mouth of Little Cottonwood Canyon. It is bordered by single-family homes to the north and undeveloped single-family lots on the east and west. Forest service and public lands are located to the south.

ORDINANCE SUMMARY

The Applicant is requesting variances from the terms of the following excerpts of City ordinance, which the Board must carefully review and consider in rendering a decision:

Sec. 21-15-4. Development Standards for Sensitive Areas.

(a) *Standards for Sensitive Areas Containing 30 Percent or Greater Slopes.*

(1) *Usable Land.*

- a. Single-family structures shall be located only upon areas constituting usable land, which area shall be fully contiguous, be at least 5,000 square feet in size and have a minimum dimension, both length and width, of 50 feet.

...

(2) *Setback requirements.*

- a. No dwellings or accessory structures shall be constructed within an average of 20 feet (no point being closer than ten feet) of a continuous hillside slope (upslope or downslope) of 30 percent or greater. The City Engineer may require greater setbacks from the slopes based on geotechnical information.

Sec. 21-15-5. Special Exceptions.

(a) *Previously Platted Lots.* If a lot which contains or is adjacent to 30 percent or greater slopes was platted, approved and recorded prior to the adoption of sensitive area (or similar) regulations either in Salt Lake County or Sandy and such lot does not comply with Sandy City's current Sensitive Area Overlay Zone, a property owner may request a special exception from the Director to allow construction on the property at reduced or no setback from the 30 percent or greater slope. If it is determined that this exception applies, the lot will not be required to proceed through Sensitive Area Overlay Zone review though special requirements to protect the health, safety and welfare of the lot owner and residents of the City will be imposed before the issuance of a building permit. A property owner may request this exception only if the lot complies with the following:

(1) *Qualifications.* Property which qualifies for the exception is limited to the following:

- a. Subdivision lots approved and recorded prior to the enactment of sensitive overlay (or similar) regulations which were applicable to the property, or subdivision lots approved and recorded under different regulations than currently apply to the property;

- b. The lot contains or is adjacent to 30 percent or greater slope and cannot be built upon in compliance with the setbacks required by the Sensitive Area Overlay Zone in effect at the time the request is made;
- c. The lot does not have the amount of usable land area required by the Sensitive Area Overlay Zone in effect at the time the request is made;
- d. The slope is stable and suitable for construction as determined by the City Engineer;
- e. Measures can be imposed which mitigate or eliminate hazards created by construction near the slope; and
- f. The development shall comply with all other requirements of this title, including driveway slopes and cuts and fills, unless the Board of Adjustment approves a variance.

...

- (4) *Application for Variance.* If a property owner is requesting to build on the 30 percent or greater slope, an application for a variance from the Board of Adjustment shall be submitted.

ANALYSIS

There are special exception provisions for previously platted lots in the Sandy City Land Development Code. These provisions would allow a property owner to build on a lot with reduced setbacks to protected hillsides if certain qualifications are met and could not otherwise comply with the requirements of the Sensitive Area Overlay Zone. This property meets the qualification criteria to grant a special exception. A slope analysis has confirmed there is no portion of the lot that has enough usable land area. In order to build anything on this property, it will require building upon a 30% or greater slope. In those instances, it requires a variance from the Board of Adjustment.

LEGAL STANDARD TO BE MET AT PUBLIC HEARING

Utah Code Section 10-9a-702 set the standards, or conditions, for approving a variance. The Board of Adjustment may grant a variance only if **ALL** statutory conditions are met. If any one (1) of the five (5) conditions is **NOT MET**, the Board of Adjustment is compelled by law to deny the request for a variance.

The conditions for approval of a variance are the following:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.
2. There are special circumstances attached to the property that do not generally apply to other properties in the same district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

The State statute and City ordinance have added the following conditions when determining the above factors which were stated in the Utah Supreme Court decision of *Chambers v. Smithfield City* 714 P.2d 1133, (Utah Supreme Court, 1986):

6. Is the hardship complained of economic in nature?
7. Is the hardship complained of self-imposed?

If the answer to questions 6 and 7 is affirmative, then the variance should not be granted.

The Board of Adjustment may not find unreasonable hardship if the hardship is self-created, grants a special privilege, or is economic in nature. Variances run with the land. Use variances (variances that allow a use not permitted in the zone) are not permitted. The Board of Adjustment may impose additional requirements or conditions on the Applicant that will mitigate any harmful effects of the variance or serve the purpose of the standards or requirements that are waived or modified.

REQUEST ANALYSIS

The Applicants are seeking a variance from the following sections of the Land Development Code, as shown above:

Sections 21-15-4(a)(1)(a) and 21-15-4(b)(2)(a) – Seeking to build into native sensitive area slopes of the lot with no setbacks from the protected slope areas.

Staff has reviewed the Applicant's Letter to the Board of Adjustment (*see attached **Applicant's Variance Request Letter & Materials***) describing their requests. It presents some of the technical challenges presented by the subject property and some of the criteria for a variance. The letter also discusses some of the specifics of their proposed site and grading. However, in staff's opinion, the Applicants have not yet adequately addressed all seven (7) standards and conditions required to approve each of the variances in their letter to the Board.

Literal enforcement of the Land Development Code would not allow a home to be built on the property at all. There is not a single area on this lot that has an area of 5,000 sq. ft. of usable area as defined in the Sensitive Area Overlay zone. There is no way to build a minimum-sized home in the R-1-15 zone (minimum footprint: single story – 1,400 sq. ft.; two-story – 1,750 sq. ft.; in addition, a minimum 400 sq. ft attached two-car garage is required) anywhere on the lot without encroaching into a protected native slope. This lot is very large but contains very steep slopes. It certainly appears to meet the conditions or standards of a variance to allow the property to be used for its intended purpose a having a single-family home built upon it.

Staff is in support of allowing a new dwelling on this previously platted lot within the slopes that exceed thirty percent (30%). But the area wherein the home can be built and how large of a home is approved is something that will need to be considered by the Board. The home needs to be located on the lot where the least amount of impact will be created in allowing the variance. In this case, staff would recommend that the home be placed as close to the lower road as possible and disturb the smallest area possible. It's important to consider that the larger the home footprint and driveway, the greater the impact to the 30% slope (larger cut/fills, larger retaining walls, larger area of disturbance, etc.).

Staff Concerns

Staff is concerned with the overall area of disturbance shown in the applicant's preliminary site and grading plans. The area of disturbance is shown to be about 19,000 sq. ft. This appears to be too large and could be reduced if the applicant makes some adjustments to their plans. Part of this large disturbance area is due to the size of the home, size/orientation of the garage and driveway, desire to have some flat yard area/covered patio in the rear of the home, and overall orientation of the home.

- #1 Footprint.** The proposed home is just above the minimum footprint of single level home (approximately 1436 sq. ft. on the main level), yet the garage is more than double the minimum required square footage (1019 sq. ft.) for a total building footprint of 2,455 sq. ft. Adjacent homes in the area on average are over 3,500 sq. ft. footprint, but those homes are not located on as steep of land with as many restrictions. In no case is the Board required to allow a home above the bare minimum home size for the zone. However, the Board can consider imposing a maximum home size to limit the impacts to the native area.
- #2 Garage and Driveway.** The proposed home is proposed to have a side loaded garage rather than fronting the garage directly to the street and being placed below the living areas of the home. This design choice increases the overall area of disturbance. The width of the driveway also creates the need for higher and more retaining walls to meet maximum driveway slopes. At minimum, staff would suggest limiting the width of the driveway, to reduce the height of retaining walls and reducing the area of disturbance.
- #3 Patio/Yard.** The home is currently designed with a flatter area behind the home with a covered patio area. By including this in their plans, it increases need for retaining walls and increases the overall disturbance area. The Board may want to limit area of disturbance outside the footprint of the home to only allow for construction of the home and not to create a usable yard area.
- #4 Orientation.** The home is not quite fully aligned or oriented with the existing contours. It could be further rotated counterclockwise to align with the contours more closely. The disadvantage of that rotation would be that it increases the distance from the road of area that needs to be disturbed but reduces the size of retaining walls. Alternatively, the home could be rotated clockwise and oriented to the street and sited closer to the road rather than further up the hillside. It would reduce the area of disturbance but might increase some cuts/fills and retaining walls on the lot.

STAFF RECOMMENDATION

The Board should carefully consider the conditions listed above before rendering a decision on each of the requested variances (individually or collectively) and should follow the law as outlined above. As stated previously, the Applicants bear the burden of proof in showing that all of the conditions justifying a variance have been met. Based upon our analysis of the letter requesting the variances and the standards and conditions required to grant a variance, we recommend that the Board approve the requests as presented.

Staff would recommend approval of the variance, as outlined in the staff report, for the property located at 3802 E Catamount Ridge Way, based upon the following findings and conditions to mitigate the negative impacts of said variance:

Findings:

1. The Applicants have met the conditions required by statute for said variance (*the Board will need to support this statement with a more detailed set of findings on each of the requirements for a variance (see the sample Variance Motion Form attached hereto)*).
2. The City Engineer has found that the land is suitable for development after reviewing the applicant's informational reports and plans.
3. The requested variance does not create any unmitigated impacts to the property or to the area if certain conditions are met.
4. The requested variance does not result in the violation of any other City ordinances.

Conditions:

1. All proposed retaining walls be designed to follow the City Engineer's recommendations, including rock fall mitigation measures.
2. If the development of the dwelling as proposed creates cuts and fills over 10 feet in height, that they seek a special exception from the Planning Commission prior to issuance of a building permit.
3. That the Planning Commission review a detailed grading plan of the lot prior to issuance of a building permit which shows the proposed grading, cuts, fills, or terracing on the continuous hillside of 30% or greater slope.
4. That a vegetation plan, in accordance with Development Code Section 21-15-4(b)(3) be reviewed and approved by staff prior to issuance of a building permit to ensure the disturbed areas of the lot are properly restored, and drainage and slope stability issues are mitigated.
5. That the proposed home be allowed to be constructed to a footprint no larger than 2,455 square feet (including the garage area) in order to reduce the impact to the hillside and reduce the amount of disturbance to the natural vegetation.
6. That the area behind the home and driveway that is to be disturbed to construct the home be limited to an average of twenty feet (20'). That a limit of disturbance be placed at the existing 5420' elevation contour in order to reduce the impact to the hillside and reduce the amount of disturbance to the natural vegetation.
7. That the driveway width be limited to eighteen-foot (18') maximum and a depth of at least twenty feet (20') before tapering to a minimum twelve foot (12') wide drive approach in order to reduce the impact to the hillside and reduce the amount of disturbance to the natural vegetation.

8. That all reports, plans, studies, and reports required by the City Engineer and Section 21-15, Sensitive Area Overlay be completed prior to issuance of a building permit and approval of an engineered site plan.

Planner:



Mike Wilcox
Zoning Administrator

File Name: S:\USERS\PLN\STAFFRPT\2022\BOA01172022-006252_ROZENFELD VARIANCE REQUEST\ROZENFELD VARIANCE REQUEST STAFF REPORT.DOCX

Notice to Applicants: Be prepared to discuss the criteria for a variance as mentioned above in your presentation to the Board of Adjustment. Generally, the questionnaire you completed as part of the variance application process requests the information which the Board needs to consider. However, you may be aware of additional information that could be useful to the Board of Adjustment, which you may wish to present orally or in writing at the public hearing.

NOTE: *Any appeal of the decision of the Board of Adjustment must be made within thirty [30] days to the appropriate District Court of the State of Utah. The proper forms and procedure for filing such an appeal may be obtained from the District Court or the attorney of your choice. Sandy City **DOES NOT** have this information and **cannot** assist you in any way with the filing of any appeal of a Board of Adjustment decision. Copies of the case file, including all evidence submitted will be made available to interested parties. You may make a copy of the audio tape of the proceedings at our offices located at 10000 Centennial Parkway, suite 210, Sandy, Utah.*