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# MEMORANDUM

June 17, 2021

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**To:** Planning Commission  
**From:** Community Development Department  
**Subject:** Clark Special Exception for Alteration of 30% Slope      SPX06032021-006063  
3 Pepperwood Drive      0.74 Acres  
[Pepper Dell, Community #28]      PUD(1.62), SAO Zone

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**HEARING NOTICE:** *This item has been noticed to property owners within 500 feet of the subject area.*

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PROPERTY CASE HISTORY	
Case Number	Case Summary
BOA-07-18-5466	Appeal of Administrative Decision to Issue Building Permit – On August 16, 2018, the Board of Adjustment determined that a building permit was issued in error because the requirements of the Sensitive Area Overlay Zone were not properly followed.

## DESCRIPTION OF REQUEST

The applicant, Dave Clark, is requesting review for a special exception to approve an alteration (grading, cut, and fill) to a continuous 30% or greater slope within the Sensitive Area Overlay Zone on their property located at 3 Pepperwood Drive. The applicant is requesting that the Planning Commission accept the current as-built condition of the hillside restoration that they have performed to date.

## NOTICE

Notices were mailed to property owners within a 500-foot radius of the subject property as per Sandy City Land Development Code requirements, to notify them of the Planning Commission meeting. No neighborhood meeting was held for this application.

**BACKGROUND & SITE CONDITIONS**

The subject property is zoned PUD(1.62) Zone and is within the Sensitive Area Overlay (SAO) Zone (see attached map exhibits). It is bordered on the west, south, and east by other single-family homes in the same zone. The subject property is approximately .74 acres in size and currently contains an existing single-family home.

The main parcel was created with the Pepperwood Phase 5 Subdivision Plat and was recorded on January 5, 1979. The Clark's also acquired the southern 20' of lot 29 of the Pepperwood Canyon #1 Subdivision Plat. The Clarks submitted a building permit for construction of their home on May 1, 2018. After review and several resubmissions by the landowner and their contractor, Staff approved a permit on July 6, 2018.

The property did have areas of 30% slope and natural vegetation on the lot. These areas were identified and reviewed by staff and were the cause of some of the revisions made during the building permit application process. All reviewing departments, including Public Works, Planning, Building and Safety, and Public Utilities, approved this permit.

The subdivision plats mentioned above did not show any areas of 30% slope but do make mention of the Hillside Ordinance that was in place at the time in the Conditions of Approval from the Planning Commission. This Hillside Ordinance was enacted in 1978. A major amendment which closely resembles the code we have today was adopted in 2007. Past practice did not pictorially identify slope areas on plats and note 5 of the recorded Pepperwood Phase 5 Subdivision plat indicating conditions of approval states, "That grading plans at a scale of at least 1 inch = 10 feet be submitted for approval on lots 513, 514, 523, 524, and 525 before building permits are issued. And that the restrictive covenants of the subdivision stipulate that any disturbance of hillsides be controlled by the Homeowners Association with grading plans, retaining hills (sic), revegetation etc....to be approved by the City." Since the lot at 3 Pepperwood Drive is within Pepperwood Phase 5, the plat note suggests that disturbance of hillsides would be pursuant to restrictive covenants, and the lot is not one that is specified in the note as one that needs a special grading plan, it was not known or unclear to members of Sandy City staff whether compliance with the current Sensitive Area Overlay would be required.

Therefore, although all other standards of Sandy City Land Development Code were applied and met prior to issuing the building permit for 3 Pepperwood Drive, special attention was not given to reviewing the requirements of Chapter 15, "Sensitive Area Overlay Zone." The requirements of Chapter 15 were not specifically articulated to the owner of 3 Pepperwood Drive, and the requirements were not specifically evaluated or required to be met during review through the multiple sets of redlines. Approval of the building permit was granted, and the 3 Pepperwood Drive construction proceeded under the issued building permit.

Construction on the site began on July 13, 2018. A neighbor of the property, John and Megan Farr submitted their intent to appeal the City's decision to grant a permit for construction on July 20, 2018. A formal Alleged Error Appeal application was received on July 31, 2018. A hearing before the Board of Adjustment was held on August 16, 2018. The Board determined that the permit was issued in error and the permit was revoked.

The Clarks reapplied for a new building permit on October 22, 2018, and grading permit on November 1, 2018. These permits reflect changes to their home plan that followed the requirements of the Sensitive Area Overlay Zone and the grading permit included hillside restoration plans of the protected slope that was disturbed. These included restoration of the contours of the preconstruction state of the hillside and a revegetation component to restore and stabilize the disturbed slope (see the attached approved plans). This grading permit to restore the hillside was issued on November 1, 2018, and the home building permit was issued on November 14, 2018.

In December of 2019, before the final building inspection for Certificate of Occupancy was conducted, staff visited the site to ensure the grading plans and hillside restoration plans were properly followed. Staff determined that further work was needed to fulfill the approved hillside restoration, and a performance bond was posted to allow for occupancy of the home while granting the owner more time to work on the grading and restoration of the hillside.

The applicant has completed further work since that time, but the finished product deviates from the approved plans. The applicant has presented as-built plans (see attached) that reflect the current conditions of the site that differ from the approved plans from 2018. It was determined that further review would be required by the Planning Commission to review these alterations to the hillside.

## ANALYSIS

The SAO zone has a provision that states:

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

(b) *Development Standards for All Sensitive Areas.*

(6) *Grading, Cuts and Fill.*

- f. No grading, cuts, fills, or terracing will be allowed on a continuous hillside of 30 percent or greater slope, crest (upslope or downslope) unless otherwise determined by the Planning Commission upon recommendation of the Director and City Engineer.

The Planning Commission has the authority to review and approve any alteration to a 30% slope upon receiving a recommendation from staff.

In this instance, staff discovered that a portion of the hillside was not fully restored to the original elevation contours. There is a discrepancy along the rear of the home (northeast area of lot) of the original elevation of the 30% slope. The hillside should have been higher and the slope steeper than the current conditions reflect. The home has a partial walkout basement that would not be exposed if the hillside had been fully restored. At this stage, staff finds that attempting to fully restore the slope may do more harm than good to the slope stability and be extremely difficult to construct, if not infeasible.

The City Engineer has provided a more detailed analysis of this situation. Please review the attached City Engineer's Memo for those details. He has provided a recommendation for approving the special exception.

**STAFF RECOMMENDATION**

Staff recommends that the Planning Commission approve the special exception for alterations of a continuous hillside of 30 percent or greater slope for the property located at 3 Pepperwood Drive, based on the following findings and subject to the following conditions:

**Findings:**

1. The City Engineer finds that the slope was restored horizontally but not vertically.
2. The City Engineer finds the current state of the slope to be stabilized.
3. Further work on the hillside to fully restore the original elevation contours vertically could be disruptive and destabilize the slope.
4. The City Engineer and Community Development Director recommend approval of the special exception.

**Conditions:**

1. That the gamble oak trees noted on the approved revegetation plan be replanted and that appropriate protection of these trees be provided to ensure they can grow and establish themselves without being consumed by the wildlife in the area.

Planner:



Mike Wilcox  
Zoning Administrator