



SANDY CITY COMMUNITY DEVELOPMENT

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MEMORANDUM

September 5, 2019

To: Board of Adjustment
From: Community Development Department
Subject: Bryce Zundel Variance Request BOA-07-19-5685
10471 South Wasatch Boulevard 2.32 Acres
[Community #29 - The Dell] R-1-40A, SAO Zone

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

PROPERTY CASE HISTORY	
History	Summary
Seven Springs Annexation	Seven Springs Annexation effective date 3/28/1978.
Seven Springs Subdivision	The Seven Springs Subdivision was recorded at the Salt Lake County Recorder's Office on 2/1/1979. Subject property is Lot 27 of the Seven Springs Subdivision.

REQUEST

Bryce Zundel ("**Applicant**"), who owns or controls property located at 10471 South Wasatch Boulevard (*see* the attached **Vicinity Map**), filed a request with the Sandy City Board of Adjustment for a variance from Section 15A-15-04(A)(2)(a) and 15A-15-04(B)(7)(f) of the Sandy City Land Development Code. The Applicant owns Lot 27 of the Seven Springs Subdivision (*see* the attached **Subdivision Plat**). He is requesting to construct a new home on a hillside slope in excess of 30 percent grade, which is classified as a lot within the Sensitive Area Overlay Zone (*see* attached **Applicant's Variance Request Letter**). The Sandy City Land Use Development Code prohibits the construction of a dwelling upon areas of 30 percent or greater slope, unless the Board of Adjustment grants a variance. It also imposes limitations on driveway slopes of greater than 12 percent.

BACKGROUND

History

This property, along with a larger surrounding area, was annexed into Sandy City as part of the Seven Springs Annexation in 1978. This parcel was created as part of the Seven Springs

Subdivision with the Salt Lake County Recorder's Office on February 1, 1979, recorded as Lot 27 of that plat.

Size of Parcel

The subject Lot is approximately 2.32 acres (101,059 square feet). The underlying zone is R-1-40A, which requires a minimum of 40,000 square feet for each single-family home.

Adjacent Area

This site is bordered by single-family homes to the north and south, Wasatch Boulevard to the west, and undeveloped, vacant land to the east.

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:

15A-15-04 Development Standards for Sensitive Areas

A. Standards for Sensitive Areas Containing 30% or Greater Slopes

2. Setback requirements.

- a. No dwellings or accessory structures shall be constructed within an average of 20 feet (no point being closer than 10 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.

B. Development Standards for All Sensitive Areas

7. Streets and Ways. Streets, roadways, and private streets, lanes and driveways shall follow as nearly as possible the natural terrain minimizing cuts and fills. In addition to the standards identified in the Subdivision Design Standards within this Title, the following additional standards shall apply:
 - f. The maximum grade of all streets or rights-of-way for vehicle traffic shall be 12 percent.

15A-15-05 Special Exceptions

A. **Previously Platted Lots.** If a lot which contains or is adjacent to 30% 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 City 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% 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.

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; and
 - b. the lot contains or is adjacent to 30% 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; and

- 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; and
 - d. the slope is stable and suitable for construction as determined by the City Engineer; and
 - 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 the Code including driveway slopes and cuts and fills unless the Board of Adjustment approves a variance.
4. If a property owner is requesting to build on the 30% or greater slope, an application for a variance from the Board of Adjustment shall be submitted.

ANALYSIS

There are provisions in the Sandy City Land Development Code that would allow a property owner to build on a lot that was previously recorded as a buildable lot that does not comply with current regulations for building within the Sensitive Area Overlay Zone. In order to qualify for a special exception to build, the property must meet the following qualifications.

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; and

Comment:

The subject property was recorded as lot 27 of the Seven Springs Subdivision. This plat was recorded on February 1, 1979. Sandy City Council passed the Hillside Ordinance on August 28, 1978, which has been updated over the years. The regulations in 1979 were different than what is enforced today. This original ordinance did not have specific setback dimensions from a slope exceeding 30 percent, as the current ordinance does.

- b. The lot contains or is adjacent to 30% 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; and

Comment:

According to the information submitted by Gilson Engineering, a topographic survey was conducted and confirmed that majority of the lot exceeds a slope of 30 percent. The current ordinance requires that "No dwellings or accessory structures shall be constructed within an average of 20 feet (no point being closer than 10 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." (15A-15-04(A)(2)(a)). There is no way that a home could be built on this lot without building into the hillside, since almost the entire lot is a slope of 30 percent or greater.

- 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; and

Comment:

According to our Geographic Information Systems (GIS) and the complete geotechnical report, almost the entire lot has a 30 percent slope or greater. In reviewing this Lot, it appears that there is no portion of the lot that meets the required 5,000 square feet of usable land needed for a residence (see 15A-15-04(A)(1)(a)).

- d. The slope is stable and suitable for construction as determined by the City Engineer; and

Comment:

The City Engineer has received a copy of the geotechnical report performed by CMT Engineering Laboratories. This report indicates that this lot is stable and suitable for construction.

- e. Measures can be imposed which mitigate or eliminate hazards created by construction near the slope; and

Comment:

The City Engineer is recommending that the property owner acknowledge the risk of rock fall on this property. The threat of rock fall can be mitigated with a fence or swale. The report indicates that the geotechnical engineer will work with Gilson Engineering to design such a system to mitigate the risk.

- f. The development shall comply with all other requirements of the Code including driveway slopes and cuts and fills unless the Board of Adjustment approves a variance.

Comment:

According to Section 15A-21-03, Residential Driveways, the minimum grade at which a driveway shall be allowed to be built is 2 percent slope, and the maximum grade at which a driveway shall be allowed to be built is 12 percent slope except as hereafter provided. The City Engineer, under exceptional circumstances, may approve driveway slopes having a grade exceeding 12 percent and may impose conditions of approval to mitigate any hazards created by the steepness of the driveway. In this particular case, the proposed driveway does exceed 12 percent - up to 15 percent at the steepest point. The City Engineer is recommending that the driveway be heated as a condition of approval in order to reduce the risk of vehicles sliding on snow and ice.

- 2. The following information shall be submitted for review and recommendation of the Director and City Engineer prior to approval of a building permit:
 - a. Evidence that the lot was platted prior to the imposition of sensitive area overlay (or similar) regulations or in compliance with previous regulations.
 - (1) Evidence shall include copies of the subdivision plat approval and recordation and copies of the regulations which governed the subdivision at the time it was approved and recorded.
 - (2) If it is claimed that no regulations were in effect at the time the subdivision plat was approved and recorded, a statement from the appropriate governmental entity that a search of their records was conducted and that no regulations were in effect.

Comment:

The Community Development Department has a copy of the Seven Springs Subdivision Plat (with conditions of approval) which identifies this as Lot 27, which is still in compliance with the frontage and square-footage requirements of the Development Code.

- b. A geotechnical report from a licensed civil engineer that identifies the following:
 - (1) The depth of undisturbed soil below grade.
 - (2) Soil compaction and stability.

- (3) Rock fall and debris flow potential.
- (4) Angle of repose.
- (5) Conditions on or near the property which, if disturbed by construction, may create hazards to the property or adjacent property.
- (6) Recommendations for construction and siting to assure safety of the development and adjoining properties from these hazards.

Comment:

It appears the geotech report has addressed all of these items. See also the recommendation from the City Engineer.

- c. Before the construction of a structure, e.g., single family dwelling, multi-family dwelling, commercial building, accessory structure, pool, etc., shall be allowed, an engineered plot plan stamped and signed by a licensed civil engineer, licensed surveyor, or licensed architect shall be submitted and include the following information:
 - (1) Location of all existing and proposed structures.
 - (2) Existing and proposed contour lines at two foot intervals.
 - (3) Retaining walls or other measures to address the safety of the subject and adjoining properties if determined necessary by the City Engineer.
 - (4) Existing and proposed vegetation types and locations.

Comment:

An engineered site plan with all requested information has been submitted to the Community Development Department.

3. The City Engineer and Director may impose requirements on the building permit as follows:
 - a. To mitigate or eliminate anticipated impacts from development.
 - b. For guarantees which are established specifically to ensure the completion and maintenance of the special exception requirements. The guarantee shall be established for a period of time to be determined by the Director and the City Engineer to assure that the mitigation measures are effective and remain in place and functional.
 - c. That a notice be recorded on the property with the County Recorder that indicates the nature of the special exception, that mitigating measures have been imposed, and that those measures cannot be removed or altered without the prior review and approval of the City Engineer and Director.

Comment:

*The City Engineer has reviewed this request and is imposing conditions outlined in his memo to the Zoning Administrator (see attached **Engineer Recommendation Letter**). Planning staff is requesting that additional conditions of approval be added to any approval by the Board of Adjustment.*

4. If a property owner is requesting to build on the 30% or greater slope, an application for a variance from the Board of Adjustment shall be submitted.

Comment:

The Applicant meets all of the criteria for a Special Exception. However, the lot does not have enough area to build without encroaching into the 30% slope. For this reason, the applicant has submitted a request for a variance from the Board of Adjustment.

LEGAL STANDARD TO BE MET AT PUBLIC HEARING

Utah Code Section 10-9a-702 and Sandy City Land Development Code, Section 15A-35-2 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 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:

- 1) §15A-15-04(A)(2)(a) – Seeking to build into native sensitive area slopes of the lot with no setbacks from the protected slope areas.
- 2) §15A-15-04(B)(7)(f) – Seeking to have a driveway steeper than 12% grade.

Staff has reviewed the Applicant's Letter to the Board of Adjustment (*see attached **Applicant's Variance Request Letter***) 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 plan (*see attached **Zundel Grading Plan***). 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.

Neither Staff nor the Board can make these arguments on the Applicants' behalf. The applicant bears the burden of proving that all of the conditions justifying the requested variances have been met.

If the Applicants are able to present satisfactory evidence and arguments in support of the variances they seek, then staff would support the requested variances. Staff's analysis of each request is set out below:

Variance #1

Literal enforcement of the Land Development Code would not allow a home to be built on the property at all. There is no way to build a minimum-sized home in the R-1-40A zone (minimum footprint: single story – 1,500 sq. ft.; two-story – 937.5 sq. ft.; in addition a minimum 400 sq. ft two-car garage is required) anywhere on the lot without encroaching into a protected native slope. Staff is in support of allowing a dwelling on this previously platted lot within the slopes that exceed 30%. However, staff is concerned that the proposed home is more than double that of the minimum footprint (approximately 3500 sq. ft.). Adjacent homes in the area on average are under 3,000 sq. ft. footprint. The increased footprint increases the area that is disturbed by the home construction and impact to the native slopes. This is something that should be considered in reviewing the request.

Variance #2

The proposed driveway is shown to have sections of the driveway that exceed 12%. The City Engineer is in support of the request, as it helps reduce the cuts and fills that are needed. This request is supported by the City Engineer subject to certain conditions to mitigate the negative effects of a steep driveway in this area.

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 if the Applicants are able to present evidence and argument that the requirements for the variances are met.

If the Board is presented satisfactory evidence that these requirements have been met, staff recommends the following action:

Staff would recommend approval of the variances 1 and 2, as outlined in the staff report for the property located at 10471 South Wasatch Boulevard, 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 geotechnical report provided by CMT Engineering Laboratories.
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. That the driveway be required to have a heating element to mitigate safety concerns.
2. All proposed retaining walls be designed to follow the City Engineer's recommendation as contained in his letter dated September 5, 2019, including rock fall mitigation measures.
3. 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.
4. 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.
5. That a vegetation plan, in accordance with Development Code Section 15A-15-05(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.

6. That the proposed home be allowed to be constructed to a footprint no larger than 2,000 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.

Planner:

Reviewed by:



Mike Wilcox
Zoning Administrator

File Name: S:\USERS\PLN\STAFFRPT\2019\BOA-07-19-5685_ZUNDEL VARIANCE REQUEST\ZUNDEL VARIANCE REQUEST STAFF REPORT.DOCX

Included Exhibits Attached Hereto:

Vicinity Map

Applicants' Variance Request Letter

Seven Springs Subdivision Plat

Zundel Grading Plan

City Engineer Recommendation Letter dated September 5, 2019

Geotechnical Study by CMT Engineering Laboratories dated August 16, 2019

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.