

- a. What type of special exception are you seeking?
 - i. An alteration to a 30% slope.

- b. Code: Sec. 21-15-4(b)(3)(i)
(3) *Vegetation and Revegetation.*
 - i. The property owner and/or developer shall be fully responsible for any destruction or damage of native or applied vegetation identified as necessary for soil retention and shall be responsible to replace such destroyed vegetation. They shall carry the responsibility both for employees and subcontractors from the first day of construction until the final acceptance of improvements. The property owner and developer shall replace all destroyed vegetation with varieties of vegetation approved by the Director.

Sec. 21-15-4(b)(6)(f)

(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.

c. Purpose for special exception:

The following is an attempt to briefly describe the history of the situation leading up to this special exception request:

- Pepperwood lot 509 (PW 509) was issued a building permit by Sandy city originally with an approval to excavate into the 30% slope that borders the north property line.
- The original house plan and site plan approved permitted a home design that was closer than 10 feet from the original top of hillside.
- The owner/builder was unaware of any city code or ordinance that would prevent the construction of the original plan design into the northern 30% slope and they were not informed of any such rule by the city.
- The property was owned by the owner/builder for over 24 years prior to receiving a building permit.
- Construction commenced with excavating the northern middle section of the hillside per the approved plan and permit.
- After excavation began a neighbor complaint to the city resulted in the city placing a stop work order on the project.
- When the stop work order was received the middle of the slope had already been excavated to the bottom of the hillside at the existing chain-link fence which is the north property line.
- That hillside was estimated to be greater than 20 feet high prior to excavation.

- The owner/builder was informed by the city of the neighbors claim that the city incorrectly issued a building permit that would allow for excavation of the hillside.
- City informed owner/builder that the neighbor was citing a city ordinance that prevented disturbance of any slope 30% or greater and the slope on the north of the property was classified as a protective overlay zone.
- Owner/builder asked city staff why they would have approved a building permit if the plan design would violate a city ordinance?
- Staff reported that it was their belief that the ownership of the property was old enough to grandfather it into the previous older codes and ordinances which therefore permitted the excavation of the hillside. Staff believed the owner/builder was not subjected to the updated revised revisions of the protected overlay zone.
- Once the neighbor was informed of this explanation from staff they indicated they would file a lawsuit against the city to stop the project and force a redesign and restoration of the hillside.
- Staff informed owner/builder of the neighbor's intentions and that the neighbors efforts would cause delays to lifting the stop work order that was currently on the project and it would go before the city council to determine if the original building permit should be revoked.
- The permit was cancelled by the city council and a new redesigned plan and full submittal process was required to receive a new building permit.
- A temporary restoration of the hillside was required to pass inspection prior to receiving a new building permit.
- The hillside was restored to the staff approved temporary slope, height, and erosion control by inspection.
- Inspections of the temporary hillside resulted in the discovery that the new plan design at 10 feet away from the approximate location of the original top of hillside would not allow for the sandy sediment to reach the exact original estimated elevation of the top of slope because the footing and foundation excavation for the new plan 10 feet away would cause the sandy hillside to cave and fail due to a 10 foot or more over dig required to safely and correctly build the footing and foundation.
- (Note that "original top of slope elevation" is relative and the numbers used were inaccurate to an unknown margin of error due to no records on file of any property survey or topo prior to the hillside excavation from the original building permit. The original top of slope elevation was determined by outdated arial lidar imaging of the surrounding area and staff informed owner/builder that this data comes from a flight path that was north of the hillside and not directly over the hillside. Therefore, it was not completely accurate. When discussions together with staff and owner/builder in an attempt to determine a more accurate option for original top of slope elevation the owner/builder learned that this type of arial imaging is considered in the engineering industry to be inaccurate and not a preferred method for slope elevations.)

- However, no other data or files existed to help everyone determine a more accurate top of slope elevation. Therefore, owner/builder had to accept this elevation declaration from staff.
- Following the approval of the temporary slope restoration and hillside cut and fill up to basement footing grade, staff approved a new building permit.
- Staff visited the site on multiple occasions to continually observe and work with owner/builder to aid in everyone's best efforts to restore the hillside the best that sandy sediment conditions would allow and continually preserve the remaining slope and verify no disturbance or deviation from the approved plan and site plan were taking place.
- Staff surveyors also repeatedly visited the site to verify top of slope distance from the house was accurate. This was done prior to basement excavation and the temporary approval of the hillside restoration. Following placement of footing and foundation and backfill staff verified the structure was built at a minimum 10 feet away from the proposed top of slope line and everything was found to be correctly done per plan.
- Clarification is needed at this point in the historical outline to understand the elevation of the foundation in relation to Pepperwood drive and the physical impossibility to access the north slope behind the structure for backfill.
 - The new site plan following the cancellation of the original permit, received a staff review requiring that the grading and drainage of the property comply with all the latest codes to retain all the water on the property. Civil engineering had an error on the site plan indicating that the house would be too high out of the ground above Pepperwood drive and therefore the elevation of top of foundation would need to be lowered into the ground. This correction was made, and the site plan was approved. The as-built condition of the property reflects compliance with the approved site plan, with the exception of the top of slope elevation in the middle of the hillside.
 - The plan allowed for a walk out basement design due to the fact that it would not be possible to backfill the middle section of the disturbed slope completely to its original proposed top of slope elevation. To the extent possible, the hillside would be continued from east to west as high as it could be with only a 10 foot setback from top of slope clearance between the house and the protected overlay zone on the slope.
 - It's important to note, that once the house was in place it would be impossible to mobilize the necessary equipment and materials to the north side of the home necessary to guarantee absolute original top of slope elevation without approval to further disturb the remaining hillside and 30% slope even if the plan did not change to a walk out daylight basement.

- Due to these extenuating circumstances a walkout basement revision was approved, and the current as-built condition of the home reflects compliance with the approved house plans.
- Following the construction of the home retaining was put in place to the maximum extent possible to ensure as much of the existing east side of the undisturbed slope was preserved and no further native vegetation was lost.
- This retaining was carried west as much as the sandy sediment and material access would physically allow in an effort to again achieve as close to original top of slope elevation as physically possible without damaging or disturbing any more hillside.
- Included photos and staff provided drone footage shows how far the hillside top of slope elevation was achieved.

This above historical outline was provided to offer our best recollection and understanding of the process and construction efforts. The owner/builder worked and communicated regularly with staff to ensure everything was built per plan to the best of all our abilities. However, despite the best efforts of staff and owner/builder, the final as-built condition of the property achieved all details as planned except for one. In our opinion, the one deviation from the site plan that resulted despite all efforts to restore the top of slope on the hillside to the height on the plan is acceptable. This solution meets or exceeds any and all realistic expectations that were established and hoped for from the approved site plan.

The deviation exists in one section in the middle of the restored hillside starting from the current undisturbed hillside on the east, where it begins to slope to the west, and drops down approximately 7 feet below the proposed original top of slope elevation for approximately 50 feet in a continued reducing angle until it meets the proposed original top of slope elevation. (See attachment.)

This deviation is due to circumstances outlined above.

This deviation is believed by the owner/builder to be minor, all things considered, and we hope the planning commission agrees. This is realistically the best possible outcome with the circumstances that were given to the owner/builder as a result of no wrong doing on their part. The need for this special exception exists unfortunately, because the owner/builder was forced into the unintended situation of choosing between an assumed lengthy legal battle and delay trying to prove the original staff interpretation of the property being grandfathered into the previous code was, in fact, correct. We feel it is important to point out, that at the time the original permit was being challenged by the neighbors, both the owner/builder and staff believed that the staff had correctly interpreted the grandfathered state of the property. Yet, part of the decision to forego challenging the situation, was an effort to “get along” with neighbors and to proceed with the least amount of disagreement possible. Owner-builder then decided to relinquish that inevitable fight and informed the staff and city council that they would be willing to redesign and change their entire plan and home placement and design to

Clark Residence – 3 Pepperwood Dr Lot 509

facilitate a better, less conflicting resolution to the neighbors' threats and complaints. Part of that decision required the owner-builder to restore the hillside to the best of their ability at their own expense. We believe the owner/builder did everything possible to restore it as close as the site would allow. The need for all the efforts, time and money of the owner/builder to restore a situation that was not a result of any errors or wrongdoing by the owner/builder resulted in what staff considers a deviation to the approved site plan and hillside restoration elevation that is only approvable by the planning commission.

For this purpose, we are requesting a special exception approval of the current as-built condition of the property as required by staff to receive the final full certificate of occupancy and the release of the \$50,000 bond that was required by staff from owner/builder to receive their approval of the temporary hillside restoration and new building permit.

Thank you for your review.