

# SANDY CITY COMMUNITY DEVELOPMENT



JAMES SORENSEN  
COMMUNITY DEVELOPMENT DIRECTOR

MONICA ZOLTANSKI  
MAYOR

SHANE PACE  
CHIEF ADMINISTRATIVE OFFICER

## MEMORANDUM

August 11, 2022

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**To:** Board of Adjustment  
**From:** Community Development Department  
**Subject:** Rozenfeld Variance Request to Amend Condition #6      BOA08012022-006373  
3802 East Catamount Ridge Way      4.45 Acres  
[Community #30 - Granite]      R-1-15, SAO Zone

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**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. The subject property is Lot 8 of the Subdivision. It was reviewed and approved under the County's FCOZ ordinance (similar to SAO zone).
BOA01172022-006252	On February 10, 2022, the Board of Adjustment granted a variance to Section 21-15-04(a)(1)(a) and 21-15-4(a)(2)(a) of the Sandy City Land Development Code to construct a new home on a hillside slope in excess of thirty percent (30%) grade, on a lot within the Sensitive Area Overlay Zone.

### REQUEST & BACKGROUND

Yuri Rozenfeld ("**Applicant**"), filed a request with the Sandy City Board of Adjustment to amend Condition of Approval #6 from a previously approved Variance. The property is located at 3802 East Catamount Ridge Way (*see the Vicinity Map, **Attachment A***).

The applicant received a variance with conditions of approval from the Board of Adjustment earlier this year, under case file BOA01172022-006252. On February 10, 2022, the Board granted a variance to Sections 21-15-04(a)(1)(a) and 21-15-4(a)(2)(a) of the Sandy City Land Development Code for the purpose of constructing a new home on a hillside slope in excess of

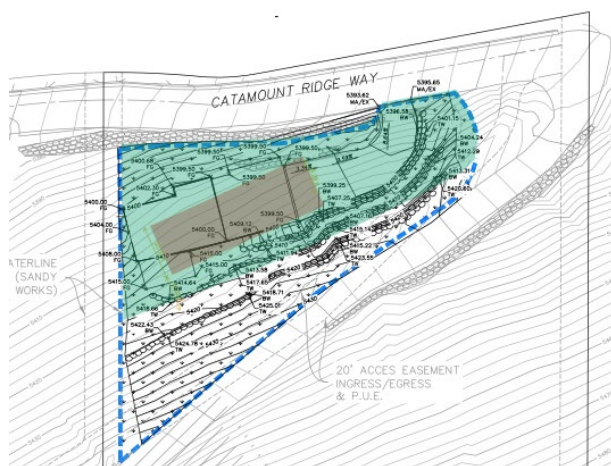
thirty percent (30%) grade, on a lot within the Sensitive Area Overlay Zone. The previous agenda packet from February 10, 2022, with staff analysis, findings, conditions of approval and all substantiating material are included with this report (see **Attachment E**). The minutes from that Board of Adjustment meeting on February 10, 2022, were submitted with the applicant's letter of request (see **Attachment D**).

The current request is to amend one of the conditions from that previous variance. Specifically, the applicant requests to amend Variance Condition of Approval #6, as follows:

*"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')~~ twenty-six feet (26'). That a limit of disturbance be placed at the existing ~~5420'~~ 5430' elevation contour in order to reduce the impact to the hillside and reduce the amount of disturbance to the natural vegetation."*

## REQUEST ANALYSIS

Staff illustrated the potential impacts of the proposed conditions during the Board of Adjustment meeting staff presentation. That illustration is shown below (left):

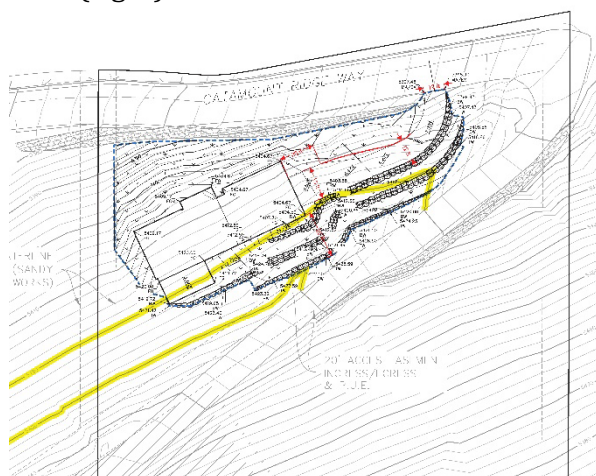


As the applicant engineered the site to address the required changes, they discovered that they couldn't do so without requesting additional changes to the conditions of approval. The applicant requests an amendment to Variance Condition of Approval #6 because it is necessary to address issues that have been created by site design recommendations and by implementation of Condition of Approval #9. The proposed site changes are illustrated below (right):

Specifically, the necessary site design changes are caused by:

- 1) A recommendation to rotate the home to align with the slope contours of the site; and
- 2) Implementation of Condition of Approval #9, which requires a 10-foot setback from the public utility easement.

These requirements result in an increase to the disturbed area behind the home by six feet (from 20' to 26'), and a ten foot (10') increase to the maximum contour elevation for the overall limit of disturbance on the site (from 5420' to 5430'). However, the applicant states that these site design changes have reduced the volume of ground that would need to be removed from the site. The applicant's narrative provides additional detail to their proposal under Attachment D.



Changes to the site design are also illustrated by the revised Grading Plan (see Sheet C300, **Attachment B**), and the original Grading Plan (see Sheet C300, **Attachment C**). As proposed, the

sight design changes and amendments to Condition #6 are the minimum necessary to address the requirements of the Variance that was approved in February of 2022.

### STAFF FINDINGS

The applicant requests the following amendment to Condition of Approval #6 of the Variance that was approved under case file BOA01172022-006252:

*“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')~~ twenty-six feet (26'). That a limit of disturbance be placed at the existing ~~5420'~~ 5430' elevation contour in order to reduce the impact to the hillside and reduce the amount of disturbance to the natural vegetation.”*

The proposal to amend Condition #6 is the minimum necessary to address site design issues caused by: 1) a recommendation to rotate the home to align with the slope contours of the site, and 2) implementation of Conditions of Approval #9, which requires a 10-foot setback from the public utility easement. Based on these facts, the applicant’s submittal information (Attachment D), and the staff report packet from February 10, 2022 (Attachment E), findings for the variance review criteria are provided below.

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.**

Finding: Literal enforcement of zoning ordinance would not allow any home to be built on this platted subdivision lot, depriving the lot of nearly all economic value, as nothing else could be built there. The proposed amendment to Condition #6 addresses site design issues that will allow construction of the new home, as was intended by the original variance approval.

2. **There are special circumstances attached to the property that do not generally apply to other properties in the same district.**

Finding: The property is severely limited by a difficult and small building envelope, primarily because of the steep slope. Other homes in this vicinity were built before the current zoning ordinance, thus enjoying the benefits of construction and use that now requires a variance. The proposed amendment to Condition #6 does not change this fact.

3. **Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.**

Finding: This is a platted lot and having and maintaining a home on the property is an essential property right. The proposed amendment to Condition #6 does not change this fact.

4. **The variance will not substantially affect the general plan and will not be contrary to the public interest.**

Finding: The general plan provides for homes to be built in this zone in spite of the steep hillsides, provided certain conditions are met. The proposed amendment to Condition #6 does not change this fact. All other conditions of approval shall remain the same to

mitigate negative impacts. Further, the applicant states that the required site design changes significantly reduced the impact on the lot by reducing the volume of ground that would need to be removed.

5. **The spirit of the zoning ordinance is observed and substantial justice done.**

Finding: If a variance is not granted, no construction would be allowed on the legally platted parcel, which would be a serious injustice. Construction of the proposed residence will not create a substantial negative impact to the protected hillside so long as the proposal is limited to the amendment to Condition #6, and all other conditions of approval remain as originally approved.

The applicant's proposal is the minimum necessary to address site design issues that will allow construction of the new home. The required site design changes significantly reduced the impact on the lot by reducing the volume of ground that would need to be removed. Further, the hillside can be properly restored and the presence of a new home on a platted lot would create little negative impact to other property owners.

6. Consistent with Utah Supreme Court decision of *Chambers v. Smithfield City* 714 P.2d 1133 (Utah Supreme Court, 1986), the hardship complained is not economic in nature. Rather, the hardship suffered here – not being able to construct on the lot – is “tied to the special circumstances” grounded in the lot, not on economic decisions or risk taking by the owner. The proposed amendment to Condition #6 does not change this fact; the proposal is the minimum necessary to address site design issues that will allow construction of the new home.
7. And finally, the hardship addressed in this variance appeal is not “self-imposed,” consistent with *Chambers*. In *Chambers*, the owner purchased a lot of size clearly beyond the zoning requirements. Therefore, their economic loss – when it was determined that they cannot build – was suffered because of a decision that was informed by the fact that that construction on the lot was not permitted. The proposed amendment to Condition #6 does not change this fact; the proposal is the minimum necessary to address site design issues that will allow construction of the new home.

**Conclusion:**

Based on the findings stated above, staff concludes the proposal to amend Condition #6 of the Variance that was approved under case file BOA01172022-006252 does not create any unmitigated impacts to the property if all other conditions are met; and the request does not result in the violation of any other City ordinances. Therefore, all applicable criteria for an amendment to Condition #6 of the Variance have been met.

**STAFF RECOMMENDATION**

Staff recommends the Board of Adjustment approve the request to amend Condition #6 of the Variance that was approved under case file BOA01172022-006252 for the property located at 3802 East Catamount Ridge Way. All other conditions of approval would remain as originally approved to mitigate the negative impacts of said variance. If approved, the amended conditions of approval shall be stated as follows:

**Conditions of Approval:**

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')~~ twenty-six feet (26'). That a limit of disturbance be placed at the existing ~~5420'~~ 5430' 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, fourteen-foot (14') maximum, 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.
9. That the buildable area be limited to be no closer than ten feet (10') within an existing water line or within a public utility easement.
10. That a conservation easement or restrictive covenant be recorded that restricts any further expansion of the approved building envelope or the construction of any further structures or further disturbance upon the property.

Planner:



Melissa Anderson  
Zoning Administrator

**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.*

File Name: S:\USERS\PLN\STAFFRPT\2022\BOA08012022-006373 REVISED ROZENFELD VARIANCE\STAFF REPORT\ROZENFELD VARIANCE AMEND COND. STAFF REPORT.DRAFT.DOCX