

SANDY CITY COMMUNITY DEVELOPMENT

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MEMORANDUM

June 7, 2019

To: Sandy City Board of Adjustment
From: Community Development Department
Subject: Schneider – Variance Requests
3381 East 9980 South
[Community #29 - The Dell]

BOA-05-19-5660
1.10 Acres
R-1-40, SAO Zone

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

PROPERTY CASE HISTORY	
Case Number	Case Summary
SUB-02-17-5194	On May 4, 2017, the Planning Commission approved a request for multiple special exceptions pertaining to a Subdivision proposal known as Schneiderville and approved a one-lot subdivision along an existing private road.
RESB-07-17-16229	A building permit was duly issued on September 28, 2017. This permit was for the construction of a single-family home on the subject property. This approval included an approved site and grading plan which included retaining walls, rock fall mitigation walls, and approved building placement. The permit has not been completed due to a notice of non-compliance that was filed on April 19, 2019 because the building, grading and retaining walls did not comply with the approved site and grading plan.

REQUEST

The applicants, Jared and Jessica Schneider ("**Applicants**"), have filed a request with the Sandy City Board of Adjustment for two (2) variances from the Land Development Code. Specifically, they are requesting variances from the following sections of the Code:

- 1) Reduced setback from the required distance of the existing home to the native sensitive area slopes of the lot (see Section 15A-15-04(A)(2)(a)).



Figure 1 – Pre-Construction Conditions

area, as the lot is impacted with various sensitive area issues (earthquake faults, steep slopes, rock fall, etc.). This building area is shown on the plat as that portion of the lot not affected by a twenty foot (20') setback from protected hillside areas, R-1-40 zone setbacks (front, side, and rear), easements, and fault-rupture setback areas. While the lot is limited, it met the minimum buildable area requirement of the Sensitive Area Overlay Zone.

The Applicants were issued a building permit as an Owner/Builder for this lot on September 28, 2017. The permit included an approved site, grading, and utility plans that was approved by the City to ensure compliance with the subdivision and zoning requirements (see attached **Building Permit Site Plan**). The Applicants proceeded to construct the home as the Owner/Builder (see Figure 2). It was discovered prior to final inspection for the certificate of occupancy, that the site plan and grading plan was not followed accurately.



Figure 2 – During Construction Conditions

2) Keep various walls that encroach into the restricted sensitive area lands of the lot (see Section 15A-15-04(B)(6)(f)).

These requested variances are related to a building permit issued for a single family home within an existing one lot subdivision, Schneiderville Subdivision. The property is located at 3381 East 9980 South, which is within the R-1-40 Residential Single-Family Zone and the Sensitive Area Overlay (SAO) Zone (see attached **Vicinity Map** and Figure 1).

BACKGROUND

History

The subject property was made into a legal building lot through the subdivision review process with the Schneiderville Subdivision. The plat was recorded on August 23, 2017 (see attached **Subdivision Plat**). This plat designated an approved building

Upon request of the City, the Applicants provided a survey of the improvements that were made (see **Applicants' Letter, Exhibit "A"** and Figure 3). It was found that the home was placed incorrectly (did not meet setbacks from the hillside) and that retaining walls were constructed beyond their approved locations exceeded approved heights, the home encroached into the required fault-rupture setback area, and significant re-grading of protected hillsides had occurred. The City recorded a "Notice of Non-Compliance" on the property on April 19, 2019. This will remain until the lot is brought into compliance with the Code or the

Applicants have received approval for variances from those requirements. Staff has also withheld a certificate of occupancy until these issues are resolved, although it appears that the Applicants may have moved into the home.

Since being notified of these issues, Staff has met with the Applicants on a few occasions to discuss the code violations and directed them to provide us with a revised site and grading plan before proceeding with further improvement, or continue to build the retaining walls as per the approved site and grading plan. Staff also directed them to have the revised wall locations surveyed before installation to ensure they were building outside of the 30% slope area. The Applicants have made significant changes to the grading and retaining walls in the rear yard area. They removed some of the retaining walls that encroached into the 30% slope area (see **Applicants' Letter, Exhibit "B"**

page 4 of 4) and are attempting to restore the hillside to its pre-construction state. The reconstructed retaining wall improvements appear to have been done without a survey as they have not been done in complete fidelity to the approved plan and portions are still within the platted hillside area. They have rebuilt other walls along the eastern property line (see **Applicants' Letter, Exhibit "C"**) so that they meet the Land Development Code requirements for retaining wall height. However, the hillside has not yet been properly regraded to fully restore it to its original pre-construction state.

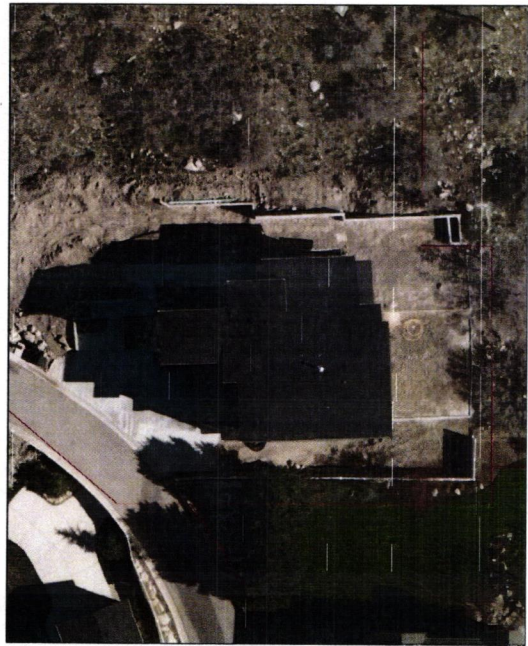
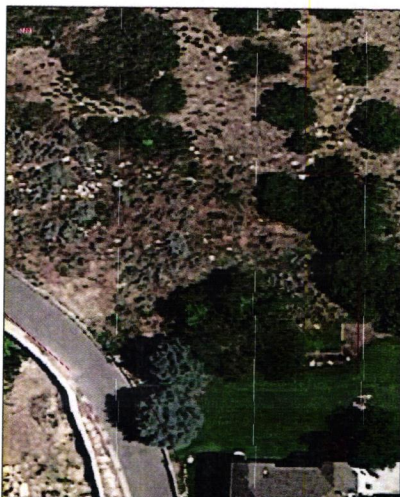


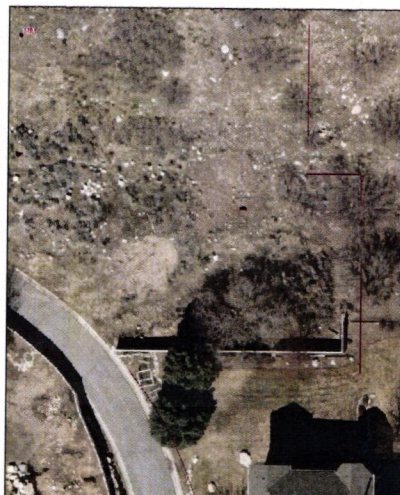
Figure 3 – Post Construction Conditions

Zoning

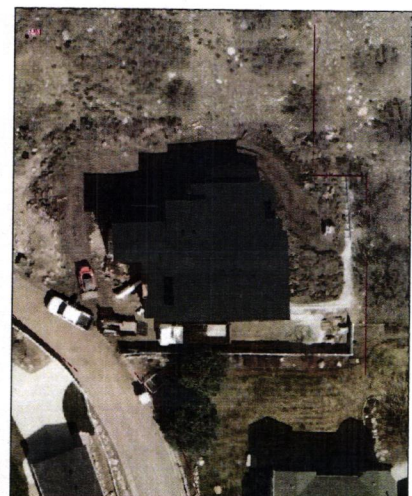
The subject property is zoned R-1-40 and is surrounded by other single family residential properties zoned R-1-15. All properties surrounding the subject property are also subject to the requirements of the Sensitive Area Overlay (SAO) Zone. The purpose of the SAO is to provide standards, guidelines, and criteria that will minimize environmental hazards and protect the natural scenic character of sensitive areas within Sandy City. This applies to areas located



2016 Vegetation Map



2017 Vegetation Map



2018 Vegetation Map

adjacent to faults, floodplain, watershed, and other potential problems such as slope areas of 30% or more, which is one of the major concerns in this matter.

Physical Features

The subject property contains steep slopes (sloping downhill from north to south) and natural vegetation of oak stands, grasses, and bushes. The subject property is located in an area with known areas of 30% or greater slope constraints and earthquake fault rupture zones. It also has rock fall hazards that were required to be mitigated in the site plan. Geologic studies conducted during the subdivision review have found that no other concerns are applicable to this property.

NOTICE

Notices were mailed to property owners within a 500-foot radius of the subject parcel to notify them of the Board of Adjustment meeting scheduled for June, 13, 2019.

ORDINANCE SUMMARY

Applicants are requesting variances from the terms of the following excerpts of City ordinance(s):

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

6. Grading, Cuts and Fill.

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

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.

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 reduced setback from the required distance of the existing home to the native sensitive area slopes of the lot.
- 2) §15A-15-04(B)(6)(f) – Seeking to keep various walls that encroach into the restricted sensitive areas of the lot.

Staff has reviewed the Applicants' Letter to the Board of Adjustment (*see attached Applicants' Letter*) describing their requests. It presents the history of their construction process as Owner/Builders, not the reason violations of the City ordinances occurred. They explain what they've done to correct some of those code violations. However, in staff's opinion, the Applicants have not yet addressed the seven (7) standards and conditions required to approve each of the variances in their letter to the Board. Merely pointing out that other variances have been approved in the past on nearby properties (which requests are unrelated to those currently under review and in a completely different set of circumstances), as the Applicants have done, is not sufficient reason to approve their requests. Each application must meet the requirements and be evaluated on their own merits.

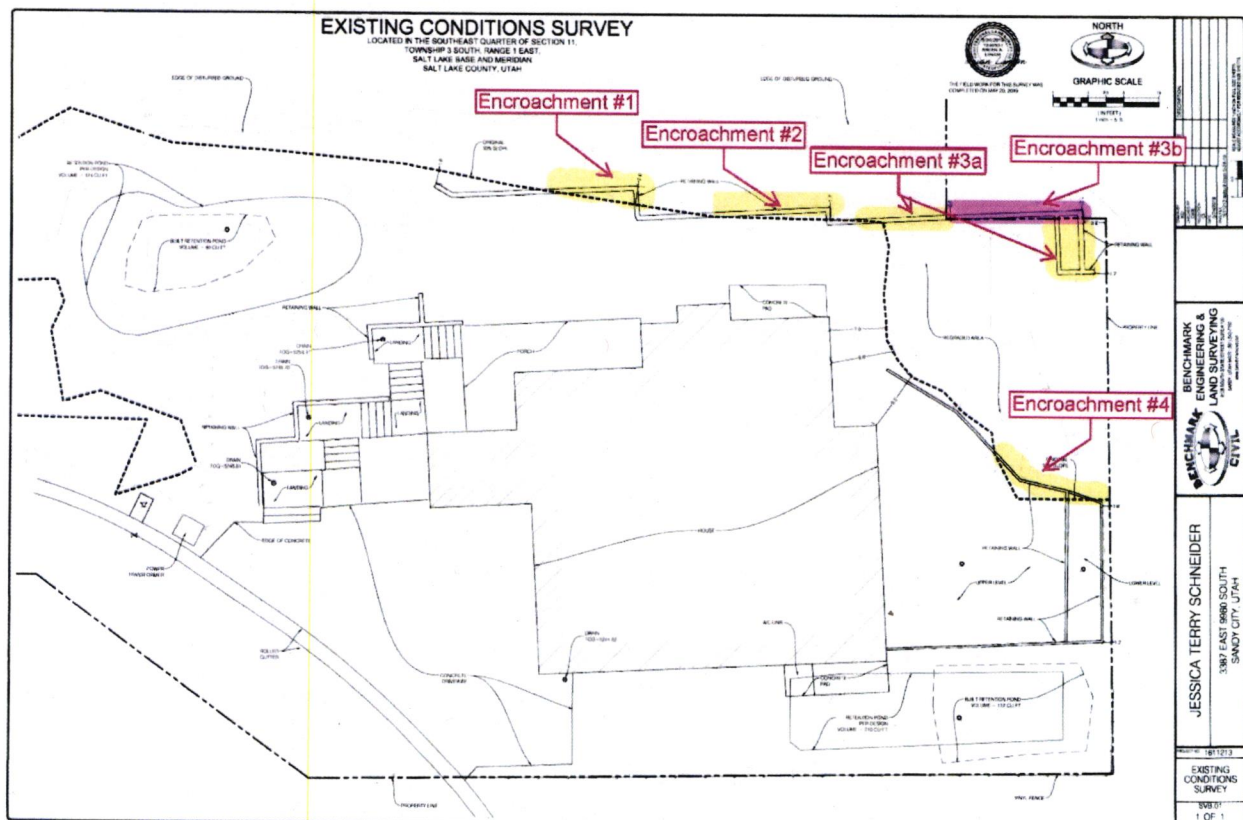
Neither Staff nor the Board can make these arguments on the Applicants' behalf. The applicant bears the burden of proving that all of the conditions justifying the requested variances have been met.

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

Variance #1

Literal enforcement of the Land Development Code would require the house to be moved or a portion of the home and foundation to be removed in order to meet the required setback from

Staff supports minor encroachments into the surveyed 30% hillside area, which are labeled as Encroachments #1, #2, and #4. They certainly do encroach, but they do not significantly disrupt



the continuous hillside nor do they create safety concerns. Staff would consider these to be minor variance requests which can be approved administratively by the Community Development Director (see Section 15A-03-03). The Director is comfortable approving these minor encroachments upon receipt of a letter of support from the City Engineer. Staff recommends that the Board only consider the major variance requested by the Applicants, which involves Encroachments #3a and #3b.

Staff does not support the request to keep encroachments shown as #3a and #3b as they egregiously encroach into the continuous 30% slope and would impede the ability to completely restore the hillside to its natural state. This encroachment is the same continuous wall as encroachments #1 and #2 and was intended as rock fall mitigation, not slope retention. Staff has described the third encroachment in two parts, because Encroachment #3b is located outside of the Applicants' property. We cannot approve any improvements that are not within their own property. For this reason alone, this section of wall must be removed and any areas outside of the Applicants' property need to be restored to the natural hillside contour.

As with Encroachments #1 and #2, these walls are intended to be rock fall mitigation walls. They are not designed to be retaining walls, as explained in the attached **IGES letter dated May 1, 2019**. The following is an excerpt from that report:

"The soil stockpiled behind the wall should be removed as soon as feasible, as the wall is not designed for a full-height 6-foot retainage, and the stockpiled soil also compromises the ability of the wall to mitigate against rockfall (a clear distance of four feet is recommended). Temporary stockpiling is acceptable for a period of short duration to facilitate completion of the backyard improvements (about four weeks or less)."

This also further illustrates that the hillside has not yet been properly regraded. The wall goes well beyond the approved length of a rock fall mitigation wall (see attached **Building Permit Site Plan**). It was determined at the time that the permit was issued, that the rock fall mitigation walls did not need to extend into the slope area in order to protect the home. If the hillside is restored properly, then there is no need for the extension of these protections, as the rocks will roll away from the home and not toward it. There are multiple letters from IGES, the engineering firm, which make some conflicting findings (see **Applicants' Letter, Exhibit "C"**; **IGES Letter Dated May 16, 2019**; and **IGES Letter Dated May 1, 2019**). When these are read together, staff concludes that the Encroachments #3a and #3b are not necessary and could be safely removed or modified.

If the Board determines that the encroaching wall would be better left in place, because removal would cause further disturbance to the hillside, staff would recommend cutting off the exposed portion and leaving the buried portion. This would satisfy the intent of the Code in restoring the hillside's natural look without further compromising its structural integrity.

The other item that is not addressed in this report is the encroachment of the home into the fault-rupture setback area (see **Applicant's Letter, Exhibit "A"**). This is an issue that the City Engineer will address by recording a Notice on the property that will advise and disclose to the public that this home has been located partially within a fault-rupture zone. This is not an issue that the Board of Adjustment can address.

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 above, 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 deny the requests as presented or table them until 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 recommend the following actions:

Staff would recommend approval of the variance request #1 of reduced setback from the designated hillside area of the property as shown in Exhibit "E" of the Applicants' Letter for the property located at 3381 East 9980 South, 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.
2. The requested variance does not create any unmitigated impacts to the property or to the area if certain conditions are met.
3. The requested variance does not result in the violation of any other City ordinances.

Conditions:

1. That the disturbed hillside shall be restored to its pre-construction state, which shall include the following:
 - a. The encroaching walls shown in the staff report as Encroachment #3a and #3b be removed or modified such that they are no longer visible after the original hillside contours are restored.
 - b. The slope is to be re-graded to match the pre-existing contours and natural slope.
 - c. A certification by a licensed land surveyor shall be presented to staff to ensure this slope restoration has been properly executed prior to any revegetation of the hillside.
 - d. Restoration of the natural vegetation is required. A landscape plan produced by a licensed landscape architect should also be prepared and approved by the Community Development Director to meet all requirements of the Land Development Code (see Section 15A-15-04(B)(3)).
 - e. No further improvements to the site shall be performed until a revised site plan, grading plan, and revegetation plan of the disturbed hillside area be reviewed and approved by the City Engineer and Community Development Director.
2. Removal of the Notice of Non-compliance and issuance of the Certificate of Occupancy shall not occur until the above requirements have satisfactorily been completed as determined by the Community Development Director.

Staff would **recommend denial** of the variance request #2 to keep all walls that encroach into the restricted sensitive areas of the lot (as described in the Applicants' Letter and further described as Encroachments #3a and #3b of this staff report) for the property located at 3381 East 9980 South, based upon the following findings:

Findings:

1. The Applicants have not met the conditions required by statute for said variance.
2. This does not constitute an unreasonable hardship by applying a literal enforcement of the ordinance nor would it carry out the general purpose of the ordinance.
3. This variance request is not essential to the enjoyment of a substantial property right.
4. This requested variance is contrary to the public interest as stated in the purpose statement for the Sensitive Area Overlay Zone (*see* Section 15A-15-01) and would not observe the spirit of said ordinance.
5. The need for this variance is self-imposed and is economic in nature.

Planner:

Reviewed by:



Mike Wilcox
Zoning Administrator

File Name: S:\USERS\PLN\STAFFRPT\2019\BOA-05-19-5660_SCHNEIDER VARIANCE REQUEST\STAFF REPORT.DOCX

Included Exhibits Attached Hereto:

Vicinity Map

Applicants' Variance Request Letter

IGES Letter Dated May 1, 2019

IGES Letter Dated May 16, 2019

Schneiderville Subdivision Plat

Building Permit Site Plan

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.*