

DATE ISSUED: April 15, 2005 REPORT NO. PC-04-182

ATTENTION: Planning Commission, Agenda of April 21, 2005

SUBJECT: HILL RESIDENCE - PROJECT NO. 15355, HILLSIDE REVIEW AND RESOURCE PROTECTION OVERLAY ZONE PERMIT NO. 32731, VARIANCE NO. 209653, AND ENCROACHMENT REMOVAL AGREEMENT NO. 209658, PROCESS 5 – OLD CODE.

REFERENCE: Hillside Review and Resource Protection Overlay Zone Permit No. 88-0742 and Resolution No. 8046 (Attachment 11).

OWNER/  
APPLICANT: Steven M. Hill and Sandi M. Hill

### SUMMARY

Issue(s): Should the Planning Commission RECOMMEND to the City Council APPROVAL of an application for:

1. Hillside Review and Resource Protection Overlay Zone Permit No. 32731, and Variance No. 209653, Amending Hillside Review and Resource Protection Overlay Zone Permit No. 88-0742, to maintain the existing height and floor area of an existing, two-story, single-family residence;
2. Street/Public Right-of-Way Vacation No. 209656, to vacate the unimproved northerly one-half of the Walnut Avenue Public Right-of-Way adjacent to the southerly boundary of the property; and
3. Encroachment Maintenance and Removal Agreement No. 209658, to allow the expansion of an existing Encroachment Maintenance and Removal Agreement within the Walnut Avenue Public Right-of-Way, within the Uptown Community Plan Area?

Staff Recommendation:

1. RECOMMEND APPROVAL of Hillside Review and Resource Protection Overlay Zone Permit No. 32731, Amending HRP/RPOZ Permit No. 88-0742; Variance No. 209653; and Encroachment Maintenance and Removal Agreement No. 209658; and
2. RECOMMEND DENIAL of Street/Public Right-of-Way Vacation No. 209656.

Community Planning Group Recommendation: - Attachment 16

On April 6, 1999, after two continuances on February 3, 1999 and March 10, 1999, a motion was made to recommend approval of the application with the following conditions - 1. A partial street vacation (of Walnut Avenue) only; 2. No construction permitted outside of the existing footprint (of the existing residence); and 3. Maintain the public view corridor along Walnut Street. The recommendation included a notation indicating that the majority of the quorum did not approve the motion and indicated a vote of 2-4. Since a majority of the quorum did not approve the motion, this resulted in "no action" being taken by the Uptown Planers. Notes in the project file indicate that the group did not support the Street Vacation, either partial or full.

On October 3, 2000, the CPG voted 5-3-1 to recommend denial of the Street Vacation.

On May 1, 2001, the Uptown Community Planning Group voted 11-0-1 to recommend approval of the extension of an existing 15-foot wide Encroachment Maintenance and Removal Agreement (ERA) to include existing improvements for wood stairs, terraces and trees, including continued maintenance, for areas south of the property at 3502 Jackdaw Street with no further improvements or access restrictions.

Environmental Review: An Exemption has been prepared for the project in accordance with State of California Environmental Quality Act (CEQA) Guidelines. This Exemption was granted pursuant to Article 19 of Guidelines for Categorical Exemptions, Section 15301 (1), Existing Facilities.

Fiscal Impact: All staff costs associated with processing this project are recovered from a separate deposit provided and maintained by the Applicant.

Code Enforcement Impact: On March 17, 1998, a Notice of Violation was issued to the property owner (Attachment 20), indicating non-compliance with conditions of the approved HRP/RPOZ Permit NO. 88-0742. On January 11, 1999, the Applicant submitted the current application to amend the approved Permit in an effort to legalize the violations.

Housing Impact Statement: The site is designated for Low Density Residential at 5-10 dwelling units per acre (dus/ac). The site is developed with one, single-family residence pursuant to a prior discretionary approval and implements the Uptown Community Plan's land use designation.

## BACKGROUND

This project is subject to the rules and regulations contained in the City of San Diego Municipal Code in effect on December 31, 1999 (Old Code), Attachment 19.

### Property History

The subject property is comprised of a 2,483 sq. ft. legal lot (approximately 25-foot wide by 100 feet deep) and was included with a larger subdivision of a Portion of Pueblo Lot 1122, in 1883. The site slopes downward approximately 29-feet from an elevation of 239.0 at the northeasterly corner, to an elevation of 210.0 at the southwesterly corner. The property is addressed as 3502 Jackdaw Street and located at the northwesterly corner of the intersection of Jackdaw Street and Walnut Avenue, between Kite Street to the west and Ibis Street to the east. Jackdaw Street is unimproved south of Walnut Avenue due to a canyon extending from northeast to southwest, which included the rear, westerly portion of the property. Walnut Avenue is an 80'-0" wide unimproved public right-of-way, between Jackdaw and Kite streets due to the same canyon.

The site is located within the R1-20,000/HR (Residential, Single-Family – Hillside Review Overlay) Zone of the Uptown Community Plan Area, and is designated for low-density, single-family residential land use at 5-10 dwelling units per acre (du/ac). The majority of the lot is located within the Hillside Review (HR) Overlay Zone. According to records from the County Assessors Office, although the original subdivision consisted primarily of 25-foot wide by 100 deep parcels, the majority of these individual lots have been combined with another and developed with a single residence across the common lot line, resulting in parcels 50' wide by 100' deep.

### Setback Suspension and Yard Variance

On May 6, 1964, the Zoning Administrator granted a request for a Setback Suspension and Yard Variance to construct a single-family residence on the property ("Lot 13") with open parking in front observing a zero-foot (front) setback on Jackdaw Street where the average setback of the block or 15-feet was required and no parking in the setback or front yard was permitted, and observing a three-foot side yard where four-feet was required. This discretionary permit was not utilized and expired.

During this period, the owner of Lot 13, Mr. Stanfield, also owned Lots 14 and 15 located adjacent to the north. These two contiguous 25'x100' parcels were developed with one, single-family residence across the common lot line which tied the lots together as one premise.

This parcel was later sold to a third party, Mr. Herrmann. Mr. Stanfield subsequently sold undeveloped Lot 13 to the current owners, Mr. and Mrs. Hill.

Hillside Review and Resource Protection Overlay Zone Permit No. 88-0742

On June 23, 1989, the Planning Director conditionally approved Hillside Review (HRP) and Resource Protection Overlay Zone (RPOZ) Permit No. 88-0742, granted to Mr. and Mrs. Hill for development on Lot 13. This Permit approved construction of a 13 85 square-foot, multi-story, single-family residence, with an attic and carport on the 2,483 sq. ft. lot. This approval reflected a floor area ratio of 0.558 or 0.59 (rounded), where a maximum floor area ratio of 0.60 was allowed in the zone. The Permit approved construction of the residence observing a zero-foot front yard setback adjacent to Jackdaw Street, where 25-feet would have otherwise been required in the R1-20,000 Zone. A copy of this approved Permit with conditions, and the Resolution with findings is included as Attachment 5.

The approved Exhibit "A" Site Plan (Attachment 12) indicates that the multi-level, single-family residence was approved observing the following setbacks; A zero-foot front setback adjacent to Jackdaw Street, where 25-feet was required; a four-foot interior side yard setback to the north, where eight-feet was required (adjacent to Lots 14 and 15 under separate ownership); an approximate 40-foot rear setback to the east (partially within the canyon); and a one-foot reduced interior side yard setback to the south, adjacent to the unimproved public right-of-way of Walnut Avenue (where a minimum eight-foot side-yard setback was required).

The approved First/Entry Level (415 sq. ft.) plan included a carport (not included in the calculation of gross floor area), one-half bath, two entries via the carport, bedroom with closet, full bath and interior stairway to the Second Level. The Second Level (970 sq. ft.) is comprised of living room, dining room, kitchen, a bedroom with walk-in closets and ¾ bath, interior stairway access to First and Third Levels, and exterior access via a spiral stairway to an attic and deck area (Third Level – 304 sq. ft.).

Approved Elevation Plans (Attachment 12) indicate the development as a two-story structure in the east (Jackdaw St.) elevation, approximately 21-feet in height, and as a three-story structure in the north, south, and west elevations, approximately 0- feet in height. The west and north elevations depict the westerly portion of residence constructed on caissons, with unimproved area underneath. This unimproved area ("underfloor area") was depicted as being open to the air on three sides and would therefore not be included in the calculation of gross floor area.

On October 2, 1990, an Encroachment Removal Agreement (ERA) was approved which allowed a maximum 15'-0" encroachment into the unimproved public right-of-way of Walnut Avenue located to the south of the residence. The approved ERA allowed encroachments which included a concrete walkway, steps, irrigation and landscaping. The walkway and steps were intended to facilitate alternate access to the south side of the residence. A copy of the approved ERA is included as Attachment 13.

In a letter dated April 23, 1998, the Applicant indicates that subsequent to HRP/RPOZ Permit approval, during site grading activities, the project design was revised based on the results of a soils investigation which determined that a mid portion of the site contained loose and compressible fill from end dumping, which was not previously detected due to inaccessibility of this portion of the canyon area. Due to the necessity to remove this fill material, additional excavation was required. Due to this required excavation and because Municipal Code regulations then in effect required the height measurement to be taken from pre-existing or finished grade whichever was lower in elevation, the resulting grade was lowered approximately five-feet. This lowering in grade resulted in the residence being constructed higher than was approved with the HRP/RPOZ Permit.

### Substantial Conformance Review (SCR)

On April 28, 1998, the current property owners filed an application for SCR in an effort to legalize the existing improvements within the Walnut Street public right-of-way beyond what was initially approved, to acknowledge the height and increased floor area of the existing residence based on design modifications required due to the previously undiscovered fill soils located on the westerly portion of the lot. These uncompacted fill soils were removed and the area replaced with appropriate fill and compacted to support the residence.

On June 24, 1998, staff responded to the request indicating that the SCR could not be supported because the site as developed was not in conformance with the approved HRP/RPOZ Permit (exceeded the scope of substantial conformity), and therefore an amendment to the approved Permit was required. A copy of this letter is included as Attachment 10.

## DISCUSSION

### HRP/RPOZ Permit No. 99-0019

#### Project Description

In January 1999, the property owners filed the current application seeking to amend HRP/RPOZ Permit No. 88-0742. The application includes a Variance to: 1) Legalize the height of the existing residence as built, as a result of the excavation of fill material and the height measurement taken from a lower point (the fill soils having been removed and replaced with appropriate fill compacted to support the residence); and 2) Increase the allowable floor area by permitting the enclosure of the carport area for use as a two car garage, and the improvement of the "underfloor area" located at the westerly portion of the lower level for use as habitable space. The Amendment would also acknowledge the enclosure of the former "underfloor area" and the departure from the design utilizing caissons.

As an alternative to the Variance, the application includes a Street/Public Right-of-Way Vacation of a 30-foot wide by 100-foot long portion of unimproved Walnut Avenue along the southerly portion of Lot 13. If approved, this Vacation would add 3,000 sq. ft. to the developable area of

Lot 13 (2,483 sq. ft.), resulting in a 5,483 sq. ft. premise. Based on the development regulations of the R1-20,000 Zone in effect under the “Old Code”, a maximum floor area of 3,290 sq. ft. would be allowed. Granting of the street/public right-of-way vacation would eliminate the need for an approved variance.

As an alternative to the Street/Public Right-of-Way Vacation, the application includes a request for an expansion of the ERA from the 15-foot width approved in 1990 (Attachment 13), to 40-feet (an additional 25-feet), and is included as Attachment 8. This request is intended to accommodate existing improvements which include additional landscaping, fruit trees, wooden stairs and wooden retaining walls. These improvements are located outside of the area included with the approval of the ERA in 1990 (Attachment 13), and intrude farther into the undeveloped Walnut Street Public Right-of-Way. During processing of the current application, a request to reduce this expanded ERA from 40-feet to 30-feet was made (Attachment 8). This revised request represents an encroachment of an additional 15-feet into the Walnut Street Public Right-of-Way (Attachment 8).

### Building Height

Submitted information indicates that topographic information initially utilized to depict existing grade was based on utility topographic maps which depict the topography as approximately five-feet higher than actual. As a result of this inaccurate information and the design changes required by the excavation of the fill soils, finished grade was ultimately lowered approximately five-feet. This resulted in utilization of retaining walls in lieu of the approved caissons to support the approved residence.

Site Section Plans from approved Exhibit “A” indicate that the existing residence observes an approximate height of 21-feet at the east elevation. Field measurements confirmed this measurement. These plans also depict an approved height of approximately 33-feet at the westerly elevation. Field measurements confirmed this measurement. Submitted plans indicate that as a result of the excavation due to the fill soils, the grade was lowered approximately five-feet, from an elevation of 225.5 to 220.33. This would result in the residence observing a height of approximately 38-feet, due to the height measurement being taken from the lower pre-existing grade.

### Floor Area

Submitted plans indicate that the enclosure of the carport area, and enclosure and improvement of the “underfloor area” would add 390 sq. ft. and 292 sq. ft. respectively to the calculation of gross floor area of the residence. This would result in an increase in the floor area of the residence from 13 85 sq. ft. to 2,067 sq. ft., and would represent an increase in the gross floor area ratio from 0.56 as approved with the HRP/RPOZ Permit, to approximately 0.83 .

As stated previously, the approval of the street vacation would increase the size of the premises to 5,483 sq. ft., and result in the 2,067 sq. ft. residence observing a floor area ratio of 0.376 (0.38 rounded).

### Community Plan Analysis

The Uptown Community Plan (Page 158, Attachment 2) indicates that the area is located within the Maple/Reynard natural open space system. Available records indicate that the portion of the canyon located on the subject property had been previously disturbed from fill soils and dumping. An unimproved portion of the Walnut Avenue public right-of-way, within the canyon area has been approved for limited use by the property owner through an Encroachment Removal Agreement (ERA). The current application requests a limited expansion of this ERA to allow existing landscaping and low wooden retaining walls to remain. Staff can support this limited request for encroachment to maintain the existing conditions. Staff cannot support any vacation of this natural open space system for private use.

### Conclusion

Based on a review of available records, plans, documentation, and field observations, staff can support the requested Amendment to HRP/RPOZ Permit No. 88-0742 to acknowledge the design change from utilization of caissons to retaining walls, and Variances to legalize the existing overheight condition due to the excavation of fill soils, and the increase in floor area ratio to accommodate enclosure of the carport area and improvement of the underfloor area as habitable space. Draft findings are included as Attachment 6.

ALTERNATIVES

1. RECOMMEND APPROVAL of Hillside Review and Resource Protection Overlay Zone Permit No. 32731; Variance No. 209653; and Encroachment Agreement No. 209658, with modifications; and
2. RECOMMEND APPROVAL of Hillside Review and Resource Protection Overlay Zone Permit No. 32731; Variance No. 209653; and Street/Public Right-of-Way Vacation No. 209656; and RECOMMEND DENIAL of Encroachment Agreement No. 209658.
3. RECOMMEND DENIAL of Hillside Review and Resource Protection Overlay Zone Permit No. 32731; Variance No. 209653; and Street/Public Right-of-Way Vacation No. 209656.

Respectfully submitted,

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Marcela Escobar-Eck  
Deputy Director, Project Management Division  
Development Services Department  
HALBERT/WCT

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Bill Tripp  
Development Project Manager  
Development Services Department

Attachments:

1. Aerial Photograph
2. Community Plan Land Use Map
3. Project Location Map
4. Project Data Sheet
5. Draft Permit with Conditions
6. Draft Resolution with Findings
7. Project Plan(s)
8. Proposed Expanded Encroachment Agreement
9. Street Vacation Request and Exhibit
10. Substantial Conformance Review/Denial
11. Approved HRP/RPOZ Permit No. 88-0742 and Resolution No. 804
12. Approved Plans for Existing SFR per HRP/RPOZ Permit No. 88-0742
13. Approved (15 -feet) Encroachment Removal Agreement, October 2, 1990
14. Compacted Fill Report
15. 1882 Subdivision Map
16. Community Planning Group Recommendation(s)
17. Ownership Disclosure Statement



18. Project Chronology
19. Relevant Municipal Code Sections
20. Supporting Documentation