

200A
9/10/07

RESOLUTION NUMBER R-302970

DATE OF FINAL PASSAGE SEPTEMBER 10, 2007

WHEREAS, Steven M. Hill and Sandi M. Hill, Owner/Applicant, filed an application with the City of San Diego for the following: (1) a variance to legalize the existing as-built condition of an existing single-family residence; legalize existing gross floor area to include enclosed under-floor area; and to allow an additional gross floor area to include enclosure of an existing carport; (2) an Encroachment Maintenance and Removal Agreement to maintain existing non-permitted encroachments within the unimproved Public Right-of-Way of Walnut Avenue thereby expanding a previously approved Encroachment Maintenance and Removal Agreement, for an existing single-family residence known as the Hill Residence project, located at 3502 Jackdaw Street, and legally described as Lot 13, Block 437, of the Subdivision of the east half and the south quarter of Pueblo Lot 1122, Map No. 381, in the Uptown Community Plan area, in the RS-1-5, RS-1-7 (Formerly R1-5000, and R1-20000) and Hillside Review Overlay Zones; and

WHEREAS, on April 21, 2005, the Planning Commission of the City of San Diego voted 4:2:0 recommending the following: (1) approval of Variance No. 209653 to maintain the existing as-built and enclosed under-floor area of the residence; (2). denial of a Variance to enclose an existing carport for use as a garage; (3) denial of Street/Public Right-of-Way Vacation No. 209656; (4) denial of an amendment to Encroachment Removal Agreement No. 209658; and (5) approval of a requirement that the area that was disturbed be revegetated and returned to the state it was in before it was encroached into without permission, with a minimum maintenance period from one to three years; and

WHEREAS, under Charter section 280(a)(2) this resolution is not subject to veto by the Mayor because this matter requires the City Council to act as a quasi-judicial body and where a public hearing was required by law implicating due process rights of individuals affected by the decision and where the Council was required by law to consider evidence at the hearing and to make legal findings based on the evidence presented; and

WHEREAS, the matter was set for public hearing on September 10, 2007, testimony having been heard, evidence having been submitted, and the City Council having fully considered the matter and being fully advised concerning the same; NOW, THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that it adopts the following findings with respect to Variance No. 209653 and Encroachment Maintenance and Removal Agreement No. 209658:

**A. VARIANCE FINDINGS ~ SAN DIEGO MUNICIPAL CODE [SDMC]
SECTION 126.0805**

1. There are special circumstances or conditions applying to the land or premises for which the variance is sought that are peculiar to the land or premises and do not apply generally to the land or premises in the neighborhood, and these conditions have not resulted from any act of the applicant after the adoption of the applicable zone regulations. In 1883, the subject property and surrounding area was subdivided into 25-foot wide by 100-foot deep lots. In 1930, the property and surrounding area were zoned R1-5000 which permitted single-family residential development. With the exception of a small northeasterly corner, the property is located within the Hillside Review Overlay Zone [HROZ], which was applied to the property in 1971. With the adoption of the Mid-City Communities Planned District Ordinance in 1986, this property was rezoned to a less dense zone. The majority of the property was rezoned from R1-5000 to R1-20,000/HR. The rezoning to R1-20,000 was significant and resulted in increased front, interior side and rear setbacks. These new regulations significantly impacted the site and resulted in the need to consider variances in an effort to allow reductions in setbacks to allow reasonable use of this remaining legal yet small lot.

Evidence in the record supports the conclusion that, during grading activities, fill soils were discovered which were not previously detected due to the growth of vegetation in the canyon area. These fill soils resulted in design modifications which included a retaining wall design in lieu of the approved caissons. The general hillside conditions did not change.

The current application seeks to remedy and authorize the existing height and design conditions previously created by the applicant without benefit of the necessary permits. The effect of the undocumented fill soils and the necessary design changes resulted in the height measurement to be taken from the resulting lowered grade. The conditions on the site are peculiar and have not been created by the applicant subsequent to the adoption of the zoning regulations.

2. The circumstances or conditions are such that the strict application of the regulations of the Land Development Code would deprive the applicant of reasonable use of the land or premises and the variance granted by the City is the minimum variance that will permit the reasonable use of the land or premises. The proposed modifications seeks to remedy and authorize the existing height and design conditions previously created by the applicant without benefit of the necessary permits. The existing residence is developed on a lot of substandard width and area, and is unique in terms of development pattern in the area, in which the majority of residences are developed across a common lot line of two lots. Enclosure of the carport for use as a garage will enhance security for the premises enjoyed by other properties in the vicinity. Improvement of the under-floor area as livable space will enhance the use of the premises and will not expand the footprint of the existing development. There are circumstances or conditions in which the strict application of the provisions of the ordinance in effect for this site would deprive the owner of reasonable use of the land or buildings and that the granting of the variance will accomplish this purpose.

3. The granting of the variance will be in harmony with the general purpose and intent of the regulations and will not be detrimental to the public health, safety, or welfare. The requested variances will remedy and authorize the existing height and design conditions previously created by the applicant without benefit of the necessary permits. The proposed increase in floor area ratio due to enclosure and future improvement of the under floor area as habitable space will not be visible, and the modification to the carport for use as a garage will be implemented in a manner compatible with the existing residence. The granting of these variances will be in harmony with the general purpose and intent of the zoning regulations and will not be injurious to the neighborhood or otherwise detrimental to the general public welfare. All construction will be reviewed by professional staff for compliance with the relevant building codes and inspected for compliance with those codes.

4. The granting of the variance will not adversely affect the applicable land use plan. If the variance is being sought in conjunction with any proposed coastal development, the required finding shall specify that granting of the variance conforms with, and is adequate to carry out, the provisions of the certified land use plan. The site is currently developed with a single-family residence and is in conformance with the existing Progress Guide and General Plan and the Uptown Community Plan. The footprint of the approved development will not change. Additional encroachment into the unimproved public right-of-way of Walnut Avenue is proposed to allow the existing improvements to remain. The existing and proposed improvements conform to the City's Progress Guide and General Plan, and other adopted applicable plans in effect for this site and zone. The granting of the requested variances will not adversely affect the City's Progress Guide and General Plan. The site is not located in the Coastal Zone.

B. ENCROACHMENT FINDINGS – SDMC SECTION 129.0715):

1. The encroachment will be installed and maintained in a safe and sanitary condition at the sole cost, risk and responsibility of the Owner/Applicant and successors in interest and will not adversely affect the public's health, safety or general welfare.

2. The Owner/Applicant has agreed to indemnify the City with an indemnification agreement satisfactory to the City Manager and the City Attorney.

3. The Owner/Applicant has agreed to remove or relocate the encroachment within thirty days after notice by the City Engineer, or the City Engineer may cause such work to be done, and the costs thereof shall be a lien upon said land, or, in the alternative, the Owner/Applicant agrees to an equivalent to the requirement for removal as determined by the City Engineer.

4. For structures encroaching over or under the public right-of-way, if any, the Owner/Applicant has agreed to provide an alternate right-of-way or to relocate any existing or proposed City facility to a new alignment, all without cost or expense to the City, whenever it is determined by the City Engineer that any existing or proposed City facility cannot be economically placed, replaced, or maintained due to the presence of the encroaching structure.

5. What ever rights and obligations that were acquired by the City with respect to the rights-of-way shall remain and continue in full force and effect and shall in no way be affected by the City's grant of permission to construct and maintain the encroaching structure.

6. This encroachment serves a single dwelling unit; therefore, the Owner/Applicant shall maintain a policy of \$500,000 liability insurance, for encroachments serving this single dwelling unit satisfactory to the City Engineer to protect the City from any potential claims which may arise from the encroachments.

7. In the event the City is required to place, replace, or maintain a public improvement over which the Owner/Applicant has constructed an encroaching structure, the Owner/Applicant shall pay the City that portion of the cost of placement, replacement, or maintenance caused by the construction, or existence of the Owner/Applicant's permanent encroaching structure.

8. The Owner/Applicant shall pay the City for all the cost of placing, replacing, or maintaining a public improvement within a public right-of-way when the City's facility has failed as a result of the construction or existence of the Owner/Applicant's encroaching structure.

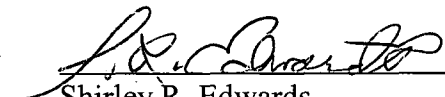
9. The costs of placing, replacing, or maintaining the public improvement shall include the cost of obtaining a necessary alternate easement.

10. The Owner/Applicant shall pay the City or public utility for all cost of relocating, replacing or protecting a facility within the public right-of-way when such relocation, replacement, or protection results from the construction of the encroachment.

11. An Encroachment Maintenance and Removal Agreement approved herein shall be recorded in the office of the County Recorder.

BE IT FURTHER RESOLVED, that Variance No. 209653 and Encroachment Maintenance and Removal Agreement No. 209658 to remedy and authorize the existing height and design conditions previously created by the applicant without benefit of the necessary permits is granted to Steven M. Hill and Sandi M. Hill, Owner/Applicant, under the terms and conditions set forth in the attached variance which is made a part of this resolution.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By 
Shirley R. Edwards
Chief Deputy City Attorney

SRE:pev
09/12/07
Or.Dept:DSD
R-2008-207

RECORDING REQUESTED BY
CITY OF SAN DIEGO
DEVELOPMENT SERVICES DEPARTMENT
PERMIT INTAKE, MAIL STATION 501

WHEN RECORDED MAIL TO
CITY CLERK
MAIL STATION 2A

SPACE ABOVE THIS LINE FOR RECORDER'S USE

JOB ORDER NUMBER 99-0019

VARIANCE NO. 209653
ENCROACHMENT MAINTENANCE AND REMOVAL AGREEMENT NO. 209658
HILL RESIDENCE – PROJECT NO. 15355
CITY COUNCIL

This Variance No. 209653 and Encroachment Maintenance and Removal Agreement No. 290658 is granted by the City Council of the City of San Diego to Steven M. Hill and Sandi M. Hill, Owner, pursuant to San Diego Municipal Code [SDMC] sections 126.0805 and 129.0715. The 0.057-acre site is located at 3502 Jackdaw Street in the RS-1-2 and RS-1-7 (formerly R1-5000 and R1-20000) and Hillside Review Overlay zones of the Uptown Community Plan Area. The project site is legally described as Lot 13, Block 437, of the Subdivision of the east half and the south quarter of Pueblo Lot 1122, Map No. 381.

Subject to the terms and conditions set forth in this Variance, permission is granted to Owner to maintain an existing multi-level, single-family residence, described and identified by size, dimension, quantity, type, and location on the approved exhibits [Exhibit "A"] dated September 10, 2007, on file in the Development Services Department.

The project or facility shall include:

- a. A maximum 2,482 square foot, multi-level, single-family residence - including Variances to - 1) Maintain the height of the existing residence at approximately 38-feet where 33-feet was approved; 2) Maintain the existing enclosed potential floor/under-floor area consisting of approximately 451 square-feet to habitable area; and 3) Enclose an existing 392 square-foot carport for use as a garage, resulting in a maximum floor area ratio total of approximately 1.00;
- b. Existing encroachments located within the unimproved public right-of-way of Walnut Avenue adjacent to the southerly perimeter of the subject property, noted on the revised Encroachment Maintenance and Removal Agreement [EMRA]. Said improvements to include landscaping, fruit

trees, wooden stairs, wooden retaining walls and irrigation. The EMRA shall reflect an expansion of the existing EMRA which varies from fifteen to thirty feet into the right-of-way;

- c. ;Landscaping (planting, irrigation and landscape related improvements);
- d. Off-street parking facilities; and
- e. Accessory improvements determined by the City Manager to be consistent with the land use and development standards in effect for this site per the adopted community plan, California Environmental Quality Act Guidelines, public and private improvement requirements of the City Engineer, the underlying zone(s), conditions of this Permit, and any other applicable regulations of the SDMC in effect for this site.

STANDARD REQUIREMENTS:

1. Prior to the issuance of any building permit, Federal Aviation Administration notification is required with a copy to the City of San Diego Development Services Department. Prior to the issuance of any building permit, the Owner shall consult with the Federal Aviation Administration and obtain a letter indicating "No Hazard" for any proposed construction. The letter of "No Hazard" shall be provided to the Development Services Department.
2. Construction must commence and be pursued in a diligent manner within thirty-six months after the effective date of final approval by the City, following all appeals. Failure to utilize the Variance or any building permits obtained within thirty-six months will automatically void the Variance or permit unless an Extension of Time has been granted. Any such Extension of Time must meet all the SDMC requirements and applicable guidelines in effect at the time the extension is considered by the appropriate decision maker.
3. No permit for the construction, occupancy or operation of any facility or improvement described herein shall be granted, nor shall any activity authorized by this Variance be conducted on the premises until:
 - a. The Owner signs and returns the Variance to the Development Services Department; and
 - b. The Variance is recorded in the Office of the San Diego County Recorder.
4. Unless this Variance has been revoked by the City of San Diego the property included by reference within this Variance shall be used only for the purposes and under the terms and conditions set forth in this Variance unless otherwise authorized by the City Manager.
5. This Variance is a covenant running with the subject property and shall be binding upon the Owner and any successor or successors, and the interests of any

successor shall be subject to each and every condition set out in this Variance and all referenced documents.

6. The utilization and continued use of this Variance shall be subject to the regulations of this and any other applicable governmental agency.
7. Issuance of this Variance by the City of San Diego does not authorize the Owner for this Variance to violate any Federal, State or City laws, ordinances, regulations or policies including, but not limited to, the Endangered Species Act of 1973 [ESA] and any amendments thereto (16 U.S.C. § 1531 et seq.).
8. The Owner shall secure all necessary building permits. The Owner is informed that to secure these permits, substantial modifications to the building and site improvements to comply with applicable building, fire, mechanical and plumbing codes and State law requiring access for disabled people may be required.
9. Before issuance of any building or grading permits, complete grading and working drawings shall be submitted to the City Manager for approval. Plans shall be in substantial conformity to Exhibit "A." No changes, modifications or alterations shall be made unless appropriate application(s) or amendment(s) to this Variance have been granted.
10. All of the conditions contained in this Variance have been considered and have been determined to be necessary in order to make the findings required for this Variance. It is the intent of the City that the holder of this Variance be required to comply with each and every condition in order to be afforded the special rights which the holder of the Variance is entitled to as a result of obtaining this Variance.

In the event that any condition of this Variance, on a legal challenge by the Owner of this Variance, is found or held by a court of competent jurisdiction to be invalid, unenforceable, or unreasonable, this Variance shall be void. However, in such an event, the Owner shall have the right, by paying applicable processing fees, to bring a request for a new variance without the "invalid" condition(s) back to the discretionary body which approved the Variance for a determination by that body as to whether all of the findings necessary for the issuance of the proposed variance can still be made in the absence of the "invalid" condition(s). Such hearing shall be a hearing de novo and the discretionary body shall have the absolute right to approve, disapprove, or modify the proposed variance and the condition(s) contained therein.

ENGINEERING REQUIREMENTS:

11. Prior to the issuance of any building permit, the Owner shall obtain an encroachment maintenance and removal agreement from the City Engineer for landscaping, irrigation, and planters located in the adjacent right-of-way portion of Jackdaw Street, in accordance with the requirements of Section 129.0715 of the San Diego Municipal Code.

12. The Encroachment Maintenance and Removal Agreement for the existing improvements within the unimproved public right-of-way of Walnut Avenue shall be completed and recorded with the Office of the County Recorder within 180-days of approval.

13. The drainage system as proposed on the approved plans is subject to approval of the City Engineer.

LANDSCAPE REQUIREMENTS:

14. Approved planting shall not be modified or altered unless this Variance has been amended and is to be maintained in a diseased, weed and litter free condition at all times.

PLANNING/DESIGN REQUIREMENTS:

15. No fewer than two off-street parking spaces shall be maintained on the property at all times in the approximate locations shown on the approved Exhibit "A." Parking spaces shall comply at all times with the SDMC and shall not be converted for any other use unless otherwise authorized by the City Manager.

16. There shall be compliance with the regulations of the underlying zone(s) except as allowed by this Variance. Three variances are approved herein as described on page one of six in subparagraph (a). Where there is a conflict between a condition (including exhibits) of this Variance and a regulation of the underlying zone, the regulation shall prevail unless the condition provides for a deviation or variance from the regulations. Where a condition (including exhibits) of this Variance establishes a provision which is more restrictive than the corresponding regulation of the underlying zone, then the condition shall prevail.

17. The height(s) of the building(s) or structure(s) shall not exceed those heights set forth in the conditions and the exhibits, including, but not limited to, elevations and cross sections. A variance to the height limit has been granted as a specific condition of this Variance.

18. Variances are being granted to allow the existing residence as constructed to maintain its as-built height of approximately 38 feet, to allow the enclosure of under-floor area for use as habitable space, and to allow the enclosure of an existing carport for use as a garage resulting in a maximum floor area ratio of approximately 1.0.

19. Any future requested amendment to this Variance shall be reviewed for compliance with the regulations of the underlying zone(s) which are in effect on the date of the submittal of the requested amendment.

20. All private outdoor lighting shall be shaded and adjusted to fall on the same premises where such lights are located and in accordance with the applicable regulations in the SDMC.

21. The use of textured or enhanced paving shall meet applicable City standards as to location, noise and friction values.

22. The residence may observe a maximum floor area ratio of 1.0 as depicted in the Exhibit "A."

INFORMATION ONLY:

Any party on whom fees, dedications, reservations, or other exactions have been imposed as conditions of approval of this Variance, may protest the imposition within ninety days of the approval of this Variance by filing a written protest with the City Clerk pursuant to California Government Code section 66020.

APPROVED by the City Council of the City of San Diego on September 10, 2007, by Resolution No. R-302970.

R-302970

AUTHENTICATED BY THE CITY MANAGER

By _____

The undersigned Permittee, by execution hereof, agrees to each and every condition of this Permit and promises to perform each and every obligation of Permittee hereunder.

STEVEN M. HILL
Owner

By _____

SANDI M. HILL
Owner

By _____

**NOTE: Notary acknowledgments
must be attached per Civil Code
section 1180 et seq.**

PERMIT/OTHER – Permit Shell 11-01-04