



TO: Town of Oro Valley
Community & Economic Development Dept.
11000 N La Cañada Dr.
Oro Valley, AZ 85737

DATE: 11/10/2022

PROJECT: La Cañada & Naranja, NW Corner Retail/Office Development

PROJECT #: 20aza01

SUBJECT: Request to Amend a 2006 Grading Exception Condition of Approval

Several decades ago, in support of the construction of La Canada Drive a significant amount of dirt was removed from this property, creating in two large pits. Several years later the pits were deemed a public health risk because they did not adequately drain stormwater. The property owner (not the same person who owns the property today) sought to fill the pits and create a shovel-ready pad, which was entirely reasonable given the property's commercial zoning. Although the pits were created as part of a regional public infrastructure project, the depth of the pits, and thus the required depth of fill to "fix" them, necessitated approval of a grading exception (Approved in 2006, OV12-06-16A). Evidently the clear public benefit associated with filling in the pits was not a sufficiently strong reason to permit the necessary grading outright. Equally confounding is the fact that a number of development design restrictions were attached to that grading exception approval despite the fact that the introduction of the associated Town staff report clearly states that "the grading exception relates only to the grading of the site and all other project elements are reviewed later". Given the lack of nexus between the type of approval and the nature of the conditions proposed, one might question the legality of the design-related conditions.

Regardless, Condition of Approval #6 states that "a minimum 15' wide landscape buffer must be provided on the east/south side of the drainage channel (west and north side of the proposed development area). A combination 6' high screen wall and an overlapping tree canopy must be achieved. The specifics must be addressed as part of the development and landscape plan process". We seek to delete this Condition because the existing mature vegetation in the drainage channel provides as much or more meaningful screening than would a 15' wide landscape bufferyard located directly behind the proposed buildings. Trees and shrubs will still be installed along the top of the bank, driven by aesthetics, and combined with the vegetation in the channel will satisfy the Town's bufferyard requirements.

Grenier Engineering has performed an analysis of the existing drainage channel and has determined that it will continue to function adequately if routine channel maintenance occurs, including trimming the existing trees and removing understory vegetation. Their report has been submitted with the CSP package. The property owner will enter into an agreement with the Town, obligating him or his successors to adhere to an enforceable channel maintenance schedule acceptable to the Town. The agreement will also ensure that meaningful screening continues to be provided, regardless of channel maintenance.

We appreciate your consideration of these requests. We look forward to working with you to change this long-blighted property into an asset and amenity for the nearby community. Please do not hesitate to contact me with any questions.

Sincerely,



Paul Oland

TOWN OF ORO VALLEY

STAFF REPORT TO DEVELOPMENT REVIEW BOARD

MEETING DATE: November 14, 2006

TO: DEVELOPMENT REVIEW BOARD

FROM: Paul Keesler, Development Review Division Manager
Sarah S. More, FAICP, Planning & Zoning Administrator

SUBJECT: Public Hearing: OV12-06-16A, Rick Engineering Company, representing John Tate (property owner), requests a Grading Exception for a proposed commercial development on the northwest corner of La Canada & Naranja, Parcel 224-10-002B.

EXECUTIVE SUMMARY OF APPLICATION:

Nature of Application:

The OVZCR provides exceptions from the Town Grading Ordinance to exceed the required cut and fill limitations. The Development Review Board (DRB) may grant or deny such exceptions at a public hearing. Decisions may be appealed to Town Council by the applicant.

The Grading Exception application relates only to the grading of the site and all other project elements are reviewed later. The applicant is requesting a grading exception to allow: 1) a maximum depth-of-cut of eight feet (8'), exceeding the maximum of six feet (6') allowed by the ordinance and 2) a maximum depth-of-fill of fifteen feet (15') that also exceeds the maximum allowed six feet (6'). Approximately two thirds of the proposed fill will occur within a pit that exists along the entire east side of the site and one third of the fill will occur within an adjacent pit near the northwest corner of the property. The proposed cut will comprise a single 5,000 square foot area (approximately) at the mid point near the south end of the property.

The OVZCR includes criteria to utilize when evaluating a grading exception. The criteria are known as "findings" and are addressed on pages 3 through 7 of this report.

Site Conditions:

- The site is 2.8 acres in size.
- The zoning is El Conquistador County Club PAD – "Commercial". Use within this site may include general retail, office and restaurants (similar to the commercial development south of this site). Convenience uses (specifically uses with a drive through) would not be permitted on this site due to location requirements specified in the code (with regards to setbacks), unless a variance is approved by the Board of Adjustment.
- The maximum building height is 38'.
- The General Plan designation is "Neighborhood Commercial/Office".
- The site is currently undeveloped and is mostly characterized by hilly terrain. There is little average cross slope across the property; therefore, very little elevation change between any two extents of the property.
- The site is moderately to heavily vegetated with two large pits that comprise much of the areas that will require fill exceeding Oro Valley grading ordinance. These pits do not drain off site and are considered a public health risk due to excessive water retention. There is a wash with grouted riprap that skirts the north and west sides of the property carrying off site drainage around the property and to the south.

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The two large pits existing on the site were created when the construction of La Canada was built in this area. Dirt from this property was used to fill portions of the roadway. This occurred approximately 15-20 years ago.

Proposed Improvements:

A conceptual site plan has been submitted to illustrate the improvements that are proposed on the site. Staff has not evaluated the site design or any of the project elements for Code compliance; therefore, approval of the Grading Exception does not constitute approval of the "conceptual plan".

The "conceptual plan" as depicted in the attached rendering proposes a commercial development, similar in scale as the development on the south side of this property (Canada Hills Retail Shops). The specifics of the site plan (design, access/circulation and landscaping etc.) will be addressed as part of the development and landscape plan process.

BACKGROUND:

Approvals to Date:

The El Conquistador Country Club PAD was adopted in 1983. There are no other approvals for this property.

Surrounding Land Uses:

North: El Conquistador Country Club PAD, Single Family Residential, Canada Hills Village 15 Subdivision.
South: El Conquistador Country Club PAD, Commercial, Canada Hills Retail Center.
West: El Conquistador Country Club, PAD, Single Family Residential, Canada Hills Village 15 Subdivision.
East: R-4, Townhouse Residential District, Single Family Homes, Copper Creek Subdivision (across La Canada).

OVZCR COMPLIANCE ANALYSIS, SECTION 22.10.E GRADING EXCEPTION REVIEW

This section of the Code states, "When reviewing requests for Grading Exceptions, the Development Review Board shall consider each of the findings and address them in their deliberations. To grant an exception the Development Review Board shall find that the request addresses the concerns of each finding and is in substantial compliance with the findings as a whole."

The following are the "findings" used to evaluate Grading Exceptions:

- I. The exception meets the intent and purpose of this code
- II. Granting the exception constitutes the minimum to allow the proposed improvement; and
- III. The conditions on the property are unique such that strict adherence to this ordinance would cause an unnecessary hardship which substantially limits the preservation and enjoyment of property and
- IV. The exception imposes conditions so as not to constitute a granting of special privilege, and
- V. That the exception will not be materially detrimental to persons residing in the vicinity, to adjacent property, to the neighborhood or the public welfare in general."

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The applicant has addressed each of the aforementioned standards and staff has provided an analysis on pages 3 through 6 of this report. A copy of the Applicant's Findings Report, letter dated May 11, 2006, is attached.

Criteria I. The exception meets the intent and purpose of this code.

Applicants' statement:

The intent of the proposed grading is to bring the site elevation to the same level with the surrounding area. The proposed development can be achieved in compliance with the purposes of the Grading Ordinance regulating the development of potentially hazardous terrain and preserving, where possible, the natural contours, the native vegetation, and the visual character of the site in harmony with the surrounding terrain and existing development, while maintaining property rights and values of adjacent parcels.

There will be no exposed cut or fill slopes as the result of the proposed development. The existing channel bank protection will be extended and stabilized to reduce the erosion effects of storm water runoff. The disturbance limits of this development will be restricted to the maximum amount necessary to implement the planned development and ensuring to provide dust control measures during grading and development of the site.

Staff Comment:

The individual criteria under the **intent** of the grading ordinance are stated in Section 27.9.B. items 1 through 5 and criteria under **purpose** of the grading ordinance are stated in Section 27.9.A. items 1 through 4. The following includes staff review of the applicant's proposal relative to noteworthy items (overlapping items omitted):

Intent:

The intent of this grading ordinance is to assure that the design and implements of all grading projects shall:

1. *Sec 27.9.B.1 – Avoid scarring and other adverse visual impacts resulting from cut, fill and any other type of ground disturbance.*

Given the small existing average cross slope and the proposed site grading, there will essentially be no visible scarring or adverse visual impacts resulting from the proposed grading. Through standard landscaping and hardscaping of this site it is possible to eliminate any adverse visual impacts.

There is a relatively small area near the south end of the site where the limitations on cut will be exceeded by a maximum of two feet. The proposed grading consists of the removal of several small disturbed mounds that will not result in scarring or any other adverse impacts.

2. *Sec 27.9.B.2 – Blend with the natural contours of the land.*

While the existing contours of this site are characterized primarily by two large pits, the average cross slope is very small. The applicant proposes to contribute a considerable volume of fill material to the site eliminating these two large pits.

The small area near the south end of the site where the limitations on cut will be exceeded by a maximum of two feet also does not appear to be a natural feature of the site.

3. *Sec 27.9.B.5 – Employ measures that:*

- a. *Ensure that graded hillside, slopes or other areas subject to erosion are stabilized.*

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- b. *Reduce the erosion effects of storm water discharge, preserve the flood-carrying capacity of natural or constructed waterways by limiting soil loss, and protect drainageways from siltation.*
- c. *Minimize dust pollution and surface water drainage from graded areas during grading and development.*
- d. *Ensure that proposed development activity is designed and implemented to avoid adverse impacts and appropriate restorative measures.*
- e. *Encourage phased projects, to preserve natural contours and vegetative communities until such time as grading must necessarily occur on a site.*

All the above measures can easily be adhered to for this project and are not beyond the capability of the applicant during project construction. Each will be addressed as part of the development and landscape plan process.

Purpose:

1. *Sec 27.9.A.1 – Regulate the development of potentially hazardous terrain.*

The existing terrain is not considered hazardous. By following proper engineering design standards this development can be designed so as to provide a safe completed site only with a grading exception. Sec 27.9A.1 does not in any way preclude the proposed grading exception in terms of the safe development of this site.

2. *Sec 27.9.A.3 – Enhance the quality and values of new development.*

The granting of this grading exception will enhance the quality and value of this new development.

3. *Sec 27.9.A.4 – Maintain property rights and property values of adjacent developed and undeveloped parcels.*

The site is situated such that viewsheds for adjacent property owners would be minimally impacted by buildings and or structures developed at the proposed grades. For this reason staff does not believe property rights are infringed upon by deviating from the grading ordinance as addressed in Section 27.9.E.1.a. Specific mitigation measures to insure compatibility with the surrounding subdivisions are provided in Exhibit A.

Criteria II. Granting the exception constitutes the minimum to allow the proposed improvement.

Applicants' statement:

Filling the existing site to the elevation as proposed in the Grading Exception Exhibit is the best configuration solution in designing this project to accommodate the proposed development. The use of 2:1 slope with grouted riprap in combine with 3:1 along the north and west edge of the site will allow the extension to the existing bank protection and place the building pad above the 100-year water surface elevation in the channel with the desire freeboard. In addition, with the proposed finished floor elevation at only a few feet below the existing elevation of the adjacent roadways, this will help reduce the slope at the driveway entrance and increase the visibility of the proposed development.

As shown on the Grading Exception Exhibit, under the existing natural conditions the site does not drain. There are two low areas onsite, one at elevation 2699 and the other at elevation 2698 while the bottom of the surrounding drainage channel varies from elevation 2700 to 2706. Site visit photos show that water pond in these two low areas after a storm.

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Staff Comment:

Staff has reviewed a thorough hydraulic analysis of the drainage conditions adjacent to and sufficiently upstream of the site. With regard to the hydraulic analysis of the site, the established water surface elevations necessitate the proposed grading exception request and also establish the minimum required elevations for grading improvements. The proposed grading improvements are in fact at the minimum elevation possible with respect to the established water surface elevations.

The existing condition of this site is such that the addition of a large amount of fill material is absolutely unavoidable in order to implement any development. The addition of this volume of material is therefore implicitly tied to this or any proposed development and will require a grading exception.

Criteria III. The conditions on the property are unique such that strict adherence to this ordinance would cause an unnecessary hardship which substantially limits the preservation and enjoyment of property rights.

Applicants' statement:

In designing this project every effort was made to work within the context of the existing grade to the center (2700) and adjacent paving elevations to the four corners (2714). However, this was difficult to achieve drainage propose. The existing grade onsite varies 22 feet in elevation between contours 2698 to 2720. Due to the small geometry, the proposed grades can only vary a few feet to minimize cross slope and meeting ADA requirements.

Stay within the allowable limit of fill (6') will place the finished floor elevation of the proposed building at the same level with the bottom of the drainage channel. This also results in the 15 feet cut and a high longitudinal slope at the drive entrances. Maintaining ADA access to the buildings from the perimeter streets will be almost unfeasible.

Staff Comment:

The conditions on the property are unique such that strict adherence to this ordinance would cause an unnecessary hardship to the property owner. This opinion has been arrived at largely as a result of the staff comments presented under Review Criteria II above. A grading exception in this case is required for any development on this site.

Criteria IV. The exception imposes conditions so as not to constitute a granting of special privilege.

Applicants' statement:

This exception request is in harmony with the intent and purpose of the Grading Ordinance which to achieve the development of the site within the grading limits with severe terrain such as this project's, in such manner so as to facilitate the development without creating a potentially hazardous condition. Granting the exception will allow the fill to the site and remove existing hazardous conditions on south bound La Canada Drive as it will widening the shoulder and recovery areas. This will also help reduce the cost in associated with fill for the improvement of La Canada Drive which will benefit the public.

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Staff Comment:

Through close inspection of the site and the tentative development plan, staff has identified several conditions so as not to constitute a granting of special privilege. These conditions are presented in Exhibit A.

Criteria V. The exception will not be materially detrimental to persons residing in the vicinity, to adjacent property, to the neighborhood or the public welfare in general.

Applicants' statement:

Granting this exception will allow the construction of the proposed development in such a manner to minimize impacts to the adjacent private properties, minimizing the area of disturbance to the land and visual impacts to adjacent neighbors. Extensive landscape plantings and slope treatments along the property boundaries will further soften the interface between this project and that of the adjacent properties.

Granting this exception will help improve the view of the surrounding area as the site will be converted from a pit with ponding water and mosquito nest into a small, well designed commercial center. The proposed development will also help blocking and reducing the noise from the intersection

Staff Comment:

The proposed grading will not be in any way materially detrimental to persons residing in the vicinity, to adjacent property to the neighborhood or the public welfare in general. The grade of this site will be approximately 7 – 10 feet lower than the residential homes to the north and west. Relative to the homes to the east, this site will be significantly lower (approximately 20') and also lower than La Canada and Naranja. The proposed building height is 24'. Conditions have been provided to assure compatibility.

As stated in the Executive Summary of this report, this site in its present configuration does present a public health risk. Currently all storm precipitation which falls onsite collects within the existing pits and stagnates for a considerable amount of time. This allows mosquitoes to breed, as well as algae to form, creating odors. The development of this site will mitigate this existing public health risk.

PUBLIC NOTIFICATION:

The applicant held a neighborhood meeting on September 7, 2006. The purpose of the meeting was to provide residents an opportunity to understand the proposed project elements and identify any issues. The issues were not directly related to the grading exception but to the development in general.

The following is a list of key issues identified:

1. Lighting concerns at the rear of the building
2. Bufferyards - width and quantity of vegetative screen adjacent to the north and west property line.
3. Viewsheds – specifically building height and views of the back of building.
4. Access and traffic circulation at the intersection and impacts to adjacent properties.

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At the meeting, the applicant proposed preliminary solutions but the specifics would be addressed once the development and landscape plans are submitted. Conditions have been incorporated to Exhibit A to assure mitigation measures.

The Town sent out a Public Hearing notice in accordance with the Town notification requirements. To date, no comments have been received from residents.

SUMMARY OF FACTORS:

Findings in Favor

1. The proposal complies with the OVZCR requirements.
2. The proposal complies with the applicable General Plan Policies.
3. Mitigation measures have been incorporated to minimize potential impacts to the adjacent residential homes.

Findings Against

1. None.

SUGGESTED MOTION:

The DRB may wish to consider the following motion:

I move to [approve, approve with conditions, or deny] **OV12-06-16A Grading Exception request for the northwest corner of La Canada and Naranja Drive.** Staff recommends that any motion to approve be subject to the conditions specified in Exhibit "A".

Attachments:

1. Exhibit "A"
2. Applicants' Findings Report
3. Grading Exception Conceptual Plan



Town Engineer



Planning and Zoning Administrator

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David Ronquillo

EXHIBIT "A"
CONDITIONS OF APPROVAL
OV12-06-16A

1. All areas disturbed by grading shall be re-vegetated with natural rock and plant material. Vegetation shall be used to minimize the visual impacts of grading.
2. The tops and toes of slopes shall be rounded to blend with the natural grades.
3. All retaining walls shall be designed to reduce excessive amount of slope area and preserve existing vegetation.
4. No grading disturbances shall be visible from La Canada Drive and Naranja Drive. Any areas of visible disturbance shall be mitigated with the above methods or shall have vegetative screening.
5. The color and texture of retaining walls shall be consistent with the character of surrounding natural areas.
6. A minimum 15' wide landscape buffer must be provided on the east/south side of the drainage channel (west and north side of property). A combination 6' high screen wall and an overlapping tree canopy must be achieved. The specifics must be addressed as part of the development and landscape plan process.
7. Approval of the grading exception does not constitute approval of the proposed conceptual plan.
8. The height of the building(s) shall be limited to (28').
9. Loading zones shall be adequately screened on all five sides. The specifics must be addressed as part of the development and landscape plan process.
10. All mechanical equipment must be screened on all five sides. The specifics must be addressed as part of the architectural review process.
11. The site design must not incorporate a loop road at the back of the buildings adjacent to the drainageways.

