



**December 15, 2020**

**ADMINISTRATIVE INTERPRETATION  
DECISION AND FINDINGS  
PLNZAD2020-00878**

**REQUEST:**

This is a request for an administrative interpretation regarding the establishment of an existing grade prior to the roof installation of a single-family home at 2234 E Hubbard Ave (Tax ID 16-10-182-004-0000). The subject property is located in the R-1/7,000 Single Family Residential zoning district.

**DECISION:**

The Zoning Administrator finds that the current grade of the property can be recognized as the “established grade” with the issuance of a separate site development or other applicable permit that shows the prior grade and the current grade of the property. The approved single-family home building plans under BLD2020-01812 will then need to be amended to show the new “established grade” and the permit would need to be re-issued for plans reflecting the current grade.

**FINDINGS:**

The subject property was issued a building permit for a single-family home in May 2020. The home is in the R-1/7,000 zoning district. In this district building height is measured from the established grade as per 21A.24.060.D.4 which states that:

*Building height for initial construction of a building shall be measured as the vertical distance between the top of the roof and the established grade at any given point of building coverage. Building height for any subsequent structural modification or addition to a building shall be measured from finished grade existing at the time a building permit is requested. Building height for the R-1 districts, R-2 District and SR districts is defined and illustrated in chapter 21A.62 of this title.*

Established grade is defined as:

*The grade of a property prior to the most recent proposed development or construction activity. On developed lots, the Zoning Administrator shall estimate established grade if not readily apparent, by referencing elevations at points where the developed area appears to meet the undeveloped portions of the land. The estimated grade shall tie into the elevation and slopes of adjoining properties without creating a need for new retaining wall, abrupt differences in the visual slope and elevation of the land, or redirecting the flow of runoff water.*

The applicant noted the established grade elevation on their building plans. The home was approved at a height of 28 feet and the 28 feet of height was measured from that established grade.

The applicant notes that prior to the construction of the home, the property was regraded, raising the grade by approximately 2.5 feet. The foundation was then installed at this new grade. As a result of this, the proposed roof of the home will exceed the allowed 28' height (measured from the established grade) by approximately 2.5 feet.

The applicant notes that they can revise the proposed height of the home by 2.5' to remain under the height limit of 28' feet above established grade. The home would then be 25.5' feet above the current, existing grade that is in place now and would effectively be a 25.5' home from the ground to the top of the roof. The applicant notes that after completing a 25.5' home they can then come in for a new permit and add 2.5' to the height of the home for a 28' tall home. This is accurate. By completing the construction of the home, this would “establish” the new grade of the property as the “finished grade.”<sup>1</sup> The grade regulations for this zone in 21A.24.050.D.4 state that “Building height for any subsequent structural modification or addition to a building shall be measured from finished grade existing at the time a building permit is requested.” This new “finished grade” would then be used for any new permits to raise the height of the home, and so the height of a roof modification to the home would be measured from this new grade to the top of the roof.

However, the current grade of the property may be established as the “established grade” for building height measurement purposes with a different process than the above scenario. “Established grade” is the grade of the property “prior to the most recent proposed development or construction activity.” The ordinance defines “development” as:

*The carrying out of any building activity, the making of any material change in the use or appearance of any structure or land, or the dividing of land into parcels by any person. The following activities or uses shall be taken for the purposes of these regulations to involve "development":*

- A. *The construction of any principal building or structure;*
- B. *Increase in the intensity of use of land, such as an increase in the number of dwelling units or an increase in nonresidential use intensity that requires additional parking;*
- C. *Alteration of a shore or bank of a pond, river, stream, lake or other waterway;*
- D. *Commencement of drilling (except to obtain soil samples), the driving of piles, or excavation on a parcel of land;*
- E. *Demolition of a structure;*
- F. *Clearing of land as an adjunct of construction, including clearing or removal of vegetation and including any significant disturbance of vegetation or soil manipulation; and*
- G. *Deposit of refuse, solid or liquid waste, or fill on a parcel of land.*

*The following operations or uses shall not be taken for the purpose of these regulations to involve "development":*

- A. *Work by a highway or road agency or railroad company for the maintenance of a road or railroad track, if the work is carried out on land within the boundaries of the right-of-way;*
- B. *Utility installations as stated in subsection 21A.02.050B of this title;*
- C. *Landscaping for residential uses; and*
- D. *Work involving the maintenance of existing landscaped areas and existing rights-of-way such as setbacks and other planting areas.*

To re-grade the property, the applicant had to “deposit... fill” on the parcel, which also involves “disturbance of vegetation” and “soil manipulation.” As such, the regrading of the property constituted “development” and if it had been done with a permit, and permitted separately from the new home building permit, the current grade would have been considered the “grade prior to the most recent proposed development” (the new house) and used as the “established grade” for the house permit.

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<sup>1</sup> “Finished Grade” is defined in the ordinance as “The final grade of a site after reconfiguring grades according to an approved site plan related to the most recent building permit activity on a site.”

The grading work didn't match the building permit plans and so was done without official permit approval. To legalize the re-grading work and establish the grading work as the "most recent proposed development" the applicant can submit for and pull a separate site development or other applicable permit for the performed grading work. This permit would establish the current, existing grade as the "established grade" of the property. The applicant would then need to submit new drawings to building services using this new "established grade" as the measurement point for the height of the proposed home. The drawings would then need to be reviewed by Building Services and permits would need to be re-issued.

**APPEAL PROCESS:**

An applicant or any other person or entity adversely affected by a decision administering or interpreting this Title may appeal to the Appeals Hearing Officer. Notice of appeal shall be filed within ten (10) days of the administrative decision. The appeal shall be filed with the Planning Division and shall specify the decision appealed and the reasons the appellant claims the decision to be in error. Applications for appeals are located on the Planning Division website at <http://www.slcgov.com/planning/planning-applications> along with information about the applicable fee. City offices are currently closed due to COVID-19. Appeals may be filed online at <https://citizenportal.slcgov.com/citizen/Default.aspx>.



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