

## Code Violations and Responses

June 19, 2020

### **A. Grading and Drainage Violations**

- A.1. Constructing retaining walls and other alterations by causing both cuts and fills more than five feet in vertical depth without obtaining grading permit in violation of Ordinance Code section C12-406.*
- A.2. Constructing a driveway, parking lots, retaining walls, and other structures by causing cuts of more than 950 cubic yards and fills of more than 1,200 cubic yards without obtaining a grading permit in violation of Ordinance Code C12-406.*
- A.3. Grading in a way that creates a hazardous condition and public nuisance and endangers adjacent property in violation of Ordinance Code section C12-406.*
- A.4. Constructing more than 100,000 square feet of new impervious areas without obtaining a drainage permit in violation of Ordinance Code C12-408.*
- A.5. Continuing to engage in grading that creates a hazardous condition due to the failure to provide erosion and/or sediment controls despite written notice to abate the hazardous conditions in violation of Ordinance Code section C12-514.*
- A.6. Continuing to perform grading work despite the posting of stop work orders and written notice in violation of Ordinance Code section C12-525.*
  - a. The applicant proposes to address and cure these existing grading violations through appropriate abatement approval and permit applications with the appropriate civil, environmental, geotechnical, and structural designs to be processed concurrently with the Use Permit Application.

### **B. Zoning Ordinance**

- B.1. Improper conversion of the main residence from original single-family residential to public temple without permits in violation of Ordinance Code sections 1.20.070, 2.20.010, 2.20-2, and 5.65.010. The construction associated with the conversion indicates a more significant use associated with public facilities, including a parking lot with a sign for the temple, a substantially expanded driveway, freestanding restroom facilities, a food facility, and multiple additional new structures.*
  - a. The applicant proposes to obtain a Use Permit that will address each of these facilities in a manner to utilize the property for a combination of Nonprofit Institution and “restricted” Religious Institutional Uses in compliance with the Santa Clara County governing criteria under the 75th Percentile for “Local-

Serving” uses. Although not a requirement for a “Use Permit” under the existing HS zoning, the project is primarily characterized as a Public Recreational Open Space Use that provides hiking trails that provide key linkages and connection to hillside open spaces.

**B.2.** *County staff observed that at least three of the unlawfully constructed accessory buildings contain sleeping platforms and sleeping materials and so appear to be used for dwelling purposes and/or overnight accommodation in violation Zoning Ordinance sections 1.20.070 and 4.20.020(H).*

- a. The project will NOT allow overnight sleeping quarters in any fashion, except for a care takers facility that will allow a caretaker to oversee maintenance and safety control measures for the property. The site “Office” (which was the historic garage, that was legally converted to an “office” in the past), will now serve as the “Accessory Dwelling Unit” (ADU) for the parcel. residence. This building will be limited to sleeping quarters for only the caretaker, owner, or owner direct family members.

### **C. Building Violations**

**C.1.** *Construction of additional new structures without obtaining required building permits in violation of Building Code section 105.1 and Ordinance Code sections C1-67 and C1-70, including (a) a carport, (b)a gate entry structure over seven feet in height, (c)retaining walls over four feet in height, (d)a restroom building, and (e thru i) accessory structures that appear to serve as temples and/or dwellings.*

- a. **Agriculture Canopy Facility:** This facility was refereed as a carport under the building code violation. This structure was part of the historical Agricultural use on the property and is an “Ag”-Exempt” structure.
- b. **Gated Entry Structure:** The applicant will submit the appropriate structural engineering design to obtain a permit to legalize the structure in its place.
- c. **Retaining Walls:** There are approved permits for certain of these retaining walls, which are mostly on the lower road. The applicant proposes to obtain permits for the walls, ones without permits, to legalize them as part of the grading permits. There are 3 places where the retaining walls are identified:
  - i. Barn Driveway Retaining Wall
  - ii. Office Driveway Retaining Wall
  - iii. Road Retaining Wall
- d. **Restroom Building:** The applicant proposes to either modify any code violations in the existing restroom facility or demolish the existing structure and build a new adequately sized facility at the same location with the appropriate permits.
- e. **Private Meditation Space:** Originally build as a concrete slab, walls and roof were constructed without a permit. The applicant is proposing to legally obtain the

proper permit for this 130 square foot closed structure as an accessory building. It will NOT be used for any occupancy whatsoever. Although it is immediately adjacent to the proposed public trail, it will NOT be open to the public and will remain always locked.

**f. Treehouse:** In 2012 the existing wood deck platform was inspected by the County. At that time there was no objection. Subsequently, walls and a roof were constructed without a permit for an enclosure of 120 square feet. The code violations from the county referenced that this facility was a sleeping/living area and that it was a possible obstruction to the underlying ditch that it spanned.

The treehouse is proposed as a private meditation room for the owner and family only. It will not be used for any sleeping arrangement by anyone. It will always be locked and not accessible to the public. Appropriate signage will deter people from entering the area surrounding the tree location. A drainage analysis was performed to adequately show that the original tree house platform, and now the subsequent structure on top, does not block or otherwise interfere with the drainage patterns of the underlying ditch.

The applicant intends to permit this structure with the appropriate structural engineering design and detailed hydraulic and environmental reports. Refer to Sheet C15 in the application drawing set for details.

**g. Tough Shed:** Referred to as a “living area” by the county code violation, this structure is strictly a “tough shed” storage space. It is not and will not be used for any sleeping quarters or as a living area. Refer to Sheet C14 in the application drawing set for details.

**h. Library:** The applicant would like to obtain a permit to legalize this structure, which has no plumbing or electrical facilities. It is a facility that will be used as a library containing reference materials relating to different cultures and religions. Refer to Sheet C14 in the application drawing set for details.

**i. Quiet Meditation Space:** Referred to as “Temple” by the county code violation, this structure is not a temple. This space will be used for resting, and private meditation and reflection. The applicant proposes to submit the proper engineering drawings to obtain a permit to legalize this structure.

Refer to Sheet C13 in the application drawing set for details.

**C.2. Alterations and additions to the office building, including construction of a retaining wall and other additional features without obtaining the required building permit in violation of Building Code section 105.1 and Ordinance Code sections C1-67 and C1-70.**

- a. **Office:** This structure was previously permitted as a garage conversion to an office in 2014. The structure will be converted with permits to either a primary residence or an ADU, depending on feedback from the County regarding the main house described in C below. Appropriate engineering design will be provided for the retaining wall in this location as referenced under C1cii above. Appropriate architectural and engineering design for all ancillary building fixtures and access will be submitted with a new permit. Refer to Sheet C16 in the application drawing set for details.

**C.3. Substantial alterations to convert the former single-family dwelling to an assembly building without obtaining a building permit in violation of Building Code section 105.1 and Ordinance Code sections C1-67 and C1-70.**

- a. **Main Residence:** The project proposes to legalize the “main house” structure to allow limited private assembly use. Guidance from the County is needed as to whether a bedroom could remain in a residential structure that also allows limited assembly use. If a bedroom is allowed, then the structure would also serve as the primary residence in which event the office (C2a) would be modified to formally constitute as an ADU.

Alternatively, if the bedroom cannot remain then this space would become an office.

The Main Residence will function as the property owner’s private residence or home office depending on the decision of use as described above.

In addition, the space includes an open area for private meditation and prayer that is not open to the public. This private meditation area will allow for once per week prayer assembly meetings for the owner, owners family, and invited guests. The prayer sessions will be held once per week on a Sunday mid-day for a 2-hour period and will allow a maximum of 50 people. The Main Residence space will also include a Butlers Kitchen where pre-cooked food will be catered in the form of a pot-luck procedure and final “prepped” for after the Sunday prayer meeting. There will be no other food preparations or cooking at any other time. The Main Residence will be locked at all other times throughout the week. Refer to Sheet C12 in the application drawing set for details.

- b. **Existing Carport at Main Residence:** This structure was built with a permit, but the permit expired without obtaining the final inspection. The applicant intends to refresh the old permit and obtain a new permit to achieve final inspection to legalize it in its current condition.

**C.4. Failure to install required safety features for the assembly building, including pivoted or side-hinged swing type doors that swing in the direction of egress travel, exit signs,**

*illuminated areas for exit discharge, and an automatic sprinkler system, in violation of Building Code sections 903.2.1.3, 1010.1.2, 1010.1.2.1 and 1013.1*

**C.4.a. Rear Exit Doors:** The applicant would replace the doors with code required doors for assembly use, with a permit.

**C.4.b. Front Exit Doors:** The applicant would propose to replace the door with a code compliant door for assembly use, with a permit.

**C.4.c. Exit Signs:** The applicant proposes to install the required exit signs, with a permit.

**C.4.d. Emergency Exit Illumination:** The applicant proposes to provide the required electrical system illumination areas, with a permit.

**C.4.e. Fire Sprinklers:** The applicant proposes to install the required fire sprinklers, with a permit.

*C.5. Construction of a patio cover and decks for the assembly building, and alterations to the garage of the assembly building without obtaining a building permit in violation of Building Code section 105.1 and Ordinance Code sections C1-67 and C1-70.*

**a. Patio, Decks:** These structures are all attached to the Main Residence (C3a) in some manner, and would be either removed, modified, or legalized in place as part of a permit application containing the appropriate engineering calculations to satisfy the structure for the proposed “limited” assembly use.

**b. Main Residence Garage:** The garage in the Main Residence was permitted under a Garage Conversion Permit that was approved but never finalized (Refer to Sheet C18 in the application drawing set for details). A new Garage Conversion permit application will be updated and filed with the county to reflect the current configuration of the already converted garage. Alternatively, the updated Garage Conversion can be included with the new Main Residence permit that includes the limited assembly use. Refer to Sheet C12 in the application drawing set for details.

*C.6. Alterations to two previously-permitted open air pavilions to enclose the pavilions and convert them into a changed occupancy use as temples without obtaining required building permits in violation of Building Code section 105.1 and Ordinance Code sections C1-67 and C1-70.*

**a. Upper Pavilion:** The original open structure was built with permits. The applicant is proposing to legalize the subsequent enclosure of the structure with a new permit. This facility is not a temple but a room for quiet reflection and prayer. The room is used as a sort of shrine where people spend 2 to 5 minutes in reflective prayer. It is located at the mid-point of the trail hike from the site entrance, where a small break to reflect and pray can be enjoyed in a quiet enclosed place.

Refer to Sheet C14 in the application drawing set for details.

**b. Lower Pavilion:** The original open structure was built with permits. The applicant proposes to legalize the added enclosure on top of the structure with a new permit. This facility offers a place to rest from the long entry stair hike, and to quietly meditate prior to continuing the trek to higher levels. County code violations cite electrical and plumbing code possible violations. These electrical and plumbing references are to an irrigation system which is attached to the exterior wall of this structure. There is no electrical or plumbing to the interior of the structure, nor does the applicant intend for there to be. The applicant intends to legalize the structure with proper engineering design and appropriate permitting.

Refer to Sheet C13 in the application drawing set for details.

**c. Open Pavilion:** The original open structure was built under an approved permit. The applicant proposes to “legalize” the subsequent enclosure on the structure with a new permit application. This “Open Pavilion” serves as a resting spot for hikers to enjoy the expansive views after climbing the Entry Stairway, which is proposed as part of the public trail system. Detailed architectural and engineering design will be supplied under the new permit application for this structure.

Refer to Sheet C13 in the application drawing set for details.

#### **D. Wastewater Violations**

*D.1. Client caused or allowed a new unpermitted OWTS to be constructed on the Subject Property in an impermissible location where the contaminants are subject to flooding and runoff in violation of section B11-67.*

*D.2. Building or structures connected to the OWTS listed above, D.1, or to any other unapproved OWTS, including, for example, the newly constructed restroom facilities, violate section B11-65.*

*D.3. County staff observed that at least some conduits on the property, such as an outdoor sink, discharge impure water and/or other offensive, injurious, or dangerous substances directly onto the land in violation of section B11-63. County believes other conduits discharge onto the land as well.*

There are three septic systems on the site serving:

##### **a. The “private” Main Residence**

This system was approved under permit with the existing residence. However, under the new Use Permit, the system will be inspected by a qualified engineer, to determine adequate functionality to handle the once per week prayer assembly.

##### **b. The Public Restrooms**

The existing septic system for this facility was built and is adequately functioning. However, it was constructed without a permit. A qualified engineer

will inspect the system and make the appropriate recommendations for either adequacy, modification, or re-construction.

**c. The Office**

The existing septic system for this facility was built and is adequately functioning. However, it was constructed without a permit. A qualified engineer will inspect the system and make the appropriate recommendations for either adequacy, modification, or re-construction.

Conduits and sinks discharging directly on the land are identified under the code violation. The applicant proposes to connect these facilities, and any wastewater discharge, to a code compliant septic tank and septic drain field system. There will be no facilities that discharge any form of wastewater directly on the land.

The applicant will inspect, test, modify, or rebuild any and/or all systems depending on the recommendation of a qualified environmental and civil engineer and to obtain the necessary permits for code compliant systems serving the above referenced facilities.

**E. Food Facility Violations**

*E.1. The food facility is operating without a valid permit and without any determination that it and its method of operation meet Retail Food Code requirements in violation of Health and Safety Code sections 114381 and 114837.*

There is no “food facility” or “retail sales” currently or proposed under the new proposed Use Permit. As proposed under the Main Residence, there will be a caterer’s type kitchen where only food prepping will be performed. There will be no food “cooking” for the “private” weekly assembly, but instead an organized form of potluck where food will be brought in, possibly microwave warmed, and divided into serving portions. The applicant will work with DEH to determine the applicable criteria that will be required for this type of service as a part of the proposed Use Permit for the property.

The owner will be allowed to cook and prepare food for immediate family and friends as part of the Main Residence or ADU uses. This is separate actively than the proposed weekly prayer service identified above.

**F. Fire Access Issues**

**F.1.** The code violations identified by the SCCFD are primarily identified as:

- a. Slope greater than 20%:** There is a 270-foot portion of the existing driveway being greater than 20% slope (actual slope is approximately 25%). The property owner paved over top of the existing roadbed that served the Main Residence and several

agriculture structures for decades. The newly built reinforced concrete driveway road did not alter the vertical alignment of the existing driveway access; however, it did widen the roadway in many locations, making it much easier to navigate the steep hillside from the old condition.

A detailed engineering design was prepared that showed an Alternate roadway alignment that would allow the 270-foot section of roadway to be under 20% grade. However, this design shows extensive grading and significant retaining wall construction to achieve the governing minimum grade of 20%.

- b. One-Way Circulation:** There is a section of the roadway that contains a “split” where one-way circulation is utilized. This alignment followed the old existing driveway pattern and was utilized in order to minimize excessive grading that would be required on the face of the hillside. The existing roadbeds were widened as much as possible and constructed with a reinforced concrete pavement. This newly constructed and widened section has been shown to adequately allow fire truck access to the upper level of the property.

The newly constructed reinforced concrete pavement and widened roadway has served several different fire districts to access hillside fires in the local area over the past numerous years. There was never any issue related to the ability of a fire truck being able to access the upper property plateau area.

A fire department turnaround will be provided at the midpoint of the vertical climb and near the Primary Residence. In addition, the applicant will provide an agreed to scoring of the 270’ section of roadway that is over the 20% slope to mitigate the potential for any traction loss and “slipping”.

The applicant intends to legalize the current configuration utilizing the Fire Marshal’s equivalent alternative means process. Realigning the road would cause significant grading and scar the natural terrain in a considerable manner.

The applicant proposes that the fire department schedule an onsite physical drive with the appropriate vehicle to assure that the roadway will provide adequate access and to locate the appropriate areas for scoring and turnaround.

- c. Fire Water:** The site contains 4 water storage tanks (3-5,000 gal, 1-2,500 gal) that are filled from an onsite approved well. The tanks will provide for domestic water, fire sprinkler systems (for the Main Residence and the Future Chapel, if these structures warrant the need for fire suppression systems), and a wharf fire hydrant located close to the fire department turnaround.



**G. Project Use Data and Governing Criteria**

**G.1. Project Use:** The applicant proposes to obtain a Use Permit that will utilize the property for a combination of Nonprofit Institution and “limited/restricted” Religious Institutional Uses in compliance with the Santa Clara County governing criteria under the 75th Percentile for “Local-Serving” uses as shown in the table below from the County code.

*(Although not a requirement for a “Use Permit” under the existing HS zoning, the project will primarily function as an Open Space Use that will have a “public” trail hiking system to allow connection to almost 28 acres of undisturbed hillside open space on the subject property, with a direct potential ridgeline linkage system (on adjacent lands owned by the applicant) to the Ed Levin Regional Park trail system (See Sheet C26))*

**Table 1.1. Thresholds (75<sup>th</sup> Percentile) for Local-Serving Indicators**

	Maximum Number of People	Building Square Footage
Commercial Uses	30	16,440
<b>Rural Residential (RR) District</b>		
Institutional Uses	50 (daily)	6,510
	220 (special events) <sup>1</sup>	
<b>Agricultural (A), Agricultural Ranchlands (AR) and Hillside (HS) Districts</b>		
Institutional Uses	70 (daily)	8,480
	320 (special events) <sup>1</sup>	

Note: All values have been rounded to the closest 10.

<sup>1</sup>Special Events are defined as 4 events per year. Events can be 1-3 consecutive days.

Religious uses will be strictly limited to private, and “quiet” areas of reflective meditation and prayer. There will be no programmed congregations, masses, or other daily or weekly planned services other than the weekly “private” prayer gatherings as described herein, and an allowance for up to 4 “Special Events” per year (not exceeding 320 people – See Table above for Local Serving Thresholds).

Any “Special Events”, as defined above, will require that the applicant/owner of the property file an application to the county for an approval/permit. This application will not only serve as “notice”, but will also include the appropriate traffic and parking plan that clearly demonstrates the ability to adequately hold such Events without causing disturbance to the surrounding neighbors or impact to the serving infrastructure. Additional information will also include the functioning program of any event so as to assure that all aspects of the events are allowed within the Use Permit description.

**G.2. Visitor Limitations.** In accordance with the limits defined under the Local Serving Hillside code for Institutional Uses, the maximum number of visitors per day will be 70(see table above).

**G.3. Maximum enclosed Building Square**

**Footage Area:** The maximum allowed building square footage under the said 75<sup>th</sup> Percentile for Local Serving indicators is 8,480 square feet. The applicant is proposing to permit the structures on the site as identified in the table below. The total building area under the Proposed Use Area is 7,565 sf (see table below) which is under the maximum 8,480 allowable.

STRUCTURES PROPOSED FOR PERMIT	
FACILITY	AREA (SF)
RESTROOM BUILDING	260
PRIVATE MEDITATION SPACE	150
TREEHOUSE	275
TOUGH SHED	120
LIBRARY	390
QUIET MEDITATION SPACE	143
OFFICE	505
MAIN RESIDENCE	2754
MAIN RESIDENCE GARAGE	621
UPPER PAVILION	330
LOWER PAVILION(A)	460
LOWER PAVILLION (B) / OPEN PAVILION	36
SHRINE	105
CHAPEL	576
MAIN RESIDENCE CARPORT	840
<b>TOTAL BULDING AREA (SF)</b>	<b>7,565</b>

**PROJECT PHASING**

The applicant proposes to implement the “Use “project in three phases, to be reflected in the compliance agreement:

Phase 1: Legalize the main house for residential use only by the owners in order that the power can be provided solely to the main house.

Phase 2: Legalize at least a portion of the lower parking lot and trail system and then dedicate an easement for the trail system and parking area to the County in order that the public can utilize the trail system. No use of any structures by the public is contemplated in this phase and will be locked to public access.

Phase 3: Cure all remaining code violations on the property and obtain a use permit to utilize the property for a combination of Nonprofit Institution and Religious Institution, then commence the permitted uses.