



# Staff Report

PLANNING DIVISION  
DEPARTMENT of COMMUNITY and NEIGHBORHOODS

To: Salt Lake City Appeals Hearing Officer

From: Amy Thompson, [amy.thompson@slcgov.com](mailto:amy.thompson@slcgov.com) or 385-226-9001

Date: November 18, 2021

Re: PLNAPP2021-00988 – Appeal of a Historic Landmark Commission Decision to deny a Special Exception for additional fence height (PLNHLC2021-00457) and associated Minor Alteration application (PLNHLC2021-00604)

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## Appeal of a Historic Landmark Commission Decision

**PROPERTY ADDRESS:** 140 E 1<sup>st</sup> Avenue  
**PARCEL ID:** 09-31-380-035  
**LANDMARK SITE:** Brigham Young Cemetery  
**HISTORIC DISTRICT:** Avenues Local Historic District  
**ZONING DISTRICT:** RMF-75– High Density Multi-Family Residential & H – Historic Preservation Overlay District  
**MASTER PLAN:** Capitol Hill Community Master Plan

**APPELLANT:** Emily Utt, representing the Church of Jesus Christ of Latter-Day Saints

Attached is the documentation submitted for an appeal (PLNAPP2021-00988) regarding the decision of the Historic Landmark Commission to deny a special exception request for additional fence height (PLNHLC2021-00457) and the associated Minor Alteration application (PLNHLC-2021-00604).

### BACKGROUND AND PROJECT DESCRIPTION:

This was a request for additional fence height for the Brigham Young Cemetery property located at 140 E 1<sup>st</sup> Avenue. The Brigham Young Cemetery is a Landmark Site and located within the Avenues Local Historic District and subject to the applicable standards for Landmark Sites in the H Historic Preservation Overlay.

Specifically, the request was to add 2 FT to the height of an existing and historical decorative wrought iron fence that sits on top of a sandstone wall surrounding the Brigham Young Cemetery. The rock wall was built around the cemetery in September 1877. In the 1880's, iron fencing and gates were added to the rock wall and around Brigham Young's grave, which were fashioned and fabricated by William J. Silver, a successful iron works businessman who established his career in Salt Lake City.

The existing height of the fence is approximately 3 FT. The proposed fence has a height of 5 FT. The height of the existing retaining wall varies due to the slope of the site—no changes were proposed to the existing retaining wall height. The proposed overall combined fence and retaining wall height varies around the site from approximately 5 FT to 9.41 FT. To achieve this additional height, the applicant proposed to add a new wrought iron bar stock at the bottom of the existing fence and the corner posts would be raised to correspond with the added fence height.

This request requires a special exception because the maximum height for fences in the front yard area is 4 FT, and in the interior side and rear yards, the maximum height is 6 FT. The proposal also requires Minor Alteration approval because any exterior changes to properties located within an H Historic Preservation Overlay requires a Certificate of Appropriateness.

**July 15, 2021 HLC Meeting** - The request was heard by the Historic Landmark Commission at the July 15, 2021 public hearing. The Historic Landmark Commission tabled the Special Exception and associated Minor Alteration requests to allow for revisions to the proposal. A video recording of the July 15, 2021 Historic Landmark Commission meeting can be viewed here - <https://youtu.be/kJ3tjUNBozc?t=8326>. The minutes from the July 15, 2021 meeting can be found in [Attachment G](#).

**September 2, 2021 HLC Meeting** - A revised request was submitted by the Appellant and was heard by the Historic Landmark Commission at the September 2, 2021 meeting. The Historic Landmark Commission denied the Special Exception and associated Minor Alteration requests based on the analysis and findings listed in the staff report, information presented, and the input received during the public hearing. Specifically, the commission's decision was based on staff's analysis, findings and discussion in the Staff Report and the Staff Memo that the proposal does not comply with the standards of approval in 21A.34.020.G, the Standards for a Certificate of Appropriateness for Alteration of a Landmark Site or Contributing Structure and the standards in 21A.52.060, General Standards and Considerations for Special Exceptions.

A video recording of the September 2, 2021 Historic Landmark Commission meeting can be viewed here - <https://youtu.be/CgoAd8lrnWQ?t=2696>. The minutes from the September 2, 2021 meeting can be found in [Attachment F](#).

The Staff Memo for the September 2, 2021 meeting, which also includes the Staff Report from the July 15<sup>th</sup> meeting, can be accessed in [Attachment H](#).

#### **BASIS FOR APPEAL:**

The appellant's application and brief are included as [Attachment B](#) and the City Attorney's response to the appeal is included as [Attachment C](#).

This is an appeal of a Historic Landmark Commission decision. Therefore, the Appeal Hearing Officer's decision must be made based on the record. This is not a public hearing; therefore, no public testimony shall be taken.

#### **ATTACHMENTS:**

- A. [Vicinity Map](#)
- B. [Appeal Application and Documentation](#)
- C. [City Attorney's Brief](#)
- D. [Record of Decision](#)
- E. [Motion Sheet](#)
- F. [Minutes from September 2, 2021 Meeting](#)
- G. [Minutes from July 15, 2021 Meeting](#)
- H. [Staff Memo from September 2, 2021 meeting \(Includes Staff Report from July 15, 2021 Meeting\)](#)
- I. [Additional Public Comments Provided to HLC](#)

#### **NEXT STEPS:**

If the decision is upheld by the Appeals Hearing Officer, the decision of the Historic Landmark Commission stands. If the Historic Landmark Commission's decision is not upheld, the matter could be remanded back to the Historic Landmark Commission. The decision made by the Appeals Hearing Officer can be appealed to Third District Court within 30 days.

# ATTACHMENT A: VICINITY MAP

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**ATTACHMENT B: APPEAL APPLICATION &  
DOCUMENTATION**

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# Appeal of a Decision

SALT LAKE CITY PLANNING

### OFFICE USE ONLY

Petition #:	Received By:	Date Received:
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Appealed decision made by:

Planning Commission       Administrative Decision       Historic Landmark Commission

Appeal will be forwarded to:

Planning Commission       Appeal Hearing Officer       Historic Landmark Commission

Petition Name and # Being Appealed:

### PLEASE PROVIDE THE FOLLOWING INFORMATION

Decision Appealed:

Address of Subject Property:

Name of Appellant:	Phone:
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Address of Appellant:

E-mail of Appellant:	Cell/Fax:
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Name of Property Owner (if different from appellant):

E-mail of Property Owner:	Phone:
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Appellant's Interest in Subject Property:

### AVAILABLE CONSULTATION

Please email [zoning@slcgov.com](mailto:zoning@slcgov.com) if you have any questions regarding the requirements of this application.

### APPEAL PERIODS

- An appeal shall be submitted within ten (10) days of the decision.
- The Applicant of an HLC decision being appealed can submit within thirty (30) days of the decision.

### REQUIRED FEE

- Filing fee of **\$269**, plus additional fees for required public notices and multiple hearings. Filing fees must be submitted within the required appeal period. Noticing fees will be assessed after application is submitted

### SIGNATURE

If applicable, a notarized statement of consent authorizing applicant to act as an agent will be required.

Signature of Owner or Agent: <i>Emily Utt</i>	Date:
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## SUBMITTAL REQUIREMENT

A written description of the alleged error and the reason for this appeal.

## WHERE TO FILE THE COMPLETE APPLICATION

Apply online through the [Citizen Access Portal](#). There is a [step-by-step guide](#) to learn how to submit online.

## INCOMPLETE APPLICATIONS WILL NOT BE ACCEPTED

\_\_\_\_\_ I acknowledge that Salt Lake City requires the items above to be submitted before my application can be processed. I understand that Planning will not accept my application unless all of the following items are included in the submittal package.

### **Additional Guidelines for Those Appealing a Planning Commission or Landmarks Commission Decision [Section 21A.16 of the City Ordinance](#)**

A person who challenges a decision by the Planning Commission or the Landmarks Commission bears the burden of showing that the decision made by the commission was in error.

The hearing officer, according to state statute, must assume that the decision is correct and only reverse it if it is illegal or not supported by substantial evidence in the record.

“Substantial evidence” means information that is relevant to the decision and credible. Substantial evidence does not include public clamor and emotion. It involves facts and not mere speculation. A witness with particular expertise can provide substantial evidence, but conjecture and public opinion alone are not substantial evidence.

The “record” includes information, including the application by the person seeking approval, the staff report, the minutes of the meeting, and any information submitted to the commission by members of the public, the applicant or others, before the decision was made. It does not include facts or opinion, even expert opinion, expressed after the decision is made or which was not available to the commission at the time the decision was made.

A decision is “illegal” if it is contrary to local ordinance, state statute or case law, or federal law. An applicant is entitled to approval if the application complies with the law, so a person challenging a denial should show that the application complied with the law; a person challenging an approval should show that the application did not conform to the relevant law. Issues of legality are not restricted to the record of the decision, but the facts supporting or opposing the decision are limited to those in the record.

With regard to the factual information and evidence that supports a decision, the person bringing the appeal, according to a long line of decisions handed down by the Utah State Supreme Court and the Court of Appeals, has a burden to “marshal the evidence” and then to demonstrate that the evidence which has been marshaled is not sufficient to support the decision.

The appellant is therefore to:

1. Identify the alleged facts which are the basis for the decision, and any information available to the commission when the decision is made that supports the decision. Spell it out. For example, your statement might begin with: “The following information and evidence may have been relied upon by the Commission to support their decision . . .”
2. Show why that basis, including facts and opinion expressed to the commission is either irrelevant or not credible. Your next statement might begin with: “The information and evidence which may have been relied upon cannot sustain the decision because . . .”

If the evidence supporting the decision is not marshaled and responded to, the hearing officer cannot grant your appeal. It may be wise to seek the advice of an attorney experienced in local land use regulation to assist you.

The Church of Jesus Christ of Latter-day Saints, Headquarters Facilities Department, is submitting this official appeal for a permit to complete minor alterations to the fence at the Brigham Young Cemetery. The cemetery is a contributing site in the Avenues Historic District.

In April 2021, The Church of Jesus Christ of Latter-day Saints submitted a certificate of appropriateness application to the city historic landmarks commission to make minor repairs and modifications at the Brigham Young Cemetery located at 140 East First Avenue. Modifications include replacing damaged pathways, planting new trees, installing new lighting, and repairing the fence surrounding the property. The fence consists of a cast-iron decorative fence on top of a sandstone wall. The fence was installed circa 1880. Along with repairs to the fence, the plans call for raising the fence three feet. The increased fence height requires a special exemption because it exceeds the maximum height permissible in a residential neighborhood. The modification to the fence was denied by the historic landmarks commission and is the reason for this appeal.

Increased security concerns at the cemetery in recent years is the major motivator for the request to raise the fence. A letter from the church's security department in support of the fence height is attached to this application. There have been an increasing number of security incidents including vandalism, theft, and drug use within the cemetery. City code specifically allows for fence heights to exceed four feet in front yards and six feet in side yards because of "encroachments on the rights to privacy, safety, security and aesthetics." (21A.52.030.3.e) Easy access to the cemetery through the too low fence encroaches on the safety and security of the cemetery.

The appeal is based on contradictory adherence to preservation standards and conflicts of interest among members of the historic landmarks commission.

#### Adherence to Preservation Standards

The Historic Landmarks Commission denied the application to modify the fence based on staff recommendations that the modification did not comply with the minor alteration standards. Namely that the modification would not be reversible and that the modification would create a false sense of history. The appellant disagrees with those findings. New bar stock material would be welded onto the historic material. A skilled metal worker will be able to break that weld if needed. Although an inch or two of material may be lost, the overall structure of the historic material would be retained. The plans are consistent with industry best practices for historic cast iron. The company hired to complete the work is frequently hired by government agencies to complete repairs to a much higher preservation standard than that required by Salt Lake City. Modifying the existing fence retains a greater sense of historicity than replacing it entirely. The project will be well documented for those who want to understand the evolution of the cemetery. The fence has undergone almost constant maintenance and repairs since its installation. The fence is currently a mix of more than a century of metal work. Raising the fence while using consistent historic details creates a consistent level of design in keeping with other city preservation standards.

#### Contradictory Application of Standards

Denial of the request to raise the fence at the Brigham Young Cemetery because of its historic status contradicts other decisions approved by the landmarks commission. For example, an application for a major project in the South Temple historic district was reviewed by the landmarks commission in the same meeting on July 15, 2021. The landmarks commission approved a major modification to the Elks

Building fenestration. Windows on the east and west elevations reflect the building's historic use as a clubhouse. The landmarks commission approved a significant modification to those windows including closing in major windows and adding a significant amount of windows for the conversion of the building to apartments. That approval poses a significant alteration to a historic property and was done for the overall success of the project. It seems contradictory to this appellant to approve a major alteration to a significant and visible building that violates the preservation standards while denying a minor alteration to an adjacent site that would improve the safety and sanctity of a historic cemetery.

The Elks Building project also approved demolition of a contributing structure in a historic district to provide parking access. The building to be demolished is a few doors down from the cemetery. While it is a newer building in the district, it is still a contributing structure. The demolition standard is usually extremely high and it seems contradictory to allow demolition just to make a project easier. If a contributing building can be demolished without major concern, a minor alteration to a fence that doesn't diminish the overall historicity of the site should be approved using the same criteria.

Similar contradictory decisions were made at the landmarks commission meeting on September 2. A contributing structure in the Central City historic district has been derelict for more than a decade. The property owner requested demolition of an historic addition at the rear of the property to enable construction of a new addition. The historic addition has acquired significance in its own right. The landmarks commission approved demolition with the comment that "if this is what is necessary to save this house, we should approve it." The preservation standards are being used in contradictory ways if a structure can be demolished for the good of the project but a fence can't be modified for the security of a site.

#### Feedback from Planning Staff and Landmarks Commission

The project team acted in good faith to find a solution that balanced preservation standards with security needs at the site. The team originally gave several options to planning staff for different fence heights and invited discussion to see which option would most likely gain support. Planning staff informed the team to submit only one plan and they would respond in the official report. There was no discussion or advice given from planning staff on how to meet the preservation standards. Following the first presentation to the historic landmarks commission, the project team again met with planning staff. We discussed an option to leave the front elevation of the fence as it was and raise the side fences at a setback. Staff seemed agreeable in that meeting to the plan and that is what was resubmitted. Staff subsequently recommended denial of the application after resubmission. Staff didn't give any other suggestions for balancing preservation standards with security concerns despite attempts by the project team to solicit and incorporate feedback.

The resubmitted plan to leave the front elevation alone and use setbacks on the side elevations was based on discussion by the landmarks commission in the July 15 meeting. The project team listened to their comments and incorporated their suggestions into the resubmitted plan. Discussion in the September commission meeting was heated but did not acknowledge attempts by the applicant to incorporate their feedback.

The landmarks commission focused some of their attention in their discussion on other security suggestions for the property. Those discussions, including changing plantings, adding security cameras, increasing security patrols, and other measures are outside the purview of the landmarks commission



and planning staff. Recommendations from security professionals were largely ignored by the commission during discussion.

### Conflicts of Interest

There are two members of the landmarks commission with conflicts of interest. Robert Hyde, commission chair, recused himself from the discussion. His employer, Kirton and McConkie, does major legal work for The Church of Jesus Christ of Latter-day Saints. John Ewanowski should have recused himself from this decision. Mr. Ewanowski works for CRSA. Their architectural firm is engaged in a number of major projects for the church right now including temples and renovation of historic buildings. Mr. Ewanowski's participation in the decision poses a conflict of interest for the applicant and his company.

### Conclusion

The applicant requests the appeals board grant the appeal. Raising the fence at the Brigham Young Cemetery greatly improves the security of the site. It does not significantly violate Salt Lake City's preservation standards. The appellant suggests denial of the application shows contradictory application of the preservation standards between projects. At least one member of the commission should have been recused because of conflicts of interest. We urge the appeals board to grant the application to increase fence height at the Brigham Young Cemetery.

**ATTACHMENT C: CITY ATTORNEY'S BRIEF**

ADMINISTRATIVE HEARING OF A LAND USE APPEAL  
(Case No. **PLNAPP2021-00988**)  
(Appealing Petition No. PLNHLC2021-00457 and PLNHLC2021-00604)  
November 18, 2021

Appellant:	Emily Utt, the Church of Jesus Christ of Latter-Day Saints
Decision-making entity:	Historic Landmark Commission
Address Related to Appeal:	140 East 1 <sup>st</sup> Avenue
Request:	Appealing the Historic Landmark Commission’s denial of a special exception and associated minor alteration application to modify the existing historic fencing to achieve additional fence height.
Brief Prepared by:	Hannah Vickery, Senior City Attorney

Land Use Appeals Hearing Officer’s Jurisdiction and Authority

The appeals hearing officer, established pursuant to Section 21A.06.040 of the *Salt Lake City Code*, is the city’s designated land use appeal authority on appeals of historic landmark commission decisions as provided in Chapter 21A.16 of the *Salt Lake City Code*.

Standard of Review for Appeals to the Appeals Hearing Officer

In accordance with Section 21A.16.030.A of the *Salt Lake City Code*, an appeal made to the appeals hearing officer “shall specify the decision appealed, the alleged error made in connection with the decision being appealed, and the reasons the appellant claims the decision to be in error, including every theory of relief that can be presented in district court.” It is the appellant’s burden to prove that the decision made by the land use authority was incorrect. Sec. 21A.16.030.F. Moreover, it is the appellant’s responsibility to marshal the evidence in this

appeal. Carlsen v. City of Smithfield, 287 P.3d 440 (2012), State v. Nielsen, 326 P.3d 645 (Utah, 2014), and Hodgson v. Farmington City, 334 P.3d 484 (Utah App., 2014).

“The appeals hearing officer shall review the decision based upon applicable standards and shall determine its correctness.” Sec. 21A.16.030.E.2.b. “The appeals hearing officer shall uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance in effect when the decision was made.” Sec. 21A.16.030.E.2.c.

This case deals with application of Subsection 21A.34.020.G (Standards for Certificate of Appropriateness for Alteration of a Landmark Site or Contributing Structure Including New Construction of an Accessory Structure) and Chapter 21A.52 (Special Exceptions) of the *Salt Lake City Code*.

### **Background**

This matter was first heard by the historic landmark commission (the “commission”) on July 15, 2021 via electronic meeting on a petition by Emily Utt on behalf of the Church of Jesus Christ of Latter Day Saints (“Applicant” or “Appellant”) for a special exception and a certificate of appropriateness to allow modification of the existing historic fencing located at 140 East 1<sup>st</sup> Avenue (the “property”) to allow for additional height. Applicant originally proposed modifying the historic fence by raising the entire existing historical fence to a varying height of 5 to 9 feet by “adding wrought iron bar stock at the bottom of the existing fence and replicating the corner posts at the new height” (*see* Applicant’s special exception notice of application project description) but later submitted modifications to the proposal. On September 2, 2021, the Applicant’s modified proposal was presented to the commission which sought to maintain the existing fence height on the north elevation and raise the existing historic fence to a height 9.41 feet on the east elevation, 7.86 feet on the west elevation, and 6 feet 2 inches on the south



elevation through the original proposed method of adding wrought iron bar stock at the bottom of the fence (the “modified proposal”).

Planning division staff prepared a report for both commission meetings in which staff determined that fence height is limited to 4 feet in the front yard and 6 feet in the rear or side yards of the property, unless approval of a special exception is granted. *See* September 2, 2021 Staff Report Sections Summary of Revisions and Request Description Section and Key Consideration #3. Given the height limitations on fencing at the subject property, the applicant applied for a special exception pursuant to Chapter 21A.52. Planning division’s staff reports addressed the modified proposal in light of the special exception standards under Chapter 21A.52 of the *Salt Lake City Code* and recommended the historic landmark commission deny the special exception because the modified proposal failed to meet all of the applicable standards. *See* Discussion Section of Planning Staff Reports.<sup>1</sup>

In addition to seeking approval of a special exception to allow for the fence height modifications as set forth in the modified proposal, the Applicant also applied for a certificate of appropriateness as required by Section 21A.34.020 of the *Salt Lake City Code*. The property is located in the historic preservation overlay district and, as such, is required pursuant to Section 21A.34.020.E of the *Salt Lake City Code* to obtain a certificate of appropriateness before any modification to the fencing on the property can be made. Section 21A.34.020.G of the *Salt Lake City Code* sets forth the standards for the applicable certificate of appropriateness.

On September 2, 2021, the historic landmark commission voted<sup>2</sup> to deny the request for a Special Exception for additional fence height and the associated Certificate of Appropriateness.

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<sup>1</sup> In addition to the staff reports and meeting minutes, video of the commission’s public meetings are part of the record of this matter and can be found at <https://www.youtube.com/watch?v=kJ3tjUNBozc> (2:20:26 to 3:32:33) and <https://www.youtube.com/watch?v=CgoAd8lmWQ> (45:00 to 1:46:01).

<sup>2</sup> The motion to deny the special exception and certificate of appropriateness was passed by a 4-0 vote.

See Salt Lake City Historic Landmark Commission Meeting Minutes for Thursday September 2, 2021 p.9. The commission’s motion indicated that the denial was based on the analysis and findings listed in the staff report, information presented, and input received during the public hearing. *Id.* The commission’s motion further specified that the denial was based on their determination that the request for the special exception and certificate of appropriateness for the modified proposal failed to comply with the standards of approval in 21A.52.060 and 21A.34.020.G. *Id.*

The Applicant submitted an appeal of the historic landmark commission’s decision<sup>3</sup> on or about September 23, 2021. The appeal argues that Salt Lake City Code Section 21A.52.030.3.e permits the excess height to the fence. The appeal further argues that the decision of the commission is in error “based on contradictory adherence to preservation standards and conflicts of interest among members of the historic landmarks (sic) commission.” *See* Appeal para. 4.

### **Discussion**

It appears the bulk of the Appellant’s legal basis for challenging the action of the historic landmark commission is that the commission acted in error in making its decision. To support the allegation of the commission’s error, the Appellant relies on an allegation of contradictory adherence to preservation standards and conflicts of interest among members of the historic landmark commission. *See* Appeal para. 4.

The Appellant erroneously argues that *Salt Lake City Code* authorizes approval of the increased fence height sought. Appellant’s brief is misleading with its assertion that “City code specifically allows for fence heights to exceed four feet in front yards and six feet in side yards

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because of ‘encroachments on the rights to privacy, safety, security and aesthetics’ (21A.52.030.3.e).” Appeal para. 3. While *Salt Lake City Code* does authorize additional fence height, pursuant to a special exception, Section 21A.52.030.3 further provides that the additional fence height “may be granted under the following circumstances *subject to compliance with other applicable requirements*” (emphasis added). Appellant’s brief fails to acknowledge other applicable regulations, most notably *Salt Lake City Code* Section 21A.52.060. In determining whether a special exception was appropriate, the Planning staff report applied the general standards and considerations for special exceptions provided in 21A.52.060 and determined that the modified proposal failed to comply with all of the applicable standards. See September 2, 2021 Staff Report Recommendations Section. The commission, in its motion to deny the special exception, found that based on the analysis and findings listed in the staff report, information presented, and input received during the public hearing, that the modified proposal failed to comply with the standards of approval in 21A.52.060. See Salt Lake City Historic Landmark Commission Meeting Minutes for Thursday September 2, 2021 p.9. The commission appropriately applied the standards set forth in Section 21A.52.060 of the *Salt Lake City Code* and determined that the modified proposal failed to comply with those standards. Absent a showing that the commission’s decision incorrect, the commission’s decision shall be upheld. See Sec. 21A.16.030.F and Sec. 21A.16.030.E.2.b of *Salt Lake City Code*.

Appellant argues that the commission incorrectly “denied the application to modify the fence based on staff recommendations that the modification did not comply with the minor alteration standards.” Appeal para. 5. Appellant further specifies that the error in the commission’s decision is in finding that the modification would not be reversible and the modification would create a false sense of history. *Id.* Section 21A.34.020.G of the *Salt Lake*

*City Code* provides the standards for approval of a certificate of appropriateness for an alteration of a landmark site. The commission denied the certificate of appropriateness based on their finding that the modified proposal failed to comply with the standards set forth in Section 21A.32.020.G of the *Salt Lake City Code*. While the Appellant may personally disagree with the findings of the commission, the Appellant's burden is to show that the commission's actions were incorrect. See 21A.16.030.E.2.b and 21A.16.030.F. The commission in their determination found that the fence was an original historic feature of the landmark site and that the proposed modification would not preserve the distinctive features, finishes, and construction techniques of the historic fencing and gates. See Attachment E of September 2, 2021 Staff Report. Section 21A.34.020.G of the *Salt Lake City Code* requires preservation of the fencing given its relationship and importance to the designated landmark site. While the Appellant may disagree with a comment made about the reversible nature of the modification and another about the modified proposal creating a false sense of history, see Appeal para. 5, it is not the role of the Appellant or the hearing officer to substitute the commission's judgment for their own. See Sections 21A.16.030.F and 21A.16.030.E.2.b of the *Salt Lake City Code*. Furthermore, the commission adopted the findings in the staff report and based their decision to deny the applications on the findings that the modified proposal did not comply with the applicable standards set forth in Section 21A.34.020.G of the *Salt Lake City Code*. Salt Lake City Historic Landmark Commission Meeting Minutes for Thursday September 2, 2021 p.9. The commission's findings were not limited to a single comment by one commission member regarding whether the modification was reversible. The standards set forth in Section 21A.34.020.G of the *Salt Lake City Code* are about preserving the historically significant features and historic character of a property, not solely about whether they could be temporarily



changed so long as it would be possible to undo the change. Appellant does not seem to dispute the historic significance of the fence at the site. In fact, the Appellant's appeal acknowledges some historic significance when it states, "the project will be well documented for those who want to understand the evolution of the cemetery." See Appeal para. 5. The Appellant fails to articulate a legal basis for why the commission's decision to deny the application based on its findings that the modified proposal doesn't comply with the standards for a certificate of appropriateness is incorrect.

Appellant also raises "contradictory application of standards" as a basis to challenge the commission's decision. Appeal p.5. The authority of the appeal hearing officer is to review a particular decision by the commission for correctness. See Section 21A.06.040.B.3 in conjunction with Section 21A.16.030.E. of the *Salt Lake City Code*. The appeal hearing officer is not authorized under city code to evaluate whether the city is consistent in its application of a particular law. The appeals hearing officer's review is limited to a determination as to the correctness of the commission's decision and is required to uphold the decision unless it is not supported by substantial evidence in the record or it violates a law, statute, or ordinance. Sections 21A.16.030.E.b and c of the *Salt Lake City Code*. As such, Appellant's argument, even if it were substantiated, is not grounds for the appeals hearing officer to invalidate the commission's decision.

The final argument raised by the Appellant is related to an allegation of a conflict of interest, specifically against Commissioner Ewanowski. While the allegation of an improper conflict of interest is disputed by the commission, even a finding of such a conflict of interest is not within the authority of the Appeals Hearing Officer, see Salt Lake City Code 21A.06.040 and 2.44.260 and, more importantly, is not grounds to grant Appellant the relief sought. Appellant

seeks to have the appeals hearing officer grant the application to increase the fence height.

Appeal para. 13. The Appellant fails to articulate any legal authority as to why a conflict of interest of one voting member of the commission would be grounds to approve the applications and effectively reverse the decision and outcome of the commission's action.<sup>4</sup> At best for the Appellant, a finding of a conflict of interest for Commissioner Ewanowski would render his vote voidable, *see Salt Lake City Code 2.44.260* and UCA §10-3-1312, and would send the matter back to the commission for another vote.<sup>5</sup> In the event the Appellant wants to pursue a conflicts of interest argument, Salt Lake City Code Chapter 2.44.290 prescribes the process for alleging a complaint of a violation of the City's conflict of interest laws.<sup>6</sup>

Appellant has failed to articulate a basis for why the commission's decision was incorrect, and therefore, has failed to carry its burden as set forth in *Salt Lake City Code 21A.16.030.F* as it relates to the denial of the special exception and certificate of appropriateness.

### **Conclusion**

For all of the reasons stated above, Appellant's arguments must be rejected and the commission's decision be upheld.

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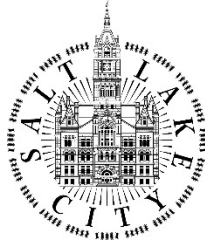
<sup>4</sup> The vote of the commission was 4-0, to deny the applications. In the event of a conflict of interest, Commissioner Ewanowski would have needed to recuse himself leaving the commission without a quorum and no action would have been taken on the applications.

<sup>5</sup> The outcome of the vote would not have given the Appellant approval of the applications even with a full commission of 7 members present and recusal of the two members as Appellant asserts should have happened. Best case scenario for the Appellant had there been a full commission present and a recusal by Commissioner Ewanowski would have been a vote of 3-2 to deny the application, definitively denying the applications.

<sup>6</sup> It's worth noting that at no point during the two commission meetings on the applications, did Appellant raise a concern regarding a conflict of interest of any commission member. Only after an unfavorable outcome did the Appellant raise the argument. Had there been a concern, it would have been prudent of the Appellant to raise the concern and follow the procedures for doing so outlined in Chapter 2.44 of the Salt Lake City Code.

## **ATTACHMENT D: RECORD OF DECISION**

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DEPARTMENT of COMMUNITY AND NEIGHBORHOODS

Erin Mendenhall  
MAYOR

Blake Thomas  
DIRECTOR

September 3, 2021

Emily Utt  
15 E North Temple Street  
Salt Lake City, Utah 84150

Re: RECORD OF DECISION FOR SPECIAL EXCEPTION AND MINOR ALTERATION - PLNHLC2021-00457 & PLNHLC2021-00604: BRIGHAM YOUNG CEMETERY FENCE AT APPROXIMATELY 140 E 1<sup>ST</sup> AVENUE

Dear Emily,

This letter is the Record of Decision relative to petition PLNHLC2021-00457, a Special Exception request for additional fence height, & PLNHLC2021-00604, the associated Certificate of Appropriateness request for height modifications to the existing historic fence.

This Record of Decision is provided to you indicating the date, the action taken, to deny the requests, the pertinent appeal periods; and, to what body an appeal can be made.

On September 2, 2021, Historic Landmark Commission denied the requests. The decision of the Historic Landmark Commission was based on specific findings listed in the staff report and staff memo related to the standards of review for a Certificate of Appropriateness for Alteration of a Landmark Site as stated in 21A.34.020.G, and the standards for Special Exceptions as stated in Chapter 21A.52 of the zoning ordinance. The decision was also based on the purpose of the zoning ordinance, the purpose of the zoning district where the project is located, the information contained in the staff report and staff memo, the project details provided by you, testimony from the public, and the discussion of the Historic Landmark Commission. Copies of this information will be made available online here: <https://www.sl.gov/boards/historic-landmark-commission-agendas-minutes/>

Appeal by the Applicant

There is a **30-day** period in which the applicant may appeal the Historic Landmark Commission's decision to the city's Appeals Hearing Officer. Any appeal by the applicant, including the filing fee, must be filed by the close of business on **October 3, 2021**.

Appeal by an Affected Party

There is a **10-day** appeal period in which any party entitled to appeal can appeal the Historic Landmark Commission's decisions to the city's Appeals Hearing Officer. This appeal period is required in the City's Zoning Ordinance and allows time for any affected party to protest the decision, if they so choose. Any appeal, including the filing fee, must be filed by the close of business on **September 13, 2020**.



The summary of action for the Historic Landmark Commission meeting is located on the Planning Division's website at: <https://www.slc.gov/boards/historic-landmark-commission-agendas-minutes/>

If you have any further questions please contact me at (385) 226 -9001 or by e-mail at [amy.thompson@slc.gov](mailto:amy.thompson@slc.gov).

Sincerely,



Amy Thompson  
Planning Manager  
cc: Case file PLNHLC2021-00457 & PLNHLC2021-00604

## **ATTACHMENT E: MOTION SHEET**

**Motion Sheet for – 140 E 1<sup>st</sup> Avenue**  
**Special Exception for Fence Height & Associated Minor Alterations**  
Petition numbers PLNHLC2021-00457 & PLNHLC2021-00604

**Recommended Motion Consistent with Staff Report Analysis & Findings (*Deny Special Exception and Minor Alteration*) -**

Based on the analysis and findings listed in the staff report, information presented, and the input received during the public hearing, I move that the Historic Landmark Commission deny the request for a Special Exception for additional fence height and the associated Certificate of Appropriateness. The requests fail to comply with the standards of approval in 21A.52.060 and 21A.34.020.G.

**Motion to Approve (*Not Consistent with Staff Recommendation*) -**

Based on the information in the staff report, the information presented and the input received during the public hearing, I move that the Historic Landmark Commission approve the request for a Special Exception for additional fence height and the associated Certificate of Appropriateness. The Historic Landmark Commission finds the request for a Special Exception and associated Certificate of Appropriateness comply with the following standards of approval in 21A.52.060 and 21A.34.020.G.

(The commission shall make findings to support this motion for each of the standards the request complies with to demonstrate compliance. Specifically, the commission shall make findings on the standards in 21A.34.020.G – 2, 3, 5, 6, 8 & 9 and the standards in 21A.52.060 – A, C, & E. These specific standards are copied below for reference. The full standards are listed in Attachment E & G of the Staff Report.)

**21A.34.020.G –**

2. *The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided;*
3. *All sites, structures and objects shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create a false sense of history or architecture are not allowed;*
5. *Distinctive features, finishes and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved;*
6. *Deteriorated architectural features shall be repaired rather than replaced wherever feasible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other structures or objects;*
8. *Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural or archaeological material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment;*
9. *Additions or alterations to structures and objects shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired. The new work shall be differentiated from the old and shall be compatible in massing, size, scale and*

*architectural features to protect the historic integrity of the property and its environment;*

**21A.52.060-**

- A. Compliance with Zoning Ordinance and District Purposes: The proposed use and development will be in harmony with the general and specific purposes for which this title was enacted and for which the regulations of the district were established.*
- C. No Undue Adverse Impact: The proposed use and development will not have a material adverse effect upon the character of the area or the public health, safety and general welfare.*
- E. No Destruction of Significant Features: The proposed use and development will not result in the destruction, loss or damage of natural, scenic or historic features of significant importance.*

**ATTACHMENT F: MINUTES FROM JULY 15, 2021  
MEETING**

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**SALT LAKE CITY HISTORIC LANDMARK COMMISSION MEETING**  
**This meeting was held electronically without and anchor location**  
**Thursday, July 15, 2021**

A roll is being kept of all who attended the Historic Landmark Commission Meeting. The meeting was called to order approximately 5:30 PM. Audio recordings of the Historic Landmark Commission meetings are retained for a period of time. These minutes are a summary of the meeting. For complete commentary and presentation of the meeting, please visit <https://www.youtube.com/c/SLCLiveMeetings>.

Present for the Historic Landmark Commission meeting were: Vice Chairperson Michael Vela; Commissioners Babs De Lay, John Ewanowski, Adien Lillie, Kenton Peters, Victoria Petro-Eschler, and David Richardson. Chairperson Robert Hyde was excused from the meeting.

Planning Staff members present at the meeting were: Deputy Director Michaela Oktay, Planning Manager Wayne Mills, Senior City Attorney Hannah Vickery, Senior Planner Nelson Knight, Senior Planner Amy Thompson, Principal Planner Caitlyn Tubbs, Administrative Assistant Aubrey Clark.

Commissioner Kenton Peters filled in as roll of Chair due to the absence of Chairperson Robert Hyde. He read the virtual meeting finding.

**APPROVAL OF JUNE 3, 2021 MEETING MINUTES**

**Commissioner Michael Vela made a motion to approve the minutes. Commissioner Babs De Lay seconded the motion. All commissioners voted “aye”. The motion passed.**

**REPORT OF THE CHAIR AND VICE CHAIR**

Acting chair, Kenton Peters, said he had nothing to report.  
Vice Chair, Michaela Vela, said he had nothing to report.

**REPORT OF THE DIRECTOR**

Deputy Director, Michaela Oktay, reported that Commissioners are needed.

**PUBLIC COMMENTS**

No one wished to comment.

**PUBLIC HEARINGS**

Commissioner Vela recused himself from the Elks item due to a conflict of interest.

**Elks Block Redevelopment at approximately 139 & 151 E. South Temple, and 120 E. 1st Avenue** - David Davis, of Dale Gardon Design, representing Property Reserve, Inc, has submitted applications to the city for a project centered around the former Elks Club Building located at approximately 139 E South Temple. This type of project requires demolition, new construction, special exception, and certificate of appropriateness review by the Historic Landmark Commission.

a. Demolition- of a contributing building at approximately 120 E 1st Avenue, in order to provide access to the other buildings within the project. **Case number PLNHLC2020-00915**

b. Major alterations- of the Elks Building at approximately 139 S. Temple, including alterations to the existing entrance, removal of incompatible additions to the building's exterior and construction of a new rooftop addition on the building. A special exception would also be required for an additional three feet of height for the addition. **Case number PLNHLC2020-00816 & PLNHLC2021-00672**

c. New Construction of an eight-story residential building at approximately 151 E. South Temple where an existing parking lot is located. The applicant is requesting a special exception for approximately 25 feet of additional building height on portions of this building beyond the 75 feet allowed in the R-MU zone, for a total height of approximately 99 feet. **Case number PLNHLC2020-00916 & PLNHLC2021-00673**

The properties along South Temple are zoned R-MU (Residential Mixed Use) and the homes on 1st Avenue are zoned RMF-75 (High-Density Multifamily Residential District). The properties are within the Avenues Local Historic District. The subject property is within Council District #3, represented by Chris Wharton. (Staff contact Nelson Knight at (385) 226-4493 or nelson.knight@slcgov.com).

Senior Planner Nelson Knight reviewed the petition. He stated the first item is a request for demolition and said Staff recommends the Commission approve the request. He stated Staff recommends approval with conditions for item B and C. He reviewed item A and showed the demolition standards. It does not comply with standard A and D. It complies with standard B, C and E. He reviewed Item B and stated that it would maintain several of the features that currently exist. He also reviewed the proposed changes. He reviewed item C that would be the South Temple Residential Building with a special exception proposed.

Commissioners and Staff discuss:

- The solid to void ratio and whether it meets the guidelines.
- The colors to be used.

Commissioner Peters opened the meeting to the applicant.

David Davis, applicant representative, reviewed their petition showing the proposed transformation of the site. He reviewed the proposed changes to the Elks Building including the windows and seismic updates. He brought up the front entry not being ADA accessible and being one level above the sidewalk and only accessible by stairs. He showed the proposed penthouse addition. He reviewed the proposed front entry with some of the same features but a lowered to street level entry with the berm removed. He also reviewed the proposed building materials.

Commission, Staff and the Applicant discuss:

- The materials used on the building across the street.
- The finish plan for the houses on 1<sup>st</sup> Avenue (134, 136, 138) which are currently painted brick and what the finish plans for those are.
- Whether the porches on the houses on 1<sup>st</sup> Avenue were going to be restored.

Commissioner Peters opened the meeting to Public Comment.

Cindy Cromer stated that she is against painting the brick of the parking structure.

David Amott, from Preservation Utah, addressed the tunnel of the Elks and its entryway and asked the Commission to retain the tunnel and entryway as it is.

David Davis said he would investigate other options for a breathable masonry coating.

Commissioner Peters moved into Executive Session.

Commissioner Lillie stated that she appreciated the applicants listening to feedback from the work sessions. She did state that she stands with Preservation Utah's stance on the Elks Building tunnel and entryway. She stated she would have a hard time approving the demolition and restructuring of the entryway. She does approve of the demolition of the contribution structure and the new construction of the residential building.

Commissioner Ewanowski thanked the applicant for trying to meet the Commission's suggestions. He addressed the new building being white and he feels it meets the standards for new construction in a historic district. He said he agreed with Cindy Cromer's comment of paint brick and is for the demolition of the post war bungalow.

Commissioner Petro-Eschler remarked on the bungalow house and is ok with the demolition of that structure. Her concern is on the repurposing of the tunnel, she sees it as a nod and respect for what was previously requested by the commission but feels like it lays the ground work for the imminent destruction of future projects with similar requests. She agrees with Cindy Cromer's protection of the brick of existing structures.

Commissioner Richardson does not feel the parking garage needs to be repainted. He is for the demolition of the bungalow. He is for the new construction. He said he sides with Preservation Utah on the Elks Building. He does not feel it is right to change the façade because it is a character defining feature. He does like the proposed east and west faces and approves of the additional height as long as the front entry isn't lowered.

Commissioner Peters feels the new construction proposed is good and the demolition of the bungalow is acceptable. He spoke on the tunnel and does not feel like the applicant is quite there with a solution that fits all that the Commission has asked for.



Commissioner De Lay asked what the other Commissioners top three issues with the proposal would be.

- Commissioner Ewanowski – the removal of the granite steps and walls around the central tunnel and painting the masonry
- Commissioner Peters – the proposal makes the tunnel two dimensional and that it's not quite right

Commissioner discussed how to move forward with the motions.

#### **MOTION:**

**Commissioner David Richardson stated, Based on the analysis and findings listed in the staff report, the information presented, and the input received during the public hearing, I move that the Commission approve petition PLNHLC2020-00915, which is a request for a Certificate of Appropriateness for Demolition of a Contributing Building at 120 E 1st Avenue.**

**Commissioner Victoria Petro-Eschler seconded the motion. Commissioners De Lay, Ewanowski, Lillie, Petro-Eschler and Richardson all voted “aye”. The motion passed unanimously.**

**Commissioner David Richardson stated, Based on the analysis and findings listed in the staff report, the information presented, and the input received during the public hearing, I move that the Commission deny petition PLNHLC2020-00816 which is a request for a Major Alteration of the Elks Building at exactly 139 South Temple and petition PLNHLC2021-00672 which is a request for Special Exception for height to accommodate construction of a new addition. This is because the evidence has not been presented that demonstrates that the proposal complies with standard 21A.34.020 G paragraphs 2, 3, 5 and to a lesser degree 9. In particular paragraph 3 paraphrased says “alterations which seek to create a false sense of history are not allowed.” In regard to the special exception 21A-52-060 paragraph E and G to a lesser degree, E says that no destruction of significant features should be allowed while allowing for a special exception.**

**Commissioner Lillie second the motion.**

**Commissioner Petro – Eschler asked if there is a way to separate elements of the special exception the petitions for alteration and height. Yes, but the motion isn't doing that.**

**Commissioners Petro-Eschler, Ewanowski, voted “aye” to deny. Commissioner De Lay abstained. The motion to deny passed.**

**Deputy Director Michaela Oktay interjected that there may be ramifications to denying a Special Exception. Staff and Commission discussed the legalities and possible ramifications specifically with regard to a special exception denial and unclear code language that stipulates a one year waiting period.**

**The Chair discussed the intent which wasn't to put the applicant off for the year. It is to have them come back soon with changes. The Chair didn't confirm the vote due to**

Commissioner Richardson's intent which isn't to put them off for a year.

Commissioner David Richardson stated, Based on the analysis and findings listed in the staff report, the information presented, and the input received during the public hearing, I move that the Commission table petition PLNHLC2021-00672, which is a request for a special exception for additional height to accommodate construction of a new addition because it is unclear how much height the Commission is approving based on the next motion. Commissioner Babs De Lay seconded the motion. Commissioners Lillie, Ewanowski, De Lay, Petro-Eschler and Richardson all voted "aye". The motion passed to table the special exception in its entirety.

Commissioner David Richardson made a motion to deny the major alterations. The Chair allowed the David Davis to ask a question and consider tabling the major alteration as was done with the special exception to give the applicant the chance to work with the commission on the elements of the Elks building. There was a discussion on which items would come back at a next meeting and the intent of the commission specifically with regards to the special exception and the COA for the Elks building.

The Chair clarified with Commissioner Richardson whether his intent was to deny the COA versus table it. Commissioner Richardson was concerned that the applicant had several opportunities to come back, he doesn't see much of a difference in process of tabling versus denial. Michaela Oktay clarified they can consider tabling the major alterations petition and the commission can cite conflicting standards that are problematic as direction to the applicant to focus on those when they return to the commission. That provides the applicant direction on the record.

Commission discussed that there was still was a motion on the table to deny the major alterations and that they should finish the vote. The commission voted unanimously to deny the motion to deny the Major alterations.

Senior Planner, Nelson Knight wanted to clarify the motion. Discussion confirmed that the entire Major alteration petition would be tabled in a future motion, that was the intent of the commission, their main issue is with the entry feature on the south facade. That the special exception was previously tabled but wanted both the COA and special exception tabled.


Commissioner David Richardson stated, motion to table petition PLNHLC2020-00816. We would like the applicant to revisit standards 21A.34.020, G, paragraphs 2, 3, 5, and 9. Commissioner Adien Lillie seconded the motion. Commissioners Richardson, Petro-Eschler, Lillie, Ewanowski and De Lay voted "aye". The motion to table passed unanimously. The petition was tabled.

Commissioner David Richardson stated, Based on the analysis and findings listed in the staff report, the information presented, and the input received during the public hearing, I

move that the Commission approve petition PLNHLC2020-00916, which is a request for a Certificate of Appropriateness for New Construction of a Principal Building at approximately 151 E South Temple, and PLNHLC2021-00673, which is a special exception for additional height for the new building, With the following conditions: 1. The front facade of the building shall be set back from the property line so it will not encroach upon the existing public right of way and to provide landscaping as shown on the building renderings. 2. The applicant will work with Planning Staff to ensure that all required landscaping standards are met in the final design. 3. The applicants will work with Planning Staff on a lighting plan with additional detail that shows the lighting will meet the intent of standards for new construction and related design guidelines; 4. A portion of the proposed balconies will project from the front wall of the building. The balconies will be at least five feet in depth to provide sufficient room for balcony use; 5. Approval of all final design details, including specific direction expressed by the Commission, shall be delegated to Planning Staff. Commissioner Babs De Lay seconded the motion. Commissioners Ewanowski, Petro-Eschler, Lillie, De Lay, and Richardson all voted “aye”. The motion passed unanimously for those two petitions.

The commission took a 5 minute break at 7:37PM.

Commissioner Vela rejoined the meeting.

 **Brigham Young Cemetery Fence Special Exception and Minor Alteration at approximately 140 E 1st Avenue** - Emily Utt, representing the Church of Jesus Christ of Latter Day Saints, is requesting a Special Exception and associated Certificate of Appropriateness (CoA) from the City to add additional height to an existing historic fence surrounding the Brigham Young Cemetery located at the address listed above. The Brigham Young Cemetery is a Landmark Site within the Avenues Local Historic District. The fence sits on top of a retaining wall and the proposed fence and retaining wall height ranges from approximately 5 feet to 9 1/2 feet in the front, side and rear yard. This request requires a Special Exception and associated Minor Alterations because the maximum height for fences in residential districts is 4 feet in the front yard, and 6 feet in the interior side and rear yard. The project is located in the RMF-75 (High Density Multi-Family Residential) zoning district within Council District 3 represented by Chris Wharton (Staff contact: Amy Thompson at (385) 226-9001 or amy.thompson@slcgov.com). **Case numbers PLNHLC2021-00457 & PLNHLC2021-00604**

Senior Planner Amy Thompson reviewed the petition. She stated that the petition fails to meet the standards and Staff recommends denial of the request. She also mentioned that there were two public comments submitted prior to the meeting and they have been put into the commissioner's dropbox folder.

The Commission and Staff discuss:

- Whether the reason for the petition is due to vandalism and what the stats are for that.
- If there are alternatives that Staff was able to recommend.
- Whether the applicant had considered moving the grave site.

Applicant representative, Emily Utt, Historic Preservation Specialist for the Church of Jesus Christ of Latter Day Saints, reviewed the reason for their request.

Commissioner De Lay asked for an explanation of the slide being shown.

Gregory Green, applicant representative, review the property damage that has occurred over the last eighteen months. They showed examples of other cemeteries in Salt Lake City that have security fencing as well as other properties in the same neighborhood that have fencing exceeding standard.

Eric Sabin shared the proposed design of the project.

The Commission, Staff and Applicant discuss:

- How the 1880's historic iron will be attached to the new material
- Whether the applicants felt the proposed changes would actually make a difference in security
- A motion activated security system
- The lighting
- If the taller fence will eliminate dogs entering the property

Commissioner Peters opened the meeting to public comment.

Cindy Cromer spoke on layering methods of security.

The applicant agreed that a layered method was going to be best.

Commissioner Peters opened the executive session.

Commissioners discuss:

- The site being a cultural landscape and feeling that the standards should be different than for a house
- Security fencing
- Where on the property the fencing is low
- A suggestion to table this was made

#### **MOTION:**

**Commissioner Petro-Eschler stated, Based on the analysis and findings listed in the staff report, information presented, and the input received during the public hearing, I move that the Historic Landmark Commission table the request for a Special Exception for additional fence height and the associated Certificate of Appropriateness. Regarding Petition numbers PLNHLC2021-00457 & PLNHLC2021-00604. We are tabling in hopes that the applicant can finds more solutions satisfactorily address issues of security and historic preservation simultaneously.**

**Babs De Lay seconded the motion. Commissioners Ewanowski, Richardson, Lillie, Petro-Eschler and De Lay voted "aye". Commissioner Vela voted "nay". The motion to table**



passed with five “aye” and one “no”.

**The Applicant asked how the Commission would suggest protecting the site. The Commission was not able to give specific suggestions but said the petition needed to meet standards set in the code.**

**Duran Solar Installation at approximately 740 East 3<sup>rd</sup> Avenue** - Christopher Vargas, representing the property owner, is requesting a Certificate of Appropriateness from the Historic Landmark Commission to install Tesla solar shingles on the roof at the address listed above. The property is zoned SR-1A and is within Council District 3 represented by Chris Wharton. (Staff contact is Caitlyn Tubbs at 358-315-8115 or caitlyn.tubbs@slcgov.com). **Case number PLNHLC2021-00460**

Principal Planner Caitlyn Tubbs reviewed the petition. She stated since it is the first instance of solar shingles Staff decided to bring it before the Commission. She stated that the request meets minor alteration standards and that Staff recommended approval.

Commissioner Lillie stated that she is a historic preservation planner in Park City and that they have approved the requested materials in that city.

Commissioners and Staff discuss the colors that the product is offered in.

Commissioner Ewanowski asked if the roof was historic material, would this product be approved to replace it. Staff addressed that most historic roofing is not able to be replaced with like material.

Commissioner Vela asked if it will be apparent at corners that the roof is not traditional material.

The Applicant addressed the Commission said it is very hard to tell the difference.

Commissioner Peters asked for clarification on how the roof will look once the shingles are installed. The applicant stated that it will be a solid look mixing the solar shingles and dummy tiles.

Commissioner Peters opened the meeting to public comment.

Bruce Plenk commented that he is now in approval of the petition because the roof will be covered in solar shingles and dummy shingles to make a cohesive look.

Commissioner Peters opened the executive session.

The Commissioners discuss:

- The importance of discussing the details and making sure there is a cohesive look
- The subject property being a good test site

**MOTION:**

**Commissioner Vela stated, Based on the information in the staff report, the information presented, and the input received during the public hearing, I move that the Historic Landmark Commission approve petition PLNHLC2021-00460. Commissioner Richardson seconded the motion. Commissioners Ewanowski, Vela, Richardson, Lillie, De Lay and Petro-Eschler voted “aye”. The motion passed unanimously.**

The meeting adjourned at 9:27 PM

**ATTACHMENT G: MINUTES FROM SEPTEMBER 2, 2021  
HLC MEETING**

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## **SALT LAKE CITY HISTORIC LANDMARK COMMISSION MEETING**

**This meeting was held electronically without an anchor location**

**Thursday, September 2, 2021**

A roll is being kept of all who attended the Historic Landmark Commission Meeting. The meeting was called to order at approximately 5:30 PM. Audio recordings of the Historic Landmark Commission meetings are retained for a period of time. These minutes are a summary of the meeting. For complete commentary and presentation of the meeting, please visit <https://www.youtube.com/c/SLCLiveMeetings>.

Present for the Historic Landmark Commission meeting were: Chairperson Robert Hyde; Commissioners Babs De Lay, John Ewanowski, Aiden Lillie, Kenton Peters, Victoria Petro-Eschler, and David Richardson. Vice-Chairperson Michael Vela had technical difficulties and could not make the meeting.

Planning Staff members present at the meeting were: Deputy Director Michaela Oktay, Planning Manager Wayne Mills, Senior City Attorney Hannah Vickery, Senior Planner Sara Javoronok; Planning Manager Amy Thompson, Principal Planner Caitlyn Tubbs, Administrative Assistant Aubrey Clark.

### **APPROVAL OF AUGUST 5, 2021 MEETING MINUTES**

**Commissioner Kenton Peters motioned to approve the minutes from the August 5, 2021 meeting. Commissioner Babs De Lay seconded the motion. Commissioner Babs De Lay, John Ewanowski, Kenton Peters, and David Richardson voted “yes”. Commissioners Victoria Petro-Eschler and Aiden Lillie did not vote. The motion passed.**

### **REPORT OF THE CHAIR AND VICE-CHAIR**

Chairperson Robert Hyde stated he has nothing to report.  
Vice-Chairperson Michael Vela was not in attendance.

### **REPORT OF THE DIRECTOR**

Deputy Director Michaela Oktay reported that Carlton Getz will be going before City Council next Tuesday for a possible appointment as a Commissioner for the Historic Landmark Commission. She also anticipated that more applicants will be interviewed



soon. She also reported that David Richardson and Victoria Petro-Eschler would be leaving the Commission soon.

## **PUBLIC COMMENTS**

No one wished to comment.

## **EXTENSION REQUEST**

**Bishop Place New Construction and Special Exceptions** - Paul Garbett, Garbett Homes, has submitted a letter to request a one-year extension for the Bishop Place project that was approved by the HLC on 10/1/2020. The approval granted was for new construction in a historic district for a single-family attached residential development of twenty-four (24) dwelling units and three (3) associated special exception requests located at approximately 432 N. 300 West (Bishop Place – a private street). The subject property is zoned SR-3 (Special Development Pattern Residential District) and is located in Council District 3 represented by Chris Wharton (Staff contact: Lex Traughber at 385-226-9056 or [lex.traughber@slcgov.com](mailto:lex.traughber@slcgov.com)). **Case numbers PLNHLC2019-01157 & PLNHLC2019-01158**

Planning Manager Wayne Mills gave an overview as to why the applicant is requesting an extension.

Paul Garbett said there have been a lot of challenges, but the project is moving forward.

## **MOTION**

**Commissioner Kenton Peters moved to approve the one-year extension for PLNHLC2019-01157 and PLNHLC2019-01158 Bishop Place. Commissioner Aiden Lilly seconded the motion. Commissioners Babs De Lay, John Ewanowski, Aiden Lillie, Kenton Peters Victoria Petro-Eschler, and David Richardson voted “aye”. The motion to approve the extension passed.**

## **PUBLIC HEARINGS**

**Minor Alteration Re-roof at Approximately 1024 E 1st Avenue** - Dynamic Roofing & Construction, representing the property owner, is requesting approval for a Minor Alteration at the address listed above. The Minor Alteration is to accommodate the construction of an already completed re-roof request. The property is presently occupied as a single-family residential house and is located within the Avenues Local Historic

District and is zoned SR-1A (Special Development Pattern Residential). The subject property is within Council District 3 represented by Chris Wharton. (Staff contact: Krissy Gilmore, (385) 214-9714 or kristina.gilmore@slcgov.com) **Case number: PLNHLC2021-00605**

Planning Manager Wayne Mills stated that the applicant had an emergency right before the meeting and would not be in attendance. He gave the Commission options on how to move forward with the meeting.

Chairperson Robert Hyde asked if there was anyone that was attending the meeting from the public that wished to speak on the matter. No one wished to speak, and he asked the Commission to postpone until the next month.

## **MOTION**

**Commissioner Petro-Eschler motioned to postpone case number PLNHLC2021-00605 until the October meeting. Commissioner Kenton Peters seconded the motion. Commissioners Babs De Lay, John Ewanowski, Aiden Lillie, Kenton Peters, Victoria Petro-Eschler and David Richardson voted “aye”. The motion to postpone to the next meeting passed.**

**Major Alteration Rear Addition at approximately 235 South 600 East** - David Kofford of NWL Architects, on behalf of the property owner, Annette Langheinrich, is requesting approval from the City for a Major Alteration for the removal of an existing rear addition and construction of a new rear addition to the dwelling at the above-listed address. The subject property is listed as a contributing building to the Central City Historic District. The proposed addition is approximately 1,420 square feet with a height of 30.5 feet. The property is located in the RMF-35 (Moderate Density Multi-Family Residential) zoning district and within Council District 4, represented by Analia Valdemoros. (Staff contact: Sara Javoronok 382-226-4448 or sara.javoronok@slcgov.com) **Case number PLNHLC2021-00366**

Senior Planner Sara Javoronok reviewed the petition as outlined in the staff report. She stated that Staff recommends approval of the request with the condition included in the report.

Commissioner Ewanowski asked whether the existing dormer is historic. Staff confirmed that it is historic.

Commissioner Kenton Peters asked whether the addition is to divide the property into apartments. Staff stated that the space will be a single-family home.

Commissioner Lillie asked if the roof of the existing addition extends into the historic roofline or if it is broken up. Staff identified that the area was not clear in the existing photographs, but that there were existing elevation drawings in the packet, and that the applicant could provide additional information.

Chairperson Hyde opened the meeting to the Applicant.

Applicant David Kofford presented plans for the subject property. He stated the petition intends to rehabilitate the property. He stated the existing sleeping porch was an addition from approximately 1911 and that the roof of the house was all reroofed in the last decade. He also stated that there is no real integration of the sleeping porch, other than the roof, with the main structure. He said that the shingle façade can be seen inside the porch. He reviewed the intended plans for the property.

Chairperson Hyde opened the meeting to Public Hearing.

## **PUBLIC HEARING**

Cindy Cromer commented that the architect's attention to detail is admirable. She commented on the roofing shingles, saying she feels the commission should delegate the shingle coloring. She also commented on the leaded glass window believing it should be left where it was originally placed.

Seeing that no one else wished to speak Chairperson Hyde closed the public hearing and turned it back over to the commission.

Commissioner Ewanowski asked why the area is carved out the volume above the porch on the second floor. The applicant stated the intent is to provide the same scale throughout the house with the same facilities found in larger homes.

Commissioner De Lay Said she is excited about the project.

Commissioner Aiden Lillie stated that she is also excited to see the structure rehabilitated and restored. Her concern is losing a large portion of the historic rear portion of the elevation. She also wanted to see the leaded glass window remain in the original placement. She wanted to know from Staff if there is a specific city code that references

the loss of historic material. Staff did state that the guidelines are stated in the staff report and that it does meet the guidelines.


Commissioner Kenton Peters said he is also glad to see this property being restored and stated that he feels the loss of historic façade on the rear of the home a small price to pay rather than see it continue to degrade.

Commissioner David Richardson said the windows must be restored, not replaced, along with the columns and other architectural features. He also suggested that the addition be a foot smaller to read as an addition.

## **MOTION**

**Commissioner Babs De Lay stated, Based on the findings listed in the Staff Report regarding PLNHLC2021-00366, Major Alteration at 235 South 600 East, the information presented, and input received during the public hearing, I move that the Historic Landmark Commission approve the request for a Certificate of Appropriateness for the major alteration for the removal of the existing rear addition and construction of a new rear addition for the proposal at 235 South 600 East, as presented in, PLNHLC2021-00366 with the condition listed in the staff report. She added that the owners are encouraged to continue with the roofing color on the new addition that is on the front part of the standing structure. Commissioner Aiden Lillie seconded the motion. Commissioners Babs De Lay, John Ewanowski, Kenton Peters, Victoria Petro-Eschler, and Aiden Lillie voted “aye”. Commissioner David Richardson abstained. The motion passed with five “aye” and one abstention.**

## **UNFINISHED BUSINESS**

 **Brigham Young Cemetery Fence Special Exception and Minor Alteration at approximately 140 E 1st Avenue** - Emily Utt, representing the Church of Jesus Christ of Latter Day Saints, is requesting a Special Exception and associated Certificate of Appropriateness (CoA) from the City to add additional height to an existing historic fence surrounding the Brigham Young Cemetery located at approximately 140 E 1st Avenue. The Brigham Young Cemetery is a Landmark Site within the Avenues Local Historic District. The fence sits on top of a retaining wall and the proposed fence and retaining wall height ranges from approximately 5 feet to 9 1/2 feet in the side and rear yard. This request requires a Special Exception and associated Minor Alterations because the maximum height for fences in residential districts is 6 feet in the interior side and rear yard. The Historic Landmark Commission reviewed this item at the July 15th public



hearing and the item was tabled to allow for revisions to the proposal. [The applicant revised their application for consideration tonight.](#) The project is located in the RMF-75 (High Density Multi-Family Residential) zoning district within Council District 3 represented by Chris Wharton. (Staff contact: Amy Thompson at 385-226-9001 or amy.thompson@slcgov.com) **Case numbers PLNHLC2021-00457 & PLNHLC2021-00604**

Planning Manager Wayne Mills let the commission know that this item is not a public hearing. He noted that there were emails that were received and forwarded to the Commission but would not be read into the meeting.

Commissioner Aiden Lillie asked for clarity on if the Commission should be thinking towards retaining nation register eligibility and whether that is in the Commission's purview. Deputy Director Michaela Oktay answered that it is not part of the Commission's standards but that following the standards would help retain that eligibility.

Planning Manager Amy Thompson reviewed the petition as outlined in the staff report. Amy Thompson detailed the revisions to the petition. She stated that the revised petition does address some of the special exception standards related to compatibility, however, it still does not meet all of the special exception standards or the standards of approval for a certificate of appropriateness Amy Thompson presented how the revised application does not meet the applicable standards under City code and indicated because of that the Staff recommendation is denial of the request.

None of the Commissioner had questions for Staff.

Chairperson Hyde opened the meeting to the Commissioners.

Commissioner David Richardson stated there are creative options to secure the site. Commissioner Babs De Lay stated she wants the site preserved. Commissioner Victoria Petro-Eschler stated that she feels they are making decisions for short-term issues.

Emily Utt said they are trying to find a balance and keep the graves safe while acknowledging increasing security issues and the site being in an urban area. She feels modification of the fence is a small price to pay to save the place long-term and keep it open.

Commissioner Richardson asked for more details about some of the security issues on the site. The applicant stated that a headstone was stolen in the last 18 months.

Commissioner Petro-Eschler asked if an alteration to the fence was the only option there is or if the applicant has explored other options for the site. The applicant stated they are exploring other options. Commissioner Petro-Eschler stated she felt that the long-term preservation of the fence should be a priority with a much longer historical perspective. The applicant feels the alteration would be reversible and classified it as a small repair.

Commissioner Ewanowski said he was torn on the issue and is worried about the ability to undo a weld on the fence. He's wondered if there was some other compromise rather than materially altering character-defining feature of the property. He stated that this is not a purely aesthetic choice and they are not saying that protection of human remains isn't important but wondered if there was a way to do this that would benefit everyone.

Commissioner De Lay asked if there was a way to shelter the site by building a structure over or around it.

Commissioner Richardson said that he had considered the same thing. He said that he has lived in the neighborhood for many years and feels the situation may improve over time. He was commenting and lost his internet connection.

Commissioner Peters wondered if there was a possibility to remove the existing fence, saving and storing it, and replacing it with a similar fence that is 5ft high. Then when there is no longer an issue returning the historic fence.

Commissioner De Lay feels that the problem will never go away but she also feels strongly that the fence needs to be preserved.

Gregory Green stated the whole site, not just the fence, is historical. He said that they want to make the site more secure but also inviting. He stated that at the end of the day they are just trying to preserve this so generations can come and enjoy this place.

Commissioner De Lay asked if this was the original burial site. The applicant confirmed that it is and that it also contains around 40 other burials at this site.

Chairperson Robert Hyde spoke up about representing the Church of Jesus Christ of Latter Day Saints in many matters and felt that even though he wasn't representing this issue he needed to recuse himself. He conferred with Attorney Hannah Vickery to find out if he needed to leave the meeting. She did not reply. Michaela Oktay interjected that someone needs to move the meeting along. Chairperson Hyde then asked Commissioner Kenton Peters to take over as Chair of the meeting.

Commissioner Richardson was able to rejoin the meeting. Commissioner Peters asked if he would like to continue his earlier thought. Commissioner Richardson stated he is optimistic that the City would improve and he doesn't see a need for this level of change for security. He also said that this is an important historical feature in their neighborhood.

## MOTION

**Commissioner David Richardson stated, Based on the analysis and findings listed in the staff report, the information presented, and the input received during the public hearing, I move that the Historic Landmark Commission deny the request for a Special Exception for additional fence height and the associated Certificate of Appropriateness. The requests fail to comply with the standards of approval in 21A.52.060 and 21A.34.020.G. for case numbers PLNHLC2021-00457 & PLNHLC2021-00604.**

The Commission and Staff discuss the ramifications of the voting to deny. Commissioner Peters stated that if the applicant is denied that they can appeal the decision. They also discussed whether to vote the special exception and certificate of appropriateness separately.

Commissioner Peters asked if Commissioner Richardson would like to amend his motion. Commissioner Richardson said he wanted to let the motion stand.

Commissioner Petro-Eschler asked if the executive session had been closed. She wanted clarification on what is within the Commission's purview. She agreed with Commissioner Ewanowski who said we don't care if something is taller but the historicity of the element is preserved.

Deputy Director Michaela Oktay said the Special Exception and the Minor Alteration are interconnected.

Commissioner David Richardson said the Special Exception and the Minor Alteration have been presented that way by the applicant. He spoke about the fence creator being a very important contributor to the City. He felt that even though it is small it is an important historical element in our city. He said it should remain the same on the façade and front twenty-five foot setback, but that beyond the setback another device could be installed to meet the needs of the applicant. He also stated he doesn't feel taller fences improve security and that security is not within their purview.

Commissioner Aiden Lillie stated that adding a taller fence would be the best solution.

Deputy Director Michaela Oktay directed the Commission to the Staff Report and stated that Staff is finding that the special exception does not meet most of the standards but told the commission that if they would like to make findings of fact on all of those standards that would be the route they need to go.

Commissioner De Lay asked about forming a committee to help the applicant.

Deputy Director Michaela Okay stated that an architectural sub-committee could be formed but clarified that a quorum couldn't meet but also suggested a work session could be held so that it is being discussed in public but then the burden would be on the applicant to return to the Commission.

Commissioner Peters commented it is not successful in meeting the criteria of the standards and he feels they need to get a "yay" or "nay" and let it take its course.

**Commissioner Aiden Lillie seconded the motion. Commissioner John Ewanowski voted "nay". Commissioner Babs De Lay voted "nay". Commissioner Victoria Petro-Eschler voted "nay". Commissioner David Richardson voted "aye". Commissioner Aiden Lillie voted "aye". The motion failed.**

Commissioner David Richardson indicated that there are 9 paragraphs in the staff report to overcome.

Deputy Director Michaela Oktay interjected that she would like some findings cited.

Planning Manager Amy Thompson stated that she did note in the motion sheet the specific standards that the commission would need to make findings on to make an alternate motion.

Commissioner Peters asked the Commission to review the standards again.

Commissioner Ewanowski stated that for him it goes back to voting between a certificate of appropriateness and special exceptions saying it's been done in the past where they have voted separately between the two.

The Commissioners and Staff discuss the possibility of separating the two petitions.

**Commissioner Victoria Petro-Eschler stated, Based on the analysis and findings listed in the staff report, information presented, and the input received during the public hearing, I move that the Historic Landmark Commission deny the request for a Special Exception for additional fence height and the associated Certificate of Appropriateness. The requests fail to comply with the standards of approval in 21A.52.060 and 21A.34.020.G. PLNHLC2021-00457 & PLNHLC2021-00604.**

**Commissioner Aiden Lillie seconded the motion. Commissioner David Richardson voted "aye". Commissioner John Ewanowski voted "aye". Commissioner Victoria Petro-Eschler voted "aye". Commissioner Aiden Lillie voted "aye". Commissioner Babs De Lay voted "aye". The motion to deny passed unanimously.**

A five-minute break was taken at 7:18 PM.

## **WORK SESSIONS**



**Third Avenue Townhomes New Construction at approximately 860 East and 868 East 3rd Avenue** - Oren Hillel is proposing new construction of six townhome units. This will be a work session review, no public hearing will be held and a decision will not be made at this meeting. The subject properties are located in the Avenues Local Historic District and are zoned RMU-35. The subject properties are in Council District 3 represented by Chris Wharton. (Staff contact is Caitlyn Tubbs at 385-315-8115 or caitlyn.tubbs@slcgov.com) Case number PLNHLC2021-00567

Principal Planner Caitlyn Tubbs reviewed the proposal as outlined in the memorandum. Commissioner Kenton Peters asked if the project had come before the commission before. Staff clarified that it had as part of a rezoning petition.

Applicant, Oren Hillel, with Remarc Investments, stated that they received approval for the rezone from City Council and now want to bring it before the Commission to refine the design.

Applicant, Brian Backe, shared the proposed design of the project. He shared a diagram of the buildable volume of the site. He stated they would be lowering the development into the ground to reduce the impact on the neighboring residence. He shared the façade design as well as the proposed bulkhead. He shared the deck design and the façade on N street made to look more like a front façade.

Commissioners supplied the following input:

- Height and volume concerns for the neighbor to the east
- Roof decks may be able to have an increased bulkhead
- The front steps and desks being a concern with room for improvement, possibly having walls to divide it from the public space
- Having extra support for rooftop hot tubs
- Maybe having a balcony off the main living area and whether it would encroach on the setback
- Concerns with the intended flat plaster, feeling it will need control joints
- Some material to differentiate between each unit

The meeting adjourned at 8:01 PM

**ATTACHMENT H: STAFF MEMO FROM SEPTEMBER 2  
MEETING (INCLUDES STAFF REPORT FROM JULY 15<sup>TH</sup>)**

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# Memorandum

PLANNING DIVISION  
DEPARTMENT of COMMUNITY and NEIGHBORHOODS

To: Salt Lake City Historic Landmark Commission

From: Amy Thompson, Senior Planner, [amy.thompson@slcgov.com](mailto:amy.thompson@slcgov.com) or 385-226-9001

Date: September 2, 2021

Re: PLNHLC2021-00457 – Special Exception Fence Height Brigham Young Cemetery  
PLNHLC2021-00604– Minor Alteration for Fence Brigham Young Cemetery

**ACTION REQUIRED:** Consider modifications made to the proposal in response to discussion and comments made at the July 15, 2021 Historic Landmark Commission meeting, and make a final decision on the proposal.

**REQUEST:** Emily Utt, representing the Church of Jesus Christ of Latter-Day Saints who is the owner of the property, is requesting a Special Exception and associated Certificate of Appropriateness (CoA) from the City to increase the height of an existing historic fence surrounding the Brigham Young Cemetery. The Brigham Young Cemetery is a Landmark Site within the Avenues Local Historic District.



**RECOMMENDATION:** In Planning Staff's opinion, the requested Special Exception and associated Minor Alterations application fail to substantially comply with the standards of approval in 21A.34.020.G and 21A.52.030. Therefore, Staff recommends the Historic Landmark Commission deny the Special Exception and Minor Alteration request for additional fence height.

**ATTACHMENTS:**

- A. [Revised Plans](#)
- B. [July 15, 2021 Staff Report](#)
- C. [July 15, 2021 HLC Meeting Minutes](#)

**BACKGROUND:**

Emily Utt, representing the Church of Jesus Christ of Latter-Day Saints who is the owner of the property, is requesting a special exception and associated minor alteration to increase the height of a decorative wrought iron fence by approximately 2 FT. To achieve this additional height, the applicant is proposing to add a new wrought iron bar stock at the bottom of the existing fence. The fence sits on

top of a sandstone wall surrounding the Brigham Young Cemetery. The rock wall was built around the cemetery in September 1877. In the 1880's, iron fencing and gates were added to the rock wall and around Brigham Young's grave.

The narrative submitted by the applicant notes the cemetery has seen a significant increase in trespassing and vandalism in recent years and they believe that raising the height of the fence will significantly improve security at the site.

The Historic Landmark Commission tabled the Special Exception and associated Minor Alteration requests at the July 15, 2021 meeting to allow for revisions to the proposal that address issues of security and historic preservation simultaneously. The following is a summary of the discussion points and comments made during that meeting:

- Statistics on the number of security incidents
- Other options to increase security on the site
- Likelihood of reversing these changes in the future if other security solutions are found
- The fence is an original character defining feature of the site built by a notable person
- A hybrid solution where the more visible fence portions remain the same and the other less visible portions are altered
- Society is changing – aggression to the site may not be going away
- Whether or not a taller fence will be the solution to the security issues on the site
- Concerns with the fence being a first line of defense given its historic value
- The purview of the commission regarding security
- The site being a cultural landscape vs. a residence and applicable standards

A video recording of the Historic Landmark Commission meeting can be viewed here - <https://youtu.be/kJ3tjUNBozc?t=8326>. The minutes from the July 15, 2021 meeting can be found in [Attachment C](#).

### **SUMMARY OF REVISIONS:**

In response to the discussion at the July 15<sup>th</sup> meeting, the applicant has made some revisions to the proposal. The applicant is no longer pursuing increased height of the north elevation of the fence adjacent to 1<sup>st</sup> Avenue – the existing fence height will remain in that area and just repairs are proposed. Additionally, the fence on the east and west elevations tapers down to a height in line with the existing height of the north elevation of the fence.

The overall proposed fence height is not changing in the revised proposal. The applicant is still seeking increased fence height on the east, west and south elevations. The existing fence is approximately 3 FT tall and the proposed fence has a height of 5 FT. The height of the existing retaining wall varies due to the slope of the site—no changes are proposed to the existing retaining wall height. The proposed overall combined fence and retaining wall height varies around the site from approximately 5 FT to 9.41 FT.

This request requires a special exception because the maximum height for fences in the front yard area is 4 FT, and in the interior side and rear yards, the maximum height is 6 FT.

See the revised elevation drawings in [Attachment A](#) for more information.

### **DISCUSSION:**

In regard to the Special Exception Standards, the revisions to the proposal to keep the existing fence height of the north elevation adjacent to 1<sup>st</sup> Avenue as is, helps to address the standards related to compatibility and brings the proposal more in line with the character of front yard fence heights in the Avenues, where fences and retaining walls are generally lower in height. However, the proposal is still in conflict with the special exception standards that speak to destruction of historic features of

significant importance and compliance with the purpose of the H Historic Preservation Overlay District. Although the revisions address some of the concerns with the initial proposal in relation to compatibility of the proposed fence height, staff finds the proposal still does not meet all of the special exception standards required for approval.

The revisions to the proposal do not change planning staff's initial analysis and findings related to the proposed alteration – staff still finds the proposal does not comply with the Standards for a Certificate of Appropriateness for a Landmark Site. The fence is an original character defining feature of the Landmark Site and it has remained unaltered since its construction in the 1880's. As discussed in the analysis of the standards of approval in [Attachment E](#) of the original staff report, the proposal to modify the existing historic fence by adding height would have a negative impact on the historic integrity of one of the original character defining features of this site and setting. The proposed alterations do not have any historical basis and could be interpreted as creating a false sense of history or architecture. The proposed modifications could hinder the ability to interpret the age of the fence and differentiate the historic features from the new features. The standards for a Certificate of Appropriateness speak to preserving distinctive features, finishes and construction techniques or examples of craftsmanship that characterize a historic property. The historic fencing was fashioned and fabricated by William J. Silver, a successful iron works businessman who established his career in Salt Lake City. The standards also discuss alterations and the importance of alterations being reversable. Staff is of the opinion it would be difficult to remove the new fence segment from the historic portion without impairing the integrity of the historic fence. Based on this analysis, staff finds the proposal does not comply with the standards of approval in 21A.34.020.G.

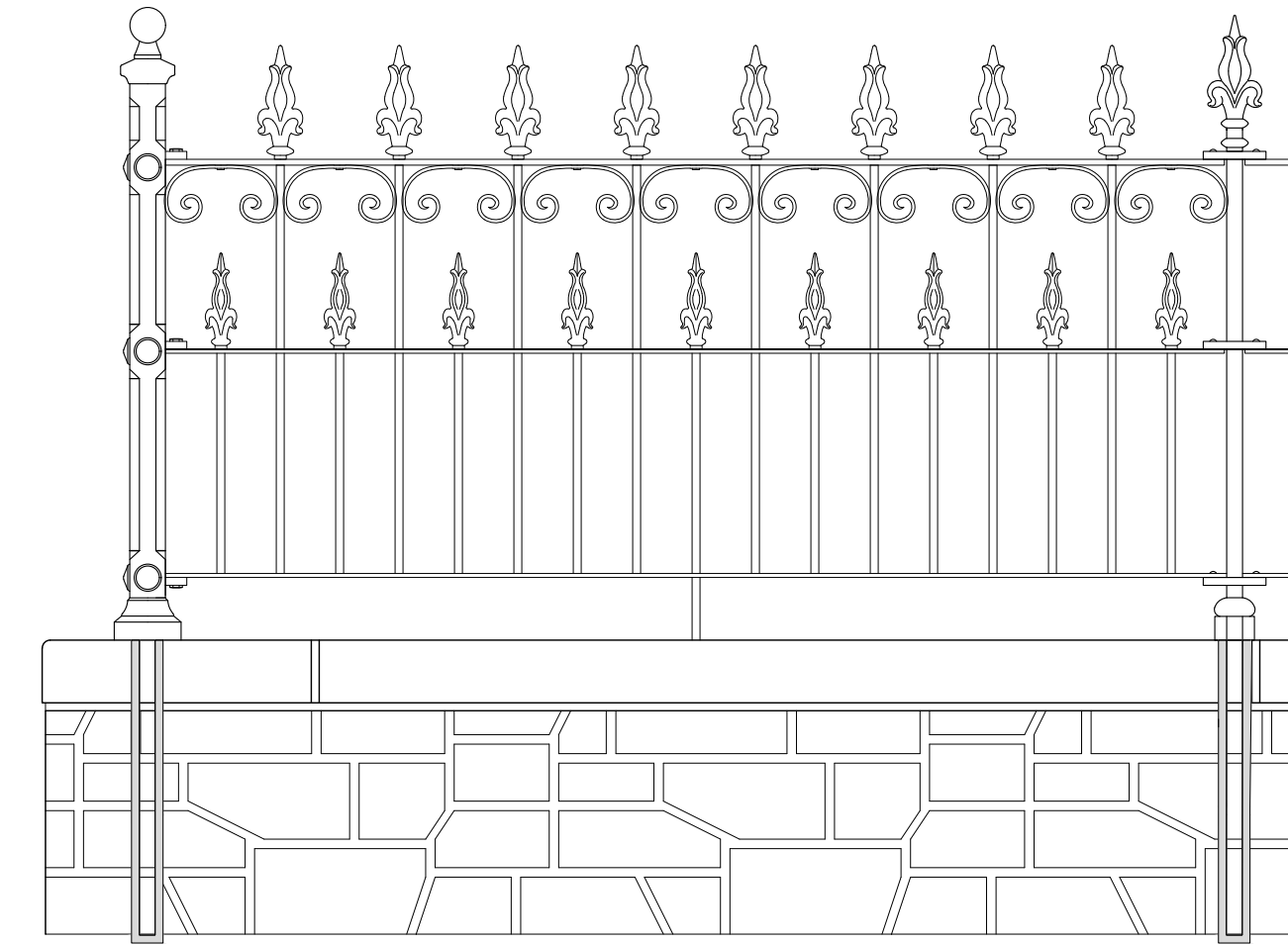
**ATTACHMENT A – REVISED PLANS**

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GENERAL FENCING NOTES:

1. THESE NOTES APPLY TO ALL FENCING AND GATE DETAILS ON THIS SHEET.
2. ALL FENCING AND GATES (INCLUDING THE FENCE AROUND BRIGHAM YOUNG'S GRAVE SHALL BE REMOVED FROM THE SITE, BE SANDBLASTED TO REMOVE ALL PAINT, RUST, ETC. THE FENCING AND GATE WILL THEN BE REPAIRED AS NECESSARY INCLUDING REPAIRING/REPLACING ANY BENT OR DISFIGURED PORTIONS OF THE FENCE. AFTER REPAIR WORK IS COMPLETED, PRIME WITH 2 COATS OF RUST INHIBITING PRIMER AND THEN PAINT THE FENCE AND GATE WITH 2 COATS OF GLOSS ALKYD BLACK ENAMEL PAINT.
3. DAMAGE RAILS, POSTS, FINIALS OR OTHER PARTS OF THE EXISTING FENCE THAT CANNOT BE SALVAGED OR REPAIRED SHALL THEN BE CAST AS NEW PIECES. ALL NEW FABRICATIONS MUST MATCH THE EXISTING FENCE COMPONENTS IN SIZE, SHAPE, METAL MATERIAL, FINISH, ETC.
4. IF AN ADDITIONAL FENCING IS ADDED TO MAKE THE FENCE 5' TALL, STRUCTURAL ENGINEERING PLANS/SPECS MUST BE FOLLOWED. THE FENCE AROUND BRIGHAM YOUNG'S GRAVE SHALL REMAIN THE SAME HEIGHT (IT SHALL JUST BE REPAIRED, BE SANDBLASTED AND BE PRIMED AND BE REPAINTED AS NOTED).
5. ANCHOR STRAPS SHALL BE REMOVED FROM THE EXISTING FENCE AND THE HOLES SHALL BE PATCHED/REPAIRED.
6. SHOP DRAWINGS FOR THE NEW 5' TALL SECTION OF FENCE AND GATE SHALL BE PROVIDED BY THE CONTRACTOR FOR OWNER/ARCHITECT APPROVAL.



1 EXISTING FENCE (3' tall fence on top of wall)

SCALE: NTS

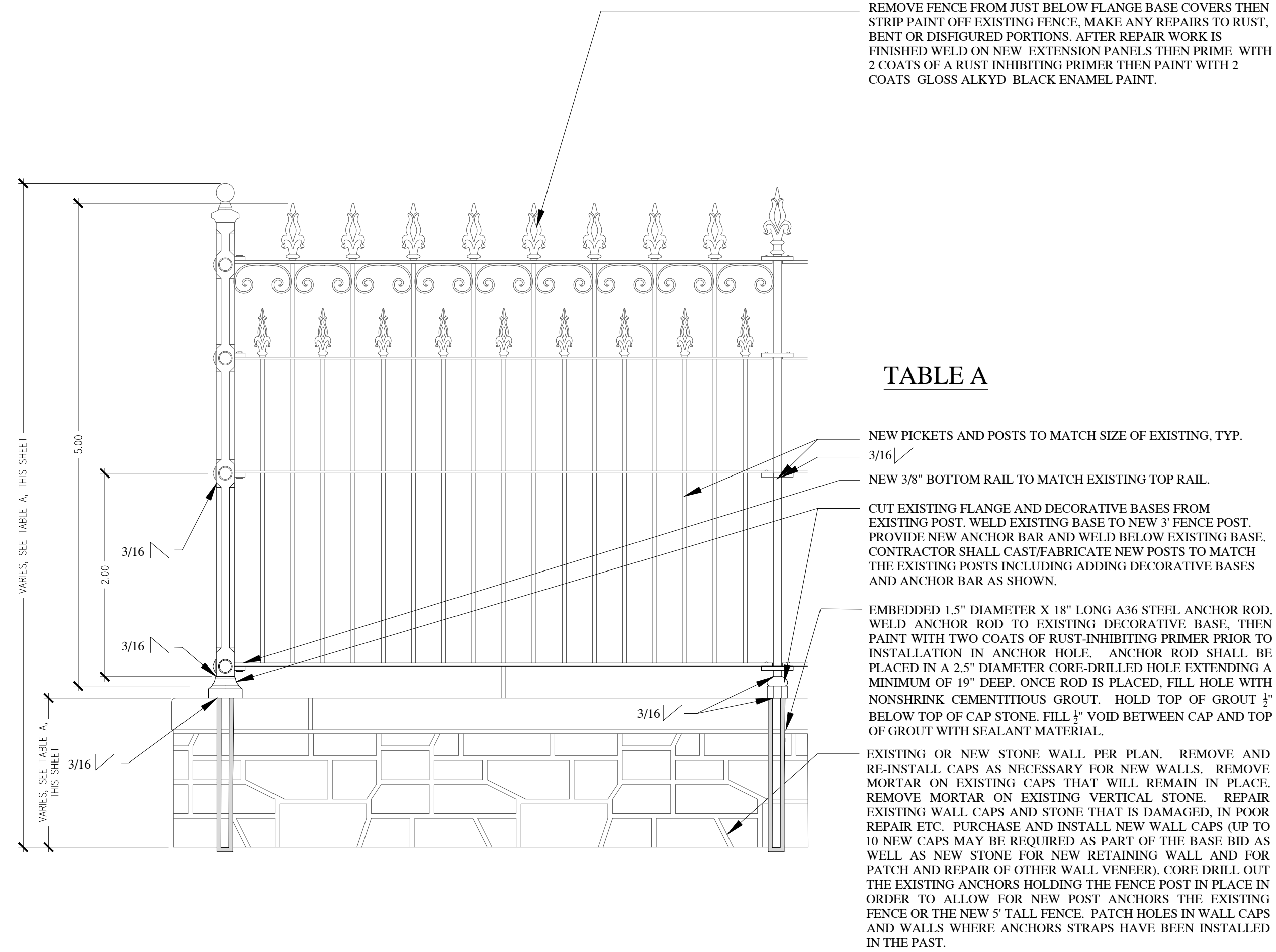


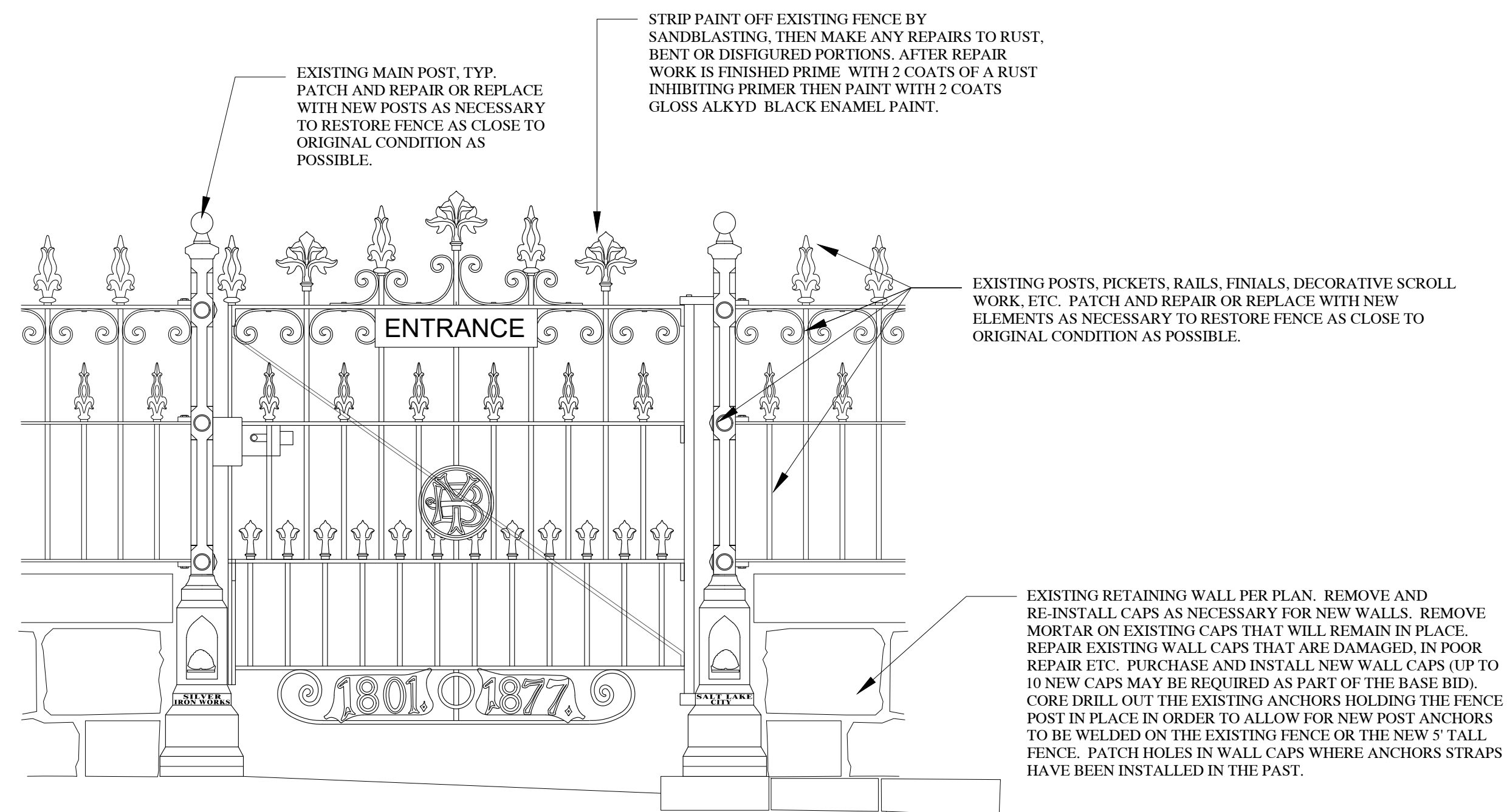
TABLE A

NOTE: THE EXISTING AND NEW WALL CAPS WILL NEED TO BE CORE DRILLED TO REMOVE THE EXISTING ANCHORS AND ALLOW SPACE TO INSERT NEW 18" LONG ANCHORS THRU THE WALL CAPS AND INTO THE NEW (AND EXISTING) STONE WALLS AS SHOWN.

2 PROPOSED FENCE (5' overall new height of fence on East, South and West sides)

SCALE: NTS

LOCATION	EXISTING WALL HEIGHT	EXISTING FENCE HEIGHT	WALL PLUS FENCE HEIGHT	PROPOSED FENCE HEIGHT	PROPOSED WALL PLUS FENCE HEIGHT
NORTHEAST CORNER	1.54	3	4.54	TO REMAIN	TO REMAIN
SOUTHEAST CORNER	1.8	3	4.8	5	6.8
SOUTHWEST CORNER	1.46	3	4.46	5	6.46
NORTHWEST CORNER	2	3	5	TO REMAIN	TO REMAIN
ENTRY GATE	1.6	4.6	4.6	TO REMAIN	TO REMAIN



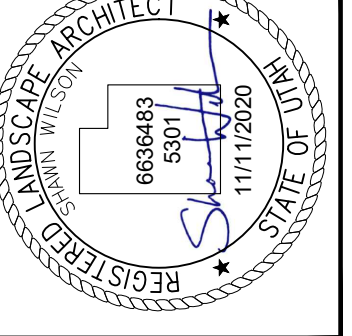
3 EXISTING GATE

SCALE: NTS

Architect / Engineer:



Stamp:



BRIGHAM YOUNG FAMILY  
CEMETERY RENOVATION  
EXTERIOR R/I PROJECT  
140 E 1st Ave  
Salt Lake City, UT 84111

Project for:  
THE CHURCH OF  
JESUS CHRIST OF  
LATTER-DAY SAINTS

BID/CONSTRUCTION DOCS

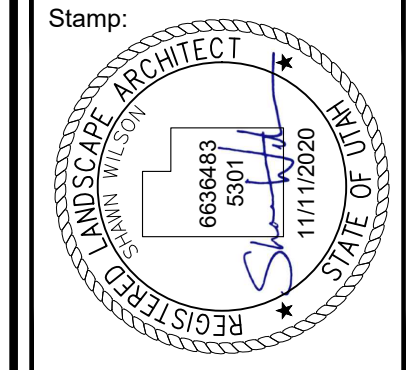
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Project Number:  
535106517  
Plan Series:  
Property Number:

Sheet Title:  
LANDSCAPE  
DETAILS &  
NOTES

Sheet:  
LS402A





Stamp:  
**BRIGHAM YOUNG FAMILY**  
**CEMETERY RENOVATION**  
**EXTERIOR R/I PROJECT**  
**140 E 1st Ave**  
 Salt Lake City, UT 84111

Project for:  
**THE CHURCH OF**  
**JESUS CHRIST OF**  
**LATTER-DAY SAINTS**

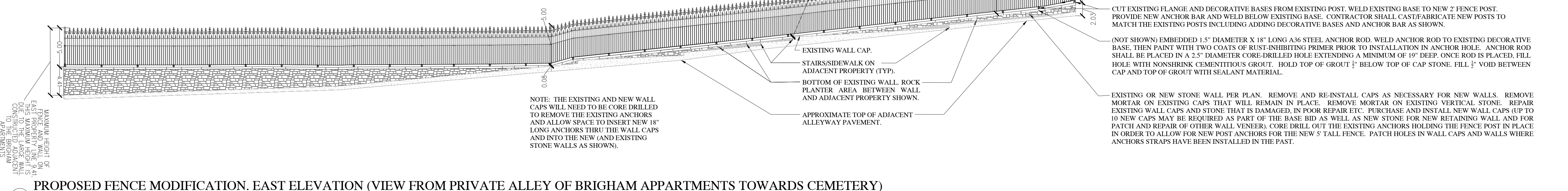
BID/CONSTRUCTION DOCS	
X	20 NOV 20

Project Number:  
**535106517**  
 Plan Series:  
 Property Number:

Sheet Title:  
**HARDSCAPE**  
**DETAILS &**  
**NOTES**

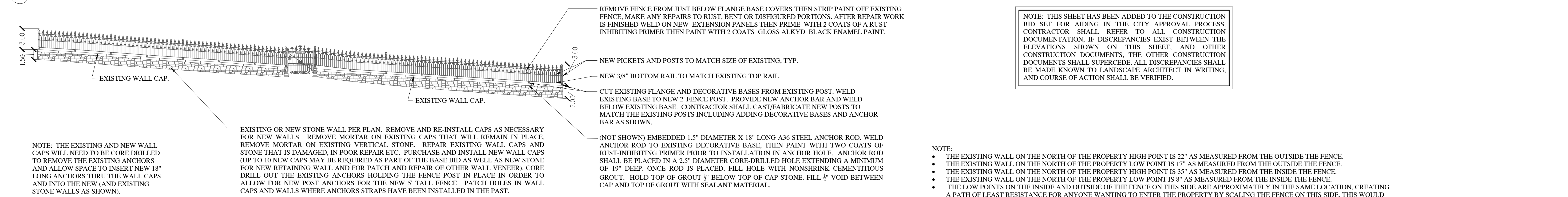
Sheet:  
**LS404A**

- NOTE:
- THE EXISTING WALL ON THE EAST OF THE PROPERTY HIGH POINT IS 53' AS MEASURED FROM THE OUTSIDE THE FENCE.
  - THE EXISTING WALL ON THE EAST OF THE PROPERTY LOW POINT IS 1' AS MEASURED FROM THE OUTSIDE THE FENCE.
  - THE EXISTING WALL ON THE EAST OF THE PROPERTY HIGH POINT IS 35' AS MEASURED FROM THE INSIDE THE FENCE.
  - THE EXISTING WALL ON THE EAST OF THE PROPERTY LOW POINT IS NEGATIVE 6' AS MEASURED FROM THE INSIDE THE FENCE.
  - THE LOW POINTS ON THE INSIDE AND OUTSIDE OF THE FENCE ON THIS SIDE ARE APPROXIMATELY IN THE SAME LOCATION, CREATING A PATH OF LEAST RESISTANCE FOR ANYONE WANTING TO ENTER THE PROPERTY BY SCALING THE FENCE ON THIS SIDE, THIS WOULD BE THE SECOND EASIEST SPOT TO ENTER THE SITE. THE ELEVATION DRAWING DOES NOT SHOW THE NEGATIVE MEASUREMENT NOTED ABOVE BECAUSE THE ELEVATION BELOW IS DRAWN FROM THE OUTSIDE OF THE PROPERTY.



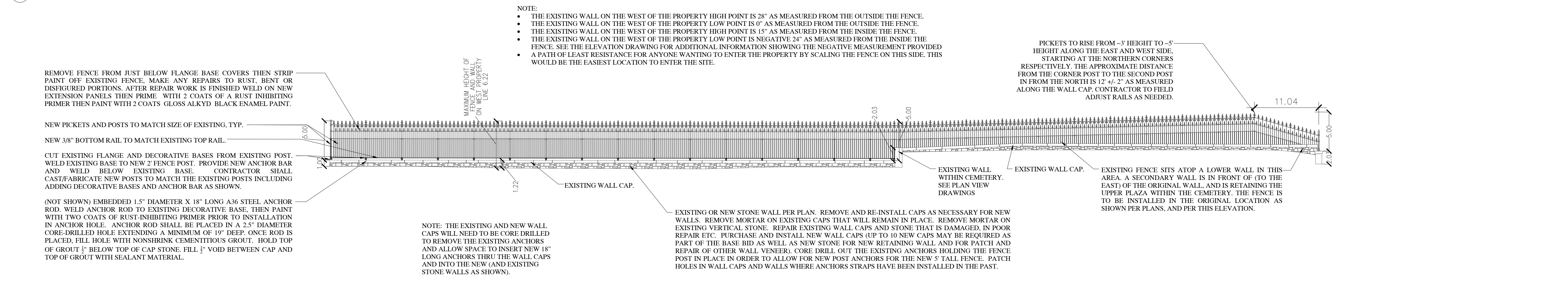
1 PROPOSED FENCE MODIFICATION, EAST ELEVATION (VIEW FROM PRIVATE ALLEY OF BRIGHAM APARTMENTS TOWARDS CEMETERY)

SCALE: 1/8"=1'-0"



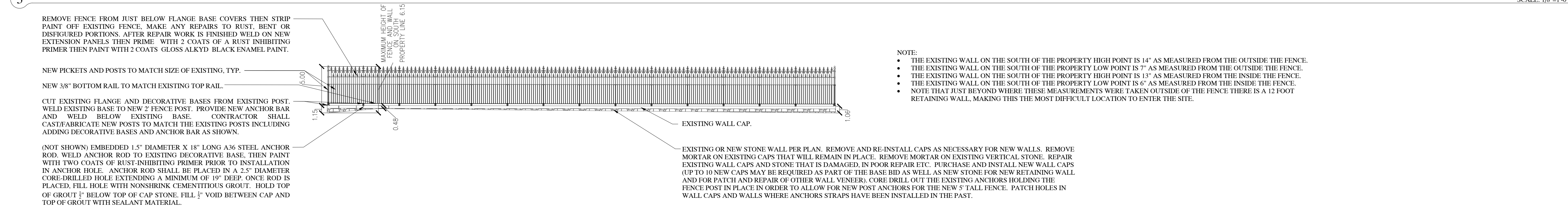
2 EXISTING FENCE NORTH ELEVATION (VIEW FROM 1ST AVE TOWARDS CEMETERY) (NO HEIGHT CHANGES PROPOSED)

SCALE: 1/8"=1'-0"



3 PROPOSED FENCE MODIFICATION, WEST ELEVATION (VIEW FROM INSIDE CEMETERY TOWARDS 136 1ST AVE)

SCALE: 1/8"=1'-0"



4 PROPOSED FENCE MODIFICATION, SOUTH ELEVATION (VIEW FROM INSIDE CEMETERY TOWARDS BRIGHAM APARTMENTS)

SCALE: 1/8"=1'-0"

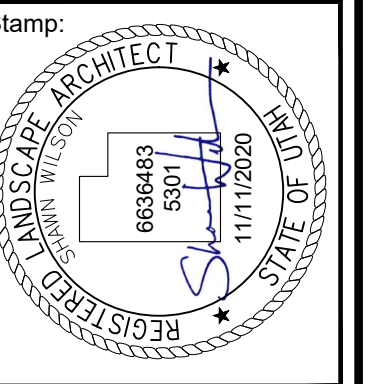




Architect / Engineer:

**In Site**  
**DESIGN GROUP**  
 Landscape Architecture Land Planning  
 17 North 470 West American Fork, Utah 84003  
 801-796-5043 www.insitedesigngroup.com  
 architect@insitedesigngroup.com

Stamp:



**BRIGHAM YOUNG FAMILY  
 CEMETERY RENOVATION  
 EXTERIOR R/I PROJECT**  
 140 E 1st Ave  
 Salt Lake City, UT 84111

Project for:

**THE CHURCH OF  
 JESUS CHRIST OF  
 LATTER-DAY SAINTS**

BID/CONSTRUCTION DOCS	
	HISTORIC LANDMARK SUBMITTAL
X	
20 NOV/20	
18 AUG/21	
X	

Project Number:  
 535106517  
 Plan Series:  
 Property Number:

Sheet Title:  
**CONCEPTUAL  
 IMAGES**

Sheet:  
**LS700**



**ATTACHMENT B – JULY 15, 2021 STAFF REPORT**

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# Staff Report

PLANNING DIVISION  
DEPARTMENT of COMMUNITY and NEIGHBORHOODS

To: Salt Lake City Historic Landmark Commission

From: Amy Thompson, Senior Planner, [amy.thompson@slcgov.com](mailto:amy.thompson@slcgov.com) or 385-226-9001

Date: July 15, 2021

Re: PLNHLC2021-00457 – Special Exception Fence Height Brigham Young Cemetery  
PLNHLC2021-00604– Minor Alteration for Fence Brigham Young Cemetery

## Special Exception & Minor Alteration

**PROPERTY ADDRESS:** 140 E 1<sup>st</sup> Avenue  
**PARCEL ID:** 09-31-380-035  
**LANDMARK SITE:** Brigham Young Cemetery  
**HISTORIC DISTRICT:** Avenues Local Historic District  
**ZONING DISTRICT:** RMF-75– High Density Multi-Family Residential & H – Historic Preservation Overlay District  
**MASTER PLAN:** Capitol Hill Community Master Plan



**REQUEST:** Emily Utt, representing the Church of Jesus Christ of Latter Day Saints who is the owner of the property, is requesting a Special Exception and associated Certificate of Appropriateness (CoA) from the City to increase the height of an existing historic fence surrounding the Brigham Young Cemetery. The Brigham Young Cemetery is a Landmark Site within the Avenues Local Historic District.

**RECOMMENDATION:** In Planning Staff's opinion, the requested Special Exception and associated Minor Alterations application fail to substantially comply with the standards of approval in 21A.34.020.G and 21A.52.030. Therefore, Staff recommends the Historic Landmark Commission deny the Special Exception and Minor Alteration request for additional fence height.

### ATTACHMENTS:

- A. [Vicinity Map & Historic District Map](#)
- B. [Historic Survey Information](#)
- C. [Property and Vicinity Photos](#)
- D. [Information Submitted by Applicant](#)
- E. [Analysis of Minor Alteration Standards](#)
- F. [Historic Design Guidelines](#)
- G. [Analysis of Special Exception Standards](#)
- H. [Public Process & Comments](#)

## REQUEST DESCRIPTION:



Emily Utt, representing the Church of Jesus Christ of Latter Day Saints who is the owner of the property, is requesting a special exception to increase the height of a decorative wrought iron fence that sits on top of a sandstone wall surrounding the Brigham Young Cemetery. The rock wall was built around the cemetery in September 1877. In the 1880's, iron fencing and gates were added to the rock wall and around Brigham Young's grave, which were fashioned and fabricated by William J. Silver, a successful iron works businessman who established his career in Salt Lake City.

The proposed fence has a height of 5 FT. The height of the existing retaining wall varies due to the slope of the site—no changes are proposed to the existing retaining wall height. The proposed overall combined fence and retaining wall height varies around the site from approximately 5 FT to 9.41 FT. To achieve this additional height, the applicant is proposing to add a new wrought iron bar stock at the bottom of the existing fence and the corner posts will be raised to correspond with the added fence height.

Maximum combined height of retaining wall and proposed fence at each elevation:

- Approximately 7 FT on the north elevation facing 1<sup>st</sup> Avenue
- Approximately 9.41 FT on the east elevation
- Approximately 7.86 FT on the west elevation
- Approximately 6 FT 2 IN on the south elevation

See the elevation drawings in [Attachment D](#) for more information.

This request requires a special exception because the maximum height for fences in the front yard area is 4 FT, and in the interior side and rear yards, the maximum height is 6 FT.

The narrative submitted by the applicant notes the cemetery has seen a significant increase in trespassing and vandalism in recent years and they believe that raising the height of the fence will significantly improve security at the site.

### **PROPERTY DESCRIPTION AND CONTEXT:**

Brigham Young Cemetery is located in the South Temple National Historic District and the Avenues Local Historic District in Salt Lake City, Salt Lake County, Utah. It fronts on 1st Avenue and is located between State Street and A Street at 140 East 1st Avenue. The cemetery is significant because it is the interment site of Brigham Young and his close family members. Young served as

the second President of The Church of Jesus Christ of Latter-day Saints from December 27, 1847 until his death on August 29, 1877.

The 0.25-acre cemetery is nestled on the west side of 1st Avenue in the lower, western-most reaches of the steep Avenues neighborhood. The cemetery is surrounded by single-family homes and apartments, including several structures located immediately adjacent to the site on its south, west and east edges. Multi-family residential buildings are also located on the north side of 1st Avenue opposite the cemetery, providing views into the cemetery from those vantage points. Farther to the west is Temple Square, Brigham Young Historic Park, and City Creek Park. Access to the burial site is from 1st Avenue. The site is located in an area with significant south-to-north upward grade, as well as west-to-east upward grade, although the site itself is relatively flat and even, the result of terracing achieved through the use of retaining walls along the steep perimeter edges and within the cemetery. The internal retaining wall includes a set of stairs, which provide access between the two character-defining sections of the cemetery: the Upper Courtyard: Mormon Pioneer Memorial and the Lower Courtyard: Brigham Young Family Burials.



The site was originally landscaped with grass and several small trees. A pioneer memorial including sculpture, monuments, and a more formal circulation path in concrete was added to the cemetery in 1974. A renovation project in 1999 restored grave markers and monuments, added sandstone paving that is currently throughout the site, and upgraded the landscape plan.

#### **OTHER CHANGES TO THE SITE:**

Planning Staff has been working with the applicant on a separate Minor Alterations application addressing various features within the Landmark Site. These following items are not included in this application that is before you for a decision, but Staff is noting the proposed modifications to provide the commission with a better sense of the overall scope of work for the Brigham Young Cemetery.

- The sandstone wall surrounding the property is deteriorated with spalling stones and missing mortar. Damaged stone will be repaired to retain original material to the greatest extent possible. The wall will be repointed to match the original mortar in color, texture, hardness, and profile.
- New light poles and security poles will be installed in the cemetery to improve security at night.
- Sandstone flagging installed in 1999 is degrading. Spalled stones are a safety hazard throughout the site. These pavers are not historic. Concrete pavers are proposed for inside the cemetery to lower maintenance requirements and increase safety. The current hardscape paths will be retained but be in concrete pavers instead of sandstone flagging. The sandstone sidewalk in front of the property is not included in this project.
- Several trees, shrubs, and other plantings have reached end of life. These trees will be replaced with compatible species.



## KEY CONSIDERATIONS:

The key considerations listed below were identified through planning staff's analysis of the project:

**Consideration 1 – Alterations to a Historic Feature of the Landmark Site:** As discussed in the analysis of the Standards for a Certificate of Appropriateness for a Landmark Site in [Attachment E](#), the proposal to modify the existing historic fence by adding height would have a negative impact on the historic integrity of one of the original character defining features of this site and setting. The proposed alterations do not have any historical basis and could be interpreted as creating a false sense of history or architecture.

**Consideration 2 – Special Exception Standards and Compatibility:**

Special exception approval for additional fence height may be granted if the proposal complies with 21A.52.030(A)(3) of the Zoning Ordinance and if the proposal complies with other applicable standards. The zoning ordinance allows for additional fence height for security purposes and when the increased height does not negatively impact the character of the neighborhood and maintenance of public and private views. The proposed height of the fence on top of the retaining wall is not compatible with the historic Avenues neighborhood character—where fences are generally lower in height to maintain the development pattern and open rhythm of yard areas along the streetscape.

The City does not typically permit taller fences in the front and side yards of residential zoning districts because they create a walled-in effect and contribute to a poor pedestrian experience. Each of the 8 specific special exception standards for additional fence height must be reviewed and considered equally before issuing approval. In addition, the general standards for special exceptions must be met. Staff has analyzed these standards in Attachment G of the Staff Report and has found the proposal does not comply with standards A, C, D, E, and G.

**Consideration 3 – Proposed Fence Height Text Amendment (PLNPCM2020-00511)**

The special exception petition is vested and the Historic Landmark Commission should make a decision based on the current zoning ordinance, but it should be noted that on January 13, 2021, the Planning Commission recommended approval to the City Council regarding a fence height text amendment (PLNPCM2020-00511) which if adopted would remove the Special Exception process for over height fences, walls, and hedges. The ordinance defines instances where a taller fence may be appropriate and approved by right. Except for a few instances, the proposed amendment would limit fence, wall, and hedge height to 4 feet in front yards and 6 feet in side or rear yards. The Planning Commission and Historic Landmark Commission would still have the authority to approve excess fence height for land use applications that are already required to go before them. The proposed amendment is intended to provide “uniformity and clear expectations to the public for when an over height fence, wall, or hedge is appropriate” and promote consistent development patterns.

As stated above, the special exception petition is vested under the current zoning ordinance and should be reviewed accordingly. If the City Council adopts new fencing regulations any future application would be subject to the updated standards of approval.

## NEXT STEPS:

**Denial of the Special Exception and CoA Request (Staff's Recommendation)**

If the HLC does not find that the Special Exception request and associated CoA for additional fence height complies with the standards in section 21A.52.030 and 21A.34.020.G of the zoning ordinance, then the HLC shall deny the requests. These standards and Planning Staff's analysis are included in Attachment E, F and G.

If the request is denied, the owner and/or owner's representative will still be able to make appropriate repairs to the existing fence, but the fence would not be able to be modified and increased in height as proposed.

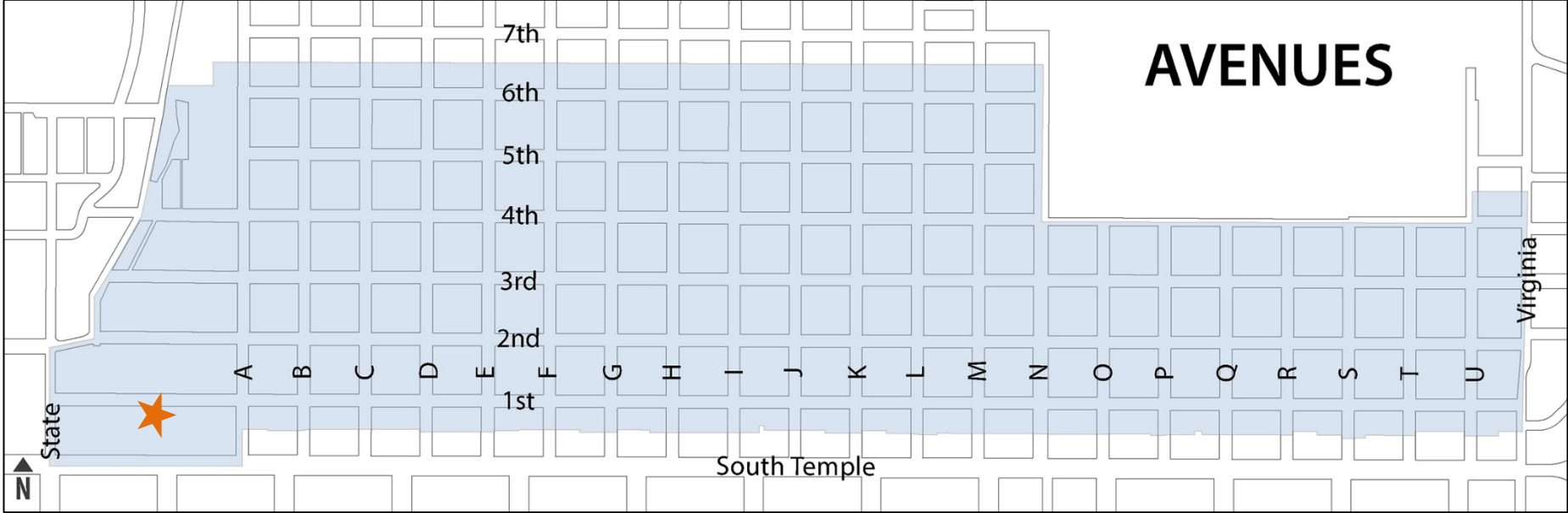
**Approval of the Special Exception and CoA Request**

If the HLC finds that the Special Exception request and associated CoA for additional fence height complies with the standards in section 21A.52.030 and 21A.34.020.G of the zoning ordinance, then the HLC can approve the requests and the applicant would be granted the additional fence height as proposed in the submitted plans. The applicant would need to apply for a building permit for the fence construction.

# ATTACHMENT A – VICINITY MAP & HISTORIC DISTRICT MAP







## **ATTACHMENT B – HISTORIC SURVEY INFORMATION**

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Property Type: 399

Historic Preservation Research Office

Site No. \_\_\_\_\_

BATCH KEY  
1805E03301

Structure/Site Information Form

IDENTIFICATION 1

Street Address: 00140 FIRST AV

UTM: 14596 14596

Name of Structure: Brigham Young's Grave

T. 01.0 S R. 01.0 E S. 31

Present Owner: CORP OF PRES OF LDS CH\*  
50 E NORTH TEMPLE

Owner Address: SLC, UT

84150

Year Built (Tax Record):

Effective Age:

Tax #: 05 2449001

Legal Description

01 Kind of Building: OTHER

COM AT NE COR LOT 12 BLK 1 PLAT I SLC SUR W 82.26 F S 10 RDSE 82.26 FT N 10 RDS TO BEG

JAN 14 1984

STATUS/USE 2

Original Owner:

Construction Date:

Demolition Date:

Original Use:

Present Use:

Building Condition:

Integrity:

Preliminary Evaluation:

Final Register Status:

Excellent

Site

Unaltered

Significant

Not of the

National Landmark

District

Good

Ruins

Minor Alterations

Contributory

Historic Period

National Register

Multi-Resou

Deteriorated

Major Alterations

Not Contributory

State Register

Thematic

DOCUMENTATION 3

Photography:

Date of Slides:

Slide No.:

Date of Photographs:

Photo No.:

Views:  Front  Side  Rear  Other

Views:  Front  Side  Rear  Other

Research Sources:

Abstract of Title

Sanborn Maps

Newspapers

U of U Library

Plat Records/Map

City Directories

Utah State Historical Society

BYU Library

Tax Card & Photo

Biographical Encyclopedias

Personal Interviews

USU Library

Building Permit

Obituary Index

LDS Church Archives

SLC Library

Sewer Permit

County & City Histories

LDS Genealogical Society

Other

Bibliographical References (books, articles, records, interviews, old photographs and maps, etc.):

Deseret News, June 1, 1974, p. A3.

Salt Lake Tribune, May 24, 1974, P. B4.

Salt Lake Tribune, June 2, 1974, P. B9.

The Pioneer, Vol. 21, No. 4 (July-August, 1974), p. 4.

Utah. A Guide to the State. New York: Hastings House, 1941.

Street Address:

Site No:

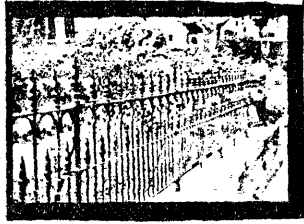
4  
ARCHITECTURE

Architect/Builder:

Building Materials:

Building Type/Style:

Description of physical appearance & significant architectural features:  
(Include additions, alterations, ancillary structures, and landscaping if applicable)



HISTORY

Statement of Historical Significance:

Construction Date:

Brigham Young's grave is a significant site in the Avenues Historic District. A green-lawned area, surrounded by an iron fence, the site marks the spot of Young's burial. Brigham Young (1801-1877) served as L.D. S. Church President from 1847 until his death.

In May, 1974 the Sons of the UTAH Pioneers "beautified" the grounds. They commissioned sculptor Edward J. Fraughton to fashion an eight-foot bronze statue which now marks the grave.

The site remains significant both because of Brigham Young's importance as a Mormon and political leader and pioneer, as well as the general feeling of the grave as an integral part of the Avenues. In addition, this is the only "family plot" cemetery in the Avenues, and this portion of the area was owned by Young, close to his residence on South Temple.



**ATTACHMENT C – PROPERTY AND VICINITY PHOTOS**

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*Streetscape of subject property. Proposed fence/retaining wall height is 7 FT along 1<sup>st</sup> Avenue*



*Existing fence from 1<sup>st</sup> Ave looking west from sidewalk*



*Existing fence from 1<sup>st</sup> Ave looking east from sidewalk*



*Existing fence along east property line*



*Existing fence along west property line*





***Inside the cemetery looking north***



***Inside the lower portion of the cemetery facing south. Existing fence along south property line can be seen in this photo.***





***Surrounding development – South side of 1<sup>st</sup> Avenue***



***Surrounding development – North side of 1<sup>st</sup> Avenue***



***Surrounding development – North side of 1<sup>st</sup> Avenue***





***Gate at entrance to Brigham Young Cemetery – Proposal is to increase height by about 2.5 FT***



**Existing fence along 1<sup>st</sup> Avenue. The retaining wall and proposed fence will have a height of approximately 7 FT at the front property line along 1<sup>st</sup> Avenue.**



**ATTACHMENT D – INFORMATION SUBMITTED BY APPLICANT**

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## Special exception notice of application project description

### Brigham Young Cemetery fence

140 1<sup>st</sup> Avenue

A special exception permit for the Brigham Young cemetery is requested in conjunction with a minor alterations certificate of appropriateness. The petition number is PLNHLC2021-00334.

The wrought iron fence surrounding the Brigham Young cemetery at 140 1<sup>st</sup> Avenue was installed circa 1880s on top of a sandstone wall. The cemetery has seen a significant increase in trespassing and vandalism in recent years. Most intruders are entering the property by jumping low portions of the fence on the sides of the property. This special exception permit is being requested to raise the fence height at the property. A taller fence will offer better security at the property. A taller fence is needed because of the negative impact of safety and security at the property in keeping with city code 21A.52.030.

The cemetery is monitored daily by church landscaping staff. In the last two years, graffiti has been painted on Brigham Young's grave, a statue of Brigham Young was pushed off its pedestal, at least twenty known after hours trespass involving damage to the grounds, and a stolen headstone. Security cameras and other measures will be installed to monitor the cemetery and help document damage. Raising the fence will greatly reduce the amount of trespassing after visiting hours.

The lowest point of the north elevation of the fence is 30 inches on top of a 19 inch sandstone wall for a total height of 49 inches. The lowest fence height on the east side of the property is about 38 inches. This occurs where the sandstone wall is about at grade. The lowest fence height on the west side of the property is about 32 inches. This occurs where the sandstone wall is about at grade. The property abuts a parking garage entrance to the east, a residential backyard to the west, and a retaining wall and parking garage access to the south.

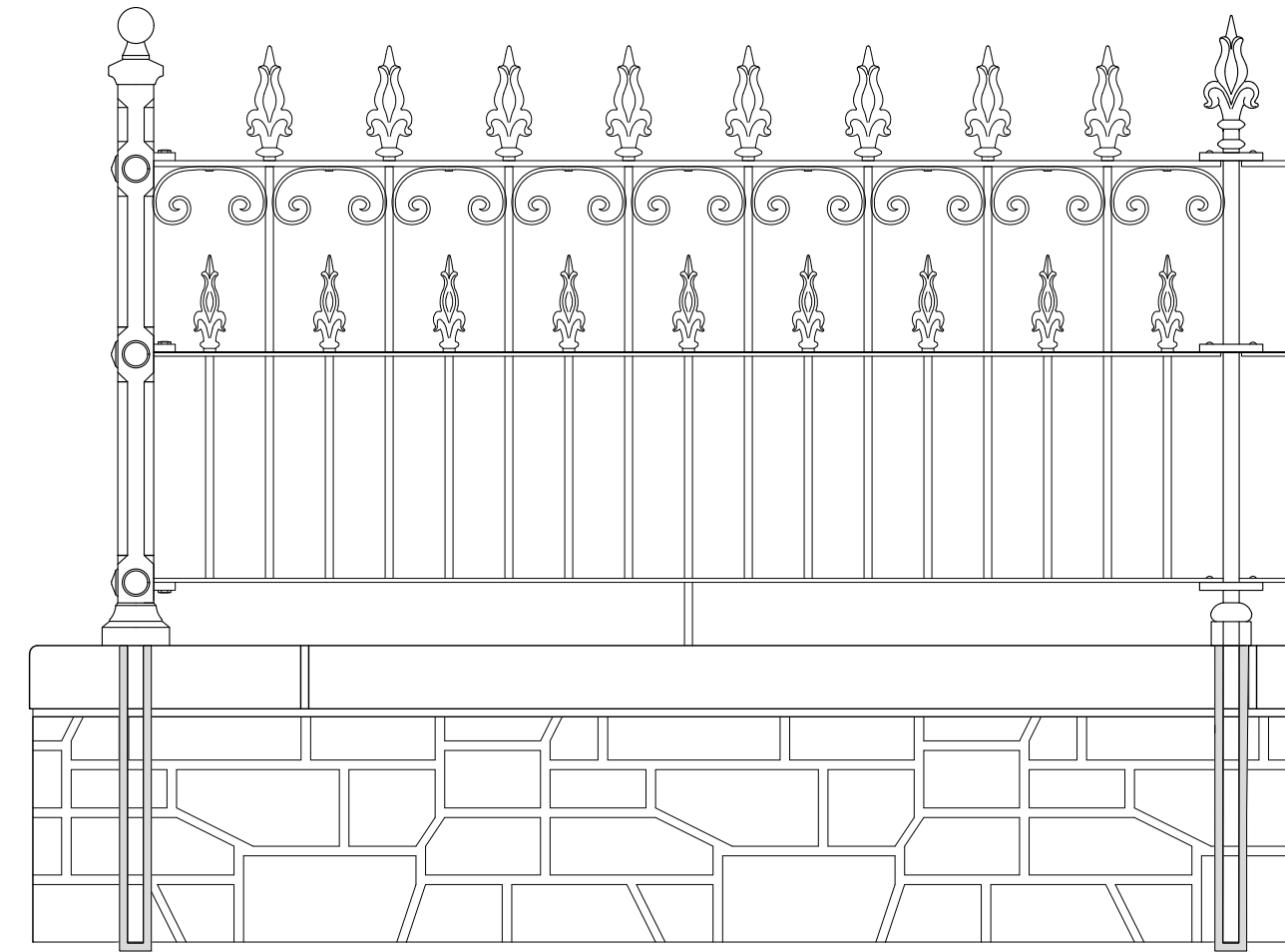
This proposal raises the fence height by adding new wrought iron bar stock at the bottom of the existing fence and replicating the corner posts at the new height. The sandstone wall will be modified only to support the wrought iron fence. All new work would replicate the historic and be reversible. These designs are consistent with the standards for certificate of appropriateness as outlined in standards five, six and nine. The historic character of the fence and wall will be preserved. Historic features will be retained. Any replacement parts will match the historic visual qualities of the original fence. While the fence will be taller, it will be consistent with the design of the original fence. Added height will be reversible. In addition, the modifications will be carefully documented as an aid to future preservation efforts. Details of the proposed design are available in the attached architectural plans.

This proposal makes the historic fence 5 feet tall on top of the variable height sandstone wall. Overall height of the wall and fence will be five feet at the shortest point along the east and west walls and over 9 feet at the southwest corner. Average overall height on the north side of the property will be approximately 7 ½ feet. A taller fence around the entire property will greatly improve security. The new fence will continue to be wrought iron and "the open, spatial and nonstructural area of the fence, wall or other similar structure constitutes at least eighty percent (80%) of its total area" following the specifications of city code 21A.52.030. Tall fences and retaining walls at varying heights are already a

feature of the historic district along First Avenue. A taller fence around this property will have a negligible impact to the visual quality from the street; especially on the east, west and south sides.

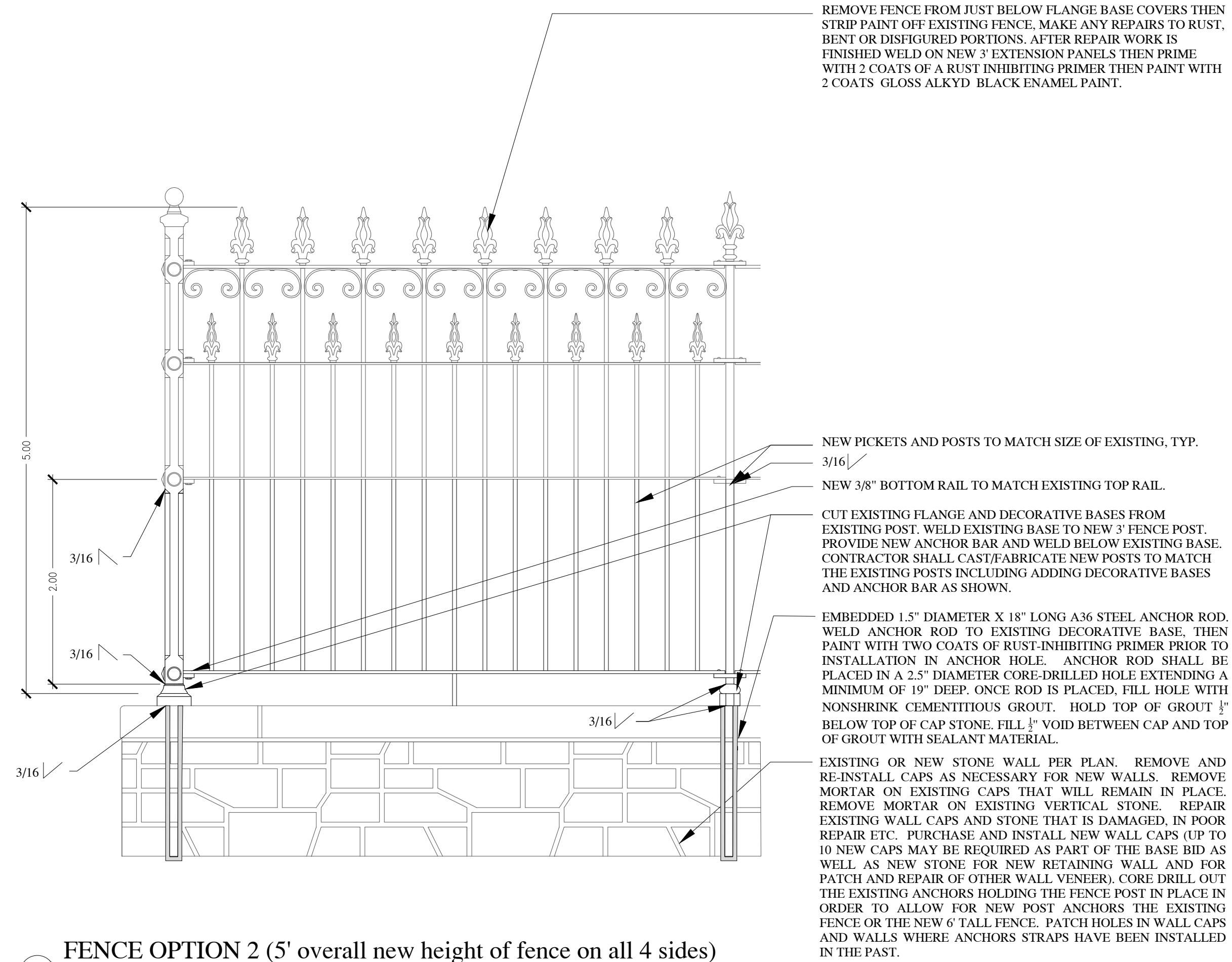
GENERAL FENCING NOTES:

1. THESE NOTES APPLY TO ALL FENCING AND GATE DETAILS ON THIS SHEET.
2. ALL FENCING AND GATES (INCLUDING THE FENCE AROUND BRIGHAM YOUNG'S GRAVE) SHALL BE REMOVED FROM THE SITE, BE SANDBLASTED TO REMOVE ALL PAINT, RUST, ETC. THE FENCING AND GATE WILL THEN BE REPAIRED AS NECESSARY INCLUDING REPAIRING/REPLACING ANY BENT OR DISFIGURED PORTIONS OF THE FENCE. AFTER REPAIR WORK IS COMPLETED, PRIME WITH 2 COATS OF RUST INHIBITING PRIMER AND THEN PAINT THE FENCE AND GATE WITH 2 COATS OF GLOSS ALKYD BLACK ENAMEL PAINT.
3. DAMAGE RAILS, POSTS, FINIALS OR OTHER PARTS OF THE EXISTING FENCE THAT CANNOT BE SALVAGED OR REPAIRED SHALL THEN BE CAST AS NEW PIECES. ALL NEW FABRICATIONS MUST MATCH THE EXISTING FENCE COMPONENTS IN SIZE, SHAPE, METAL MATERIAL, FINISH, ETC.
4. IF AN ADDITIONAL 3' OF FENCING IS ADDED TO MAKE THE FENCE 6' TALL, STRUCTURAL ENGINEERING PLANS/SPECS MUST BE FOLLOWED. THE FENCE AROUND BRIGHAM YOUNG'S GRAVE SHALL REMAIN THE SAME HEIGHT (IT SHALL JUST BE REPAIRED, BE SANDBLASTED AND BE PRIMED AND BE REPAINTED AS NOTED).
5. ANCHOR STRAPS SHALL BE REMOVED FROM THE EXISTING FENCE AND THE HOLES SHALL BE PATCHED/REPAIRED.
6. SHOP DRAWINGS FOR THE NEW 6' TALL SECTION OF FENCE AND GATE SHALL BE PROVIDED BY THE CONTRACTOR FOR OWNER/ARCHITECT APPROVAL.



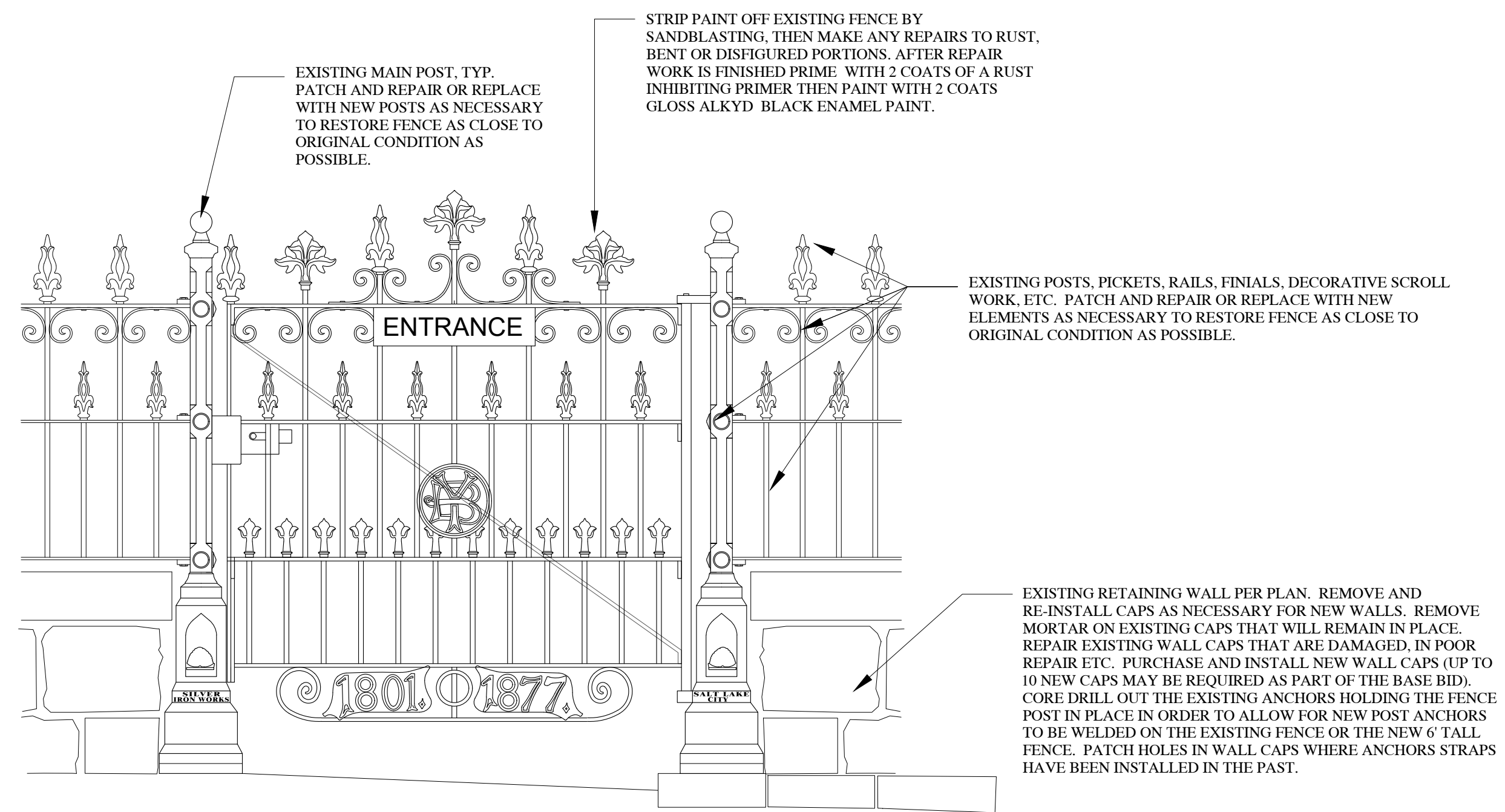
1 FENCE OPTION 1 (Existing 3' tall fence on top of wall)

SCALE: NTS



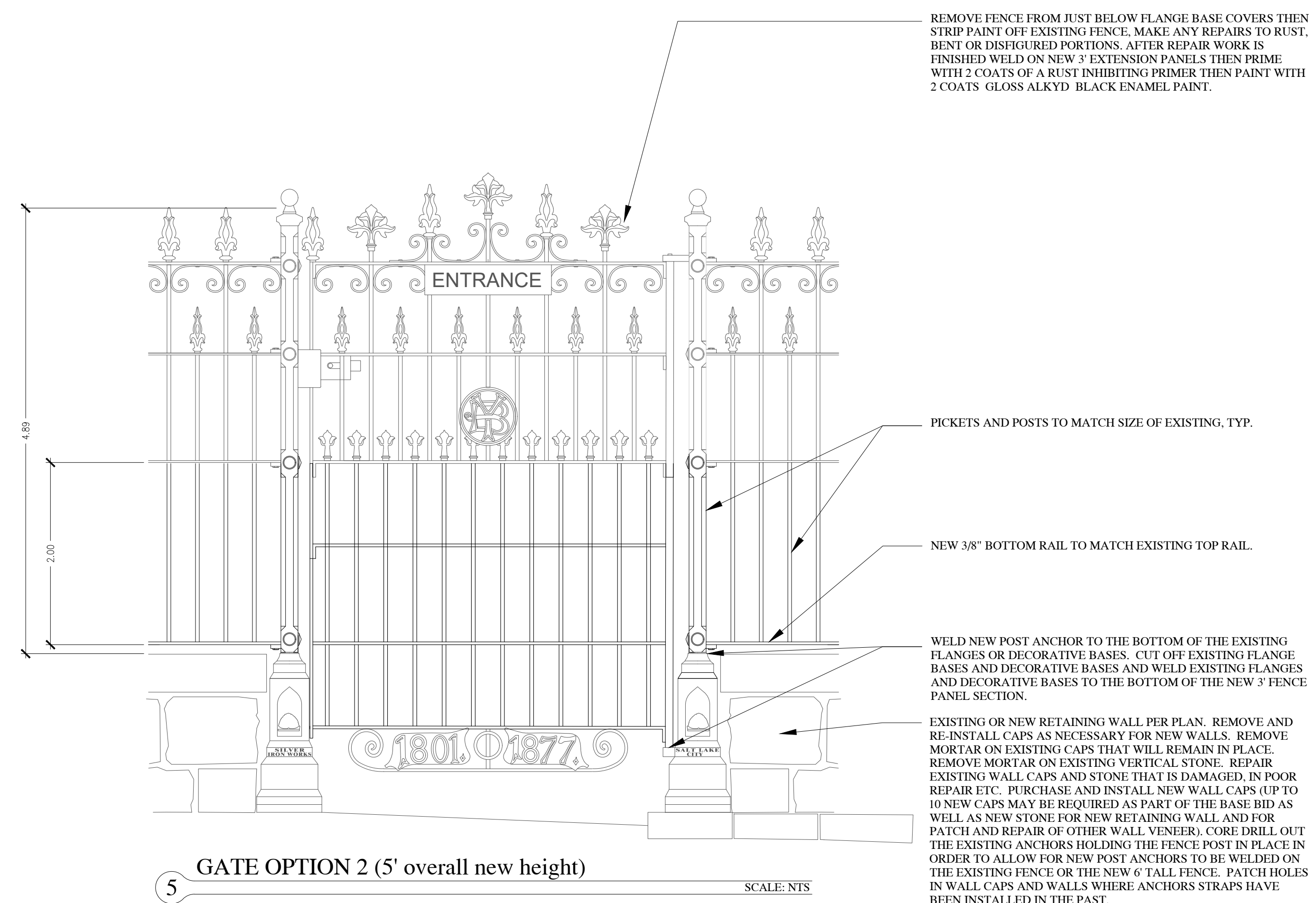
2 FENCE OPTION 2 (5' overall new height of fence on all 4 sides)

SCALE: NTS



4 GATE OPTION 1 (Existing Gate to remain as-is)

SCALE: NTS



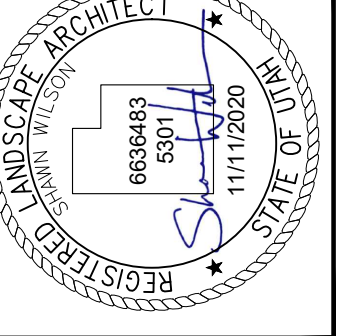
5 GATE OPTION 2 (5' overall new height)

SCALE: NTS

Architect / Engineer:

**In Site**  
DESIGN GROUP  
Landscape Architecture Land Planning  
17 North 470 West American Fork, Utah 84003  
801.796.5043 www.insitedesigngroup.com  
architect@insitedesigngroup.com

Stamp:



BRIGHAM YOUNG FAMILY  
CEMETERY RENOVATION  
EXTERIOR R/I PROJECT  
140 E 1st Ave  
Salt Lake City, UT 84111

Project for:  
THE CHURCH OF  
JESUS CHRIST OF  
LATTER-DAY SAINTS

BID/CONSTRUCTION DDCS	
X	20 NOV/20

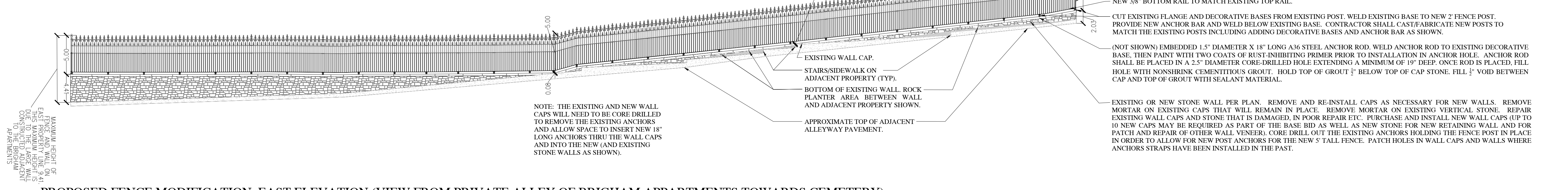
Project Number:  
535106517  
Plan Series:  
Property Number:

Sheet Title:  
HARDSCAPE  
DETAILS &  
NOTES

Sheet:  
LS402A

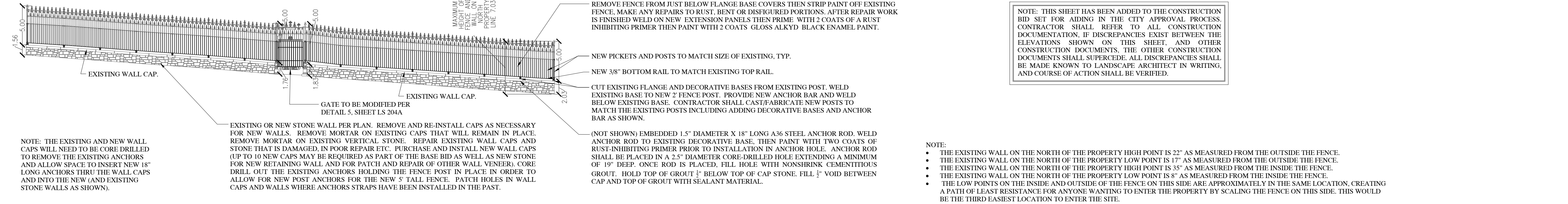


NOTE:  
• THE EXISTING WALL ON THE EAST OF THE PROPERTY HIGH POINT IS 53" AS MEASURED FROM THE OUTSIDE THE FENCE.  
• THE EXISTING WALL ON THE EAST OF THE PROPERTY LOW POINT IS 1" AS MEASURED FROM THE OUTSIDE THE FENCE.  
• THE EXISTING WALL ON THE EAST OF THE PROPERTY HIGH POINT IS 35" AS MEASURED FROM THE INSIDE THE FENCE.  
• THE EXISTING WALL ON THE EAST OF THE PROPERTY LOW POINT IS NEGATIVE 6" AS MEASURED FROM THE INSIDE THE FENCE.  
• THE LOW POINTS ON THE INSIDE AND OUTSIDE OF THE FENCE ON THIS SIDE ARE APPROXIMATELY IN THE SAME LOCATION, CREATING A PATH OF LEAST RESISTANCE FOR ANYONE WANTING TO ENTER THE PROPERTY BY SCALING THE FENCE ON THIS SIDE. THIS WOULD BE THE SECOND EASIEST SPOT TO ENTER THE SITE. THE ELEVATION DRAWING DOES NOT SHOW THE NEGATIVE MEASUREMENT NOTED ABOVE BECAUSE THE ELEVATION BELOW IS DRAWN FROM THE OUTSIDE OF THE PROPERTY.



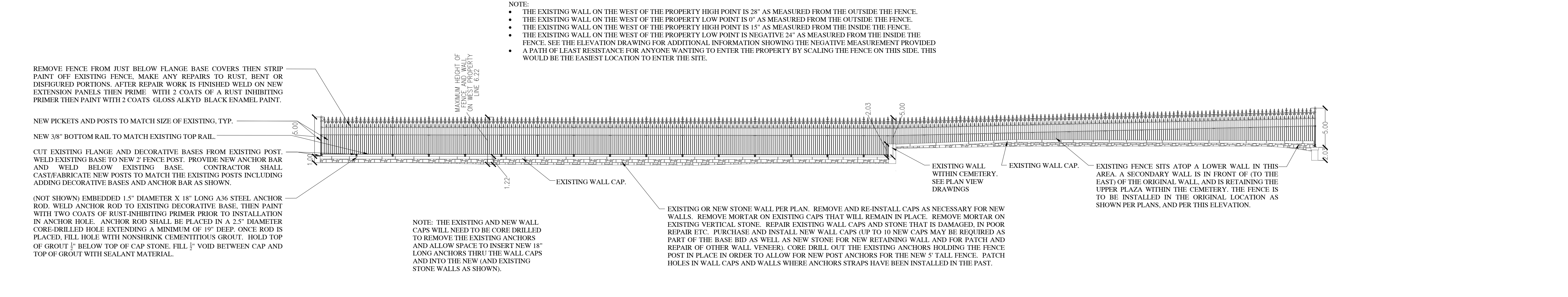
1 PROPOSED FENCE MODIFICATION. EAST ELEVATION (VIEW FROM PRIVATE ALLEY OF BRIGHAM APARTMENTS TOWARDS CEMETERY)

SCALE: 1/8"=1'-0"



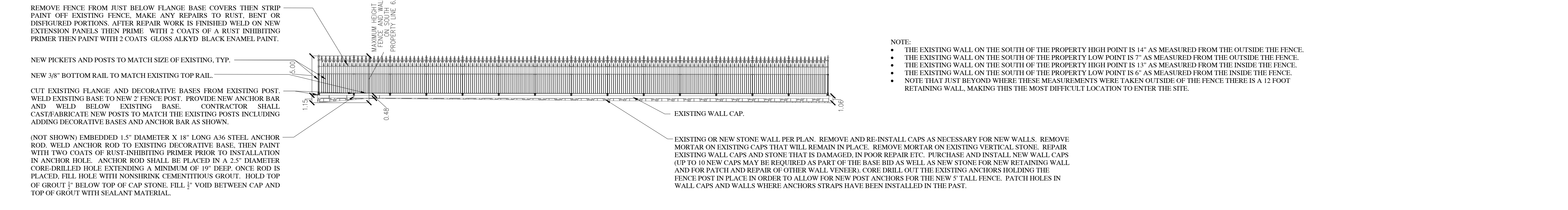
2 PROPOSED FENCE MODIFICATION. NORTH ELEVATION (VIEW FROM 1ST AVE TOWARDS CEMETERY)

SCALE: 1/8"=1'-0"



3 PROPOSED FENCE MODIFICATION. WEST ELEVATION (VIEW FROM INSIDE CEMETERY TOWARDS 136 1ST AVE)

SCALE: 1/8"=1'-0"



4 PROPOSED FENCE MODIFICATION. SOUTH ELEVATION (VIEW FROM INSIDE CEMETERY TOWARDS BRIGHAM APARTMENTS)

SCALE: 1/8"=1'-0"



## ATTACHMENT E – ANALYSIS OF STANDARDS FOR MINOR ALTERATIONS

### H Historic Preservation Overlay District – Standards for a Certificate of Appropriateness for Alteration of a Landmark Site (21A.34.020.G)

In considering an application for a Certificate of Appropriateness for alteration of a Landmark Site, the Historic Landmark Commission shall find that the project substantially complies with all of the general standards that pertain to the application and that the decision is in the best interest of the City. The proposal is reviewed in relation to those that pertain in the following table.

A Preservation Handbook for Historic Residential Properties & Districts in Salt Lake City, Chapter 1 Site Features, are the relevant historic design guidelines for this design review. The Design Objectives and related design guidelines are referenced in the following review where they relate to the corresponding Historic Design Standards for Alteration of a Contributing Structure (21A.34.020.G), and can be accessed via the links below. Design Guidelines as they relate to the Design Standards are identified in Attachment F to this report.

<http://www.slcgov.com/historic-preservation/historic-preservation-residential-design-guidelines>

<http://www.slcdocs.com/historicpreservation/GuideRes/Ch1.pdf>

Standard	Analysis	Finding
<b>1. A property shall be used for its historic purpose or be used for a purpose that requires minimal change to the defining characteristics of the building and its site and environment;</b>	The use of the property will not change with the proposal. This standard is met.	<b>Complies</b>
<b>2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided;</b>	The proposed alterations to the existing fence would negatively impact a historic feature that characterizes the property.	<b>Does Not Comply</b>
<b>3. All sites, structures and objects shall be recognized as products of their own time. Alterations that have no historical basis and which seek to create a false sense of history or architecture are not allowed;</b>	The proposal is to modify an existing historic fence by raising the height approximately 2 ½ FT. The proposed alterations have no historical basis and the proposed design could be interpreted as creating a false sense of history. The proposed modifications could hinder the ability to interpret the age of the fence and differentiate the historic features from the new features.	<b>Does Not Comply</b>
<b>4. Alterations or additions that have acquired historic significance in their own right shall be retained and preserved;</b>	The proposed alterations are to an original historic feature of the Landmark Site, not an alteration or an addition to the site.	<b>Does Not Apply</b>
<b>5. Distinctive features, finishes and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved;</b>	The historic fencing and gates were erected by sometime in the 1880's. The fencing was fashioned and fabricated by William J. Silver, a successful iron works businessman who established his career in Salt Lake City. The existing fence is one of the original character defining features of this site. The proposal to modify the fence by adding additional height would adversely affect the historic integrity of this feature and its setting.	<b>Does Not Comply</b>

<p><b>6. Deteriorated architectural features shall be repaired rather than replaced wherever feasible. In the event replacement is necessary, the new material should match the material being replaced in composition, design, texture and other visual qualities. Repair or replacement of missing architectural features should be based on accurate duplications of features, substantiated by historic, physical or pictorial evidence rather than on conjectural designs or the availability of different architectural elements from other structures or objects;</b></p>	<p>There are some deteriorated portions of the fence the applicant is proposing to repair, however, in addition to those repairs the applicant is also proposing to modify the existing fence by increasing the height of the fence. The proposed fence modification is not consistent with visual qualities of the historic fence including the design and scale. The proposed modification to the fence is not based on accurate duplications of features. This standard is not met.</p>	<p><b>Does Not Comply</b></p>
<p><b>7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible;</b></p>	<p>There are no chemical or physical treatments associated with this proposal. This standard does not apply.</p>	<p><b>Does Not Apply</b></p>
<p><b>8. Contemporary design for alterations and additions to existing properties shall not be discouraged when such alterations and additions do not destroy significant cultural, historical, architectural or archaeological material, and such design is compatible with the size, scale, color, material and character of the property, neighborhood or environment;</b></p>	<p>As perceived from 1<sup>st</sup> Avenue, the proposed fence is out of scale with the sequence of relatively open front yard areas on this street. The overall fence and wall height of 7 FT along 1<sup>st</sup> Avenue would be visually obtrusive and create a walled in effect in an area that is characterized by lower fence heights, especially in the front yard area. Historic retaining walls are not uncommon in the avenues, especially along this sloped section of 1<sup>st</sup> Avenue, however the fencing on top of the retaining wall is generally much lower in height. The height proposed for the fence is out of character in regard to existing fences on the block as well as the larger historic district.</p> <p>The proposed fence height may have less of an impact on the south, east, and west elevations, however, altering a historic feature of the property by raising the height of the fence would have a negative impact on that character defining feature of the site.</p> <p>Staff is of the opinion, the proposed design of the structure is not compatible with the size, scale, and character of the property and historic neighborhood. The proposed design does not meet objectives of this standard.</p>	<p><b>Does Not Comply</b></p>



<p><b>9. Additions or alterations to structures and objects shall be done in such a manner that if such additions or alterations were to be removed in the future, the essential form and integrity of the structure would be unimpaired. The new work shall be differentiated from the old and shall be compatible in massing, size, scale and architectural features to protect the historic integrity of the property and its environment;</b></p>	<p>In Staff's opinion, it would be difficult to remove the new fence segment from the historic portion without impairing the integrity of the historic fence.</p> <p>The new fence segment is not differentiated from the old and the proposed additional height is not compatible in terms of size and scale. As proposed, this standard is not met.</p>	<p><b>Does Not Comply</b></p>
<p><b>10. Certain building materials are prohibited including the following: Aluminum, asbestos, or vinyl cladding when applied directly to an original or historic material.</b></p>	<p>This proposal does not include any of the listed materials being applied directly to a historic material. This standard does not apply.</p>	<p><b>Does Not Apply</b></p>
<p><b>11. Any new sign and any change in the appearance of any existing sign located on a landmark site or within the H historic preservation overlay district, which is visible from any public way or open space shall be consistent with the historic character of the landmark site or H historic preservation overlay district and shall comply with the standards outlined in chapter 21A.46 of this title.</b></p>	<p>There is not a sign associated with this proposal. This standard does not apply.</p>	<p><b>Does Not Apply</b></p>

## ATTACHMENT F – APPLICABLE HISTORIC DESIGN GUIDELINES

A Preservation Handbook for Historic Residential Properties & Districts in Salt Lake City, Chapter 1 – Site Features and Chapter 13 - The Avenues, are the relevant historic design guidelines for this review, and are identified here as they relate to the corresponding Historic Design Standards for alteration to a contributing structure including new construction of an accessory structure in the Avenues Historic District (21A.34.020.G).

<http://www.slcdocs.com/historicpreservation/GuideRes/Ch1.pdf>

<http://www.slcdocs.com/historicpreservation/GuideRes/Ch13.pdf>

Applicable Design Guidelines	Corresponding Standards for a Certificate of Appropriateness
<p><b>Site Features: Historic Fences</b>            There is often a demarcation of the front yard with a low fence, often in wood picket form or decorative wrought and/or cast iron, which helps to maintain the visual continuity between the house and the street. Where a fence is higher and/or less “transparent” it will disrupt this relationship.</p> <p>Originally, painted wood picket fences were used to enclose many front yards. The vertical slats were set apart, with spaces between, and the overall height of the fence was generally less than three feet. This combination of low height and semi-transparency helped to both identify individual sites and property, while retaining the visual relationship between gardens and the streetscape. Wrought iron and wire fences were also used in early domestic landscapes. Early cast iron and wrought iron frequently add decorative detail and a sense of maturity to the design character of a neighborhood.</p> <p>Historic photographs portray fence heights at a much lower level than we are used to seeing today. Consider using a lower fence height to enclose a front yard, in keeping with historic patterns and to retain a sense of continuity along the street frontage.</p> <p><b>Avenues: Fences &amp; Retaining Walls</b>            In many sections of the Avenues, yards are bounded by retaining walls, commonly of natural stone or plain cement facing. Because many yards have natural slopes, retaining walls have always been features of the district. Walls or terraced yards are often used to create level building sites. Historically, these walls were often topped with cast iron fences. The repetition of masonry retaining walls and fences throughout the district lends a sense of continuity and character to the streetscape that should be continued. See Chapter 1 of PART II of these design guidelines on Site Features for specific guidelines on Fences and Retaining Walls.</p>	<p>Standards, 2, 3, 5, 8 &amp; 9</p>
<p><b>1.1 Historically significant site features should be preserved.</b></p> <ul style="list-style-type: none"> <li>• These may include historic retaining walls, irrigation ditches, gardens, driveways and walkways.</li> <li>• Fences and street trees are also examples of original site features that should be retained whenever feasible.</li> <li>• Civic maintenance and improvements should identify, recognize and retain important streetscape features such as sidewalks, parkways, planting strips, street trees and street lighting.</li> </ul>	<p>Standards, 2, 3, 5 &amp; 9</p>
<p><b>1.2 An original fence should be retained</b></p> <ul style="list-style-type: none"> <li>• Replace only those portions that are deteriorated beyond repair.</li> </ul>	<p>Standards, 2, 3, 5 &amp; 9</p>

<p><b>1.3 Use materials that appear similar to that of the original for a replacement fence.</b></p> <ul style="list-style-type: none"><li>• A painted wood picket fence is an appropriate replacement in many locations.</li><li>• A simple metal fence, similar to traditional “wrought iron” or wire, may also be considered.</li><li>• Review early examples nearby to identify appropriate design options.</li><li>• Fence components should be similar in scale to those seen historically in the neighborhood.</li></ul>	Standards 8 & 9
<p><b>1.5 Consider “transparency” in the design of higher privacy fencing for the side yard of a corner property.</b></p> <ul style="list-style-type: none"><li>• This helps to maintain a sense of visual continuity.</li><li>• Locate a higher street-facing side fence behind the front facade.</li></ul>	Standards 8 & 9

## **ATTACHMENT G – ANALYSIS OF SPECIAL EXCEPTION STANDARDS**

**Section 21A.06.050(C)** of the zoning ordinance authorizes the Historic Landmark Commission to review and approve certain special exceptions for properties located within an H Historic Preservation Overlay District.

### **21A.52.020 Definition**

*A "special exception" is an activity or use incidental to or in addition to the principal use(s) permitted in a zoning district or an adjustment to a fixed dimension standard permitted as exceptions to the requirements of this title of less potential impact than a conditional use but which requires a careful review of such factors as location, design, configuration and/or impacts to determine the desirability of authorizing its establishment on any given site.*

### **21a.52.060: General Standards and Considerations for Special Exceptions:**

Standard	Finding	Rationale
<p><b>A. Compliance with Zoning Ordinance and District Purposes: The proposed use and development will be in harmony with the general and specific purposes for which this title was enacted and for which the regulations of the district were established.</b></p>	<p><b>Does Not Comply</b></p>	<p>The purpose of the <b>H historic preservation overlay</b> district is to:</p> <ol style="list-style-type: none"> <li>1. Provide the means to protect and preserve areas of the city and individual structures and sites having historic, architectural or cultural significance;</li> <li>2. Encourage new development, redevelopment and the subdivision of lots in historic districts that is compatible with the character of existing development of historic districts or individual landmarks;</li> <li>3. Abate the destruction and demolition of historic structures;</li> <li>4. Implement adopted plans of the city related to historic preservation;</li> <li>5. Foster civic pride in the history of Salt Lake City;</li> <li>6. Protect and enhance the attraction of the city's historic landmarks and districts for tourists and visitors;</li> <li>7. Foster economic development consistent with historic preservation; and</li> <li>8. Encourage social, economic and environmental sustainability.</li> </ol> <p>The purpose of the <b>RMF-75 High Density Multi-Family Residential District</b> is to provide an environment suitable for high density multi-family dwellings. This district is appropriate in areas where the applicable Master Plan policies recommend a maximum density less than eighty five (85) dwelling units per acre. This district includes other uses that are typically found in a multi-family residential neighborhood of this density for the purpose of serving the neighborhood. Such uses are designed to be compatible with the existing scale and intensity of the neighborhood. The standards for the district are intended to provide for safe and comfortable places to live and play, promote sustainable and compatible development patterns and to preserve the existing character of the neighborhood.</p> <p>Special exception approval is sought for modifications to fence requirements – 4 FT in front yard and 6 FT in the side and rear yard. The applicant is proposing a fence on top of a retaining wall that ranges in height from 7 FT to 9.5 FT. It is difficult to argue the proposed height as compatible with the existing scale and character of the immediate neighborhood, when reviewed in the context of the sequence of fencing and retaining walls along this section of 1<sup>st</sup> Avenue. The proposal is also not compatible with the historic character of the Landmark Site. The proposal may not be in harmony with the</p>



<p><i>Continued from previous page</i></p> <p><b>A. Compliance with Zoning Ordinance and District Purposes: The proposed use and development will be in harmony with the general and specific purposes for which this title was enacted and for which the regulations of the district were established.</b></p>	<p><b>Does Not Comply</b></p>	<p>general and specific purposes of the H Preservation Overlay or the RMF-75 zoning district. Staff finds this special exception standard is not met.</p>
<p><b>B. No Substantial Impairment of Property Value: The proposed use and development will not substantially diminish or impair the value of the property within the neighborhood in which it is located.</b></p>	<p><b>Complies</b></p>	<p>Staff has not received any information or evidence indicating that the proposal would substantially diminish or impair the value of the property within the neighborhood. This standard is met.</p>
<p><b>C. No Undue Adverse Impact: The proposed use and development will not have a material adverse effect upon the character of the area or the public health, safety and general welfare.</b></p>	<p><b>Does Not Comply</b></p>	<p>The proposed fence height is not consistent with the historic development patterns in the Avenues. Staff is of the opinion that the proposed fence and wall height of 7 FT along 1<sup>st</sup> Avenue would create a walled in effect when the pattern along the streetscape is that of open areas and low fencing. The proposed height is further intensified by the west/east grade change along the public sidewalk at the frontage of the property. This standard is not met.</p>
<p><b>D. Compatible with Surrounding Development: The proposed special exception will be constructed, arranged and operated so as to be compatible with the use and development of neighboring property in accordance with the applicable district regulations.</b></p>	<p><b>Does Not Comply</b></p>	<p>The proposal is not compatible with surrounding uses and development on neighboring properties. Taller front and side yard fences are not typically found in the neighborhood. This standard is not met.</p>
<p><b>E. No Destruction Of Significant Features: The proposed use and development will not result in the destruction, loss or damage of natural, scenic or historic features of significant importance.</b></p>	<p><b>Does Not Comply</b></p>	<p>The proposal is to add height to a historically significant wrought iron fence. Staff is of the opinion the proposed alterations to the fence negatively impact the integrity of a historically significant feature of this Landmark Site.</p>
<p><b>F. No Material Pollution of Environment: The proposed use and development will not cause material air, water, soil or noise pollution or other types of pollution.</b></p>	<p><b>Complies</b></p>	<p>There is no foreseen material pollution of the environment. This standard is met.</p>
<p><b>G. Compliance with Standards: The proposed use and development complies with all additional standards imposed on it pursuant to this chapter.</b></p> <p><b>Additional height for fences, walls or similar structures may be granted to exceed the height limits established for fences and walls in</b></p>	<p><b>Does Not Comply</b></p>	<p>As noted throughout the report, the proposed fence height would have a negative impact on the established character of the landmark site and the streetscape as well as the public and private views of the cemetery.</p> <ol style="list-style-type: none"> <li>a. The proposed addition to the existing fence is constructed of wrought iron and the open, spatial area of the fence meets the 80% requirement.</li> <li>b. The subject property is not a corner lot.</li> <li>c. The entire fence is ornamental in nature and the proposed additional height maintains that design.</li> </ol>

<p><b>chapter 21A.40 of this title if it is determined that there will be no negative impacts upon the established character of the affected neighborhood and streetscape, maintenance of public and private views, and matters of public safety. Approval of fences, walls and other similar structures may be granted under the following circumstances subject to compliance with other applicable requirements:</b></p> <ul style="list-style-type: none"> <li><b>a. Exceeding the allowable height limits; provided, that the fence, wall or structure is constructed of wrought iron, tubular steel or other similar material, and that the open, spatial and nonstructural area of the fence, wall or other similar structure constitutes at least eighty percent (80%) of its total area;</b></li> <li><b>b. Exceeding the allowable height limits on any corner lot; unless the city's traffic engineer determines that permitting the additional height would cause an unsafe traffic condition;</b></li> <li><b>c. Incorporation of ornamental features or architectural embellishments which extend above the allowable height limits;</b></li> <li><b>d. Exceeding the allowable height limits, when erected around schools and approved recreational uses which require special height considerations;</b></li> <li><b>e. Exceeding the allowable height limits, in cases where it is determined that a negative impact occurs because of levels of noise, pollution, light or other encroachments on the rights to privacy, safety, security and aesthetics;</b></li> <li><b>f. Keeping within the character of the neighborhood and urban design of the city;</b></li> <li><b>g. Avoiding a walled-in effect in the front yard of any property in a residential district where the clear character of the neighborhood in front yard areas is one of open spaces from property to property; or</b></li> <li><b>h. Posing a safety hazard when there is a driveway on the petitioner's property or neighbor's property adjacent to the proposed fence, wall or similar structure.</b></li> </ul>		<ul style="list-style-type: none"> <li>d. The Brigham Young Cemetery is somewhat of a unique use, however similar uses (such as the city cemetery) do not have higher fencing and staff does not believe a cemetery use would typically be associated with special height considerations for fencing such as a school or other recreational use.</li> <li>e. The applicants have indicated the reason for their request for additional fence height is for safety and security of the site. Staff is of the opinion that some other measures they are taking to secure the site (such as security cameras) will address these security concerns without negatively impacting the fence or requiring additional fence height that is not compatible with the neighborhood and streetscape. Other measures that have been discussed with the applicant include lighting and better signage.</li> <li>f. The proposed height of the fence is not consistent with the historic neighborhood character where fences are generally lower in height to maintain the development pattern and rhythm along the streetscape.</li> <li>g. The proposed overall fence and wall height of 7 FT in the front yard area does create a walled in effect where the clear character of the neighborhood in front yard areas is one of open spaces from property to property. Where fences and retaining walls are seen, they are generally lower in height – similar to the existing historic fence height and retaining wall on the property.</li> <li>h. There is a driveway on the neighboring property to the east that abuts the proposed fence. The height of the fence/retaining wall in this area ranges from approximately 5 FT to 9 FT. Where the fence nears the public sidewalk the height is approximately (7 FT – 5 FT fence and 2 FT retaining wall). The transparency of the fence appears to meet the sight distance triangle requirements and does not appear to be a safety hazard.</li> </ul>
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## **ATTACHMENT H – PUBLIC PROCESS & COMMENTS**

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### **Public Notice, Meetings, Comments**

The following is a list of public input opportunities related to the proposal:

#### **Notice of the public hearing for the proposal included:**

- Public hearing notice mailed on July 1, 2021
- Public notice posted on City and State websites and Planning Division list serve on July 1, 2021
- Public hearing notice sign posted on the property July 2, 2021

#### **Public Input:**

As of the publication of this Staff Report, Staff has not received any public comments or questions regarding the requests. If Staff receives any future comments on the proposal, they will be included in the public record and forwarded to the commission.

**ATTACHMENT C – JULY 15, 2021 HLC MEETING MINUTES**

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**SALT LAKE CITY HISTORIC LANDMARK COMMISSION MEETING**  
**This meeting was held electronically without and anchor location**  
**Thursday, July 15, 2021**

A roll is being kept of all who attended the Historic Landmark Commission Meeting. The meeting was called to order approximately 5:30 PM. Audio recordings of the Historic Landmark Commission meetings are retained for a period of time. These minutes are a summary of the meeting. For complete commentary and presentation of the meeting, please visit <https://www.youtube.com/c/SLCLiveMeetings>.

Present for the Historic Landmark Commission meeting were: Vice Chairperson Michael Vela; Commissioners Babs De Lay, John Ewanowski, Adien Lillie, Kenton Peters, Victoria Petro-Eschler, and David Richardson. Chairperson Robert Hyde was excused from the meeting.

Planning Staff members present at the meeting were: Deputy Director Michaela Oktay, Planning Manager Wayne Mills, Senior City Attorney Hannah Vickery, Senior Planner Nelson Knight, Senior Planner Amy Thompson, Principal Planner Caitlyn Tubbs, Administrative Assistant Aubrey Clark.

Commissioner Kenton Peters filled in as roll of Chair due to the absence of Chairperson Robert Hyde. He read the virtual meeting finding.

**APPROVAL OF JUNE 3, 2021 MEETING MINUTES**

**Commissioner Michael Vela made a motion to approve the minutes. Commissioner Babs De Lay seconded the motion. All commissioners voted “aye”. The motion passed.**

**REPORT OF THE CHAIR AND VICE CHAIR**

Acting chair, Kenton Peters, said he had nothing to report.  
Vice Chair, Michaela Vela, said he had nothing to report.

**REPORT OF THE DIRECTOR**

Deputy Director, Michaela Oktay, reported that Commissioners are needed.

**PUBLIC COMMENTS**

No one wished to comment.

**PUBLIC HEARINGS**

Commissioner Vela recused himself from the Elks item due to a conflict of interest.

**Elks Block Redevelopment at approximately 139 & 151 E. South Temple, and 120 E. 1st Avenue** - David Davis, of Dale Gardon Design, representing Property Reserve, Inc, has submitted applications to the city for a project centered around the former Elks Club Building located at approximately 139 E South Temple. This type of project requires demolition, new construction, special exception, and certificate of appropriateness review by the Historic Landmark Commission.



a. Demolition- of a contributing building at approximately 120 E 1st Avenue, in order to provide access to the other buildings within the project. **Case number PLNHLC2020-00915**

b. Major alterations- of the Elks Building at approximately 139 S. Temple, including alterations to the existing entrance, removal of incompatible additions to the building's exterior and construction of a new rooftop addition on the building. A special exception would also be required for an additional three feet of height for the addition. **Case number PLNHLC2020-00816 & PLNHLC2021-00672**

c. New Construction of an eight-story residential building at approximately 151 E. South Temple where an existing parking lot is located. The applicant is requesting a special exception for approximately 25 feet of additional building height on portions of this building beyond the 75 feet allowed in the R-MU zone, for a total height of approximately 99 feet. **Case number PLNHLC2020-00916 & PLNHLC2021-00673**

The properties along South Temple are zoned R-MU (Residential Mixed Use) and the homes on 1st Avenue are zoned RMF-75 (High-Density Multifamily Residential District). The properties are within the Avenues Local Historic District. The subject property is within Council District #3, represented by Chris Wharton. (Staff contact Nelson Knight at (385) 226-4493 or nelson.knight@slcgov.com).

Senior Planner Nelson Knight reviewed the petition. He stated the first item is a request for demolition and said Staff recommends the Commission approve the request. He stated Staff recommends approval with conditions for item B and C. He reviewed item A and showed the demolition standards. It does not comply with standard A and D. It complies with standard B, C and E. He reviewed Item B and stated that it would maintain several of the features that currently exist. He also reviewed the proposed changes. He reviewed item C that would be the South Temple Residential Building with a special exception proposed.

Commissioners and Staff discuss:

- The solid to void ratio and whether it meets the guidelines.
- The colors to be used.

Commissioner Peters opened the meeting to the applicant.

David Davis, applicant representative, reviewed their petition showing the proposed transformation of the site. He reviewed the proposed changes to the Elks Building including the windows and seismic updates. He brought up the front entry not being ADA accessible and being one level above the sidewalk and only accessible by stairs. He showed the proposed penthouse addition. He reviewed the proposed front entry with some of the same features but a lowered to street level entry with the berm removed. He also reviewed the proposed building materials.

Commission, Staff and the Applicant discuss:

- The materials used on the building across the street.
- The finish plan for the houses on 1<sup>st</sup> Avenue (134, 136, 138) which are currently painted brick and what the finish plans for those are.
- Whether the porches on the houses on 1<sup>st</sup> Avenue were going to be restored.

Commissioner Peters opened the meeting to Public Comment.

Cindy Cromer stated that she is against painting the brick of the parking structure.

David Amott, from Preservation Utah, addressed the tunnel of the Elks and its entryway and asked the Commission to retain the tunnel and entryway as it is.

David Davis said he would investigate other options for a breathable masonry coating.

Commissioner Peters moved into Executive Session.

Commissioner Lillie stated that she appreciated the applicants listening to feedback from the work sessions. She did state that she stands with Preservation Utah's stance on the Elks Building tunnel and entryway. She stated she would have a hard time approving the demolition and restructuring of the entryway. She does approve of the demolition of the contribution structure and the new construction of the residential building.

Commissioner Ewanowski thanked the applicant for trying to meet the Commission's suggestions. He addressed the new building being white and he feels it meets the standards for new construction in a historic district. He said he agreed with Cindy Cromer's comment of paint brick and is for the demolition of the post war bungalow.

Commissioner Petro-Eschler remarked on the bungalow house and is ok with the demolition of that structure. Her concern is on the repurposing of the tunnel, she sees it as a nod and respect for what was previously requested by the commission but feels like it lays the ground work for the imminent destruction of future projects with similar requests. She agrees with Cindy Cromer's protection of the brick of existing structures.

Commissioner Richardson does not feel the parking garage needs to be repainted. He is for the demolition of the bungalow. He is for the new construction. He said he sides with Preservation Utah on the Elks Building. He does not feel it is right to change the façade because it is a character defining feature. He does like the proposed east and west faces and approves of the additional height as long as the front entry isn't lowered.

Commissioner Peters feels the new construction proposed is good and the demolition of the bungalow is acceptable. He spoke on the tunnel and does not feel like the applicant is quite there with a solution that fits all that the Commission has asked for.

Commissioner De Lay asked what the other Commissioners top three issues with the proposal would be.

- Commissioner Ewanowski – the removal of the granite steps and walls around the central tunnel and painting the masonry
- Commissioner Peters – the proposal makes the tunnel two dimensional and that it's not quite right

Commissioner discussed how to move forward with the motions.

#### **MOTION:**

**Commissioner David Richardson stated, Based on the analysis and findings listed in the staff report, the information presented, and the input received during the public hearing, I move that the Commission approve petition PLNHLC2020-00915, which is a request for a Certificate of Appropriateness for Demolition of a Contributing Building at 120 E 1st Avenue.**

**Commissioner Victoria Petro-Eschler seconded the motion. Commissioners De Lay, Ewanowski, Lillie, Petro-Eschler and Richardson all voted “aye”. The motion passed unanimously.**

**Commissioner David Richardson stated, Based on the analysis and findings listed in the staff report, the information presented, and the input received during the public hearing, I move that the Commission deny petition PLNHLC2020-00816 which is a request for a Major Alteration of the Elks Building at exactly 139 South Temple and petition PLNHLC2021-00672 which is a request for Special Exception for height to accommodate construction of a new addition. This is because the evidence has not been presented that demonstrates that the proposal complies with standard 21A.34.020 G paragraphs 2, 3, 5 and to a lesser degree 9. In particular paragraph 3 paraphrased says “alterations which seek to create a false sense of history are not allowed.” In regard to the special exception 21A-52-060 paragraph E and G to a lesser degree, E says that no destruction of significant features should be allowed while allowing for a special exception.**

**Commissioner Lillie second the motion.**

**Commissioner Petro – Eschler asked if there is a way to separate elements of the special exception the petitions for alteration and height. Yes, but the motion isn't doing that.**

**Commissioners Petro-Eschler, Ewanowski, voted “aye” to deny. Commissioner De Lay abstained. The motion to deny passed.**

**Deputy Director Michaela Oktay interjected that there may be ramifications to denying a Special Exception. Staff and Commission discussed the legalities and possible ramifications specifically with regard to a special exception denial and unclear code language that stipulates a one year waiting period.**

**The Chair discussed the intent which wasn't to put the applicant off for the year. It is to have them come back soon with changes. The Chair didn't confirm the vote due to**



Commissioner Richardson's intent which isn't to put them off for a year.

Commissioner David Richardson stated, Based on the analysis and findings listed in the staff report, the information presented, and the input received during the public hearing, I move that the Commission table petition PLNHLC2021-00672, which is a request for a special exception for additional height to accommodate construction of a new addition because it is unclear how much height the Commission is approving based on the next motion. Commissioner Babs De Lay seconded the motion. Commissioners Lillie, Ewanowski, De Lay, Petro-Eschler and Richardson all voted "aye". The motion passed to table the special exception in its entirety.

Commissioner David Richardson made a motion to deny the major alterations. The Chair allowed the David Davis to ask a question and consider tabling the major alteration as was done with the special exception to give the applicant the chance to work with the commission on the elements of the Elks building. There was a discussion on which items would come back at a next meeting and the intent of the commission specifically with regards to the special exception and the COA for the Elks building.

The Chair clarified with Commissioner Richardson whether his intent was to deny the COA versus table it. Commissioner Richardson was concerned that the applicant had several opportunities to come back, he doesn't see much of a difference in process of tabling versus denial. Michaela Oktay clarified they can consider tabling the major alterations petition and the commission can cite conflicting standards that are problematic as direction to the applicant to focus on those when they return to the commission. That provides the applicant direction on the record.

Commission discussed that there was still was a motion on the table to deny the major alterations and that they should finish the vote. The commission voted unanimously to deny the motion to deny the Major alterations.

Senior Planner, Nelson Knight wanted to clarify the motion. Discussion confirmed that the entire Major alteration petition would be tabled in a future motion, that was the intent of the commission, their main issue is with the entry feature on the south facade. That the special exception was previously tabled but wanted both the COA and special exception tabled.


Commissioner David Richardson stated, motion to table petition PLNHLC2020-00816. We would like the applicant to revisit standards 21A.34.020, G, paragraphs 2, 3, 5, and 9. Commissioner Adien Lillie seconded the motion. Commissioners Richardson, Petro-Eschler, Lillie, Ewanowski and De Lay voted "aye". The motion to table passed unanimously. The petition was tabled.

Commissioner David Richardson stated, Based on the analysis and findings listed in the staff report, the information presented, and the input received during the public hearing, I

move that the Commission approve petition PLNHLC2020-00916, which is a request for a Certificate of Appropriateness for New Construction of a Principal Building at approximately 151 E South Temple, and PLNHLC2021-00673, which is a special exception for additional height for the new building, With the following conditions: 1. The front facade of the building shall be set back from the property line so it will not encroach upon the existing public right of way and to provide landscaping as shown on the building renderings. 2. The applicant will work with Planning Staff to ensure that all required landscaping standards are met in the final design. 3. The applicants will work with Planning Staff on a lighting plan with additional detail that shows the lighting will meet the intent of standards for new construction and related design guidelines; 4. A portion of the proposed balconies will project from the front wall of the building. The balconies will be at least five feet in depth to provide sufficient room for balcony use; 5. Approval of all final design details, including specific direction expressed by the Commission, shall be delegated to Planning Staff. Commissioner Babs De Lay seconded the motion. Commissioners Ewanowski, Petro-Eschler, Lillie, De Lay, and Richardson all voted “aye”. The motion passed unanimously for those two petitions.

The commission took a 5 minute break at 7:37PM.

Commissioner Vela rejoined the meeting.

 **Brigham Young Cemetery Fence Special Exception and Minor Alteration at approximately 140 E 1st Avenue** - Emily Utt, representing the Church of Jesus Christ of Latter Day Saints, is requesting a Special Exception and associated Certificate of Appropriateness (CoA) from the City to add additional height to an existing historic fence surrounding the Brigham Young Cemetery located at the address listed above. The Brigham Young Cemetery is a Landmark Site within the Avenues Local Historic District. The fence sits on top of a retaining wall and the proposed fence and retaining wall height ranges from approximately 5 feet to 9 1/2 feet in the front, side and rear yard. This request requires a Special Exception and associated Minor Alterations because the maximum height for fences in residential districts is 4 feet in the front yard, and 6 feet in the interior side and rear yard. The project is located in the RMF-75 (High Density Multi-Family Residential) zoning district within Council District 3 represented by Chris Wharton (Staff contact: Amy Thompson at (385) 226-9001 or amy.thompson@slcgov.com). **Case numbers PLNHLC2021-00457 & PLNHLC2021-00604**

Senior Planner Amy Thompson reviewed the petition. She stated that the petition fails to meet the standards and Staff recommends denial of the request. She also mentioned that there were two public comments submitted prior to the meeting and they have been put into the commissioner's dropbox folder.

The Commission and Staff discuss:

- Whether the reason for the petition is due to vandalism and what the stats are for that.
- If there are alternatives that Staff was able to recommend.
- Whether the applicant had considered moving the grave site.

Applicant representative, Emily Utt, Historic Preservation Specialist for the Church of Jesus Christ of Latter Day Saints, reviewed the reason for their request.

Commissioner De Lay asked for an explanation of the slide being shown.

Gregory Green, applicant representative, review the property damage that has occurred over the last eighteen months. They showed examples of other cemeteries in Salt Lake City that have security fencing as well as other properties in the same neighborhood that have fencing exceeding standard.

Eric Sabin shared the proposed design of the project.

The Commission, Staff and Applicant discuss:

- How the 1880's historic iron will be attached to the new material
- Whether the applicants felt the proposed changes would actually make a difference in security
- A motion activated security system
- The lighting
- If the taller fence will eliminate dogs entering the property

Commissioner Peters opened the meeting to public comment.

Cindy Cromer spoke on layering methods of security.

The applicant agreed that a layered method was going to be best.

Commissioner Peters opened the executive session.

Commissioners discuss:

- The site being a cultural landscape and feeling that the standards should be different than for a house
- Security fencing
- Where on the property the fencing is low
- A suggestion to table this was made

#### **MOTION:**

**Commissioner Petro-Eschler stated, Based on the analysis and findings listed in the staff report, information presented, and the input received during the public hearing, I move that the Historic Landmark Commission table the request for a Special Exception for additional fence height and the associated Certificate of Appropriateness. Regarding Petition numbers PLNHLC2021-00457 & PLNHLC2021-00604. We are tabling in hopes that the applicant can find more solutions satisfactorily address issues of security and historic preservation simultaneously.**

**Babs De Lay seconded the motion. Commissioners Ewanowski, Richardson, Lillie, Petro-Eschler and De Lay voted "aye". Commissioner Vela voted "nay". The motion to table**



passed with five “aye” and one “no”.

**The Applicant asked how the Commission would suggest protecting the site. The Commission was not able to give specific suggestions but said the petition needed to meet standards set in the code.**

**Duran Solar Installation at approximately 740 East 3<sup>rd</sup> Avenue** - Christopher Vargas, representing the property owner, is requesting a Certificate of Appropriateness from the Historic Landmark Commission to install Tesla solar shingles on the roof at the address listed above. The property is zoned SR-1A and is within Council District 3 represented by Chris Wharton. (Staff contact is Caitlyn Tubbs at 358-315-8115 or caitlyn.tubbs@slcgov.com). **Case number PLNHLC2021-00460**

Principal Planner Caitlyn Tubbs reviewed the petition. She stated since it is the first instance of solar shingles Staff decided to bring it before the Commission. She stated that the request meets minor alteration standards and that Staff recommended approval.

Commissioner Lillie stated that she is a historic preservation planner in Park City and that they have approved the requested materials in that city.

Commissioners and Staff discuss the colors that the product is offered in.

Commissioner Ewanowski asked if the roof was historic material, would this product be approved to replace it. Staff addressed that most historic roofing is not able to be replaced with like material.

Commissioner Vela asked if it will be apparent at corners that the roof is not traditional material.

The Applicant addressed the Commission said it is very hard to tell the difference.

Commissioner Peters asked for clarification on how the roof will look once the shingles are installed. The applicant stated that it will be a solid look mixing the solar shingles and dummy tiles.

Commissioner Peters opened the meeting to public comment.

Bruce Plenk commented that he is now in approval of the petition because the roof will be covered in solar shingles and dummy shingles to make a cohesive look.

Commissioner Peters opened the executive session.

The Commissioners discuss:

- The importance of discussing the details and making sure there is a cohesive look
- The subject property being a good test site

**MOTION:**

**Commissioner Vela stated, Based on the information in the staff report, the information presented, and the input received during the public hearing, I move that the Historic Landmark Commission approve petition PLNHLC2021-00460. Commissioner Richardson seconded the motion. Commissioners Ewanowski, Vela, Richardson, Lillie, De Lay and Petro-Eschler voted “aye”. The motion passed unanimously.**

The meeting adjourned at 9:27 PM

**ATTACHMENT I: ADDITIONAL PUBLIC COMMENTS  
PROVIDED TO HLC**

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**From:** [Rachel Quist](#)  
**To:** [Thompson, Amy](#)  
**Subject:** (EXTERNAL) HLC Brigham Young Cemetery Fence / PLNHLC2021-00457 & PLNHLC2021-00604  
**Date:** Wednesday, September 1, 2021 10:39:24 AM

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Ms. Thompson:

I am writing to you in opposition to the proposal changes to the fence around the Brigham Young cemetery.

I have reviewed both the July 15 and the Sept 2 proposals and find both problematic.

I have two primary concerns regarding the proposal:

1. The fence is an unusual piece of SLC history in that it was manufactured by the Silver Brothers Iron works. This is significant because it shows the care and consideration inherent to the fence around Brigham Young's grave as a foundry was chosen to manufacture a decorative end enduring fence rather than utilize metal pipe or wood fencing more common for the time. The Silver Iron Works are associated with famous works such as casting the oxen used in the baptismal font in the SLC LDS Temple. It also shows the the age of the historic fence and the fact that little of it has changed over the years. Most iron fence work in SLC, including within historic cemeteries, was done by the Crager Iron works which was founded a few years after the Brigham Young fence was installed. So the fact that this Silver Iron works fence exists is a testament to the prominence of Brigham Young and the early history of iron fencing in SLC.

2. The proposal discusses changing the height in less prominent locations, meaning those not along 1st Ave. I find this problematic because one of the most famous photographs of this fence is the 1899 image of Brigham Young's grave that was turned into a postcard. Here is a link to scanned archived copy of the postcard: <https://collections.lib.utah.edu/ark:/87278/s6sr41np/1511726>. As you can see, the east and south sections of the fence are a major component of this image. As this style of postcard are common collector items today, a change to any portion of the fence height would significantly damage the historic characteristics a visitor to the gravesite would expect to see and experience.

I do support regular maintenance and repair work. I do not support changes to height which would significantly alter the historic characteristics of the fence.

Thank you for your work on the staff package regarding this proposal.

Sincerely

Rachel Quist  
Salt Lake City

**From:** [REDACTED]  
**To:** [Historic Landmark Comments; Thompson, Amy](#)  
**Subject:** (EXTERNAL) historic landmark exception request case #PLNHLC2021-00457 & PLNHLC2021-00604 Brigham Young Cemetery Fence  
**Date:** Thursday, July 15, 2021 6:57:55 AM  
**Importance:** High

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Hello,

I am writing today to express my opposition to granting exception to fence height restrictions on the property located at 140 E 1st Avenue in Salt Lake City. I have lived at 131 1st Avenue since January 2003 and the property in question is directly across the street. Access to the property is limited to one pedestrian entrance/egress from the sidewalk of 1st Avenue. As recently as 2019 the property has been open and accessible to all 24 hours a day. Within the past two years a padlock has been utilized to secure the property gate at dusk on a semi-regular basis. During the recent 4th of July holiday, the property was open and unlocked for 72 hours. In the nearly 20 years I have lived across the street from this property I have never witnessed any criminal or unsavory activity. The existing fence is in excellent condition and not in need of repair. The existing fence in its current configuration provides a visible, physical, and legally enforceable barrier to this property. The owner(s) of the property currently employ CBI Security to provide 24 hour security monitoring of the property and adjoining properties. The property in question has approximately 60 residences that have a direct view of the property. It is reasonable to assume any suspicious activity would be promptly reported.

Additionally, I am opposed to the exception because a 9 1/2 foot fence is not a "Minor Alteration" but in fact an over doubling of current 4 foot height restriction for front of property and out of character for this historic residential neighborhood. I believe the appearance would be institutional and exclusionary in an otherwise welcoming residential neighborhood.

The property in question is not a magnet for criminal activity and should not be treated as such.

Respectfully,

Jon Stark

[REDACTED]  
[REDACTED]  
[REDACTED]

**From:** [REDACTED]  
**To:** [Thompson, Amy](#)  
**Subject:** (EXTERNAL) Brigham Young Cemetery Modification  
**Date:** Thursday, July 15, 2021 2:34:44 PM

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Dear Ms. Thompson-

I'm a grt grt grandson of Brigham Young and the current president of the Brigham Young Family Association. I understand it was our organization that previously owned the BY Cemetery property and deeded it to the Church of Jesus Christ of Latter-day Saints years ago.

The Family continues to hold gatherings at the Cemetery location. I live in the Avenues a short distance from the the Cemetery and have visited it frequently.

For sometime I have had concerns about the security of property and it's contents, which includes not only the graves Brigham Young, Eliza R. Snow and others but considerable statuary of significant value.

Not too long ago, when the gate to the property was closed and locked, I observed someone easily step over the west fence into the Cemetery.

Also, I know that such places can become temporary campsites with the attendant refuse, security problems, and necessary cleanup.

I believe the requested heightening of the fence will help with these concerns and as the Family Association head I support the modification request.

Thanks for your service.

Richard Lambert  
[REDACTED]

Sent from my iPhone