



Staff Report

PLANNING DIVISION

To: Salt Lake City Appeals Hearing Officer
From: Meagan Booth, Principal Planner, meagan.booth@slcgov.com, 801-535-7213
Date: October 19, 2023
Re: PLNZAD2023-00522, 22 E Churchill Drive 6 ft Fence and Gate Variance

Variance

PROPERTY ADDRESS: 22 E Churchill Drive
PARCEL ID: 08-25-277-003-0000
MASTER PLAN: Capitol Hill
ZONING DISTRICT: FR-3/12,000 (FOOTHILLS RESIDENTIAL DISTRICT)

REQUEST:

Mark Ibrahim, the property owner, is seeking a variance to build a 6-foot fence and gate in the front yard area at the above-stated address. The property is located in FR-3/12,000 (Foothill Residential Zoning District). The regulations for the FR-3 district are in 21A.24.040, and the special foothills regulations are in 21A.24.010P, which states "Walls and fences located within the front yards and along roadways shall not exceed a maximum of forty-two inches (42") in height." The Appeals Hearing Officer will determine this variance request in accordance with Salt Lake City Zoning Ordinance Section 21A.18.020.

RECOMMENDATION:

Based on the information and findings listed in the staff report, staff finds that the request does not meet the applicable standards of approval and therefore recommends the Appeals Hearing Office deny the request

ATTACHMENTS:

- A. [ATTACHMENT A: Vicinity Map](#)
- B. [ATTACHMENT B: Applicant Materials](#)
- C. [ATTACHMENT C: Property and Vicinity Photos](#)
- D. [ATTACHMENT D: Variance Standards](#)
- E. [ATTACHMENT E: Public Process & Comments](#)
- F. [ATTACHMENT F: Department Review Comments](#)

PROJECT DESCRIPTION

The subject property is located at 22 E. Churchill Drive, is in FR-3/12,000 Foothills Residential district and is a single-family home. The house is situated on a .51-acre corner lot between two local streets, Dartmoor Way, and Churchill Drive. The property is surrounded by other single-family homes on Capitol Hill and is part of the Capitol Hill Plat C Subdivision.

The property owner is seeking a variance to construct a 6-foot fence around the entirety of his property and enclose the driveway with a 6-foot gate. The site plan for the proposed fence and gate is shown below. The fence location is represented by the yellow line around the property. The location of the gate is indicated by the turquoise dots. A fence exceeding 42 inches in height is not allowed in the front yard area. The area of the fence subject to this request is circled in blue below.



Quick Facts

Height of Fence Requested: 6 feet.

Height of Fence Allowed in the Front Yard : 42 in. (3.5 feet)

Proposed Location: Front Yard

Fence Materials: Aluminum Non-View Obscuring

Review Process & Standards: Variance Standards and general zoning standards.

Definitions: YARD, FRONT: A yard extending between side lot lines and between the front lot line and the required front yard setback line.

Background Information

On March 20, 2023, the contractor applied for a building permit (BLD2023-02073) for the fence, but the proposal of a 6-foot fence in the front yard did not meet the height requirement and the permit was not issued. However, at the time of this report, a 6-foot fence has been installed along the rear, side, and corner side property lines. The contractor has stopped construction in order to await the outcome of this variance request and will be required to obtain a building permit. The front fence has not yet been installed. The proposed height of the fence in the front yard area along Churchill Drive is the focus of this request.

APPROVAL PROCESS AND APPEALS HEARING OFFICER AUTHORITY

The hearing office will determine this request by using the variance standards. The standards required for granting a variance are set forth in Utah Code Section 10-9a-707 and Salt Lake City Zoning Ordinance, Section 21A.18.060. The hearing officer may grant a variance only if all the conditions described in Attachment D are found to exist. The applicant shall bear the burden of demonstrating that the standards have been met and that the variance is justified.

KEY CONSIDERATIONS

The key considerations listed below were identified through the analysis of the project:

1. Applicants Narrative
2. Compliance with Variance Standards

Consideration 1: Applicant's Narrative

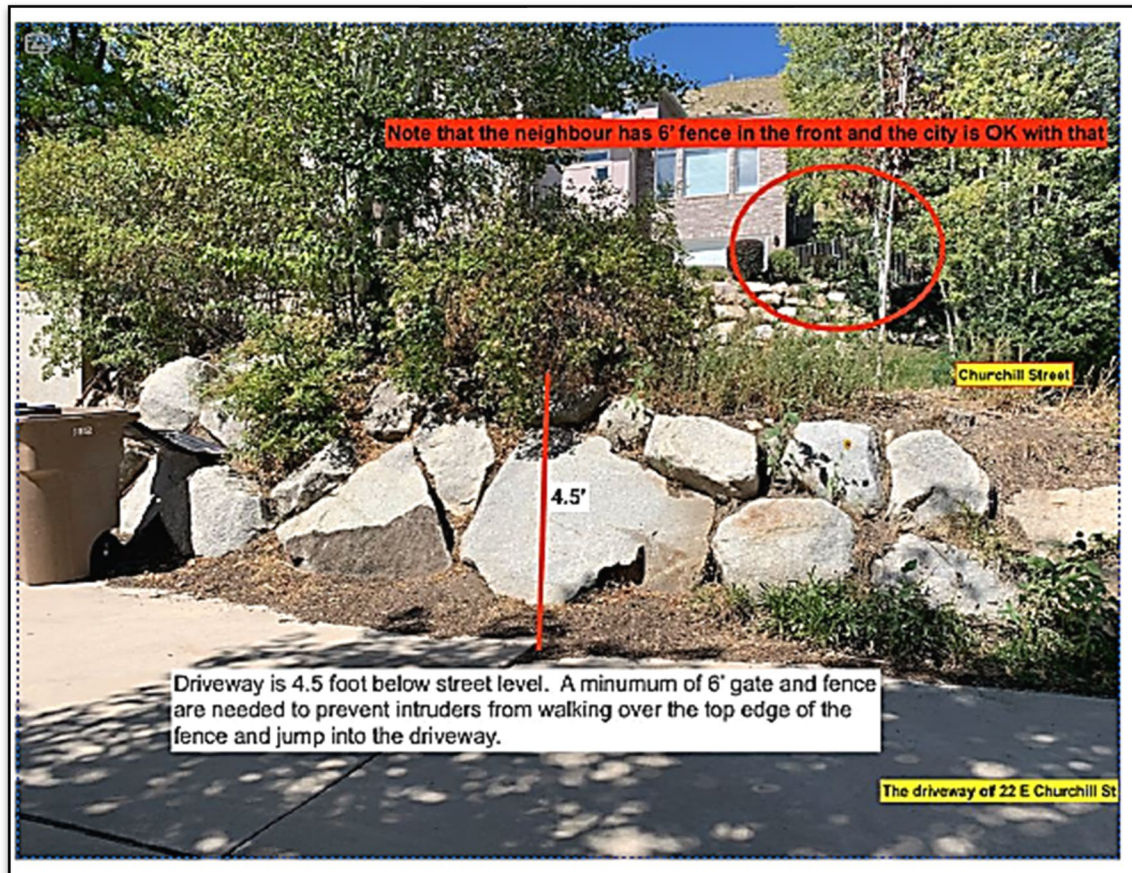
The following is a summary of the applicant's narrative. A key issue pointed out in the narrative is the elevation change from the street to the driveway which ranges from approximately 5 to 12 feet at the highest point. Due to the sloping topography of the lot and the sidewalk location being much higher than the driveway below, the property owner expresses concern about the safety and security of his property. He states that a 42-inch fence will not be tall enough to prevent pedestrians and bicycle riders from falling over the retaining wall onto the driveway below. The picture on the right depicts the safety concern, including a grade change, sidewalk, retaining wall, and garage.



The applicant claims that allowing a 6-foot fence will serve various purposes, including personal security, protecting children and pets, deterring intruders, and addressing vulnerabilities and emotional distress. The property owner feels that enforcing a 42-inch fence and gate at the front of their home is unjust and denies them the same privileges as similar houses in the zoning district (See photos in [Attachment C](#)). He wants the fence to be continuous and the gate to be aesthetically

and logically tied into the height of the existing retaining wall while still providing visibility and mountain views. The applicant also has concerns about wildlife entering his property, as the property is located in the foothills near the Wasatch Mountains. Residents in this area may encounter an abundance of wildlife. Elevation changes, security, ability for children to play, vegetation preservation, and pedestrian/bicycle safety are among the applicant's concerns, and he believes the grade change is reasonable enough to grant their request. The full narrative is included in this report (See [Attachment B](#))

The applicant provided the visual representation of the alleged hardship below.



Consideration 2: Compliance with Variance Standards

All five criteria must be found in favor of the variance in order for it to be valid. The unreasonable hardship may not be self-imposed or purely economic and must arise from conditions unique to the property. The variance standards are listed below:

- A. Literal enforcement of the land use ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the ordinance.
- B. There are special circumstances attached to the property that do not generally apply to other properties in the same district.
- C. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone.
- D. The variance will not substantially affect the general plan and will not be contrary to the public interest.
- E. The spirit of the zoning ordinance is observed, and substantial justice is done.

STAFF RECOMMENDATION

After careful consideration of the applicant's narrative, review of the variance standards, staff recommends that the request does not meet the applicable standards of approval, and therefore the Appeals Hearing Officer should deny the request. The findings for each standard are shown in [Attachment D](#) to this report.

NEXT STEPS

Approval of the Variance Request

If the requested variance is granted the applicant will be able to construct a 6-foot fence and add a gate within the front yard through the building permit process.

Denial of the Variance Request

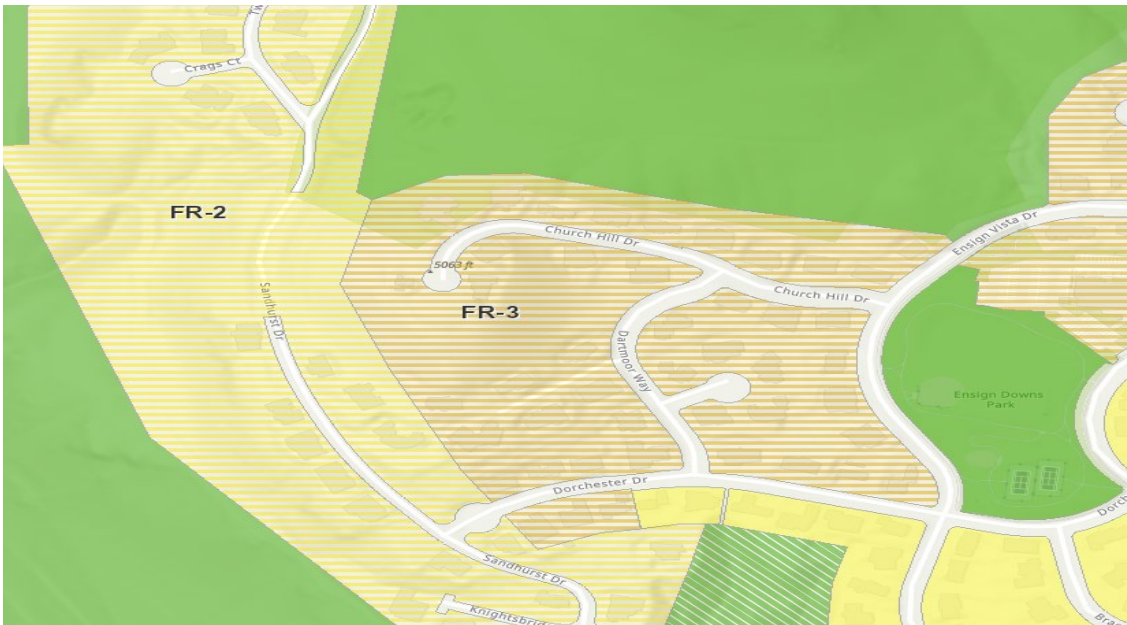
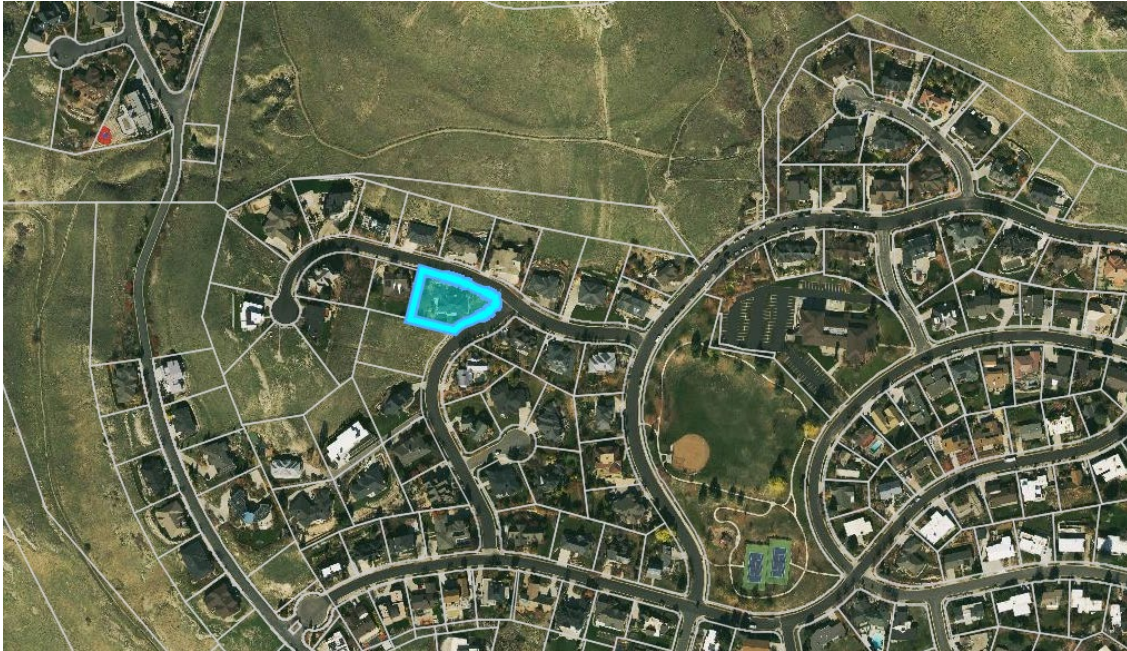
If the requested variance is denied the applicant would not be permitted to construct a 6-foot fence and gate in the front yard but could construct a fence that complies with the standards

Appeal Process

Any person adversely affected by a final decision made by the appeals hearing officer can be appealed to Third District Court within 30 days after the decision is rendered.

ATTACHMENT A: Vicinity Map

The subject property is highlighted in blue below. It is located near Ensign Peak and Ensigns Down Park. The property is zoned FR-3/12,000 FOOTHILLS RESIDENTIAL DISTRICT. The surrounding properties are also residential.



ATTACHMENT B: Applicant Materials



PLANNING PROCESS // **VARIANCE**

ABOUT THE APPLICATION

Thank you for your interest in submitting a Variance application. The following packet will provide general information to get started on your project and guide you through the application process from start to finish. The package is broken down into three sections: information about the application, a visual diagram of the application process, and the application form.

We highly encourage you to work with our Planning staff prior to submitting an application. For questions regarding any of the information listed in this packet or to set up a pre-submittal meeting please contact us at zoning@slc.gov or give us a call at 801.535.7757.



PLANNING DIVISION
451 SOUTH STATE STREET ROOM 406
PO BOX 165480
SALT LAKE CITY, UT 84114-5480

S.L.C.GOV/PLANNING
ZONING@SLC.GOV.COM
TEL 801.535.7757

IMPORTANT PROCESS INFORMATION

ORDINANCE

21A.18

PURPOSE & INTENT OF THE PROCESS

The variance process is intended to provide relief from unforeseen applications of the zoning ordinance where it creates unreasonable hardships that cannot be remedied by other means. The appeals hearing officer may grant a variance for the enjoyment of a substantial property right and at the minimum necessary to relieve the unnecessary hardship.



WHEN TO APPLY FOR A VARIANCE?

To apply for a variance, you must show that the literal enforcement of the zoning code creates an unreasonable hardship. The appeals hearing officer may not find an unreasonable hardship unless:

1. The alleged hardship is related to the size, shape or topography of the property for which the variance is sought; and
2. The alleged hardship comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

PROHIBITED VARIANCES

The appeals hearing officer shall not grant a variance that:

- A. is intended as a temporary measure only;
- B. is greater than the minimum variation necessary to relieve the unnecessary hardship demonstrated by the applicant; or
- C. authorizes uses not allowed by law (i.e., a "use variance").



SELF-IMPOSED OR ECONOMIC HARDSHIP

In determining whether or not enforcement of this title would cause unreasonable hardship under subsection 21A.18.060.A of the Zoning Ordinance, the appeals hearing officer may not find an unreasonable hardship if the hardship is self-imposed or economic.



CONSULTATION

If you have questions regarding the Variance regulations or process, please contact the Salt Lake City Planning Counter staff at zoning@slcgov.com or give us a call at 801-535-7757. If you would like to discuss your development plan in more detail, you can request a pre-submittal meeting with Planning staff by contacting the Planning Counter.

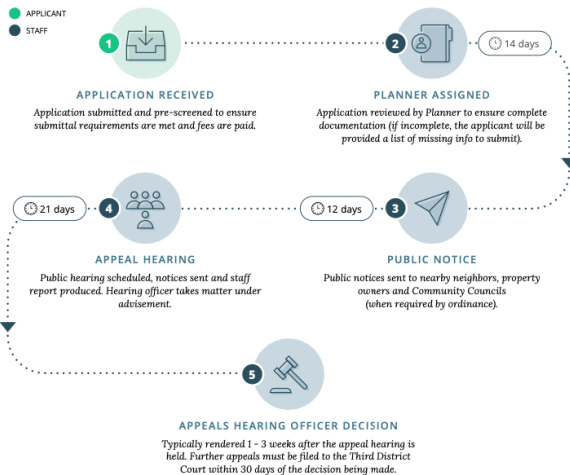
Pre-submittal meetings are held on Thursdays in 30 minute slots between 1:30 and 3:30 pm.

PROCESS TIMELINE

TIME FRAME

🕒 2 - 3 MONTHS

● APPLICANT
● STAFF



DISCLAIMER: APPLICATION TIME FRAMES MAY VARY DEPENDING ON CURRENT WORKLOAD AND COMPLEXITY OF APPLICATIONS. INCOMPLETE OR MISSING INFORMATION ON DRAWINGS AND APPLICATION FORMS WILL DELAY THE PROCESS.

VARIANCE

IMPORTANT INFORMATION



CONSULTATION

Available prior to submitting an application. For questions regarding the requirements, email us at zoning@slcgov.com.



SUBMISSION

Submit your application online through the [Citizen Access Portal](#). Learn how to submit online by following the [step-by-step guide](#).



REQUIRED FEES

- **\$428** filing fee.
- Additional required notice fees will be assessed after submission.

APPLICANT INFORMATION

PROJECT NAME (OPTIONAL)

Mark Ibrahim

ADDRESS OF SUBJECT PROPERTY

22 E Churchill Drive, Salt Lake City, UT

REQUEST

6' security fence around property

NAME OF APPLICANT

Mark Ibrahim

PHONE

248-890-2909

MAILING ADDRESS

EMAIL

<input type="text"/> APPLICANT'S INTEREST IN PROPERTY (*owner's consent required)		<input type="text"/> IF OTHER, PLEASE LIST
<input checked="" type="radio"/> Owner <input type="radio"/> Architect* <input type="radio"/> Contractor* <input type="radio"/> Other*		<input type="text"/>
NAME OF PROPERTY OWNER (if different from applicant)		PHONE
<input type="text"/> Mark Ibrahim		<input type="text"/> Owner; 248-890-2909
MAILING ADDRESS		EMAIL
<input type="text"/> 22 E Churchill Drive Salt Lake City, UT		<input type="text"/> Micardio2@gmail.com

OFFICE USE

CASE NUMBER	RECEIVED BY	DATE RECEIVED
<input type="text"/>	<input type="text"/>	<input type="text"/>

DISCLAIMER: PLEASE NOTE THAT ADDITIONAL INFORMATION MAY BE REQUIRED BY THE PROJECT PLANNER TO ENSURE ADEQUATE INFORMATION IS PROVIDED FOR STAFF ANALYSIS. ALL INFORMATION REQUIRED FOR STAFF ANALYSIS WILL BE COPIED AND MADE PUBLIC, INCLUDING PROFESSIONAL ARCHITECTURAL OR ENGINEERING DRAWINGS, FOR THE PURPOSES OF PUBLIC REVIEW BY ANY INTERESTED PARTY.

ACKNOWLEDGMENT OF RESPONSIBILITY

1. This is to certify that I am making an application for the described action by the City and that I am responsible for complying with all City requirements with regard to this request. This application will be processed under the name provided below.
2. By signing the application, I am acknowledging that I have read and understood the instructions provided for processing this application. The documents and/or information I have submitted are true and correct to the best of my knowledge. I understand that the documents provided are considered public records and may be made available to the public.
3. I understand that my application will not be processed until the application is deemed complete by the assigned planner from the Planning Division. I acknowledge that a complete application includes all of the required submittal requirements and provided documents comply with all applicable requirements for the specific applications. I understand that the Planning Division will provide, in writing, a list of deficiencies that must be satisfied for this application to be complete and it is the responsibility of the applicant to provide the missing or corrected information. I will keep myself informed of the deadlines for submission of material and the progress of this application.
4. I understand that a staff report will be made available for my review prior to any public hearings or public meetings. This report will be on file and available at the Planning Division and posted on the Division website when it has been finalized.

NAME OF APPLICANT	EMAIL	
Mark Ibrahim	Micardio2@gmail.com	
MAILING ADDRESS	PHONE	
22 E Churchill Drive Salt Lake City, UT	248-890-2909	
APPLICATION TYPE	SIGNATURE	DATE
Variance		5/8/23

LEGAL PROPERTY OWNER CONSENT

If the applicant is not the legal owner of the property, a consent from property owner must be provided. Properties with a single fee title owner may show consent by filling out the information below or by providing an affidavit.

Affirmation of sufficient interest: I hereby affirm that I am the fee title owner of the below described property or that I have written authorization from the owner to pursue the described action.

LEGAL DESCRIPTION OF SUBJECT PROPERTY

LEGAL DESCRIPTION OF SUBJECT PROPERTY		
<input type="text"/>		
NAME OF OWNER	EMAIL	
<input type="text"/>	<input type="text"/>	
MAILING ADDRESS	SIGNATURE	DATE
<input type="text"/>	<input type="text"/>	<input type="text"/>

1. If a corporation is fee titleholder, attach copy of the resolution of the Board of Directors authorizing the action.
2. If a joint venture or partnership is the fee owner, attach copy of agreement authorizing action on behalf of the joint venture or partnership.
3. If a Home Owner's Association is the applicant then the representative/president must attach a notarized letter stating they have notified the owners of the proposed application. A vote should be taken prior to the submittal and a statement of the outcome provided to the City along with the statement that the vote meets the requirements set forth in the CC&Rs.

DISCLAIMER: BE ADVISED THAT KNOWINGLY MAKING A FALSE, WRITTEN STATEMENT TO A GOVERNMENT ENTITY IS A CRIME UNDER UTAH CODE CHAPTER 76-8, PART 5. SALT LAKE CITY WILL REFER FOR PROSECUTION ANY KNOWINGLY FALSE REPRESENTATIONS MADE PERTAINING TO THE APPLICANT'S INTEREST IN THE PROPERTY THAT IS THE SUBJECT OF THIS APPLICATION.

VARIANCE PROCESS 5 PLANNING DIVISION // v3.14.23

We are requesting that a 6' security perimeter see-through fence be allowed on the front elevations along Churchill Drive as a safety precaution to block debris, balls, skateboards, bicycle riders from coming over the property causing injury or property damage to the driveway, parked vehicles or property below. We are also requesting a 6' tall gate be allowed over the driveway to secure the drive for children's play and prevent balls and the like from rolling down the street. The height is needed to prevent both the under and over the top for balls and play toys.

There is significant and adequate distance for vehicles to pull off the street for gates to open (open into property). The height and quality of the fence will be consistent around the property to establish security while enhancing the property safety and beauty. The Churchill Drive side will be 3' from the sidewalk to allow for tree growth as well as a safe distance from the sidewalk for pedestrian use without damaging the fence. This will also keep debris from getting caught in the landscape causing (detracting from the upkeep and beauty of the neighborhood).

The unique positioning of the home on the property and the topography of the land (front elevation set down below the street level of Churchill Drive) requires the fence height of 6' to provide protection and also allows for a consistent look around the property. It may be difficult to visualize from pictures alone, but a site visit clearly shows the challenges of protecting the property while keeping a clean and consistent aesthetic to the property worthy of the size of the lot and neighborhood.

Material selection was carefully chosen to uphold the beautiful aesthetics of the neighborhood while also providing the needed visibility for access and maintains views and line of site. The neighboring property has a similar fence surrounding the property that has 6' tall gates at the drive and along the sidewalk (pictures below).

SUBMITTAL REQUIREMENTS

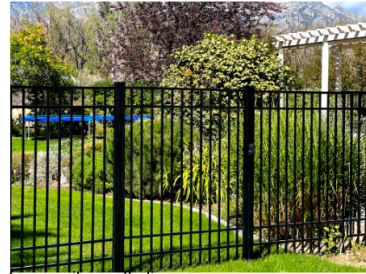
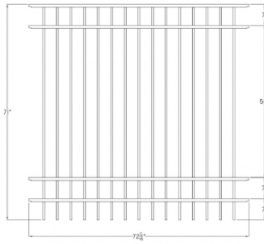
Please provide the following information with your application. Confirm that you have included each of the requirements listed below by adding a check mark for each item.

- | CHECK | STAFF | REQUIREMENTS (21A.18.040.A) |
|-------------------------------------|--------------------------|--|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | A Narrative that Includes: <ul style="list-style-type: none"> Information about the proposed construction and specifically how it would not meet the zoning ordinance. The specific provision of the zoning ordinance from which the variance is sought. The special circumstances associated with the subject property that present compliance with the zoning requirement. How compliance with the zoning requirement would result in unnecessary hardship. The minimum variation of the zoning requirement that would be necessary to permit the proposed use, construction or development. The special circumstances that exist on the subject property, which do not generally apply to other properties in the same zoning district. How the variance is essential to the enjoyment of a substantial property right possessed by other properties in the same zoning district. How the variance upholds the general city's plan and not negatively affect the public interest. How the variance observes the spirit of the Zoning Ordinance. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Site Plan: <ul style="list-style-type: none"> Site plan (see Site Plan Requirements flyer for further details). |
| <input type="checkbox"/> | <input type="checkbox"/> | Other Drawings: <ul style="list-style-type: none"> Floor plans drawn to scale identifying the use and size of the interior space(s). Elevations, sections, and details drawn to scale, if applicable. Streetscape plan if involving building height. Topographical drawing if involving grade changes. Landscape plan if involving setback, height or grade changes. |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Supporting Evidence: <ul style="list-style-type: none"> Drawings and photos that clarify and support the applicant's claim. |

INCOMPLETE INFORMATION WILL NOT BE ACCEPTED

INITIALS **DISCLAIMER:** 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.

VARIANCE PROCESS 6 PLANNING DIVISION // v3.14.23



6' tall materials on all sides of property for security, aesthetic consistency.



7' drop from front street to driveway (debris and hazard for individuals)



Churchill Street view higher elevation sloping down



Neighboring property w/ 6' perimeter



RECORD OF SURVEY
 LOT 312, CAPITOL HILLS PLAT C, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 1 EAST OF THE SALT LAKE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS



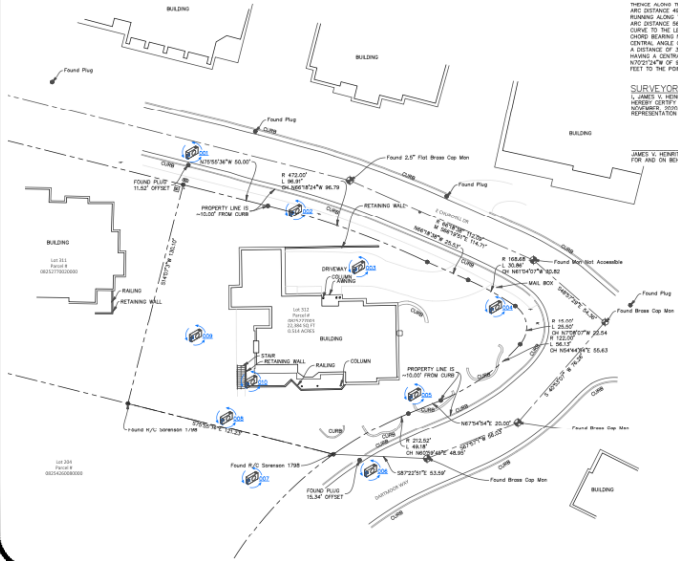
SURVEYOR'S NARRATIVE
 THE PURPOSE OF THIS SURVEY WAS TO REESTABLISH PROPERTY BOUNDARIES OF THE ABOVE-DESCRIBED PROPERTY FOR MARK BEARING, NEIGHBORING SURVEYS, PROPERTY CORNERS, OCCUPATION LINES, AND MONUMENTS WERE USED TO RELOCATE THE BOUNDARIES.

LEGAL DESCRIPTION:
 LOT 312, CAPITOL HILLS PLAT C, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 30, TOWNSHIP 1 NORTH, RANGE 1 EAST OF THE SALT LAKE MERIDIAN, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS COMMENCING AT THE BRASS CAP CENTRAL MONUMENT IN QUARTER WAY, WHENCE THE BRASS CAP CENTRAL MONUMENT IS LOCATED IN QUARTER WAY BEARS NORTH BY 27° 05' 00" E A DISTANCE OF 50.00 FEET AND LINE FORMING THE BASE OF BEARING TO THE OCCUPATION LINE.

THENCE NORTH BY 27° 05' 00" WEST A DISTANCE OF 63.59 FEET TO THE SOUTHWEST CORNER OF LOT 312 AND THE POINT OF BEGINNING;
 THENCE ALONG THE ARC OF A CURVE TO THE RIGHT HAVING A CENTRAL ANGLE OF 127° 07' 00" A RADIUS OF 21.00 FEET AN ARC DISTANCE OF 48.00 FEET AND A CHORD BEARING N107° 04' 00" W OF 48.00 FEET, THENCE N107° 04' 00" W 35.00 FEET, THENCE BEARING ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 127° 07' 00" A RADIUS OF 21.00 FEET AN ARC DISTANCE OF 48.00 FEET AND A CHORD BEARING S107° 04' 00" E OF 48.00 FEET, THENCE BEARING ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 127° 07' 00" A RADIUS OF 21.00 FEET AN ARC DISTANCE OF 48.00 FEET AND A CHORD BEARING S107° 04' 00" E OF 48.00 FEET, THENCE BEARING ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 127° 07' 00" A RADIUS OF 21.00 FEET AN ARC DISTANCE OF 48.00 FEET AND A CHORD BEARING S107° 04' 00" E OF 48.00 FEET, THENCE BEARING ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 127° 07' 00" A RADIUS OF 21.00 FEET AN ARC DISTANCE OF 48.00 FEET AND A CHORD BEARING S107° 04' 00" E OF 48.00 FEET, THENCE BEARING ALONG THE ARC OF A CURVE TO THE LEFT HAVING A CENTRAL ANGLE OF 127° 07' 00" A RADIUS OF 21.00 FEET AN ARC DISTANCE OF 48.00 FEET AND A CHORD BEARING S107° 04' 00" E OF 48.00 FEET TO THE POINT OF BEGINNING.

SURVEYOR'S CERTIFICATE:
 I, JAMES C. HENRITZ, A LICENSED PROFESSIONAL LAND SURVEYOR IN THE STATE OF UTAH, LICENSE NO. 11072410-2205, DO HEREBY CERTIFY THAT I AM THE SURVEYOR OF THIS SURVEY AND THAT I AM A MEMBER OF THE NATIONAL ASSOCIATION OF PROFESSIONAL SURVEYORS AND THAT TO THE BEST OF MY KNOWLEDGE IT IS A CORRECT REPRESENTATION OF THE LAND SURVEYED.

JAMES C. HENRITZ, P.L.S. 11072410-2205
 FOR AND ON BEHALF OF MARK IBRAHIM



- LEGEND:**
- PANORAMIC PHOTO LOCATION
 - PROPERTY LINE
 - MONUMENT
 - SET AS REBAR WITH PLASTIC MARKED "VABA 30" UNLESS OTHERWISE NOTED
 - R DENOTES RECORD BEARING AND/OR DISTANCE
 - M DENOTES MEASURED BEARING AND/OR DISTANCE

PROJECT INFORMATION
MARK IBRAHIM
 22 E CHURCHILL DRIVE SALT LAKE CITY, UT 84103
BOUNDARY SURVEY

DATE	REVISION	BY
VARAD		
SURVEYING & CONSULTING INC.		
2020-101		
NOVEMBER 2020		
1" = 20'		

Purpose of the fence:

The aluminum see-through fence on this property will serve several essential purposes, including personal security, ensuring the safety of children and pets, deterring intruders, safeguarding against wildlife, and preserving the garden and landscaping.

The particular topographical layout of the house presents security challenges that a standard 4-foot fence cannot adequately address. To mitigate these security vulnerabilities and alleviate the resulting emotional distress experienced by my family and me, a taller fence is necessary.

Unique topography of the property:

The property boasts a distinctive topography, as illustrated in the attached photo, wherein our driveway resides approximately 4 ½ feet below the street level. To safeguard against potential intruders walking along Churchill Drive and prevent them from stepping on the top edge of the gate or fence and gaining entry to the driveway, a minimum 6-foot gate and fence are imperative. Additionally, this height is essential for deterring hazardous wildlife activity. The security vulnerabilities stemming from this unique topographical setup have inflicted considerable emotional hardship upon my family and me, particularly due to ongoing wildlife incidents on the property and a history of prior break-in attempt.

Furthermore, it's worth highlighting that all adjacent residences proudly showcase 6-foot fences in their front yards. Enforcing a 4-foot fence and gate at the front of our home seems unjust and denies our property the same privileges enjoyed by similar houses in our zoning district.

I've come to realize that the city has not taken any measures to enforce the ordinance in my neighborhood in the past, and my neighbors may have never submitted permits for their fences. This situation allows citizens to freely utilize their properties without obtaining permits. Regrettably, the city's inaction perpetuates this inequity and establishes a concerning precedent that may dissuade citizens from seeking permits. As a result, I respectfully urge your thoughtful consideration of my request for this variance.



Precedents:

After conducting research within our neighborhood, I've observed that numerous residences along Churchill Drive feature 6-foot fences or gates in their front yards. It's worth noting that none of the houses in our neighborhood contend with the unique topographical challenges we face, yet the owners of these properties were allowed to keep 6-foot fences or gates in the front. Again, this situation strikes me as unjust for my family and me, and it's crucial that fairness prevails. Below, you'll find a visual representation showcasing houses on Churchill Drive with 6-foot fences or gates in their front yards.



976 E. Churchill Dr



976 E. Churchill Dr



Public interest/safety and city benefit:

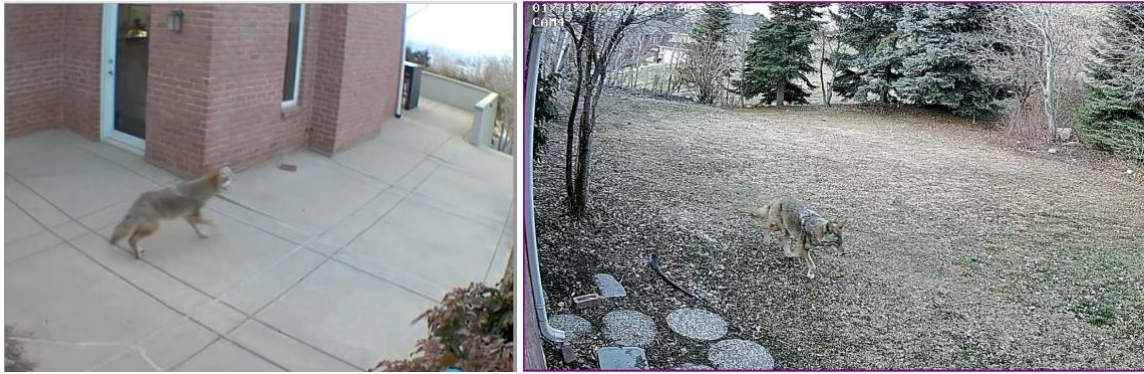
The plan is to install a see-through aluminum fence that stands at 6 feet in height, a design choice that seamlessly blends with the surrounding neighborhood's aesthetics and necessary to mitigate the challenging topography of the house. Furthermore, I contend that providing an exception would serve the greater public interest by bolstering safety and security within our community. This proposal not only serves my own interests but also aligns with the city's objectives of prioritizing safety and upholding property values.

Evidence of wildlife activity inside the property:

- A. Coyote spotted wandering in our side yard in mid 2022.



- B. In early 2022, yet another coyote was sighted in our patio and backyard. This encounter was particularly unsettling as my two-year-old son came face-to-face with the coyote on the patio, resulting in a period of intense fear and anxiety for him.



- C. Several deer spotted in the backyard and caused significant damage to our newly planted trees to the point we had to re-plant 8 new arborvitae trees. Deer are known to easily jump over fences that are 4 feet tall. A 6-foot fence is recommended as a minimum height to effectively deter deer.



Evidence of prior intruder activity: On May 14th, 2022, at 11:41p, we had this lady knocking on the front door. We were asleep and did not answer. Later one, we heard rattling noise coming from the lower-level patio door. She was trying to break in! We immediately called 911 and reported the incidence. She run away after she saw us talking on the phone and the police could not catch her. A 4-foot fence and gate in the front will not be a significant deterrent for potential intruders, making our property more vulnerable to security risks. This is exaggerated by the unique driveway position below the street level.



Appreciate your consideration.
Sincerely,

Majd Ibrahim, MD and Stephanie Frisch MD
Property owners

Sept 27/2023

ATTACHMENT C: Property and Vicinity Photos



Subject Property



Aerial Photo



Corner Side Yard of Property (Side, Side Corner and Rear Yard Fence has been installed.)



Rear of the Subject Property. The lot behind the home is currently vacant.



Churchill Street View and Slope Increase



A neighborhood fence that meets Ordinance standards.



Neighboring Property with 6-foot fence in the Front Yard

ATTACHMENT D: Variance Standards

Variations

The Finding for each standard is the recommendation of the Planning Division based on the facts associated with the proposal, the discussion that follows, and the input received during the engagement process. Input received after the staff report is published has not been considered in this report.

21A.18.050 Prohibited Variations: Subject to the prohibitions set forth in section [21A.18.050](#) of this chapter, and subject to the other provisions of this chapter, the appeals hearing officer may grant a variance from the terms of this title only if:

A. Is intended as a temporary measure only
Discussion: The fence will be installed permanently.
Finding: Complies
B. Is greater than the minimum variation necessary to relieve the unnecessary hardship demonstrated by the applicant
Discussion: Staff recommends the applicant can secure the property with a 42-inch fence along the front property and meet the zoning requirement.
Finding: Does Not Comply
C. Authorizes uses not allowed by law (i.e., a "use variance").
Discussion: Fences are allowed as an accessory structure.
Finding: Complies

21A.18.060: Standards for Variations: Subject to the prohibitions set forth in section [21A.18.050](#) of this chapter, and subject to the other provisions of this chapter, the appeals hearing officer may grant a variance from the terms of this title only if:

A. General Standards
1. Literal enforcement of this title would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of this title;
Finding: Does Not Comply
Discussion:

According to the staff's findings in standards B and C below, staff is of the opinion that there is no unnecessary hardship. There is a change in topography; however, topographical changes are general to the neighborhood. The applicant's claim that there is an unreasonable hardship is self-imposed because the property is similar in shape and dimensions to other properties in the zoning district. Steep front yards and back yards are characteristic of the foothill area. The property doesn't have any special circumstances that could be mitigated by complying with the ordinance.

Condition(s):

2. There are special circumstances attached to the property that do not generally apply to other properties in the same zoning district;

Finding: Does Not Comply

Discussion:

The property shares similar shape and dimensions with other properties in the zoning district, with steep front and back yards typical of the foothill area. "Special circumstances" refers to physical conditions unique to the property which relate to the hardship and make compliance difficult or impossible. Special circumstances do not include self-imposed conditions, or economic concerns. This property does not have any special circumstances attached to the property that others do not have in the same zoning district.

Condition(s):

3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district;

Finding: Does Not Comply

Discussion:

The variance for a 6-foot fence in the front yard area does not relate to a substantial property that others in the zoning district enjoy. The applicant has a fully fenced backyard, similar to other property owners in the area. All property owners in this zoning district are prohibited by the ordinance from having a 6-foot fence in the front yard. A 6-foot fence is not necessary for the property to be used and enjoyed.

Condition(s):

4. The variance will not substantially affect the general plan of the city and will not be contrary to the public interest; and

Finding: Does Not Comply

Discussion:

This request has no significant impact on the Capitol Hill Master Plan. Staff believe that there is no property-related hardship; hence, deviating from the zoning ordinance rules would not be in the best interests of the community. Granting a variance to allow a six-foot fence would go against that intent and would set a precedent for all other properties. Per the Capitol Hill Master Plan, "As a

foothill residential neighborhood, properties are subject to foothill development regulations. These regulations include lot size, building height design regulations, color, s site improvements such as fencing and landscaping, and the maximum slope of developable properties. These regulations are intended to promote environmentally sensitive and visually compatible development on properties that are in the foothills.” The request does not meet the Foothill Development Standards, sets a precedent, and is contrary to the public interest in visually compatible development.

Condition(s):

5. The spirit of this title is observed, and substantial justice done.

Finding: Does Not Comply

Discussion:

The request to install a 6-foot fence in the front yard area to secure the property is not a substantial property right and if granted could set a precedent for other homes in the neighborhood. Staff believes the request does not meet variance standards, violating the spirit of the Zoning Ordinance and would not be substantial justice.

Condition(s):

B. Circumstances Peculiar To Property: In determining whether or not enforcement of this title would cause unreasonable hardship under subsection A of this section, the appeals hearing officer may not find an unreasonable hardship unless:

1. The alleged hardship is related to the size, shape or topography of the property for which the variance is sought; and

Finding: Does Not Comply

Discussion:

The property is similar in size, shape, and dimensions to other properties in the zoning district and neighborhoods. Other homes in the neighborhood have steep front and backyards, a characteristic feature of foothill neighborhoods.

Condition(s):

2. The alleged hardship comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.

Finding: Does Not Comply

Discussion:

The elevation change of the property is an existing condition. A condition that is general to the neighborhood and development in the foothill area. Sloping streets, driveways, and elevation changes are not particular to this property alone but characteristic of this neighborhood.

Condition(s):

C. Self-Imposed Or Economic Hardship: In determining whether or not enforcement of this title would cause unreasonable hardship under subsection A of this section, the appeals hearing officer may not find an unreasonable hardship if the hardship is self-imposed or economic.

1. The special circumstances relate to the alleged hardship; and

Finding: Does Not Comply

Discussion:

The home was purchased with an understanding of the lot's topography and potential constraints, resulting in self-imposition. The contractor started work before a building permit was issued. The property owner bought the fencing materials before the building permit was issued, resulting in storage fees. Changing the fence plan at this point may result in financial hardship for the property owner. Financial impact alone shall not be grounds for granting a variance.

Condition(s):

2. The special circumstances deprive the property of privileges granted to other properties in the same zoning district.

Finding: Does Not Comply

Discussion:

Another property owner in this zoning district would be prohibited from building a 6-foot fence in the front yard area that is taller than 42 inches. It is not just if the property owner is allowed a privilege other property owners would be denied.

Condition(s):

ATTACHMENT E: Public Process & Comments

Public Hearing, Meetings, Comments

Notice of the public hearing for the proposal included:

- October 9, 2023
 - Public hearing notice sign posted on the property.
- October 6, 2023
 - Public hearing notice mailed.
 - Public notice posted on City and State websites and Planning Division list serve.

Public Input:

- No public comments were received at the time of this staff report.
- The Hearing is scheduled for October 19, 2023.

ATTACHMENT F: Department Review Comments

This proposal was reviewed by the following departments. Any requirement identified by the City Department is required to be complied with.

Engineering:

No Comments

Zoning:

Review of the building permit will depend on the outcome of the variance request. The fence must be installed entirely on the property and not within the 10-foot public utility easement shown on the plat.

Fire:

The only thing that I see is that with a fence and gate, FD access must still be within 150 feet of all ground level points of the building. The FD must be able to gain access in an emergency.

Urban Forestry:

Not required

Transportation:

The standard for pedestrian guardrails is 36-42 inches above the sidewalk and 6 inches back from the sidewalk edge. There should be a middle and lower rail, and vertical slats/rails are optional. The fence should be installed on the property line, not in the right-of-way, and may not be installed directly adjacent to the sidewalk, as shown in some examples.

Police:

Higher fencing from a public safety standpoint would be a good thing to prevent and deter additional crime from occurring. There are many different styles of fencing, and some may be more desirable than others. I like fencing that still allows visible lines of sight so people can still see if something suspicious is going on and call the police if needed. Wrought iron fencing for example or other difficult to climb but highly visible fencing would be ideal in my opinion. Solid panel fencing is fine and provides added privacy, but once someone looking to commit crime gets on the inside it provides a cover for nefarious activity.

Public Utilities:

Public Utilities has no issues with the proposed fence height and gate, if required clearances and access is still provided for the property's water. Please see attached figure and additional comments for water meter requirements:

- Water meters must be located a minimum of 3 feet outside of proposed drive approaches, sidewalks, or drivable surfaces. Meters must be located in the public right-of-way.
- Water meter must always be accessible by SLCDPU. The fence cannot be installed to obstruct access to the water meter.

Public Services:

From the Public Services perspective, both operations and right of way management, the fence height is not a concern, as it does not disrupt the access to the right of way.

