



Staff Report

PLANNING DIVISION
COMMUNITY & ECONOMIC DEVELOPMENT

To: Salt Lake City Planning Commission

From: David J. Gellner, AICP, Principal Planner, 801-535-6107,
david.gellner@slcgov.com

Date: September 28, 2016

Re: PLNPCM2016-00623 – Over-Height Backyard Fence

Special Exception

PROPERTY ADDRESS: 1481 South 1500 East
PARCEL ID: 16-16-132-005-0000
MASTER PLAN: East Bench
ZONING DISTRICT: R-1/5000 – Single-Family Residential District

REQUEST:

Lindsey Henderson and Nicole Neumarker, owners of the property at 1481 South 1500 East are requesting approval for a proposed over-height fence. The proposed 9-foot fence would be installed along a 12-foot long portion of the north side of their rear property in order to provide reasonable privacy in their rear yard. The Planning Commission has final decision making authority for Special Exceptions.

RECOMMENDATION:

Based on the findings listed in the staff report, it is the Planning Staff's recommendation that the Planning Commission approve an over-height fence of 9-feet tall in order to provide the applicant with additional privacy in their rear yard as requested.

ATTACHMENTS:

- A. [Vicinity Map](#)
- B. [Applicant Materials](#)
- C. [Site Photographs](#)
- D. [Analysis of Zoning Standards](#)
- E. [Public Process and Comments](#)
- F. [Motions](#)

PROJECT DESCRIPTION:

This is a Special Exception request for an over-height fence in a portion of a rear yard of a single-family dwelling. The applicant has proposed a fence 9-feet in height along a portion of the north property line. Fences in the rear yard are limited to 6-feet in height in all residential districts. Additional height may be requested through the Special Exception process. The Special Exception will only be approved if the proposal meets the General Standards and Considerations for Special Exceptions (21A.52.060) and 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.

KEY ISSUES:

The key issues listed below have been identified through the analysis of the project, and public input.

Issue 1: Elevation to a Planning Commission Hearing

Section 21A.52.040(5)(b) of the Salt Lake City Municipal Code states that: *“The planning director or the planning director’s designee may refer any application to the planning commission due to the complexity of the application, the significance in change to the property or the surrounding area.”*

This application has been elevated to a Planning Commission hearing based on receiving public feedback that is not supportive of the project. Staff is seeking to provide a forum for any concerns to be heard. More specifically, the neighbor adjacent to the fence has objected to a fence being built at this height and feels that it will be out of character for the neighborhood, would create a walled-in effect in their backyard and adversely impact the value of their property.

Issue 2: Adverse Impacts to Surrounding Properties

The proposed fence will be 9-feet in height, approximately 12-feet long and will be located between the properties for the purposes of facilitating privacy between the neighbors. The property owners may request an over height fence through the Special Exception process. An over height fence can be approved subject to the standards found in Attachment E of this report.

The proposed fence is located in a portion of the rear yard between neighboring property owners. When viewed from the street frontage, the fence would not be readily visible to passers-by on 1500 East. From a perspective of public space, the additional fence height would not have a discernable impact on neighboring properties aside from the immediate neighbor to the north and would not be out of character for the neighborhood as a whole. While the fence may be more visible to the rear and for neighbors on either side, the oversized garage in the neighbor’s yard to the north effectively blocks the view of most of the fence. The characteristics of an oversized rear garage on the neighboring property to north already create a character of creating a walled-in effect in their backyard so the fence will not substantially change the established character of their rear yard.

Issue 3: Scale of Fence Modification and Relationship to Site Conditions

The adjacent neighbor has stated that they recognize that their rear deck impinges on the yard privacy of the applicant. However, they have stated that a 9-foot fence would create a walled-in effect in their back yard which would be undesirable and could adversely affect their property value since it is very out of character for the neighborhood. They have also stated that they would support a middle-ground solution of an over-height fence that is no taller than 7.5 feet tall between their properties. In addition, they have also planted two columnar birch trees along the south side of their property, adjacent to the proposed fence in order to provide a natural barrier when they fill in over time.



View of the proposed fence location showing the neighbor's elevated deck and over-height garage

The proposed fence would be located behind the primary residence in the portion of the rear yard shared by the applicant and their neighbor to the north. The photo above shows the location of the proposed 9-foot fence that would be approximately 12-feet in length. The proposed fence is located within the applicant's rear yard, within a couple of feet of the property line. The neighboring property owner's elevated deck extends approximately to the property line itself.

Planning Staff recognizes the applicant's right to privacy as defined in 21A.52.030 (A)(3) (e) while also balancing the aesthetics as mentioned in the same section. While the 9-foot height would create some additional feeling of being "walled in" for the neighbor to the north, that effect can be attributed more to the location of their over-height garage near their south property line. That garage was approved through a Special Exception with the Board of Adjustment and later modified to provide for a hobby shop as occupiable space through a Special Exception. In conjunction with their recently installed elevated deck which links the house to the garage, the effect of looking down into and looming over the applicant's yard is quite evident from field observations. In addition, while the columnar birch trees planted by the neighbor will help with screening, the solution is seasonal as the trees shed their leaves. While the deck may not be used as much during the winter, the effect of an invasion of privacy caused by the combination of the deck and over-height garage would be a year-round issue for the applicant.

The usual standard for creating a reasonable and expected level of privacy in the rear yard of a single-family dwelling is established by a 6-foot tall fence, which coincides with the height limit for the zoning district. In this case, special circumstances must be considered. Specifically, due to the neighbor's elevated deck, the applicant does not have the same level of expected privacy as the effective height of the fence has been reduced by the height of the deck which is approximately

2-3 feet off the ground. The proposed taller fence would provide the applicant with the expectation of privacy they would have with a 6-foot fence if the deck was built at grade or set back further from the property line.

A nexus between the applicant's desire and right to privacy and the scale of modification proposed has been established. The proposed fence would provide the applicant with a reasonable and expected amount of privacy in their rear yard given the existing conditions.

NEXT STEPS:

Approved with Staff's Recommendation

If approved, the applicant will be able to apply for a building permit to construct an over-height fence of 9-feet in height.

Deny

If denied, the applicant will be able apply for a building permit to construct a fence up to the maximum height of 6-feet allowed in the residential zoning district.

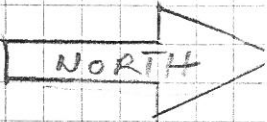
ATTACHMENT A: VICINITY MAP



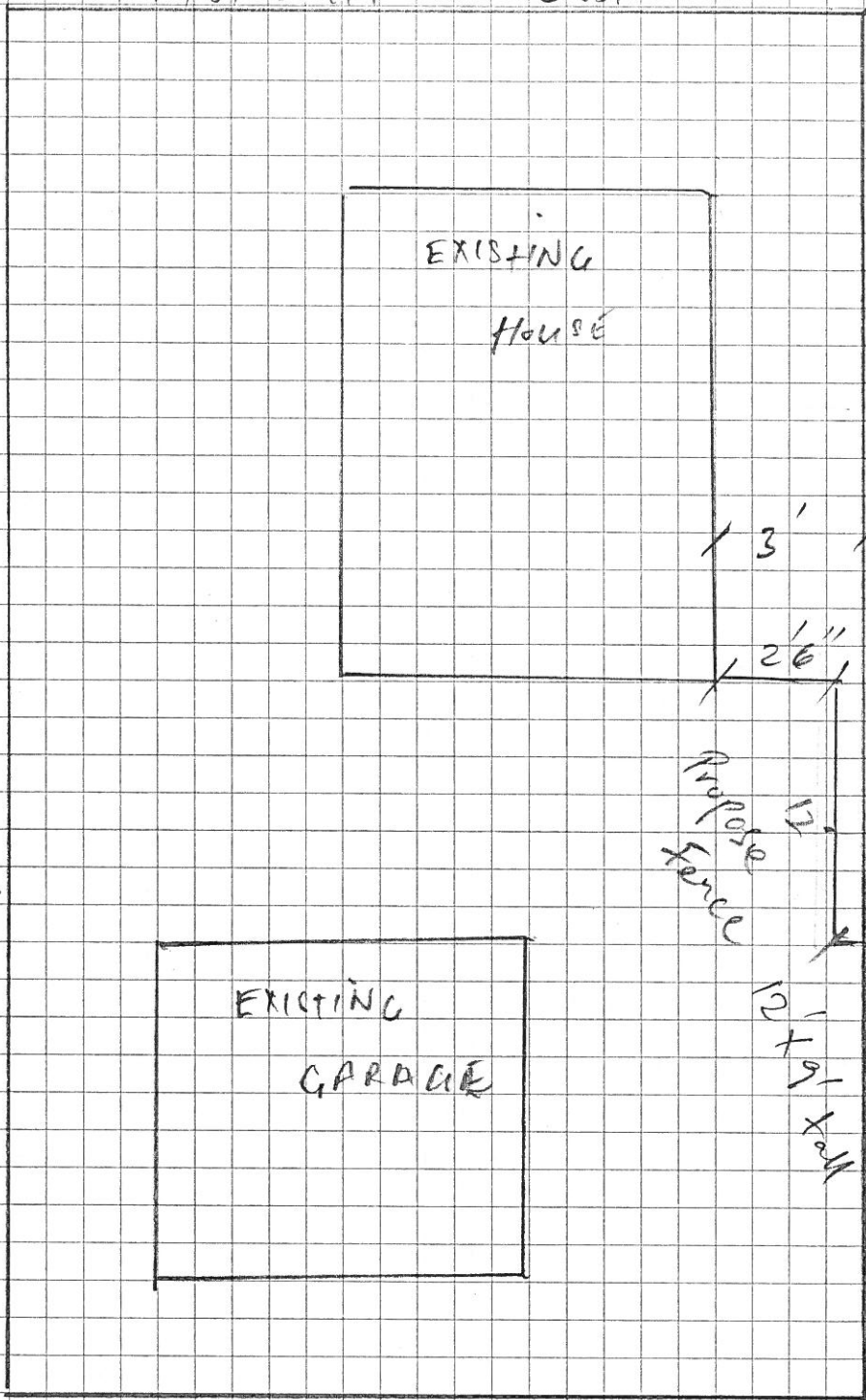
ATTACHMENT B: APPLICANT MATERIALS

Project Description

We are proposing a 2x6 x 9' tall wall by 12' long on the north side of our property because our neighbor just installed a wood deck 4' off the ground and about 3' from our old fence which was 6' tall. which make our yard inexcusable because of the lack of privacy so all we are asking is for our fence to be 6'^{high} above my neighbor's deck floor so we can have the privacy we deserve. Thank you.



1481 South 1500 East



EXISTING
HOUSE

3'

2 1/6"

Propose
Fence

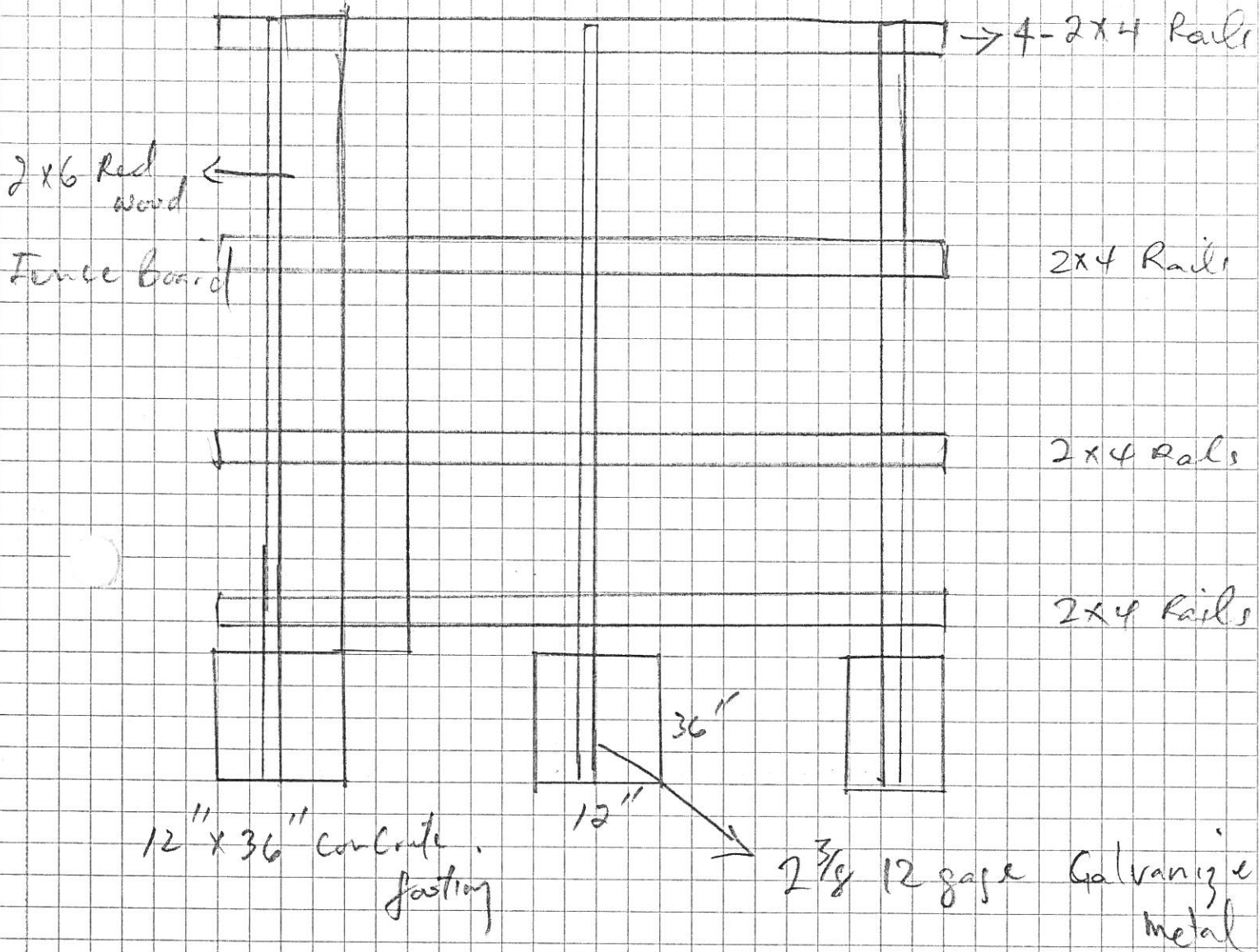
12' x 9'
Hall

EXISTING
GARAGE

119.50'

39.60'

Fence Details



2x6 x 9' Red wood Fence 12' long.

ATTACHMENT C: SITE PHOTOGRAPHS



Proposed fence – posts are approximately 9-feet tall.



Location of the proposed fence between the property showing elevation of neighboring deck and row of columnar birch trees planted for extra seasonal screening.

ATTACHMENT D: ANALYSIS OF ZONING STANDARDS

21A.40.120: REGULATION OF FENCES, WALLS AND HEDGES:

A. Purpose: Fences, walls and hedges serve properties by providing privacy and security, defining private space and enhancing the design of individual sites. Fences also affect the public by impacting the visual image of the streetscape and the overall character of neighborhoods. The purpose of these regulations is to achieve a balance between the private concerns for privacy and site design and the public concerns for enhancement of the community appearance, and to ensure the provision of adequate light, air and public safety.

21A.52.030: Special Exceptions Authorized

3. Additional height for fences, walls or similar structures may be granted to exceed the height limits established for fences and walls in 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:

- 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;
- f. Keeping within the character of the neighborhood and urban design of the city;

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

No application for a special exception shall be approved unless the planning commission or the planning director determines that the proposed special exception is appropriate in the location proposed based upon its consideration of the general standards set forth below and, where applicable, the specific conditions for certain special exceptions.

Standard	Finding	Rationale
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.	Complies	The proposed fence would have no impact that is contrary to the overall purpose of the zoning ordinance or specific zoning district. Furthermore, the purpose statement for fences (21A.40.120) recognizes a balance between the concerns for private concerns for privacy and the visual impact on the public. In this case, the fence would not have an impact on the public realm and would not be readily visible from such. The fence would be in harmony with the purpose statement for fences regarding privacy in that it would provide the applicant with reasonable privacy in their rear yard given existing site conditions.
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.	Complies	The neighboring property owner has expressed concern about the fence adversely impacting their property value. There is no evidence that there will be a substantial impact on property value.

<p>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.</p>	<p>Complies</p>	<p>Due to the location of the fence in the rear yard, the fence will have no discernable on the public realm or upon the character of the area.</p>
<p>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.</p>	<p>Complies</p>	<p>While a 9-foot fence is substantially taller than the 6-foot maximum allowed, the site specific conditions would conceal the fence from surrounding development. This fence would help make the neighbor's existing development which includes an oversized garage in the neighboring yard and an attached elevated deck that was recently added, more compatible with the applicant's property because it maintains an expected level of privacy that is normally provided by a six foot tall fence.</p>
<p>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.</p>	<p>Complies</p>	<p>The proposal will not result in the destruction of significant features.</p>
<p>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.</p>	<p>Complies</p>	<p>The proposal will not create any pollution.</p>
<p>G. Compliance with Standards: The proposed use and development complies with all additional standards imposed on it pursuant to this chapter.</p>	<p>Complies</p>	<p>The proposal will comply with all standards.</p>

ATTACHMENT E: PUBLIC PROCESS AND COMMENTS

Public Process:

- Notice of application letters sent to abutting property owners on August 15, 2016
- Public hearing notice mailed on September 15, 2016
- Public hearing notice posted on the City and State websites on September 15, 2016
- Public hearing sign posted on property on September 14, 2016

Public Comments:

Staff has received public comments from the adjacent property owner to the north via email.

The neighboring property owner expressed the following:

- Opposed to the petition
- Fence would create walled-in effect in their backyard
- Interconnectedness of homes in Wasatch Hollow is a unique characteristic that should be preserved.
- Potential impact on property value.
- Supportive of a compromise solution of a fence up to 7.5 feet high along with natural vegetation to create a buffer.

The full text of the email can be found on the following page.

Gellner, David

From:
Sent: Friday, August 19, 2016 2:53 PM
To: Gellner, David
Subject: Petition # PLNPCM2016-00623

Follow Up Flag: Follow up
Flag Status: Completed

Dear Mr. Gellner,

Thank you for your notice re: Petition # PLNPCM2016-00623—a request by N Neumarker and L Henderson to erect a 9 ft wall on the property line between our homes. We've made it known to our neighbors that we are not in support of such a high fence, and would like to formally dispute that special exception request for the following reasons:

- 1) **The interconnectedness of the homes in Wasatch Hollow is a unique and special characteristic that should be preserved and appreciated.** We love the tight-knit character of this neighborhood. When the kids and I dance in the living room, the neighbors across the street can see through our large picture windows. When I'm singing in my shower, our poor neighbor Dennis will hear my screeching while he's out watering his raspberries. When my two year old runs around naked in the back yard, our neighbor across the alley giggles and waves hello. If you've listen to the Oral Histories collected by the Wasatch Hollow Community Council, you've heard the stories from residents who grew up here from the 1930's through the 1960's extoll the virtues of the interconnectedness of this neighborhood. This is why people want to live here; it's why we love living here, and we think it's an attribute that should be preserved.
- 2) **A 9 ft. wall would create a walled-in effect in our back yard.** Not only do we think that this is undesirable for us, but we think that this would adversely affect our property value, as it's so out of character for this neighborhood.

We understand the desire for privacy, and we understand that our neighbors feel that the landing behind our home has infringed upon their sense of privacy. In an effort to remedy that, we have since planted two columnar birch trees along the South side of our property, adjacent to the proposed fence. In time, they will fill the space with a natural barrier. The fence along the property line was in poor condition, and they have already removed it, so something needs to be put in its place. **We would support a middle ground solution of a fence greater than 6ft in height, but no higher than 7.5 ft.**

Thank you for your time and attention. Please feel free to call if you would like to discuss or have any questions.

Regards,

Bianca Covio Shepard

ATTACHMENT F: MOTIONS

Staff Recommendation:

Planning staff is recommending Approval of the Special Exception for the 9-foot fence. The proposal meets the General Standards and Considerations for Special Exceptions found in Chapter 21A.52.060.

Potential Motions:

Approval

Consistent with Staff Recommendation:

Based on the findings, testimony, and plans presented, I move that the Planning Commission approve the Special Exception for an over-height fence of 9- feet in height as recommended by Staff.

Not Consistent with Staff Recommendation:

Denial

Based on the testimony, plans presented, and the following findings, I move that the Planning Commission deny the petition for a Special Exception for the over-height fence.

(The Planning Commission shall make findings on the Special Exception standards and specifically state which standard or standards are not supported by the request. Please see Attachment D for applicable standards.)