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2 **MINUTES OF THE COTTONWOOD HEIGHTS CITY**
3 **ADMINISTRATIVE HEARING**
4

5 **Wednesday, January 3, 2024**

6 **12:00 p.m.**

7 **City Council Chambers**

8 **2277 East Bengal Boulevard**

9 **Cottonwood Heights, Utah**
10

11 ***ATTENDANCE***
12

13 **Staff Present:** Michael Johnson, Community and Economic Development Director/Hearing Officer
14 Maverick Yeh, Assistant Planner
15 Maria Devereux, Deputy City Recorder
16

17 **Attendees:** Sally Burt
18 J. Shelton Burt
19 Mary Bailey
20 Travis Bailey
21 Brad Carter
22 Kelly Marsden
23

24 **ADMINISTRATIVE HEARING**
25

26 **1.0 Business Items**
27

28 Administrative Hearing Officer, Michael Johnson called the meeting to order at 12:00 p.m. and
29 welcomed those present.
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31 **1.1 (Project CUP-23-016) Request from Brad and Chari Carter to Construct a Six-**
32 **Foot Four-Inch Fence along the North Property Line at 7245 South Dorset Circle.**
33

34 City Planner, Maverick Yeh, presented the Staff Report and stated that the request was to construct a
35 6'4" fence along the north property line. The subject property is located at 7245 South Dorset Circle.
36 The applicants were identified as Brad and Chari Carter. The request stemmed from a desire for
37 increased privacy between the applicants' front yard and the neighbor's rear yard. The property
38 zoning designation is R-1-8 (Residential Single-Family). As the property line is a shared boundary
39 between a rear yard and a front yard, City Staff interpreted the Code as allowing a six-foot fence on
40 this boundary. The actual implementation resulted in posts that are four inches higher once capped.
41 Following a Code Enforcement investigation, the applicant applied for a Conditional Use Permit to
42 ensure that both the usage and height of the fence align with the City's regulations. This proposed
43 fence aims to provide a reasonable level of privacy to homeowners and consists of Trex materials.
44 Fences and walls may be allowed to a maximum height of eight feet in any zone as a Conditional Use
45 and up to 12 feet as a Conditional Use with neighbor consent. As this proposal is requesting only
46 6'4", consent was not required. Three public comments were received and were submitted to Hearing
47 Officer Johnson.
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1 Mr. Yeh presented the Staff analysis and stated that the subject property is located on a cul-de-sac.
2 The fence links the front yard area to the backyard of the adjacent neighbor, which is why City Staff
3 interpreted the Code as allowing a six-foot fence at this location. In addition, the fence does not affect
4 the clear view area located 30 feet from the driveway approach. Per the application, Staff deemed
5 the proposed 6'4" fence to be a reasonable privacy enhancement and the additional four inches do not
6 impose any unreasonable or negative impact. Staff recommended the fill material be removed from
7 against the fence or the fence assessed by a licensed Engineer and deemed fit to withstand such a load
8 and ensure that the fill is graded to prevent debris runoff. Staff recommended approval pursuant to
9 the findings and conditions enumerated in the Staff Report.

10
11 The applicant, Brad Carter, reported that Trex fencing has specific requirements and any deviation of
12 the six-foot panels will need to be cut. The neighbors submitted a complaint regarding the view
13 corridor and while their concerns are well-intentioned, there is no legal basis for a perpetual view
14 corridor from their kitchen window. The issue becomes whether the fence is measured from the top
15 of grade or to the top of the post. He believed the Code is subject to interpretation and after meeting
16 with architects, developers, and attorneys, it was the consensus that the fence is the fence and the post
17 is the post. He agreed to comply with Staff's recommendations and look for equal application of the
18 Code to avoid disparate treatment. Measurements were taken from natural grade from his side of the
19 property where the posts were dug and soil removed, which has since been replaced with soil pep on
20 top. The last 18 inches of the 67-foot length of fence slopes to the sidewalk. Mr. Carter expressed a
21 willingness to comply with the City's intent and fill the space below the rail for retention purposes.

22
23 Hearing Officer Johnson asked if each section of the fence was installed individually. He stated photos
24 show sediment erosion below the fence and asked if there was an alternative solution to fully eliminate
25 any debris flow. Mr. Carter confirmed that each section was installed with posts with a top and bottom
26 rail. The Trex material is then placed within the rails and believed to be a very efficient way to
27 construct a fence. Regarding additional mitigation options, he proposed a metal sheet be placed on his
28 side of the fence and into the ground to prevent any dirt from going onto the neighbor's property. Staff
29 suggestions were welcomed.

30
31 Hearing Officer Johnson reported that per the Ordinance requirements, a Building Permit is required
32 for any fence over six feet in height. There will be a subsequent step and numerous requirements to
33 ensure that the subject property is compliant. The nature of the hearing was to address the Conditional
34 Use request for additional height above six feet.

35
36 *Travis Bailey* identified himself as a Licensed Civil Engineer and the owner of property at 2164 East
37 Worchester Drive. He emphasized that it was not his intent to hold up the Carter's project but to ensure
38 that it is constructed correctly. He completed a line-of-sight analysis using sight triangles to clear the
39 area that is in conflict. Based on the analysis, he felt that the left section of the fence should be
40 removed, lowered, or reduced to avoid limiting the line of sight. The request was due to a cul-de-sac
41 in the area that causes the sidewalk to taper away. They are required to look through the fence to see
42 approaching bicycles or pedestrians. He recognized that the City has determined that a six-foot fence
43 is permitted. His second concern was the apparent disregard for adjacent properties as the fence has 7
44 to 11-inch gaps where the landscaping is already sliding onto his property. Stability was an issue as
45 the fence being constructed does not have properly compacted soil and stable slips around all sides of
46 the fence post. At the sidewalk, the final post is seven feet from natural grade. As a resident,
47 Mr. Bailey felt that was too high for site-specific conditions and particularly adjacent to a sidewalk.

1 He believed that the seven-foot height forces them into a Conditional Use Permit if they were to replace
2 their existing fence and match the height of the corner post.

3
4 *Mary Bailey* reported that she owns the home at 2164 East Worchester Drive. She expressed concern
5 with the applicants choosing to build a fence between their properties. Several small children in the
6 neighborhood spend hours outside running between each other's homes. She was concerned about
7 visibility for children riding bicycles. She reported that the Carter's fencing has created gaps beneath
8 of up to 12 inches and she has shoveled dirt from under the bottom rail that has resulted in their existing
9 fence serving as a retaining wall. Should they ever choose to remove the fence, the dirt will come onto
10 their property and create problems. Ms. Bailey stated that the seven-foot fence height does not match
11 the feel or look of the neighborhood and puts them in a predicament should they ever build a fence.
12 She was opposed to the request and believed there were other reasonable solutions to solve the problem
13 the fence posed.

14
15 *Kelly Marsden* had significant safety concerns with the proposed fence height. Children ride and play
16 in the neighborhood and she wants to ensure their safety. She emphasized that the reduction in
17 visibility is worrisome.

18
19 *Sally Burt* gave her address as 7258 Dorset Circle and stated that the Bailey's existing fence is chain
20 link with broken slats. The home across the street has a six-foot white vinyl fence that is similar to the
21 applicant's. Neighborhood children play in the cul-de-sac and there have been reoccurring safety
22 concerns. They have had multiple discussions with the Baileys regarding their children riding bicycles
23 back and forth to the extent that her family questions whether it is safe to drive. She did not believe
24 the fence was a problem and felt it was up to the parents to keep their children in their backyards rather
25 than playing in the street.

26
27 There were no further public comments. The public hearing was closed.

28
29 Hearing Officer Johnson reported that the City code does not regulate aesthetics in residential settings. He
30 noted that the one item prohibited in the ordinance is unfinished chain link fencing, which the subject
31 fencing is not. He did not believe the additional height creates an impact from an aesthetic standpoint
32 and the ordinance that is in place will sufficiently address structural concerns. Building Permits
33 typically address issues such as retention and debris or sediment discharge, which are legitimate
34 concerns.

35
36 With regard to the City's clear view policy, Hearing Officer Johnson stated that the only intersecting
37 street is near the end of the cul-de-sac that is within the 30-foot clear view triangle. He believed clear
38 sight was not an issue in regards to the nearest street intersection. Without additional assessments or further
39 deliberation by the City, he asked if the applicant was willing to either remove the panel closest to the
40 sidewalk or lower the span to a height of four feet. He believed the shared concerns were compelling
41 enough that if there is an unwillingness from the applicant and he desires to keep the application as-
42 is, which he is entitled to do, he would be interested in sending additional Staff to the subject property
43 to analyze the situation more completely prior to making a decision.

44
45 Mr. Carter was not willing to modify the height to four feet. He did not believe the end panel made
46 any difference with regard to obstruction of the view. He agreed to lower the height to just under the
47 current six-foot requirement. Hearing Officer Johnson stated that bringing the fence height down to 5

1 to 5 ½ feet would result in visibility concerns being reasonably addressed without having to request
2 additional approval. The applicant verbally agreed to this modification.

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4 **Hearing Officer Johnson moved to APPROVE Project CUP 23-016 subject to the following:**

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6 **Findings:**

- 7
8 **1. There is clear and convincing evidence shown by the property owner relating to**
9 **privacy will be substantially minimized or eliminated by the implementation of**
10 **the requested wall and fence combination (19.76.050.E.1.a).**
- 11
12 **2. The construction of such a wall and fence is the most reasonable solution under**
13 **the circumstances. The additional fence height is necessary to ensure mitigation**
14 **of the aforementioned issues.**
- 15
16 **3. The Conditional Use Permit is granted by the director or his designee following**
17 **an administrative hearing preceded by all required notifications.**
18 **(19.76.050.E.1.b).**
- 19
20 **4. The evidence presented with the proposed conditional use has been found to be**
21 **compliant with the requirements of Section 19.84.080 (Conditional Uses –**
22 **Determination) and Section 19.76.050.E (Miscellaneous – Fences).**
- 23
24 **5. There is sufficient evidence that the standards for the issuance of a Conditional**
25 **Use Permit as outlined in Section 19.84.080 CH Code have been satisfied.**

26
27 **Conditions:**

- 28
29 **1. A Building Permit and all necessary inspections shall be obtained and completed.**
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31 **2. The Building Permit will clearly state materials, and design, and shall not exceed**
32 **a total height of 6' 4" from the existing grade.**
 - 33
34 **3. Any fill material bearing upon the fence from the applicant's property shall be**
35 **fully removed or re-graded. This condition shall require inspection and written**
36 **approval by City Staff to be considered satisfied.**
 - 37
38 **4. The applicant shall clearly provide an acceptable solution to prevent runoff**
39 **sediment overflow or discharge of that nature both onto adjacent properties and**
40 **the public right-of-way. The solution be incorporated into the approved**
41 **structural design of the fence.**
 - 42
43 **5. The applicant shall work with Staff to reduce the vertical height of the first**
44 **section of fencing adjacent to the public sidewalk to a height of approximately 5**
45 **to 5 ½ feet to address potential visibility concerns raised in the hearing.**
- 46

1 **2.0 Consent Agenda**

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3 **2.1 Approval of Administrative Hearing Officer Minutes from January 3, 2024.**

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5 **The Administrative Hearing Officer will APPROVE the minutes of the January 3, 2024, meeting**
6 **after the following process is completed. The City Recorder will prepare the minutes and email**
7 **them to the Hearing Officer. The Hearing Officer will have five days to review the minutes and**
8 **provide any changes to the Recorder. If, after five days there are no changes, the minutes will**
9 **be approved. If there are changes, the process will be followed until the changes are made and**
10 **the hearing officer agrees, at which time the minutes shall be deemed approved.**

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12 **3.0 Adjournment**

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14 **The Administrative Hearing adjourned at approximately 12:35 p.m.**

1 ***I hereby certify that the foregoing represents a true, accurate, and complete record of the***
2 ***Cottonwood Heights City Administrative Hearing held Wednesday, January 3, 2024.***
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4 Maria Devereux, Deputy City Recorder
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