

A Variance Meeting held at Nibley City Hall, 455 West 3200 South, Nibley, Utah, on Tuesday, June 4, 2019.

The following actions were made during the meeting:

Mr. Hillyard said he would deny the request for a variance and gave the following reasons:

He said literal enforcement of the ordinance didn't require an unreasonable hardship on the applicant because they could construct a four-foot fence or a six-foot fence with the last two feet being transparent.

Mr. Hillyard said special circumstances didn't apply on the property.

Mr. Hillyard said the variance wouldn't substantially effect the general plan and would not be contrary to public interest.

Mr. Hillyard said the spirit of the land use was observed and substantial justice done.

Mr. Hillyard said he would deny the application because he felt there was a reason for a four-foot fence up to the sidewalk and he hadn't seen anything on the applicant's property to change that.

OFFICIAL MINUTES OF THE MEETING
Deputy City Recorder, Cheryl Bodily, took minutes

Call to Order

Lyle Hillyard, Nibley City's Administrative Hearing Officer convened the appeal hearing to order at 11:30 a.m. on Tuesday, June 4, 2019. Those in attendance included Variance Officer, Lyle Hillyard, and the applicants seeking a variance; Johnathan and Tiffany Whitmire. Mr. Stephen Nelson, Nibley City Planner, was also in attendance.

A request for a variance of Nibley City Code 19.24.090 at 3364 S 1500 W (Applicant Johnathan and Tiffany Whitmire)

Mr. Hillyard said this was a variance hearing from Nibley City zoning ordinance for the construction of a six-foot fence.

Mr. Nelson had a Google image of the applicant's property displayed on a projected screen.

Mr. Whitmire said they were seeking a variance to built a six-foot fence on the north side of their property line at 3360 South. He described how his children would see a four-foot fence as an obstacle or something to climb over; they were always climbing over things. Mr. Whitmire discussed that they had a baby and his wife would often need to attend to the baby and was not able to accompany the other children outside. Mr. Whitmire discussed that there was no driveway on that side of his property that would cause view or safety concerns for oncoming traffic and that the street was not a high traffic street. Mr. Whitmire discussed the fence at the house adjacent to his facing east; his home face west on 1500 West. He described commercial trucks driving down 1500 West that are driving down to a dairy. He said the six-foot fence would be a safety issue to keep his family safe in the backyard from this truck traffic. Mr. Whitmire discussed moving to their home and said they had right to a certain level of privacy for themselves, his children and two pets. Mr. Whitmire reported on conversations with his adjoining neighbors and that none of them had seen an issue with constructing a six-foot fence to provide privacy and security. Mr. Whitmire said he understood the true meaning of the corner-lot fence code; with safety for pedestrians and motor vehicles being the main concern. Mr. Whitmire showed and gave measurements of where he wanted to place his fence using the projected image. He said the location of his proposed fence provided view and vision for 60-75% of the street.

Mr. Hillyard clarified the fencing options the applicant currently had and where the applicant wished to place his fence and any known history of fence permitting on adjoining properties.

Mr. Hillyard stated that zoning ordinance was for the safety and security of everybody. He was concerned because the applicant could build a four-foot fence; that would take care of the children and and animals; what they needed the six-foot fence for was for privacy. Mr. Whitmire said they were concerned with privacy. He discussed other rough areas they had lived in where children had been taken right out of their yards. Mr. Hillyard didn't think 350 South would be a busy road but was concerned with 1500 west; that it would remain a very vibrant, cross-country road. Mr. Nelson said 1500 connected to Hyrum's industrial zones and there was some traffic on 1500 from those industrial and agricultural sites.

Mr. Hillard discussed the factors he had to consider when making a variance decision:

- (i) literal enforcement of the ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinances;
- (ii) there are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- (iii) granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;

- (iv) the variance will not substantially affect the general plan and will not be contrary to the public interest; and
- (v) the spirit of the land use ordinance is observed and substantial justice done.”

Mr. Hillyard said there were no special circumstances that applied to this property that were not applied to other properties in the same zone. Mr. Hillyard was not convinced there was anything unique about the property that would justify the variance. Mr. Whitmire argued that you would still be able to see 75% of the road and 3-4 other houses had already received variances to have their fences. Mr. Hillyard and Mr. Whitmire debated vehicle traffic view. Mr. Nelson and Mr. Hillyard discussed the history of the fences across the street.

Mr. Hill asked how having a four-foot fence plus two feet of transparency on the top would enhance safety. Mr. Nelson said the reason for the transparency was to increase visibility to streets for vehicles and pedestrians when approaching an intersection. Mr. Nelson was able to provide data showing anticipated traffic on 1500 West; it was anticipated there would be a fairly low traffic count on 1500 West. The side of the current intersection was capable of handling any anticipated increase in traffic. He said 1500 West would be maintained as a local road.

Mr. Hillyard said he would deny the request for a variance and gave the following reasons:

He said literal enforcement of the ordinance didn't require an unreasonable hardship on the applicant because they could construct a four-foot fence or a six-foot fence with the last two feet being transparent. Mr. Witmore discussed how easy it would be for his children to climb a four-foot fence.

Mr. Hillyard said special circumstances didn't apply on the property. Mr. Whitmire discussed other property owners having fences and that putting a six-foot fence cut the north side of his property in half and took away the use of the property. Mr. Hillyard said the applicant still had use, it just wasn't private.

Mr. Hillyard said the variance wouldn't substantially effect the general plan and would not be contrary to public interest.

Mr. Hillyard said the spirit of the land use was observed and substantial justice done. Mr. Whitmore said if the applicant show that the fence across the street to the east was approved after the zoning ordinance took place he would like to see it. If it wasn't granted, if it was a preexisting use before zoning, that, in and of itself, didn't justify changing the zoning. He assumed Nibley City would show this and could be found.

Mr. Hillyard said he would deny the application because he felt there was a reason for a four-foot fence up to the sidewalk and he hadn't seen anything on the applicant's

property to change that. Mr. Hillyard discussed the other options the applicant had. Mr. Whitmire and Mr. Hillyard reviewed the Nibley City fence code and discussed the interpretation and intent of the code. Mr. Nelson described Nibley City's interpretation of the corner fence code and said this was the intent of the code when it was passed.

Mr. Hillyard suggested the applicants could

1. Go to Nibley City and see if they would change their interpretation to allow his fence.
2. Or, File legal action with the court that there was ambiguity in the code and the ambiguity should be construed in their favor and should allow them to build their fence.

The appeal hearing concluded at 12:10 a.m.

Attest: _____
Deputy City Recorder