

March 16, 2023

Craig Hall, Hearing Officer
Bennett Tueller Johnson & Deere, LLC
3165 East Millrock Drive, Suite 500
Salt Lake City, UT 84121

**Re: City of South Jordan's Response Memorandum to Variance Application filed by
Thomas and Rebekah Wiandt.**

File No.: PLZNA202200215

Mr. Hall:

This letter is the City of South Jordan's (the "City") response in opposition to the variance application dated February 21, 2023 (the "Application"), for Thomas and Rebekah Wiandt (the "Applicants"). The Applicants request a variance from the City Code's fence requirements. The City respectfully requests that the variance be denied.

BACKGROUND

The Applicants own property located at 11201 S. Alisa Meadow Drive in South Jordan and seek to install a wrought iron or simulated wrought iron fence across the front of the property, as depicted in the drawings attached as Exhibit "C." The City does not allow fencing along the front of a home unless the home is facing a collector street. City Code §§ 17.40.020.H.4 and 16.04.200.C.1 (*See* Exhibit "A"). A diagram from the City's website (but not part of City Code) entitled "Residential Fence Requirements" states "[f]ences are not allowed to go across the front of the property unless parallel with a collector street." *See* Exhibit "B."

The Applicants' property does not face a collector street. As such, a front fence is in violation of City ordinances. Although the Application contains some discussion of landscaping, only the front yard fencing is in need of a variance.

MEMORANDUM

To obtain a variance, the Applicants have the burden of establishing the Application meets each of the five standards set forth in Chapter 17.16.020.030 F. of the City Code. These are:

- a. Literal enforcement of the requirement would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance;

- b. There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
- 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; and
- e. The spirit of the land use ordinance is observed and substantial justice done.

I. UNREASONABLE HARDSHIP

The Applicants must show that “[l]iteral enforcement of the [fence limitations] would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance.” City Code Chapter 17.16.020.030F.

With respect to this standard, the Applicants make the following statement in the Application (*see* Exhibit “D”):

There is not an economic hardship, we are proactively seeking to protect our property while maintaining the beauty of our home and surrounding homes.

In this regard, the City does not question the Applicants’ motives for constructing a front yard fence. However, this desire alone does not meet the required showing of hardship and does not justify a variance from the zoning laws. The Applicants claim a hardship because there is a school bus stop at the corner. Many homes throughout the City are located on a corner lot of two residential streets, and many homes are located near a school bus stop or near school walking routes. There is no hardship attributable to Applicants’ property that cannot be similarly attributed to many other properties within City boundaries.

II. SPECIAL CIRCUMSTANCES

The second factor the Applicants must prove is “[t]here are special circumstances attached to the property that do not generally apply to other properties in the same zone.” City Code § 17.16.020.030.F.1.b. “In determining whether or not there are special circumstances attached to the property ..., a hearing officer may find that special circumstances exist only if the special circumstances: a. Relate to the hardship complained of; and b. Deprive the property of privileges granted to other properties in the same zone.” *Id.* at § 17.16.020.030.F.4.

With respect to this factor, the Applicants make the following statement in the Application (*see* Exhibit “D”):

We have been the bus stop for all schools in the neighborhood for 23 years. Our yard is a constant garbage dump. We have been subjected to vandalism from the neighborhood children including graffiti on our home, decorations for holidays being destroyed and stolen, a pit stop for bikes, scooters, skateboard various toys, jogger, their clothing, water bottled etc. dog walkers and dog crap. We are tired of it.

Although the Applicants deserve sympathy and in some cases the services of the City's police department, these are not circumstances "attached to the property" that justify a variance. There are no special circumstances that apply to the Applicants' property, which deprive the Applicants of privileges granted to other similarly situated properties. All similarly situated properties are required to comply with the City's fencing requirements. Therefore, the Applicants have not met their burden for this standard.

III. VARIANCE IS ESSENTIAL TO ENJOYMENT OF A SUBSTANTIAL RIGHT

The third factor the Applicant must prove is "[g]ranting the variance is essential to the enjoyment of a substantial property right possessed by the other property in the same zone." City Code 17.16.020.030F.1.c.

The Applicants state that the property has been trashed and vandalized over the course of 23 years. Again, it is not shown how these issues are specific to Applicants' property and not common to issues around the neighborhood or the City. The Applicants fails to meet the burden of proof on the third factor.

IV. NO SUBSTANTIAL AFFECT TO GENERAL PLAN OR PUBLIC INTEREST.

The fourth factor the Applicant must prove is "[t]he variance will not substantially affect the general plan and will not be contrary to the public interest." City Code § 17.16.020.030.F.1.d.

This Application appears to be against the public interest, as variance approvals should be based on unique circumstances tied to the property. Nothing appears to be unique or specific about this property as shown in the Application. The issues presented by the Application are common issues for many homes around the City. For this reason, the Applicants have failed to meet the burden here.

V. SPIRIT OF THE ORDINANCE IS OBSERVED.

The last factor the Applicants must prove is "[t]he spirit of the land use ordinance is observed and substantial justice done." City Code § 17.16.020.030.F.1.e.

If a variance were granted here, the Applicants will have been given a privilege not enjoyed by others in the City and for circumstances not unique to their property.

CONCLUSION

For the variance to be granted, the Applicant must prove all five elements listed above. Because none of the five elements were proven, the variance request should be denied.

Regards,

Gregory M. Simonsen, Esq.
Assistant City Attorney

EXHIBIT A

CITY OF SOUTH JORDAN MUNICIPAL CODE

17.40.020: DEVELOPMENT AND DESIGN STANDARDS

H. Fencing, Screening And Clear Vision: The fencing, screening and clear vision requirements of this section shall apply in Residential Zones.

4. Front Yard Fencing: A maximum four foot (4') high, nonvisually obscuring decorative wrought iron, simulated wrought iron or nonobscuring vinyl picket fence may be constructed along a side lot line to the right-of-way line or sidewalk of a neighborhood street, except as regulated in Clear Vision Areas, according to Section 16.04.200 {J}. A masonry or solid vinyl fence or hedge may also be constructed along lot lines to the right- of-way or sidewalk but may not be greater than three feet (3') high. Brick pillars may not exceed eighteen inches (18") square or be closer than ten feet (10') on center. Posts or pillars may not extend higher than four inches {4"} above the fence panel.

16.40.200: FENCING

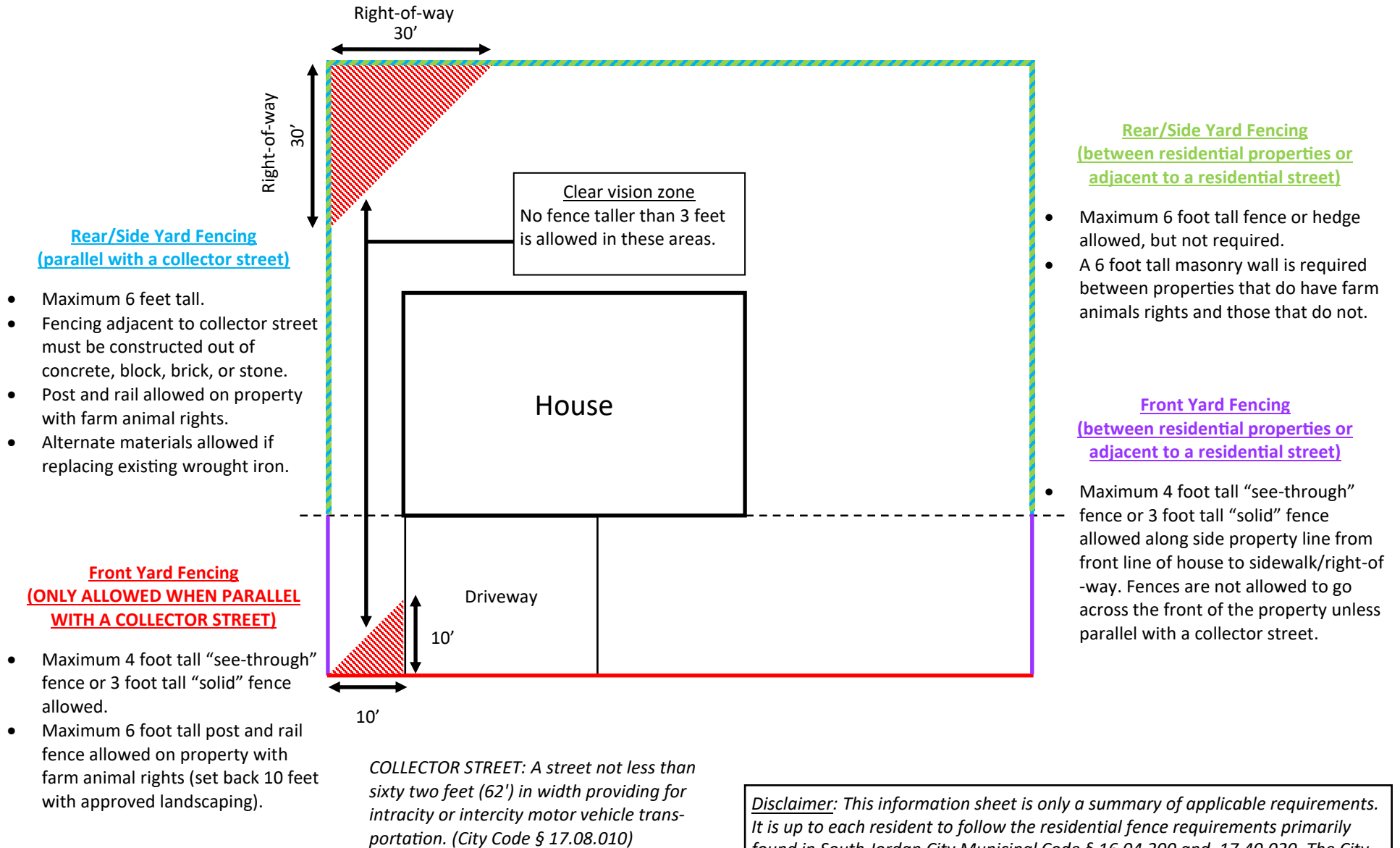
C. Fencing Between Residential Uses Abutting Collector Streets: The following fencing shall be installed and maintained between residential uses abutting collector streets:

1. Residential front yard fencing adjoining or parallel to collector streets shall meet the following criteria:
 - a. Height: Fence heights shall be measured from the finished grade of the edge of the right-of-way.
 - (1) A maximum of four feet (4') for nonobscuring fences or maximum three feet (3') for obscuring fences.
 - (2) A maximum six foot (6') reinforced post and rail style fencing is allowed on R-1.8 and agriculturally zoned properties which allow for large animals.
 - (3) A six foot (6') tall fence may be allowed parallel to the right-of-way if set back from the sidewalk ten feet (10') with approved landscaping.
 - b. Materials: Reinforced nonobscuring vinyl picket or split rail, decorative wrought iron, or a decorative precast concrete or integrally colored and textured block, brick, stone, or other masonry fence and/or wall, with an approved cap.
 - c. Design: Masonry fences shall have an architectural pattern and be earth tone colors. There shall be architectural relief features at minimum twenty five foot (25') intervals.

EXHIBIT B

Residential Fence Requirements

HEIGHT, FENCE: The vertical distance from the ground to the top of the fence panel (portion of fence between the fence poles or supports). Minimal fence poles or supports may extend no higher than six inches (6") above the fence panel. Fencing constructed above a retaining wall shall be located a minimum of three feet (3') from the top of said retaining wall. (City Code § 17.08.010)



Disclaimer: This information sheet is only a summary of applicable requirements. It is up to each resident to follow the residential fence requirements primarily found in South Jordan City Municipal Code § 16.04.200 and 17.40.020. The City Code can be found by visiting [South Jordan Municipal Code](#).

Wiandt Residence

EXHIBIT C



Scale: 1/10" = 1 ft

Symbol	Qty	Common Name
Herbaceous\Perennials		
	12	Perennials
Shrubs\Evergreen		
	4	Wintergem Boxwood
	4	Columnar Evergreen
	47	Littleleaf Boxwood
Trees\Evergreen		
	3	Italian Cypress

Fill Style	Category
	1" Light Tan Rock
	Artificial Turf
	Groundcover w/soil pep
	Shrub beds
	Stamped Concrete

*Groundcover plants:
Seasonal bulbs
Daylilies
Local wildflower species

Symbol	Qty	Name
Accessories\Statues		
	14	4' Columns - Stucco finish
Structures\Gates		
	1	4' High Iron Fence
Water Elements\Fountains		
	1	Fountain - 67.5" tall

Wiandt Residence



EXHIBIT D



CITY OF SOUTH JORDAN ■ PLANNING & ZONING
1600 W. TOWNE CENTER DRIVE ■ SOUTH JORDAN UT 84095
TEL. (801) 254-3742 ■ FAX. (801) 253-5235

VARIANCE APPLICATION

Brief Description of Variance Request:

The applicant is required to prove that all conditions justifying a variance have been met. After reading each section below describing the justifications for a variance, provide a brief explanation of how your request complies. Attach additional sheets if necessary. This application sheet along with other required materials will be submitted to the Hearing Officer to aid in his/her review and decision.

Before any variance may be authorized, it must be shown that:

- 1) 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;
 - a) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (1) above, the Board may not find an unreasonable hardship unless the alleged hardship:
 - i) Is located on or associated with the property for which the variance is sought; and
 - ii) Comes from circumstances peculiar to the property, not from conditions that are general to the neighborhood.
 - b) In determining whether or not enforcement of the land use ordinance would cause unreasonable hardship under Subsection (1) above, the appeal authority may not find an unreasonable hardship if the hardship is self-imposed or economic.

- 2) There are special circumstances attached to the property that do not generally apply to other properties in the same zone;
 - a) In determining whether or not there are special circumstances attached to the property under Subsection (2) above, the appeal authority may find that special circumstances exist only if the special circumstances:
 - i) Relate to the hardship complained of; and
 - ii) Deprive the property of privileges granted to other properties in the same zone.
- 3) Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same zone;
- 4) The variance will not substantially affect the general plan and will not be contrary to the public interest; and
- 5) The spirit of the land use ordinance is observed and substantial justice done.