

Administrative Hearing Staff Report

Meeting Date: March 11, 2020



FILE NUMBER: CUP-20-007

LOCATION: 2247 E Tompkins Drive, Cottonwood Heights, UT, 84121

REQUEST: Conditional use wall height extension to build an 8-foot fence along the east property line.

OWNER/APPLICANT: Michael and Bridgette Higgins

STAFF CONTACT: Samantha DeSeelhorst, 801-944-7069

RECOMMENDATION: Approve

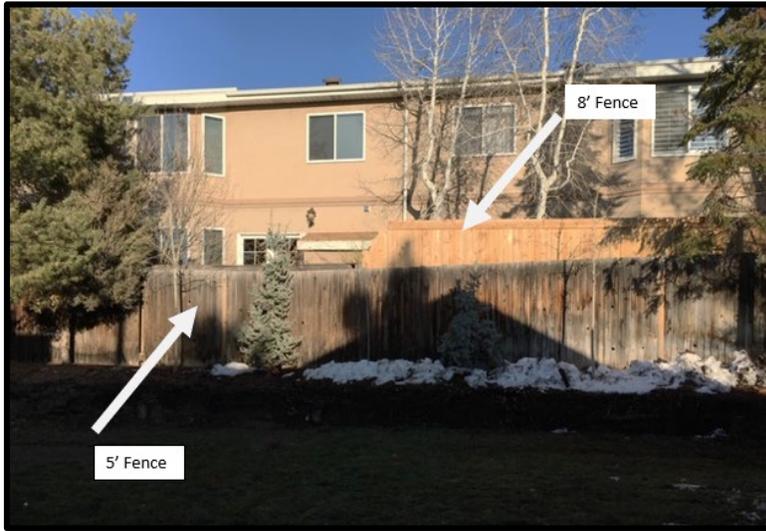


This aerial image shows the subject property in context of the neighborhood. The blue lines represent property lines, and the red line represents the location of the proposed 8-foot fence.

APPLICANT'S PROPOSAL

The applicant is proposing to construct an 8-foot Trex composite fence along their east property line. The rationale for this request, as explained by the applicant, is due to privacy issues and adjacent fencing. The applicant's property sits at the bottom of a slope, with its rear neighbor situated at the top of the slope. The applicant is requesting an 8-foot fence to help mitigate some privacy concerns between these two homes related to visibility into one another's windows.

Aside from privacy concerns, there are aesthetic concerns as well. One neighbor to the west of the applicant's property has an 8-foot fence (CUP-19-013), while another neighbor has a 5-foot fence. The applicant is proposing the construction of an 8-foot fence across their entire east property line in order to create a more uniform aesthetic and provide visual consistency.



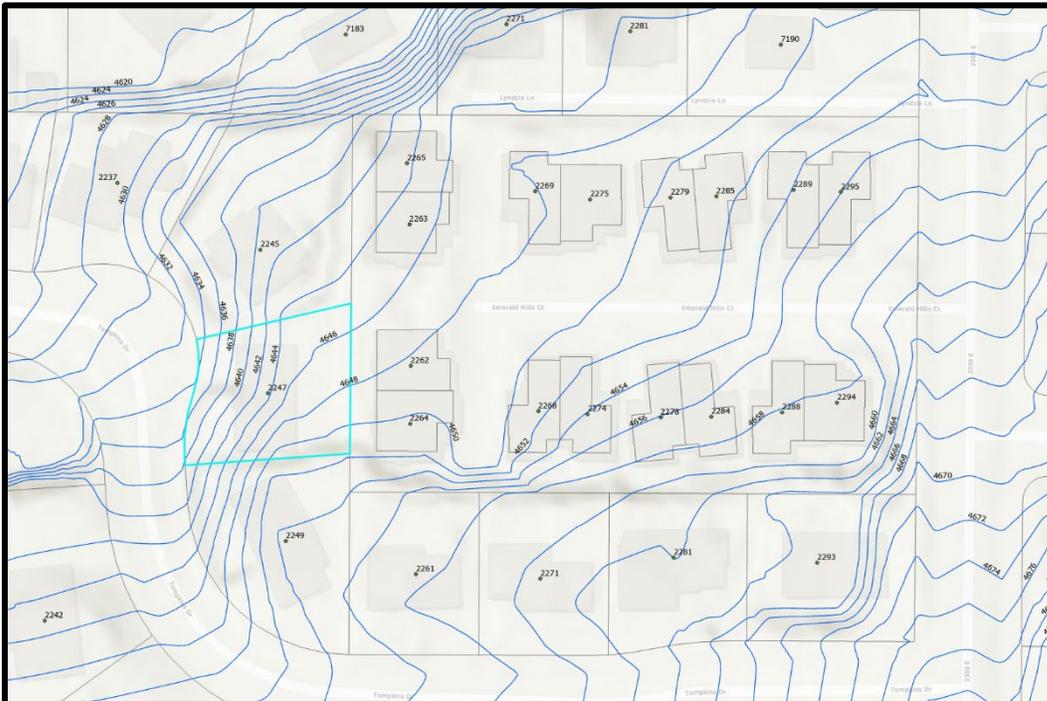
Demonstration of conflicting fence heights in the applicant's rear yard



TREX® FENCING BENEFITS

- More durable than competing materials
- Often referenced as benefit in real estate listings
- Low maintenance – no sanding, staining, or painting required
- 25-year warranty
- Aesthetic appeal on both sides of fence
- Made from 96% recyclable materials

Details of proposed fencing material



Contour map showing the west to east slope conditions of this property and its rear neighbor

BACKGROUND

Zoning

The zoning designation of the property is R-1-8 (Residential Single Family). Fences and walls may be allowed to a maximum height of eight feet in any zone as a conditional use, and up to 12 feet as a conditional use with neighbor consent, as outlined in section 19.76.050.E CH Code.

E. Fences.

1. No fence, wall or hedge shall be erected to a height which exceeds four feet in the required front yard and six feet in the side yards and/or rear yard. Fencing to a maximum height of eight feet may be allowed for side and/or rear yards as a conditional use upon a clear and convincing showing by the property owner:

(a) Of unique or special circumstances of a material, adverse nature relating to the property that will be substantially minimized or eliminated by the increased height of the requested fence; and

(b) That erection of such a fence is the most reasonable solution under the circumstances. Any such conditional use permit may be granted by the director or his designee following an administrative hearing preceded by all required notifications. A building permit shall be required for all fences approved as a conditional use.

(d) "Neighbor consent" means that all neighbors abutting the proposed wall/fence will be required to provide written consent for retaining wall/fence height above eight feet up to 12 feet.

3. Conditional use. Fences in the side and rear yards may be erected to the maximum height of eight feet as a conditional use upon a clear and convincing showing by the property owner in accordance with subsections (a) and (b) below:

(a) The existence of unique or special circumstances of a natural material and adverse nature relating to the property that will be substantially minimized or eliminated by the increased height of the requested fence; and

(b) That erection of such a fence is most reasonable solution under the most reasonable circumstances. Any such conditional use permit may be granted by the director or his designee following an administrative hearing preceded by all required notifications. A building permit shall be required for all fences approved as a conditional use.

4. Neighbor consent. Side and rear yard fences may exceed eight feet in height to a maximum height of 12 feet in cases where the applicant has neighbor consent and has received conditional use approval in accordance with subsection 19.76.050(E)(3).

IMPACT ANALYSIS

Staff Analysis: The proposed wall height extension meets the above requirements, as found in the zoning ordinance. Violation of any of these requirements may lead to revocation of any conditional use permit and/or business license on the property. Due to unique slope and existing fencing conditions, which impact privacy and aesthetic qualities, the erection of an 8-foot fence is the most reasonable solution to mitigate these concerns.

Nuisance Analysis

The reason the applicant is requesting the wall height extension is to increase privacy for surrounding properties and to prevent nuisances from neighboring homes, including lights, window visibility, etc.

Noticing

Property owners within 300 feet of the subject property have been mailed notices.

Conditional Use Permit Determining Criteria

Staff has found enough evidence that the standards for the issuance of a conditional use permit have been satisfied (see Section 19.84.080 CH Code).

FINDINGS FOR APPROVAL

1. There is clear and convincing evidence shown by the property owner of a unique or special circumstance relating to privacy and adjacent fencing that will be substantially minimized or eliminated by the implementation of the requested wall; (19.76.050.E.1.a)
2. That construction of such wall is the most reasonable solution under the circumstances. The additional fence height is necessary to ensure mitigation of aforementioned issues.
3. The conditional use permit is granted by the director or his designee following an administrative hearing preceded by all required notifications. (19.76.050.E.1.b)
4. The evidence presented with the proposed conditional use has been found to be compliant with the requirements of section 19.84.080 (Conditional Uses – Determination) and section 19.76.050.E (Miscellaneous – Fences).
5. There is sufficient evidence that the standards for the issuance of a conditional use permit as outlined in Section 19.84.080 CH Code have been satisfied.

ATTACHMENTS:

- 1. Applicant Statement**
- 2. Proposed Layout**