



ADMINISTRATIVE HEARING AGENDA

May 6, 2020

NOTICE is hereby given that the Cottonwood Heights Community and Economic Development Director or designee will hold an Administrative Hearing Meeting on **Wednesday, May 6, 2020 beginning at 12:00 p.m.** electronically. In view of the current COVID-19 pandemic, this meeting will occur only electronically, without a physical location, as authorized by the Governor's Executive Order 2020-05 dated 18 March 2020. The public may remotely hear the open portions of the meeting through live broadcast by connecting to <http://mixlr.com/chmeetings>

*****Public comments may be submitted to City staff by email at sdeseelhorst@ch.utah.gov up to the start of the meeting at 12:00 pm, MST. Comments received by that deadline will be verbally read into the meeting's record by the Director or a designee. Comments received after the start of the meeting will be forwarded to the Director, but not read into the meeting record or addressed during the meeting. There will be no opportunity for verbal comments, questions, or other input by the public during this electronic meeting.*****

12:00 p.m. ADMINISTRATIVE HEARING MEETING

1.0 Business Items

1.1. (Project CUP-20-008)

Request from Morgan Handley, on behalf of Lydia Riley, for a wall height extension at 2873 E. Elk Horn Ln.

2.0 Consent Agenda

2.1. Approval of Minutes for May 6, 2020

(The Director will move to approve the above-mentioned minutes after the following process is met. The recorder will prepare the minutes and email them to the Director and present staff members. The Director and members will have five days to review the minutes and provide any changes to the recorder. If, after five days there are no changes, the minutes will stand approved. If there are changes, the process will be followed until the changes are made and the Director and members agree, at which time the minutes shall be deemed approved.)

3.0 Adjournment

Meeting Procedures

Items will generally be heard in the following order:

1. Staff Presentation
2. Applicant Presentation
3. Open Public Hearing (if item has been noticed for public hearing). Written public comment received prior to the meeting will be read into the record.
4. Close Public Hearing
5. Community and Economic Development Director Deliberation
6. Community and Economic Development Director Decision

Administrative Hearing applications may be tabled if: 1) Additional information is needed in order to act on the item; OR 2) The Community and Economic Development Director feels there are unresolved issues that may need further attention before the Director is ready to make a decision. The Community and Economic Development Director may carry over agenda items to the next regularly scheduled meeting.

Submission of Written Public Comment

Written comments on any agenda item should be received by the Cottonwood Heights Community and Economic Development Department prior to the start of the meeting to be read into the record. Comments should be emailed to sdeseelhorst@ch.utah.gov. Comments received after the start of the meeting will be distributed to the Director after the meeting.

Notice of Compliance with the American Disabilities Act (ADA)

In compliance with the Americans with Disabilities Act, individuals needing special accommodations or assistance during this meeting shall notify the City Recorder at (801)944-7021 at least 24 hours prior to the meeting. TDD number is (801)270-2425 or call Relay Utah at #711.

Confirmation of Public Notice

A copy of the foregoing notice was posted in conspicuous view in the front foyer of the Cottonwood Heights City Offices. The agenda was also posted on the City's website at www.cottonwoodheights.utah.gov and the State Public Meeting Notice website at <http://pmn.utah.gov>.

DATED THIS 30th day of April, 2020
Paula Melgar, City Recorder

Administrative Hearing Staff Report
Meeting Date: May 6, 2020



FILE NUMBER: CUP-20-008

LOCATION: 2873 E. Elk Horn Ln., Cottonwood Heights, 84093

REQUEST: Conditional use wall height extension to construct a 5' fence on top of an existing 7' retaining wall

OWNER/APPLICANT: Morgan Handley, on behalf of Lydia Riley

STAFF CONTACT: Samantha DeSeelhorst, 801-944-7069

RECOMMENDATION: Approve



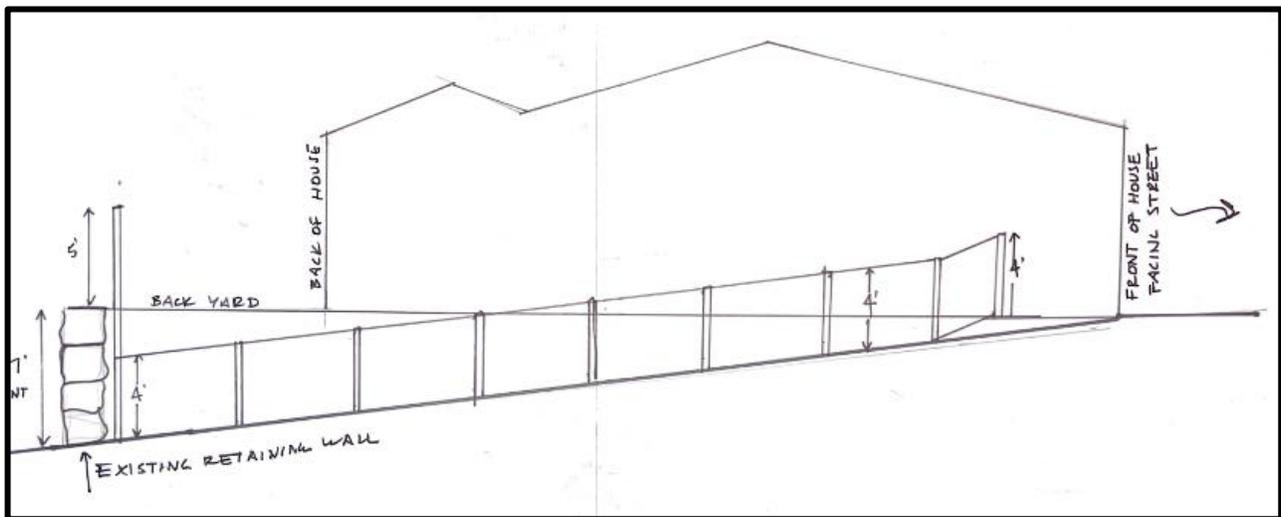
This aerial image shows the subject property in context of the neighborhood. The red lines show the property lines, and the blue line shows the location of the proposed fence.

APPLICANT'S PROPOSAL

The applicant is proposing to construct a 5-foot vinyl fence along the western (rear) property line at 2873 E. Elk Horn Ln. The proposed fence will sit on top of an existing 7-foot retaining wall. This retaining wall was built to retain the slope from the subject property to its adjacent western neighbor. As seen in the image below, the top of the retaining wall sits at grade with the rest of the subject property's rear yard. Because of this, the proposed 5-foot fence would only have an impact of 5 feet on the subject property, but would have an impact of 12 feet on the western neighboring property.



Demonstration of the existing retaining wall between subject property and western neighbor



Elevation view of the proposed 5' fence on top of the existing 7' retaining wall

The rationale for this fence is to provide safety for those using the backyard by providing a barrier along the retaining wall drop off. In the applicant's own words, "[It] would be safer to have a fence keeping children and animals out as well as in. The back yard along the retaining wall is only 13' wide so the drop off is dangerous. The fence would allow the residents to safely use the space and prevent objects from falling off and damaging the neighboring house."



Demonstrations of the shallow backyard and retaining wall drop off

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 were the applicant has neighbor consent and has received conditional use approval in accordance with subsection 19.76.050(E)(3).

Neighbor consent from the neighboring property to the west was required. This neighbor provided their consent, and their signed agreement has been included as an attachment at the end of this report.

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 drop off conditions between the subject property and its western neighbor, staff finds this application to be a reasonable mitigation effort.

Nuisance Analysis

The applicant is requesting the wall height extension in order to increase privacy and eliminate nuisances such as a sporting equipment falling over the edge and trespassing into the neighbor's yard. It is staffs' opinion that this nuisance, as well as nuisances relating to sight and sound, can be addressed by the proposed fence.

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), including the need for neighbor consent by the adjacent property.

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. **Site Photos**
3. **Proposed Layout**
4. **Neighbor Consent**

Application for fence Construction

Owner's Name: Lydia Riley

Address: 2873 Elk Horn Lane, Cottonwood Heights

Proposed Project description:

We propose to construct a white vinyl fence along the side and back of the Riley house at the about address. It is a corner lot on a descending hill. The fences will start 6' back on the southwest side of the house at a height of 4' and will descend in elevation along the grade of the existing hill, along the sidewalk to the bottom of the property at a continued height of 4'. It will then turn at a ninety degree angle to go along the back (northwestern) side of the property along almost the entire length of the property to tie in to the existing white vinyl fence on the northwest corner of the property. This section of fence will be 5' tall and on top of an existing retaining wall. This wall varies at a height of 6 to 7' so at the tallest point the fence would be 12'.

General Plan and purpose of compliance statements:

The fence will be 12' tall on top of the existing retaining wall.

Justification:

The property is along a street and would be safer to have a fence keeping children and animals out as well as in. The back yard along the retaining wall is only 13' wide so the drop off is dangerous. The fence would allow the residents to safely use the space and prevent objects from falling off and damaging the neighboring house.





2873 Elk Horn Ln - Google Maps

Google Maps 2873 Elk Horn Ln



4' Vinyl Fence

5' Vinyl Fence on Retaining Wall

4' Vinyl Fence

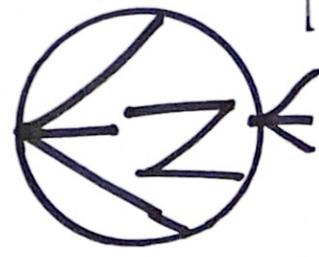
RILEY RESIDENCE R18

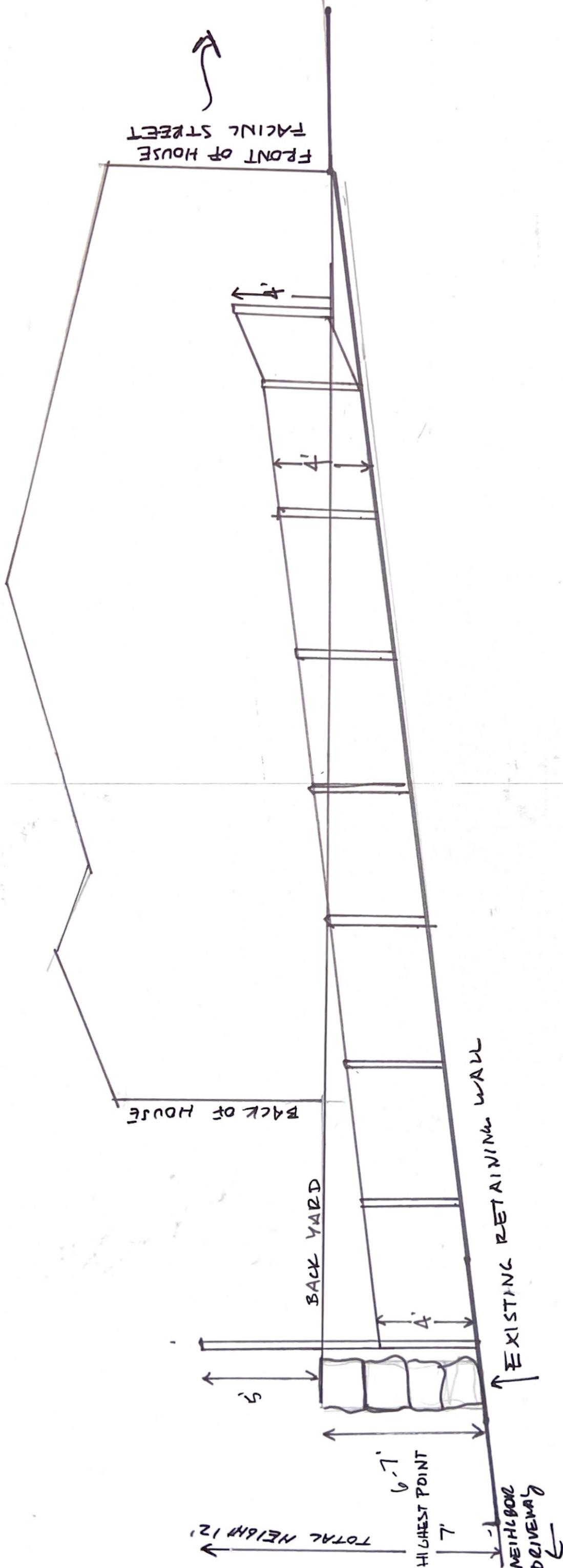
2873 ELK HORN LANE

SCALE 1:20

4/06/2020

NORTH ↑





RILEY RESIDENCE R18
 2873 ELK HORN LANE

4/06/2020



CONSENT TO WALL HEIGHT EXTENSION ON ABUTTING PROPERTY

1. I am the owner of property located at 2857 E. Elk Horn Ln.
Sandy 84093
2. I consent to the construction of a retaining wall/fence with a height above eight feet up to 12 feet on the property located at 2873 Elk Horn Ln.
3. I understand that the City of Cottonwood Heights has reviewed this proposal and found it to be in compliance with all adopted ordinances and laws pertaining to the general heights and design regulations for walls, fences and retaining walls, as required by 19.76.050.E. of the zoning ordinance.

XIMENG ZHU
Print Name(s)

Ximeng Zhu
Signature

4/8/2020
Date

Signature

Date

STATE OF UTAH)
 ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this _____ day of _____,
20__ by _____ and _____.

NOTARY PUBLIC