

Administrative Hearing Staff Report

Meeting Date: October 2, 2019



FILE NUMBER/

PROJECT NAME: CUP-19-013

LOCATION: 2264 E. Emerald Hills Court, Cottonwood Heights, UT, 84121

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

OWNER: John and Kathleen Kaloudis

APPLICANT: John and Kathleen Kaloudis

STAFF CONTACT: Samantha DeSeelhorst, 801-944-7069

RECOMMENDATION: APPROVE, pursuant to attached conditions of approval

APPLICANT'S PROPOSAL

The applicants are proposing to replace a section of their existing 6-foot fence, with an 8-foot fence. The existing fence is located in the rear yard of the home, along the west property line. The rationale for this request, as explained by the applicants, is due to privacy issues. As the applicants' home sits in such a way that they see directly into their neighbors' windows, they are requesting a higher fence to increase privacy. In addition to privacy, the applicants are proposing this extended fence to mitigate the light that shines from their home into their neighbors' windows. The applicants are planning to graduate the fence back down to a 6-foot level as it approaches their north property line, in order to tie in with their northern neighbor's existing 6-foot fence.

BACKGROUND

Zoning

The zoning designation of the property is R-2-8 (Residential Multi-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).

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.

Nuisance Analysis

The reason the applicant is requesting the wall height extension is to increase privacy for surrounding properties and to prevent light trespass into adjacent homes.

Noticing

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

Conditional Use Permit Determining Criteria

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

IMPACT ANALYSIS

Attachments:

1. Conditions of Approval & Findings
2. Context Aerial

CONDITIONS OF APPROVAL

1. The applicant must complete necessary steps to obtain a building permit.

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 light trespass that will be substantially minimized or eliminated by the increase 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 in compliance 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.

CONTEXT AERIAL

