

Minutes of the Hearing Officer meeting held on Wednesday, December 14, 2022, at 12:30 p.m. in the Murray City Municipal Council Chambers, 5025 South State Street, Murray, Utah.

Present: Scott Finlinson – Hearing Officer  
Susan Nixon – Senior Planner  
Zachary Smallwood – Senior Planner

Members of the public: Anthony Hall  
Mark Hardy  
Sandy Fullmer

## CONFLICT OF INTEREST

## No conflicts of interest

CASE # 1597 - ANTHONY HALL - 4733 South Hidden Woods Lane – Project #22-155

Ms. Nixon presented the application for Mr. Hall, who is requesting a variance to Section 17.64.020.A of the Murray Land Use Ordinance to allow the existing 6-foot-high fence to remain within the front yard setback area. The subject property is in the Cushing Woods Subdivision located on the north side of 4800 South. The subdivision was approved in March of 2005. A lot consolidation for lots #4 & #5 was approved by the Planning Commission in February 2021. The resulting lot #4A, is the subject property for this variance. Tony Hall, owner of both lots #4 and #5 (now lot #4A) is wishing to maintain the existing perimeter fence. At the time the fence was installed, it was solely on lot #5. In order to be granted, the variance must meet five criteria:

- A. The literal enforcement of the Land Use Ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the land use ordinance.
  - a. The only applicable options for better security fencing in a residential zone are:

"D. The Planning Commission is authorized to grant additional fence height for buffer fencing between commercial and residential zoning districts to a maximum height of eight feet (8'). "F. Properties exceeding one-half (1/2) acre in size may erect a fence to a height not exceeding eight feet (8'). "The eight-foot height in the above referenced sections are not applicable within the front setback area and although the property exceeds the minimum one-half (1/2) acre requirement, again, it is applicable for side yard and rear yard areas and must maintain the front setback requirements of 3 or 4 feet. The alternatives provided in code; the literal enforcement of the ordinance cannot represent an unreasonable hardship. Staff finds that the application does not meet this requirement for granting a variance.
- B. There are special circumstances attached to the property that do not generally apply to other properties in the district.
  - a. The property owner states there are special circumstances associated with the property are: "Lot 4A is at the dead end of a private street with no possibility of future developing taking place to the east that might change the current layout and situation. The fence does not impede the sight line of motorists or have a detrimental visual impact on the community. Both the HOA and adjacent neighbor (lot 6) support the variance request and have supplied letters of support for the fence and gate to remain in place." Additionally, the applicant indicates

"The reduction in the fence height would reduce the security that lots 4, 5 (4A) and 6 currently have and increase our risk by allowing open access to the rear of our properties." The fact that the property is at a dead end on a private street does show uniqueness to the property and does not impede sight visibility from the street. The only property it could potentially affect, is the property owner at lot 6 who has indicated their support of the proposed variance. Staff finds that the application does meet this requirement for granting a variance.

- C. Granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the district.
  - a. Security is a substantial property right, but the Land Use Ordinance identifies an 8-foot-high fence is allowed for properties greater than 1/2 acre. While the applicant meets this section of the code, it does not apply to the front setback area where the variance is requested; however, the proposed variance location would have no impact to another property or safety sight visibility. Staff finds that the variance is not essential for security, but there may be justification based on the unusual configuration and uniqueness of the property and location on a dead-end private roadway. Staff finds that the application does not meet this requirement for granting a variance.
- D. The variance will not substantially affect the General Plan and will not be contrary to the public interest.
  - a. The General Plan calls for this area is intended for residential uses established/planned neighborhoods and to be developed with high quality dwellings and uses. Staff finds the proposed variance will not be contrary to that public interest and will add to the neighbor's desire and recommends that the application does meet this requirement for granting a variance.
- E. The spirit of the Land Use Ordinance is observed, and substantial justice done.
  - a. The intent of the language in the Land Use Ordinance is clear, and additional options to provide security are available. Staff finds that granting the variance would not violate the spirit of the Land Use Ordinance, and that the application does meet this requirement for granting a variance.

Ms. Nixon stated that In the analysis of the standards for granting a variance as they relate to the subject property, Staff finds that the application can be considered to meet some, but not all, of the requirements for the granting of a variance.

Based on review and analysis of the application materials, the subject property, surrounding area, and applicable sections of the Murray City Land Use Ordinance, Staff finds that the application does meet some of the applicable standards for a variance, with the exception of (A) the literal enforcement would cause an unreasonable hardship and (C) granting the variance is essential to the enjoyment of a substantial property right possessed by other properties in the district. However, in this case there is merit to consider that the literal enforcement would affect no one other than the subject property and is supported by the adjacent property owners and could be argued that it would be essential to the enjoyment of the applicant's substantial property right. Staff recommends APPROVAL of the requested variance to the requirements of Sections 17.64.020.A. of the Murray City Land Use Ordinance.

Mr. Finlinson asked Mr. Hall to approach the podium. Mr. Hall indicated that he has an L-shaped fence from the front of the house to the gate in the picture presented. Mr. Finlinson confirmed with Ms. Nixon that the 20-feet set-back is not an issue. She confirmed.

Mr. Finlinson confirmed the property is now totally enclosed with a six-foot fence. Mr. Hall indicated that, prior to purchasing the second lot, 4800 was used by the public as a pass-through. Once he purchased the additional lot, he realized he would have to fence to provide more security. Mr. Hall indicated that the family's personal vehicle had been stolen, as one example of theft. Mr. Finlinson confirmed he understands the request.

Neighbor, Sandra Fullmer, spoke on behalf of Mr. Hall. She indicated that there is no obstruction to her property and she is in favor of the height and does not want the fence lowered.

Mr. Finlinson told Mr. Hall that his decision would be posted officially next week, with a full write-up, but did verbally confirm that he will approve the request for Mr. Hall.

**CASE #1598 - AARON & BETSY ANDREWS - 4734 South Hanauer Street – Project #22-162**

Ms. Nixon presented the application for Mr. & Ms. Andrews, who would like to expand 1,055 sq.ft. to the existing dwelling. The home is currently nonconforming to the corner side yard setback regulations as written in Section 17.96.080 of the Land Use Ordinance. The applicant's request for an expansion is to allow the property owner to remodel and add on to the rear of the home. The request will not bring the property into full compliance and will maintain the existing side yard setback nonconformity. For this reason, staff supports the applicant's request. The proposed addition will slightly reduce the rear yard setback from approximately 83' to 68'6". The proposed rear yard setback with the addition is 68'6" and is much larger than the minimum required of 15 feet. Staff does not anticipate that the requested addition to the home will increase the existing nonconformity on the property or cause a burden to neighboring property owners. Ms. Nixon indicated the findings:

1. The addition to, enlargement of, or moving of the building will be in harmony with one or more of the purposes of this title.
2. That the proposed change does not impose any unreasonable burden upon the lands located in the vicinity of the nonconforming use or structure.

Notices were sent to the 48 surrounding neighbors. One email was sent from Chris Brown, who indicated he was in favor of the request.

Based on a review and analysis of the submitted material and applicable sections of the Murray City Land Use Ordinance, Staff finds that the proposal meets the standards for an expansion of a nonconforming structure and recommends APPROVAL subject to the following conditions:

1. The applicant shall obtain the appropriate Murray City Building Permits necessary for the proposed addition.
2. The proposed addition shall meet the setbacks as described on the proposed site plan.

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Mr. Finlinson did not have additional questions for staff. He did ask the applicant to approach the podium. Mark Hardy, project manager working with owner, spoke. Mr. Finlinson asked Mr. Hardy if the addition going to the back of the existing building, staying on the north line of the property. Mr. Hardy confirmed. Mr. Finlinson verbally indicated that he would approve this request and the formal approval would be presented next week.

Ms. Nixon commented to Mr. Hardy that they do need to wait until the formal findings are presented before applying for the building permit.

Mr. Smallwood asked Mr. Finlinson to state that no other public comments portion was opened and closed.

Mr. Finlinson concluded the meeting.