

Minutes of the Hearing Officer meeting held on Wednesday, October 11, 2023, at 12:30 p.m. in the Murray City Hall, Poplar Room #151, 10 East 4800 South, Murray UT 84107.

Present: Jim Harland, Hearing Officer  
Susan Nixon, Senior Planner  
Zachary Smallwood, Senior Planner  
Mark Richardson, Deputy City Attorney  
Carlos Figueroa, Appellant  
Kori Figueroa, Appellant  
Casey Roberts, Appellant

#### CALL MEETING TO ORDER

Mr. Harland called the meeting to order at 12:30 p.m. He stated that he has no conflict of interest with either of these cases.

#### EXPANSION OF NON-CONFORMING STRUCTURE(S)

##### CASE #1609 - Carlos Figueroa - 4742 South Hanauer Street - Project #23-097 Expansion of Non-Conforming Structure

Mr. Smallwood presented the request by Mr. Figueroa for the expansion of non-conforming structures. The property is in the R-1-6 zoning district which requires a 20-foot front setback, 25-foot rear setback, and 5-foot side setbacks. The property was built in 1907 prior to the city's first zoning ordinance which was adopted in 1946. The site plan shows about a 4-foot separation between the structure and the property line, though the applicant states it may be closer to 0 feet. When applying for a building permit, accurate dimensions will need to be provided if this request is approved. The request is to add on to the existing single-family dwelling with an attached garage and living space above. This type of addition is allowed per code. Some questions were raised about having a second story above a garage, but this is permitted for attached garages. Elevations were shown by Mr. Smallwood for informational purposes to see the proposed addition. The R-1-6 zone requires a 5-foot side setback, but code section 17.52 allows the expansion of non-conforming structures with Hearing Officer approval. There are two required findings. First, the addition will be in harmony with zoning purposes like preserving the neighborhood and planned development. Second, the addition does not impose an unreasonable burden on surrounding properties. Staff believes the applicant meets these findings as the use remains a single-family home and the addition should not negatively impact neighbors. Staff recommends the Hearing Officer approve the expansion subject to the following two conditions:

1. The applicant shall obtain the appropriate Murray City Building Permits necessary for the proposed addition.

2. The proposed addition shall conform to all other yard and area requirements of the R-1-6 Zone.

Mr. Harland stated that the possible need for a survey is included in the condition number one. Mr. Harland asked Mr. Smallwood to confirm that the property is marked as commercial, asking if it was possibly a small store at one point.

Mr. Smallwood said, no, it was always a home. When The City adopted the zoning ordinance and the zoning map, they just marked it as commercial.

Mr. Harland said he did not have any further questions. He invited Mr. Figueroa to speak.

Mr. Figueroa stated he's putting a garage on the house, with a small living area above it.

Ms. Figueroa stated the house has been poorly remodeled in the past, creating issues for them. When they need to have someone fix electrical or plumbing issues, they can't because it's not up to code. They want to update the property and make it look good.

Mr. Harland asked if they are going to keep the old structure there or tear that down. He asked if it's a garage.

Mr. Figueroa stated that it's a small garage. He said there's nothing they could do to improve it. There's a lot of water damage. He feels it's best to tear it down and start with a new structure.

Mr. Harland opened and closed the comment period.

Mr. Harland told Mr. Figueroa it takes about a week to get the decision. He stated that this looks very straightforward and that he intends to approve it. He told Mr. Figueroa not to take any action until he receives the written copy of the report and findings from the Planning Department.

#### VARIANCE(S)

#### CASE #1610 - Casey Roberts - 923 West Bullion Street - Project #23-102 Fence Height Variance in Rear Yard

Mr. Smallwood presented the request for Mr. Roberts' variances on his newly purchased home. It is in the R-1-6 zone. The setbacks are 20 feet in the front, 5 feet on either side and 25 feet in the rear. Mr. Smallwood stated that the address was wrong on the agenda but was correct on the notice and staff report.

Mr. Smallwood explained that when Bullion Place was constructed, the builders had to install a French drain system. There is a retaining wall approximately three feet high separating the rear yards from a wooded area. Underneath the grassy area behind this wall is a French drain that runs the entire length of the property. This drainage system is relevant to property lot number eight, owned by Mr. Roberts. His lot changes elevation significantly from his dwelling to the rear property line.

There are five criteria that must be met to approve a variance to the fence height regulations for Mr. Roberts' property. The first criteria are that literal enforcement of the ordinance would cause unreasonable hardship not necessary to meet the intent of allowing privacy and security. Due to the topography, limiting Mr. Roberts' fence to around three feet would be unreasonable and would allow his neighbor to see into his yard. This meets the first criteria. The second criteria is that there must be special circumstances not common to other properties. The French drainage system is unique and most single family lots do not have such drainage issues. The second criteria are satisfied. The third criteria are that the variance must allow property rights comparable to others, namely privacy. The steep slope and drainage system unreasonably hinders Mr. Roberts' ability to build a standard privacy fence. Granting a height variance would restore that right. The fourth criteria are that the variance must not contradict the general plan or public interest. Allowing this fence supports the goal of letting people remain in their neighborhoods long-term and improves Mr. Roberts' enjoyment of his property. Finally, the fifth criteria is that the spirit of the ordinance must still be observed. Mr. Roberts would comply with all other fence requirements. The fifth criteria is satisfied. Staff recommends that an 8-foot fence variance be approved, subject to the following two conditions:

1. The applicant shall obtain required building permits for any fence over seven feet (7').
2. The property shall meet all other applicable requirements of Chapter 17.96 of the Murray City Land Use Ordinance.

Mr. Harland asked if these other properties similarly affected with that type of slope.

Mr. Roberts said, yes, but this might be the worst one. There are four additional undeveloped lots uphill that have increasingly steep terrain. The backyard of the far-left lot is relatively flat. The retaining wall on the house next to it is about two feet high all the way across. The retaining wall on the next lot over, starts at two feet and increases to about three feet in height. On my lot, the retaining wall was made in a rainbow shape, starting at just over two feet high on one end and ending at just under four feet on the far end. Continuing further downhill, the lots get significantly steeper. It is unknown what will be done with those lots in the future, as the slope gets much more severe. The retaining walls may become quite high due to the steep downgrade of the terrain as you continue downhill over the additional undeveloped lots.

Mr. Harland asked if eight feet is the height limit and wondered if someone could go to ten feet, if that was possible.

Mr. Smallwood said they could request it. Generally, eight feet is the maximum.

Mr. Harland asked if a six-foot fence is automatically acceptable without a permit.

Mr. Smallwood said yes. He also said that ten feet would start to negatively impact the people on this side of the property, but it would be on a case-by-case basis.

Mr. Harland asked Mr. Roberts to speak. He added to the context about fence pricing, installing a fence up to eight feet high is relatively the same reasonable price. The cost understandably increases slightly with height in that range. However, once you get to nine feet and above, the price triples. There are additional considerations for fences above eight feet regarding pricing and approvals.

In the photo, the French drain system is already in place. It runs the entire length of the subdivision along the undeveloped portions uphill. There has been a lot of recent dirt work and excavation in those areas. Excavators are installing retaining walls and performing other site work. It was unclear previously what would be done with those uphill lots given the steep terrain. Initially, Brodsky Builders constructed the six existing homes and Gardner Capital owned the townhomes below. However, Brodsky has since sold the remaining undeveloped lots to Gardner Capital. For now, those lots remain idle with all "for sale" signage removed, so future plans are on hold.

Mr. Harland asked if Mr. Roberts had anything else to add or any other questions.

Mr. Roberts said that Mr. Smallwood a great job of presenting.

Mr. Harland asked if Mr. Roberts can meet those two conditions. Mr. Roberts said yes.

Mr. Harland opened and closed the public comment period.

Mr. Harland stated that this seems like a reasonable request and he intends to improve it. He asked Mr. Roberts not to make any construction plans until he receives the written copy of the report and findings from the Planning Department.

Ms. Nixon asked if Mr. Roberts is planning to do an eight-foot fence and stated that those do require footings.

Mr. Roberts stated that he is doing an eight-foot fence and is aware that the fencing company will do three-foot footings in the rear and two-foot footings in the front. The fence's sides will be six-foot in the front and eight-foot in the back.

Ms. Nixon asked about the depth of the French drain.

Mr. Roberts answered by explaining that the drain screen is a corrugated pipe, and it sits against the retaining wall. He owns the land almost five feet back. So, the fence will be on that property line and away from the French drain. In that area, he plans on plugging the sprinklers and laying down gravel, due to the awkward nature of that area of land.

Jim Harland adjourned the meeting at 12:55 pm

#### ANNOUNCEMENTS AND QUESTIONS

There will not be a meeting held on Wednesday, November 8<sup>th</sup>, 2023. The next scheduled meeting will be held on Wednesday, December 13<sup>th</sup>, 2023, at 12:30 p.m. MST located at Murray City Hall, Poplar Room #151, 10 East 4800 South, Murray UT 84107.

**ADJOURNMENT**

Mr. Harland adjourned the meeting at 12:55 p.m. MST.

A handwritten signature in black ink, appearing to read "Philip J. Markham".

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Philip J. Markham, Director  
Community & Economic Development Department