



SANDY CITY COMMUNITY DEVELOPMENT

JAMES SORENSEN
COMMUNITY DEVELOPMENT
DIRECTOR

KURT BRADBURN
MAYOR

MATTHEW HUISH
CHIEF ADMINISTRATIVE OFFICER

MEMORANDUM

December 5, 2019

To: Planning Commission
From: Community Development Department
Subject: Development Code Interpretation

MISC-11-19-5766

NOTICE: *This item has been noticed to property owners within 500 feet of the subject area.*

REQUEST

Mr. Jeff Nilsen is requesting that the Planning Commission review the official interpretation by the Community Development Director regarding lattice work that has been erected along a property line. This is related to property located at 9663 S. 2980 E.

BACKGROUND

In June 2019, the applicant was given a notice of correction for the lattice work that was erected within inches from his east property line. After meeting with the property owners on several occasions, staff was asked to give an official interpretation of whether the lattice work would be identified as a stand-alone arbor, fence or structure.

On November 7, 2019 the Community Development Director interpreted the lattice work to be either a fence or an accessory structure, depending upon the location. The justification for this interpretation is included in the attached letter.

The applicant is claiming that he built the lattice work as a stand-alone arbor under provisions of the Development Code Section related to accessory structures (21-11-2(a)(4)(h)).

Other Structures. These provisions do not apply to children's play equipment, flagpoles, light poles, stand-alone arbors, or other similar structures.

ANALYSIS

Section 21-1-6 of the Sandy Municipal Code states:

Interpretation and application of the provisions and requirements contained herein are declared to be the minimum requirements for the purposes set forth, unless otherwise specifically stated. If in the course of administration hereof, a question arises as to the meaning of any phrase, section, or chapter, or zone district, the interpretation thereof shall be given by the Community Development Director (hereinafter referred to as the "Director") and shall be construed to be the official interpretation thereof. In the event that there is need of further interpretation by any person, firm or corporation, or official of Sandy City, they shall submit the question to the Planning Commission, which, unless otherwise provided, is authorized to interpret the title and such interpretation shall be final.

STAFF RECOMMENDATION

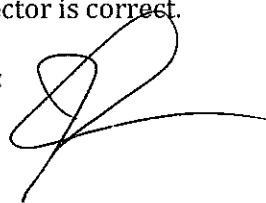
Staff recommends that the Planning Commission review the attached information and decide whether the interpretation from the Community Development Director is correct.

Planner:



Brian McCuiston
Planning Director

Reviewed by:



File Name: S:\USERS\PLN\STAFFRPT\2019\MISC-11-19-5766 Development Code Interpretation.DOCX



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November 7, 2019

Jeffrey Nilson
9663 S. 2980 E.
Sandy, UT 84092

Dear Mr. Nilson,

As you have requested, this letter is the interpretation from the Community Development Director regarding the lattice work that has been erected along a certain section of your eastern property line. This decision is based upon the following findings:

1. On or about June 18, 2019 the Community Development Department was made aware of some lattice work that was erected along a portion of your eastern property line. This lattice work stands approximately 13-feet above grade, approximately 20-feet wide with a sidewall of approximately two (2) feet. This has been erected within inches of your eastern property line.
2. The primary purpose of this lattice work is to provide privacy between you and the new home that was built to the east of your home.
3. During a visit with representatives from the Community Development Department, you informed them that you thought you were allowed to build this because of a particular section of the Sandy City Land Development Code (Code). Accessory Structures, states that the provisions (for accessory structures) do not apply to children's play equipment, flagpoles, light poles, stand-alone arbors, or other similar structures. (Section 21-11-2(a)(4)(h))
4. The Code does not define an arbor, or stand-alone arbor. The Merriam Webster online dictionary defines an arbor and stand-alone as:
Arbor - shelter of vines or branches of latticework covered with climbing shrubs or vines.
Stand-alone - able to operate without control from another system.
5. The Code does define a fence (Section 21-37-07) as follows:
Fence means any tangible barrier, an obstruction of any material, a line of obstacles, lattice work, screen, wall, hedge, or continuous growth of shrubs or trees with the purpose of, or having the effect of, preventing passage or view across a fence line.
6. The Code does define a structure (Section 21-37-20) as follows:
Structure means anything constructed or erected, the use of which requires location on the ground or attachment to something having location on the ground. A building is included in this definition. Any structure two feet or above in grade shall meet all underlying zoning requirements.

In my experience, a stand-alone arbor is typically used as a gateway into a garden or backyard and is not connected to the primary dwelling. Based upon the findings outlined in this letter, I do not consider the lattice work erected along a portion of your eastern property line as a stand-alone arbor.

The lattice work where it is currently located, meets the definition of fence quoted above. Therefore, it must meet the requirements of a fence, including the maximum height limitation of six (6) feet, which will require the lattice work to be shortened. Under limited circumstances I may approve a fence up to a maximum height of eight (8) feet.

If the lattice work is moved away from the east property line at least two (2) feet, then it will be considered a structure and must meet the requirements of an accessory structure. In addition, as per Section 21-11-02(a)(1)(a) Setbacks and Location Restrictions:

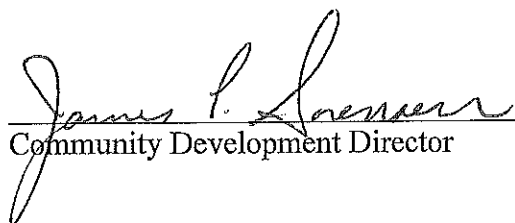
Accessory buildings located three feet or less from the property line shall have concrete, asphalt, or other approved surface between the property line and accessory building.

Also, a structure in this particular zone (R-1-10) may be allowed to a maximum height of 15' from the peak to the ground. (Section 21-11-02(a)(3)(a))

The Community Development Director is the one responsible for the interpretation and application of the provisions and requirements contained within the Code. In the event that there is a need of further interpretation, the Planning Commission is authorized to interpret the Code and that decision will be final. (Section 21-1-6) Should you decide to go to the Planning Commission, you would be required to file an application (General Development Application) and pay a fee of \$80 for an appeal fee.

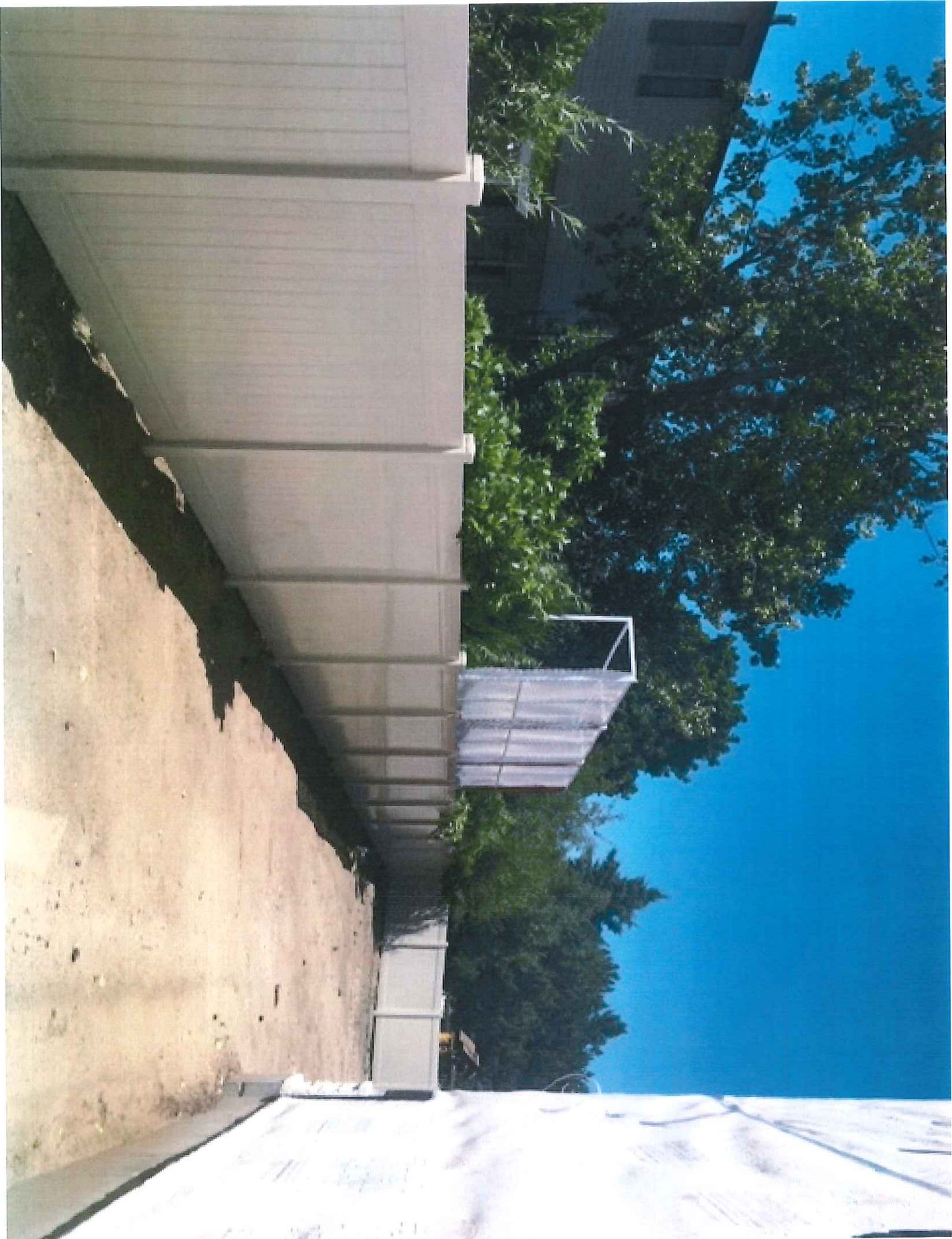
The Planning Commission decision may be appealed within ten calendar days of their decision as outlined in the Code. (Section 21-35-1) A complete application and payment of applicable fees (\$400) for an alleged error must be filed in writing with the Community Development Department, which writing may be delivered to Mike Wilcox, Zoning Administrator, who can be contacted by email at mwilcox@sandy.utah.gov or by phone at 801-568-7261.

Sincerely,

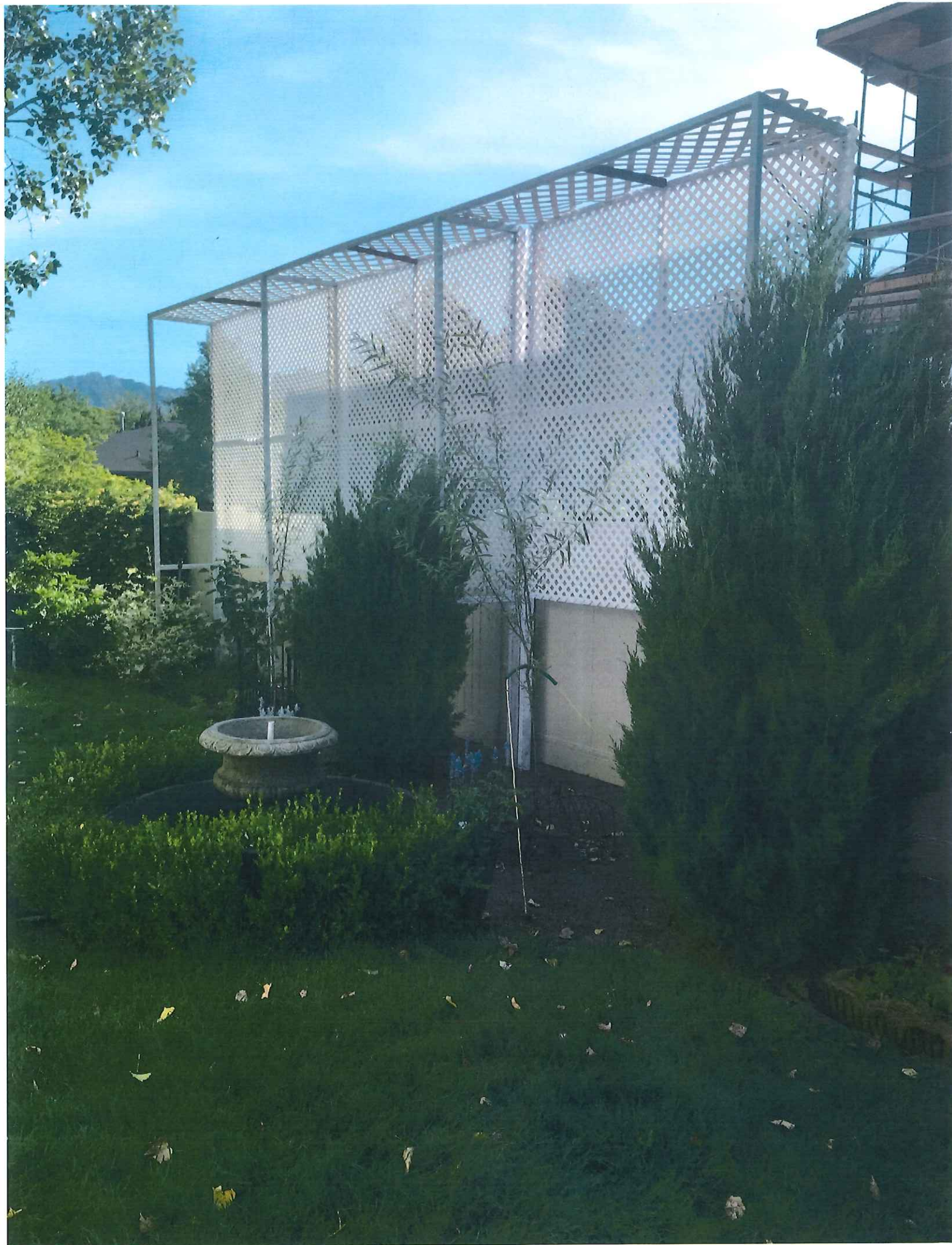


Community Development Director

11-7-19
Date







11-15-2019

Sandy City Community Development – Planning Commission

RE: Appeal of Determination that Other Structure in our garden is not an Arbor.

Summary of Related Events:

We have constructed an Arbor in our backyard garden. It is constructed in 3 sections that are 8 x 12 feet fashioned as a combination Arbor/Trellis with lattice which currently has a series of 3 vines growing, one in each section.

I designed and built this stand-alone structure so that it would adhere to the Sandy City Development Code stated in Chapter 15A-11, 15A-11-02, A. Residential Standard, #4 Other Requirements h. Other Structures. This code specifically states that all provisions specified in section A.1, A.2 and A.3 do not apply to Children's play equipment, flag poles, light poles, **stand-alone Arbors** or other similar structures. I have 1200 pounds of concrete in the ground anchoring 4 4x6 pressure-treated posts. The lattice attached for the vines weights very little. We experienced winds this September over 90 MPH and it did not budge.

On or about Jul 10, 2019, when responding to a complaint from the owner of a house under construction behind our house, a Sandy City building inspector evaluated the structure and then subsequently served code violation to me. He had issues with the height and with the proximity to the fence that separated my property from my neighbor. He said that it was a fence and that it violated Sandy City Development Code.

When I explained to him that it was an Arbor and complied with the conditions specified in the Sandy City Development Code 15A-11-02, A. Residential Standard, #4 Other Requirements h. Other Structures.

I showed him a copy of the code and he just reiterated that it was a fence, handed me a citation and said that I had to contact Sandy City with 2 weeks.

We contacted the Development Director, James Sorensen and scheduled a review with 2 of his employees, Brian and Scott Marsell. They both came by our residence the following week to discuss the situation. We had a 45 minute conversation and showed them pictures of Arbors that I had downloaded from the Lowes web site and at the end of that conversation, they both agreed that the structure **was** an Arbor, and suggested that they would relay their findings to James Sorensen.

The following week James Sorenson called my wife and suggested that it was not an Arbor (he had never seen it) and that we would have to comply with the Development Code to structures pertaining to setback, size and height. He did offer that if we lowered it to 8 feet, that he would consider it an exception. My wife then requested an appointment with James to discuss this matter further.

I prepared a document which provided the definition of Arbor from multiple sources on the internet which all briefly defined an Arbor as follows:

A shelter or lattice structure in a garden with vines or branches

I prepared a document providing pictures of dozens of Arbor/Trellis structures as an example of our structure.

I also provided the exact Development Code mentioned above including the paragraph **h – Other Structures**.

My wife met with James Sorenson and Scott Marsell for the scheduled appointment. They reviewed the documents and James asked Scott if the structure was an Arbor and he replied – yes – it was an Arbor. James responded to my wife that

"it looks like you have found a loophole". He suggested that Brian was on vacation and that when he returned they would discuss and would be back in contact.

Brian subsequently contacted my wife and he told her that they were concerned that it might be dangerous due to the 12 feet height and that they were back to "it was a fence", but if we lowered it to 8 feet it would be ok. My wife asked what recourse we had and he said we could appeal the determination that James Sorensen had made. After a discussion with me, we requested a formal written determination from the director so we could appeal.

We received the letter dated November 7, 2019 on November 13th and it was signed by James Sorensen. This document states that James Sorensen has determined, based upon his personal interpretation of how he does not perceive our garden structure as an Arbor, that it is a fence, not an Arbor. The letter also states that if we do not agree with his interpretation, we may appeal to the Planning Commission within 10 days.

A few days after we received the letter, my wife scheduled another meeting for Nov 15, 2019 at 9am with James which also included Brian and Scott. She brought many documents once again supporting the case that the structure was an Arbor. They reviewed them and James said that it was not. She confronted Brian and Scott and asked them if they still agreed that it was an Arbor and they looked directly at James and would not answer.

James suggested once again that we could lower the structure to 8 feet, add another structure 2 feet away from the property boundary for compliance and add lattice starting at 8 feet which could go as high as 15 feet – per the code.

My wife was concerned about Sandy City putting a lien on our property, which Scott had explained during an earlier meeting would mean that we could not refinance or sell our home until the structure was removed or brought into compliance.

James then suggested as an alternative that we could just take it down, refinance our home and then put it back up afterwards and then just deal with the lien that would be placed on our property after we were cited again. He also asked that she not repeat this to anyone suggesting he would deny it.

I would like to appeal this decision by James Sorensen at the earliest convenience of the Planning Commission. I certainly hope that this is an objective process and the review will be based upon the Development Code and the facts presented.

Regards,

Jeff and Janice Nilsen
9663 S. 2980 E.
Sandy, UT 84092