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COMMUNITY DEVELOPMENT
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CHIEF ADMINISTRATIVE OFFICER

MEMORANDUM

February 4, 2021

To: Sandy City Board of Adjustment
From: Community Development Department
Subject: Pearce Variance Request
3382 E. Deer Hollow Circle
The Dell, Community #29

BOA-01-21-5985
1.45 Acres
R-1-40A, SAO Zone

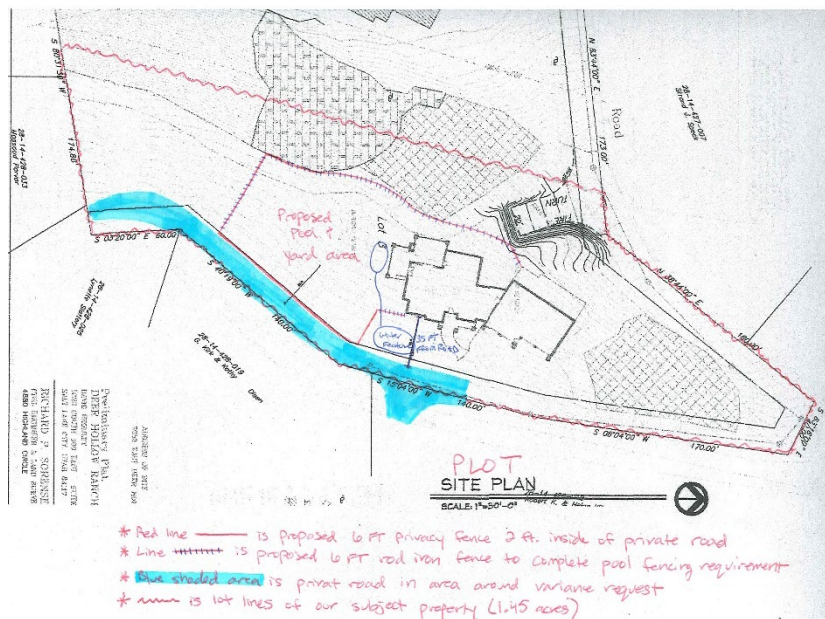
HEARING NOTICE: *This item has been noticed to property owners within **500** feet of the subject area.*

PROPERTY CASE HISTORY	
Case Number	Case Summary
ANEX-09-12-2542	The Lone Springs Annexation added approximately 32.17 acres with 21 parcels of mostly developed land into Sandy City and given the R-1-40A Zone District on 12/14/2012.

REQUEST

The applicants, Trent and Aubrey Pearce, have filed a request with the Sandy City Board of Adjustment for a variance from the Land Development Code. Specifically they are requesting a variance from [section 21-28-3](#) of the Land Development Code to allow for a six-foot (6') fence in a portion of the front yard area.

The applicant has detailed their request in the attached "Applicant Letter".



BACKGROUND

History

This lot was created through a subdivision that was approved in Salt Lake County in 2007. It was later annexed into the City in 2012.

Physical Features

The property is heavily vegetated with natural stands of oak trees and has significant slopes. The subject property is in an area with known areas with 30% or greater slope constraints and earthquake fault zones. Studies have found that no other geologic concerns are applicable to this proposal.

Parcel Features

The lot is irregularly shaped and is considered a corner lot with private streets on two (2) sides of the lot. There are twenty-five-foot (25') road easements along the north and east property lines (total of fifty-foot (50') wide private easements on either side of the road centerline).

NOTICE

Notices were mailed to property owners within a 500-foot radius of the subject parcel to notify them of the Board of Adjustment meeting.

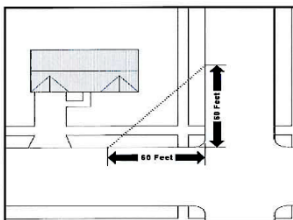
ORDINANCE SUMMARY

Applicants are requesting to vary from the terms of the following City ordinance(s):

Sec. 21-28-3. - Fences; Residential Standards.

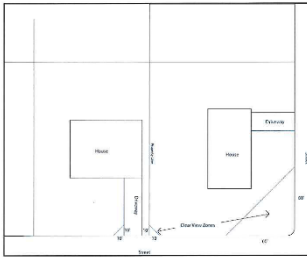
- (a) *Side Yards and Rear Yards.* In any required side or rear yard on lots, the height of fences shall not exceed six feet, unless otherwise allowed herein.
- (b) *Front Yards.* Fences in required front yards shall be allowed provided that solid type fences shall not exceed three feet, and open type fences (e.g., wrought iron) shall not exceed four feet.
- (c) *Corner Lots.* In addition to the other provisions contained in this section, fences located on corner lots shall be subject to the following provisions:
 - (1) Any fence, wall, and/or hedge on the front yard setback shall not exceed three feet if opaque construction or four feet if open construction.
 - (2) In the side yard setback that fronts on a street, height up to six feet shall be allowed beyond 60 feet from the intersection measured from the intersecting extended curb lines. Height within the 60 foot area shall conform to the requirements of a front yard setback.

Illustration of a Common 60 Foot Sight Visibility Triangle

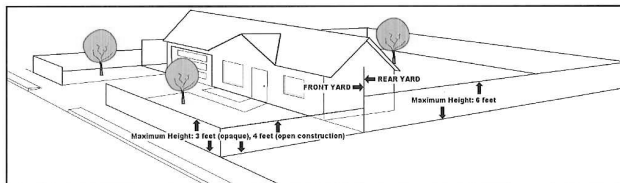


- (3) A clear view zone shall be maintained free of fencing, except a see-through fence or a view obscuring fence no higher than three feet in height when a driveway exists on the adjacent lot

within ten feet of the shared property line. The clear view zone refers to the portion of the corner lot lying within a triangular area formed by measuring back ten feet from the point where the interior property line shared with the adjacent lot meets the property line along the public right-of-way.

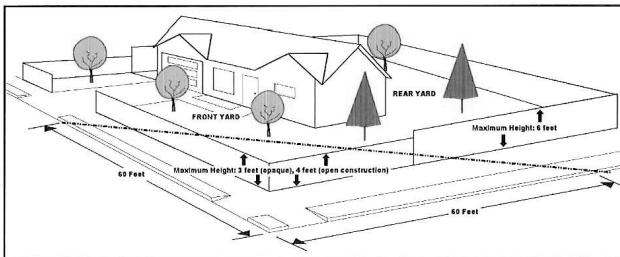


Fence Figure #1. Interior Lot Fence Height Restrictions



- (4) Heights on the rear yard setback and interior side yard setback shall not exceed six feet, unless otherwise allowed herein.

Fence Figure #2. Corner Lot Fence Height Restrictions



LEGAL STANDARD TO BE MET AT PUBLIC HEARING

[Utah Code Section 10-9a-702](#) and Sandy City Land Development Code, Section 21-35-2 set the standards, or conditions, for approving a variance. The Board of Adjustment may grant a variance only if **ALL** statutory conditions are met. If all five conditions are **NOT MET**, the Board of Adjustment is compelled by law to deny the request for a variance.

The traditional conditions for approval of a variance can be stated as follows:

1. Literal enforcement of the zoning ordinance would cause an unreasonable hardship for the applicant that is not necessary to carry out the general purpose of the zoning ordinance.

2. There are special circumstances attached to the property that do not generally apply to other properties in the same district.
3. Granting the variance is essential to the enjoyment of a substantial property right possessed by other property in the same district.
4. The variance will not substantially affect the general plan and will not be contrary to the public interest.
5. The spirit of the zoning ordinance is observed and substantial justice done.

The State statute and City ordinance have added the following conditions when determining the above factors which were stated in the Utah Supreme Court decision of *Chambers v. Smithfield City* (714 P.2d 1133, Utah Supreme Court (1986)) :

6. Is the hardship complained of economic in nature?
7. Is the hardship complained of self-imposed?

REQUEST ANALYSIS

The applicants are seeking a variance from the fence height restriction on fencing within the front yard area (see section 21-28-3), which restricts fencing in the front yard to fence heights to three to four feet (3' -4') depending on style of fence. Because this property is a corner lot, it has two (2) street frontages onto private streets. The house faces onto the east street frontage and that side is considered the front yard area. The corner lot fencing provisions in subsection (c) would only allow the northern corner side yard area to be fenced (so long as it is outside of the sight visibility triangle). The front yard area would extend from the front plane of the home, extended to the north and south, and would need to be set back a minimum of thirty-feet (30') from the front property line (see diagram of the front yard area). As mentioned, there is a twenty-five-foot (25') private road easement along the entire north and east property lines to allow for a private road access. This area should not be fenced because of the easement but would be enforceable by the



easement owners of the road and not the city. The city would only enforce the provisions of our code.

In staff's opinion, the applicants have not yet addressed all seven (7) required standards and conditions to approve each of the variances in their letter to the Board. Staff has not been presented with any convincing evidence that the literal enforcement of the Code has created an unreasonable hardship on the applicants. Usable yard area is not a substantial property right. Some lots in the sensitive area overlay zone have smaller sized useable yard areas due to the natural topography and restrictions of the code. They still have a usable yard area that can be screened with six-foot (6') fencing. A smaller space does not deny them a right that is enjoyed by similarly situated properties. This lot is a corner lot, has an unusual shape, has many natural features (such as earthquake fault area, steep slopes, natural vegetation tree stands, etc.), and is impacted by sensitive area restrictions. However, those are not necessarily unique in this area and not substantially impacted.

The stated reason for needing the variance on fence height is due to the desire to have a pool. A pool is required to fence the yard area or the pool deck area with a six-foot (6') fence (see [section 21-11-10](#) for the full details). This issue is a self-imposed hardship which could be addressed by altering the size or location of the pool within the side and rear yard area where 6' fences are allowed.

STAFF POSITION

The Board should carefully consider the conditions listed above before rendering a decision on each of the requested variances (individually or collectively) and should follow the law as outlined above. The applicants bear the burden of proof in showing that all of the conditions justifying a variance have been met. Based upon our analysis of the letter requesting the variances and the standards and conditions to grant a variance, we recommend to the Board of Adjustment that it deny the requests as presented.

Planner:



Mike Wilcox, Zoning Administrator

File Name: S:\USERS\PLN\STAFFRPT\2021\BOA-01-21-5985_PEARCE FENCE VARIANCE\STAFF REPORT.DOCX

Notice to Applicants: Be prepared to discuss the criteria for a variance as mentioned above in your presentation to the Board of Adjustment. Generally, the questionnaire you completed as part of the variance application process requests the information which the Board needs to consider. However, you may be aware of additional information that could be useful to the Board of Adjustment, which you may wish to present orally or in writing at the public hearing.

NOTE: *Any appeal of the decision of the Board of Adjustment must be made within thirty [30] days to the appropriate District Court of the State of Utah. The proper forms and procedure for filing such an appeal may be obtained from the District Court or the attorney of your choice. Sandy City **DOES NOT** have this information and **cannot** assist you in any way with the filing of any appeal of a Board of Adjustment decision. Copies of the case file, including all evidence submitted will be made available to interested parties. You may make a copy of the audio tape of the proceedings at our offices located at 10000 Centennial Parkway, suite 210, Sandy, Utah.*