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3 PLEASANT GROVE CITY
4 LAND USE HEARING MINUTES
5 November 29, 2022
6 City Hall Conference Room
7 70 S 100 E Pleasant Grove UT 84062
8

9 **PRESENT:** Hearing Officer, Craig Call

10
11 **STAFF:** Jacob Hawkins, City Planner; Kara Kresser, Planning Assistant
12

13 Officer Call opened the meeting at 3:10 p.m. and described the hearing process.
14

15 **ITEM 1** – Public meeting to consider a request of Magleby Construction for a variance from City
16 Code Section 10-15-38A: Fencing Standards, Front Yard, which requires all fences located in any
17 front yard perimeter to be built to a maximum of three feet (3') with the exception of fences that are
18 not sight obscuring, which can be built to a maximum of four feet (4"). The property is located at
19 approx. 911 West 2600 North in the R-R (Rural Residential) Zone.
20

21 Planner Hawkins thanked Officer Call for his time and apologized for the technical problems that
22 caused the delay in starting the meeting.
23

24 Officer Call asked the applicant Robert Safsten of Magleby Construction to present the details of the
25 variance request.
26

27 Mr. Safsten explained that there is an existing retaining wall on the North side of the property and
28 the owner of the property would like to install a 6 ft fence on top of that retaining wall. One concern
29 of the property owner is safety, as a 3 ft fence would still allow children to climb on it. As well
30 match the aesthetics of the existing fence on the west side of the property, and the property owner
31 will be placing livestock and other animals on their property and would like to hinder wildlife. Mr.
32 Safsten presented the topography as well as a picture of the retaining wall. He then provided the
33 existing grades of the area.
34

35 Officer Call inquired if any of the neighbors had been notified of the meeting, it was noted that the
36 agenda was posted on the State and City Website as well and in 3 public locations.
37

38 Officer Call questioned what a 6 ft fence would do to the site line for the neighboring properties, a
39 discussion followed about the property line and if the fence would cross over into a city right away
40 or not.
41

1 It was stated by Officer Call that Variances are rare, and the question is, is this a substantial hardship
2 that meets all 5 of the criteria. There further talk about is this a matter of a hardship. It was brought
3 up that a 3 ft fence can also be used as a warning to bicyclists and traffic. There was some discussion
4 on the lot shape and the entrances to the other lot. If the issues are for security and protection, the
5 east entrance is not subject to the same setbacks because it is not in the front set back.
6

7 Officer Call brought it back to question of if the existing retaining wall is on the city right of way
8 and the question of the property lines, he has the authority at this point to approve this request, but
9 he would require a survey showing the property lines. Mr. Safsten asked if the survey would be
10 required just for a 3 ft fence. Officer call confirmed that would be the best thing to do.
11

12 Officer Call denied the request of Magleby Construction and requested the applicant work with staff,
13 Planning Commission and City Council to have the authority to make policy decisions.
14

15
16 Closed the hearing at 3:36 p.m.
17
18
19
20

21 See Attached Decision

22 Craig Call
23 Land Use Hearing Officer
24

25
26 Date Approved: 12/9/22
27

DECISION
Pleasant Grove Land Use Appeals Hearing Officer
Variance Request
Magleby Construction – Approx. 911 West 2600 North
December 5, 2022

This matter involves a request for a variance to the city ordinances related to the height of a proposed wall along the frontage of the subject property. Magleby Construction asks for a variance from language in the code that limits the height of a fence or wall along the front property line to three feet. This application relates to property located at 911 West 2600 North.

RECORD

The record includes the eleven-page staff report; an application for hearing by Magleby Construction dated October 13, 2022 comprised of five pages along with an additional 34 pages of materials including drawings and photos; a letter dated September 19, 2022 from Robert Safsten to Paul Douglas; comprised of one page with an additional twenty-six pages of materials including drawings and photos; and an audio recording of a hearing held on Tuesday November 29, 2022 at 70 South 100 East in Pleasant Grove. Present and appearing at the hearing were the applicant Robert Safsten representing Magleby Construction; Planner Jacob Hawkins, and Kara Kresser. Minutes of the hearing were taken by Kara Kresser from the city staff and are included in the record.

ANALYSIS – FINDINGS OF FACT

1. This matter includes a request for a variance to allow a six-foot tall masonry wall along the frontage of the property located at 911 West 2600 North in the City.
2. The property is located in the R-R zoning district.
3. The request would allow the property owner more private and personal use of the property within the thirty foot wide front yard of the residence on the subject property
4. Other properties along 2600 North Street do not have six-foot walls or fences along their front property lines. Some have such fences or walls along their rear or side property lines.
5. The application of the ordinance does not impose fencing requirements on the applicant here that are not imposed on other property owners in the same neighborhood.

ANALYSIS – CONCLUSIONS OF LAW

1. The property line of the subject parcel which lies along 2600 North is a front lot line as defined in the ordinances at Section 10-6-2, Definitions.
2. The City Code does not allow a fence or wall taller than three feet along the front lot line of a parcel of land in the R-R zone. Code Section 10-15-38.
3. In order to qualify for a variance, the Code provides at 10-2-3-A that the following requirements must be met:
 1. The variance will not substantially affect the General Plan of zoning and that adherence to the strict letter of this title will cause unnecessary difficulties and hardships.

2. There are special circumstances attached to the property covered by the application that do not generally apply to other properties in the same neighborhood.
3. Because of special circumstances, property covered by this application is deprived of privileges possessed by other properties in the same neighborhood; and
4. The granting of the variance is essential to the enjoyment of a substantial property right possessed by other property in the same neighborhood.
4. In seeking a variance, the burden to establish proof that the request meets the criteria listed is on the applicant. Utah Code Ann. 10-9a-705.
5. The Applicant here has not met the burden to demonstrate by substantial evidence in the record to meet criteria number 4 in the Code, which requires proof that, absent the approval of the variance, the applicant would not enjoy a substantial property right possessed by other property in the same neighborhood.

Conclusion:

There is no showing that other properties along 2600 North Street have six foot walls or fences along their front lot lines. There are other walls in the area, but those are found along the side or rear lot lines of the lots involved. The applicant argues matters of policy and practicality which are appropriate to a policy discussion before the legislative body which has the power to amend the ordinance to make it more practical or allow it to better balance the public interest with private concerns. Those arguments, however, are not adequate to meet the strict level of proof needed for a quasi-judicial hearing officer to substitute their judgment for that of the legislative body which wrote the code.

The worst-case result of this request for the property owner is that any six-foot tall structure could be located some thirty feet back from the front property line instead of along that property line. There is no question that this may be a less efficient use of the property for the applicant's own purposes, but, absent the compromise of a substantial property right as the courts have defined that term, this request does not meet the legal requirements to justify a variance. The best forum for this request would be before the Planning Commission and the City Council, who have the authority to make policy decisions.

The variance request is denied.

Dated this 5th day of December, 2022.



A handwritten signature in black ink, appearing to read 'Craig L. ...', is written over a horizontal line.