



NOTICE OF BOARD OF ADJUSTMENTS AND APPEALS MEETING

March 21, 2023

Members of the public are invited to attend remotely or in person through the options listed below. Public comment is welcome for items appearing on the agenda or on any matter of BOA concern. Each speaker is allotted a maximum of five minutes to speak.

Individuals wishing to comment on an agenda item must register in advance by contacting boaplanning@auroragov.org or 303.739.7541.

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Event Password Aurora2020

Call-in Participation

Call 720.650.7664

Access Code 2480 998 2739

In-person Participation

Aurora Municipal Center
Aspen Room, 2nd Floor
15151 E Alameda Parkway
Aurora, CO 80012

Translation/Accessibility

If you are in need of an interpreter, please contact the Office of International and Immigrant Affairs at 303-739-7521. Si necesita un intérprete, comuníquese con la oficina de asuntos internacionales e inmigrantes al numero 303.739.7521.

For more information regarding Board of Adjustments & Appeals meetings, please contact Planning & Development Services at boaplanning@auroragov.org or 303.739.7541.



AGENDA

Board of Adjustment and Appeals

Tuesday, March 21, 2023

6:00 p.m.

Hybrid Meeting

Aurora Municipal Center

15151 E Alameda Pkwy, 2nd Floor

Aurora, CO 80012

Pages

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF MINUTES

3.a Draft BOA Meeting Minutes 2.21.2023

2

4. ADOPTION OF AGENDA

5. GENERAL BUSINESS

5.a Case Number 03-23 - 4464 S Pagosa Way

6

A request by the property owner, Jimmy, and Jerryca Garcia, for the following Single Family Dwelling Variance(s): To allow a replacement of a corner lot fence that does not meet set back (4 feet from the sidewalk) or street frontage fencing requirements which limit the height of solid fencing (solid fencing no taller than 18 inches).

6. OTHER BUSINESS

7. ADJOURNMENT

Planning Department
City of Aurora, Colorado

SUMMARY OF BOARD OF ADJUSTMENT AND APPEALS ACTIONS

BOA Hearing Date: February 21, 2023
Hearing Location: Hybrid Public Hearing, held via WebEx and in-person
Case Manager: Rachid Rabbaa

Board Members Present: Lynn Bittel
Kari Gallo
Richard Palestro
Andris Berzins
Ron Swope

Case Number: 02-23 – 1555 N Clinton Street

Description:

Request by the property owner, Jose Juan Carlos Muratalla, for the following Single-Family Dwelling Variance:

- An adjustment to the requirement of Section 146-4.7.9.L.1, which requires side and rear-yard fences on residential properties not to exceed 6-feet in height

Recommendation from staff to approve the variance as requested.

Case Presentation Given at the Hearing:

Staff gave a presentation describing the applicant's request, the context of the neighborhood and the subject property, and an analysis of the request with respect to the Code Criteria of Approval. The applicant's request would allow a 7-foot privacy fence on the north and west property lines (excluding the front yard).

Mr. Berzins commented that it is not clear from the plan drawings where the proposed fence would go along the backplane. Mr. Berzins asked staff to clarify if the fence would completely enclose the garage or only go to the garage door.

Mr. Rabbaa responded that the fence would enclose the garage and include a small gate.

Mr. Swope asked if the applicant intends to construct a 7-foot privacy fence.

Mr. Rabbaa replied yes.

Mr. Swope then asked if the fence would be privacy or chain-link in front of the garage.

Mr. Rabbaa stated the fence would be the same material for the rear and backyard and would be privacy, not chain-link.

Mr. Berzins noted that the drawing presented in the staff report appears to indicate that the fence would come to the front of the house and would include a gate on the driveway at the back of the house. Mr. Berzins asked the staff to confirm if those plans are correct.

Mr. Rabbaa replied yes with the exception that the fence will not go to the front of the house; it will end at the front line of the house to the rear.

Mr. Berzins asked if the applicant will be fencing in both of his driveways.

Mr. Rabbaa responded that the driveway to the back of the house will be fenced-in, and a small fence or door will be constructed at the rear of the house abutting the neighboring business's wall.

Ms. Gallo asked the staff to clarify if the existing chin-link fence would be replaced with 7-foot privacy fencing.

Mr. Rabbaa confirmed that this is correct.

Mr. Berzins asked if there is a stipulation on what materials can be used for the privacy fencing.

Mr. Rabbaa replied that the applicant must meet the fence material requirements of the Unified Development Ordinance, UDO.

Mr. Berzins asked staff to inform the board what those materials are.

Mr. Rabbaa reviewed allowable fence materials.

Mr. Bittel asked if the applicant has indicated what materials he will use.

Mr. Rabbaa replied to Mr. Bittel noting that the applicant initially indicated steel sheeting, which is not allowed by code. Mr. Rabbaa stated that the applicant was provided with a list of approved materials to choose from instead.

Mr. Muratalla, the applicant, was available for questions. Mr. Muratalla reviewed the reasons for his request for waiver including security for his property and family. Mr. Muratalla noted incidents of criminal activities by persons accessing homeless support services from the business directly abutting his property.

Mr. Bittel asked the applicant what materials he plans to use for the privacy fence.

Mr. Muratalla replied he will use an allowed material.

Mr. Palestro commented that it appears the applicant does not know yet what material he will use.

Mr. Rabbaa replied that the applicant will choose from materials approved by code and receive a permit for the privacy fence.

Ms. Gallo stated it is not clear what difference a 7-foot fence would provide for security as opposed to the allowable 6-foot fencing.

Mr. Bittel replied that a 6-foot fence is easier to climb than a 7-foot fence. Mr. Palestro agreed.

Mr. Muratalla replied to Ms. Gallo's question. Mr. Muratalla commented that a neighbor constructed a 6-foot privacy fence but still had problems with trespassers on her property. Out of an abundance of caution for the safety of his family, Mr. Muratalla is asking for a waiver for a higher, 7-foot fence.

Public Comment Given at the Hearing:

No members of the public were present at the virtual hearing.

Board of Adjustment and Appeals Results

Mr. Berzins expressed disapproval of the request for a waiver due to concerns it may encourage the idea of creating compounds in a neighborhood that is historic to the City of Aurora, instead of addressing issues of crime.

Mr. Palestro commented that, by visiting the site, one appreciates the unique reasons this applicant is requesting a waiver. Mr. Palestro expressed support for the request for a waiver.

General discussion ensued.

Daniel Money, City Attorney, advise the board that the public hearing should be closed if there are no other speakers and a motion made after which additional discussion can occur.

A motion was made by Mr. Berzins. Move to deny the variance request because the proposal does not comply with the required findings of Code Section 146-4.7.9. L.1, and:

- It is not compatible with the neighborhood;
- It does not allow for the improvement or efficiency of design; and,
- The design is unsightly.

There was not a second.

The motion died.

Board of Adjustment and Appeals Results

A motion was made by Mr. Palestro and seconded by Ms. Gallo.

Move to approve the variance request because the proposal complies with the required findings of Code Section 146-4.7.9.L.1, and:

- Does not have an adverse impact on adjacent properties;
- Will not have a negative impact on existing city infrastructure or public improvements;
- Will allow safe use of the property and achieve efficiency of design; and,
- Controls for external effects.

Action Taken: Approved
Votes for the Waiver: 4
Votes against the Waiver: 1
Absent: 2
Abstaining: None

Other Topics Discussed at the Hearing:

Minutes were presented for adoption from the January 17, 2023, meeting. The minutes were approved unanimously.

Staff briefly discussed a virtual study session of the BOA and Planning and Zoning Commission scheduled for February 22, 2023.

SUMMARY OF PROCEEDINGS PREPARED AND SUBMITTED BY: Rachid Rabbaa

Lynn Bittel, Chairman

Rachid Rabbaa, City of Aurora



Planning Division
 15151 E. Alameda Parkway, Ste. 2300
 Aurora, Colorado 80012
 303.739.7250

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MEMORANDUM

- To:** Lynn Bittel, Board of Adjustment Chairman
 Board members: Andris Berzins, Kari Gallo, Ron Swope, Gary Raisio, Richard Palestro, Marty Seldin
- From:** Rachid Rabbaa, Planner, Board of Adjustment staff liaison
- Date:** March 13, 2023
- Hearing Date:** March 21, 2023
- Subject:** BOAA Case No. 03-23 – 4464 S. Pagosa Way
- Notification:** The Notice of Waiver Request was mailed to abutting property owners on March 09, 2023 and a notice of virtual public hearing sign was posted on the property on the same day in accordance with Code.
- Summary:** Request by the property owner, Jimmy Garcia, for the following Single-Family Dwelling Variance:
- A request by the property owner, Jimmy, and Jerryca Garcia, for the following Single Family Dwelling Variance(s): To allow a replacement of a corner lot fence that does not meet setback (4 feet from the sidewalk) or street frontage fencing requirements which limit the height of solid fencing (solid fencing no taller than 18 inches). Section 146-4.7.9. L.

Background Information: The subject property is located at 4464 S. Pagosa way in the Summer Valley neighborhood, within the Summer Valley subdivision. The property is approximately 0.11 acres with an approximately 750 square foot primary residence and constructed in 1983 according to the Arapahoe County Assessor’s records. The property and surrounding neighborhood are zoned R-1 Single Family Detached District. Generally, this property and neighborhood lie in an area between a lower density established single family neighborhood and Medium-Density density residential and more intensive commercial uses (MU-C) and Business/Tech District (I-1). This zone district is intended to create a low average density and a single family detached residence character, with minimum lot sizes and setback requirements to ensure this character is maintained. In the R-1 zone district, the minimum required a corner lot fence setback 4 feet from the sidewalk. **See Exhibit A – Vicinity Map.**

The applicant replaced substantially complaint front yard and privacy fence with a non-complaint fence impacting the public sidewalk along S. Pagosa Way. The original privacy fence appears to be 3’ to 4’ from back of sidewalk, in substantial compliance The new fence has no setback from the sidewalk and is located in the public right of way. The original front yard fence was a three-rail fence which complied with the 50% transparency requirement. The new fence is completely opaque and a significant reduction in compliance. Both situations adversely affect the usability of the public sidewalk, reduces siter visibility for vehicular traffic and visually contribute to a “fence canyon” appearance along the street. The applicant’s stated reasons for this fence is that when he bought the house the fence was already there

all they did was update the fence. The applicant was cited by Code Enforcement in October of 2022 for the fence Setback. (See **Exhibit B– Application and Justification**).

Analysis: The city code stipulates that privacy fences must be setback a minimum of 4 feet from the back of existing sidewalks. The intent of this code requirement is to ensure that the right of way remains clear of encroachments, and to ensure adequate visibility and space for turning movements between driveways or around corners and the usability of the sidewalk is not adversely impacted. Front yard fences are permitted to be 18” from the back of sidewalk, but they are also required to be 50% “open”. Again, these requirements are to support the functionality of the sidewalk and visibility in the neighborhood. Staff has consulted with the City Traffic Engineer and agreed that the fence be moved back 4- feet to better meet the city standard for sight triangles and out of the public right of way. (See **Comments from Traffic Department**).

Required Findings: According to Section 146-5.4.4.B.3 (Exhibit F), the Board of Adjustments and Appeals can grant variances based on the following criteria:

1. Effect on adjacent properties. The proposed variances will not adversely affect adjacent properties or the surrounding neighborhoods.

Staff Analysis: The fence location is highly visible and contributes to diminished functionality of the public street and sidewalk which impact the neighborhood.

2. The proposed variance is consistent with the majority of the criteria as follows:

a. Improved Design

Staff Analysis: Staff finds that the fence does not achieve internal efficiency of design, diminishing the design and functionality of the public realm.

b. Consistency with Neighborhood Character

Staff Analysis: Staff finds the side yard fence location not to be compatible with the rest of the existing neighborhood.

c. Compatibility with Adjacent Development

Staff Analysis: *Not many* of the surrounding properties on corner lots have existing 6-foot-tall side yard fences against the street. The applicant’s fence is not compatible with this pattern.

d. Impact on existing city infrastructure and public improvements

Staff Analysis: The fence does encroach into the right of way or any and does impede traffic sight triangles. Therefore, this has a negative impact to city infrastructure or public improvements.

e. Internal efficiency of design

Staff Analysis: The location of the fence may pose an impediment to pedestrians or those with disabilities attempting to use the sidewalk in front of the property. It also may present an impediment to future city efforts to widen sidewalks in this area to current standards. As such, staff finds that the fence does not achieve internal efficiency of design.

f. Control of external effects

Staff Analysis: The side gate swing, which is pretty clearly going to overlap into the curb/gutter/parking area, and will block the ADA pathway.

Conclusion:

Based on the required findings of Code Section 146-5.4.4.B.3, staff finds the variance request does not meet the criteria because:

- It is not consistent with the existing neighborhood character and adjacent properties.
- The fence appears to be within the right of way.
- Adversely impacts the public sidewalk and street.

Staff Recommendation:

Staff recommends **denial** of the proposed variance. And that the privacy fence to be moved to its original set back (4 feet from sidewalk) and the front yard fence include required open design.

ATTACHMENTS:

- Exhibit A – Vicinity Map
- Exhibit B – Application and Justification
- Exhibit C – Site Photos
- Exhibit D – City Code Section 146-5.4.4.B.3

Exhibit A – Vicinity Map





CASE # _____

APPLICATION TO THE BOARD OF ADJUSTMENT & APPEALS
VARIANCE

ADDRESS OF PROPERTY AFFECTED: 4464 S. Pagosa Way

Zone District _____

Applicant

Name: Jimmy Garcia Jerryca Garcia
Address: 4464 S. Pagosa Way
Phone #: 720-990-7529 email jerjim83@gmail.com

Property Owner:

Name: Jimmy Garcia Jerryca Garcia
Address: 4464 S. Pagosa Way
Phone #: 720-990-7529 email jerjim83@gmail.com

Signature [Handwritten Signature]

Variance requested:

Received a complaint on updated fence to be moved back 4ft.
When we bought the house fence was already there all we
did was update the fence and all around are neighborhood
the fences are all around our a not 4ft from the sidewalk.

The above request does not conform to Section(s) _____ of the Aurora City
Code, which requires _____



PLOT PLAN

Building Division • 15151 E. Alameda Parkway, Ste 2400 • Aurora, CO 80012 • 303.739.7420
Email: permitcounter@auroragov.org

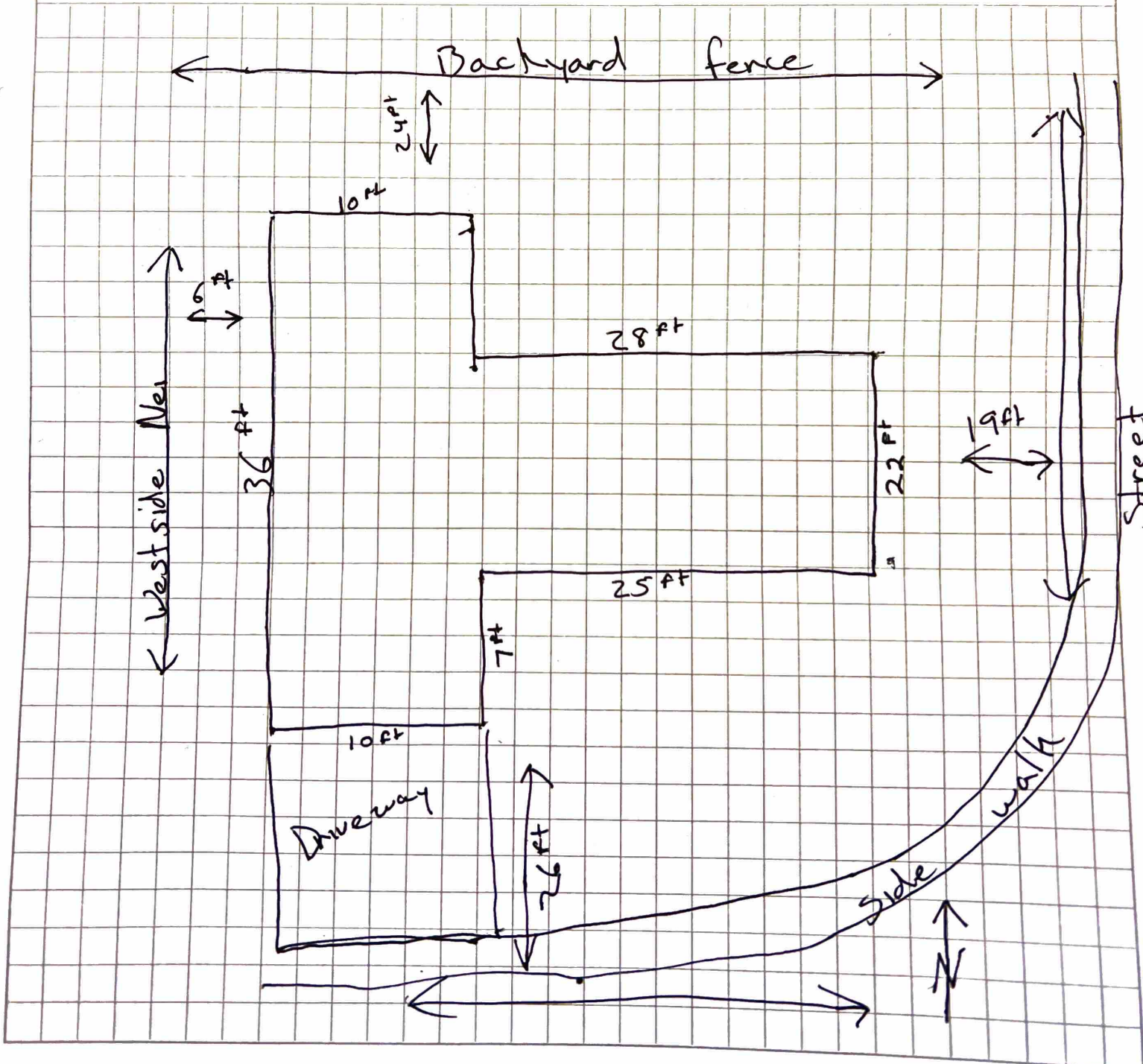
ADDRESS: 4464 S Pagosa Way ROWID: _____



INDICATE
N

NOTE:

Indicate the following information - streets, alleys, and/or easement; front, rear and side yard setbacks; dimensions between buildings and dimensions of building.
Indicate existing structures with a solid line _____
Indicate proposed structures with broken line - - - - -



CASE # _____

Type, or print clearly, the name and complete address (including zip code) of each abutting property owner:

ABUTTING PROPERTY ADDRESS:

NAME & ADDRESS OF PROPERTY OWNER

4462 S. Pagosa Way - Yesenia Hernandez

4454 S. Pagosa Way - Brianne Gilbert

4452 S. Pagosa Way - Tameela Watson

4453 S. Pagosa Way - Andrew Aguilar

4451 S. Pagosa Way - Walter Lopez Acosta

4455 S. Pagosa Way - Edward Ulibarri

4461 S. Pagosa Way

4463 S. Pagosa Way

4465 S. Pagosa Way - Mark Sousa / Thomas Schuller

4471 S. Pagosa Way - Judit Torok

4473 S. Pagosa Way - Paul Flores

4475 S. Pagosa Way - Emily Piesik

Rick White
4456 S PAGOSA WAY
Aurora, CO 80015

Amer Al-Bairaqdar
1090 S Kalispell St
Aurora, CO 80017

Janet Gill
4488 S Pagosa Cir
Aurora, CO 80015

Yesenia Garcia
4462 S PAGOSA WAY
Aurora, CO 80015

Juan Onate Araujo
3571 S Kittredge St Unit D
Aurora, CO 80013

Cary Mercer
4491 S Pagosa Way
Aurora, CO 80015

Adolfo Lopez-Mira
1680 S Beeler St #22
AURORA, CO 80010

Paul Flores
4473 S Pagosa Way
Aurora, CO 80015

Judit Torok
4471 S Pagosa Way
Aurora, CO 80015

Crystal Henning
4483 S Pagosa Way
Aurora, CO 80015

Security Portfolio II LP
1717 N Waterfront Pky
Wichita, KS 67206

Kristin Watson
4452 S Pagosa Way
Aurora, CO 80015

William Gilbert
4454 S Pagosa Way
Aurora, CO 80015

Jose Rivera
4494 S Pagosa Cir
Aurora, CO 80015

Judith Reyes
4481 S Pagosa Way
Aurora, CO 80015

Jerry Walters
4492 S Pagosa Cir
Aurora, CO 80015

Yu Zhang
4490 S Pagosa Cir
Aurora, CO 80015

Jennifer McManus
13433 Ivy St
Thornton, CO 80602

Brittney Fitzgerald
4453 S Pagosa Way
Aurora, CO 80015

Edward Ulibarri
4455 S Pagosa Way
Aurora, CO 80015

William Rees
4461 S Pagosa Way
Aurora, CO 80015

Juan Escalante
4484 S Pagosa Cir
Aurora, CO 80015

Emily Piesik
4475 S Pagosa Way
Aurora, CO 80015



CITY OF AURORA
Neighborhood Support Division
15151 E. Alameda Pky 4th Floor
Aurora, CO 80012
Code Officer: Carolee #333 at 303-739-7478
Office: 303-739-7280 Fax: 303-739-7191
Email: cthailin@auroragov.org

NOTICE OF VIOLATION

OPENDOOR PROPERTY TRUST I
7974 E COSTILLA BLVD
CENTENNIAL CO 80112-1215

ADDRESS OF VIOLATION: 4464 S PAGOSA WAY AURORA 800151913

Code Area

Section

CEV Fences (P,C)

Fence Setback 146-4.7.9 L 1

Officer Comments:

PLEASE SET THE NEW FENCE IN THE SIDE YARD BACK AT LEAST 4 FEET FROM THE EDGE OF THE SIDEWALK.
PLEASE CALL THE PLANNING DEPT WITH ANY QUESTIONS OR PERMIT REQUIREMENTS. THANK YOU

CORRECTION OF THE ABOVE CITED VIOLATION(S) MUST BE COMPLETED PRIOR TO **10/06/2022**.

CODE OFFICER: Carolee #333
IF YOU HAVE QUESTIONS OR NEED MORE INFORMATION PLEASE CALL: 303-739-7478.

READ CAREFULLY

Violations of the ordinance of the City are punishable by fine and/or imprisonment, as provided in the ordinance. If you fail to comply with this notice, or have further violations of the ordinance as cited above, a summons and complaint will be issued for your appearance before the municipal court.





4463 S Pagosa Way

Aurora, Colorado

Google Street View

Jul 2019 [See more dates](#)

X





2023/01/31
12:13





2023/01/31
12:13







2023/01/31
12:14



Rabbaa, Rachid

From: Gates, Erik
Sent: Wednesday, March 8, 2023 8:32 AM
To: Rabbaa, Rachid
Subject: FW: BOA Question Regarding 4464 S Pagosa Way

Hi Rachid,

See Steven's response below. Is there anything you want me to follow up on? The ADA thing may be a fire/life safety issue, if the gate does open outward.

Erik Gates

Planner
Planning & Development Services | City of Aurora
Office 303.739.7132
Email egates@auroragov.org
he/him/his



[Facebook](#) | [Twitter](#) | [Instagram](#) | [Nextdoor](#) | [AuroraTV.org](#)

From: Gomez, Steven <segomez@auroragov.org>
Sent: Wednesday, March 8, 2023 8:18 AM
To: Gates, Erik <egates@auroragov.org>
Subject: RE: BOA Question Regarding 4464 S Pagosa Way

Erik,
Since there is not a STOP condition/conflicting traffic at this location there is not a COA sight triangle requirement.
The fence appears to be within the right of way, I'm sure you are aware of that.

The primary concern is the gate swing, which is pretty clearly going to overlap into the curb/gutter/parking area, and will block the ADA pathway (sidewalk) 100%. Is there a COA code that prevents that? Are they're able to do gate that swings in? Likely, though, they're parking a trailer in there and an in-swing gate isn't going to fit.

Steve

Steve Gomez, P.E., PTOE
Senior Engineer – Traffic | City of Aurora
office 303.739.7300 | email segomez@auroragov.org



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Please note upcoming out of office days:

From: Gates, Erik <egates@auroragov.org>
Sent: Monday, March 6, 2023 4:24 PM
To: Gomez, Steven <segomez@auroragov.org>
Subject: BOA Question Regarding 4464 S Pagosa Way

Hello Steven,

I'm helping out with a board of adjustments case that will be heard near the end of the month and I was hoping to get your take on the item from a traffic engineering perspective.

The applicant installed a closed style wood fence immediately adjacent to the attached sidewalk as you can see from the attached photos. The lower fence is around 3 ft tall and the taller fence is around 6 ft I understand.

We had two main questions about this, but if anything else sticks out to you please let me know.

The first question is if there is an issue with sight triangles at the corner with the fence at that location.

The second is if there is an issue with the rear gate (see photo 112_1526) being as close to the road as it is. I wasn't sure if there was any regulation on the public works side of things that would require a minimum distance between a gate that a vehicle can enter/exit and a public roadway.

Feel free to let me know if there is more information you need and I will try to find it. You can also give me a call if you'd rather discuss that way.

Thank you,

Erik Gates
Planner
Planning & Development Services | City of Aurora
Office 303.739.7132
Email egates@auroragov.org
he/him/his



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B. Single-Family Dwelling Variance

All applicable provisions of Section 146-5.3 (Common Procedures) apply unless specifically modified by the provisions of this Section 146-5.4.4.B.

1. Applicability

This Section 146-5.4.4.B applies to all applications for a variance from the standards and of provisions of this UDO or to the provisions of Chapter 90 as they relate to the modification of an existing single-family dwelling or the lot on which it is located that do not qualify for approval as a Minor Amendment under Section 146-5.3.15.A. This section may not be used to vary the standards or provisions of this UDO for single-family homes that have not yet obtained a certificate of occupancy or Manufactured Homes that have not yet been installed in accordance with Chapter 90.

1. Procedure

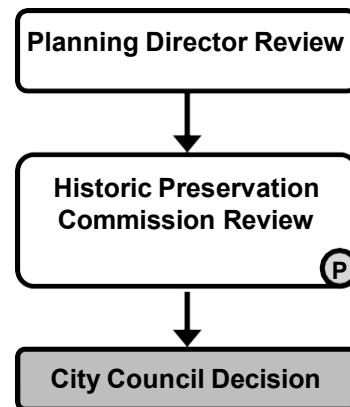
- a. Planning Director shall review the application and forward a recommendation to the Board of Adjustment and Appeals pursuant to all applicable provisions of Section 146-5.3 (Common Procedures).
- b. The Board of Adjustment and Appeals shall conduct a public hearing on the application and shall make a decision on the application pursuant to all applicable provisions of Section 146-5.3.

2. Criteria for Approval

An application for a Single-family Dwelling Variance shall be approved if the Board finds that the proposed variance will not adversely affect adjacent properties or the surrounding neighborhoods and a majority of the following criteria have been met.

- a. The proposed variance results in improved design.
- b. The proposed variance does not adversely affect the character of lower density residential areas.
- c. The proposed variance will result in development that is compatibility with adjacent land development.
- d. The proposed variance will not result in undue or unnecessary burdens on existing infrastructure and public improvements, or arrangements have been made to mitigate those impacts.
- e. The proposed variance results in development that achieves internal efficiency for its residents and does not endanger public health or convenience.
- f. The proposed variance results in development that controls external effects on nearby land uses, movement and congestion of traffic, noise generated, arrangement of signs and lighting to prevent nuisances, landscaping, and features to prevent detrimental impacts on public health, welfare, safety or convenience.

**Historic
Landmark/District
Adjustment**



(P) Indicates Public Hearing Required