



NOTICE OF BOARD OF ADJUSTMENTS AND APPEALS MEETING

May 16, 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.

View or Listen Live

Click to join:

<https://auroragov.webex.com/auroragov/j.php?MTID=md2d7a40edacf0b64c859991ce791976b>

Event Password: Aurora2020

Call-in Participation

Call 720.650.7664

Access Code: 2491 624 4415

Event Password: 28767220

In-person Participation

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

Knock to be granted access to the building by security.

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 número 303.739.7521.



AGENDA

Board of Adjustment and Appeals

Tuesday, May 16, 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 for 4-18-2023 2
4. ADOPTION OF AGENDA
5. GENERAL BUSINESS
 - 5.a 05-23 - 1166 Jamaica Street 6

A request by the property owner, Ciara Bujanos, for the following Single Family Dwelling Variance(s): To allow a front yard fence that does not meet height or transparency requirements.
6. OTHER BUSINESS
7. ADJOURNMENT

Planning Department
City of Aurora, Colorado

SUMMARY OF BOARD OF ADJUSTMENT AND APPEALS ACTIONS

BOA Hearing Date: April 18, 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
Marty Seldin
Andris Berzins

Case Number: 04-23 – 1209 N Lansing Street

Description:

Request by the property owner, Desiree Trujillo, for the following Single-Family Dwelling Variance:

- An adjustment to the requirement of Section 146.4.7.9.L., which requires that the setback in the front yard of residential properties be 18 inches from the back of the sidewalk with an open-style fence design.

Recommendation from staff to deny 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 fence in the front yard that does not meet setback or transparency requirements.

Mr. Bittel commented that images provided by the applicant of comparable fences throughout their neighborhood appear to be older fences.

Mr. Rabbaa agreed that, by appearance, the fences look to be old.

Mr. Bittel commented that perhaps the fences were constructed prior to changes in code requirements.

Mr. Berzins asked the staff if the variance could be considered separately, one variance for setback and another for opacity, or if both variances must be considered together.

Daniel Money, City Attorney, stated that either choice is allowable. However, Mr. Money noted that if the variances are split then it is advisable to vote on each separately.

Mr. Bittel asked the board how they wished to proceed.

Mr. Berzins deferred to the applicant to state their intentions for the fence and willingness for any modifications. Mr. Berzins commented that the narrowness of the sidewalk in Original Aurora

makes the 18-inch setback more conducive for future modification as opposed to a change in fence design.

Mr. Palestro encouraged considering the variance for setback and opacity together, not separated. Mr. Seldin voiced support for separate consideration.

Desiree Trujillo, 1209 N Lansing Street, Aurora, CO 80010, the applicant was available for questions. Ms. Trujillo noted that a survey was completed regarding the construction of the fence. The fence was built by the applicant and her family. Ms. Trujillo stated no intent to violate codes. Ms. Trujillo noted her reasoning for the design of the fence to include limitations imposed by the tree root system and gas lines as well as safety and security. According to the applicant, a few instances of theft and vagrancy occurred at her property. Ms. Trujillo stressed that personal hardships are impeding her from changing the fence. She also noted support from neighbors for the fence.

Mr. Seldin asked that the applicant provide additional information on the survey completed at the property.

Ms. Trujillo indicated that she called 811 to inquire about water and gas lines.

Mr. Seldin stated that to the north of the property appears to be a water shut-off. Mr. Seldin asked if any comment was received on the construction of the fence in relation to the water shut-off.

Ms. Trujillo stated she was told the fence should be 18 inches away from the main water source away from the home and 18 inches away from the yellow marks left on her property/grass by the surveyor. She was informed electrical is overhead.

Mr. Bittel asked the applicant if she was told that her fence needed to be 18 inches from the sidewalk.

Ms. Trujillo replied, no.

Mr. Berzins commented that 811 would be unlikely to be able to inform the applicant of this detail. Mr. Berzins asked the applicant if they are willing to make modifications to the fence to meet opacity requirements.

Ms. Trujillo stated she is unable to make further changes to the fence due to personal hardship.

General discussion ensued.

Ms. Trujillo noted difficulties in setting the fence back further from the sidewalk due to the tree root system in the front yard.

General discussion ensued.

Sharyn Vallenga, Code Enforcement Office, was available for questions. Ms. Vallenga noted that this was a proactive notice of violation issued in December 2022, for the height of the fence and it not being 50% opaque. Ms. Vallenga reviewed conversations with the applicant regarding why the fence was not in compliance. Ms. Vallenga noted an extension was issued on the notice and information was provided on the Board of Adjustments. Ms. Vallenga expressed concerns that the tree in the front yard may be city-owned. A city-owned tree cannot be jeopardized in any way or impacted by the fence.

Ms. Bittel asked for additional information pertaining to the tree setback from the sidewalk.

Ms. Vallenga confirmed that the tree is setback from the sidewalk. Ms. Vallenga also commented on the construction of the fence. She indicated that the beams have been notched on the side to slide into the notches. If a board is removed, it will slide down to the next board. Ms. Vallenga noted that this was a concern posed by the applicant that may impend changes to the fence.

Mr. Palestro noted that the boards could be screwed in, which should not pose many issues with changes to the fence to meet opacity requirements.

Mr. Berzins noted that spacers could also be used to achieve the same effect.

Mr. Bittel expressed concerns about the distance of the fence from the sidewalk, noting that this may pose a safety hazard to the public.

General discussion ensued.

Mr. Berzins noted that some photos submitted by the applicant were of a church and school which may have different code requirements for commercial versus residential.

General discussion ensued.

Mr. Berzins expressed concerns about the potential for a gate across the driveway which may create a compound aesthetic.

Ms. Trujillo, the applicant, replied to have no intention of building a gate.

Daniel Money, City Attorney, spoke to neighboring fences. Mr. Money indicated that if a fence was constructed incorrectly in the past or through a different code that would then qualify as a nonconforming structure. If a nonconforming structure is rebuilt, it must adhere to the current code. Mr. Money noted that the fence under consideration must adhere to the code unless granted a waiver or variance. Also, Mr. Money stated that splitting the request for a variance into two would be made in the motion by the board. Mr. Money cautioned against the board giving the applicant solutions to address the citation, instead the applicant should be referred to the code or law.

General discussion ensued.

Ms. Gallo requested the discussion be closed and a motion be made.

Mr. Money reviewed information on the authority of the Board of Adjustments and Appeals.

Ms. Vallenga, Code Enforcement Officer, noted that the tree in the front yard is a city-owned tree. That tree can in no way be jeopardized through the relocation of the fence in the front yard.

Public Comment Given at the Hearing:

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

Board of Adjustment and Appeals Results

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

Move to deny the variance/waiver request because the proposal does not comply with the required findings of Code Section 146-5.4.4.B.3., and:

- It is not consistent with the existing neighborhood character and adjacent properties;
- The fence is not meeting the setback or design requirements; and,
- The fence adversely impacts the public realm by potentially inhibiting pedestrian travel and future sidewalk improvements.

Action Taken: Denied

Votes for the Waiver: 0

Votes against the Waiver: 5

Absent: 2

Abstaining: 0

Other Topics Discussed at the Hearing:

Ms. Gallo noted an error in the findings section of the Draft Board of Adjustments and Appeals Minutes for March 21, 2023. The Draft Board of Adjustments and Appeals Meeting Minutes for March 21, 2023, was approved as amended to remove the error in the findings section.

Mr. Money advised staff to coordinate with the homeowner on the next steps following the board's decision. Mr. Rabbaa and Ms. Vellenga confirmed that they would coordinate with the homeowner.

Mr. Berzins requested staff adjust applications to include more comprehensive information on the properties presented for consideration of a waiver, which may include among other things city surveys. Mr. Berzins expressed an interest in working with staff and the city attorney on this.

Mr. Bittel requested that staff explore in-person meeting requirements for applicants. Mr. Bittel also expressed support for full in-person meetings. Mr. Money noted that this is a decision the board could consider and be brought to a vote by the board.

Mr. Money noted that the applicant is afforded the same opportunities to participate in the meetings as other attendees. As a hybrid meeting, the applicant can attend in person, online, or by phone.

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: Stephen Gubrud, Planner, Board of Adjustment staff liaison

Date: May 5, 2023

Hearing Date: May 16, 2023

Subject: BOAA Case No. 05-23 – 1166 N Jamaica St.

Notification: The Notice of Variance Request was mailed to abutting property owners on May 03, 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, Ciara Bujanos, for the following Single-Family Dwelling Variance:

- A request by the property owner, Ciara Bujanos, for the following Single Family Dwelling Variance(s): An adjustment to the requirement of Section 146-4.7.9.L Table 4.7-4, which requires a maximum fence height of 42 inches and an open fence style with at least 50% visual permeability in the front yard area and should be constructed with like materials.

Background Information: The subject property is located at 1166 N Jamaica Street in the Del Mar Parkway neighborhood, within the Aurora Heights subdivision. The property is approximately 0.15 acres with an approximately 1020 square foot primary residence, constructed in 1950 according to the Arapahoe County Assessor’s records. The subject property and surrounding neighborhood are zoned Original Aurora Low-Density Residential District (OA-R-1) and is made up of primarily single-family homes. This zone district is intended to create a low-density single-family detached residential character, with minimum lot sizes and setback requirements to ensure this character is maintained. (See **Exhibit A – Vicinity Map**).

The applicant requests a variance to allow a front yard fence that is a 45-inch-high, closed-style wood fence, which is not within code compliance. The city code requires an open-style fence that is at least 50% open, and this fence was constructed at close to 0% open as a nearly solid wood fence. The City Code limits the height of a front yard fence to 42 inches and this proposal is for 45 inches. This request is only for the portion of the fence parallel to the front lot line since the existing side fences are pre-existing chain link and do not require a variance.

The applicant's stated reason for constructing this fence is to improve the aesthetic of their home and the neighborhood in general. The applicant was directed by Code Enforcement on February 23, 2023, to apply for a variance with the City of Aurora. (See **Exhibit B– Application and Justification**).

Analysis: There are three key components to the front yard fence standards. They include height, setback, and transparency. These three parameters work together to create a consistent approach to front yard fencing that protects the functionality of the public sidewalk and maintains visibility of the street from the home and vice versa. The requirements for the maximum fence height, consistency in fence materials, and open fence style in the front yard of residential districts are, in part, to ensure that residential areas maintain an open and attractive street presence and public realm throughout Aurora's neighborhoods.

The existing 45-inch high, mostly opaque, front yard fence does not meet the intent of the code as it does not provide the visual permeability and material consistency intended to support an inviting and aesthetically appealing residential neighborhood. It is worth noting that the setback from the back of the sidewalk of around 3 feet exceeds the minimum requirement and provides some mitigation for the opaque fence. Code requirements are in place to enhance and support the neighborhood's character.

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 variance will not adversely affect adjacent properties or the surrounding neighborhoods.*

Staff Analysis: The proposed variance does not present a significant adverse effect on adjacent properties or the surrounding 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 achieve internal efficiency of design, improving the design and functionality of the public realm.

b. Consistency with Neighborhood Character

Staff Analysis: Staff finds the front yard fence design is not compatible with the surrounding neighborhood as most homes do not have a closed-style front yard fence.

c. Compatibility with Adjacent Development

Staff Analysis: The immediate surrounding properties do not have existing closed-style wood fences. The applicant's fence is not compatible with this pattern.

d. Impact on existing city infrastructure and public improvements

Staff Analysis: The existing fence does meet setback requirements and is not an impediment to sidewalk functionality or potential future public sidewalk improvements.

e. Internal efficiency of design

Staff Analysis: The location of the fence does not pose an impediment to pedestrians. As such, staff finds that the fence does achieve internal efficiency of design.

f. Control of external effects

Staff Analysis: The proposal would not cause significant adverse external effects on the public realm.

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 varying materials and closed style do not meet the intent of the UDO to enhance and support neighborhood character.

Staff Recommendation:

Staff recommends **denial** of the proposed variance and recommends that the fence be modified to meet code with a maximum 50% opacity for front yard fences and achieve a consistency in materials and 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



12th AVE

JAMAICA ST

JOLIET ST

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PLANNING DEPARTMENT

15151 E. Alameda Pkwy., 2nd Floor
Aurora, Colorado 80012
303-739-7250
FAX: 303-739-7268

Board of Adjustments and Appeals

The Board of Adjustments and Appeals (or BOA) is a volunteer-based Board comprised of 7 residents of the City of Aurora. They have the authority to deliberate on and approve or deny Variance requests.

So, what does that mean for me?

- The BOA is the deciding body for requests from Aurora homeowners who wish to make any alteration or improvement to their residential property which does not meet applicable standards of the Unified Development Ordinance (UDO).
- What are some examples of Variance requests?
 - A proposed new detached garage which would exceed the maximum allowable square footage.
 - A fence which was built and exceeds the maximum allowable height.
 - A proposed home addition which encroaches into the rear yard setback.

How do the hearings work?

- The BOA meets at 6 pm on the 3rd Tuesday of every month.
- Important information for applicants:
 - The 2022 application fee is \$150 and is non-refundable once the hearing occurs, even if your request is denied.
 - A completed application form and fee payment must be received by the City by the first Friday of the month, one month prior to the target hearing date. (for example, if you wish to have your request heard at the August hearing, your application is due the first Friday of June)
 - 10 days before the hearing, you must post a Notice of Public Hearing sign on your property.
 - 10 days before the hearing, mailed notices summarizing your request will be sent to the owners of each property adjacent to yours.
- At the hearing, your request will be presented to the BOA. The request should include how your application complies with the Criteria of Approval in Section 146-5.4.4.A.3 (Hardship) or Section 146-5.4.4.B.3 (Single-Family) and will be voted to approve or deny by the Board.
- The BOA Members are finders of fact and have the authority to interpret compliance with the Criteria of Approval.

CASE # 1692231

BOARD OF ADJUSTMENT & APPEALS
CITY OF AURORA
APPLICATION FOR VARIANCE

1. **A complete application with a check for \$150.00, payable to the City of Aurora, must be received no later than the first Friday of the month to be included in the agenda for the following months' hearing.**
2. Please type or print clearly when filling out the application. After completing the application, schedule an appointment by emailing **boaplanning@auroragov.org**.
3. **An appointment needs to be scheduled by the first Friday of the month.**
4. When meeting with the applicant, staff will review the application for completeness and will provide instruction on the procedures of the hearing.
5. The Planning Department will prepare a public hearing sign for the applicant to post the property a minimum of ten days prior to the hearing. **(Do not remove the sign prior to the hearing.)** The sign must be posted through the entire hearing process.

HEARING DATE:



CASE # 1692231

APPLICATION TO THE BOARD OF ADJUSTMENT & APPEALS
VARIANCE

ADDRESS OF PROPERTY AFFECTED: 1166 Jamaica St. Aurora, CO 80010

Zone District _____

Applicant	Name: <u>Ciara Bujanos</u>
	Address: <u>1166 Jamaica St. Aurora, CO 80010</u>
	Phone #: <u>405-249-1729</u> email <u>c.buj22@gmail.com</u>
Property Owner:	Name: <u>Ciara Bujanos</u>
	Address: <u>1166 Jamaica St. Aurora, CO 80010</u>
	Phone #: <u>405-2491729</u> email <u>c.buj22@gmail.com</u>

Signature Ciara Bujanos

Variance requested:
I'm wanting to appeal a fence violation that I received. Prior to putting up the fence it was chain link, I put up a nice wooden fence which looks a lot better than it did before. It's not bothering anyone and it helps the neighborhood look nicer.

146-4.11.1 D 2
146-4.7.9. L 1

The above request does not conform to Section(s) 146-4 .7.9 D of the Aurora City Code, which requires fence being 50% open, not exceeding 42 inches in height, and should be constructed with a like material consistent with the rest of the fence, chain link.

ISMAEL ROMAN
20120 E DOANE DR
AURORA, CO 80013

DEVRENT LLC
8301 E PRENTICE AVE SUITE 203
GREENWOOD VILLAGE, CO 80111-2905

BAF ASSETS 5 LLC
5001 PLAZA ON THE LAKE
STE 200
AUSTIN, TX 78746-1053

URIEL & SMADAR RAUFF
1532 S KENTON ST
AURORA, CO 80012-5113

HUSSAN BIN HAMED
1172 JAMAICA ST
AURORA, CO 80010-3421

JESUS RAFAEL & MARIA MUNOZ-
ARMENDARIZ
1165 JOLIET ST
AURORA, CO 80010-3434

DANIEL & MARY HACKLEY
1157 JOLIET ST
AURORA, CO 80010-3434

JANICE RODRIGUEZ
1149 JOLIET ST
AURORA CO 80010

GILLIE ANN PINNOCK-MCGHIE
1188 JAMAICA ST
AURORA, CO 80010-3421

MANUEL FLORES
1156 JAMAICA ST
AURORA, CO 80010-3421

1173 JOLIET LLC
1685 S COLORADO BLVD STE 220
DENVER, CO 80222-4000

OMAIR AMRO
4820 S ODESSA ST
CENTENNIAL, CO 80015-3454

KRISHNA LAMSON
1208 KINGSTON ST
AURORA CO 80010-3714

JOEL DURAN
1180 JAMAICA ST
AURORA CO 80010-3421

LUIS & MARIA GUTIERREZ
1771 ARGONNE ST
AURORA CO 80011-5208



CITY OF AURORA
Neighborhood Support Division
15151 E. Alameda Pky 4th Floor
Aurora, CO 80012
Code Officer: Sharyn #116 at 303-739-7298
Office: 303-739-7280 Fax: 303-739-7191
Email: svelleng@auroragov.org

Courtesy Notice

ADDRESS: 1166 N JAMAICA ST AURORA 800103421

NAME:

Code Area

Section

Fences	Fence Requirements 146-4.11.1 D 2
Fences	Front Yard Req 146-4.7.9 L 1
Fences	Material 146-4.7.9 D

Officer Comments

THE FENCE AROUND THE FRONT YARD DOES NOT MEET THE REQUIREMENTS OF THE CITY OF AURORA MUNICIPAL CODE. A FRONT YARD FENCE SHOULD BE 50% OPEN (EVERY OTHER PICKET REMOVED), NOT EXCEED 42 INCHES IN HEIGHT AND SHOULD BE CONSTRUCTED OF A LIKE MATERIAL CONSISTANT WITH THE REST OF THE FENCING AROUND THE FRONT YARD (CHAIN LINK). PLEASE CONTACT ME IF YOU WOULD LIKE TO DISCUSS YOUR OPTIONS FOR THE FENCE CONSTRUCTION. THANK YOU

This courtesy notice has been issued to advise you a code violation(s) listed above has been observed on your property. Please make the necessary corrections within 7 day(s). The property will be re-inspected on .

DATE/TIME SERVED:

IF YOU HAVE QUESTIONS OR NEED MORE INFORMATION PLEASE CALL CODE OFFICER: Sharyn #116 at 303-739-7298









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

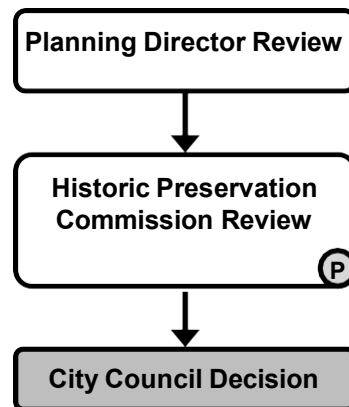
- a. Planning Director shall review the application and forward a recommendation to the Board of Adjustment and Appeals pursuant to all applicable provisions of Section 146-5.3 (Common Procedures).
- b. The Board of Adjustment and Appeals shall conduct a public hearing on the application and shall make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