

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**



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Lynn Bittel, Chairman



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Rachid Rabbaa, City of Aurora