

Planning Department
City of Aurora, Colorado

SUMMARY OF BOARD OF ADJUSTMENT AND APPEALS ACTIONS

BOA Hearing Date: May 16, 2023
Hearing Location: Hybrid Public Hearing, held via WebEx and in-person
Case Manager: Stephen Gubrud

Board Members Present: Lynn Bittel
Marty Seldin
Richard Palestro
Kari Gallo

City Staff Present: Brandon Cammarata
Steve Timms
Daniel Money
Stephen Gubrud
Rachid Rabbaa
Stephanie Beard
Diane Webb
Sharyn Vellenga

Case Number: 05-23 – 1166 Jamaica Street

Description:

Request by the property owner, Ciara Bujanos, for the following Single-Family Dwelling Variance:

- 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.

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 height or transparency requirements. Staff corrected a clerical error that Exhibit F was mislabeled in the packet. It should be labeled Exhibit D.

The Board members did not ask staff questions.

Mr. Bittel asked the applicant if she would like to make a presentation.

The applicant, Ciara Bujanos, 1166 N Jamaica Street, Aurora, CO 80010, was available in person for questions. Ms. Bujanos stated that she wanted to improve the appearance and curb appeal of her front yard by covering the existing chain-link fence. She noted the new wooden

fence provides extra security, buffers sound, and mitigates trash accumulation. Ms. Bujanos also stated the fence looks nice, it is not impeding anyone's health or safety, nor is it blocking the sidewalk. Ms. Bujanos stated she had good intentions and never intended to violate the code because she was unaware of the code regarding front yard fences. She hoped to improve the neighborhood and encourage other neighbors to do the same. Ms. Bujanos noted support from her neighbors for the fence. Ms. Bujanos stated perhaps she should have thought of looking up the code. Ms. Bujanos stated she reviewed previous Board of Adjustment and Appeals meetings and found that most were regarding fence violations like her own. She noted this as a possible breakdown in communication between the City of Aurora and homeowners and suggested ways to improve communication.

Mr. Bittel agreed with Ms. Bujanos' comment regarding improved communication between the City of Aurora and homeowners, stating that he had suggested this previously.

Ms. Gallo asked the applicant how she determined how far back to set the fence.

Ms. Bujanos replied that there is a chain-link fence right behind, so the wooden fence was installed over the existing chain-link fence.

Ms. Gallo asked the applicant how difficult and abhorrent it would be to make the fence at least 50% transparent.

Ms. Bujanos replied that she could make the change but questioned the necessity. Her objective in appealing against the code violations was to receive the variances. She added that the fence is not a nuisance, it is not obstructing anyone's view, the neighbors like it, and she worked hard on it.

Mr. Bittel noted that if the applicant removed the top board, and every other board, the fence would meet the height requirement.

Ms. Bujanos stated she understood, but the height variance was not massive just ½ - 1 inch.

Mr. Bittel clarified the fence is 45 inches high, instead of the allowable 42 inches.

General discussion ensued regarding the side fence, transparency issues, and maintenance of the fence.

Mr. Seldin motioned to separate the issues of height and transparency to vote on them separately.

Mr. Palestro questioned whether the Board could do that.

Daniel Money, City Attorney, clarified that the Board could just make a motion to approve one variance but not the other. However, the Board is permitted to create a motion to separate the issues and vote on each one separately, if preferred.

General discussion ensued about the original chain-link fence being grandfathered in, and the height of the chain-link fence vs. the wooden fence.

Ms. Gallo noted that in the staff report pictures of Ms. Borunda's front yard, the neighbor's chain

link fence appeared to be higher than Ms. Borunda's fence.

Sharyn Vellenga, City of Aurora code enforcement officer, stated she checked the city records dating back to 2005 and there are no previous variances for the chain-link fence.

Board members concluded that the new fence is a new issue, but the old fence is not.

General discussion ensued about the code requirement that the front yard fence be at least 50% transparent. It was noted that a solid fence can appear offensive, and the opaque style is not consistent with the image the city wants to convey.

Mr. Bittel clarified the hearing results for the applicant, stating the fence must be made at least 50% transparent, but the 45" height is permissible.

General discussion ensued about methods the applicant could use to make the fence transparent enough to meet the code.

Ms. Bujanos expressed understanding.

Board members complimented the appearance of the applicant's fence.

Sharyn Vellenga, City of Aurora code enforcement office, asked if there would be any discussion regarding the need for like materials since the wood fence is attached to a chain-link fence, and the surrounding front yard fence is also chain-link.

Mr. Bittel stated he did not think the chain-link fence was part of the case.

Ms. Vellenga clarified the varying material is part of the report.

Mr. Money asked Ms. Vellenga if the ticket or notice was written for the material.

Ms. Vellenga stated the notice of violation was written for fence requirements, front yard requirements, and material.

Mr. Money advised Mr. Bittel the issue of the material must be addressed, and a third motion must be held.

General discussion ensued regarding the different fence materials and past hearings regarding fence violations and variances.

Brandon Cammarata, Planning Department Manager, clarified the staff recommendation and how the Planning Department arrived at its conclusion. He stated the Planning Department considers this a new fence. The maintenance section of the code is regarding the maintenance of an existing fence. The Planning Department viewed the issue as a new fence segment rather than the fence being fixed or maintained. It's not really repairing a chain-link fence with unlike materials.

Board members asked for guidance regarding their authority to grant a variance for the use of unlike materials.

Mr. Cammarata further clarified that the wood fence is fine, in the sense that it is a new fence. The section of code referenced is related to the maintenance of an existing fence, and it's fair to look at this as a new fence. The variance questions have already been addressed.

Mr. Money asked Ms. Vellenga if she supported not issuing a ticket regarding the use of unlike materials.

Ms. Vellenga expressed understanding and agreed not to issue a ticket regarding the use of unlike fence materials.

Mr. Money clarified the Board would be discussing code violations, but since the city is viewing it as a new fence and its compliance with height and transparency requirements, then the Board could proceed with the original motions made.

Mr. Cammarata agreed and stated he would contact Ms. Vellenga to provide further clarification on the Planning Department's conclusion. He thanked everyone for their efforts with the case.

Board members also thanked Mr. Cammarata for the information.

Mr. Bittel informed Ms. Borunda of the results of the hearing and thanked her for her time. Mr. Bittel advised Ms. Borunda that she would be contacted with further instructions, including receiving a letter and a timeline for completing the changes to her fence.

Ms. Borunda expressed understanding.

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 Mr. Seldin and seconded by Mr. Palestro.

Move to separate the issues of height and transparency and vote on them separately.

Action Taken: Approve

Votes to separate variance requests: 3

Votes against separating variance requests: 1 (Gallo)

Absent: 3

Abstaining: None

A motion was made by Mr. Palestro and seconded by Mr. Seldin.

Move to deny the variance request for an open fence style with at least 50% visual permeability in the front yard because the proposal does not comply with the required finding of Code Section 146-5.4.4.B.3, and:

- It is not consistent with the existing neighborhood character and adjacent properties;
- The closed style does not meet the intent of the UDO to enhance and support neighborhood character.

Action Taken: Deny

Votes for the Waiver: 1 (Gallo)

Votes against the Waiver: 3

Absent: 3

Abstaining: None

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

Move to approve the variance request for a maximum fence height of 42 inches because the proposal complies with Code Section 146-5.4.4.B.3 of the Unified Development Ordinance.

Action Taken: Approve

Votes for the Waiver: 4

Votes against the Waiver: None

Absent: 3

Abstaining: None

Other Topics Discussed at the Hearing:

Draft Board of Adjustment and Appeals Meeting Minutes from April 16, 2023, meeting were approved unanimously by those present.

Ms. Gallo asked if the BOA packet the Board members receive is also shared with the applicant.

Stephanie Beard, Project Coordinator, responded that the packet is published on the City of Aurora website and is publicly available, along with meeting recordings. She stated the applicant also receives a copy of the agenda.

Ms. Gallo thanked Ms. Beard for the information.

SUMMARY OF PROCEEDINGS PREPARED AND SUBMITTED BY: Stephen Gubrud



Lynn Bittel, Chairman



Stephen Gubrud, City of Aurora