

Planning Department
City of Aurora, Colorado

SUMMARY OF BOARD OF ADJUSTMENT AND APPEALS ACTIONS

BOA Hearing Date: August 15, 2023
Hearing Location: Virtual Public Hearing, held via WebEx
Case Manager: Stephen Gubrud

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

City Staff Present: Rachel Allen – Attorney for Planning and Development Services
Stephen Gubrud – City Planner
Andrew Playter - City Code Enforcement Officer
Steve Timms - Planning Supervisor
Diane Webb - Project Coordinator

Case Number: 08-23 – 992 Quari Court

Description:

Request by the property owner, Cinthia Martinez, for the following Single-Family Dwelling Variances:

- (1) An adjustment to the requirement of Code Section (146-4.2.3.F.1) which requires that accessory buildings of more than 120 square feet shall be set back a minimum of 5 feet from the side and rear property lines; and (2) An adjustment to the requirement of Code Section (146-4.6.5.C.2.a) which states: except for wedge-shaped lots, all driveways or parking surfaces located in the front yard shall not cover more than 40 percent of the total front yard area. For wedge-shaped lots, the maximum coverage shall be 50 percent.

Recommendation from staff to approve the variances 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 (1) allow an existing detached garage that is set back approximately 3 feet from the side and rear property lines, and (2) allow for a driveway that covers more than 50% of the front yard area on a wedge-shaped lot.

Board Discussion at the Hearing:

Mr. Bittel stated he had not visited the property and asked which board members had visited the site.

Mr. Berzins and Mr. Palestro both replied that they had visited the property. Ms. Gallo and Mr. Swope replied that they had not visited.

Mr. Palestro noted the ratio of grass to concrete illustrated in the plot plan does not meet code. There appears to be at least 60 % concrete vs. grass. This must be brought into compliance with no more than 50% concrete.

Mr. Berzins asked about utility or traffic easements on the property other than the existing utility boxes. He inquired about drainage from the spout on the west side of the garage and spillage onto the sidewalk during freezing conditions.

Mr. Gubrud replied there are no other sidewalk or right-of-way easements. There is no impermeable surface in that area, so freezing drainage should not be a concern.

Mr. Berzins noted the front face of the house does not match what is illustrated in the plot plan. An accurate drawing is needed to correctly determine the dimensions they are working with.

Mr. Gubrud agreed and stated the plan would need to be revised during the approval process if approved.

Ms. Gallo asked if the driveway that extends to the back garage is part of the variance requests.

Mr. Gubrud replied, no it would not be part of any violation.

Ms. Gallo asked about the fence that extends across the driveway.

Mr. Gubrud noted there is not actually a fence extending across the driveway as illustrated in the plot plan. This is an error. There is only a gate on the east side of the driveway.

Ms. Gallo asked if the gate would remain.

Mr. Gubrud replied, yes.

Mr. Bittel asked if there is adequate space near the side yard fences for first responders to access the area with their equipment as the area appears to be narrow.

Steve Timms, Planning Supervisor, responded that the space is 3 feet wide.

Mr. Gubrud added that there is adequate walking room. In terms of safety, the building must be fire-rated up to 5 feet from the property line.

Mr. Bittel called on Andrew Playter, City Code Enforcement Officer, to explain the department's involvement in the case.

Mr. Playter stated the property is classified as a chronic violator because they have received two or more violations within six months. The initial violation was for banners and illuminated signs advertising a home-operated tax business. While addressing the signage, the residents were informed that the driveway is not permitted to be all concrete. The second violation was issued when the fire department notified Code Enforcement that an auto shop was being operated at the home. The fire department had to respond to a fire in the backyard. Mr. Playter produced site pictures to illustrate his point.

Mr. Bittel noted that the code violation for operating an auto shop from the home is not being addressed at this meeting.

Mr. Playter concurred and stated the issue would be addressed separately.

Rachel Allen, Attorney for Planning and Development Services, asked that the additional information being provided by code enforcement be supplemented in the record and added to the official case.

Mr. Bittel acknowledged Ms. Allen's request and a discussion ensued regarding the method to enter the new information into the record.

Mr. Palestro noted the proposed variances significantly change the neighborhood, which is otherwise well-maintained. The requested changes are inconsistent with the design criteria and expectations of the community.

Mr. Bittel called on the homeowner to speak.

The homeowner, Cinthia Maldonado, 992 Quari Court, Aurora, CO 80011, deferred to the applicant, Robert Esparza, to speak on her behalf. She expressed a desire to comply with the city code.

Robert Esparza stated he is happy to bring the existing garage and driveway into compliance.

Ms. Maldonado added there is no auto shop business being run from the home anymore. They notified their tenant to vacate the property. Mr. Esparza reiterated this fact.

Mr. Bittel asked if the tenant had moved yet.

Ms. Maldonado replied, no. The tenant was notified to move by the end of the year.

Mr. Bittel noted Code Enforcement will need to determine if that timeframe is acceptable.

Ms. Gallo asked if any neighbors had expressed concern.

Mr. Gubrud replied no neighborhood concerns had been received.

Ms. Maldonado added there have been no issues with neighbors and they maintain a respectful relationship with them.

Mr. Berzins asked the applicant to clarify the design of the proposed driveway expansion as demonstrated in the plot plan.

Mr. Esparza stated he is trying to find a cost-effective solution that meets code and maintains the integrity of the neighborhood.

There was no further discussion of the case and no further questions from members of the Board.

Public Comment Given at the Hearing:

A member of the public identified online as "Taylor" attended virtually. She stated she is the neighbor directly to the north of the property. When asked if she had any comment, she replied she was mainly attending the meeting out of curiosity but was glad to see the auto shop is no longer operating. She had no further comment.

Board of Adjustment and Appeals Results

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

Move to approve the variance request to allow an existing detached garage that is set back approximately 3 feet from the side and rear property lines, with a caveat that if the structure is rebuilt, the setback must be returned to 5 feet, because the proposal complies with the required findings of Code Section 146, and:

- Does not have an adverse impact on adjacent properties;
- Is consistent with the neighborhood character;
- Is compatible with adjacent development;
- Will not have a negative impact on existing city infrastructure or public improvements; and
- Will achieve an internal efficiency of design.

Action Taken: Approved

Votes for the Waiver: 5

Votes against the Waiver: 0

Absent: 1 (Seldin)

Abstaining: None

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

Move to deny the variance request to allow for a driveway that covers more than 50% of the front yard area on a wedge-shaped lot because the proposal does not comply with the required findings of Code Section 146, and:

- Is not consistent with the neighborhood character;
- Is not compatible with adjacent development;
- Will have a negative impact on existing city infrastructure or public improvements; and
- Will not achieve an internal efficiency of design.

Action Taken: Denied

Votes for the Waiver: 0

Votes against the Waiver: 5

Absent: 1 (Seldin)

Abstaining: None

Other Topics Discussed at the Hearing:

Draft Board of Adjustment and Appeals minutes from July 18, 2023, were approved by those board members present, except for Mr. Berzins who abstained due to his absence from last month's meeting.

Mr. Berzins led the discussion of the Board of Adjustment process improvements noting that most of his concerns have been addressed by recent staff reports which have been much more comprehensive. Mr. Timms stated the staff is working on updating the BOA application to create a clearer application for citizens. This should improve the content and consistency of the applications received. Mr. Timms thanked the Board for their feedback and welcomed ongoing discussions. The Board would like to see BOA packets distributed to them no less than 5 business days before the meeting. The bylaws and a possible time change for the meeting were also discussed. Mr. Bittel proposed that staff encourage applicants to attend in person. Although in-person attendance is not required, it is preferred. Mr. Timms and Mr. Gubrud acknowledged Mr. Bittel's request and agreed it was something that could be presented to future applicants.


Mr. Bittel announced that he is not renewing his term. General discussion ensued regarding the term limits, expiration dates, and process for reappointing members and appointing new members.

Rachel Allen, Attorney for Planning and Development Services, referenced UDO code regarding BOA bylaws and requested the information be distributed to board members. Ms. Allen also announced that the city has extended an offer to a new Planning Attorney with a tentative start date of August 28th.

SUMMARY OF PROCEEDINGS PREPARED AND SUBMITTED BY: Stephen Gubrud



Lynn Bittel, Chairman



Stephen Gubrud, City of Aurora