

Planning Department
City of Aurora, Colorado

SUMMARY OF BOARD OF ADJUSTMENT AND APPEALS ACTIONS

BOA Hearing Date: September 19, 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 - Client Group Manager, Aurora City Attorney's Office
Lena McClelland – Attorney for Planning and Development Services
Brandon Cammarata – Planning Manager
Steve Timms- Planning Supervisor
Stephen Gubrud – City Planner
Steven Baptista - City Code Enforcement Officer
Manuel Dangerfield – City Code Enforcement Officer
Diane Webb - Project Coordinator

Case Number: 10-23 – 15295 E Ohio Avenue

Description:

- Request by the owner, Francisco Gallegos, for the following Single-Family Dwelling Variance: Requesting a variance from UDO code section 146-4.7.9.L.1 which states that new side and rear yard fences along arterial and collector streets may be a maximum of 6 feet in height. The applicant's property is located in the R-1 zone district and they request a variance to allow an additional 1 foot and 5 inches of height for a total fence height of 7 feet and 5 inches as measured from the exterior.

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 side yard fence with an additional 1 foot and 5 inches of height for a total fence height of 7 feet and 5 inches as measured from the exterior of the property.

Board Discussion at the Hearing:

Mr. Bittel stated he visited the site and asked which board members visited the site.

Ms. Gallo, Mr. Swope, and Mr. Palestro stated they did not visit the site. Mr. Berzins stated he visited the site.

Mr. Bittel noted that during his site visit, as you look from Chambers Rd. onto the subject property, the fence next to it is as high as the fence variance requested, so it would be a matching height.

Mr. Berzins asked if the request is for 7 feet and 5 inches for the side and rear yard. He questioned why it is the rear yard and not just a wing fence along the west side.

Stephen Gubrud, City Planner, replied that the fence goes into the rear yard area which is back behind the house.

Mr. Berzins asked if it is only the eastern-most plane.

Mr. Bittel added the fence portion in question is only on Chambers Rd.

Mr. Gubrud agreed with Mr. Berzins and Mr. Bittel and stated the fence does not extend westward across the applicant's property line.

Mr. Berzins asked for clarification that the variance would not be for the western fence or anything else.

Mr. Gubrud replied that Mr. Berzins was correct.

Mr. Palestro asked about the proximity of the fence to the sidewalk.

Mr. Gubrud replied that he did not have the measurements, but the fence is in the same location as the previous fence.

Mr. Bittel noted the fence is close but there is room to walk to on the sidewalk as he observed during his site visit.

Mr. Berzins agreed the distance matches the other fences along Chambers Rd.

Steve Timms, Planning Supervisor, added that the sidewalk on Chambers Rd. is wider because it is an arterial street.

Mr. Bittel asked if the board members had any more questions for the staff. There were none at the time.

Mr. Bittel called on the applicant to speak.

The applicant and homeowner, Francisco Gallegos, 15295 E Ohio Avenue, was available online. He thanked the board and city staff for reviewing his application. He stated safety and privacy were his main concerns in building the fence. He hoped that the variance request would be approved.

Mr. Berzins asked Mr. Gallegos if he intends to replace the fence between the current fence and the brick on the corner.

Mr. Gallegos responded that he plans to replace it in the future.

Mr. Berzins asked if he intends to make it the same height.

Mr. Gallegos replied it depends on whether the current variance request is approved. He wants to keep the entire fence the same height.

Mr. Bittel asked Mr. Gallegos if had any further input.

Mr. Gallegos referenced a site photo from the staff presentation which shows that the old fence and new fence are the same height because of the grade of his yard.

Mr. Berzins asked staff for the photo of the front wing fence that keeps coming forward, where it meets the brick, to see how far it extends.

Mr. Gubrud showed a photo to display the view requested.

Mr. Berzins noted it's about 15-20 feet between the end of Mr. Gallegos' fence and the brick structure.

Mr. Gubrud stated he did not know how the variance would apply to the front yard area because there are different restrictions for the front yard. The fence in question is the plane separating the side yard and the front yard.

Ms. Gallo noted the fence is an improvement both aesthetically and in terms of providing safety.

Mr. Berzins agreed.

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

Public Comment Given at the Hearing:

No members of the public gave comment at the hearing.

Board of Adjustment and Appeals Results

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

Move to approve the variance request 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

Case Number: 11-23 – 1036 Kramer Ct

Description:

Request by the owner, Abu Satar Bin Abdul Bashir, for the following Single-Family Dwelling Variances:

- Request #1: An adjustment to the requirements of UDO code section 146-4.7.9.L.1, which requires that front yard fences must be no taller than 42 inches. The applicant is requesting an additional 7 inches in front yard fence height, which is 49 inches in total.
- Request #2: An adjustment to the requirements of UDO code section 146-4.7.9.L.1, which states that front yard fences must be setback from the sidewalk by at least 18 inches. The applicant is requesting a 12-inch reduction to the front setback, resulting in an approximate 6-inch setback.
- Request #3: An adjustment to the requirements of UDO code section 146-4.7.9.L.2, which states that front yard fences must be at least 50% visually permeable. The applicant is requesting a closed-style fence that is 100% opaque.

Recommendation from staff to deny the three 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 allow (1) an additional 7 inches in front yard fence height which is 49 inches total; (2) a reduction to the front setback of 12 inches resulting in a 6-inch setback; and (3) a 50% visual permeability reduction for the front yard portion of the fence resulting in a completely opaque fence.

Board Discussion at the Hearing:

Mr. Bittel stated he visited the site and asked which board members visited the site.

Ms. Gallo, Mr. Swope, and Mr. Palestro stated they did not visit the site. Mr. Berzins stated he visited the site.

Mr. Berzins asked if the variance requests are for the entire front yard area and not just the area with the wooden fence.

Stephen Gubrud, City Planner, replied yes.

Mr. Bittel asked if the board members had any more questions for the staff. There were none at the time.

Mr. Bittel called on the applicant to speak.

The applicant, Abu Satar Bin Abdul Bashir, 1036 Kramer Court, attended the meeting in person. His daughter, Oksana, also attended in person. She spoke on her father's behalf and provided translation services. She requested to keep the fence as it is. She stated they are willing to move the front yard fence if necessary, but they cannot move a portion of it because of the safety of the kids.

Mr. Palestro asked to which part she was referring.

Oksana replied they would like to keep a part of the fence that shields the kids and protects them while in the yard.

Mr. Swope asked if the variance request is for the side fence.

General discussion ensued regarding the area being requested for variances.

Mr. Berzins asked if since the applicant must replace the chain-link fence, could they also move back the wooden fence as well since 18 inches is not too far?

Oksana stated concerns with privacy and problems with the neighbors as the reasons for building the fence.

Mr. Berzins pointed out in a photo from the staff presentation which portion of the fence is allowable and which portion is not within the code.

Mr. Swope noted that the fence suits the needs of the applicant's privacy and safety.

General discussion ensued regarding the neighborhood characteristics and the applicant's yard and fence.

Mr. Berzins asked what materials the applicant intends to use to replace the chain-link fence.

Oksana replied that the wooden fence was constructed to protect the kids from the street.

Mr. Berzins restated his question.

Oksana spoke with her father and stated they would move the chain-link fence back 18 inches and asked what materials would be allowed.

Mr. Timms, Planning Supervisor, replied that Mr. Gubrud has a list of approved fence materials that could be provided to the applicant.

Mr. Swope asked if the applicant installed the fence himself or if a company installed it.

Oksana replied they did the work themselves.

Mr. Berzins asked if code enforcement was involved.

Mr. Timms replied yes.

Oksana stated that her father noted problems with the neighbors taking pictures and videos of them and making comments when they go outside.

The board members reminded the applicant the issue with the neighbors is a civil matter and it is not being addressed at the meeting.

Mr. Berzins requested a 5-minute recess, which Mr. Bittel granted.

Mr. Bittel called the meeting back to order.

Lena McClelland, Attorney for Planning and Development Services, stated it might be best for the

board to continue the case to a date certain and obtain a translator for the applicant. She cited concerns about apparent communication difficulties throughout the meeting. Ms. McClelland stated she wants to ensure the applicant gets a fair hearing.

Mr. Bittel thanked her for the input.

General discussion ensued between the board members.

Public Comment Given at the Hearing:

A member of the public who attended in person spoke regarding neighborhood safety concerns with the fence. Other members of the public who attended in person and online did not make comment since the case was continued to October 17, 2023.

Mr. Timms informed the public in attendance that they would receive notification again when the case was continued so they could comment and present their evidence.

Board of Adjustment and Appeals Results

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

Move to continue the case to October 17, 2023, and obtain a translator for the applicant.

Action Taken: Continue case to October 17, 2023

Votes for the Continuance: 5

Votes against the Continuance: 0

Absent: 1 (Seldin)

Abstaining: None

Other Topics Discussed at the Hearing:

Mr. Berzins noted a correction to the draft minutes for the August 15, 2023, meeting. The minutes should state that Mr. Bittel requested the BOA packets be distributed to board members no less than **5 business** days before the meeting.

Mr. Bittel agreed.

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

Move to accept the draft minutes for the August 15, 2023, meeting with the correction noted above.

Action Taken: Accept the draft minutes for August 15, 2023, with the noted correction

Votes for: 5

Votes against: 0

Absent: 1 (Seldin)

Abstaining: None

The board members in attendance conducted an interview for approximately 10 minutes with applicant, Javier Chavez, for one of the vacancies on the Board of Adjustment and Appeals.

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

Move to recommend to City Council the appointment of Javier Chavez as a member of the Board of Adjustment and Appeals.

Action Taken: Recommend the appointment of Javier Chavez

Votes for: 5

Votes against: 0

Absent: 1 (Seldin)

Abstaining: None

Mr. Bittel advised that a memo would be submitted to City Council with the board's recommendation.

General discussion ensued regarding item 7.a on the agenda and closing the meeting.

Rachel Allen, Client Group Manager, Aurora City Attorney's Office, advised the board to keep the meeting open to address all issues on the agenda. Lena McClelland, Attorney for Planning and Development Services agreed and referenced the Open Meetings Law.

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

Move to postpone item 7.a to an indefinite date until called up by the Chairman.

Action Taken: Postpone item 7.a until called up by the Chairman

Votes for: 5

Votes against: 0

Absent: 1 (Seldin)

Abstaining: None

Mr Berzins noted that the bylaws have not been changed since they moved from 5 members to 7 members. They still say it requires a 3-person vote and not a majority vote. He would like to make that change in the bylaws.

Ms. McClelland noted that according to the city code, changes in bylaws must be approved by City Council.

Mr. Berzins agreed and clarified that the board could make a recommendation to City Council.

Ms. McClelland agreed.

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

Move to request City Council to amend the bylaws from a 3-person vote to a majority of quorum vote.

Action Taken: Approve the request to amend the bylaws

Votes for: 5

Votes against: 0

Absent: 1 (Seldin)

Abstaining: None

Mr. Bittel entertained a motion to adjourn the meeting.

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

Move to adjourn the meeting.

Action Taken: Adjourn the meeting

Votes for: 5

Votes against: 0

Absent: 1 (Seldin)

Abstaining: None

The meeting adjourned at approximately 6:45 p.m.

SUMMARY OF PROCEEDINGS PREPARED AND SUBMITTED BY: Stephen Gubrud



Lynn Bittel, Chairman



Stephen Gubrud, City of Aurora