

Planning Department
City of Aurora, Colorado

SUMMARY OF BOARD OF ADJUSTMENT AND APPEALS ACTIONS

BOA Hearing Date: October 17, 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
Marty Seldin
Ron Swope

City Staff Present: Lena McClelland – Attorney for Planning and Development Services
Brandon Cammarata – Planning Manager
Steve Timms- Planning Supervisor
Stephen Gubrud – City Planner
James Schireman – City Planner
Steven Baptista - City Code Enforcement Officer
Eugene Johnson – City Code Enforcement Officer
Diane Webb - Project Coordinator

Chairman Mr. Lynn Bittel commenced the meeting at approximately 6:00 p.m.

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

Move to rearrange the agenda to hear item 5b. Case Number 12-23 – 12290 E Vassar Drive first because the interpreter for agenda item 5a. Case Number 11-23 – 1036 Kramer Court was not yet in attendance when the meeting began.

Action Taken: Hear agenda item 5b. before agenda item 5a.

Votes for: 6
Votes against: 0
Absent: 0
Abstaining: None

Case Number: 12-23 – 12290 E Vassar Drive

Description:

- Request by the owner, Varya Fursova, for the following Single-Family Dwelling Variance: Requesting a variance from UDO code section 146-4.7.9.L.1 which states that rear yard fences 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 2 feet in height for a total of 8 feet along the approximately 64-foot length of the rear lot line.

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 an additional 2 feet in fence height along a portion of the rear property line.

Board Discussion at the Hearing:

Mr. Berzins asked how the case came to the Board of Adjustment and Appeals.

Stephen Gubrud, City Planner, responded that the case is a result of a code enforcement violation.

Mr. Berzins asked if the neighbor in the rear lot wrote the letter in favor of the variance.

Mr. Gubrud replied, yes.

Mr. Berzins asked if the variance was just for the rear lot line fence but not the wing fence or the side fence.

Mr. Gubrud replied that Mr. Berzins was correct. The variance is only for the 46-foot-long section along the rear lot line.

Ms. Gallo asked if a public hearing sign is usually posted in the front yard.

Mr. Gubrud replied, yes.

Ms. Gallo noted that she did not see the sign when she visited the site, and she asked how long the sign should be posted.

Mr. Gubrud deferred to the applicant. He stated he delivered the sign to the applicant and has documentation of that.

Mr. Seldin asked if there would be any negative results because the sign wasn't there.

Lena McClelland, Attorney for Planning and Development Services, responded that one could question whether the case was properly noticed. She added that the case was noticed on the city's website.

Mr. Seldin also stated the sign was not present when he visited the site.

Mr. Bittel stated that he visited the site.

Ms. Gallo, Mr. Seldin, and Mr. Palestro stated that they visited the site.

Mr. Berzins and Mr. Swope stated that they did not visit the site.

Mr. Bittel called upon the applicant to speak.

The applicant, Varya Fursova, 12290 E Vassar Drive, attended the meeting in person. Ms. Fursova stated she placed the public hearing sign in her yard, but her puppy kept dragging it down. There is no front yard fence so she was unable to ensure the sign would remain posted. Other homeowners'

dogs in the area also caused issues with the sign posting.

Mr. Palestro asked if dogs were ripping down the sign.

Ms. Fursova replied, yes.

General discussion ensued regarding the proper notice of the public hearing and how Ms. Fursova could have ensured proper posting.

Ms. McClelland clarified that we are looking for substantial compliance and not strict compliance with the notice posting. The notice was posted on the city's website, it was mailed to surrounding neighbors, and the sign was posted at the home for a period.

Ms. Fursova continued with her presentation. She stated that when she bought the home in 2021, it was not in good condition, so she did quite a bit of home improvement inside and outside. In 2022, Ms. Fursova had an incident at her home that prompted her to make changes to increase security. Ms. Fursova spoke to the HOA regarding the back fence height. They instructed her to work with the neighbor directly behind the fence. The fence was five feet and there was no privacy. Ms. Fursova did not realize that building an eight-foot fence would violate the City code. Since the fence has been increased to eight feet, the noise has been reduced and has improved privacy. The back fence is not visible from the main street. Ms. Fursova referenced another house in the HOA that also has a taller fence that is visible from nearly every corner.

Ms. Gallo asked if the back neighbor had any objections to the increased fence height.

Ms. Fursova replied that her back neighbor, Dan, is in favor of the fence. He also submitted a letter in support of the fence.

There were no further questions for the applicant from members of the board.

Public Comment Given at the Hearing:

An anonymous written comment was received in objection to the requested variance. The comment was made available to the board members and public.

Daniel Gay, 12291 E Villanova Drive, joined the meeting by phone. He identified himself as the homeowner who shares the back fence with Ms. Fursova. Mr. Gay cited the reasons he supports the new fence, including increased privacy, noise reduction, and protection from wildlife in the area.

General discussion ensued between the board members regarding site visits and HOA rulings vs. City code.

Mr. Berzins asked staff if the fence code violation was reported to the city by a citizen or if code enforcement discovered the violation.

Mr. Gubrud responded that a neighbor reported the violation.

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

Board of Adjustment and Appeals Results

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

Move to approve the variance request because the proposal complies with the required findings of Code Section 146, and:

- Will not adversely affect adjacent properties or the surrounding neighborhood;
- Would result in an improved design that achieves internal efficiency to the site; and
- Would control for external effects and would not impact existing city infrastructure or any future public improvements.

Action Taken: Approved

Votes for the Waiver: 6

Votes against the Waiver: 0

Absent: 0

Abstaining: None

Case Number: 11-23 – 1036 Kramer Ct (Continued from September 19, 2023)

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.

Khinma U., the interpreter provided by the City of Aurora contractor Cesco Linguistic Services, Inc. provided Rohingya interpretation services during the meeting.

Board Discussion at the Hearing

Mr. Bittel stated he visited the site.

Ms. Gallo, Mr. Berzins, and Mr. Seldin stated they visited the site.

Mr. Swope and Mr. Palestro stated they did not visit the site.

Mr. Berzins asked about the extra photos in the staff memo.

Steve Timms, Planning Supervisor, clarified that the additional photos labeled "Exhibit E" are photos submitted by a neighbor who supplied them during the hearing last month.

Mr. Seldin noted he was not present at the September 19, 2023, meeting and asked why the case was continued from last month since the applicant's daughter was able to translate.

Mr. Bittel explained that legal counsel advised the board to obtain a Rohingya interpreter provided by the city rather than having a family member interpret.

Mr. Seldin asked for clarification regarding the variances requested.

Stephen Gubrud, City Planner, clarified that the three variances are being requested for the front yard fence.

Mr. Bittel called on the applicant to speak.

The homeowner, Abu Satar Bin Abdul Bashir, 1036 Kramer Court, attended the meeting in person. The interpreter provided by the City of Aurora, Khinma U. provided Rohingya interpretation for him. Mr. Bin Abdul Bashir explained that he built the fence because the neighbors had called the police on them several times and they received a warning. They have an ongoing conflict with the neighbors, but the fence provides security for his children and a way to reduce interactions with the neighbors.

The applicant's wife also provided testimony using the interpreter. She stated she stays at home with the children. Neighbors call the police if small amounts of trash blow into the yard, but the fence prevents this from happening. She cited cultural differences as a reason for the conflict with neighbors. She stated they asked the neighbors for permission to build the fence and they said it was okay. Her family feels safer and more secure with the fence.

The applicant's daughter, Oksana, stated the neighbors take pictures and videos of them without their permission.

Mr. Seldin stated that although the board is sympathetic to the applicant's situation with the neighbors, the purpose of the meeting is to evaluate the variance requests from a city code perspective.

The applicant's wife replied that they need a safe and peaceful place to live with their children. The fence provides a way for them to avoid interacting with the neighbors. They bought the home so they would have a peaceful place and a yard for their children.

Mr. Berzins asked the applicant what the benefit is of having a 49-inch-tall fence vs. a 42-inch-tall fence. What is the benefit of the additional seven inches?

After some clarification of the question, the applicant's wife replied they were told it was okay to install a taller fence.

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

Public Comment Given at the Hearing:

Matt and Anita Avalos, 1024 Kramer Ct. attended the meeting in person. Ms. Avalos read a statement to oppose granting the variances requested. She stated the applicant did not check with them before building the fence. The fence extends into their property line, obstructs the sidewalk and the view from the yard, and obstructs the lighting at the back of their house. They also have concerns about accessing their door when it snows because the fence is so close. Ms. Avalos submitted additional pictures and a certificate from the city to explain the conflict with the neighbors, to be added to the evidence as Exhibits A through G.

Rose Sabo, 1045 Kramer Ct, attended the meeting in person. Ms. Sabo read a statement to oppose granting the variances requested. Ms. Sabo stated that, among other reasons, the fence obstructs the sidewalk in violation of the Americans with Disabilities Act of 1990. She stated no property survey was done nor were the neighbors on either side contacted before the fence was built. The

neighbor's landscaping was destroyed, and the fence is too close to the property line. The fence also obstructs the view of drivers down the street. Ms. Sabo stated she and her neighbors enjoy the cultural diversity in their neighborhood.

Mr. Bin Abdul Bashir explained the reason the new fence was built higher, to mitigate fighting between the neighbors. He stated the fence materials are new and in good condition.

Ms. Gallo asked to move to close the discussion.

Mr. Bittel said it would be the board's decision.

Mr. Seldin noted some of the testimonies were going off on a tangent.

Ms. Gallo clarified she did not want to give the impression that the board has purview over matters unrelated to the variances.

Alicia Gallardo, 348 Kramer Ct., attended the meeting in person. Mr. Matt Avalos provided Spanish interpretation for Ms. Gallardo. She spoke to oppose granting the variances requested. Ms. Gallardo stated the neighbors did not consult her before building the fence. She was concerned that the applicant did not consult anyone before building the fence.

Leigh Tyson attended the meeting online. Ms. Tyson stated she lives on the other side of the block. She noted the applicant's wooden fence on the side is not see-through which makes it dangerous when she walks through the neighborhood. The sidewalks are already narrow, and the fence is very close to it. The on-street parking makes it even more difficult to walk through there.

Ms. Avalos presented a letter from a neighbor who expressed concerns about the fence, to be added to the evidence as Exhibit H.

Mr. Berzins asked city staff to clarify if the variance requests includes the side fence.

General discussion ensued regarding the side yard fence vs. the front yard fence. Mr. Gubrud provided photos from the staff presentation to illustrate the fence portion being requested for variances. The variance requests are for the fence setback, opacity, and height.

Mr. Bittel described what he observed during his site visit, including the maintenance of the yard and that the applicant's fence appeared to be over the property line.

Ms. Gallo added that she approached the property from the north and the south and visibility from the sidewalk is completely hampered by the fence as well as access going to and from the north and south. The fence doesn't hamper visibility when driving, it's the cars parked on the road that reduce visibility. The fence isn't helping to secure anyone from the road.

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

Board of Adjustment and Appeals Results

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

Move to deny the variance request to allow for an additional 7 inches in front yard fence height, which is 49 inches in total because the proposal does not comply with the required finding of Code Section 146-4.7.9.L.1, and:

- Does not result in improved design;
- Adversely affects the character of the lower-density residential area;
- Does not result in development that achieves internal efficiency for its residents and endangers public health and convenience.

Action Taken: Deny

Votes for the Waiver: 0

Votes against the Waiver: 6

Absent: 0

Abstaining: None

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

Move to deny the variance request to allow for a 12-inch reduction to the front setback, resulting in an approximate 6-inch setback because the proposal does not comply with the required finding of Code Section 146-4.7.9.L.1, and:

- Does not result in improved design;
- Adversely affects the character of the lower-density residential area;
- Does not result in development that achieves internal efficiency for its residents and endangers public health and convenience.

Action Taken: Deny

Votes for the Waiver: 0

Votes against the Waiver: 6

Absent: 0

Abstaining: None

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

Move to deny the variance request to allow for a closed-style fence that is 100% opaque because the proposal does not comply with the required finding of Code Section 146-4.7.9.L.2, and:

- Does not result in improved design;
- Adversely affects the character of the lower-density residential area;
- Does not result in development that achieves internal efficiency for its residents and endangers public health and convenience.

Action Taken: Deny

Votes for the Waiver: 0

Votes against the Waiver: 6

Absent: 0

Abstaining: None

Mr. Bittel had the interpreter inform the applicant that all three variance requests had been denied.

Other Topics Discussed at the Hearing:

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

Move to accept the draft minutes for the September 19, 2023, meeting.

Action Taken: Accept the draft minutes for September 19, 2023.

Votes for: 6

Votes against: 0

Absent: 0

Abstaining: None

Board members discussed the November meeting scheduled for a Tuesday instead of Monday and who was planning to attend.

Chairman Mr. Lynn Bittel announced his resignation from the Board of Adjustment and Appeals since his term expired in August 2023. He announced that this would be his last meeting.

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

Move to recommend to City Council the reappointment of Mr. Palestro, Mr. Seldin, and Mr. Swope to the Board of Adjustment and Appeals.

Action Taken: Recommend to City Council the reappointment of Mr. Palestro, Mr. Seldin, and Mr. Swope.

Votes for: 6

Votes against: 0

Absent: 0

Abstaining: None

Mr. Bittel entertained a motion to adjourn the meeting.

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

Move to adjourn the meeting.

Action Taken: Adjourn the meeting.

Votes for: 6

Votes against: 0

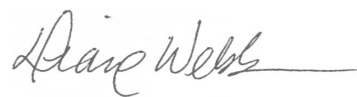
Absent: 0

Abstaining: None

The meeting adjourned at approximately 8:00 p.m.

SUMMARY OF PROCEEDINGS PREPARED AND SUBMITTED BY: Diane Webb

Andris Berzins, Vice Chairman



Diane Webb, City of Aurora Recording Secretary