

Planning Department
City of Aurora, Colorado

SUMMARY OF BOARD OF ADJUSTMENT AND APPEALS ACTIONS

BOA Hearing Date: December 19, 2023
Hearing Location: Virtual Public Hearing, held via WebEx
Case Manager: Stephen Gubrud

Board Members Present: Andris Berzins – Vice Chairman
Javier Chavez
Kari Gallo
Richard Palestro
Marty Seldin
Ron Swope

City Staff Present: Lena McClelland – Attorney for Planning and Development Services
Steve Timms- Planning Supervisor
Stephen Gubrud – City Planner
Rebecca Brooker- City Code Enforcement Officer
Jeffrey Calkins – City Code Enforcement Officer
Kristin Gates – City Code Enforcement Officer
Diane Webb - Project Coordinator

Vice Chairman Mr. Andris Berzins commenced the meeting at approximately 6:00 p.m.

Case Number: 13-23 – 1910 N Altura Boulevard

Description:

Request by the property owner, Cindy Arellano, for the following Single-Family Dwelling Variances:

- (1) To allow a variance from UDO code section 146-4.2.3.F.1.e which states that accessory buildings in residential districts larger than 120 square feet shall be set back from each side property line a minimum of 5 feet, and (2) To allow a variance from UDO code section 146-4.2.3.F.1.c which states that accessory buildings in residential districts larger than 120 square feet shall not exceed 450 square feet or 50 percent of the gross floor area of the principal building, whichever is greater.

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 for an existing accessory structure within one foot of the side property line resulting in a minimum setback reduction of four feet; (2) allow for a 1600-square-foot accessory structure that exceeds the allotted structure area of 520 square feet.

Board Discussion at the Hearing:

Mr. Palestro asked if the variance request is for an existing barn.

Mr. Berzins replied yes and referenced a site photo in the staff presentation.

Mr. Seldin asked if there is a fire concern given the depth of the lot and the distance from fire hydrants in the area.

Mr. Gubrud replied that he is not aware of any fire concerns and deferred to the Life Safety department which would address any fire concerns during the inspection period.

Mr. Berzins asked if the applicant did not have a permit for the barn and had received a code citation.

Mr. Gubrud replied yes to both questions.

Ms. Gallo asked how the case came to the board.

Mr. Gubrud responded that the applicant received a citation but no application had been made.

Rebecca Brooker, City Code Enforcement Officer, clarified that the code violation was reported to her by a neighbor who was concerned about the large structure being built.

Mr. Palestro asked how long the structure has existed.

Mr. Gubrud deferred to the homeowner.

The board members had no further questions of the staff.

Mr. Berzins called upon the applicant to speak.

The applicant, Cindy Arellano, 1910 N Altura Boulevard, attended the meeting in person. She apologized for being unaware of the code requirements.

Mr. Palestro asked how long the building has existed.

Ms. Arellano said it has been there for about a year or longer.

Mr. Palestro asked if she built it.

Ms. Arellano replied that her husband built it.

Mr. Chavez asked if the applicant plans to fix the fence segment that is leaning onto the building.

Ms. Arellano replied that her husband and the neighbor have discussed splitting the bill for repairs. The fence is composed of boards and pieces.

General discussion ensued regarding fence repairs.

Mr. Berzins stated that he visited the property.

Mr. Palestro, Mr. Chavez, and Ms. Gallo each stated that they visited the property.

Mr. Seldin and Mr. Swope both stated that they did not visit the property.

Mr. Palestro noted that no neighbors had attended the meeting to comment even though someone had reported the applicant to Code Enforcement.

Ms. Gallo added that at the northernmost section of the building is a neighbor who apparently does not have an issue with it.

Mr. Berzins expressed concern that access behind the building is limited and makes it difficult to do repairs and maintenance.

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

Public Comment Given at the Hearing:

No members of the public commented on this case at the hearing.

Board of Adjustment and Appeals Results

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

Move to approve the variance request to allow for an existing accessory structure within one foot of the side property line resulting in a minimum setback reduction of four feet 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;
- The proposal 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: None

Abstaining: None

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

Move to approve the variance request to allow for a 1600-square-foot accessory structure that exceeds the allotted structure area of 520 square feet because the proposal complies with the required findings of Code Section 146, and:

- It will not adversely affect adjacent properties or the surrounding neighborhood;
- Would result in an improved design that achieves internal efficiency to the site and;
- The proposal 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: None

Abstaining: None

Case Number: 14-23 – 1731 N Altura Boulevard

Description:

Request by the property owner, Alan Quintana Maldonado, for the following Single-Family Dwelling Variances:

- (1) To allow a variance from UDO code section 146-4.2.3.F.1.e which states that accessory buildings in residential districts larger than 120 square feet shall be set back from each side property line a minimum of 5 feet, and (2) To allow a variance from UDO code section 146-4.2.3.F.1.c which states that accessory buildings in residential districts larger than 120 square feet shall not exceed 450 square feet or 50 percent of the gross floor area of the principal building, whichever is greater.

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 for an existing detached carport structure within three-and-a-half feet of the side property line resulting in a minimum setback reduction of one-and-a-half feet; (2) allow for an 800-square-foot accessory structure that exceeds the allotted structure area of 528 square feet.

Board Discussion at the Hearing:

Mr. Berzins requested the legal definitions of a carport and a non-conforming garage.

Mr. Gubrud referenced the UDO definitions and explained that the applicant's structure more closely fits the definition of a carport.

Lena McClelland, Attorney for Planning and Development Services, added that the section of the code that is being requested for a variance is for accessory structures. The code does not distinguish between carports or garages as both are considered accessory structures.

The board members had no further questions of the staff.

Mr. Berzins called upon the applicant to speak.

The applicant, Alan Quintana, 1731 N Altura Boulevard, attended the meeting in person. He stated he did not have any additional comments.

Mr. Berzins asked if the case was the result of a code violation.

Mr. Gubrud responded yes and added that it was reported by a neighbor.

Mr. Swope asked if the applicant planned to add concrete from the driveway into the carport.

Mr. Quintana replied that he may do so in the future but it is expensive to add concrete. He noted that the City of Aurora built a new sidewalk in that area and put gravel there. He has an easement to work around.

Mr. Berzins stated that he visited the property.

Mr. Palestro, Mr. Chavez, and Ms. Gallo each stated that they visited the property.

Mr. Seldin and Mr. Swope both stated that they did not visit the property.

General discussion ensued regarding fire safety and proximity to the neighbor's house.

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

Public Comment Given at the Hearing:

No members of the public commented on this case at the hearing.

Board of Adjustment and Appeals Results

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

Move to approve the variance request to allow for an existing detached carport structure within three-and-a-half feet of the side property line resulting in a minimum setback reduction of one-and-a-half feet because the proposal complies with the required findings of Code Section 146, and:

- It will not adversely affect adjacent properties or the surrounding neighborhood;
- Would result in an improved design that achieves internal efficiency to the site and;
- The proposal 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: None

Abstaining: None

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

Move to approve the variance request to allow for an 800-square-foot accessory structure that exceeds the allotted structure area of 528 square feet because the proposal complies with the required findings of Code Section 146, and:

- It will not adversely affect adjacent properties or the surrounding neighborhood;
- Would result in an improved design that achieves internal efficiency to the site and;
- The proposal 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: None

Abstaining: None

Case Number: 15-23 – 411 N Iola Street

Description:

Request by the property owner, Bruce Edwards, for the following Single-Family Dwelling Variance:

- To allow a variance from UDO code section 146-4.7.9.L.1, Table 4.7-4 which states that new side and rear yard fences along arterial and collector streets may be a maximum of 6 feet in height.

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 for an 8-foot-tall residential fence along the length of the rear lot line facing Havana Street.

Mr. Seldin noted that according to the staff report, the applicant received a citation from Code Enforcement on September 6, 2022. He asked if the city staff and the applicant discussed this during this time.

Mr. Gubrud replied that the applicant contacted the city in September 2023. The applicant had been constructing the fence for some time but had difficulties. Mr. Gubrud deferred to Code Enforcement for comment.

Kristin Gates, Code Enforcement Officer clarified that the applicant was issued a notice in 2022 to bring the fence into compliance or apply for a BOA variance, but it was never done. She worked with the applicant and gave extensions, but finally issued a summons in July.

Mr. Seldin noted the summons in the staff report is dated March 1, 2023, which is inconsistent with the dates mentioned.

Ms. Gates clarified that the date on the summons in the staff report is correct.

Ms. Gallo asked if the back fence and side fence are the same height.

Mr. Gubrud replied yes.

Ms. Gallo asked why the side fence is not part of the case consideration.

Mr. Gubrud responded that the side fence has been continually existing in that non-conforming status and was never removed.

Mr. Berzins asked if the applicant would need to apply to BOA again to get approval for an 8-foot panel if it were repaired or replaced.

Mr. Gubrud replied no.

Mr. Berzins asked if there are concerns about the utility easements on the property.

Mr. Gubrud replied no because the fence has already existed there.

The board members had no further questions of the staff.

Mr. Berzins called upon the applicant to speak.

The applicant, Bruce Edwards, 411 N Iola Street, attended the meeting in person. He explained the delay in fixing the fence was due to sickness and personal reasons.

Mr. Berzins stated that he visited the property.

Mr. Palestro, Mr. Seldin, Mr. Chavez, and Ms. Gallo each stated that they visited the property.

Mr. Swope stated that he did not visit the property.

Mr. Chavez noted that other fences in the area are the same height as the applicant's, so his fence is consistent with the neighborhood character.

General discussion ensued regarding the benefits of having a higher fence.

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

Public Comment Given at the Hearing:

No members of the public commented on this case at the hearing.

Board of Adjustment and Appeals Results

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

Move to approve the variance request to allow for an 8-foot-tall residential fence along the length of the rear lot line facing Havana Street because the proposal complies with the required findings of Code Section 146, and:

- It will not adversely affect adjacent properties or the surrounding neighborhood;
- Would result in an improved design that achieves internal efficiency to the site and;
- The proposal 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: None

Abstaining: None

Case Number: 16-23 – 5003 S Elkhart Court

Description:

Request by the property owner, Peggy Sexton, for the following Single-Family Dwelling Variance:

- To allow a variance from UDO code section 146-4.7.9.L.1, Table 4.7-4 which states that new side and rear yard fences for residential properties may be a maximum of 6 feet in height.

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 for an additional three feet of side yard fence height for a total fence height of 9 feet along approximately 7 feet and three inches of the length of the southern interior side lot line. Mr. Gubrud noted that 12 proxy letters were received from surrounding neighbors who opposed approving the variance request.

Ms. Gallo noted the fence panel looks more like a screen or a trellis, similar to the arbor the neighbor has.

Mr. Gubrud noted the fence segment is detached so setback is an issue if it is treated as an accessory structure rather than a fence panel.

General discussion ensued regarding accessory structures and whether the applicant's structure is a fence or an accessory structure.

Mr. Swope noted the structure is free-standing but it is not consistent with a fence because the panels are horizontal instead of vertical.

Steve Timms, Planning Supervisor, noted the city has a broad definition of a fence.

Mr. Gubrud quoted the city's definition of a fence.

Mr. Chavez asked for the definition of an accessory structure.

Mr. Gubrud quoted the city's definition of an accessory structure.

The board members had no further questions of the staff.

Mr. Berzins called upon the applicant to speak.

The applicant, Peggy Sexton, 5003 S Elkhart Court, attended the meeting in person. She had questions about the proxy letters. She cited an ongoing conflict with her neighbor. She described the structure as a privacy panel that was installed after removing dying bushes from the area. She said the panel creates privacy for herself and her neighbor. The panel was professionally designed and installed. Ms. Sexton also spoke to a surrounding neighbor who did not express concern about the panel.

Mr. Palestro stated he visited the property and saw two structures.

Ms. Sexton replied the other structure is an artwork.

The board members had no further questions of the applicant.

Public Comment Given at the Hearing:

Cheryl Conway, 5023 S. Elkhart Court, attended the meeting in person and identified herself as the applicant's neighbor. Ms. Conway stated there is contention between herself and her neighbor, Ms. Sexton. Ms. Conway opposes approving the variance request and attended the meeting as proxy for 12 other surrounding neighbors who oppose approving the variance. Ms. Conway also provided photos from her property to be entered into the evidence. She stated the structure is not aesthetically pleasing and is not in accordance with the code, among other concerns. The structure is visible from certain areas. Ms. Conway filed a complaint with the HOA and she contacted Code Enforcement.

Mr. Seldin referenced the applicant's statement that the structure was installed for privacy. He asked Ms. Conway if she also had any desire for privacy.

Ms. Conway stated she is not tall enough to see over her 6-foot fence. The fence provides enough privacy for her hot tub which is on the other side.

Mr. Berzins asked who owns the fence.

Ms. Conway said she didn't know. The fence was there when she bought the house 23 years ago.

Ms. Sexton said they installed the fence 32 years ago.

Mr. Berzins asked if the case originated from a citation from Code Enforcement.

Mr. Gubrud replied yes.

Mr. Berzins stated that he did not visit the property.

Mr. Palestro and Ms. Gallo stated that they visited the property.

Mr. Seldin, Mr. Chavez, and Mr. Swope stated that they did not visit the property.

General discussion ensued. Ms. Gallo noted the structure looks nice and there is good cause for a privacy fence in that area. She stated the Board of Adjustment and Appeals respects each homeowner's ability to make changes that enhance their property. Mr. Berzins noted the structure is well-constructed and is compatible with the neighborhood.

Mr. Palestro noted he has an issue with the structure's 9-foot height and questioned if the city would allow structures like this in any houses.

Mr. Timms replied that homeowners would need to apply to the Board of Adjustment and Appeals.

Mr. Palestro also noted the neighbors who oppose granting the variance request and that their opinions must be considered.

General discussion ensued about the structure's height and visibility from the street.

Mr. Swope cited the proxy letters submitted by neighbors who oppose this structure. If the board approves this variance, then other neighbors could say they want to build a structure to block it, and so on. Mr. Swope stated he leans in favor of the surrounding neighbors who took the time to submit

their statements of opposition.

General discussion ensued regarding the structure's height and privacy.

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

Board of Adjustment and Appeals Results

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

Move to approve the variance request to allow for an additional three feet of side yard fence height for a total fence height of 9 feet along approximately 7 feet and three inches of the southern interior side lot line, with a condition that the variance approval is limited to the width of the panel because the proposal complies with the required findings of Code Section 146, and:

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

Action Taken: Approved

Votes for the Waiver: 4

Votes against the Waiver: 2 (Swope and Palestro)

Absent: None

Abstaining: None

Other Topics Discussed at the Hearing:

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

Move to accept the draft meeting minutes for the October 17, 2023, meeting.

Action Taken: Accept the draft minutes for October 17, 2023

Votes for : 6

Votes against: 0

Absent: None

Abstaining: None

Ms. McClelland reminded the board that their decisions are individual and not precedential.

General discussion ensued regarding HOA jurisdiction and the city's jurisdiction.

Board members discussed staff reaching out to the BOA candidates again to have them attend an interview on February 20, 2024.

Mr. Berzins entertained a motion to adjourn the meeting.

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

Action Taken: Adjourn the meeting

Votes for: 6

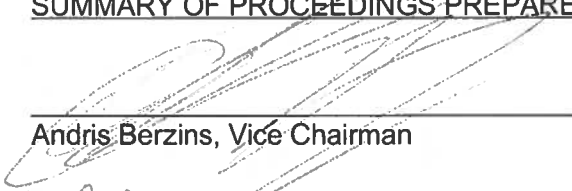
Votes against: 0

Absent: None

Abstaining: None

Vice Chairman Mr. Andris Berzins adjourned the meeting at approximately 7:21 p.m.

SUMMARY OF PROCEEDINGS PREPARED AND SUBMITTED BY: Diane Webb



Andris Berzins, Vice Chairman



Diane Webb, City of Aurora Recording Secretary