



NOTICE OF BOARD OF ADJUSTMENT AND APPEALS MEETING

April 16, 2024

Members of the public are invited to attend remotely or in person through the options listed below. Public comment is welcome for items appearing on the agenda or on any matter of BOA concern. Each speaker is allotted a maximum of five minutes to speak.

Individuals wishing to comment on an agenda item must register in advance by contacting boaplanning@auroragov.org.

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Event Password: Aurora2020

Call-in Participation

Call 720.650.7664

Access Code: 2498 260 3101

Event Password: 28767220

In-person Participation

Aurora Municipal Center
Aspen Room, 2nd Floor
15151 E Alameda Parkway
Aurora, CO 80012

For more information regarding Board of Adjustment & Appeals meetings, please contact Planning & Development Services at boaplanning@auroragov.org.



AGENDA

Board of Adjustment and Appeals

Tuesday, April 16, 2024

6:00 p.m.

Aspen Room/Hybrid

Aurora Municipal Center, 2nd Floor

15151 E Alameda Pkwy

Aurora, CO 80012

Pages

1. CALL TO ORDER

2. ROLL CALL

3. APPROVAL OF MINUTES

3.a Draft BOA Meeting Minutes for March 19, 2024

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4. ADOPTION OF AGENDA

5. GENERAL BUSINESS

5.a Case Number 04-24 - 1902 Moline Street

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A request by the property owner, Alfredo Zapata, for the following Single-Family Dwelling Variance for property zoned Original Aurora Medium-Density Residential (MU-OA-R-2): To allow for an already constructed front yard fence that exceeds 42 inches in height.

6. OTHER BUSINESS

7. ADJOURNMENT

Planning Department
City of Aurora, Colorado

SUMMARY OF BOARD OF ADJUSTMENT AND APPEALS ACTIONS

BOA Hearing Date: March 19, 2024
Hearing Location: Hybrid Public Hearing, held via WebEx and In-Person
Case Manager: Stephen Gubrud

Board Members Present: Andris Berzins - Chairman
Javier Chavez – Vice Chairman
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
Sharyn Vellenga - City Code Enforcement Officer
Diane Webb - Project Coordinator

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

Case Number: 03-24 – 2072 Emporia Street

Description:

Request by the property owner, Sage RE LLC, represented by Gabrielle Prato, for the following Single-Family Dwelling Variances:

- Two adjustments to code section 146-4.7.9.L.1 (1) to allow an additional 30 inches of front yard fence height for a total maximum fence height of six feet, and (2) to allow a closed-style fence that is not visually permeable.

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 already constructed front yard fence that exceeds 42 inches in height and is completed closed-style.

Recommendation from staff for conditional approval of the two proposed variances under the following condition(s): The frontmost 25 feet on either side of the property, as measured from the back of the sidewalk, be modified to meet the front yard fence criteria listed in UDO section 146-4-7-9.L.1.

Sharyn Vellenga, City Code Enforcement Officer, agreed with the staff recommendation to conditionally approve the variance requests.

Board Discussion at the Hearing:

Mr. Palestro mentioned that during his site visit at the property, he noticed several homes on Elmira Street with fences that extend beyond the yard and asked if those violate code.

Ms. Vellenga attended the meeting virtually and attempted to respond, but her response could not be heard due to technical difficulties.

Mr. Berzins determined that the issue was not material to the case.

Mr. Palestro explained he asked the question because the Board must consider how the variance requests affect the community.

Mr. Berzins agreed and asked Ms. Vellenga to type in her response or call into the hearing.

Mr. Berzins noted that City Council approved additional Accessory Dwelling Units (ADU) in this part of Original Aurora (MU-OA-R-2 zone district). With the property being up against the alley, you would typically have a carriage house. He asked if that was still the same.

Stephen Gubrud, City Planner, replied that an ADU could not be placed in front of the house. The ADU would have to be alley-served and would preclude it from being in the front yard area. Typically accessory structures are required to be in the side or rear yard area.

Mr. Berzins asked if the primary unit could be moved to the front and then call the existing structure the accessory unit since the variance requests concern the front plane of the primary residence.

Mr. Gubrud responded that could be an option, but the property owner would still need to meet setback requirements and all other dimensional requirements.

Mr. Berzins asked if Ms. Vellenga had posted a response to Mr. Palestro's question earlier, but she did not post a response.

Mr. Gubrud posited that perhaps Ms. Vellenga was going to explain that a code violation was issued to the home that Mr. Palestro referenced.

There were no further questions for staff from members of the Board.

Mr. Berzins called upon the applicant to speak.

The applicant, Gabrielle Prato, representing the property owner Sage RE LLC, attended the meeting in person. She stated she is a co-owner of the property at 2072 N Emporia Street but lives near Southlands in Aurora, CO. The subject property was purchased in 2022 and is currently being rented out. The code violation surprised her because the fence has been there for about 2 years without issue; however, she wants to ensure the property complies with code. Ms. Prato stated she had nothing further to add to the staff presentation, which she found accurate.

Mr. Seldin stated during his site visit to the applicant's property, he noticed a white fence on the north side that most likely belongs to the neighbor.

Ms. Prato responded yes; the white fence is her neighbor's.

Mr. Seldin continued that in the BOA application, Ms. Prato stated she built the fence at the current

height to screen the view of that neighbor's property. Mr. Seldin asked if they already have a fence the same height, how would your fence screen it.

Ms. Prato responded that only a portion of the neighbor's fence on the north is the same height as hers. The fence was built to provide more protection from the neighbor's property on the south side because those neighbors have several aggressive dogs. The fence on the north side was constructed to match the fence height on the south.

Mr. Seldin asked if the variance request is for the north-side fence.

Ms. Prato replied that the variance requests are for both sides of the fence.

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

Public Comment Given at the Hearing:

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

Mr. Berzins closed the meeting to public comment.

Mr. Berzins stated he visited the site.

Mr. Chavez, Mr. Seldin, and Mr. Palestro each stated they visited the site.

Ms. Gallo and Mr. Swope both stated they did not visit the site.

Mr. Seldin cited an issue with the fence on the north side. If the variance were denied and the applicant had to remove that fence, the neighbor's fence which is the same height would still be an issue.

Mr. Berzins noted the neighbors can build the fence up to the front plane of their house which is different than where the applicant's house is located. He also mentioned the Board could request the applicant make the fence 42 inches until the plane of the neighboring property.

Mr. Seldin stated the applicant's fence resembles a wall and that other fences in the neighborhood are more aesthetically pleasing. He favors the staff recommendation if the applicant were to lower the fence height in tiers until the front section was 42 inches and no more than 50% opaque to meet code.

Mr. Chavez agreed with the staff recommendation for a 25-foot setback, 42-inch height, and 50% permeable fence requirements.

General discussion ensued between the Board members regarding possible fence modifications, fence opacity, and how the neighbor's fences appeared to be non-compliant with code.

Steve Timms, Planning Supervisor, explained that the neighbor's fences were grandfathered in so the current code is not applicable.

The Board members discussed options for approving the variances.

Lena McClelland, Attorney for Planning and Development Services, reminded the Board that staff provided recommended motions in the staff report, which Board members could utilize.

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 Ms. Gallo and seconded by Mr. Chavez.

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

- They would result in an improved design and provide a typical yard area for the subject property;
- They would result in development that is compatible with adjacent land development and the character of the surrounding neighborhood and;
- With the applied condition the fence would achieve an internal efficiency of design and would not have any adverse effects on public health or convenience.

Approval to be subject to the following condition:

1. The frontmost 25 feet on either side of the property, as measured from the back of sidewalk, be modified to meet the front yard fence criteria listed in UDO section 146-4.7.9.L.1

Action Taken: Approved

Votes for the Variances: 6

Votes against the Variances: 0

Absent: None

Abstaining: None

Other Topics Discussed at the Hearing:

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

Move to accept the draft minutes for the February 20, 2024, meeting.

Action Taken: Accept the draft minutes for February 20, 2024.

Votes for: 6

Votes against: 0

Absent: None

Abstaining: None

Mr. Berzins entertained a motion to close the meeting.

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

Move to close the meeting.

Action Taken: Close the meeting

Votes for: 6

Votes against: 0

Absent: None

Abstaining: None

Chairman Andris Berzins closed the meeting at 6:32 p.m.

SUMMARY OF PROCEEDINGS PREPARED AND SUBMITTED BY: Diane Webb

Andris Berzins, Chairman

Diane Webb, City of Aurora Recording Secretary



Planning Division
 15151 E. Alameda Parkway, Ste. 2300
 Aurora, Colorado 80012
 303.739.7217

MEMORANDUM

- To:** Andris Berzins, Board of Adjustments Chairman
 Board Members: Kari Gallo, Ron Swope, Richard Palestro, Marty Seldin, Javier Chavez
- From:** Stephen Gubrud, Planner, Board of Adjustments staff liaison
- Date:** April 11, 2024
- Hearing Date:** April 16, 2024
- Subject:** BOAA Case No. 04-24 – 1902 N Moline St. (NEC of the intersection of E. 19th Ave. and N. Moline St.)
- Notification:** The Notice of Variance Request was mailed to abutting property owners on April 5, 2024, and a notice of virtual public hearing sign was posted on the property on or prior to the same day in accordance with Code.
- Summary:** Request by the property Alfredo Zapata, for the following Single-Family Dwelling Variances:
- Requesting 1 variance from UDO code section 146-4.7.9.L.1 which states that front yard fences for residential properties be a maximum of 42 inches in height. The applicant’s property is located in the MU-OA-R-2 zone district and they request (1) a variance to allow an additional 25 inches of front yard fence height for a total maximum fence height of 67 inches.

Background Information: The subject property is located at 1902 N Moline St. in the North Aurora Neighborhood, within the Yates-Ross #1 subdivision. The property is approximately 0.17 acres with an approximately 738 square foot primary residence, constructed in 1948 according to the Adams County Assessor’s records. The subject property is zoned MU-OA-R-2 (Original Aurora Medium Density Residential District). The surrounding neighborhood is zoned a mixture of MU-OA-R-2 (Original Aurora Medium Density Residential District) and MU-OA-R-1 (Original Aurora Low Density Residential District) and is made up of primarily single-family homes. There is also the Cedar Wood Christian Academy located directly diagonal across the intersection from the subject property. The purpose of the MU-OA-R-2 district is to promote active and pedestrian-oriented areas that have a mix of residential and small, neighborhood-scale commercial uses. The subdistrict shall permit a broad range of housing types that are compatible in scale with existing single-family homes while providing diverse housing choices for households of different ages, sizes, and incomes.

The applicant requests one variance to allow for an already constructed approximately 67-inch-tall, front yard, wrought iron and masonry column fence. The existing non-compliant fence was identified in the Notice of Violation, which was issued to the property owner on February 14th of 2023 which appears to be the result of a neighborhood complaint. The fence was in existence for nearly 5 years prior to this recent enforcement action. The applicant has stated one of the reasons for building the subject fence at this height and with such materials is to prevent entry to their property from vehicles which have caused damage to the front yard landscaping multiple times prior to installation. The homeowner has also indicated that they erected the fence to ensure a higher degree of safety for their children who enjoy playing in the grassy front yard area. This property is located at the corner of a fairly busy intersection and the applicant claims traffic laws are frequently violated.



Specifically, the stop sign for E. 19th Avenue located at the southwest corner of their property is frequently missed, a problem common to the Original Aurora area due to the variation of sign placement. There is an attached sidewalk located in front of the property and on street parking is permitted on both E. 19th Ave. and Moline St. The fence is currently setback approximately 39 inches on the west side and 42 inches on the south side from the back of the city sidewalk which would meet UDO standards for a front yard fence. (**See Exhibit B– Application and Justification**).

Analysis: There are three key components to the front yard fence standards. They include height, setback, and transparency. These three components work together to create a consistent approach to front yard fencing that protects the functionality of the public sidewalk and maintains visibility of the street from the home and vice versa. The requirements for the maximum fence height, consistency in fence materials, and open fence style in the front yard of residential districts are, in part, to ensure that residential areas maintain an open and attractive street presence and public realm throughout Aurora’s neighborhoods.

This specific case varies from many other front yard fence instances in that the materials are masonry and wrought iron, versus wood, which does provide significantly more than the required minimum of 50% visual permeability. This helps to mitigate potential impacts on traffic visibility and allow for “eyes on the street”. Furthermore, although it does not currently meet code criteria, the fence has been existing in its current condition since 2018 and does not appear to have caused an adverse impact on the neighborhood to this point. Although construction of the fence predates the UDO, the previous fence standards were largely the same as now and would have capped the height of this fence below its existing height. The only portion of this front yard fence that borders a neighboring residential property is the northmost masonry column, all other portions of the northern fence line currently meet city code or are existing non-conforming in nature.

Although the existing fence is well constructed and durable, the 67-inch-tall front yard fence does not meet the intent of the code as proposed as it does not appear to be compatible with the character of the surrounding neighborhood and adjacent residential uses. Although the materials are permitted by city code, fences exceeding 42 inches in height are not prevalent in this area. Staff understands that this type of fence is expensive to construct and would be difficult to move or modify, however would also advise consultation with city staff when considering future renovations to the property to ensure code compliance.

Required Findings: According to Section 146-5.4.4.B.3 (Exhibit D), the Board of Adjustments and Appeals can grant variances based on the following criteria:

1. *Effect on adjacent properties.* The proposed variance will not adversely affect adjacent properties or the surrounding neighborhoods.

Staff Analysis: The proposed variance would not present a significant adverse effect on adjacent properties or the surrounding neighborhood as proposed. The fence does not extend along the northern property line and thus does not significantly impact the neighboring property to the north.

2. The proposed variance is consistent with the majority of the criteria as follows:

a. Improved Design

Staff Analysis: Staff finds that the fence does achieve an improved design by replacing the previously existing chain link fence, which is no longer a permitted fence material for residential fences, with a high durability product featuring masonry elements.

b. Consistency with Neighborhood Character



Staff Analysis: Staff finds the front yard fence design is not compatible with the surrounding neighborhood as proposed. Although there are other wrought iron fences nearby few, if any, in the surrounding neighborhood reach the same height in the front yard area.

c. Compatibility with Adjacent Development

Staff Analysis: As all adjacent development to this property is primarily residential in nature, other than the nearby school, and a 67-inch-tall fence would not meet this criteria since no surrounding dwellings feature a front yard fence exceeding 42 inches in height.

d. Impact on existing city infrastructure and public improvements

Staff Analysis: The existing fence does meet setback requirements and does not create an impediment to sidewalk functionality or potential future public improvements.

e. Internal efficiency of design

Staff Analysis: The location of the fence does not pose a physical or visual impediment to pedestrians or adjacent property owners. As such, staff finds that the fence does achieve internal efficiency of design.

f. Control of external effects

Staff Analysis: The proposal would not cause significant adverse external effects on the public realm and has been existing in this state since approximately June of 2018.

Conclusion:

Based on the required findings of Code Section 146-5.4.4.B.3, staff finds the requested variance does not meet the criteria as proposed because:

- It is not consistent with the character of the surrounding neighborhood and;
- It exceeds the height of front yard fences present within adjacent residential development.

Staff Recommendation:

Staff recommends **Denial** of the proposed variance as requested.

Recommended Motion:

I move that the Board of Adjustment **deny** the requested variance as proposed for the property located at 1902 N Moline St. contained in case 04-24 because it does not meet the following criteria of the UDO:

- It is not consistent with the character of the surrounding neighborhood and;
- It exceeds the height of front yard fences present within adjacent residential development.

Alternative Motion(s):

I move that the Board of Adjustments **approve/approve with condition** the requested variance as currently proposed for the property located at 1902 N Moline St. contained in case 04-24 because it meets the following criteria of the UDO:

- Board member lists findings.

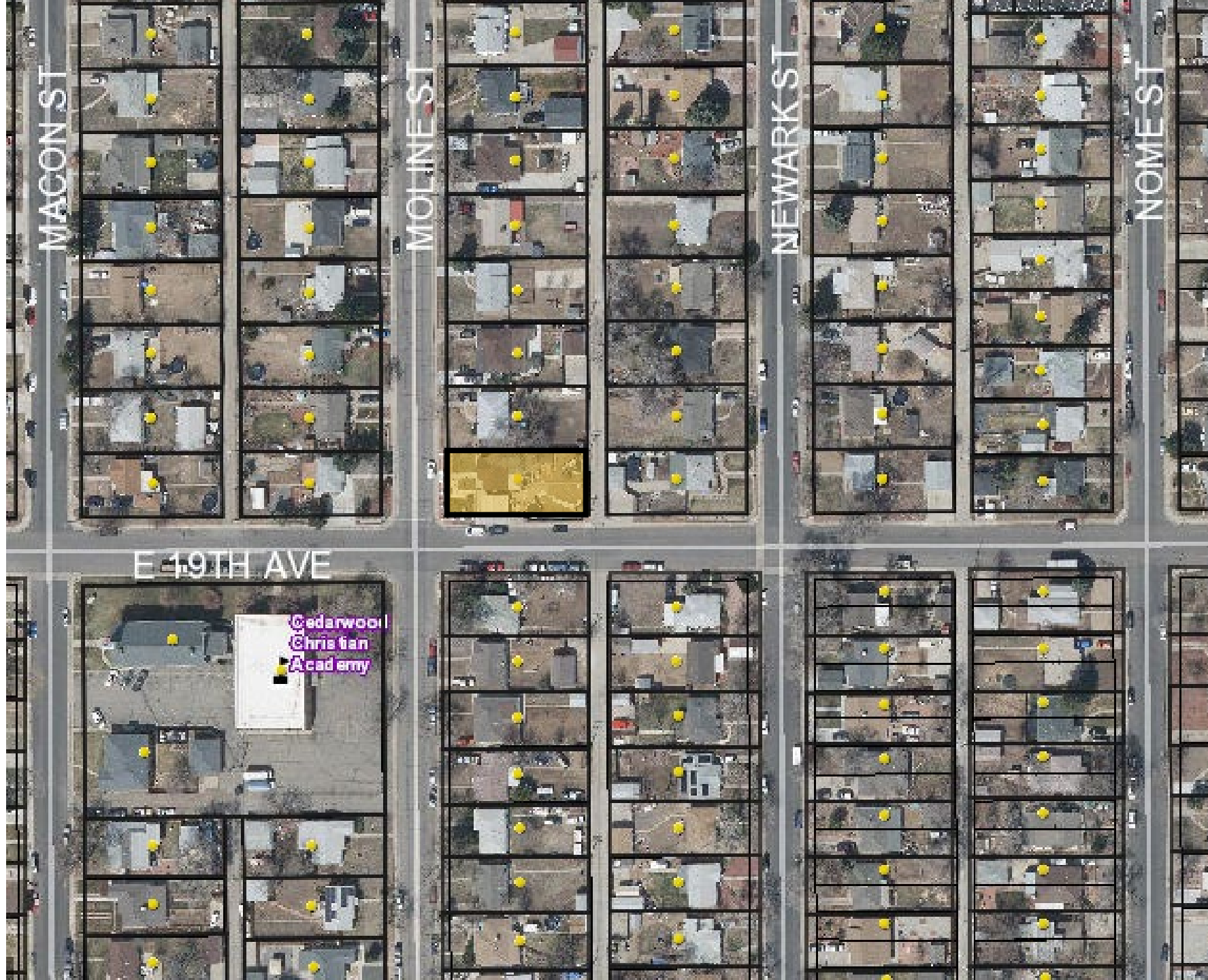
ATTACHMENTS:

- Exhibit A – Vicinity Map
- Exhibit B – Application and Justification



Exhibit C – Site Photos

Exhibit D – City Code Section 146-5.4.4.B.3





PLANNING AND DEVELOPMENT SERVICES DEPARTMENT

15151 E. Alameda Pkwy, Suite 2300
 Aurora, Colorado 80012
 Office: 303-739-7217
 Email: boaplanning@auroragov.org

APPLICATION TO THE BOARD OF ADJUSTMENT & APPEALS

Property Information:	
Case # (entered by staff)	
Address of Subject Property:	1902 Moline st Aurora CO 80010
Zone District:	Adams-Arapahoe 28
Variance Requested:	
The above request does not conform to Section(s): 146-4.7.9.L.1 of the Aurora Unified	
Development Code, which requires: Front yard fences must not exceed a height of 42 inches.	

Property Owner Information:	
Name:	Alfredo Zapata
Address:	1902 Moline st Aurora CO 80010
Phone:	(720) 276-4849
Email:	alfredozapata06@gmail.com



RSN 1690661

Applicant/Representative Information:	
If an applicant/representative on behalf of the owner of the property, please complete the following information:	
Name:	Alfredo Zapata
Address:	1902 Moline St Aurora CO 80010
Phone:	(720) 276-4849
Email:	alfredozapata06@gmail.com

I hereby certify that the above information provided to the City of Aurora is true and accurate.

Applicant/Representative/Owner Signature:

Alfredo Zapata

Date: 12-6-2023

I hereby authorize the person named above to act as my applicant/representative in processing this application before the Board of Adjustment for the City of Aurora (only needed if name is different):

Owner's Signature: *[Signature]*

Date: 12-6-2023

To Be Completed by City:

Staff Review Information:
Case Number:
Case Manager:
Date Received:
Date Application Complete:
BOA Meeting Date:
Application Fee Paid Date:

RACHEL ALLEN
1912 MOLINE ST
AURORA CO 80010

CONCEPCION FELIX
1907 NEWARK ST
AURORA CO 80010

MARK HERRERA ET AL
1909 MOLINE ST
AURORA CO 80010

THE JESSIE W TRAMUTOLO
LIVING TRUST
1485 DETROIT ST
DENVER CO 80206



VARIANCE NARRATIVE

General Property Information:	
1.	Property Address: 1902 Moline St Aurora CO 80010
2.	Applicant's Name: Alfredo Zapata
3.	Property Owner's Name: Alfredo Zapata
4.	Current Zoning of the Subject Property: OA-R-2

Background Information		Yes	No	
1.	Is this request an amendment to an existing variance?		X	If yes, what was the previous case number? Case# _____
2.	Is this application an attempt to correct a code violation of some kind?	X		If yes, please attach a copy of the violation notice.

Section 5.4.4.B.3 of the UDO stipulates specific criteria for the approval of variances. No application for a variance shall be approved unless the BOA finds that the following criteria are met.

- a. The proposed variance results in improved design;
- b. The proposed variance does not adversely affect the character of the lower density residential area;
- c. The proposed variance will result in development that is compatible with adjacent land development;
- d. The proposed variance will not result in undue or unnecessary burdens on existing infrastructure and public improvements, or arrangements have been made to mitigate those impacts;
- e. The proposed variance results in development that achieves internal efficiency for its residents and does not endanger public health or convenience; and
- f. The proposed variance results in development that controls external effects on nearby land uses, movement and congestion of traffic, noise generated, arrangement of signs and lighting to prevent nuisances, landscaping, and features to prevent detrimental impacts on public health, welfare, safety, or convenience.

The following pages contain specific questions about the nature of your request. Therefore, it is in your best interest to answer them in as much detail as possible to help limit the number of questions and advance the application. Please do not simply answer with yes or no.



1. Describe in detail the nature of this request and why you are asking for this variance.

I am requesting an appeal to keep my fence. Since the moment that I bought my home there has been countless accidents due to drivers not respecting the stop sign on the corner of 19th and Moline. I kept the original fence for years even after the accidents but I needed to reinforce the fence because my grandchildren live with me. With all past accidents, the vehicles would enter the yard and destroy the fence. The fence now is strong enough to stop the impact of the vehicles and keep my grandchildren safe.

2. Describe in detail all efforts made to comply with the requirements of the regulation or ordinance and why, in this particular case, that was not possible?

When I built the fence I was not aware of the height that it had to be. The structure is pretty solid and I do not have the tools or money to correct the height. But it has proven to keep my family safe and that is what I am fighting. I just want the fence to stay up to keep my family members safe and it helps your neighborhood look good as well.

3. Describe how the proposed variance results in an improved design in comparison to what would be allowed under the code.

The height has been proven to stop vehicles from entering the yard within impact. I have videos of before and after that it helps. My family and I spend our summer in the front yard and the fence gives me peace of mind that they are safe.

4. Does the proposed variance result in development that is not compatible with adjacent land development?

No it does not. I don't think it affects any future developments or future city projects.



5. Will the proposed variance have any burdens on existing infrastructure or future public improvements in the area?

Nothing else will be done to the front yard. Our main concern was and is the safety of my family.

6. Does the proposed variance create greater efficiency, convenience, and public health?

Yes it does, the fence provides safety as well as appealing to the neighborhood. Not only does it help with accidents, but at the same time it helps to look decent and attract more buyers around the neighborhood.

7. Will the proposed variance affect traffic, noise, signage, lighting, or landscaping in the area?

No it does not, it does not block any signs, does not affect traffic nor lighting.

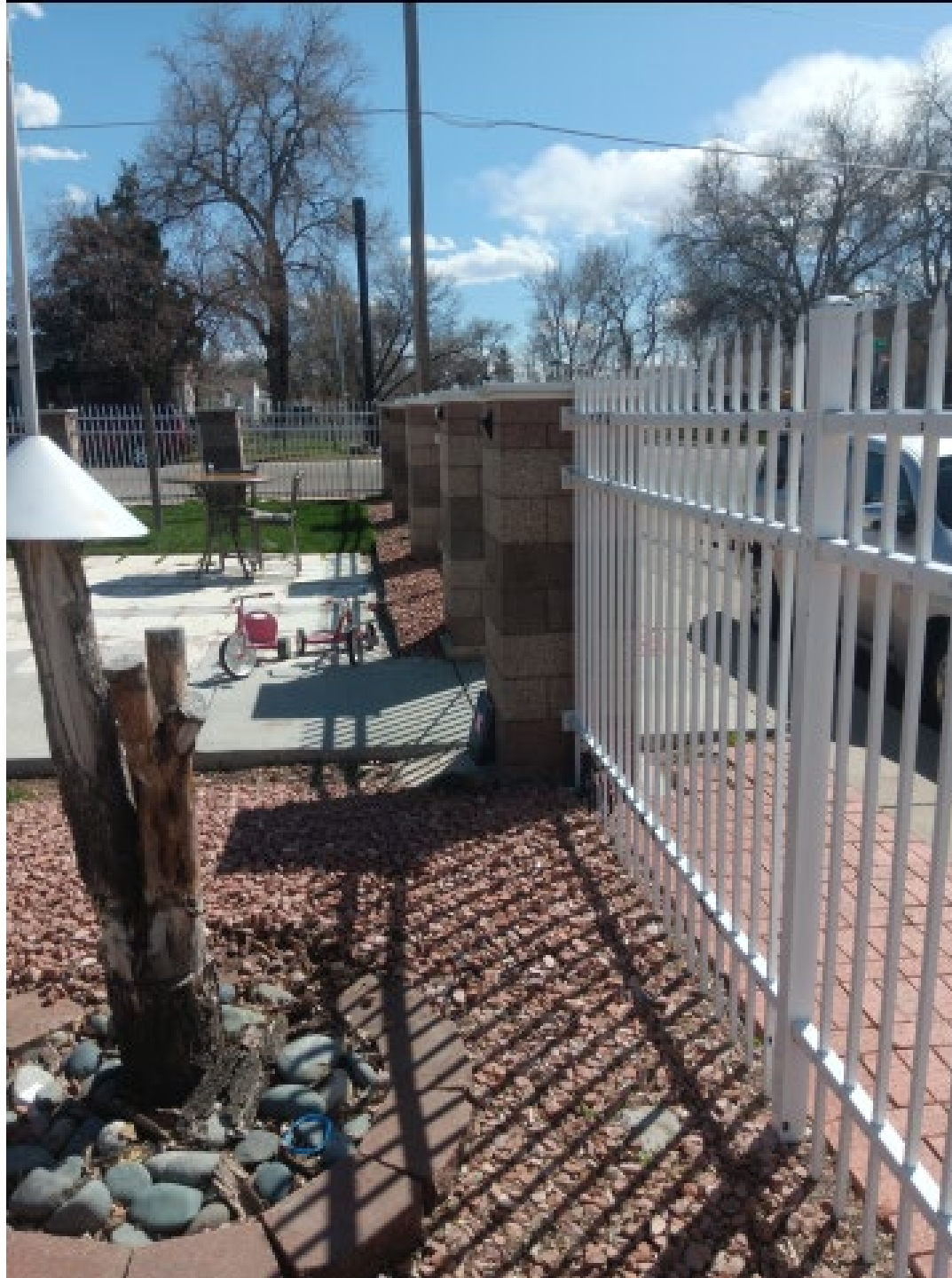


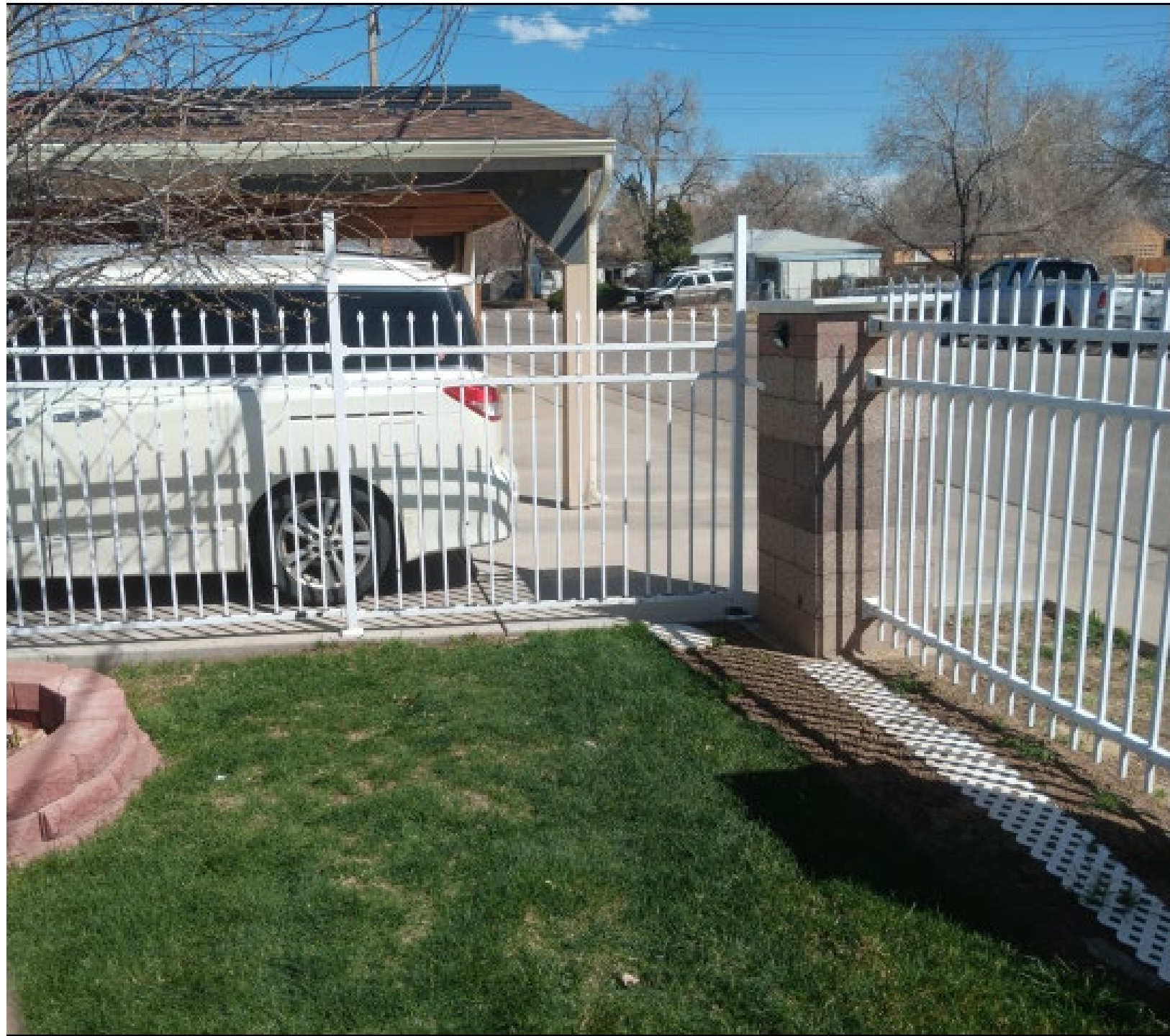














B. Single-Family Dwelling Variance

All applicable provisions of Section 146-5.3 (Common Procedures) apply unless specifically modified by the provisions of this Section 146-5.4.4.B.

1. Applicability

This Section 146-5.4.4.B applies to all applications for a variance from the standards and of provisions of this UDO or to the provisions of Chapter 90 as they relate to the modification of an existing single-family dwelling or the lot on which it is located that do not qualify for approval as a Minor Amendment under Section 146-5.3.15.A. This section may not be used to vary the standards or provisions of this UDO for single-family homes that have not yet obtained a certificate of occupancy or Manufactured Homes that have not yet been installed in accordance with Chapter 90.

1. Procedure

- a. Planning Director shall review the application and forward a recommendation to the Board of Adjustment and Appeals pursuant to all applicable provisions of Section 146-5.3 (Common Procedures).
- b. The Board of Adjustment and Appeals shall conduct a public hearing on the application and shall make a decision on the application pursuant to all applicable provisions of Section 146-5.3.

2. Criteria for Approval

An application for a Single-family Dwelling Variance shall be approved if the Board finds that the proposed variance will not adversely affect adjacent properties or the surrounding neighborhoods and a majority of the following criteria have been met.

- a. The proposed variance results in improved design.
- b. The proposed variance does not adversely affect the character of lower density residential areas.
- c. The proposed variance will result in development that is compatibility with adjacent land development.
- d. The proposed variance will not result in undue or unnecessary burdens on existing infrastructure and public improvements, or arrangements have been made to mitigate those impacts.
- e. The proposed variance results in development that achieves internal efficiency for its residents and does not endanger public health or convenience.
- f. The proposed variance results in development that controls external effects on nearby land uses, movement and congestion of traffic, noise generated, arrangement of signs and lighting to prevent nuisances, landscaping, and features to prevent detrimental impacts on public health, welfare, safety or convenience.