

Planning Department  
City of Aurora, Colorado

## **SUMMARY OF BOARD OF ADJUSTMENT AND APPEALS ACTIONS**

BOA Hearing Date: February 21, 2023  
Hearing Location: Hybrid Public Hearing, held via WebEx and in-person  
Case Manager: Rachid Rabbaa

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

**Case Number: 02-23 – 1555 N Clinton Street**

### **Description:**

Request by the property owner, Jose Juan Carlos Muratalla, for the following Single-Family Dwelling Variance:

- An adjustment to the requirement of Section 146-4.7.9.L.1, which requires side and rear-yard fences on residential properties not to exceed 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 a 7-foot privacy fence on the north and west property lines (excluding the front yard).

Mr. Berzins commented that it is not clear from the plan drawings where the proposed fence would go along the backplane. Mr. Berzins asked staff to clarify if the fence would completely enclose the garage or only go to the garage door.

Mr. Rabbaa responded that the fence would enclose the garage and include a small gate.

Mr. Swope asked if the applicant intends to construct a 7-foot privacy fence.

Mr. Rabbaa replied yes.

Mr. Swope then asked if the fence would be privacy or chain-link in front of the garage.

Mr. Rabbaa stated the fence would be the same material for the rear and backyard and would be privacy, not chain-link.

Mr. Berzins noted that the drawing presented in the staff report appears to indicate that the fence would come to the front of the house and would include a gate on the driveway at the back of the house. Mr. Berzins asked the staff to confirm if those plans are correct.

Mr. Rabbaa replied yes with the exception that the fence will not go to the front of the house; it will end at the front line of the house to the rear.

Mr. Berzins asked if the applicant will be fencing in both of his driveways.

Mr. Rabbaa responded that the driveway to the back of the house will be fenced-in, and a small fence or door will be constructed at the rear of the house abutting the neighboring business's wall.

Ms. Gallo asked the staff to clarify if the existing chain-link fence would be replaced with 7-foot privacy fencing.

Mr. Rabbaa confirmed that this is correct.

Mr. Berzins asked if there is a stipulation on what materials can be used for the privacy fencing.

Mr. Rabbaa replied that the applicant must meet the fence material requirements of the Unified Development Ordinance, UDO.

Mr. Berzins asked staff to inform the board what those materials are.

Mr. Rabbaa reviewed allowable fence materials.

Mr. Bittel asked if the applicant has indicated what materials he will use.

Mr. Rabbaa replied to Mr. Bittel noting that the applicant initially indicated steel sheeting, which is not allowed by code. Mr. Rabbaa stated that the applicant was provided with a list of approved materials to choose from instead.

Mr. Muratalla, the applicant, was available for questions. Mr. Muratalla reviewed the reasons for his request for waiver including security for his property and family. Mr. Muratalla noted incidents of criminal activities by persons accessing homeless support services from the business directly abutting his property.

Mr. Bittel asked the applicant what materials he plans to use for the privacy fence.

Mr. Muratalla replied he will use an allowed material.

Mr. Palestro commented that it appears the applicant does not know yet what material he will use.

Mr. Rabbaa replied that the applicant will choose from materials approved by code and receive a permit for the privacy fence.

Ms. Gallo stated it is not clear what difference a 7-foot fence would provide for security as opposed to the allowable 6-foot fencing.

Mr. Bittel replied that a 6-foot fence is easier to climb than a 7-foot fence. Mr. Palestro agreed.

Mr. Muratalla replied to Ms. Gallo's question. Mr. Muratalla commented that a neighbor constructed a 6-foot privacy fence but still had problems with trespassers on her property. Out of an abundance of caution for the safety of his family, Mr. Muratalla is asking for a waiver for a higher, 7-foot fence.

**Public Comment Given at the Hearing:**

No members of the public were present at the virtual hearing.

**Board of Adjustment and Appeals Results**

Mr. Berzins expressed disapproval of the request for a waiver due to concerns it may encourage the idea of creating compounds in a neighborhood that is historic to the City of Aurora, instead of addressing issues of crime.

Mr. Palestro commented that, by visiting the site, one appreciates the unique reasons this applicant is requesting a waiver. Mr. Palestro expressed support for the request for a waiver.

General discussion ensued.

Daniel Money, City Attorney, advise the board that the public hearing should be closed if there are no other speakers and a motion made after which additional discussion can occur.

A motion was made by Mr. Berzins. Move to deny the variance request because the proposal does not comply with the required findings of Code Section 146-4.7.9. L.1, and:

- It is not compatible with the neighborhood;
- It does not allow for the improvement or efficiency of design; and,
- The design is unsightly.

There was not a second.

The motion died.

**Board of Adjustment and Appeals Results**

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

Move to approve the variance request because the proposal complies with the required findings of Code Section 146-4.7.9.L.1, and:

- Does not have an adverse impact on adjacent properties;
- Will not have a negative impact on existing city infrastructure or public improvements;
- Will allow safe use of the property and achieve efficiency of design; and,
- Controls for external effects.

**Action Taken:** Approved

Votes for the Waiver: 4

Votes against the Waiver: 1

Absent: 2

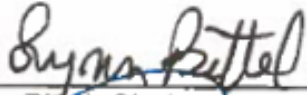
Abstaining: None

**Other Topics Discussed at the Hearing:**

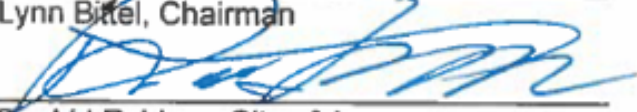
Minutes were presented for adoption from the January 17, 2023, meeting. The minutes were approved unanimously.

Staff briefly discussed a virtual study session of the BOA and Planning and Zoning Commission scheduled for February 22, 2023.

SUMMARY OF PROCEEDINGS PREPARED AND SUBMITTED BY: Rachid Rabbaa



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Lynn Bittel, Chairman



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Rachid Rabbaa, City of Aurora