

Planning Department
City of Aurora, Colorado

SUMMARY OF BOARD OF ADJUSTMENT AND APPEALS ACTIONS

BOA Hearing Date: March 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
Marty Seldin
Gary Raisio

Case Number: 03-23 – 4464 S Pagosa Way

Description:

Request by the property owner, Jimmy Garcia for the following Single-Family Dwelling Variance:

- An adjustment to the requirement of Section 146-4.7.9.L, to allow a replacement of a corner lot fence that does not meet setback (4 feet from the sidewalk) or street frontage fencing requirements which limit the height of solid fencing (solid fencing no taller than 18 inches).

Recommendation from staff to deny the variance as requested, that the privacy fence be moved to its original setback (4 feet from the sidewalk) and the front yard fence include the required open design.

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 replacement corner lot fence that does not meet code requirements.

Ms. Gallo asked that staff confirm they have recommended the fence be moved back 4 feet from the sidewalk and the front yard fence be an open design.

Mr. Rabba confirmed that this is correct.

Ms. Gallo asked for the height of the front section of the fence.

Mr. Rabbaa replied the fence exceeds 18 inches.

Ms. Gallo asked staff to confirm that the back 6 ft fence can stay if it is 4 feet from the sidewalk.

Mr. Rabbaa replied that was correct.

Mr. Palestro commented that the front portion of the fence should not exceed 3 feet, must be 50% open, and moved back 4 feet.

Mr. Rabbaa indicated that the code allows the front yard fence height to be up to 42 inches, setback 18 inches from the sidewalk, and 50% open-style.

Mr. Bittel noted that the back portion of the fence adjacent to the mailbox appears to have a gate that opens outward onto the sidewalk. Mr. Bittel commented that the gate should open inwards in addition to the setback changes. Mr. Bittel asked the staff if the applicant had room for the gate to open inwards.

Mr. Rabbaa commented that this was an issue raised by the Traffic Department.

Jimmy Garcia, 4464 S Pagosa Way, Aurora, CO, 80015, applicant, was available for questions. Mr. Garcia responded to Mr. Bittel noting that the gate cannot open inwards. This is due to renovations of the site to create an enclosed garage for vehicle storage. Mr. Garcia commented that vehicle thefts have occurred on his property. Mr. Garcia stressed that the replacement fence was of the same height and setback with an outward opening gate as the initial fence. The fencing was replaced due to its poor condition. Mr. Garcia noted that due to multiple vehicles parked along the street adjacent to the property, visibility is an issue regardless of the fencing. Concerns were expressed on the upkeep of landscaping adjacent to the fence if fencing were setback further.

General discussion ensued.

Mr. Gallo noted that the board would need to consider the back fence, front fence, and gate when making their decision.

Mr. Raisio commented that vehicle parking was also a code issue the board should take into consideration due to the impact on right-of-way visibility at the site. Mr. Bittel agreed.

General discussion ensued.

Jerryca Garcia, 4464 S Pagosa Way, Aurora, CO, 80015, applicant, was available for questions. Ms. Garcia stated that the City of Aurora was called prior to the replacement of the fence. Information was provided by staff that the fence could be replaced but not with wrought iron or ore.

Mr. Bittel responded that staff may have assumed the fence would be replaced with the same material. Therefore, key information was missing from that conversation.

Ms. Garcia responded that the fence was replaced with newer wood. Concerns were expressed that surrounding neighbors have similar fencing as well. Mr. Garcia agreed.

Public Comment Given at the Hearing:

William Reese, 4461 S Pagosa Way, Aurora, CO 80015, abutting property owner, spoke in favor of the request for a variance. Mr. Reese commented on the condition of the previous fence. Mr. Rees attested that the prior fence was rotted and in poor condition. Mr. Reese stressed that the new fence appears to have been placed in the same position as the prior fence.

General discussion ensued.

Brandon Cammarata, Planning Department Manager, advised the board to receive all testimony from the applicant and the public and to ask any questions from them and the staff that would be needed to make their decision on the variance.

Mr. Garcia and Ms. Garcia commented that they are new to the area and the ordinances for the city. Mr. Garcia expressed concern that rules were not clearly communicated during conversations with the city.

Mr. Seldin stated that regardless of whether the board approved the variance, visibility at the site is a car issue that was raised by the Traffic Department.

Mr. Bittel noted the importance of adding to the discussion the 15-foot rule pertaining to vehicle parking.

Mr. Seldin commented that the addition of a stop sign at the site may be appropriate.

Daniel Money, City Attorney, asked the staff if the fence is in the right of way and if there are utility easements that the fence is over.

Mr. Rabbaa replied that the Traffic Department noted that the fence is in the right of way. Mr. Rabbaa indicated the fence does not appear to be encroaching on any utility easements.

Mr. Money indicated that nothing could block the right of way and that this is an issue that the board cannot provide a variance or waiver on. Mr. Money stressed that a license agreement with Public Works would be required for anything to extend into the right of way. Mr. Money cautioned that Public Works would be unlikely to grant a license agreement for a fence. Mr. Money also cautioned that most sidewalks at the site are narrower than the Americans with Disabilities Act (ADA) requires. If the site is not redeveloped, ADA does not require the sidewalk to be extended. If someone could not pass the sidewalk because it is obstructed or too narrow that would open both the city and the homeowner to a potential lawsuit.

Mr. Money asked the staff if they could confirm how wide the sidewalk is.

Mr. Rabbaa noted that, based on his measurements, the sidewalk is 3.91 feet wide.

General discussion ensued.

Mr. Money cautioned that the board can only rule on waivers or variances, they cannot give advice. Mr. Money advised the applicant that if they are considering removing a tree from their property or something of that nature to always check with the city and find what the proper permits are and rules for that work to commence.

Mr. Money advised the board to defer to the applicants' request for waiver, the criteria to judge that request, and to decide on the request for waiver.

Board of Adjustment and Appeals Results

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

Move to deny the variance request because the proposal does not comply with the required findings of Code Section 146-5.4.4.B.3, and:

- It is not consistent with the existing neighborhood character and adjacent properties;
- The fence appears to be within the right of way; and,
- It adversely impacts the public sidewalk and street.

Action Taken: Denied

Votes for the Waiver: 0

Votes against the Waiver: 5

Absent: 2

Abstaining: None

Other Topics Discussed at the Hearing:

Draft Board of Adjustments and Appeals Meeting Minutes for February 21, 2023, were approved.

Mr. Seldin expressed concern about conducting site visits without an official way to identify himself as a member of the Board of Adjustments and Appeals with the City of Aurora. Mr. Bittel requested that staff provide the full board with name tags to use during site visits. Staff confirmed that name tags would be ordered for the full board.

Mr. Bittel expressed concerns that the public may not be aware that they need to check with the City of Aurora before making property changes. Mr. Palestro and Mr. Seldin agreed.

Mr. Money voiced understanding of the concern, however, he noted that homeowners are responsible for knowing the rules of the city before commencing work on their property.

Mr. Bittel recommended that the city conduct public outreach on this issue. Mr. Raisio agreed.

Mr. Money cautioned that there will always be people who do not know the law or willfully act in violation of the law. Mr. Money noted that this is a responsibility of being a homeowner as opposed to living within a rental or Homeowners Association (HOA) property. Mr. Money reviewed the functions of the Board of Adjustments and Appeals.

SUMMARY OF PROCEEDINGS PREPARED AND SUBMITTED BY: Rachid Rabbaa



Lynn Bittel, Chairman



Rachid Rabbaa, City of Aurora