

Planning Department
City of Aurora, Colorado

SUMMARY OF BOARD OF ADJUSTMENT AND APPEALS ACTIONS

BOA Hearing Date: February 20, 2024
Hearing Location: Hybrid Public Hearing, held via WebEx and In-Person
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
Brandon Cammarata – Planning Manager
Steve Timms- Planning Supervisor
Stephen Gubrud – City Planner
Sharyn Vellenga - City Code Enforcement Officer
Diane Webb - Project Coordinator

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

Case Number: 01-24 – 2341 N Elmira Street

Description:

Request by the property owner, Jeanne Fischetti, for the following Single-Family Dwelling Variances:

- An adjustment to the requirement of Section 146-4.7.9.L.1, which states that front yard fences for residential properties be a maximum of 42 inches in height and at least 50% permeable. The applicant's property is located in the OA-R-2 zone district and she requests (1) a variance to allow for an additional 30 inches of front yard fence height for a total maximum fence height of 6 feet; and (2) a variance to allow for a completely closed-style fence in the front yard area.

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 existing front yard fence that exceeds 42 inches in height and that is less than 50% visibly permeable.

Recommendation from staff to deny the variances as requested.

Board Discussion at the Hearing:

Mr. Berzins asked Lena McClelland, Attorney for Planning and Development Services, for guidance regarding separating the variance requests for voting purposes.

Ms. McClelland responded that it is permissible.

Mr. Berzins called a five-minute recess to allow assistance to Mr. Palestro, who was having difficulty signing into the meeting to attend virtually.

Mr. Palestro joined the meeting virtually at approximately 6:14 p.m., at which time Mr. Berzins called the meeting back to order.

Sharyn Vellenga, Code Enforcement Officer, spoke on behalf of the applicant, Jeanne Fischetti, and cited Ms. Fischetti's reasons for building the fence. Although the fence does not meet code, it provides a buffer between the applicant and the property to the north, which Ms. Vellenga described as a repeat code offender. Ms. Vellenga stated she understands the applicant's reasons for building a fence.

Mr. Chavez asked Ms. Vellenga if the camper in the yard is not allowed at the property to the north.

Ms. Vellenga replied that the camper is allowed, but the people living in the camper are not allowed.

Mr. Berzins called upon the applicant to speak.

The applicant, Jeanne Fischetti, 1800 Grove St, Denver, CO, attended the meeting in person. She stated she lives in Denver but owns the property at 2341 N Elmira Street. She expressed appreciation for Ms. Vellenga's input. Ms. Fischetti shared her findings regarding her neighbor's property to the north, that there is no current owner listed on the County Assessor's website as the previous owners passed away, and there are multiple code violations on record for the property as well as alleged criminal activity. Ms. Fischetti met with the City Attorney's office to discuss her legal rights regarding the neighbor's home and was informed nothing further could be done other than issuing code violations because there is no owner on record. She ultimately decided to build the fence.

Mr. Seldin asked if it's the neighbor to the north or to the south that is creating an issue.

Ms. Fischetti clarified that it's the property to the north.

Mr. Seldin stated he spoke to the neighbor to the north when he visited the site and the neighbor said he has lived in the home for 50 years

Ms. Fischetti clarified that the neighbor's parents owned the property. Several family members have lived at the home at various times. None of the children currently own the home. It was their father's home.

Mr. Seldin asked Ms. McClelland what would happen to the neighbor's property.

Ms. McClelland responded that further research had to be conducted to determine what transpired during the conversations between the applicant and the City Attorney's office.

Mr. Berzins asked Ms. Fischetti how she decided on the tiered fence design.

Ms. Fischetti stated she was trying to reduce the fence height the closer it got to the street.

Mr. Palestro asked Ms. Fischetti if she plans to build any other fences in the front or make modifications.

Ms. Fischetti responded that she may repair the gate on the back fence, but she does not plan to modify the front yard fence.

Ms. Vellenga requested that if the Board plans to approve the variance requests, they include a stipulation that the portion of the fence closest to the sidewalk be made at least 50% open to maintain visibility for traffic.

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 that he visited the property.

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

Mr. Swope stated he did not visit the property.

General discussion ensued between the Board members regarding safety issues, fence opacity, height, and design.

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. Berzins and seconded by Mr. Seldin.

Move to approve the variance requests for the six-foot fence segment closest to the sidewalk to remain at 48 inches or less and be at least 50% open, the next eight-foot fence segment may be up to five feet 60 inches and remain completely opaque, the remaining fence segment that extends to the rear may remain and be completely opaque because the proposal complies with the required findings of Code Section 146, and:

- Does not have an adverse impact on adjacent properties;
- Is consistent with the neighborhood character;
- Is compatible with adjacent development;
- Will not have a negative impact on existing city infrastructure or public improvements; and
- Will achieve an internal efficiency of design.

Action Taken: Approve

Votes for the Variances: 6

Votes against the Variances: 0

Absent: None

Abstaining: None

Case Number: 02-24 – 1114 N Beeler Street

Description:

Request by the property owner, Jesus Carrillo, for the following Single-Family Dwelling Variances:

- An adjustment to the requirement of Section 146-4.7.9.L.1, which states that front yard fences for residential properties be a maximum of 42 inches in height and at least 50% permeable. The applicant's property is located in the OA-R-2 zone district and he requests (1) a variance to allow for an additional 30 inches of front yard fence height for a total maximum fence height of 6 feet; and (2) a variance to allow for a completely closed-style fence in the front yard area.

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 existing front yard fence that exceeds 42 inches in height and that is less than 50% visibly permeable.

Recommendation from staff to deny the variances as requested.

Board Discussion at the Hearing:

Mr. Berzins asked Stephen Gubrud, City Planner, where the 30-foot mark is in the plot plan.

Mr. Gubrud referenced a site photo in the presentation to illustrate where the fence segment is located.

Mr. Berzins called upon the applicant to speak.

The applicant, Jesus Carrillo, 1114 N Beeler Street, attended the meeting in person. He cited privacy, safety, and security as the reasons for building the fence. He stated his neighbors sometimes verbally harass his wife and children when they are in the front yard. He doesn't want the entire fence to be six feet tall, just the portion closest to the house so his family can be outside freely. He stated he could reduce the fence portion closest to the street to four feet.

Mr. Seldin asked the applicant how tall the backyard fence segment on the south side is because it appears very tall.

Mr. Carrillo replied that he built an eight-foot-tall plastic "blocking fence" in that area for the same reasons he is building the front yard fence.

Public Comment Given at the Hearing:

Staff received a comment the day of the meeting from a neighbor who opposes approval of the variances. The comment was read to the Board members.

Mr. Berzins closed the meeting to public comment.

Mr. Berzins stated that he visited the property.

Mr. Seldin, Ms. Gallo, and Mr. Palestro all stated they visited the property.

Mr. Chavez and Mr. Swope each stated they did not visit the property.

General discussion ensued between the Board members regarding the six-foot-tall height appearing like a wall, and a tall front yard fence not being consistent with neighborhood character. They discussed with the applicant ways to improve opacity and reduce the fence height.

Mr. Seldin noted Mr. Carrillo's issue with his neighbors is a common one and that building fences does not necessarily mitigate the issue.

Mr. Berzins stated he understands Mr. Carrillo's need for privacy and would be willing to allow a few inches more than the 42-inch height, possibly 48 inches total, if the fence remains at least 50% open.

Mr. Seldin and Mr. Palestro agreed.

Mr. Chavez questioned whether the additional inches would make much difference.

Ms. Gallo noted the taller fence would stand out compared to the other shorter fences in the neighborhood and that the height allowed by code is sufficient.

Mr. Chavez stated he favors keeping the fence height 42 inches and 50% open.

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. Chavez and seconded by Mr. Seldin.

Move to deny the variance requests to allow for an existing front yard fence that exceeds 42 inches in height and that is less than 50% visibly permeable because the proposal does not comply with the required finding of Code Section 146-4.7.9.L.1, and:

- It is not consistent with the character and aesthetic of the surrounding neighborhood;
- The height and style of the fence may impact views from the neighboring property and;
- The proposed fence is highly visible to the public and would not provide mitigation for any external effects.

Action Taken: Deny

Votes for the Variances: 1 (Palestro)

Votes against the Variances: 5

Absent: 0

Abstaining: None

Other Topics Discussed at the Hearing:

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

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

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

Votes for: 6

Votes against: 0

Absent: 0

Abstaining: None

The Board members interviewed for approximately 10 minutes with applicant, Matthew Robinson, for the remaining vacancy on the Board of Adjustment and Appeals. The Board also received an application from Andrew Kwon. Mr. Kwon confirmed he would attend the interview, but he did not attend. Therefore, the Board did not interview him.

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

Move to recommend to City Council the appointment of Matthew Robinson as a member of the Board of Adjustment and Appeals.

Action Taken: Recommend the appointment of Matthew Robinson

Votes for: 4

Votes against: 1 (Seldin)

Absent: 0

Abstaining: 1 (Berzins, because he knows Mr. Robinson personally)

Mr. Berzins advised Mr. Robinson that a memo would be submitted to City Council with the Board's recommendation.

The Board held the annual elections for Chairman and Vice Chairman.

Mr. Seldin nominated Mr. Berzins as Chairman. The nomination was supported unanimously by those Board members present. Mr. Berzins was appointed as Chairman.

Mr. Berzins nominated Mr. Seldin as Vice Chairman, however, Mr. Seldin gratefully declined. Mr. Seldin then nominated Ms. Gallo, who gratefully declined.

Ms. Gallo nominated Mr. Chavez as Vice Chairman. The nomination was supported unanimously by those Board members present. Mr. Chavez was appointed as Vice Chairman.

Mr. Berzins entertained a motion to close the meeting.

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

Move to close the meeting

Action Taken: Close the meeting

Votes for: 6

Votes against: 0

Absent: 0

Abstaining: None

Mr. Berzins closed the meeting at approximately 7:13 p.m.

SUMMARY OF PROCEEDINGS PREPARED AND SUBMITTED BY: Diane Webb

Andris Berzins, Chairman

Diane Webb, City of Aurora Recording Secretary