
NEW BUSINESS CALENDAR

PLANNING COMMISSION AGENDA

ITEM NO: 4

STAFF: RYAN TEFERTILLER

FILE NO:
CPC CA 15-00128 – LEGISLATIVE

PROJECT: FENCE AND ACCESSORY STRUCTURE CODE CHANGE

APPLICANT: CITY OF COLORADO SPRINGS – PLANNING AND DEVELOPMENT

PROJECT SUMMARY:

1. Project Description: This proposal is to amend City Code to clarify zoning code regulations pertaining to fence height and accessory structures. While the proposed code sections were known to lack clarity, and Staff had plans to improve the language, the proposed changes were expedited due to an active code enforcement case where a property owner disagreed with the City's implementation of existing code. As a result, Staff agreed to clarify the code.
2. Planning & Development Team's Recommendation: **Approval of the proposed code changes.**

STAKEHOLDER PROCESS AND INVOLVEMENT:

Standard notification is not utilized for legislative code changes, as the proposed application affects all City residents and property owners. However, adequate public outreach and input was achieved by circulating the proposed changes to the Colorado Springs Housing and Building Association (HBA), the Council of Neighbors and Organizations (CONO), the Colorado Springs Code Scrub Committee, and the specific property owner and neighbor who initiated Staff's work on this change. Minor comments were received and incorporated into the final draft of the proposed text.

ANALYSIS OF REVIEW CRITERIA AND MAJOR ISSUES

The proposed ordinance amends existing code relative to two separate issues: fence height and accessory structure standards. See **FIGURE 1** for the proposed code changes using bold for new text and strikethrough for deleted text.

The proposed code changes improve the clarity of how the City regulates fences, fence height, and how fences on top of retaining walls are measured. Firstly, the definition for “fence” is improved to clarify that walls, both freestanding and retaining, are treated similar to fences, and numerous additional materials are added to the definition that previously listed only “wood or other material” as the makeup of typical fences.

The second part of the proposed change affecting fence regulations is found in Section 7.4.102 – General Standards. First, the language in Part A. is modified to clarify that the standards apply to both fences and walls. Second, the existing code includes language regulating how the height of a fence that differs on either side of the fence; this section is clarified. The new code language clarifies how fences which are in close proximity to the top of a retaining wall are regulated: if the fence is within three feet of the wall, then the height is measured from the base of the wall to the top of the fence; if the fence is more than three feet from the wall, then the height of the fence and wall are measured independently. A new provision allows fence posts, poles, or finials to extend above the maximum height of the fence as long as they are spaced at least eight feet apart.

Staff supports the proposed changes as they provide numerous community benefits. Current City Code allows fences up to six feet in height to be located within residential setback areas, effectively on the property line of the lot. Fences which are placed on top of retaining walls in close proximity to a property line can have negative impacts on the down slope property owner. From the down slope side, a six foot fence sitting on top of a 6 foot retaining wall has the same impact as a twelve foot high structure with no physical separation from the down slope property. If the down slope property owner’s home is located just within the required five foot setback typical on most residential lots, the wall/fence will have significant impacts on the amount of light, air, and openness that is expected in residential areas.

However, allowing the wall and fence in the example above to be as close as three feet from each other allows the up slope property owner to utilize a standard fence height for privacy, security, and enclosure without giving up the use of the full five foot setback area. It should be noted that accessory structures in residential zones may be up to twenty feet in height and principal structures may be up to thirty feet in height (with sloped roofs), may be as close as five feet from a side or rear lot line, and therefore could have much more significant impact on the neighboring properties.

Lastly, the provision to allow additional height for fence posts, poles, or finials was added to encourage higher quality fences that create architectural and visual interest without penalizing the property owner by requiring the bulk of the fence to be less than six feet.

The second portion of the proposed code change clarifies two minor provisions for how accessory structures are regulated. Firstly, the definition is improved by adding a number of additional typical accessory structures. Secondly, a definition for “detached” is added to code to help clarify a common challenge for review planners. Setbacks for principal structures in residential zones differ from setbacks for accessory structures; specifically principal structures must maintain a 25 to 25 foot rear yard setback whereas accessory structures may be as close as five feet from the rear lot line. Given that an accessory structure is “detached and separate from the principal building” property owners would sometimes “detach” a proposed garage from the principal structure by a matter of inches in order to take advantage of more liberal setback requirements. While the two structures may indeed be “detached,” the form, appearance, and bulk of the two structures are essentially identical to that of one principal structure.

Conversely, some property owners on larger lots may take steps to attached two otherwise detached structures to take advantage of additional height allowances for principal structures. If the property in question is large and setbacks aren't an issue, and when the property owners desires to have a detached structure for purposes of site design or separation, the height of the large detached (i.e. accessory) structure is limited to 16 feet for roof slopes with a pitch less than six to twelve, and 20 feet for roof slopes with a pitch of six to twelve or great. These regulations can limit the ability to accommodate a second story within the accessory structure. However, some property owners have proposed to artificially "attach" the two structures with fencing, trellis, or even an unenclosed breezeway to allow them to utilize the additional height provisions awarded to principal structures.

While internal policies have been in place to guide staff in these instances, existing code was unclear, leaving property owners, architects, and contractors with little guidance on this issue. The proposed code language clarifies that at least three feet of separation are needed for two structures to qualify as detached, and only breezeways that are greater than 12 feet in height and six feet in width can be used to formally attach to structures.

While no formal criteria exist for the review of a proposed change to the text of the City's zoning code, Staff has worked diligently on these issues. Research was compiled on how other communities regulated these issues, draft text was circulated internally and feedback from review planners considered, and the proposed standards were circulated to major stakeholder groups like the Housing and Building Association (HBA) and the Council of Neighbors and Organizations (CONO). The current language is supported by these key internal and external stakeholders.

STAFF RECOMMENDATION:

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Approve the proposed code change based on the fact that the procedures described in Section 7.5.602 have been met.

ORDINANCE NO. 15-_____

AN ORDINANCE AMENDING SECTION 201 (DEFINITIONS ENUMERATED) OF PART 2 (DEFINITIONS) OF ARTICLE 2 (BASIC PROVISIONS, DEFINITIONS AND LAND USE TYPES AND CLASSIFICATIONS) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO FENCES AND ACCESSORY STRUCTURES

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. Section 201 (Definitions Enumerated) of Part 2 (Definitions) of Article 2 (Basic Provisions, Definitions and Land Use Types and Classifications) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

7.2.201: Definitions Enumerated

* * *

ACCESSORY STRUCTURE: A structure that is located on the same lot and detached and separate from the principal building. Accessory structures shall be incidental to the principal structure and devoted exclusively to an accessory use. **Examples of accessory structures may include, but are not limited to: garages, carports, sheds, storage buildings, play structures, gazebos, arbors, greenhouses, barns, saunas, and other similar buildings and fences and walls that exceed six feet (6') in width.**

* * *

DETACHED: Not attached and having no wall in common and separated by three feet or more; structures that are connected by a covered, unenclosed breezeway shall be considered detached if the breezeway is less than 12 feet (12') in height and less than six feet (6') in width.

* * *

FENCE or WALL: A structure made of wood, brick, stone, stucco, concrete,

wrought iron, chain link or other **similar** material that provides screening or encloses an area, most often a front or back yard. **Walls include both freestanding walls and retaining walls.**

Section 2. Section 102 (General Standards) of Part 1 (General Standards) of Article 4 (Site Development Standards) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, is amended to read as follows:

7.4.102: General Standards

* * *

A. **Fences or Walls:** Except in a TND and HS overlay zone, fences or walls six feet (6') or under in height may be placed anywhere on the property except within established preservation areas. Fences within preservation areas are subject to development plan approval to establish appropriate locations. All fences must comply with the corner visibility regulations described in this section. Fences or walls over six feet (6') are considered accessory structures and must meet accessory structure setback **and height** requirements **identified in Section 7.3.105.A** and receive a building permit for construction. Fence height shall be measured from the top of the fence **including fence poles, posts, and finials** to the ~~natural~~ **finished** grade on both sides **of the fence**; ~~if the height on the two (2) sides varies then the higher of the two (2) measurements shall be used in determining the height of the fence. See article 3, part 9 of this chapter for fence heights in front yard setback areas in the TND zone. Alternate requirements for fencing may be included as a part of an FBZ regulating plan.~~

1. **If the the height of the two (2) sides varies, then the larger of the two (2) measurements shall be used in determining the height of the fence.**
2. **If the fence is located within three feet (3') of the face of a retaining wall, the height of the fence is measured from the top of the fence to the finished grade at the bottom of the retaining wall.**
3. **The finished grade of the fence area shall not be altered to artificially comply with these regulations.**
4. **An additional 12 inches (12") of height is permitted for fence posts, poles, and finials when spaced 8 feet (8') or more from each other.**

* * *

Section 3. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by Charter.

Section 4. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2015.

Finally passed: _____
Council President

Delivered to Mayor on _____.

Mayor's Action:

- Approved on _____.
- Disapproved on _____, based on the following objections:

Mayor

Council Action After Disapproval:

- Council did not act to override the Mayor's veto.
- Finally adopted on a vote of _____, on _____.

- Council action on _____ failed to override the Mayor's veto.

Council President

ATTEST:

City Clerk