



Appeal of an Administrative Decision to City Planning Commission

Project Name: Nonuse Variance for Fence Height
Site Address: 21 Marland Rd
Tax Schedule Number: 7436404006
Type of Application being appealed: Non-use Variance
Include all file numbers associated with application: AR NV 20-00678
Project Planner's Name: Alex Osborne
Administrative Decision Date or Date of Notice and Order: 12/15/2020

SUBMITTAL REQUIREMENTS: Submit an application for an appeal to City Planning Commission to the City Land Use Review office (30 S Nevada, Suite 105, Colorado Springs, CO 80903) with the following items included:

- An appeal statement including justification of City Code 7.5.906.A.4:
Criteria For Review Of An Appeal Of An Administrative Decision: In the written notice, the appellant must substantiate the following:
Identify the explicit ordinance provisions which are in dispute.
Show that the administrative decision is incorrect because of one or more of the following:
It was against the express language of this zoning ordinance, or
It was against the express intent of this zoning ordinance, or
It is unreasonable, or
It is erroneous, or
It is clearly contrary to law.
Identify the benefits and adverse impacts created by the decision, describe the distribution of the benefits and impacts between the community and the appellant, and show that the burdens placed on the appellant outweigh the benefits accrued by the community.
A copy of the NOTICE and ORDER from the issuing agency (if applicable).
For an appeal of a notice and order, you are stating that one or both of the following are true:
You are not in violation of City Code and believe the official is in error; and
The abatement period is unreasonable and should be lengthened.
A check for \$176 payable to the City of Colorado Springs.

CONTACT INFORMATION:

Appellant's Name: George + Amy Tracy Telephone 719-576-2278
Address: 17 Marland Rd City Colorado Springs
State: CO Zip Code: 80906 e-mail: amyetracy@icloud.com

APPELLANT AUTHORIZATION:

The signature(s) below certifies that I (we) is(are) the authorized appellant and that the information provided on this form is in all respects true and accurate to the best of my (our) knowledge and belief. I(we) familiarized myself(ourselves) with the rules, regulations and procedures with respect to preparing and filing this petition. I agree that if this request is approved, it is issued on the representations made in this submittal, and any approval or subsequently issued building permit(s) or other type of permit(s) may be revoked without notice if there is a breach of representations or conditions of approval.

Signature of Appellant: [Handwritten Signature] Date: 12/26/2020

** If you would like additional assistance with this application or would like to speak with the neighborhood outreach specialist, contact Katie Sunderlin at sunderka@springsgov.com (719) 726-1118.

City Authorization:

Payment \$ _____

Date Application Accepted _____

Receipt No: _____

Appeal Statement _____

Intake Staff: _____

Completed Form _____

Copy of Notice and Order (if applicable): _____

Assigned to: _____

AR NV 20-00678

Decision Date: 12/11/2020

City Planner: Alex Osborne

Tax Schedule #: 7436404006

Applicant: David and Amy Surofchek

Appellants: George and Amy Tracy

December 24, 2020

This appeal under City Code 7.5.906.A.4 involves the disputed ordinances: City Code 7.4.102A (Fences) and 7.3.105A (Accessory Structures). The applicant requested a nonuse variance for a 7' 6" fence height from top of fence to finish grade at the bottom of the retaining wall within 3' of the fence, where 6' is required.

We, the appellants, are the homeowners of 17 Marland Rd. who are directly impacted by the city code violation and the subsequent approval of a nonuse variance. We are appealing because the administrative decision is incorrect based on erroneous information provided by the applicant.

First, the applicant provided incorrect measurements and an inaccurate drawing of the retaining wall. The variance approval letter dated December 15, 2020 approved a 7' 6" retaining wall/fence. The letter states, "the measurement of the retaining wall/fence is taken from the bottom of the retaining wall to the top of the fence due to the fence and retaining wall being within 3 feet of each other."

At its highest, the retaining wall is 22" to 23"—not 18" as drawn. The cedar fence measures 6' to 6' 3". This results in much of the wall/fence being well over 7' 6". Measurements were taken when city code enforcement visited the site and should be on record. We remember Tom with City Code saying the fence was close to 8' in places. The length of the retaining wall is 60 feet long—20 feet more than applicant represented in site plan.



Below addresses the staff analysis in the "Record-of-Decision" based on information provided by the applicant.

1.7.5.802 (B.1) Exceptional or Extraordinary Conditions

"This property exhibits unique physical conditions due to topography."

The physical conditions due to topography were self-imposed. According to City Code 7.4.102 (A.3), "The finished grade of the fence area shall not be altered to artificially comply with these regulations." The homeowner changed the conditions of the driveway in April 2018 when a cement driveway was poured. The previous gravel driveway and attached garage were there since 1995; the owner who was also the licensed builder of 21 Marland had no trouble accessing the garage. The topography was further changed in October 2018 when dirt was added to create a retaining wall and higher than 6-foot fence. No structural engineer has stated that a retaining wall was necessary "to stabilize the driveway apron" prior to October 2018. There were no stabilization or stormwater issues between April 2018 when driveway was poured and October 2018 when the retaining wall was added. Other driveways in the neighborhood are similar to 21 Marland, including 17 Marland, and do not require retaining walls. Furthermore, cutting the fence with retaining wall to a total of 6 feet would not impact the applicant's ability to access the garage.



Driveway and easement between 17 and 15 Marland is similar to concrete driveway of 21 Marland prior to retaining wall added in October 2018.

"To deny the homeowner this nonuse variance request, it would lead to exceptional and extraordinary conditions not general to the neighborhood as the fence would be required to be relocated 3' off the property line and into the driveway limiting access."

The fence can be moved 3' (three feet) or be cut down to City Code without impacting driveway access (see photo below). The applicant knew in May 2018 per text communication with landscaper Patrick Harr of Creative Outdoor Living that retaining wall was planned and applicant did not apply for permit or variance between May 2018 to October 2018.

Furthermore, the applicant created exceptional and extraordinary conditions to the neighborhood and for the City by erecting the retaining wall. As the applicant's site plan shows, there is a five-foot utility easement on the applicant's property and the 60-foot retaining wall is placed right up to the property line within the easement. According to El Paso County Land Development Code 6.2.1 D. 4, "The fence and wall shall not be established within an easement in a manner where the use of the easement is unnecessarily impeded."



After driveway and before retaining wall. Stakes represent property line inches from where retaining wall was erected.



Retaining Wall and filler dirt added in October 2018, six months after driveway. No engineer report stating retaining wall was needed for stabilization prior to October 2018.

2. 7.5.802 (B.2) Reasonable Use of Property

"The use of a fence for security at this property is a reasonable use allowed within the zoning."

"A denial of this request would not allow the reasonable use of the property for driveway access or fence security."

Driveway access is addressed above. In regards to security, a six-foot fence would provide adequate security for both neighbors. A 3-foot setback would not impact fence security. Both homes have security surveillance systems. The lots are over one acre and a six-foot fence is adequate for others who live on Marland Rd. (see letter from Dan League, 15 Marland, attached). While appellants cannot address the applicant's accusations in his application due to a settlement agreement, the fence existed at the time of these alleged incidents. Additionally, the current almost 8-foot fence did not prevent a worker from entering appellants' yard without permission or others crossing the fence while appellants were out of state.



3. 7.5 802 (B.3) No Adverse Impact to Surrounding Property

“Multiple properties adjacent have similar retaining walls within 3’ of a fence that exceeds 6’ from top of fence to the finish grade.”

There are two properties with somewhat similar retaining walls that are comparable to appellants’ property in terms of value and year built (2008): 5 Marland Rd. (built in 2009) and 28 Marland Rd. (built in 2012). First, both of these retaining walls are positioned toward the property owners’ homes who constructed them. The retaining wall the applicant erected is positioned so only 17 Marland can view. The applicant cannot view the retaining wall and has hidden the cedar fence on 21 Marland’s side with trees.

5 Marland Rd’s wood fence is 5 foot. According to City Code 7.4.102.A.4, “an additional twelve inches (12”) of height is permitted for fence posts, poles, and finials when spaced eight feet (8’) or more from each other.” The retaining wall positioned so only 5 Marland can view is stone and harmonious to the neighborhood and does not adversely impact other neighbors or the community. We believe 5 Marland may have obtained a variance to position the fence closer to the retaining wall; portions of the fence are set back farther than other portions.



5 Marland's retaining wall

28 Marland has a 6-foot cedar fence. The "stepped-up" retaining wall facing the homeowner is attractive stone harmonious to the neighborhood. Between the first "step" of the retaining wall, the cedar fence is roughly 5 feet setback from the first step. This fence was built to hide the abandoned house at 34 Marland, which City Code enforcement is familiar with (red tagged for years). According to the homeowner at 28 Marland, the cedar fence is also temporary until someone buys the abandoned house. The retaining wall/fence in no way adversely impacts the dilapidated house next to it or the neighborhood the way the retaining wall at 21 Marland does to its neighbor and surrounding neighborhood.



28 Marland's Retaining wall to hide abandoned house.

The cement retaining wall between 29 Marland (built in 1972) and 35 Marland (built in 1952) may have been used for comparison. Not sure what City Code was at the time this was built, but the split-rail fence is less than 5 feet tall.



Retaining wall/fence between 29 and 35 Marland

“No adverse impact are anticipated through the design and location of the fence.”

The approval of a variance allows for a nonconforming “structure” contradictory to City Code and the neighborhood covenants. Marland Road is in the 158-acre tract of land called the Count Pourtales area of the Broadmoor. The Count Pourtales Association was incorporated in 1954. This neighborhood of 80+ homes surrounding the Count Pourtales Park consists of multimillion-dollar homes on one acre or more lots with manicured yards. Neighbors walking by often comment on the size and unattractiveness of “the wall.” Homeowners are concerned this variance will set a precedent for the City to approve future variances that negatively impact their homes and the Count Pourtales neighborhood.

The landscaping at the appellants home at 17 Marland was designed by Roger Haywood, President of Accent Landscaping in Colorado Springs and graduate of Ohio State Landscape Architecture school. The natural fence boundary that previously existed prior to the southern retaining wall/fence was incorporated into the appellants’ 2012 landscaping plan. The backyard with large eating area under a pergola, outdoor kitchen and bar, putting green and firepit was designed for enjoyment as well as to host fundraising events for nonprofits supported by appellants personally as well as through a family foundation. The yard is now used to host business meetings and events due to the COVID pandemic.



Appellants' yard prior to retaining wall/fence

The wall built in October 2018 is already crumbling and eroding. A structural engineer is scheduled will be consulted. The cedar fence is poorly built and will require lifetime maintenance that applicant will be unable to do without trespassing. A three-foot setback will allow applicant to access the fence.



Retaining wall falling apart is inches from property line

The retaining wall/fence devalues the appellants' home value and ability to sell in today's market when backyards are important selling features. In 2012 the landscaping and structures cost over \$170,000. Trisha Kampilla, realtor with ERA Sheilds/Broadmoor office for over 16 years, estimates this landscaping would be valued at \$500,000 in today's market. For more information on damages to house value, see attached letter from Trisha Kampilla. In order to restore the property value, the appellants will need to erect a fence that buyers expect in a multimillion-dollar home. A variance will not allow the appellants to cover the existing retaining wall/fence. The appellants are also seeking the advice of a home inspector.

Furthermore, the design of the 60-foot east-west retaining wall has created significant runoff on both sides, harming the appellants' property. Refer to letter and photos sent to Alex

Osborne dated December 7, 2020. According to the Record-of-Decision, City Engineering says, "although lot-to-lot drainage is a concern, it is a private matter that City Engineering does not have jurisdiction or funding to correct." Appellants are therefore seeking a structural engineer's review.



Ongoing damage to appellants' property caused by stormwater runoff

Upon reviewing all the facts presented in this appeal, we hope the City Planning Commission will reconsider the granting of the nonuse variance.

Thank you for your consideration.

George and Amy Tracy



Thu, 12/28/20, 12:30 PM

Dan League <danieague@earthlink.net>

CASE # AR NV 20-00678

To: Osborne, Dan

[Bing Maps](#)

CAUTION! - External Email. Malware is most commonly spread through unknown email attachments and links. DO NOT open attachments or click links from unknown senders or unexpected

Mr. Osborne:

I reside at 15 Marland Road and have so since 1977. This email is in response to the notice of a request for a nonuse variance for 21 Marland Road. The reference, made by Mr. Surofcheck to 21 Marland Road, regarding my property is incorrect. First my driveway enters in back from the street east of Marland Road. I do not have a retaining wall on either side of my property and my east to west chain link. Also, the three properties to the north mentioned to in Mr. Surofcheck's letter are configured in the same manner.

The lots along the east side of Marland are at least one acre in size and provide an abundance of privacy and open space. For this reason most of us chose this area in which to live. In my opinion the wall and the fencing at 21 Marland Road do not fit in the neighborhood and in fact create an eyesore. They are also not in compliance with our covenants. For these reasons a variance should be unnecessary.

Dan League
15 Marland Road
Colorado Springs, Co.

December 26, 2020

To City Planning Commission:

I have been a realtor in Colorado Springs for 16 years in the ERA Shields Broadmoor office. I primarily buy and sell homes in all areas of Colorado Springs with an emphasis in the southwest area of Colorado Springs. The Tracys asked me to provide an analysis of the impact of the retaining wall/fence that their neighbor installed inches away from the property line between 21 Marland and 17 Marland. This wall/fence is considered a shared boundary fence because of its location and would typically be agreed upon by both neighbors. In this case, the Tracys were not consulted prior to the erection of the retaining wall/fence.

If a fence is built with quality material, built at a quality level, and maintained over time, a fence has the potential to significantly increase the value of a home, especially in the Tracys' neighborhood where most backyards are fenced with aesthetically appealing brick and wrought iron and stucco fences and stone or stucco retaining walls. I recently sold a multimillion-dollar house in Old Broadmoor where the fenced backyard was the deciding factor for the buyer considering several houses. On the flip side, if a fence is nonconforming to the neighborhood and unattractive as is the case with the fence built by 21 Marland, a fence can devalue a home's asking price as well as its appeal to buyers.



Before the boundary wall/fence was installed in 2018, the Tracys backyard was a buyer's dream and definitely would have been a selling feature. Today, the wall/fence is seen from the street and negatively impacts curb appeal. The poorly built post-side of the fence (it is fence etiquette to put posts inside the fence owner's property) and the the badly poured and very long cement retaining wall can be seen from all angles of the Tracy's professionally landscaped yard.

Based on my analysis of other homes in the neighborhood, I have suggested to the Tracys to build an upscale fence fitting to a home of their value and that hides the cement wall and cedar fence. This fence must also be built on the other side of their yard to match. I understand that a variance has been granted to 21 Marland that allows them to keep an over 7' fence that is not customary to this neighborhood. This will make it difficult for the Tracys to build a fence that follows the neighborhood covenants allowing 6' fences or shorter.

Sincerely,

Trisha Kampilla
Associate Broker

Rockrimmon Office
P: 719.593.1000 F: 719.548.9357
5475 Tech Center Dr. Ste 300
Colorado Springs, CO 80919

www.erashields.com
 (800)888.8208 

Broadmoor Off
P: 719.576.3600 F: 719.576.3600
130 E. Cheyenne Mountain Blvd
Colorado Springs, CO 80901

December 7, 2020

Dear Mr. Osborne,

Since the second review of the variance application for 21 Marland is still in process, we would like to add some additional facts and photos that have recently come to our attention.

The Surofccheks stated in the variance application that the retaining wall was needed "not only to prevent our driveway from eroding to the north of us due to the downward slope of our property to the north but to also make sure the water drainage from our property moves away from the physical home at 17 Marland."

Following is Photo A taken by the Surofcchek's landscaper *after* the driveway was poured and *before* the retaining wall was built. This photo clearly shows that the north-south slope is insignificant. For the 20+ years the former owners of 21 Marland lived there, as well as the 8 years we lived in our house sans the retaining wall, there has never been an issue with runoff--even during severe storms. The builder of 21 Marland was also the builder and former owner of 17 Marland and he would be happy to talk to you.

Our *layperson* opinion is the current runoff and resulting damage is due to the Surofcchek's landscaper changing the typography of the land in order to erect a higher than 6-foot fence. The retaining wall is sloped (see Photo C). The storm water and possibly irrigation backs up behind the barrier and has nowhere to go except into our yard (see photos D and E). We have seen a photo of a recent drainage pipe added to the Surofcchek's gutter but as stated before, there was never a drainage problem from 1995 to 2008. Storm water also comes through at the top of the retaining wall as evidenced by the Surofcchek's landscaping materials on our side of the fence.

Finally, I am including Photo E of our driveway garage entrance at 17 Marland which is quite similar to the Surofcchek's. There is a slight downward slope toward our neighbor at 15 Marland but it's so slight I cannot get a good photo. Our neighbor who has lived at 15 Marland for 43 years will also attest to the fact we have never had a run off/erosion issue.

Thank you, and please let us know if we can provide any further documentation.

George & Amy Tracy

Photo A: Topography Before Retaining Wall



Photo B: Typography Change for Retaining Wall



Photo C: Slope of Retaining Wall



Photo D: Runoff at End of Retaining Wall



Photo E: Runoff Becomes a River (I have a video)



Photo F: 17 Marland Drive: No Retaining Wall Needed

