



Jan 8, 2021 at 9:05:01 AM



Jan 8, 2021 at 9:04:27 AM



Jan 8, 2021 at 9:05:33 AM





Jan 8, 2021 at 9:06:49 AM



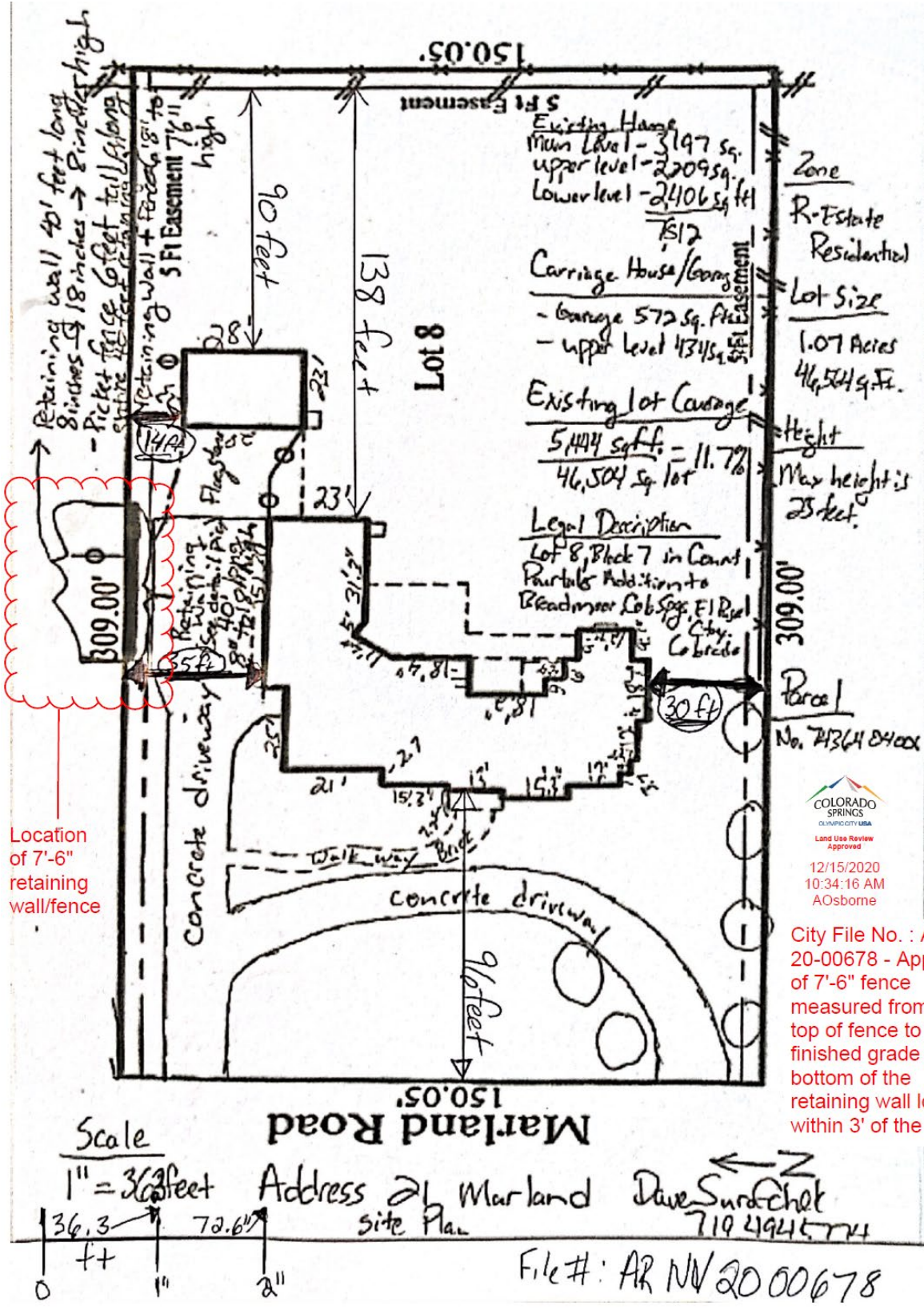
Jan 8, 2021 at 9:08:48 AM



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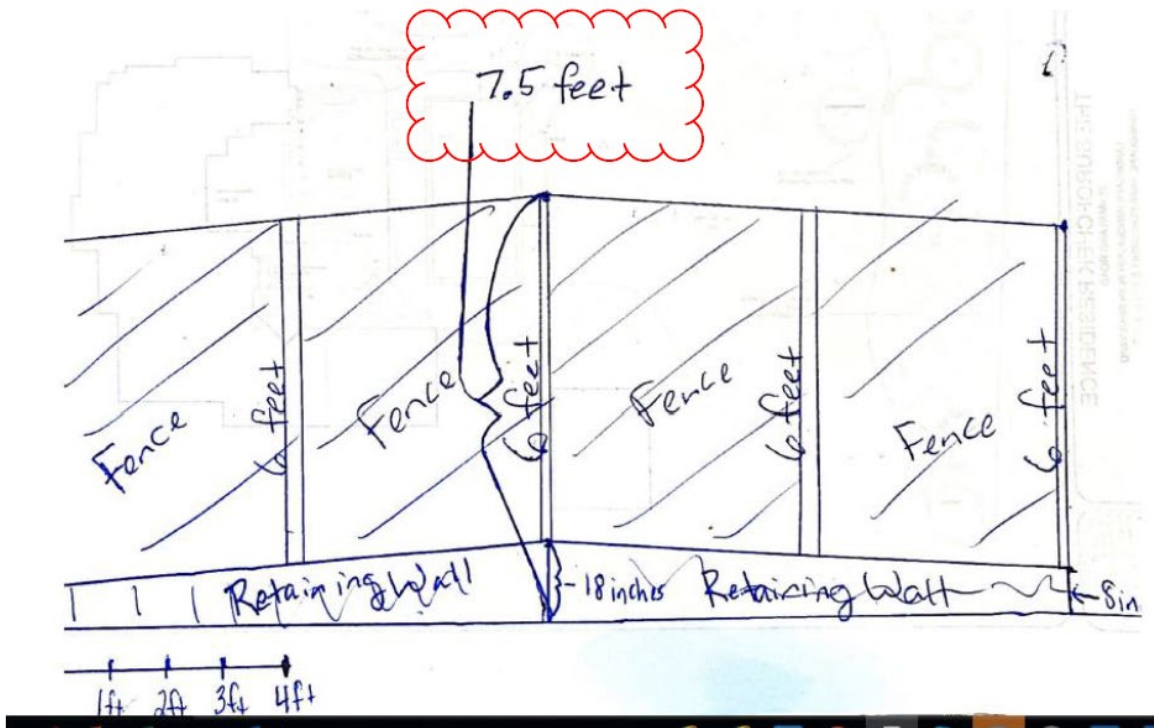


Jan 8, 2021 at 9:10:47 AM



COLORADO SPRINGS  
 MUNICIPALITY USA  
 Land Use Review  
 Approved  
 12/15/2020  
 10:34:16 AM  
 AOsborne

City File No. : AR NV  
 20-00678 - Approval  
 of 7'-6" fence  
 measured from the  
 top of fence to the  
 finished grade at the  
 bottom of the  
 retaining wall located  
 within 3' of the fence.



City File No. : AR NV 20-00678 - Approval of 7'-6" fence measured from the top of fence to the finished grade at the bottom of the retaining wall located within 3' of the fence.



12/15/2020  
10:34:03 AM  
AOsborne

Approved Site Plan\_21 Marland Road

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 (Russ Acuff will attest to this). 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 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.”**

As the applicant’s site plan shows, there is a five-foot easement on the applicant’s property and the 60-foot retaining wall is placed right up to the property line within the easement. The fence can be moved 3’ (three feet) or be cut down to City Code without impacting driveway access. 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. 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.” If applicant had followed the homeowners’ association covenants, the easement would not have been unnecessarily impeded.



*After driveway before retaining wall (taken by Creative Outdoor Living 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. 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 built in 2009 in value and year built: 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 others in the neighbors.



*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. This retaining wall follows City Code. The split-rail fence is less than 5 feet tall. The retaining wall appears to be less than 4 feet in height.



*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 COVID.



*Appellants' yard prior to retaining wall/fence*

The wall built in October 2018 is already crumbling and eroding. A structural engineer is scheduled to come out and review. 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 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 retaining wall*

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 11/5/2020 12:42 PM

Dan League <danleague@earthlink.net>

CASE # AR NV 20-00678

To: Osborne, Alex

Bing Maps

+ Get more apps

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 email!

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 the owner of 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 fencing is 48" 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 retaining 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 not be granted as it is unnecessary.

Dan League  
15 Marland Road  
Colorado Springs, Co.



Mon 11/2/2020 12:34 PM

Amy Tracy <amyetracy@icloud.com>

Erosion

To: Osborne, Alex

You forwarded this message on 11/3/2020 10:02 AM.

Alex, When you go to our house, walk down the entire fence line and you'll see the erosion caused by runoff as well as the Surofcheks' rocks that are pushed under the fence. Our expensive mulch just washes away. I'm sending one photo but I have ongoing documentation including videos. Our yard was professionally landscaped and our landscaper and gardener can tell you this problem occurred after the retaining wall/fence. Surofcheks' claims that the changes in topography etc were to prevent water erosion for 17 Marland but the opposite has happened. Have repeatedly asked for a professional to evaluate and mitigate but no response. Giving a variance will mean this will continue.

Thanks, Amy





Mon 12/14/2020 10:36 AM

Amy Tracy <amyetracy@icloud.com>

Photo shows boundary fence

To Osborne, Alex

ATT00001.txt  
273 bytes

This is a terrible photo but you can see the pin and pink marker and the bottom of cement that hangs off retaining wall. Obviously the retaining wall and cedar fence are now a "shared fence." No one in our neighborhood would ever do something like this without both neighbors agreeing to the fence. I offered to pay for half a fence in 2017. Dave told us he was just going to do what he wanted and that was that. We have that in writing.





## SWENT Email



Tue 11/24/2020 7:44 AM

Scherer, Jonathan

RE: 21 Marland Dr.

To  Osborne, Alex

 You forwarded this message on 11/24/2020 9:40 AM.

Suggested Meetings

+ Get more apps

Hello Alex, I hope all is well.

I apologize for the delayed response.

As per the Engineering Criteria Manual (ECM), Chap 5, Sec 5.5 Lot-to-Lot Drainage it states;

Lot-to-lot drainage from one private property to another is fairly common in subdivision design although it must be kept to a minimum and avoided whenever a suitable alternative drainage pattern can be found. City Engineering is concerned about lot-to-lot drainage and receives many complaint calls from citizens primarily in single family developments. **All design professionals, developers, home builders, home owners, landscapers, and contractors must also be concerned to avoid lot-to-lot drainage problems. All of these parties are responsible for avoiding and correcting these kinds of problems.** City engineering inspection staff is available to meet with citizens to discuss lot-to-lot drainage and when possible will meet with design professionals, developers, etc. **However lot-to-lot drainage is a private matter that City Engineering does not have jurisdiction or funding to correct.**

The property owner needs to assure that they do not negatively impact the neighboring property with the proposed construction.

Please let me know if you have any other questions.

Thank you,  
Jonathan

Code Enforcement Letter



PLANNING & DEVELOPMENT DEPARTMENT  
Neighborhood Services Division  
PO Box 2169 MC 1525  
Colorado Springs, CO 80901  
(719) 444-7891

NOTIFICATION OF FENCE HEIGHT ZONING REGULATION

September 14, 2020

SUROFCHEK DAVID T, SUROFCHEK AMY  
21 MARLAND RD  
COLORADO SPRINGS CO, 80906-4328

RE: 21 MARLAND RD, COLORADO SPRINGS CO, 80906-4328– Fence Regulations - Case # 2008453  
Parcel Identification Number: 7436404006; Property zoning: R-Estate (Residential)

Dear Property Owner,

A complaint has been filed alleging the fence constructed along the north property line of your property is in violation of the City of Colorado Springs zoning regulations for setback requirements.

Fences, walls, or posts six-feet (6') or under in height may be placed anywhere on the property except within established preservation areas. However, a fence located within 3' feet of retaining wall is measured from the bottom of the retaining wall to the top of the fence. For example, a 6' fence on top or next to a 3' retaining wall is considered a 9' tall fence and must meet the required setback for the zoning designation of the property – see attached Development Application Bulletin 304.

Fences or walls over six feet (6') are considered accessory structures and must meet accessory structure setback and height requirements identified in subsection 7.3.105.A (Accessory Uses And Structures) of zoning regulation code. The property is zoned, R-Estate (Residential), which requires fences, walls, or posts over six feet (6') to be placed no closer than ten-feet (10') from the side property line.

A field inspection indicates the fence and retaining wall is exceeding 6' in height. Therefore, this letter is our request for your voluntary cooperation in resolving this zoning violation by doing one of the following:

1. Lowering the height of the fence in order to meet the 6' height requirement of the retaining wall and fence combination or removing the fence. Another option is to move the fence 3' away from the retaining wall.
2. Contacting the City of Colorado Springs, Planning Department to schedule a pre-application meeting with a City Planner to discuss the possibility of a variance. You must schedule a pre-application meeting on-line by going to [www.coloradosprings.gov/planning](http://www.coloradosprings.gov/planning). For general questions, contact City Planning at 719-385-5905. Please understand, meeting the justification for a variance is challenging.
  - Before contacting City Planning, please review the variance requirements on the following page.

I am asking that you bring the property into compliance with the zoning regulations by September 28, 2020, to ensure that this matter is not advanced to the next level of enforcement. I may be reached at 719-444-7890 or you may reach me by e-mail at [twasinger@springsgov.com](mailto:twasinger@springsgov.com).

Additionally, property owners, whether knowingly or unknowingly, are responsible for the abatement of zoning code compliance on their property. I have included a pre-application form for your convenience.

Sincerely,

A handwritten signature in black ink that reads "Tom Wasinger".

Tom Wasinger  
Code Enforcement Supervisor

Fence Photos



Jan 8, 2021 at 9:25:08 AM



Jan 8, 2021 at 9:24:26 AM



Jan 8, 2021 at 9:12:10 AM



Jan 8, 2021 at 9:05:01 AM

