

**CITY PLANNING COMMISSION AGENDA**

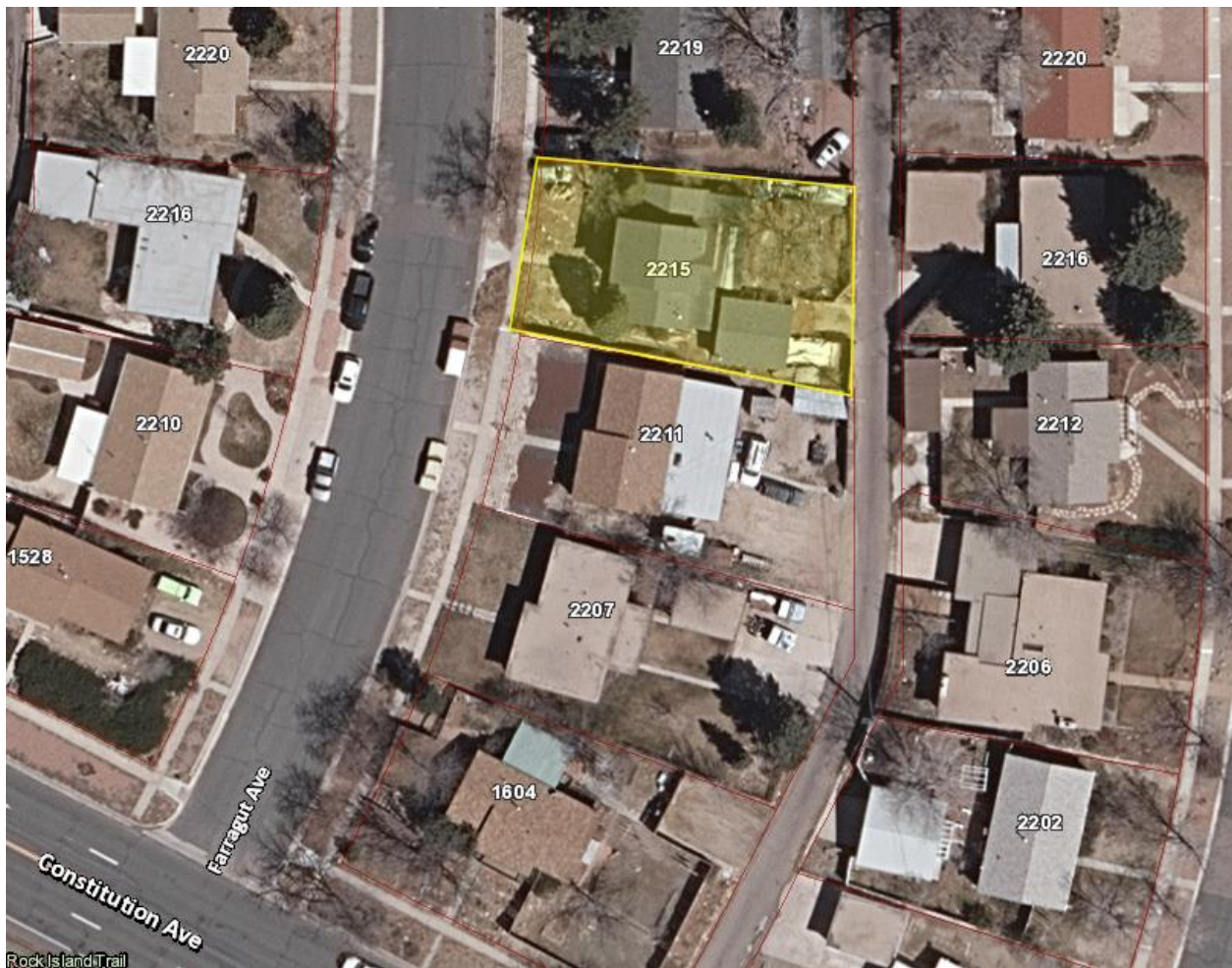
**STAFF: DENNIS WOLF**

**FILE NO(S):**  
**CPC AP 16-00071**

**PROJECT:** APPEAL OF NOTICE OF VIOLATION & ORDER TO ABATE - 2215 FARRAGUT AVENUE

**APPLICANT:** WILLIAM H. LOUIS, ESQ.

**OWNER:** DEVON K. BOWEN



### **PROJECT SUMMARY:**

1. **Project Description:** A request to appeal the Notice of Violation & Order to Abate served on the property owner of 2215 North Farragut Avenue on/or about May 4, 2016 for violations of an over height fence along the south property line (fence installed within 3 feet of a retaining wall where height of the fence is measured from the grade level at the bottom of the wall to the top of the fence) and the construction of an approximately eight foot' (8') tall pergola/arbor (accessory structure) within the front yard setback area where no accessory structures over six feet (6') are allowed. This property is zoned R1-6000, Single Family Residential. **(FIGURE 1)**
2. **Applicant's Project Statement:** Appeal of Notice of Order issued May 4, 2016 for 2215 North Farragut Avenue. Summary of the appeal statement:
  - The applicant states Ordinance 16-19 does not apply to the six foot high fence because it was constructed before the ordinance was adopted and city staff misinterpreted City Code Section 7.4.101 in that the fence is not constructed on the property line, but constructed inside of the property line.
  - City Staff does not have any evidence concerning the natural grade of the adjacent property.
  - Ordinance 16-19 does not apply to the pergola/arbor in the front of the property because it was constructed before the ordinance was adopted.
  - City staff misinterpreted City Code Section 7.3.105 that the pergola/arbor as constructed does not constitute a structure or accessory structure under the City Code and City staff is engaging in selective enforcement of the this pergola/arbor. **(FIGURE 2)**
3. **Community Development Department's Recommendation:** To uphold the notice and order issued to the property owner on May 4, 2016.

### **BACKGROUND:**

1. **Site Address:** 2215 Farragut Avenue
2. **Existing Zoning/Land Use:** R1-6000 (Single Family Residential) (lot size of 6739 sq. ft.)
3. **Surrounding Zoning/Land Use:**  
North: R-1-6000 SFR  
South: R-1-6000 SFR  
East: R-1-6000 SFR  
West: R-1-6000 SFR
4. **Comprehensive Plan/Designated 2020 Land Use:** General Residential
5. **Annexation –** The property was annexed in 1950 as part of Belleville Addition
6. **Master Plan/Designated Master Plan Land Use:** There is no master plan for this property
7. **Subdivision:** Belleville Addition to Colorado Springs
8. **Zoning Enforcement Action:** Non-compliance with §7.4.102 A and Ordinance 16-19
9. **Physical Characteristics:** The lots in this area are generally "stair stepped" lots with a higher elevation to the north and going down in elevation to the south. Many lots utilize retaining walls on the south side of the lots.

### **STAKEHOLDER PROCESS AND INVOLVEMENT:**

No Stakeholder process required. Notice and Order issued as a result of a complaint.

### **ANALYSIS OF REVIEW CRITERIA/MAJOR ISSUES/COMPREHENSIVE PLAN & MASTER PLAN CONFORMANCE:**

1. **Review Criteria / Background:**  
A complaint was received in January 2015 alleging that the property owner of 2215 Farragut Avenue had constructed a six foot (6') fence on top of a retaining wall along the south side of his property and was working to construct a portion of fence on a rock wall he had constructed along this front property line parallel to the street. A field inspection of this property was conducted and it was determined that a fence was constructed about one foot (1') north of the retaining wall beginning at the front property

continuing for approximately 58' feet along the property line between 2215 and 2211 Farragut Avenue. The grade of the front property line near the sidewalk starts at zero grade and increases in grade to a height of approximately four feet (4'). **(FIGURE 3 – photo history)**

Applying the zoning regulation language for fence measurement the fence was determined to be ten feet (10') +/- at the highest point between the two houses. A voluntary request for compliance notice was mailed to the property owner on January 28, 2015. On or about February 16, 2015, an onsite meeting was held with the property owner to discuss the height issues noted in the communication sent on January 28, 2015. Height measurements were conducted along the retaining wall from the front property line to the approximate rear of the house along the south property line. The fence height was determined to be ten feet (10') starting at approximately 20' from the back of the sidewalk continuing for a distance of approximately 25' feet. Measurements were taken along the front property line and at the points measured were found to be in compliance.

During this meeting with the property owner, the pergola/arbor constructed within the front yard setback was also brought to the attention of the property owner. On June 15, 2015 the property owner and his agent had a pre-application meeting with planning staff and requested the city obtain clarification as to the method employed by the land use inspector for determining fence height since the fence was not constructed on the retaining wall but on the property owners private property next to the retaining wall. A meeting between the Planning Manager and the Department Director occurred on June 23, 2015 whereby a formal request to the Planning Commission was made to clarify how a fence is measured resulting in the Planning Department making clarification to the zoning code. A stay of enforcement occurred until a decision was rendered. The Planning Commission and the City Council conducted hearings, and on February 24, 2016, approved Ordinance 16-19. On or about March 24, 2016, a field inspection of the 2215 Farragut Avenue property was conducted and conditions were noted to be the same as previous inspections that found the fence height and the pergola/arbor to be in violation of city zoning ordinance allowances. On March 25, 2016, notice of the findings of the Planning Commission and the City Council were mailed to the property owner and voluntary compliance was requested based upon the confirmation of the method for measuring fence height and the definition amendment clarifying arbors and pergolas are, in fact, accessory structures and not allowed in the front yard setback area. The Notice and Order was issued on May 4, 2016.

2. Conformance with the City Comprehensive Plan:  
Not applicable to a notice and order
3. Conformance with the Area's Master Plan:  
There is no master plan for this area.

**STAFF RECOMMENDATION:**

**CPC AP 16-00071 - APPEAL OF NOTICE OF VIOLATION & ORDER TO ABATE**

Deny the appeal and uphold the notice and order to abate issued to the property owner on May 4, 2016.