



THE PLANNING & DEVELOPMENT DEPARTMENT APPEAL TO CITY COUNCIL

Complete this form if you are appealing *City Planning Commission's, Downtown Review Board's or the Historic Preservation Board's* decision to City Council.

APPELLANT CONTACT INFORMATION:

Appellants Name: JAMES BERDON Telephone: 719.445.9255 OR 719.593.7572
Address: 6315 WILSON RD City COLORADO SPRINGS
State: CO Zip Code: 80919 E-mail: JDB@PROPERKEY.COM

PROJECT INFORMATION:

Project Name: FLYING W RANCH - WILDLIFE FENCE
Site Address: 2830 BROGANS BLUFF DR COLORADO SPRINGS CO 80919
Type of Application being appealed: FENCE OVER 6 FEET TALL
Include all file numbers associated with application: SITE PLAN PLANTRACK #117003
Project Planner's Name: MEGGAN HERINGTON
Hearing Date: SCHEDULED 13 AUGUST 2019 Item Number on Agenda: _____

CITY CLERK'S OFFICE
2019 JUL -1 P 2:08

YOUR APPEAL SUBMITTAL SHOULD INCLUDE:

1. Completed Application
2. \$176 check payable to the City of Colorado Springs
3. Appeal Statement
 - See page 2 for appeal statement requirements. Your appeal statement should include the criteria listed under "Option 1" or "Option 2".

Submit all 3 items above to the **City Clerk's office (30 S Nevada, Suite 101, Colorado Springs, CO 80903)**. Appeals are accepted for 10 days after a decision has been made. Submittals must be received no later than 5pm on the due date of the appeal. Incomplete submittals, submittals received after 5pm or outside of the 10 day window will not be accepted. If the due date for the submittal falls on a weekend or federal holiday, the deadline is extended to the following business day.

If you would like additional assistance with this application or would like to speak with the neighborhood development outreach specialist, contact Katie Sunderlin at sunderka@springsgov.com (719) 385-5773.

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] Signature of Appellant 01 JUL 19 Date

THE APPEAL STATEMENT SHOULD INCLUDE THE FOLLOWING

- ❑ **OPTION 1:** If you are appealing a decision made by City Planning Commission, Downtown Review Board, or the Historic Preservation Board that was **originally** an administrative decision the following should be included in your appeal statement:
 1. Verbiage that includes justification of City Code 7.5.906.A.4
 - i. Identify the explicit ordinance provisions which are in dispute.
 - ii. Show that the administrative decision is incorrect because of one or more of the following:
 1. It was against the express language of this zoning ordinance, or
 2. It was against the express intent of this zoning ordinance, or
 3. It is unreasonable, or
 4. It is erroneous, or
 5. It is clearly contrary to law.
 - iii. 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.

- ❑ **OPTION 2:** If the appeal is an appeal of a City Planning Commission, Form Based Zoning Downtown Review Board, or Historic Preservation Board decision that was **not made administratively initially**, the appeal statement must identify the explicit ordinance provision(s) which are in dispute and provide justification to indicate how these sections were not met, see City Code 7.5.906.B. For example if this is an appeal of a development plan, the development plan review criteria must be reviewed.

CITY AUTHORIZATION:

Payment: \$ 176.00

Date Application Accepted: 7/1/19

Receipt No: 115323

Appeal Statement: _____

Intake Staff: BW

Completed Form: _____

Assigned to: _____

APPEAL TO CITY COUNCIL

Project Name: FLYING W RANCH – WILDLIFE FENCE

Site Address: 2830 BROGANS BLUFF DR COLORADO SPRINGS CO 80919

Type Application: FENCE OVER 6 FEET TALL

File Numbers: SITE PLAN PLANTRACK #117003

- I. This appeal to City Council includes the list of concerns/issues on Page 2, Figure 2 Appeal Package (CPC AP 19-00069) upon which incorrect administration decisions were made. (Specifically, but not limited to, conflicting decisions from Staff related to setbacks (Item 2, Page 2, *ibid* and Figures A9 and A10--attached) and incorrect wavier of Hillside Overlay requirements (Item 3, Page 2, *ibid*)

The Planning Commission's decision to reject the appeal (in whole and in part), conflicts with the express language of the code and is contrary to law.

- II. Furthermore, a request for a postponement with cause was incorrectly denied by the Planning Commission related to the minimum requirements for Public Notice.
 - A. The failure to meet the minimum requirements for signage Posting – 7.5.902(C)(2) as is described in the attached email dated June 12, 2019 at 4:07 PM.
 - B. Also, the minimum requirements for Mailed Public Notification -- 7.5.902(C)(3)(a)(2) were not met. Notification was sent to some “property owners and associations directly adjacent to the proposed project” indicating the Manager or Planning Staff deemed mail was required and “shall be sent.” However, only a small percentage of property owners directly adjacent to the proposed project were mailed notification.

The 7.5.902(C)(3) code is clear:

- a. The mailed notification shall be sent:

(1) A minimum of ten (10) days prior to the Planning Commission or City Council public hearing regarding a proposed development project.

(2) To property owners and associations directly adjacent to the proposed project, within one hundred fifty feet (150'), within five hundred feet (500') or within one thousand feet (1,000') of the perimeter of the proposed project site

The proposed project is almost 2 miles in length and crosses 10 parcels (7315300011, 7315300015, 7300000348, 7300000349, 7300000350, 7300000490, 7315200006, 7315200007, 7315200008, 7300000059) with "property owners...directly adjacent" who were not mailed notification as required.

Therefore, The Planning Commission's decision to reject a request for postponement (in whole and in part), conflicts with the express language of the code and is contrary to law.

In summary, for the reasons in the Appeal Packet (Item I of this letter) and additional concerns (Item II of this letter) we request the City Council refer any matter appealed back to the Planning Commission for further consideration to modify the action of the Planning Commission to ensure Planning Administration can make an informed decision with respect to the combined proposed rebuild- and new-development plans for Flying W Ranch's Hospitality and Attractions Business.


From: Sunderlin, Katie Katie.Sunderlin@coloradosprings.gov 
Subject: RE: Flying W Questions
Date: May 6, 2019 at 9:34 AM
To: JDB - ProperKey jdberdon@properkey.com
Cc: Lawrence Starr lestarr@comcast.net, jdb@properkey.com

FIGURE A9

JD,

Staff has determined the front of the property to be the line as shown on the exhibit I've attached, requiring a 25' setback from the property line. Our Water Resources Engineering Division will also be requiring a grading and erosion control plan for the fencing project in conformance with Hillside regulations. A grading and erosion control plan will be required even if they decide to put a 6' fence on the property line. Just for scale, the Water Resources Engineering Division required a grading and erosion control plan for a small pergola in a residential backyard.

I just emailed this information to Flying W and have not heard what their course of action is. They *did* hire a surveyor to locate their property line so we will be able to measure the distance of the fence from the property line with certainty when it is constructed.

Your continued questions have sparked additional research into this construction project!

Katie Sunderlin, Architect
LEED AP BD+C
Neighborhood Development
Neighborhood Services
719-385-5773
Katie.Sunderlin@coloradosprings.gov



From: JDB - ProperKey [<mailto:jdberdon@properkey.com>]
Sent: Monday, May 06, 2019 9:11 AM
To: Sunderlin, Katie
Cc: Lawrence Starr; jdb@properkey.com
Subject: Re: Flying W Questions

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!

Hey Katie:

I apologize for not getting back to you last week; something came up with higher priority.

FIGURE A9 CONTINUED

Attached is a document with questions underlined within the outline. I expect Zoning's answers will generate more questions/discussion.

JD

FIGURE A9CONTINUED





Aaron Winter <aaron@flyingw.com>

FW: Flying W Ranch Wildlife Fence - Setback

3 messages

Herington, Meggan <Meggan.Herington@coloradosprings.gov>
To: "aaron@flyingw.com" <aaron@flyingw.com>

Mon, May 13, 2019 at 10:35 AM

From: Herington, Meggan
Sent: Monday, May 13, 2019 10:35 AM
To: 'Aaron Winter (flyingwcolorado@gmail.com)'
Cc: Wysocki, Peter; Sunderlin, Katie
Subject: Flying W Ranch Wildlife Fence - Setback

Aaron,

I was asked to look into the development plan and the application of setbacks as they apply to a "ranch" or similar agricultural use within our very urban and suburban-centric zoning code.

The strict interpretation of the Code indicates that an individual "lot" has setbacks related to its orientation. Specifically, the front setback of an individual buildable site is taken from the property address or frontage along a public street. However, the planning staff did approve a development plan for the Flying W Ranch on July 20, 2018.

Page two of the approved development plan illustrates the approval of a 10 foot side setback along Chuckwagon and the Mountain Shadows development. Approval of the development plan established the front, side and rear setbacks for property covered by the development plan for re-construction of the Chuckwagon and associated site improvements. With that approval, it is reasonable to carry that 10 foot setback for the cumulative property. That would include the 10 foot setback being extended along the Mountain Shadows neighborhood adjacency to the Colorado Springs Utility site and beyond.

The site plan that you have prepared shows the property line for the ranch and the 10 foot setback for the construction of the fence. This site plan should be submitted with a building permit. I will be sure to add these notes to the Regional Building database so that other planning and review staff understand how the setback is applied.

Thank you, Meggan

FIGURE A10



Meggan L. Herington, AICP

Assistant Director of Planning

Phone (719) 385-5033

Email: mherington@springsgov.com

City of Colorado Springs

30 South Nevada Avenue Suite 105

Colorado Springs CO 80903



Links: [Planning & Community Development Home](#) | [Look At Applications Online](#) | [FAQ](#)
[Meeting Request](#) | [Applications and Checklists](#) | [Home Preservation](#)

FIGURE 1

From: JDB - ProperKey jdbardon@properkey.com
Subject: Flying W Ranch Wildlife Barrier
Date: June 12, 2019 at 4:07 PM
To: Herington, Meggan Meggan.Herington@coloradosprings.gov
Cc: Wysocki, Peter Peter.Wysocki@coloradosprings.gov, Lawrence Starr lestarr@comcast.net
Bcc: Don Austin don-ahi@hotmail.com



Meggan:

Adhering to 7.5.906(B)(3), please consider this email a formal request for postponement of the appeal hearing currently scheduled for June 20, 2019 (CPC AC 19-00069) on the grounds that the express language of 7.5.902(C)(2)(a)(3) has been ignored.

Specifically, 7.5.902(C)(2)(b) states: "All signage shall be placed...in locations which are visible from adjacent public ways" and 7.5.902(C)(2)(a)(3) states: "for a minimum of ten (10) days prior to the Planning Commission or City Council public hearing."

More concerning is that no signage exists at the permit pack application address of 2830 Brogans Bluff. 7.5.902(C)(2) — "to provide visual notice to the owners of surrounding properties and the general public who may pass by the site..." I believe, in this case, "the site" should be considered within reasonable proximity of the project's legal address.

Although some signage has been "placed", it is obfuscated—as demonstrated in the attached images—and therefore, has not been visible for the minimally required 10 days. With respect to the Sector Way signage, it is tucked into a corner at the far end of a dead end street which is rarely traveled except by City workers accessing the Utilities. I don't think this meets the minimum requirements expressed intent of the in 7.5.902(C)(2).

Please request a postponement for this matter until an ensuing Planning Commission meeting to allow the Public sufficient and necessary notification for proper review of this permit application and related appeal.

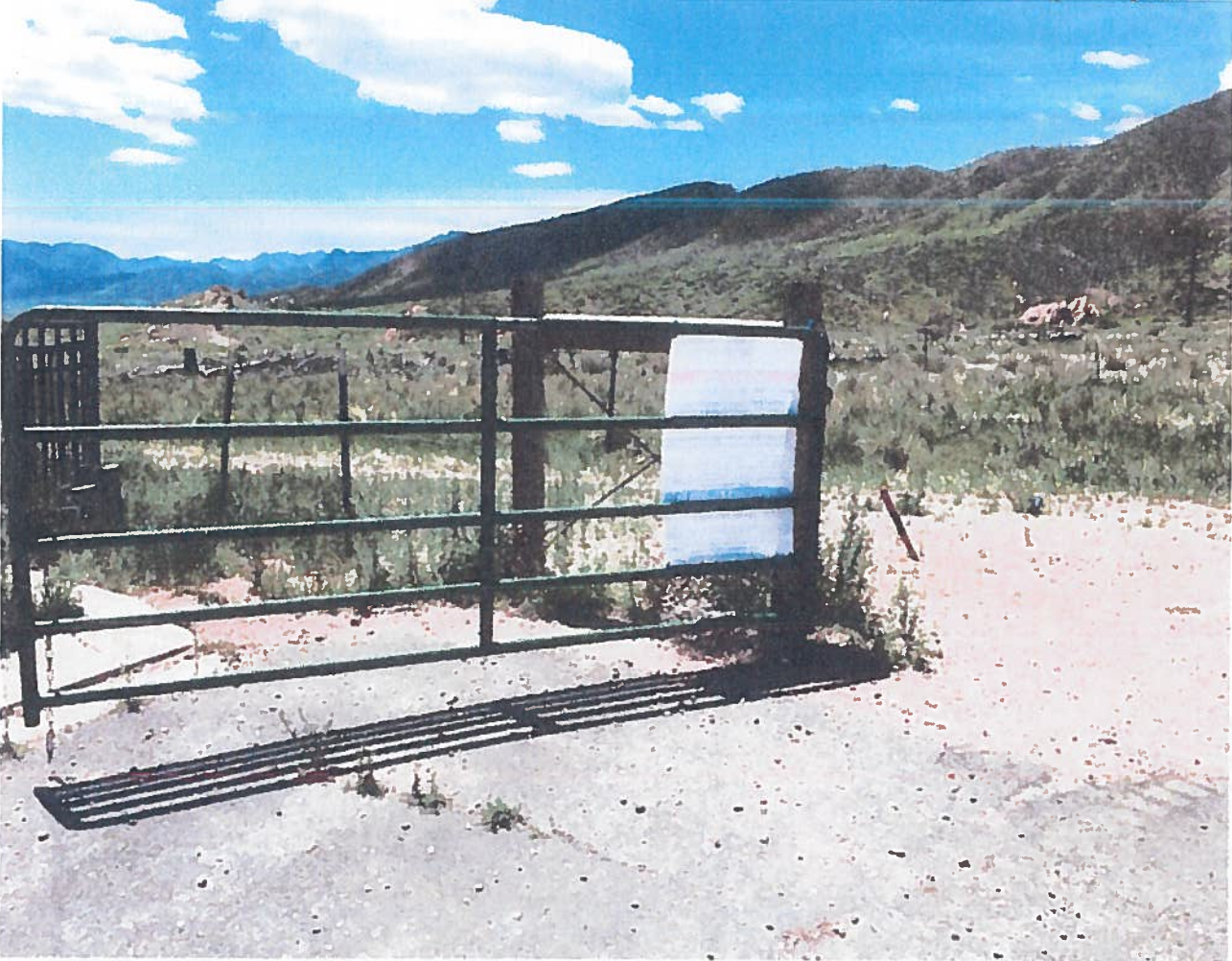
Respectfully,

JD Bardon
719.445.9255

On Flying W Ranch front entrance gate at Chuckwagon Road (obfuscated when gate is open)



On gate at dead end street Sceptor Way which has no enumerated residences (also, obfuscated when gate is open).



From: JDB - ProperKey jdbardon@properkey.com
Subject: Flying W Ranch Wildlife Barrier
Date: June 12, 2019 at 4:07 PM
To: Herington, Meggan Meggan.Herington@coloradosprings.gov
Cc: Wysocki, Peter Peter.Wysocki@coloradosprings.gov, Lawrence Starr lestarr@comcast.net
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Respectfully,

JD Berdon
719.445.9255

On Flying W Ranch front entrance gate at Chuckwagon Road (obfuscated when gate is open)

