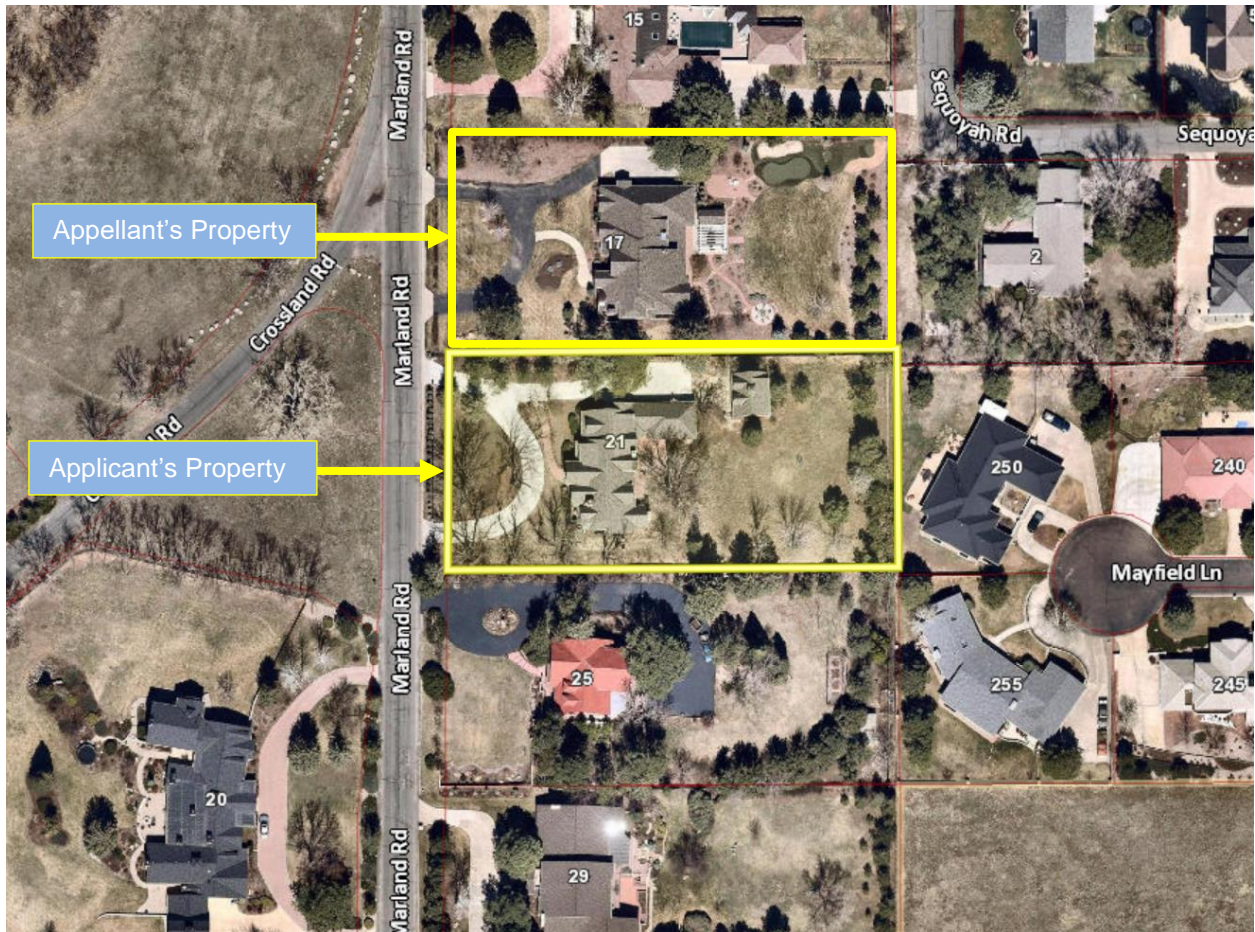


CITY PLANNING COMMISSION AGENDA  
January 21, 2021

STAFF: ALEX OSBORNE

FILE NO:  
CPC AP 20-00021 – QUASI-JUDICIAL

**PROJECT:** 21 MARLAND ROAD – NONUSE VARIANCE APPEAL  
**APPLICANT:** DAVID SUROFCHEK  
**OWNER:** DAVID SUROFCHEK – 21 Marland Road  
**APPELLANT:** AMY TRACY – 17 Marland Road



## **PROJECT SUMMARY**

1. **Project Description:** This is an appeal of the administrative approval of nonuse variance to allow a 7'-6" (seven feet and six inch) fence/retaining wall combination with the fence within 3 feet of the retaining wall. Per City Code Section 7.4.102.A.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. The site is zoned R, located at 21 Marland Road, and consists of 1.07 acre. **(See Approved Site Plan\_21 Marland Road)**

The application was approved administratively on December 15, 2020 and appealed by Amy Tracy on December 28, 2020.

2. **Appellant's Project Statement:** The appeal letter is attached as **Appeal Letter**.
3. **Planning and Development Team's Recommendation:** Staff recommends denial of the appeal, thus upholding the administrative approval of the nonuse variance.
- 4.

## **BACKGROUND**

1. **Site Address:** 21 Marland Road
2. **Existing Zoning/Land Use:** R - Single-Family Residence
3. **Surrounding Zoning/Land Use:** North: R (Estate Single-Family Residence)/Residential  
South: R (Estate Single-Family Residence)/Residential  
East: R (Estate Single-Family residential)/Residential  
West: R (Estate Single-Family)/Residential
4. **Annexation:** Property was annexed in 1980 as part of the Reannexation of the Southwest.
5. **Master Plan/Designated Master Plan Land Use:** There is not a master plan for this site.
6. **Subdivision:** Count Pourtales Addition to the Broadmoor
7. **Zoning Enforcement Action:** Case Number 2008453
8. **Physical Characteristics:** The property in question is a 1.07 -acre lot with a single family residence and detached garage. The property backs another residential neighborhood. The yard has mature vegetation and subtle slopes residing to the north, south, and east. The northern side property line is adjacent to 17 Marland Road, the appellant's property.

## **STAKEHOLDER PROCESS AND INVOLVEMENT**

The public process involved with the review of the nonuse variance application included posting the site and sending postcards to neighbors within 150 feet of the property in question. A total of 9 property owners were notified. A nonuse variance public notification poster was posted in the front yard for duration of ten days. During the internal review stage, staff received opposing comment from the appellant. Other objections or questions from the neighborhood are also attached **(See Neighborhood Opposition Attachment)**.

The letter and call in opposition from the neighbor expressed the following concerns: no extraordinary or exceptional conditions on site, runoff and erosion, adverse impact, and violation of the Count Pourtales Association Architectural Review Committee policy guidelines for perimeter wall and fence approval. Concerns relevant to City Code for fence height are addressed in the following sections of this report.

Staff did not send plans to internal and external review agencies as no review by other agencies was deemed to be required. However, during the review process staff emailed Stormwater Enterprise (SWENT) to ensure the site met any drainage files on record. No history of drainage reports for the property was found. Stormwater Enterprise also provided code sections to ensure lot to lot drainage from one private property to another is a private matter. **(See SWENT Email)**.

## **ANALYSIS OF REVIEW CRITERIA:**

1. **Review Criteria/Design & Development:**
  - a. **Background**

The subject property was annexed into the City of Colorado Springs in 1980 and existing single-family residence was built in 1996 as 21 Marland Road. The existing detached garage was constructed in 2002. According to the homeowner, a survey was completed in May of 2018 to

ensure the retaining wall and fence were entirely on the property at 21 Marland Road. The retaining wall and fence were then constructed in October of 2018. According to the nonuse variance application materials submitted by the homeowner, the retaining wall is 40 feet long. The retaining wall ranges in height from 8 inches at both easterly and westerly ends, to 18 inches in height in the middle. A 6-foot wood picket privacy fence runs the length of the wall and sits approximately adjacent with fence posts touching the inside of the retaining wall.

The owners were cited by Code Enforcement on September 17<sup>th</sup>, 2020, for a fence exceeding 6' (six feet) in height because the 6-foot wood picket fence is constructed within 3 feet of the retaining wall (**See Code Enforcement Letter**). City Code Section 7.4.10.A, states in part:

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 twelve inches (12") of height is permitted for fence posts, poles, and finials when spaced eight feet (8') or more from each other.*

With the 6-foot wood picket fence being constructed within 3 feet of the retaining wall, the fence is up to approximately 7 feet 6 inches at the tallest point. Because the retaining wall varies in height, this changes the overall height of the fence at different locations along the length of the fence; this is not a consistent 7-foot 6-inch tall fence.

The applicant submitted a pre-application meeting request on September 17<sup>th</sup>, 2020 and was contacted September 23<sup>rd</sup>, 2020. The nonuse variance application was submitted on October 21<sup>st</sup>, 2020. During public notification, comments were received on November 3<sup>rd</sup>, 2020. Comments were noted in first review letter sent on November 9<sup>th</sup>, 2020. The applicant addressed comments and resubmitted the nonuse variance application on December 10<sup>th</sup>, 2020. Staff found the resubmittal to meet all nonuse variance requirements and approved the application on December 15<sup>th</sup>, 2020. An appeal was filed on December 28<sup>th</sup>, 2020 by neighboring property to the north, 17 Marland Road, Amy Tracy.

**Nonuse Variance:** The nonuse variance justification to allow a fence exceeding 6' (six feet) in height is outlined below. The record of decision with staff comments is attached as **Record of Decision**.

#### **7.5.802 (B.1) Exceptional or Extraordinary Conditions**

Due to the topography of this lot the homeowner was required to construct a retaining wall in order to stabilize the driveway apron needed for proper access and adequate use of the existing attached garage. Due to the topography of the lot requiring a retaining a wall for the driveway, the homeowner is unable to place a 6' (six foot) fence further than 3' (three feet) from the existing retaining wall. Because the driveway is so close to the required retaining wall, the fence also serves as privacy and safety for the area adjacent to the driveway. It serves as a protective barrier for vehicles and anyone recreating in the driveway. Placement of the fence closer than 3 feet to the retaining wall also eliminates any dead space that would then fall on the opposite side of the fence between the retaining wall and the fence that would be the responsibility of the owner of 21 Marland. If the fence were setback more than 3 feet the space between the retaining wall and the fence could become a maintenance issue.

#### **7.5.802 (B.2) No Reasonable Use of Property**

The use of a fence for security at this property is a reasonable use allowed within the zoning district. The driveway is also a reasonable use to allow access to the single-family dwelling. Due to the architectural design of the home with an attached garage facing west and existing driveway dimensions, the homeowner cannot properly access attached garage without the driveway apron

which requires the retaining wall in order to be properly constructed and stabilized. The location of the fence is required to be located within 3 feet of the retaining wall to prevent access issues for the driveway.

**7.5.802 (B.3) No Adverse Impact to Surrounding Property**

Multiple properties adjacent have similar retaining walls within 3' (three feet) of a fence that exceeds 6' (six feet) from top of fence to the finish grade at the bottom of the retaining wall. (**see attached Fence Photos**) No adverse impacts are anticipated through the design and location of the fence.

A drainage complaint was received during review of this request. The drainage complaint and alleged drainage issues have little to do with the fence height. However, since the complaint was made the applicant took corrective measures to minimize drainage issues to neighboring properties. City Engineering was asked to comment and provided that although lot-to-lot drainage is a concern, it is a private matter that City Engineering does not have jurisdiction or funding to correct. This was not considered as part of staff's approval of the nonuse variance. The retaining wall itself is not an issue at the current placement and is permitted to be where it is located. The issue at hand is the placement of the 6-foot wooden fence in relationship to the retaining wall. The fence height itself has no adverse impact to neighboring properties.

- b. Appeal Review Criteria:** The appeal letter states that the applicant provided erroneous information as part of the nonuse variance request. Erroneous information stated by the appellant reads as: "the applicant provided incorrect measurements and inaccurate drawing of the retaining wall." And "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 over 7'-6", which was the height administratively approved.

Once the appeal was filed with this information, Code Enforcement staff verified that the retaining wall is taller than 18 inches at the highest point, making the fence closer to approximately 8 feet at its tallest section. However, this information does not change staff's recommendation. Whether the fence is 7 feet 6 inches or 8 feet at the tallest section is a minimal issue. Staff considered the requirement and need for the retaining wall and the space for the fence, as well as fact that the fence is not at a consistent height of over 7 feet, has existed for 2 years, and there are other similar fences and walls in the area.

Other points from the appeal letter are listed below with staff input on each:

- Appellant states the construction of retaining wall and fence in 2018 was not needed and no structural engineer has stated it was needed for stabilizing the new driveway apron.

A retaining wall under 4' feet in height does not require building permit, therefore engineering and zoning review was not required for this construction. However the fence does not meet code, which resulted in the code enforcement citation and nonuse variance application. Since a building permit was not required for construction of the retaining wall or fence, the property owner was unaware of the height issue or need for a nonuse variance until 2 years after construction.

- El Paso County Land Development Code 6.2.1D.4 states: the fence and wall shall not be established within an easement in a manner where the use of the easement is unnecessarily impeded.
- "El Paso County Land Development Code 6.2.1D.4 states: the fence and wall shall not be established within an easement in a manner where the use of the easement is unnecessarily impeded".

Staff notes that this property falls under the City of Colorado Springs jurisdiction, therefore this section not pertain to this application.

- Appellant states retaining wall and fence have led to runoff on site resulting in adverse impact to surrounding properties.

Stormwater Enterprise (SWENT) was emailed during review process to ensure no historical drainage documents existed on site. SWENT confirm no historical drainage reports exist and provided code that confirmed site to site runoff issues is a civil issue.

There are several points made in the appellant letter that staff cannot comment on including:

- Fence on site blocks homeowner from seeing retaining wall unlike surrounding retaining walls in the area that face inward and are not shielded by a solid fence.
- The cutting of the fence to a total height of 6 feet would not impact the applicant's ability to access the garage.
- Fence within 3' of retaining wall that do exceed a total height of 6' after top of fence to bottom of retaining wall exists at 28 Marland Road, but was only constructed to hide abandoned house to the South at 34 Marland Road.

### 3. Conformance with the City Comprehensive Plan

Staff has evaluated the proposed application is consistent with the City's current comprehensive plan (herein referred to as "PlanCOS"). According to PlanCOS, it is important to maintain vibrant neighborhoods. For neighborhoods to thrive it is essential to protect, enhance or revitalize the character and functions within each area. The project site is identified on PlanCOS Vibrant Neighborhoods Framework map (**see attached Framework Map**) as part of the Old Broadmoor. The predominant typology is an established historic neighborhood. The goal of this neighborhood typology is to recognize, support, and enhance the existing character while supporting their ongoing investment and improved adaptation.

The proposal supports this idea with careful consideration regarding placement, minimal land and vegetation disturbance within an established neighborhood and improving investment to the property value. This proposal also maintains the character of the existing home.

Specific policies of PlanCOS that appear to support the project are listed below:

Policy VN-2.A: Promote neighborhoods that incorporate common desired neighborhood elements.

Strategy VN-2.A-3: Projects that provide a variety of housing types and sizes and meeting the needs of residents and families through various life stages and income levels.

Policy VN-3.A: Preserve and enhance the physical elements that define a neighborhood's character.

City Planning staff finds the nonuse variance to be in conformance with PlanCOS and its guidance.

### 4. Conformance with the Area's Master Plan

No master plan exists for this site.

## **STAFF RECOMMENDATION**

### **AR NV 20-00678 – Nonuse Variance**

Deny the appeal and uphold the administrative approval of the nonuse variance to City Code Section 7.4.102.A.2, based on the finding that the nonuse variance meets the criteria for granting a nonuse variance in City Code Section 7.5.802.B and that the appellant has not substantiated that the appeal satisfies the review criteria outlined in City Code Section 7.5.906.A.4.