



1220 EAGLE ROCK RD – RETAINING WALL

Planning Commission November 13, 2024

Staff Report by Case Planner: Drew Foxx



Quick Facts

Applicant

John Fernandez

Property Owner

John Fernandez

Developer

N/A

Address / Location

1220 Eagle Rock Rd

TSN(s)

6320003003

Zoning and Overlays

Current: R-E HS-O (Single-Family - Estate with Hillside Overlay)

Site Area

1.64 acres

Established Land Use

Single-Family Detached Dwelling

Applicable Code

7.2.610.D.1.d

Project Summary

Non-Use Variance application to allow a nine (9) foot retaining wall where a maximum of four (4) feet in height for retaining walls within the hillside overlay is permitted located at 1220 Eagle Rock Road. The 1.64-acre property is zoned R-E/HS-O (Single-Family - Estate with Hillside Overlay).

| File Number | Application Type | Decision Type |
|--------------|------------------|----------------|
| NVAR-24-0007 | Nonuse Variance | Quasi-Judicial |

Background

Prior Land-Use History and Applicable Actions

| <i>Action</i> | <i>Name</i> | <i>Date</i> |
|--------------------------|------------------------------------|-------------------------------|
| Annexation | North Colorado Springs Addition #1 | 1969 |
| Subdivision | Riley Subdivision | April 21 st , 1999 |
| Master Plan | N/A | N/A |
| Prior Enforcement Action | N/A | N/A |

Site History

This site became a part of the City of Colorado Springs in 1969 via the North Colorado Springs Addition #1 annexation. The property was later platted as part of the Riley Subdivision plat on April 21st of 1999 establishing this 1.64-acre lot. A hillside development plan approved in 1998 (City File No. AR DP 98-727; See Attachment 1 – Approved Hillside Development Plan) approved the development of single-family residences at 1210 and 1220 Eagle Rock Road. The single-family residence at 1210 Eagle Rock Road was permitted in 1999 via building permit number D57154, while the single-family residence at the subject address was approved in 2019 via building permit number M10094 and has since been built. The existing condition for the site includes a shotcrete slope (see pictures in the Site Plan, Project Statement, and Existing Conditions) that has no history of building permit or construction plans, and a statement has been provided by Pikes Peak Regional Building that a Building Permit was required at the time of the shotcrete slope's construction given that the wall exceeds a 2:1 grade (see "Attachment #8 - PPRBD Correspondence). The applicant proposes to replace this shotcrete slope with the proposed retaining wall.

Applicable Code

The subject application was submitted after the implementation date (06/05/2023) of the City's Unified Development Code. All subsequent references within this report that are made to "the Code" and related sections are references to the Unified Development Code.

Surrounding Zoning and Land Use

Adjacent Property Existing Conditions

| | <i>Zoning</i> | <i>Existing Use</i> | <i>Special Conditions</i> |
|-------|---------------|----------------------------------|--|
| North | R-E | Dwelling, Single-Family Detached | Preservation area established on the eastern portion of the lot. |
| West | R-E | Dwelling, Single-Family Detached | None |
| South | R-E | Undeveloped | None |
| East | R-E | Open Space | Austin Bluffs Open Space; Owned by the City of Colorado Springs |

Zoning Map



Stakeholder Involvement

Public Notice

| | |
|---|--|
| Public Notice Occurrences (Poster / Postcards) | Two (2) times, Administrative Review and prior to Planning Commission public hearing |
| Postcard Mailing Radius | 1,000' |
| Number of Postcards Mailed | 28 |
| Number of Comments Received | One (1) |

Public Engagement

The City Planning Department received opposition to the project from the property owner directly to the north of the subject lot at 1210 Eagle Rock Road. City Planning staff has communicated with the property owner all information regarding the proposed retaining wall and the application process. A letter of opposition stating that the proposed retaining wall would have negative implications on their property value and that the wall is not a necessary structure to include on

the property was forwarded to the applicant (See Attachment 2 - Notice of Opposition) and a response to the owner of 1210 Eagle Rock Rd was provided (See Attachment 3 - Public Response Letter).

Timeline of Review

| | |
|--------------------------|---------------------------------|
| Initial Submittal Date | July 16 th , 2024 |
| Number of Review Cycles | Four (4) |
| Item(s) Ready for Agenda | October 16 th , 2024 |

Agency Review

City Engineering

- All comments addressed.

Development Review Enterprise - Hillside Division

- Please clarify why previously approved permit R189939 approved on 5/31/24 as designed/approved is no longer a suitable alternative (two-tiered retaining wall system that did not exceed 7' height and fencing).
- Per the revised submitted project statement, please elaborate what aspects of the existing shotcrete slope are "damaged" or problematic as you refer to it as "damaged area".

SWENT

- All comments addressed.

Colorado Springs Utilities

- All comments addressed.

Nonuse Variance

Summary of Application

The proposed Non-Use Variance application is to allow for a nine (9) foot retaining wall where only four (4) feet is permitted within the hillside overlay per 7.4.610.D.1.d of the UDC. Subsequent to this application, the owner submitted a Building Permit plan for a retaining wall with a lesser height which was approved through Pikes Peak Regional Building Department (PPRBD). After further review of the previously approved Building Permit plan, the approval was issued in error by Planning Staff as the request requires a similar Non-Use Variance application for the retaining wall height as shown and a modification of the approved Hillside Development is also required to remedy that error.

It is City Planning's understanding that the purpose of the proposed retaining wall is to increase erosion and drainage control for the northeastern portion of this lot (see Attachment #4 – Site Plan). The drainage and erosion for this area of the lot is currently being maintained by a concrete slab (shotcrete) that had been installed along the naturally eroded slope. The owner is requesting approval to support the location of the proposed retaining wall to improve the existing physical conditions by replacing the existing shotcrete slope. This is also an effort by the owner to improve the reliability for drainage and erosion control and limit any safety or financial risks associated with further erosion and drainage in this area (See Attachment #5 - Project Statement). The highest portion of the wall is located on a short segment of the north property line that is shared with 1210 Eagle Rock Road, but many portions of the wall are greater than four (4) feet in height, and therefore the entirety of the proposed wall is under review with this Non-Use Variance application.

It has been requested and added as a condition of approval to this application, that the owner may shift the location of the proposed segment of wall that is shown on the shared property line between 1210 and 1220 Eagle Rock Road up to two (2) feet to the south due to physical constraints after having provided evidence from a licensed Engineer to City Planning that the proposed location as shown is no longer suitable. This is an effort by the applicant to grant City Planning Commission the opportunity to address this flexibility now, rather than return with an amended plan for re-review by City Planning Commission in the instance that this relocation needs to occur.

It should be mentioned that another section of the UDC, 7.4.203.A: Setback Exceptions, restricts a wall within a setback to seven (7) feet in height, however, City Planning has required that the Non-Use Variance request be in reference to 7.4.610.D.1.d as this section limits retaining walls for the entire property to four (4) feet in height, therefore, making this section the more restrictive code requirement.

Application Review Criteria

UDC 7.5.526.E: Non-use Variance

1. The application complies with any standards for the use in Part 7.3.3 (Use-Specific Standards).

Staff Analysis: City Planning staff finds that there are no use-specific standards in part 7.3.3 of the UDC for retaining walls.

2. The property has extraordinary or exceptional physical conditions that do not generally exist in nearby properties in the same zone district.

Staff Analysis: According to the applicant, the 1,125 square foot area of the subject lot to be impacted by the proposed retaining wall currently has concern for erosion and drainage control. The applicant provided a letter from Entech Engineering recommending over excavation of expansive soils in this area and “rockfall mitigation” for the site (see “Attachment #6 - Entech Recommendation”). After evaluation of the Non-Use Variance application, City staff finds that the application meets this review criteria.

3. That the extraordinary or exceptional physical condition of the property will not allow a reasonable use of the property in its current zone in the absence of relief.

Staff Analysis: This section of the property is on a steep grade in which the owner has concerns for unknown safety, maintenance, and reliability risks if the shotcrete slope is not replaced by the proposed retaining wall. It should be noted that according to the Geologic Hazard Report Validation Letter (See Attachment #7; pg. 3) unstable slopes were observed east of the building site which is the area that shall be supported by this request. Additionally, in reference to the recommendation letter received from Entech, rockfall mitigation was recommended. After evaluation of the Non-Use Variance application, City staff finds that the application meets this review criteria.

4. That the granting of the Non-Use Variance will not have an adverse impact upon surrounding properties.

Staff Analysis: Per the applicant’s project statement, a professional engineering (retaining wall design) assessment, State of Colorado Geological Hazard Report Validation Letter, and Soils Report have identified the most effective and minimal disturbance to the surrounding geological area. Due to the supporting aforementioned documents and upon final review of the Building Permit, it can be expected that the proposed wall shall not have any physical adverse impact on the surrounding properties if the retaining wall is built in compliance with the proposed plans and may create a safer environment due to observations conducted and reported related to unstable slopes in the Geological Hazard Report. After evaluation of the nonuse variance application, City staff finds that the application meets this review criteria.

Staff Analysis: After evaluation of the Non-Use Variance application, City staff finds that the application meets the review criteria.

Compliance with Development Standards

| Development Standard | Required | Proposed |
|--|---|---------------------------------|
| 7.2.610.D.1.d: Hillside Development Plan | Retaining walls shall be Four (4) feet or less in height | Nine (9) foot retaining wall |

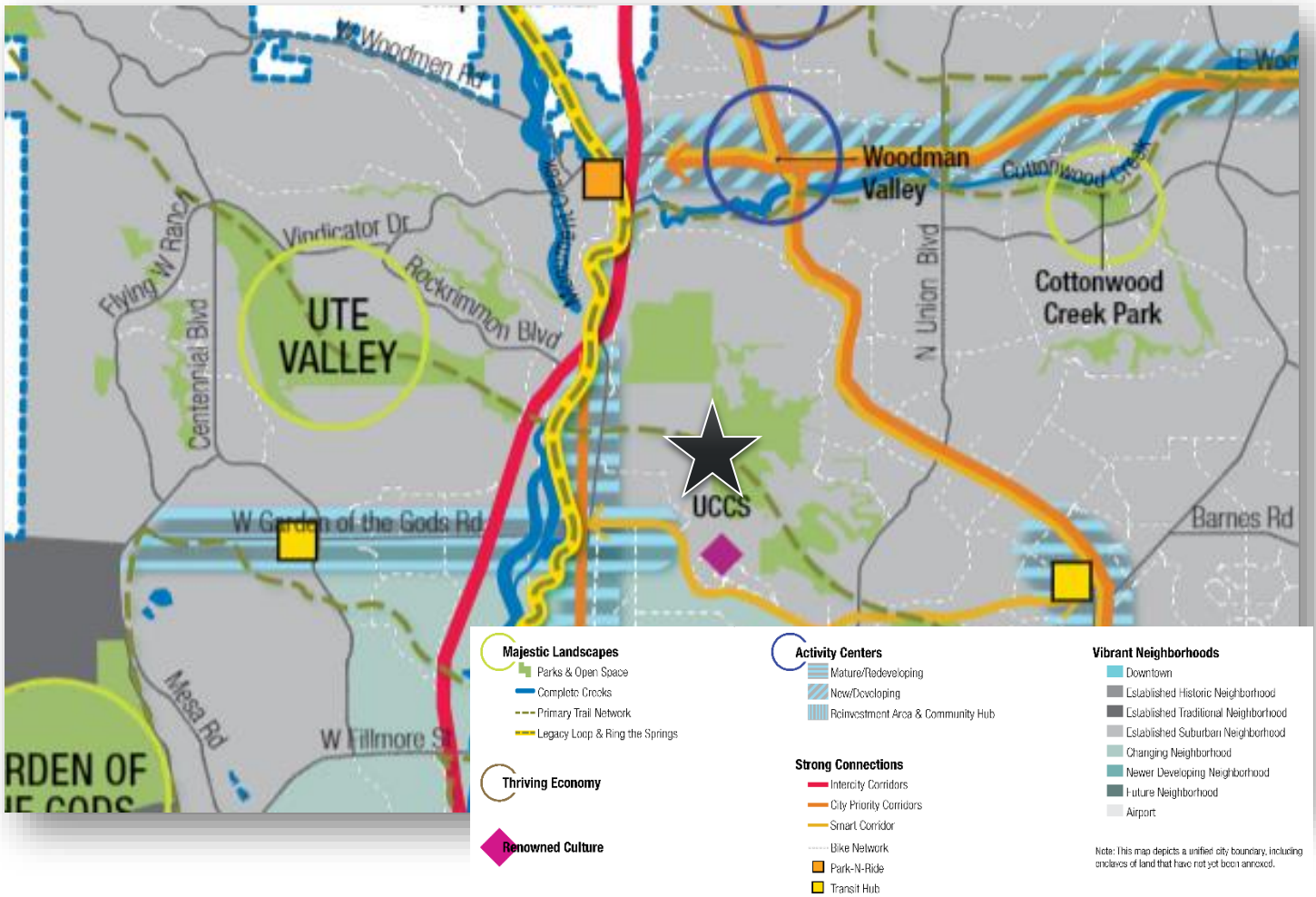
Compliance with Relevant Guiding Plans and Overlays

Hillside Overlay (HS-O) / Hillside Development Plan (City File No. AR DP 98-727)

A Hillside Overlay is applicable to this site and the reason that this Non-Use Variance application has been submitted is due to the requirement for retaining walls within the Hillside Overlay zone, under section 7.2.610.D.1.d: Hillside Development Plan and Building Lots, be no higher than four (4) feet in height. A portion of the proposed retaining wall located within the required 10-foot side yard setback is nine (9) feet in height and is the highest portion of the wall. Per 7.4.203.A: Setback Exceptions, fences and walls are permitted within a required setback if seven (7) feet or less in height rearward of front building façade, or four (4) feet or less in height forward of front building façade. However, Planning staff finds that the more restrictive requirement to the proposed wall is found in 7.2.610.D.1.d, where retaining walls located within the hillside overlay are to be limited to four (4) feet in height with no more than two (2) piers separated by four (4) to six (6) feet.

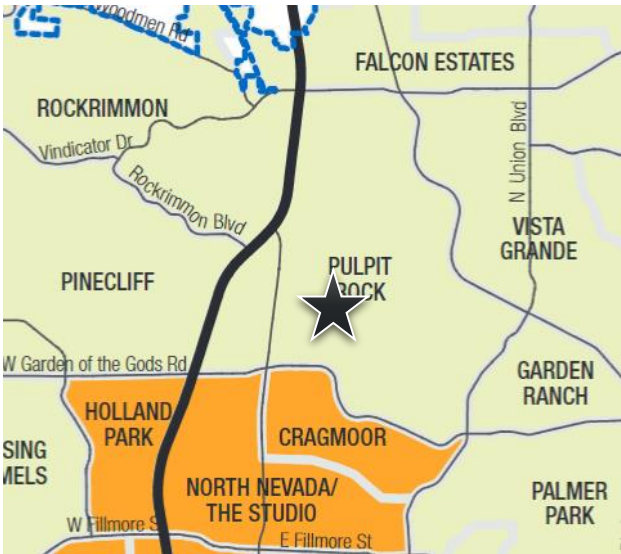
While the proposed wall complies with a majority of the Hillside Development Plan Review criteria, the wall as designed does conflict with criteria 7.2.610.D.5.d & f with respect to the visual impact of the wall on off-site areas. A tiered retaining wall system as outlined in City Code 7.2.610.D.1.d would soften the structural massing as compared to the proposed single cast-in-place wall. The preservation or use of native plantings can also be used as a stabilizing measure and to soften the structures visibility. The applicant has not deployed these measures.

Per the approved Hillside Development Plan (City File No. AR DP 98-727) for this lot, any proposed retaining wall shall only be constructed after the review and approval of a Hillside Site and Grading Plan. The referenced Hillside Development Plan includes a note that walls remain under four (4) feet in height. City staff determined that a modification of the approved Hillside Development Plan is needed. Should the nonuse variance application be approved, a condition of approval requiring the modification is recommended to ensure that the application meets the Hillside Overlay Review Criteria per UDC 7.2.610.D.5: Hillside Development Plan Review Criteria.



Staff evaluated the proposed application for conformance with the City’s current comprehensive plan (herein referred to as “PlanCOS”), adopted in January 2019. According to the PlanCOS, the project site is identified as being within a “Established Suburban Neighborhood”. Established Neighborhoods are predominantly completed and have been for at least a few decades. Relative to other neighborhoods, they are stable and do not anticipate high levels of land use changes. However, most Established Neighborhoods within the city should expect some degree of infill and redevelopment.

Suburban Neighborhoods are defined as a subcategory to Established Neighborhoods in PlanCOS, and include those that developed with a suburban pattern, including curvilinear streets with cul-de-sacs. These neighborhoods have matured to the point where they are not actively being developed and no longer have actively managed, privately initiated master plans, and ordinarily do not yet have publicly initiated master plans. These neighborhoods have a high value in maintaining the privacy of homes and safe streets for families. New development should focus on safe connections into and within these neighborhoods.



Predominant Typology

| | |
|-----------------------------------|--------------------------------------|
| Downtown | Established Traditional Neighborhood |
| Newer Developing Neighborhood | Established Suburban Neighborhood |
| Changing Neighborhood | Airport |
| Established Historic Neighborhood | Future Neighborhood |

Vibrant Neighborhoods

Strategy VN-3.A-5 asks that the City supports updates to plans to encourage a blend of uses that positively affect neighborhoods. The proposed application generally supports this effort in that it is improving the erosion and drainage control that could potentially be otherwise impactful to other residential sites in the area. The area under review is at higher elevation than other sites to the west and therefore, could be a factor in how drainage and erosion control impacts other properties in the neighborhood that are below the site.

Statement of Compliance

City File No. NVAR-24-0007

After evaluation of the nonuse variance application and considering the information that has been provided at this time, staff does not find the application to be meeting the applicable review criteria for 7.2.610.D.5.d & 7.2.610.D.5.f. If this nonuse variance application were to be approved, staff recommends the following conditions of approval:

- a. The property owner may shift the location of the wall by up to two (2) feet to the south due to physical constraints after having provided evidence from a licensed Engineer to City Planning that the proposed location as shown is no longer suitable.
- b. An amendment to the applicable hillside overlay development plan (City File No. AR DP 98-727) shall be processed prior to approval of a building permit.
- c. Wall height shown on the site plan shall be from finished grade to top of wall.