



**SUMMARY MINUTES OF PLANNING COMMISSION ACTION HELD**

**June 20, 2023**

Planning Commission meeting minutes are not an exact transcript and represent key points and the basis of discussion.

**1. CALLED MEETING TO ORDER– By Michael P. Griffith at 6:17 P.M.**

**2. PLEDGE OF ALLEGIANCE**

**3. ROLL CALL OF MEMBERS**

Those present: Michael P. Griffith, Tim Knapp, Brandon Figliolino, Tom Aljinovich,

**THOSE ABSENT**

Doug Magee, Steve Hannan, Andrew Gay

**MOTION**

It was moved by Mr. Griffith to excuse the absence of Mr. Hannan, Mr. Magee and Mr. Gay.

Those voting Yes: Griffith, Knapp, Ajinovich, Figliolino

Those voting No:

Those absent: Gay, Magee, Hannan

The motion carried: 4-0

**ALSO PRESENT:** Rob Smetana, Acting Director of Community and Economic Development and City Planning Manager; Brad Moloney, Deputy City Attorney; Jeremiah Bebo, Planner II, Heidi Van Gieson, Recording Secretary.

**4. APPROVAL OF MINUTES**

June 6, 2023. The minutes stand approved as printed.

**5. GENERAL BUSINESS**

None

**6. REPORTS**

None

**7. PUBLIC COMMENT**

There being no one wishing to speak. Public Comment was closed.

**8. PUBLIC HEARINGS**

**DA2023-0035 Major Modification from the Land Development Code to increase the maximum height allowed for a solid fence in the front setback to six feet when LDC Division 4-7-2 restricts the height of solid fences in the front yard to three feet generally located at 5618 W 64th Ave. Arvada, CO**

The public hearing was opened.

Mr. Bebo had a correction to the staff report. On page 6 in the table for the major modification approval criteria. For criteria number 2, currently it says that we have the finding of "Does Not Comply". However it should read "Complies/ Does Not Apply".

Mr. Griffith entered into the record the staff report DA2023-0035 dated June 20, 2023, staff report, posting notice, affidavit of mailing, and posting log.

Jeremiah Bebo introduced the project.

Zach Mahone 5618 W 64h Ave/the homeowner. Stated that he would like to change the current chain link fence to a 6 ft cedar fence. Stated that the request is for safety, sound dampening and will bring curb appeal. Mr. Mahone stated how the request is unique because of the unique location of the house. Applicant stated that there is no concern regarding the site triangle.

Mr. Griffith opened the hearing for comments from the public.

**PUBLIC COMMENT**

**IN FAVOR**

Don Taylor 5620 W 64th Street, stated that the new fence would be appreciated for the aesthetics of it.

**IN OPPOSITION**

NONE

**APPLICANT REBUTTAL**

Mr. Griffith closed public comment.

**QUESTIONS FROM THE COMMISSION**

Brandon Figlolino asked what the city considers a front yard?

Mr. Bebo stated that it is where the property is adjacent to the street and where the right-of-way is. Even though they have a private drive that services the three houses there it is technically

regarding the frontage with Right-of-way. Thereby automatically putting the front of the house on the North.

Mr. Figliolino asked if the city team would change their mind if there were more trees in front of the fence? Would that be a lesser impact?

Mr. Bebo stated that at this stage, probably not. The intent of the regulation is to prevent street frontages that are just solid walls or fences and trees may help lessen that impact, however..

Mr. Figliolino asked if the City staff had any concerns with the Site Triangle?

Mr. Bebo stated that they did not.

Tim Knapp asked to explain the correction that was made to number 2 on page 6 the Staff Report? Why does it Comply as well as Not Comply?

Mr. Bebo stated that the approval Criterion states that the requested modification addresses a unique situation or incorporates creative design. We (staff) do find that the modification does address a unique situation being that there is the presence of the private drive/Cul-de-sac. In that it is not the only property in the city that has that, it is a rarity though. The part that staff struggled with, was if it incorporated creative design. It did comply with part of the Criteria but didn't meet the full spectrum of the criteria.

Mr. Knapp asked if there was another solution that the staff was considering?

Mr. Bebo stated that offline they explored different options. They looked at reducing the amount of fence extending to the west to try to pull it back a bit. We (staff) thought they had found a way to bring it to the Board of Adjustment, but there is a criterion about seeking the least variance necessary and they found that this design does not meet that at its face value.

Mr. Knapp asked if the applicant takes care of the yard between the road and the fence?

Mr. Mahone stated that he has been letting it grow a bit to create more privacy. He does go out and picks up trash and cuts a bit around the mailbox.

Mr. Knapp asked what exactly the applicants' concerns are about privacy, security and noise?

Mr. Mahone stated that 64th Ave is a fairly busy street and because of the way his property is, as far as safety; there is trash and debris thrown into the yard. Sound wise, it would just create more privacy specifically for his tenant downstairs that's window looks right onto it. Security, there are people that walk along W 64th that could easily jump his current fence and get into his yard or backdoor. A 6 ft fence would create privacy along that road and decrease accessibility to his property making it more safe.

Mr. Aljinovich asked the staff if the applicant created this situation?

Mr. Bebo stated that is correct, he did not.

Mr. Aljinovich stated that he inherited it when he bought the home, so he has a unique situation here that can be solved. Is he with the setback limits within the proposed new fence?

Mr. Bebo stated that the applicant is encroaching into the front setback but not beyond the property line.

Mr. Aljinovich asked if the current fence is permitted?

Mr. Bebo stated that it is because it is a chain link fence. You can have up to a 4 ft tall fence so long as it is 50% open.

Mr. Aljinovich asked what code violation would he be breaking if he got a 6 ft fence?

Mr. Bebo stated that it is the height and the fact that it's not transparent. He stated that those are the two factors that staff is looking at.

Mr. Aljinovich asked what is considered his front yard?

Mr. Bebo stated that the side facing 64th is his front yard.

Mr. Aljinovich stated that his front yard faces into the Cul-de-sac?

Mr. Bebo stated that that was correct, but the technical reading of the code is that the North is his front yard.

Mr. Aljinovich asked Mr. Smetana to explain.

Mr. Smetana stated that per the code the front yard is the side that faces 64th even though his house is orientated towards a private drive.

Mr. Aljinovich stated that that is not the applicant's fault.

Mr. Smetana stated that the lot was plotted this way in 1979. It was a known situation since then. The house could've been facing 64th.

Mr. Aljinovich asked the applicant if he was aware of this when he purchased the home?

Mr. Mahone stated that he did not.

Mr. Griffith asked about the slope considerations. Under circumstances when there is a slope , how do we fix that with the code?

Mr. Bebo stated that it is measured from finished grade which creates a conundrum with situations like this.

Mr. Griffith asked when we are looking at Major Modifications, we are looking at 20% over what is allowed? But perception wise, if there is a 1 ft drop, the fence will only look as though it is 4.5 to 5 ft tall.

Mr. Bebo stated that that is correct.

Mr. Griffith asked how we get some of the non code 6 ft no transparent fences along 64th?

Mr. Bebo stated that the Code update that they did in 2020 helped alleviate a lot of that, the current code is a lot more liberal about what's legally defined as a corner lot and allows a reduced set back on the street side. Also large subdivision fencing is allowed if there is a backyard facing an arterial street.

**MOTION:**

It was moved by Mr. Figliolino that a Major Modification from the Land Development Code to increase the maximum height allowed for a solid fence in the front setback to six feet when LDC Division 4-7-2 restricts the height of solid fences in the front yard to three feet generally located at 5618 W 64th Ave. Arvada, CO, be recommended to City Council for (Denial) stated in the Staff Report.

The motion for denial is based on the facts and findings on Page 6 or 7 of the Staff Report.

**DISCUSSION OF MOTION**

Mr. Griffith reviewed that a vote for yes would be a vote to deny and a vote of no would be a vote to approve the project.

Brad Moloney stated that if this vote was to not carry, we would have to do a second motion to approve it.

Mr. Knapp stated that he will not be voting in favor of the proposed motion. He stated that we do have a unique situation, one of which is in the lay of the land. Also that there are fences along that road already. He feels that the new fence will be an improvement of what is currently there.

Mr. Griffith will also not be voting In Favor of the motion as read, stating that he will be voting against the denial. He stated that he appreciates that the staff noted the areas where the project Complies or Does Not Comply. Specifically on Criteria number 5, he has a different point of view on it. He feels that it does comply and that there will not be a significantly negative impact by the fence on the frontage as he feels the frontage is a little ambiguous in this case whether it is the side or the front.

Mr. Aljinovich stated that Mr. Mahone is in a unique situation with the way that the house is situated and has a significant difficulty with the way the house is on the lot which is not his doing. He feels it causes a significant difficulty on him (Mr. Mahone) and it is a unique situation and he will be voting no for this motion.

Mr. Figliolino stated that he agrees with his fellow commissioners and feels that it will not have a negative impact to have the fence there as this is a unique situation.

Those voting Yes:

Those voting No: Griffith, Knapp, Ajinovich, Figliolino

Those absent: Gay, Hannan, Magee

The motion failed 0-4

**MOTION:**

It was moved by Mr. Figliolino that a Major Modification from the Land Development Code to increase the maximum height allowed for a solid fence in the front setback to six feet when LDC Division 4-7-2 restricts the height of solid fences in the front yard to three feet generally located at 5618 W 64th Ave. Arvada, CO, be recommended to City Council for Approval stated in the Staff Report.

The motion for approval is based on the facts and findings on Page 6 or 7 and complies with Criteria 1, 4 & 5 of the Staff Report.

### **DISCUSSION OF MOTION**

Mr. Griffith stated his thanks to the applicant for putting together a very concise and professional presentation. This is the most well organized case that he has seen. He stated that it does not mean that they vote on the presentation itself but that it makes it easier to understand what is being asked for.

Mr. Moloney stated that we are voting on the approval criteria, the commission will be making a vote that it does comply across the board with pages 6 & 7 of the staff report.

Mr. Griffith clarified with Mr. Figliolino that that is what he meant by his motion.

Mr. Figliolino agreed that, yes it was.

Mr. Griffith thanked the staff as well. This is a great example of government appointed staff, staff and citizens all coming together to solve a problem. It may just be a fence, but staff looked and saw that they had some issues with it in regards to the Code. It is a great example of everyone working together, and that it is very clear that the process is being followed.

Mr. Knapp thanked staff for bringing this to their attention and allowing the commission to weigh in on the matter. He will be voting in favor on this matter.

Those voting Yes: Griffith, Knapp, Ajinovich, Figliolino

Those voting No:

Those absent: Gay, Hannan, Magee

The motion carried: 4-0

### **8. OTHER ITEMS**

Tour of new city website

Mr. Smetana explained how to navigate and find the Planning Commission information.

No meeting July 4th due to the holiday or July 18th.

It was moved by Mr. Figliolino to cancel the July 18th meeting.

Those voting Yes: Griffith, Knapp, Ajinovich, Figliolino

Those voting No:

Those absent: Gay, Hannan, Magee  
The motion carried: 4-0

Next meeting will be August 8, 2023

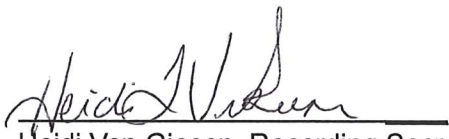
9. **ADJOURNED** at 7:05 P.M.



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Tim Knapp, Secretary



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Michael P. Griffith, Chair



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Heidi Van Gieson, Recording Secretary