



Zoning Board of Appeals Remote Meeting Instructions for July 27, 2021 Meeting

No physical location, including the City Council Chambers, will be set up for viewing or participating in this meeting.

Citizen Participation During Hearing

Click the link below to join the virtual meeting. During the public hearing portion, use the Q&A or raised hand features at the bottom of the screen and you will be called upon to speak at the appropriate time.

<https://greeleygov.zoom.us/j/87185922381?pwd=cjNCQ3I4aUxMQmc1d3owNlFyazVpdz09>

Passcode: 744961

Livestream on YouTube:

View a live stream of the meeting on the City of Greeley YouTube channel

<https://www.youtube.com/CityofGreeley>.

Other options for sharing public comments:

E-mail – Submit to cd_admin_team@greeleygov.com

All comments submitted by e-mail will be read into the record at the appropriate points during the meeting in real time. Comments can be submitted up to and throughout the meeting.

Traditional Mail – Zoning Board of Appeals, 1100 10th Street, Greeley, CO 80631

All written comments must be received no later than the day of the meeting. Written comments received by mail will also be read into the record in real time.

To download the agenda and agenda packet, click on the "Enter City Meeting Portal" button on the Planning Commission web page – <https://greeleygov.com/government/b-c/boards-and-commissions/planning>. You may also call the Planning office at 970-350-9780 if you have any other questions or require special accommodations to attend a virtual hearing.



Chair
Justin Yeater

Vice-Chair
Erik Briscoe

Commissioners
Louisa Andersen
Brian Franzen
Larry Modlin
Chelsie Romulo
Christian Schulte

**A City Achieving
Community Excellence**

Greeley promotes a healthy, diverse economy and high quality of life responsive to all its residents and neighborhoods, thoughtfully managing its human and natural resources in a manner that creates and sustains a safe, unique, vibrant and rewarding community in which to live, work, and play.

Zoning Board of Appeals Agenda

July 27, 2021 at 1:15 p.m.

This meeting will be conducted remotely. (See previous page or participation instructions and/or to view the YouTube replay.)

- I. Call to Order
- II. Roll Call
- III. Approval of Agenda
- IV. Approval of April 13, 2021 Minutes
- V. Public hearing to consider a variance request to allow for up to a 9.6 foot fence/wall in the R-L (Residential Low Density) zone district

Project: 2015 27th Avenue Height Variance
Case No.: VAR2021-0005
Applicant: Jared Mortell
Location: 2015 27th Avenue
Presenter: Kira Stoller, Planner II

- VI. Public hearing to consider a variance request to allow for a 3-foot reduction from the required interior side parking setback, from three to zero feet, in the R-L (Residential Low Density) zone district

Project: 2015 27th Avenue Setback Variance
Case No.: VAR2021-0011
Applicant: Jared Mortell
Location: 2015 27th Avenue
Presenter: Kira Stoller, Planner II

- VII. Adjournment



ZONING BOARD OF APPEALS

Proceedings

April 13, 2021
(Zoom Webinar and viewable on City of Greeley YouTube)
1:15 p.m.

I. Call to Order

Chair Yeater called the meeting to order at 1:15 p.m.

II. Roll Call

Chair Yeater, Commissioners Andersen, Briscoe, Romulo and Schulte were present.
(Commissioners Franzen and Modlin were absent.)

III. Approval of minutes for meeting held on November 10, 2020

Commissioner Andersen moved to approve the minutes dated November 10, 2020.
Commissioner Romulo seconded the motion. Motion carried 5-0. (Commissioners Franzen and Modlin were absent.)

IV. A public hearing to consider a variance request to allow for a 3-foot reduction from the required interior side parking setback, from 3 to zero feet in the Residential Low Density zone district

Case No.: VAR2020-0020
Project Name: 2040 Balsam Avenue Parking Setback Variance
Applicant: Irma Navarro
Location: 2040 Balsam Avenue
Presenter: Brittany Hathaway, Planner III

Brittany Hathaway addressed the Board and introduced the request as a variance to allow an existing driveway to be zero feet from the interior side set back where a 3-foot setback is required. Ms. Hathaway presented a map and aerial photograph showing the location of the site as well as photographs showing the site conditions. She advised that the applicant proposes keeping the existing driveway extension installed by a previous owner in 2014 or 2015. Ms. Hathaway reported that the proposal meets the overall standards with the exception of the 3-foot encroachment into the side setback, adding that the site was graded to steer storm water away from neighboring properties. The applicant became aware of the setback issue after applying for a flatwork permit to replace the adjacent driveway leading to the garage.

Ms. Hathaway described the variance approval criteria and noted that the request is the minimum needed to accommodate any difficulty involved. She advised that the current owner did not install the driveway extension and was unaware of any issue until after purchasing the home and applying for a subsequent flatwork permit. Ms. Hathaway stated that requiring the current owner to meet the required setback might result in an unnecessary hardship, adding that there have been no neighborhood comments or complaints and storm water is diverted from running onto neighboring properties. She advised that the applicant was unaware that the flatwork poured previously had been done without a permit. Staff recommended approval.

The applicant, Irma Navarro, 2040 Balsam Avenue, addressed the Board and stated that she had nothing to add to the staff presentation.

Chair Yeater opened the public hearing at 1:22 p.m. There being no communication by U.S. mail, email or Zoom Q&A, the public hearing was closed at 1:22 p.m.

Commissioner Andersen moved that, based on the application received and the preceding analysis, the Zoning Board of Appeals finds that the requested variance to reduce the required driveway setback to zero where the minimum setback is three feet, complies with Section 18.22.040(f), Items 1 and 3, and Section 18.22.040(g), Items 1, 2 and 3 of the Development Code; and, therefore, approves the request. Commissioner Romulo seconded the motion. Commissioner Andersen thanked applicant for seeking a permit. Motion carried 5-0. (Commissioners Franzen and Modlin were absent.)

V. A public hearing to consider a variance request to allow for a reduced front setback from 25 feet to 13.5 feet for the installation of a gas canopy in the Commercial High Intensity zone district

Case No.: VAR2020-0017
Project Name: 2730 23rd Avenue Gas Canopy Setback Variance
Applicant: Shahzad Sarwar
Location: 2730 23rd Avenue
Presenter: Kira Stoller, Planner II

Kira Stoller addressed the Board and introduced the request as a variance to allow for a reduced front setback Ms. Stoller presented an aerial photograph showing the location of the site that is zoned Commercial High Intensity. She described the surrounding properties and indicated that they are also zoned Commercial High Intensity.

Ms. Stoller explained that the site was originally developed in 1967 and upgraded in 2012. She advised that the existing gas pumps are located 13 feet from the front property line on 23rd Avenue. Ms. Stoller noted that a prior variance application was approved in 2012 but had since expired. She advised that the request today is for a variance increasing the setback from 23rd Avenue to allow for installation of a larger gas canopy over three islands with fuel pumps. Ms. Stoller reported that the owner is upgrading the current pumps to meet credit card chip reader requirements and wants to protect his investment with a canopy, adding that the canopy will also provide shelter and better lighting for customers. She presented photographs of the site and surrounding areas

Ms. Stoller reported that the previous variance approval submitted in 2011 included a 10-foot setback for a canopy and was granted by the Board in January 2012. Due to funding constraints, the owner was unable to construct the canopy at that time. Ms. Stoller advised that the applicant has secured funds to move forward with the project and is submitting a new variance request that is similar to what was previously proposed and approved. She provided a rendering of the canopy and indicated that the maximum height was 17 feet and would include lighting.

Staff found that the request meets three of the five variance consideration criteria 1, 3, 5 and will accommodate the existing pump locations without encroaching too far into the front setback. Ms. Stoller added that the request aligns with Comprehensive Plan goals. She added that all three mandatory criteria had been met, stating that the variance will not negatively affect neighboring properties. Ms. Stoller noted that the only way to avoid a setback variance would be to relocate the gas pumps, adding that the site is unique in that the canopy installation is being proposed long after use of the site as a gas station was established. Staff recommended approval.

Referring to the 25-foot setback requirement, Commissioner Briscoe asked how the setback was established and the purpose of that particular setback for a gas canopy. Ms. Stoller advised that gas station canopies are treated as structures in the same manner that parking is considered a structure under the current definition in the Code. She added that those areas are usually for landscaping or access drives and that setting structures further from the road provides less of a shadow effect. Ms. Stoller stated that the canopy itself is being measured from its outer edge. Upon question by Commissioner Briscoe, Ms. Stoller advised that the canopy is being considered like any other general type of structure.

The applicant, Shahzad Sarwar, 12441 Arlington Avenue, Broomfield, Colorado, addressed the Board and stated that he had no additional comments.

Chair Yeater opened the public hearing at 1:34 p.m. There being no communication by U.S. mail, email or Zoom Q&A, the public hearing was closed at 1:34 p.m.

Commissioner Andersen moved that, based on the application received and the preceding analysis, the Zoning Board of Appeals finds that the requested variance to reduce the required front setback from 25 feet to 13.5 feet for the installation of a gas canopy located at 2730 23rd Avenue complies with Section 18.22.040(f), Items 1, 3 and 5, and Section 18.22.040(g), Items 1, 2 and 3 of the Development Code; and, therefore, approves the requested. Commissioner Romulo seconded the motion. Commissioner Schulte observed that the canopy does not appear to affect any aspect of the site and he did not see a downside to approval. Chair Yeater agreed and commended the applicant for improving the property. Commissioner Andersen stated that she was pleased to see better lighting on the north side of the bridge along 23rd Avenue. Motion carried 5-0. (Commissioners Franzen and Modlin were absent.

VI. Adjournment

The meeting adjourned at 1:37 p.m.

Justin Yeater, Chair

Mike Garrott, Assistant Secretary

DRAFT

ZONING BOARD OF APPEALS SUMMARY

ITEM: Request for a variance to allow for up to a 10.6 foot tall fence/wall

CASE NO: VAR2021-0005

PROJECT: 2015 27th Avenue – Height Variance

LOCATION: 2015 27th Avenue

APPLICANT: Jared Mortell

CASE PLANNER: Kira Stoller, Planner II

ZONING BOARD OF APPEALS HEARING DATE: July 27, 2021

ZONING BOARD OF APPEALS FUNCTION:

Review the proposal for compliance with Chapter 5, Variances, of the City of Greeley Development Code and approve, approve with conditions, continue the application for future consideration, or deny the request.

EXECUTIVE SUMMARY

The City of Greeley is considering a variance request by Jared Mortell, to allow for up to a 10.6 foot tall fence/wall, where 6-feet is allowed, at 2015 27th Avenue (*see Attachment A – Applicant Narrative*).

A. REQUEST

Approval of a variance to allow for up to a 10.6 foot tall fence/wall.

B. STAFF RECOMMENDATION

Denial

C. LOCATION

The subject site is located between 27th and 28th Avenue, south of 20th Street (*see Attachment B – Vicinity Map*).

Abutting Zoning: North: R-L (Residential Low Density)
South: R-L
East: R-L
West: R-H (Residential High Density)

Surrounding Land Uses: North: Single-family residential
South: Single-family residential
East: Single-family residential
West: Multifamily residential

Site Characteristics: The subject property is zoned R-L (Residential Low Density) and is approximately 8,751 square feet in size. The existing single-family home was constructed in 1973 and the lot includes a grade change from the high point at the south, sloping approximately five (5) feet to the north.

D. BACKGROUND

On March 28, 2021, the applicant submitted a building permit for a retaining wall which had already been constructed along the northern boundary of the subject site, as well as on a portion of the western property line (*see Attachment C – Retaining Wall Photos*). After a number of clarifying discussions following this discovery, the applicant is requesting to install a five (5) foot vinyl fence on top of the north retaining wall and a six (6) vinyl fence on the western retaining wall. Based on the portion of the retaining wall that is situated above grade and how the code defines grade for new fences/structures, this would amount to an overall fence/wall height of 9.6 feet along the north property line and 10.6 feet on the west (*see Attachment D – Fence Plan*).

The code does not allow fences/walls over six (6) feet in height without the approval of a variance. Additionally, the code states: *the height of a fence or wall shall be the distance from the top of the fence or wall to the finished grade of the lot directly under the fence or wall as such grade existed at the time the fence or wall was constructed. Any berm, wall or similar feature that is constructed for the purpose of increasing the height of a fence or wall shall be considered to be a part of the fence or wall* [Sec. 24-1265(c)(1)]. Because the combined height of the retaining wall and proposed fence would exceed six (6) feet, a variance is required.

The wall alone does not trigger the need for a variance because it is less than 6-feet (up to 5.83 feet) tall. However, if the variance request is not approved, the property owner may be allowed to retain the retaining wall, after following through on other requirements as part of the building permit. First, retaining walls over four (4) feet in height need to be engineered, and because no design plans or detailed engineering were provided prior to submittal of the building permit, this will need to be resolved. Secondly, an easement encroachment would need to be approved by the corresponding utility providers, because a portion of the previously constructed retaining wall (along the northwest corner of the property) was installed within a fifteen (15) foot drainage and utility easement. Thirdly, the exposed sections of the concrete retaining wall would need to be improved, in order to align with Sec. 24-1265(d)(10)(a) (which requires retaining walls to have a decorative exterior finish when adjacent to residential areas). Fourthly, the existing fence posts would need to be removed from the top of the retaining wall. The applicant has already been made aware of these requirements and the building permit for the retaining wall would not be able to be approved until these items are resolved. Resolution of the building permit is not dependent on the outcome of the fence variance request.

E. APPROVAL CRITERIA

Variances: Section 24-516 of the Development Code states that: *When practical difficulties, unnecessary hardship, or results inconsistent with the general purpose of this Code occur through the strict and literal interpretation and enforcement of the provisions thereof, the Zoning Board of Appeals shall have the authority, subject to the provisions of this Chapter, to grant such conditions as it may determine to be necessary to be in conformance with the intent of the Land Use Chapter of the*

Comprehensive Plan. In general, the power to authorize a variance from the terms of this Code shall be exercised only under peculiar and exceptional circumstances. The Board may grant a variance as applied for, or a variance constituting a reduction thereof. The Board may attach conditions in granting a variance, which conditions shall be reasonably related to promoting compatibility with the surrounding area and land uses.

The review criteria found in Section 24-516 (f) 1-5 and (g) 1-3 of the Greeley Development Code shall be used by the Zoning Board of Appeals when considering all variance requests.

Consideration Criteria: Development Code Section 18.22.040 (f)

In taking action on a variance request, the Zoning Board of Appeals shall consider any comments received from the public and the applicant and the staff recommendation. The Board shall also consider if the proposed variance meets the following criteria in taking action to approve, approve with conditions, deny, or table the application for future consideration:

1. Any variance granted shall be the minimum needed to accommodate or alleviate the difficulty or hardship involved.

Staff Comment: A grade change of approximately five (5) feet currently exists on the property, with the elevation decreasing from south to north. The area between the principal structure on the subject site and the neighboring home to the north contains a grade change of about two (2) feet. Based on this difference in grade, installing a 9.6 foot fence/wall along the northern property line exceeds the height needed to provide a typical level of screening (generally met with a six foot fence) between properties, because the equivalent measure would amount to eight (8) feet in this instance. There is also a grade change of up to six (6) feet directly west of the rear property line. However there is already a retaining wall in place on the neighboring property and the subject site could be adequately screened with just a six (6) foot fence in this area.

The proposal does not comply with this criterion.

2. A variance is necessary to accommodate an unusual or atypical lot configuration, which makes a reasonable use of the property unreasonable without a variance.

Staff Comment: Although the subject site features a change in grade between the north and south sides of the property, this is not atypical for the area. Most of the lots along 27th Avenue between 20th and 22nd Street feature some level of grade change. The argument being made for the proposed height of the fence/wall is that it is needed to make the property usable, however it has more to do with the applicant's desire for greater privacy in the backyard. The neighbor to the north has a second floor deck that looks directly into the back yard of the subject site, which

according to city records has been in place since shortly after the home was constructed in 1972. The house on the subject site was built in 1973 and the property would still be usable without the installation of up to a 10.6 foot fence/wall.

The proposal does not comply with this criterion.

3. Any difficulty or hardship constituting the basis for a variance shall not be created by the party seeking the variance, nor shall it be due to, or a result of the general conditions in the area.

Staff Comment: The variance request is related to the existing lot topography. The applicant indicates that the north side of the property has been eroding away, which is why the retaining wall was needed. However, city staff was not provided with any documentation to demonstrate that the current site conditions are a substantial change from the historic grading of the subject site (*see Attachment E – Contour Map*). Additionally, the installation of the wall alone (which does not exceed six feet in height) should alleviate this hardship and would not necessitate the increased fence height that is proposed. Therefore, the basis of the variance is considered self-imposed. The grade differential along the northern boundary of the subject site does not vary significantly from the general condition of other properties in the area.

The proposal does not comply with this criterion.

4. Granting the variance is necessary so that the building or structure can align with the prevailing location of other similar buildings or structures on the same block face.

Staff Comment: Although the subject property contains a fence along the southern property line that exceeds six (6) feet in height (by approximately one foot) this structure would not be permitted to be rebuilt today without a variance. Additionally, granting the request to install a fence/wall with a combined height of up to 10.6 feet would not align with other structures along the block. While there is an existing retaining wall along the western property line of the subject site, it is situated along the rear of both lots and is not generally visible to the surrounding area, whereas the proposed height of the new fence/wall would be.

This criterion is not applicable to the variance request.

5. Granting the variance is consistent with the Comprehensive Plan and area neighborhood plans, or may achieve a better result in meeting the intent of the plan objectives than if the codes were strictly applied.

Staff Comment: There are no neighborhood plans for this area and granting the variance does not clearly align with any goals or objectives from the Imagine Greeley Comprehensive Plan.

The proposal does not comply with this criterion.

Mandatory Criteria: Development Code Section 18.22.040(g)

In every instance where the Board grants a variance, there shall be a finding that:

- 1. The granting of such variance will not be of substantial detriment to the public interest or to adjacent property or improvements in such district in which the variance is sought, and will observe the spirit of the Code; and**

Staff Comment: The proposed variance does not observe the spirit of the Code and the retaining wall alone already appears to have had a negative visual impact on the neighborhood. While the applicant would be required to improve the finish of the exposed sections of the concrete retaining wall whether or not the variance request is approved, adding a five (5) or six (6) foot vinyl fence on top of the wall does not serve the public interest. In fact, this would likely draw more attention to the structure and would not conform to the surrounding area.

The proposal does not comply with this criterion.

- 2. The strict application of the provisions of the Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Code; or**

Staff Comment: Strict application of the Code would limit the applicant's level of privacy from the neighbor to the north. However, affording more privacy than is consistent in the area is not one of the considerations for variance requests. Rather, compatibility and minimizing impacts to surrounding land uses are the applicable considerations, and the proposed fence/wall design does not align with these standards.

The proposal does not comply with this criterion.

- 3. There are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use or development of the property that do not apply generally to other properties or uses in the same zoning district.**

Staff Comment: No exceptional circumstances apply to the subject site that do not generally apply to other properties within the same zoning district. The

lot can continue to be utilized with the existing retaining wall and revised site grading, without having to install a five (5) or six (6) foot fence on top of the wall.

The proposal does not comply with this criterion.

F. PHYSICAL SITE CHARACTERISTICS

1. SUBDIVISION HISTORY

The subject site was platted as Lot 3, Block 7 of Cascade Park, Third Addition, on September 23, 1971 (Rec No. 1575730). The property has not undergone any additional subdivisions since it was platted.

2. HAZARDS

Staff is unaware of any existing hazards on the site, aside from the grade change and erosion problem that the applicant indicated exists along the north side of the property.

3. WILDLIFE

The site is not located within an area of ecological significance.

4. FLOODPLAIN

The property is not located within any flood zones.

5. DRAINAGE AND EROSION

The subject site generally drains from south to north. The backyard slopes to the west, while the front yard slopes to the east and directs drainage to the street. The applicant intends to level out the grade between the north side of the house and the retaining wall to reduce erosion in this area, while maintaining historic drainage patterns for the property. Additional documentation will be required of the applicant prior to issuing the corresponding building permit for the retaining wall to ensure that the proposed regrading does not result in any negative impacts to adjacent properties.

6. TRANSPORTATION

The construction of a fence/wall on the subject property would have no impact on area traffic.

G. OVERLAY DISTRICTS

The property is not located within any overlay districts.

H. PUBLIC NOTICE AND COMMENT

Notification letters regarding the proposed variance were mailed to property owners within 500 feet of the subject site on July 13, 2021, and a sign was posted on the property on July 16, 2021. Public notice was also published in the newspaper on July 21, 2021. Staff received feedback from one neighboring property owner regarding their concerns about the proposed variance for the fence/wall (*see Attachment F – Public Input*).

I. ZONING BOARD OF APPEALS RECOMMENDED MOTION

Based on the application received and the preceding analysis, the Zoning Board of Appeals finds that the requested variance to allow for up to a 10.6 foot tall fence/wall, where 6 feet is allowed, does not comply with Section 24-516(f) or (g) of the Development Code and, therefore, denies the request.

J. ATTACHMENTS

- Attachment A – Applicant Narrative
- Attachment B – Vicinity Map
- Attachment C – Retaining Wall Photos
- Attachment D – Fence Plan
- Attachment E – Contour Map
- Attachment F – Public Input

Fence

(1) The granting of such variance will not be of substantial detriment to the public interest or to adjacent property or improvements in such district in which the variance is sought, and will observe the spirit of the Code;

Adding a fence will not be of substantial detriment to the public interest or adjacent property. There is currently no privacy for the neighbor's rental property to the north and apartments to the west or for our property. The neighbors deck overlooks our lot. A minimum 5' privacy fence mounted to the retaining wall to the north will alleviate this hardship for all adjacent properties.

(2) The strict application of the provisions of the Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Code

The retaining wall is 7" above the grade of our homes foundation. The combination of retaining wall and fence will allow us to have proper drainage while also allowing us to have privacy, and a fence that is of symmetrical height on 3 sides of the property.

(2) The strict application of the provisions of the Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Code

Exception/extraordinary circumstances of the property that apply is that the property is on a hill and surrounded by rental properties on the west and north. The retaining wall will level out property, creating a useable and private yard. The west side of our property is visible all the way from Sanborn Park and west side apartment dwellers can see directly into our sliding glass door.

(1) Any variance granted shall be the minimum needed to accommodate or alleviate the difficulty or hardship involved.

60" solid panel vinyl fence is minimum necessary to alleviate hardship and create reasonable privacy

(2) A variance is necessary to accommodate an unusual or atypical lot configuration which makes a reasonable use of the property unreasonable without a variance

A variance is necessary to accommodate an unusual lot. A level wall will make the fence level/symmetrical and allow for reasonable use of our property.

(3) Any difficulty or hardship constituting the basis for a variance shall not be created by the party seeking the variance, nor shall it be due to or a result of the general conditions in the area.

Hardship is zero privacy from north neighbor rental property, including high deck, and multiple 2 story apartments to the west. Solid panel fence in requested height will alleviate the hardship.

(4) Granting the variance is necessary so that the building or structure can align with the prevailing location of other similar buildings or structures on the same block face.

South side property has an 84" cedar privacy fence that is deteriorating and sliding into our property. This fence will also be replaced with solid panel vinyl fence.



(5) Granting the variance is consistent with the Land Use Chapter of the Comprehensive Plan and area or neighborhood plans, or may achieve a better result in meeting the intent of the plan objectives than if the codes were strictly applied.

Granting variance for retaining wall and fence on top of wall will level out property and convert our unlevel yard into usable private backyard.

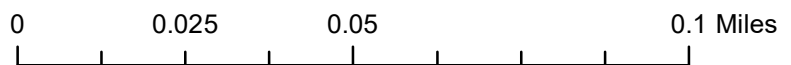
Vicinity Map



Legend

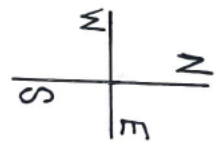
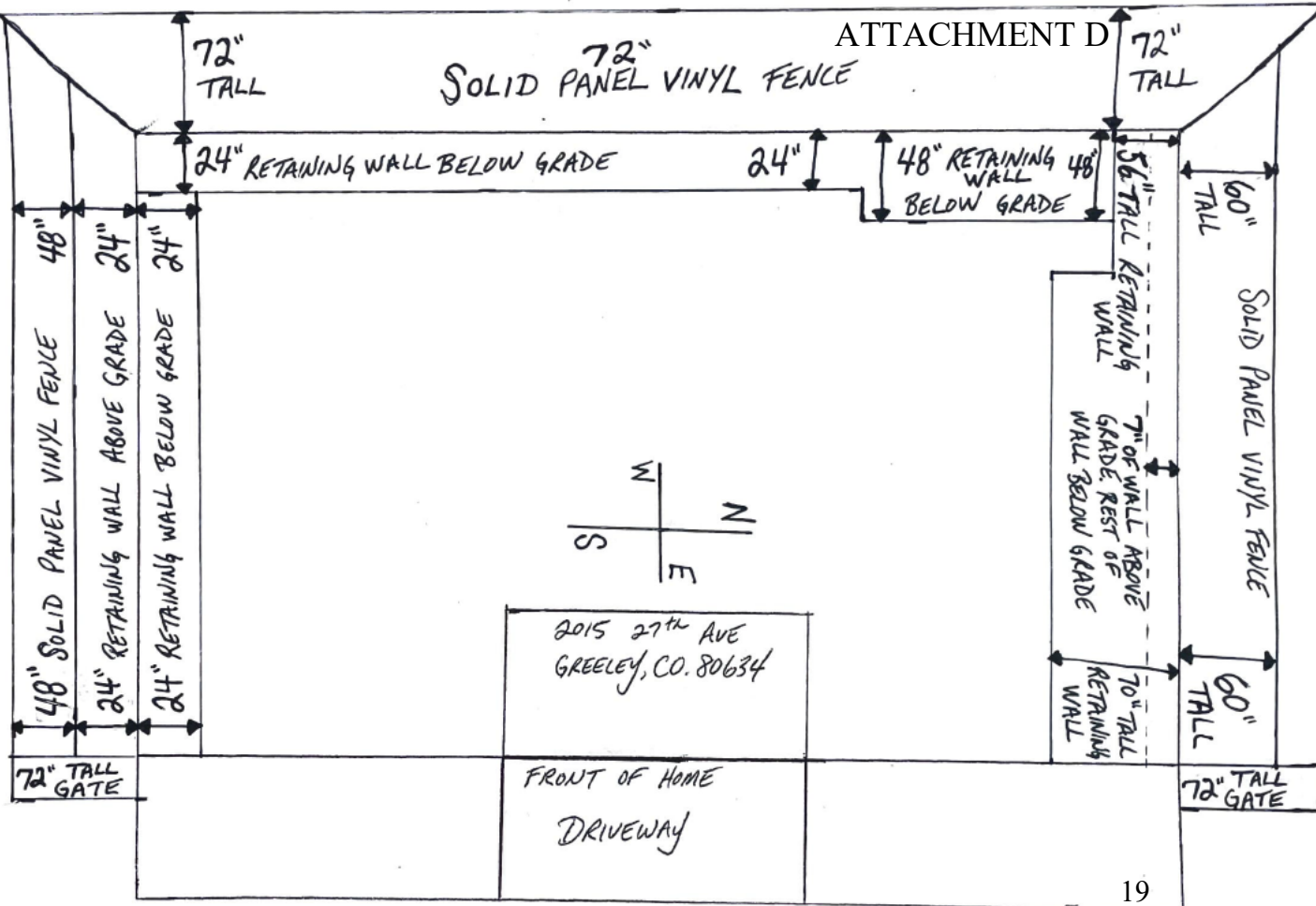
-  Subject Site
-  Parcels

**2015 27th Avenue
Height & Setback Variances
VAR2021-0005 & VAR2021-0011**









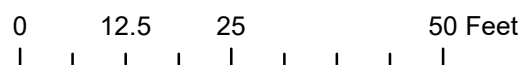
Contour Map



Legend

- Subject Site
- Index Contour (2013)
- Intermediate Contour (2013)
- Parcels

**2015 27th Avenue
Height & Setback Variances
VAR2021-0005 & VAR2021-0011**



To whom it may concern,

My name is Mike Harrington and I am the owner of the property to the north connecting to the property with the concrete wall at 2015 27th ave, Greeley. I understand the owner of 2015 27th ave is asking for a 12-13' wall/fence. I can understand in certain industrial settings a large wall/fence would be needed and I'm grateful the city has put a limit on 6' fences for residential use. I think this wall is an absolute eye sore to our neighborhood even with it's current state being 6' off the ground. I emphatically would like to discourage the planning commission to approve this variance. The wall is hurting my and the neighbors property values as it is an eye sore in the neighborhood. I was under the impression he had a permit to do his work and that the permit passed with the city as he told me but he never never had one to begin with. I never would have allowed the carnage that went on if I knew there was never a permit in place. I have filed a claim with my insurance to hopefully recoup the thousands of dollars in damages that were made to my property from the excavation.

Mike Harrington

ZONING BOARD OF APPEALS SUMMARY

ITEM: Request for a variance to reduce the required 3-foot interior side parking setback to zero feet in the R-L (Residential Low Density) zone district

CASE NO: VAR2021-0011

PROJECT: 2015 27th Avenue – Setback Variance

LOCATION: 2015 27th Avenue

APPLICANT: Jared Mortell

CASE PLANNER: Kira Stoller, Planner II

ZONING BOARD OF APPEALS HEARING DATE: July 27, 2021

ZONING BOARD OF APPEALS FUNCTION:

Review the proposal for compliance with Chapter 5, Variances, of the City of Greeley Development Code and approve, approve with conditions, continue the application for future consideration, or deny the request.

EXECUTIVE SUMMARY

The City of Greeley is considering a variance request by Jared Mortell, to allow for a reduction from the required interior side parking setback, from three (3) feet to zero (0), in the R-L zone district (*see Attachment A – Applicant Narrative*).

A. REQUEST

Approval of a variance to allow for the construction of a driveway extension up to the interior side property line, where a three (3) foot setback is required.

B. STAFF RECOMMENDATION

Approval

C. LOCATION

The subject site is located between 27th and 28th Avenue, south of 20th Street (*see Attachment B – Vicinity Map*).

Abutting Zoning: North: R-L (Residential Low Density)
South: R-L
East: R-L
West: R-H (Residential High Density)

Surrounding Land Uses: North: Single-family residential
South: Single-family residential
East: Single-family residential
West: Multifamily residential

Site Characteristics: The subject property is zoned R-L (Residential Low Density) and is approximately 8,751 square feet in size. The existing single-family home was constructed in 1973 and the lot includes a grade change from the high point at the south, sloping approximately five (5) feet to the north.

D. BACKGROUND

On March 28, 2021, the applicant submitted a building permit for a retaining wall which had already been constructed along the northern boundary of the subject site (*see Attachment C – Retaining Wall Photos*). Included with the building permit was a site plan which also proposed a driveway extension up to the property line, alongside the retaining wall. The applicant has indicated that the retaining wall and associated driveway extension are necessary to manage erosion problems on the north side of the site, which have undermined the existing driveway (*see Attachment D – Driveway Extension Plan*).

The code requires driveways to be at least three (3) feet from an interior side property line to provide adequate drainage between properties [Sec. 24-1098(9)(e)]. In this instance, consideration needs to be given to the fact that a retaining wall exists along the neighboring interior side property line (on the northern edge of the lot) because the wall would affect both on-site and off-site drainage flows. If the variance request for the driveway extension is not approved, the property owner may still be allowed to maintain the retaining wall, provided that additional adjustments outlined in the corresponding height variance case (VAR2021-0005), are made, as the retaining wall is below the 6-foot height maximum.

E. APPROVAL CRITERIA

Variances: Section 24-516 of the Development Code states that: *When practical difficulties, unnecessary hardship, or results inconsistent with the general purpose of this Code occur through the strict and literal interpretation and enforcement of the provisions thereof, the Zoning Board of Appeals shall have the authority, subject to the provisions of this Chapter, to grant such conditions as it may determine to be necessary to be in conformance with the intent of the Land Use Chapter of the Comprehensive Plan. In general, the power to authorize a variance from the terms of this Code shall be exercised only under peculiar and exceptional circumstances. The Board may grant a variance as applied for, or a variance constituting a reduction thereof. The Board may attach conditions in granting a variance, which conditions shall be reasonably related to promoting compatibility with the surrounding area and land uses.*

The review criteria found in Section 24-516 (f) 1-5 and (g) 1-3 of the Greeley Development Code shall be used by the Zoning Board of Appeals when considering all variance requests.

Consideration Criteria: Development Code Section 18.22.040 (f)

In taking action on a variance request, the Zoning Board of Appeals shall consider any comments received from the public and the applicant and the staff recommendation. The Board shall also consider if the proposed variance meets the following criteria in taking action to approve, approve with conditions, deny, or table the application for future consideration:

1. Any variance granted shall be the minimum needed to accommodate or alleviate the difficulty or hardship involved.

Staff Comment: There may be other engineering solutions to manage the erosion issue along the northern side of the house without having to extend the driveway all the way to the interior side property line. For example, an underdrain could be installed and covered with rock or gravel, in order to maintain the three (3) foot separation between the driveway and property line, however this solution may have impacts on the public right-of-way due to runoff. Therefore, the variance request is not the minimum needed to alleviate the hardship.

The proposal does not comply with this criterion.

2. A variance is necessary to accommodate an unusual or atypical lot configuration, which makes a reasonable use of the property unreasonable without a variance.

Staff Comment: The subject site features a change in grade between the north and south sides of the property, which is not unusual for the area. Most of the lots along 27th Avenue between 20th and 22nd Street feature some level of grade change. While the proposed driveway extension would be one way to address the erosion that is occurring along the north side of the lot, the applicant could still reasonably use the majority of the property without the variance request being granted.

The proposal does not comply with this criterion.

3. Any difficulty or hardship constituting the basis for a variance shall not be created by the party seeking the variance, nor shall it be due to, or a result of the general conditions in the area.

Staff Comment: The variance request is related to the topography of the lot. The applicant indicated that the north side of the property has had erosion issues since they purchased the site in 2007 and that this has undermined the condition of the driveway. While the applicant did not create the hardship constituting the basis for the variance, the slopes on the subject site are not unique to the area (*see Attachment E – Contour Map*).

The proposal does not comply with this criterion.

- 4. Granting the variance is necessary so that the building or structure can align with the prevailing location of other similar buildings or structures on the same block face.**

Staff Comment: Granting the variance for a driveway extension up to the northern property line is not needed for the site to align with other similar structures on the block face.

This criterion is not applicable to the variance request.

- 5. Granting the variance is consistent with the Comprehensive Plan and area neighborhood plans, or may achieve a better result in meeting the intent of the plan objectives than if the codes were strictly applied.**

Staff Comment: There are no neighborhood plans for this area and granting the variance does not clearly align with any goals or objectives from the Imagine Greeley Comprehensive Plan.

The proposal does not comply with this criterion.

Mandatory Criteria: Development Code Section 18.22.040(g)

In every instance where the Board grants a variance, there shall be a finding that:

- 1. The granting of such variance will not be of substantial detriment to the public interest or to adjacent property or improvements in such district in which the variance is sought, and will observe the spirit of the Code; and**

Staff Comment: Although the proposed variance does not meet any of the consideration criteria, granting the request would not be of substantial detriment to the public because it could help to alleviate further erosion issues on the subject site. Maintaining the required three (3) foot drainage area between the edge of the driveway and the northern property line might actually be more problematic for drainage due to the existence of the retaining wall. If dirt or rocks were to remain between the driveway and wall, they could potentially be washed away overtime, impacting the adjacent public right-of-way. Per the provided drawings, the retaining wall is two (2) inches taller than the sidewalk along the eastern property line and would be eight (8) inches taller than the driveway on the western edge of the extension. Additionally, a drainage pipe will be installed under the concrete. Therefore, the driveway extension should not result in negative impacts to the neighboring property.

The proposal complies with this criterion.

2. **The strict application of the provisions of the Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Code; or**

Staff Comment: Strict application of the Code could result in future difficulties for the applicant, as well as the neighboring property to the north. This is due to the fact that maintaining at least three (3) feet of separation between the driveway, and the property line which contains the concrete retaining wall, could result in drainage running immediately adjacent to the wall. Without the proper installation of an underground storm gutter, this could affect the integrity of the footers for the retaining wall and might eventually lead to the collapse of the structure. While there are ways to avoid the potential for such a scenario if the variance request is not approved, extending the driveway all the way to the retaining wall may help alleviate future problems.

The proposal complies with this criterion.

3. **There are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use or development of the property that do not apply generally to other properties or uses in the same zoning district.**

Staff Comment: While many properties surrounding the subject site also feature sloped grades, staff is unaware of any other lots having significant erosion issues. The subject site could continue to be utilized without the requested driveway extension or with a lesser expansion that does not necessitate a variance. However, based on the placement of the existing retaining wall (which may remain in place whether or not this setback variance is granted, provided that the engineering details and easement encroachment are approved and the aesthetics of the exposed sections of the wall are improved), granting the request should limit the possibility of further complications arising down the line.

The proposal complies with this criterion.

F. PHYSICAL SITE CHARACTERISTICS

1. SUBDIVISION HISTORY

The subject site was platted as Lot 3, Block 7 of Cascade Park, Third Addition, on September 23, 1971 (Rec No. 1575730). The property has not undergone any additional subdivisions since it was platted.

2. HAZARDS

Staff is unaware of any existing hazards on the site, aside from the grade change and erosion problem that the applicant indicated exists along the north side of the property.

3. WILDLIFE

The site is not located within an area of ecological significance.

4. FLOODPLAIN

The property is not located within any flood zones.

5. DRAINAGE AND EROSION

The subject site generally drains from south to north and the front yard slopes to the east, directing drainage to the street. The slope of the driveway extension would match that of the existing one, which is currently 25% or 14 degrees. Additional documentation would be requested from the applicant ahead of issuing a building permit for the additional flatwork, to ensure that the proposed design does not result in any negative impacts and maintains historic drainage patterns.

6. TRANSPORTATION

The construction of the proposed driveway extension on the subject property would have no impact on area traffic.

G. OVERLAY DISTRICTS

The property is not located within any overlay districts.

H. PUBLIC NOTICE AND COMMENT

Notification letters regarding the proposed variance were mailed to property owners within 500 feet of the subject site on July 13, 2021, and a sign was posted on the property on July 16, 2021. Public notice was also published in the newspaper on July 21, 2021. No public input pertaining to the setback variance has been received to date.

I. ZONING BOARD OF APPEALS RECOMMENDED MOTION

Based on the application received and the preceding analysis, the Zoning Board of Appeals finds that the requested variance to allow for a three (3) foot reduction from the required interior side parking setback, complies with Section 24-516 (g), Items 1, 2 and 3 of the Development Code and, therefore, approves the request.

J. ATTACHMENTS

- Attachment A – Applicant Narrative
- Attachment B – Vicinity Map
- Attachment C – Retaining Wall Photos
- Attachment D – Driveway Extension Plan
- Attachment E – Contour Map

Driveway extension

(1) Any variance granted shall be the minimum needed to accommodate or alleviate the difficulty or hardship involved.

70" retaining wall is 7" above foundation grade. This is the minimum necessary for proper drainage with slope and concrete sidewalk for usable space

(2) A variance is necessary to accommodate an unusual or atypical lot configuration which makes a reasonable use of the property unreasonable without a variance.

North side of property is unusable and eroding into neighbors property. Retaining wall, sidewalk and driveway will eliminate erosion situation and make this usable space

(3) Any difficulty or hardship constituting the basis for a variance shall not be created by the party seeking the variance, nor shall it be due to or a result of the general conditions in the area.

This hardship has been present since purchase of home in 2007. We have been saving money to address this hardship. Surveying of property exposed additional hardship of chain-link fence and north neighbors water feature encroaching on our property by 6'.

(4) Granting the variance is necessary so that the building or structure can align with the prevailing location of other similar buildings or structures on the same block face.

Variance is necessary so the structure can align with the prevailing location of other similar buildings. There is an existing 86" retaining wall on the west side of the property separating apartments and parking lot from our elevated property.

(5) Granting the variance is consistent with the Land Use Chapter of the Comprehensive Plan and area or neighborhood plans, or may achieve a better result in meeting the intent of the plan objectives than if the codes were strictly applied.

Granting the variance may achieve a better result in meeting the intent of the plan. Property is on a hill. The north side of the foundation is exposed due to erosion. The north side of the driveway is being undermined is unusable space. Granting of variance for driveway, sidewalk and retaining will allow for all hardships to be solved.

(1) The granting of such variance will not be of substantial detriment to the public interest or to adjacent property or improvements in such district in which the variance is sought, and will observe the spirit of the Code

Driveway extension to retaining wall will eliminate the issue of landscaping eroding into north neighbors property. Full concrete to property line/retaining wall will prevent the 3' of dirt and rock from eroding onto sidewalk and street. This is a benefit to both public and adjacent property. No substantial detriment will be incurred.

(2) The strict application of the provisions of the Code would result in practical difficulties or unnecessary hardship inconsistent with the general purpose and intent of the Code

Strict application of the code creates unnecessary hardship due to the 25 percent slope of the driveway and property drainage issues. The driveway is currently being undermined due to severe sloping of property and drainage issues. Extension of driveway and installation of pvc pipe under the concrete for gutter drainage will prevent the ongoing undermining of the driveway. This will be a permanent and proper correction of the problem.



(3) There are exceptional or extraordinary circumstances or conditions applying to the property involved or to the intended use or development of the property that do not apply generally to other properties or uses in the same zoning district.

Property is currently on a hill. The driveway is at 25 percent/ 14.04 degree slope. The north side of the property is even steeper slope than driveway. This has created unsafe conditions and even with retaining wall, requiring 3' of rock at a 25 percent slope between driveway and retaining wall will create unsafe walking conditions and rock will slide toward the bottom of the driveway due to extreme slope.

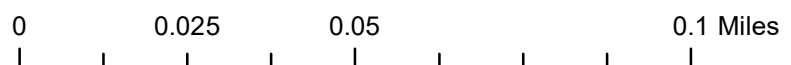
Vicinity Map



Legend

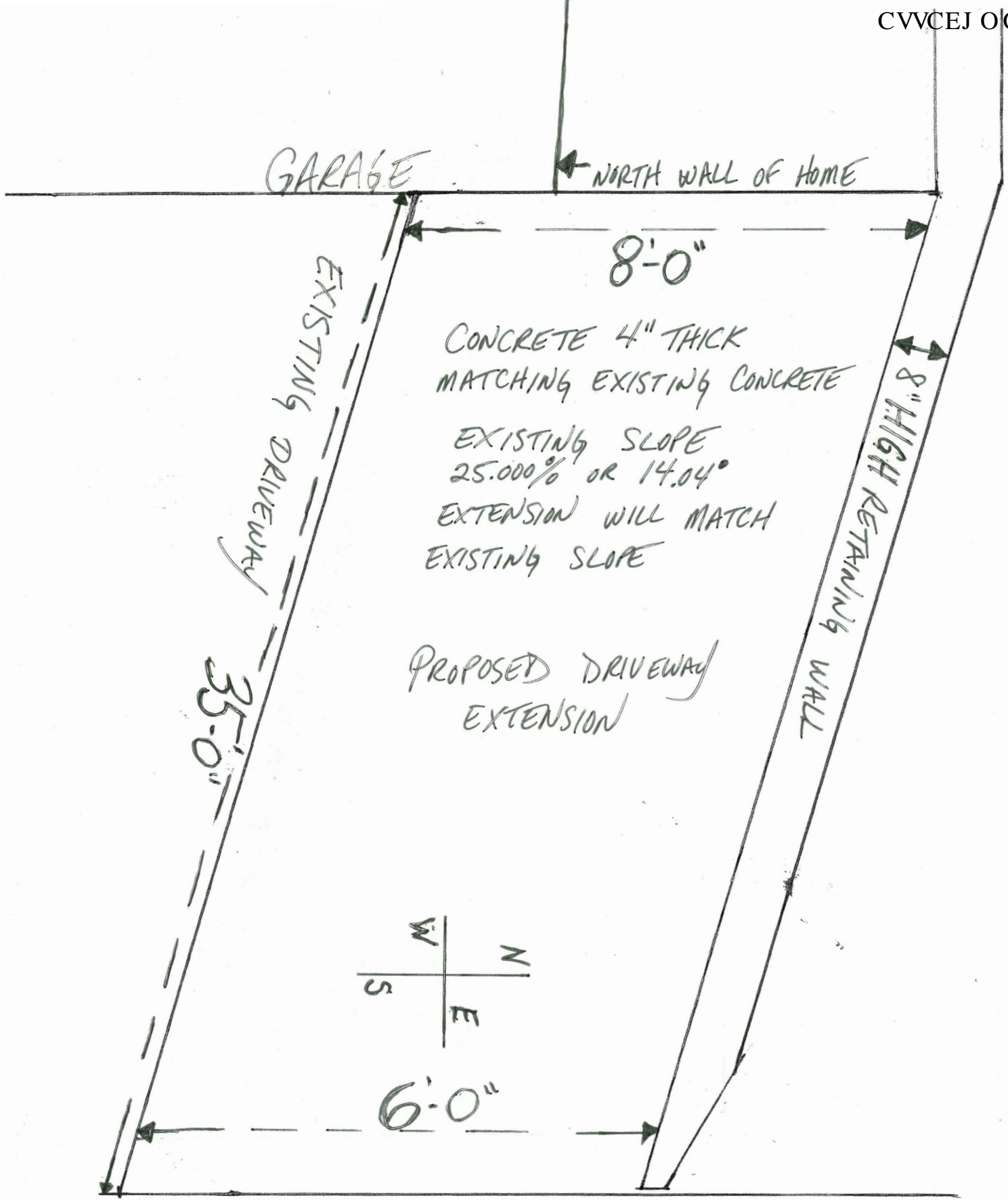
-  Subject Site
-  Parcels

**2015 27th Avenue
Height & Setback Variances
VAR2021-0005 & VAR2021-0011**





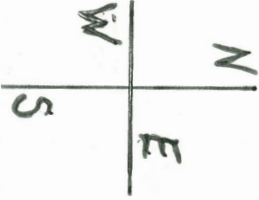




CONCRETE 4" THICK
MATCHING EXISTING CONCRETE

EXISTING SLOPE
25.000% OR 14.04°
EXTENSION WILL MATCH
EXISTING SLOPE

PROPOSED DRIVEWAY
EXTENSION







SIDEWALK

Contour Map



Legend

-  Subject Site
-  Index Contour (2013)
-  Intermediate Contour (2013)
-  Parcels

2015 27th Avenue Height & Setback Variances VAR2021-0005 & VAR2021-0011

