CASE NO. BOA-2025-00005; VARIANCE REQUEST TO CONSTRUCT A SIX-FOOT-TALL

FENCE IN FRONT OF THE HOME

APPLICANTS: NASSIB AND ANDREA ASALI ZONING ADMINISTRATOR: CAITLYN MARS

LOCATION: The site is located at 1593 S. Uinta Way, Denver CO 80231. The property is zoned RR-B (Rural-Residential B) and located within Election District 4.



Vicinity Map - (site is indicated by highlighted box and arrow)

ADJACENT SUBDIVISIONS, ZONING, AND LAND USES:

Northwest:

- Zoned R-3 (Residential/Single Family); lot size approximately 41,425.56 sq. ft. (minimum required 12,500 sq. ft.)
- Zoned R-1-A (Residential/Single Family); lot size approximately 65,340 sq. ft. (minimum required 40,000 sq. ft.)
- North (across Uinta Way): Zoned R-3 (Residential/Single Family), rezoned in 1962; minimum lot size 12,500 sq. ft.
- Southeast: Zoned R-PSF (Residential/Single Family) in 1990, Mountainview Acres subdivision (two lots)
- Northeast: Zoned R-PSF (Residential/Single Family) in 1990, Mountain Meadows subdivision; fully developed with minimum lot size 13,440 sq. ft.
- West: Highline Canal

PROPOSAL:

The applicants, Nassib and Andrea Asali, residents of unincorporated Arapahoe County, are requesting a variance from LDC § 4-1.5.C.2, of the Fence Regulations. The relevant code section states:

Except as otherwise provided in this Section, fences erected in front of any building on a zone lot shall not exceed three feet in height.

The applicants seek the variance to construct a six-foot wrought iron fence across the front of the property and in front of the home at their residence of 1593 S. Uinta Way.

BACKGROUND:

The property in question is 2.41 acres (104,979.6 sq. ft.) in size and is zoned RR-B. It was originally designated Residential-Agricultural (R-A) in 1961 and was reclassified as RR-B in August 2019, when the Land Development Code was reorganized and several zoning districts were renamed. The RR-B district is primarily intended to preserve existing low-density residential development, with gross densities of at least one dwelling unit per 2.41 acres. The principal permitted uses within the RR-B zone district include single-family detached residential dwellings, along with accessory uses and structures appropriate to semi-rural densities, such as the keeping of a limited number of animals, accessory buildings, and private stables. Additionally, limited non-commercial agricultural uses are permitted.

The existing home on the property was constructed in 1981, with a Certificate of Occupancy issued in 1982. The current owners of the property purchased it in 2020.

LDC Table 4-1.1 Agricultural and Residential District Dimensional Standards

The minimum front setback for a primary structure in the RR-B zone is 50 feet, with side and rear setbacks of at least 25 feet. The front setback requirements for a six-foot-tall fence or any accessory structure are determined by the location of the primary structure - in this case, the home - on the property. The home is set back approximately 100 feet from the front lot line.

In 2024, a permit was issued for the construction of a fence along the rear and south side of the property. In 2025, an additional permit was granted to extend the fence along the north side property line. In both cases, the fence was proposed to terminate parallel to the home, in compliance with LDC § 4-1.5.C.2, of the Fence Regulations.

DISCUSSION

Staff review of this application has included an analysis of the proposal against the Land Development Code, as well as the Comprehensive Plan, and further considered, an analysis of referral comments.

Land Development Code and Comprehensive Plan

The following approval criteria are identified in the Land Development Code for any variance application. Additionally, per code, the applicant is required to clearly demonstrate a hardship.

Analysis of approval criteria:

1. The strict application of these Regulations would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the Regulations.

The front yard fence height restriction is intended to ensure traffic and neighborhood safety, as well as preserve visual quality and community cohesion. While these standards are generally applicable, unique property conditions may warrant site-specific evaluation and potential relief through the variance process.

In their letter, the applicants state that strict enforcement of the three-foot fence height restriction would cause significant and undue hardship:

- The home is set back 100 feet, making the large front yard an important part of their usable outdoor space. Having the space unsecure is a concern for the family and any potential future pets.
- Deer frequently enter the yard, damaging plants and posing potential health risks.
- A six-foot fence, constructed at the 100-foot setback, would block yard use, garage access, and require removing mature trees.
- The applicants advise they have experienced theft on their property in the past. They note that the construction of the six-foot rear and side yard fences have successfully prevented further intrusions, but express that a three-foot fence along the front property line would not be a meaningful deterrent for further intrusions.

The County understands the concerns raised by the applicant to be personal to them and not specific to the application of the Land Development Code. The "strict application" of fence location requirement is not presented as a basis for the variance request. Rather, specific attributes of the applicant's use of the property are the basis for their request. Staff does not find the application of the fence location requirement results in either practical difficulties or unnecessary hardships. In other words, the application of the LDC does not cause the problems complained of by the applicant.

2. Any variance shall not grant special privileges inconsistent with the limitations upon other properties in the vicinity and zoning district in which the subject property is located.

Although the applicant's lot is zoned differently from surrounding properties (see attached map), several nearby lots have similar depths, with homes built at similar or even greater distances from Uinta Way than the applicant's home. None of these adjacent properties have six-foot-tall fences located in front of the homes. Staff find that granting the requested variance would effectively grant special privilege not extended to other properties in the area. All properties in the vicinity are subject to the same fence setback requirements, and approval of this variance would be inconsistent with those limitations.

3. Because of special, applicable circumstances, including size, shape, topography, or location, the strict application of these Regulations will deprive the subject property of privileges enjoyed by other properties in the vicinity and under identical zone classification; or that there are exceptional circumstances or conditions applicable to the property involved or to the intended use or development of the property that do not apply generally to other property in the same zone or neighborhood.

The applicant's property does not exhibit special or exceptional circumstances related to size, shape, topography, or location that would justify a variance such as the one being requested. Similar properties within the neighborhood share comparable characteristics. Therefore, strict application of the regulations would not deprive the property of rights enjoyed by others, and no unique conditions exist that distinguish this property from others nearby.

4. That the condition or situation for which the variance is sought is not of so general a nature that the formulation of regulations would be necessary to insure consistent application of the regulations.

The regulations in question apply uniformly to the subject property as well as all other residentially zoned properties within the County. The circumstances described by the applicant, including lot size and setback configurations, are similar to those of other properties in the area that have not previously been granted exceptions. Consequently, granting this variance could result in inconsistent application of the fence regulations and compromise the intent of maintaining uniform standards. Staff find that the situation does not warrant a deviation from the established code requirements through a variance.

5. That the granting of a variance will not be substantially detrimental to the public good and will not substantially impair the intent and purpose of these Regulations.

Staff have evaluated the potential impact of granting the requested variance and find that it would likely not be substantially detrimental to the public good but do have concerns about it impairing the intent and purpose of the Regulations.

In this case, the proposed fence would not obstruct public rights-of-way, interfere with traffic or pedestrian visibility, or otherwise compromise public safety. With that said, granting this variance would set a precedent for similar requests in the area. This could incrementally erode the regulatory standards set forth in the Fence Regulations.

6. That the granting of a variance will not be contrary to the objectives of the Arapahoe County Comprehensive Plan.

The Comprehensive Plan designates this area for single family residential. Given that no change in land use is proposed, this request does not conflict with the Comprehensive Plan's objectives.

Referral Comments

Comments received as a result of the referral process are as follows:

Public Works and Development

- 1. Planning Division: Planning indicated it was unable to identify a hardship experienced by the applicant form the application of the Code and speculated the fence request was for unrelated purposes.
- 2. Engineering Division: *Initial site plan indicated that two entrances and gates would be constructed. Engineering advised that t*
- 3. Building Division: No Response.
- 4. Mapping Section: *Mapping has nothing to review*.

Public Health Department: No documented septic system identified for this site that would be impacted by fence construction.

South Metro Fire Department: SMFR indicated that if approved, they require gates for access in the event an emergency response to the property is required in the future.

Arapahoe County Sheriff's Office: No issues with this variance.

STAFF FINDINGS:

Staff have visited the site, reviewed the plans and supporting documentation, referral comments, as well as citizen input in response to this application. Based upon review of applicable policies and goals in the Land Development Code and analysis of referral comments, our findings include:

- 1. While the applicant cited several reasonable concerns such as a deep front setback, deer intrusion, and security of property staff finds these do not constitute a unique or undue hardship under the Land Development Code, as similar conditions exist on other properties in the area and are not cause by the application of the Code itself.
- 2. The property does not exhibit unique physical characteristics (size, shape, topography, or location) that would warrant relief. Comparable properties comply with the same regulations without variances.
- 3. Nearby lots of similar size and setbacks do not have six-foot fences in front yards. Granting this request would provide a special privilege inconsistent with what is allowed for neighboring properties.
- 4. The situation is not so unique as to justify a variance, nor so widespread as to suggest the need for a code amendment. Approval could undermine consistent enforcement.

5. While the proposal would not harm public safety or obstruct visibility, approving it could weaken the purpose of the Fence Regulations.

Attachments Staff Report

Fence Regulations Zoning Map Pictures and Sign Posting 2024 Fence Permit Site Plan 2025 Fence Permit Site Plan Neighbor Notifications Map Fire Department Response

Regular plant maintenance shall be performed to maintain plant health, support plant growth, and achieve design and aesthetic goals.

- d. Grounds Keeping
 - All landscaped areas shall be kept clean and free of invasive plant species.
- e. All water quality facility maintenance shall be in conformance with the applicable operations and maintenance manual.

12. Qualifications and Certifications

- a. The landscape plan shall be prepared by a Colorado-licensed landscape architect.
- b. The irrigation system plan shall be completed by a Certified Irrigation Designer (CID) and installed by a Qualified Water Efficient Landscaper (QWEL)-certified professional.
- c. The irrigation audit shall be conducted by a third-party Certified Landscape Irrigation Auditor (CLIA).
- d. The consulting arborist shall be certified by the International Society of Arboriculture.

13. Landscape Installation and Inspections

- a. The landscape architect of record shall inspect and certify that the landscape area has been constructed as depicted on the approved landscape plan.
- b. Prior to the issuance of a certificate of occupancy, the landscape architect of record shall submit a Certification of Landscape Installation to the County Planning Division.
- c. A third-party certified landscape irrigation auditor shall conduct an audit and submit a report to the Planning Division prior to the certificate of occupancy.
- d. If the Developer has not completed all the installation of the landscaping and irrigation and wishes to obtain a temporary certificate of occupancy, a landscape agreement and collateral (check or letter of credit) must be provided to the County Planning Division.
- e. Upon installation of the landscaping required by the approved landscape plan and inspection by the landscape architect of record to confirm compliance with said plan, and the irrigation audit has been submitted and approved, the County shall release the collateral provided by the developer

4-1.5. Fence Regulations

A. GENERAL PROVISIONS

- 1. No person, firm or corporation shall erect, construct, enlarge, alter or move any fence in the County without first obtaining a fence permit from the PWD Building Division, pursuant to this Section.
- 2. No fence permit shall be issued by the PWD Building Division unless the applicant for such permit demonstrates compliance with the provisions of this Section.
- **3.** Fees for fence permits issued pursuant to this Section shall be set by the Board of County Commissioners to cover the costs of inspections and administration of this Section, and may be amended as necessary by the Board. Fees shall be paid by the applicant prior to the issuance of the fence permit.
- **4.** The purpose of this Section is to promote the health, safety and welfare of the public, to protect the economic and aesthetic value of Arapahoe County, and to prevent traffic hazards and the creation of nuisances. The intent of this Section is to regulate only those fences of whatever class, which are physically located or intended to serve as a

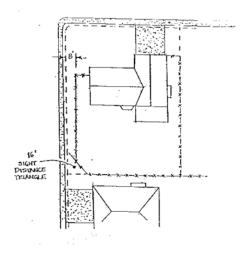
boundary between adjoining properties or as a barrier or enclosure of greater than 15 percent of the area of a particular zone lot.

B. CLASSES OF FENCES AND WALLS

- Class 1 MASONRY. Any fence or wall composed of stone, brick, concrete, gypsum, hollow clay tile, concrete block, pre-cast concrete units or tile or similar building units or materials or combination of these materials laid up unit by unit and set in mortar, or pre-cast and set in place.
- **2.** Class 2 ORNAMENTAL IRON. Any wrought iron or metal fence, of primarily open design, consisting of straight or curved metal bars or pieces, including metal vertical picket fences.
- **3.** Class 3 CHAIN LINK. A fence of primarily open design consisting of an interlocking pattern of wire or metal of at least one-eighth inch in diameter supported by vertical and/or horizontal bars or posts of at least one and one half inches in diameter.
- **4.** Class 4 WOOD PICKET. A fence that is more than 50 percent open, as viewed from outside the fence, and is constructed with wooden supports and fence materials. This type of fence includes fences with vertical pieces of wood, with or without pointed ends, as the primary fencing material (i.e., "picket fence"), as well as fences with horizontal wooden bars or rails as the primary fencing material (i.e., "split rail fence").
- **5.** Class 5 SOLID. A fence that is less than 50 percent open as viewed from outside the fence
- **6.** Class 6 HEDGE. A wall consisting of living bushes, trees, plants or plant materials, but not including grass or weeds.

C. REQUIREMENTS OF FENCES

- 1. These requirements apply to all fences in unincorporated Arapahoe County enclosing any lot or greater than 15 percent of a lot in any zone district.
- **2.** Except as otherwise provided in this Section, fences erected in front of any building on a zone lot shall not exceed three feet in height.
- 3. Side and rear yard fences may be of any class, as defined in Section 4-1.5.B herein, but shall not exceed a height of six feet excluding hedges; provided that a side yard fence shall not extend past the lot's front building line or the adjacent neighbor's front building line, whichever is closest to the rear lot line, unless a 16 foot minimum sight distance triangle is provided and that the fence is a minimum setback of eight feet from the side (corner) property line as illustrated below:



- **4.** Except as otherwise provided in the Definitions Section, side and rear yard fences may be of any class, as defined in Section 4-1.5.B but shall not exceed a height of six feet excluding hedges; provided that a side yard fence shall not extend past the lot's front building line or the adjacent neighbor's front building line, whichever is closest to the lot's rear lot line.
- **5.** Except as otherwise provided in this Section, rear yards and side yards siding onto a major collector or arterial street may have a masonry wall not exceeding eight feet in height under the following conditions:
 - a. The wall must not be located within the public right-of-way and easements that are dedicated to Arapahoe County;
 - b. The wall must be designed by a structural engineer licensed in Colorado for all applicable loads. The wall must be built in conformance to the wall construction plans approved by the Building Division;
 - c. The same height, design, colors and materials must be used for the entire frontage of the subdivision.
 - d. No barbed wire or electrically charged fence shall be erected or maintained, except on land zoned A-E, A-1, RR-A, RR-B, PUD where stables are a legal use, B-3, B-4, I-1 or I-2, in portions of PUDs where industrial uses are allowed, and/or in conjunction with a jail or correctional facility. On land zoned B-3, B-4, I-1 or I-2, or portions of PUDs where industrial uses are allowed, the fence must be of chain link construction, and the barbed or electrically charged portion of the fence must be at least six feet six inches above the finished grade outside the fence. Any electrically charged fence in any zone district shall be clearly and conspicuously posted to warn those outside the fence that it is electrically charged, and shall be maintained by its owner.
 - e. On corner lots, no fence or retaining wall shall be erected or maintained which obstructs the vision of automobile traffic on the adjacent streets or driveways.
 - f. Retaining walls exceeding a height of four feet from the finished grade on the low side of the wall shall be designed by a licensed structural engineer, and plans submitted for a fence permit shall show the seal of such engineer. Retaining walls within 30 feet sight triangles cannot exceed three feet in height.
 - g. Every fence in the County, including but not limited to those fences for which no permits are required, shall be maintained in good structural condition at all times. The PWD Director, or their designees, or the Zoning Administrator, or their designee, shall inspect and have the authority to order the repair or removal of a fence which constitutes a nuisance or hazard to safety or health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence or abandonment, or which shall constitute a hazard or zoning violation for any other reason.
 - h. Fences on land zoned A-E, A-1, or RR-A are excluded from the requirements of this Section, except for Sections 4-1.5.C.4 and 4-1.5.C.5.e, as long as such land is used for agricultural purposes and proper maintenance is exercised by its owner.
 - i. Fences in B-3, B-4, I-1 or I-2 districts may be up to eight feet tall, provided that the fence must be of Class 3 construction.
 - j. Fences surrounding tennis courts may be up to 12 feet tall.

- k. When the provisions of this Section conflict with the special fence provisions for particular uses found in other Sections of these Regulations, such special provisions shall control.
- l. Sound barrier walls, when constructed adjacent to major arterial roadways, shall be designed in accordance with CDOT.

D. CORNER LOTS

On any corner lot on which a front and side yard is required, no wall, fence, sign, structure or any obstructive plant growth having a height in excess of three feet above the elevation of the lowest point on the crown of the adjacent roadway shall be maintained in a triangle formed by measuring from the point of intersection of the front and exterior lot lines a distance of 30 feet along said front and side lot lines, connecting the points so established to form a single triangle on the area of the lot adjacent to the street intersection. However, all structures shall set back no less than 25 feet from each lot line abutting a street unless an approved P.U.D. Plan permits a lesser setback.

4-1.6. Lighting

A. INTENT

The purpose of the outdoor illumination standards are to:

- 1. Provide adequate lighting for safety and security;
- **2.** Reduce light pollution, light trespass, glare, sky glow impacts, and offensive light sources:
- **3.** Prevent inappropriate, poorly designed or installed outdoor lighting;
- **4.** Encourage quality lighting design, light fixture shielding, uniform light intensities, maximum lighting levels within and on property lines, and lighting controls;
- 5. Promote efficient and cost effective lighting and to conserve energy; and
- **6.** Provide an environmentally sensitive nighttime environment that protects significant wildlife habitat.

B. APPLICABILITY

The lighting standards contained in this Chapter shall apply to all exterior lighting, including illumination from outdoor signs and any interior lighting from buildings or structures that affect the outdoor environment, unless otherwise excepted or exempted herein. All uses that require Arapahoe County approval of a General Development Plan, Specific Development Plan, Administrative Site Plan, or Use by Special Review shall conform to these lighting standards.

1. Conformance at the Time of Building Permit Application

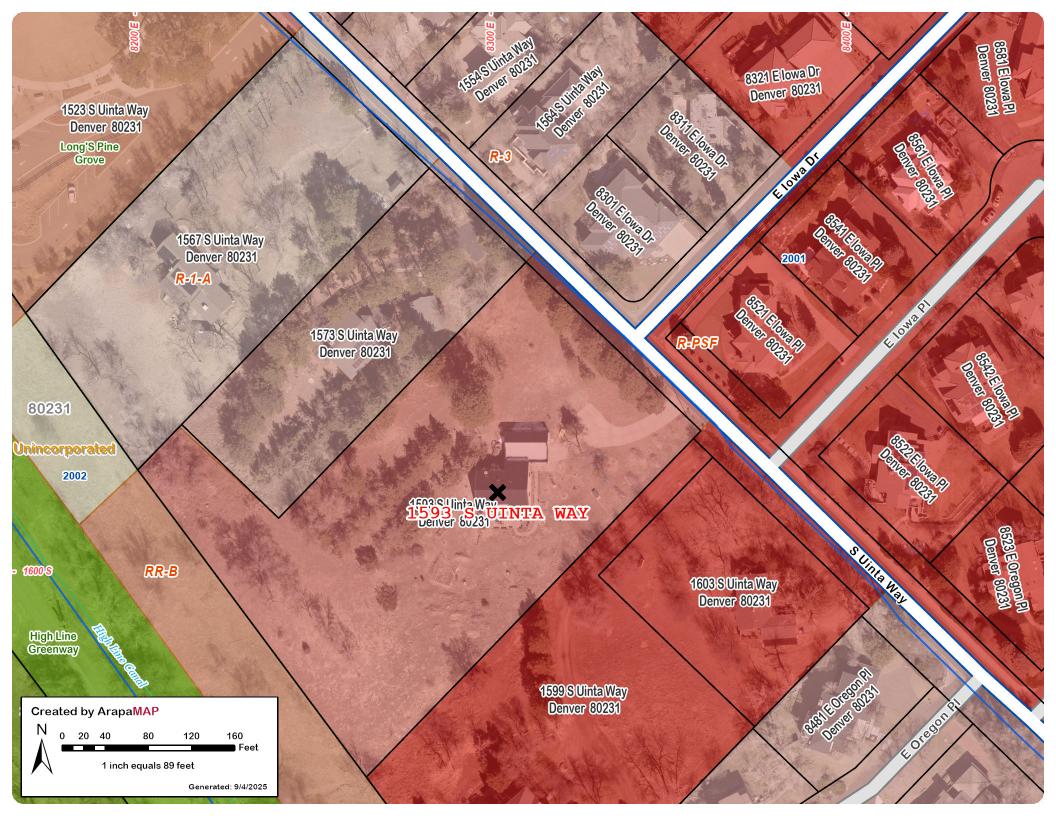
These requirements shall be met prior to a final inspection for any building permit for new development or any redevelopment in accordance with the appropriate process requirements for the application.

2. Replacement of Fixtures

If an existing non-standard light fixture is removed, it shall only be replaced with a conforming light fixture, or fully shielded, and mounted and in compliance with Illuminating Engineers Society of North America (IESNA) standards for full cut-off.

3. Replacement of Lamps

To the extent that compliance with this section can be achieved by replacement of a lamp within a light fixture, such lamp shall be replaced after failure of the lamp.













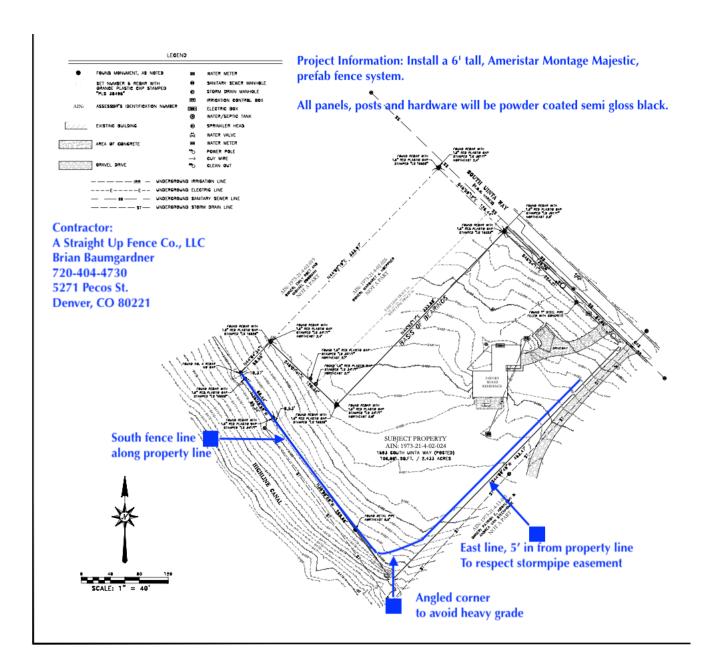


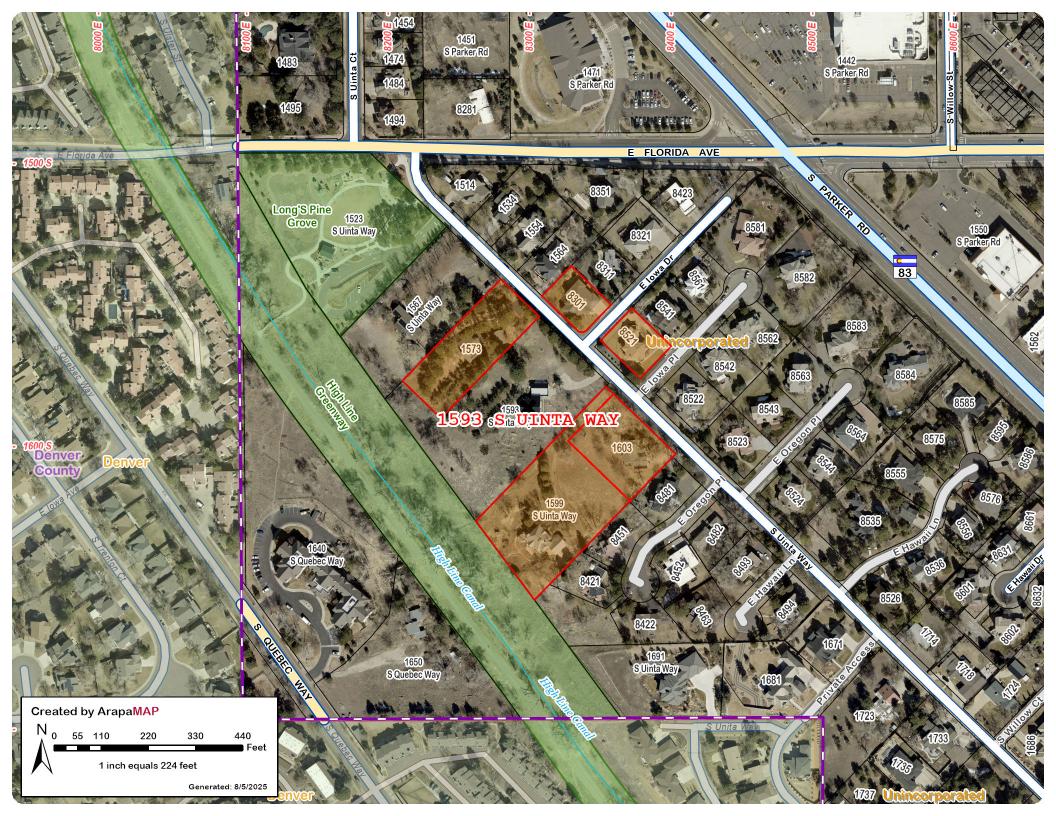












SOUTH METRO FIRE RESCUE FIRE MARSHAL'S OFFICE



Caitlyn Mars, Zoning & Weed Control Manager Arapahoe County Public Works 6924 S. Lima St, Centennial CO 80112 720-874-6713 CMars2@arapahoegov.com

Project Name: 1593 S Uinta Way Variance

Project File #: BOA-2025-00005 S Metro Review # REFOTH25-00182

Review date: August 19, 2025

Plan reviewer: Jeff Sceili

720-989-2244

Jeff.Sceili@Southmetro.org

Project Summary: Variance request to install 6 foot tall fence 25 feet from property line

Code Reference: 2021 Fire Code Edition, 2021 Building Code Edition

South Metro Fire Rescue (SMFR) has reviewed the above project and has conditionally approved the plans based on the following comments that must be resolved prior issuance of any permits. Applicants and Contractors are encouraged to contact SMFR regarding the applicable permit requirements for the proposed project.

COMMENTS:

1. Gates shall be installed by permit from SMFR.