



Variance Report

Case #AV25-0002

Board of Adjustment Date: June 10, 2025

Continued to July 8, 2025

Continued to August 12, 2025

General Information

Project Name	16764 East 105 th Avenue Covered Patio Variance
Location	16764 East 105 th Avenue
Site Size	0.18 acres
Current Zoning	Planned Unit Development (PUD) – Amendment #1 of the Buffalo Hills Ranch PUD Zone Document (Reunion PUD)
Applicant	Troy & Kimberly Clark
Case Planner	Nathan Chavez

Request

Kimberly Clark, the property owner of 16764 East 105th Avenue, is requesting a variance to reduce the 20-foot Rear Yard setback within the Reunion PUD in conjunction with [Sec. 21-4200\(3\). – Setbacks](#), to an 11-foot Rear Yard setback, a 9-ft. minimum reduction for a patio cover.

Background and Case History

The residence was originally constructed in 2003, and the current property owners purchased the residence in foreclosure in 2012. The patio cover was later erected in 2020 without a building permit by the current property owners, specifically a contractor. Upon discovery of this unpermitted structure by Code Enforcement via routine patrols through the City, the property owner submitted for a building permit. During the building permit review process, Planning staff discovered the structure does not adhere to the 20-ft. rear yard setback standard. Per Sec. 21-4200(3). – Setbacks, patio covers have to meet the principal structure setback as opposed to the accessory structure setback. The applicant is now requesting the variance so that the constructed patio cover may remain. The property is located at the southwest corner of East 105th Avenue and Olathe Way in a residential neighborhood. It is surrounded by other residential properties to the south and west, as well as, across East 105th Avenue and Olathe Way.

June 10, 2025 Board of Adjustment

The Board of Adjustment (Board) heard AV25-0002 on [June 10, 2025](#). During the hearing, the Board asked why the applicant was not in attendance, if a Code Enforcement violation existed, how the Code Enforcement Division noticed the violation, if the Building Division reviewed the

patio cover, if the building permit plans are stamped by an engineer, if similar variances existed in the neighborhood, and what the setbacks standards are. Three letters of support were submitted into the record during the hearing and no members of the public provided spoken comment. One Board member had concerns with approval criteria ii. “The hardship is not self-imposed.” The City Attorney’s Office advised the Board that the City of Commerce City Charter stipulates four votes are needed to approve a variance. The Board voted 4-0 to continue the application to the July 8, 2025 Board of Adjustment so the applicant could be in attendance.

July 8, 2025 Board of Adjustment

The applicant requested a continuance for the August 12, 2025 Board of Adjustment hearing and as a result, the July 8, 2025 Board of Adjustment meeting was cancelled and the subject’s case continued and renoticed for the August 12, 2025 meeting.

Project Analysis

Public Comment

City staff received three letters from the public regarding the variance. Staff also received a phone call inquiring about the purpose of the public notice mailings. All three written comments are in favor of the proposed Variance.

Overall Analysis

Per the Board’s request, staff reviewed the surrounding lot sizes and found that the average Reunion Filing No. 2 lot size is 5,897.92 sq. ft. and the average lot size for the subject site’s block is 5,624 sq. ft. (Table 1). The subject site is 1,813.08 square feet larger than the average Reunion Filing No. 2 lot and 2,086.36 sq. ft. larger than the average lot in its block. In addition to lot size, four other factors contribute to the hardship.

Lots:	Lot Size:
16764 East 105 th Avenue:	7,711 Sq. Ft.
Average Lot in Block (22 lots):	5,624.63 Sq. Ft.
Average Lot in Reunion Filing 2 (176 lots):	5,897.92 Sq. Ft.

Table 1. Lot Sizes

The first factor to consider is the front yard setbacks; the subject’s residence is set back 24-ft. from the front property line. The average front yard setback for the block is 18.31 feet, meaning the subject residence is pushed further from the front yard than most of the residences in the block. The second consideration is that the home was constructed in 2003, nine years prior to the applicant’s purchase of the home, which was in foreclosure at the time of purchase, and 17 years prior to the patio cover. In addition, Staff reviewed the Rear Yard setbacks for 120 of the 176 properties in the Reunion Filing No. 2. Figure 9 is an aerial of immediate neighborhood with the rear yard setbacks for patio covers in blue. Of the 120 properties, roughly 48 (40%) would require a variance for a patio cover at least 10-ft. in depth. If the depth were increased to 16-ft., such as size of the subject patio cover, then the number of properties requiring a variance for a patio cover would increase to 88 (73%). This is a result of how the Reunion PUD (approved in 2002), and the 2009 Land Development Code interact with each other (third consideration). The Reunion PUD has a different set of accessory structure bulk standards, however, per [Sec. 21-4200\(3\). – Setbacks](#), the setbacks defer back to the principal structures setbacks, an

unforeseen interaction between the two zoning standards. Lastly, the subject property is an irregularly shaped corner lot with the residence placed in such a way that it only parallels one lot line, meaning sections of the house are much closer to property lines than others.

Taking all four of these points into consideration; the increased setback to the front property line, large lot size, relationship between the PUD and Land Development Code, and irregular lot shape; City Staff found that a hardship exists due to the physical characteristics of the lot and the juxtaposition of the house on the lot. In addition, through the review process, City staff determined that the variance request will meet all other City standards and should not cause any undue negative impacts on surrounding properties. The applicant submitted for a Building Permit to finalize the structure, the Building Division and South Adams County Fire Department have no comments on the existing patio cover. Lastly, the proposed variance was reviewed by all relevant Development Review Team agencies, including Commerce City Planning, Engineering, Building, Economic Development, & Energy, Equity, and the Environment (E3), the South Adams County Water and Sanitation District (SACWSD), and South Adams County Fire Department (SACFD) with no comments. At this time, there are no outstanding concerns from any of the aforementioned referral agencies related to this variance request.

Variance Approval Criteria

A decision for this case must be based on the following criteria from [Sec. 21-3222\(3\)](#) of the Land Development Code. An application for a variance may be approved if:

(a) All of the following criteria are met:

- i. **The physical character of the property, including dimensions, topography or other extraordinary situation or condition of the property, create a situation where the strict enforcement of the standards in this land development code will deprive the property of privileges generally enjoyed by property of the same classification in the same zoning district (hardship);**

Analysis: The proposed 11-ft. variance, a 9-ft. reduction, is needed for the property owner to shelter their rear yard patio from sunlight and rain. The patio does meet the accessory use setbacks. The patio cover is allowed within single-family residential neighborhoods; however, the irregular layout of the site, non-parallel placement of the home, increased setback to the front property line, large lot size, and existence of [Sec. 21-4200\(3\). – Setbacks](#) creates a configuration where the patio cover requires a variance in order to be built where the home's rear door and patio exist. Lastly, it is a reasonable expectation to have a patio cover in the neighborhood. *Therefore, it can be found that this application **meets criteria (i).***

- ii. **The hardship is not self-imposed;**

Analysis: The subject property is an irregularly shaped corner lot with the residence placed in such a way that it only parallels one lot line, meaning sections of the house are much closer to property lines than others which constitutes a hardship. In addition, the home was constructed with a large front yard setback (24-ft.) than required by code (10-ft. minimum). This has resulted

in the patio cover being closer to the rear property line than is typical. *Therefore, it can be found that this application **meets criteria (ii)**.*

iii. The variance will not be of substantial detriment to adjacent property; and

Analysis: There are large plantings along Olathe Way screening the view of the patio cover as well as, fencing and some landscaping between the subject site and neighbors to the south and west. In addition, the Commerce City Building Division and South Adams County Fire Department reviewed a building permit for the structure and provided their approval to the structure. *Therefore, it can be found that this application **meets criteria (iii)**.*

(b) One of the following criteria is met:

i. The variance granted is the minimum needed for the reasonable use of the land, building, or structure; or

Analysis: The patio cover could have been smaller and still provide effective use of the patio. *Therefore, it can be found that this application **does not meet criteria (i)**.*

ii. The character of the district will not be changed by the granting of the variance.

Analysis: Per the Reunion PUD, a patio cover is allowed for this land use. The granting of a variance will allow for the already constructed patio cover, which is typically found within a single-family detached home neighborhood, in a configuration closer to the property line than the PUD setbacks allow for. *Therefore, it can be found that this application **meets criteria (ii)**.*

Staff Recommendation

Planning staff has found that the application does meet all the approval criteria found within [Sec. 21-3222\(3\)](#) of the Land Development Code, and therefore Planning staff recommends the Board of Adjustment approve case AV25-0002.

Considerations for Discussion

1. The variance is for a 9-foot rear yard setback reduction, from 20-feet to 11-feet.
2. Review of the requested variance for the patio cover revealed limited impacts to surrounding properties.
3. The structure has existed for around 5 years, with no recorded negative impacts or complaints.
4. The structure matches the existing home in design, color, materials, and aesthetics.
5. The application meets all the Variance approval criteria.
6. Reviewed by all relevant Development Review Team (DRT) agencies and there are no outstanding comments or concerns.

Potential Motions

Approval

*I move that the Board of Adjustment enter a finding that the requested **variance**, for the property located at **16764 East 105th Avenue** contained in case **AV25-0002**, meets the criteria of the Land Development Code and based upon such finding, approve the **variance**.*

Approval with Conditions

*I move that the Board of Adjustment enter a finding that the requested **variance**, for the property located at **16764 East 105th Avenue** contained in case **AV25-0002**, meets the criteria of the Land Development Code and based upon such finding, approve the **variance** subject to the following conditions:*

[Insert Conditions]

Denial

*I move that the Board of Adjustment enter a finding that the requested **variance**, for the property located at **16764 East 105th Avenue** contained in case **AV25-0002**, fails to meet the criteria of the Land Development Code and based upon such finding, deny the **variance**.*

[Insert criteria not met]

Figure 1. Zoning Map



Figure 2. Aerial Map



Aerial form March 3, 2025

Figure 3. Site Plan

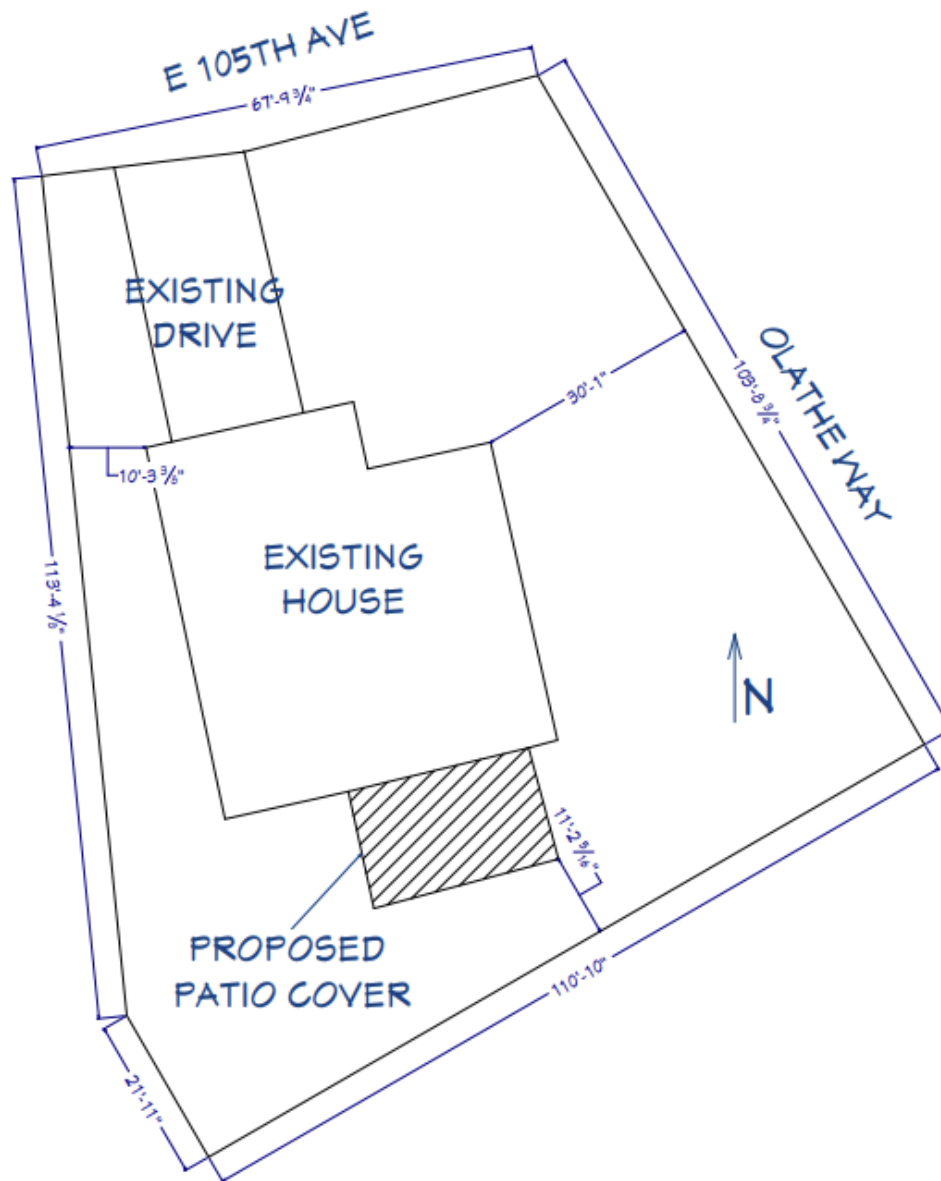


Figure 4. Principal Structure Setbacks

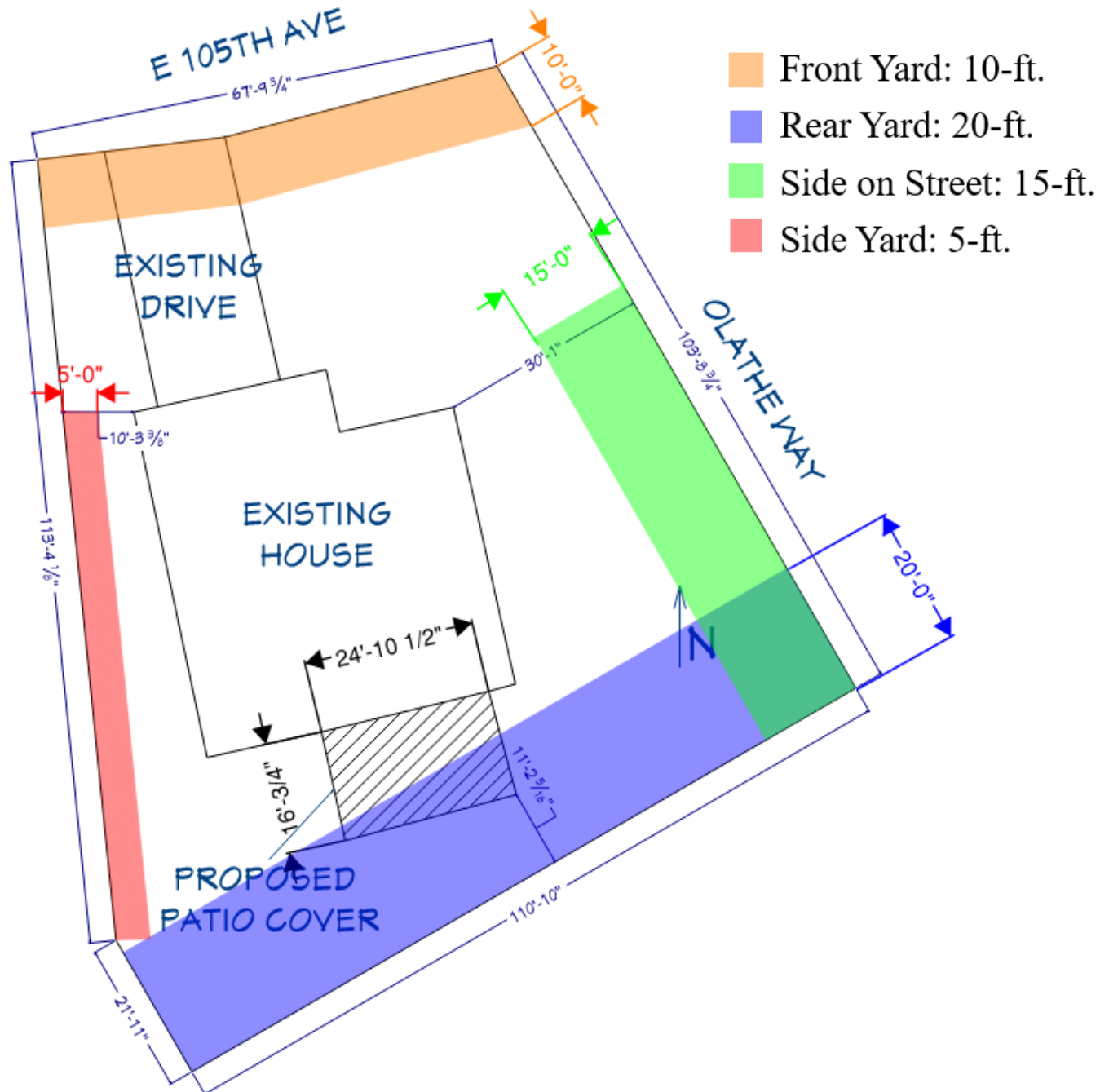


Figure 5. Existing Covered Patio



Photo of the existing covered patio facing west, taken on May 7, 2025

Figure 6. Existing Covered Patio



Photo of the existing covered patio facing north, taken on May 7, 2025

Figure 7. Existing Covered Patio



Photo of the existing covered patio facing east, taken on May 7, 2025

Figure 8. Residence in 2012



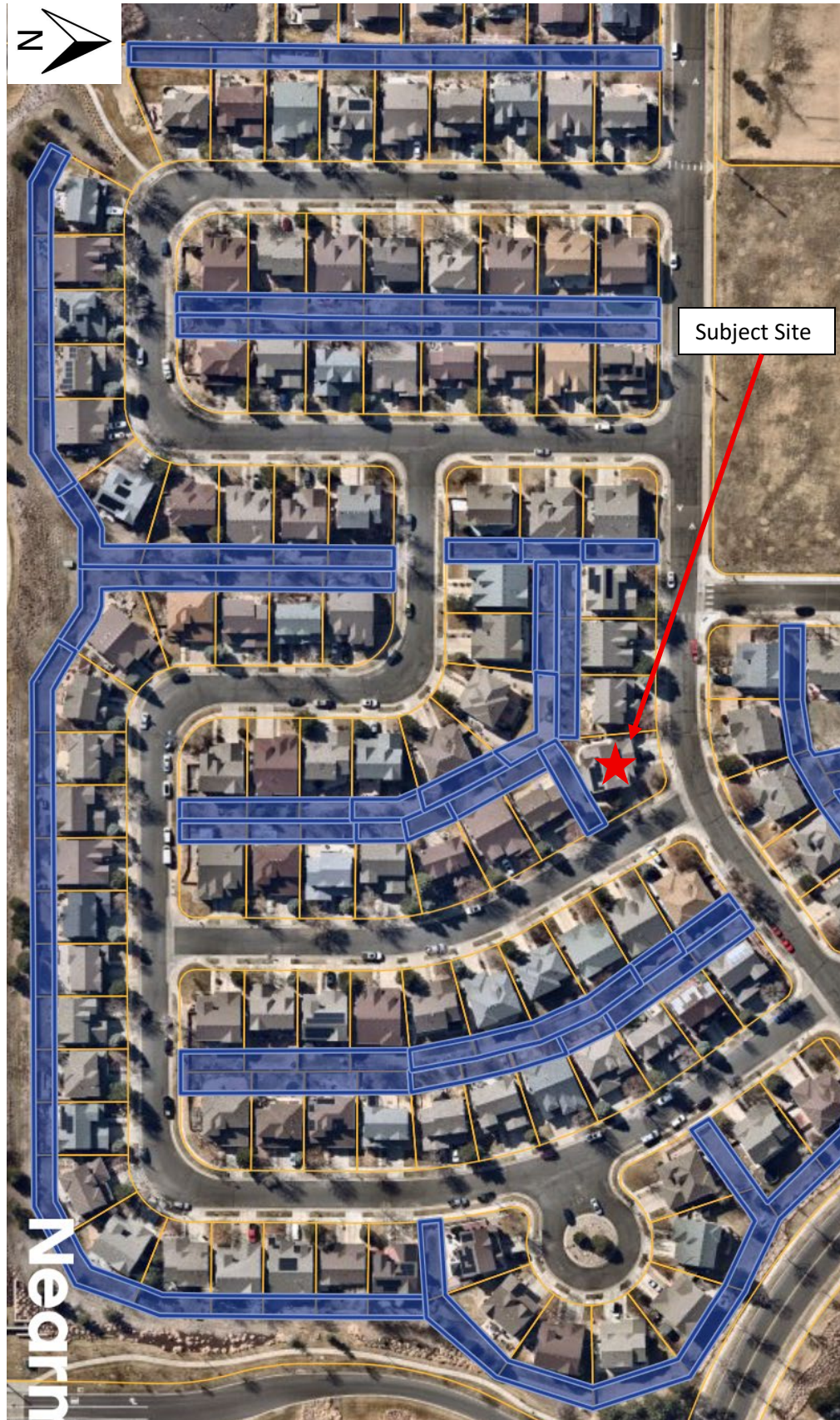
Photo of the residence from 2012 facing west

Figure 9. Residence in 2012



Photo of the residence from 2012 facing north

Figure 10. Rear Yard Setbacks for Patio Covers



Blue indicates the 20-ft. Rear Yard Setback for patio covers.