



Variance Report

Case #AV25-0016

Board of Adjustment Date: April 14, 2026

General Information

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| Project Name | Oxenfree Retaining Wall Height |
| Location | 9713 E. 110 th Ave. & 9712 E. 110th Ave. |
| Site Size | 3.69 acres |
| Current Zoning | Planned Unit Development (CanAm) |
| Applicant | Harris Kocher Smith |
| Property Owner | Core Spaces |
| Case Planner | Nathan Chavez |

Request

Harris Kocher Smith, on behalf of the property owner Core Spaces, are requesting a Variance to increase the maximum retaining wall height from four feet to eight feet, a four-foot increase.

Background and Case History

The subject sites are under construction for a residential neighborhood known as Oxenfree. The overall site was recently annexed into the City in Spring 2022 as a Planned Unit Development (PUD) known as the CanAm PUD. The Oxenfree development includes 269 residential units including townhomes, duplexes, and single-family detached and was initially approved under PUD Development Permit Z-964-D-568-24. While the overall Oxenfree site naturally slopes and drains to the western portion of the site, the South Adams County Water & Sanitation District (SACWSD) sanitary sewer outfall is located to the northeast. Because all new homes are required to connect to the SACWSD water and wastewater services; and to ensure the required gravity drainage for the proposed homes in the southwest corner of the Oxenfree development, this corner is being raised in elevation, thus resulting in the need for the retaining wall. During review of a building permit (CMISC25-00028) for the subject retaining wall, it was discovered that 525 feet of the retaining wall, which stretches roughly 1.030-feet in length, is proposed to be taller in some portions (Figure 4) than the 4-feet indicated in the approved PUD Development Permit. Per [Sec. 21-7735\(1\). – Retaining Walls](#) of the City of Commerce City Land Development Code, a retaining wall not attached to a primary structure and not necessary to compensate for a change in grade on a site shall not exceed four feet in height. Lastly, Figure 4 illustrates the retaining wall height at heights less than the requested 8 feet. The applicant wants to ensure there is a buffer to the request in case the wall needs to be constructed greater than the anticipated 6.5 feet – 7 feet.

Project Analysis

Site Overview

The site, which is located along Belle Creek Boulevard, is within the CanAm PUD, specifically, within a residential planning area. To the north (The Dunes) and south (Belle Creek) are PUDs, to the east is Highway 85 followed by industrial zoning, and to the west is unincorporated Adams County to the west across Belle Creek Boulevard. A residential subdivision is under construction for the site. To the south is the northern edge of the Belle Creek neighborhood, to the north is the Dunes neighborhood, and to the west across Belle Creek Boulevard is the Tanabe reservoir owned by the City and County of Denver.

Comprehensive Plan Consistency

Per the [2045 Comprehensive Plan](#), the site is within the Northern Neighborhoods Character Area (Figure 2) which designates residential as a primary land use. The Residential Areas Framework map (Figure 3) designates the site as Greenfield Development, which calls for high quality building and site design standards. The Character Areas Land Use Map and Residential Areas Framework map when viewed together call for high quality residential as a primary use, which is currently under construction.

Public Comment

City Staff provided public notice per the Land Development Code Standards, including publication in the Commerce City Sentinel, posting of one sign on the site, and mailing of flyers to all property owners within 500 feet of the subject property. No letters, emails, or phone calls from the public were received regarding the proposed variance.

Application Review

The proposed variance was reviewed by all relevant Development Review Team agencies, including the City of Commerce City Planning Division, Geographic Information Systems Division, Parks, Recreation and Golf Department, Department of Economic and Community Vitality, Engineering Review Division, Building Safety Division, & Energy, Equity, and the Environment Division, the South Adams County Water and Sanitation District (SACWSD) and South Adams County Fire Department with no comments or all comments addressed. 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 South Adams County Water & Sanitation District (SACWSD) sanitary sewer outfall is located to the northeast of the subject sites. To ensure for the proper and required gravity drainage for the proposed homes in the southwest corner of the Oxenfree development this corner is being raised in elevation, thus resulting in the need for the retaining wall. *Therefore, it can be found that this application **meets criteria (i)**.*

ii. The hardship is not self-imposed;

Analysis: The hardship stems from the existing sanitary sewer outfall in the northeastern corner of the site and the requirement by the SACWSD for gravity drainage. A retaining wall is necessary to ensure the sanitary sewer for future homes in this location drain to the northeast. *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: The portion of the proposed retaining wall which requires the variance (greater than four feet) either abuts Belle Creek Boulevard or a detention pond (Figure 4). While there are four existing homes which will abut the lower portions of the wall, they will abut a retaining wall regardless of the outcome of this variance. There is no expected detriment to adjacent properties from the retaining wall as proposed. *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 retaining wall is needed to contain the additional fill brought to the site to ensure there is adequate elevation difference for sanitary sewer to drain to the SACWSD sanitary sewer outfall. In addition, the eight-foot wall protects the usable space for future residents of the Oxenfree development. *Therefore, it can be found that this application **meets criteria (i)**.*

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

Analysis: The 2045 Comprehensive Plan designates the general area for residential as a primary land use. Regardless of the outcome of the variance, residential will be built at this location. A retaining wall will need to be constructed to create a higher elevation to ensure adequate flow for sanitary sewer. The utilization of a tiered retaining wall approach would result in two walls the lowest being 4 feet in height with 4 foot of spacing, followed by another wall between two to four feet in height. *Therefore, it can be found that this application **meets criteria (ii)**.*

Staff Recommendation

Planning staff found that the application meets 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 AV25-0016.

Considerations for Discussion

1. The variance is for a four-foot maximum retaining wall height increase, from four feet to eight feet in height.
2. Although the applicants can construct the retaining wall as a two-tiered wall, this would reduce the backyards of six homes by four to six feet to around 10-12 feet deep back yard.
3. The increase in elevation is needed to accommodate the required gravity drainage to the SACWSD sanitary sewer outfall which is located to the northeast.
4. Neighboring residents were notified about the variance and provided an opportunity to comment and attend the Board of Adjustment.
5. Denial of the subject variance would require the applicants to construct a tiered retaining wall, still of the same height but would reduce the back yards of abutting residences by four to six feet.
6. Review of the requested variance revealed limited impacts to surrounding properties.
7. The application meets the Variance approval criteria.
8. The variance application was 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 properties located at **9713 E. 110th Ave. & 9712 E. 110th Ave.** contained in case **AV25-0016**, 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 properties located at **9713 E. 110th Ave. & 9712 E. 110th Ave.** contained in case **AV25-0016**, 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 properties located at **9713 E. 110th Ave. & 9712 E. 110th Ave.** contained in case **AV25-0016**, fails to meet the criteria of the Land Development Code and based upon such finding, deny the **variance**.*

[Insert criteria not met]

Figure 1. Aerial Map



Red is the proposed retaining wall location. Aerial from February 6, 2026

Figure 2. Character Areas Land Use Map



Figure 3. Residential Areas Framework Map

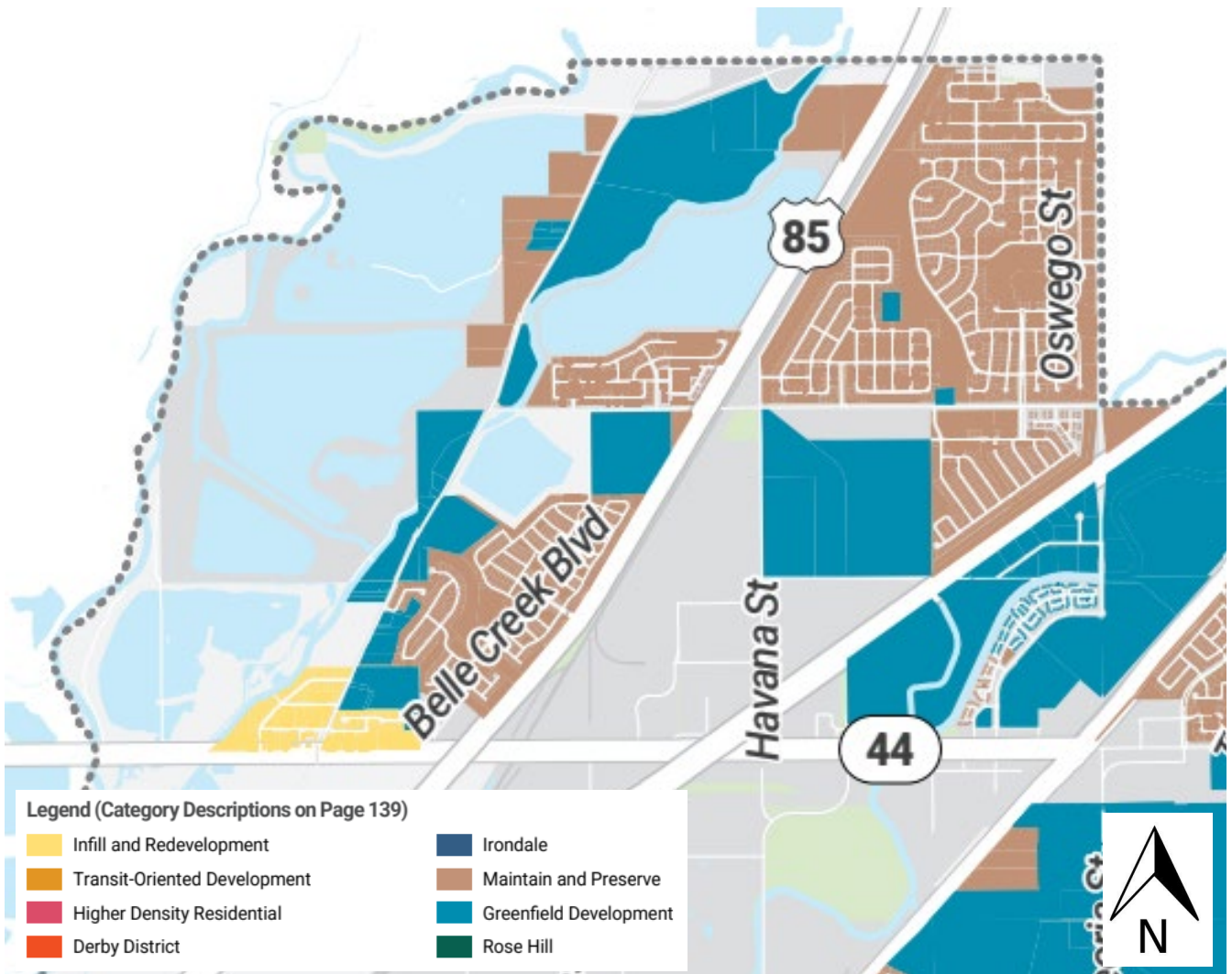


Figure 4. Retaining Wall Aerial Plan

