

**Findings**  
**Appeal - Variance 1283 – 2213 2<sup>nd</sup> Ave N**

The standards of review for an appeal are different from a variance request. An appeal alleges there was an error in interpretation of the written code, a misapplication of the code requirements or some other mistake occurred during the administrative review.

The BOA is authorized to affirm, reverse (in whole or in part), or modify the decision of the Planning staff on zoning issues. Section 27-1505(f) states: “*the Board of Adjustment may, in conformity with the provisions of this chapter, reverse or affirm, wholly or partly, or modify the order, requirement or decision or determination as ought to be made, and to that end shall have all the powers of the office from whom the appeal is taken.*”

While an appeal may be taken by a single property owner, a decision on the appeal would apply to all property within the city limits.

**1. Did the Planning Staff correctly interpret the zoning code language?**

Section 27-604(e) specifies the types of materials allowed and prohibited for the use in constructing fences within residential or commercial zoning districts. The code states the following: “*All fences in residential, agricultural and commercial zoning districts shall be constructed from materials which are commonly used for fencing and shall not be constructed from railroad ties, wood pallets, tires, rubble or salvaged material. Commonly used fence materials include wood, brick, stone, split railing, chain-link, wire, vinyl, ornamental iron work. Materials not listed are subject to special review.*” The appellant states the wood used for the construction of this fence has in fact been salvaged from wooden pallets. The code specifically prohibits the use of wood pallets or salvaged material. The Planning staff believes it has correctly interpreted the language of Section 27-604(e) of the zoning regulations. The code language uses “shall” to affect an absolute requirement.

**2. Did the Planning Staff misapply the code requirement?**

The subject property is within the Central Business District (CBD) zoning district. This district is considered to be a “commercial” zoning district. The code regarding fencing materials at 27-604(e) applies to all “*residential, agricultural and commercial*” zoning districts. The Planning Staff believes it has correctly applied the zoning requirement.

**3. Did the Planning Staff make any other error when applying the code requirements?**

Planning Staff has reviewed the administrative files regarding this appeal including the fence permit application (PLN-18-00581) and the Code Enforcement case file (CE-18-01043). On March 14, 2018, a complaint was received in our office about a fence under construction without a permit at the subject property. A CE Officer was assigned to investigate and contact the owner if the alleged non-permitted activity was underway. A notice was sent on the same date notifying the owner to get a fence permit. The permit was submitted on March 22, 2018. The Planning Staff reviewed the application and denied the permit due to the use of salvaged materials from wooden pallets. The Zoning Code does define “salvage” in Section 27-201: “*Something saved as valuable or useful from trash, rubbish, worn out equipment, or junk.*” Planning Staff believes it has not made any other errors when applying the code requirements.