



BOARD OF APPEALS AGENDA

COUNCIL CHAMBERS

TUESDAY, JUNE 10, 2025

6:05 PM

or immediately following the City Council Meeting

1. Call to Order/ Approve Agenda
2. Items for Discussion
 - A. Property Owner Request to Appeal Staff Ruling
3. Adjournment



Request for Council Action

TO: Mayor and City Council
THROUGH: Jessica L. Kinser, City Administrator
FROM: Dustin Dienst, Fire and Codes Services
MEETING DATE: June 10, 2025
SUBJECT: Property Owner Request to Appeal Staff Ruling

Background:

On September 18, 2024, City Planner, Harry Davis, responded to a complaint from Sharon Bauer, property owner at 947 6th Ave SW. Sharon had sent pictures of her north property line and her concerns about the area. Harry ruled that there were no planning and zoning violations that he could see from the photos.

Harry included other staff members, including Director Mark Duchene, Director Dave Wanberg, and Property Maintenance Inspector Steve Breckenridge on the email chain for their assessment of the area. All staff agreed that there are no violations here. Sharon did some research and believes that the neighbor's retaining wall was not built to code and is too close to the property line. Staff are ruling that there is no retaining wall, just a landscaped area with flat limestone on it that serves as landscape feature to help with the looks and maintenance of the area.

I, Dustin Dienst, visited the site and agree with my fellow staff members that this is not a retaining wall and there are no planning and zoning or property maintenance violations.

Recommendation:

Attachments:

1. Online Form Submittal_ City Code Interpretation Appeal
2. Sharon Bauer Narrative
3. Bauer Photo 1 - Property line of concern May 27
4. Bauer Photo 2
5. Bauer Photo 3
6. Bauer Photo 4

From: noreply@civicplus.com
To: [Dustin Dienst](#); [Building Codes](#); [Tassja Muchow](#)
Subject: Online Form Submittal: City Code Interpretation Appeal
Date: Tuesday, June 3, 2025 12:49:22 PM

City Code Interpretation Appeal

City Code Interpretation Appeal

As outlined in Faribault City Code ([see Chapter 7, Article IV, Sec. 7-26](#)), an applicant is allowed to appeal to the Fire and Code Services Director within 30 calendar days based on a claim of:

- the true intent of any code or the rules legally adopted thereunder have been incorrectly interpreted*
- the provisions of any code do not fully apply*
- an equally good or better form of construction is proposed*

Please note, this appeal is not related to any citation and/or administrative citation but rather based on the above-listed claims.

The appeals hearing must occur within ten (10) working days from the date that a properly completed application is received.

For the purpose of determining the suitability of alternate materials and methods of construction and to provide for reasonable interpretation of the Minnesota State Building Code, the International Fire Code and the International Property Maintenance Code, the City Council is designated as the board of appeals.

First Name	Sharon
Last Name	Bauer
Address	947 6th avenue sw
City	Faribault
State	Mn
Zip	55021
Appeal Information	My neighbor at 935 6th Avenue SW ha constructed a retaining wall. However, this retaining wall was not built according to

Minnesota building Code. It is difficult to know how high this Retaining Wall would be if it had been constructed according to the Minnesota Building Code. This excavated, unbalanced soil pile measures approximately: 7 feet deep (from my property line to the foundation wall of the neighbor's garage), 3.5 to 4.5 in height (it is difficult to measure the height because i cannot measure down to the ground level) and 30 feet in length). It is not maintained and in very poor shape. Rocks and boulders are falling off this walland in some sections crossing, falling onto my property. The soil from this soil pile is is eroding, crossing over onto my property. Codes, Laws violated include: 2020 Minnesota Residential Code, R301.1.3 and R404-4; City of Faribault Minnesota Rules Chapter 1300.0120; Faribault City Code 6-120 ; Section 6-26 'Fence Materials and Maintenance'.

Email not displaying correctly? [View it in your browser.](#)

Sharon Bauer

947 6th Ave SW

- September 18, 2024 – City Planner Harry Davis responded to Sharon about the pictures of the area of concern to City Planner Harry Davis.
- September 30 – Sharon emailed Harry asking for an update.
- October 2nd – Harry wrote back to Sharon.

I appreciate the pictures describing your identified issue along your property line. I have reviewed your pictures and determined that there isn't an issue from Planning & Zoning and can find no violation within zoning and subdivision controls applicable to the situation. As discussed before, this appears to be landscaping from one property that extends over into your property. The matter is an issue for you and your neighbor to discuss and come to a resolution without P&Z involvement. If there is a nuisance violation here, I leave it to Steve to chime in and address that. I have also included in this email chain Mark Duchene from Engineering and Brad Phenow from Communications to help with efficient dissemination of information and coordinating efforts.

- October 7 – Harry responded to an email from Sharon:

Sharon,

You sent me an email at around 3:30 AM today with the following message:

"Hi, Sorry, I missed your email. :) Thank you for your response. I did some research and I did find this stated in Mn law. "153.082 Retaining Walls: (2) Landscape walls less than four feet in height shall not require a building permit but shall be subject to the requirements stated in this section. (D) Setbacks. (1) All private retaining walls and landscape walls abutting up to or running parallel with a nearby property line shall be setback at least two feet from the property line to allow for adequate access and maintenance."

Also, I am not sure of the height of the retaining wall in my yard. It could be 4 feet or over 4 feet. It needs to be measured at the foot and I cannot do that. It is on their property. Also, the wall does not follow the building code for a landscape or retaining wall.

Also, I am not trying to get the city to take care of this if it is not their responsibility. I am fact finding and I need to know all the facts related to this situation so that i can make the appropriate decisions.

Thank you.

Sharon Bauer”

- March 31, 2025 – Dave Wanberg responded to Sharon with this email;

Sharon,

I spoke with Harry Davis this past Friday regarding your question about retaining walls. I also reviewed the email chain below. The Faribault City Code is silent on retaining walls and does not have definitions or other provisions related to retaining walls. However, as you noted, the State Building Code defines a retaining as being at least four feet high. I reviewed other City Codes to understand how they handle retaining walls. All of them refer to the four-foot height requirement. You identified 153.082 as requiring a two-foot setback from property lines. However, that is not state law. I believe 153.082 is Lonsdale’s zoning ordinance. Zoning ordinances in many cities define a retaining wall as holding back unbalanced soil. In other words, it is holding back soil that would collapse if not for the retaining wall. Some cities require retaining walls to be set back from property lines, others do not.

I understand that Faribault City Staff have determined that your neighbor did not construct a retaining wall, but rather a boulder/landscaped area that extends up to (and possibly spills over onto) your property. I suspect your neighbor installed this boulder/landscaped area because it was too difficult for the neighbor to mow or maintain it. Based on my understanding of the situation, the City does not define the boulder/landscaped area as a retaining wall.

After reviewing previous emails between you and City Staff, it appears that City Staff concluded that there wasn't a zoning or subdivision violation. Consequently, the City cannot force the neighboring property owner to make changes. If you feel City Staff has erred in its determination that there is no zoning or subdivision violation, you can file an appeal with the City. Ultimately, the City Council would make the final decision. Feel free to let me know how you want to proceed.

- April 11, 2025 Sharon responded with:

Hi, Thanks for your response. Yes, that is right. 153.082 is Lonsdale's zoning ordinance.

This is a retaining wall as described by Minnesota State law. However, this wall was not constructed according to Minnesota Building Code. It is difficult to know how high this retaining wall would be if it had been constructed according to Minnesota Building Code. This unbalanced fill is approximately 7 feet wide, 3 to over 4 feet in height (it is difficult to measure the height because I cannot measure down to ground level) and 30 feet in length. It is not maintained and is in very poor shape. Rocks and boulders are falling off and in some parts are crossing, falling onto my property.

This is from a Faribault brochure, " Work Exempt From Permit, Building Inspections Department - The following exemptions from permit requirements of the code do not authorize work to be done in any manner in violation of the code or any other laws or ordinances of the city of Faribault (Minnesota Rules (1300.0120) This list is not meant to supercede the Minnesota State Building Code. A. Building permits shall not be required for the following work: 4. Retaining walls that are not over 4 feet in height measured from the bottom of the footing of the wall, unless supporting a surcharge or impounding class 1, 11, 11-A liquids." This retaining wall supports a surcharge.

6-120 -- "Setback encroachments. All required setbacks shall remain open and unobstructed from ground level to the sky, ... " This retaining wall appears to violate this setback encroachment rule.

"Walls taller than 48" that are not laterally supported at the top, or walls taller than 24" that retain lateral loads in addition to soils shall require an engineered design in accordance with Sections R301.1.3 and R404.4 of the Minnesota Residential Code."

"A building permit is also required if the wall will support a surcharge (a vertical load on the retained soil possibly adding lateral pressure in addition to the soil) regardless of the height of the wall. " This retaining wall supports a surcharge.

Section 6- 260 " Fence Materials and Maintenance -- (1) All Walls and Fences shall be durable, standard fence materials, and kept in a condition so as not to become a nuisance."

Thank you

Sharon Bauer

- April 23 – Sharon asked for an update.
- April 28th – Sharon asked for another update.
- April 29 – Dave Wanberg email this back to Sharon;

Sharon,

I received and read your April 11, 2025, email. I apologize - I did not realize you were expecting me to respond to your email. As I stated on March 31, 2025, Faribault City Staff determined that the boulder/landscaped area is not a retaining wall. However, I also noted that if you feel City Staff erred in its determination, you could appeal the decision to the City Council. I asked you how you want to proceed.

Again, Staff determined that there are no ordinance violations associated with the boulder/landscaped area. I understand the neighbor adequately addressed drainage issues related to the garage. If plants from the neighboring property are overhanging into your property (or rock spills over onto your property), City Staff previously stated that both property owners should try to resolve those issues.

I know this is not the answer you want. However, I have spoken with City Staff several times, and they are confident that there is no City Code violation that the City can enforce associated with the boulder/landscaped area. If you disagree with that decision and wish to appeal it to the City Council, please let me know, and City Staff will help guide you through that process.

- April 29 – Sharon replied:

You state that " Faribault City Staff determined that the boulder/landscaped area is not a retaining wall". Could you please tell me what is the definition of "Retaining Wall" that the City of Faribault uses? How can I or the city, for that matter, make these decisions without the legal definition of a 'Retaining Wall' ? My research tells me that it is a 'Retaining Wall'. Before I proceed forward, I need to know the definition of 'Retaining Wall' that the city uses. Could you please get that for me.

Thank you.

- April 30th - Dave Wanberg replied;

On Wed, Apr 30, 2025 at 9:31 AM David Wanberg <dwanberg@faribaultmn.gov> wrote:

Sharon,

"How does the City of Faribault define a retaining wall?" is a fair question. As you know, the City's Unified Development Ordinance (UDO) refers to a "retaining wall" in several places. However, it does not specifically define a "retaining wall." Nevertheless, the second sentence in Chapter 1, Sec. 1-120 of the UDO states, "All words and phrases not defined shall have their common meaning."

Merriam-Webster defines a retaining wall as "A wall that is built to keep the land behind it from sliding." It has several definitions for a "wall" including "a structure that serves to hold back pressure (as of water or sliding earth)."

Wikipedia states, "A retaining wall is designed to hold in place a mass of earth or the like, such as the edge of a terrace or excavation. The structure is constructed to resist the lateral pressure of soil when there is a desired change in ground elevation that exceeds the angle of repose of the

soil.” The angle of repose is essentially the steepest angle the earth can be at without slumping. An example of such an area is on the north side of City Hall and the Fire Department (see the picture below). This area is quite steep and is likely nearing the angle of repose. However, there is no retaining wall. If the City were to add boulders and landscape plants to the steep areas to avoid mowing the area, it would not be defined as a retaining wall.

Several City Staff have reviewed the area in question and have stated that they do not believe the “boulder/landscaped area” is a retaining wall as commonly defined. At least one staff member stated that the neighboring property owner likely installed the boulders and landscaping as an attractive, low-maintenance alternative to having to mow a steep area (similar to the above photo).

I know you are frustrated and concerned about this situation. As previously stated in earlier emails, if you feel City Staff has erred in its findings, you have the right to appeal Staff’s decisions to the City Council. The City Council can then make the City’s final determination.

In talking with the City Staff who have reviewed this matter, they have stated that they have encouraged you and your neighbor to cooperate to address your concerns. However, they have noted that there is no zoning, building code, or engineering violation to enforce. Again, if you feel Staff erred in its determination, you can appeal to the City Council.

Please let me know what you would like to do. If you want to appeal to the City Council, City Staff can help you with the next steps.

- May 14th Sharon replied;

Hi, It is interesting then that Steven Breckenridge always referred to it as a retaining wall.

The reason my neighbor constructed a retaining wall there was to hold in place the newly excavated unbalanced pile (I gave you the dimensions) of soil. They did not follow Minnesota state law for building this said Retaining Wall and now this said retaining wall and soil has crossed over onto my property and will continue to do so.

I provided you with what I believe to be code violations.

All I want is what the law affords me, no more, no less. It is my responsibility to maintain the quality and value of my property. Why would my neighbor cooperate with me to fix this if the City states that there are no code violations? I have tried to work with my neighbor on this for years with no success.

Yes, I would like to appeal to the City Council.

Thank you.

- May 15 – Dave Wanberg replied –

Sharon,

I have copied Dusty Dienst, the Director of Fire and Code Services, on this email. I believe you are appealing the determination from City Staff that the area south of your neighbor's garage does not involve a retaining wall, and that there are no code violations, including property maintenance violations. Given your concerns relate to building code and property maintenance issues, in my conversation with the City Administrator, we decided your appeal request should go through Fire and Code Services, not Community and Economic Development.

Dusty, feel free to call me, and we can coordinate on how best to get back to Sharon on the appeal process.

- May 18 – Steve Breckenridge, Hunter Houdek and I stopped by to visit Sharon. She was not home but the neighbors were, and they allowed us to look at the site from their property. We all agreed that there were no violations present and that the slope from the garage to the property line is landscaped with flat limestone and does not constitute a retaining wall.
- May 27 – I stopped by, and Sharon was at home. She took me back and showed me the area of concern. She showed me where she believes that soil is washing onto her property and that is affecting the value of her property. I did not see any ruts suggesting erosion but without before and after photos I can't say there isn't any erosion. I

can honestly say that, if there is erosion, it isn't degrading the value of her property. I asked if I could take a picture and she allowed me. I told her that I agree with the other City staff that this is not a retaining wall and that there are no violations here. I told her the next step would be to appeal to the City Council. She stated that she want to do that.

- May 27 – Sharon emailed me:

Hi, I would like to appeal this to the City Council. I thought that this was the process I was in but then David Dienst, Faribault Fire Chief, stopped by unannounced and gave me an evaluation. I believe that there are code violations that harm the quality and value of my property. How do I proceed forward with my appeal to the City Council.

Thank you.

Oh, I meant Dustin instead of David 😊

- June 2 – Sharon emailed me;

Hi, You sent me an Appeal Form. I do not understand how this process works. I read that I need to get a written interpretation of my code interpretation complaint from the City administrator. I do not believe that I have received that. I have received no response related to the City Code violations that I have presented in terms of the specific codes I have presented. Please explain how this process works.

Thank you

Sharon Bauer

syb333@gmail.com

- I replied back to her and sent her the URL for her to fill out. She filled it out and sent it to me on June 3.







