



Front Yard Fence Variance Staff Report and Recommendation

Community Development Department, Planning Division

REPORT DATE: June 21, 2019

HEARING DATE: July 1, 2019

LAND USE REQUESTS:

- Approval of a front yard fence in a residential zone that exceeds a height of 42 inches.
- Approval of a fence that exceeds a height of 42 inches that is also located within a driveway clear vision area.

FILE NUMBER(S): 311-19-000011-PLNG

PROPERTY LOCATION: 3402 Ivy Crest Court

LEGAL DESCRIPTION: Washington County Tax Lot 1N426CA05300

OWNER/APPLICANT(S) Applicant: Maris Graube, 3402 Ivy Crest Court
Forest Grove, Oregon 97116
Property Owner: Same

**COMPREHENSIVE
PLAN MAP AND
ZONING MAP
DESIGNATIONS:** Low Density Residential (LDR-C)
Single-Family Residential (R-10)

**APPLICABLE
STANDARDS
AND CRITERIA:** City of Forest Grove Development Code:
§17.2.700 et. seq. Variance
§17.3.100 et. seq. Residential Zones
§17.7.040 Fence Standards for Residential Zones
§17.8.150 Clear Vision Area

REVIEWING STAFF: James Reitz (AICP), Senior Planner

RECOMMENDATION: Staff recommends denial of both variance requests

I. LAND USE HISTORY

The applicant recently completed construction of a new home at the site. Because the site is sloped, a wall was constructed near the property line separating 3402 from 3403 Ivy Crest Court. The segment of the wall in question was not required by the building code; it is only a landscape feature. A fence was constructed atop the wall. A segment of the wall and fence are located within the front yard area. In addition, the applicant's garage and driveway are also located near the common property line.

The Development Code (DC) regulates the height of fences in residential zones and clear vision areas near driveways. In residential zones, the front yard fence height is limited to 42 inches. In residential zones, the front yard extends at least 14 feet into a

property from the front property line, pursuant to DC §17.3.130 Table 3-7 *Setback Requirements*.

Clear vision area requirements apply in all zones except the Town Center, to “ensure proper sight distances ... to reduce the hazard from vehicular turning movements.”

The combined fence and wall height in the front yard area exceeds 42 inches, and it is located within the clear vision area, thus obscuring visibility.

In response to a complaint, the applicant was notified by the City that the fence would need to be modified in order to be compliant. The applicant instead is requesting City approval to retain the fence as constructed.

Process: DC §17.2.710 *Procedure* authorizes the Planning Commission to act on a variance request after holding a public hearing pursuant to Type III review procedures.

Public notice for this application was mailed to property owners and residents within 300 feet of the site on June 12, 2019, 2019, as required by DC §17.1.160. Notice of this request was also provided to the Plans Review Board, and published in the *News Times*. As of the writing of this report, no comments have been received from the public.

II. PROJECT DESCRIPTION AND ANALYSIS

- A. Description of Proposal: The applicant is proposing to retain the fence as constructed (see photos in Exhibit A).

The applicant has submitted the following material in support of this request (included in its entirety in Exhibit A). Additional details are provided in the Approval Criteria and Findings section below.

The fence is on top of a retaining wall that divides my lot from the higher lot of my neighbor. The fence on the retaining wall near the sidewalk was built to be at least 36" high. The reason for this is to prevent people falling from the higher ground of my neighbor's property onto mine. The 36" is the required height for the restraint when fall prevention is needed. Unfortunately, this safety consideration creates a conflict with two City of Forest Grove ordinances.

- B. Existing Comprehensive Plan Designation and Zoning of Site and Area

LOCATION	COMPREHENSIVE PLAN DESIGNATION	ZONE DISTRICT	LAND USE
Site	LDR-C	R-10 SFR	Single-Family Home
North	LDR-C	R-10 SFR	Single-Family Home
South	LDR-C	R-7 SFR	Single-Family Home
East	LDR-B	R-7 SFR	Single-Family Home
West	LDR-C	R-10 SFR	Single-Family Home

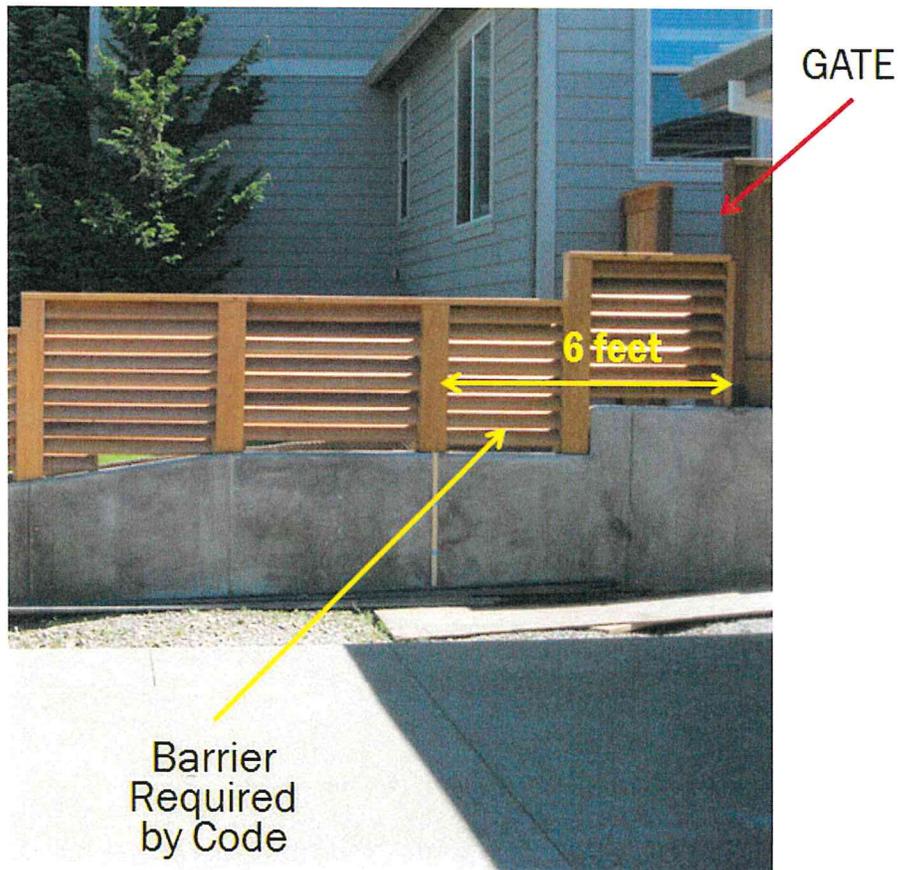
- C. Site Examination: The site at 3402 Ivy Crest Court is located at a lower elevation relative to the neighboring property at 3403 Ivy Crest Court. Due to this grade differential, a wall was constructed along the common property line. This wall was not built to satisfy a building code requirement. Pursuant to the Oregon Residential Specialty Code (ORSC) §R105.2 (3) (work exempt from permits), a permit is only

required for retaining walls that support a regulated building, or to retain material which, if not restrained, could impact a regulated building. Neither condition exists in this case. Guards (like a fence) atop a wall are only required when site conditions require fall protection to be addressed.

The gate in the fence at 3403 Ivy Crest Court serves as an emergency escape route. ORSC §R310.1 requires that all sleeping rooms have an emergency escape and rescue opening. These openings are to open directly to a public way or to a yard or court that opens directly to a public way. This path would be considered a walking surface thus providing access from the rear yard to the public way. The path through the gate at 3403 Ivy Crest Court could be used as a walking path to the street.

The walking surface is part of the egress path from the rear yard of the house to the public way, and the edge of the gate is a demarcation point of the identified path of travel. ORSC §R312.1.1 requires guards at the open sides of walking surfaces when a vertical distance of more than 30" is measured to the grade below occurs within 36" horizontally of the walking surface edge.

The walking surface used for egress extends from the gate towards the public way. Once the edge of the path is more than 36" horizontally from a vertical grade difference of greater than 30", a guard is no longer required. In this instance, the fall protection would be required to extend 72" (or 6 feet) from the plane of the gate.



Thus, the fence panels to the left in the photo above are not required for fall protection, because at that point, the grade differential between the two properties is less than 30 inches (the wall extends higher than the grade at 3403 Ivy Crest Court).

III. APPROVAL CRITERIA AND FINDINGS

Development Code §17.2.720 *Review Criteria* requires that the Commission find that the proposal complies with the following criteria:

- (A) The need for the variance does not result from prior actions of the applicant or owner, or from personal circumstances of or caused by the applicant or owner, such as financial circumstances;

Applicant's Response: No response to this criterion was submitted.

Finding: The need for the variance does result from prior actions of the applicant.

Finding: The need for the variance is as a result of personal circumstances. The applicant's site does not exhibit any unusual physical or dimensional features. As such, it is not unique.

Conclusion: This criterion has not been met.

- (B) To meet the need, the request is the minimum necessary variation from the Code requirement; and

Applicant's Response: *The purpose (of the Clear Vision Ordinance) is "to establish standards that will ensure proper sight distance at intersection to reduce the hazard from vehicular movements." In this situation, my driveway is at the end of a cul-de-sac. The traffic in this area is extremely low. The vision for the backing out of my driveway is in no way impeded by the fence."*

Finding: Backing visibility is impeded by the fence. While the area directly behind a backing vehicle would be visible to the driver, the area up hill and to the left of the driver would not be visible due to the fence. Both vehicles in the street and pedestrians on the sidewalk would not be visible, as demonstrated in this photo, taken from within a vehicle parked on the applicant's driveway:



Conclusion: This criterion has not been met.

- (C) The circumstances that apply to the site do not typically apply to other properties in the same vicinity or zoning district and are unique and unusual.

Applicant's Response: *From observation in my neighborhood it is obvious that there are numerous violations of this ordinance in places where the driveway intersects at right angles with the street and where the traffic is much greater.*

Finding: The applicant's site does not exhibit any unique or unusual physical or dimensional characteristics.

Finding: Impediments to visibility, particularly landscape plantings, can and do occur over time. The City has a long-standing policy of addressing such issues on a complaint basis. Should complaints be filed on any of the properties noted by the applicant, follow-up action on each complaint would be initiated, just as it was in this instance. Other examples of similar code violations do not warrant the granting of a variance to the code.

Conclusion: The circumstances that apply to the site do apply to other properties in the same vicinity and zoning district. The applicant's site does not exhibit any characteristics that are unique and unusual. Thus, this criterion has not been met.

IV. ALTERNATIVES

The Planning Commission may approve as submitted, continue deliberations to a date certain, or deny this request.

V. RECOMMENDATION

Based on the information provided in the application and the findings above, staff recommends denial of both variance requests.

VI. LIST OF EXHIBITS

The following exhibits were received, marked, and entered into the record as evidence for this application at the time this staff report was written. Exhibits received after the date of this report will be marked beginning with the next consecutive letter and will be entered into the record at the time the public hearing is opened, prior to oral testimony.

Exhibit A Variance narrative and application materials, prepared and submitted by the applicant

Exhibit B PowerPoint Slides

EXHIBIT A

Variance Application Materials
Submitted by the Applicant

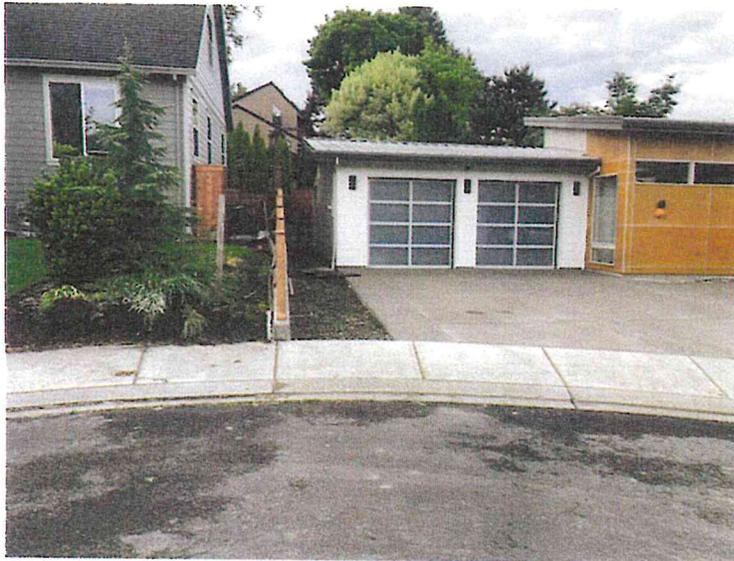
RECEIVED

MAY 17 2019

City of Forest Grove

Fence Height Variance Application

This application for a variance from the Planning Commission is a response to the letter of April 24, 2019 from the Planning department requiring me to remove my fence. The pictures below show the fence currently at my house at 3402 Ivy Crest Ct.



Fence viewed from the street



Fence viewed from my driveway

17 May 2019

The fence is on top of a retaining wall that divides my lot from the higher lot of my neighbor. The fence on the retaining wall near the sidewalk was built to be at least 36" high. The reason for this is to prevent people falling from the higher ground of my neighbor's property onto mine. The 36" is the required height for the restraint when fall prevention is needed. Unfortunately, this safety consideration creates a conflict with two City of Forest Grove ordinances:

10.8.155 Clear Vision Ordinance

The purpose of this ordinance is "to establish standards that will ensure proper sight distance at intersections to reduce the hazard from vehicular turning movements". In this situation, my driveway is at the end of a cul-de-sac. The traffic in this area is extremely low. The vision for backing out of my driveway is in no way impeded by the fence

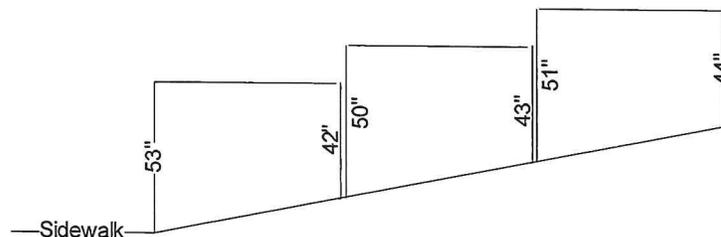
From observation in my neighborhood it is obvious that there are numerous violations of this ordinance in places where the driveway intersects at right angles with the street and where the traffic is much greater. Shown below are some examples:



10.7.040 Standards for Residential Zones

This ordinance deals with fence heights. Section E of the ordinance deals with the clear vision area that is discussed above. Section D addresses separation from utility pedestals. This is not applicable here. Section A requires that in the front yard setback area the fence height is limited to 42".

The City's "removal" letter states that my fence height is measured from the sidewalk. This is puzzling. By this measurement criteria, the 5' fence on the 6' high portion of the retaining wall next to my garage would be 11' feet high and clearly higher than the 6' maximum height limit. The fence height measurement should be taken from highest ground next to it not the sidewalk. Show below is the fence height measured from the ground:



Regardless, the front yard fence height requirements in section A is an aesthetic consideration. Given that the fence is at the end of a cul-de-sac, as seen from the street, the fence is hardly visible. I believe my fence does not represent a visual eyesore.

There are a number of other fences in my neighborhood that do not meet the front yard fence criteria. Examples are shown below:



In summary, I ask for a variance to the fence height requirements to be sure my neighbor's children do not fall over my retaining wall. Given the many instances where the two ordinances are violated, this variance would not set a new precedent.

17 May 2019

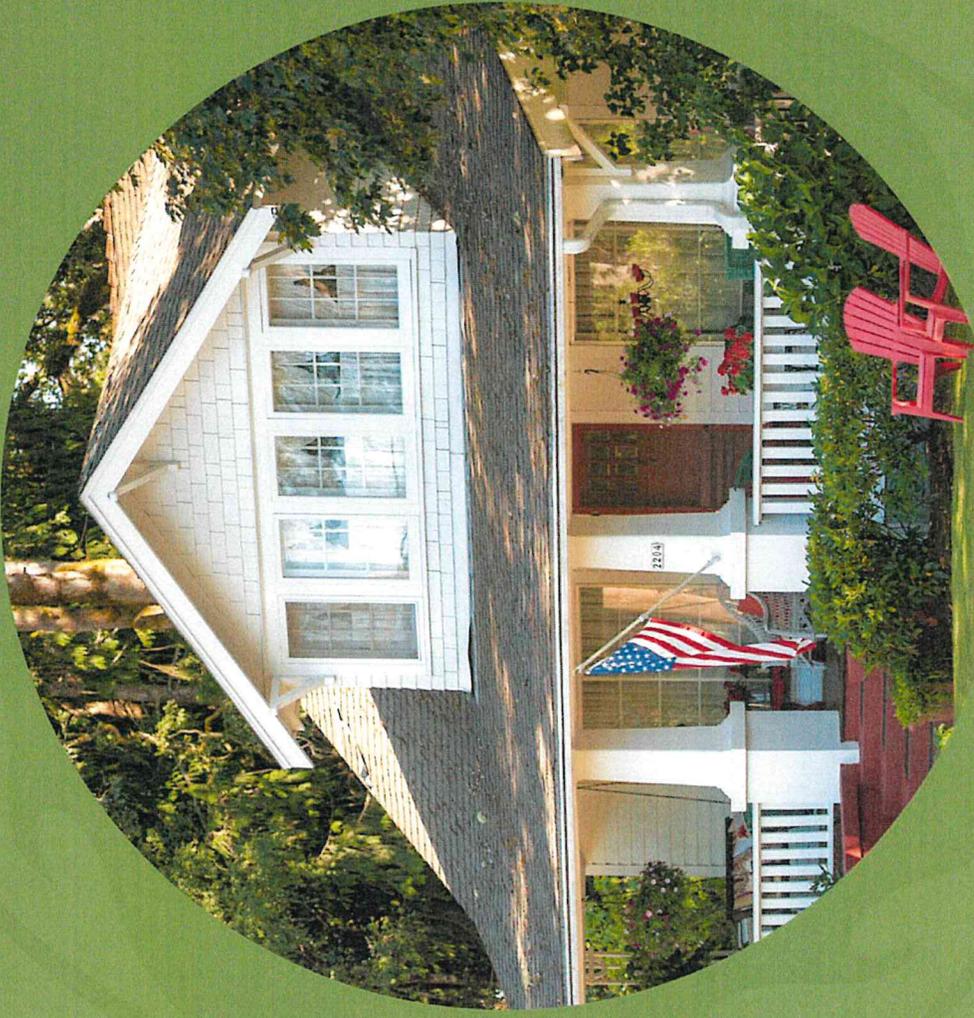
EXHIBIT B

PowerPoint Slides



FENCE & VISION
CLEARANCE
VARIANCE @ 3402
IVY CREST COURT

James Reitz, AICP
Senior Planner



07/01/19



GATE

6 feet

Barrier
Required
by Code

Driver's View



Conclusion and Recommendation

CONCLUSION – The fence obscures visibility of the street and sidewalk, and its height is not required by the building code.

RECOMMENDATION -

- Staff recommends that the variances be denied.
- As a result of the denial, the applicant would have 14 days in which to:
 - Bring the fence into compliance; or
 - File for an appeal to the City Council