



# CITY OF MEDINA

501 EVERGREEN POINT ROAD | PO BOX 144 | MEDINA WA 98039-0144  
TELEPHONE 425-233-6400 | www.medina-wa.gov

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## STAFF ANALYSIS AND RECOMMENDATION WANG NON-ADMINISTRATIVE VARIANCE APPLICATION

Prepared by: Stephanie Keyser, AICP, Planning Manager  
Date: December 10, 2021

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**Summary of Recommendation:** No recommendation.

### PART 1 – GENERAL INFORMATION

CASE NO: P-21-087

LOCATION: 607 86<sup>th</sup> Avenue NE

TAX PARCEL NO: 542470-0150

PROPERTY OWNER: Jennifer Wang (owner)

APPLICANT: Chad Kulper of John Buchan Homes

LEGAL DESCRIPTION:

MEDINA HEIGHTS ADD & POR VAC ST

PROPOSAL: Non-administrative variance to install 8-foot fence panels along the north property line to mitigate HVAC noise

ZONING: Single Family Residence, R-16

COMPREHENSIVE PLAN DESIGNATION: Single Family Residential

CRITICAL AREAS: N/A

ENVIRONMENTAL (SEPA) REVIEW: The proposal is exempt from environmental (SEPA) review pursuant to WAC 197-11-800(6)(e).

EXHIBITS:

1. Staff Report
2. Declaration of Agency, received October 28, 2021
3. Statutory Warranty Deed, received October 28, 2021
4. Legal Notices
  - a. Notice of Complete Application, dated October 28, 2021
  - b. Notice of Application, dated October 29, 2021
  - c. Notice of Hearing, dated November 16, 2021
5. Non-Administrative Variance application, received October 28, 2021
6. Site Plan, received October 28, 2021
7. Variance Drawings, received October 28, 2021

8. Memo from Steve Wilcox, Director of Development Services to Emily Miner, Assistant City Attorney, regarding Buchan Homes LLC Noise Compliance Matter, dated July 15, 2021

**PART 2 – SITE CHARACTERISTICS**

EXISTING CONDITIONS: The subject property has been redeveloped with a single-family residence and related site improvements.

SURROUNDING ZONING:

Direction	Zoning	Present Use
North	R-16 District	Residential
South	R-16 District	Residential
East	R-16 District	Residential
West	R-16 District	Residential

ACCESS: Ingress and egress is from 86<sup>th</sup> Avenue NE

**PART 3 – COMPREHENSIVE PLAN**

It is the basic policy of the City to retain and promote the high-quality residential setting that has become the hallmark of the Medina community.

The following comprehensive plan goals and policies apply to the proposed project:

LU-G1: To maintain Medina’s high-quality residential setting and character.

H-G1: The City shall preserve and foster housing development consistent with Medina’s high-quality residential setting.

**PART 4 – AGENCY REVIEW/PUBLIC COMMENT**

NOTICES: (Exhibit 4)

Application received:	October 28, 2021
Determination of Completeness:	October 28, 2021
Notice of Application:	October 29, 2021
Notice of Hearing:	November 16, 2021

The application was received on October 28, 2021, and was determined complete on October 28, 2021, pursuant to MMC 16.80.100. A Notice of Application was issued on October 29, 2021, by mailing to property owners pursuant to MMC 16.80.140(B)(2); posting on-site; and posting at other public notices locations (City Hall, Medina Post Office, Park Board, and City of Medina website). A 14-day comment period was used pursuant to MMC 16.80.110(B)(7). A Notice of Hearing was issued on November 16, 2021, consistent with MMC 16.80.120. The notice was mailed to property owners pursuant to MMC 16.80.140(B)(2), published in *The Seattle Times* newspaper, and posted on the site and other public notices locations (City Hall, Medina Post Office, Medina Park Posting Board, and City of Medina website).

GENERAL PUBLIC COMMENTS: No public comments were received.

AGENCY COMMENTS: No agency comments were received.

## **PART 5 – STAFF ANALYSIS**

### **GENERAL:**

1. Jennifer Wang and Ashley Anders are the owners and taxpayers of record of the property identified as 607 86<sup>th</sup> Avenue NE, tax parcel no. 542470-0150, according to King County Department of Assessments and the Statutory Warranty Deed (Exhibit 3). The property owners have designated Chad Kulper of John Buchan Homes as the agent for the project (Exhibit 2).
2. The property is zoned R-16 and is approximately 17,036 square feet (.39 acres) in size. The lot is irregularly shaped with maximum overall dimensions of approximately 174 feet in length and 123 feet at its widest part. The lot is developed with a single-family dwelling and related site improvements, including driveway and landscaping.
3. The applicant is requesting relief to install 8-foot fence panels along the north property line to mitigate HVAC noise.

### **STATE ENVIRONMENTAL POLICY ACT (SEPA):**

4. Pursuant to WAC 197-11-800(6)(e), the processing of a variance based on special circumstances applicable to the subject property, such as size, shape, topography, location or surroundings and not resulting in any change in land use or density, are exempt from environmental (SEPA) review. The variance request qualifies for this exemption.

### **BACKGROUND:**

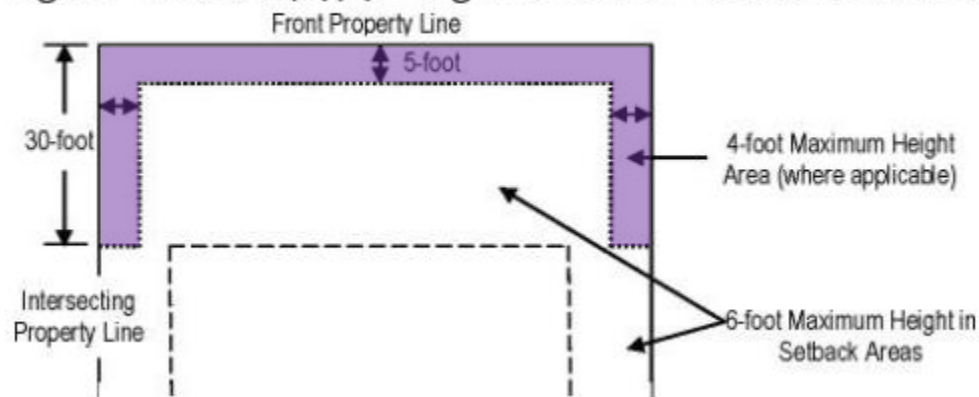
5. On October 15, 2019, a building permit was issued for the redevelopment of 607 86<sup>th</sup> Avenue NE by demolishing the existing structure and constructing a new single-family residence. Before a building permit can be closed and the certificate of occupancy issued, all required inspections must be passed.
6. Mechanical permits are a separate, deferred submittal. The reason for this is to prevent the mechanical permit from having to be renewed along with the building permit if the work extends beyond 18 months.
7. Mechanical permit M-20-009 was submitted on January 15, 2020, and issued on May 26, 2020, for this address (Exhibit 8).
8. Maximum permissible sound levels are established in MMC 8.06.110. For residential properties, this maximum level is 55 dB(A) during the day (Table 8.06.110) and 45 dB(A) during 10:00 PM and 7:00 AM on weekdays, and between 10:00 PM and 9:00 AM on the weekends (Table 8.06.120). A sound test is required for new and replaced mechanical equipment to ensure that the sound levels do not exceed what is permissible by code.

9. On February 19, 2021, a sound test was conducted by Medina's acoustic consultant, Jaimie Penzell of DRC Acoustics & Audiovisual Design. The sound level was tested while the two condensing units were operating and the measurement taken from the nearest, north property was measured at 53 dBA. However, the tested dBA is measured against the allowed nighttime maximum of 45 dBA. The sound test was not passed (Exhibit 8).
10. Erik Miller-Klein, PE, INCE Bd. Cert., of Tenor/Elevating Acoustical Design, was hired by the applicant as a third-party acoustic specialist. Mr. Miller-Klein suggested that the Trane "Quiet Mode" be used by the homeowner to meet the sound code, however this approach was rejected (Exhibit 8).
11. Whenever a mechanical unit fails a sound test, mitigation to reduce the unit's noise level is required. Mr. Miller-Klein has recommended the installation of 8-foot fence panels in front of the units, along the property line, to provide sound mitigation (Exhibit 7).

#### FENCES:

12. MMC 16.30.010 outlines the development standards for fences with the maximum height varying depending on where the fence is located on site. Within a 5-foot buffer that extends 30-feet back from the front property line, the maximum height is limited to 4-feet; beyond that but within the setbacks, the maximum height is limited to 6-feet; and outside of the setbacks a fence can be as tall as the maximum height permitted in that zoning district, as shown in Figure 1 below.

**Figure 16.30.010(B)(1): Height Limits for Fences and Walls**



**Figure 1. 16.30.010(B)(1) demonstrates how tall fences can be in relation to the front property lines by right**

13. The location of the fence panels that will be used for noise mitigation are located along the north property line, approximately 45'-6 1/2" from the front property line as shown in Figure 2. A fence in this location is limited to a maximum height of 6-feet.



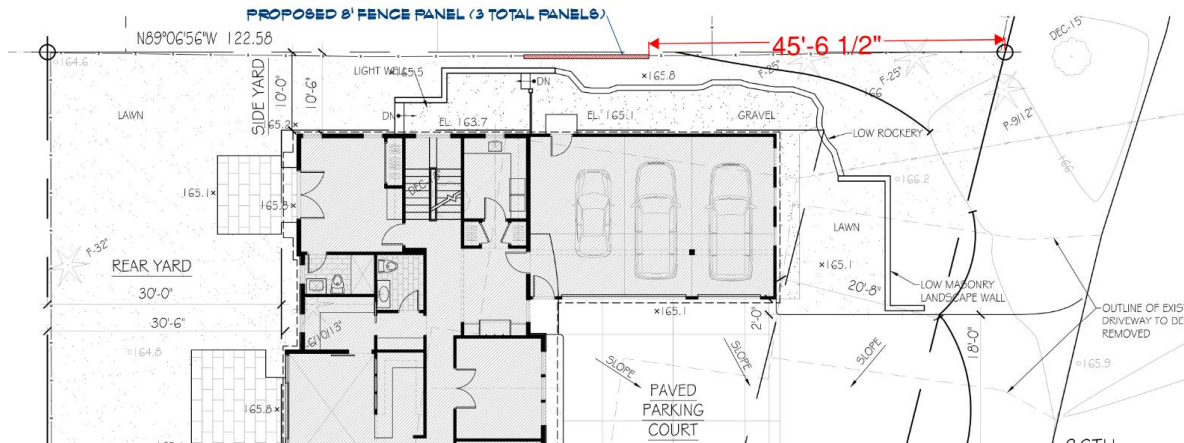


Figure 2. Distance of fence panels from the property line (Exhibit 6)

14. Medina has an administrative variance process where staff may approve small departures in numeric development standards, including increasing the height of fences up to *less than 8-feet* (MMC 16.71.020(D)(1)). However, on the recommendation of the third-party specialist, the panels need to be 8-feet, which makes this request ineligible for the administrative variance. A non-administrative variance determined by a Hearing Examiner is the only option for this project.

**NON-ADMINISTRATIVE VARIANCE:**

15. Pursuant to MMC 16.72.030(C) and MMC 16.80.060(C), a non-administrative variance application is processed as a Type 3 decision. The Hearing Examiner is authorized to hear and decide non-administrative variance application requests pursuant to MMC 2.78.070 and MMC 16.803.060(C).
16. The applicant has requested a variance from dimensional development standards for fence height in the R-16 zoning district.
17. MMC 16.72.030(E) sets forth certain limitations on the granting of a non-administrative variance. This includes:

- a. *Relief from dimensional standards where the application of the dimensional standard would result in an unusual or unreasonable hardship due to physical characteristics of the site.*

The applicant is requesting relief from dimensional development standards for a fence height to exceed the maximum allowed height by 2-feet to mitigate HVAC noise.

- b. *Evidence of other variances granted under similar circumstances shall not be considered in the granting of a non-administrative variance.*

The applicant has not cited any other variance applications to provide justification for granting this application.

- c. *No variance shall be granted ... to alter any definition or interpretation of this title; to alter a provision establishing a use within a zoning district; or to alter any procedural provisions.*

The applicant is seeking relief from dimensional development standards for fence height in the R-16 zoning district. The application does not involve altering any definitions or interpretations, or establishing a use not permitted within the R-16 zone, nor does it alter any procedural requirements of the municipal code.

18. The applicant provided information addressing the approval criteria set forth in MMC 16.72.030(F):

- a. *The variance does not constitute granting of special privilege inconsistent with the limitations upon uses of other properties in the Property's vicinity and zone in which the subject property is located.*

APPLICANT RESPONSE: No special privilege will be given by allowing this variance. This variance is to meet the City's ordinance for noise levels at night time. HVAC equipment that is installed on property are the quietest units available on the market but don't meet Medina's expectations.

STAFF ANALYSIS: The property is zoned R-16 Single-Family Residence, and a detached single-family dwelling and related appurtenances, including fences, are permitted pursuant to MMC 16.21.030. The granting of the variance would not alter this use. The proposal is, therefore, consistent with the limitations on uses of other properties in the vicinity and in the R-16 zone.

- b. *The variance is necessary because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the property is located.*

APPLICANT RESPONSE: Variance needed to allow heat pumps to be off quite mode during extreme temperature events. Heat pumps are 10 feet away from property line and neighbors living space is roughly 40 feet away from property line.

STAFF ANALYSIS: In addition to being located on a corner, this lot is an irregular rectangle that is wider at the north end of the property and tapers in toward the south end with the house following that same north/south orientation (Exhibit 6). Placement of the mechanical equipment was limited, and their location does comply with the requirement of being outside of the setbacks (MMC 16.22.040). That the sound emanating from the units when not in the "quiet mode" from their location does not meet Medina's sound testing has been cited as a special circumstance. Whether the variance is necessary because of special circumstances relating to the size, shape, topography, location, or surroundings of this property, to provide it with use rights and privileges permitted to other properties in the vicinity and in this zone are for the Hearing Examiner to determine.

- c. *The variance is necessary to relieve a material hardship that cannot be relieved by any other means such that the material hardship must be related to the land itself and not to problems personal to the applicant.*

APPLICANT RESPONSE: The variance is to eliminate the possible hardship of not being able to use HVAC equipment installed as they had been designed. The equipment location meets all City codes and rules but is just a couple of decibels away from passing night time levels with units at 100%.

STAFF ANALYSIS: A house cannot receive its certificate of occupancy unless all inspections are passed, including the sound test for mechanical equipment. The applicant has identified that they are not able to pass the sound test without these panels and on recommendation from a third-party acoustic specialist, the panels need to be 8-feet tall. Whether these constitute a material hardship related to the land itself is for the Hearing Examiner to decide.

- d. *The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.*

APPLICANT RESPONSE: The variance will not be detrimental to the adjacent properties or general public. It is just turning three sections of 6 feet fence to three sections of 8 feet sections of fence. Style per drawing and will keep with current look.

STAFF ANALYSIS: The request is for 2 additional feet to install 8-foot fence panels along the north property line. The fence panels will not create new view blockages for neighbors (Exhibits 6 and 7). The proposal will not cause a change in the use of the property, nor will there be any impact to the structure's maximum height. Once construction is completed, this proposal will not create new impacts from noise, light or traffic.

- e. *The variance is the minimum necessary to provide reasonable relief.*

APPLICANT RESPONSE: Based on the recommendation from a 3rd party acoustic specialist this is the least obnoxious and best compromise to the issue at hand.

*Additional information added by the applicant*

I'd like to give a brief explanation to why we are asking for the 8' sound barrier fence variance in the first place. We constructed a house that needed 3 heat pumps and the approved permitted plan only showed 2. On the permitted plan it showed the Heat pumps in the side yard setback and noted sound barrier concrete wall to be installed. This plan was done by a WA State Registered Architect which the city requires because according to the city staff they know how the paper work and city codes work better than home designers.

We (John Buchan Homes) who have built a number of house in community knew that the HVAC equipment could not be in that location per city code so we moved them to be out of the side yard setback. The only place to move them beings the design was already done and we didn't have many options we made an alcove in one of the garage bays. We gave up about 3' of garage space at the single stall knowing that what was on the permitted plan would not work.

Once the 3 units had been installed in a manner to not create more lost space for our owner and meet city requirements we didn't pass the night time noise levels. At the time

of city hired noise inspector no solution was given or clear explanation of how this is to measured.

I then hired a 3rd party acoustic specialist to come out and assist w/ the issue. During this time frame we were informed by our HVAC installer that the units we installed have a quite mode that makes the heat pumps run at a lower speed in order to meet decibel level requirement. This quite mode was designed specifically for WA states noise ordinance and these specific heat pumps have been approved by other jurisdictions that enforce this ordinance. This is the only unit the city of Seattle allows without needing to do an acoustic level test. Once the units had been placed in quite mode it passed the noise ordinance without an issue. We then submitted our 3rd party letter stating how it was measured and that we met the WA State guidelines for noise ordinance. The city of Medina staff did not feel the same the way.

The consensus was that if the homeowner can control the quite mode then it would not be an acceptable way to meet the ordinance.

I have then since been going around and around trying to understand this decision since Feb. Paying for a temporary permit every month at \$400 a pop to try and understand why this mode isn't acceptable and what my options are. At the end of the day this function available to meet WA state noise ordinance isn't sufficient for the city of Medina so we are asking for the ability to install 3 sections of 8' sound barrier fence on property line.

The home owners would have signed a declaration stating that they would keep the heat pumps in quite mode most all the time except during record breaking heat events. They just wanted to have that option as the weather is changing around here. I hope that we can just install this fence and move on as well as giving my client the peace of mind of having an official certificate of occupancy.

STAFF ANALYSIS: The applicant is requesting to install 8-foot fence panels along the north property line to mitigate HVAC noise. This is the minimum necessary to provide reasonable relief to pass the sound test and is based on the recommendation from a third-party acoustic specialist. Whether this request for a variance is the minimum necessary to provide reasonable relief is for the hearing examiner to determine.

## **PART 6 – CONCLUSION**

1. Pursuant to MMC 2.78.070 and MMC 16.80.060(C), the Hearing Examiner has the authority to hold a public hearing and decide non-administrative variance applications. The applicant has requested the non-administrative variance to exceed the maximum height for a fence by 2-feet to install 8-foot fence panels along the north property line to mitigate HVAC noise.
2. Proper notice for this public hearing has been provided. Notices was posted on the property and mailed to surrounding property owners within 300 feet or 3 parcels depth, which is greater but not to exceed 1,000 feet, published in the Seattle Times newspaper on November 16, 2021, more than 15 days prior to the date of the hearing (Exhibit 4c).
3. Pursuant to MMC 16.72.030(F), a non-administrative variance application may only be approved if the following criteria are met:

- a. *The variance does not constitute a granting of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the subject property is located.*

CONCLUSION: See Analysis 18a. The Hearing Examiner will need to conclude whether this criterion is satisfied.

- b. *The variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located.*

CONCLUSION: See Analysis 18b. The Hearing Examiner will need to conclude whether this criterion is satisfied.

- c. *The variance is necessary to relieve a material hardship that cannot be relieved by any other means such that the material hardship must relate to the land itself and not to problems personal to the applicant.*

CONCLUSION: See Analysis 18c. The Hearing Examiner will need to conclude whether this criterion is satisfied.

- d. *The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.*

CONCLUSION: See Analysis 18d. The Hearing Examiner will need to conclude whether this criterion is satisfied.

- e. *The variance is the minimum necessary to provide reasonable relief.*

CONCLUSION: See Analysis 18e. The Hearing Examiner will need to conclude whether this criterion is satisfied.

## **PART 7 – STAFF RECOMMENDATION**

As a matter of policy, staff does not make a recommendation on non-administrative variance applications. If the request for a non-administrative variance is granted, however, staff recommends the following conditions be included:

1. Relief from the maximum fence height is limited to 8-feet from existing grade.
2. All other zoning and development regulations applicable to the project shall be followed.
3. Pertinent construction permits shall be obtained prior to starting construction activity.
4. An approved non-administrative variance shall expire if within one year of the date the decision of the non-administrative variance becomes final, a complete building permit application is not submitted. A six-month extension may be granted pursuant to MMC 16.72.030(H).

  
\_\_\_\_\_  
Stephanie Keyser, AICP  
Planning Manager

**12/10/2021**  
\_\_\_\_\_  
Date



DEVELOPMENT SERVICES

OWNER'S DECLARATION OF AGENCY A-05

501 EVERGREEN POINT ROAD MEDINA, WA 98039
PHONE: 425-233-6414/6400

Project Address 607 86TH AVE NE Parcel No. 5424700150

I/We JENNIFER WANG do hereby declare and affirm that I/we are:
[ ] the owners or contract purchasers of the above property
[ ] an officer or representative of ... a Washington corporation or trust which is the owner of the above property.

AGENCY

I/We are applying for one or more permits for development of the above property. I/We understand that the proposed work may also include additional permits for land use approvals.

For the purposes of applying for the applicable permits and managing the owner's responsibility for compliance with the approved plans and any land use permits associated with this project, I/we

[ ] will act as my own agent
[X] do hereby appoint CHAD KULPER to act as my agent in dealing with the City of Medina in all acts and decisions related to processing the application for permit, review and approval of the application, authorization of revisions, and coordination of required inspections and project approvals.

AGREEMENT TO CONDITIONS

I/We agree as a condition of this permit:

- To comply with all applicable codes, ordinances, laws and conditions of approval in effect at time of permit issue.
To ensure that all work shall be done in accord with the approved plans and specifications, which shall not be modified without the prior approval of the Building Official.
To inform all contractors, subcontractors and workers of these conditions and any project mitigation requirements agreed to, and I/we will enforce compliance thereto.
To maintain the approved plans, all correction notices, all inspection reports, and all permit documents on the project site and readily available to the inspectors.
To ensure that requests are made to the City for the required inspections.
To cause all certifications required by the City to be completed and to reconcile the permit fees upon completion of the work.
I/We acknowledge that consultant fees may be incurred as a result of the review and inspection of the proposed work.

SALES TAX

All contractors and vendors must report sales taxes for transactions in the City of Medina on quarterly combined excise tax returns. The 4-digit location code for the City of Medina is 1718.

OWNER OR OFFICER/REPRESENTATIVE NAME AND SIGNATURES

I HAVE READ UNDERSTOOD AND AGREE TO THE ABOVE REQUIREMENTS

Signature Jennifer Wang 10/20/2021 Date Ashley Anderson 10/20/2021

Name Jennifer Wang and Ashley Anderson

**Instrument Number: 20210226002286 Document:WD Rec: \$106.50 Page-1 of 4**  
**Excise Docs: 3101934 Selling Price: \$7,400,000.00 Tax Amount: \$228,555.00 Record Date:2/26/2021 4:26 PM**  
**Electronically Recorded King County, WA**

After recording return to:  
**Jennifer O Wang**  
**Ashley Anderson**  
**607 86<sup>th</sup> Ave NE**  
**Medina, WA 98039**

**CW Title**  
**CK 40268575**

Reference: 40268575-803-JH4

**STATUTORY WARRANTY DEED**

THE GRANTOR(S) John Buchan Homes, LLC, a Washington limited liability company,

for and in consideration of Ten (\$10.00) Dollars and other good and valuable consideration

in hand paid, conveys and warrants to Jennifer O Wang and Ashley Anderson, a married couple

the following described real estate, situated in the County of King, State of Washington:

**SEE EXHIBIT A ATTACHED HERETO AND MADE A PART HEREOF.**

Subject to: Those items specifically set forth on Exhibit "B" attached hereto.  
Abbreviated Legal: **LOT 30 OF MEDINA HEIGHTS**

Tax Parcel Number(s): **5424700150**



Instrument Number: 20210226002286 Document:WD Rec: \$106.50 Page-2 of 4  
Record Date:2/26/2021 4:26 PM King County, WA

Reference: Statutory Warranty Deed 40268575-803-JH4

Dated: February 23, 2021

SELLER:

John Buchan Homes, LLC



Heather Dosch, Manager

State of Washington

SS:

County of KING

I certify that I know or have satisfactory evidence that Heather Dosch is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) is authorized to execute the instrument and acknowledged it as the Manager of John Buchan Homes LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: February 23, 2021

Given under my hand and official seal the day and year last above written.



Notary Public in and for the State of Washington

Residing at Redmond

My Appointment expires: 01.16.2023

**Instrument Number: 20210226002286 Document:WD Rec: \$106.50 Page-3 of 4**  
**Record Date:2/26/2021 4:26 PM King County, WA**

**Exhibit 3**

**Reference: Statutory Warranty Deed 40268575-803-JH4**

**EXHIBIT A**  
**Legal Description**

LOT 30, MEDINA HEIGHTS, ACCORDING TO PLAT RECORDED IN VOLUME 21 OF PLATS, PAGE 54, IN KING COUNTY, WASHINGTON;

TOGETHER WITH THE NORTH HALF OF VACATED NORTHEAST 6<sup>TH</sup> STREET (FORMERLY OLYMPIA ROAD) ADJOINING;

LESS THE SOUTH 10 FEET OF THE VACATED NORTH HALF OF NORTHEAST 6<sup>TH</sup> STREET ADJOINING.

SITUATE IN THE CITY OF MEDINA, COUNTY OF KING, STATE OF WASHINGTON.

Unofficial Copy

Instrument Number: 20210226002286 Document:WD Rec: \$106.50 Page-4 of 4  
Record Date:2/26/2021 4:26 PM King County, WA

Exhibit 3

**Reference: Statutory Warranty Deed 40268575-803-JH4**

## Exhibit "B"

EASEMENT AND THE TERMS AND CONDITIONS THEREOF: GRANTEE: PUGET SOUND POWER & LIGHT COMPANY PURPOSE: ELECTRIC TRANSMISSION AND DISTRIBUTION LINE AREA AFFECTED: A PORTION OF SAID PREMISES RECORDED: SEPTEMBER 29, 1952 RECORDING NO.: 4276204

ALL COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS OR OTHER SERVITUDES, IF ANY, DISCLOSED BY THE RECORDED PLAT OF MEDINA HEIGHTS, RECORDED UNDER RECORDING NO. 916387.

COVENANTS, CONDITIONS AND RESTRICTIONS IMPOSED BY INSTRUMENT RECORDED ON OCTOBER 5, 1914, UNDER RECORDING NO. 956672. NOTE: RESTRICTIONS INDICATING ANY PREFERENCE, LIMITATION OR DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, HANDICAP, FAMILIAL STATUS OR NATIONAL ORIGIN HAVE BEEN DELETED.

MATTERS SET FORTH BY SURVEY: RECORDED: JULY 13, 1999 RECORDING NO.: 990713900002

PRIVATE EASEMENTS RIGHTS, IF ANY, OF ADJACENT OWNERS OVER VACATED STREETS AND ALLEYS; UNRECORDED, COMMON LAW, PRIVATE EASEMENT RIGHTS MAY PERSIST DESPITE CESSATION OF PUBLIC EASEMENT BY: 1) NON-USER STATUTE, RCW 36.87.090; OR 2) BY VACATION OR RELEASE OF PUBLIC INTEREST.



## CITY OF MEDINA

501 EVERGREEN POINT ROAD | PO BOX 144 | MEDINA WA 98039-0144  
TELEPHONE 425-233-6400 | [www.medina-wa.gov](http://www.medina-wa.gov)

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October 28, 2021

Chad Kulper  
2821 Northup Way  
Bellevue, WA 98004  
(via email: [chadk@buchan.com](mailto:chadk@buchan.com))

**Re:                 Determination of Complete Application – P-21-087**  
**607 86<sup>th</sup> Ave NE**

Dear Mr. Kulper,

The City has reviewed the above referenced application for a request for a non-administrative variance at 607 86<sup>th</sup> Ave NE and has determined it is complete pursuant to MMC 16.80.100. The City will issue a Notice of Application to notify parties of the application in accordance with MMC 16.80.110. The notice will be mailed and posted by the City within 14 days of the date of this letter pursuant to MMC 16.80.140.

Please be aware that this determination does not preclude the City from requesting additional information. If you have questions, please do not hesitate to contact me directly at [skeyser@medina-wa.gov](mailto:skeyser@medina-wa.gov) or 425.233.6416.

Sincerely,

Stephanie Keyser, AICP  
Planning Manager

**CITY OF MEDINA  
DECLARATION OF MAILING**

Stephanie Keyser does declare as follows:

That s/he is an employee of the city of Medina and that on the 29<sup>th</sup> day of October 2021 s/he caused a true and correct legible copy of the following described documents to be mailed to all residences which are within 300 feet of the property in question described by its street address as follows:

607 86<sup>th</sup> Ave NE  
\_\_\_\_\_  
\_\_\_\_\_

Description of document:

NOA – Non-Admin Variance  
\_\_\_\_\_  
\_\_\_\_\_

A copy of the mailed item and the addresses to which it was mailed are attached hereto.

Signed under the penalties of perjury of the laws of the state of Washington at Medina, Washington this:

29<sup>th</sup> day of October 20 21

  
\_\_\_\_\_  
Signature of mailing employee



# CITY OF MEDINA

501 EVERGREEN POINT ROAD | PO BOX 144 | MEDINA WA 98039-0144  
 TELEPHONE 425-233-6400 | [www.medina-wa.gov](http://www.medina-wa.gov)

## NOTICE OF APPLICATION

**Proposal:** Request for a non-administrative variance to install 8-foot fence panels along the north property line to mitigate HVAC noise.

**File No.** P-21-087 Non-Administrative Variance

**Applicant:** Chad Kulper of Buchan Homes (agent)  
 Jennifer Wang (owner)

**Site Address:** 607 86<sup>th</sup> Ave NE

**Required Permits/Studies:** Future Building Permit

Application Received:	October 28, 2021
Determination of Completeness:	October 28, 2021
Notice of Application:	October 29, 2021

**PUBLIC COMMENTS:** Pursuant to MMC 16.80.110(B)(7), this application has a 14-day public comment period to receive written comments on this proposal. Comments must be submitted to Medina City Hall (via staff email below) by **4:00 pm, November 12, 2021**.

**STATE ENVIRONMENTAL POLICY ACT:** The proposal is exempt from environmental (SEPA) review pursuant to WAC 197-11-800(6)(e).

**DETERMINATION OF CONSISTENCY:** Pursuant to RCW 36.70B.040, a preliminary determination has found the proposal consistent with the provisions of the Medina Municipal Code.

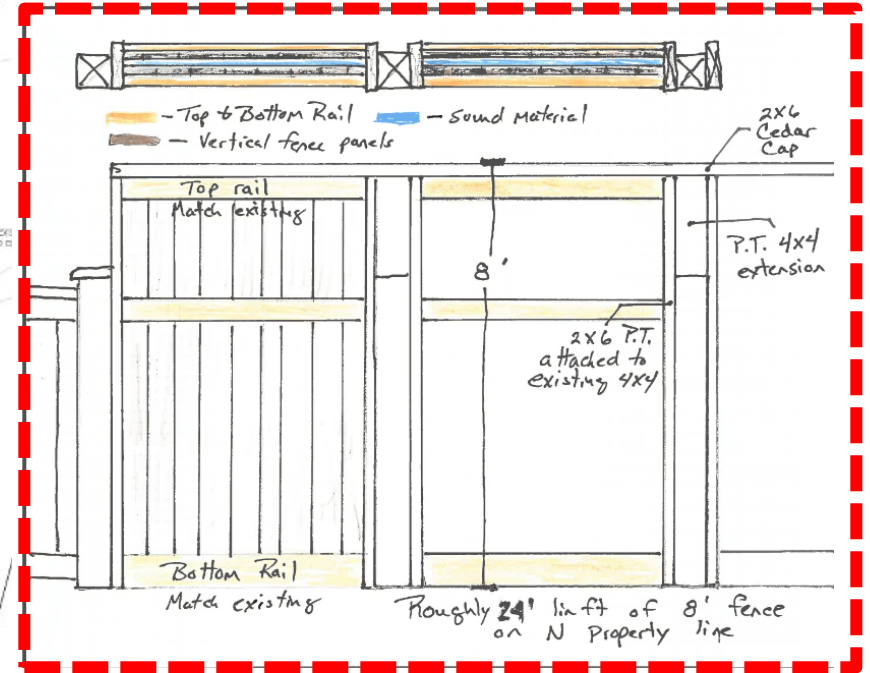
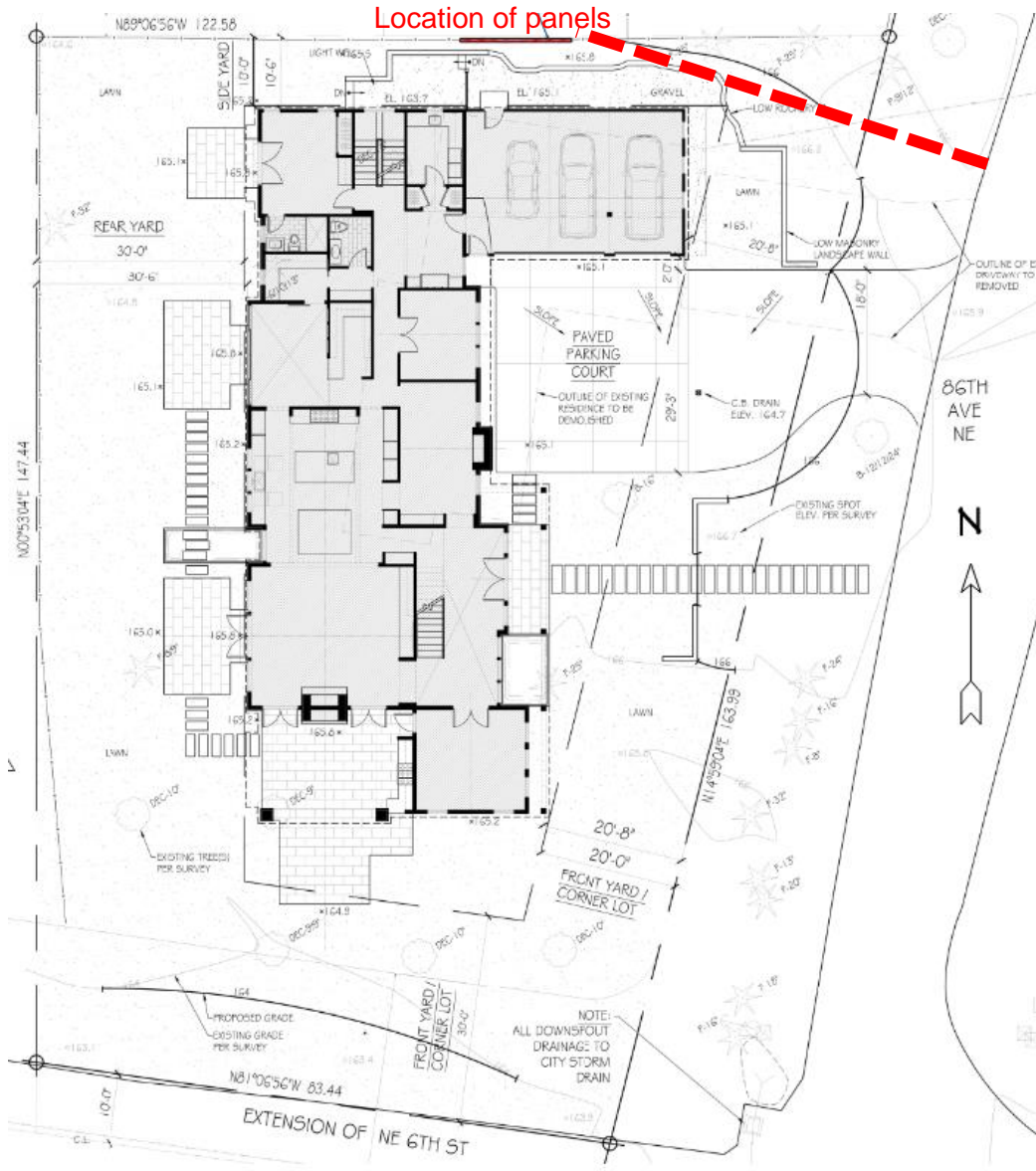
**PUBLIC HEARING:** The Non-Administrative Variance will have a hearing before the Medina Hearing Examiner. **A SEPARATE MAILING** will be sent with the date and time of the hearing once the public comment period has expired.

**APPEAL RIGHTS:** A Type 3 Non-Administrative Variance may be appealed to the King County superior court pursuant to MMC 16.80.220(B) and 36.70C RCW.

**QUESTIONS:** Due to Covid-19 and temporary changes to City Hall, please **email** the staff contact below to review the complete application electronically, or if you have any questions.

**STAFF CONTACT:** Stephanie Keyser, AICP, Planning Manager, at (425) 233-6416 or [skeyser@medina-wa.gov](mailto:skeyser@medina-wa.gov)

# Site Plan



Elevation section of panels

ZORKIN CHRISTOPHER+MELISSA  
804 86TH AVE NE  
MEDINA, WA 98039

ANDERSSON HANS  
806 84TH AVE NE  
MEDINA, WA 98039

OSCAR PATRICIA B  
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Exhibit 4b

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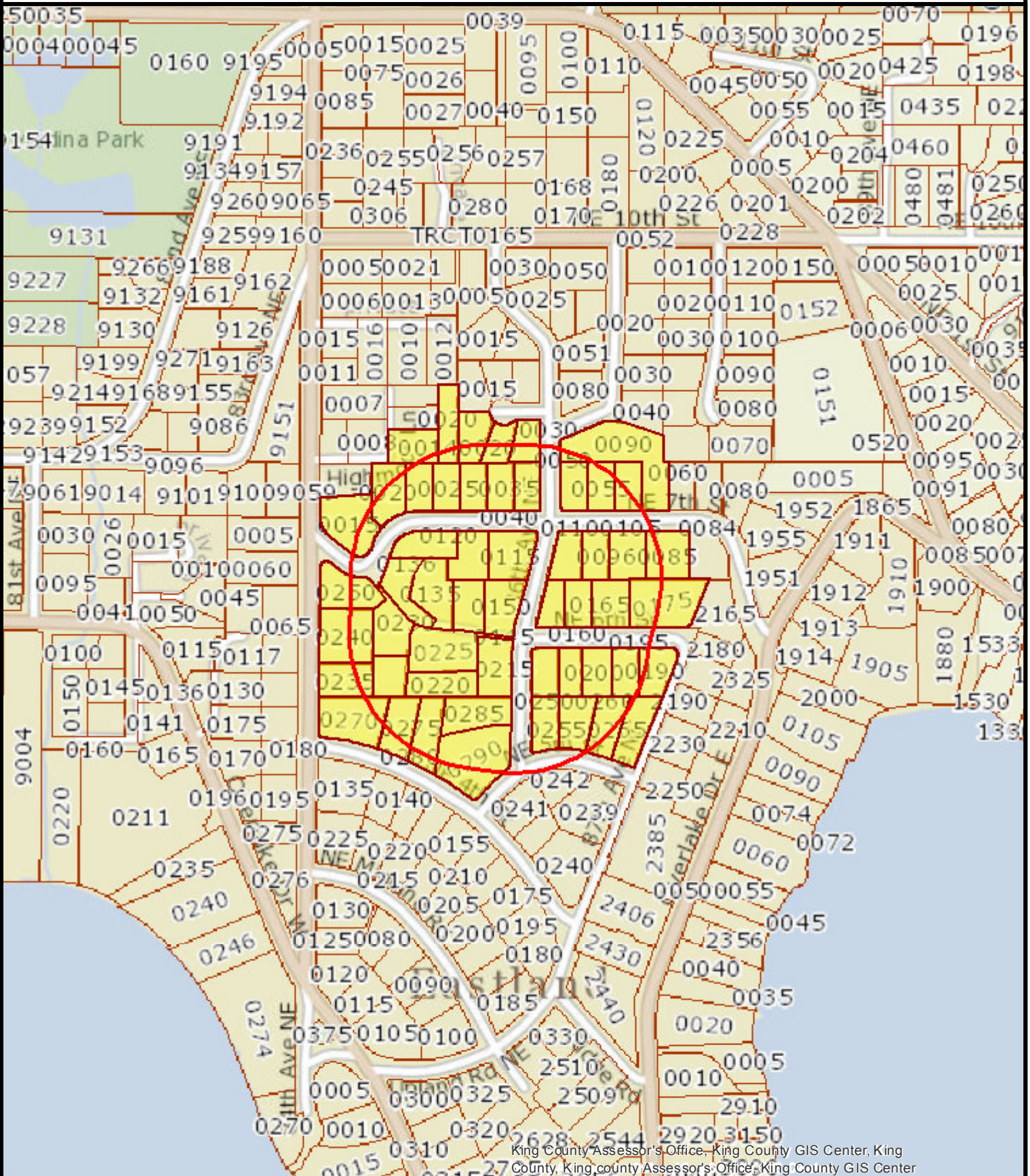
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8459 NE 9TH ST  
MEDINA, WA 98039

# King County



The information included on this map has been compiled by King County staff from a variety of sources and is subject to change without notice. King County makes no representations or warranties, express or implied, as to accuracy, completeness, timeliness, or rights to the use of such information. This document is not intended for use as a survey product. King County shall not be liable for any general, special, indirect, incidental, or consequential damages including, but not limited to, lost revenues or lost profits resulting from the use or misuse of the information contained on this map. Any sale of this map or information on this map is prohibited except by written permission of King County.

Date: 10/19/2021



**King County**

# CITY OF MEDINA DECLARATION OF POSTING

MICHAEL HOLLY does declare as follows:

That s/he is an employee of the city of Medina and that on the:

29<sup>TH</sup> day of OCTOBER 20 21

s/he caused a true and correct legible copy of the following described documents to be posted at each of the following indicated locations:

MH Medina City Hall, 501 Evergreen Point Road, Medina

PN City Website

MH Medina Post Office, 816 Evergreen Point Road, Medina

MH Public notice board at Medina Park Northeast 12<sup>th</sup> Street parking lot.

MH At two locations within 300 feet of the property in question described by its street address as follows:

607 86<sup>th</sup> Ave NE  
\_\_\_\_\_  
\_\_\_\_\_

Description of document:

P-21-087 (NOA – Wang)  
\_\_\_\_\_

A copy of the posted item is attached hereto.

Signed under the penalties of perjury of the laws of the state of Washington at Medina, Washington this:

29<sup>TH</sup> day of OCTOBER 20 21

Michael Holly  
Signature of posting employee





# CITY OF MEDINA NOTICE OF APPLICATION

**Proposal:** Request for a non-administrative variance to install 8-foot fence panels along the north property line to mitigate HVAC noise.

**File No.** P-21-087 Non-Administrative Variance

**Applicant:** Chad Kulper of Buchan Homes (agent)  
Jennifer Wang (owner)

**Site Address:** 607 86<sup>th</sup> Ave NE

**Required Permits/Studies:** Future Building Permit

Application Received:	October 28, 2021
Determination of Completeness:	October 28, 2021
Notice of Application:	October 29, 2021

**PUBLIC COMMENTS:** Pursuant to MMC 16.80.110(B)(7), this application has a 14-day public comment period to receive written comments on the proposal. Persons wishing to provide written comments must submit them by **4:00 pm on November 12, 2021**, to Medina City Hall via the staff email below.

**PUBLIC HEARING:** This application will have a hearing before the Medina Hearing Examiner. A separate notice will occur with the date and time of the hearing once the public comment period has expired.

**STATE ENVIRONMENTAL POLICY ACT:** The proposal is exempt from environmental (SEPA) review pursuant to WAC 197-11-800(6)(e)

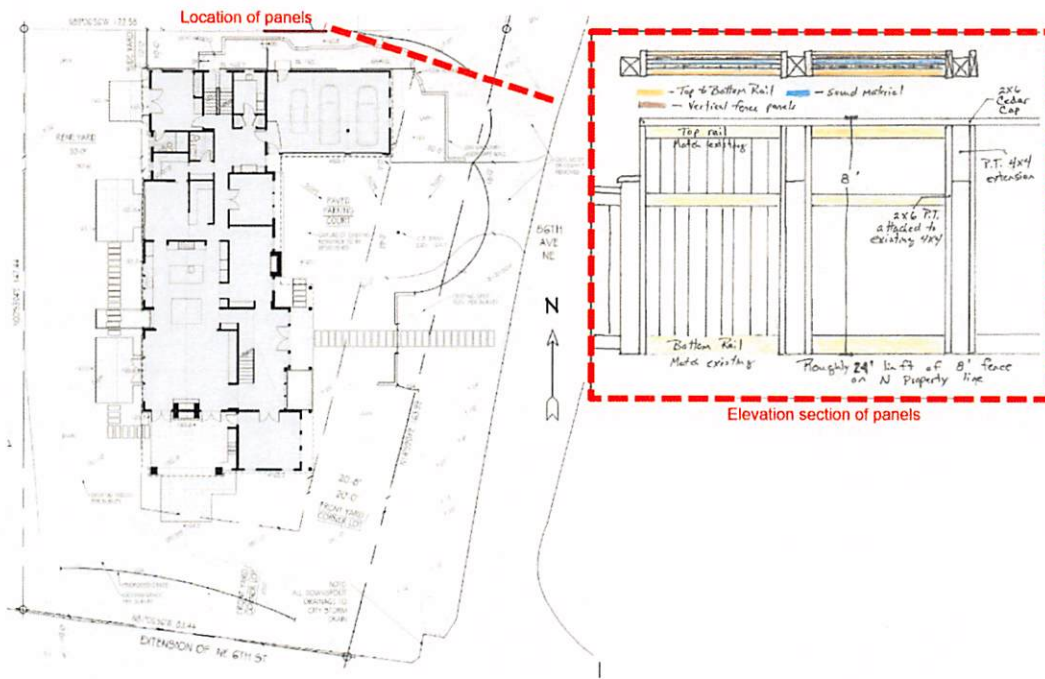
**DETERMINATION OF CONSISTENCY:** Pursuant to RCW 36.70B.040, a preliminary determination has found the proposal consistent with the provisions of the Medina Municipal Code.

**APPEAL RIGHTS:** Type 3 decisions made by the Medina Hearing Examiner may be appealed to King County superior court pursuant to MMC 16.80.220(B) and 36.70C RCW.

**QUESTIONS:** Due to Covid-19 and temporary changes to City Hall, please email the staff contact below to review the complete application electronically, or if you have questions.

**STAFF CONTACT:** Stephanie Keyser, AICP, Planning Manager, at (425) 233-6416 or [skeyser@medina-wa.gov](mailto:skeyser@medina-wa.gov)

Below: Site Plan



*[Signature]*  
Stephanie Keyser, AICP, Planning Manager

**10/29/2021**  
Notice Issued

# CITY OF MEDINA DECLARATION OF MAILING

Stephanie Keyser does declare as follows:

That s/he is an employee of the city of Medina and that on the 16<sup>th</sup> day of November 2021 s/he caused a true and correct legible copy of the following described documents to be mailed to all residences which are within 300 feet of the property in question described by its street address as follows:

607 86<sup>th</sup> Ave NE

Description of document:

NOH – Non-Admin Variance for fence panels

A copy of the mailed item and the addresses to which it was mailed are attached hereto.

Signed under the penalties of perjury of the laws of the state of Washington at Medina, Washington this:

16<sup>th</sup> day of November 20 21



\_\_\_\_\_  
Signature of mailing employee



## CITY OF MEDINA NOTICE OF VIRTUAL HEARING

**NOTICE IS HEREBY GIVEN** that the Medina Hearing Examiner will conduct a virtual public hearing on **Friday, December 17, 2021, at 1:00 PM** or as called as soon thereafter via Zoom. The purpose of this hearing is to consider testimony for and against the following:

**Proposal:** Request for a non-administrative variance to install 8-foot fence panels along the north property line to mitigate HVAC noise

**File No.** Non-administrative Variance (P-21-087)

**Applicant:** Jennifer Wang (owner)  
Chad Kulper of Buchan Homes (agent)

**Site Address:** 607 86<sup>th</sup> Ave NE

**YOU ARE INVITED** to attend the remote hearing and make oral and written comments. The Hearing Examiner has the discretion to limit testimony to relevant, non-repetitive comments and to set time limits. If you are unable to attend, written comments, photographs, or other exhibits on the application may be submitted to the staff contact or address below before the hearing date. The Hearing Examiner gives equal weight to testimony submitted in person at a hearing and written comments that are submitted.

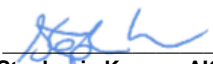
For information on how to participate in the remote hearing, please see the City's website for the hearing agenda which will be posted by Friday, December 10, 2021, at 4:00 PM. Please either log in or phone in at the beginning of the hearing to participate. If you need special accommodations, please contact the staff below.

**STATE ENVIRONMENTAL POLICY ACT:** The proposal is exempt from environmental (SEPA) review pursuant to WAC 197-11-800(6)(e).

**APPEAL RIGHTS:** Appeal of the Non-administrative Variance is to King County Superior Court pursuant to MMC 16.80.220(B).

**QUESTIONS:** The complete application may be reviewed at City Hall. Requests for information and/or written comments may be directed to the staff contact below, or to Medina City Hall, Attn: Development Services, 501 Evergreen Point Road, Medina, WA 98039.

**STAFF CONTACT:** Stephanie Keyser, AICP, Planning Manager, at (425) 233-6416 or [skeyser@medina-wa.gov](mailto:skeyser@medina-wa.gov).

  
 Stephanie Keyser, AICP, Planning Manager

11/16/2021  
 Notice Issued

*WARNING!*

*Posted notice is not to be removed, mutilated or concealed in any way.*

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Exhibit 4c

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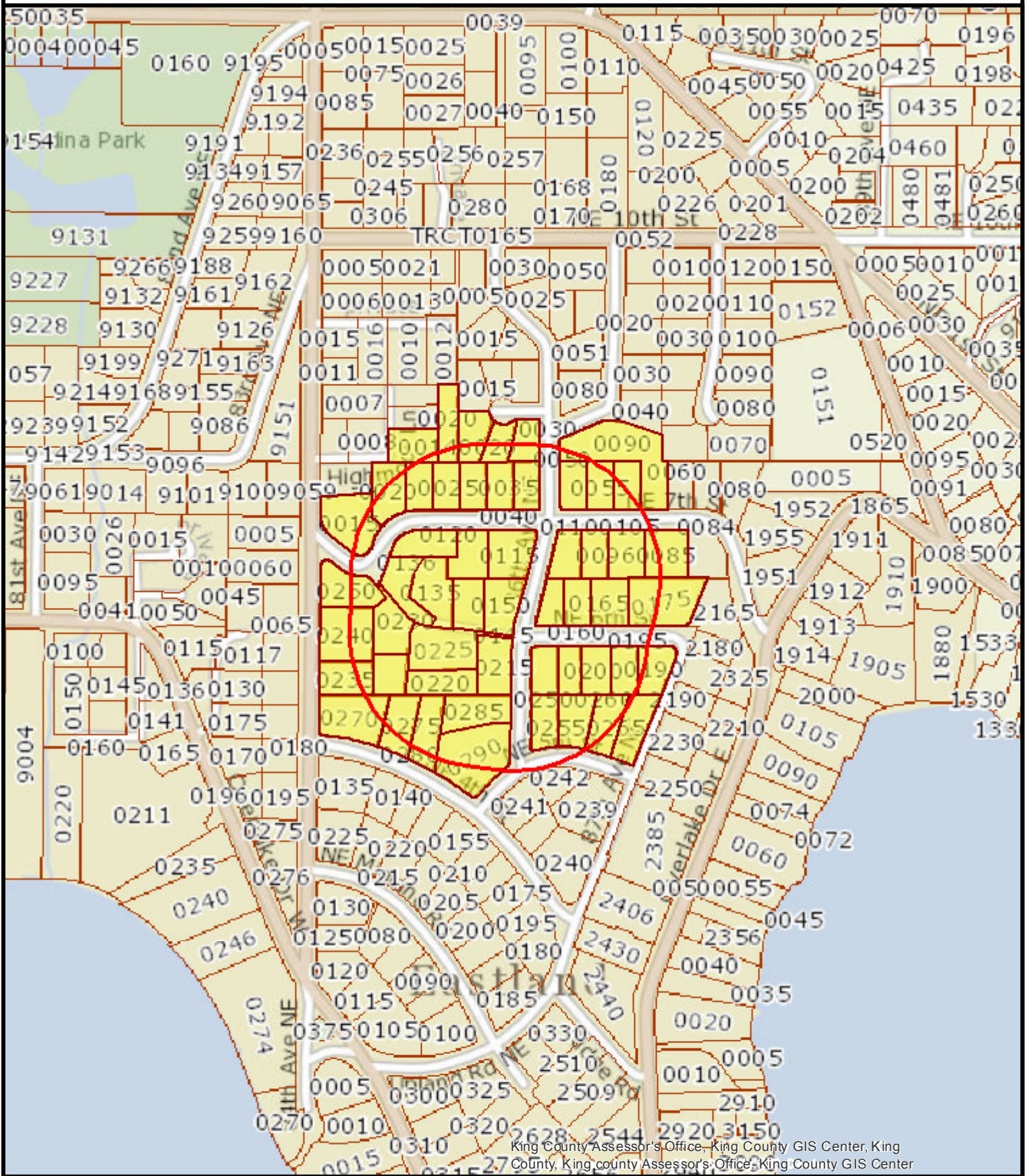
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# King County

Exhibit 4c



King County Assessor's Office, King County GIS Center, King County, King County Assessor's Office, King County GIS Center

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Date: 10/19/2021



King County

# CITY OF MEDINA DECLARATION OF POSTING

MICHAEL HOLLY does declare as follows:

That s/he is an employee of the city of Medina and that on the:

16<sup>TH</sup> day of NOVEMBER 20 21

s/he caused a true and correct legible copy of the following described documents to be posted at each of the following indicated locations:

MH Medina City Hall, 501 Evergreen Point Road, Medina

DN City Website

MH Medina Post Office, 816 Evergreen Point Road, Medina

MH Public notice board at Medina Park Northeast 12<sup>th</sup> Street parking lot.

MH At two locations within 300 feet of the property in question described by its street address as follows:

607 86<sup>th</sup> Ave NE

Description of document:

P-21-087 (NOH – Non-Admin Variance for fence panels)

A copy of the posted item is attached hereto.

Signed under the penalties of perjury of the laws of the state of Washington at Medina, Washington this:

16<sup>TH</sup> day of NOVEMBER 20 21

Michael Holly  
Signature of posting employee





## CITY OF MEDINA NOTICE OF VIRTUAL HEARING

**NOTICE IS HEREBY GIVEN** that the Medina Hearing Examiner will conduct a virtual public hearing on **Friday, December 17, 2021, at 1:00 PM** or as called as soon thereafter via Zoom. The purpose of this hearing is to consider testimony for and against the following:

**Proposal:** Request for a non-administrative variance to install 8-foot fence panels along the north property line to mitigate HVAC noise

**File No.** Non-administrative Variance (P-21-087)

**Applicant:** Jennifer Wang (owner)  
Chad Kulper of Buchan Homes (agent)

**Site Address:** 607 86<sup>th</sup> Ave NE

**YOU ARE INVITED to attend the remote hearing and make oral and written comments.** The Hearing Examiner has the discretion to limit testimony to relevant, non-repetitive comments and to set time limits. If you are unable to attend, written comments, photographs, or other exhibits on the application may be submitted to the staff contact or address below before the hearing date. The Hearing Examiner gives equal weight to testimony submitted in person at a hearing and written comments that are submitted.

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**STATE ENVIRONMENTAL POLICY ACT:** The proposal is exempt from environmental (SEPA) review pursuant to WAC 197-11-800(6)(e).

**APPEAL RIGHTS:** Appeal of the Non-administrative Variance is to King County Superior Court pursuant to MMC 16.80.220(B).

**QUESTIONS:** The complete application may be reviewed at City Hall. Requests for information and/or written comments may be directed to the staff contact below, or to Medina City Hall, Attn: Development Services, 501 Evergreen Point Road, Medina, WA 98039.

**STAFF CONTACT:** Stephanie Keyser, AICP, Planning Manager, at (425) 233-6416 or [skeyser@medina-wa.gov](mailto:skeyser@medina-wa.gov).

  
Stephanie Keyser, AICP, Planning Manager

11/16/2021  
Notice Issued

*WARNING!*

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**Stephanie Keyser**

---

**From:** Legals <legals@seattletimes.com>  
**Sent:** Friday, November 12, 2021 8:25 AM  
**To:** Stephanie Keyser  
**Subject:** RE: 17416 - 17417 - Legal Ads - City of Medina

Hi Stephanie,  
These are both scheduled to publish on 11/16, totals and proofs are below.  
Thank you,

Order 17416, \$162.79

**CITY OF MEDINA  
NOTICE OF PUBLIC HEARING**

NOTICE IS HEREBY GIVEN that the Medina Hearing Examiner will conduct a remote public hearing on Friday, December 17, 2021, at 1:00 PM. The purpose of this hearing is to consider public testimony for and against the following:

**Proposal:** Request for a non-administrative variance to install 8-foot fence panels along the north property line to mitigate HVAC noise

**File No:** Non-Administrative Variance (P-21-087)

**Applicant:** Jennifer Wang (owner)

Chad Kulper of Buchan Homes (agent)

**Address:** 607 86th Ave NE

YOU ARE INVITED to attend the remote hearing and make oral and written comments. The Hearing Examiner has the discretion to limit testimony to relevant, non-repetitive comments and to set time limits. If you are unable to attend, written comments, photographs, or other exhibits on the application may be submitted to the staff contact or address below before the hearing date. The Hearing Examiner gives equal weight to testimony submitted in person at a hearing and written comments that are submitted.

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**STATE ENVIRONMENTAL POLICY ACT (SEPA):** This project is exempt from environmental (SEPA) review pursuant to WAC 197-11-800(6)(e)

**APPEAL RIGHTS:** Appeal of the Non-administrative Variance is to King County Superior Court pursuant to MMC 16.80.220(B).

**QUESTIONS:** City Hall remains closed to the public. However, the complete application may be reviewed by emailing the staff contact below. Requests for information and/or written comments may be directed to Medina City Hall, Attn: Development Services, 501 Evergreen Point Road, Medina, WA 98039.

**STAFF CONTACT:** Stephanie Keyser, AICP, Planning Manager, at (425) 233-6416 or skeyser@medina-wa.gov

Order 17417, \$160.56



---

**From:** Stephanie Keyser <skeyser@medina-wa.gov>  
**Sent:** Friday, November 12, 2021 7:26 AM  
**To:** Legals <legals@seattletimes.com>  
**Subject:** Legal Ads - City of Medina

Good Morning,

Attached please find two legal ads for publication on Tuesday, November 16<sup>th</sup>.

Thanks!  
Stephanie

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

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DEVELOPMENT SERVICES

NON-ADMINISTRATIVE VARIANCE APPLICATION

501 EVERGREEN POINT ROAD MEDINA, WA 98039  
PHONE: 425-233-6414/6400

Complete this form for the following:

- Relief from dimensional zoning standards and
- The relief is not eligible for an administrative variance or minor deviation

General Information

Owner Name: JENNIFER WANG

Property Address: 607 86TH AVE NE 98039

Legal Description: MEDINA HEIGHTS ADD & POR WALST PLAT LOT: 30

Tax Parcel Number: 542470-0150

Agent / Primary contact

Name: CHAD KULPER Email: chadk@buchan.com

Contact Phone: 425.417.5745 Alternative Phone: 425.739.3855

Mailing Address: 2821 NORTHUP WAY City: BELLEVUE State: WA Zip: 98004

Property Information

Lot Size: 17,036 SQFT

Critical area(s) located on the property (Ch. 20.50 MMC)?  YES  NO

Zoning District:  R-16  R-20  R-30  SR-30  Public  NA (Neighborhood Auto)

Check all boxes for which relief is requested:  Maximum height  Maximum structural coverage  Maximum impervious surface coverage  Minimum setback  Other NOISE

Please clearly state what your variance request is (i.e. This is a request to reduce the rear yard setback from 30 ft. to 15 ft.)

THIS IS A REQUEST TO MODIFY THE FENCE HEIGHT MAXIMUM TO 8'

List known variances or special/conditional use permits previously approved for this property:

N/A

Please describe any known nonconforming conditions:

N/A

Please provide a complete description of the proposed project (attach additional pages if necessary):

TO HELP MEET THE NOISE CODE FOR OUR HEAT PUMPS WE WOULD LIKE TO GET A VARIANCE TO THE FENCE CODE FOR HEIGHT.

WE WOULD LIKE TO INSTALL 3 SECTIONS OF 8' FENCE ACROSS FROM OUR HEAT PUMPS.

DESIGN WILL BE SIMILAR TO CURRENT FENCE, DRAWING PART OF PACKET



## Approval Criteria

The following is the approval criteria for a non-administrative variance. Please respond to each item by providing as much detailed information as possible to support your request. Attach additional pages if necessary.

1. The variance does not constitute a granting of special privilege inconsistent with the limitations upon uses of other properties in the vicinity and zone in which the subject property is located

SEE ATTACHED

2. The variance is necessary, because of special circumstances relating to the size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located

SEE ATTACHED

3. The variance is necessary to relieve a material hardship that cannot be relieved by any other means such that the material hardship must relate to the land itself and not to problems personal to the applicant

SEE ATTACHED



Approval Criteria (continued)

4. The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated

SEE ATTACHED

5. The variance is the minimum necessary to provide reasonable relief

SEE ATTACHED

I certify under the penalty of perjury that I am the owner of the above property or the duly authorized agent of the owner(s) acting on behalf of the owner(s) and that all information furnished in support of this application is true and correct.

Signature \_\_\_\_\_ Owner  Agent  Date \_\_\_\_\_

Signature  Owner  Agent  Date 10.21.21

## Approval Criteria

- 1. The variance does not constitute a granting of the special privilege inconsistent with the limitations upon uses of other properties in the vicinity and zone in which the subject property is located.***

No special privilege will be given by allowing this variance. This variance is to meet the City's ordinance for noise levels at night time. HVAC equipment that is installed on property are the quietest units available on the market but don't meet Medina's expectations.

- 2. The variance is necessary, because of the special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located.***

Variance needed to allow heat pumps to be off quite mode during extreme temperature events. Heat pumps are 10 feet away from property line and neighbors living space is roughly 40 feet away from property line.

- 3. The variance is necessary to relieve a material hardship that cannot be relieved by any other means such that the material hardship must relate to the land itself and not to problems personal to the applicant***

The variance is to eliminate the possible hardship of not being able to use HVAC equipment installed as they had been designed. The equipment location meets all City codes and rules but is just a couple of decibels away from passing night time levels with units at 100%.

- 4. The granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.***

The variance will not be detrimental to the adjacent properties or general public. It is just turning three sections of 6 feet fence to three sections of 8 feet sections of fence. Style per drawing and will keep with current look.

- 5. The variance is the minimum necessary to provide reasonable relief.***

Based on the recommendation from a 3<sup>rd</sup> party acoustic specialist this is the least obnoxious and best compromise to the issue at hand.

### ***Additional Information***

I'd like to give a brief explanation to why we are asking for the 8' sound barrier fence variance in the first place. We constructed a house that needed 3 heat pumps and the approved permitted plan only showed 2. On the permitted plan it showed the Heat pumps in the side yard setback and noted sound barrier concrete wall to be installed. This plan was done by a WA State Registered Architect which the city requires because according to the city staff they know how the paper work and city codes work better than home designers.

We (John Buchan Homes) who have built a number of house in community knew that the HVAC equipment could not be in that location per city code so we moved them to be out of the side yard setback. The only place to move them beings the design was already done and we didn't have many options we made an alcove in one of the garage bays. We gave up about 3' of garage space at the single stall knowing that what was on the permitted plan would not work.

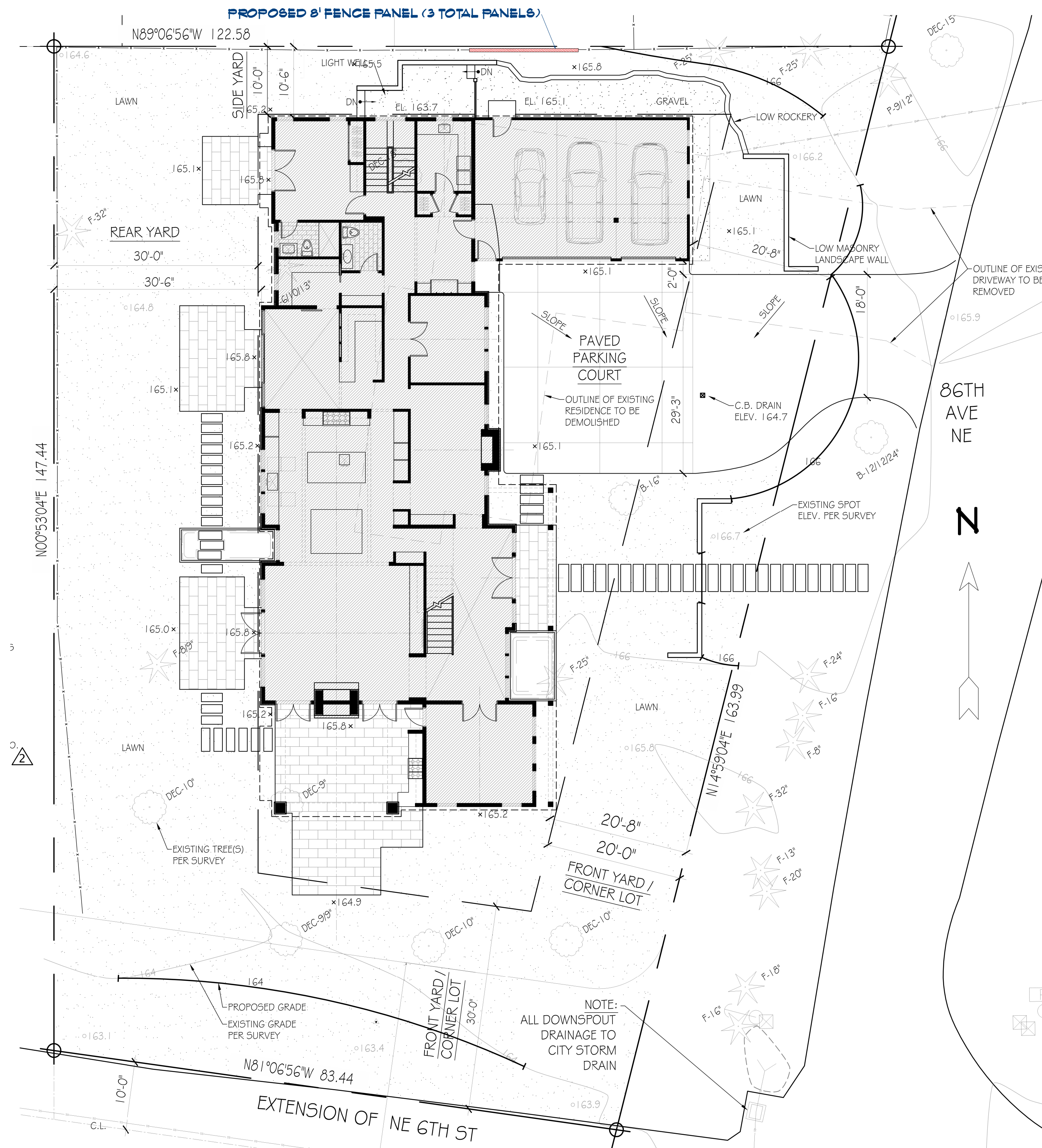
Once the 3 units had been installed in a manner to not create more lost space for our owner and meet city requirements we didn't pass the night time noise levels. At the time of city hired noise inspector no solution was given or clear explanation of how this is to measured.

I then hired a 3<sup>rd</sup> party acoustic specialist to come out and assist w/ the issue. During this time frame we were informed by our HVAC installer that the units we installed have a quite mode that makes the heat pumps run at a lower speed in order to meet decibel level requirement. This quite mode was designed specifically for WA states noise ordinance and these specific heat pumps have been approved by other jurisdictions that inforce this ordinance. This is the only unit the city of Seattle allows without needing to do an acoustic level test. Once the units had been placed in quite mode it passed the noise ordinance without an issue. We then submitted our 3<sup>rd</sup> party letter stating how it was measured and that we met the WA State guidelines for noise ordinance. The city of Medina staff did not feel the same the way. The consensus was that if the homeowner can control the quite mode then it would not be an acceptable way to meet the ordinance.

I have then since been going around and around trying to understand this decision since Feb. Paying for a temporary permit every month at \$400 a pop to try and understand why this mode isn't acceptable and what my options are. At the end of the day this function available to meet WA state noise ordinance isn't sufficient for the city of Medina so we are asking for the ability to install 3 sections of 8' sound barrier fence on property line.

The home owners would have signed a declaration stating that they would keep the heat pumps in quite mode most all the time except during record breaking heat events. They just wanted to have that option as the weather is changing around here. I hope that we can just install this fence and move on as well as giving my client the peace of mind of having an official certificate of occupancy.





SCALE - 1" = 10'

JOHN BUCHAN  
H O M E S

Project Date: 607 86TH AVE NE VARIANCE SITEPLAN

DRAWINGS PROVIDED BY:  
Chad Kuiper

DATE:  
10/20/2021

SCALE:  
1" = 10'

SHEET:  
1





- Top & Bottom Rail — Sound Material

- Vertical fence panels

2x6 Cedar Cap

P.T. 4x4 extension

2x6 P.T. attached to existing 4x4

8'

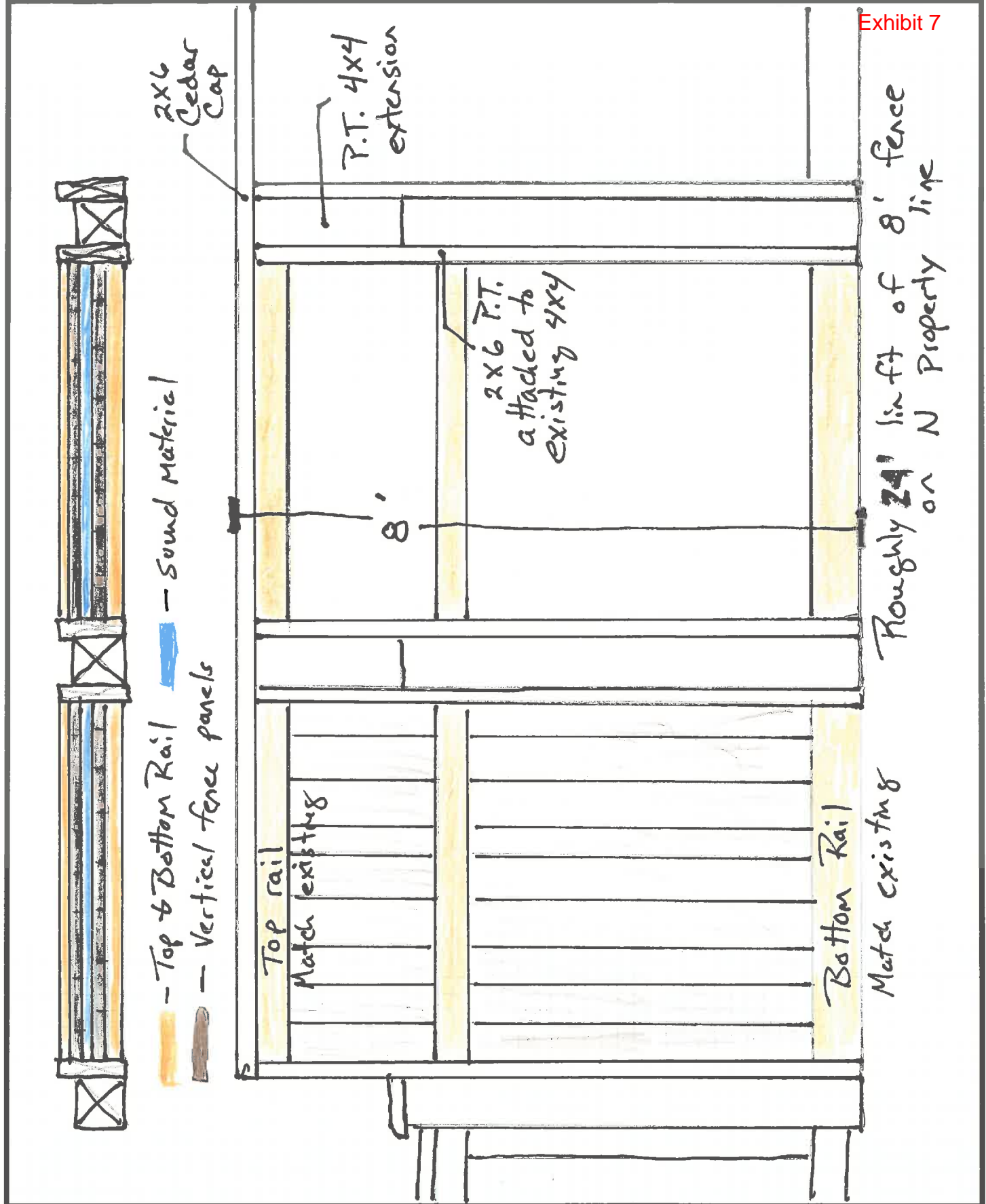
Top rail

Match existing

Bottom Rail

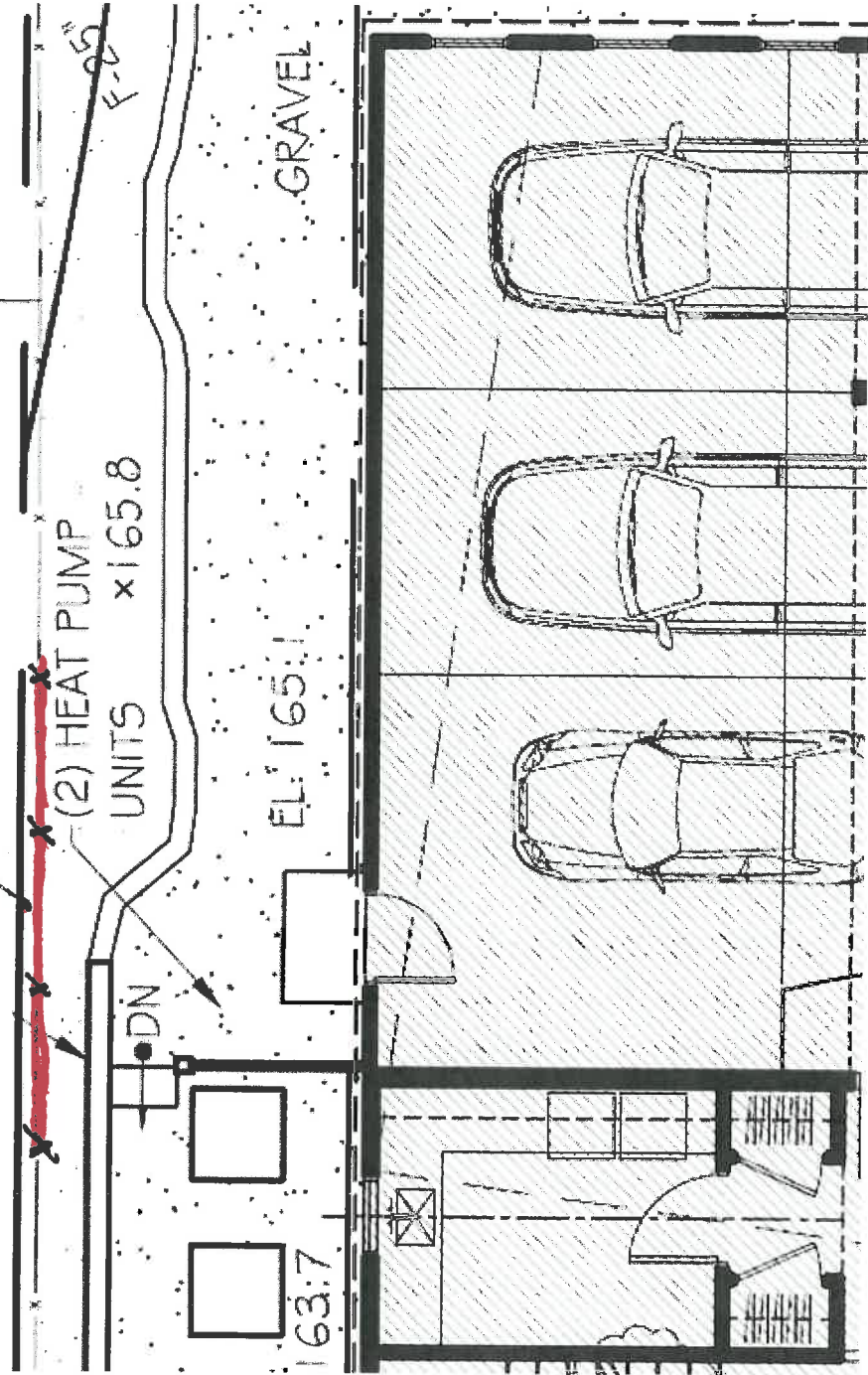
Match existing

Roughly 24' lin ft of 8' fence on N Property line



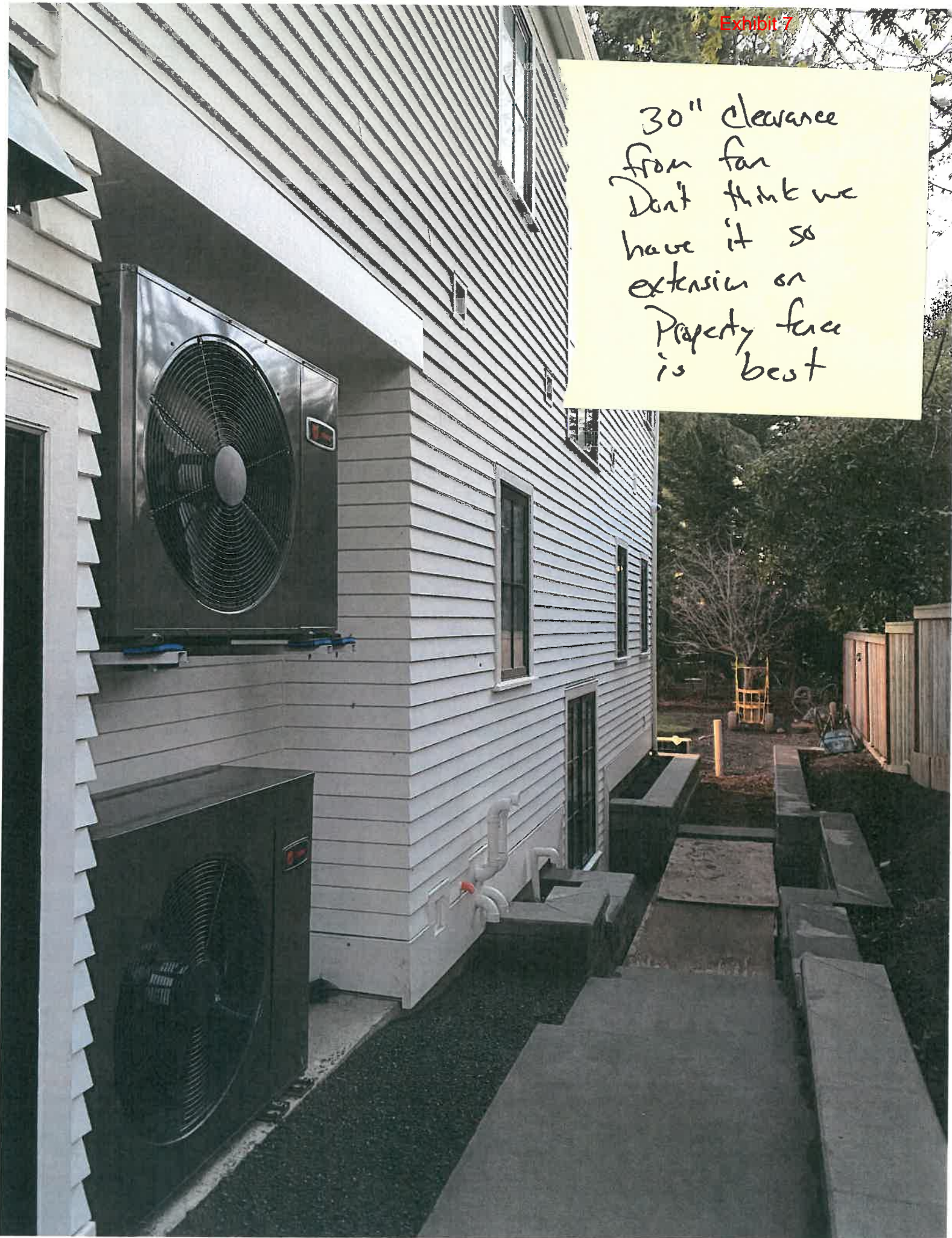
Proposed 8' face panels @  
location in red.

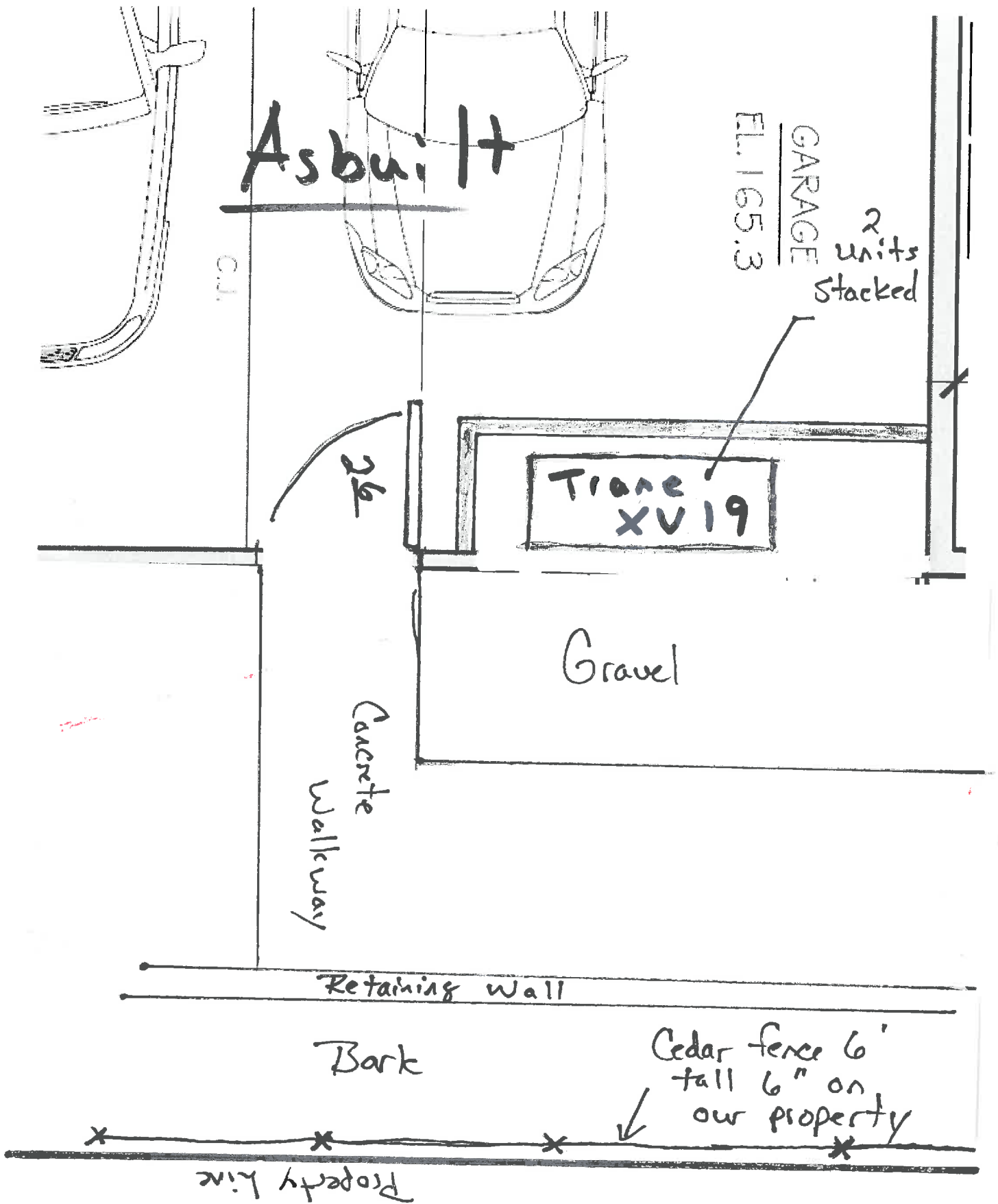
3 panels proposed





30" clearance  
from fan  
Don't think we  
have it so  
extension on  
Property fence  
is best

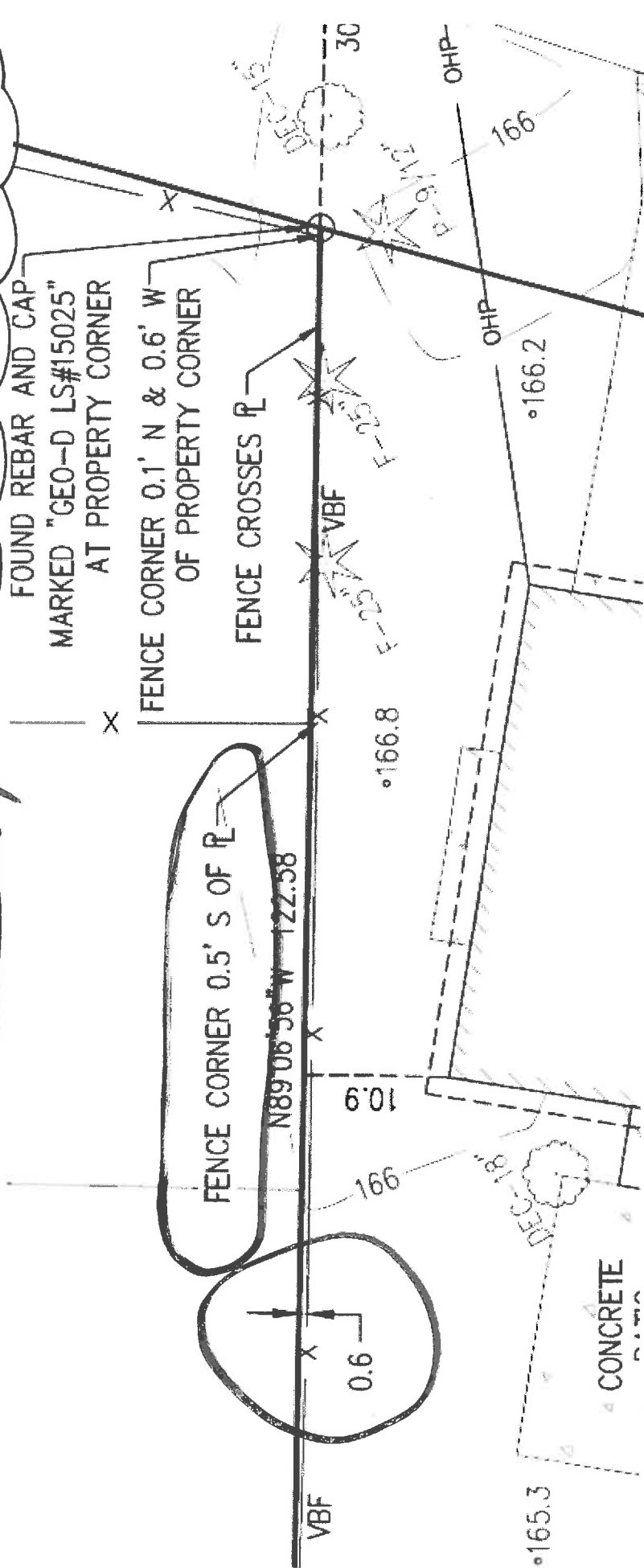






# Survey

Verification fence is on property of - 607 86<sup>th</sup> Ave



Kevin,

Install the 8'-0" as extension above existing fence using plywood, cement board, or translucent plastic (1/4" thick). Extend this taller section across from units and 5' east and 5' west of the footprint of units. You could gradually step it up on each side, but should end up with 13' to 16' linear feet of 8' fence north of the units.

All the best,

Erik

Erik Miller-Klein, PE, INCE Bd. Cert.  
Principal of Acoustical Engineering  
Tenor / Elevating acoustical design.  
206.899.5450 / Office  
206.658.7920 / Cell

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501 Evergreen Point Road, Medina WA 98039  
425.233.6400 [www.medina-wa.gov](http://www.medina-wa.gov)

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July 15, 2021

To: Emily Miner  
Fm: Steve Wilcox

Cc: Mike Sauerwein  
Scott Missall

RE: **Buchan Homes LLC Noise Compliance Matter**

Hello Emily-

We first discussed this matter about three-months ago. A response to Kevin Dosch's attorney is overdue with my most recent response to an inquiry about this matter on July 12<sup>th</sup>.

**Permitting Background:**

Medina issued building permit B-19-018 for construction of a new single-family home. A deferred permit for the mechanical systems including two exterior appliances was issued. Deferred mechanical permits are common.

Once permits were issued by Medina inspections were sequentially requested by the builder. A sound test to determine compliance with Medina Municipal Code Chapter 8.06 was required for Mechanical Permit M-21-009 as is consistent Development Services operating procedure. The initial test was performed by the City of Medina's acoustic consultant. This initial sound test failed. Subsequent test(s) were performed by John Buchan LLC's third-party acoustic engineer. Possible solutions to the noise test failure were discussed between various Medina staff, the builder and his representatives.

**Property:**

Address  
607 86<sup>th</sup> Ave. NE  
Medina 98039

Parcel Number  
542470-0150

**Contacts:**

Kevin Dosch, Co-owner of John Buchan Homes LLC  
2821 Northup Way, Bellevue 98004  
[kevind@buchan.com](mailto:kevind@buchan.com)

Chad Kulper, John Buchan Homes LLC  
2821 Northup Way, Bellevue 98004  
[chadk@buchan.com](mailto:chadk@buchan.com)

Shanen Boettcher, Neighbor of 607 86<sup>th</sup> Ave NE  
8457 NE 7<sup>th</sup>, Medina 98039  
[shanenboettcher@gmail.com](mailto:shanenboettcher@gmail.com)

Jennifer Wang, Current owner of the home  
607 86<sup>th</sup> Ave. NE  
Medina 98039

Purchased from John Buchan Homes LLC on March 4, 2021

**Vested Codes:**

M-20-009 and B-19-018 are vested to the 2015 Washington State Building Code. Specifically, the 2015 International Mechanical Code as amended by Washington State and adopted by the City of Medina, and the 2015 International Building Code as amended by Washington State and adopted by the City of Medina. See Chapter 20.40 of the Medina Municipal Code.

**Summary:**

1. The current Temporary Certificate of Occupancy allowing the new owner to occupy expires on August 11, 2021. This is the second TCO for this property and was given because Buchan Homes needed time to process a non-administrative variance.
2. The property is no longer owned by John Buchan Homes LLC.
3. There is an outstanding permit process error. The builder, John Buchan Homes LLC called Medina and requested a final mechanical inspection. A final mechanical inspection is the last step in the code compliance process and closes the mechanical permit. Our consistent process, as stated within permit documents provided to the builder, is to have the sound test "inspection" call and approved as being code compliant. Then, with an approved sound test the builder can call us for a final inspection. Our City of Medina staff approved the final inspection for permit M-20-009 out of process sequence.

M-20-009 has been approved on the builders documents and in our permit software. However, the permit remains open as the inspection sequence was not followed and the software did not allow the mechanical permit to close.

4. There is an outstanding permit review error. In Medina mechanical permit applications which include exterior appliances are first reviewed and approved for zoning compliance, then routed for mechanical and energy code compliance review. Only after

zoning compliance is approved can other reviews including mechanical and energy code compliance occur. This is standard practice.

The zoning compliance review for M-20-009 shows two mechanical appliances (condensing units) on the north side of the house between the house and property line. A "Sound Screen" wall of undefined height is shown between the two mechanical appliances and the property line. The contractor was acknowledging that there would be a sound compliance issue, and knowing Medina sound test requirements showed a sound mitigation wall. This same condition is shown on the building permit plans for B-19-018. Unfortunately, this condition is not allowed as the mechanical appliances are in the side-yard setback.

The builder deviated from the approved plans. The as-built condition does not have the two mechanical appliances in the setback and there is no sound mitigation wall. The two mechanical appliances are within a recess of the north wall of the house. There is no sound mitigation wall. The change for the approved building and mechanical plans required a revision but none was applied for and our Medina staff did not notice the changes. The structural deviations from the permitted plans were not reviewed and were not approved.

Ultimately, the Washington State Building Code places the permit applicant as responsible for code compliance.

5. Building permits are not closed until all other associated permits have been inspected and closed following confirmation of code compliance. The permit to construct the house is B-19-018 and remains open due to this sound test matter. This sequence of inspections used by Medina to close a permit conforms to the requirements of the Washington State Building Code.
6. Medina has been requiring sound testing of exterior mechanical appliances since at least September 2007 when I began work at Medina as Building Official. The sound test requirement and process was already in existence when I arrived in September 2007 and I simply used what was already working. Since 2007 there have been times when various Council members and residents expressed the desire to continue testing mechanical appliance sound levels as part of the permit process. There has never been any discussion of discontinuing the sound test requirement.

The required sound testing of exterior mechanical appliances is not codified, however Medina City Council(s) are aware of the testing through their review and passage of supporting Ordinance, Resolution, and associated professional services contract. The Development Services Department would be unable to implement the sound testing requirement without approvals by City Council(s).

- a. At a Council meeting on February 15, 2017 a contract with BRC Acoustics and Audiovisual Design was approved for the purpose of providing:

*"...empirical on-site sound testing for compliance with maximum permissible sound levels related to new mechanical appliances and system components."*

This confirms that Council was aware of, and approved of the Development Services requirement for sound testing by supporting the effort through this contract.

- b. At the May 8, 2017 Council meeting the Development Services Staff Report which was written to the Mayor and Council stated:

*“Starting May 15, 2017, the City will begin collecting a \$300 fee for mechanical permits that require sound testing and the City will conduct the sound test. Applicants who have already submitted a mechanical permit before this date can use their own sound expert to perform testing or may pay the \$300 fee and use the City’s sound expert. Mixed into this is the new noise code is expected to be able to go into effect about mid-June.”*

This confirms that Council was aware of Development Services requirement for sound testing.

- c. At a Council meeting on March 13, 2017 Medina adopted ‘Ordinance 945 Adopting New Noise Control Regulations’. Within this Agenda Bill is Attachment 2 Memorandum “City Comments & Analysis”. This memorandum summarizes Council member comments submitted to the Development Services Director regarding the proposed new Ord. 945, which was adopted at the 3/13/21 meeting.

Under item 9 of Attachment 2 the Director responded to a Council member question with an acknowledgement of the City requirement to test mechanical appliances and further provides a description of the process the City had been using and is still using.

This confirms that Council was aware of the Development Services requirement for sound testing.

- d. Fee Resolution 396 was adopted on 6/11/2018 by Council. Within Resolution 396 is Exhibit B ‘Sound Testing Fee’. The Council approved fee is \$300 for the city to have our acoustic consultant perform a test on-site.

This confirms that Council was aware of Development Services requirement for sound testing and supported the testing by approval of a fee to cover our consultant cost.

- e. Fee Resolution 400 is the current permit fee schedule approved by Council for use. Resolution 400 became effective 2/1/2019. Within Resolution 400 is Exhibit B ‘Sound Testing Fee’. The Council approved fee is \$300 for the city to have our acoustic consultant perform a test on-site.

This confirms that Council was aware of Development Services requirement for sound testing and supported the testing by approval of a fee to cover our consultant cost.

7. John Buchan Homes LLC was provided documents which advised them of the required sound test process. Kevin Dosch was familiar with Medina's sound test requirements prior to the project at 607 86<sup>th</sup> Ave. NE.

Medina's "Sound Testing" guideline was provided with permit M-20-009. John Buchan Homes LLC and Kevin Dosch have used this form on previous construction projects in Medina and also subsequent to the work at 607 86<sup>th</sup> Ave. NE.

Kevin Dosch constructed his own personal residence in Medina at 7842 NE 21<sup>st</sup>, at a recently completed home his company completed at 2451 78<sup>th</sup> Ave NE, and likely several others. The sound testing requirement has been applied to all of his Medina projects and never has been a problem in the past.

John Buchan Homes LLC was also aware of the required sound test requirements through the permit conditions provided with their mechanical permit. The required sound test and the process involved was described to the builder more than 8-months prior to the current matter becoming known.

8. Night setback thermostats have been an energy code requirement in Washington since as far back as 1991. Over time the night setback thermostats have become more sophisticated but have essentially the same basic concept as the original 30-years ago. Reducing the use, or by lessening the demand of your heating and cooling system reduces energy consumption, is less expensive and reduces sound levels of outdoor appliances.

Less sophisticated thermostats allow the homeowner to simply adjust the setting back or turn off the system manually. The Trane brand "Quiet Mode" is a feature available on certain of their thermostats and is technically sophisticated in how it works, but simple to operate. The Trane Quiet Mode is programmed into the thermostat by the user/homeowner. Essentially, the Quiet Mode limits the capacity or ability of the exterior mechanical appliances (condensing units) to heat or cool a home which in turn makes those appliances less noisy as there is less demand on them. The appliances simply do not work as hard in Quiet Mode.

Quiet Mode is intended to be a simple program to set by the homeowner. If Quiet Mode is set to be on thus reducing appliance capacity then it appears that the exterior mechanical appliances meet the Medina Municipal Code sound limits. If the Quiet Mode is turned off then the two appliances fail the sound test and are non-compliant with the MMC.

The Washington State Building Code gives the Building Official authority to interpret the code. Appeals are to the Hearing Examiner.

**Event Timeline:**

- 1/15//2020 Deferred mechanical permit application M-20-009 which includes exterior appliances (A/C and/or Heat Pump) was received by Medina's Development Services.
- 1/15/2020 Mechanical permit application including a site plan routed to Planning Manager Stephanie Keyser for review. The site plan is required for zoning compliance review prior to routing for mechanical code review. A site plan is required due to the exterior appliances. If there were no exterior mechanical appliances, a site plan would not be required, and only mechanical review would then occur.
- 1/21/2020 M-20-009 zoning review completed and approved by S. Keyser. Routed to S. Wilcox for mechanical code review.
- 5/19/2020 M-20-009 mechanical code review completed. Review included some required technical corrections and re-submittal which is common.
- 5/26/2020 M-20-009 was issued.
- 6/23/2020 Partial "rough" mechanical inspection of M-20-009 approved.
- 7/13/2020 Partial "rough" mechanical inspection of M-20-009 approved.
- 2/10/2021 Final Mechanical Inspection of M-20-009 approved. This inspection was approved out of sequence. Medina process requires that a mechanical appliance sound test be approved prior to the mechanical permit final. Medina's permit tracking system shows that the final inspection is approved, however without the sound test approval the permit remains open.
- 2/19/2021 Mechanical appliance sound test failure. The sound level of the two condensing units was tested by Medina's acoustic consultant. The sound level while the two condensing units were normally operating was measured at 53 dBA at the north (nearest) property. Tested dBA is measured against allowed nighttime maximum of 45 dBA.
- 2/24/2021 The home builder had a sound test performed by a third-party. The third-party stated as a primary part of indicating that the sound test had passed and complied with City of Medina ordinance that the Trane "Quiet Mode" be used by the homeowner. This approach was rejected.
- 2/25/21 A Temporary Certificate of Occupancy was issued for 45 days which is standard time we give. This first TCO was from 2/25/21 through 4/11/21. The TCO was issued because the builder was working with the City towards a solution. TCO's are not mandatory.



- 2/22/21 – 2/26/21 Date not recorded. S. Wilcox met at the house with Kevin Dosch and his mechanical contractor to review the operation of the thermostat and the “Quite Mode”. Kevin Dosch was told that the decision to not accept the “Quite Mode” use was still in effect.
- 3/4/21 S. Wilcox received a phone call from the neighbor to the immediate north of 607 86<sup>th</sup> Ave. NE Shanen Boettcher. The neighbor’s home has bedrooms which face the new Buchan installed mechanical appliances. The neighbor stated he was concerned about the location of the mechanical appliances and whether the testing he observed occurring had shown code compliance or not. The neighbor further stated that at one point louvers had been placed over the two mechanical appliances and he wanted me to know about that. This type of call from a neighbor regarding sound testing has never occurred with me prior on any project since 2007. A photo of the louver installation was sent the same day.
- 3/11/21 Buchan Homes staff had email discussion with Medina Planning Manger about a fence for sound mitigation that would require a non-administrative variance. Last message in the email indicated that Buchan Homes would pursue a variance to solve the noise problem.
- 4/11/21 Second TCO issued. This second TCO issuance is highly unusual but was given at the builder’s request because he was working with the City’s Planning Manager on a non-administrative variance application. This second TCO was approved for longer than our standard TCO period to help assure that the builder had enough time to go through the entire variance process. This second TCO is valid 4/11/21 through 8/11/21.
- 4/14/21 Second contact by neighbor Shanen Boettcher to ask about the sound test status.
- 4/28/21 Letter dated 4/21/21 received from Dosch attorney.
- 8/11/21 Temporary Certificate of Occupancy will expire.