

**FINDINGS AND CONCLUSIONS OF THE MILLWOOD CITY COUNCIL
FOR WARD APPEAL OF FENCE PERMIT DENIAL
PUBLIC HEARING ON JUNE 30, 2025**

I. FINDINGS OF FACT

1. On October 24, 2024, the City of Millwood (the “City”) discovered an illegal fence construction in progress on property located at 9011 E. South Riverway, Millwood, WA (the “property”).
2. On October 30, 2024, the City issued a Code Violation Warning Notice to Joseph Ward and Budinski Residential, LLC, owner of the property, for installation of a fence without a permit in violation of Millwood Municipal Code (“MMC”) 17.44.040 and 17.38.005(E)(6) and installation of a front and front-side fence (fence located within the 25-foot setback) exceeding 42 inches in height in violation of MMC 17.38.005(E)(3).
3. On November 15, 2024, Mr. Ward and Budinski Residential, LLC, submitted a fence permit application for the existing, unpermitted 6-foot wrought iron fence constructed on the property and for a proposed 6-foot-tall dumpster enclosure fence on the property.
4. On November 22, 2024, the City denied the permit application as to the constructed 6-foot fence in the front and front-side of the property, which must be reduced to 42 inches within the 25-foot front-side setback, and the dumpster enclosure needed to either be removed from the front-side setback or reduced to 42 inches in height.
5. On April 16, 2025, Mr. Ward and Budinski Residential, LLC, submitted an amended and restated fence permit application dated April 15, 2025.
6. On April 21, 2025, the City approved in part, and denied in part, the amended fence permit application from Mr. Ward and Budinski Residential, LLC.
7. Exhibit B to the City’s staff report shows which portions of the amended fence permit were approved and/or denied. Specifically, the portions of the fence highlighted in green were approved. The portion of the fence highlighted in red were denied. The portion of the fence highlighted in yellow and orange were determined to be outside the scope of the permit application. Exhibit B to the City’s staff report is incorporated to this Decision herein and attached hereto as Exhibit “A.”
8. Mr. Ward and Budinski Residential, LLC, submitted an appeal fee to appeal the partial denial of his amended fence permit on April 29, 2025. Mr. Ward and Budinski Residential, LLC, did not submit the required appeal application form by the appeal deadline of May 4, 2025. As Mr. Ward had already paid the appeal fee, the City extended the deadline to file the appeal application form until May 19, 2025. Mr. Ward and Budinski Residential,

LLC, submitted his appeal form on May 19, 2025, and provided supplemental materials on May 20, 2025. The Millwood City Council considers the appeal timely.

9. Following public notice, on June 30, 2025, the Millwood City Council held a special meeting to conduct an open record appeal hearing of the appeal of the administrative decision denying the fence permit application. The Millwood City Council considered the following exhibits:
 - a. Administrative Appeal;
 - b. City of Millwood Staff Report, including exhibits;
 - c. Acknowledgement of a Public Records Request, dated June 27, 2025;
 - d. Appellant Request for Consideration of Documents or Materials, inclusive of all materials;
 - e. Millwood Ordinance 54A; and
 - f. Written Appeal Statement submitted by Mr. Ward at hearing.
10. At the open record hearing on June 30, 2025, the Millwood City Council heard argument and received testimony and evidence from the City and the appellant, Joseph Ward and Budinski Residential, LLC.
12. MMC 17.38.005(E)(3) requires that front and front-side fences do not exceed 42 inches in height.
13. MMC 117.38.005(E)(6) requires a property owner obtain a permit for any construction or reconstruction of a fence.
14. Front and front side yard fences have been required to be 42 inches in height or less since 1955.
15. Permits have been required for the construction of fences since 1961.
16. The wrought iron fence subject to this appeal, highlighted in red on Exhibit A attached to this decision, is 6 feet in height and located in the property's front and front-side yard setback.
17. The proposed dumpster enclosure subject to this appeal, highlighted in red on Exhibit A is 6 feet in height and located in the property's front-side yard setback.
18. Mr. Ward and Budinski Residential, LLC, did not provide any evidence that a previously existing 6-foot cedar fence along the west side of the property was legally permitted so as to support a non-conforming use.

- a. Mr. Ward and Budinski Residential, LLC, did not provide any evidence that they had obtained a permit for the 6-foot cedar fence, despite the fact that permits have been required since 1961.
 - b. Mr. Ward and Budinski Residential, LLC, did not provide any evidence that a previously existing 6-foot cedar fence along the west side of the property encroached into the 25-foot setback so as to support a non-conforming use that would allow the 6-foot wrought iron fence.
19. The juniper bushes and landscaping rocks that previously existed along the front of the property did not qualify as a fence, but rather as normal landscaping features.
20. The Millwood City Council finds that the request of Mr. Ward and Budinski Residential, LLC, for a fence permit for a 6-foot wrought iron fence along the front and front-side yard would violate MMC 17.38.005(E)(1).
21. The Millwood City Council finds that the request of Mr. Ward and Budinski Residential, LLC, for a fence permit for a 6' dumpster enclosure within the 25-foot front yard setback would violate MMC 17.38.005(E)(3).
22. On August 12, 2025, the Millwood City Council considered these Findings and Conclusions of the Millwood City Council at a regular City Council meeting.

II. CONCLUSIONS OF LAW:

- a. Pursuant to MMC 17.38.005(E)(3), all front and front-side fences (fences located within the 25-foot setback) must be 42 inches in height or less.
- b. Mr. Ward and Budinski Residential, LLC, did not obtain a permit for the 6-foot wrought iron fence along the front and front side of the property prior to its construction, in violation of MMC 17.38.005(E)(6).
- c. The City's denial of the fence permit application from Mr. Ward and Budinski Residential, LLC, was proper as the proposed fencing was more than 42 inches in height in violation of MMC 17.38.005(E)(3).
- d. Mr. Ward and Budinski Residential, LLC, did not meet their burden to show the non-conforming status of the previous cedar fence so as to be relieved from the requirement that the proposed wrought iron fence be 42 inches in height or less.
- e. The Millwood City Council hereby affirms the administrative decision denying the amended fence permit application of Mr. Ward and Budinski Residential, LLC.

- f. All relief requested by Mr. Ward and Budinski Residential, LLC, in their appeal is hereby denied.
- g. Any Finding of Fact that is more correctly a Conclusion of Law is hereby incorporated as such by this reference.

III. DECISION:

Based on the above Findings of Fact and Conclusions of Law, the Millwood City Council hereby AFFIRMS the April 21, 2025, administrative decision denying the amended fence permit application submitted by Joseph Ward and Budinski Residential, LLC, on April 16, 2025.

Approved as of this 12th day of August, 2025

_____, Councilmember Position

_____, Councilmember Position

_____, Councilmember Position

_____, Councilmember Position

_____, Councilmember Position