CITY OF TUALATIN
Planning Division

Analysis and Findings for
PGE Substation Fence Variance (VAR 21-0002)
May 20, 2021

Case #:	VAR 21-0002
Project:	PGE Substation Fence Variance
Location:	12150 SW Tualatin-Sherwood Rd, Tualatin, OR. Tax Map: 2S127C Lot 500
Applicant:	Angelo Planning
Owner:	Portland General Electric Company (PGE)

I. INTRODUCTION

The issue before the Planning Commission is consideration of a Variance to the required setback for fences in the Manufacturing Business Park zone as they relate to a proposed substation within the PGE Integrated Operations Center property.

The subject site is a 43-acre property located at 12150 SW Tualatin-Sherwood Road (Washington County Tax Map: 2S127C Lot 500), and is zoned Manufacturing Business Park (MBP).

A. Applicable Criteria

The following Chapters of the Tualatin Development Code (TDC) are applicable to VAR 21-0002:

- TDC 33.120(6)

Based on the Analysis and Findings presented, staff recommends approval of VAR 21-0002.

B. Project Description

The applicant, Angelo Planning on behalf of Portland General Electric (PGE) is proposing a substation development on the site of the PGE Integrated Operations Center, currently under construction.

The applicant is requesting a Variance to the listed setback specific to fences in TDC Table 64-2, which requires a 50-foot setback from all rights of way. The applicant requests a modified setback of 10 feet from all applicable rights of way.

C. Previous Land Use Actions

- Conditional Use Permit CUP 19-0002 for a Wireless Communications Facility
- Variance VAR 19-0001 for wireless facility height and security fence setbacks for the main Integrated Operations Facility
- Architectural Review AR 19-0005 for the main Integrated Operations Facility
- Annexation ANN 18-0002

D. Site Description and Surrounding Uses

The subject site is composed of 42 acres at the western edge of Tualatin in a growing industrial area. The northerly portion of the site is currently being constructed as the Integrated Operations Center for Portland General Electric (PGE). The proposed substation area is in the southwest corner of the parcel, south of the newly designated SW Blake Street right-of-way. The area of the site is predominantly wooded though the location has also been under agrarian use.

Surrounding uses indicate a transitional area including commercial services and light industrial uses. Adjacent land uses include:

North: General Manufacturing (MG)

- Fleet Pride
- Shields Manufacturing
- IPT (new industrial construction)
- Packaging Resources
- Columbia Corrugated Box

South: FD-20 (Unincorporated Washington County)
Tualatin Urban Planning Area, designated future Manufacturing Business Park (MBP) zone

- Tigard Sand and Gravel

West: FD-20 (Unincorporated Washington County)

- Tualatin Valley Water District

East : FD-20 (Unincorporated Washington County)
Tualatin Urban Planning Area, designated future Manufacturing Business Park (MBP) zone

- Tigard Sand and Gravel
- CR Contracting

General Manufacturing (MG)

- La-Z Boy Furniture Warehouse
- Lucky Foods
- Innovative Bakery Resources
- Western Precision Products
- Tualatin Indoor Soccer
- Ardent Mills
- Engine and Performance Warehouse
- Majestic Building

Figure 1 Site and Development Area

E. Exhibit List

A: Applicant's Narrative

B: Site Plan and Survey

C. Supplemental Materials

II. PLANNING FINDINGS

These findings reference the Tualatin Development Code (TDC), unless otherwise noted.

Chapter 32: Procedures

Section 32.010 – Purpose and Applicability.

[…]

(2) Applicability of Review Procedures. All land use and development permit applications and decisions, will be made by using the procedures contained in this Chapter. The procedure "type" assigned to each application governs the decision-making process for that permit or application. There are five types of permit/application procedures as described in subsections (a) through (e) below. Table 32-1 lists the City's land use and development applications and corresponding review procedure(s).

[…]

(c) Type III Procedure (Quasi-Judicial Review – Public Hearing). Type III procedure is used when the standards and criteria require discretion, interpretation, or policy or legal judgment. Quasi-Judicial decisions involve discretion but implement established policy. Type III decisions are made by the Planning Commission or Architectural Review Board and require public notice and a public hearing, with an opportunity for appeal to the City Council.

[…]

(3) Determination of Review Type. Unless specified in Table 32-1, the City Manager will determine whether a permit or application is processed as Type I, II, III, IV-A or IV-B based on the descriptions above. Questions regarding the appropriate procedure will be resolved in favor of the review type providing the widest notice and opportunity to participate. An applicant may choose to elevate a Type I or II application to a higher numbered review type, provided the applicant pays the appropriate fee for the selected review type.

Table 32-1 – Applications Types and Review Procedures

Application / Action	Procedure Type	Decision Body*	Appeal Body*	Pre-Application Conference Required	Neighborhood/Developer Mtg Required	Applicable Code Chapter
[…]						
Variance						
• Variance (including Sign Variance) except as specified below	III	PC	CC	Yes	Yes	TDC 33.120
[…]						

* City Council (CC); Planning Commission (PC); Architectural Review Board (ARB); City Manager or designee (CM); Land Use Board of Appeals (LUBA).

Finding:
The requested applications are classified as Type III Procedure Types according to Table 32-1. They are being processed according to the applicable code for Type III procedures. This standard is met.

Section 32.020 – Procedures for Review of Multiple Applications.
Multiple applications processed individually require the filing of separate applications for each land use action. Each application will be separately reviewed according to the applicable procedure type and processed sequentially as follows:

(1) Applications with the highest numbered procedure type must be processed first;
(2) Applications specifically referenced elsewhere in the TDC as to the particular order must be processed in that order; and
(3) Where one land use application is dependent on the approval of another land use application, the land use application upon which the other is dependent must be processed first (e.g., a conditional use permit is subject to prior approval before architectural review).

Finding:
Further substation development will also require an Architectural Review (Type II). In this case, the approval of the Architectural Review is dependent upon the approval of the variance. VAR 21-0002 is therefore being processed before the Architectural Review, in accordance with 32.020(3). This standard is met.

Section 32.030 – Time to Process Applications.
(1) Time Limit - 120-day Rule. The City must take final action on all Type II, Type III, and Type IV-A land use applications, as provided by ORS 227.178, including resolution of all local appeals, within 120 days after the application has been deemed complete under TDC 32.160, unless the applicant provides written request or consent to an extension in compliance with ORS 227.178. (Note: The 120-day rule does not apply to Type IV-B (Legislative Land Use) decisions.)
[…]

Finding:
The application was deemed complete on April 2, 2021. The 120th day will be July 31, 2021. The hearing is scheduled May 20, 2021. The final action will take place within the 120 days unless the applicant requests an extension in compliance with ORS 227.178.This standard is met.

Section 32.110 – Pre-Application Conference.
(1) Purpose of Pre-Application Conferences. Pre-application conferences are intended to familiarize applicants with the requirements of the TDC; to provide applicants with an opportunity discuss proposed projects in detail with City staff; and to identify approval criteria, standards, and procedures prior to filing a land use application. The pre-application conference is intended to be a tool to assist applicants in navigating the land use process, but is not intended to be an exhaustive review that identifies or resolves all potential issues, and does not bind or preclude the City from enforcing any

applicable regulations or from applying regulations in a manner differently than may have been indicated at the time of the pre-application conference.
(2) When Mandatory. **Pre-application conferences are mandatory for all land use actions identified as requiring a pre-application conference in Table 32-1. An applicant may voluntarily request a pre-application conference for any land use action even if it is not required.**
(3) Timing of Pre-Application Conference. **A pre-application conference must be held with City staff before an applicant submits an application and before an applicant conducts a Neighborhood/Developer meeting.**
(4) Application Requirements for Pre-Application Conference.
(a) Application Form. **Pre-application conference requests must be made on forms provided by the City Manager.**
(b) Submittal Requirements. **Pre-application conference requests must include:**
(i) A completed application form;
(ii) Payment of the application fee;
(iii) The information required, if any, for the specific pre-application conference sought; and
(iv) Any additional information the applicant deems necessary to demonstrate the nature and scope of the proposal in sufficient detail to allow City staff to review and comment.
(5) Scheduling of Pre-Application Conference. Upon receipt of a complete application, the City Manager will schedule the pre-application conference. The City Manager will coordinate the involvement of city departments, as appropriate, in the pre-application conference. Pre-application conferences are not open to the general public.
(6) Validity Period for Mandatory Pre-Application Conferences; Follow-Up Conferences. A follow-up conference is required for those mandatory pre-application conferences that have previously been held when:
(a) An application relating to the proposed development that was the subject of the pre-application conference has not been submitted within six (6) months of the pre-application conference;
(b) The proposed use, layout, and/or design of the proposal have significantly changed; or
(c) The owner and/or developer of a project changes after the pre-application conference and prior to application submittal.

Finding:
A pre-application meeting is mandatory. The applicant participated in a pre-application meeting on November 4, 2020, 127 days prior to submittal. These standards are met.

Section 32.120 – Neighborhood/Developer Meetings.
(1) Purpose. The purpose of this meeting is to provide a means for the applicant and surrounding property owners to meet to review a development proposal and identify issues regarding the proposal so they can be considered prior to the application submittal. The meeting is intended to allow the developer and neighbors to share information and concerns regarding the project. The applicant may consider whether to incorporate solutions to these issues prior to application submittal.
(2) When Mandatory. Neighborhood/developer meetings are mandatory for all land use actions identified in Table 32-1 as requiring a neighborhood/developer meeting. An applicant may voluntarily

conduct a neighborhood/developer meeting even if it is not required and may conduct more than one neighborhood/developer meeting at their election.
(3) Timing. A neighborhood/developer meeting must be held after a pre-application meeting with City staff, but before submittal of an application.
(4) Time and Location. Required neighborhood/developer meetings must be held within the city limits of the City of Tualatin at the following times:
(a) If scheduled on a weekday, the meeting must begin no earlier than 6:00 p.m.
(b) If scheduled on a weekend, the meeting must begin between 10:00 a.m. and 6:00 p.m.
(5) Notice Requirements.
(a) The applicant must provide notice of the meeting at least 14 calendar days and no more than 28 calendar days before the meeting. The notice must be by first class mail providing the date, time, and location of the meeting, as well as a brief description of the proposal and its location. The applicant must keep a copy of the notice to be submitted with their land use application.
(b) The applicant must mail notice of a neighborhood/developer meeting to the following persons:
(i) All property owners within 1,000 feet measured from the boundaries of the subject property;
(ii) All property owners within a platted residential subdivision that is located within 1,000 feet of the boundaries of the subject property. The notice area includes the entire subdivision and not just those lots within 1,000 feet. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name, the notice area need not include the additional phases; and
(iii) All designated representatives of recognized Citizen Involvement Organizations as established in TMC Chapter 11-9.
(c) The City will provide the applicant with labels for mailing for a fee.
(d) Failure of a property owner to receive notice does not invalidate the neighborhood/developer meeting proceedings.
(6) Neighborhood/Developer Sign Posting Requirements. The applicant must provide and post on the subject property, at least 14 calendar days before the meeting. The sign must conform to the design and placement standards established by the City for signs notifying the public of land use actions in TDC 32.150.
(7) Neighborhood/Developer Meeting Requirements. The applicant must have a sign-in sheet for all attendees to provide their name, address, telephone number, and email address and keep a copy of the sign-in sheet to provide with their land use application. The applicant must prepare meeting notes identifying the persons attending, those commenting and the substance of the comments expressed, and the major points that were discussed. The applicant must keep a copy of the meeting notes for submittal with their land use application.

Finding:
The applicant has provided evidence that they held a Neighborhood/Developer meeting on January 18, 2021, 52 days prior to application submittal. The applicant has provided documentation of sign posting and notification in compliance with this section, as well as a sign-in sheet and notes from the meeting. These standards are met.

Section 32.130 – Initiation of Applications.

(1) Type I, Type II, Type III, and Type IV-A Applications. Type I, Type II, Type III, and Type IV-A applications may be submitted by one or more of the following persons:

(a) The owner of the subject property;

(b) The contract purchaser of the subject property, when the application is accompanied by proof of the purchaser's status as such and by the seller's written consent;

(c) A lessee in possession of the property, when the application is accompanied by the owners' written consent; or

(d) The agent of any of the foregoing, when the application is duly authorized in writing by a person authorized to submit an application by paragraphs (a), (b) or (c) of this subsection, and accompanied by proof of the agent's authority.

[…]

Finding:

The applicant has provided a title report (Exhibit C) showing Portland General Electric Company (PGE) to be the current owner of the subject site. The application has been signed by Jennifer Santhouse, PGE Manager of Property Services. This standard is met.

Section 32.140 – Application Submittal.

(1) Submittal Requirements. Land use applications must be submitted on forms provided by the City. A land use application may not be accepted in partial submittals. All information supplied on the application form and accompanying the application must be complete and correct as to the applicable facts. Unless otherwise specified, all of the following must be submitted to initiate completeness review under TDC 32.160:

(a) A completed application form. The application form must contain, at a minimum, the following information:

(i) The names and addresses of the applicant(s), the owner(s) of the subject property, and any authorized representative(s) thereof;

(ii) The address or location of the subject property and its assessor's map and tax lot number;

(iii) The size of the subject property;

(iv) The comprehensive plan designation and zoning of the subject property;

(v) The type of application(s);

(vi) A brief description of the proposal; and

(vii) Signatures of the applicant(s), owner(s) of the subject property, and/or the duly authorized representative(s) thereof authorizing the filing of the application(s).

(b) A written statement addressing each applicable approval criterion and standard;

(c) Any additional information required under the TDC for the specific land use action sought;

(d) Payment of the applicable application fee(s) pursuant to the most recently adopted fee schedule;

(e) Recorded deed/land sales contract with legal description.

(f) A preliminary title report or other proof of ownership.

(g) For those applications requiring a neighborhood/developer meeting:

(i) The mailing list for the notice;

(ii) A copy of the notice;

(iii) An affidavit of the mailing and posting;
(iv) The original sign-in sheet of participants; and
(v) The meeting notes described in TDC 32.120(7).

(h) A statement as to whether any City-recognized Citizen Involvement Organizations (CIOs) whose boundaries include, or are adjacent to, the subject property were contacted in advance of filing the application and, if so, a summary of the contact. The summary must include the date when contact was made, the form of the contact and who it was with (e.g. phone conversation with neighborhood association chairperson, meeting with land use committee, presentation at neighborhood association meeting), and the result;

(i) Any additional information, as determined by the City Manager, that may be required by another provision, or for any other permit elsewhere, in the TDC, and any other information that may be required to adequately review and analyze the proposed development plan as to its conformance to the applicable criteria;

(2) Application Intake. Each application, when received, must be date-stamped with the date the application was received by the City, and designated with a receipt number and a notation of the staff person who received the application.

(3) Administrative Standards for Applications. The City Manager is authorized to establish administrative standards for application forms and submittals, including but not limited to plan details, information detail and specificity, number of copies, scale, and the form of submittal.

Finding:

The applicant submitted this application on March 11, 2021. The application was deemed complete on April 2, 2021. The general land use submittal requirements were included with this application. These standards are met.

Section 32.150 - Sign Posting.

(1) When Signs Posted. Signs in conformance with these standards must be posted as follows:

(a) Signs providing notice of an upcoming neighborhood/developer meeting must be posted prior to a required neighborhood/developer meeting in accordance with Section 32.120(6); and

(b) Signs providing notice of a pending land use application must be posted after land use application has been submitted for Type II, III and IV-A applications.

(2) Sign Design Requirements. The applicant must provide and post a sign(s) that conforms to the following standards:

(a) Waterproof sign materials;

(b) Sign face must be no less than eighteen (18) inches by twenty-four (24) inches (18" x 24"); and

(c) Sign text must be at least two (2) inch font.

(3) On-site Placement. The applicant must place one sign on their property along each public street frontage of the subject property. (Example: If a property adjoins four public streets, the applicant must place a sign at each of those public street frontages for a total of four signs). The applicant cannot place the sign within public right of way.

(4) Removal. If a sign providing notice of a pending land use application disappears prior to the final decision date of the subject land use application, the applicant must replace the sign within forty-eight (48) hours of discovery of the disappearance or of receipt of notice from the City of its

disappearance, whichever occurs first. The applicant must remove the sign no later than fourteen (14) days after:

(a) The meeting date, in the case of signs providing notice of an upcoming neighborhood/developer meeting; or

(b) The City makes a final decision on the subject land use application, in the case of signs providing notice of a pending land use application.

Finding:

The applicant provided certification (Exhibit C) that signs in conformance with this section were placed on site in accordance with this section. This standard is met.

Section 32.160 – Completeness Review.

(1) Duration. Except as otherwise provided under ORS 227.178, the City Manager must review an application for completeness within 30 days of its receipt.

(2) Considerations. Determination of completeness will be based upon receipt of the information required under TDC 32.140 and will not be based on opinions as to quality or accuracy. Applications that do not respond to relevant code requirements or standards can be deemed incomplete. A determination that an application is complete indicates only that the application is ready for review on its merits, not that the City will make a favorable decision on the application.

(3) Complete Applications. If an application is determined to be complete, review of the application will commence.

(4) Incomplete Applications. If an application is determined to be incomplete, the City Manager must provide written notice to the applicant identifying the specific information that is missing and allowing the applicant the opportunity to submit the missing information. An application which has been determined to be incomplete must be deemed complete for purposes of this section upon receipt of:

(a) All of the missing information;

(b) Some of the missing information and written notice from the applicant that no other information will be provided; or

(c) Written notice from the applicant that none of the missing information will be provided.

(5) Vesting. If an application was complete at the time it was first submitted, or if the applicant submits additional required information within 180 days of the date the application was first submitted, approval or denial of the application must be based upon the standards and criteria that were in effect at the time the application was first submitted.

(6) Void Applications. An application is void if the application has been on file with the City for more than 180 days and the applicant has not provided the missing information or otherwise responded, as provided in subsection (4) of this section.

[…]

Finding:

The applicant submitted this application on March 11, 2021. The application was deemed complete on April 2, 2021. The general land use submittal requirements were included with this application. These standards are met.

Section 32.230 – Type III Procedure (Quasi-Judicial Review – Public Hearing).

Type III decisions involve the use of discretion and judgment and are made by the Planning Commission or Architectural Review Board after a public hearing with an opportunity for appeal to the City Council. The decision body for each application type is specified in Table 32-1. A hearing under these procedures provides a forum to apply standards to a specific set of facts to determine whether the facts conform to the applicable criteria and the resulting determination will directly affect only a small number of identifiable persons.

(1) Submittal Requirements. Type III applications must include the submittal information required by TDC 32.140(1).

(2) Determination of Completeness. After receiving an application for filing, the City Manager will review the application will for completeness in accordance with TDC 32.160.

(3) Written Notice of Public Hearing – Type III. Once the application has been deemed complete, the City must mail by regular first class mail Notice of a Public Hearing to the following individuals and agencies no fewer than 20 days before the hearing.

(a) Recipients:

(i) The applicant and, the owners of the subject property;

(ii) All property owners within 1,000 feet measured from the boundaries of the subject property;

(iii) All property owners within a platted residential subdivision that is located within 1,000 feet of the boundaries of the subject property. The notice area includes the entire subdivision and not just those lots within 1,000 feet. If the residential subdivision is one of two or more individually platted phases sharing a single subdivision name, the notice area need not include the additional phases;

(iv) All recognized neighborhood associations within 1,000 feet from the boundaries of the subject property;

(v) All designated representatives of recognized Citizen Involvement Organizations as established in TMC Chapter 11-9;

(vi) Any person who submits a written request to receive a notice;

(vii) Any governmental agency that is entitled to notice under an intergovernmental agreement entered into with the City and any other affected agencies, including but not limited to: school districts; fire district; where the project either adjoins or directly affects a state highway, the Oregon Department of Transportation; and where the project site would access a County road or otherwise be subject to review by the County, then the County; and Clean Water Services; Tri Met; and, ODOT Rail Division and the railroad company if a railroad-highway grade crossing provides or will provide the only access to the subject property. The failure of another agency to respond with written comments on a pending application does not invalidate an action or permit approval made by the City under this Code;

(viii) Utility companies (as applicable); and,

(ix) Members of the decision body identified in Table 32-1.

(b) The Notice of a Public Hearing, at a minimum, must contain all of the following information:

(i) The names of the applicant(s), any representative(s) thereof, and the owner(s) of the subject property;

(ii) The street address if assigned, if no street address has been assigned then Township, Range, Section, Tax Lot or Tax Lot ID;

(iii) The type of application and a concise description of the nature of the land use action;
(iv) A list of the approval criteria by TDC section for the decision and other ordinances or regulations that apply to the application at issue;
(v) Brief summary of the local decision making process for the land use decision being made and a general explanation of the requirements for submission of testimony and the procedure for conduct of hearings;
(vi) The date, time and location of the hearing;
(vii) Disclosure statement indicating that if any person fails to address the relevant approval criteria with enough detail, he or she may not be able to appeal to the Land Use Board of Appeals on that issue, and that only comments on the relevant approval criteria are considered relevant evidence;
(viii) The name of a City representative to contact and the telephone number where additional information may be obtained; and
(ix) Statement that the application and all documents and evidence submitted to the City are in the public record and available for review, and that copies can be obtained at a reasonable cost from the City; and
(x) Statement that a copy of the staff report will be available for inspection at no cost at least seven days prior to the hearing and will be provided at reasonable cost.

(c) Failure of a person or agency to receive a notice, does not invalidate any proceeding in connection with the application, provided the City can demonstrate by affidavit that required notice was given.

Finding:
After submittal and completeness review as required by this section, notice for the Type III hearing concerning VAR 21-0002 was mailed by city staff and contained the information required by this section. These standards are met.

(4) Conduct of the Hearing - Type III.
The person chairing the hearing must follow the order of proceedings set forth below. These procedures are intended to provide all interested persons a reasonable opportunity to participate in the hearing process and to provide for a full and impartial hearing on the application before the body. Questions concerning the propriety or the conduct of a hearing will be addressed to the chair with a request for a ruling. Rulings from the chair must, to the extent possible, carry out the stated intention of these procedures. A ruling given by the chair on such question may be modified or reversed by a majority of those members of the decision body present and eligible to vote on the application before the body. The procedures to be followed by the chair in the conduct of the hearing are as follows:

(a) At the commencement of the hearing, the person chairing the hearing must state to those in attendance all of the following information and instructions:
(i) The applicable substantive criteria;
(ii) That testimony, arguments and evidence must be directed toward the criteria described in paragraph (i) of this subsection or other criteria in the plan or land use regulation which the person believes to apply to the decision;

(iii) That failure to raise an issue accompanied by statements or evidence sufficient to afford the decision maker and the parties an opportunity to respond to the issue precludes appeal to the State Land Use Board of Appeals based on that issue;
(iv) At the conclusion of the initial evidentiary hearing, the decision body must deliberate and make a decision based on the facts and arguments in the public record; and
(v) Any participant may ask the decision body for an opportunity to present additional relevant evidence or testimony that is within the scope of the hearing; if the decision body grants the request, it will schedule a date to continue the hearing as provided in TDC 32.230(4)(e), or leave the record open for additional written evidence or testimony as provided TDC 32.230(4)(f).

(b) The public is entitled to an impartial decision body as free from potential conflicts of interest and pre-hearing ex parte (outside the hearing) contacts as reasonably possible. Where questions related to ex parte contact are concerned, members of the decision body must follow the guidance for disclosure of ex parte contacts contained in ORS 227.180. Where a real conflict of interest arises, that member or members of the decision body must not participate in the hearing, except where state law provides otherwise. Where the appearance of a conflict of interest is likely, that member or members of the decision body must individually disclose their relationship to the applicant in the public hearing and state whether they are capable of rendering a fair and impartial decision. If they are unable to render a fair and impartial decision, they must be excused from the proceedings.

(c) Presenting and receiving evidence.

(i) The decision body may set reasonable time limits for oral presentations and may limit or exclude cumulative, repetitious, irrelevant, or personally derogatory testimony or evidence;
(ii) No oral testimony will be accepted after the close of the public hearing. Written testimony may be received after the close of the public hearing only as provided by this section; and
(iii) Members of the decision body may visit the property and the surrounding area, and may use information obtained during the site visit to support their decision, if the information relied upon is disclosed at the beginning of the hearing and an opportunity is provided to dispute the evidence.

(d) The decision body, in making its decision, must consider only facts and arguments in the public hearing record; except that it may take notice of facts not in the hearing record (e.g., local, state, or federal regulations; previous City decisions; case law; staff reports). Upon announcing its intention to take notice of such facts in its deliberations, it must allow persons who previously participated in the hearing to request the hearing record be reopened, as necessary, to present evidence concerning the newly presented facts.

(e) If the decision body decides to continue the hearing, the hearing must be continued to a date that is at least seven days after the date of the first evidentiary hearing (e.g., next regularly scheduled meeting). An opportunity must be provided at the continued hearing for persons to present and respond to new written evidence and oral testimony. If new written evidence is submitted at the continued hearing, any person may request, before the conclusion of the hearing, that the record be left open for at least seven days, so that he or she can submit additional written evidence or arguments in response to the new written evidence. In the interest of time, after the close of the hearing, the decision body may limit additional testimony to arguments and not accept additional evidence.

(f) If the decision body leaves the record open for additional written testimony, the record must be left open for at least seven days after the hearing. Any participant may ask the decision body in writing for an opportunity to respond to new evidence (i.e., information not disclosed during the public hearing) submitted when the record was left open. If such a request is filed, the decision body must reopen the record, as follows:

(i) When the record is reopened to admit new evidence or arguments (testimony), any person may raise new issues that relate to that new evidence or testimony;

(ii) An extension of the hearing or record granted pursuant to this section is subject to the limitations of TDC 32.030, unless the applicant waives his or her right to a final decision being made within the required timeframe; and

(iii) If requested by the applicant, the decision body must grant the applicant at least seven days after the record is closed to all other persons to submit final written arguments, but not evidence, provided the applicant may expressly waive this right.

Finding:

The Tualatin Planning Commission will follow the hearing requirements set forth by this section in hearing VAR 21-0002. These standards will be met.

(5) Notice of Adoption of a Type III Decision.

Notice of Adoption must be provided to the property owner, applicant, and any person who provided testimony at the hearing or in writing. The Type III Notice of Adoption must contain all of the following information:

(a) A description of the applicant's proposal and the City's decision on the proposal, which may be a summary, provided it references the specifics of the proposal and conditions of approval in the public record;

(b) The address or other geographic description of the property proposed for development, including a map of the property in relation to the surrounding area;

(c) A statement that a copy of the decision and complete case file, including findings, conclusions, and conditions of approval, if any, is available for review and how copies can be obtained;

(d) The date the decision becomes final, unless a request for appeal is submitted; and

(e) The notice must include an explanation of rights to appeal the decision to the City Council in accordance with TDC 32.310.

(6) Appeal of a Type III Decision. Appeal of an Architectural Review Board or Planning Commission Type III Decision to the City Council may be made in accordance with TDC 32.310.

(7) Effective Date of a Type III Decision.

(a) The written order is the final decision on the application.

(b) The mailing date is the date of the order certifying its approval by the decision body.

(c) A decision of the Architectural Review Board or Planning Commission is final unless:

(i) a written appeal is received at the City offices within 14 calendar days of the date notice of the final decision is mailed; or

(ii) The City Manager or a member of the City Council requests a review of the decision within 14 calendar days of the date notice of the final decision is mailed.

Finding:
A final decision and any appeal will follow the requirements of this section. These standards will be met.

Chapter 33: Applications and Approval Criteria

Section 33.120 Variances and Minor Variances
[…]
(2) Applicability. Variances may be granted to the requirements of the TDC as provided in this Section when it can be shown that, owing to special and unusual circumstances related to a specific piece of property, the literal interpretation of the TDC would cause an undue or unnecessary hardship.
(a) Variances may be requested for the following:
(i) Standards in TDC Chapters 40-69 and 71-73A through 73F.

Finding:
A Variance is proposed to the fence setback standard described in TDC Table 64-2, Development Standards in the MBP Zone. The proposed fence configuration is shown in the applicant's site plans (Exhibit B). The Variance process is applicable per TDC 33.120(2)(a)(i).

[…]

(6) Approval Criteria for Granting a Variance that is not a Minor Variance or for a Wireless Communication Facility. A variance must not be granted unless it can be shown that criterion (a) is met and three of the four approval criteria (b)-(e) are met for non-sign requests:

(a) A hardship is created by exceptional or extraordinary conditions applying to the property that do not apply generally to other properties in the same zone or vicinity and the conditions are a result of lot size or shape, topography, or other physical circumstances applying to the property over which the applicant or owner has no control.

Finding:
The proposed fence setback variance is to allow the perimeter security fence to be located up to 10 feet from the right of way on SW Blake Street and SW 124th Avenue. The subject standard is a setback requirement specific to fences in the MBP zone, which must be 50 feet "from public right of way" (Table 64-2, TDC 64.300).

The applicant notes that there are several pressures pointing toward the particular location for a substation, which in turn is confounded by site limitations. The pressures prompting the need for locating a substation in this vicinity include proximity to the new Integrated Operations Center, and proximity to the Willamette Water Supply water treatment plant, such that construction of the substation at this location has advantages for regional utility service stability. The applicant describes that no other options within the 43-acre site controlled by PGE provide the necessary area, topography, and access appropriate for substation development.

While it is not inherently unique to have at least one road traversing a 43-acre area, the applicant notes that the particular location and angle of the necessary SW Blake alignment limits other possible development locations for a substation with a footprint over 150,000 square feet within the site area that is needed in order to provide this regional service (Exhibit A).

The fence itself is an inherent safety component of the substation unlike many other fences associated with development types that would be permitted in this zone. The need to distance high voltage equipment within the substation drives the need for space between individual pieces of equipment, as well as the distance required between high-voltage equipment and other objects including the fence itself and trees.

Criterion A is met.

(b) The hardship does not result from actions of the applicant, owner or previous owner, or from personal circumstances or financial situation of the applicant or owner, or from regional economic conditions.

Finding:
The circumstances described in the above section related to regional service needs, the configuration of SW Blake, and safety needs associated with substation development are not inherently the result of owner actions, circumstances, or finances, and do not result directly from regional economic conditions. Criterion B is met.

(d) The variance must not be detrimental to the applicable goals and policies of the Tualatin Comprehensive Plan and must not be injurious to property in the zone or vicinity in which the property is located.

Finding:
Applicable Comprehensive Plan goals and policies include:

***GOAL 5.1** Locate public services and utilities in a manner that minimizes negative impacts and enhances public benefits.*
***POLICY 5.1.2 PUBLIC SAFETY.** Locate facilities such as utilities and other critical infrastructure to minimize the risk of hazards the facility may pose to surrounding uses, or risks that natural or other hazards may pose to the facility and surrounding uses alike.*
***POLICY 5.1.3 COMPATIBILITY.** Encourage attractive design, screening, and use of landscaping to moderate visual impacts of utilities and public facilities with their urban design context.*

The applicant describes that the intended location of the proposed substation will enhance public benefit, co-locating the substation with an existing PGE site and near other critical infrastructure to maximize stability in the electrical grid and nearby water utilities. Since the fence is also a critical piece of safety equipment for such development, the proposed Variance is additionally consistent with promoting public safety and minimizing hazards. Locating the substation on existing PGE property meanwhile reduces any associated noise or visual impacts to other locations beyond a limited corner of the industrial area.

CHAPTER 10 PLANNING DISTRICT OBJECTIVES

Manufacturing Business Park Planning District (MBP)

The purpose of the MBP Planning District is to provide an environment for industrial development consistent with the Southwest Tualatin Concept Plan (accepted by the City in October 2010) and as a Metro-designated Regionally Significant Industrial Area (RSIA) consistent with Metro's Urban Growth Boundary expansion decisions of 2002 and 2004. The MBP Planning District will be a mix of light industrial and high-tech uses in a corporate campus setting, consistent with MBP Planning District development standards. The RSIA-designated area requires at least one 100-acre parcel and one 50-acre parcel for large industrial users. The district is intended to provide for an esthetically attractive working environment with campus-like grounds, attractive buildings, ample employee parking and other amenities appropriate to an employee oriented activity. It also is intended to protect existing and future sites for such uses by maintaining large lot configurations, a cohesive planned-development design and limiting uses to those that are of a nature that will not conflict with other industrial uses or nearby residential areas of the City.

Since the substation is part of the larger PGE IOC campus, which is consistent with the objective of campus-like development. The development of a substation would be served by its proximity to a central PGE office, resulting in a cohesive working location that also serves the broader area with critical electric service.

To the extent that the proposed Variance is shown to be consistent with these goals and policies, Criterion D is met.

(e) The variance is the minimum remedy necessary to alleviate the hardship.

Finding:

The applicant describes that no other options within the 43-acre site controlled by PGE provide the necessary area, topography, and access appropriate for substation development. In order to provide a design consistent with National Electrical Safety Code and PGE's own standards, the fencing must be located at a distance from proposed equipment. The applicant has provided design diagrams (Exhibit B) showing the most compact equipment design they assert is practicable, illustrating that the proposed setback variance is the minimum necessary to achieve a viable design and alleviate the associated hardships. Criterion E is met.

Chapter 64: Manufacturing Business Park Zone (MBP)

Section 64.300 – Development Standards.

Development standards in the MBP zone are listed in Table 64-2. Additional standards may apply to some uses and situations, see TDC 64.310.

Table 64-2
Development Standards in the MBP Zone

STANDARD	REQUIREMENT	LIMITATIONS AND CODE REFERENCES
[…]		
MINIMUM SETBACKS		
[…]		
Fences	50 feet	From public right-of-way.
[…]		

Finding:

Per Table 64-2, the standard setback for fences is 50 feet from the public right-of-way. The criteria for a variance from these standards have been addressed above. The remainder of the development standards are to be addressed through Architectural Review. These standards are or will be met.

III. RECOMMENDATION

Based on the application materials and analysis and findings presented above, staff finds that the applicable criteria have been met relative to VAR 21-0002, and therefore recommends approval of these applications.