

**CITY OF TUMWATER
HEARING EXAMINER STAFF REPORT
Hearing Date: September 25, 2024**

Project Name: Three Lakes Crossing Fence Variance

Case Numbers: TUM-24-0928

Owner: Copper Ridge, LLC; PO BOX 73790, Puyallup, WA 98373.

**Project Proponent/
Representative:** Evan Mann, Copper Ridge, LLC; PO BOX 73790,
Puyallup, WA 98373

Type of Action Requested: The project proponent is requesting approval of a Variance (TUM-24-0928) from required fence height regulations. The variance requests the ability to install a solid panel fence 72” tall within a corner lot setback.

Project Location: 1157 68th Ave SE, Tumwater, WA 98501. Lot 29 of the Three Lakes Crossing Subdivision. Tax Parcel # 79620002900.

SEPA: This proposal is categorically exempt from the Washington State Environmental Policy Act review, per WAC 197-11-800(6)(e).

Public Notification: Public notification for the September 25, 2024 public hearing was mailed to property owners within 300 feet of the subject property and various agencies, posted on-site and published in *The Olympian* on September 13, 2024, in conformance with Tumwater Municipal Code (TMC) 14.06.

Staff Recommendation: Denial of the variance request.

Staff Planner: Alex Baruch, Senior Planner, AICP
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I. BACKGROUND INFORMATION

A. Application and Review Process

The variance application was submitted on June 10, 2024. Review of the materials and coordination with the applicant occurred during June and July. Staff reached out to the applicant regarding a meeting date for this application. The applicant was not

available on August 28 so we scheduled this hearing for September 25.

Under TMC 2.58.090, review authority for Variance applications fall under the purview of the Hearing Examiner.

B. Project History

While completing inspections at the end of the site infrastructure construction, staff noted a 72” solid panel fence being installed along the edge of the property facing Henderson Boulevard SE and 68th Ave SE. Staff reached out to the applicant notifying them of fence height regulations at property corners. Staff met with the applicant’s representative on-site to review the height regulations for this corner lot. After the meeting the applicant provided a site distance exhibit showing that there were not site distance issues with a 72” tall solid panel fence (Exhibit 3).

Staff stated that there was not flexibility within the Tumwater Municipal Code (TMC) 18.46.030.A.1, Fences – Height restrictions, to allow a full panel 72” tall fence along the corner within the required setback, even if the site distance can be met. Staff mentioned that a 72” tall fence could be accommodated if the portion of fence in the front and or side yard on a flanking street above 36” is composed of open work in such a manner that eighty percent of any portion can be seen through by oncoming traffic and pedestrians (Exhibit 4).

The applicant stated that they would like to file a variance application to allow a full panel (solid wood) 72” tall fence. Prior to recordation of the final plat the applicant filed a letter stating their intent to request a variance (Exhibit 5). The final plat was recorded on May 14, 2024. The applicant filed building permit applications for several lots within the subdivision, including Lot 29. Prior to approval of the building permit staff requested the removal of the fence panels until a decision on the variance had been made. The applicant agreed to remove the fence panels and once they were removed staff approved the building permit for construction (Exhibit 6).

C. Existing Conditions

A preliminary plat and planned unit development was approved for this property on July 15, 2022. Over the last two years the applicant has moved forward with completing construction of the infrastructure and roads required by the approval. All inspections for the site infrastructure have been completed, final plat has been recorded and single-family homes are beginning to be constructed.

D. Project Description

The applicant is requesting a variance to allow a full panel (solid wood) 72” tall fence on the corner of Lot 29 at Henderson Boulevard SE and 68th Ave SE.

II. REGULATORY FRAMEWORK

The proposal is subject to the following policies and regulations:

- A. **Public Notice Requirements –TMC Chapter 14.06:** TMC Chapter 14.06 requires the City to provide public notification of certain application types by issuing a Notice of Open Record Hearing (TMC 14.06.070).

Staff Response and Recommended Finding: *Public notice for the variance hearing was mailed to property owners within 300 feet of the subject property, affected agencies and posted on-site and published in the Olympian on September 13, 2024 (Exhibit 2 and 7).*

- B. **Tumwater Zoning Code – TMC Title 18:**

The subject property is located within the Single Family Low Density (SFL) and Single Family Medium Density (SFM) zone district.

18.46.030 Fences – Height restrictions.

- A. Residential Zones.

1. Front yard: forty-two inches maximum height. On corner lots, fences shall be limited to thirty-six inches in height for a distance of fifteen feet from the intersection of the property lines abutting the street, and to forty-two inches in height for the remainder of the front yards facing on both streets.

Fences may be permitted to a maximum height of seventy-eight inches from the ground in the front and/or side yard on a flanking street if the portion above thirty-six inches is composed of open work in such a manner that eighty percent of any portion can be seen through by oncoming traffic and pedestrians.

Fences for legally established agriculture uses may be permitted to a maximum height of ninety-six inches (eight feet) from the ground in the front yard provided the fence material is of a common deer fence type design. Examples of common deer fence designs include wire or polypropylene mesh with rectangular openings generally four inches by four inches in size. Barbed wire, electric charge, and sharp or pointed protrusions are not allowed on the ninety-six-inch (eight feet) fences. Additionally, the ninety-six-inch (eight feet) fences shall not be constructed of chain link, chicken wire, solid steel, solid wood, or other similar solid designs that do not allow the passage of air and light.

On through lots, a seventy-eight-inch fence may be allowed in one of the front yards, provided the following conditions can be met: (a) the fence will be located in the yard

on the back side of the structure; (b) there is no street access from the end of the lot where the fence will be located; (c) the addition of the fence will not be detrimental to the neighborhood in terms of view, light, and air, nor injurious to traffic safety; (d) the fence will not appear obtrusive when compared to the rest of the block face on which it will be placed.

Staff Analysis: Lot 29 is considered a corner lot per the Tumwater Municipal Code definition which states: 18.04.120: "Lot, corner" means a lot that has frontage on or abuts two or more intersecting streets. This is not what would be considered a through lot as Lot 29 does not only "front on two parallel or nearly parallel streets".

Applying the corner lot requirements in the fence ordinance there are two options for locating fences within the setback:

- Fences shall be limited to thirty-six inches in height for a distance of fifteen feet from the intersection of the property lines abutting the street, and to forty-two inches in height for the remainder of the front yards facing on both streets; or
- Fences may be permitted to a maximum height of seventy-eight inches from the ground in the front and/or side yard on a flanking street if the portion above thirty-six inches is composed of open work in such a manner that eighty percent of any portion can be seen through by oncoming traffic and pedestrians.

C. Variances – 18.58:

Hearing Examiner – TMC 2.58.090 and 18.58:

TMC.18.58.010 states: "Where difficulties exist rendering compliance with the zoning ordinance impractical and such compliance would create unnecessary hardship to the owners or users of land or buildings, the hearing examiner may grant a variance after due notice and a public hearing. The variance procedure applies to mechanical problems, such as structure height, yard setbacks, parking requirements, etc."

Variance Criteria Analysis:

Applicant and Staff Response and Recommended Finding:

Both the applicant and staff's analysis of the variance criteria is provided below. The applicant's variance request submittal can be found in Exhibit 12 and 13.

In accordance with TMC 18.58.040, a variance may be granted, after investigation, provided all of the following findings of fact exist:

1. *That special conditions exist which are peculiar to the land, such as size, shape, topography, or location, not applicable to other lands in the same*

district, and that literal interpretation of the provisions of this title would deprive the property owners of rights commonly enjoyed by other properties similarly situated in the same district under the terms of this title;

Applicant Response: Please reference the site plan and sight distance exhibit (Exhibit 13) included with this letter. The sight distance triangles for the intersection show that with the fence at full 72" height there are zero impacts to visibility or sight distance. With the fence as it is currently constructed and located there would be unimpeded line of sight for traffic entering and leaving the site. The removal or reduction of this fence to 42"/36" would only serve to reduce privacy for the home. In addition, Lot 29 sits lower than the road grade so with a reduced fence height this lot would have an even further reduction of privacy. This could result in prowlers having free reign to peer into their backyard and with a low fence of 36" they would have easy access to the property. The intent of the fence height restriction is to provide clear line of sight for traffic at corners. This makes sense at a true 90° corner. However, this corner is rounded with a 25' right of way radius and effectively that results in the fence being set back from the intersection sufficiently to meet the intent of the code without reducing the height. A fence height of 72" is standard in all forms of residential home building throughout all jurisdictions. Without a specific need for added sight distance there is no justifiable reason to require the fence be reduced at the corners and along a side yard adjacent to a road.

Staff Analysis: Staff does not believe that special conditions exist for this development that are not applicable to other lands in the same district. The subdivision across the street (Susan Lake Estates) has a group of homes that have a smaller retaining wall in the back of their lots along Henderson Blvd. that includes a lot at the corner of Percy Lane and Henderson Blvd (6619 Percy Lane SE). A similar discussion occurred with the developer of that lot as to what corner lot fence requirements should be implemented. The applicant in that circumstance brought the fence height below the required amount 15' from the corner of the lot (Exhibit 8).

Staff also does not believe that the literal interpretation of the provisions of this title would deprive the property owner of the rights commonly enjoyed by other properties within the community as all corner lots are treated the same throughout the City. The intent of the fence ordinance "is to establish minimum requirements and standards for fencing where needed to promote safety, provide screening to safeguard privacy and to protect the aesthetic assets of the community in general."

Staff agrees with the applicant that the large grade at the rear of the property would allow more visibility into the backyard with a lower fence height. While this is the case, there will still be privacy and safety for the lot with one of the corner lot fence options allowed by the ordinance, especially with the option that allows a 72" tall fence where any portion over 36" is made of open work where eighty percent of any portion can be

seen through by oncoming traffic and pedestrians. Lastly, the way the lot is set behind a large retaining wall will also provide privacy for the homeowners.

2. *That the special conditions and circumstances are not the result of actions of the applicant;*

Applicant Response: The city requires that intersections have a radius where two roads meet. This results in the property line and eventual fence line being set back from the road and allowing for full sight distance even with a 72" tall fence. The City standard negates the need for a reduced side yard and intersection fence height for increased sight distance. The removal and shortening of the fence will not result in any additional sight distance.

Staff Analysis: Staff does not believe there are special conditions or circumstances that are not the result of actions by the applicant. The development requirements for a subdivision which include density, infrastructure, open space and street regulations required developing a subdivision to specific standards. This lot configuration and road alignment was approved by the City and met the development guide standards for public roads. The fence ordinance discusses options and fence heights for construction of fences within the required lot setbacks. One option for laying out the fence as desired (with a 72" full panel solid wood construction) would be to install the fence outside the required setbacks (Exhibit 9).

One example of the lot configuration choices that were made during the subdivision planning was to include a landscape tract adjacent to Lot 30 (Exhibit 10). As a result, Lot 30 was not considered a corner lot. This allows Lot 30 to have a taller fence along the side and rear of the property.

Since the applicant did not make this choice for Lot 29, we would have to apply the corner lot fence regulations (TMC 18.46.030.A) which require either:

- *Fences shall be limited to thirty-six inches in height for a distance of fifteen feet from the intersection of the property lines abutting the street, and to forty-two inches in height for the remainder of the front yards facing on both streets; or*
- *Fences may be permitted to a maximum height of seventy-eight inches from the ground in the front and/or side yard on a flanking street if the portion above thirty-six inches is composed of open work in such a manner that eighty percent of any portion can be seen through by oncoming traffic and pedestrians.*

The lot configuration was the result of the applicant's actions and therefore an opaque fence 72" tall would not be allowed in the proposed location.

3. *That the granting of the variance requested will not confer a special privilege to the property that is denied other lands in the same district;*

Applicant Response: The granting of this variance will not confer a special privilege to the property that would be denied other lands in the same district. The fence code applies throughout the City and is applicable in a majority of cases. However, in this case where the road standards result in a large open right of way with a generous radius, there is no added benefit to sight distance by the reduction of the fence height.

Staff Analysis: Fence height regulations along corner lots have been a requirement since the original inception of the fence ordinance in 1984 (Exhibit 11, page 19-20). The same corner lot diagram, distances and height regulations have been in place for corner lots over this time. Staff has interpreted this requirement for corner lots the same way over the years. As already discussed under staff's analysis under the first variance criteria, the lot at the corner of Percy Lane and Henderson Blvd developed within Susan Lake Estates installed fencing meeting the requirements of TMC 18.46.030.A.1. Granting a variance for a solid fence would be a privilege to this property, that was not provided to other lands in the same district. Lastly, there is not an exception built into the ordinance for meeting the site distance requirements for vehicles to allow an opaque fence 72" tall.

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

Applicant Response: The granting of the variance will not be materially detrimental to the public welfare or injurious to the property. As stated previously, there is ample sight distance for vehicles and pedestrians entering and leaving the project. All factors of safety and functionality have been met and exceeded. Allowing this variance will help to bolster neighborhood cohesiveness and uniformity. Also, as states before, allowing the fence to remain at 72" in height will provide for a higher level of security and privacy for the future homeowners of Lot 29.

Staff Analysis: It does not appear that the proposed opaque fence at 72" would be materially detrimental to the public welfare as site distance requirements appear to be met (Exhibit 13).

5. *That the reasons set forth in the application justify the granting of the variance, and that the variance, if granted, would be the minimum variance that will make possible the reasonable use of the land.*

Applicant Response: The proposed variance is minimal in scale and scope and allows for a reasonable expectation of privacy and uniformity in the plat. The reduction of this one section of fence in a plat of 45 lots would result in Lot 29 being subject to a

different standard than the remainder of the lots in the plat. This is only sensible given the design of the intersection resulting in ample sight distance being met and all factors of safety being provided for.

Staff Analysis: Staff does not believe that the reasons outlined in the application justify the variance. The proposed fence configuration would provide a benefit that other subdivisions within the City have not been granted in the same situation and the lot configuration was the result of the applicant's actions. Lot 29 is also not the only corner lot within the Three Lakes Crossing plat, Lot 11 is also a corner lot and would need to meet the corner lot fence regulations as well.

Staff does not believe that a 72" solid panel fence along the corner of Henderson Blvd and 68th Ave is the minimum variance that would make possible the reasonable use of the land. A building permit has been approved for the construction of a single-family home. A fence meeting the ordinance requirements for a corner lot could be constructed along the roads which would provide ample privacy and safety.

Staff Recommendation:

Staff recommends denial of this variance as it does not meet all of the variance criteria as required by 18.58.040.

**Submitted on Behalf
Of the City of
Tumwater
Community
Development
Department by/
Staff Contact:**

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Report Issue Date: September 18, 2024

List of Exhibits:

1. Staff Report
2. Public Hearing Notice 09-13-2024
3. Three Lakes Crossing - Sight Distance Exhibit 04-17-2024
4. Chapter 18.46 FENCING
5. Three Lakes Crossing - Fence Variance Letter of Intent
6. Exhibit 6. Photo Fence Panels Removed 06-17-2024
7. Public Notice Certification
8. Percy Lane Photos
9. Full Height Fence Site Plan Example
10. Three Lakes Crossing Lot 30 Example
11. Ordinance #883 07-01-1984

12. Request for Variance 06-11-2024
13. Three Lakes Sight Distance Exhibit 07-18-2024