



COMMUNITY DEVELOPMENT

333 Broadalbin Street SW, PO Box 490, Albany, Oregon 97321-0144 | Community Development 541-917-7550

Staff Report

Minor Variance to Fence Height

VR-08-24

August 15, 2024

Summary

The request is for a Minor Variance to increase the height of an interior yard fence from six feet to six feet six inches. Minor Variance applications are a Type I-L procedure reviewed at the staff level. This report evaluates the proposal for conformance with the applicable Minor Variance criteria in Section 2.696 in the ADC. The analysis finds all applicable standards and criteria are met.

Application Information

Proposal:	Increase the height of an interior yard fence from 6 feet to 6 feet 6 inches.
Review Body:	Staff (Type I-L review)
Applicant/Property Owner:	Howard Basch; 1919 13th Avenue SW; Albany, OR 97321
Address/Location:	1919 13th Avenue SW; Albany, OR 97321
Map/Tax Lot:	Linn County Assessor: 11S-04W-12BC, Tax Lot 03800
Zoning:	Residential Single Dwelling (RS-6.5)
Overlay Districts:	Floodplain Overlay District
Total Land Area:	6,000 square feet (0.14 acre)
Existing Land Use:	Single Dwelling Unit

Notice Information

A notice of filing was mailed to property owners located within 100 feet of the subject property on July 30, 2024. At the time of drafting this report, the Albany Planning Division received two written comments from the public.

COMMENTS

Robert Cooney, no address given, wrote in support of the minor variance and stated that they had no problems with the fence (Attachment C). James Helton, with Empire Builders of Oregon LLC, states that his company has built over 20 homes in Takena Estates. He contends that most of the people in the development have installed six-foot high fences, including the applicant. Sometime after June 2023, the applicant added 18 inches to the top of the fence which is not in compliance with City standards or the homeowner's association (Attachment D).

STAFF RESPONSE

The applicant has applied for a minor variance to the maximum fence height. Approval of the minor variance will limit the fence height to no more than 6 feet 6 inches, a 10 percent increase over the maximum allowable fence height in accordance with Albany Development Code (ADC) section 2.696(3).

Appeals

A Minor Variance decision is a limited land use decision and may be appealed in accordance with Albany Development Code Sections 1.220 and 1.410.

Analysis of Development Code Criteria – Minor Variance

Albany Development Code (ADC or Development Code) includes the following approval review criteria in Section 2.696 (identified below). Development Code criteria are shown in ***bold italic*** followed by findings and conclusions. Certain findings explain how the proposed development can meet review criteria through conditions of approval, where determined feasible.

Criterion 1

The Minor Variance is not requested to avoid a land use review process or increase density; AND

Findings of Fact

- 1.1 The applicant is requesting a minor variance to increase the interior yard six-foot fence height to six feet six inches.
- 1.2 The requested minor variances are not requested to avoid a land use review process or increase density.

Conclusion

- 1.1 The minor variance is not being requested to avoid a land use review or increase density.

Criterion 2

The need for the Minor Variance is created by the unusual configuration of the property, to protect natural features, due to the location of an existing structure on the site, or the site is an infill or redevelopment site less than one acre with development on both sides; AND

Findings of Fact

- 2.1 The applicant's property has fill that was placed when the Takena Estates subdivision was developed in order to lift the residence above the adjacent floodplain.
- 2.2 The fill that was placed only served to raise the elevation of the home but not the adjacent yard. As a result, the existing six-foot fence was constructed in an area where no fill was placed, making it appear shorter than six feet at the vantage point relative to the house. This unusual circumstance is the basis for the minor variance.
- 2.3 The applicant is seeking an increase to the fence height from six feet to six feet six inches in order to enhance the level of privacy that an ordinary fence could provide.

Conclusion

- 2.1 The need for the minor variance is created by the unusual circumstance of the property.

Criterion 3

The Minor Variance is the minimum necessary to address the unusual circumstance, generally no more than 10 percent from a numeric standard, and the request is still consistent with the purpose of the zoning district and any applicable overlay district.

Findings of Fact

- 3.1 The applicant states that the minor variance is the minimum necessary to address the unusual circumstances and is not greater than a 10 percent deviation from a numeric standard.

Conclusion

- 3.1 The applicant has demonstrated that the minor variance is the minimum necessary to address the circumstances on the subject property, and the request is still consistent with the zoning district.

Overall Conclusion

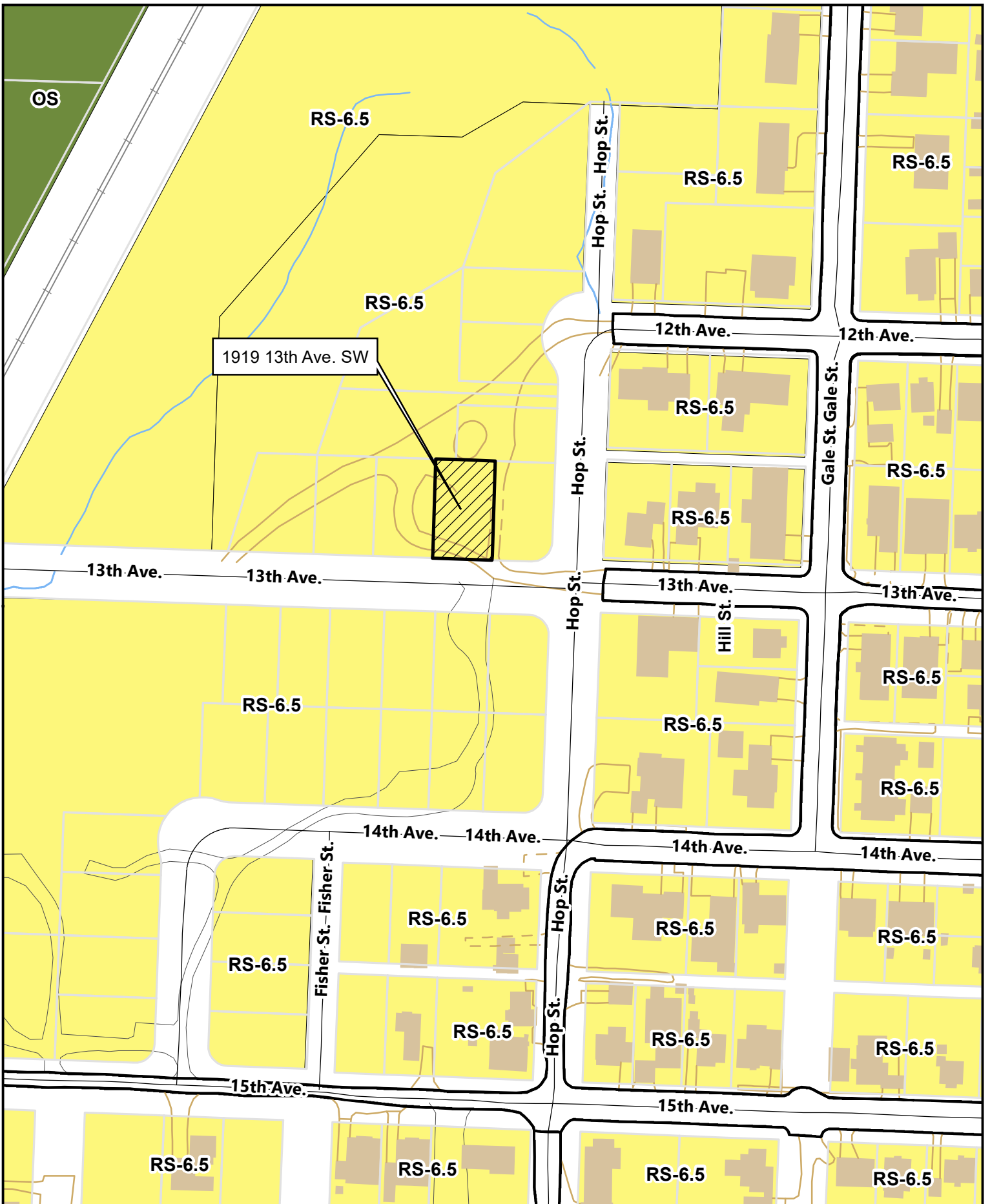
As proposed, the application for a minor variance satisfies all applicable review criteria as outlined in this report.

Attachments

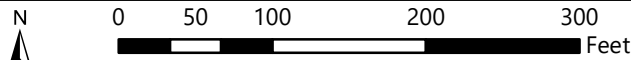
- A. Location Map
- B. Minor Variance Checklist
- C. Cooney Comments
- D. Helton Comments

Acronyms

ADC	Albany Development Code
VR	Variance Review File Designation



G:\Community Development\Planning\Land Use Cases\2020s\2024\Variances (08)\1919_13th_Ave_SW\Location Map.mxd



Date: 7/25/2024 Map Source: City of Albany

1919 13th Avenue SW

Location / Zoning Map

SUPPLEMENTAL APPLICATION INFORMATION

Submit answers to the following proposal questions (separately or submit this sheet):

List the Article of the Development Code from which you are requesting the Minor Variance, (Note: a separate application is needed for each additional request to vary from a Development Code Article.) [Example: ADC Table 3.190-1].

Briefly explain the requested Minor Variance request. (Example: To allow a 14-foot front yard setback when 15 feet is the standard.)

REQUESTING A MINOR VARIANCE TO RAISE MY BACK FENCE TO 6'-6" HIGH. MEASURING FROM THE AVERAGE HIGH POINT

Will any existing structures be removed or affected by the Minor Variance? NO

(NOTE: Before demolition or removal of any structure, please obtain a demolition/moving permit from the City of Albany Building Division.)

Does the site contain any historic structures or historically significant features as identified on the City's Historic Inventory? Yes ___ No [X]

If yes, historic review may be required per Article 7. Please describe any impact or alterations to any historic structures or features.

Existing uses and zoning of properties adjacent to the site (including across the street, if applicable):

	Current Uses	Zoning
North	Single Family	
South	" "	" "
East	" "	" "
West	" "	" "

Note: Some properties may have covenants or restrictions, which are private contracts between neighboring landowners. These frequently relate to density, minimum setbacks, or size and heights of structures. While these covenants and restrictions do not constitute a criterion for a City land use decision, they may raise a significant issue with regard to the City's land use criteria. It is the responsibility of the applicant to investigate private covenants or restrictions.

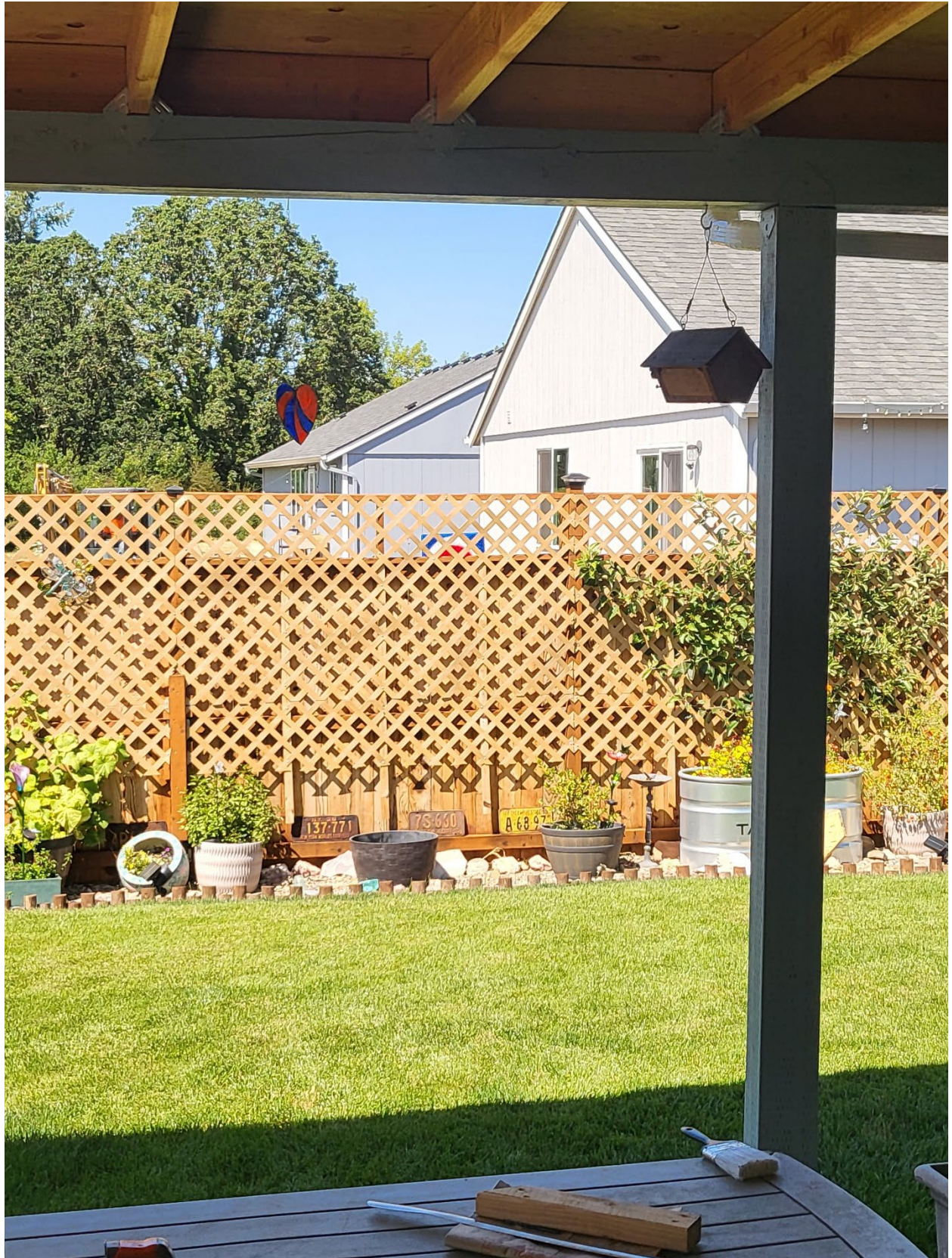
MINOR VARIANCE - PURPOSE AND PROCEDURE

Purpose (ADC 2.692). The Minor Variance review allows the Director to approve limited modifications to the application of numeric standards for unusual situations specific to the site. Minor Variances will not be considered to void a review process or standard in this Code. Minor Variances are typically for requests that are 10 percent or less of numeric standard.

Alternative setbacks in developed areas are addressed in Sections 3.240, 4.130, and 5.130 and may not require a Minor Variance.

Procedures (ADC 2.694). Minor Variance applications are processed through a Type I-L procedure. Requests not meeting the purpose of Minor Variances may be processed as Major Variances. The Director will determine whether an application is processed as a Minor Variance or a Major Variance.

Minor Variance requests within one any of Albany's Significant Natural Resources overlay districts (/SW, /RC, /HA), require mitigation per ADC Sections 6.400 and 6.410.





From: [Robert Cooney](#)
To: [Martineau, David](#)
Cc: [Jessica Cooney](#)
Subject: Minor Variance to Fence Height
Date: Monday, August 5, 2024 8:29:17 AM

Hello,

I am just responding to the letter I received in the mail about a minor variance to fence height filing for Howard Basch at 1919 13 Ave SW Albany, OR 97321. My wife and I live right next-door to Howard and we have absolutely no problem whatsoever with the height of his fence.

Please let me know if you have any further questions. You can reach out to me at either Robert-Cooney@hotmail.com or my cell phone at 541-207-5263.

Thank you for your time,
Robert Cooney.

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From: [JAMES HELTON](#)
To: [Martineau, David](#)
Subject: Minor variance to fence height application
Date: Monday, August 5, 2024 5:32:06 PM

[**WARNING!** This email came from outside our organization. Do **NOT** click unknown attachments or links in email.]

I am replying to a copy of an application by Howard Bosch at 1919 13th Ave. SW., Albany, OR. My company Empire builders of Oregon LLC developed the property and has built over 20 homes in Takena Estates, most of the people that have purchased homes from us have installed six-foot fences around their backyard with no problems. All of the lots in the subdivision are the same elevation. Howard purchased his home from us at the end of February 2023, by 1 June 2023 Howard had installed a 6-foot fence that met the city of Albany's building code (picture attached), sometime later he added 18 inches to the top of his fence which is not in compliance. Howard needs to remove the 18 inches he added and then he will be in compliance with the city and the homeowner's association.

I have attached pictures of the neighbors on either side of Howard's home showing their legal fences next to Howard's fence.

James Helton
Empire Builders of Oregon LLC
8527 Saghalie Dr. S
Salem, OR 97306 – 9753

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