



**STAFF REPORT**  
**To the**  
**LONGVIEW APPEAL BOARD OF ADJUSTMENT**

**PREPARED BY:** Adam Trimble, Planner

**HEARING DATE:** October 13, 2015

**APPLICATION NO.:** ABA 2015-6

**APPLICANT:** Demetrius Pye

**PROPERTY OWNER:** DT Investment Property Management LLC

**REQUEST:** Fence Waiver per §16.48.030 [Fences; General Requirements] of the Longview Municipal Code to allow a private fence to encroach into unimproved right-of-way of the City of Longview in the R-1 Residential District.

**LOCATION:** The property is located at 302 Douglas St, Longview, WA (Parcel Number 04683), described as HIGHLANDS 3 BLK:38 LOT:21 DESC: EXC LOT 21A

**ASSOCIATED CASES:** ABA 2015-6

**ZONING DISTRICT:** R-1 Residential District

**BACKGROUND AND PROPOSAL**

The property owner Demetrius Pye has applied for a variance to place a fence along the side yard of his property in the public right-of-way immediately adjacent to the public sidewalk along 38<sup>th</sup> Ave. The new owner removed two large trees from the yard and was unable to remove the remaining stumps. A past fence straddled between the two stumps but was removed with the trees. A new fence is proposed to be located in the 1-2 foot (typical) area of public right of way between the property line and the public sidewalk. Work on the fence was begun without a permit, resulting in an enforcement action. The owner has applied for a fence waiver in accordance with chapter 16.48 of the Longview Municipal Code. See Exhibit A for the application and photos of the fence before and after tree removal. The owner reports that metal

was found in the stumps, preventing grinding. Exhibit B provides photos of the fence and aerial views of the property.

In accordance with Longview Municipal Code (LMC) §19.12.090(1), written notice of the public hearing was mailed to the applicant and to the owners of all adjacent properties on Friday October 2, 2015 [Exhibit B].

## **SEPA DETERMINATION**

SEPA review is not required for the scope of work described in the application.

## **CRITICAL AREA ORDINANCE REQUIREMENTS**

There are no mapped critical area indicators on or near the property.

## **APPLICABLE CODE SECTIONS**

1. The sections of the municipal code for which relief via a variance petition is being requested:

### 16.48.030 [Fences] General requirements.

- (1) No fence shall extend beyond the front, side or rear property lines of any lot or plot of land.
- (2) No fence shall be erected in the parking strip of any public street.
- (3) *Repealed by Ord. 2772.*
- (4) No fence shall be constructed or maintained so as to be a menace to life or limb of any person moving against it. Barbed stock-type wire fencing shall not be permitted in any congested residential district.
- (5) Every fence built along the alley property line or within the required rear yard, shall be provided with a gate at least three feet in width so as to provide accessibility to the rear of any building in case of any emergency. (Ord. 2772 § 3, 2000; Ord. 1038, 1960).

2. The specific criteria under which a variance may be granted by the Appeal Board of Adjustment:

### 16.48.040 [Fences] Waiver or reduction of requirements.

- (1) Recognizing that there may be situations in which the height and location of fences do not affect safety or the public welfare, it is provided that notwithstanding any provisions in this chapter to the contrary, where any of the hereinafter specified conditions exist, the owner or tenant of real property may request the zoning board of adjustment to waive or reduce the requirements of this chapter. Such zoning board of adjustment, upon determining that any provision of this chapter shall be waived or reduced for any such applicant, may impose such restrictions as they deem necessary in view of the particular facts as represented

by the owner or tenant, taking into consideration the prevention of fires, the public health and safety and the surrounding neighborhood.

(2) The conditions under which the zoning board of adjustment may waive or reduce the requirements of this chapter, are as follows:

- (a) Where no improved alley exists at the rear of the lot of the applicant; or
- (b) Where the lot of the applicant is other than rectangular in shape; or
- (c) Where the lot of the applicant contains more than one front yard as shown by the plat thereof; or
- (d) Where the distance from the nearest property line of a corner lot to the traveled portion of the street is 11 feet or more. (Ord. 1166 § 1, 1963).

## **STAFF DISCUSSION**

The applicant recently acquired the property and desires to improve the property, starting by removing the two very large trees and by replacing the fence which previously spanned between the trees. The property is nearly rectangular shaped, roughly 135+ feet deep and 37 feet wide at the front, 74 feet wide in the rear. The lot is 7,429 square feet in size and is a corner lot located at 32<sup>nd</sup> and Douglas Streets with access to an improved alley in the rear. Lots in the vicinity range between 4,600 and 10,000 sq. ft. in size. The typical platted lot in Longview is 6,000 sq. ft. in size and a 120' x 50' rectangle. The sidewalk adjacent to the owner's property along 32<sup>nd</sup> Ave is 4' wide with no planting strip between the sidewalk and street. Adjacent land uses are residential, single family homes. Across 32<sup>nd</sup> Avenue are higher density residential zones with a mixture of single family homes and multi-family homes.

The shape of the lot being other than rectangular, criteria (c) from the fence waiver conditions, qualifies this proposal for a fence waiver request. This waiver would allow a private fence to be built in the 1-2 foot (typical) area of right-of-way between the sidewalk and the property line. The owner faces a difficult task in trying to place the fence on the property line due to the large tree stumps. The owner notes in the application, removal of the trees also removed the danger of having large trees with branches that pose a threat to life and property. The fence waiver allows the owner to improve and secure a property located along a fairly busy street and allows the fence to be symmetrical (from page 2 of the application ABA 2015-6). Since the stumps were growing over the property line and the owner states metal spikes were driven into the trees making removal of the stumps dangerous, the fence was placed in the public right-of-way up against the public sidewalk. Good intentions aside, this placement affects safety and the public welfare. The additional area of right-of-way between the sidewalk and property line serves several purposes:

- 1) It allows for pedestrians to pass each other comfortably without running up against a wall,
- 2) It provides an additional space for bicycle handle bars to occupy when travelling on the sidewalk.

- 3) It provides more sight distance for drivers pulling out of the alley and looking for cars before turning.
- 4) It is used by utilities such as cable, power, telecom and more recently, natural gas.

Reviewing the criteria qualifying the property for a waiver, the request would be stronger if the property qualified under criteria (d) “Where the distance from the nearest property line of a corner lot to the traveled portion of the street is 11 feet or more.” Properties experiencing this condition may apply to fence in a portion of this ‘extra’ right-of-way without any harm to the public safety or welfare. This application does not meet this criterion and appears to negatively affect public safety and welfare, in addition to setting an unfair and unusual precedent.

The City’s Public Works Department, Fire Marshal, and Building Official have reviewed this request for a variance and requested that the proposal be denied for the reasons listed above and due to the safety concern of a bicyclist running a handlebar into the fence and veering into 32<sup>nd</sup> Ave which is a fairly busy road.

## **STAFF FINDINGS**

1. The lot of the applicant is other than rectangular in shape and meets criteria (b) to apply for a waiver or reduction of the fencing requirements.
2. Granting a waiver of the fencing requirements will negatively affect safety and the public welfare, taking into consideration the prevention of fires, the public health and safety and the surrounding neighborhood. The fence as proposed will prevent pedestrians from passing each other comfortably without running up against a wall, reduce the space for bicycle handlebars to occupy when travelling on the sidewalk, reduce the sight distance for drivers pulling out of the alley and insert an obstruction into a right-of-way used by utility providers.

## **RECOMMENDATION**

Staff recommends denying this request for a fence waiver due to the potential to negatively affect public safety and welfare and the safety of the surrounding neighborhood.

## **EXHIBITS**

- A. Fence Waiver Request
- B. Site Plan/Photos
- C. Public Notice

Staff Report Date 10/5/15