

**July 31, 2019**

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**To:** City Commission  
**From:** Kelly Reid, AICP, Planner  
**Re:** Planning regulations applicable to fence at 302 3<sup>rd</sup> Avenue

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This memorandum summarizes the degree to which recent repairs to an existing fence within the Ganong Street right-of-way adjacent to 302 3<sup>rd</sup> Avenue is subject to Planning Division requirements. The scope of this memo is limited to land use planning review and is entirely separate and distinct from the proposed right-of-way obstruction permit. The information in this memorandum is based on staff's understanding of the following information about the fence:

1. It was first constructed approximately 32 years ago;
2. It is six feet in height and constructed of vertical wood boards with no spacing; and
3. The recent repairs include replacement of boards of the same material, configuration, size, and location as the original fence.



Figure1. Intersection of 3<sup>rd</sup> Ave and Ganong Street looking in a southeasterly direction



Figure 2. Looking westward on Ganong Street almost to the intersection with 3<sup>rd</sup> Ave.

The Planning Department regulates the height of fences citywide; the fence is also located within the Natural Resource Overlay District and the Historic Overlay District. An analysis of each regulation is provided below.

#### **Natural Resource Overlay District: Chapter 17.49**

The property is within the Natural Resource Overlay District (NROD) due to the presence of Coffee Creek. The Oregon City Municipal Code protects habitat and water features through vegetated corridors consisting of native plantings adjacent to natural features such as streams and wetlands to improve water quality and functions and discourage development within this area. OCMC 17.49.080 exempts the following:

- I. Routine repair and maintenance of existing structures, roadways, driveways and utilities; and*
- J. Replacement, additions, alterations and rehabilitation of existing structures, roadways, utilities, etc., where the ground level impervious surface area is not increased.*

Since no new fence posts have been added, there is no impervious surface created, and thus the repair of the fence is not subject to NROD review.

#### **Fences: Chapter 17.54.100**

Oregon City Municipal Code (OCMC) 17.54.100 contains height limits for fences throughout the City. The first sentence of the code section states that “A fence may be located on the property or in a yard setback area subject to the following”, clarifying that the standards apply to fences on private property only and do not apply within the right-of-way. There is no adopted provision which limits the height of fences within the right-of-way. Appendix A contains the details of OCMC 17.54.100.

#### **Historic Overlay: Chapter 17.40**

The fence is located in the Canemah National Register Historic District, and the property at 302 3<sup>rd</sup> Avenue is a contributing structure within the district – the Ervin Carothers House. The National Register District is characterized by its historic homes along with its landscape and setting, which includes its steep terrain, dense vegetation, stone retaining walls, staircase, and channeled creeks. The nomination for the Canemah District also describes the Coffee Creek channel on this property, stating:

*“The residents also created permanent improvements to channel and control the flow of the water that otherwise would be disruptive during high runoff periods. These included a variety of rock walls and channels that have been extended, altered and improved over the years to date.*

*At the southeast part of town there are ponds south of 5th Street that join with Coffee Creek further to the east, and descend the steep hill into the waterway that flows under*



Figure 3. Historic basalt channel of Coffee Creek; Creek channel in the public ROW.



*the Carothers house at the corner of 3rd & Ganong (302 3rd), thence emerging into the side yard and flowing under and along 3rd to emerge once again in the back yard of the Captain Sebastian Miller House (402 South McLoughlin), thence turning northward and entering a culvert, where it is directed to the river. The stonework is composed of basalt believed to have been quarried locally, or reused from blasting operations as they occurred. It is dry set in some areas and mortared in other locations. Portions of the creek bed is utilized, while other areas are structured to conform with lot and street lines."*



Figure 4. Historic basalt channel of Coffee Creek looking towards 302 3<sup>rd</sup> Ave on private property

While screening a portion of the creek from public view may not affect the overall character of the district, there may be a threshold at which screening of historic creek channels from public view would have a negative effect on the district. The Historic Review Board exercises the discretion to determine if particular proposals affect the character of the district. The Board has not weighed in on this matter because it is not a new fence, as explained below.

#### Historic Review

Per OCMC 17.40.060.J the historic review process for alterations to historic properties does not apply to maintenance and repair:

*17.40.060 - Exterior alteration and new construction.*

*J. Nothing in this section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural features which does not involve a change in design, material or the outward appearance of such feature which the building official shall certify is required for the public safety because of its unsafe or dangerous condition.*

The fence was repaired with the same material, in the same configuration, with the same height, and in the same location as the original fence. Thus, the work is considered maintenance and repair, which is exempt from historic review. Furthermore, it is the City's practice to allow routine maintenance and repair in historic districts.

If the fence were a new fence, the HRB Policies would apply. OCMC 17.40.060 authorizes the HRB Policies to allow minor investments, such as fences, to historic resources without the cost and time of submitting an application to the Historic Review Board. This fence does not meet the HRB Policies due to the height in the corner side yard and the solid wood material in the corner side yard. The Policies are discussed in greater detail in Appendix B. Please note that the HRB Policies are currently being revised, but these standards are tentatively proposed to be retained.

The historic Design Guidelines for New Construction apply to new construction in a historic district. OCMC 17.40.060 defines this as new structures and building additions of 30% or more in square footage.

*17.40.060 - Exterior alteration and new construction.*

*A. Except as provided pursuant to subsection I of this section, no person shall alter any historic site in such a manner as to affect its exterior appearance, nor shall there be any new construction in an historic district, conservation district, historic corridor, or on a landmark site, unless a certificate of appropriateness has previously been issued by the historic review board. Any building addition that is thirty percent or more in area of the historic building (be it individual or cumulative) shall be considered new construction in a district. Further, no major public improvements shall be made in the district unless approved by the board and given a certificate of appropriateness.*

The Design Guidelines for New Construction thus do not apply to fences unless the fence is being constructed in conjunction with an exterior alteration or new construction, or is a major public improvement. In that case, the project would be reviewed as a whole by the Historic Review Board for compliance with the Guidelines. The Design Guidelines are discussed further in Appendix C.

### **Conclusion**

In conclusion, because the fence was repaired with the same material, in the same configuration, with the same height, and in the same location as the original fence, and because there was no increase the impervious surface, the fence is exempt from planning review processes.

The Appendices attached to this memorandum provide further discussion of standards that apply to new fences on private property. I do not have a recommendation for the Commission on the right-of-way obstruction request, but I am happy to answer any questions that arise from your review of the request.

Respectfully,

Kelly Reid  
Planner, AICP  
Community Development Department, City of Oregon City

## Appendix A: Oregon City Municipal Code Standards for Fences Citywide

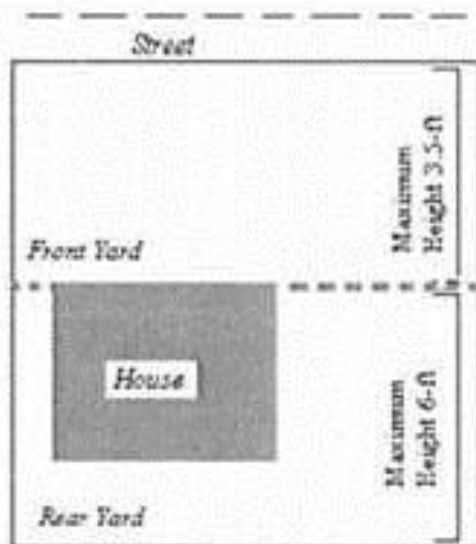
The citywide standards for maximum fence height in Oregon City Municipal Code (OCMC) 17.54.100 do not apply to fences within the right-of-way.

*Oregon City Municipal Code*

*17.54.100 - Fences.*

*Fence, Setback and Height Limitations.*

*A fence may be located on the property or in a yard setback area subject to the following:*



*Diagram: Any fence, hedge or wall located in front of your home may be up to three and one-half-feet in total height.*

*Diagram: A fence, hedge or wall located next to and behind your home may be up to six feet in total height.*

- A. Generally. Fence, hedge, or wall.
- 1. Fences and walls—Fences and walls over forty-two inches shall not be located in front of the front façade or within forty feet of the public right-of-way, whichever is less. All other fences (including fences along the side and rear of a property) shall not exceed six feet in total height unless as permitted [in] Section 17.54.100.B.
- 2. Hedges shall not be more than forty-two inches in the underlying front yard setback. Individual plants and trees taller than forty-two inches tall may be permitted provided there is at least one foot clearance between each plant.
- 3. Property owners shall ensure compliance with the traffic sight obstruction requirements in Chapter 10.32 of the Oregon City Municipal Code.
- 4. It is unlawful for any person to erect any electric fence or any fence constructed in whole or in part of barbed wire or to use barbed wire, except as erected in connection with security installations at a minimum height of six feet, providing further that prior written approval has been granted by the city manager.

On private property, the citywide standards in OCMC 17.54.100 allow fences up to 3.5 feet in height between the front facade of the home and 3<sup>rd</sup> Avenue and up to a fence up to 6 feet in height in all other locations, with a slightly taller fence in conjunction with a retaining wall. This application of the fence standards is supported by definitions in OCMC 17.04.485 and 17.04.490.

*17.04.485 - Front façade.*

*"Front façade" means the exterior wall/foundation of a building exposed to the front lot line. This shall be the most architecturally significant elevation of the building, commonly including a front door or main entrance. If the most architecturally significant elevation of the building is not exposed to the front lot line, the community development director shall determine the front façade.*



*17.04.490 - Front lot line.*

*"Front lot line" means a lot line abutting a street. For corner lots, the front lot line is that with the narrowest frontage. When the lot line abutting a street is curved, the front lot line follows the curve. For a flag lot, the front lot line is the shortest lot line adjoining the pole portion of the lot, excluding the unbuildable portion of the pole (see Figure 1, codified at the end of this title).*

If the fence standards in OCMC 17.54 did apply in the right-of-way, the 6' height would be allowed in this location behind the front of the home.

Note that the Historic Review Board policies apply to this property, and these policies are more restrictive than the height limits in 17.54.100.



## Appendix B: Historic Review Board Policies

HRB Policies are authorized by OCMC 17.40.060 and apply to existing structures and properties within the Historic District. The policies are meant to allow certain types of alterations to historic properties without HRB review. Policy #6 pertains to fences and walls, and was first adopted in 1988 and updated in 1991. The policies are also currently being updated with a final version expected to be approved by the Historic Review Board on July 23<sup>rd</sup>, 2019.

The policy includes height limits that are more restrictive than the general citywide code, specifically on private property, corner side yards are limited to 3.5 feet in height rather than 6 feet.



A small portion of the fence in question is 6 feet in height on the corner side yard (between the house and Ganong Street) even though the maximum height limitation is 3.5 feet.



The current policy for fences and walls does NOT allow solid wood fences in front and corner side yards, but allows solid wood fences in rear and side yards. For fences that do not meet the HRB Policy, applicants can apply to the HRB for approval on a case by case basis.

If the fence in question was a new fence, it would not meet the HRB policy for two reasons:

1. It is 6 feet in height rather than the maximum of 3.5 feet in the corner side yard.
2. It is solid wood, while only wood picket fences are permitted in the corner side yard.

If the corner side portion of the fence were reduced in height to 3.5 feet and every other board removed, it would be considered a picket fence that meets the HRB Policies.

*HRB Policy #6 (First Adopted 9/88; Revised 6/91) - Policy on Construction of Fences and Walls  
The following policy is hereby adopted by the Oregon City Historic Review Board regarding the construction or alteration of fences and walls within Historic Districts, on designated sites in Conservation Districts, or on individual sites designated as landmarks.*

*Front yard fences or walls and corner side yard fences or walls should be no more than 42 inches in height and shall not create a traffic site obstruction (as defined in Chapter 10.32 of the Oregon City Municipal Code). Along rear yards and interior side yards (beyond the front yard setback), fences or walls may be up to six (6) feet in height.*

*Fences or walls that are listed in the "ACCEPTABLE" category may be reviewed and a decision made by staff. The primary criterion to be used by staff shall be compatibility of the proposed fence or wall with the style and period of the designated structure. If the proposal is not on a designated, the primary criterion shall be compatibility with surrounding historic structures. Either staff or applicant shall have the option of referring the plans to the Historic Review Board for resolution of doubtful or contested application of standards. Fences or walls that are not listed, or that are specifically listed under the "NOT ACCEPTABLE" category must be submitted for review and decision by the Historic Review Board.*

<b>Fences and Walls in Front Yards and Corner Side Yards</b>	
<b>ACCEPTABLE</b>	<b>NOT ACCEPTABLE</b>
Iron Picket	Chain-link
Ornamental Cast Iron	Post and Rail / Split Rail
Brick	Concrete Block
Combinations of Iron and Masonry	Stockade
Wood Picket - flat boards or square vertical	Plywood / Hardboard or Asbestos Panel
Woven Wire if installed according to height Available from manufacturer and with wood posts and rails	Hollow, Twisted Wrought Iron
	Mixed Material Diagonal Board (e.g. brick / wood/vinyl)
<b>Fences in Interior Side Yards, Alleyways and Rear Yards</b>	
<b>ACCEPTABLE</b>	<b>NOT ACCEPTABLE</b>




<i><b>All that are acceptable above</b></i>	<i><b>All that are not acceptable above</b></i>
<i><b>Concrete Block</b></i>	
<i><b>Horizontal Board</b></i>	
<i><b>Staggered Vertical Board (good neighbor)</b></i>	
<i><b>Solid Wood - flat-topped, clipped top or capped vertical</b></i>	

Note that the HRB Policies are currently being reviewed and potentially amended. The tentative draft of the HRB Policy changes retains the 3.5 foot tall height requirement as well the allowance of solid wood fences in rear yards and the restriction on solid wood fences in the front and corner side yards. The draft policy changes also clarify the definition of solid wood fences to include stockade style fences.

## Appendix C: Historic Design Guidelines for New Construction

The adopted Design Guidelines for New Construction apply to new structures and building additions of 30% or more in area. The 30% rule applies to additions to historic buildings and does not apply to fences. These design guidelines do contain specific guidelines for fences which are constructed in conjunction with new buildings, and include a guideline against solid wood fences. This guideline does not apply to the fence in question, because it is not considered new construction and it is not associated with a new structure or addition in the district.

If the fence was constructed at the same time as the home or a modest addition, the Design Guidelines would apply. The Guidelines identify fences in the front yard to be limited at 3.5 feet in height and do not allow elements which significantly obscure or detract from the primary sides of the building.

USE OF SITE	<i>How the site is planned to be used.</i>	
ASPECT	PRINCIPLE — GOOD EXAMPLE	NOT ALLOWED
Site Features	<p>Secondary features to support the design and character of the building and to not obscure its visibility from the public way.</p> <p>Decorative walls, fences and hedges at front yard to face of building to be no more than 3½ feet high; entry arbors and gates are excepted.</p> <p>Retaining and structural walls to be minimized; to be faced or finished to complement the district where constructed.</p> 	<p>Elements that significantly obscure or detract from the primary sides of the building</p> <p>Tall walls and fences in the front and front portion of side yards</p> <p>Large decorative landscape elements in the front yard, such as a gazebo, fountain, pool, statue</p> <p>Temporary structures in the front yard to face of building</p> <p>Unfinished structural walls; Cribbing, gabion walls unless obscured with plant covering</p>

The Guidelines go on to state specifically that fences in corner side yards should be limited to 3.5 feet in height and should not be a stockade (or continuous wood with no space between the boards) style.

ELEMENT	PRINCIPLE	DESIGN	NOT ALLOWED
Fences, Front and Corner Side Yards	Low, open fencing and gates at the front yard to front face of house [Please refer to HRB Policy #6 – Fences]	Simple, painted vertical iron, wooden pickets or slates	Chain-link, vinyl, split rail, ornate wrought iron, stockade, plywood or hard panel; Fences over forty two (42) inches in height

The design guidelines also apply to major public improvements. OCMC 17.04.720 defines major public improvements, which excludes repair and maintenance.

*17.04.720 - Major public improvements.*

*"Major public improvements" means the expenditure of public funds or the grant of permission by a public body to undertake change in the physical character of lands or the making of public improvements within a district, except for the repair or maintenance of public or private improvements within a district.*

The standards for public improvements may be found on page 52 of the Guidelines, as demonstrated below, and do not include standards specifying height or materials specific to fences.

## IV PUBLIC IMPROVEMENTS, UTILITIES

### *Improvements in the public right of way*

### *Utilities and related equipment*

ASPECT	PRINCIPLE — GOOD EXAMPLE	NOT ALLOWED
<b>STYLE</b>	<p>Construction to complement the nature of the historic district, but flexibility is necessary to allow a system wide approach, parts standardization and use of available materials.</p> <p>New utility work to be minimized in appearance.</p> <p>Support pedestrian use and scale.</p> 	<p>Visible 'high tech' installations</p> <p>Insertion of stylistic elements and systems that do not complement the district</p> <p>The Guideline appreciate that there is necessary public safety and engineering work that may be difficult to alter; Installations should follow the guidelines as possible, often simple measures can reduce an adverse impact; Review with City design staff and HRB</p>
<b>DESIGN</b>	<p>For visible features, use design that was typical or similar to that of the historic period; where unable, screen or cover the installation in an historically appropriate manner.</p> <p>Construction to not significantly alter the district's built pattern.</p> <p>Locate equipment away from primary views to maximum extent practicable.</p> <p>Utilize landscape or fabricated screening to minimize disruptive appearance.</p> <p>Minimize street signage as allowable by codes.</p>	<p>Construction out of scale with the district</p> <p>Street, sidewalk, stairs, walls that significantly alter the historic pattern and dimension of the district.</p> <p>Modern details and construction in visible locations unless screened or appearance mitigated.</p> <p>Excessive regrading or removal of vegetation that adversely affects the historic context of the district and surrounding area without mitigation</p>
<b>MATERIALS</b>	<p>Materials and Products For Visible Features: Use those that were typical of the historic period or those that offer a similar appearance. Use of stone, concrete, wood and metal in finishes and textures similar to that of the historic period is most appropriate.</p> 	<p>Obvious synthetic materials, non historic finishes or colors.</p> <p>Historic materials used in ways not found in the district</p> <p>Bright stainless, galvanized, aluminum, exposed aggregate concrete, other non historic finishes</p> 