



**CITY OF MCMINNVILLE  
PLANNING DEPARTMENT**  
231 NE FIFTH STREET  
MCMINNVILLE, OR 97128

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[www.mcminnvilleoregon.gov](http://www.mcminnvilleoregon.gov)

**DECISION, CONDITIONS, FINDINGS OF FACT AND CONCLUSIONARY FINDINGS FOR THE APPROVAL OF A VARIANCE TO ALLOW A 10-FOOT TALL PERIMETER “SUSPENDED WIRE SECUTIRY ALARM SYSTEM” ELECTRIC FENCE AT 1936 NE LAFAYETTE AVENUE**

- DOCKET:** VR 3-21 (Variance)
- REQUEST:** Application for a variance to allow a fence taller than 6-feet in order to properly secure the property.
- LOCATION:** 1936 NE Lafayette Avenue. Tax Lot R4415 01900
- ZONING:** M-2 (General Industrial Zone)
- APPLICANT:** Nicole Wojtkiewicz and Danielle Hufford, on behalf of property owners Lee Larson Properties LLC, c/o Dave Kiersey/Kiersey & McMillan.
- STAFF:** Adam Tate, Associate Planner / Tom Schauer, Senior Planner
- DATE DEEMED COMPLETE:** October 20, 2021
- HEARINGS BODY & ACTION:** The McMinnville Planning Commission makes the final decision, unless the Planning Commission’s decision is appealed to the City Council.
- HEARING DATE & LOCATION:** December 16, 2021 at 6:30 PM. Zoom Online Meeting  
<https://mcminnvilleoregon.zoom.us/j/92712511996?pwd=Z2ZXUXFsVHV1WkpzYjZlYjJrd20xUT09>  
ID 856 3179 4745 Passcode 286067
- PROCEDURE:** An application for a variance is processed in accordance with the procedures in Section 17.72.120 of the Zoning Ordinance. The application is reviewed by the Planning Commission in accordance with the quasi-judicial public hearing procedures specified in Section 17.72.130 of the Zoning Ordinance.
- CRITERIA:** The applicable criteria for a variance for a fence over 6 feet tall are provided as follows: Zoning Ordinance (Title 17 of the McMinnville Code): MMC Section 17.74.100. Variance – Planning Commission Authority; MMC Section 17.74.100. Conditions for Granting Variance; MMC Section 17.54 (Fences); Chapter 17.42 (M-2 General Industrial Zone); Title 8, Chapter 8.10 (Public Nuisances): Section

8.10.210 (Electric Fences). In addition, the goals, policies, and proposals in Volume II of the Comprehensive Plan are to be applied to all land use decisions as criteria for approval, denial, or modification of the proposed request. Goals and policies are mandated; all land use decisions must conform to the applicable goals and policies of Volume II. "Proposals" specified in Volume II are not mandated but are to be undertaken in relation to all applicable land use requests.

**APPEAL:**

**The Planning Commission’s decision is final unless appealed to the City Council.** Such an appeal must be filed within 15 calendar days of the date the written notice of decision is mailed.

If the Planning Commission’s decision is appealed to City Council, the City Council’s final decision may be appealed to the Oregon Land Use Board of Appeals as specified in State Statute. The City’s final decision is subject to the 120-day processing timeline, including resolution of any local appeal.

**COMMENTS:**

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Engineering Department, Building Department, Parks Department, City Manager, and City Attorney; McMinnville Water and Light; McMinnville School District No. 40; Yamhill County Public Works; Yamhill County Planning Department; Frontier Communications; Comcast; and Northwest Natural Gas.

**DECISION**

Based on the findings and conclusionary findings, the Planning Commission finds the applicable criteria are satisfied and **APPROVES** the variance (VR 3-21).

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**DECISION: APPROVAL**  
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Planning Commission: \_\_\_\_\_  
Roger Hall, Chair of the McMinnville Planning Commission

Date: \_\_\_\_\_

Planning Department: \_\_\_\_\_  
Heather Richards, Planning Director

Date: \_\_\_\_\_

## **I. APPLICATION SUMMARY & BACKGROUND:**

### ***Subject Property & Request***

The subject property is a 4.6-acre lot located at 1936 NE Lafayette Avenue between NE Orchard Avenue and 20<sup>th</sup> Street and the railroad to the East. It is more specifically described as Tax Lot R4415 01900. The property is zoned M-2 (General Industrial Zone) and serves as a parking/storage/maintenance area for school buses for McMinnville School District. The property shares an access easement for a sanitary mainline with a C-3 lot to the West. The area is surrounded by an existing chain link fence that is 5-feet tall topped by some barbed wire. The applicant claims this existing fence is not a sufficient deterrent to trespassers who easily gain access to the property along the border with the railroad track. Applicant proposes a new fence, inset one foot from the existing fence. The new fence will be, “a 10-foot tall, suspended wire security alarm system behind the existing perimeter fence. With a 12-volt DC battery-operated, pulsed low voltage system, independent of the main power grid.”

Section 17.54.090, *Fences*, Title 17, *Zoning Ordinance*, of the McMinnville Municipal Code limits fence heights to seven feet per the following:

“A fence placed along an interior side or rear property line shall not exceed the height of seven (7) feet. The construction of a fence greater than six (6) feet in height requires a building permit.”

Additionally, Section 8.10.210, *Electric Fences*, Title 8, *Health and Safety*, states.

“A person in charge of premises must not permit, allow or cause to exist an electric fence: 1. Along any sidewalk or public way abutting the premises; or 2. Along the boundary of any real property abutting the premises.”

The applicant’s request is for a variance to Section 17.54.090 of the McMinnville Municipal Code allowing an electrical fence ten-feet tall inset one foot from the perimeter of the lot in order to safeguard the property from trespass and vandalism. This will relieve a stated undue hardship on the property owner.

Title 8, Chapter 8.10.210, *Electric Fences* has been determined to not be relevant to this variance request as the proposed electric fence will not be installed along a sidewalk, public right of way or actual property boundary as it will be inset one foot from the existing chain-link fence on the property line.

The applicant proposes that the variance is appropriate under the applicable criteria because the variance is necessary for the preservation of a property right of the owners of the property to ensure the safety of McMinnville School Districts school busses and related equipment from theft and vandalism, which the new fence will prevent, whereas the current fence is not enough of a deterrent.

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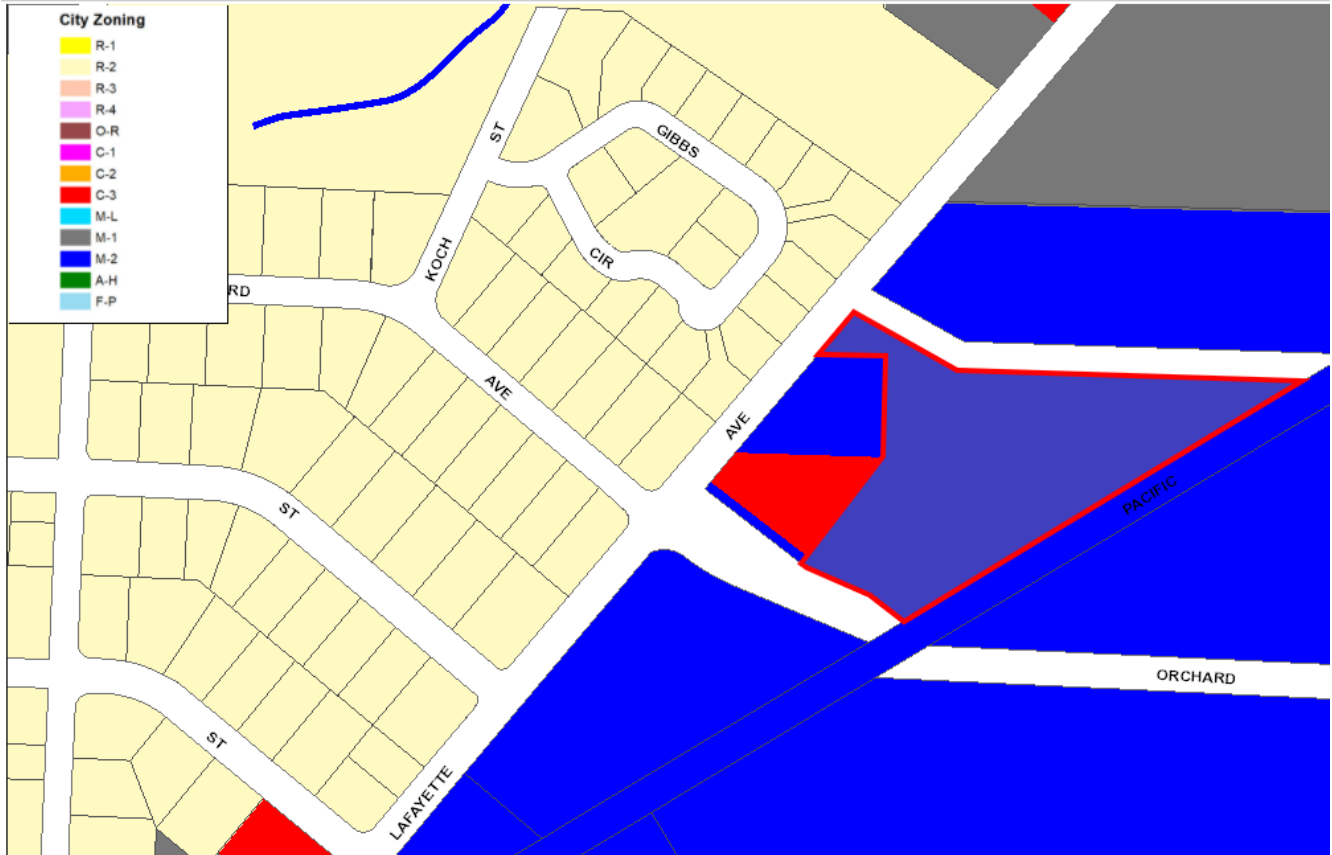
#### *Attachments:*

Attachment 1 – Application and Attachments

**Exhibit 1. Vicinity Map & Aerial Photo**



**Exhibit 2. Zoning Map**



**Attachments:**

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## **Summary of Criteria**

The applicable criteria for a variance for a fence over six feet tall are as follows:

- **Comprehensive Plan:** The goals, policies, and proposals in Volume II of the Comprehensive Plan are to be applied to all land-use decisions as criteria for approval, denial, or modification of the proposed request. Goals and policies are mandated; all land-use decisions must conform to the applicable goals and policies of Volume II. “Proposals” specified in Volume II are not mandated but are to be undertaken in relation to all applicable land use requests.
- **Zoning Ordinance (Title 17 of the McMinnville Code):**
  - MMC Section 17.54.90. Fences
  - MMC Section 17.74.100. Variance – Planning Commission Authority;
  - MMC Section 17.74.110. Conditions for Granting Variance;

## **Interpreting the Variance Criteria**

Some communities have variance criteria that serve strictly as a “relief valve” in the event a land use regulation would preclude all reasonable use of a property when the regulation is applied to a property that has unique characteristics that don’t generally apply to other properties subject to the same regulations. As a result, application of a standard to a specific property could result in a regulatory taking absent a variance process to allow reasonable use of the property. With such variance criteria, the bar to address the criteria is very high.

Other communities have less restrictive variance criteria which are intended to provide for equity; those criteria are intended to provide for reasonable use and development of a property for intended uses, where there is a unique circumstance associated with the property. Such criteria typically provide for a comparison of the subject property to other similarly situated properties to allow for an adjustment to a general standard which isn’t tailored to each unique situation that might arise on a property, where strict application of a standard might be unreasonable in a specific context. Often, this relates to unique size, shape, or topography of a property. In short, a limited variance to such a standard would allow for development with certain reasonable expectations about the use and development that are customary for the enjoyment of the property for intended uses.

The variance criteria in the McMinnville Zoning Ordinance include a comparison to other properties “in the same zone or vicinity.” Therefore, the intent of the variance provisions of the McMinnville Zoning Ordinance are more consistent with the latter philosophy.

In either case, the unique situation associated with a property that creates the need for a variance shouldn’t be a self-created hardship and shouldn’t confer an additional special right to the property that isn’t available to other properties (or wouldn’t be available to another property with similar unique circumstances through a comparable variance application). Further, a variance shouldn’t typically substitute for a legislative change that may be needed. For example, if a standard is always varied upon request no matter the context, then it would be more appropriate to change the standard, so a variance isn’t required. Otherwise, the standard wouldn’t appear to serve a valid public purpose or appropriately implement policy if it is routinely varied.

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**II. CONDITIONS:**

Not Applicable.

**III. ATTACHMENTS:**

A. VR 3-21 Application and Attachments

**IV. COMMENTS:****Agency Comments**

This matter was referred to the following public agencies for comment: McMinnville Fire Department, Police Department, Parks and Recreation Department, Engineering and Building Departments, City Manager, and City Attorney, McMinnville School District No. 40, McMinnville Water and Light, Yamhill County Public Works, Yamhill County Planning Department, Recology Western Oregon, Frontier Communications, Comcast, and Northwest Natural Gas. The following comments have been received:

- City Attorney

Q: Is the system/fence fully contained within the person's property? A: Yes

Reply: Okay great. I have no further questions or issues with the application.

- Comcast

After review, I don't see any conflicts with this project. All of our plant is on NE Lafayette Ave.

- McMinnville Building Division

No building permit necessary but they will need to work directly with Yamhill County on any necessary electrical permitting. <https://www.co.yamhill.or.us/content/electrical-permits>

- McMinnville Engineering Department

No comments.

- McMinnville Water & Light

Water: No comments/issues

Light: No comments/issues

**Public Comments**

Notice of this request was mailed to property owners located within 300 feet of the subject site. Notice of the public hearing was provided in the News Register on Tuesday, December 7, 2021. Other than the testimony provided by the applicant, no other public testimony was provided.

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## **V. FINDINGS OF FACT - PROCEDURAL FINDINGS**

1. The applicants, Nicole Wojtkiewicz and Danielle Hufford, on behalf of property owners Lee Larson Properties LLC, c/o Dave Kiersey/Kiersey & McMillan, submitted the application on September 20, 2021.
2. The applicant held a neighborhood meeting in accordance with Section 17.72.095 of the Zoning Ordinance on August 25, 2021.
3. The application was deemed complete on October 20, 2021.
4. Notice of the application was referred to the following public agencies for comment in accordance with Section 17.72.120 of the Zoning Ordinance: McMinnville Fire Department, Police Department, Parks and Recreation Department, Engineering and Building Departments, City Manager, and City Attorney, McMinnville School District No. 40, McMinnville Water and Light, Yamhill County Public Works, Yamhill County Planning Department, Recology Western Oregon, Frontier Communications, Comcast, Northwest Natural Gas. Comments received from public agencies are addressed in the Decision Document.
5. Notice of the application and December 16, 2021, Planning Commission public hearing was mailed to property owners within 100 feet of the subject property on November 24, 2021, in accordance with Section 17.72.120 of the Zoning Ordinance.
6. Notice of the application and December 16, 2021, Planning Commission public hearing was published in the News Register on Tuesday, December 7, 2021, in accordance with Section 17.72.120 of the Zoning Ordinance.

No public testimony was submitted to the Planning Department prior to the issuance of this document.

7. On December 16, 2021, the Planning Commission held a duly noticed public hearing to consider the request.

## **VI. FINDINGS OF FACT - GENERAL FINDINGS**

1. **Location:** 1936 NE Lafayette Avenue, Tax Lot R4415 01900
2. **Lot Size:** 4.6 acres
3. **Comprehensive Plan Map Designation:** Industrial
4. **Zoning:** M-2 (General Industrial Zone)
5. **Overlay Zones/Special Districts:** None
6. **Current Use:** Facility for the storage and maintenance of McMinnville School District's school bus fleet.
7. **Inventoried Significant Resources:**
  - a. **Historic Resources:** None
  - b. **Other:** None Identified

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8. **Other Features:** The site is generally level with no significant features.
9. **Utilities:**
  - a. **Water:** The site is served by McMinnville Water & Light
  - b. **Sewer:** The site is served by a sewer main on NE Lafayette Avenue
  - c. **Stormwater:** Unknown
  - d. **Other Services:** Unknown
10. **Transportation:** Lafayette Avenue is classified as Minor Arterial in the 2010 McMinnville Transportation System Plan. It has a 90-foot right of way, and a 46-foot curb-to-curb width. Orchard Avenue and 20<sup>th</sup> Street are classified as Local Streets: with a right of way of 50-feet and a curb-to-curb width of 28 feet. Access to the site is from both Orchard Avenue and 20<sup>th</sup> Street.

## **VII. CONCLUSIONARY FINDINGS:**

The Conclusionary Findings are the findings regarding consistency with the applicable criteria for the application. The applicable criteria for a variance to fence requirements are as follows:

- **Comprehensive Plan:** The goals, policies, and proposals in Volume II of the Comprehensive Plan are to be applied to all land-use decisions as criteria for approval, denial, or modification of the proposed request. Goals and policies are mandated; all land-use decisions must conform to the applicable goals and policies of Volume II. “Proposals” specified in Volume II are not mandated but are to be undertaken in relation to all applicable land use requests.
- **Zoning Ordinance (Title 17 of the McMinnville Code):**
  - MMC Section 17.74.100. Variance – Planning Commission Authority
  - MMC Section 17.74.100. Conditions for Granting Variance

### **Comprehensive Plan Volume II:**

The following Goals, Policies, and Proposals from Volume II of the Comprehensive Plan provide criteria applicable to this request:

The implementation of most goals, policies, and proposals as they apply to this application are accomplished through the provisions, procedures, and standards in the city codes and master plans, which are sufficient to adequately address applicable goals, policies, and proposals as they apply to this application. Therefore, where applicable standards exist, subsequent findings regarding the parallel comprehensive plan policies are not made when they are duplicative or a restatement of the specific standards which achieve and implement the applicable goals and policies.

The following additional findings are made relating to specific Goals and Policies. Policies applicable to this variance application are addressed through implementation standards, except as provided below.

## **CHAPTER X. CITIZEN INVOLVEMENT AND PLAN AMENDMENT**

### **GOAL X 1: TO PROVIDE OPPORTUNITIES FOR CITIZEN INVOLVEMENT IN THE LAND USE DECISION MAKING PROCESS ESTABLISHED BY THE CITY OF McMINNVILLE.**

*Policy 188.00 The City of McMinnville shall continue to provide opportunities for citizen involvement in all phases of the planning process. The opportunities will allow for review and comment by community residents and will be supplemented by the availability of information on*

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*planning requests and the provision of feedback mechanisms to evaluate decisions and keep citizens informed.*

**APPLICANT’S RESPONSE:** None.

**FINDING: SATISFIED.** The process for a Variance provides an opportunity for citizen involvement through the public hearing process. Throughout the process, there are opportunities for the public to review and obtain copies of the application materials prior to the McMinnville Planning Commission’s review of the request. All members of the public have access to provide testimony and ask questions during the public hearing process.

### **McMinnville Zoning Ordinance**

The following Sections of the McMinnville Zoning Ordinance (Ord. No. 3380) provide criteria applicable to the request:

- 17.54.090 Fences
- 17.42.100 Variance – Planning Commission Authority
- 17.74.110. Conditions for Granting Variance

### **Section 17.54.090 Fences**

- A. A fence placed along an interior side or rear property line shall not exceed the height of seven (7) feet. The construction of a fence greater than six (6) feet in height requires a building permit.

**APPLICANT’S RESPONSE:** This site is abutted by a railroad on the Southeast side of the property. There are many places along the perimeter where trespassers with criminal intent gain access to the property. The storage lot area is 1,907 linear feet in perimeter making it impossible for security officers or local police to constantly, effectively manage the entire lot.

The right to protect the safety and wellbeing of staff and employees and the right to protect buildings and company assets from threat of vandalism and theft, meaning first student can continue to operate and serve children and families in the City of McMinnville.

The unnecessary hardship avoided by granting this variance is the threat of dangerous criminal activity. The size and nature of a fleet of school busses makes it impossible to store them indoors. Protecting the safety and security of dozens of employees and ensuring several thousands of dollars’ worth of highly desirable business assets are not at risk of theft or vandalism.

The security system is nearly invisible by design and will not negatively impact the desired aesthetics of the area. The system is safety tested and certified and can in no way medically harm a person or animal that touches it.

The current perimeter fence is between 6-7 ft tall. If the Amarak system was installed at the same height, it would be simple for an intruder to prop a ladder up to the perimeter fence and simply scale both the perimeter fence and AMAROK system together. This would render the system useless. Through our 30 years of installation and research, we have determined that 10ft is the minimum height to not only prevent, but deter crime and trespass.

**FINDING: SATISFIED.** The Planning Commission concurs that the applicant has successfully made their case for a new security fence over 6-feet in height in order to adequately secure the school bus lot.

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**Section 17.74.100. Variance – Planning Commission Authority**

The Planning Commission may authorize variances from the requirements of this title where it can be shown that, owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship, except that no variance shall be granted to allow the use of property for a purpose not authorized within the zone in which the proposed use would be located. In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of this title.

***“Owing to special and unusual circumstances related to a specific piece of property, strict application of this title would cause an undue or unnecessary hardship.”***

**APPLICANT’S RESPONSE:** The unnecessary hardship avoided by granting this variance is the threat of dangerous criminal activity. The size and nature of a fleet of school busses makes it impossible to store them indoors. Protecting the safety and security of dozens of employees and ensuring several thousands of dollars’ worth of highly desirable business assets are not at risk of theft or vandalism.

This site is abutted by a railroad on the Southeast side of the property. There are many places along the perimeter where trespassers with criminal intent gain access to the property. The storage lot area is 1,907 linear feet in perimeter making it impossible for security officers or local police to constantly, effectively manage the entire lot.

**FINDING: SATISFIED.** The Planning Commission concurs that the unusual size and layout of the lot acts as an undue hardship for the property owner and that the proposed variance can serve as a potential remedy to this situation.

***“No variance shall be granted to allow the use of property for a purpose not authorized within the zone.”***

**APPLICANT’S RESPONSE:** (N/A)

**FINDING: SATISFIED.** The subject site is developed with an allowed use in the M-2 zone. The variance would not change the existing use on the parcel.

***“In granting a variance, the Planning Commission may attach conditions which it finds necessary to protect the best interests of the surrounding property or neighborhood and otherwise achieve the purposes of this title.”***

**APPLICANT’S RESPONSE:** (N/A)

**FINDING: NOT APPLICABLE.**

**17.74.110. Conditions for Granting Variance**

A variance may be granted only in the event that the following circumstances substantially exist:

- A. Exceptional or extraordinary circumstances apply to the property which do not apply generally to other properties in the same zone or vicinity and result from lot size or shape legally existing prior to the date of the ordinance codified in this title, topography, or other circumstance over which the applicant has no control.

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**APPLICANT’S RESPONSE:** This site is abutted by a railroad on the Southeast side of the property. There are many places along the perimeter where trespassers with criminal intent gain access to the property. The storage lot area is 1,907 linear feet in perimeter making it impossible for security officers or local police to constantly, effectively manage the entire lot.

The current perimeter fence is between 6-7 ft tall. If the Amarak system was installed at the same height, it would be simple for an intruder to prop a ladder up to the perimeter fence and simply scale both the perimeter fence and AMAROK system together. This would render the system useless. Through our 30 years of installation and research, we have determined that 10ft is the minimum height to not only prevent, but deter crime and trespass.

**FINDING: SATISFIED.** The Planning Commission concurs that the applicant successfully demonstrates that the large lot size and inadequate, existing chain-link fence makes securing the site difficult. The addition of the new fence will remedy this issue.

- B. The variance is necessary for the preservation of a property right of the applicant substantially the same as owners of other property in the same zone or vicinity possess.

**APPLICANT’S RESPONSE:** The right to protect the safety and wellbeing of staff and employees and the right to protect buildings and company assets from threat of vandalism and theft, meaning first student can continue to operate and serve children and families in the City of McMinnville.

The current perimeter fence is between 6-7 ft tall. If the Amarak system was installed at the same height, it would be simple for an intruder to prop a ladder up to the perimeter fence and simply scale both the perimeter fence and AMAROK system together. This would render the system useless. Through our 30 years of installation and research, we have determined that 10ft is the minimum height to not only prevent but deter crime and trespass.

See attached photo below.



**FINDING: SATISFIED.** The Planning Commission concurs that the applicant successfully demonstrates that the existing infrastructure is inadequate for protecting the safety and wellbeing of staff, employees, and assets (EG: school busses) and that the new fence will help secure that property right.

- C. The variance would not be materially detrimental to the purposes of this title, or to property in the zone or vicinity in which the property is located, or otherwise conflict with the objectives of any city plan or policy.

**APPLICANT’S RESPONSE:** The security system is nearly invisible by design and will not negatively impact the desired aesthetics of the area. The system is safety tested and certified and can in no way medically harm a person or animal that touches it.

I have also attached actual photos of our installations. As you can see, they are difficult to even spot from just a few feet away. Visually, the security system is an imposing adversary when approached by a would-be criminal, but the security system is nearly invisible from the street and is of completely open design, keeping in harmony with the general purpose of the zoning ordinance and all regulations.

See attached photo below.

## AESTHETICS



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**FINDING: SATISFIED.** The Planning Commission concurs that the variance would not be detrimental to the surrounding area because it would not change the existing use of the site, or the intensity of the use. The fence will be set inside of the existing chain-link fence and will not hinder the view in or out.

D. The variance requested is the minimum variance which would alleviate the hardship.

**APPLICANT’S RESPONSE:** The variance is the minimum necessary to alleviate the hardship because cameras simply record crime and do not prevent it, chain-link fencing has proven time after time to be ineffective and is easily cut or scaled over completely, and security guards are unreliable and often complicit in property crimes. The Amarok security system is the most reliable, economical, and safest security application on the market today.

The current perimeter fence is between 6-7 ft tall. If the Amarok system was installed at the same height, it would be simple for an intruder to prop a ladder up to the perimeter fence and simply scale both the perimeter fence and AMAROK system together. This would render the system useless. Through our 30 years of installation and research, we have determined that 10ft is the minimum height to not only prevent, but deter crime and trespass.

**FINDING: SATISFIED.** The Planning Commission concurs with the applicant’s finding that the additional security fence is the best solution to the problem of adequately securing the lot.

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