

February 18, 2021

Ashly Hoffman & Bryan Borgmeier
2512 SE Lark Street
Milwaukie, OR 97222

Re: 2512 SE Lark Street – Fence / Right of Way Encroachment Appeal

Ms. Hoffman and Mr. Borgmeier,

On January 27, 2021, you submitted an appeal after being denied a permit for a major encroachment on city right-of-way (ROW). The encroachment is a fence across the ROW adjacent to your address at 2512 SE Lark Street. Your application asserts that the city is not correctly defining “current use” and that the support from the neighbors should be given more standing in this process. Based on these two criteria and others, the fence is not consistent with current use and such action would be counter to past recent precedence. The appeal is denied.

The current use of this property is ROW. As defined by the Oxford Dictionary, ROW is “the legal right, established by usage or grant, to pass along a specific route through grounds or property belonging to another.” The public has the right to walk on this land. In your email dated January 13 to Jennifer Backhaus you note:

“Not only is the City unable to protect us from such criminal activity stemming from this unused space, but they are actually the cause of it; but not for the City’s own actions of displacing non-violent criminals to the Park Ave max location, we wouldn’t have needed to take such urgent actions to prevent ongoing harm.”

I can only infer then that your fence was placed to limit other individuals accessing this space. I appreciate your statement that the gate allows for that access, but it also falsely shows you as having ownership and granting access. That is not the case.

In 2018, the city was asked on several occasions by the Island Station neighborhood to assert our property rights as landowners on a similar property. This specific case was an encroachment by a property owner onto both ROW and park lands that disrupted the natural habitat. There are several similarities to this application and in that case, the city denied a request for fencing in the ROW. For this reason and the others listed above, the permit is denied.

Regards,



Ann Ober
City Manager
City of Milwaukie