

**FINDINGS OF FACT and FINAL ORDER
TYPE II VARIANCE**

DATE:	April 28, 2026
FILE NO.:	26-011 VAR - Fence/Retaining Wall Variance
APPLICATION:	Type II – Variance
APPLICANT:	Mt. View Contracting Co.
PROJECT NAME:	MHAC Fence/Retaining Wall Variance
OWNER:	PLR Properties LLC (Paul Reed)
ZONING:	C-2 (General Commercial)
MAP AND TAX LOT:	24E14BA, Tax Lot 1100
STAFF CONTACT:	Patrick Depa, Senior Planner

BACKGROUND

On March 19, 2026, the owner of Mt. Hood Athletic Club (MHAC) received approval to construct two outdoor Pickle Ball Courts under File No. 26-009 DR/TREE. These courts are in addition to a pickle ball court that was built as part of a design review modification (File No. 25-047 MOD) in 2025. The design review approved the two new pickle ball courts to be located in a lower area along the eastern property line, setback approximately ten feet from the unimproved Kate Schimitz Avenue right-of-way.

The east property line elevation changes gradually. To mitigate the elevation change and maintain a secure level area for the two pickleball courts, the applicant proposed to install a retaining wall along a portion of the east property line. The proposed retaining wall is engineered to start at two feet in height and rise to eight feet in height at the far north end of the pickleball courts. The retaining wall is a total of one hundred thirty-seven (137) feet in length (see Figure 1).

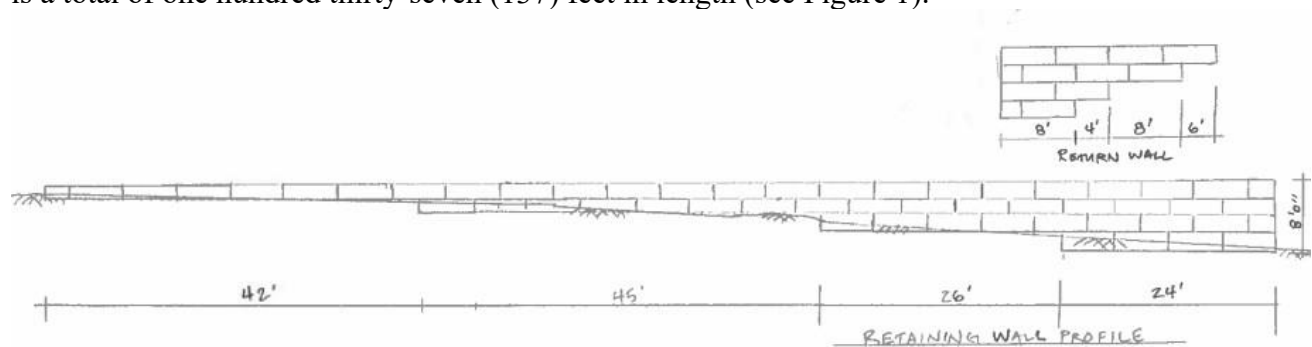


Figure 1

PROPOSAL

The applicant is proposing to install a six-foot fence around both pickleball courts with a gate. The gate connects to a pedestrian walkway that provides access to and from all three courts. The six-foot-high fence is proposed to attach to the top of the retaining wall. Per Section 17.74.40.B.4., the maximum allowed height of a retaining wall/fence in a side or rear yard in the General Commercial (C-2) district is eight (8) feet. Due to the construction of a retaining wall along the east side of the new pickleball courts, the combined height of the six-foot fence and eight-foot retaining wall will exceed the maximum allowed height for a retaining wall/fence by six feet.

Because of the varying height of the retaining wall, the variance will only be for the portion of the fence and retaining wall that combines to exceed the eight-foot maximum height. Therefore, the variance will consist of approximately ninety-five feet along the east property line and eight feet of the return wall heading west (see Figure 1).

EXHIBITS

Applicants' Submittals:

- a. Land Use Application
- b. Site Plan and Pickle Ball Court Details
- c. Retaining wall drawings
- d. Engineering Report Retaining Wall

Building Division Comments:

Building permits and an engineering report were approved for the geoblock retaining wall supporting the Pickle Ball Courts; however, the contractor had installed the retaining wall prior to permits being issued (see Figures 2 and 3). The retaining wall was placed and backfilled before certain inspections required by the engineering report were completed. The engineering report required geogrid mats with gravel at each two (2) foot lift. The Building Official has not witnessed any of the lifts and has not seen any geogrid material on site. **To move forward, the contractor shall provide evidence the required geogrid mats are in place as per the engineering report.**



Figure 2



Figure 3

GENERAL FINDINGS OF FACT

- Finding 1:** These findings are based on the applicant's submittal received April 2, 2026, and the application was deemed complete upon receipt.
- Finding 2:** The proposed variance to Section 17.74.40.B.4., the maximum allowed height of a retaining wall/fence in a side or rear yard are subject to a Type II Design Review.
- Finding 3:** Notice was sent April 10, 2026, to all property owners within 300 feet of the subject property. No comments were received at the time the final order was written.
- Finding 4:** The subject site is approximately 4.78 acres and shares an access drive with four other parcels. The subject lot is Lot 3 of the Twin Cedars Subdivision plat recorded in 2005.
- Finding 5:** The site is located on the north side of Hwy 26 between Kate Schmitz Avenue and the Sandy Marketplace. Cross access easements connect to the two commercial areas.
- Finding 6:** The property is zoned C-2 (General Commercial). Chapter 17.44 – General Commercial - Section 17.44.10.(B)(2)(a) states that an athletic club is a permitted outright use in the C-2 (General Commercial) zoning designation. The Pickleball Courts are directly related to the Mount Hood Athletic Club and their use is included with membership.
- Finding 7:** The adjacent property is zoned C-2 to the north, south, and west. The property to the east is zoned R-2 (Medium Density Residential). The R-2 property is owned by the Oregon Trail School District (OTSD). The OTSD property is separated from the subject property by the unimproved Kate Schmitz Avenue right-of-way.
- Finding 8:** MHAC is proposing to install a six-foot-high black vinyl coated fence around both new pickleball courts. The fencing around these two new courts will be identical to what was installed on the first court that was built (see Figure 4 on page 4).



Figure 4

FINDINGS APPLYING SANDY DEVELOPMENT CODE CRITERIA

CHAPTER 17.74 ACCESSORY DEVELOPMENT—ADDITIONAL PROVISIONS AND PROCEDURES

Section 17.74.40. Fences and retaining walls.

B. *Fences—Commercial/Industrial.*

1. *Fences on corner lots.* Any fence or retaining wall, constructed upon or adjacent to any property line that abuts two or more intersecting streets, shall not exceed three feet in height within the clear vision area.
2. *Fences in a front yard (Commercial).* The height of a fence or retaining wall in a front yard shall not exceed four feet.
3. *Fences in a front yard (Industrial).* The height of a fence or retaining wall in a front yard shall not exceed six feet.
4. *Fences—Side and Rear Yards.* The height of a fence or retaining wall adjacent to a side or rear yard or a side or rear property line shall not exceed eight feet.

C. *Fence Regulations for Recreation Areas.* Any recreational court may be enclosed by a wire fence not exceeding 12 feet in height provided that no part of the court fence is within 20 feet of any street.

Finding 9: MHAC is proposing to install a six-foot-high black vinyl coated fence around both new pickleball courts. The height variance will assist in providing safety for athletic club members using the pickle ball courts, as the courts are adjacent to a gradual elevation change of up to eight (8) feet supported by a retaining wall.

Finding 10: MHAC has constructed the wall using 2-ft by 2-ft by 4ft concrete Ecology Blocks (see Figure 3) to create a retaining wall that goes from two-foot-high to eight feet high and is designed to account for the grade difference directly adjacent to the new pickleball courts.

Finding 11: The provision under Section 17.74.40.C. allows a fence that encloses a recreational court to a height of twelve (12) feet provided that no part of the court fence is within 20 feet of any street. This subsection cannot be applied as the proposed pickleball courts are within 20 feet of the unimproved Kate Schmitz Avenue right-of-way.

Finding 12: No structures will be installed within the pickleball court except for a removable basketball pole, backboard, and hoop.

CHAPTER 17.66 ADJUSTMENTS AND VARIANCES

Sec. 17.66.70. Type II and type III variance criteria. The authority to grant a variance does not include authority to approve a development that is designed, arranged, or intended for a use not otherwise approvable in the location. The criteria are as follows:

A. The circumstances necessitating the variance are not of the applicant's making.

Finding 13: The circumstances requiring the variance are not directly due to the installation of the fence, but due to the combination of the six-foot high fence attached to the top of the eight-foot-high retaining wall. The retaining wall is necessary due to the topography directly adjacent to the pickleball courts. The installation of the aforementioned six-foot-high fence will act as a protective guard rail adjacent to the grade difference to prevent falls.

B. The hardship does not arise from a violation of this Code, and approval will not allow otherwise prohibited uses in the district in which the property is located.

Finding 14: The hardship arises from new construction and the existing topography and not a violation of the code. An outdoor recreation court associated with an athletic club is a permitted use in the General Commercial (C-2) district and the granting of the variance will not allow a prohibited use in the C-2 district.

C. Granting of the variance will not adversely affect implementation of the Comprehensive Plan.

Finding 15: Granting this variance will in no way affect the overall use or implementation of the comprehensive plan.

- D. The variance authorized will not be materially detrimental to the public welfare or materially injurious to other property in the vicinity.

Finding 16: The addition of the fence along the top of the retaining wall will create a physical barrier to prevent falling over the steep grade difference supported by the retaining wall, thus necessitating the variance. Approval of the variance request will not be materially detrimental, but beneficial to public safety and will not in any way affect any of the adjacent properties in an unfavorable way as there is a 60-foot right-of-way between the subject property and the OTSD property to the east.

- E. The development will be the same as development permitted under this Code and City standards to the greatest extent that is reasonably possible while permitting some economic use of the land.

Finding 17: The project is balancing strict compliance with the City Development Code with the need for reasonable economic use of the property. The design adheres to setbacks and lot coverage requirements and the height “variance” is minimal and necessary for public safety. The addition of the pickleball courts adds to the economic viability of the MHAC and aligns with the character of the general business district to the highest extent possible.

- F. Special circumstances or conditions 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 effective date of this Code), topography, or other circumstances over which the applicant has no control.

Finding 18: Because of the gradual elevation change and the desire to expand the area around the pickleball courts, the design incorporates the installation of a retaining wall to address the change in elevation along the eastern property line. The special circumstances requiring this variance are due to a difference in grade. The land naturally slopes downwards to the north of the property along the east property line. Due to the natural slope of the property, the Ecology Blocks that are being used for the retaining wall will go from one Ecology Block (two feet) on the south end of the wall up to four Ecology Blocks (eight feet) on the north end of the wall in order to follow the natural slope of the land. The site being quite steep is not in the developer’s control.

Keeping the pickleball court users safe is the priority. Placing the fence on the outside of the top of the retaining wall mitigates the number of people who might be tempted to climb on the top of the blocks and potentially injure themselves.

DECISION

For the reasons described above in the findings of fact and adherence to the criteria evaluating the impacts to public safety and economic growth, the variance request to install a six-foot-high fence atop the eight-foot-high retaining wall is hereby **approved** as modified by the conditions listed below.

CONDITIONS OF APPROVAL

A. The applicant shall apply for and receive approval for all necessary building and electrical permits prior to any construction. Contact the Building Division regarding submission requirements. The applicant shall complete the following:

1. The contractor shall provide evidence that the required geogrid mats are in place as per the engineering report.
2. Provide details on how the fencing is installed adjacent to the retaining wall shall be included in the building permit submission.
3. Install the two new pickleball courts as approved in the building permit plans, including the retaining wall and all other aspects of the project's building permit.

B. General Conditions of Approval:

1. This variance shall be void after two (2) years from the date of the Final Order unless the applicant has submitted plans for building permit approval.



Patrick Depa, Senior Planner

RIGHT OF APPEAL

A decision on a land use proposal or permit may be appealed to the Planning Commission by a party with appeal standings by filing an appeal with the Director within twelve (12) calendar days of notice of the decision. Any person interested in filing an appeal should contact the City to obtain the form, "Notice of Appeal", and Chapter 17.28 of the Sandy Development Code regulating appeals. All applications for an appeal shall indicate the nature of the interpretation that is being appealed and the matter at issue will be a determination of the appropriateness of the interpretation of the requirements of the Code.

An application for an appeal shall contain:

1. An identification of the decision sought to be reviewed, including the date of the decision;
2. A statement of the interest of the person seeking review and that he/she was a party to the initial proceedings;
3. The specific grounds relied upon for review;
4. If de novo review or review by additional testimony and other evidence is requested, a statement relating the request to the factors listed in Section 17.28.50;
5. Payment of required filing fees. Payment of required filing fees is jurisdictional and must accompany an appeal at the time it is filed;
6. The name and mailing address of the person or entity appealing the decision; and
7. List and two sets of mailing labels for property owners within 300 feet of the subject property (for appeal of a Type I decision) or 500 feet of the subject property for appeal of a Type II or Type III decision. The property owner list and labels shall be obtained from a Title Company no more than seven days prior to submitting the appeal. Note that a Type IV decision may be appealed to the Land Use Board of Appeals (LUBA) or to other tribunals in accordance with Oregon law.