

Request for a Fencing Variance

The QFC located at 2615 Broadway is requesting a variance on the fencing requirements in the Everett Municipal Code section 19.40 based on Section 15.03.140 Variances. We are requesting a Review Process IIIA.

Section 15.03.140 Variances is a mechanism where “the provisions of Title 19 can be varied by a case-by-case basis if the application of such provisions would result in an unreasonable and unusual hardship.”

Section 15.03.140 D

The reason for the request is the store is experiencing the following health and safety issues:

1. Employees face homeless persons sleeping and/or occupying the back areas behind and on the side of the store;
2. Employees face unsanitary conditions with human feces and urine left behind by the homeless;
3. Employees are having to deal with the health hazards of needles and drug paraphernalia left behind from drug use;
4. Currently the store’s requests for help from the city to remove the safety and health hazards of homeless people loitering around the store and sleeping at the store have not been met;
5. After meeting with the city’s representatives, nothing was offered by the city to stop the homeless issue nor was a solution provided to protect the store’s employees or customers from the safety hazards present at the store.

Section 15.03.140 Variances is a mechanism where “the provisions of Title 19 can be varied by a case-by-case basis if the application of such provisions would result in an unreasonable and unusual hardship.” Applying the new zoning designation MU on an existing, already developed piece of property is an unreasonable and unusual hardship. QFC’s building was permitted and built under the old zoning designation that allowed the building to cover almost the entire property. The new zoning designation prevents the building of a fence on any ROW or close to a sidewalk. Under the old designation it was allowed to build a fence closer to the edge of their property and in the city’s right of way (ROW).

Section 15.03.140 Subsection D Criteria for a Variance allows a variance to be approved if it is found:

1. The variance will not be materially detrimental to the property in the area of the subject property or to the city as a whole; and
2. The variance is necessary because of exceptional or extraordinary circumstances regarding the size, shape, topography or location of the subject property; or the location of a preexisting improvement on the subject property that conformed to the zoning or unified development code in effect when the improvement was constructed; and
3. The variance will only grant the subject property the same general rights enjoyed by other property in the same area and zone as the subject property; and
4. The need for the requested variance is not the result of a self-created hardship.

Concerning subsection 1: Allowing QFC to install a 96” high cyclone fence is not detrimental to any adjoining property since it was allowed prior to the zoning change in 2020.

Subsection 2: The existing building and structures were permitted and allowed under previous zoning regulations. The location of the buildings precludes QFC from meeting the newly imposed zoning regulations.

Subsection 3: QFC is requesting to install a fence that other business owners were able to install prior to the zoning change.

Subsection 4: The need for this variance is because of the city's inability to prevent the homeless from using QFC's property and building as a shelter and public toilet facility. This is not brought on by any action on the part of QFC.

A fencing variance is appropriate given the following items:

- Prior to 2020, by city code chainlink fence was allowed to be installed on the QFC property.
- Prior to 2020, fencing was allowed to be installed in the City's ROW.
- While the zoning change from UM to MU makes sense for residential and multi-family properties in the area, it severely handicaps a functioning business from protecting its employees and customers from the safety hazards QFC is facing.
- The current MU zoning prevents a functioning business from protecting its property. This fact is glaringly obvious when applied to a business's property when its building was legally built prior to the zoning change. Existing, legally developed property when placed under the new zoning no longer can build a fence to protect their property or employees.
- The purpose of the city's Development Code section 19 clearly states: "The Unified Development Code is adopted to promote and **protect the public health, safety and welfare...**" Not allowing a security fence is not protecting public health, safety and welfare.
- The Development Code further states: "1. Provide for **high standards** for a living and **working environment for all residents** and visitors..." For a business to provide a high standard working environment, they must be allowed to protect their employees.

Given the items outlined above, QFC's request for a variance of the fencing code falls in line the purpose and intent of the development code and its variance mechanism.

We respectfully request a fencing variance allowing QFC to install a 96" high cyclone fence on their property and in the ROW of the city as shown in the attached drawings.