



October 1, 2008

TECHNICAL STAFF REPORT

*Petition Accepted on August 29, 2008
Planning Board Meeting of October 16, 2008
County Council Hearing to be scheduled*

Case No./Petitioner: ZRA-112 – Marsha S. McLaughlin, Director, Department of Planning and Zoning

Request: To amend Section 128.A.9. of the Zoning Regulations by establishing new provisions to allow fences six feet or less in height along rear or side lot lines adjoining public streets for lots that are not corner lots; to allow, with certain limitations, fences six feet or less in height along side lot lines adjoining public streets for corner lots; and to prohibit closed fences and walls over three feet in height within a defined triangular area adjoining the intersection of the two streets for a corner lot.

Department of Planning and Zoning Recommendation:

APPROVAL

I. DESCRIPTION OF PROPOSAL

- # The Petitioner proposes one amendment to the Supplementary Regulations section of the Zoning Regulations as an addition to the current regulations concerning fences. The amendment is proposed to alleviate the difficulties often encountered in constructing reasonable, appropriate privacy fences on through-lots, corner lots, or other lots that adjoin a public street right-of-way.
- # The amendment would allow lots that are not corner lots, such as a through lot, to have a privacy fence along a public street that adjoins a side lot line or a rear lot line, although in most cases this may only be along a rear lot line.
- # Corner lots would have a new restriction of a 25 foot “triangle” at the intersection of the two streets in which no closed fence or wall higher than three feet could be placed. A six foot privacy fence could then be placed along the side street of the lot, as long as it did not encroach into the “triangle”. Closed fences above three feet high would still be prohibited in the front yard setback from the other street.
- # The subsections proposed to be amended and the amendment text is attached as Exhibit A – Petitioner’s Proposed Text (CAPITALS indicates text to be added; text in [[brackets]] indicates text to be deleted).

II. EXISTING REGULATIONS

- # **The 1977 Zoning Regulations began to specifically regulate fences in such a way so as to prevent all closed fences over three feet from being in a setback from any public street right-of-way, although this was done in the Definitions section concerning what was, and what was not, considered a “structure”, rather than in the Supplementary Regulations section. This was also done in a further expanded definition in the 1985 Zoning Regulations.**
- # **It was in the 1993 Zoning Regulations that the current format of the fence regulations in the Supplementary Regulations section was established.**

III. BACKGROUND INFORMATION

A. Scope of Proposed Amendment

- # **The amendment would apply to all zoning districts, including the NT District, as that is one proposed change. It has been determined that there are many examples in the NT District of residential corner lots which have privacy fences that screen side and rear yard areas along public streets, so this amendment may bring many of such fences into compliance.**

IV. EVALUATIONS AND CONCLUSIONS

- # **All of the versions of the fence regulations appear to have been drafted in the context of a “standard” lot, i.e., one with only the front yard of the lot adjoining one public street, and the intent apparently has always been to preclude the construction of tall, closed fences (i.e., privacy fences) in the front yards of such lots.**

However, in writing the regulations from that context, the regulations also prohibit a fence along a side or rear lot line if that side or rear lot line adjoins another street. This overlooks the fact that having a side or rear yard along a street is precisely the reason someone might want to have a privacy fence in the first place, in order to have a more usable, and protected, area of the yard.

- # **As noted in the petition, residents have always had the option to create more privacy by using landscaping instead of fences, because landscaping is not regulated in any way, and it is likely that many will continue to use that option even with this amendment.**

Even so, it has always been somewhat contradictory from a strictly land use perspective to prohibit a property owner from constructing a six foot privacy fence along a side or rear street when there is no prohibition on establishing a potentially significantly taller screen with a hedge of shrubs or a line of trees.

- # **In considering this amendment, it should be understood that one major problem in regulating fences in residential districts is that there is no building permit requirement for residential fences six feet or less in height.**

IV. EVALUATIONS AND CONCLUSIONS

This means that, because there is no permit application review taking place before a fence is constructed, zoning issues with noncomplying fences are often reactive rather than proactive. Responsible fence contractors are aware of the regulations and follow them, and prudent property owners will ask questions before constructing a fence themselves. However, in other cases fences have been constructed contrary to the regulations without anyone knowing, unless someone happens to register a complaint.

V. RECOMMENDATION APPROVAL

For the reasons noted above, the Department of Planning and Zoning recommends that ZRA-112 as noted above, be APPROVED.

Marsha S. McLaughlin, Director

Date

MM/JRL/jrl

NOTE: The file on this case is available for review at the Public Service Counter in the Department of Planning and Zoning.

Exhibit A – Petitioner’s Proposed Text

Setback Requirements for Fences, Walls and Retaining Walls

The following regulations shall apply to fences and retaining walls in all zoning districts. [[except the NT District.]]

- a. Fences shall be classified in the following categories:
 - (1) Open fence are fences which do not restrict visibility beyond the fence line. Open fences include wire, chain link, post and rail, paddock, picket, and other fences in which more than 50 percent of the fence area is left open. The fence area is the surface area from the bottom to the top of the fence section, including stringers supporting the section but not the post area above or below the fence section.
 - (2) Closed fences include board on board, privacy or stockade fences, or any other fences in which 50 percent or less of the fence area is open. Masonry walls that serve the same purpose as a closed fence are considered closed fences.
- b. The following types of fences and retaining walls shall be exempt from all structure or use setback requirements, including the setbacks in the M-1 and M-2 Districts which apply specifically to fences:
 - (1) Closed fences three feet or less in height.
 - (2) Open fences five feet or less in height.
 - (3) Retaining walls three feet or less in height.
 - (4) A series of retaining walls in which the height of each individual wall does not exceed three feet and the horizontal distance between walls is three feet or greater, however, a series of retaining walls must be set back in accordance with engineering requirements in the Design Manual. If the adjoining property is developed for residential use, no more than two retaining walls are permitted in a series and the closer wall can be no nearer than 10 feet from the property line.
- c. Fences and walls six feet or less in height shall not be subject to structure or use setback requirements if located in a side or rear yard which is not adjacent to a public street right-of-way.
- D. FENCES AND WALLS SIX FEET OR LESS IN HEIGHT SHALL NOT BE SUBJECT TO SETBACK REQUIREMENTS IF LOCATED IN A SIDE OR REAR YARD WHICH ADJOINS A PUBLIC STREET RIGHT-OF-WAY, PROVIDED THE PROPERTY IS NOT A CORNER LOT. ON CORNER LOTS, FENCES AND WALLS SIX FEET OR LESS IN HEIGHT SHALL NOT BE SUBJECT TO SETBACK REQUIREMENTS IF LOCATED IN A SIDE YARD WHICH ADJOINS A PUBLIC STREET RIGHT-OF-WAY, PROVIDED THE FENCE COMPLIES WITH SECTION 129.A.9.E. BELOW AND DOES NOT ENCROACH INTO A FRONT SETBACK FROM A PUBLIC STREET RIGHT-OF-WAY.**
- E. ON A CORNER LOT, CLOSED FENCES AND WALLS OVER THREE FEET IN HEIGHT SHALL NOT BE LOCATED WITHIN A TRIANGLE FORMED BY THE PROPERTY CORNER WHERE THE STREETS INTERSECT AND THE POINTS ON THE PROPERTY LINE TWENTY-FIVE (25) FEET FROM THE PROPERTY CORNER WHERE THE STREETS INTERSECT.**
- [[d.]]F. Where the ground is higher on one side of a fence or retaining wall than another, the height of a fence shall be measured on the side where the ground is lower.
- [[e.]]G. Other than the exceptions noted above, fences must comply with all bulk requirements of the applicable zoning district.