



STAFF REPORT

DATE: October 4, 2016

REGULAR

ITEM #: 15

MOTION

TO: Mayor and City Council

FROM: Kristina Handt, City Administrator

AGENDA ITEM: Reconsider Fence Ordinance

BACKGROUND:

At the September 20, 2016 meeting the vote on the fence ordinance was 2-1-2 . While no one questioned whether it passed at the meeting, staff did further research after the meeting and found that it did not pass. Minnesota Statutes Section 412.191, subdivision 4 states that every ordinance must be enacted by “a majority vote of all members of the council ...” So even though there were 2 abstentions, those members still count as members of the Council and three votes would have been necessary for adoption.

All of the same information presented by Planner Becker at the last meeting is included in your packet.

OPTIONS:

- 1) Council may correct the record and note that the ordinance did not pass
- 2) Council can revote on the ordinance and if 3 affirmative votes occur, then the ordinance will be considered approved.



MAYOR AND COUNCIL COMMUNICATION

DATE: 9/20/2016

REGULAR

ITEM #: 30

AGENDA ITEM: Amending Solid Wall Fence Regulations

SUBMITTED BY: Emily Becker, City Planner

THROUGH: Kristina Handt, City Administrator

REVIEWED BY: Stephen Wensman, Planning Director

BACKGROUND:

On August 16, 2016, City Council directed Staff to bring to the Planning Commission for discussion a text amendment to the City's fencing regulations that would amend the restrictions of solid wall fences over four feet in height on properties under half an acre.

On September 12, 2016, the Planning Commission held a public hearing and discussed the removal of this restriction and recommended approval of an amendment to the ordinance.

ISSUE BEFORE COUNCIL:

The Council is respectfully requested to review and approve an amendment to solid wall fence restrictions.

PROPOSAL DETAILS/ANALYSIS:

There are two Subdivisions within the City Code that are being proposed to be amended:

- First, Section 154.205: Fencing Regulations (E) (3) prohibits solid wall fences over four feet in height on lots under ½ and acre, except under certain circumstances, listed below:
 - a. *When a residential property abuts a district or use of a higher classification, and specifically, when an A, RR, RS, RE, or LDR district abuts any other district or a single family residential use abuts a multi-family residential use or a non-residential use.*
 - b. *When a property is a through lot and abuts a street that is a higher functional classification than the street abutting the front yard of the property.*
 - c. *For screening of outdoor living space subject to the following criteria:*
 - i. *The area enclosed by outdoor extended living area fencing shall not exceed an enclosed area of 500 square feet.*
 - ii. *A fence utilized to enclose and outdoor living area shall be extended to a point not more than 6 inches from the principal structure at 1 fence termination point.*
 - iii. *A fence utilized to enclose an outdoor extended living area shall not extend into side yard of a lot beyond the existing building line of the existing principal structure, nor shall such fences be located in any side or front street yard.*

- d. For screening or privacy purposes when the lineal measurement of the fence does not exceed one-fourth ($\frac{1}{4}$) of the linear distance of the perimeter of a lot. Such fences may only be installed with the written consent of the adjacent property owner.*
- e. Under other circumstances when a solid fence is warranted due to safety, health, animal containment or similar purposes subject to review and approval by the City Council and with the written consent of the adjacent property owner.*

The proposed amendment specifically addresses the aforementioned exceptions “d.” and “e.” for the following reasons:

- **Exception d.** requires written consent of the adjacent property owner for fences erected for screening and privacy purposes. Privacy fences are so named because they provide concealment and sanctuary, and it should be considered that neighbors do not always get along. Whether or not a certain type of fence can be erected should not be the sole decision of an adjacent property owner. As such, this requirement is eliminated in the proposed amendment.
- **Exception e.** is subjective. Allowing one property owner to do this and not another could be considered discriminatory. As such, this exception is eliminated in the proposed amendment.
- Second, it is being recommended that the provision set forth in Section 154.081: Permitted Encroachments on Required Yards that requires that fences in side and rear yards need to be 30% open to air and light be eliminated for the following reasons:
 - Requiring a fence to be 30% open when erected in side and rear yard setbacks does not allow a property owner to adequately screen a certain portion of property.
 - This requirement is set forth in a completely different Section of the Code than other fencing regulations. This creates confusion.
 - Openness requirements would still be set forth for front and side (corner) yard setbacks so traffic sight lines are not inhibited.

FISCAL IMPACT:

The proposed amendment is not expected to create significant fiscal impact aside from a possible decrease in Staff time enforcing issues created by violations of this ordinance or preparing requests by property owners who request their properties to be considered as exceptions.

PLANNING COMMISSION/PUBLIC HEARING:

A public hearing was held on the proposed amendment on the 12th of September, 2016. Staff had presented to the Commission two options for this ordinance amendment. The first option considered eliminated the prohibition of solid wall fences over four feet in height on lots under half an acre altogether, as well as eliminating the 30% openness requirement for fences existing in the side and rear. The second proposed amendment is what is being proposed to be adopted herein.

The proposed amendment was recommended by 4-3 vote. Reasons for dissenting votes included that the proposed amendment is too complicated, and the first option was easier to understand (noted by

Commissioner Dodson). Additionally, the restriction of the fence being allowed to be erected on only 1/4th of the perimeter of the property was too restrictive (noted by Commissioner Williams). The reasons stated for recommending the ordinance amendment proposed herein included that it was a smaller change to an ordinance that has had a lot of history and changes over the years and would preserve site lines (noted by Commissioners Kraemer, Larson and Fields).

OPTIONS:

The Council may:

- Approve the recommended ordinance amendment.
- Make changes to and approve the ordinance amendment.
- Deny the recommended ordinance amendment.

RECOMMENDATION:

Staff respectfully requests that the Council approve, as recommended by the Planning Commission, the proposed ordinance amendment to the City's Fencing Regulations.

“Move to approve Ord. 08-154 amending the City’s Fencing Regulations regulating solid wall fences over four feet in height on properties less than half an acre by: removing the requirement of permission from an adjacent property owner to erect such a fence on ¼ the lineal measurement of the perimeter of the property; and removing the exception that allows such a fence be erected when warranted due to safety, health, animal containment or similar purposes subject to review and approval by the City Council and with the written consent of the adjacent property owner.”

In addition, Staff is recommending that the City Council authorize summary publication of the approved ordinance through the following resolution:

“Move to adopt Resolution 2016-79, authorizing summary publication of Ordinance 08-154”

ATTACHMENTS:

- Ord. 08-154
- Resolution 2016-79
- Planning Commission meeting minutes, 9/12/16

CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA

ORDINANCE NO. 08-154

AN ORDINANCE AMENDING THE LAKE ELMO CITY CODE OF ORDINANCES BY
REPEALING THE PROHIBITION OF SOLID WALL FENCES IN THE LAKE ELMO ZONING
CODE.

SECTION 1. The City Council of the City of Lake Elmo hereby amends Title XV:
Land Usage; Chapter 154: Zoning Code; Section 154.205: Fencing Regulations;
Subd. (E) (3): Residential Design Requirements, by amending the following:

E. Fence Height and Design

1. *Fences within Front and Side (Corner) Yards.* Any fence within a front or side (corner) yard setback may not exceed forty-two (42) inches in height and must be 50% open to air and light.
2. *Residential and Mixed-Use Districts.* No fence or wall shall exceed six feet (6') in height, and shall be subject to the design requirements of §154.205.E.3.
3. *Residential Fence Design Requirements.* Solid wall fences over four (4) feet in height shall be prohibited on any lot under ½ acre (21,780 square feet) in size. Any portion of a fence over four (4) feet on such lots shall be at least 75% open to light and air, except under one of the following circumstances:
 - a. When a residential property abuts a district or use of a higher classification, and specifically, when an A, RR, RS, RE, or LDR district abuts any other district or a single family residential use abuts a multi-family residential use or a non-residential use.
 - b. When a property is a through lot and abuts a street that is a higher functional classification than the street abutting the front yard of the property.
 - c. For screening of outdoor living space subject to the following criteria:
 - i. The area enclosed by outdoor extended living area fencing shall not exceed an enclosed area of 500 square feet.
 - ii. A fence utilized to enclose an outdoor extended living area shall be extended to a point not more than 6 inches from the principal structure at 1 fence termination point.
 - iii. A fence utilized to enclose an outdoor extended living area shall not extend into side yard of a lot beyond the existing building line of the existing principal structure, nor shall such fences be located in any side or front street yard.
 - d. For screening or privacy purposes when the lineal measurement of the fence does not exceed one-fourth (¼) of the linear distance of the perimeter of a lot

~~Such fences may only be installed with the written consent of the adjacent property owner.~~

- e. ~~Under other circumstances when a solid fence is warranted due to safety, health, animal containment, or a similar purposes subject to review and approval by the City Council and with the written consent of the adjacent property owner.~~
- 4. *Commercial and Industrial Districts.* No fence or wall shall exceed eight feet (8') in height. Fences that exceed eight feet (8') in height require a conditional use permit.

SECTION 2. The City Council of the City of Lake Elmo hereby amends Title XV: Land Usage; Chapter 154: Zoning Code; Section 154.081: Permitted Encroachments on Required Yards, Subd. (B), by repealing the following:

- (B) *Side and rear yards.* Fences ~~30% open~~; walls and hedges 6 feet in height or less; bays not to exceed a depth of 3 feet or containing an area of more than 30 square feet; fire escapes not to exceed a width of 3 feet.

SECTION 3. Effective Date. This ordinance shall become effective immediately upon adoption and publication in the official newspaper of the City of Lake Elmo.

SECTION 4. Adoption Date. This Ordinance 08-154 was adopted on this ____th day of _____, 2016, by a vote of ____ Ayes and ____ Nays.

LAKE ELMO CITY COUNCIL

Mike Pearson, Mayor

ATTEST:

Julie Johnson, City Clerk

This Ordinance 08-154 was published on the ____ day of _____, 2016.

**CITY OF LAKE ELMO
COUNTY OF WASHINGTON
STATE OF MINNESOTA**

RESOLUTION NO. 2016-76

**RESOLUTION AUTHORIZING PUBLICATION OF ORDINANCE 08-154 BY TITLE
AND SUMMARY**

WHEREAS, the City Council of the City of Lake Elmo has adopted Ordinance No. 08-154, an ordinance to amend Section 154.205: Fencing Regulations, Subd. (E) (3); and Section 154.081: Permitted Encroachments on Required Yards, Subd. (B), of the City Code; and

WHEREAS, the ordinance is lengthy; and

WHEREAS, Minnesota Statutes, section 412.191, subd. 4, allows publication by title and summary in the case of lengthy ordinances or those containing charts or maps; and

WHEREAS, the City Council believes that the following summary would clearly inform the public of the intent and effect of the ordinance.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lake Elmo, that the City Clerk shall cause the following summary of Ordinance No. 08-154 to be published in the official newspaper in lieu of the entire ordinance:

Public Notice

The City Council of the City of Lake Elmo has adopted Ordinance No. 08-154, which amends the Chapter 154: Zoning Code:

- By amending the following exceptions to Fencing Regulations Section 154.205 (E) (3) that prohibits solid wall fences over four feet in height on properties less than ½ acre by:
 - Removing the requirement to obtain permission from an adjacent property owner in order to erect such a fence on ¼ the lineal measurement of the perimeter of the property.
 - Removing the exception that allows such fencing under other circumstances due to safety, health, animal containment, or similar purposes.
- By removing the requirement that fences in side and rear yard setbacks to be 30% open.

The full text of Ordinance No. 08-154 is available for inspection at Lake Elmo city hall during regular business hours.

BE IT FURTHER RESOLVED by the City Council of the City of Lake Elmo that the City Administrator keep a copy of the ordinance at City Hall for public inspection and that a full copy of the ordinance be placed in a public location within the City.

Dated: September 20, 2016

Mayor Mike Pearson

ATTEST:

Julie Johnson, City Clerk

(SEAL)

The motion for the adoption of the foregoing resolution was duly seconded by member
_____ and upon vote being taken thereon, the following voted in favor
thereof: _____ and the following voted against
same: _____

Whereupon said resolution was declared duly passed and adopted.

subject to the conditions of approval as recommended by staff and the additional condition recommended by the Planning Commission, ***Vote: 7-0, motion carried unanimously.***

Public Hearing – Zoning Text Amendment – Solid Wall Fences

Becker started her presentation by explaining the current fence code regulations as it relates to solid wall fencing on lots under ½ acre and what the exceptions are. Becker went through some of the history on the fence code. Anticipated higher density residential development was cited as the reason for the recommendation for allowing privacy fencing. After discussion over the course of five meetings, the current ordinance amendment was adopted.

Section 154.081 requires that fences in side and rear yards need to be at least 30% open to air and light. Even if the prohibition of solid wall fences over four feet on lots under ½ acre is removed, fences would still need to adhere to this requirement unless this requirement is removed. Staff researched other Cities that allow solid wall fences over 4' and there were quite a few. Staff presented two different options to the Planning Commission for discussion. Option #1 eliminates the prohibition of solid wall fences on lots under ½ acre altogether and also eliminates requirement of permitted encroachments on required yards. Option #2 eliminates the requirement for adjacent property owner to give permission. It also exempts fences that do not exceed one-fourth of the linear distance of the perimeter of a lot from the 30% openness requirement. It also eliminates the exception which allows fences that are erected under other circumstances when a solid wall fence is warranted due to safety, etc. which could be considered subjective and discriminatory. Staff recommends that the Planning Commission adopt option #2.

Fields asked if this allows privacy from one neighbor, but not three. Williams is wondering why we would not want to allow it on 3 sides of the lot, but not in the front yard. Becker stated that there is already a provision on front and side on corner lots. Option #2 is much more restrictive and there is only exceptions for when solid wall fences can be erected.

Public Hearing opened at 7:51 pm

Denise Thompson, 9077 Jane Road N, tried to get a fence permit for their dog and they were not able to get the neighbor signature. They feel that they are not able to have enough privacy. She also did some research and she was not able to find another City in Minnesota that does not allow the 6 foot high privacy fence.

There were no other written or electronic comments received

Public Hearing closed at 7:57 pm

Dodson prefers option #1 because it is easier to understand and option #2 is too much in the design area of the fence. Williams agrees, but is struggling with why we would restrict it to ¼ of the perimeter. They should be allowed anywhere behind the front of the house on any lot.

Kreimer would prefer to take the smaller step and go for option #2. Larson likes the simplicity of option #1. He doesn't think the difference between 4' and 6' makes that much difference. He is wondering if it should be done different for urban vs. rural. This is Shoreland which might be different also. Fields prefers the step of option #2 because the City has not been inundated with requests, but this is based on one circumstance.

Williams is thinking that the CIC have their own restrictions on fences. Dodson doesn't see a need to restrict fences in other areas as other Cities do not do it. Kreimer feels that there was a lot of discussion a few years ago and is not in favor of changing it much because of one circumstance.

M/S/F:Williams /Dodson, move to recommend approval of option #1, **Vote: 3-4, motion Failed.**

Larson is wondering if the Planning Commission picks option #1 if the City Council won't accept it. Becker stated that staff has recommended option #2 because they felt that out of respect for previous work done on the code, it might be better received. Williams asked

M/S/P: Fields/Dunn, move to recommend approval of Ord. 08- (Option #2), which amends Sec. 154.205: Fencing Regulations; Subd. (E) (3), by repealing language of Subp. D that requires permission from and adjacent property owner to erect a solid wall fence up to six feet in height for screening or privacy purposes when the lineal measurement of the fence does not exceed one-fourth of the linear distance of the perimeter of the lot on a lot under half an acre; and which repeals subp. e., **Vote: 4-3, motion carried.** Dodson voted no because he feels option #2 is just a little too complicated.

Business Item – Conditional Use Permit – 9200 Hudson Blvd

City Council Updates – September 6, 2016 Meeting

- i) Royal Golf Course at Lake Elmo Concept PUD Plan
- ii) OP Ordinance
- iii) Boulder Ponds LLC – Zoning Map Amendment/PUD Amendment – Ordinance 08-149

Staff Updates

- 1. Upcoming Meetings
 - a. September 26, 2016

b. October 10, 2016

Commission Concerns

Meeting adjourned at 9:12 pm

Respectfully submitted,

Joan Ziertman
Planning Program Assistant

DRAFT