



STAFF REPORT

DATE: 5/9/2017

DISCUSSION

ITEM #:

TO: City Council
FROM: Emily Becker, City Planner
AGENDA ITEM: Fence Ordinance
REVIEWED BY: Stephen Wensman, Planning Director

BACKGROUND:

The City's Zoning Code prohibits solid wall fences over four feet in height on lots under ½ acre in size. Any portion of a fence over four feet in height on such lots are to be at least 75% open to air and light, with certain provisions. A solid wall fence six feet in height was permitted on a lot within the Hunter's Crossing development on a lot under half an acre in size. The fence permit application was not signed by the Planning Department and the fence detail was not provided with the permit application, yet the permit was issued, and the final permit inspection was originally on a building inspector's schedule, never performed and never rescheduled, yet the inspection shows it as having failed in the City's permit application.

There are a number of issues with what transpired with this particular fence permit application, yet the ordinance that a solid wall fence that is over four feet in height is prohibited except under certain provisions still governs. The City has recently received a complaint by a property owner who has observed the aforementioned fence and believes that he should be able to have a solid wall fence six feet in height or that the aforesaid fence should be required to be removed.

ISSUE BEFORE COUNCIL:

The Council is being asked to re-review Section 154.205 (E) (3) of the City's Zoning Code.

PROPOSAL DETAILS/ANALYSIS:

Ordinance Review. The City's fence ordinance has been reviewed multiple times over the years. In 2013, an amendment was made to the fence ordinance that requires any portion of a fence over four feet in height on a yard that is less than half an acre to be at least 75% open to air and light. The section of this ordinance is below:

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 ($\frac{1}{4}$) 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 a similar purposes subject to review and approval by the City Council and with the written consent of the adjacent property owner.

The Council re-reviewed this requirement in September and October of 2016 and made certain amendments to these provisions, striking the following. The Council was not amenable to removing the prohibition of solid wall fences over four feet in height on lots less than half an acre in size entirely.

~~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.~~

Existing Non-Compliant Fence. The existing, non-compliant fence was permitted and has now been inspected. While it is not compliant with the requirement that solid wall fences over four feet in height be at least 75% open to air and light on lots less than half an acre in size, it was erroneously permitted by the City.

Planning Analysis. When lot sizes decrease, so does privacy from abutting lots. With narrower lots and houses closer together, there are not as many opportunities to provide adequate privacy and separation between homes and yards through site design alone.

Fence Ordinance of Other Cities. Attached is a table that outlines fence ordinances of other cities. These cities were selected, as they were the cities used in the market analysis of the Job Classification and Compensation Study. This table shows that these cities generally allow a solid wall fence of up to six feet in height in side and rear yards.

Current Code Limitations on Fences within Front and Side (Corner) Yards. The Fence Height and Design Section currently already limits fences on any lot to be over 42 inches in height within front or side (corner) yards and mandates that they be at least 50% open to air and light. This is consistent with other city requirements and promotes public safety so as not to limit sight lines for drivers and pedestrians on streets. However, it should be considered that a rear yard may abut a public right-of-way, so it may be beneficial to change the language aforementioned language to the following:

Fences within Front and Side (Corner) Yards. Any fence within a front or side (corner) yard setback or any setback abutting public right-of-way may not exceed forty-two (42) inches in height and must be 50% open to air and light.

FISCAL IMPACT:

None.

OPTIONS:

- **Removing prohibition of solid wall fences on properties under less than half an acre in size.**
~~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.~~
- **Removing prohibition of solid wall fences on properties under less than half an acre in size and adding prohibition of solid wall fences within the shoreland setback.** This will protect views of the lakes and other protected water bodies.
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~~ within the required structure setback from the Ordinary High Water Level (OHWL) of a property within a shoreland, as indicated in Section 154.800. 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:[...]
- **Removing prohibition of solid wall fences on properties under less than half an acre in size in the urban residential districts.**
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 in the rural zoning districts. 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:[...]
- **Not amending solid wall fence restrictions.**
- **Suggesting a different amendment to the solid wall fence restriction.**

RECOMMENDATION:

Staff recommends that Council review Section 154.205 (E) (3) of the City's Zoning Code and provide feedback. Staff recommends striking the prohibition of solid wall fences over four feet in height on lots under half an acre in size and that the Council consider adding a provision that solid wall fences over four

feet in height within the required structure setback from the OHWL within a shoreland be prohibited and that any portion over four feet in height be at least 75% open to air and light. Staff also recommends adding a provision that any fence within a setback abutting public right-of-way be limited to 42 inches in height and be at least 50% open to air and light.

ATTACHMENTS:

- Fence Ordinance Comparison Table