



Memo

To: Honorable Mayor Armitage; City Council
From: Bryan Myrkle, Community Development Director
Date: September 16, 2022
Re: Staff report on revised fenced ordinance

Background

The Charlotte City Council recently charged the Planning Commission with making changes to the City's fence regulations to better accommodate residents who live on corner lots. My review of fence regulations in numerous other communities established that Charlotte's current regulations are substantially similar to regulations found elsewhere. In fact, I did not find a single ordinance that treated corner lots much differently than Charlotte does.

Furthermore, my review of actual corner lots in the community showed that the specific physical conditions of these sites vary widely from parcel to parcel, making it difficult to find a single policy that will work for all corner properties.

Therefore, I proposed a solution that would allow 'exceptions' to the basic regulations if a review of a proposed fence plan did not obstruct sightlines in the vicinity of driveways and intersections, and do not have a negative effect on neighboring properties. The review would be conducted by the Planning Commission. These exceptions would be fundamentally different from a variance, in that the property owner would not have to demonstrate the existence of a hardship or a unique property condition.

The Planning Commission's work on the fence ordinance also provided the opportunity to address other deficiencies with the City's existing fence regulations. After working with the Planning Commission to consider the various options, we have created a draft that we believe will better serve our citizens if adopted.

Aside from problems on corner lots, the new ordinance would provide a measure of relief for several other common problems our residents face. These include situations that are commonplace, but not addressed in our ordinance, like access issues in areas with shared driveways, uncertainty about property line location, non-conforming fences, fence orientation.

I have provided a draft of the ordinance for your review, but will also make a presentation regarding the proposed ordinance at your meeting on Monday night.

You are asked to consider approving the first reading of the proposed ordinance and to set a public hearing before the Planning Commission in October. You would then get a chance to consider a final reading and adoption of the new ordinance your first meeting after that.

Recommendation

Approve the first reading of the proposed fence ordinance and set a public hearing for the October 4 Planning Commission meeting.

Financial Impacts

There is no direct financial impact to the City for this proposal.

Suggested Motion

I move that the City Council approves the first reading of this ordinance and sets a public hearing for October 4 before the Charlotte Planning Commission.

Introduced: September 19, 2022
Adopted:
Effective:

CITY OF CHARLOTTE
ORDINANCE NO. 2022-06

AN ORDINANCE TO AMEND CHAPTER 82 - ZONING - OF THE CODE OF THE CITY OF CHARLOTTE BY AMENDING SECTION 82-465 FENCES, RESIDENTIAL AND DELETING SECTION 82-466 FENCES, INDUSTRIAL TO UPDATE FENCING REGULATIONS FOR RESIDENTIAL, COMMERCIAL, AND INDUSTRIAL PROPERTIES.

Councilmember _____ moved that the following ordinance be read and presented to Planning Commission for a public hearing and recommendation:

Section 1. Regulations related to fencing, being part of Chapter 82 - Zoning, of the Code of the City of Charlotte, Section 82-465 is hereby deleted and replaced in its entirety as follows:

82-465 FENCES

(1) PURPOSE.

It is in the best interest of all city residents to ensure attractive and safe neighborhoods. Fence regulations help preserve the aesthetic quality of the city's neighborhoods while protecting the health, safety and welfare of all residents.

(2) DEFINITIONS.

(A) The following definitions shall be used in interpretation and enforcement of this chapter. If a term is not defined herein, the definition stated in the city's subdivision or zoning regulations shall be used.

(B) If the term is not defined in the subdivision or zoning regulations, the common meaning of the term, as stated in a generally accepted dictionary, shall be used.

(C) For the purpose of this subchapter, the following definitions apply unless the context clearly indicates or requires a different meaning.

BUILDING CODE. The current building code adopted and enforced by the city or its designee.

CLEAR-VIEW TRIANGLE (CVT). The triangular area near driveways openings and street intersections intended to provide the required corner clearance, as described in 82-463 Corner Clearance.

FENCE. A structure serving as an enclosure, barrier or boundary, usually made of posts, boards, chain link, masonry, wire, vinyl or rails, with a height of at least 24 inches.

FENCE, ORNAMENTAL. A manmade structure, the surface area of which is more than 50% open. Ornamental fences do not include chain link fences or fences of wire construction.

FINISHED SIDE. The side of a fence that covers the posts and support structures.

FRONT YARD. The setback area required by the zoning ordinance for the zoning district in which the property is located, or the area between the property line and the principal structure on a parcel, whichever is less. A corner property has FRONT YARD areas along both street frontages.

HEIGHT. The vertical distance from the adjacent grade to the highest portion of a fence.

REAR YARD. The area of a parcel from the required front yard area or front of a structure to the back property boundary, and excluding defined side yard areas.

RIGHT-OF-WAY (ROW). Land dedicated to the public for public use as streets, utility areas, sidewalks, alleys or pedestrian ways.

SIDE YARD. The setback area between structures on a parcel and the side property lines as required by the zoning ordinance for the zoning district in which the property is located.

(3) PERMITTED FENCE MATERIALS.

(A) (1) All fences shall be constructed in a workman-like manner, and of generally accepted fencing materials such as painted or treated wood, chain link, brick, stone, vinyl and wrought iron.

(2) Other material that is generally acceptable for fencing shall be considered as well. The City of Charlotte Zoning Official shall make the determination as to whether a proposed material is appropriate.

(B) No fence shall constitute a blighting influence, nuisance or hazard.

(C) Barbed wire shall not be permitted in a residential zoning district, and shall be a minimum of six feet high on security fencing in commercial and industrial areas.

(D) Chain link fences must be constructed so as to have the barbed end at the bottom of the fence.

(4) RESIDENTIAL ZONING DISTRICTS.

(A) Residential uses in residential zoning districts shall be permitted fencing as follows.

- (1) Front yard. Ornamental fencing, not exceeding 42 inches in height as measured from the established sidewalk or curb grade may be located within a front yard. Ornamental fences shall be faced decorative side outward. Front yard fencing shall not intrude or interfere with any CVT area, as described in this chapter.
- (2) Side yard. Fencing shall not exceed six feet, six inches in height in any side yard area.
- (3) Rear yard. Fencing shall not exceed six feet, six inches in height in any rear yard areas.
- (4) Recorded lots having a lot area in excess of 2 acres and a frontage of at least 200 feet are excluded from these regulations.

(B) No fence that obstructs view of an intersection or creates a visual safety hazard shall be permitted. In those cases where a determination is required, the City of Charlotte Chief of Police or designee shall make such determination.

- (1) A CVT shall be required at all intersections and driveways.
- (2) No fencing shall be permitted in the CVT area.

(C) No fence shall be erected where it would unreasonably obstruct the continued use of, or safe access to any abutting property.

(D) In those cases where a fence has an identifiable finished side, the fence shall be installed so that the finished side faces outward.

(5) COMMERCIAL, BUSINESS AND INDUSTRIAL ZONING DISTRICTS.

(A) All fencing shall meet the requirements of the Building Code.

(B) No fence that obstructs view of an intersection or creates a visual safety hazard shall be permitted.

- (1) A CVT shall be required at all intersections and driveways.
- (2) No fencing shall be permitted in the CVT area.

(C) No fence shall be erected where it would unreasonably obstruct the continued use of, or safe access to any abutting property.

(D) In those cases where a fence has an identifiable finished side, the fence shall be installed so that the finished side faces outward.

(E) In those cases where screening is required between land uses, the standards of 82-467 shall be followed.

(6) SWIMMING POOLS.

All swimming pool fencing shall comply with state statutory and Building Code requirements.

(7) TEMPORARY FENCES.

Temporary fences, including the use of wood or plastic snow fences to limit the drifting of snow between November 1 and April 1, chain link fences to protect construction and excavation sites, and fences to protect plants and/or landscaping during construction projects, shall be permitted without a permit; provided, the fence is not more than five feet in height.

(8) EXCEPTIONS TO HEIGHT AND MATERIALS.

Limits on heights and materials permitted by this chapter may be changed or exceeded upon issuance of a conditional use permit by the City of Charlotte Planning Commission provided that:

(A) The increase in height or change in material will not obstruct vision at street intersections, driveways, sidewalks and other traffic areas;

(B) A detailed drawing shall be submitted with the application for review and approval by the city;

(C) The fence shall be set back from the property line an adequate distance to provide for clear vision of street intersections and driveway openings, and to maintain an attractive relationship to the fence's external appearance;

(D) The fence shall not have a negative impact on adjacent properties or create a blighting influence on the neighborhood in which it is located;

(E) Additional landscaping may be required by the City of Charlotte Planning Commission in cases where a height or material exception is requested.

(9) PROPERTY LINES AND EASEMENT AREAS.

(A) Property lines.

(1) Property owners are responsible for locating property boundaries.

(2) A fence may be allowed on a property boundary if written permission is received from the abutting property owner, and submitted to the city with the fence permit application.

(3) The applicant is responsible for fence maintenance of a fence on a property boundary. In those cases where the original applicant no longer owns a property, the current owner of the applicant property will be responsible for fence maintenance.

(4) If written permission is not obtained from the neighboring property owner, the fence shall be placed a minimum of one foot from the property boundary.

(5) If a neighboring property owner disputes the proposed fence location due to unknown property boundaries, or if the City of Charlotte Zoning Official requires one, a certificate of survey from a state-registered land surveyor shall be required prior to issuance of a fence permit.

(6) City staff may attempt to assist a property owner in locating known property boundaries, but this does not constitute a survey if the boundary is disputed by an abutting property owner.

(B) Easement areas.

(1) Fencing proposed for easement areas shall be reviewed on a case-by-case basis to determine its impact on the easement areas.

(2) Even if the fence is approved for an easement area by the city, it shall be the responsibility of the property owner to remove and replace the fence should access or maintenance of the easement area be necessary.

(3) A fence proposed for an easement area may be denied if it will obstruct drainage or negatively affect the easement area. A permit may be issued if the applicant has the written permission of the easement holder.

(10) MAINTENANCE.

(A) All fences shall be maintained in an upright, vertical condition and shall not create a blighting influence on the surrounding neighborhood or area.

(B) Maintenance must be done on a regular basis to prevent the fence from being in a state of disrepair.

(C) Failure to maintain or repair a fence, once notified by the city that maintenance or repairs are necessary, shall constitute a violation of this chapter.

(11) PERMIT REQUIREMENTS AND FEE.

(A) Permit requirements.

(1) A permit is required when constructing a new fence or extending an existing fence.

(2) A permit is also required when reconstructing more than half of the linear length of an entire fence.

(3) A site plan or plot drawing shall be required before issuance of a fence permit.

(a) The plan or drawing shall show the location and dimension of the fence, location of property line and distance to all structures on the property.

(b) The fence height and material shall also be noted on the site plan, drawing and/or application form.

(B) Fee.

(1) A fence permit application fee set by City Council from time to time shall also be required with the fence permit application.

(2) This fee shall help cover costs of review of the fence permit application and is not refundable, even if the fence permit is not approved.

(12) NONCONFORMING FENCES.

(A) Any nonconforming fence may be repaired like-for-like in height, location and material, up to 50% of the overall linear footage of the nonconforming section. In no case shall a nonconforming fence be enlarged or extended, and shall not be replaced except in a conforming manner. City of Charlotte staff can approve repair to a nonconforming fence under these criteria.

(13) VARIANCES.

(A) Conditions of variances. Where there are practical difficulties or unnecessary hardships in carrying out the strict letter of the provisions of this chapter, a variance may be granted; provided that, all the following conditions are true.

(1) The particular physical surroundings, shape or topographical conditions of the specific parcel of land involved cause a particular hardship to the owner, as distinguished from a mere inconvenience, if the strict letter of this chapter were to be carried out.

(2) The conditions upon which a petition for a variation is based are unique to the parcel of land for which the variance is sought, and are not generally applicable to other property within the same zoning classification.

(3) The alleged difficulty or hardship must be caused by this chapter and not by any person presently having an interest in the parcel of land.

(4) The granting of the variance will not be detrimental to the public welfare or injurious to other land or improvements in the neighborhood in which the parcel of land is located.

(5) The proposed variance will not impair an adequate supply of light and air to adjacent properties, will not increase the congestion of the public streets, will not endanger the public safety, or will not diminish or impair property values within the neighborhood.

(B) Variance procedures.

(1) A person desiring to secure a variance from any provisions of this chapter shall fill out and submit to the Zoning Administrator a variance form, together with the required filing fee as set by the City Council.

(2) The fee for the variance application shall be the same as the fee set by the City Council for a variance from the Zoning Ordinance.

(3) Notice of the variance proceedings shall be mailed to adjacent property owners within 300 feet of the property seeking the variance at least fifteen days prior to the variance being heard.

(4) The request for variance shall be heard and determined by the City of Charlotte Zoning Board of Appeals following the required public hearing.

Section 2. That the entirety of Section 82-46 Fences, Industrial is hereby rescinded.

Section 3. This amendment shall be designated as Ordinance No. 2022-06 and the City Clerk shall record this amendment and the date of the adoption thereof and shall maintain a file containing a copy of this ordinance.

Section 4. This ordinance shall become effective upon 20 days after the date of its publication.

Second, _____. () Yeas. () Nays.

Dated:

Mary LaRocque, City Clerk