

ORDINANCE
OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK,
MARYLAND, AMENDING CHAPTER 87 "BUILDING CONSTRUCTION", BY
REPEALING AND REENACTING §87-19 "APPEALS" TO ALLOW FOR APPEAL OF
FENCE VARIANCE RECOMMENDATIONS TO THE MAYOR AND COUNCIL, AND
BY REPEALING AND REENACTING §87-23 "FENCES" TO CLARIFY CERTAIN
TERMS AND THE SCOPE OF THE FENCE CODE, TO ALLOW FOR CHAIN LINK
FENCES IN FRONT YARDS IN SOME CIRCUMSTANCES, TO REMOVE SHRUBS
AND NATURAL GROWTH LESS THAN FOUR FEET IN HEIGHT FROM THE
DEFINITION OF FENCES, TO CLARIFY THAT NEW RETAINING WALLS IN
FRONT YARDS REQUIRE APPROVAL OF THE ADVISORY PLANNING
COMMISSION, TO ALLOW SHRUBBERY ON TOP OF RETAINING WALLS, TO
INCORPORATE CERTAIN FIGURE DRAWINGS AND TO MAKE CERTAIN
TECHNICAL CHANGES AND AMENDING CHAPTER 110 "FEES AND
PENALTIES", BY REPEALING AND RE-ENACTING §110-1, TO REQUIRE A FEE
FOR FENCE APPEALS.

WHEREAS, pursuant to Md. Code Ann., Art. 23A, §2, the City of College Park, Maryland (hereinafter, the "City") has the power to pass such ordinances as it deems necessary to protect the health, safety and welfare of the citizens of the municipality and to prevent and remove nuisances; and

WHEREAS, Mayor and Council have adopted a Building Code to ensure the health and safety of the residents of the City; and

WHEREAS, the Mayor and Council determined that regulation of the construction and re-construction of fences is necessary to preserve and protect the character of residential neighborhoods in the City, permit the rapid, free and unobstructed access to residences by emergency vehicles, personnel and equipment; allow for the unobstructed establishment, maintenance and creation of public rights-of-way along the streets and sidewalks in the City; prevent the obstruction or reduction, by man-made structures, of visibility at corners and

CAPS
 [Brackets]
 Asterisks ***

: Indicate matter added to existing law.
 : Indicate matter deleted from law.
 : Indicate matter remaining unchanged in existing law but not set forth in Ordinance

intersections for drivers and pedestrians; add to the attractiveness and comfort of the residential district; create a better home environment in the City; preserve an area which is generally regarded by the public as pleasing to the eye; and preserve, improve and protect the general character of lands within the City and the improvements thereon; and

WHEREAS, the determination of whether a variance from the requirements of the fence code would be allowed was delegated to the Advisory Planning Commission (APC) of the City; and

WHEREAS, the Mayor and Council have determined that it is appropriate to allow for an appeal of variance decisions made by the APC to the Mayor and Council; and

WHEREAS, the Mayor and Council have determined that certain clarifications of the fence law are required.

Section 1. NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Mayor and Council of the City of College Park, Maryland that that Chapter 87 "Building Construction", §87-19 "Appeals", be, and is hereby repealed and reenacted with amendments to read as follows:

§ 87-19. Appeals.

- A. Any person affected by any notice or order which has been issued in connection with the enforcement of any provision of this chapter may request and shall be granted a hearing on the matter by the Advisory Planning Commission, hereinafter referred to as "the Commission," provided that such person shall, within 10 days after service upon him/her or on the premises of a notice or order, file in the office of the Public Services Director a

written notice of an appeal requesting a hearing, setting forth a brief statement of the reasons therefor. Upon receipt of such notice of appeal, the Public Services Director shall forthwith notify the Commission, and the Commission shall promptly set a time and place for such hearing and shall give the person appealing and the Public Services Director notice thereof. The Commission shall decide such appeals as promptly as is practicable.

- B. After such hearing, the Commission may affirm, amend or modify the order appealed from. In hearing appeals, the Commission may also grant the applicant a waiver from strict compliance with a code provision upon an express finding that strict compliance is unreasonable or contrary to the spirit or intent of the code and that strict compliance would impose an undue hardship upon the appellant, provided that the waiver does not compromise the health, safety and welfare of the citizens of the community. THE CRITERIA TO BE USED IN DETERMINING WHETHER TO GRANT SUCH A WAIVER IN APPEALS REGARDING FENCES ARE SET OUT IN §87-23(J). The Commission may retain such technical experts as it may require upon consultation with the City Manager. The Commission's decision shall be by way of a written order OR, IN THE CASE OF FENCE APPEALS, A WRITTEN RECOMMENDATION. The decisions of the Commission shall constitute an order, and any person who shall fail, refuse or neglect to comply with any such order shall be guilty of violating the provisions of this chapter. The decision of the Commission shall in all cases be final, except AS OTHERWISE PROVIDED HEREIN. [~~that any appellant or party directly~~

~~aggrieved by the decision of the Commission may, provided that he/she does so within 30 days after the rendering of such written decision, appeal to a court of record of competent jurisdiction for further review, and the findings of fact of the Commission shall be conclusive, and such review shall be limited solely to questions of law. The decision of the Commission in any case or appeal shall be stayed pending decision by the court].~~

C. NOT LESS THAN 15 CALENDAR DAYS AFTER RECEIPT OF THE RECOMMENDATION OF THE COMMISSION REGARDING A VARIANCE, A MAJORITY OF THE MAYOR AND COUNCIL MAY ADOPT THE RECOMMENDATION BY CONSENT, UNLESS EXCEPTIONS THERETO HAVE BEEN FILED. FAILURE OF THE MAYOR AND COUNCIL TO ACT ON A RECOMMENDATION OF THE COMMISSION WITHIN 60 DAYS OF THE RECEIPT THEREOF SHALL RESULT IN THE DENIAL OF THE VARIANCE REQUEST.

D. ANY PERSON OF RECORD AND/OR ANY COUNCILMEMBER MAY FILE WITH THE MAYOR AND COUNCIL, WITHIN 15 CALENDAR DAYS AFTER NOTICE OF THE COMMISSION'S RECOMMENDATION REGARDING A FENCE APPEAL, EXCEPTIONS THERETO AND A REQUEST FOR ORAL ARGUMENT BEFORE THE MAYOR AND COUNCIL ON THE BASIS THAT THE RECOMMENDATION FAILS TO COMPLY WITH THE CRITERIA ESTABLISHED IN §87-23. THE FOLLOWING PROCEDURE SHALL APPLY IN THE EVENT OF

THE FILING OF AN EXCEPTION AND REQUEST FOR ORAL ARGUMENT:

- (1) THE CITY CLERK SHALL NOTIFY THE COMMISSION OF ANY EXCEPTIONS AND REQUEST FOR ORAL ARGUMENT. AS SOON AS POSSIBLE, AND IN ANY EVENT AT LEAST SEVEN DAYS PRIOR TO ANY ORAL ARGUMENT ON THE APPEAL, THE COMMISSION SHALL TRANSMIT TO THE MAYOR AND COUNCIL A COPY OF THE RECORD CREATED BY THE COMMISSION INCLUDING, BUT NOT LIMITED TO, ALL WRITTEN EVIDENCE AND MATERIALS SUBMITTED FOR CONSIDERATION BY THE COMMISSION AND A TRANSCRIPT OF THE PUBLIC HEARING ON THE VARIANCE APPLICATION.
- (2) THE MAYOR AND COUNCIL SHALL SCHEDULE ORAL ARGUMENT ON THE APPEAL. THE CITY CLERK SHALL GIVE AT LEAST SEVEN CALENDAR DAYS' NOTICE OF THE HEARING TO ALL PERSONS OF RECORD AND THE COMMISSION. ORAL ARGUMENT SHALL BE LIMITED TO THE FACTS AND INFORMATION WITHIN THE RECORD MADE AT THE HEARING BEFORE THE COMMISSION.
- (3) AFTER THE CLOSE OF THE COUNCIL'S HEARING, A MAJORITY OF THE MAYOR AND COUNCIL SHALL ACCEPT, DENY OR MODIFY THE RECOMMENDATION OF THE COMMISSION OR RETURN THE VARIANCE APPLICATION TO THE COMMISSION TO TAKE

FURTHER TESTIMONY OR RECONSIDER ITS RECOMMENDATION. THE COUNCIL SHALL GIVE ITS DECISION, IN WRITING, STATING THE REASONS FOR ITS ACTION. COPIES OF THE DECISION SHALL BE SENT TO ALL PERSONS OF RECORD.

E. IN ALL OTHER CASES, ANY APPELLANT OR PARTY DIRECTLY AGGRIEVED BY THE DECISION OF THE COMMISSION MAY, PROVIDED THAT HE/SHE DOES SO WITHIN 30 DAYS AFTER THE RENDERING OF SUCH WRITTEN DECISION, APPEAL TO A COURT OF RECORD OF COMPETENT JURISDICTION FOR FURTHER REVIEW, AND THE FINDINGS OF FACT OF THE COMMISSION SHALL BE CONCLUSIVE, AND SUCH REVIEW SHALL BE LIMITED SOLELY TO QUESTIONS OF LAW.

F. THE DECISION OF THE COMMISSION IN ANY CASE OR APPEAL SHALL BE STAYED PENDING DECISION BY THE COURT

[E]. G. The Commission is hereby established as the body to act upon appeals from the Public Services Director's denial of a building permit as set forth above. THE CITY'S PLANNING DEPARTMENT SHALL ASSIST THE COMMISSION WITH REGARD TO FENCE APPEALS AS SET OUT IN §15-20(C) AS APPROPRIATE.

Section 2. BE IT FURTHER ORDAINED AND ENACTED, by the Mayor and Council of the City of College Park, Maryland that Chapter 87 "Building Construction", §87-23 "Fences", be, and is hereby repealed and reenacted with amendments to read as follows:

§87-23 Fences.

A. Definitions

1. * * *

2. Fence. Any HEDGE OR OTHER NATURAL GROWTH GREATER THAN FOUR FEET IN HEIGHT, ANY structure, barrier, wall, RETAINING WALL, hedge or other natural growth GREATER THAN FOUR FEET IN HEIGHT, or partition OR COMBINATION THEREOF having the effect of or erected for the purpose of enclosing a piece of land, dividing a piece of land into distinct portions, separating two contiguous estates, or stopping and/or creating an obstacle to pedestrian crossings; and consisting of a section or sections of any type of fencing material, chain, railing, arbor, trellis, blocks, bricks, stones, wood, iron, wire, plastics, concrete or any other building or construction material or natural material; provided, however, that a structure which is solely for decorative purposes shall not constitute a fence, as long as such structure does not exceed four (4) feet in height, and provided that such structures on any residential lot do not, in total, consist of more than two (2) eight (8) foot sections, with each section located at least twelve (12) feet from the other. The length of the materials shall be measured at their longest point. Such decorative structures shall be landscaped along their total length with bushes, shrubs, plants or flowers. Fence does not include an arbor or trellis that is less than eight feet in length, and does not include underground, invisible animal restraint barriers.

3. through 7. * * * * *

8. FIGURE DRAWINGS ILLUSTRATING THE APPARENT FRONT YARD, FRONT YARD, SIDE YARD, REAR YARD THROUGH CORNER LOT, CORNER LOT, VISUAL OBSTRUCTION SETBACK AND VARIOUS TYPES OF FENCES ARE ADOPTED AND INCORPORATED IN THIS CODE BY REFERENCE.

B. through C. * * * * *

D. SCOPE. This section shall apply to all new fences, walls or combinations constructed, reconstructed or replaced ON RESIDENTIAL PROPERTIES IN RESIDENTIAL ZONES, EXCEPT THOSE ALLOWED BY APPROVED CONCEPTUAL SITE PLANS, DETAILED SITE PLANS AND SPECIAL EXCEPTIONS, on or after the effective date of this section. [~~This section does not prohibit the reconstruction or replacement, with similar dimensions, placement and materials, of any fence or wall properly permitted before the effective date of this section, or for which a variance has been granted, provided, however, that no such reconstructed or replaced fence or wall shall exceed four feet (4') in height in the front yard and setback shall be generally characteristic of and consistent with the surrounding neighborhood.~~]

E. RETAINING WALLS. Retaining walls built to retain or support the lateral pressure of earth or water or other superimposed load and otherwise designed and constructed of appropriate materials within allowable stresses and in conformance with acceptable engineering practices may be constructed where necessary in the front, side or rear yard, but shall not extend more than one (1) foot above finished grade. DIMENSIONS, PLACEMENT AND MATERIALS FOR NEW RETAINING WALLS IN LOCATIONS OTHERWISE REQUIRING A VARIANCE SHALL BE DETERMINED BY THE ADVISORY PLANNING COMMISSION. LANDSCAPING UP TO A HEIGHT OF FOUR FEET (4') MAY BE PLACED AS APPROVED ON RETAINING WALLS.

F. [~~The advisory planning commission shall apply the following criteria to any appeal arising from the provisions of this section:~~

- ~~1. There is an extraordinary situation or condition that would support the request for a variance;~~
- ~~2. Denial of the variance would result in a peculiar and unusual practical difficulty to, or an exceptional or undue hardship to the owner;~~
- ~~3. Granting the variance will not impair the intent, purpose or integrity of any applicable county general plan or county master plan;~~
- ~~4. The variance is consistent with the design guidelines adopted for the historic district, if applicable;~~
- ~~5. The variance will not adversely affect the public health, safety, welfare or comfort;~~
- ~~6. The fence for which a variance is requested incorporates openness and visibility as much as is practicable, provided however, that it shall not be constructed of chain link; and~~
- ~~7. The proposed construction, including setbacks, is characteristic of and consistent with the surrounding neighborhood.~~

EXISTING FENCES. THIS SECTION DOES NOT PROHIBIT THE RECONSTRUCTION OR REPLACEMENT, WITH SAME DIMENSIONS AND PLACEMENT, OF ANY FENCE OR WALL LEGALLY EXISTING BEFORE THE EFFECTIVE DATE OF THIS SECTION, OR FOR WHICH A VARIANCE HAS BEEN GRANTED, PROVIDED, HOWEVER, THAT NO SUCH RECONSTRUCTED OR REPLACED FENCE OR WALL SHALL EXCEED FOUR FEET (4') IN HEIGHT IN THE FRONT YARD. REPLACEMENT FENCES MAY BE RECONSTRUCTED OF SIMILAR

MATERIALS, OR MATERIALS SUCH AS WROUGHT IRON, SPLIT RAIL, OR PICKET, INCORPORATING OPENNESS AND VISIBILITY. CHAIN LINK MAY NOT BE USED FOR RECONSTRUCTION UNLESS IT WAS THE ORIGINAL MATERIAL OR A VARIANCE IS OBTAINED.

G. RIGHT OF WAY AND SETBACKS. In no event shall a fence be constructed to encroach into the public right of way OR VIOLATE THE VISUAL OBSTRUCTION SETBACKS REQUIRED BY PRINCE GEORGE'S COUNTY CODE SECTION 27-421, AS AMENDED, FOR CORNER LOTS.

H. PROHIBITED MATERIALS. In no event shall a fence be constructed of barbed wire, electrically charged material, or other hazardous material.

I. FENCE CONSTRUCTION. Where practicable, fences shall be built with the finished side facing outwards.

J. PERMIT REQUIRED. A city permit is required for the construction or reconstruction of fences on residential property.

K. APPEALS. THE ADVISORY PLANNING COMMISSION SHALL APPLY THE FOLLOWING CRITERIA TO ANY APPEAL ARISING FROM THE PROVISIONS OF THIS SECTION:

1. THERE IS AN EXTRAORDINARY SITUATION OR CONDITION THAT WOULD SUPPORT THE REQUEST FOR A VARIANCE;
2. DENIAL OF THE VARIANCE WOULD RESULT IN A PECULIAR AND UNUSUAL PRACTICAL DIFFICULTY TO, OR AN EXCEPTIONAL OR UNDUE HARDSHIP TO THE OWNER;

3. GRANTING THE VARIANCE WILL NOT IMPAIR THE INTENT, PURPOSE OR INTEGRITY OF THE FENCE ORDINANCE;
4. THE VARIANCE IS CONSISTENT WITH THE DESIGN GUIDELINES ADOPTED FOR THE HISTORIC DISTRICT, IF APPLICABLE;
5. THE VARIANCE WILL NOT ADVERSELY AFFECT THE PUBLIC HEALTH, SAFETY, WELFARE OR COMFORT;
6. THE FENCE FOR WHICH A VARIANCE IS REQUESTED INCORPORATES OPENNESS AND VISIBILITY AS MUCH AS IS PRACTICABLE, PROVIDED HOWEVER, THAT IT SHALL NOT BE CONSTRUCTED OF CHAIN LINK UNLESS THIS MATERIAL IS CONSISTENT WITH THE SURROUNDING NEIGHBORHOOD; AND
7. THE PROPOSED CONSTRUCTION, INCLUDING SETBACKS, IS CHARACTERISTIC OF AND CONSISTENT WITH THE SURROUNDING NEIGHBORHOOD. IN NEIGHBORHOODS WHERE CHAIN LINK IS A CHARACTERISTIC MATERIAL, ALTERNATE MATERIALS INCORPORATING OPENNESS AND VISIBILITY, MAY BE PERMITTED.

ADJOINING PROPERTY OWNERS SHALL BE GIVEN WRITTEN NOTICE OF ANY APPEAL BY REGULAR MAIL AT LEAST SEVEN DAYS PRIOR TO THE HEARING.

Section 3. BE IT FURTHER ORDAINED AND ENACTED, by the Mayor and Council of the City of College Park, Maryland that Chapter 110 "Fees and Penalties ", §110-1

"Fees and interests", be, and is hereby repealed and reenacted with amendments to read as follows:

§110-1 "Fees and interests"

Chaper/Section	Description	Fee/Interest
	* * * * *	
Ch. 87 Building Construction		
	* * * * *	
§87-19	FENCE APPEALS	\$50.00
	* * * * *	

Section 4. BE IT FURTHER ORDAINED by the Mayor and Council of the City of College Park that, upon formal introduction of this proposed Ordinance, which shall be by way of a motion duly seconded and without any further vote, the City Clerk shall distribute a copy to each Council member and shall maintain a reasonable number of copies in the office of the City Clerk and shall publish this proposed ordinance or a fair summary thereof in a newspaper having a general circulation in the City of College Park together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council. The public hearing, hereby set for 7:00 P.M. on the 12 day of June, 2007, shall follow the publication by at least seven (7) days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time. All persons interested shall have an opportunity to be heard. After the hearing, the Council may adopt the proposed ordinance with or without amendments or reject it. As soon as practicable after adoption, the City Clerk shall have a fair summary of the Ordinance and notice of its adoption published in a

newspaper having a general circulation in the City of College Park and available at the City's offices. This Ordinance shall be submitted to the Prince George's County Council within five days after its adoption, and shall become effective twenty (20) days after review and approval by the Council, provided that a fair summary of this Ordinance is published at least once prior to the date of passage and once as soon as practical after the date of passage in a newspaper having general circulation in the City.

INTRODUCED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the 22 day of May 2007.

ADOPTED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the 12th day of June 2007.

EFFECTIVE the ___ day of _____, 2007.

ATTEST:

**THE CITY OF COLLEGE PARK,
MARYLAND**

By: Janeen S. Miller
Janeen S. Miller, City Clerk

By: [Signature]
Stephen A. Brayman, Mayor

**APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:**

[Signature]
Suellen M. Ferguson, City Attorney

Figure 1

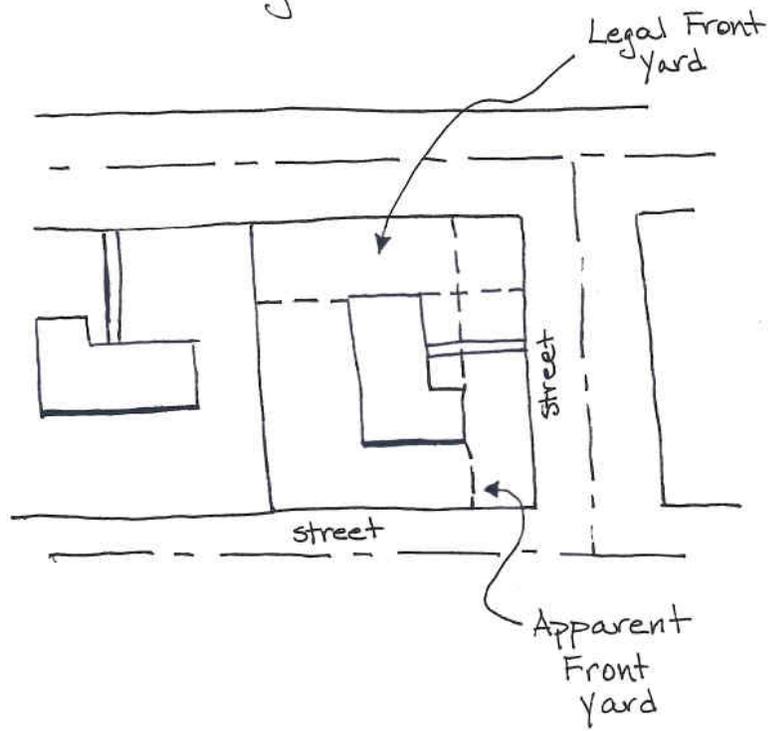


Figure 2

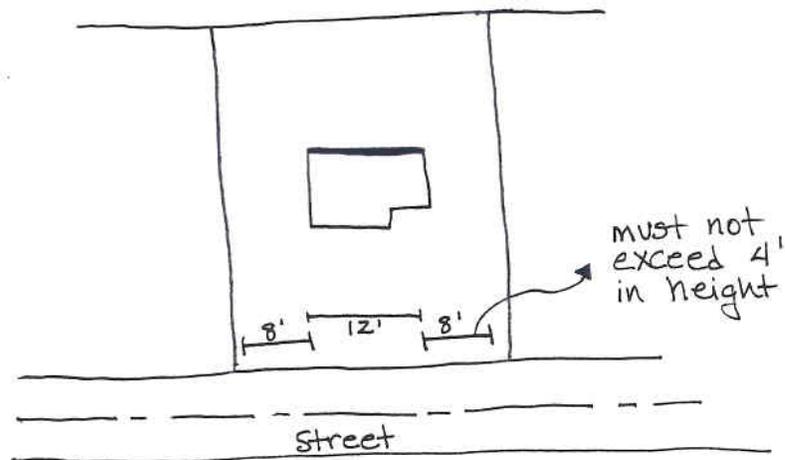


Figure 3

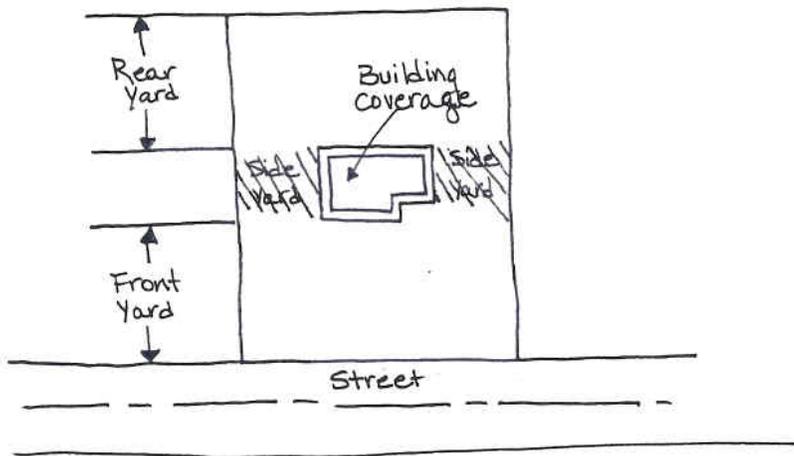


Figure 4

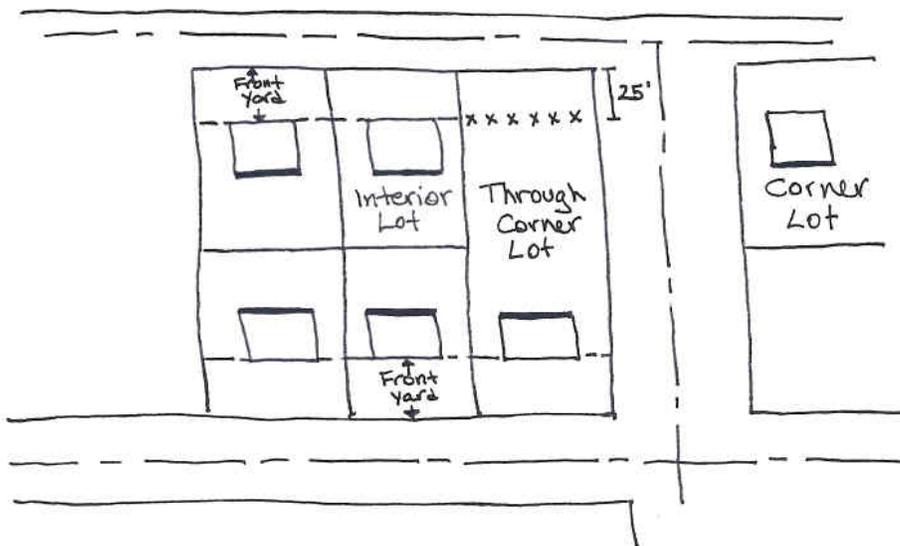


Figure 5

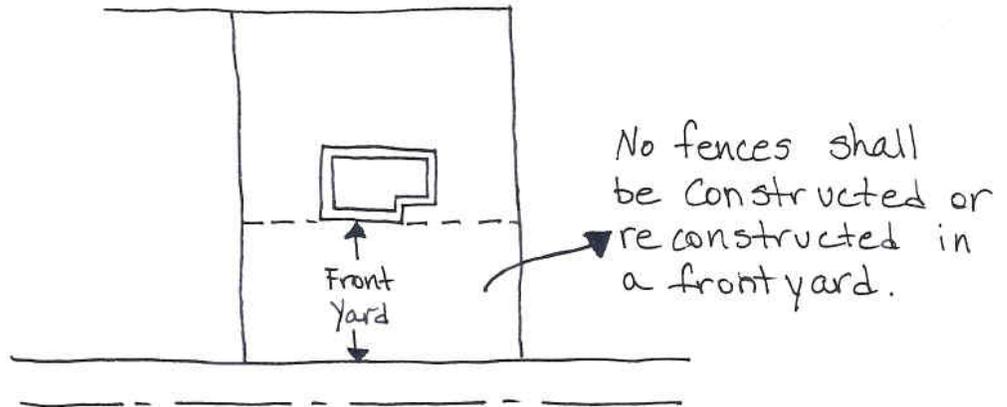
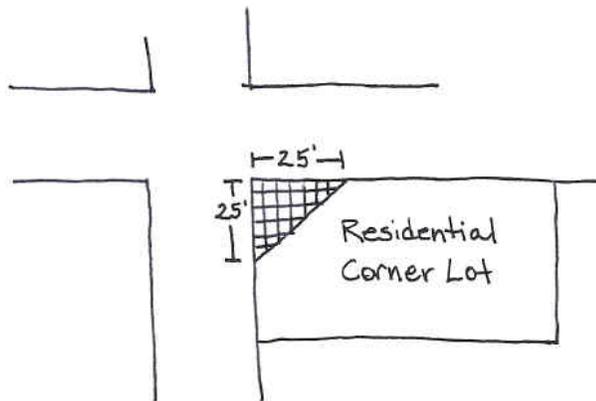
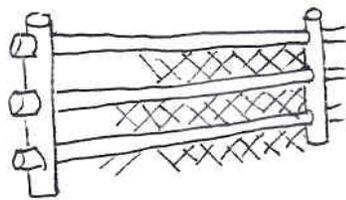


Figure 6

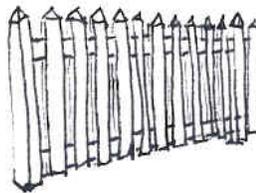


No visual obstruction more than 3' high may be located in

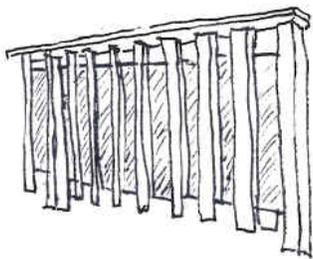




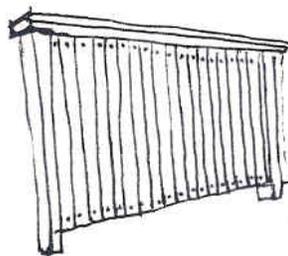
Split Rail



Picket



Board-on-Board



Solid Board



Chain Link