

Elements of a Fence Ordinance

TO: The Town Council Ordinance Committee

June 29, 2010

Ordinance vs. Policy

- Regulation of fences should be a local ordinance which has the force of law and ability of the municipality to enforce the law.
- Ordinances require a public process to change. Policies do not.

Definition

- Fences should be carefully and broadly defined to include any material, natural or manmade which intend to limit access or obstruct views by the public or abutters or scenic vistas, including objects or the storage of items which result in visual obstructions.
- For example, vegetation which eventually grows in hedges, or trees planted which will achieve those purposes should be considered de facto fences and be governed by the ordinance. The use of planters, stone, or other screening materials should be considered fences in the language of the ordinance

Affected Areas

- Regulation of fence installations is particularly important in scenic area. Scenic areas should be defined broadly.
- Sensitive environmental areas, areas with public vistas, and public property should be included in the affected areas.

Grandfathering

- Fences which do not meet the standards in the ordinance may have to be grandfathered as they currently exist, but any expanded or constructed after the ordinance committee began the process of lawmaking are not.
- Code enforcement should immediately inventory fencing photographically upon enactment and evidence of fencing become a part of the property file.
- State statute allows for retroactive enactment of ordinances to prevent property owners from attempting to become grandfathered during the ordinance development process.

Sensitive Areas

- The DEP and other state agencies have guidelines for fencing in sensitive areas such as dunes, flood areas, etc. These should be Incorporated into the ordinance and strengthened because Scarborough has such a large inventory of scenic areas.
- For example, fences in the front and back dunes or flood hazard areas should be regulated so as to allow for the passage of wind, sand and water.
- Design standards should be clear, such as the use of 36" open, two horizontal-rail fences in these sensitive areas, or similar designs carefully described.

Set Backs

- Fences cannot be maintained if they are not required to be set back on the lot at some distance necessary for maintenance or replacement without the need to obtain permission from an abutter.
- Setback standards should apply to properties which abut public property notwithstanding the right of the property owner to access public property for maintenance.

Spite Fences

- Spite fences should be included in the ordinance and the language made clearer than in the statute.
- Spite fences enforcement should be authorized for code enforcement and not only civil action
- Spite fences should be defined with a lower height in scenic areas

Grades

- The practice of building up the natural grade of the land and then installing a fence on that higher grade should be prohibited by the ordinance.
- The construction of a structure, such as a patio or deck above natural grade should also not be permitted to circumvent the intent of the law.

Screening for Practical Purposes

- Fencing or any type used to screen such items as dumpsters, trampolines, campers or other arguably obstructions to scenic views should still maintain the maximum desired height of 36" and the use of these or other obstructions should be included in the definition if the intent or outcome of storage is to prevent the public's enjoyment of scenic vistas.

Comprehensive Plan

- There are several references to preservation of scenic and marine areas in the comprehensive plan.
- And ordinance regulating fencing is consistent with the implementation phase of the Comprehensive Plan.

Municipal Exclusions

- The municipality should be required to follow the ordinance, particularly since there is a substantial amount of property in scenic areas owned by the public.

Appeals

- Strict appeal standards should be put in place for Zoning Board review of any appeals

Safety

- In the case of safety issues, such as fences around a detention pond, fence material standards should be implemented which call for so-called “invisible” fences which are made of materials that allow wind, sand and water to pass but do not create visual obstructions.
- Examples are fine wire fencing made from new materials which will achieve safety but not obstruct views.
- Height limitations should also be part of a provision on safety fencing