

STAFF REPORT AND RECOMMENDATION TO THE CLARK COUNTY PLANNING COMMISSION

TO: Clark County Planning Commission

FROM: Jan Bazala, Planner II

PREPARED BY: Jan Bazala, extension 4499

SUBJECT: Retaining wall setbacks

PC HEARING

DATE: August 18, 2016

REPORT PREPARATION

DATE: August 2, 2016

I. SUMMARY

Changes to CCC 40.320.010.F regarding fence and retaining wall heights within building setbacks are presented for the Planning Commission's consideration and recommendation to the Board of County Councilors.

II. BACKGROUND

This existing code section addresses retaining walls and fences immediately abutting a neighboring property line. It requires retaining walls over 4 feet in height and fences over 6 feet in height to maintain the standard building setback for the zone. While not currently codified, the current interpretation is that the height of a fence on top of a retaining wall is measured from the top of the fence to the bottom of the wall.

The development community has noted a number of issues with the current code. One of their main concerns is that when a wall/fence exceeds the limits noted above, it must be set back from a property line, which can result in a "no-man's land" that is often either maintained by the abutting property owner (which can result in a potential adverse possession claim), or the area is not maintained at all. Also, side and rear setbacks are 20 feet for multifamily developments; prohibiting walls and fence combinations greater than 6 feet tall in a 20 foot side or rear setback can have a significant impact on the design of a project.

The proposal allows for a number of exceptions including the stepping of walls, obtaining permission from an abutting landowner, situations where a residence is at least 50 feet away from the property line, and exceptions for non-residential property.

It should be noted that the allowable height of fences that do not require a building permit has been raised to 7 feet through the Spring biannual code amendment process. If the Planning Commission votes to change nothing else in 40.320.010.F, please consider at least approving 40.320.010.F.3, which allows fences 7 feet in height within building setbacks; otherwise 7 foot tall fences that do not require building permits will still need to meet building setbacks. Since the majority of fences are built on (or very near) property lines, staff envisions considerable confusion between the two different standards.

III. ANALYSIS

Should the code changes be approved, taller retaining wall and fences will be allowed within building setbacks under certain circumstances. In urban single family Residential zones the rear and side building setback range between 5 and 10 feet; in Rural zones, the side and rear setbacks typically range between 10 and 20 feet. It needs to be re-stated that there currently are no height limits to retaining walls and fences that do meet building setbacks. According to the DEAB, they do not expect a rash of huge retaining walls as a result of allowing them closer to the property lines, as they do require engineering and are expensive to construct.

IV. COMMUNITY OUTREACH

The proposed changes were originally part of the 2016 Spring Biannual code amendments.

A SEPA determination of non-significance was published in the "Columbian" newspaper on March 30, 2016.

A legal notice of the public hearing was published in the "Columbian" newspaper on April 6, 2016.

The DEAB reviewed and endorsed the majority of the proposed changes at their March 2016 meeting.

The Planning Commission held a work session on the biannual code amendments (including this item) on April 7, 2016.

At the April 21, 2016 Biannual code amendments hearing the Planning Commission took testimony regarding this item and voted to pull this item out of the Spring Biannuals and re-visit it at a later date; that later date is now. See pages 29-43 of the attached PC minutes from April 21.

V. RECOMMENDATION

Staff recommends the Planning Commission consider this proposal and forward a recommendation of APPROVAL to the Board of County Councilors.

Language proposed to be deleted is ~~struck through~~. Language proposed to be added is double-underlined.

40.320.010.F

F. Establishing Setback Standards for Retaining Walls and Fences.

1. This section regulates the height of retaining walls and fences along the perimeter of sites. Building codes regulate under what circumstances retaining walls and fences require building and grading permits and possible engineering. Changes to stormwater runoff resulting from construction of retaining walls are subject to Chapter 40.386.
- 4.2. Construction of private retaining walls or fences within public rights-of-way is prohibited. Exceptions to this prohibition shall require approval of the Public Works director. The Public Works Director may apply the exceptions to height and setbacks for walls and fences in 40.320.010.F 4.a through i as applicable.
- 2.3. The construction of retaining walls four (4) feet or less in height and fences ~~six (6)~~ seven (7) feet or less in height may be constructed within public easements. Exceptions to these height limits may be granted when written approval has been obtained from the easement holder.
- 3.4. The construction of retaining walls in excess of four (4) feet in height and fences in excess of ~~six (6)~~ seven (7) feet in height shall meet the setback requirements of the underlying zone. The height of a fence on top of retaining walls shall be measured to the grade at the bottom of the wall. Exceptions to this provision are as follows:
 - a. ~~When an exception under subsection (F)(1) of this section has been granted;~~
 - a. Retaining walls taller than four feet may be placed within setbacks by using a series of retaining walls four feet high or less that are separated a minimum of four feet, provided the area between walls is maintained in ground cover or shrubs. The total height of a series of walls within the building setback shall not exceed eight (8) feet. Landscaping shall be maintained consistent with CCC40.320.010.G.6. Fences are allowed on top of such walls consistent with Section 40.320.010.F.4.i;
 - b. The exposed faces of retaining walls over four (4) feet in height are directed toward the interior of the lot;
 - c. The retaining walls and / or fences are constructed as part of the site improvements prior to a final plat, and located between lots within the development. Retaining walls on the perimeter of the plat may not use this exception, except as allowed under subsection (F)(4)(d) of this section;

- d. Retaining walls and / or fences abutting a road right-of-way or road easement; ~~provided~~, subject to the following:
 - (1) The wall or fence does not block required sight distance;
 - (2) Walls and / or fences over 12 feet in height will be reviewed for potential shading and visual impacts beyond the right of way or easement. The community development director may impose conditions on the design and setbacks of such walls if needed to mitigate impacts;
 - e. The retaining wall and / or fence is constructed between lots under the same ownership;
 - f. The retaining wall and / or fence is at least fifty (50) feet from a dwelling on an abutting residential property;
 - g. Permission to exceed the height limits within the setback is granted in writing from the abutting property owner;
 - h. The retaining wall and / or fence is abutting commercial or industrial zoned property or legally permitted non-residential uses;
 - i. Non-sight-obscuring fences such as chain link or wrought iron seven (7) feet high or less, and sight-obscuring fences forty-two (42) inches high on top of retaining walls no greater than four feet tall are allowed within setbacks;
4. 5. Building codes for retaining walls may require setbacks that are greater than those required by this section 40.320.010.F.4.
6. These provisions do not apply to fences required by state law to enclose public utilities, or to chain link fences enclosing school grounds or public recreation areas.