

ORDINANCE NO. 38-14

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HANOVER AMENDING AND SUPPLEMENTING CHAPTER 166 OF THE CODE OF THE TOWNSHIP ENTITLED LAND USE AND DEVELOPMENT LEGISLATION BY AMENDING AND SUPPLEMENTING VARIOUS PROVISIONS CONCERNING FENCES AND WALLS

WHEREAS, Chapter 166 of the Township of Code currently sets forth various requirements for fences and walls; and

WHEREAS, the fences and walls, when properly designed and located, may provide various beneficial functions, including screening, enclosure and other benefits; and

WHEREAS, fences and wall, when improperly located and designed can be detrimental to the public good by being visually intrusive or imposing, by being otherwise unsightly, by limiting light and air, by interfering with appropriate sight distance, by creating safety hazards and by creating other negative impacts; and

WHEREAS, the Board of Adjustment in its annual report has made various recommendations that the fence regulations be reviewed; and

WHEREAS, the Planning Board has reviewed both the current regulations and the recommendations in the annual report of the Board of Adjustment, and has recommended amended standards for fences and walls; and

WHEREAS, the Township Committee believes that it is in the public interest to amend the regulations for fences and walls as recommended by the Board of Adjustment and the Planning Board.

NOW, THEREFORE, BE IT ORDAINED, by the Township Committee of the Township of Hanover in the County of Morris in the State of New Jersey, that Chapter 166 of the Code of the Township entitled Land Use and Development Legislation, is hereby amended and supplemented as follows:

Section 1. Paragraph (3) in Subsection A. of § 166-124., *Outdoor storage*, in Article XIX, *General Provisions*, is hereby amended to read as follows:

- (3) Where outdoor storage is permitted, no article or material shall be kept, stored or displayed outside the confines of a building unless the same is so screened by either a wall or fence designed in accordance with §166-138.2. and plant material as approved by the Planning Board so that said storage is not visible from any adjacent property or public street.

Section 2. The opening paragraph of Subsection D. in Section 166-125., *Buffer requirements*, in Article XIX, *General Provisions*, is hereby amended to read as follows:

- D. Preservation of existing vegetation. Within the buffer, all existing trees, shrubs, ground cover and other vegetation shall be preserved. Areas to be preserved shall

be identified on the site and/or subdivision plans, and such plans shall include measures to protect existing vegetation during construction through the use of fencing and by prohibiting the use or storage of construction equipment, materials, soil or debris within the buffer area, etc. Notwithstanding the foregoing, existing vegetation within a required buffer area may be disturbed under the following circumstances. The following disturbance exceptions shall not be construed to permit within the buffer any buildings, parking or loading areas, driveways or other paved areas, walls, retaining walls, or any storage of materials or equipment, except as permitted herein.

Section 3. Section 166-126., *Traffic visibility at intersections*, in Article XIX, *General Provisions*, is hereby amended to read as follows:

§ 166-126. Obstructions to street functions.

- A. On any corner lot, no fence, structure or planting shall be erected or maintained in a manner that would interfere with appropriate sight distance at the intersection of streets. The sight triangles at intersections shall be in accordance with ASSHTO's *A Policy on Geometric Design of Highways and Streets*, and based upon the speed limits established for the intersecting streets. Prior to the issuance of any permit in the front yard of a corner lot, the permitting agency or official, as the case may be, shall refer to the permit application to the Township Engineer for a determination of the appropriate sight triangle.
- B. All such structures or plantings of trees and shrubs on all lots, including both corner lots and interior lots, shall be located on private property at least two feet from the street right-of-way.

Section 4. Section 166-138.2., *Fences in front yards in residential zones*, in Article XIX, *General Provisions*, is hereby amended to read as follows:

§ 166-138.2. Fences and walls.

The following regulations apply to fences, freestanding walls and retaining walls, unless specifically provided otherwise by this Chapter. In case of conflict between this section and the Uniform Construction Code of the State of New Jersey, the more restrictive requirement shall apply.

- A. Location.
 - (1) Fences and retaining walls shall be permitted in front, side and rear yards.
 - (2) Unless required to be located in the front yard by this chapter for buffers or screening purposes, freestanding walls shall be permitted only in the side and rear yards, except that sitting walls and walls that are designed as a planter, either of which do not exceed a height of 24 inches, shall be permitted in the front yard.
 - (3) Setbacks. The required setbacks for fences and walls shall be as follows:

- (a) No setback from any property line shall be required for fences and freestanding walls, unless a setback is provided by other provisions of this chapter or if required as a condition of approval in particular circumstances, such as in certain cases where fences or walls are permitted to exceed a height of 6 feet.
- (b) The exposed face of retaining walls shall be set back from any property line a horizontal distance not less than one foot for each foot of height of the retaining wall. The height of the wall used for determining the required setback shall be measured from the top of the retaining wall to the finished ground level at the base of the wall at the point of setback measurement.
- (c) When a fence or other barrier is located at the top of a retaining wall, the height of the fence or barrier shall be included in the height of the wall, unless such fence or other barrier is set back from the face of the wall a distance not less than the height of the fence barrier, with the fence/barrier height measured from the top of the retaining wall.
- (d) In the case of tiered retaining walls, the exposed face of any wall shall be separated from the exposed face of other walls by a horizontal distance not less than one foot for each foot of height of the upper. The required setback shall be based upon the vertical difference between the top of the wall above and the top of the wall directly below. In the case of walls of varying height, the setback at any point shall be based upon the height of the wall at the same point. The provisions of paragraph (c) above shall also apply to the requirements of this paragraph.

B. Height. The maximum permitted height of fences, freestanding walls and retaining walls shall be as follows:

(1) Height of fences and freestanding walls.

(a) Front yard.

[1] The height of fences and freestanding walls accessory to single-family detached dwellings, two-family dwellings, community shelters and residences shall not exceed 3.5 feet (42 inches) when located in the front yard or the minimum required front yard, whichever is more restrictive. Any fence or freestanding wall so located shall be designed to provide openings in at least 50% of the fence or wall.

[2] The height of fences and freestanding walls accessory to single-family attached dwellings, multifamily dwellings and nonresidential uses shall not exceed 6 feet when located in the front yard or the minimum required front yard, whichever is more restrictive. Any fence or freestanding wall so located shall be designed to provide openings in at least 80% of the fence or wall.

- (b) Side and rear yards.
 - [1] The height of fences and freestanding walls accessory to single-family detached dwellings, two-family dwellings, community shelters and residences shall not exceed 6 feet when located in the side or rear yard.
 - [2] The height of fences and freestanding walls accessory to single-family attached dwellings, multifamily dwellings and nonresidential uses shall not exceed 6 feet when located in the side or rear yard; provided, however, that the reviewing agency may permit or require a fence or wall with a height up to 8 feet without the need for a variance when such height is needed to provide adequate screening and will not result in a substantial negative visual impact to adjacent properties or the general public.
- (2) Height of retaining walls. The height of retaining walls shall not exceed four feet, measured from the finished ground level at the base of the wall. In the case of multiple retaining walls, the following shall apply:
 - (a) The height of any individual wall shall not exceed 4 feet.
 - (b) In the case of tiered retaining walls, the height of any tier of the wall shall not exceed 4 feet, and further provided that the total height of all tiers combined shall not exceed 12 feet within a horizontal distance of 20 feet from the lowest wall. Such 12 foot height shall be measured from the base of the lowest wall to the top of the highest wall directly above the point of measurement.
 - (c) When fences, guard rails or other barriers are located at the top of retaining walls, the height of the wall shall be measured in accordance with Paragraph A.(3)(c) above.
- C. Swimming pool enclosures. Enclosures for swimming pools shall be required to comply with the requirements of the Uniform Construction Code or this Chapter, whichever is more restrictive. Such enclosures shall be prohibited in the front yard or the minimum required front yard, whichever is more restrictive.
- D. Recreational facility enclosures. Recreational facility enclosures, such as enclosures of tennis courts or similar courts, shall be subject to the following requirements, in addition to the other requirements of this section. In case of conflict between this subsection and the remainder of this section, this subsection shall supersede and control for such enclosures.
 - (1) The height of such enclosures shall be the minimum necessary to provide reasonable containment of projectiles used in play, but in no case shall the height of such enclosures exceed 12 feet.

- (2) Any such enclosure greater than 6 feet high shall be set back from any side or rear lot line a distance not less than the height of the enclosure.
- (3) Such enclosures shall be prohibited in the front yard or in the minimum front yard, whichever is more restrictive.

E. Temporary fences.

- (1) Temporary fences designed and used to restrict access and to implement other controls during construction, demolition, site remediation and other such temporary activities associated with a development application shall not be subject to the provisions of this Section, but shall be subject to the requirements set forth in the resolution of approval and/or developer's agreement, as applicable.
- (2) Temporary fences designed and used to restrict access to the subject property during temporary activities not associated with a development application shall not be subject to the provisions of this Section, but shall be required to obtain a zoning permit from the Zoning Officer. Prior to issuance of such permit, the Zoning Officer shall determine the following:
 - (a) A reasonable need exists for such fence in order to prevent unwarranted access to the subject property during the period of the temporary activity.
 - (b) The height of such fence shall not exceed 6 feet.
 - (c) Such fence shall be located and designed to not obstruct sight distance at intersections of streets or at other points where sight distance is needed for safety.
 - (d) Such fence shall provide for access to the enclosed area by emergency personnel, such as but not limited to police, fire and first aid personnel.
 - (e) The time period during which the fence is in place shall not exceed two years. An extension of such period may be requested and may be granted upon due cause shown.

F. Design requirements.

- (1) Safety barriers. The reviewing agency or official may, in appropriate instances, require a guard rail or other restraining device at the top of retaining walls if deemed necessary or advisable to protect persons, vehicles or equipment from falling off the wall. Such safety barriers shall be subject to the provisions of Paragraphs A.(3)(c) and B.(2)(c) above.
- (2) Materials and construction. The following standards shall apply to the materials and construction of fences and walls.
 - (a) In the event that both sides of a fence or freestanding wall are not identical, the finished or preferred side shall be required to face the

street and/or abutting properties, as applicable. For purposes of administering this provision, the finished or preferred side shall be that side which best conceals the fence posts, rails and other supporting parts, and/or which is painted, stained or otherwise treated when only one such side is so treated.

- (b) Walls shall not be faced with unfinished, painted or stained poured concrete, concrete block or cinder block, unless the same is textured to simulate natural stone or is split-face block.
- (c) Fences, freestanding walls or retaining walls that may present a danger or hazard to the public welfare, including but not limited to fences or walls, which are electrified, contain broken glass, razor wire or barbed wire, or other sharp edges, are prohibited.

Section 5. Subsection B. in Section 166-178., *Accessory uses*, in Article XXIX, *R-M Residential-Multifamily District*, is hereby amended to read as follows:

§ 166-178. Accessory uses.

B. All fences and signs shall be subject to §166-138.2. and Planning Board approval as to design and height.

Section 6. In case, for any reason, any section or provision of this Ordinance shall be held to be unconstitutional or invalid, the same shall not affect any other section or provision of this Ordinance, except so far as the section or provision so declared unconstitutional or invalid shall be severed from the remainder or any portion thereof.

Section 7. All ordinances or parts of ordinances inconsistent with the provisions of this ordinance are, to the extent of such inconsistency, hereby repealed.

Section 8. This ordinance shall take effect in accordance with the law.

TOWNSHIP COMMITTEE
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY

DATE OF INTRODUCTION: September 11, 2014

DATE OF ADOPTION: October 9, 2014

NOTICE OF INTRODUCTION

NOTICE IS HEREBY GIVEN, that the foregoing Ordinance was submitted in writing at a meeting of the Township Committee of the Township of Hanover, in the County of Morris and State of New Jersey, held on the 11TH day of September, 2014, introduced and ready by title and passed on first reading and the Governing Body will further consider the same for second reading and final passage thereof at a meeting to be held on the 9th day of October, 2014, at 8:30 o'clock in the evening prevailing time, at the Municipal Building, 1000 Route 10 in Whippany, in said Township of Hanover, at which time and place a public hearing will be held thereon by the Governing Body and all persons and citizens in interest shall have an opportunity to be heard concerning same.

JOSEPH A. GIORGIO, TOWNSHIP CLERK
TOWNSHIP OF HANOVER
COUNTY OF MORRIS
STATE OF NEW JERSEY

DATED: September 18, 2014