

SPONSOR: \_\_\_\_\_  
PLANNING REVIEW COMMISSION: \_\_\_\_\_  
PUBLIC NOTICE: \_\_\_\_\_  
PUBLIC HEARING: \_\_\_\_\_

**AN ORDINANCE TO AMEND SECTION 425-16 OF THE BETHANY BEACH  
TOWN CODE REGARDING FENCE RESTRICTIONS WITHIN THE TOWN OF  
BETHANY BEACH**

**WHEREAS**, the Town of Bethany Beach has a duly enacted Zoning Code that outlines restrictions for fences within the Town of Bethany Beach;

**WHEREAS**, the Town Council desires to amend Chapter 425-16 of the Bethany Beach Town Code to update and clarify fence restrictions.

**BE IT HEREBY ENACTED** the Town Council of the Town of Bethany Beach, a majority thereof concurring in Council duly met, that the Town Code be and hereby is amended as follows:

**Section 1.** Amend Section 425-16 (Amendments and additions are highlighted in bold below and the language and punctuation highlighted in bold with a solid line striking through should be deleted.):

§ 425-16 **Regulation of perimeter fences.**

A. Purpose.

The purpose of these regulations is to establish criteria for the location, appearance and maintenance of perimeter fences. The Town of Bethany Beach recognizes the health, safety, aesthetic and economic value of fences. The provisions of these regulations are intended to:

- (1) Allow for on-site areas for privacy, while maintaining the Town's general open design along streets, alleys and private ways;
- (2) Provide screening and mitigation of potential conflicts between active (commercial and recreational) areas and more passive (residential) areas;
- (3) Maintain the overall aesthetic conditions within the Town;
- (4) Limit sight line obstructions;
- (5) Prevent conflicts involving the Town's right-of-way and stormwater management issues;
- (6) Insure proper fence construction and maintenance.

B. Definitions. As used in this section, the following terms shall have the meanings indicated:

### **APPROPRIATE FENCE MATERIALS**

Fences must be constructed of wood, metal, bricks and/or masonry, plastic or other materials designed for permanent outdoors fencing. Wood fences must be constructed of cedar, redwood, or other decay-resistant wood. Fences must not be constructed from razor wire, chain linked, snow fencing, plywood, or materials used for other purposes. Any **above ground** fences that conducts an electric current or any guard wall, or other forms of protection upon which any spike, nail, or pointed instrument of any kind is fixed, attached or placed shall not be permitted. Electrically wired in-ground "invisible" pet containment systems are not considered fences and therefore are not subject to these fence regulations.

### **ARBOR**

~~An Arbor is defined as a structure that is attached to a fence or is freestanding and serves to define a gate or entrance way located in the front, rear or side yard. Arbors may be a maximum of eight feet in height and eight feet in width.~~

### **FENCE**

(1)

A barrier, including one for noise attenuation, or any structure, except a structural part of a building, that wholly or partially screens from view, encloses or divides a yard or other land, or marks or substantially marks the boundary between adjoining land. A fence is further defined as any permanent partition or barrier more than 24 inches in height from the natural grade (**inclusive of the height of any retaining wall upon which a fence is located**) ~~(or the top of a retaining wall if a fence is placed on such a wall)~~ bordering or parallel to and within five feet of a lot line that in whole or in part defines the boundaries of the lot.

(2)

A, ~~retaining wall~~, trellis, arbor or landscaping material such as a hedge shall not be considered to be a fence. Fences located within the interior of a lot which does not serve to define a lot boundary, such as, but not limited to, fences that enclose dog runs, play areas, pools and spas (see § 500-7, Barrier requirements.) tennis courts, etc. are not subject to these fence regulations except for any portion of such fence that borders or is parallel to and within five feet of a lot line.

### **HEIGHT**

**Fence height is determined by** the vertical distance measured from the natural grade of the ground at the location where the fence is erected (~~or from the top including the height~~ of a retaining wall if a fence is placed on the retaining wall) to the top of the fence section or panel. Fence supports such as posts, columns, piers or pilasters, as well as gates ~~and arbors~~ may exceed the height restriction contained in this Fence Ordinance by not more than **12 8** inches. In cases where the top of the fence section or panel is curved, the height shall be calculated using the average of the highest and lowest points on the top of the fence section or panel.

## **LATTICE**

~~“Lattice” or “latticework” is a framework of cross wood or metal strips or a predominantly open framework of wood or metal designed for decorative purposes or landscaping purposes.~~

## **LEGAL NONCONFORMING FENCE**

Any **existing** fence **that was legally installed** that does not conform to the requirements of this section shall be considered legal nonconforming. Fences erected prior to January 1, 2012, that do not conform to the requirements of this section shall be considered to be legal nonconforming fences.

## **OPACITY**

The degree to which light or views are blocked and is measured perpendicular to the fence for each fence section between the fence supports.

## **RETAINING WALL**

A wall or terraced combination of walls used to provide a barrier or to restrain lateral forces of soil or other material and not used to support, provide a foundation for, or to provide a wall for a building or structure.

## **SCREENING**

A method of visually modifying the view of a structure, a building, or a feature using methods such as fencing, walls, berms, densely planted vegetation or a combination of these methods.

## **TRELLIS**

~~A horizontal structure of open latticework designed and intended to support the growth of vines or other vegetation or a horizontal decorative element composed of latticework which admits light and air through a predominantly open design. A trellis up to tow additional feet in height to a maximum of six feet may be added as a decorative element to a fence so long as the combined length of the trellis(s) constructed facing a property line do not exceed 25% of the total length of that property line.~~

C. Requirement of a fence permit.

(1)

~~Any person erecting a perimeter fence two feet in height or more shall first obtain~~ A fence permit is required and shall first be obtained from the Building Inspector of the Town of Bethany Beach ~~for any perimeter fence two feet in height or more~~. The Town of Bethany Beach is exempt from all provisions in § 425-16.

(2)

The following items are required at the time of applying for a fence permit:

(a)

Contact information, including the applicants name, phone number and address.

(b)

A detailed plot plan that indicates property lines with the plot plan noting the location of the proposed fence as well the location of the primary structure on the plot plan as it relates to the property line.

(c)

The application for a fence permit must also note the height of the fence and gates, a representation of the style/design of the fence and all materials used to construct the fence, gates and posts.

(d)

The fence contractor must have a valid Bethany Beach business license.

D. Regulation of perimeter fences in residential zoning districts.

(1)

Fences bordering a front lot line. Fences located in the required front yard shall not exceed three feet in height. ~~The maximum fence height may be increased by one foot if constructed of open, decorative, ornamental fencing materials that are less than sixty-percent opaque.~~

(2)

Fences bordering side lot line. No fence or portion of a fence bordering or parallel to a side lot line shall exceed four feet six inches in height, and any portion of a fence bordering a side lot line which is within two feet of a front lot line shall be graded to match the height of any fence bordering the front lot line.

[Amended 10-16-2016 by Ord. No. 519]

(3)

Fences bordering the rear lot line. No fence or portion of a fence bordering or parallel to a rear lot line shall exceed four feet six inches in height.

(4)

Fences bordering side or rear lot lines where the entire length of the side or rear lot lines immediately abuts **the zoning districts that are** nonresidential (~~C-1, C-1H~~ **CL-1, and C-2**) or Municipal, Open Space, Recreational and Educational (MORE) Zoning Districts may be increased to a maximum of six feet.

(5)

Any fence located on top of a retaining wall must comply with the height requirements outlined in Subsection **D** of this section.

**E.**

Regulation of perimeter fences in nonresidential zoning districts. The height of perimeter fences located in nonresidential zoning districts including fences erected by the Town of Bethany Beach in the MORE Zoning District shall not exceed six feet in height except as necessary for athletic facilities.

**F.**

Regulation applicable to all perimeter fences.

(1)

All fences including fence footings are permitted up to but not over the owner's property line.

(2)

Fences should follow the natural contours of the ground.

(3)

Fences may not be placed on or extend into Town easements/rights-of way where public improvements are located without first obtaining an encroachment agreement from the Town.

(4)

Fences constructed within Bethany Beach and/or public utility easements may be removed to allow access for installation or maintenance of utilities and/or drainage. The property owner shall be responsible for the reconstruction and replacement on any fences removed.

(5)

Fences placed on corner lots must maintain a clear view triangle for visibility at the intersection of two streets or at the intersection of an alley and a street. **The fence section considered to be located on the side and fronting on a street or alley must be reduced in height to no more than three feet (same as the fence on the front property line) for a distance of 3 feet from the corner.**

(6)

~~Fences adjacent to public sidewalks must be set back a minimum of two feet from the nearest edge of the sidewalk.~~

(6)

Fences and walls shall not restrict natural surface drainage nor be constructed to divert or channel water flow with increased velocity.

G.

Retaining walls. Retaining walls exceeding four feet in height, whether terraced or not, shall be designed and constructed to support lateral loads and shall be accompanied by design calculations and plans sealed by a professional engineer registered in the State of Delaware.

H.

Maintenance.

(1)

Every person or business that owns a fence shall maintain the fence in a "good state of repair." Routine maintenance such as painting or replacement with in-kind material of less than 50% along any property line does not require a fence permit. Replacement of 50% or more of the length of a fence along any property line shall be considered a new fence and must obtain a fence permit.

(2)

For purposes of this section, "good state of repair" shall mean:

(a)

The fence is complete, structurally sound, plumb and securely anchored;

(b)

Protected by weather-resistant materials;

(c)

Fence components are not broken, rusted, rotten or in a hazardous condition;

(d)

All stained and painted fences are maintained in a visually appealing manner;

(e)

The fence does not present an unsightly appearance deleterious to the abutting land or neighborhood;

(f)

Graffiti shall be removed immediately upon notification.

**I. Ornamental additions permitted**

**(1)**

**An arbor may be added to any length of fence or may stand alone up to but not over the owner's property line. An arbor is defined as a structure that is attached to a fence panel at the side or is freestanding and serves to define a gate or entranceway located in the front rear or side yard. Arbors may be a maximum of eight feet in height, eight feet in width and have a maximum depth of 30". An arbor is limited to one per lot line. Regulations regarding corner lots shall also apply.**

**(2)**

**A trellis may be added to any length of fence or may stand alone up to but not over the owner's property line. A trellis is defined as a structure made of open latticework designed and intended to support the growth of vines or other vegetation. A trellis up to 1.5 additional feet in height to a maximum of six feet may be added as a separate detached decorative element to a fence line so long as the combined length of the trellis(s) constructed facing a property line do not exceed 25% of the total length of the fence.**

**(3)**

**Lattice or latticework may be added to any fence, arbor or trellis and is defined as a framework of cross wood, metal or vinyl strips or a predominantly open framework of wood, metal or vinyl designed for decorative purposes or landscape purposes. The use of lattice is not intended to add height to any fence, arbor or trellis over the maximum height permitted.**

**Synopsis**

This ordinance amends Section 425-16 concerning fence restrictions within the Town of Bethany Beach to clarify and to clearly articulate the restrictions that applies to all fences within the Town.

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This shall certify that this is a true and correct copy of the ordinance duly adopted by the Town Council of the Town of Bethany Beach at a duly-noticed and convened meeting at which a quorum was present on \_\_\_\_\_

Attest: \_\_\_\_\_  
Town Clerk

\_\_\_\_\_  
Mayor

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This shall certify that a public hearing concerning the foregoing ordinance was held before the Town Council of the Town of Bethany Beach on \_\_\_\_\_, and that notice of such meeting was posted at five public places in the Town on \_\_\_\_\_,

2021 and published in a newspaper of general circulation in the Town on \_\_\_\_\_, 2021.

So Certifies:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Town Clerk

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This shall certify that the title, synopsis, date of adoption, and effective date of the foregoing ordinance was published in \_\_\_\_\_ on \_\_\_\_\_, 2021 and that a copy of the foregoing ordinance was posted at the Town Hall on \_\_\_\_\_, 2021.

So Certifies:

\_\_\_\_\_  
Date

\_\_\_\_\_  
Town Clerk