



City of Annapolis

DEPARTMENT OF PLANNING AND ZONING

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CHRISTOPHER N. JAKUBIAK, AICP
DIRECTOR

January 30, 2025

MEMORANDUM

To: Planning Commission

From: Eric Leshinsky, Chief of Comprehensive Planning

Via: Christopher Jakubiak, Director

Re: Ordinance O-30-24: Fencing Requirements for Permits Related to Use and Development Standards in the City Zoning Code, Title 21

Attachments:

- **O-30-24 First Reader**
- **O-30-24 Amendment 1**
- **O-30-24 Amendment 2**
- **O-30-24 Amendment 3**
- **O-29-24 and O-30-24 Fiscal Impact Report**
- **O-29-24 and O-30-24 Staffing Impact Report**

SUMMARY

The purpose of O-30-24 is to modify Title 21 of the City's Code of Ordinances to prohibit property owners from installing privacy fences on their wooded lots if their houses are positioned 50 feet or more from the fence, and to set forth those things that could constitute an undue obstruction of light and air created by a proposed fence.

Note: *The sponsor of O-30-24 has submitted a companion ordinance, O-29-24, which proposes changes to Chapter 17 (Buildings and Construction) of the Code of Ordinances relating to fence permitting and appeals. O-29-24 has not been referred to Planning Commission and is therefore not discussed in this report. However, O-29-24 is discussed in the attached fiscal impact and staffing impact reports.*

ANALYSIS

Overview

O-30-24 proposes additional standards intended to mitigate the impact of fences that “unduly obstruct light and air from neighboring properties or public ways”. The proposed legislation is addressing a concern that the installation of privacy fencing can have mixed consequences and tries to clarify the types of fencing that should be deemed an obstruction of light and air. For the property owner who installs the fence, it may provide privacy, security, a means of keeping dogs within a yard, or simply clarify a property edge. For those on the other side of the fence, it may appear to be an obstruction. The proposed legislation is written decidedly from the perspective of those on the other side of the fence, whether they be neighboring property owners or the general public, in an effort to limit when and how fences are installed.

Section 17.34.010 of City’s Code of Ordinances is clear that *“No new fence or wall shall be erected, placed, or maintained and no existing fence or wall shall be altered or replaced until a permit is obtained from the Department of Planning and Zoning.”* Section 17.34.020 clarifies the grounds and process for appeals of permitting decisions, and Section 17.34.030 clarifies that violation of the rules regarding fence permitting is “a municipal infraction subject to a civil fine.” Section 21.60.070 then clarifies the current standards for fences which include guidance on location, orientation, materials, and height. Among these standards is subsection (E) which states: *“Fences and walls shall not be located to unduly obstruct light and air from neighboring properties or public ways.”*

O-30-24 proposes additional standards to sub-section (E) that include restrictions on fence height, fence location, and spacing between fence boards *“along areas that are backed on one side, the applicant’s side, by forests or open space that does not have homes located on or within 50 feet of the fence”* and *“within 10 feet of a neighboring property’s rear window.”* The implication of these additional standards is that there are locations where privacy fencing should not be installed, where its negative impact on neighboring properties and the public interest will outweigh whatever benefit it will provide to the property owner seeking the fence permit. In these situations, the proposed legislation implies that there is a potential nuisance to neighboring property owners or the general public by a privacy fence of a certain height or design. There is also an aesthetic implication to the proposed legislation whereby the view of or experience passing a wooded area is more desirable when not obstructed by a privacy fence.

The existing standard which states that *“Fences and walls shall not be located to unduly obstruct light and air from neighboring properties or public ways”* is admittedly a subjective guideline and there is value in trying to better define it. However, the wording of the proposed legislation complicates the standard by introducing additional circumstances and standards which are at once very specific while also still very subjective. Permitting of projects and enforcement of the City’s Code of Ordinances work best when the standards that must be followed are clear with as minimal room for interpretation as possible. With key phrases in the proposed legislation such as *“Undue obstructions could include, but are not limited to”, “Fences located on up-slopes behind homes may be more obstructive to light and air”,* and *“should be modified as needed”*, there is a strong likelihood that the legislation will work against its intent

and add confusion to how fence permits are reviewed, how they are appealed, and how they are enforced.

One area where O-30-24 could have a measurable benefit is in preserving wildlife corridors. Although not explicit in the proposed legislation, additional limitations on privacy fencing along wooded areas, such as those proposed in O-30-24, would help to ensure the open passage of wildlife within the city's natural areas. However, it is not clear that this is the intent of the legislation given that the changes proposed are only addressing the obstruction of light and air.

Impact of Legislation

As of December 1, 2024 the Department of Planning and Zoning processed 189 fence applications and issued 174 fence permits in 2024. We anticipate the proposed legislation, consisting of both O-30-24 and O-29-24, will add 1/2 hour to fence plan/permit reviews and necessitate site visits (by junior staff personnel) for an estimated 25% of applications. The impact will be greater if the legislation prompts appeals and enforcement actions which are addressed in the wording of the two bills, though this is not estimated here.

The additional site visits necessitated by staff will take them away from other tasks, and generally increase the time which plan review and administrative assistance staff spend on fence applications. The legislation will likely result in staff rejecting more applications for lack of information and will certainly require staff to insist that applicants for fences submit higher quality and detailed plans and even professionally prepared applications in some instances. We expect that fence applicants will need to invest more time and resources on their applications. The impact to operations will be greater if the proposed legislation prompts appeals and enforcement actions, though these additional costs are not estimated here.

Conclusion

We support the idea of amending the zoning code (Title 21) to address fences. Our experience in administering Title 21 and Title 17 has highlighted significant areas for improvement to these current codes; improvements addressing design compatibility, aesthetics, functionality, public safety, and the permit experience for the applicant. We look forward to advancing legislation that will address these items and address the goals of the sponsor of O-30-23 (and O-29-24) this year.

CODE COMPLIANCE AND RECOMMENDATION

Based on the above analysis, the staff does not recommend approval of the proposed O-30-24.

..Title

Fence Permit Requirements Related to Use and Development Standards in the City Zoning Code, Title 21 – For the purpose of creating additional standards related to home fencing along forests and open spaces; clarifying undue obstructions related to fencing; stating Council preference for extra consideration regarding fences on an up-slope; and generally related to fence regulation in Title 21.

..Body

**CITY COUNCIL OF THE
City of Annapolis**

Ordinance 30-24

Introduced by: Alderman Savidge

Referred to:

Planning Commission
Rules and City Government Committee

AN ORDINANCE concerning

**Fencing Requirements for Permits Related to Use and Development Standards
in the City Zoning Code, Title 21**

FOR the purpose of creating additional standards related to home fencing along forests and open spaces; clarifying undue obstructions related to fencing; stating Council preference for extra consideration regarding fences on an up-slope; and generally related to fence regulation in Title 21.

BY repealing and reenacting with amendments the following portions of the Code of the City of Annapolis, 2024 Edition:
21.60.070

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the Code of the City of Annapolis shall be amended to read as follows:

Title 21 - PLANNING AND ZONING

Division V - Regulation of General Applicability

Section 21.60.070 - Fences and walls.

- E. Fences and walls shall not be located to unduly obstruct light and air from neighboring properties or public ways.

Explanation: ~~Strikethrough~~ indicates matter stricken from existing law.
 Underlining indicates a change to the City Code.
 Underlining & black - copyediting or reformatting of existing Code section
 Underlining & red - new matter added to the code.

- 1 1. Privacy fences or other fences with less than two inches gap between boards,
2 excluding lattice-type fencing, shall not be installed along areas that are backed
3 on one side, the applicant's side, by forests or open space that does not have
4 homes located on or within 50 feet of the fence.
- 5 2. Undue obstructions could include, but are not limited to, fences that are over four
6 feet tall that include no lattice or have gaps smaller than two inches between
7 boards, that are proposed to be located within 10 feet of a neighboring property's
8 rear windows or that are backing undeveloped forest.
- 9 3. Fences located on up-slopes behind homes may be more obstructive to light and
10 air and should be modified as needed to alleviate this issue, especially when there
11 are no homes on the applicant's side of the fence.

12
13 **SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE**
14 **ANNAPOLIS CITY COUNCIL** that this ordinance:

- 15 1. Shall take effect upon passage; and
- 16 2. Apply to all projects and applications without final approval from the Department.

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Underlining & red - new matter added to the code.

O-30-24

Fence Permit Requirements Related to Use and Development Standards in the City Zoning Code, Title 21

AMENDMENT 1 – ALD. SAVIDGE

Amendment Summary:

Amendment 1 requires next-door neighbor approval prior to the installation of privacy fences, or any fences with less than a 2-inch gap between boards, along areas that border forests or open spaces where no homes are located within 50 feet of the fence.

MOTION:

On page 2, line 2, after "installed" insert "without approval of the adjacent property owners".

As the change would look in the ordinance:

Privacy fences or other fences with less than two inches gap between boards, excluding lattice-type fencing, shall not be installed without approval of the adjacent property owners along areas that are backed on one side, the applicant's side, by forests or open space that does not have homes located on or within 50 feet of the fence.

O-30-24

Fence Permit Requirements Related to Use and Development Standards in the City Zoning Code, Title 21

AMENDMENT 2 – ALD. SAVIDGE

Amendment Summary:

Amendment 2 limits the height of new fences in Annapolis to six feet

MOTION:

- 1) On page 2, in line 12, insert a new section of City Code to be edited, § 21.60.070(I).
- 2) After paragraph B, insert paragraph "C. The maximum fence height for all new fences is limited to six feet."

As the change would look in the ordinance:

I. Standard Maximum Height.

1. A. On properties within the R2-NC, R3-NC and R3-NC2 Residential Neighborhood Conservation Districts, the maximum height of a fence or wall shall be six feet, unless the fence or wall is located along a public street, in which case the maximum height of the fence or wall shall not exceed four feet.
- B. The height limits in Subsection (I)(1) of this section shall also apply to properties within the WME and WMM Maritime Districts as well as the OCD Overlay District, only when a fence or wall is located along a lot line or public street that is contiguous with an adjacent property in the R2-NC District.
- C. The maximum fence height for all new fences is limited to six feet.

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 Underlining & red - new matter added to the code.
 Underlining & blue - amendment

O-30-24

Fencing Requirements for Permits Related to Use and Development Standards 21 in the City Zoning Code, Title 21

AMENDMENT 3 – ALD. SAVIDGE

Amendment Summary:

Amendment 3 requires next-door neighbor approval prior to the installation of privacy fences, or any fences with less than a 2-inch gap between boards, along areas that border forests or open spaces where no homes are located within 50 feet of the fence.

MOTION:

On page 2, line 7, strike "neighboring property's" and after "10 feet of" insert "an adjacent property owner's".

As the change would look in the ordinance

2. Undue obstructions could include, but are not limited to, fences that are over four feet tall that include no lattice or have gaps smaller than two inches between boards, that are proposed to be located within 10 feet of a neighboring propertyan adjacent property owner's rear windows or that are backing undeveloped forest.



STAFF REPORT ON PROPOSED LEGISLATION

To: Mayor Gavin Buckley

From: Michael Mallinoff, City Manager

Date: January 22, 2025

Subject: O-29-24: Fence Permit Requirements Related to Buildings and Construction Standards in Title 17; and O-30-24: Fence Permit Requirements Related to Use and Development Standards in the City Zoning Code, Title 21

Purpose of legislation

The purpose of O-29-24 (and its two amendments) is to require a permit to remove a fence of a certain length; to require that permit applications show the location of trees over five inches in diameter at breast height; to mandate that the Director of Planning and Zoning impose a stop work order during any appeal of a fence application; to require that an applicant for a fence begin installing that fence within 30 days and complete it within 120 days; to instruct the Building Board of Appeals that it must not veer from “plainly written meaning and intension” of the Code when considering fence applications and to require that body to recommend when the Code needs to be clarified; and to mandate that the Board of Building Appeals reverse or modify a decision on a fence application it finds such decision was made in error (currently the Code authorizes the Board to do this, but does not mandate that the Board take these actions).

The purpose of O-30-24 is to modify Title 21 to prohibit property owners from installing privacy fences on their wooded lots if their houses are positioned 50 feet or more from the fence, and to set forth those things that could constitutes an undue obstruction of light and air created by a proposed fence.

Fiscal impact of legislation

For the first 11 months of 2024, the Department of Planning and Zoning processed 189 fence applications. Assuming 189 applications are processed annually, which is a conservative annual estimate, and an additional 1/2 hour of review time per permit, an additional 94.5 hours over the course of a year will be devoted to fence permitting. At an estimated \$90 per hour loaded labor cost, this will generate an annual cost of \$8,505. The added site visits (representing 25% of all applications or 47 site visits), which last one hour, will add 47 more hours annually. At a loaded labor cost of \$65.00 per hour, this will generate an annual cost of \$3,055. Therefore, the added review time and added site visit will cost the City an estimated \$11,560 per year.

The fiscal impact will be greater if the legislation prompts appeals and enforcement actions which are addressed in the wording of the two bills, though these additional costs are not estimated here.

Prepared by Christopher Jakubiak, Planning Director



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The purpose of O-30-24 is to modify Title 21 to prohibit property owners from installing privacy fences on their wooded lots if their houses are positioned 50 feet or more from the fence, and to set forth those things that could constitutes an undue obstruction of light and air created by a proposed fence.

Impact of legislation on staffing

The legislation, consisting of both O-30-24 and O-29-24, will add approximately 141.5 hours of work within the Department of Planning and Zoning. For the first 11 months of 2024, the Department of Planning and Zoning processed 189 fence applications. Assuming 189 applications are processed annually, which is a conservative annual estimate, and an additional 1/2 hour of review time per permit, an additional 94.5 hours over the course of a year will be devoted to fence permitting. The added site visits (representing 25% of all applications or 47 site visits), which last one hour, will add 47 more hours annually and could be done by junior staff.

The impact to staffing will be greater if the legislation prompts appeals and enforcement actions which are addressed in the wording of the two bills, though these additional costs are not estimated here.

Prepared by Christopher Jakubiak, Planning Director