

Ordinance No. 21- 2013

ORDINANCE OF THE TOWNSHIP OF LIVINGSTON AMENDING AND SUPPLEMENTING SECTION 3 REGARDING DEFINITIONS AND SECTION 91 REGARDING FENCES OF CHAPTER 170 OF THE CODE OF THE TOWNSHIP OF LIVINGSTON

BE IT ORDAINED, by the Township Council of the Township of Livingston in the County of Essex as follows:

Section 1: Section 170-3 Terms Defined of the Code of the Township of Livingston as heretofore amended is further amended by inserting the following definitions in their appropriate alphabetical positions in said section:

BERM – A mound of earth or the act of aggregating earth into a mound.

NATURAL / EXISTING GRADE – The elevation of the ground level in its natural state before construction, filling or excavation.

Section 2. Section 170-91 Fences of the Code of the Township of Livingston as heretofore amended is further amended by deleting language indicated by ~~striketrough~~ and adding language shown in **bold** as follows.

§ 170-91. Fences.

A. Purpose. It is the intent and purpose of this § 170-91 to maintain and preserve the traditionally open landscape of the Township of Livingston by limiting and regulating the design, erection, enlargement, maintenance or replacement of fences and retaining walls. **No fence or retaining wall shall be erected or enlarged without the appropriate permits.**

B. In all residence districts ~~and in the R-6 Senior Citizen Housing District:~~

(1) Fences shall not be erected or enlarged either:

- (a) Within 25 feet of the intersection of streets or roadway right-of-way lines; or,
- (b) In such a manner as to interfere with traffic visibility and lines of sight across a **street** corner.

(2) Front yard fence.

- (a) Front yard fence means any fence that is on a residence property at any point forward of the plane of the front facade of the residence.
- (b) A front yard fence shall not be taller than 48 inches at its highest point nor less than 50% open, such as picket fences and post and rail fences. In no instance shall a front yard fence be made of chain link or similar materials.
- (c) Decorative walls **and fences**, not more than 18 inches high at their highest point, that are erected as part of a general landscaping plan may be erected and maintained with a setback of not less than ~~20 feet~~ **5 feet** from the property line, **public sidewalk or pedestrian easement.**

(d) In no instance shall any fence or wall be erected or **enlarged** that will block the visibility of the house number from the street.

(3) Side yard fence.

(a) Side yard fence means any fence that is on a residence property at any point between the plane of the front facade of the residence and the plane of the rear facade of the residence.

(b) A side yard fence that does not face a street or public right-of-way shall be no higher than 60 inches at its highest point.

(c) A side yard that faces a street or public right-of-way shall be treated as a front yard for purposes of this § 170-91.

(4) Rear yard fence.

(a) Rear yard fence means any fence that is on a residence property at any point between the rear property line and a line along the plane of the rear facade of the residence extending between property lines that meet the rear property line.

(b) A rear yard fence shall not be taller than 72 inches at its highest point.

(c) However, a rear yard fence that faces a street or public right-of-way shall not be constructed or enlarged of chain link or similar materials, and shall not be taller than 48 inches at its highest point nor less than 50% open, ~~such as picket fences and post and rail fences~~; provided, however, that if the fence is no closer to the street or public right-of-way line than the plane of the residence facade facing that street or right-of-way line, such fence may be up to 72 inches tall at its highest point and of board-on-board construction.

(5) Deer fence

(a) Deer fence means a fence, not taller than 96 inches at its highest point, constructed of black polypropylene mesh in which the size of the opening is not more than 2.5 inches by 2.5 inches and not less than 1.5 by 1.5 inches.

(b) A deer fence may be installed parallel to a side or rear property line of a residence property where such line abuts undeveloped property not less than two acres in size. Height restrictions elsewhere in this ~~section~~ § 170-91 applicable to a fence at such location shall not apply.

(6) Every fence facing a street or any public right-of-way and taller than 48 inches at its highest point shall:

(a) Be screened from public view by evergreen plantings that shall have a height, at planting, equal to not less than 50% of the height of the fence.

(b) No such fence shall be closer than the greater of three feet to a public sidewalk or pedestrian easement or a roadway right-of-way line, or ten feet to the street.

(7) In determining what percentage of a fence is open, all translucent, transparent or clear materials shall be considered as solid elements.

(8) Every fence that has only one finished side shall have that side facing away from the property that is fenced.

(9) Whenever a chain link fence is permitted, the chain links shall be vinyl-clad and the other elements of the fence shall be of matching color. Only one color shall be used, and the color may be black, brown or green.

(10) No fence or retaining wall shall contain sharp spikes or points, jagged or sharpened, surfaces, or other components or materials that may cause injury. No fence or retaining wall shall be constructed of nonstandard or makeshift materials creating an eyesore.

(11) Every fence shall be maintained in safe, sound and upright condition and in good appearance. Every planting required by this section shall be maintained in good condition and pruned so as not to intrude upon any sidewalk, right-of-way or easement. Any required plantings that die shall be replaced with healthy plantings of the same size as originally required.

(12) No retaining wall may be erected, ~~or~~ installed **or enlarged** in lieu of a fence not permitted under this § 170-91.

(13) If a fence or retaining wall has a gate or door, such gate or door shall not open in such a way as to intrude upon any right-of-way, sidewalk or easement for a sidewalk.

(14) Any nonconforming fence or retaining wall lawfully in existence on the effective date of this § 170-91, if **substantially** destroyed or removed, may not be replaced unless replaced by a conforming fence or retaining wall; provided, however, that a nonconforming front yard fence or retaining wall on a property designated as an historic site, as provided in § 170-3, may be replaced with a fence or retaining wall faithful to the style of the property's architecture and historic period.

a. If a conforming fence needs less than a substantial repair, a permit still is required. However the fee will be waived.

b. Existing fencing vs. repaired / replaced section: The replacement material for the section of fence being repaired or replaced must be the same or of like kind and appearance as the existing fence.

(15) No retaining wall or rear yard fence facing a street or public right-of-way shall be erected, installed or enlarged without a permit therefor issued by the Construction Official upon application as provided in § 170-87B.

(16) Any retaining wall that is 60 inches or more in height shall, as a safety measure against falls over the wall, either:

(a) Be topped by a permanent substantial fence not less than 48 inches in height, with its base not less than 2 inches above the wall and with any opening in the fence not more than four inches in width; or

(b) Be protected by a permanent substantial fence located not less than four feet from the wall and not less than 48 inches in height, with its base not more than 2 inches above grade and with any opening in the fence or its gate not more than four inches in width, and with evergreen plantings between the fence and the wall that shall have a height, at planting, of not less than 2.5 feet;

provided, however, that if the topography requires that there be two or more essentially parallel retaining walls at different elevations there shall be a setback of not less than 8 feet between such walls, and the Construction Official shall determine which wall or walls shall be topped or protected as above. The aggregate height of such walls shall not exceed 120 inches, and the setback area between them shall have evergreen plantings that shall have a height, at planting, of not less than 2.5 feet.

(17) No base, pedestal or enclosure for a light fixture between the front façade of a residence and the street shall have a height greater than 3 feet or horizontal plane dimensions greater than 2 feet by 2 feet. Any such base, pedestal or enclosure shall meet the same setback requirements as for a fence at its location.

(18) No fence visible from a street or roadway right-of-way or ~~facing~~ **abutting** another property shall be erected or enlarged on the property of a nonconforming or conditional use in a residence district without application to, and approval of, the Planning Board or the Zoning Board of Adjustment, as appropriate.

(19) Nothing in this § 170-91 supersedes requirements established elsewhere in this chapter concerning the fencing of private swimming pools or private tennis courts.

(20) Swimming pool fences must be maintained in compliance with the Zoning and Building code requirements.

(21) If a fence or wall is constructed on a berm, then the height of the berm is included in the total height of the fence. Berm height is measured from the natural / existing grade. ~~of the lot~~

(22) All fences separating adjacent residential properties must be installed not less than 6" from the property line. However, if adjacent property owners want to share a fence on the property line, they shall submit a joint notarized letter to the Construction Official stating they have agreed to such installation and setting forth their agreement as to maintenance and repair of the fence; provided, that if the fence is intended for protection of a swimming pool the maintenance and repair of the fence shall be the responsibility of the owner of the property with the pool.

(23) Fence color, other as permitted in (9) above, shall be earth tones, green, black, grey, white or muted colors. Bright or reflective colors shall not be used.

(24) No fence post may be installed on an easement. Any fence that crosses or abuts an easement shall have a gate to allow access to the easement.

C. Nonresidential districts. In nonresidential districts no fence or retaining wall shall be erected or enlarged without application to, and approval by the Planning Board or the Zoning Board of Adjustment, as appropriate, except for an area for outdoor seating for consumption of food or beverages established under a permit issued pursuant to § 170-92.1.

D. Enforcement. This § 170-91 shall be enforced as follows:

(1) Any fence or retaining wall erected, installed, enlarged or maintained in violation of this section shall be removed, or the violation otherwise cured, by the owner within 30 days after receipt of a notice of violation from the Zoning Officer. Such notice shall be deemed to be properly and sufficiently served if copy thereof is sent by registered or certified mail to the last known address of the person, persons, entity or entities upon which the same is served, as shown by the most recent tax lists of the Township, or if a copy of such notice is handed to such person, persons, entity or entities, or a copy thereof is left at the usual place of abode or business of such person, persons, entity or entities, The notice shall state that if the violation has not been cured within such thirty-day period, or such additional time as may be allowed by the Township, a summons and complaint shall then be issued against the person, persons, entity or entities so notified.

(2) Any person or entity who shall violate any of the provisions of this § 170-91 shall, upon conviction after issuance of a summons and complaint, be punished as provided for in §1-7 General Penalty of the Code of the Township of Livingston. Each violation of any provisions of this section shall be deemed a separate and distinct offense. A separate offense shall be deemed committed on each day during or on which a violation occurs or continues after expiration of the time for cure allowed under Subsection D(1) above.

Section 3. Should any provision of this Ordinance be held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the Ordinance shall continue to be in full force and effect.

Section 4. Except as hereby amended, the Code of the Township of Livingston shall remain in full force and effect.

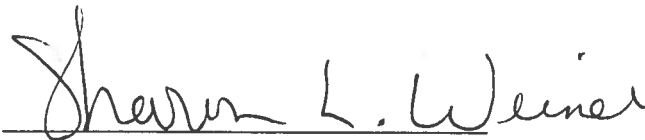
Section 5. This Ordinance shall take effect upon adoption and 20 days from publication in accordance with law.



Rufino Fernandez, Jr., Mayor



Glenn R. Turteltaub, Township Clerk



Sharon L. Weiner, Esq., Township Attorney

Sharon L. Weiner, Esq., Township Attorney

Introduced: 7/29/13

Adopted: 8/19/13