



MEMORANDUM

MEETING OF: June 29, 2017
COMMITTEE: Planning Commission
DEPARTMENT: Community Development

ISSUE/AGENDA ITEM TITLE:

TA17-05 an Ordinance to Amend Section 27-1462 Walls, Fences, & Retaining Walls, of the Code of the City of Brookhaven

BACKGROUND/SUMMARY:

The City has received complaints about and also identified several fence related issues since incorporation. Most recently, there have been a number of instances where fences have been found placed in the public right-of-way. Currently, there is no permit required or inspections completed on fences and builders, fence companies, and homeowners are making little effort to comply with the City's code requirements. At this time, staff is proposing that permits begin to be required for fences. The permits would be issued over-the-counter at no cost to the property owner.

The proposed amendment updates the City's regulations related to walls, fences, and retaining walls to ensure installation in accordance with design, location, and safety requirements and to ensure the protection of property owners within the city.

The proposed amendment was presented to the Planning Commission at the May 3 meeting. The Commission recommended approval of the text amendment as presented.

STAFF RECOMMENDATION:

Approval as presented.

ATTACHMENTS:

- TA17-05 MARK-UP An Ord to Amend Sec. 27-1462 Walls, Fences, & Retaining Walls 042517 (PDF)

STATE OF GEORGIA
COUNTY OF DEKALB
CITY OF BROOKHAVEN

ORDINANCE 2017 _____

AN ORDINANCE TO AMEND SECTION 27-1462 WALLS, FENCES, & RETAINING WALLS, OF THE CODE OF THE CITY OF BROOKHAVEN

WHEREAS, Section 1.03(b)(25) of the Charter of the City of Brookhaven grants the City of Brookhaven the power to provide comprehensive planning and regulation through zoning and subdivision requirements to ensure a safe, healthy, and aesthetically pleasing community; and

WHEREAS, the Mayor and City Council find that amendments to the existing wall, fence, and retaining wall code are necessary to ensure installation in accordance with design, location, and safety requirements and to ensure the protection of property owners within the city.

BE IT ORDAINED by the Mayor and Council of the City of Brookhaven, Georgia and it is hereby ordained by the authority of same:

SECTION I:

Section 27-1462 Walls, Fences, & Retaining Walls, is amended to read as follows:

Sec. 27-1462. - Walls, fences and retaining walls.

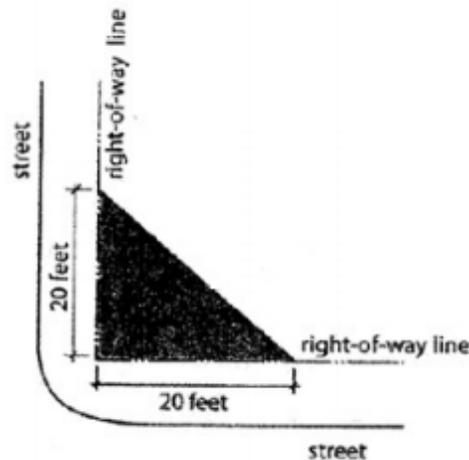
(a) *Permit required.* Fences and walls must be permitted by the community development department prior to installation. To receive a permit, the applicant must submit a completed application to the community development department. Upon receipt of a completed, compliant application, the community development department shall issue the applicant a permit on the day of receipt of the completed application at no cost to the property owner. Permits shall only be issued for fences and walls that conform to the provisions of this section.

(b) *Walls and fences.*

- (1) No wall or fence shall be more than six (6) feet in height between the front of the primary structure and the right-of-way and no more than eight (8) feet along all other property lines.
- (2) No wall or fence shall be constructed in any public right-of-way except upon approval of the director of public works.
- (3) No wall or fence shall be placed or maintained within the triangular area formed by the intersection of street right-of-way lines and a straight line connecting points on said street lines, each of which is twenty (20) feet distant from the point of intersection, as indicated in the Figure 27-1462(A) below.

- (4) No wall or fence in a front yard of a lot zoned single-family residential or land use shall exceed four (4) feet in height if that wall or fence is opaque.
- (5) Fences and walls that exceed four (4) feet in height in the front yard of single-family detached dwellings shall have a spaced picket design with a minimum spacing of one (1) inch between pickets.
- (6) Fences and walls over three (3) feet in height shall be designed with a column or decorative element every eight (8) linear feet to provide architectural variations and eliminate large expanses of blank area.
- (7) Column, post, and ornament heights are permitted to exceed the maximum height up to two (2) feet.
- (8) Wall and fence heights shall be measured from the subject finished grade to the highest point of the fence.
- (9) When this chapter requires a wall or fence to be constructed, the wall or fence shall be completed prior to the issuance of a certificate of occupancy for the principal structure.
- (10) No wall or fence shall be permitted along a road frontage of a residential development or subdivision that is more than 50 percent opaque.

Figure 27-1462(A). Wall and Fence Setback.



- (b) *Retaining wall.* The distance between a retaining wall and the side property line on all lots with single-family detached dwellings shall be equal to at least half of the distance between the side property line and the required setback line. Newly constructed retaining walls on all lots zoned for single-family detached dwellings shall not be higher than four feet; however, existing retaining walls may be repaired and replaced so long as the height of the repaired or replaced wall does not increase in height over the original height of the wall.
 - (1) If exceptional topographical restrictions exist on the lot in context with the adjoining property which were not created by the applicant or owner and it is established to the satisfaction of the planning director or designee that no practical alternative design of such wall is feasible, then the planning director may grant a maximum two-foot increase in height of the applicable

height requirement set forth in this section of such retaining wall. Applicant shall provide to the planning director or designee a certified field run site plan or a topographical map certified by an engineer or landscape architect with the application for a variance.

- (2) If exceptional topographical restrictions exist on the lot in context with the adjoining property which were not created by the applicant or owner and it is established to the satisfaction of the zoning board of appeals that no practical alternative design of such wall is feasible, the zoning board of appeals may allow the height of the retaining walls to be greater than six feet and/or vary the distance between the side property line and the required setback line for retaining walls. This request shall be heard by the zoning board of appeals in accordance with the process set forth in article V, division 5, of this chapter, and in accordance with the criteria set forth in section 27-1665. No variance shall be granted to allow the height of a retaining wall above eight feet. In addition to the materials otherwise required for a variance in section 27-1658, an applicant shall provide a certified field run site plan or a topographical map certified by an engineer or landscape architect with the application for a variance.

- (c) *Retaining wall; attached, multifamily, and commercial districts.* Height of retaining wall measured in feet shall not exceed the horizontal distance measured in feet between the face of the retaining wall and the property line of a lot containing a residential use. Retaining walls shall not be located within a transitional buffer.

(Ord. No. 2014-09-03, § I(27-787), 9-23-2014; Ordz. No. 2016-01-01, § II, 1-12-2016)

SECTION II:

Severability: Should any section of this Ordinance be declared invalid or unconstitutional by any court of competent jurisdiction, such declaration shall not affect the validity of the Ordinance as a whole or any part thereof which is not specifically declared to be invalid or unconstitutional.

SECTION III:

Repeal of Conflicting Provisions: All ordinances, part of ordinances, maps, or regulations in conflict herewith are repealed.

SECTION IV:

Effective Date: This ordinance shall be effective immediately upon adoption.

SO ORDAINED, this _____ day of _____, 2017.

Approved by:

Approved as to Form and Content

John Arthur Ernst Jr., Mayor

Christopher Balch, City Attorney

Attest:

Susan Hiott, City Clerk

SEAL