

Benzonia Village

Ordinance. No. 2021-02

FENCES, WALLS, AND SCREEN AMENDMENT

Purpose: An ordinance to amend in part the Ordinance. Entitled "Village of Benzonia Zoning Ordinance, Adopted October 2, 1997 Amended", to amend Section 3.15 Fences Walls and Screens as located in Section 3. General Provisions.

Benzonia Village HEREBY ORDAINS

SECTION 1. Fences, Walls and Screens Section

The Village of Benzonia Zoning Ordinance, Adopted October 2, 1997 Amended (hereinafter the "Ordinance"), shall be amended to delete the entire Section 3.15 Fences, Walls, and Screens, and replace in its entirety with the following:

"Sec. 3.15 Fences, Walls, and Screens

A. General Fence Requirements:

1. Fence height shall be measured from the surrounding grade at every point along the fence line.
2. All fences shall be constructed with materials of a type approved by the zoning administrator (ZA). Barbed wire, razor wire, agricultural wire, chicken wire or any other type of wire mesh (except around plants and gardens), electrically charged fences, snow fence (wood or plastic), old doors, sheet metal, plywood, broken concrete, or similar materials are prohibited in any district. Chain-link style fences are prohibited in front yards.
 - a. Exceptions:
 - i. Snow fences (wood or plastic) may be erected and used only in the months of customary snowfall, after which they shall be removed. No snow fence shall be used so as to cause an artificial or unnatural accumulation of snow or driving snow to accumulate on the property of another, in excess of that which would otherwise accumulate in the absence of such a fence.
 - ii. Snow style fences may be used for safety barriers on a temporary basis (during construction for example) when approved by the ZA.
3. Decorative or ornamental sides of fence, wall and fence screen shall face the adjoining properties (face the outside).
4. Any reconstruction of a non-conforming fence shall require a permit and must meet current ordinance standards, unless otherwise specified in the ordinance.
5. There shall be a maximum of 1 fence per property line.
6. Fence ownership shall be determined by the fence permit applicant.
7. Prohibition in right-of way: Fences shall not be erected in public rights-of-way.
8. Location in Alleys: All fences hereafter erected adjacent to an alley shall be set back a minimum of three (3) feet from the property line.
9. Invisible Fences: Use of an invisible fence shall be identified with a posted sign clearly visible from the street or other public right-of-way.

B. Permit Required: It shall be unlawful for any person to construct or erect any fence or wall upon any property within the Village without first having obtained a land use permit. The permit application shall be accompanied by a site plan showing the type, size and proposed location of the fence and payment of the permit fee established by resolution adopted by the Village Council.

C. Fences are permitted in Residential Use Districts subject to the following regulations:

1. Location in front yards: Fences of an ornamental nature may be located in a front yard of any lot of record up to a height of thirty-six (36) inches, provided that for corner lots adequate clear vision is provided as determined by the ZA, per Section 3.15.C.1.f. No front yard fence shall be erected closer than six (6) inches to any public sidewalk or the property line, and shall not cross any public rights-of-

way. Front yard fences are to be ornamental fences of approved materials, of a design as to be non-sight obscuring (opacity of at least 50%) and of a fence type listed below:

- a. Post and rail.
- b. Split rail.
- c. Picket.
- d. Wrought iron.
- e. Other types of ornamental fences must be approved by the Planning Commission prior to placement in the front yard area.

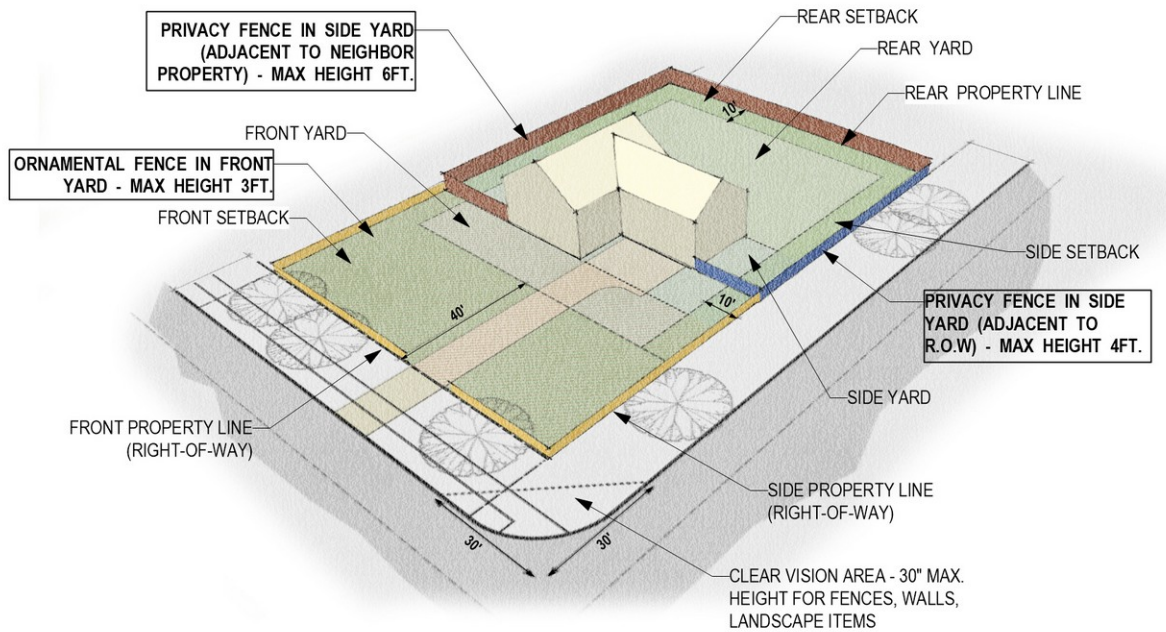


Figure 1: DIAGRAM - TYPICAL RESIDENTIAL CORNER LOT

2. Side Yard Fence Standards: Fences may be located in the side yard up to a height of six (6) feet. Fences located along the side property line may not extend beyond the front building line. A six (6) foot fence may extend perpendicular from the property line to the front building line.
3. Rear Yard Fence Standards: Privacy fences (solid wood fence or similar) may be erected in a rear or side yard on any lot of record provided the privacy fence does not extend beyond the rear building line. Privacy fences shall be a maximum of 6 feet in height measured from the surrounding grade at every point along the fence line. All other fence types are permitted.
4. Vegetation Screens/Hedges: For residential districts only, any hedge erected for the purpose of enclosing a front yard shall not exceed four (4) feet in height above the natural grade.
5. Exceptions
 - a. Corner lots exception: For residential corner parcels - maximum height along the side yard next to the street is four (4) feet unless the fence is set back at least five (5) feet from the property line. (refer to diagram). Fences within the triangular corner area bounded by the street lot lines – measured a minimum of thirty (30) feet from the intersecting lot line – may not be more than 30" above the top of the curb. (refer to diagram) County or State clear vision regulations shall

- supersede and may be larger.
- b. Height exception: A privacy fence may be erected in the rear yard (or side yard if directly abutting adjacent property), and shall not exceed eight feet in height, including posts, when such rear or side yard property line abuts a property zoned or used for nonresidential purposes or other more high intensity use.
 - c. Garden Fences: Garden fences located in the interior of the lot are not subject to permit requirements, unless they are determined by the Zoning Administrator to cause a nuisance to the neighbors.
- D. Fences are permitted in Commercial Use Districts and subject to the following additional regulations including the regulations in Items A (1-9) and C (1-4) above, unless otherwise stated:
1. Fences located adjacent to residential districts or residential uses shall not exceed six (6) feet in height above natural grade.
 2. Fences that are not located adjacent to a residential district or residential use shall not exceed ten (10) feet in height for the side or rear yards. Subject to site plan review and any covenant restrictions or other overlay zoning that may apply.
- E. Maintenance: All fences shall be maintained in a good condition, in an upright position and shall not constitute an unreasonable hazard. Any fence, which is not maintained, as determined by the ZA, Planning Commission or Village Council shall be removed or replaced (any required fence shall be replaced) at the owner's expense.
- F. Restrictions: Fences shall not contain electric current or charge of electricity. Barbed wire, spikes, nails or any other sharp instruments of any kind are prohibited on top of or on the sides of any fence. Fences protecting public utilities and public property may use barbed wire or other security fencing measures.
- G. Fences Around Swimming Pools and Ponds: Private swimming pools and ponds having a water depth of two (2) or more feet shall be located within a fenced enclosure at least four (4) feet and not more than six (6) feet in height. The protective enclosure shall be maintained by gates with a closing and latching device for keeping the gate or door securely closed at all times when not in actual use. Fences around swimming pools must comply with all applicable regulations regarding swimming pools.
- H. Terraces and Soil Retaining Walls: Refer to the Steep Slope Overlay Ordinance, 2020-04.
- I. Walls constructed of stone, brick or similar materials shall be permitted in the front yard provided they do not exceed three (3) feet in height. The height limits in the side and rear yards shall not exceed six (6) feet. Walls shall be set back a minimum of two (2) feet from all property lines and must be constructed and maintained in the future as to not create *safety concerns for adjoining property owners* or the general public.
- J. In those cases where the ZA questions whether a fence, wall or screen is usual and customary to a permitted use, a determination shall be made by the Planning Commission utilizing the following criteria, and the procedure for calling a hearing for a special use shall be followed.
1. Whether the proposed size and location of the proposed fence, wall or screen is consistent with existing permitted uses.
 2. Whether the proposed fence, wall or screen will adversely affect the water, light and air circulation of any adjoining buildings or properties.
 3. Whether the proposed fence, wall or screen will adversely affect the view of any adjoining property.
 4. The environmental effect of the fence, wall or screen or their proposed use.
 5. Whether the proposed fence, wall or screen can be located such that it meets the yard and other requirements and in relation to existing or planned roads, land divisions, and utilities."

SECTION 2. SEVERABILITY

Should any portion of this ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, the remainder of this ordinance shall not be affected.

SECTION 3. REPEAL

All ordinances or parts of ordinances in conflict with this ordinance herewith are hereby repealed.

SECTION 4. EFFECTIVE DATE.

This Ordinance shall become effective upon publication in accordance with law. At a regular meeting of the Village Council for Benzonia Village held on the 4th day of October, 2021, Trustee Hafer, moved for adoption of the foregoing ordinance and Trustee French supported the motion.

Voting for: Flynn, Hafer, Misner, French, Heyn, Cook

Voting against:

Abstains: Bair

The Village President declared the ordinance adopted.

(see copy on file in office for signatures)

Timothy Flynn
Village President

CERTIFICATION

The foregoing is a true copy of Ordinance No. 2021- 02, which was enacted by the Village Council for the Benzonia Village at a regular meeting held on October 4, 2021.

Maridee Cutler
Village Clerk