



AGENDA ITEM REQUEST FORM

Development Services

Department Submitting Request

Jeff Bowman

Code & Zoning Supervisor

REGULAR
COMMISSION MTG
Meeting Dates - 7:00 PM

DEADLINE TO
Town Clerk

ROUNDTABLE
MEETING
Meeting Dates - 7:00 PM

DEADLINE TO
Town Clerk

- April 27, 2011
- May 24, 2011
- June 28, 2011
- July 26, 2011

- (5:00 pm)
- ** (5:00 pm)
- ** (5:00 pm)
- ** (5:00 pm)

- April 12, 2011
- May 10, 2011
- June 14, 2011
- July 12, 2011

- April 1 (5:00 pm)
- ** (5:00 pm)
- ** (5:00 pm)
- ** (5:00 pm)

*Subject to Change

- | | | | |
|---------------------------------------|-----------------------------------------|---------------------------------------|-----------------------------------------------|
| <input type="checkbox"/> Presentation | <input type="checkbox"/> Reports | <input type="checkbox"/> Consent | <input checked="" type="checkbox"/> Ordinance |
| <input type="checkbox"/> Resolution | <input type="checkbox"/> Quasi Judicial | <input type="checkbox"/> Old Business | <input type="checkbox"/> New Business |

SUBJECT TITLE: Second Reading - Ordinance 2011-03 Proposed Amendments to Section 30-313(4), Fences, Walls, and Hedges.

EXPLANATION: At the February 22, 2011 Commission meeting the attached Ordinance (**Exhibit 1**) was approved on First Reading. Additionally, staff placed this item on the March 8, 2011 Roundtable in the event the Commission desired to have further discussions before it went to second reading.

This item was discussed at the December 7th Commission meeting (Agenda item 15a) as a follow-up to a request from the El Dorado Club regarding their wall and wanting to extend the existing wall. Direction was provided to staff to send it to Planning and Zoning for recommendations. The Commission provided the following direction to staff:

1. Expand on the types of finishing's for cement or concrete walls.
2. Expand more on decorative features that would increase attractiveness.

Staff also made other minor revisions and is outlined below:

1. Maintenance of walls
2. Allowing finished side of fences on the inside when an obstacle prevents the finished side from being constructed outward.
3. Deleted business zoning and added nonresidential use or with a nonresidential zoning to the height of fencing.

On January 19, 2011 the Planning and Zoning Board reviewed the proposed amendments and recommended approval.

BOARD RECOMMENDATION: The Board recommended approval with the following recommendations:

The proposed Ordinance is silent on what happens when an obstacle is removed. The Board recommends adding the following language to 30-313 (4) (j) addressing unfinished sides of fences: If the obstacle preventing the finished side out is removed then that section must be finished upon repair or replacement of 50% or more of the length of the fence/wall.

The Board recommendation could result in a fence/wall not meeting the code for a long time after an obstacle is removed. We recommend an alternative of establishing a 180 day period for the owner to complete the unfinished side of the fence/wall after an obstacle is removed, which is reflected in the attached Ordinance on page 4 line 144.



Item No. _____

AGENDA ITEM REQUEST FORM

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STAFF RECOMMENDATION: Recommend approval of the ordinance on second reading.

EXHIBITS:

1. Ordinance 2011-03
2. Planning and Zoning Minutes

Reviewed by Town Attorney

Yes No

Town Manager Initials JB

Exhibit 1
Ordinance 2011-03

ORDINANCE 2011-03

**AN ORDINANCE OF THE TOWN OF LAUDERDALE-BY-
THE SEA, AMENDING SECTION 30-313(4), OF THE CODE
OF ORDINANCES TO AMEND REQUIREMENTS FOR
FENCES, WALLS AND HEDGES; PROVIDING FOR
CODIFICATION, SEVERABILITY, CONFLICTS AND AN
EFFECTIVE DATE**

WHEREAS, the Town Commission recognizes that changes to the adopted Code of Ordinances are periodically necessary in order to ensure that the Town's land development regulations are current and consistent with the Town's planning and regulatory needs; and

WHEREAS, the Town Commission desires to revise the regulations applicable to fences, walls and hedges; and

WHEREAS, the Town Commission finds and determines that this Ordinance is consistent with all applicable policies of the Town's adopted Comprehensive Plan; and

WHEREAS, Section 30-531 of the Code requires issuance of a Notice of Intent prior to the processing of any amendment to the land development regulations in Chapter 30 of the Code, and such notice was given of this amendment on January 25, 2011; and

WHEREAS, the Planning and Zoning Board, sitting as the Local Planning Agency, has reviewed this Ordinance at a duly noticed hearing on January 19, 2011 and recommended its adoption; and

WHEREAS, the Town Commission conducted a first and second reading of this Ordinance at duly noticed public hearings, as required by law, and after having received input from and participation by interested members of the public and staff, the Town Commission has determined that this Ordinance is consistent with the Town's Comprehensive Plan and in the best interest of the Town, its residents, and its visitors.

ORDINANCE 2011-03

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COMMISSION OF THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, AS FOLLOWS:

SECTION 1. Recitals. The foregoing "Whereas" clauses are ratified and confirmed as being true, correct and reflective of the legislative intent underlying this Ordinance and are hereby made a specific part of this Ordinance.

SECTION 2. Amendment. Section 30-313 of Article V of Chapter 30 is hereby amended¹ as follows:

Sec. 30-313. - General provisions.

* * *

(4) Height, ~~design,~~ and location of fences, walls, hedges.

a. Height. The maximum height of any fence or wall shall be six (6) feet, except where the fence or wall abuts property with a nonresidential use or with a nonresidential business zoning, in which case the maximum height is eight (8) feet. The height of fences, walls, hedges or plantings of whatever composition shall be measured from the natural contour of the ground on adjoining lots.

b. Construction. All fences and walls shall comply with the Florida Building Code.

~~c.~~ Cement or concrete walls:

1. Cement or concrete walls are ~~prohibited~~ permitted in all zoning districts, and must comply with the standards outlined in subsection 2. below. ~~except when the design and construction provides for not less than 25 percent of the area of said wall to be constructed with decorative brick and provide openings to permit air circulation. All concrete and cement walls shall be stuccoed, finished, and painted.~~
2. Except when a new wall directly abuts an existing wall or fence preventing compliance with this requirement, walls shall be finished on both sides with materials satisfying industry standards, such as painted stucco, prefinished block, or other prefinished materials, shall be compatible

¹ Words in ~~strike-through~~ type are deletions; words in underlined type are additions. Words in double underline were added between first and second reading, pursuant to amendment by the Town Commission.

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with proposed or existing buildings, and shall meet the following design guidelines:

i. Cement or concrete walls in the RS-4, RS-5 and RD-10 zoning districts which exceed four (4) feet in height must provide a minimum of twenty-five (25) percent openings to allow air circulation.

ii. Walls shall be designed with changes in material, color, texture, or profile to avoid the massive, linear aspect and monotony of otherwise plain walls. Walls over two (2) feet in height shall not form a continuous straight line without an offset, change of direction, or significant vertical feature every ten (10) feet to break up the length of the wall.

iii. Walls shall include finishing features such as, but not limited to, changes in texture or color, variety of materials, capstones, decorative painting or bands of tile.

~~c. No fences or walls shall be constructed within 25 feet of the front property line or within 30 feet clear site triangle at the corner of the property on residential lots.~~

~~d. The height of fences, walls, hedges or plantings of whatever composition shall be measured from the natural contour of the ground adjoining lots.~~

d. Fence/wall top features. The top of a fence or wall may contain architectural features and light fixtures. However, such features shall not extend more than eighteen (18) inches above the maximum height of the fence or wall, and the combined width of the features shall not exceed twenty percent (20%) of the total linear length of the fence or wall.

e. Gates. A fence or wall may have a pedestrian entrance with a gate. Such an entranceway, including any archway, may be no greater than eight (8) feet in height, and no more than eight (8) feet in width. Gates must swing or slide in a manner which does not obstruct public rights of way.

f. Maintenance. All fences and walls shall be maintained in good repair and in a secure manner. All defective structural and decorative elements shall be repaired or replaced in a workmanlike manner, to match as closely as possible the original materials and construction of the fence or wall. All surfaces shall have all graffiti and loose material removed. Any damaged portion of a fence or wall shall be repaired or replaced in a manner consistent with these standards. Any patching

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or resurfacing shall match the existing materials and shall be impervious to the elements, when possible.

ge. *Hedges.* A hedge is defined as any grouping of plants or bushes placed so close together so as to obscure visibility. All hedges shall be planted and maintained by property owners within the property lines and shall not encroach into the adjacent properties or right-of-way (ROW). The height of a hedge shall be maintained not to exceed 12 feet in all zoning districts.

hf. *Visibility Limitations.* No fences or walls shall be constructed within 25 feet of the front property line or within 30 feet of the clear site triangle at the corner of the property on residential lots. No walls, fences, hedges or plantings shall be planted or maintained to a height exceeding 30 inches above the crown of the roadway within sight visibility triangles: within 25 feet of the intersection of the front and side street property lines, within ten feet of any driveway, within ten feet from the intersection point of the edge of a driveway and alley or street, and within 15 feet from the intersection point of the extended property lines at an alley and a street.

ig. *Chain link fences.* Chain link fences shall be completely hidden from view when viewed from any portion of the right-of-way in RS-5, RD-10 and RM-25 zoned property. Chain link fences are prohibited in any business zoning district.

~~h. Chain-link fences are prohibited in any business zoning district.~~

ji. *Placement of finished side.* Except when a new wall or fence directly abuts an existing wall or fence preventing compliance with this requirement, fences and walls finished on only one side shall be placed to have the finished side facing out. If a fence or wall is erected and any portion is placed with an unfinished side facing out due to an abutting obstacle, then that portion shall be finished within 180 days of the obstacle being removed.

kj. *Prohibited fence types.* Barbed wire, electrified or razor wire fences, and fences or walls topped with barbed, electric or razor wire are prohibited, and shall not be erected or maintained on any property.

lk. *Zero lot line lots.* Privacy fences and/or walls separating porches, patios, and pools along zero lot lines may be built to height not to exceed eight (8) feet subject to building setbacks requirements of the residential zoning district where fence/walls are erected.

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SECTION 3.Codification. This Ordinance shall be codified in accordance with the foregoing. It is the intention of the Town Commission that the provisions of this Ordinance shall become and be made a part of the Town of Lauderdale-by-the-Sea Code of Ordinances; and that the sections of this Ordinance may be renumbered or re-lettered and the word “ordinance” may be changed to “section”, “article” or such other appropriate word or phrase in order to accomplish such intentions.

SECTION 4.Severability. If any section, sentence, clause, or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, then said holding shall in no way affect the validity of the remaining portions of this Ordinance.

SECTION 5.Conflicting Ordinances. All prior ordinances or resolutions or parts thereof in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 6.Effective Date. This Ordinance shall become effective immediately upon passage on second reading.

Passed on the first reading, this ____ day of _____, 2011.

Passed on the second reading, this ____ day of _____, 2011.

Mayor Roseann Minnet

	First Reading	Second Reading
Mayor Minnet	_____	_____
Vice-Mayor Dodd	_____	_____
Commissioner Clotey	_____	_____
Commissioner Sasser	_____	_____
Commissioner Vincent	_____	_____

Attest:

ORDINANCE 2011-03

189 _____
190 Town Clerk, June White

191 (CORPORATE SEAL)

192 Approved as to form:

193 _____
194 _____
195 Town Attorney, Susan L. Trevarthen

Exhibit 2

Planning and Zoning Minutes

January 19, 2011

P&Z January 19, 2011 Minutes

Item #2. Proposed changes to fences and concrete wall requirements.

Mr. Bowman reviewed the changes laid out in the backup pertaining to the subject item, noting the Town Commission directed staff to investigate cement concrete walls, the aim being to expand on the types of finishes required for such walls, including decorative features that increased their attractiveness.

Mr. Wick asked if any of the changes proposed by staff were unusual or different by design than what was done in the past; that is, would the changes lead to any major or significant alterations in existing design standards.

Mr. Bowman responded the Town never established any design standards for cement walls, and the new language was reflected in red and underlined in the backup.

Mr. Wick wished to know if the proposed changes were common to neighboring or other Broward municipalities; this was important for consistency.

Mr. Bowman replied staff pulled ordinances from surrounding cities and found their design standards to be consistent with staff's proposals. The only proposed change that was not consistent was detailed item 2 l.

Mr. Yankwitt recalled the City recently hired a consultant to conduct a seminar on design concepts that might be aesthetically pleasing in the Town, and the following day of the seminar a walkthrough of the Town was conducted. He thought many wonderful ideas emerged from the walkthrough of the Town with the consultant and the Town's people, as there was an interchange of ideas, thoughts and concerns. Staff's proposal appeared to have been drafted prior to the walkthrough; if so, could changes be made based on the outcome of the seminar and input from the walkthrough.

Mr. Bowman indicated the changes reflected in the backup as they related to cement walls would remain the same. However, if there were recommendations Mr. Yankwitt wished to add that were not reflected in the backup, this was the proper forum to voice them.

Mr. Yankwitt commented during the walkthrough some members of the community expressed surprise the Town had a marina with boats docked there, and along the road the marina abutted there was a fence that could be changed to allow passersby to see the marina, a more aesthetically pleasing structure that enhanced the appearance of the area. He wondered if staff's proposed changes allowed for such a fence.

Mr. Bowman believed it would, noting Mr. Yankwitt seemed to be suggesting a fence through which people passing by could see the marina was preferable to a solid fence. He thought the reasoning behind the property owner erecting a solid fence was for security purposes, mainly to protect the many boats and equipment located on the property. It would be difficult to change the fence if the owner preferred not to.

Mr. Yankwitt presented a scenario in which an owner found his property surrounded by neighboring enclosures that were undesirable. If that owner chose to erect a fence to obscure the view of undesired enclosures and the latter were subsequently removed, would that property owner be required to bring the outer facing portion of the fencing up to an aesthetically pleasing standard.

Mr. Bowman thought this a good point, suggesting the Board consider adding language to address such a scenario to ensure the property owner maintained the visible outer facing portion of the fence up to Code requirements.

Town Attorney Mehaffey asked if the Board wished there to be a condition requiring such property owners to upgrade their fence by a set period of time if the obstacle was removed or the fence destroyed, or there should there be a nonconforming condition, whereby the fence could be made code compliant when it was replaced.

Mr. Yankwitt mentioned certain causative factors should be considered; such as, destruction by an act of God like a hurricane; voluntary removal of fences; or new homeowners with different aesthetic tastes wishing to make changes.

Town Attorney Mehaffey pointed out the Town already had established codes for fencing; if fences were repaired or replaced, there were standards property owners had to adhere to.

Mr. Bowman reminded the Board the current verbiage in the Code applied only to wood fences.

Town Attorney Mehaffey indicated both wood and concrete fences/walls were being addressed under C2 in the backup, stating they needed to be finished on both sides unless they abutted an existing wall or fence.

Mr. Freaney felt the answer was to have a nonconforming condition apply to the fence or wall until the criteria set forth in the current Code was met. It would be an economic hardship to require a landowner immediately tear down or repair a fence just to comply with the Code due to their neighbor's decision to remove or alter an abutting fence or wall.

Mr. Wick questioned item I G that dealt with chain link fences, wondering if the chain link fence along the parking lot running north to south on A1A before reaching the south entrance of Belair would be classified as being in a nonconforming district or was it out of code. He noted trash was collected along the chain link fence, and the fence abutted a property zoned RM4 or RM5.

Mr. Bowman responded in 2007, the Town unified the Code to improve the whole Town; prior to that time, Broward County's Code was used and it permitted the chain link fence. There was no language in the current Code that addressed nonconforming fences, though it might be discussed in 3021, but the removal of such a fence meant it met the 50 percent requirement.

Town Attorney Mehaffey confirmed the chain link fence would be classified as nonconforming under 3021, and no action would be required unless it met the 50 percent criterion.

Mr. Hunsaker remarked the subject lot was nonconforming, and a variety of objects was stored on that property.

Mr. Wick indicated the proposed additions to the subject code were fairly well written and invited a motion from the Board to pass them onto the Commission as presented by staff. Amendments to the language could be made thereafter.

Mr. Hunsaker made a motion to approve the subject changes as reflected in the backup and have them go forward to the Commission for approval, seconded by Mr. Yankwitt.

Mr. Yankwitt wished to make a motion to amend the proposed changes to include language to address properties whose walls or fence became a nonconforming use. The property had to become code compliant within a reasonable amount of time; the requirement could be categorized under two criteria, one for conditions due to an act of God, the second due to actions of abutting neighbors.

Mr. Bowman was unsure if nonconforming was the appropriate classification, as the aim was to bring exposed, unfinished walls/fences up to code whenever they occurred. When a structure or use was classified as nonconforming, it was due to a change in the Town's code; thus, when fences were built, they were usually in compliance. He suggested including language that gave a set time frame in which an unfinished wall or fence must be brought up to code after the removal of abutting enclosures; the time allowed could be differentiated based on the act that led to the removal of the abutting enclosure. Where the exposure of the unfinished fence was due to an act of God, the property owner should be allowed more time to bring the structure up to code, and if a neighbor's removal of their fencing exposed unfinished fencing, less time should be given.

Mr. Bowman believed that for both scenarios, a reasonable amount of time should be allotted the property owner required bring their exposed fence or wall into compliance; he was unsure of the justification to treat them differently, as the time frame should be guided by the extent of the work required to bring the fencing into compliance.

Mr. Freaney pointed out that the property owner erecting the second fencing had very limited ability to overcome the difficulty of complying with the Code requirement to finish the exterior of a wall or fence if it was in close proximity to a neighboring enclosure. The aim of the additional language should be to offer the property owner some guidance on what to do to help them bring their fencing up to code. He was unsure a set time frame should be included in the language, as each scenario would be unique, and a set time could create economic hardship for the property owner being asked to comply. If the fence or wall was damaged by a hurricane, for instance, then the 50 percent rule should apply with regard to replacement or repair.

Mr. Bowman thought unfinished fences and walls that were visible from rights of way should be addressed first.

Mr. Hunsaker pointed out problems might arise if such language was added to the Code, whereby, individuals building after the amended language took effect had to comply, but those who built prior to the requirements taking effect would not. The same rules should apply for both existing and new construction.

Mr. Bowman commented the Code should remain as is.

Town Attorney Mehaffey summarized the motion: the proposal to be forwarded to the Commission for approval was an addendum, the new item J on the second page as currently proposed in the text set forth in the backup, with added text, based on Board discussion. This would reflect language along the lines of: if the obstacle is removed, the fence side facing out shall be finished on the side facing out, upon replacement or repair of any facing out segment for any reason. Repair or replacement of 50 percent or more of the fence shall require all segments facing out to be finished."

Mr. Yankwitt felt the amended language reflected the essence of his recommendation.

Mr. Bowman asked if the requirement should apply to both wood fences and cement walls.

Mr. Yankwitt affirmed the language should apply to both forms of enclosures.

Mr. Yankwitt made a motion to amend staff's proposed changes to include the above language as presented by Town Attorney Mehaffey, seconded by Mr. Freaney.

In a roll call vote, the motion passed 3 – 1.

Mr. Hunsaker made a motion to approve the subject changes as reflected in the backup and have them go forward to the Commission for approval as amended, seconded by Mr. Yankwitt.

In a roll call vote, the motion passed 4 – 0.