

STAFF REPORT

DOCKET #: UDO-290
STAFF: [Chris Murphy](#)

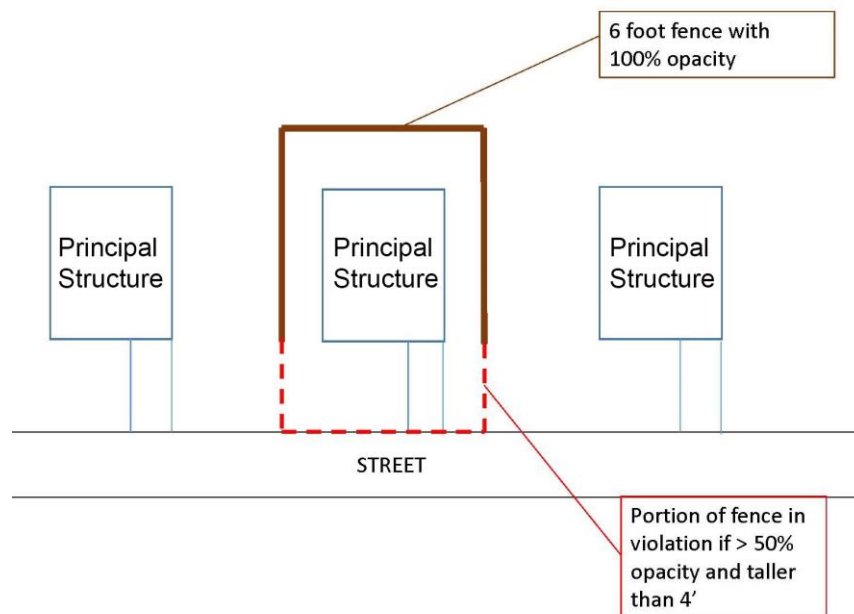
REQUEST

A Unified Development Ordinances (UDO) Text Amendment (UDO-290) proposed by the City Attorney's Office creating new location, height and design requirements for fences located on residential building single-family, duplex, twin home, triplex, quadraplex and townhouse properties.

BACKGROUND AND ANALYSIS

The Unified Development Ordinances (UDO) currently have no regulations pertaining to fences and fencing in residential zoning districts and/or for residential uses. The City Attorney's Office, acting on a request from the Community Development, Housing and General Government Committee, began preparing a fence ordinance aimed at addressing height, opacity and materials of fences between the front building wall and the street for residential single-family, duplex, twin home, triplex, quadraplex and townhouse properties. The proposed ordinance standards have been discussed extensively at both the staff level and with the Community Development, Housing and General Government Committee over the last 12-18 months.

The proposed ordinance exempts any and all masonry walls from the provisions of the ordinance if (1) entirely masonry or (2) any fence located on a Historic (H) or Historic Overlay (HO) zoned property or any property designated a Local Historic Landmark. For fences not entirely masonry, the proposed ordinance limits fences with an opacity level greater than 50% to no taller than four (4) feet in height on the street side of the front building wall (between the front building wall and the front property line). This standard applies to any portion of a fence in the front yard (parallel with the street/front façade and the portions of fences located along side property lines between the front building wall and the street). (see graphic below)



The proposed ordinance further clarifies that fences cannot be located within utility easements, block natural drainage flow or interfere with sight distance at intersections/driveways. Next, the proposed ordinance clarifies that barbed, razor, and concertina wire, as well as electric fences, cinder block walls and walls made of junk, debris, trash, etc. are prohibited. The proposed ordinance also specifies that the finished side of any fence must face the street or side property lines (the unfinished side shall face into the property). Finally, the proposed ordinance has an amortization period whereby any fence or wall made nonconforming must come into compliance or be removed within six (6) months of adoption.

As part of the process of drafting the proposed ordinance, the City Attorney’s Office analyzed fence regulations from other jurisdictions in North Carolina. The Table below summarizes the regulations from our peer cities.

Jurisdiction	Height Standard	Permitted Materials	Prohibited Materials
Gastonia	Front – 4’ Side – 8’	None specified	None specified
High Point	4’ if within 15’ of street	Masonry, stone, iron, aluminum, wood, composite, chain link	Barbed/razor wire, electric fence, fences made of junk, debris, plywood, etc.
Burlington	4’ between street and front building wall	None specified	No electric fence or barbed wire fence
Durham	Front – 4’ unless SUP from ZBOA Side/rear – 8’	None specified	None Specified
Greensboro	4’ if within 15’ of street Side/rear – 7’	Masonry, stone, ornamental metal, chain-link, plastic or vinyl wood or similar material	Barbed/razor wire, electric fence, fences made paper, cloth or canvas
Raleigh	Front – 6.5’ Side/rear – 8’	Stucco, wood, wrought iron, decorative blocks, metal, brick, stone, cast stone	Barbed wire, no chain-link in front or street side yard
Charlotte	Front – 5’ Side/rear – 8’	None specified	None specified
Winston-Salem (PROPOSED)	Front – 4’ if greater than 50% opacity – masonry walls exempted	None specified	Barbed/razor/concertina wire, electric fences, cinder block, fences made of junk, debris, plywood, sheet metal, rolled plastic, etc.

The proposed regulations appear to keep the City of Winston-Salem in line with our peer jurisdictions across the state. Although the proposed regulations appear to be in line with other jurisdictions, staff does have several concerns with the ordinance as proposed. First, enforcement will be challenging on several fronts. There has been no exhaustive survey of all existing fences within the City of Winston-Salem. As a result, there is no “base-line” to determine how many fences this ordinance will impact. In the scattered windshield surveys conducted across the eight (8) wards, staff has found numerous examples of fences that would be rendered nonconforming if the proposed ordinance is adopted (please see the images at the end of the staff report). Also, with respect to enforcement, there is no requirement to obtain a permit for fences (current and proposed, unless the fence is taller than 6’ and thus needs engineered footings and wind load calculations). As a result, there is no mechanism whereby property owners can be warned/stopped from creating a costly mistake.

Beyond the enforcement issues, it is staff's position that the proposed ordinance will impact a significant number of properties/fences to address very few "problem" fences. The proposed regulation may work in removing some unwanted fences but the associated peripheral impacts may lead to a significant level of unintended consequences. All of the fences in the images on pages 4 through 10 of this staff report would likely be rendered illegal by the proposed ordinance. Finally, the proposed ordinance provides an exemption for fences and walls constructed entirely of brick, stone and stucco, regardless of the height. Staff does note that the same exemption does not apply to fences and walls made of other materials such as cinder blocks.

As staff has reviewed zoning-related complaints logged over the past 10+ years, there have been no complaints related to residential fencing. Staff has concerns about enacting an ordinance with such far-reaching impacts without adequate data to support such regulation. As such, staff cannot support this ordinance as currently drafted but could be supportive of an ordinance that provides some degree of regulation without the potential associated negative impacts.

RECOMMENDATION

Denial of UDO-290 as currently drafted.

**CITY-COUNTY PLANNING BOARD
WORK SESSION
MINUTES FOR UDO-290
APRIL 25, 2019**

FENCE TEXT AMENDMENT

Chris Murphy presented to the Planning Board a brief background of the fence text amendment being proposed as UDO-290. Chris gave an overview of the content included in UDO-290, which would be location requirements, height standards, prohibited material, finished side, maintenance, exemptions, and nonconforming fences and walls.

Chris presented examples of a variety of fencing. Permitting was a point of discussion, as well as the amortization period. Greensboro and High Point share some of the same fencing standards in their regulations, which Chris shared with the board.

During discussion, a few points were made with regard to materials used that board members felt would not be appropriate for a front yard, such as sheet metal, concertina wire, and junk material. Height issues, side yard fencing, and the need for fencing along busy roadways and in noisy areas were also points of discussion.

It was noted that fencing with too much height, such as the one at Country Club and First Street, seem to be inconsistent with the vision of *Legacy*, in that it inhibits the feel of a walkable, interactive neighborhood.

Staff will present the proposal from the Community Development/Housing/General Government Committee to the board at the April 11 public meeting. After the Planning Board reviews the initial proposal, they will make recommendations for any revised proposals they may have at the April work session meeting.

**CITY-COUNTY PLANNING BOARD
PUBLIC HEARING
MINUTES FOR UDO-290
APRIL 11, 2019**

Chris Murphy presented the staff report.

PUBLIC HEARING

FOR: None

AGAINST:

Troi Bachmann, 723 Bellview Street, Winston-Salem, NC 27103

- I am here representing the Home Builders Association and the Realtors Association. The Home Builders Association and the Realtors Association agree with the possible problems this could create, as opposed to providing a solution to some problem. I'm referring to the ripple effect this could have. We don't have a database of fences, and most of the fences in the pictures look like normal fences to your average property owner.
- I concur with the staff recommendation here and urge you to consider that ripple effect.

Barbara Raffaldini, 3309 York Road, Winston-Salem, NC 27106

- I have been a real estate attorney for 30 years. I agree with staff that this should be denied. I think it is onerous to make people have to spend money tearing down a fence to comply. It is not fair. Some changes need to be made.
- A lot of people have fences on the side and in the front of their yards for privacy, and for their dogs. I would ask for some re-drafting.

Gardenia Henley, 4920 Old Walkertown Road, Winston-Salem, NC 27105

- I do not know if I am in opposition, but one thing I do know is I have a fence and I need the fence and I do not understand the parameters of what you all are saying. I could not clearly see the pictures but it appears one of them is my house.
- For me, the type of fence I have is a safety fence. I have spoken to the state and they have given me their blessing on the fence that I have now. What I basically have is a custom made cast iron fence and then I have boulders. I don't know if you all addressed that or not. We love it, and most people say they like it. But for us, it's a safety issue. As soon as we put those stones out, somebody ran through it and flipped their truck.
- Someone may look at it and say which is the back and which is the front of the boulder. We tried to put the flat, pretty side on the front because we were concerned about that too.

Are we going to be grandfathered in? Are we going to have to spend thousands of dollars to get a Bobcat or a crane? And where are we going to put those boulders? Is the city willing to accommodate the cost for this?

WORK SESSION

Chris Leak: It was discussed at the March 28th work session meeting for us to continue this to the April work session meeting to discuss alternatives; is that correct?

Melynda Dunigan: We talked about that. I'm probably one of the main reasons why we decided to do that. I have thought a lot about it and looked at fencing a lot since our work session and I agree with the staff's recommendation for it. If we were to change it, those would be the parameters. If we did that, there would practically be nothing left in the ordinance. It would be nothing but materials, and that would be it. And there may even be some disagreement on that. So if it's that problematic, then maybe we ought to just have a motion on settling the matter right now. I'm agreeable to that.

MOTION: Clarence Lambe recommended denial of the proposed ordinance amendment.

SECOND: Brenda Smith

VOTE:

FOR: George Bryan, Melynda Dunigan, Jason Grubbs, Tommy Hicks, Clarence Lambe, Chris Leak, Brenda Smith

AGAINST: None

EXCUSED: None

Aaron King
Director of Planning and Development Services