

FACTSHEET

TITLE: CHANGE OF ZONE NO. 05046, a text amendment to Title 27 of the Lincoln Municipal Code, requested by Pierson, Fitchett, Hunzeker, Blake and Katt on behalf of Hampton Development Services, by amending Section 27.71.080 to allow fences to a maximum height of one hundred two (102) inches under certain conditions.

STAFF RECOMMENDATION: Approval, as revised on 7/06/05.

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 07/06/05
Administrative Action: 07/06/05

RECOMMENDATION: Approval, as revised, with amendment (5-0: Carroll, Carlson, Esseks, Larson and Bills-Strand voting 'yes'; Krieser, Pearson, Sunderman and Taylor absent).

1. Except along the major street side of a double frontage lot where the fence may be 96 inches in height, the current zoning standards limit fence height to 76 inches (6 feet, 4 inches). The proposed text amendment will allow fences to a maximum height of 102 inches (8 feet 6 inches) within any commercial or industrial district; on a common lot line between a residentially zoned district and a commercial or industrial zoned district; on residential side and rear yards, if they are more than 4 feet from a main structure; and in the front yard abutting the major street on double frontage lots for which vehicular access is not to the major street.
2. The staff recommendation of approval is based upon the "*Analysis*" as set forth on p.2, concluding that the proposed amendment is in conformance with the Comprehensive Plan.
3. At the public hearing before the Planning Commission on July 6, 2005, the staff amended paragraphs (4) and (5) under 27.71.080(a). (See Minutes, p.5).
4. The applicant's testimony is found on p.5, including a proposed amendment such that ornamental features on the top of fence posts, up to six inches in height above 96 inches, which was the original request, shall not be considered part of the fence. (Also See p.11).
5. There was no testimony in opposition.
6. On July 6, 2005, the Planning Commission agreed with the staff recommendation and voted 5-0 to recommend approval, as revised by staff on July 6, 2005, with amendment to change the maximum height from 96 inches to 102 inches, with no reference to the ornamental top or cap, the intent being that the 102 inches would include the height of the cap (Carroll, Carlson, Esseks, Larson and Bills-Strand voting 'yes'; Krieser, Pearson, Sunderman and Taylor absent).
7. Building & Safety points out a requirement in the Building Code will require that if the fence is combustible (wood) and more than 76 inches in height, it will need to be set back 2 feet from the property line. Planning has encouraged that this section of the Building Code be amended in order to allow taller wood fences on property lines.

FACTSHEET PREPARED BY: Jean L. Walker

DATE: July 11, 2005

REVIEWED BY: _____

DATE: July 11, 2005

REFERENCE NUMBER: FS\CC\2005\CZ.05046

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

for JULY 6, 2005 PLANNING COMMISSION MEETING

****As Revised and Recommended for Approval by Planning Commission****
July 6, 2005

PROJECT #: Change of Zone No.05046

PROPOSAL: Amend section 27.71.080 of the Lincoln Municipal code relating to fences to allow fences to a maximum height of ~~ninety-six~~ one hundred two inches in height under certain conditions. Allowing fences ~~96"~~ 102" in height in specific locations will provide a more effective screen while not allowing the fence to exceed 76" when less than 4' from a main structure. (****Per Planning Commission: 07/06/05****)

CONCLUSION: In conformance with the comprehensive plan.

<u>RECOMMENDATION:</u>	Approval
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ANALYSIS:

1. This is a request to amend Section 27.71.080 of the Lincoln Municipal Code to allow fences to a maximum height of ninety-six inches under certain conditions.
2. The text change will allow fences to a maximum height of ninety-six inches within any commercial or industrial district and on a common lot line between a residentially zoned district and a commercially or industrially zoned district.
3. The text change will allow fences to a maximum height of ninety-six inches in the front yard abutting the major street on double frontage lots and vehicular access is not to the major street.
4. Allowing fences to a height of ninety-six inches will provide improved security and screening between residential uses and commercial or industrial uses.
5. City of Lincoln building code requires that if the fence is higher than 6 foot 4 inches and is a combustible material it must be set back two-feet from the property line. This text amendment does not supercede the building code.
6. City of Lincoln Design Standards states that the height of the fence shall comply with Title 27.
7. The increase in the height of the fence will reduce the amount of light and air circulation. Therefore, the height shall not be increased from 76" if the fence is closer than 4' to the main structure.

8. Following is the proposed text:

27.71.080 Fences.

(a) Permitted Locations and Heights. Notwithstanding the area regulations of this title with respect to the requirements for open space for front yard, side yard, and rear yard, fences may be erected to a height not to exceed seventy-six inches on any part of a lot or premises., ~~provided, that~~ In addition, fences may be erected to a height not to exceed ~~ninety-six~~ **one hundred-two** inches in the required front yard abutting a major street if the following conditions are met: on any part of a lot or premises under one of the following conditions: (****ninety-six inches amended to one hundred-two inches by Planning Commission: July 6, 2005****)

- (1) The fence is located in the required front yard abutting a major street, and
 - (a I) The lot or premises has double street frontage and abuts a major street;
 - (b ii) Vehicular access to the lot or premises is not from the major street;and
 - ⓐ iii) The fence shall be parallel to the major street.
- (2) The fence is located within any commercial or industrial district.
- (3) The fence is located on a common lot line between a residentially zoned district and a commercially or industrially zoned district, or
- (4) The fence is located in the rear or side yard of a residentially zoned district, or ~~and~~
- (5) The fence is located within the front yard area connecting to a fence located in the required front yard abutting a major street pursuant to section (1) above,

provided that no fence over seventy-six inches shall be located within four feet from any main structure.

(b) Prohibited Locations. ~~However, n~~No fence shall be erected within:

- (1) ~~t~~The triangular area required for sight distance of vehicles entering or exiting the property or entering an adjacent intersection, in conformance with the design standards of the city and the “guidelines and regulations for driveway design and approach.”
- (2) Ten feet from the opening side of all padmounted equipment (the side with decals on the lid/door), three feet from the opening side of the power pedestals (the side with the padlock), and twelve inches from the other non-opening sides of padmounted equipment or power pedestals.

ⓐ) Measurement. The height of a fence shall be determined by a measurement from the ground beneath the fence. Swales and other earth depressions up to six feet wide shall not be used when measuring the fence's height. Man-made earth berms, terraces, and retaining walls that elevate the fence shall be considered a part of the fence. Notwithstanding the above, if a lot or premises is lower than an adjacent major street, as defined in Section 26.07.190 of the Land Subdivision Ordinance, then the height of the fence shall be determined by a measurement from the street grade at a ninety degree angle from the fence; provided, however, the total vertical measurement from the ground beneath the fence to the top of the fence shall not exceed twelve feet.

(d) Exclusions. The height limitation herein provided for fences permitted on any part of a lot or premises, notwithstanding the area regulation of this title with the requirements for open space from front yard, side yard,

and rear yard, shall not apply to fences required by the city for uses permitted by the city. It is not intended that any structure other than a fence is permitted on any part of a lot or premises by this section, and all other structures must comply with area and use regulations of this title.

Prepared By:

Tom Cajka
Planner

DATE: June 22, 2005

APPLICANT: Jason Scott
Pierson Fitchett Hunzeker Blake & Katt
1045 Lincoln Mall Suite 200
Lincoln, NE 68508

CONTACT: same as applicant

CHANGE OF ZONE NO. 05046,

PUBLIC HEARING BEFORE PLANNING COMMISSION:

July 6, 2005

Members present: Carroll, Carlson, Esseks, Larson and Bills-Strand; Krieser, Pearson, Sunderman and Taylor absent.

Staff recommendation: Approval

Ex Parte Communications: None.

This application was removed from the Consent Agenda by the staff.

Tom Cajka of Planning staff made changes to paragraphs (4) and (5) below for clarification:

- (1) The fence is located in the required front yard abutting a major street, and
 - (a I) The lot or premises has double street frontage and abuts a major street;
 - (b ii) Vehicular access to the lot or premises is not from the major street;and
 - ⊕ iii) The fence shall be parallel to the major street.
- (2) The fence is located within any commercial or industrial district.
- (3) The fence is located on a common lot line between a residentially zoned district and a commercially or industrially zoned district, or
- (4) The fence is located in the rear or side yard of a residentially zoned district, or ~~and~~
- (5) The fence is located within the front yard area connecting to a fence located in the required front yard abutting a major street pursuant to section (1) above,

provided that no fence over seventy-six inches shall be located within four feet from any main structure.

Proponents

1. **Mark Hunzeker** appeared on behalf of **Hampton Development Services**, which has a new company in the fence business. The reason that they have requested this text amendment is due to the desire of many commercial and industrial customers, and residential customers that abut commercial or industrial areas, to use a larger fence as a screen between different uses. The purpose is to allow for certain circumstances where you have use an 8' fence instead of a 6' fence. Hunzeker agreed with the staff's amendment; however, he also proposed an amendment to the "Measurement" provision to allow that, "Ornamental features on the top of fence posts up to six inches in height shall not be considered part of the fence." The fences that Hampton Development builds are concrete, made with concrete pillars and panels which appear to be stone, and they are stained to look like stone. They put a concrete cap on top of the pillar, and this is interpreted to be part of the fence. Hunzeker's proposed amendment would define ornamental caps and the like as not being part of the fence if they are less than six inches tall as an extension of the post. He wants to make it clear that we are providing for decorative caps that are generally proportionate to the

height and width of the post. We are not intending to allow for extensions which span between the posts, or disproportionate to the posts, or which have the effect to increase the overall height of the fence.

Larson understands that there would not be any fences allowed between residential lots. Hunzeker explained that fences are permitted between residential lots. If the 8' fence were an extension of a permitted 8' fence along an arterial street, it would be allowed to extend between the houses, but would have to be a minimum of 4' from either main structure. If you have less than 10' between the buildings, you would not be able to extend a fence that is taller than 6' 4".

Esseks observed that the existing language provides for a rather liberal vertical standard to 12 feet. Hunzeker explained that this applies in the situation where you have a lot which is below the grade of the existing street. In that situation, you can have a fence that may extend above the grade of the street but it cannot be more than 12' from the ground. The caps would just be on top of the post. Esseks inquired whether the posts would be so close together to be a major obstruction. Hunzeker suggested that most people put them as far apart as they can. He does not know whether there is a standard. The ones built by his client are at least eight feet apart. A standard panel at a lumber yard is an 8' panel.

There was no testimony in opposition.

Staff questions

Carroll asked for staff's reaction to Hunzeker's proposed amendment. Cajka indicated that staff is in agreement.

Carroll inquired whether ornamental tops are currently allowed in the fence code. Cajka believes that Building & Safety counts everything within the height of the fence, including lattice work, etc. Under this provision, up to six inches would not be counted. The top for posts is not included in the code today.

Larson has some concern about an 8' fence between residential lots. Cajka clarified that the 8' fence would commonly be known as the back yard, but for zoning purposes, it is considered the front yard along a major street. It can also be included between two residential houses on the side yard. It does not necessarily have to go all the way to the major street. The fence between the residences has to be 4' away from the main structure. The 8' fence could also be between main structures even if there was not a major street, as long as it is 4' away from the house or structure. Larson does not like this provision.

Carlson wondered about simply changing the height from 96 inches to 100 or 102 inches to give flexibility for the decorative caps or top. Cajka advised that there had been some discussion about allowing the entire fence to be up to 8' 6". He believes staff would be amenable either way.

Carlson understands that an 8' fence is currently allowed if it is inspected to make sure it is constructed properly. Cajka advised that any fence above 6'4" must have a building permit from Building & Safety. If the fence is of combustible materials and over 6' 4", it has to be set back on the lot line two feet.

Response by the Applicant

Hunzeker agreed that changing the height from 96 inches to 102 inches is acceptable and, as far as Building & Safety is concerned, that would probably be their preference. His amendment was drafted in response to a specific question about the ornamental caps. There is an additional 4" of slack in the 6' fence that allows you to put it off the ground or whatever. Hunzeker believes there is both the merit of simplicity and consistency in saying 102 inches across the board, and he would not object.

ACTION BY PLANNING COMMISSION:

July 6, 2005

Carlson moved approval, including the amendment by staff submitted today, seconded by Carroll.

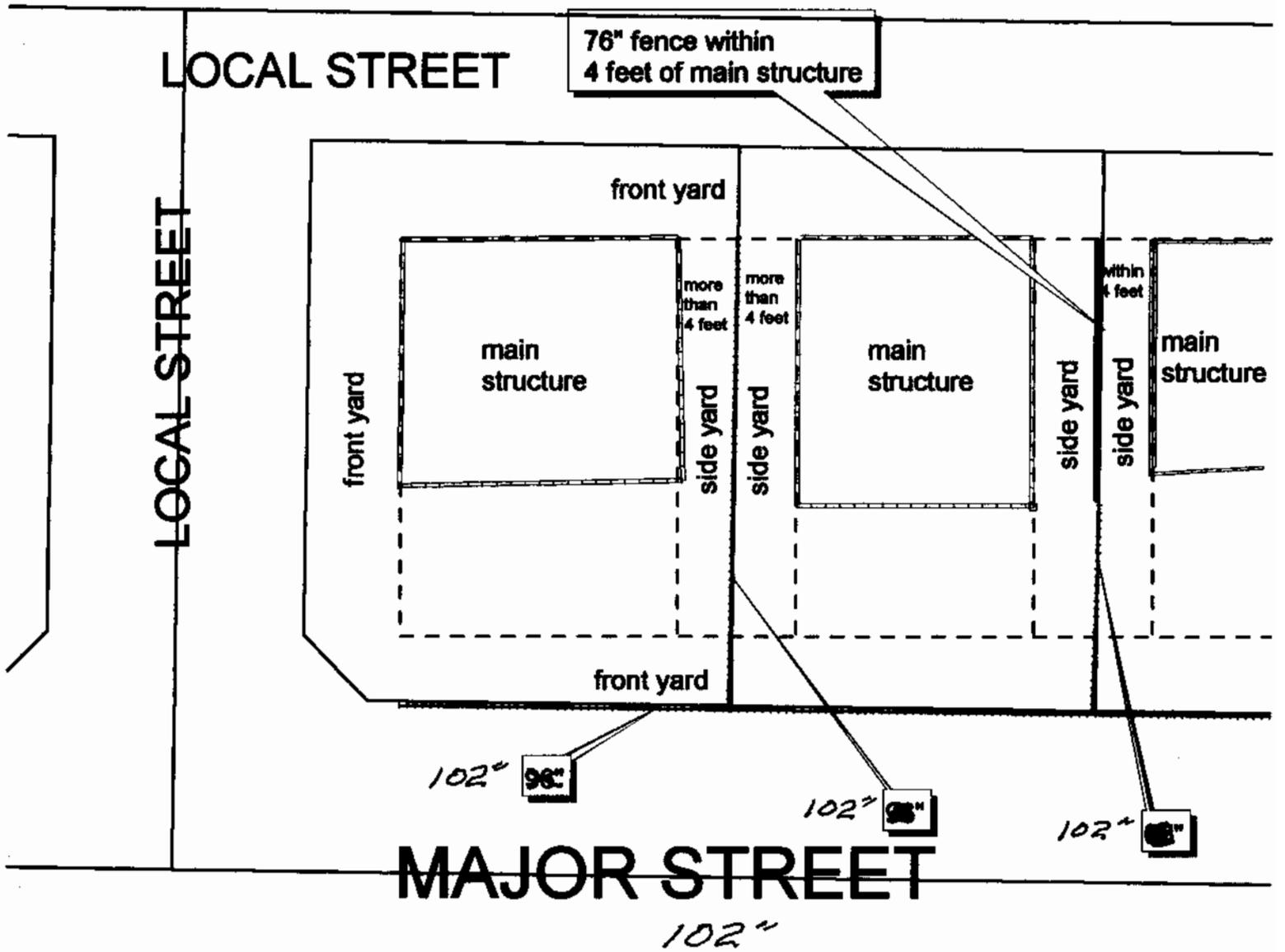
Carlson believes the amendment is fairly consistent. The only significant change is the ability to put the fence on the lot line if taller than six feet instead of having to move it back two feet. It becomes a maintenance issue. He does not believe there will be much of an aesthetic difference.

Carlson made a motion to amend the overall restriction from 96 inches to 102 inches, with no reference to the caps, seconded by Esseks.

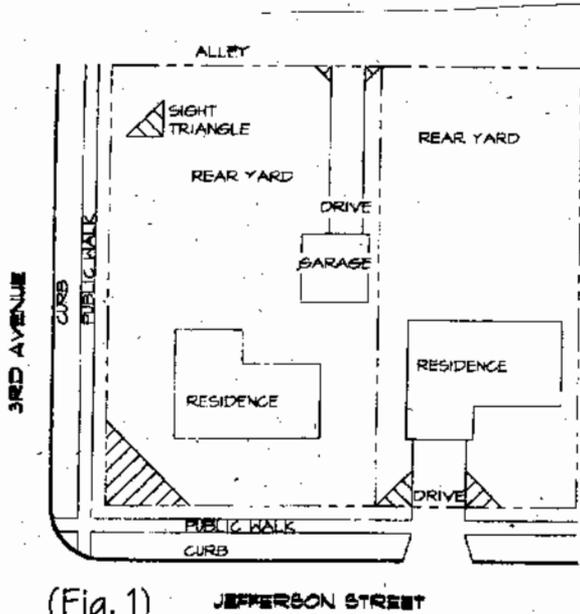
Carlson noted that his intent is that the 102 inches would include the height of the cap.

Motion to amend carried 5-0: Carroll, Carlson, Esseks, Larson and Bills-Strand voting 'yes'; Krieser, Pearson, Sunderman and Taylor absent

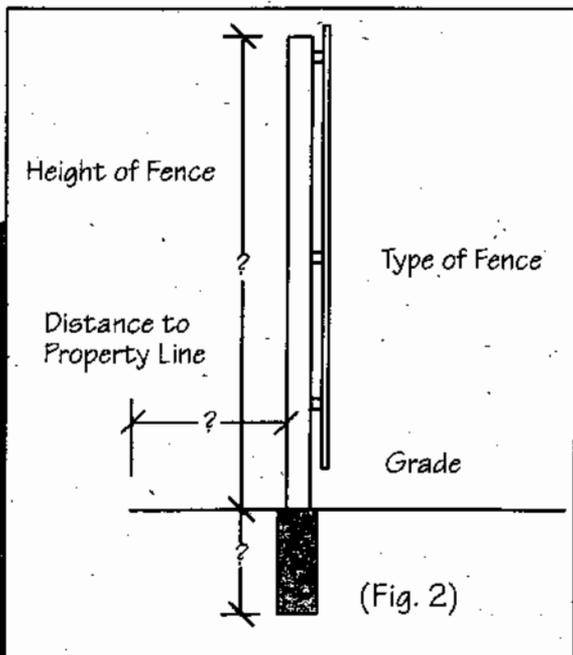
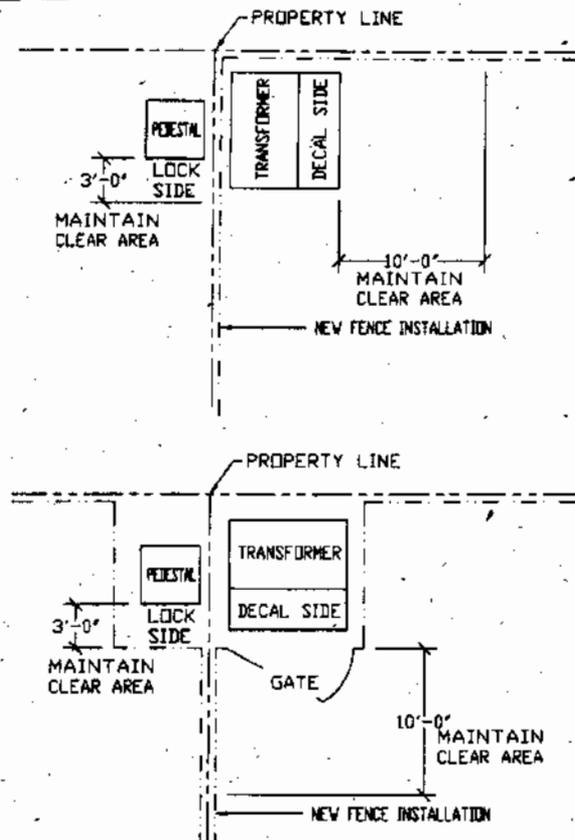
Main motion, as amended, carried 5-0: Carroll, Carlson, Esseks, Larson and Bills-Strand voting 'yes'; Krieser, Pearson, Sunderman and Taylor absent. This is a recommendation to the City Council.



This is an illustration showing 96" height fences may be installed if more than 4 feet from main structure . If within 4 feet the fence cannot exceed 76" in height.



(Fig. 1) JEFFERSON STREET



(Fig. 2)

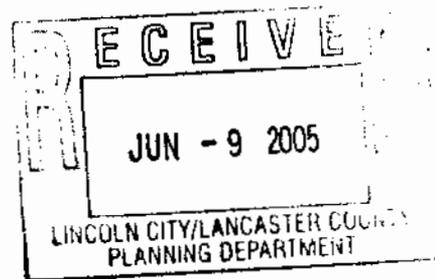
Fences

PURPOSE STATEMENT

Applicant requests a change in the text of § 27.71.080 of the Lincoln Municipal Code to provide for the construction of fences up to 8' in height in the following circumstances:

1. Within commercial development
2. On lot lines between residential and commercial development
3. On lot lines between residential development where there is at least 4' between the fence and the main structures on each lot.

The change also adds language prohibiting any fence from being constructed within the needed clearances around electrical boxes.



(c) **Measurement.** The height of a fence shall be determined by a measurement from the ground beneath the fence. Swales and other earth depressions up to six feet wide shall not be used when measuring the fence's height. Man-made earth berms, terraces, and retaining walls that elevate the fence shall be considered a part of the fence. Ornamental features on the top of fence posts up to six inches in height shall not be considered part of the fence. Notwithstanding the above, if a lot or premises is lower than an adjacent major street, as defined in Section 26.07.190 of the Land Subdivision Ordinance, then the height of the fence shall be determined by a measurement from the street grade at a ninety degree angle from the fence; provided, however, the total vertical measurement from the ground beneath the fence to the top of the fence shall not exceed twelve feet.

(G:\WPData\MH\Measurement paragraph.wpd)