

ZONING AMENDMENT APPLICATION
TOWN OF NAGS HEAD, NORTH CAROLINA

Applicant BRIAN BRUMFIELD/BRUMFIELD RVC

Mailing address 441 W. VILLA DUNES, NAGS HEAD NC 27959

Explanation of request

Zoning Ordinance - Section(s) 48-80 WALLS & FENCES
Attach amendment in ordinance form.

Zoning Map
Attach copy of current Zoning Map with affected property outlined in red.
Attach names and mailing addresses of the property owners of all parcels of land abutting the parcel in question.

Nature of request

CHANGE SECTION - 48-80-(C)
RESIDENTIAL DISTRICT: NO WALL SHALL EXCEED
4' IN HEIGHT WITHIN A FRONT YARD & FROM
THE FRONT ^(STREET SIDE) PORTION OF HOUSE OR DECK THE WALL
OR FENCE SHALL ^{NOT} EXCEED 6' IN HEIGHT. FENCE OR WALL
SHALL BE ALLOWED TO STEP UP OR DOWN WITH NATURAL
GRADE OF YARD ~~EXISTING~~ ~~FENCE~~.

Reason for request

THE PRESENT ORDINANCE IS TO
RESTRICTIVE & DOES NOT ALLOW
QUIET ENJOYMENT OF ONE'S
BACK YARD.

Brian J. Brumfield
Applicant

2/14/07
Date



Town of Nags Head

Planning and Development
Department

Post Office Box 99
Nags Head, North Carolina 27959
www.townofnagshead.net

Telephone 252-441-7016
FAX 252-441-4290

January 25, 2007

**VIA CERTIFIED MAIL 7003 1010 0000 4932 2569
RETURN RECEIPT REQUESTED**

Brian Brumfield
441 W. Villa Dunes Drive
Nags Head, NC 27959

Re: Notice of Violation and Enforcement Order, 4605 Blue Marlin Way (PIN#989116942919)

Dear Mr. Brumfield:

An inspection of the above property was conducted on January 22, 2007 by Dabni Gray, Zoning Administrator. The results of this inspection found that a fence has been installed along both side yard property lines. The construction of the fence is non-compliant. Furthermore, I have found no records in this office to indicate you or your representative applied for the necessary zoning permit to install a fence on said property. As a result of this activity, the following sections of the Town of Nags Head Zoning Ordinance have been violated:

Section 48-80 Walls and Fences. (b) & (c)

This section states that:

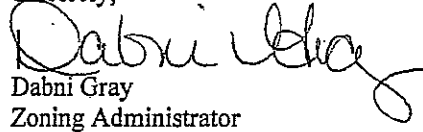
- (b) Walls and fences of wood construction must be constructed so that exposed framing of each section of fence faces the interior yard.
- (c) ...no wall or fence shall exceed four feet in height within a front yard or the frontward one-half portion of the side yard or six feet in height in a rear yard or the rearward one-half portion of the side yard.

It is my determination that the recent activity on site is not compliant with the requirements of Section 48-80. Based upon the above findings and to enforce compliance with the requirements of the zoning ordinance, I hereby order that a zoning permit be applied for and in addition the submittal of a site plan depicting the location and height of the fence.

Pursuant to Section 48-594(b)(1) of The Nags Head Zoning Ordinance, you may appeal this Notice of Violation and Enforcement Order to the Nags Head Board of Adjustment within thirty (30) days from the date of receipt. Please be advised that this decision shall become final and unappealable if not appealed to the Board of Adjustment during this thirty (30) day period. Failure to comply with or appeal this Notice of Violation within the prescribed time frames will result in additional future actions, including

but not limited to civil citations. You may contact me at 449-6042. Office hours are from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Sincerely,

A handwritten signature in black ink that reads "Dabni Gray". The signature is written in a cursive style with a large initial "D" and a long, sweeping tail.

Dabni Gray
Zoning Administrator

Cc: Tim Wilson, Director Planning and Development
Bruce Bortz, Deputy Director Planning and Development
Kelly Wyatt, Zoning Administrator
Kim Allen, Code Enforcement Officer

**TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR SESSION
June 5, 2002**

**REPORTS AND RECOMMENDATIONS FROM THE PLANNING BOARD AND THE
PLANNING AND DEVELOPMENT DIRECTOR**

DISCUSSION OF FENCE REGULATIONS

Planning Director Tim Wilson summarized the report on residential fence regulations which was dated May 28, 2002, and read in part as follows:

"On April 3, 2002 the Board of Commissioners was informed by the Town Manager of several complaints arising from recent Notices of Zoning Violation that had been issued by the Department of Planning and Development in late March 2002 concerning the installation of fences in residential districts. It was decided at the April 3, 2002 meeting that staff would further inform the Board on the matter of residential fences and applicable zoning regulations at a future date. All property owners receiving a Notice of Violation were informed by letter that their deadline for compliance would be continued pending future Board review and action.

The nature of the fence violations were by majority a combination of fence height and fence location on the subject properties. Section 22-110 of the Town Code specifically regulates the height of fences in select zoning districts where residential uses are permitted (R-1, R-2, R-3, CR, SED-80, SPD-20 and SPD-C).

The maximum height of the fence is furthermore determined by its location in a defined front yard, side yard, and/or rear yard as set forth and delineated under the definition for yards found under Section 22-153 of the Code. In part, in any of the above mentioned residential district no fence (or wall) shall exceed four (4) feet in height when located in a front or side yard or six (6) feet in height when located in a rear yard. The complete requirements of Section 22-110, Walls and fences, are as follows:

'Sec. 22-110. Walls and fences.

'(a) The setback requirements of these regulations shall not prohibit any necessary retaining wall or prohibit any wall or fence except as regulated in section 22-109 above.

'(b) Walls and fences of wood construction must be constructed so that exposed framing of each section of fence faces the interior yard.

'(c) Within any residential district (R-1, R-2, R-3, CR, SED-80, SPD-20, and SPD-C), no wall or fence shall exceed four (4) feet in height within a front yard or side yard or six (6) feet in height in a rear yard.

'(d) Within any commercial district, no wall or fence shall exceed ten (10) feet in height.

(e) Fences used in conjunction with any permitted outdoor recreational use shall not exceed ten (10) feet in height in any zoning district.

(f) In instances where a residentially zoned lot abuts a commercial use or district, a wall or fence may be allowed up to six (6) feet in height along the lot line adjacent to the commercial use or district.

It is noteworthy to mention that while the requirement of Section 22-110 apply to the CR District, they do not apply to the C-1, C-2 and C-4 Districts even though residential uses are listed principal permitted use in these zoning district. As an example, staff did receive inquiries concerning the recently constructed pool fences for several new pools and homes built on the bypass road immediately south of E. Danube Street. These pools and fences, while located in a defined front yard and exceeding four feet in height, were not subject to the requirements of Section 22-110 due to the fact that these properties are classified as C-2 District.

It is also important to note for clarification that the fence height requirements of Section 22-110 apply as equally to pool fences as they do to any other type of fences, regardless of the pool's location in the front, side and rear yards. There may be an increasing demand to locate pools in the front yard of residential properties in response to proposed revised CAMA regulations anticipated to become effective August 1, 2002 that will no longer exempt pools in the required CAMA setback. The minimum height for a required pool fence under the building code is four (4) feet. Therefore, there is no conflict between the four (4) feet front and side yard height requirements of the zoning ordinance and the building code. Additionally, Section 22-108 more specifically addresses pools and requires that no part of a pool (including the required pool fence) may be located in any required setback of a front, side or rear yard, thereby essentially making the pool and associated fences subject to the same setback requirements of a principal structure and use. Section 22-110 does not provide for any exception to this location requirement relative to pool fences.

To determine the location and boundaries of the front, side and rear yards for the purpose of administering Section 22-110, the following definitions and terms of Section 22-153 apply:

Yard. A required open space other than a court unoccupied and unobstructed by any structure or portion of a structure from thirty (30) inches above the general ground level of the graded lot upward, provided, however, that fences, walls, poles, posts and other customary yard accessories, ornaments and furniture may be permitted in any yard subject to height limitations and requirements limiting obstruction of visibility or any other requirement of this chapter. And further provided, that customary accessory buildings may be located in any rear or side yard no closer than five (5) feet to any property line and subject to other limitations of this chapter. For lots of record which front on access easements, yard and lot depth measurements shall be made from the edge of the easement rather than from the lot line.

(a) Yard, front. A yard extending between side lot lines across the front of a lot adjoining the public street. Depth of required front yard shall be measured at right angles to a straight line joining the foremost points of the side lot lines. The foremost point of the side lot line, in the case of rounded property corners at street intersections, shall be assumed to

be the point at which the side and front lot lines would have met without such rounding. Front and rear yard lines shall be essentially parallel. The inner edge of the front yard shall be measured from the building foundation and shall exclude the outermost three (3) feet of eaves, gutters, uncovered handicapped ramps, or uncovered steps.

(b) Yard, rear. A yard extending across the rear of the lot between side lot lines. Depth of a required rear yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the rear lot line. The inner edge of the rear yard shall be measured from the building foundation and may exclude the outermost three (3) feet of eaves, gutters, uncovered handicapped ramps, or uncovered steps.

(c) Yard, side. A yard extending from the rear line of the required front yard to the rear yard. Width of a required side yard shall be measured in such a manner that the yard established is a strip of the minimum width required by district regulations with its inner edge parallel with the side lot line. The inner edge of the side yard shall be measured from the building foundation and may exclude the outermost three (3) feet of eaves, gutters, uncovered handicapped ramps, or uncovered steps.

Attachment (A) depicts the location and boundaries of the front, side and rear yards as defined above.

~~All of the Notices of Violation issued in March 2002 where fence height was the only issue~~ (not inclusive of other violations such as exposed framing facing outward, location in a street right-of-way, etc.) were specific to fence sections located in the side yard that exceeded four (4) feet in height. Typically these fence sections in the side yard were six (6) feet in height matching the height of the remaining fence legally located on the property in the rear yard.

It is important to note that there have been differing interpretations of the requirements of Section 22-110 in the past, as well as differences in the delineation and meaning of front, side and rear yards areas set forth by definitions of the Code. These differing readings and interpretations subsequently resulted in different and inconsistent permitting and enforcement actions. The confusion in the reading of the yard definitions was making the distinction between a yard, which is an open area between the building and property lines, and a required yard, which is a measured minimum setback distance from a property line. In the context of Section 22-110 the requirements are specific to the entire yard, but in many instances the requirements of the Section were only being applied to the more limited area of the required yard. Nonetheless, the meaning and requirements of these Code sections have been thoroughly discussed in meetings with and among Planning Department staff, the Town Manager, and the Town Attorney and it has been agreed and decided that Sections 22-110 and 22-153 of the Code under the most current enforcement actions have been properly applied and enforced by staff. Also contributing to the confusion and misunderstanding of fence regulations is that fence structures, while regulated by the zoning ordinance, were not subject to the regulatory requirements of the building code. With such being the case, there has historically been no type of permit application or approval specifying the location and height of fence construction. Such permitting would provide for better clarity and understanding of ordinance requirements by the general

public and more consistent and improved ordinance administration and enforcement by staff.

This present situation was in part the impetus for the development of a separate zoning permit application that is presently being worked on by planning staff and the Town Attorney.

The Board of Commissioners essentially has two broad options upon the conclusion of their review and discussion of this matter. Those options are (1) to take no action concerning any proposed ordinance amendments whereby staff will resume enforcement actions required under the previously issued Notices of Violation, or (2) to initiate a process to consider potential ordinance amendments thereby changing the regulations and potentially changing present and future enforcement actions. Staff is of the opinion that the latter is in order and presents the following recommendations for the Boards review and consideration:

- Amendment to Section 22-110(c) to provide that the requirements of that Section shall apply to properties in the C-1, C-2, and C-4 Districts where the principal use of the property is single-family or two-family (duplex) residential use.
- Amendment to Section 22-110(c) of the Code to increase the maximum fence height in the side yard from four (4) feet to (6) feet. Staff submits that this allowance in height increase should be limited to only the first one-third (1/3), and at a maximum the first one-half (1/2), of the total distance of the side yard beginning from the rear yard boundary. Staff contends that these proposed amendments would not be contrary to the intent or purposes of the zoning ordinance. Staff looks forward to reviewing and further discussing this matter with the Board at the June 5, 2002 meeting."

It was Board consensus to direct staff to take a proposal concerning fence regulations to the Planning Board prior to returning to the Board of Commissioners for a public hearing. He suggested that staff is on the right track and stated that the proposal to be prepared should include the following:

- Maximum fence height in the side yard be increased to six (6) feet to be limited to only the first one-third (1/3) of the total distance of the side yard beginning from the rear yard boundary (a public hearing will determine how those impacted feel)
- Fencing regulations should be added to all residential uses town-wide
- A zoning permit process should be prepared for review

Mayor Muller thanked staff for the diagram which assisted in understanding the issue.



Town of Nags Head

Planning and Development
Department

Post Office Box 99
Nags Head, North Carolina 27959
www.townofnagshead.net

Telephone 252-441-7016
FAX 252-441-4290

MEMORANDUM

TO: Board of Commissioners
FROM: Planning and Development Staff
DATE: July 26, 2002
SUBJECT: Public Hearing to consider proposed amendment to
Section 22-110, Walls and Fences, fence requirements in
residential
districts.

At the June 5, 2002 Board of Commissioners meeting, planning staff was directed to prepare proposed zoning amendments to Section 22-110 of the Code, which regulates the construction of fences in residential districts. The proposed amendments would (1) increase the maximum allowed height of a fence in the rearward one-third portion of the side yard from four feet to six feet and (2) to extend the requirements of Section 22-110 to residentially developed properties in other zoning districts (C-1, C-2 and C-4).

Planning Board Recommendation:

At their regular meeting on June 18, 2002 the Planning Board by a 4-0 vote recommended the adoption of the proposed amendments with the following modifications (1) to increase the area of six feet allowable fence height in the side yard from the proposed rearward one-third of the side yard to the rearward one-half of the side yard, and (2) to further amend subsection (f) to specify that in instance where residential lots abut commercial uses or districts that the fence may be increase to six feet in height only along side property lines. This clarification was added due to the fact that an adjoining commercial use could be located directly across a roadway and thereby could potentially allow a six foot tall fence along a front property line by the roadway.

Planning Staff Recommendation:

Staff finds that the proposed amendment is consistent with the Board of Commissioners' request and concurs with the recommendation forwarded by the Planning Board. In further evaluating residential fence issues, staff is additionally recommending amendments specific to conditions determined to be unique to the CR District. In the CR District the *front yard* of the property, being that area between the road and the dwelling, typically functions more as the traditional *rear yard*, in that it provides an area for accessory buildings and uses such as a safe and secure area for the keeping of pets and children. This type of property use may require a fence with a greater height than the presently permitted four feet. But while there may be a recognizable need by private property owners for uses requiring greater fence height, there is also an equally important and legitimate public need to keep the beach road an attractive, safe and unobstructed environment. To balance these needs, staff is recommending in the CR District that fences located in the *front yard* and frontward one-half of the *side yard* be allowed a six foot maximum height provided that the fence complies with the minimum setback requirements for principle structures of the district (30 feet *front yard* and 8 feet *side yard*).

Attached are the proposed amendments to Section 22-110 as recommended by the Planning Board and Planning and Development Staff.

TLW

DRAFT #2; 6/18/2002; Staff

AN ORDINANCE AMENDING THE CODE OF ORDINANCES
OF THE TOWN OF NAGS HEAD, NORTH CAROLINA

BE IT ORDAINED by the Board of Commissioners of the Town of
Nags Head, North Carolina, that the Code of Ordinances shall be
amended as follows:

PART I. That **Section 22-110 Walls and fences** be amended to read
as follows:

Sec. 22-110. Walls and fences.

- (a) The setback requirements of these regulations shall not prohibit any necessary retaining wall or prohibit any wall or fence except as regulated in section 22-109 above.
- (b) Walls and fences of wood construction must be constructed so that exposed framing of each section of fence faces the interior yard.
- (c) Within any residential district (R-1, R-2, R-3, CR, SED-80, SPD-20, and SPD-C), and within any other district where the existing or proposed principal permitted use of the property is *single-family or two-family residential* (C-1, C-2 and C-4) no wall or fence shall exceed four (4) feet in height within a *front yard* or the frontward one-half (1/2) portion of the *side yard* or six (6) feet in height in a *rear yard* or the rearward one-half (1/2) portion of the *side yard*. In the CR District, a fence located in the *front yard* and frontward one-half (1/2) portion of the *side yard* may be increased to a height not exceeding six (6) feet provided that the fence meets the minimum required *front yard* and *side yard* setback distances established for *single-family* and *duplex* uses.
- (d) (d) Within any commercial district, no wall or fence shall exceed ten (10) feet in height.
- (e) Fences used in conjunction with any permitted outdoor recreational use shall not exceed ten (10) feet in height in any zoning district.

(f) In instances where a residentially zoned *lot* abuts on either side of a commercial *use* or district, a wall or fence may be allowed up to six (6) feet in *height* along the *side lot line* adjacent to the commercial *use* or district.

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

PART III. This ordinance shall be in full force and effect from and after the ____ day of _____, 2002.

Robert W. Muller, Mayor

ATTEST:

Town Clerk

APPROVED AS TO FORM:

Town Attorney

Date adopted: _____

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS

Town of Nags Head
Planning Board
June 18, 2002

NEW BUSINESS:
Walls and Fences

Tim Wilson presented the first item of discussion, an amendment to Section 22-110, Walls and Fences, of the Town Code of Ordinances. He reported that the Board of Commissioners had been advised of complaints arising from Notices of Zoning Violation issued by the Planning and Development Department in March 2002, concerning the installation of fences in residential districts. Following a discussion of this topic at the June 5, 2002 Board of Commissioners meeting, Staff had been directed to prepare amendments to Section 22-110, which regulates the construction of fences in residential districts. The proposed amendments would (1) increase the maximum allowed height of a fence in the rearward one-third portion of the side yard from four feet to six feet and (2) extend the requirements of Section 22-110 to residentially developed properties in other zoning districts.

Mr. Wilson explained that the fence violations were a combination of height and location on the subject properties. Section 22-110 of the Town Code specifically regulated the height of fences in zoning districts where residential uses are permitted (R-1, R-2, R-3, CR, SED-80, SPD-20 and SPD-C). A majority of the Notices of Violation issued in March, where fence height was the only issue, were specific to fence sections located in the side yard of the property that exceeded four feet in height. Typically these fence sections in the side yard were six (6) feet in height matching the height of the remaining fence legally located on the property in the rear yard. The proposed amendment would directly address this type of situation.

Mr. Wilson stated that Staff had determined that that the proposed amendment would not be contrary to the purpose and intent of the zoning ordinance and would afford property owners relief and reasonable use of their property. Planning Staff was recommending adoption of the proposed amendment, and further recommended favorable consideration of extending the area of six foot fence height in the side yard from the proposed rearward one-third portion of the side yard to the rearward one-half

portion of the side yard.

Mr. Wilson explained that most height violations occurring in the side yards involved a side door. It was found that these doors were usually located in the rear half of the house, and Staff felt extending the six-foot height to one-half of the side yard to result in negligible impacts and have a marginal effect on aesthetics.

Board members discussed this proposal as well as subsection (f) *In instances where a residentially zoned lot abuts a commercial use or district, a wall or fence may be allowed up to six (6) feet in height along the lot line adjacent to the commercial use or district.* Mr. Wilson pointed out that this could be interpreted to allow a wall or fence to be erected along a front lot line. He felt there might be a need to address this especially the CR district along the oceanfront.

Following discussion, Paul Royston moved to recommend adoption of the proposed amendment with the modification ~~to extend the six-foot portion to one-half of the side yard.~~

The motion was seconded by Mr. Shafer. Mr. Oakes inquired if the motion should include the amendment of subsection (f) to add the word "side" for clarification of the location of the fence. The motion was so amended and passed unanimously.

AYES:(4) OAKES, SHAFER, OAKSMITH, ROYSTON

NAYS: (0) NONE

~~Mr. Wilson stated that Staff would further evaluate walls and fences in the CR district.~~

**TOWN OF NAGS HEAD
BOARD OF COMMISSIONERS
REGULAR SESSION
August 7, 2002**

**PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO
SECTION 22-110 WALLS AND FENCES OF THE TOWN CODE**

Planning Director Tim Wilson summarized the Planning and Development staff memo dated July 26, 2002, which read in part as follows:

"At the June 5, 2002 Board of Commissioners meeting, planning staff was directed to prepare proposed zoning amendments to Section 22-110 of the Code, which regulates the construction of fences in residential districts. ~~The proposed amendments would (1) increase the maximum~~ allowed height of a fence in the rearward one-third portion of the side yard from four feet to six feet and (2) to extend the requirements of Section 22-110 to residentially developed properties in other zoning districts (C-1, C-2 and C-4).

Planning Board Recommendation:

At their regular meeting on June 18, 2002 the Planning Board by a 4-0 vote recommended the adoption of the proposed amendments with the following modifications (1) to increase the area of six feet allowable fence height in the side yard from the proposed rearward one-third of the side yard to the rearward one-half of the side yard, and (2) to further amend subsection (f) to specify that in instance where residential lots abut commercial uses or districts that the fence may be increase to six feet in height only along side property lines. This clarification was added due to the fact that an adjoining commercial use could be located directly across a roadway and thereby could potentially allow a six foot tall fence along a front property line by the roadway.

Planning Staff Recommendation:

Staff finds that the proposed amendment is consistent with the Board of Commissioners' request and concurs with the recommendation forwarded by the Planning Board. In further evaluating residential fence issues, staff is additionally recommending amendments specific to conditions determined to be unique to the CR District. In the CR District the *front yard* of the property, being that area between the road and the dwelling, typically functions more as the traditional *rear yard*, in that it

provides an area for accessory buildings and uses such as a safe and secure area for the keeping of pets and children. This type of property use may require a fence with a greater height than the presently permitted four feet. But while there may be a recognizable need by private property owners for uses requiring greater fence height, there is also an equally important and legitimate public need to keep the beach road an attractive, safe and unobstructed environment. To balance these needs, staff is recommending in the CR District that fences located in the *front yard* and frontward one-half of the *side yard* be allowed a six foot maximum height provided that the fence complies with the minimum setback requirements for principle structures of the district (30 feet *front yard* and 8 feet *side yard*).

‘Attached are the proposed amendments to Section 22-110 as recommended by the Planning Board and Planning and Development Staff.’

Notice of the public hearing was published in the *Coastland Times* on Thursday, August 25, 2002, and on Thursday, September 1, 2002, as required by law.

Mayor Muller announced the public hearing open at 10:05 a.m.

There being no one present who wished to speak, Mayor Muller announced the public hearing closed at 10:05 a.m.

Comr. Remaley confirmed with Mr. Wilson that this ordinance does not affect the existing ordinances for pool fences.

Mayor Muller questioned, on a resident's behalf, what would happen if two (2) neighbors installed fences that abut each other. Town Manager Fuller said that this is the type of issue that comes up most often with pool fences. Mayor Pro Tem Farah noted that this would need to be resolved on a case-by-case basis.

Mayor Pro Tem Farah recommended adopting the ordinance “as is” and then monitoring any issues that may occur.

Mayor Muller questioned where this ordinance leaves the existing non-compliant fences; Mr. Wilson explained that the ordinance eliminates the vast majority of nonconformities except in one or two instances.

Mayor Muller questioned if a zoning permit for fences is included in the proposal; Mr. Wilson reported that he has prepared a draft and needs to confer with the town attorney before presenting it to the Board.

MOTION: Mayor Pro Tem Farah made a motion to adopt the ordinance concerning walls and fences with the following modification: In item "F" modify "In instances where a residentially zoned lot abuts on either side of a commercial use" to read "In instances where a residential use abuts on either side of a commercial use ...". The motion was seconded by Comr. Murray.

Mayor Pro Tem Farah confirmed with Town Attorney Ike McRee that this change does not constitute a change of intent of the ordinance.

CONTINUATION OF MOTION: The motion passed unanimously.

A copy of the ordinance concerning walls and fences, as adopted, is attached to and made a part of these minutes as shown in Addendum "E".

~~AN ORDINANCE AMENDING THE CODE OF ORDINANCES~~

OF THE TOWN OF NAGS HEAD, NORTH CAROLINA

BE IT ORDAINED by the Board of Commissioners of the Town of

Nags Head, North Carolina, that the Code of Ordinances shall be amended as follows:

PART I. That **Section 22-110 Walls and fences** be amended to read as follows:

Sec. 22-110. Walls and fences.

- (a) The setback requirements of these regulations shall not prohibit any necessary retaining wall or prohibit any wall or *fence* except as regulated in section 22-109 above.
- (b) Walls and *fences* of wood construction must be constructed so that exposed framing of each section of *fence* faces the interior yard.
- (e) Within any residential district (R-1, R-2, R-3, CR, SED-80, SPD-20, and SPD-C), and within any other district where the existing or proposed principal permitted *use* of the property is *single-family* or *two-family* residential (C-1, C-2 and C-4) no wall or *fence* shall exceed four (4) feet in

height within a *front yard* or the frontward one-half (1/2) portion of the *side yard* or six (6) feet in *height* in a *rear yard* or the rearward one-half (1/2) portion of the *side yard*. In the CR District, a fence located in the *front yard* and frontward one-half (1/2) portion of the *side yard* may be increased to a height not exceeding six (6) feet provided that the fence meets the minimum required *front yard* and *side yard* setback distances established for single-family and duplex uses.

- (f) (d) Within any commercial district, no wall or fence shall exceed ten (10) feet in *height*.
- (e) Fences used in conjunction with any permitted outdoor recreational use shall not exceed ten (10) feet in *height* in any zoning district.
- (f) In instances where a residential use abuts on either side of a commercial use or district, a wall or fence may be allowed up to six (6) feet in *height* along the *side lot line* adjacent to the commercial use or district.

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

PART III. This ordinance shall be in full force and effect from and after the 7th day of August, 2002.

Robert W. Muller, Mayor

ATTEST:

Carolyn F. Morris, Town Clerk

APPROVED AS TO FORM:

Donald I. McRee, Jr., Town Attorney

Date adopted: August 7, 2002

Motion to adopt by Commissioner _____

Motion seconded by Commissioner _____

Vote: _____ AYES _____ NAYS