

ARTICLE IV. - FENCES

Sec. 122-174. - Purpose and applicability.

(a)

The purpose of this article is to regulate the construction, erection, enlargement, alteration and maintenance of all fences within the boundaries of the city in order to allow for privacy and security, maintain the neighborhood appearance and enhance the general welfare of the community, and provide for practical safeguarding of life, health and property from hazards that may arise from improper construction or maintenance of fences.

(b)

This article shall apply in all zoning districts within the city except for fences erected or maintained upon property zoned agricultural district; however, necessary sight visibility triangle standards shall apply within all zoning districts of the city.

(Code 1982, § 34-150; Ord. No. 2005-10-105, §§ 2, 3, 10-18-2005)

Sec. 122-175. - Permits.

(a)

Required.

(1)

It shall be unlawful for any person to install or cause to be installed or to permit any person to install a fence, or to make any alterations, additions or changes to a fence, without first having procured a permit to do so from the chief building official.

(2)

The fee for the permit required by this section shall be as determined from time to time by city council and shall be paid prior to the issuance of the permit.

(3)

The chief building official shall require a plot plan showing the lot size, all improvements on the lot and the proposed location of the fence to be constructed before a permit will be issued under this section.

(4)

The chief building official may refuse to issue a permit under this section to any person who has been convicted of a violation of any provision of this article.

(b)

Inspections required.

(1)

When any fence for which a permit has been issued under this article is completed, it must be inspected by the city for compliance with the applicable construction codes. The chief building official's office shall be notified upon completion of the fence.

(2)

The chief building official will certify acceptance if the fence complies with the provisions of this article or reject the fence if it does not so comply.

(3)

The owner of the property shall be required to remove any noncompliant fence or replace it with a fence that does comply.

(Code 1982, § 34-151; Ord. No. 2005-10-105, §§ 2, 3, 10-18-2005; Ord. No. 2008-08-078, 8-19-2008)

Sec. 122-176. - General standards.

(a)

Fence materials and types.

(1)

Except as otherwise stated herein, fences may be constructed of stone, masonry, brick, wood, PVC, chainlink or other materials of like kind that the chief building official determines have the same quality, appearance and durability.

(2)

Chainlink fences less than five feet in height in residential districts shall have the finished edge of the material on the top of the fence.

(3)

A fence constructed in such a manner that it may conduct electrical current shall not be permitted in any zoning district except the agricultural zoning district.

(4)

Barbed wire fences shall not be permitted in any zoning district except on fence arms in industrial districts.

(5)

Fence arms shall not be permitted in any zoning district except industrial districts. Fence arms may be permitted on fences located in industrial districts so long as they do not extend beyond the property line.

(6)

Any stone, masonry or brick wall or fence constructed of similar materials greater than four feet in height shall be engineered, designed and the plans sealed by a state professional engineer.

(b)

Fence heights.

(1)

Within industrial districts, fences may be constructed to a maximum height of ten feet.

(2)

Front yard setback area fence requirements shall be as follows:

a.

No fence over four feet in height shall be permitted from the front building line to the street right-of-way line;

b.

All fences shall have a minimum of 50 percent through vision in any front yard;

c.

All wire fences are prohibited in front yards in uses other than industrial; and

d.

The lot shall have an existing structure on it or a building permit to construct a structure has been issued.

(3)

Side yard setback area fence requirements shall be as follows: Fences may be constructed to a maximum height of 8½ feet on any side property line up to the building line of the building proper. Within the historic overlay district, the height shall not exceed six feet eight inches.

(4)

Rear yard setback area fence requirements shall be as follows: Fences may be constructed to a maximum height of 8½ feet along the rear property line. Within the historic overlay district, the height shall not exceed six feet eight inches.

(5)

Corner lot fence requirements:

a.

On all corner lots in residential districts which have opposing rear lot lines, whether directly or across an alley, fences may be constructed to a maximum height of 8½ feet along the side and rear yard lines, as shown in figures 1 and 2. Fences may be constructed to the normally permitted height elsewhere on the property.

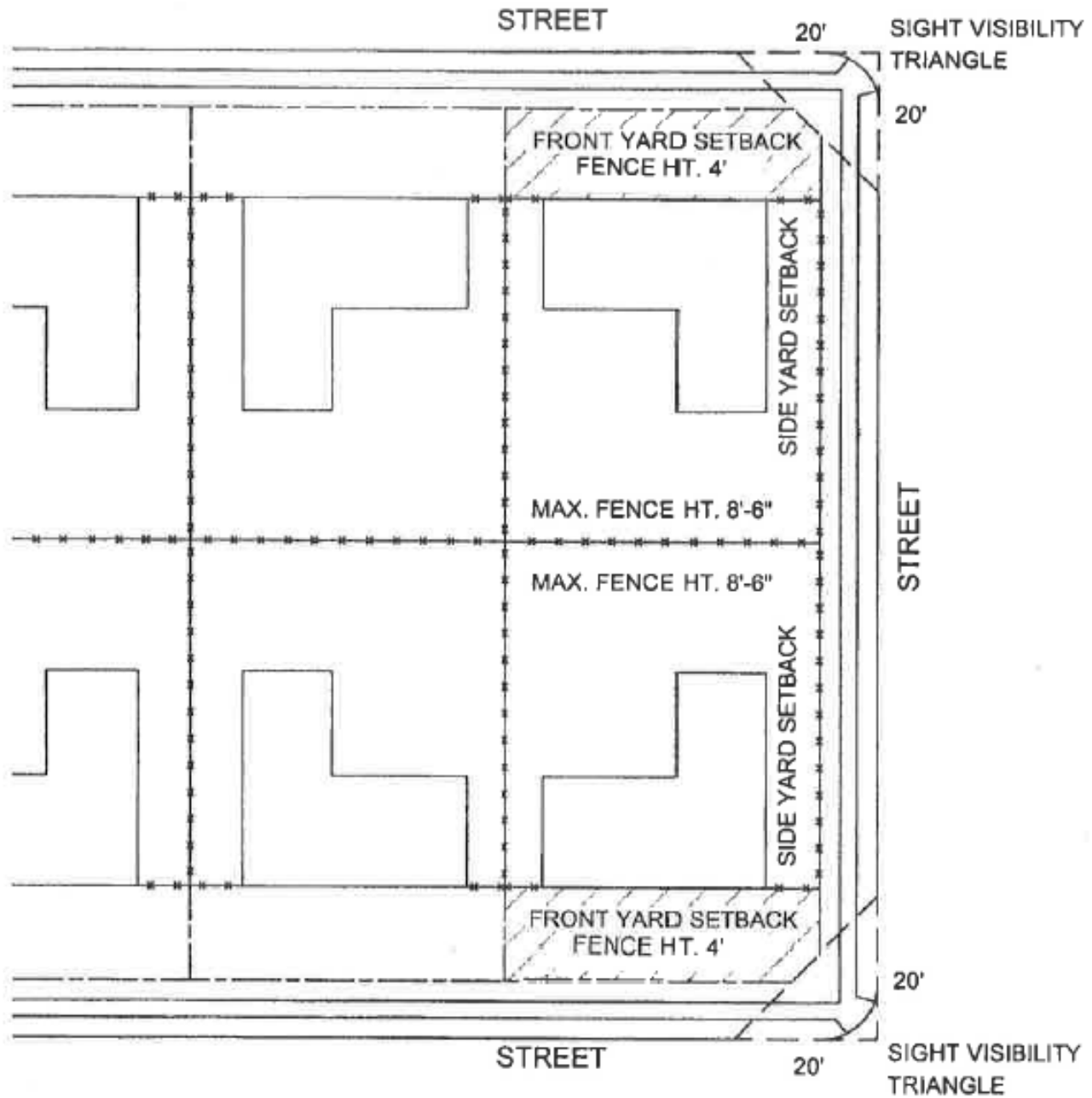


Figure 1

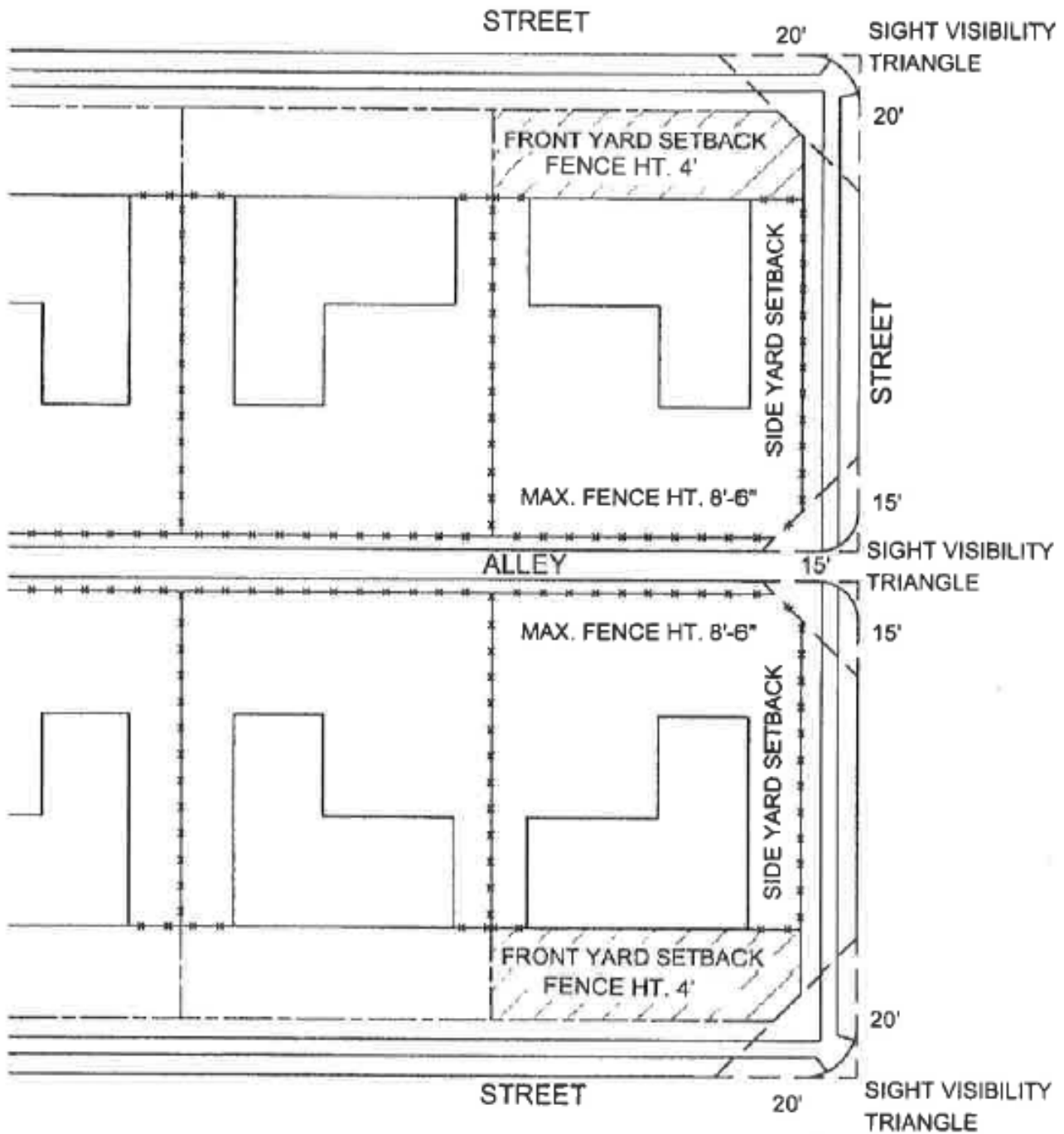


Figure 2

b.

On all corner lots in residential districts where the side lot line is immediately adjacent to the front yard of the adjacent lot (or immediately across an alley from the front yard of the adjacent lot), fences may be constructed to a maximum height of four feet between the side yard setback line and the property line adjacent to the street, as shown in figures 3 and 4, except that wrought iron fences may be constructed up to six feet in height if it does not create a sight distance issue or safety concern in the opinion of the chief building official or city engineer. Fences may be constructed to the normally permitted height elsewhere on the property.

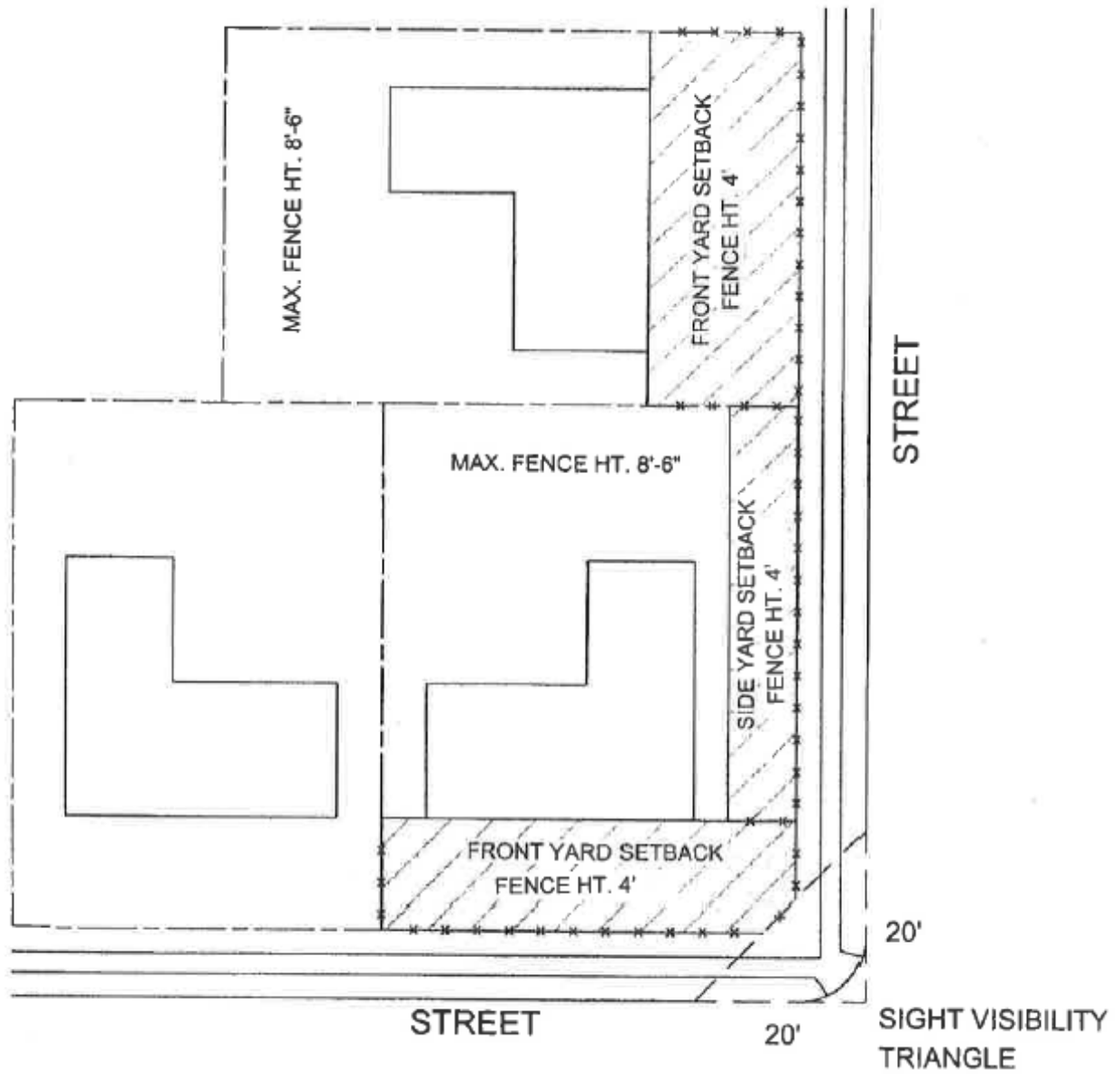


Figure 3

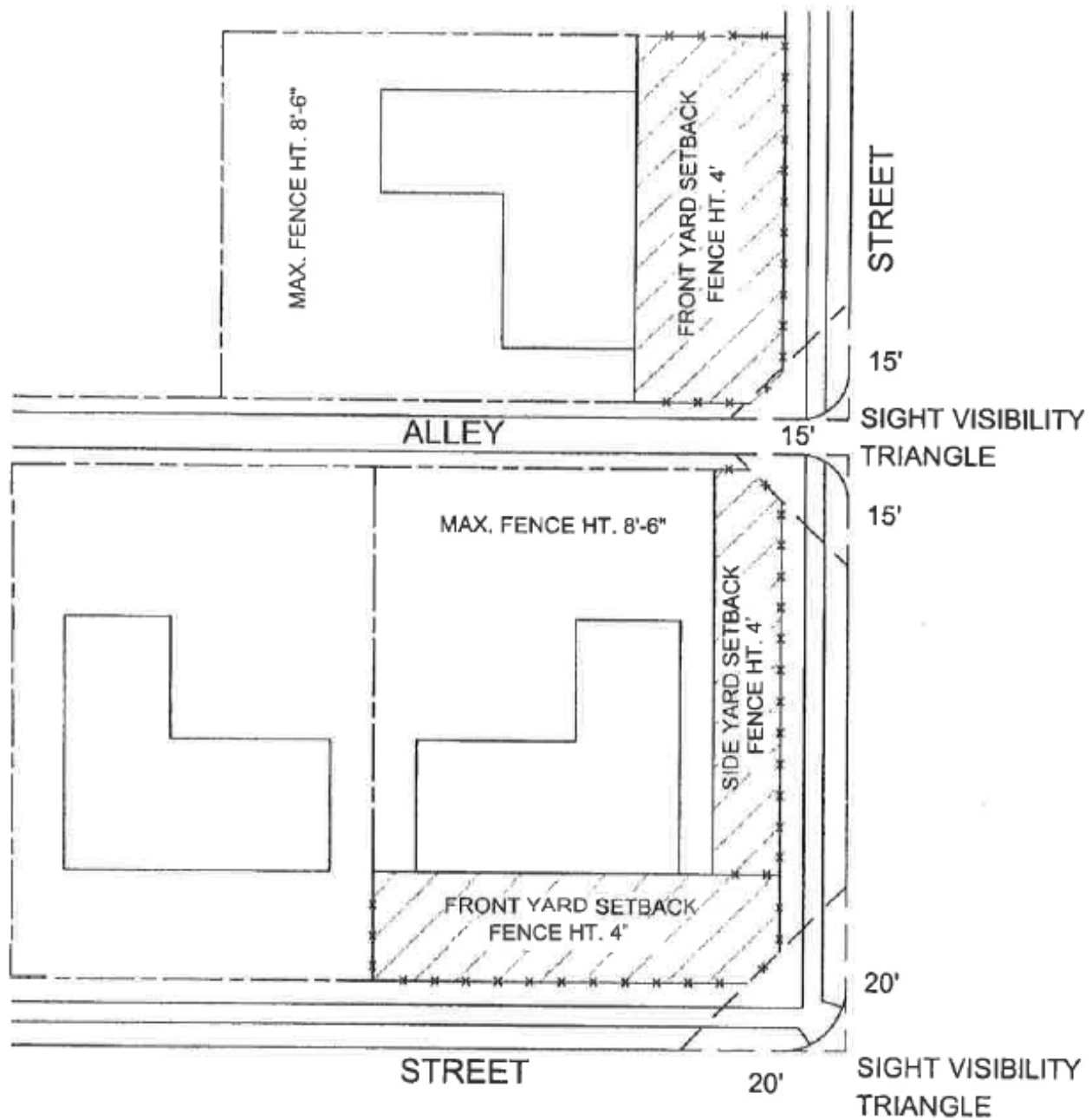


Figure 4

(6)

No fence adjacent to a required subdivision screening wall, whether parallel or perpendicular to the wall, may be constructed higher than the height of the subdivision screening wall unless granted a special exception by the board of adjustment as provided for in [section 122-178](#).

(7)

Fences around tennis courts, regardless of the district in which they are located, shall be constructed between ten and 12 feet in height. Such fences shall be chain link or other open view material so as to minimize the visual impact of the fence. Fence arms shall not be allowed on tennis court fences.

(c)

Other fence standards.

(1)

Sight visibility at intersections. No fence shall be constructed in the triangle formed by measuring 20 feet back from the intersection of two streets or 15 feet back from the intersection of a street and an alley. The city engineer may require additional sight distances to be maintained where specific conditions render such provisions necessary to provide for the public health and safety.

(2)

Construction within drainage easements. No fence shall be constructed within any drainage easement in the corporate limits of the city unless the city engineer shall have first determined and advised the chief building official, in writing, that he believes such fence shall, in all probability, not interfere with or impair the natural flow of water across the drainage easement.

(3)

On or over city property. No privately owned fence or guy wires, braces or any other part of a privately owned fence shall be constructed upon or caused to protrude over property owned by the city.

(4)

Gate required. Every fenced enclosure constructed under the provisions of this article shall have at least one gate in its perimeter.

(Code 1982, § 34-152; Ord. No. 2005-10-105, §§ 2, 3, 10-18-2005; Ord. No. 2007-12-131, § 2, 12-18-2007; Ord. No. 2016-03-019, §§ 2—4, 3-15-2016)

Sec. 122-177. - Swimming pool enclosures.

(a)

All swimming pools shall comply with the following:

(1)

Residential pools shall conform with the International Residential Code for pool fencing standards, as amended; and

(2)

Public pools, including homeowners association and apartment complex pools, shall conform with V.T.C.A., Health and Safety Code ch. 757, as amended.

(b)

Every swimming pool, or excavation designed or intended to ultimately become a swimming pool, while under construction as well as after completion, shall be continuously protected by an enclosure

surrounding the pool or excavated area in such a manner as to make such pool or excavated area reasonably inaccessible to small children or animals. This provision shall not apply to:

(1)

Bodies of water other than swimming pools that are owned or controlled by the federal government, state, county or any agency, subdivision or department thereof; and

(2)

Bodies of water located in natural drainageways.

(c)

All plans submitted to the city for swimming pools to be constructed shall show compliance with the requirements of this section, and the final inspection and approval of all pools constructed shall be withheld until all requirements of this section have been complied with by the owner, purchaser under contract, lessee, tenant or licensee.

(Code 1982, § 34-153; Ord. No. 2005-10-105, §§ 2, 3, 10-18-2005)

Sec. 122-178. - Special exceptions.

(a)

The board of adjustment may grant a special exception that will allow a fence up to a maximum height of 8½ feet for a fence that is adjacent to a required subdivision wall; provided that the board finds that:

(1)

The lot has unusual topographical conditions that distinguish it from other similarly sized and shaped lots, and where such conditions create a hardship that renders privacy inadequate without such relief; and

(2)

The following required provisions have all been met:

a.

The lot shall have an existing residential structure on it or a building permit to construct a residential structure has been issued;

b.

The subject property shall not be located within the historic overlay district;

c.

The subject fence shall not be a corner lot fence as provided for in [section 122-176\(b\)\(5\)](#); and

d.

Such fences shall be constructed of either:

1.

Stained wood, board-on-board construction or double-sided construction, with a stained trim cap and steel posts; or

2.

An engineered brick, stone or masonry wall in a color and style that is consistent with and compatible with the surrounding vicinity.

(b)

A special exception is only appropriate for those sides of a fence that meet the requirements set out herein above. A hardship may be found regardless of when the unusual condition was created.

(c)

The board of adjustment may grant a special exception that will allow a fence up to a maximum height of six feet for a fence that is situated between the front building line and the street right-of-way line of a lot (a "front yard fence") provided that the board finds that:

(1)

The subject property shall not be located within the historic overlay district;

(2)

A front yard fence shall not be a corner lot fence as provided for in [section 122-176\(b\)\(5\)](#);

(3)

The lot shall have an existing structure on it or a building permit to construct a structure has been issued;

(4)

All fences shall have a minimum of 50 percent through vision in any front yard;

(5)

The six-foot front yard fences must be consistent and appropriate to the area they are proposed.

(Code 1982, § 34-154; Ord. No. 2005-10-105, §§ 2, 3, 10-18-2005; Ord. No. 2016-03-019, § 5, 3-15-2016)

Sec. 122-179. - Maintenance.

All fences constructed under the provisions of this article shall be maintained so as to comply with the requirements of this article at all times. The chief building official may order the repair or removal of a fence if it is more than five percent damaged or leaning ten degrees from the vertical. Fences shall be repaired in compliance with the provisions of this article.

(Code 1982, § 34-155; Ord. No. 2005-10-105, §§ 2, 3, 10-18-2005)

Sec. 122-180. - Appeals.

Any appeal from an interpretation of the chief building official of the provisions of this article shall be made to the board of adjustment.

(Code 1982, § 34-156; Ord. No. 2005-10-105, §§ 2, 3, 10-18-2005)

Sec. 122-181. - Sidewalk use and fence permits.

(a)

Type A sidewalk use and fence permits. Type A sidewalk use and fence permits shall be issued in accordance with all of the following requirements:

(1)

The holder of a valid Texas Alcoholic Beverage Code permit must apply for and receive a type A sidewalk use and fence permit pursuant to the process established by the city secretary.

(2)

The permit applicant must be the owner or lessor of a business located within the type A sidewalk use and fence permit zone.

(3)

For purposes of this section, the zone in which a type A sidewalk use and fence permit may be applied for and granted is hereby set forth in figure 5 below.



Figure 5

(4)

A 36-inch tall fence is required around the sidewalk use permit area and must receive a written determination of suitability from the city town center development coordinator prior to installation.

(5)

Signage must be posted indicating that alcoholic beverages may not be removed from the fenced area.

(6)

The sidewalk use and fence permit area shall be monitored by an employee at all times to ensure that no alcoholic beverages are removed from the sidewalk use permit area.

(7)

The sidewalk use and fence permit area must maintain a minimum five-foot wide free and clear pedestrian path between the face of the enclosure and the back of the curb unless otherwise approved,

on a case-by-case basis, by the town center development coordinator or as specifically described in figure 7 below.

(8)

The city secretary may revoke a sidewalk use permit at any time. A person/business aggrieved by the revocation of a sidewalk use and fence permit may appeal the revocation to the city manager, whose decision shall be final.

(9)

A sidewalk use and fence permit shall expire on the date specified in the executed sidewalk lease agreement, but may be renewed without the necessity of complying with the application process set forth in subsection (a)(1) of this section, if the permit holder has not plead guilty or no contest to and/or has not been convicted of any alleged violation of this section.

(b)

Type B sidewalk use and fence permits. Type B sidewalk use and fence permits shall be issued in accordance with all of the following requirements:

(1)

The holder of a valid food service establishment permit pursuant to [section 46-2\(c\)](#) of the Code of Ordinances of the City of McKinney, Texas for which the primary function of the business is the sale and consumption of food must apply for and receive a type B sidewalk use and fence permit pursuant to the process established by the city secretary.

(2)

The permit applicant must be the owner or lessor of a food service establishment located within the type B sidewalk use and fence permit zone.

(3)

For purposes of this section, the zone in which a type B sidewalk use permit may be applied for and granted is hereby set forth in figure 6 below.



Figure 6

(4)

Barriers shall be erected to enclose the sidewalk use permit area and must receive a written determination of suitability from the city town center development coordinator prior to installation. Said barriers may include but not be limited to, fencing that reaches a height of 36 inches, or benches or other barriers that reach a minimum of 20 inches in height and a maximum of 42 inches in height. Living plant screens shall not be an acceptable barrier material.

(5)

The sidewalk use and fence permit area must maintain a minimum five-foot wide free and clear pedestrian path between the face of the barrier and the back of the curb unless otherwise approved, on a case-by-case basis, by the town center development coordinator or as specifically described in figure 7 below.

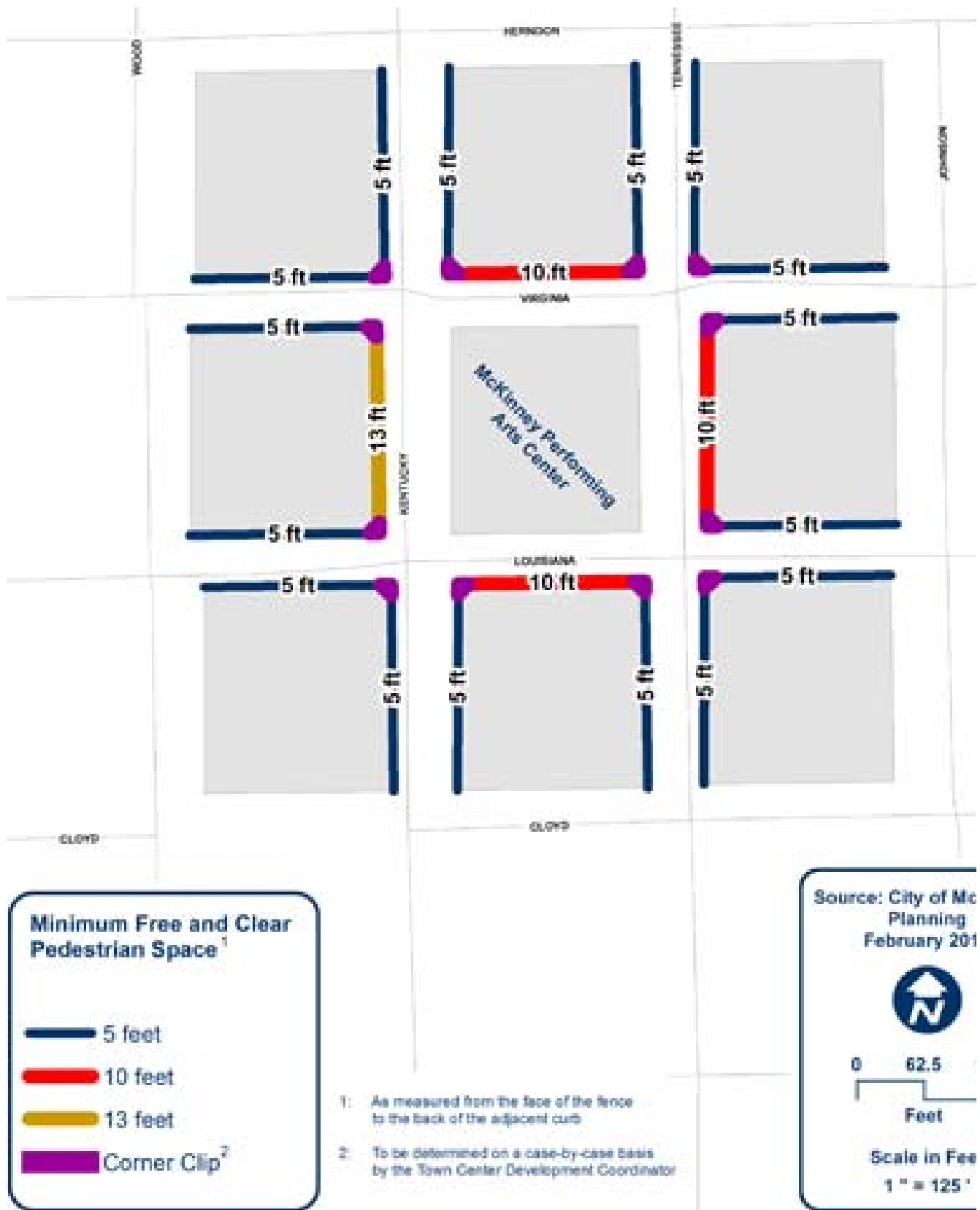


Figure 7

(6)

Signage must be posted indicating that alcoholic beverages are not allowed within the sidewalk use and fence area.

(7)

The sidewalk use and fence permit area shall be monitored by an employee to ensure that no alcoholic beverages are brought into the sidewalk use and fence permit area.

(8)

The city secretary may revoke a sidewalk use and fence permit at any time. A person/business aggrieved by the revocation of a sidewalk use permit may appeal the revocation to the city manager, whose decision shall be final.

(9)

A sidewalk use and fence permit shall expire on the date specified in the executed sidewalk lease agreement, but may be renewed without the necessity of complying with the application process set forth in subsection (b)(1) of this section if the permit holder has not plead guilty or no contest to and/or has not been convicted of any alleged violation of this section.

(Ord. No. 2014-03-013, § 3, 3-4-2014)