

ORDINANCE NO. 2016-03-\_\_\_\_\_

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, AMENDING THE CODE OF ORDINANCES OF THE CITY OF MCKINNEY, TEXAS, THROUGH THE AMENDMENT OF CHAPTER 122, ENTITLED "CONSTRUCTION REGULATIONS," THROUGH THE AMENDMENT OF ARTICLE IV, "FENCES," BY AMENDING SECTION 122-176, "GENERAL STANDARDS," BY AMENDING SUBPARAGRAPHS (b)(2) AND (b)(5) AND REPLACING FIGURES 1 THROUGH 4 TO INCREASE THE HEIGHT OF FENCES ALLOWED TO BE CONSTRUCTED IN THE FRONT YARD SETBACK BY RIGHT FROM 2-½ FEET TO 4 FEET, AND BY AMENDING SECTION 122-178, "SPECIAL EXCEPTIONS, TO ADD A NEW SUBPARAGRAPH (c) TO ALLOW A SPECIAL EXCEPTION TO BE GRANTED FOR FRONT YARD FENCES OF UP TO 6 FEET IN HEIGHT PROVIDED CERTAIN CONDITIONS ARE FULFILLED; REPEALING ALL CONFLICTING ORDINANCES; PROVIDING A SEVERABILITY CLAUSE; RESERVING ALL EXISTING RIGHTS AND REMEDIES; PROVIDING FOR IMMUNITY; PROVIDING FOR INJUNCTIONS; PROVIDING FOR THE PUBLICATION OF THE CAPTION OF THIS ORDINANCE; AND PROVIDING FOR AN EFFECTIVE DATE

**WHEREAS**, the City of McKinney, Texas, (the "City") is a Home-Rule City possessing the full power of local self-governance pursuant to Article XI, Section 5 of the Texas Constitution, Section 51.072 of Texas Local Government Code and its Home Rule Charter; and

**WHEREAS**, the City Council has recognized that certain provisions of the Code of Ordinances should be reviewed and updated from time to time; and

**WHEREAS**, the City Council of the City of McKinney, Texas, finds and determines that it is in the best interest of the public health, safety and general welfare of the citizens of McKinney, Texas, to amend Section 122-76, "General Standards," by amending subparagraphs (b)(2)a and (b)(5) and replacing Figures 1 through 4 to increase the height of fences allowed to be constructed in the front yard setback by right from 2-½ feet to 4 feet, and by amending Section 122-178, "Special Exceptions, to add a new subparagraph (c) to allow a special exception to be granted for front yard fences of up to 6 feet in height provided certain conditions are fulfilled.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, THAT:**

Section 1. **FINDINGS**

All of the above premises are found to be true and correct and are incorporated into the body of this Ordinance as if set forth in their entirety.

Section 2. **AMENDMENT OF CHAPTER 122 ENTITLED "CONSTRUCTION REGULATIONS," THROUGH THE AMENDMENT OF ARTICLE IV, "FENCES," BY AMENDING SECTION 122-176, "GENERAL STANDARDS," BY AMENDING SUBPARAGRAPH (b)(2) TO INCREASE THE HEIGHT OF FENCES ALLOWED TO BE CONSTRUCTED IN THE FRONT YARD SETBACK BY RIGHT FROM 2-½ FEET TO 4 FEET**

From and after the effective date of this Ordinance, Chapter 122, entitled "Construction Regulations," is hereby amended through the amendment of Article IV, "Fences," by amending Section 122-76, "General Standards," by deleting existing subparagraph (b)(2) in its entirety and replacing said subparagraph with a new (b)(2) to read as follows:

“(b) Fence heights.

.....

(2) Front yard setback area fence requirements shall be as follows:

- a. No fence over 4 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.”

Section 3. **AMENDMENT OF CHAPTER 122 ENTITLED “CONSTRUCTION REGULATIONS,” THROUGH THE AMENDMENT OF ARTICLE IV, “FENCES,” BY AMENDING SECTION 122-176, “GENERAL STANDARDS,” BY AMENDING SUBPARAGRAPH (b)(5)b TO INCREASE THE HEIGHT OF FENCES ALLOWED TO BE CONSTRUCTED IN THE FRONT YARD SETBACK BY RIGHT FROM 2-½ FEET TO 4 FEET**

From and after the effective date of this Ordinance, Chapter 122, entitled “Construction Regulations,” is hereby amended through the amendment of Article IV, “Fences,” by amending Section 122-76, “General Standards,” by deleting existing subparagraph (b)(5)b in its entirety and replacing said subparagraph with a new (b)(5)b to read as follows:

“(b) Fence heights.

.....

(5) Corner lot fence requirements:

.....

- 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 4 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 6 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.”

Section 4. **AMENDMENT OF CHAPTER 122 ENTITLED “CONSTRUCTION REGULATIONS,” THROUGH THE AMENDMENT OF ARTICLE IV, “FENCES,” BY AMENDING SECTION 122-176, “GENERAL STANDARDS,” BY AMENDING FIGURES 1 THROUGH 4 TO INCREASE THE HEIGHT OF FENCES ALLOWED TO BE CONSTRUCTED IN THE FRONT YARD SETBACK BY RIGHT FROM 2-½ FEET TO 4 FEET**

From and after the effective date of this Ordinance, Chapter 122, entitled “Construction Regulations,” is hereby amended through the amendment of

Article IV, "Fences," by amending Section 122-76, "General Standards," by deleting existing Figures 1 through 4 in their entirety and replacing said figures with new Figures 1 through 4 attached hereto as Exhibits 1 through 4, respectively, and incorporated herein by reference for all purposes allowed by law. Said new Figures 1 through 4 shall be inserted in the same places at which the existing Figures 1 through 4 were previously inserted in Section 122-176.

Section 5. **AMENDMENT OF CHAPTER 122 ENTITLED "CONSTRUCTION REGULATIONS," THROUGH THE AMENDMENT OF ARTICLE IV, "FENCES," BY AMENDING SECTION 122-178, "SPECIAL EXCEPTIONS, TO ADD A NEW SUBPARAGRAPH (c) TO ALLOW A SPECIAL EXCEPTION TO BE GRANTED FOR FRONT YARD FENCES OF UP TO 6 FEET IN HEIGHT PROVIDED CERTAIN CONDITIONS ARE FULFILLED**

From and after the effective date of this Ordinance, Chapter 122, entitled "Construction Regulations," is hereby amended by amending Article IV, "Fences" by amending 122-178, "Special Exceptions," to add a new Subparagraph (c) to read as follows:

"(c) The board of adjustment may grant a special exception that will allow a fence up to a maximum height of 6 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 6-foot front yard fences must be consistent & appropriate to the area they are proposed."

Section 6. **REPEALER CLAUSE**

This Ordinance shall be cumulative of all other ordinances of the City and shall not repeal any of the provisions of said ordinances except in those instances where provisions of those ordinances are in direct conflict with the provisions of this Ordinance and such ordinances shall remain intact and are hereby ratified, verified and affirmed.

Section 7. **SEVERABILITY CLAUSE**

If any section, article, paragraph, sentence, clause, phrase or word in this Ordinance, or application thereof to any person or circumstance, is held invalid or unconstitutional by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portions of the Ordinance, and the City Council hereby declares it would have passed such remaining portions of the Ordinance despite such invalidity, which remaining portions shall remain in full force and effect.

Section 8. **RESERVATION OF EXISTING RIGHTS AND REMEDIES**

All rights and remedies of the City of McKinney are expressly saved as to any and all violations of the provisions of any Ordinances which have accrued at the time of the effective date of this Ordinance; and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such Ordinances, same shall not be affected by this Ordinance but may be prosecuted until final disposition by the courts.

Section 9. **IMMUNITY**

All of the regulations provided in this ordinance are hereby declared to be governmental and for the health, safety and welfare of the general public. Any member of the City Council or any City official or employee charged with the enforcement of this ordinance, acting for the City of McKinney in the discharge of his duties, shall not thereby render himself personally liable; and he is hereby relieved from all personal liability for any damage that might accrue to persons or property as a result of any act required or permitted in the discharge of his said duties.

Section 10. **INJUNCTIONS**

Any violation of this ordinance can be enjoined by a suit filed in the name of the City of McKinney in a court of competent jurisdiction, and this remedy shall be in addition to any penal provision in this ordinance or in the Code of the City of McKinney.

Section 11. **PENALTY**

Any person, firm or corporation violating any of the provisions of this ordinance shall be subject to the penalty provisions set forth in Chapter 126 of the McKinney Code of Ordinances; and each and every day such violation shall continue shall be deemed to constitute a separate offense.

Section 12. **PUBLICATION**

The caption of this Ordinance shall be published one time in a newspaper having general circulation in the City of McKinney following the City Council's adoption hereof as provided by law.

Section 13. **EFFECTIVE DATE**

This Ordinance shall become effective from and after the date of its final passage and publication as provided by law, and it is accordingly so ordained.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MCKINNEY, TEXAS, ON THE 15<sup>TH</sup> DAY OF MARCH, 2016.**

CITY OF MCKINNEY, TEXAS

\_\_\_\_\_  
BRIAN LOUGHMILLER  
Mayor

CORRECTLY ENROLLED:

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SANDY HART, TRMC, MMC  
City Secretary  
DENISE VICE, TRMC  
Assistant City Secretary

DATE: \_\_\_\_\_

APPROVED AS TO FORM:

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MARK S. HOUSER  
City Attorney

Exhibit 1

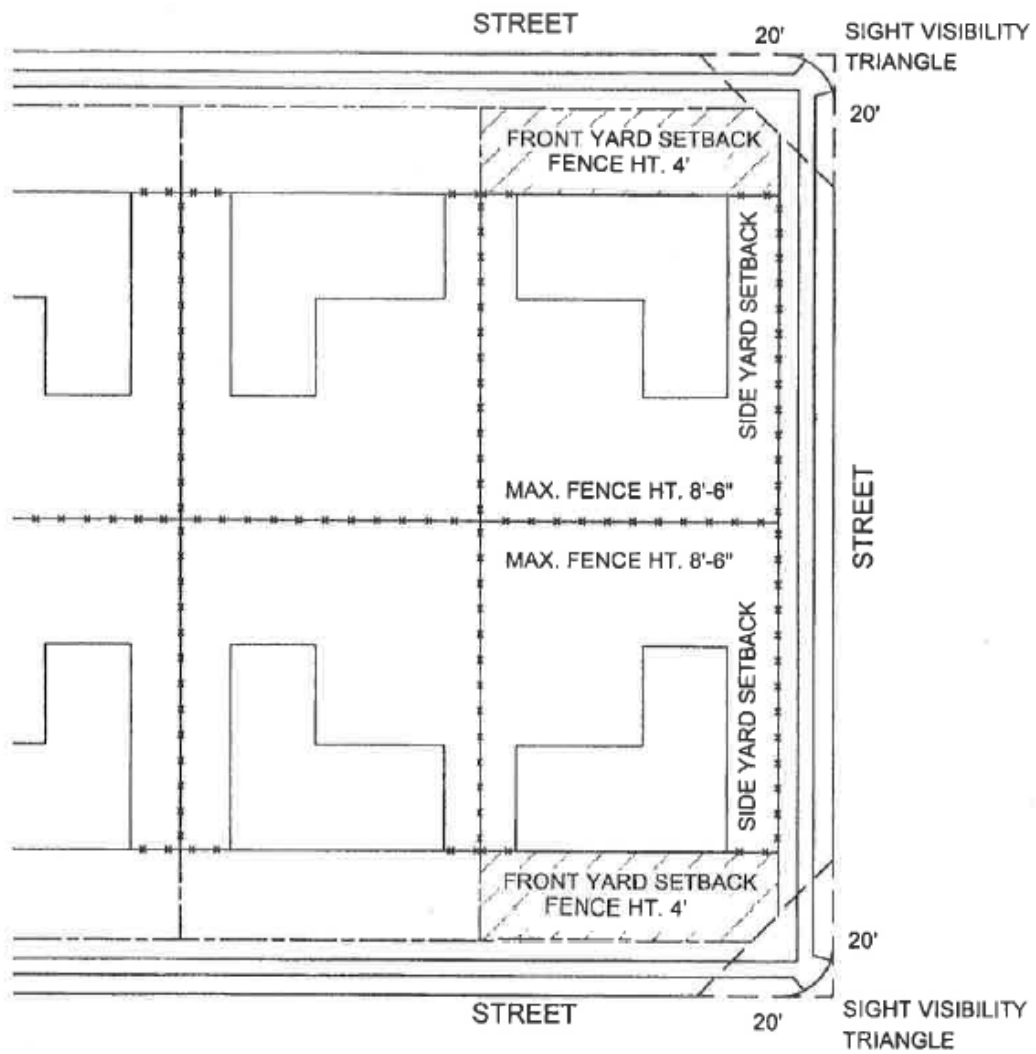


Figure 1

Exhibit 2

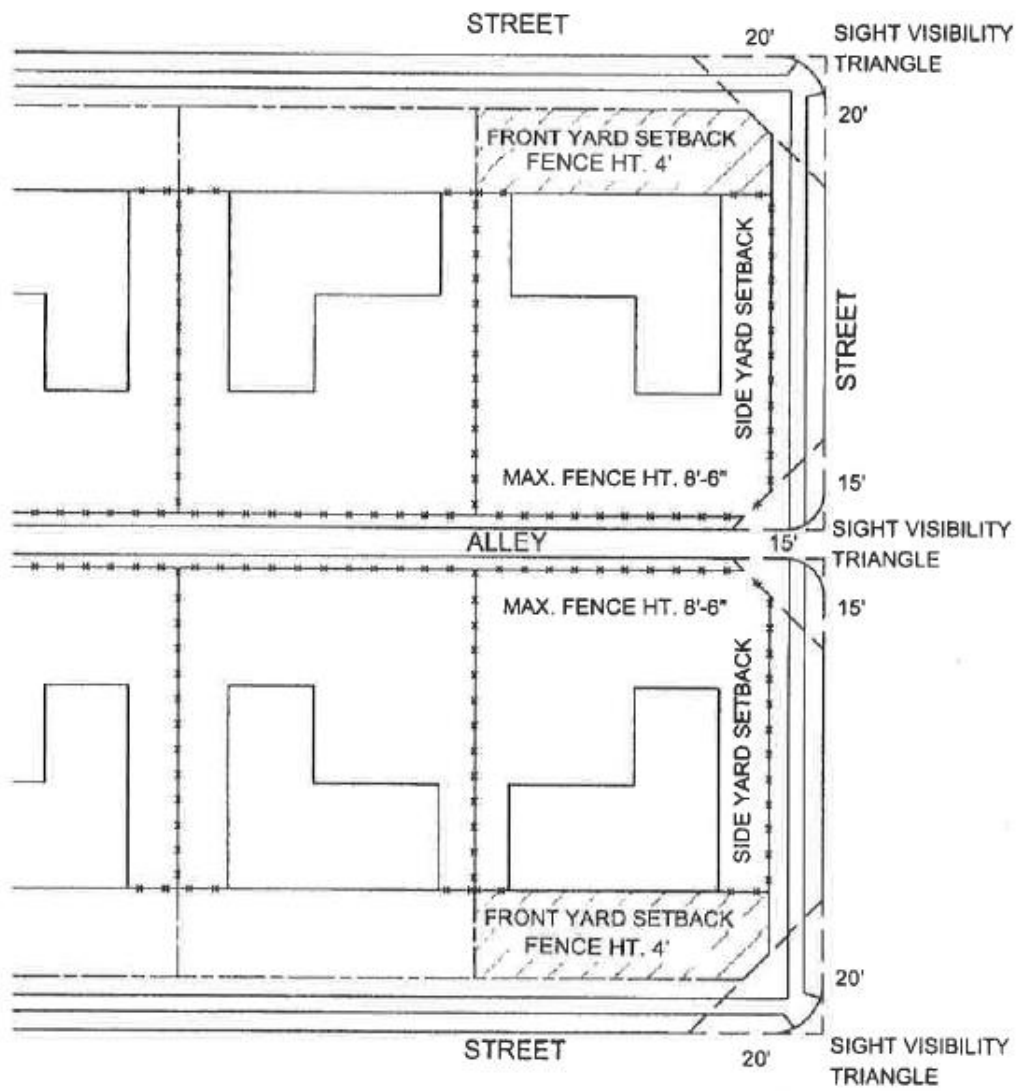


Figure 2

Exhibit 3

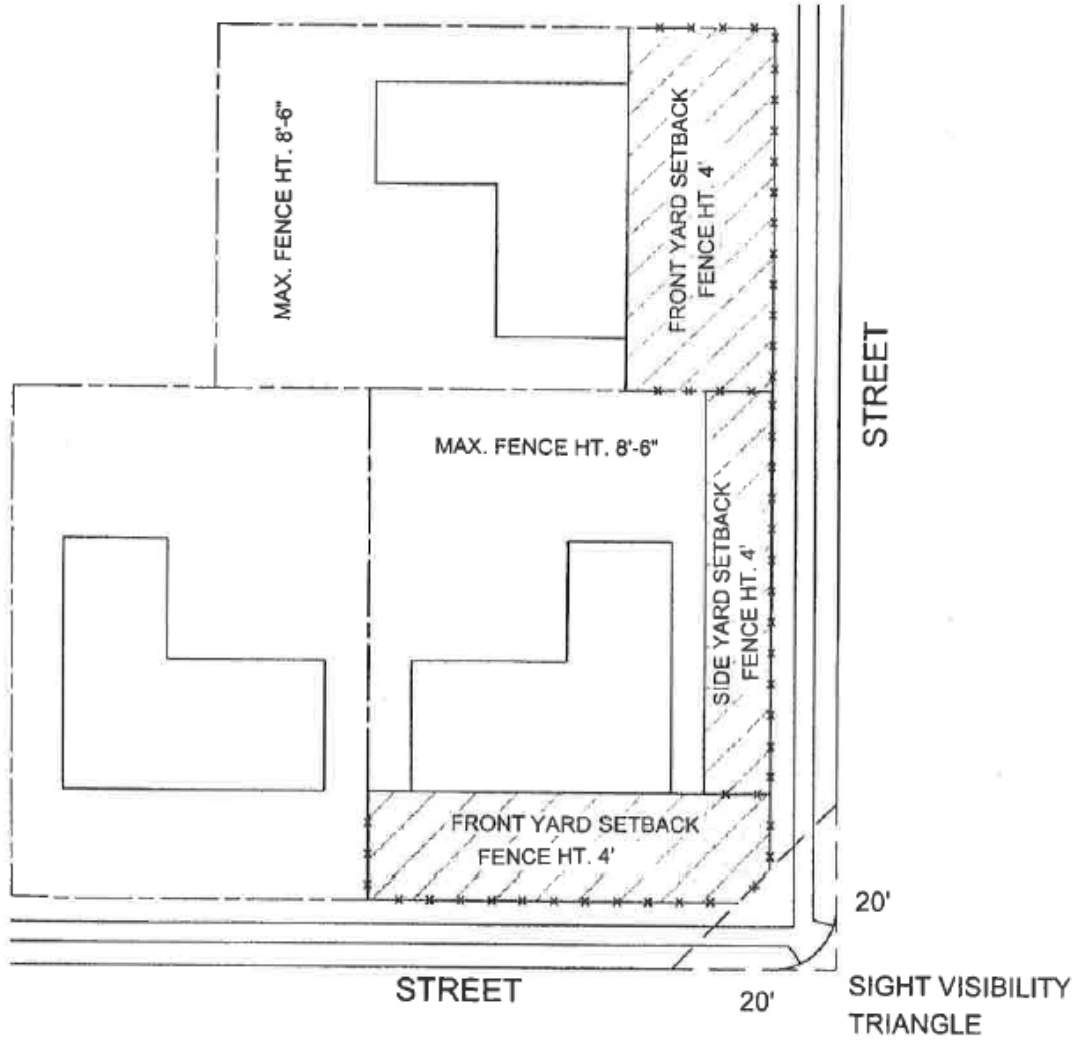


Figure 3



Exhibit 4

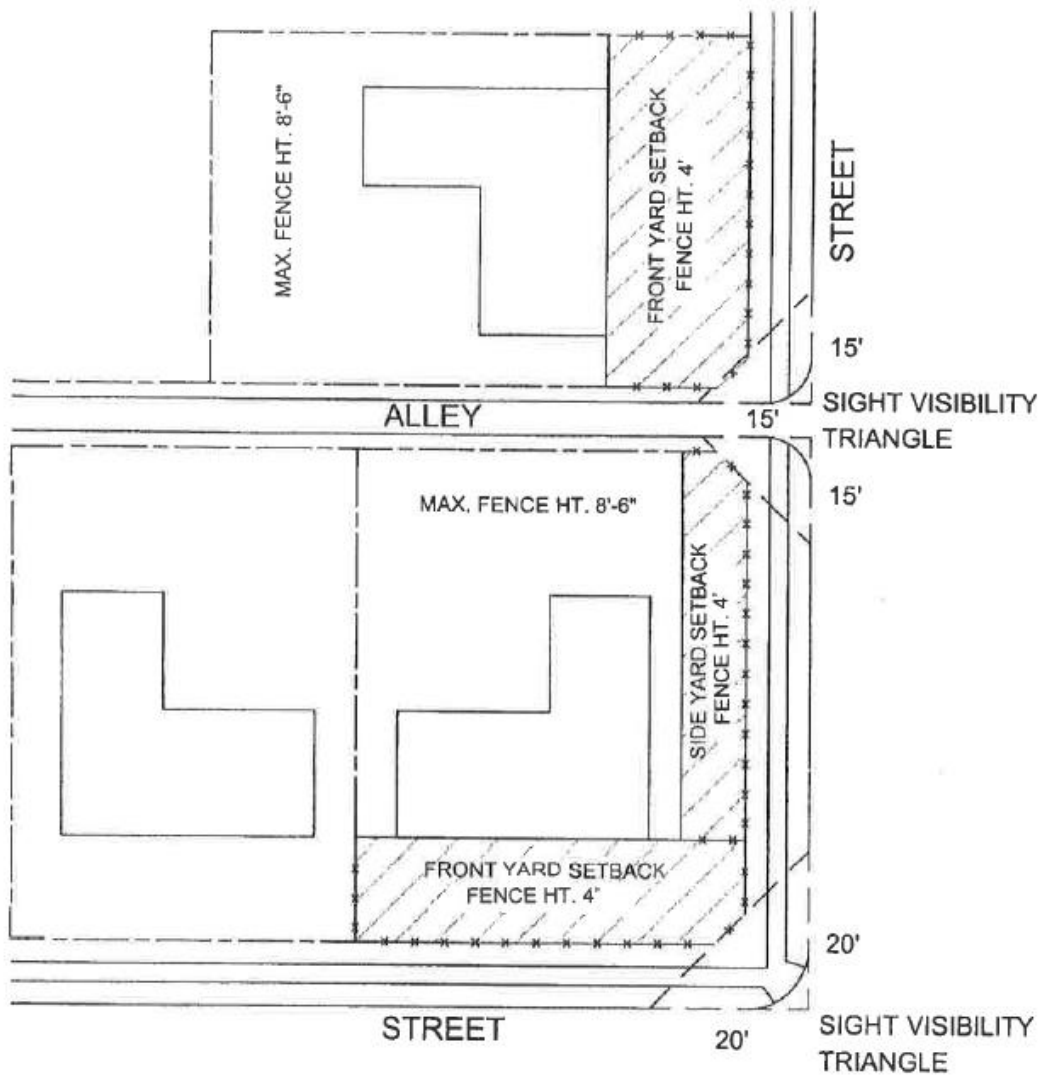


Figure 4