ATTACHMENT A

A RESOLUTION RECEIVING THE REPORT ON FENCING
No. 77/2012-13

WHEREAS, in November of 2011 the Town received a request to revisit the regulations related to fencing in residential zoning districts; and,

WHEREAS, Town staff presented a report on the current requirements and their history.

NOW, THEREFORE, BE IT RESOLVED by the Carrboro Board of Aldermen that the Board receives the report on the current requirements related to fencing.

BE IT FURTHER RESOLVED that the Board directs staff to:

1. _____
2. _____
3. _____

This is the 22nd day of January in the year 2013.

TOWN OF CARRBORO

NORTH CAROLINA

TRANSMITTAL **PLANNING DEPARTMENT**

DELIVERED VIA: ☒ *HAND* ☐ *MAIL* ☒ *FAX* ☐ *EMAIL*

To: **David Andrews, Town Manager**
Mayor and Board of Aldermen

From: **Christina R. Moon, Planning Administrator**

Date: **January 16, 2013**

Subject: **Review of Regulations Relating to Fences**

BACKGROUND

Over the years, the Board has considered fencing on several occasions, most notably during a four-year period in the mid- to- late 1990s, which began when the developers of the Berryhill subdivision requested permission to construct a fence along Smith Level Road. Discussion focused on whether to allow fencing along the rear property line of lots in subdivisions that bordered public rights-of-way, "double front lots."

At that time, the Land Use Ordinance (LUO) referenced fences in two places. Section 15-184(a)(3) provided a definition for structures subject to setback requirements based on two criteria, the extent to which they constitute a visual obstruction, or to which they generate activity similar to that usually associated with a building. Per Subsection 15-184(a)(3)(b), fences, running along lot boundaries adjacent to public street rights-of-way are subject to building setbacks if such fences, exceed three feet in height and are substantially opaque. Sections 15-307 and 15-308 in Article XIX, Screening and Trees, also spoke to fences as a structural alternative to vegetation that could be used to meet the requirements of an Opaque Screen, Type-A, a "screen that is opaque from the ground to a height of a least six feet . . . may be composed of a wall, fence, landscaped berm . . ." The Type-A screen is the most stringent of the three types of screens established to provide a separation between different types of land uses.

Discussion extended over multiple meetings, during which time the following key points emerged.

- The intent of Section 15-184(a)(3)(b) was to prevent fences from becoming a visual obstruction to drivers. It did not take into account the construction of fences along the rear boundary of "double front" lots.

- The establishment of gated communities was deemed undesirable. Any substantial feature--—i.e., privacy walls, fences, and steep earth berms--installed as a physical and visual barrier between a development and public rights-of-way was considered objectionable.
- Earth berms of a certain height and size should also be considered as a "building" and subject to building setback requirements.

At a May 19, 1998 public hearing, the LUO was amended in four areas:

1) Section 15-149, Permissible Uses and Specific Exclusions, was modified to include a new subsection 15-149(c)(5) to read: "Construction by the developer of a major residential subdivision of an opaque fence, wall, or berm more than three feet in height around any portion of the periphery of such subdivision, except where such fence, wall or berm is designed to shield the residents of such subdivision from the adverse effects of any adjoining nonresidential use other than a street. Notwithstanding the foregoing, a berm of more than three but less than four feet in height shall be allowed under the foregoing circumstances where (i) the side slopes of the berm are constructed at a steepness ration of 4:1 to 6:1 and (ii) the average height of the berm does not exceed three feet."
2) Section 15-154(a)(3)(b) was modified to allow fences along public-rights-of-way for the rear side of lots with "double frontage," street frontage along two public rights-of-way. "Fences, walls or berms running along lot boundaries adjacent to public street rights-of-way if such fences, walls or berms exceed three feet in height and are substantially opaque except that fences, walls or berms shall not be regarded as "buildings" within the meaning of this subsection if they are located along the rear lot line of lots that have street frontage along both the front and rear of such lots."
3) Section 15-15, Definition of Basic Terms, was amended with the following new definition for a berm: "Berm. A man made mound of earth whose length exceeds its height by a factor of at least five and whose side slopes are constructed at a steepness ratio of 6:1 or steeper. (The side slope of a berm shall not be constructed steeper than 2:1.)
4) Subsection 15-184(d) was amended to include the following sentence. "Setbacks for berms shall be measured from the property line or street centerline to a point on the berm where it exceeds three feet in height."

In 1999, the LUO was further amended in two areas related to fences. On May 25, 1999, a new subsection 15-149(c)(6) was added to read, "Construction of gates that prevent access to private roads serving five or more lots or dwelling units." Subsequently on August 24, 1999, subsection 15-149(c)(5) was further amended with the following additional sentence, "For the purposes of this subsection, the term "developer" includes any entity that is under the control of the developer, including a homeowners association that is under the developer's control.

Amendments to the LUO adopted in the late 1990s also included minor references to fences. Section 15-177, Architectural Standards for Subdivisions Containing Four or More Single-Family Detached Residents, speaks to fences as they relate to screening and building design elements. Section 15-176, Towers and Antennas, also speaks to fences related to screening.

For the most part, however, discussion regarding fences has focused on two issues: the potential impact of a tall and opaque structure to impact visibility along a public right-of-way, and the potential for the physical structure of a fence to enclose a subdivision and create a gated community. Fences have also been recognized, to a lessor degree, for their aesthetic value in screening undesirable views such as large utility towers and antennas and individual HVAC systems.

CHANGING TRENDS TOWARD THE USE OF FENCES

Property owners who inquire about the regulations pertaining to fences are referred to Subsection 15-184(a)(3) to determine if their proposal is subject to building setbacks. Fences that are greater than three feet in height and opaque are considered a "building" and subject to building setbacks along public rights-of-way; such fences may be constructed so long as they are positioned outside of the setback. Fences may be constructed and installed along the lot boundary lines without regard to height or density, and per the 1998 amendment, fences may be installed along the rear boundary line of double-front lots without regard to height and density. See-through fences—chain link fences, wood fences with space between the pickets and lattice type fences may be placed parallel to a public right-of-way without regard to the setback.

In 2009 the Town received special legislation to restrict new subdivisions from using covenants to limit the use of energy conserving measures based on aesthetics. Subsequently, in 2011, the Town adopted a new amendment to the LUO, Section 15-83.3, Covenants May Not Prohibit Devices that Generate or Conserve Energy or Water. Subsection 15-83.3(b) prevents plat approval for residential lots restricted from technological devices designed to generate or conserve energy, including, garden fences. The key subsection of the amendment reads, "Final plat approval for such subdivision may not be granted if the covenants or restrictions prohibit, or have the effect of prohibiting, or allow a property owners association to prohibit, the orderly installation of solar collectors, clotheslines, rain barrels, **garden fences**, or any further technology or device designed specifically to generate or conserve energy through the use of renewable resources or to capture, store, or reuse water, so long as such installation is done by or on behalf of a person who otherwise has a property right to install such device." The related agenda materials may be found at the Town's website using the following link: http://www.townofcarrboro.org/BoA/Agendas/2011/04_26_2011_A2.pdf

A renewed interest in gardening has coincided with a gradual increase in the local deer population, creating a need for more substantial and innovative garden enclosures. Deer fencing is typically quite tall, often six or eight feet in height, and may be installed with a second surrounding ring of fencing to increase its effectiveness. While the bulk deer fencing may consist of wire or netting, it

requires some sort of structural framework in wood, metal or heavy duty plastic stakes at the corners and mid-points. The utilitarian nature of garden fencing tends to take precedent over its appearance.

The aesthetic implications of such fencing efforts have begun to surface. In November of 2011, the Town received a request from Allan Spalt to revisit its fence regulations. Mr. Spalt reported that his neighbor had constructed a fence that faces his front yard and that while the fence may comply with the letter of the LUO it is, in his opinion, more substantial and obtrusive than the spirit of the ordinance. In his request, Mr. Spalt outlined a number of criteria for the Board's consideration to further define and evaluate fences. These include the following:

- The allowed location of massive fences; front yard streetscapes should be protected
- Maximum height, perhaps in relation to bulk
- Bulk; it is not only opacity that matters
- Definition of opacity (which is not an issue here).
- Consideration of aesthetics in relation to the practical purpose for which a fence is desired.
- Recognition that people will be building taller fences because of deer, and perhaps other reasons
- Other reasonable restrictions in the interest of the community.

SUMMARY

Developing ordinances for aesthetic purposes can be challenging, particularly for utilitarian structures such as fences. Should the Board wish to consider amendments to the LUO, a number of different approaches are available. New language could be added to identify or simply clarify the different types of fences by their function, (e.g., privacy fence, agricultural fence) or by their type of construction (wire fences, split rail fence). Existing sections of the LUO could be modified to reference which provisions apply to a specific type of fence. Another approach would be to add a new subsection that would regulate all fences to a greater degree, or to apply additional regulations only to certain types of fences (such as garden fences).

When guiding potential amendment language, three considerations should be kept in mind:

1) New amendments should remain consistent with the provisions of Subsection 15-83.3(b) which specifically speak to garden fences as "protected" technological devices designed to generate or conserve energy.
2) Typically gardens are located based on sun exposure, restricting the placement of gardens to those portions of a lot that are not visible from a right-of-way, may limit their potential productivity.
3) Fences do not typically require a permit. Property owners may be less likely to inquire about permit requirements for fences than for other structures. Complaint driven enforcement tends to be problematic. Should the Board wish to consider requiring permits for fences, some sort of outreach and education program would be recommended.

ARTICLE IV

PERMITS AND FINAL PLAT APPROVAL

PART II. MAJOR AND MINOR SUBDIVISIONS

Section 15-83.3 Covenants May Not Prohibit Devices that Generate or Conserve Energy or Water (AMENDED 04/26/11).

(a) This section is authorized by Chapter 42 7 of the 2009 Session Laws, codified as Section 10-2 of the Carrboro Town Charter.

(b) Subject to the provisions of subsections (c) and (d) of this section, lots within a residential subdivision may not be conveyed subject to covenants or restrictions that run with the land unless, prior to approval of the final plat creating such lots, the final plat approval authority (planning director for minor subdivisions and town manager for major subdivisions) has determined that such covenants or restrictions are consistent with the requirements of this section. The developer shall submit any such proposed covenants to the town along with or subsequent to the proposed final plat. Final plat approval for such subdivision may not be granted if the covenants or restrictions prohibit, or have the effect of prohibiting, or allow a property owners association to prohibit, the orderly installation of solar collectors, clotheslines, rain barrels, garden fences, or any further technology or device designed specifically to generate or conserve energy through the use of renewable resources or to capture, store, or reuse water, so long as such installation is done by or on behalf of a person who otherwise has a property right to install such device.

(c) The provisions of subsection (b) of this section do not apply to any condominium created under Chapter 47A or 47C of the General Statutes. Nor are such provisions intended to prohibit the adoption or enforcement of any covenant or restriction, or any rule or regulation adopted by a property owners association, that does any of the following:

(1) Affects a common area.

(2) Is designed to ensure that any device described in subsection (b) is installed and maintained in such a manner that it does not pose a risk to the safety of any person or domesticated animal.

(3) Regulates the location or screening of any device described in subsection (b), provided the covenant or restriction, or rule or regulation adopted by a property owners association, does not have the effect of preventing the reasonable use of such device.

(d) The provisions of this section apply only to covenants or restrictions recorded after the effective date of this section.

ARTICLE XII

DENSITY AND DIMENSIONAL REGULATIONS

(c)

Section 15-184 Building Setback Requirements.

(a) Subject to Section 15-187 (Architecturally Integrated Subdivisions) and the other provisions of this section, no portion of any building or any freestanding sign may be located on any lot closer to any lot line or to the street right-of-way line or centerline than is authorized in the table set forth below: **(AMENDED 1/22/85)**

(1) If the street right-of-way line is readily determinable (by reference to a recorded map, set irons, or other means), the setback shall be measured from such right-of-way line. If the right-of-way line is not so determinable, the setback shall be measured from the street centerline.

(2) As used in this section, the term "lot boundary line" refers to lot boundaries other than those that abut streets.

(3) As used in this section, the term "building" includes any substantial structure, which, by nature of its size, scale, dimensions, bulk, or use tends to constitute a visual obstruction or generate activity similar to that usually associated with a building. Without limiting the generality of the foregoing, the following structures shall be deemed to fall within this description:

a. Gas pumps and overhead canopies or roofs.

b. Fences, walls or berms running along lot boundaries adjacent to public street rights-of-way if such fences, walls or berms exceed three feet in height and are substantially opaque except that fences, walls or berms shall not be regarded as "buildings" within the meaning of this subsection if they are located along the rear lot line of lots that have street frontage along both the front and rear of such lots. **(AMENDED 05/19/98)**

(4) Notwithstanding any other provision of this chapter, signs that do not meet the definition of freestanding signs may be erected on or affixed to structures (e.g., some fences) that are not subject to the setback requirements applicable to buildings only if such signs are located such that they satisfy the setback requirements applicable to freestanding signs in the district where located. **(AMENDED 5/26/81; 12/7/83; 2/4/86; 11/14/88; 05/15/90; 04/16/91;01/16/01)**

ZONE	Minimum Distance from Street Right of Way line		Minimum Distance from Street Centerline		Minimum Distance from Lot Boundary Line
	Building	Freestanding Sign	Building	Freestanding Sign	Building and Freestanding Sign
C	25	12.5	55	42.5	20
WR	35	17.5	65	47.5	20
RR	40	20	70	50	20
R-20	40	20	70	50	20
R-15	35	17.5	55	47.5	20
R-10	25	12.5	55	42.5	12
R-S.I.R.	25	12.5	55	42.5	10
R-7.5	25	12.5	55	42.5	10
R-3	15	7.5	45	37.5	8
B-1(c)	--	--	30	--	--
B-1(g)	--	--	30		
B-2	15	7.5	45	37.5	10
B-3	15	7.5	45	37.5	15
B-3-T	15	7.5	45	37.5	15
B-4	30	15	60	45	10
CT	--	--	30	--	--
B-5	40	20	70	50	20
M-1	--	--	30	--	--
M-2	--	--	30	--	--
WM-3	30	15	60	45	20
O	15	7.5	45	37.5	15
O/A	15	7.5	45	37.5	15
R-2	15	7.5	45	37.5	8, plus 2 feet for every additional foot above 35 feet in height

(b) With respect to lots within the R-20 district that were in existence or had received preliminary plat approval by Orange County prior to November 14, 1988 and were outside the town's extraterritorial planning jurisdiction but that on or after that date became zoned R-20 as a result of the implementation of the Joint Planning Agreement:

(1) The minimum set back distance from the lot boundary line shall be 15 feet rather than the 20 feet indicated in the table set forth in subsection (a);

(2) On lots having frontage on more than one street, the building setback applicable to the street which the front of the principal building located on that lot faces shall be as set forth in subsection (a). The building setback

from the other streets shall be 15 feet from the right-of-way line. **(AMENDED 04/25/89)**

(c) Whenever a lot in a nonresidential district has a common boundary line with a lot in a residential district, then the lot in the nonresidential district shall be required to observe the property line setback requirements applicable to the adjoining residential lot.

(d) Setback distances shall be measured from the property line or street centerline to a point on the lot that is directly below the nearest extension of any part of the building that is substantially a part of the building itself and not a mere appendage to it (such as a flagpole, etc.). Setbacks for berms shall be measured from the property line or street centerline to the point on the berm where it exceeds three feet in height. **(AMENDED 05/19/98)**

(e) Whenever a private road that serves more than three lots or more than three dwelling units or that serves any nonresidential use tending to generate traffic equivalent to more than three dwelling units is located along a lot boundary, then:

(1) If the lot is not also bordered by a public street, buildings and freestanding signs shall be set back from the centerline of the private road just as if such road were a public street.

(2) If the lot is also bordered by a public street, then the setback distance on lots used for residential purposes (as set forth above in the column labeled "Minimum Distance from Lot Boundary Line") shall be measured from the inside boundary of the traveled portion of the private road.

(f) Notwithstanding any other provision of this section, on lots in residential zones used for residential purposes, a maximum of one accessory building may be located in the rear yard of such lot without regard to the setback requirements otherwise applicable to the rear lot boundary line if such accessory building does not exceed fifteen feet in height or contain more than 150 square feet of gross floor area. **(AMENDED 5/26/81)**

(g) Reserved. **(REPEALED 3/24/09)**

(h) Reserved. **(REPEALED 3/24/09)**

(i) Notwithstanding any other provision of this section, no setback requirement shall apply to bus shelters erected by or at the direction of the town. **(AMENDED 1/22/85)**

(j) Notwithstanding any provision in (a), no minimum distance from a lot boundary

line for buildings or freestanding signs shall be required from any railroad right-of-way or other railroad property being used principally as a track bed or corridor. **(AMENDED 2/4/86)**

(k) In addition to the overall density restrictions of the underlying zone, each mobile home unit in any mobile home community (use classification 1.122 or 1.123) must be placed such that it is at least 10 feet in any direction from any other mobile home unit within the community, in order to reduce the likelihood of the spread of fire. **(AMENDED 10/20/87)**

(l) Notwithstanding the provisions of subsections (a) or (b), properties located in Carrboro's Transition Area II, and zoned R-R shall be required to maintain a 100-foot undisturbed, naturally vegetated setback along any common boundary line with Properties in Orange County's planning jurisdiction that are designated both Rural Buffer and Public/Private Open Space on the Joint Planning Area Land Use Plan. No structures or associated clearing shall be permitted within this setback. Utilities and associated clearing shall be permitted within this setback only to the extent that no reasonable alternative exists. **(AMENDED 06/05/89)**

(m) When the neighborhood preservation district commission determines that an application for a permit under this ordinance involves a proposed authentic restoration, new construction or reconstruction in the same location and in the original conformation of a structure within a neighborhood preservation district that has architectural or historic significance, but that such proposed restoration, construction or reconstruction cannot reasonably be accomplished in conformity with the setback requirements set forth in this section, the neighborhood preservation district commission may recommend, and the permit issuing authority may allow, a deviation from these requirements to the extent reasonably necessary to accommodate such restoration, construction or reconstruction. **(AMENDED 09/26/89)**

(n) Signs erected in connection with elections or political campaigns, as described in subsection 15-273(a)(5), shall not be subject to the setback requirements of this section. However, as provided in subsection 15-273(a)(5), such signs may not be attached to any natural or man-made permanent structure located within a public right-of-way, including without limitation trees, utility poles, or traffic control signs. **(AMENDED 08/25/92)**

(o) When the appearance commission determines that (i) any new construction or any repair, renovation, or reconstruction of a pre-existing building is proposed within any commercial zoning district; and (ii) the appearance of the building would be substantially improved by the addition of or extension of an architectural feature; and (iii) the feature proposed by the appearance commission would violate the setback provisions of this section, then, subject to the following requirements, the commission may recommend, and upon such recommendation the applicant may

amend his plans to propose and the permit issuing authority may authorize, an encroachment of such architectural feature into the required setback area.

(1) For purposes of this subsection, the term "architectural feature" includes any part of a building other than a building wall or mechanical appurtenance.

(2) The maximum encroachment that can be authorized under this subsection is two feet.

(3) The encroachment may be allowed when the appearance commission and permit issuing authority both conclude that authorization of the encroachment would result in a building that is more compatible with the surrounding neighborhood than would be the case if the encroachment were not allowed. **(AMENDED 11/09/93)**

(p) Notwithstanding the other provisions of this section, in the historic district, no portion of any new dwelling unit on a flag lot may be located any closer than fifteen (15) feet from any property line or any closer than thirty (30) feet from any existing dwelling unit located on the lot from which the flag lot was created (see Section 15-175.10). **(AMENDED 11/21/95)**

(q) Notwithstanding the other provisions of this section, the base of a use classification 18.200 tower shall be set back from a street right-of-way line and a lot boundary lane a distance that is not less than the height of the tower. **(AMENDED 02/18/97)**

(r) Notwithstanding any provision in this section with respect to use classification 1.340, single-room occupancy buildings may be set back from a street right-of-way line a distance that is consistent with the setbacks of other nearby buildings that front the same street. **(AMENDED 01/11/00)**