

Excerpt from draft minutes from the Planning & Zoning Board meeting held on November 7, 2017

ID 2017-582

- 2A) **PZ-17-17** CONSIDERATION OF AN ORDINANCE TO AMEND SINGLE FAMILY HOME FENCE REGULATIONS ON SYMMETRICAL CORNER LOTS
PETITIONER: CITY OF MARGATE, ECONOMIC DEVELOPMENT DEPARTMENT

Andy Dietz led with a PowerPoint presentation. He explained that the purpose of the ordinance was to change the fence regulations so that a fence would be able to be erected on a symmetrical corner lot in the same manner that it would be if the corner lot was asymmetrical. He showed a diagram of an existing symmetrical corner and pointed out that it currently held two front yard classifications. He said the line of text being added to the ordinance would reclassify a side yard as the street side yard which would allow a fence.

Mr. Zucchini asked if there was a setback from the sidewalk for the side yard. Mr. Dietz responded that the sidewalk would be in the right-of-way and the setbacks would be measured from the property line. He said the setback for the fences would stay the same. He said on an asymmetrical lot, the fence could be built up to the property line which was usually also the location of the sidewalk. Mr. Zucchini commented that having a fence abutting a sidewalk could create a potential problem for the City if they had to repair the sidewalk. Mr. Dietz said it had not been a problem in the past; this ordinance would treat fencing on symmetrical corner lots the same as all other home property lots. Mr. Zucchini commented that it would not be a problem because the Code currently did not allow a fence in a side front yard.

Mr. Pinney, made a Point of Information, noting that the current fence laws allowed 95% or more of the corner lots to bring a fence all the way to the sidewalk. He said in the rare instance where there was a symmetrical corner lot where the front property line was the same length as the side property line, the City's definition of corner lot identified the lot as having two front yards. He said there were a handful of homes in the City that were not able to enjoy the same fence privileges as the vast majority of other corner lots in the City. He said currently corner lots were permitted to have the fence brought out to the sidewalk on the side yard.

Mr. Zucchini asked if there was a setback for a fence on a front yard. Mr. Pinney responded that fences were not allowed anywhere on a front yard. Mr. Zucchini said he had several issues with allowing a fence along the side that abutted to the edge of the house. He said if the house were too close to the sidewalk in the front, there could be a line of sight problem at the corner. Mr. Pinney responded that the street side setback for a house was 15 feet in most of the zoning districts. Mr. Zucchini asked if it were possible for homes to have variances on their setbacks. Mr. Pinney said it was possible if there were unique conditions on the property and the homeowner pursued a variance. Mr. Zucchini said having a fence that directly abutted the sidewalk was a concern and that there should be some minimum setback for the side yard fence. Mr. Pinney responded that when the City first adopted a zoning code in the 1960's, it used to require that fences were in line with the sidewall of the house. The code was later amended so that the fence had to be 15 feet back from the side yard. He said there was a code change 5-7 years ago that allowed the fence to come all the way out to the sidewalk on the side yard. He reiterated that symmetrical lots were unique in that they had two front yards

rather than a front yard and street side yard; the ordinance was intended to correct that issue so that all corner lots would be treated the same. Mr. Zucchini suggested that the Board might want to consider a minor setback from the sidewalk. He said another issue had to do with easements that ran along the side of a house. He asked if a fence could be built across the easement. Mr. Pinney responded that a fence could be built if the owner had easement agreements from the five utility companies that serviced Margate, adding that it was common practice in the Building Department. He said fences were considered temporary structures and homeowners signed away their rights when the utility company signed off on them.

Mr. Zucchini commented that the ordinance pertained to single family homes, and he asked how townhomes were defined. Mr. Pinney responded that they were considered multi-family. Mr. Arserio said the Florida Building Code defined them as single family homes. Mr. Pinney said that they were multiple dwellings that were attached and were one structure. He said for zoning purposes, townhomes were only allowed in multi-family dwelling districts.

Mr. Zucchini expressed his concern about young planning graduates that had the idea to urbanize the environment and allow the construction of townhomes that were located at the edge of the sidewalk, and the possibility of also having fences allowed at the edge of the sidewalk on both sides which could create line of sight problems. Mr. Pinney, as a Point of Information, said the last code change which took place 5-7 years ago and allowed fences to come out to the sidewalk was a commissioner led initiative.

Mr. Arserio said Mr. Zucchini made some valid points and that he was not completely against it. He said there would not be a line of sight issue with chain link fences, but he agreed that there should be some type of setback. He said having a chain link fence up against the sidewalk was a safety issue, especially for someone riding a bike. Mr. Arserio made the following motion:

MOTION: TO CREATE A TWO-FOOT SETBACK FROM ANY
SIDEWALK OR RIGHT-OF-WAY

Mr. Pinney interjected that the sight line issue was addressed in the prohibition of allowing fences in both the front yard and the corner yard. He pointed out the locations of the front and corner yards on the diagram, noting that fences were prohibited in those vital areas. Mr. Zucchini said it was under the assumption that there was a setback for single family homes but not for a townhome built on the edge of the sidewalk. Mr. Pinney reiterated that the provision in the ordinance applied to single family homes and duplexes only. He clarified that under the City Code, there was a special R-2 district that was for duplexes and many times duplexes were treated the same as single family homes for driveways, fences, setbacks, etc.

Mr. Zucchini asked if any of the other board members had comments with regards to setback of the fence. Mr. Angier said he was fine with it. Mr. Mangeney said he was fine with it as it stood.

Mr. Chitepu advised that the ordinance was to allow the property owner of a symmetrical lot to put a fence at the property line just like any other property owner that had an asymmetrical lot. He said the item before them was not looking at setbacks. He said if setbacks needed to be established, then they would need to look at setbacks for all other property owners.

Mr. Arserio said his concern was for safety reasons, noting that people were not passing back and forth on a daily basis between the fence lines of two homes whereas on a sidewalk, a bicycle could get caught on a chain link fence.

Mr. Chitepu explained that the intent was to give homeowners on symmetrical lots the same rights to have a fence as other single family homeowners. Mr. Arserio agreed but said that a setback was needed because he did not think the fence should be allowed to run up against the sidewalk.

Mr. Angier asked how many incidents had occurred with fences on the other (asymmetrical) types of properties. Mr. Chitepu said he did not have the information at the time but he said all sight line issues went through his office and they would go out and look at them. He said when they approved any fences, they also looked at line of sight issues. Mr. Angier asked Mr. Chitepu if the City were having problems with fences on the other (asymmetrical) types of properties. Mr. Chitepu said more problems existed with bushes and landscaping than fences for line of sight issues.

Mr. Chitepu said if the Board wished to look at the setbacks, setbacks should be looked at for all of the single family homes. He said it would be discriminatory to ask for setbacks on single family homes on symmetrical lots but not the others. Mr. Arserio commented that properties in the Enclave in the Carolina Club off of Holiday Springs Boulevard all had wooden fences that were setback from the sidewalk one to two feet. Mr. Zucchini said he disagreed that it would be discriminatory as it was something that was not currently allowed. He said he thought a minor setback from the sidewalk should be required on symmetrical lots. Mr. Chitepu said his earlier point was that if setbacks were an issue, they should be looked at as a whole as a separate item.

Mr. Arserio said his concern was that amendments to ordinances were often advised or recommended to ordinances that already existed.

Mr. Mangeney said he agreed that it was important that the setbacks were uniform for all single family homes. He said there would be situations where some fences would be out to the sidewalk while others were setback within two feet and aesthetically it would not be good for the City. He said people have not been on notice that the City might change the setbacks. He said he did not have enough information or knowledge on fence setbacks to know whether they were needed. He said he would be happy to revisit the topic. He said he understood the safety and line of sight issues but that he would need additional information in order to vote on it.

Mr. Arserio suggested they should consider tabling it rather than amending one piece of an ordinance only to find out later that it affected something else. He suggested they look at fences as a whole and then come back and advise the Commission all at once.

Mr. Mangeney asked if there were any outstanding permit requests that were waiting for the Board's decision. Mr. Pinney said this item came up at the Building permit window when a couple with young kids said that there had been someone walking through their side yard and looking in their windows and they wanted to secure the yard with a fence. He said the permit could not be passed because it was a symmetrical lot and it had two front yards. He said the best that could be done would be to have them fence off their rear yard but it would still leave

their side windows exposed. Mr. Zucchini commented that they should not object to a having a minor setback requirement.

Mr. Angier stated that his understanding of what he had heard was a request to place a setback requirement on symmetrical corner lots which would be inconsistent with asymmetrical homes. He added that staff's suggestion was to pass the ordinance which would keep everything consistent, and then to go back and address setbacks as a whole for both symmetrical and asymmetrical lots. Mr. Pinney said that was a good approach, but as a recommending body, he said they could pass it with a recommendation to add a setback. Mr. Zucchini said he did not agree that an asymmetrical lot was analogous to a symmetrical lot because a non-symmetrical lot could have different shapes and might not necessarily abut along the sidewalk. Mr. Angier clarified that the problem with the symmetrical lot was that, in the Code, it had two front yards instead of a front yard and a side yard and people who wished to fence in their side yard were being penalized by the Code. Mr. Zucchini responded that he was in agreement with it as long as the new symmetrical side yard had a minimum setback.

Mr. Zucchini seconded the motion made previously by Mr. Arserio.

There was additional discussion clarifying the motion. Mr. Angier clarified that the ordinance was for all single family and not just symmetrical lots. Mr. Arserio asked whether a sidewalk was considered a right-of-way. Mr. Chitepu clarified that a sidewalk was in the right-of-way and that most of the time the right-of-way was the back of the sidewalk but sometimes the right-of-way could be ten feet into a resident's yard with the sidewalk closer to the road, depending on the lot. He said limiting it to sidewalks only would not work because if the sidewalk were in the right-of-way and there was space between the right of way and the sidewalk, the homeowner would not be able to put the right-of-way up to the sidewalk; he could only go to the right-of-way line. He suggested using right-of-way. Mr. Arserio gave a scenario where the sidewalk could be fenced in if the street were the right-of-way. Mr. Chitepu clarified that there was a difference between the right-of-way and the right-of-way line and, for this purpose, the right-of-way line should be used because the right-of-way line and property line were the same. He said the right-of-way was owned by the City of a public entity, and the sidewalk was always in the right-of-way, and most of the time, the backside of the sidewalk was the right-of-way line or the property line, but sometimes it was not. He said sometimes the property line or the right-of-way line was towards the structure so there was more green space between the sidewalk and the right-of-way line or the property line. In that situation, the property owner would not be able to come up to the sidewalk; he would only be allowed to put the fence at the property line. The motion was restated as follows:

MOTION: TO CREATE A SETBACK OF TWO FEET FROM ANY
RIGHT-OF-WAY LINE AND/OR PROPERTY LINE ON ALL SINGLE
FAMILY HOMES

ROLL CALL: Mr. Arserio, Yes; Mr. Mangeney, No; Mr. Zucchini Yes;
Mr. Hylander, Absent; Mr. Angier, No. The motion failed with
a 2-2 vote.

Mr. Arserio made the following motion, seconded by Mr. Zucchini:

MOTION: TO DENY AS PRESENTED

ROLL CALL: Mr. Arserio, Yes; Mr. Mangeney, No; Mr. Zucchini, Yes;
Mr. Hylander, Absent; Mr. Angier, No. The motion failed with
a 2-2 vote.

Mr. Mangeney made the following motion:

MOTION: TO TABLE TO THE NEXT MONTH

Mr. Chitepu advised that the item would need to go before the City Commission and any recommendations or comments from the Board would be included in the meeting minutes as well as incorporated in the agenda fact sheet for the City Commission to review and consider at the City Commission meeting, rather than table and delay the item.

Mr. Mangeney withdrew his motion.

Mr. Angier, passed the gavel, and made the following motion, seconded by Mr. Mangeney:

MOTION: TO APPROVE

Mr. Angier asked if the concerns raised by board members regarding the need for setbacks should be incorporated. Mr. Chitepu said information from the meeting minutes would be incorporated in the agenda fact sheet for the commissioners to review.

Mr. Arserio commented that he was in favor of the ordinance but he thought there should be some sort of setback.

ROLL CALL: Mr. Arserio, No; Mr. Mangeney, Yes; Mr. Zucchini, No;
Mr. Hylander, Absent; Mr. Angier, Yes. The motion failed with
a 2-2 vote.