

§ XXXXX

Fences, retaining walls, freestanding walls, and graded slopes.

Before any fence, retaining wall or freestanding wall can be erected, altered or reconstructed, but excluding the restoration or repair of an existing fence, retaining wall or freestanding wall having the same dimensions and restored or repaired with the same materials, within a front, rear or side yard setback, an application must be made to the Zoning Administrator for a fence **or retaining wall** zoning permit, and the application shall include a plot plan showing the location of the fence or wall, a description of the type of fence or wall to be erected and the height of the fence or wall, together with a fee as established in the Ordinance of **Borough of Midland Park**. **Walls having a height of not more than two feet shall be exempt from this permit requirement. Walls that are exempt from permit requirements shall nonetheless comply with all applicable substantive requirements.**

All fences and/or walls in the **Borough of Midland Park** shall be subject to the rules and regulations as follows:

A. Residential zones.

- (1) Fences and retaining walls shall be permitted in front, side and rear yards. Freestanding walls shall be permitted only in the side and rear yards, except that freestanding walls which do not exceed a height of 24 inches above normal grade shall be permitted in the front yard.
- (2) Minimum setback. The required setback for fences and walls shall be as follows:
 - (a) Fences and freestanding walls may abut property lines without any setback required. Retaining walls may abut the front property line only without any setback required.
 - (b) The exposed face of retaining walls shall be set back from any side or rear lot line a horizontal distance not less than one foot for each foot of the retaining wall. **For walls located five feet or less from the property line, the required setback shall be based upon the height of the retaining wall above the ground level at the property line. For other walls, the required setback shall be based upon the height of the retaining wall above the finished ground level at the base of the wall.**
 - (c) In the case of multiple retaining walls, the exposed face of each wall shall be set back from the exposed face of each other wall a horizontal distance not less than one foot for each foot of height of the higher retaining wall. In the case of walls of varying height, the setback at any point shall be based upon the height of the wall at the same point.
 - (d) For purposes of determining the required minimum setback, the height of any fence or other barrier located at the top of a retaining wall shall be included within the height of the retaining wall unless such fence or other barrier is set back from the face of the wall a horizontal distance not less than one foot for each foot of height of the barrier or the retaining wall, **whichever is greater.**
 - (e) **Retaining walls shall be constructed in such a way so as to enable the property owner to perform periodic maintenance and upkeep to the area between the retaining wall and the property lines.**

(3) Maximum height. The maximum permitted height of fences, freestanding walls and retaining walls shall be as follows:

(a) The height of fences located in rear or side yards shall not exceed six feet above the normal grade. **{Add specific height limitation for retaining walls in the front yard?}**

(b) The height of freestanding walls shall not exceed four feet above normal grade.

(c) The height of **single-tier** retaining walls shall not exceed four feet above the normal grade. In the case of multiple retaining walls, the height of any individual wall shall not exceed four feet, and the total height of all walls combined shall not exceed 12 feet within a horizontal distance of 20 feet.

(d) In determining the height of fences, freestanding walls and retaining walls, the following shall apply:

[1] For fences and walls that are not uniform in height along the top of the fence, the height shall be measured to the highest point of the fence **or wall**, except as provided otherwise herein.

[2] For fences and walls located on sloping ground, the height shall be measured from the grade directly below the point of measurement.

[3] The height of fences and walls shall be measured from normal grade. Normal grade shall be construed to be newly established grade after construction, disregarding any filling, berming, mounding, excavating or curbing which alters the grade at the base of the fence or wall from the grade in the general vicinity of the fence or wall.

[4] In the case of fences, guardrails or other barriers located at the top of retaining walls, the combined height of the barrier and retaining wall shall not exceed the permitted height for either fences or walls, unless the barrier and wall are separated as provided in Subsection A(2)(d) above.

[5] **In the case of retaining walls with multiple tiers, the height of the top wall shall be measured from the top of the upper wall to the top of the lower wall directly below.**

(4) Sight distance . **See ordinance section §34-14.6 for requirements for retaining walls or other obstructions that may obstruct sight distances.**

(5) Safety barriers. The reviewing authority may, in appropriate instances, require a guardrail or other restraining device at the top of retaining walls if deemed necessary or advisable to protect persons, vehicles or equipment from falling off such walls. **Guardrails or other barriers shall meet the requirements of the International Building Code, current NJ edition.**

(6) Materials and construction. The following standards shall apply to the materials and construction of fences and walls:

(a) In the event that both sides of a fence or freestanding wall are not identical, the finished or preferred side shall be required to face the street and/or abutting properties, as applicable. The finished or preferred side shall be that side which best conceals the fence posts, rails and other supporting parts and/or which is painted, stained or otherwise treated when only one such side is so treated.

(b) Walls shall not be faced with poured concrete, concrete block or cinder block unless the same is textured to simulate natural stone or split face block.

- (c) Fences located within the front yard shall not be more than 50% solid and shall not be more than six inches thick. The measurement of solidity shall be made perpendicular to the side of the fence. Split rail fences which include chicken wire and/or mesh-type wire and chain link and/or similar style fences shall not be permitted in the front yard.
- (d) Freestanding walls and/or retaining walls which are greater than **four** feet in height shall require the design of a professional engineer.
- (e) Retaining walls shall be designed to provide for proper drainage both behind the retaining wall and around it.**
- (f) In the case of retaining walls with multiple tiers, plantings shall be required at each tier level (except the top level adjoining a lawn area) to minimize the appearance of the wall's height and enhance its aesthetics.**
- (g) Fences and walls which present a danger or hazard to the public welfare, including but not limited to fences or walls which are electrified or contain razor wire, barbed wire or other sharp edges, are hereby prohibited.
- (h) No fence shall be installed within the **public** right-of-way.

(7) Structural Design.

- (a) Freestanding walls and/or retaining walls which are greater than four feet in height shall require the design of a professional engineer licensed in the State of New Jersey and that design submitted to the Borough for review by the Borough Engineer, Planning Board Engineer, or Zoning Board Engineer (as applicable). The design shall include construction details for the proposed walls and (at the discretion of the review engineer) structural calculations, soil reports, foundation details, compaction requirements, and grading plans.**
- (b) Whenever two or more retaining walls are proposed where the average slope from the toe of the lowest wall to the top of the highest wall has an average slope equal to or greater than one vertical to two horizontal an engineering analysis of the entire sloped area shall be submitted.**
- (c) For any wall that include fences, guardrails, or other barriers above the wall, said barriers shall be accounted for in the structural design.**
- (d) For retaining walls that required structural design, at the completion of construction, the design engineer shall provide to the Borough a letter certifying that the wall was constructed in accordance with the approved design.**

(8) Graded slopes. No proposed graded slope shall exceed one vertical to three horizontal unless otherwise approved by the Planning or Zoning Board. This shall apply to both cut slopes and fill slopes.

B. Business zones. All rules and regulations within this section of the Code of the **Borough of Midland Park** which apply to walls and fences in residential zones shall also apply to fences and walls in all business zones, with the exception of the following:

- (1) In all business zones, there shall be no solid fences erected in the front yard unless required by the Planning or Zoning Board at the time of site plan approval to screen adjoining uses.
- (2) A solid or other type of fence not to exceed six feet in height may be erected to enclose the rear yard of a property, including the area at the sides of the building up to the front yard, except in the case of a corner lot or a lot running through from one street to another, any

yard abutting a street shall be subject to the same regulations as a front yard. No such fence shall be allowed if it interferes with the necessary safe sight distance as articulated in **§34-14.6**.

- (3) All applications for new fences, with the exception of direct replacement, must be approved by the Planning or Zoning Board as an amended site plan.

C. Industrial zones. All rules and regulations within this section of the Code of the **Borough of Midland Park** which apply to walls and fences in residential zones shall also apply to fences and walls in all industrial zones, with the exception of the following:

- (1) In industrial zones, there shall be no solid fences erected in the front yard unless required by the Planning or Zoning Board at the time of site plan approval to screen adjoining uses. Fences which are not more than 50% solid up to a height of six feet may be erected in the front yard, except that on a corner lot, no fence may be erected **that violates the sight distance requirements outlined in §34-14.6**
- (2) A solid or other type fence not to exceed eight feet in height may be erected to enclose the rear yard of a property, including the area at the sides of the building up to the front yard except that on a corner lot or a lot running through from one street to another, any yard abutting a street shall be subject to the same regulations as a front yard. No such fence shall be allowed if it interferes with the necessary safe sight distance as articulated in **§34-14.6**.
- (3) All applications for new fences with the exception of direct replacement, must be approved by the Planning or Zoning Board as an amended site plan.