

**STATE OF WISCONSIN
MILWAUKEE AND OZAUKEE COUNTIES
VILLAGE OF BAYSIDE**

ORDINANCE NO: 737

**An Ordinance to Repeal and Recreate Section 104-125 of the Municipal Code
with Regard to Fences**

The Village Board of the Village of Bayside, Milwaukee and Ozaukee Counties, Wisconsin does ordain as follows:

Section One: Section 104-125 of the Municipal Code is hereby repealed and recreated to read as follows:

Sec. 104-125. – Fences, walls, architectural screening devices, driveway gates, and arbors.

- (a) The Village is fortunate to have a rich natural diversity of properties that include waterfront, ravines, a variety of densely- planted, mature trees, and open green spaces. Many residents have selected this area to live based on a desire to enjoy these natural surroundings and this feeling of open space. A fence, wall, architectural screening device, driveway gate or arbor can sometimes be in contradiction to this desire. Also, a fence can have a strong visual impact on the neighboring properties. For these reasons, all fence, wall, architectural screening devices, driveway gate and arbor are subject to review by the Architectural Review Committee. It is important that homeowners discuss their fence project with the surrounding neighbors before submitting plans to avoid potential conflicts and to identify concerns before they become major issues. The following regulations are established to ensure that the Village retains the openness and semirural character of its landscape:
- a. Permit required. No person shall erect or construct any fence, wall, driveway gate, architectural screening device or arbor, unless specifically exempted by the provisions of this subsection, on any property within the Village without having first obtained a permit from the Building Inspector and having paid the fee prescribed from time to time by the Village Board. A survey by a licensed surveyor or Geographic Information Systems (GIS) image of property and current structures shall be submitted with each application for a fence, wall, architectural screening device, driveway gate or arbor. The survey or GIS image shall show the location of the proposed fence, wall, architectural screening device, driveway gate or arbor in relation to the property line as well as the main structure on the property. The Building Inspector shall deny a permit application if the proposed fence, wall, architectural screening device, driveway gate or arbor is in the right-of-way or if its proposed location will impede visibility of vehicular traffic.
 - b. Replacement or reconstruction. If an existing fence, wall, architectural screening device, driveway gate or arbor is substantially or destroyed or becomes deteriorated to a material degree, it may be replaced or reconstructed in the same location, height, and materials by first obtaining a permit, provided that the replacement or reconstruction must be completed within 12 months of the removal. All other replacement or reconstruction of existing fences, walls, architectural screening devices, driveway gates, or arbors must fully comply with the terms of this chapter.

- c. Temporary fences. With the exception of construction barriers, no temporary fences less than 30 linear feet shall be erected and left in place for more than 14 days without first obtaining permission from the Village Manager or designee. No temporary fence shall be installed for a period exceeding 90 days. Temporary fences greater than 30 linear feet shall be reviewed and considered by the Architectural Review Committee prior to receiving and permit and installation. Temporary fences that are shielded from view by nature of their location, not seen by the public, or neighboring property owners, do not require permission by the Village Manager or designee. Temporary fence applications may be referred to the Architectural Review Committee by the Village Manager.
- d. Lake, bluffs, and ravines. Where property abuts Lake Michigan or is located on a bluff or a ravine in such a locale that construction of a fence, wall, architectural screening device, driveway gate, or arbor would materially obstruct the aesthetic views of adjoining and surrounding property owners, ARC may deny a permit based upon their determination that there is a substantial negative impact upon the aesthetic enjoyment of surrounding properties. Any affected party may appeal the ARC's determination to the Board of Appeals within 30 days of the ARC's determination. No fence, wall, architectural screening device, driveway gate or arbor shall be constructed on the side of ravine or bluff in violation of Village Code.
- e. Construction in right-of-way prohibited. Any fence, wall, architectural screening device, driveway gate, or arbor that is erected in a street right-of-way or impedes traffic visibility may be removed by the Village at any time.
- f. Definitions. For purposes of this subsection, the following terms shall have the following meanings: the terms "front yard," "rear yard" and "side yard" shall be defined as set forth in this chapter.

ARBOR – Any structure intended to provide a support system for plantings or to designate an aesthetically pleasing outdoor seating or walk area.

ARCHITECTURAL SCREENING DEVICE – Any self-standing fence, wall type of structure employed for gardening, screening, ornamental, property boundary delineation, decorative, signage, or landmark purposes.

DRIVEWAY GATE – A fence that opens and closes across a driveway.

FENCE – A structure which creates an enclosure, barrier, or boundary, having a set or permanent location in the ground, or which is attached to something having a permanent location on the ground. A fence is considered to be a structure.

FINISHED LOT GRADE – Does not include constructed berms, artificial hills, and mounds.

HEIGHT – Does not include two inches of clearance at the bottom of the fence, nor does it include two inches in excess of the height limitation of the fence posts.

OPEN FENCE – A structure of rails, planks, stakes, strung wire, or similar material erected as an enclosure, barrier, or boundary. Open fences are those with more than 50% of their surface area open for free passage of light and air.

ORNAMENTAL FENCE – A structure whose primary purpose is to decorate, accent, or frame a feature of the landscape or premises.

SOLID FENCE – Solid fences are those with 50% or less of their surface open for free passage of light and air and designed to conceal from view the activities conducted behind them.

WALL – Substantially a solid masonry, wood, or composite structure which shall be self-supporting, but is not incorporated into an enclosed structure, and shall include any non enclosed structure having as its purpose the denomination or accent of driveways or entryways.

- g. Construction standards. Fence, walls, architectural screening devices, driveway gates or arbors shall be constructed in such a manner that the “finished” side shall face the neighboring property. Fence posts shall be on the side of the fence facing the permit applicant’s property. Fences should be adhered to fence posts; non-compliance shall result in immediate removal of posts delineating property boundaries. Fences shall be constructed of wood or other wood- simulated natural- appearing materials, wrought iron or other metal materials generally employed to obtain an aesthetically pleasing appearance. Open fences may be permitted; however, barbed wire, electric wire, chicken wire, or double or triple strand wire are prohibited. The Architectural Review Committee may consider aesthetically appealing, decorative cable or wire may be used in the construction of a fence, when approved by Architectural Review Committee.
- h. Location and height restrictions. Subject to the following exceptions, a fence, wall, architectural screening device, driveway gate, or arbor may be permitted up to the lot line in the side and rear yard of any property in Bayside. A fence, wall, architectural screening device located in a rear or side yard shall not exceed a height of six feet from the finished lot grade and shall not project forward of the front line of the principal building. An arbor shall not exceed a height of eight feet from the finished lot grade and shall not project forward of the front line of the principal building.
 - i. In the event a building is irregularly configured, such as an L- or V- shaped structure, or the building is located upon a corner lot, irregularly shaped lot, or lot which abuts more than one public or private road, such that there are or appear to be multiple front, side, or rear sides of the structure, the determination of the front, rear, or side areas, as well as the determination of the location of any fencing, shall be referred by the Building Inspector to Architectural Review Committee, which shall then review the matter without requirement of any appeal fee. Architectural Review Committee shall consider the least obstructive alternative, and any other criteria as set forth in the provisions of this chapter which serve to balance the interests of the applicant with the interests of the surrounding property owners.
 - ii. No new fence, wall, architectural screening device, driveway gate, or arbor shall be located beyond the front line of the principal building unless permitted by the Board of Zoning Appeals by special exception after a hearing, pursuant to the procedures. The Board of Zoning Appeals may grant a special exception under this subsection only if it finds that the fence, wall, architectural screening device, driveway gate, or arbor is reasonably necessary to protect the safety of people residing on the property. Every special exception granted by the Board of Zoning Appeals for a driveway gate shall be conditioned upon the applicant filing with the

Village Clerk/ Treasurer the written approval of the Village Police Chief in consultation with the Fire Chief for the specific driveway gate and gate location that is proposed; and if such approval is denied, the special exception is thereby denied.

- iii. If the rear of the applicant's lot abuts a neighbor's side, front, or back yard, any proposed fence shall be an "open fence." Property owners are encouraged to use natural landscaping should they desire additional screening or closed fence.
 - iv. An ornamental fence or architectural screening device may be allowed by the Architectural Review Committee anywhere on the property, provided the fence or screening device does not exceed 3 feet in height and is set back in its entirety 20 feet or more from all boundaries of the property.
 - i. Solid fences may be constructed with a total horizontal linear length not to exceed 30 total linear feet and at minimum 10 feet from any property line except for screening along an adjacent railroad, state highway, interstate highway, county highway, or commercial parking lot property.
 - j. Footings. All new fences are required to have a minimum of four-foot footings. Fence replacement or repair projects of existing fences are not required to incorporate footings unless the fence is being replaced or repaired.
- (b) Notwithstanding the otherwise applicable height limitations stated elsewhere in this section, a fence may be constructed to a height of 6 feet from the finished lot grade on property. Such a fence may be constructed on top of a berm, provided the berm is constructed in compliance with the requirements of this Code and all applicable laws, and further provided that the height of the fence shall be measured from the finished grade as defined in this section. Exceptions shall be made when adjacent to an active railroad, property, state or county highway, or commercial parking lot property, in which case fences shall not exceed 8 feet. Fences immediately adjacent to interstate highways may exceed these height limits but may not exceed height restrictions imposed by county, state, or federal authorities. Fences constructed within the front yard of a home shall not exceed three feet in height, subject to Architectural Review Committee consideration. Ornamental posts protruding less than one foot above the measured average height of a fence may be permitted provided they are at least six feet apart or are otherwise granted exception for closer proximity by the Architectural Review Committee (which exception shall be subject to a two-thirds vote). In all other cases, fences shall be measured to their highest point (including posts) in determining compliance with height restrictions.
- a. Maintenance. The owner, occupant, or their agent shall keep all fences, architectural screening devices, walls, driveway gates, and arbors structurally sound and maintained in a neat and attractive manner. The maintenance standards established in this section shall be enforced as provided in the Village of Bayside Code.
 - b. Special exceptions. A special exception to the height, size, material, design, setback, or other physical standards set forth in this subsection or to allow a driveway gate may, upon filing a written application, be considered by the Board of Zoning Appeals after a hearing. The application shall include an accurate visual rendering of the proposed wall, architectural screening device, driveway gate, or arbor, along with a written statement outlining the applicant's need for the same.

Section Two: Severability: In the event that any provision of this Ordinance is for any reason held to be invalid, unconstitutional, or unenforceable by any court of competent jurisdiction, such portions of this Ordinance shall be deemed separate, distinct and independent provisions of the Ordinance and all remaining portions of this Ordinance shall remain in full force and effect.

Section Three: All ordinances or parts of ordinances conflicting with the provisions of this ordinance are hereby to such extent repealed.

Section Four: This ordinance shall take effect and be in force after its passage and posting pursuant to law.

PASSED AND ADOPTED by the Village Board of Trustees of the Village of Bayside this seventeenth day of November, 2022.

VILLAGE OF BAYSIDE

Eido M. Walny, Village President

Rachel Safstrom, Administrative Services
Director/Clerk/Treasurer