



THE MARYLAND-NATIONAL CAPITAL PARK AND PLANNING COMMISSION

**MCPB**  
**Item #7**  
**7/25/02**

**DATE:** July 19, 2002  
**TO:** Montgomery County Planning Board  
**VIA:** Michael Ma, Zoning Supervisor *Ma*  
**FROM:** Greg Russ, Zoning Coordinator *GR*  
**REVIEW TYPE:** Zoning Text Amendment  
**PURPOSE:** To provide a definition of deer fence; exemption provisions from setback and yard requirements; and allowing other fences up to 8 feet in height in the RDT, if the property is farmed.

**TEXT AMENDMENT:** No. 02-18  
**REVIEW BASIS:** Advisory to the County Council sitting as the District Council, Chapter 59 of the Zoning Ordinance  
**INTRODUCED BY:** Councilmember Dacek  
**INTRODUCED DATE:** June 25, 2002

**PLANNING BOARD REVIEW:** July 25, 2002  
**PUBLIC HEARING:** July 30, 2002, 1:30 PM

---

**STAFF RECOMMENDATION:** APPROVAL with modifications

#### **PURPOSE OF THE TEXT AMENDMENT**

To provide a definition of deer fence; provide exemption provisions from setback and yard requirements; and allow other fences up to 8 feet in height in the RDT, if the property is farmed.

#### **BACKGROUND**

A fence under existing law is exempt from building line and yard requirements if it is not over 6½ feet in height. The proposed text amendment was introduced as a protective measure against problems that deer may cause.

#### **ANALYSIS**

## Proposed Definition of Deer Fence

The proposed definition of deer fence in Section 59-A-2.1 is as follows:

***Deer fence:** A fence that is up to 8 feet high and constructed of an open mesh, heavy weight, plastic material that allows a clear view through the fence. Mesh sizes ranges from 1.5x1.5 inches to 2x2.75 inches. A deer fence may be constructed with wood, metal, or fiberglass posts.*

## Amendments to Division 59-B-2. Exemptions From Yard Requirements

The proposed text amendment is as follows:

### **59-B-2.1. Walls or fences.**

*The building line and yard requirements of this chapter [shall] do not apply to: (1) retaining walls or other walls, (2) deer fencing not over 8 feet in height, [or] (3) other fences not over 6 1/2 feet in height, or (4) other fences not over 8 feet in height in the RDT zone, if the property is farmed. Fence height is measured from the lowest level of the ground immediately under the fence; except, that on a corner lot in any residential zone [there shall be no] a fence, wall, terrace, structure, shrubbery, planting or other obstruction to vision must not have [having] a height greater than 3 feet above the curb level for a distance of 15 feet from the intersection of the front and side street lines. Retaining walls [shall] must be [permitted] provided where changes in street grade width or alignment have made such structures necessary.*

Staff is concerned that permitting 8 foot high fencing along road frontages located in smaller lot zones may not be appropriate and may create a tunnel effect along these corridors. Where property is farmed, staff believes that eight foot high deer fencing is necessary to protect crops, etc. As such, staff recommends that deer fencing not over 8 feet in height be exempt from yard requirements in the agricultural zones (where property is farmed) and from the rear and side yard requirements in all other zones (where gardens are typically located and where deer generally approach from adjoining stream valley parks, wooded areas, etc.). Additionally, to permit the exemption of other fencing not over 8 feet in height (privacy, chain link, etc.) in the RDT zone on farmed property could affect existing scenic easements along these corridors. As such, staff recommends that this exemption be permitted only if existing scenic easements can be adhered to.

## **RECOMMENDATION**

As modified, staff supports the proposed text amendment to provide a definition of deer fence; provide exemption provisions from setback and yard requirements; and allow other fences up to 8 feet in height in the RDT, if the property is farmed. Staff's recommended modifications

include deer fencing not over 8 feet in height be exempt from yard requirements in the agricultural zones and from the rear and side yard requirements in all other zones. Also, staff recommends that the exemption of other fencing not over 8 feet in height (privacy, chain link, etc.) in the RDT zone on farmed property be permitted only if existing scenic easements can be maintained. Staff has also recommended some editorial changes to further clarify the intent of Section 59-B-2.1.

Attachment 1 depicts the proposed text amendment as modified by staff. Underlining indicates text that is added to existing laws by the original text amendment. [Single boldface brackets] indicate text that is deleted from existing law by the original text amendment. Double underlining indicates text that is added to the text amendment by amendment (staff's changes). [[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment (staff's changes).

GR

#### Attachments

1. Proposed Text Amendment 02-18

Zoning Text Amendment No: 02-18  
Concerning: Deer Fencing  
Draft No. & Date: 1 – 6/25/02  
Introduced: June 25, 2002  
Public Hearing: July 30, 2002; 1:30 PM  
Adopted:  
Effective:  
Ordinance No:

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND  
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF  
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN  
MONTGOMERY COUNTY, MARYLAND**

---

By: Councilmember Dacek

---

AN AMENDMENT to the Montgomery County Zoning Ordinance for the purpose of:

- providing a definition of deer fence that may be up to 8 feet in height and constructed of plastic material;
- exempting a deer fence from building line and yard requirements; and
- allowing other fences up to 8 feet in height in the RDT zone, if the property is farmed.

By amending the following section of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2	“DEFINITIONS AND INTERPRETATION”
Section 59-A-2.1	“Definitions”
DIVISION 59-B-2	“EXEMPTIONS FROM YARD REQUIREMENTS”
Section 59-B-2.1	“Walls or fences”

**EXPLANATION:** ***Boldface** indicates a heading or a defined term.*

*Underlining indicates text that is added to existing laws by the original text amendment.*

*[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.*

*Double underlining indicates text that is added to the text amendment by amendment.*

*[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.*

*\*\*\* indicates existing law unaffected by the text amendment.*

*ORDINANCE*

*The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:*

1           **Sec. 1. Division 59-A-2 is amended as follows:**

2           **DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.**

3           **59-A-2.1. Definitions.**

4           \* \* \*

5           **Deer fence:** A fence that is up to 8 feet high and constructed of an open mesh,  
6           heavy weight, plastic material that allows a clear view through the fence. Mesh  
7           size ranges from 1.5x1.5 inches to 2x2.75 inches. A deer fence may be constructed  
8           with wood, metal, or fiberglass posts.

9  
10           **Sec. 2. Division 59-B-2 is amended as follows:**

11           **DIVISION 59-B-2. EXEMPTIONS FROM YARD REQUIREMENTS.**

12           **59-B-2.1. Walls or fences.**

13           The building line and yard requirements of this chapter [shall] do not apply to: (1)  
14           retaining walls where changes in street grade, width or alignment have made such  
15           structures necessary [[or other walls]], (2) deer fencing [[not over 8 feet in height]]  
16           in all agricultural zones and in the rear and side yards of all other zones. [or] (3)  
17           other walls or fences not over 6 1/2 feet in height, or (4) other fences not over 8  
18           feet in height in the RDT zone, if the property is farmed and if any scenic setback,  
19           as indicated on an approved and adopted master plan, is adhered to. Fence height  
20           is measured from the lowest level of the ground immediately under the fence.

21           [[;except, that o]]On a corner lot in any residential zone [there shall be no] a fence,  
22           wall other than a retaining wall, terrace, structure, shrubbery, planting or other  
23           obstruction to vision must not have [having] a height greater than 3 feet above the  
24           curb level for a distance of 15 feet from the intersection of the front and side street  
25           lines. [[Retaining walls [shall] must be [permitted] provided where changes in  
26           street grade width or alignment have made such structures necessary.]]

1           **Sec. 3. Effective date.** This ordinance becomes effective 20 days after the  
2 date of Council adoption.

3

4 This is a correct copy of Council action.

5

6

7

8

---

9 Mary A. Edgar, CMC

10 Clerk of the Council