MEMORANDUM

TO: KENNETH W. PARKER, CITY MANAGER
FROM: Michael E. Disher, AICP, Planning & Development Manager (MD)
RE: **LDC Amendment – Revised Figure (Ord. No. 2005-55)**
DATE: January 9, 2006

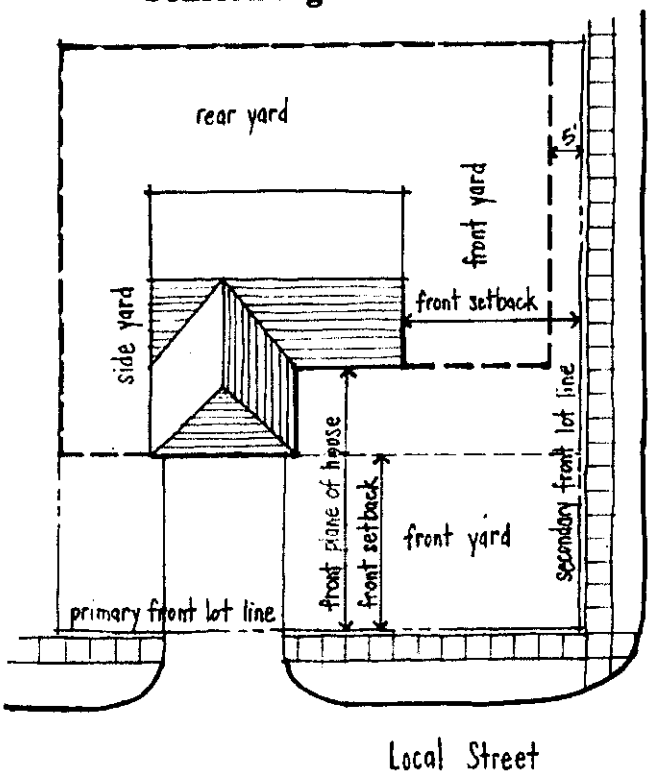
At its December 6, 2005 meeting, the City Council approved Ordinance No. 2005-55 on first reading. This ordinance, an amendment to the Land Development Code regarding fences and walls, was approved with the condition that the new Figure, no. 16:1, be revised. The revised figure is attached to this memo.

If you have any questions, please do not hesitate to contact me at extension 5670, or by e-mail at mdisher@port-orange.org.

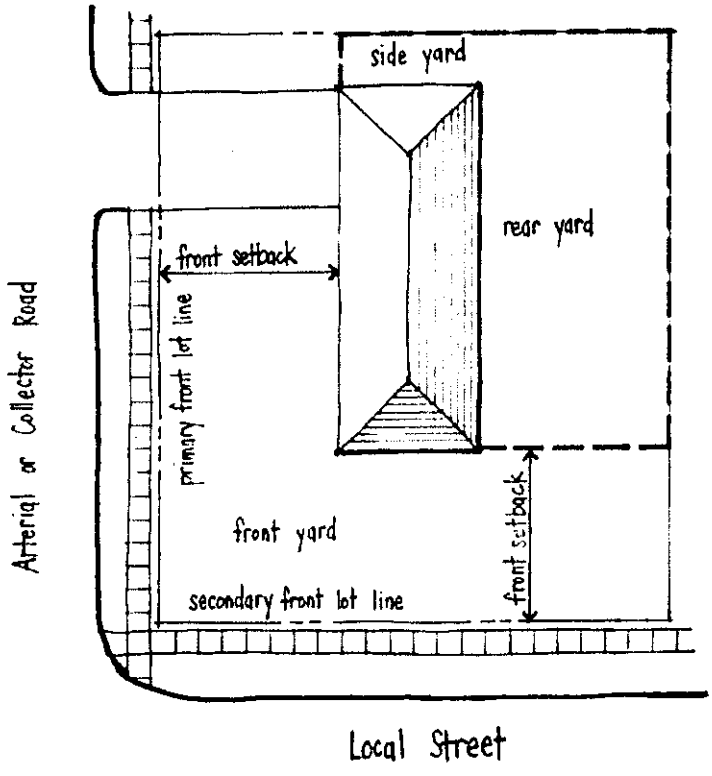
MED

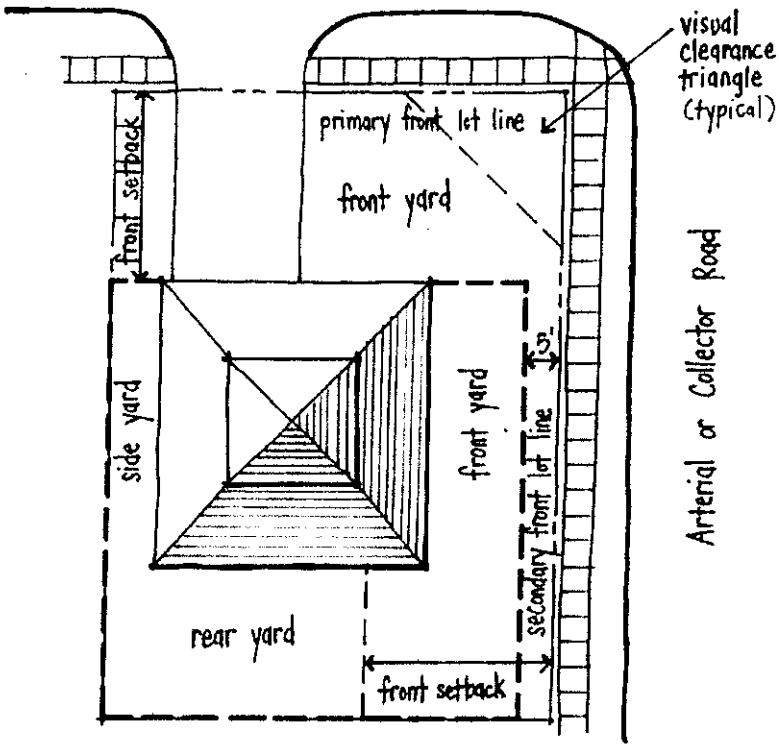
Pc: Margaret Roberts, City Attorney

Conforming Lot & Structure

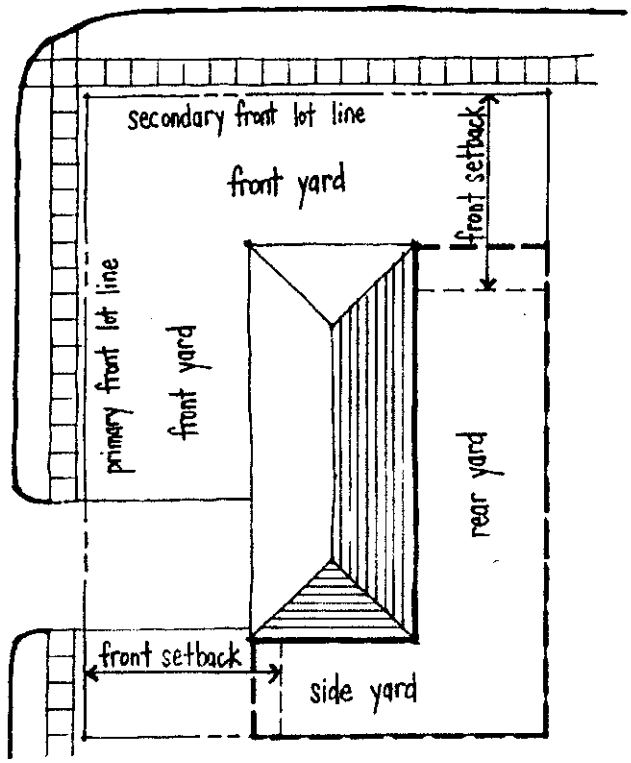


Conforming Lot & Structure





Non-Conforming Lot & Structure



Non-Conforming Lot & Structure

Figure 16:1

— — — = allowed 6' high fence location

CITY COUNCIL AGENDA FORM

REQUESTED COUNCIL MEETING DATE: 12/06/05

SUBJECT: LAND DEVELOPMENT CODE AMENDMENTS / CHAPTERS 2, 13, AND 16 - FENCE AND WALL REQUIREMENTS

DEPARTMENT: COMMUNITY DEVELOPMENT

RECOMMENDED MOTION:
To adopt Ordinance No. 2005-55, amending Land Development Code Chapter 2 (Definitions and Interpretations), Chapter 13 (Landscaping), and Chapter 16 (Miscellaneous Regulations), as recommended by the Planning Commission.

SUMMARY:
Planning Commission Action: July 28, 2005
Recommended approval, 6-0 (Commissioner Barker absent), of the Land Development Code amendments to Chapters 2, 13, and 16. The amendments were prepared as a result of joint workshops of the Planning Commission and City Council during March through June 2005. If approved, the amendments would establish specific criteria for the placement of six-foot-tall fences and walls on residential corner lots and along lots abutting arterial and collector roads. The amendments would specify the point from which the height of opaque walls and fences would be measured when serving a buffering function between residential and non-residential land uses. The amendments include other minor changes to improve clarity to the current regulations. The Staff report is attached for your review.

The amendments were first presented to the Commission in draft form at its June 30, 2005 meeting. The amendments were then sent to VCARD to seek their input on July 11, 2005. VCARD representatives attended the July 28, 2005 Planning Commission meeting, and indicated that they had no concerns with the proposed amendments.

ATTACHMENTS: [X] Ordinance [ ] Resolution [ ] Budget Resolution

[ ] Other [ ] Support Documents/Contracts Available for Review in Manager's Office

DEPARTMENT HEAD Donna J. Steinebach Michael E. Disher Date 11-28-05

CITY ATTORNEY Approved as to Form and Legality Date 11-23-05

CITY MANAGER Approved Agenda Item For: 12/6/05

COUNCIL ACTION: [X] **Approved as Recommended** [ ] **Disapproved**

[ ] **Tabled Indefinitely** [ ] **Continued to Date Certain** [ ] **Approved with Modification**

Second Reading 1/17/0

ORDINANCE NO. 2005-55

AN ORDINANCE OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA, AMENDING THE LAND DEVELOPMENT CODE BY AMENDING CHAPTER 2, SECTION 2, ESTABLISHING DEFINITIONS RELATING TO FRONT LOT LINES; AMENDING SECTION 3.5 OF CHAPTER 13 RELATING TO LANDSCAPING AND BUFFERS; AMENDING SECTION 3 OF CHAPTER 16 RELATING TO FENCES AND WALLS; PROVIDING FOR CONFLICTING ORDINANCES; PROVIDING FOR SEVERABILITY AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, for purposes of this ordinance words with underline (underlined) type shall constitute additions to the original text and words with strikethrough (~~strikethrough~~) type shall constitute deletions from the original text.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The City Council hereby amends Section 2 of Chapter 2 of the Land Development Code to read as follows:

Chapter 2, Definitions and Interpretations, Section 2

Lot line, front. Any side of a lot which fronts upon a street, be it public or private. The primary front lot line is that frontage on which the address is given. For lots with multiple frontages, such as corner lots, the remaining front lot lines are considered to be secondary.

Primary front lot line. See *Lot line, front.*

Secondary front lot line. See *Lot line, front.*

Section 2. The City Council hereby amends Section 3.5 of Chapter 13 of the Land Development Code to read as follows:

Chapter 13, Landscaping and Buffers, Section 3.5

(a)(2) In situations where the abutting development may give rise to negative security, visual, and/or auditory implications, for which a standard six-foot high fence/wall may not sufficiently mitigate ~~for~~, the administrative official may require said fence/wall to be increased to as much as ten feet in height, and/or may require said fence/wall to be constructed of masonry block or similar noise-attenuating material, as deemed necessary to mitigate the impact on adjoining residential property. Where significant grade differentials exist between the residential and non-residential property, such that headlights from parking vehicles would shine directly onto the adjacent residential structure(s), the height of the fence/wall shall be measured from the finished grade elevation of the non-residential parking lot.

Section 3. The City Council hereby amends Subsections 3(b)(2), (3)(a) and (5)(b) of Chapter 16 of the Land Development Code to read as follows:

Chapter 16, Miscellaneous Regulations, Section 3: Fences and walls, Subsection

(b) *General provisions.*
(2) *Height.*

(a) For individual single-family and two-family residential lots ~~uses~~, no permanent fence or wall shall exceed six feet in height in rear or side yards, except as provided in subparagraphs ~~(d) and~~ (e) below. In addition, fences and walls shall not exceed four feet in height when erected on an atypical lot within the required rear yard setback, except as provided in subparagraph (h)~~(f)~~ below.

(b) For individual single-family and two-family residential lots ~~uses~~, no permanent fence or wall shall exceed four feet in height in required front ~~or side~~ yards abutting rights-of-way, except as provided in subparagraphs ~~(d) and~~ (e), (f), and (g) below.

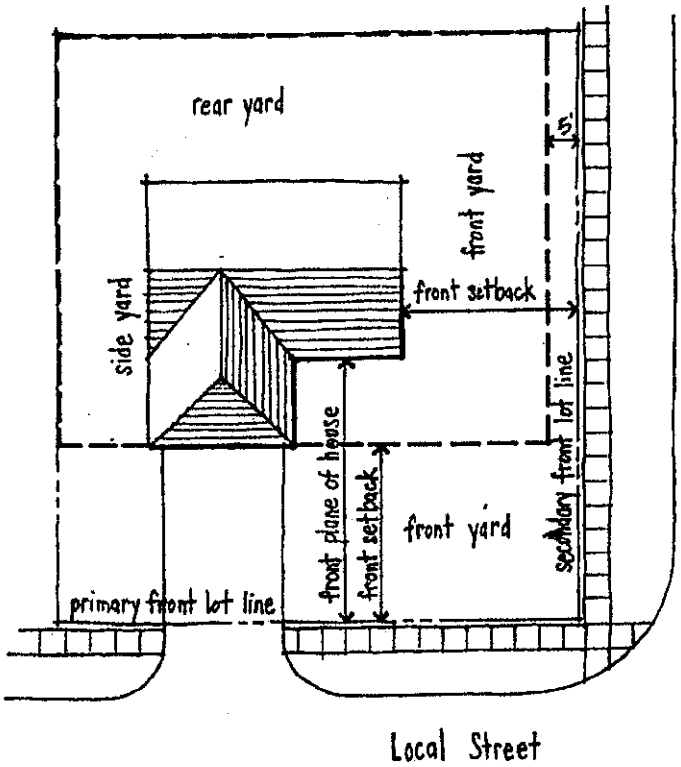
(c) For non-residential ~~commercial and industrial~~ uses, no permanent fence or wall shall exceed ten feet in height unless approved as part of a development plan to meet the buffering requirements between different types of uses, per chapter 13, section 3.5.

(d) No permanent fence or wall located adjacent to any public right-of-way and designed to be an integral part of a new or existing subdivision improvement, including but not limited to subdivision entrances and subdivison walls, shall exceed 12 feet in height, including columns.

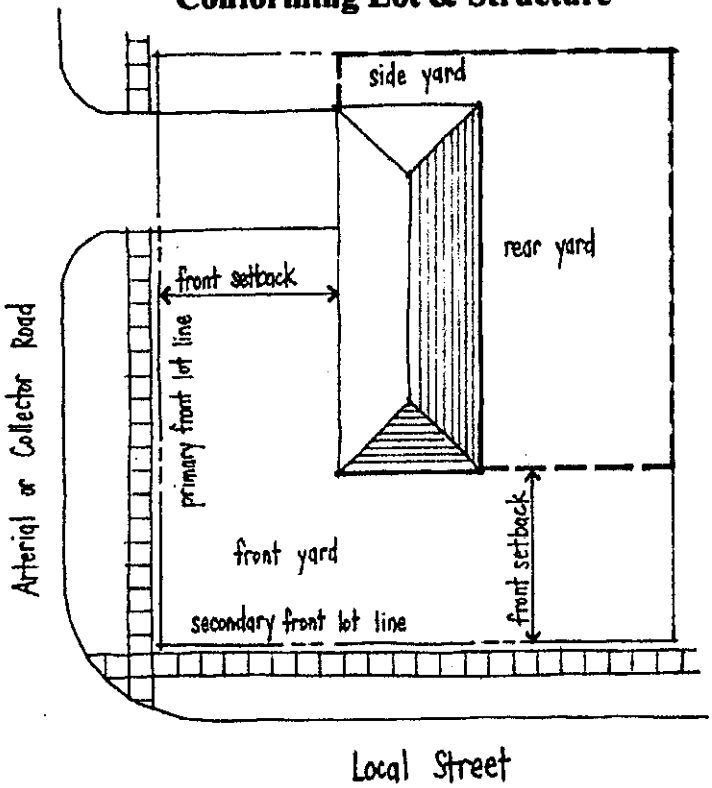
(e) For residential uses adjacent to Interstate 95 right-of-way, no permanent fence or wall shall exceed 12 feet in height adjacent to any property line abutting such right-of-way.

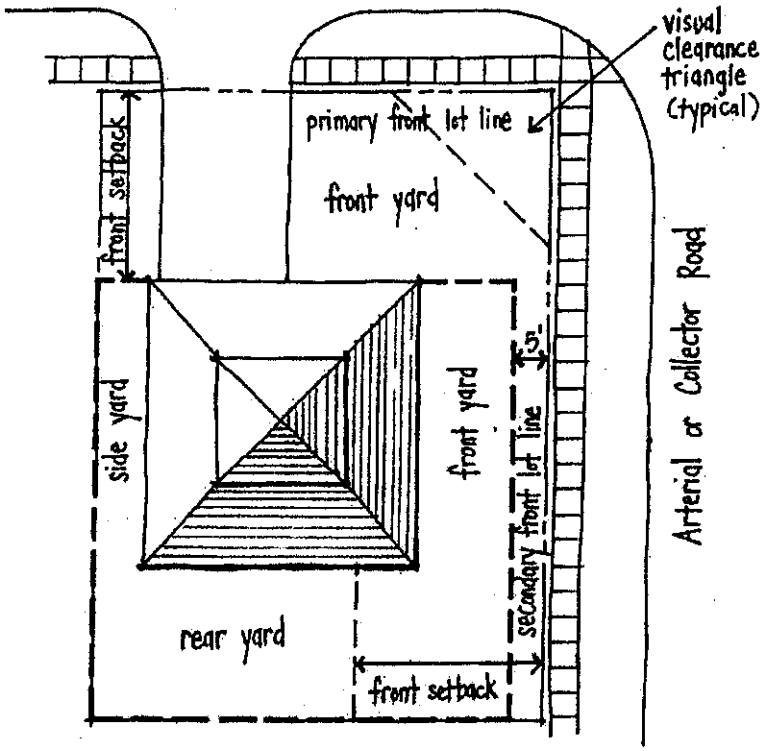
(f) For individual single-family and two-family residential corner lots with a secondary front lot line abutting a local street, a six-foot-tall privacy fence may be placed up to the front plane of the house. For corner lots with a secondary front lot line abutting an arterial or collector road, the six-foot-tall fence may further encroach into the required front yard to within five feet of the secondary front lot line. Fence placement per this subparagraph shall also be allowed on legal non-conforming lots, provided visual clearance requirements of section 6 of this chapter can still be met. Please see Figure 16:1 below.

Conforming Lot & Structure

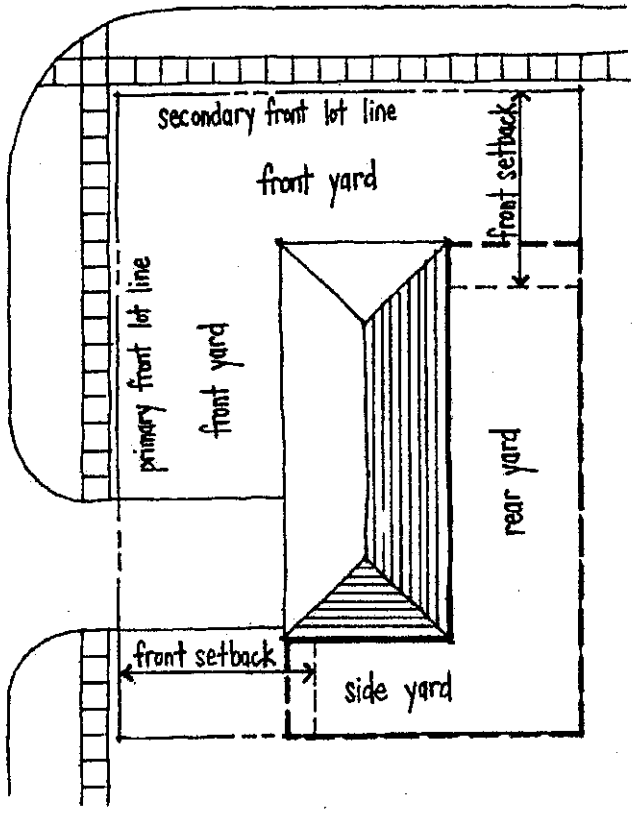


Conforming Lot & Structure





Non-Conforming Lot & Structure



Non-Conforming Lot & Structure

Figure 16:1

— — — = allowed 6' high fence location

(g) For individual single-family and two-family residential through lots with a secondary front lot line abutting a local street or arterial or collector road, a six-foot-tall privacy fence may be placed to within five feet of the secondary front lot line.

(h)~~(f)~~ On atypical lots, chain link fences may not exceed six feet in height when erected within the required rear yard.

(i) Where a fence or wall transitions from a higher to a lower height, the transition must be complete at or before the point where the lower height must begin. For example, where a six-foot-tall fence transitions to a four-foot-tall fence, the transition from higher to lower must be completed where the four-foot height limitation begins, such that no portion of the fence exceeds the height limitation.

(3) *Location.*

(a) No permanent fence or wall shall be located closer than five ~~two~~ feet to any right-of-way line~~, except as described in subsection 5(b) below~~.

(5) *Exemptions.*

~~(b) Fences required or installed to provide rear lot screening of residential uses shall be exempt from right-of-way setback requirements. However, such fences shall comply with requirements to provide visibility clearance at intersections as described in section 6 of this chapter.~~

Section 4. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 5. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by any court of competent jurisdiction, that holding shall in no way affect the validity of the remaining portions of this ordinance.

Section 6. This ordinance shall become effective immediately upon adoption.

MAYOR ALLEN GREEN

ATTEST:

Kenneth W. Parker, City Manager

Passed on first reading on the day of

Passed and adopted on second and final reading on the day of

Reviewed and Approved:
City Attorney

C:\Legal\ORD\ldc Fence Amendments.doc

STAFF REPORT - *REVISED*

Amendment to the Land Development Code / Chapters 2, 13, and 16 – Fence and Wall Requirements
City of Port Orange, applicant
July 8, 2005

INTRODUCTION:

The City of Port Orange, applicant, proposes to amend Chapters 2, 13, and 16 pertaining to the requirements for fences and walls. If approved, the amendments would establish specific criteria for the placement of six-foot-tall fences and walls on residential corner lots and along lots abutting arterial and collector roads. The amendments would specify the point from which the height of opaque walls and fences would be measured when serving a buffering function between residential and non-residential land uses. The amendments include other minor changes to improve clarity to the current regulations.

BACKGROUND:

The amendments under consideration were developed from discussions held at a series of workshops involving the Planning Commission and City Council individually and in joint session from March through June 2005. These meetings were held to identify needed revisions to the City's development regulations and give policy direction to staff regarding these revisions. Four changes to current regulations for fences and walls that were considered:

1. Allowing taller fences on a portion of corner lots that abut arterial or collector roads.
2. Specifying how transitions from one fence height to another should be accomplished.
3. Establishing standards for the materials that may be used for fences and walls along arterial and collector roads.
4. Regulating the height of fences between commercial and residential lots where grade differentials are present.

The proposed amendments listed above were presented to the Port Orange Planning Commission at a special meeting on June 30, 2005. The Commission recommended postponing consideration of the third amendment topic until plans could be prepared to establish the style and materials of fences along individual roadway corridors, and until the City's Neighborhood Investment Program could be modified to assist individual homeowners with meeting the new requirements. This report has now been modified to remove those particular requirements.

DISCUSSION:

FENCES ON CORNER LOTS:

The Planning Commission has been regularly considering requests for variances from the City's current fence and wall regulations to permit taller fences for residential units on corner lots where secondary front yards abut arterial or collector roads. The variance requests have all been for lots in older neighborhoods that were platted without the benefit of a landscape buffer area between the arterial or collector road and the nearest lot. Applicants have been citing the desire for increased privacy for rear and side yard activities from the higher volume of vehicular and pedestrian traffic experienced on arterial and collector roads. When a series of variance requests are received on the same issue, it typically indicates a need to review the code to determine if changes are appropriate. The Planning Commission has asked Staff to include this issue in the overall code review effort.

Exhibit "A" shows the current situation with regard to yards and fences. On a corner lot, each yard abutting the street is a front yard. Thus, the City's current fence requirements limit the height of fences to a maximum of four feet in the yards fronting the local street and the arterial or collector road. Where the house faces the local street and the yard along the arterial or collector road is the secondary front yard, a six-foot fence can only be installed to the building setback line. Any fence in the secondary front yard extending closer to the street is limited to four feet in height.

In recent years the Planning Commission has issued a number of variances from this rule to allow property owners to construct six-foot fences that enclose a least a portion of the secondary front yard along the major roadway. The extent of the variance differs based on the specific circumstances of each case. This issue was examined in detail over a series of workshops in April and May 2005, and the City Council and Planning Commission provided guidance on the policy that should be implemented.

Exhibit "B" illustrates the new proposed policy. The amended code would allow a six-foot fence to be constructed within the secondary front yard to within five feet of and parallel to the arterial or collector road, and up to the front face of the building on the local street. The language of Chapter 16, Section 3(b) will need to be amended to permit this option. On corner lots where the residence faces the arterial or collector road, the four-foot height limit in required front yards will remain in effect.

FENCE HEIGHT TRANSITION

Related to the issue of fence height is how fences may transition from one height to another. Currently, the LDC sets maximum limits on fence height, but it does not provide specify how transitions from one height to another should be accomplished. Staff commonly receives questions regarding this issue from homeowners, especially where the City requires a six-foot fence in one part of the yard and a four-foot high fence in another part. The proposed amendment simply requires that the transition be complete at the point where the lower fence height must begin. Please see Exhibit "C" for an illustration of this requirement.

FENCE HEIGHT ON COMMERCIAL PARCELS

Discussion of fence issues at the workshop sessions identified an issue relating to light impacts from commercial properties onto adjacent residential properties. These impacts

are particularly noticeable where there is a significant grade difference between the commercial and residential parcels. To minimize impacts to the residential parcel, the fence or wall elevation should be measured from the finished grade of the parking lot. In those cases where the commercial parcel is higher than the residential property, the overall fence height might exceed six feet for the length of the common lot line where fences are permitted. Staff proposes to amend Chapter 13, Section 3.5 to specify how fence and wall heights should be measured. Please see Exhibit "D" for an illustration.

RECOMMENDATION:
The Planning Commission and City Council have determined that the proposed amendments are necessary and warranted. Staff therefore recommends **approval** of the amendments as proposed.

Prepared by: Michael E. Disher, AICP, Planning & Development Manager and Thomas A. Harowski, AICP, TMH Consulting

City of Port Orange Department of Community Development 1-386-506-5600

PLANNING COMMISSION DATE: July 28, 2005
CITY COUNCIL DATE: August 16, 2005

PROPOSED AMENDMENTS
Fence and Wall Requirements

Chapter 2, Definitions and Interpretations, Section 2
Lot line, front. Any side of a lot which fronts upon a street, be it public or private. The primary front lot line is that frontage on which the address is given. For lots with multiple frontages, such as corner lots, the remaining front lot lines are considered to be secondary.

Primary front lot line. See *Lot line, front.*

Secondary front lot line. See *Lot line, front.*

Chapter 13, Landscaping and Buffers, Section 3.5
(a)(2) In situations where the abutting development may give rise to negative security, visual, and/or auditory implications, for which a standard six-foot high fence/wall may not sufficiently mitigate ~~for~~, the administrative official may require said fence/wall to be increased to as much as ten feet in height, and/or may require said fence/wall to be constructed of masonry block or similar noise-attenuating material, as deemed necessary to mitigate the impact on adjoining residential property. Where significant grade differentials exist between the residential and non-residential property, such that headlights from parking vehicles would shine directly onto the adjacent residential structure(s), the height of the fence/wall shall be measured from the finished grade elevation of the non-residential parking lot.

Chapter 16, Miscellaneous Regulations, Section 3: Fences and walls, Subsection
(b) *General provisions.*
(2) *Height.*

(a) For individual single-family and two-family residential lots ~~uses~~, no permanent fence or wall shall exceed six feet in height in rear or side yards, except as provided in subparagraph~~s (d) and~~ (e) below. In addition, fences and walls shall not exceed four feet in height when erected on an atypical lot within the required rear yard setback, except as provided in subparagraph (h)~~(f)~~ below.

(b) For individual single-family and two-family residential lots ~~uses~~, no permanent fence or wall shall exceed four feet in height in required front ~~or side~~ yards abutting rights-of-way, except as provided in subparagraphs ~~(d) and~~ (e), (f), and (g) below.

(c) For non-residential ~~commercial and industrial~~ uses, no permanent fence or wall shall exceed ten feet in height unless approved as part of a development plan to meet the buffering requirements between different types of uses, per chapter 13, section 3.5.

(f) For individual single-family and two-family residential corner lots with a secondary front lot line abutting a local street, a six-foot-tall privacy fence may be placed up to the front plane of the house. For corner lots with a secondary front lot line abutting an arterial or collector road, the six-foot-tall fence may further encroach into the required front yard to within five feet of the secondary front lot line. Fence placement per this subparagraph shall also be allowed on legal non-conforming lots, provided visual clearance requirements of section 6 of this chapter can still be met. Please see Figure 16:1 below.

(g) For individual single-family and two-family residential through lots with a secondary front lot line abutting a local street or arterial or collector road, a six-foot-tall privacy fence may be placed to within five feet of the secondary front lot line.

(h)~~(f)~~ On atypical lots, chain link fences may not exceed six feet in height when erected within the required rear yard.

(i) Where a fence or wall transitions from a higher to a lower height, the transition must be complete at or before the point where the lower height must begin. For example, where a six-foot-tall fence transitions to a four-foot-tall fence, the transition from higher to lower must be completed where the four-foot height limitation begins, such that no portion of the fence exceeds the height limitation.

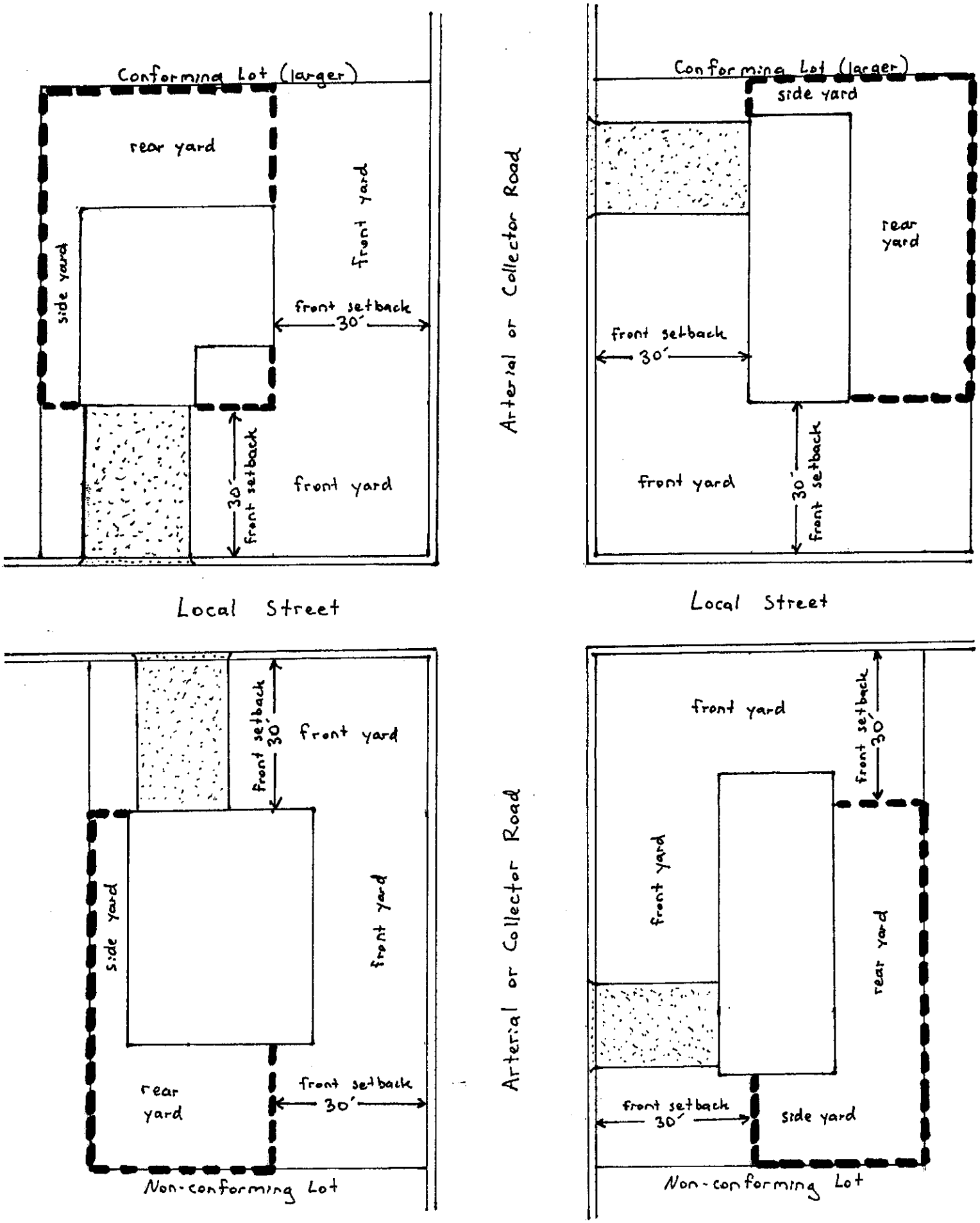
(3) *Location.*

(a) No permanent fence or wall shall be located closer than five ~~two~~ feet to any right-of-way line~~, except as described in subsection 5(b) below~~.

(5) *Exemptions.*

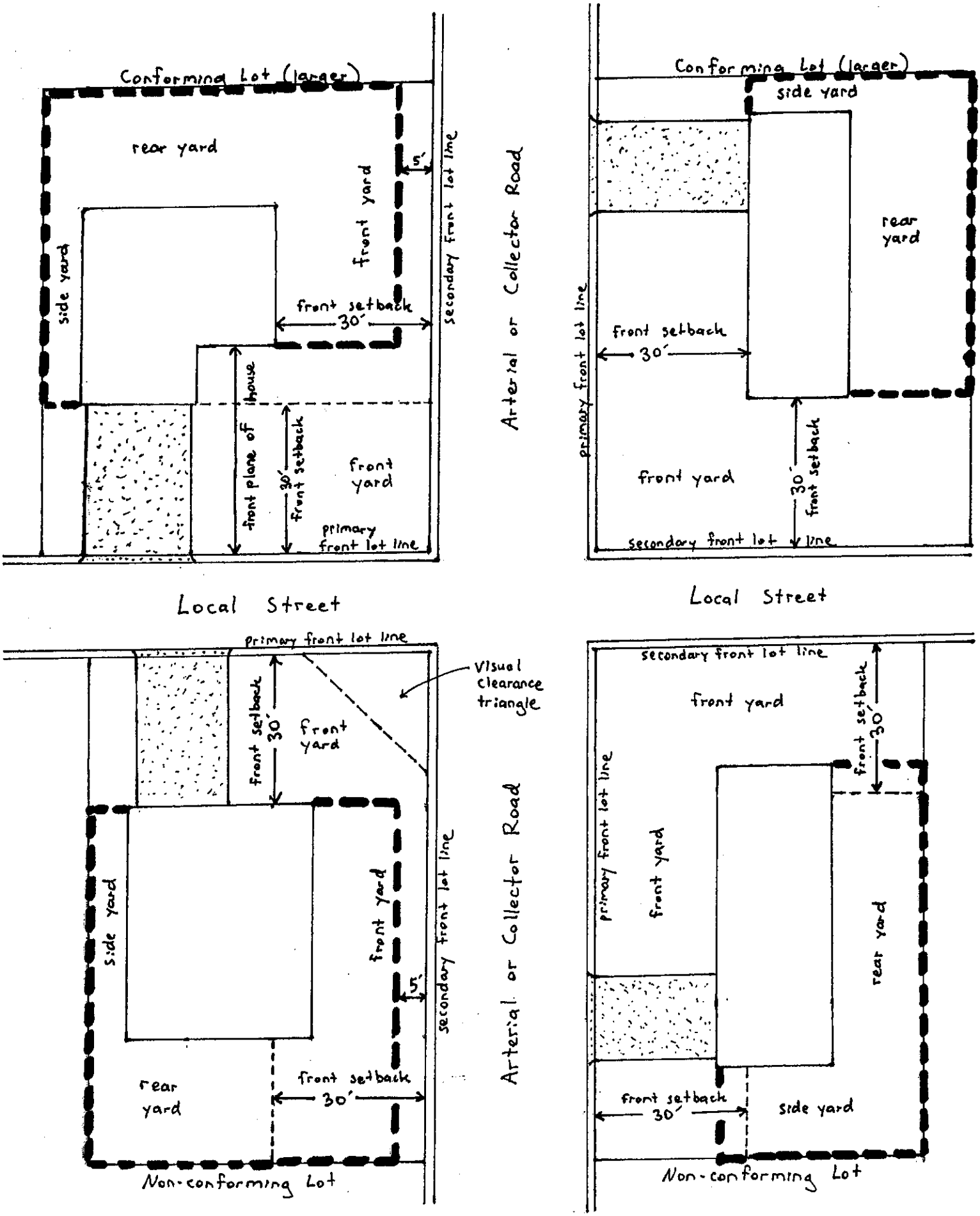
(b) ~~Fences required or installed to provide rear lot screening of residential uses shall be exempt from right-of-way setback requirements. However, such fences shall comply with requirements to provide visibility clearance at intersections as described in section 6 of this chapter.~~

Exhibit "A"



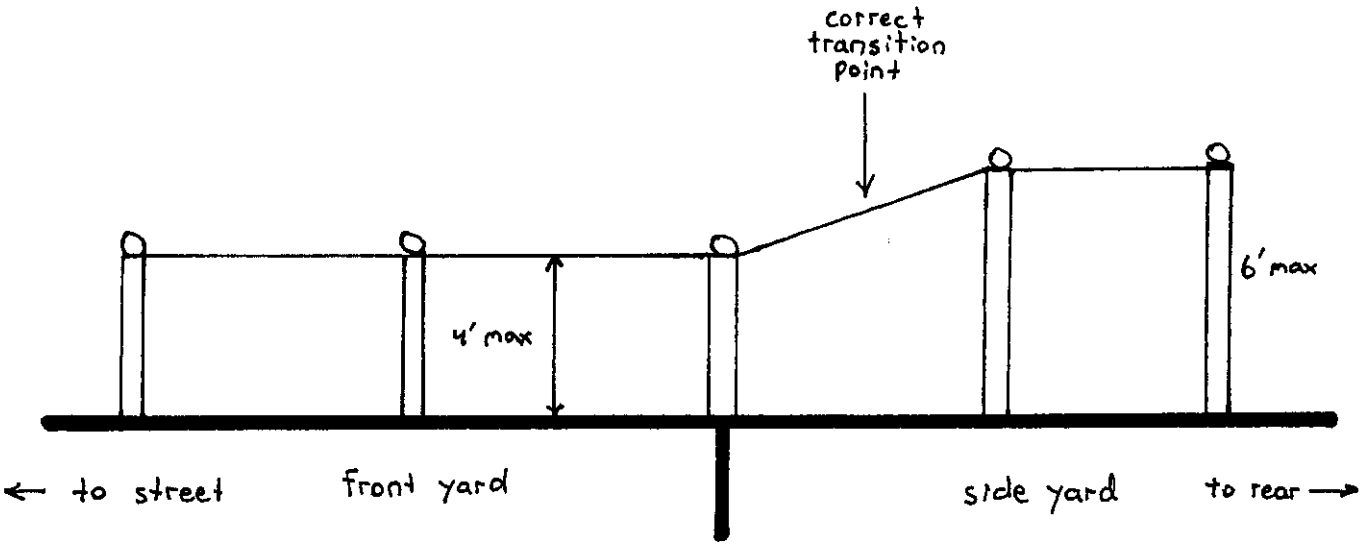
■■■ = allowed 6'-high fence location

Exhibit "B"

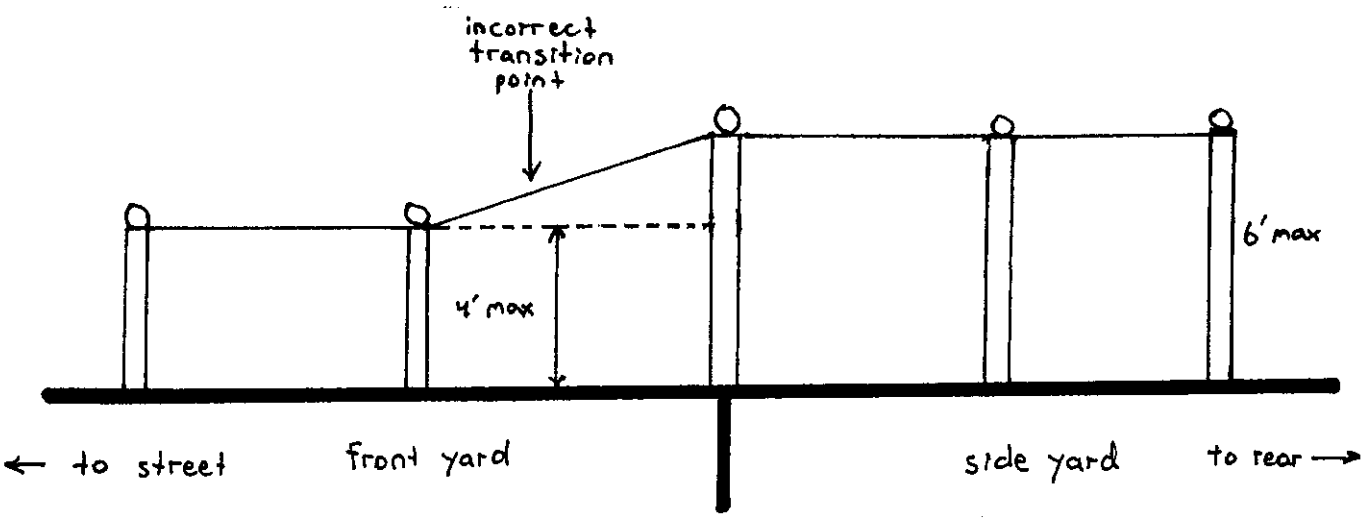


■ ● ● = allowed 6'-high fence location

Exhibit "C"

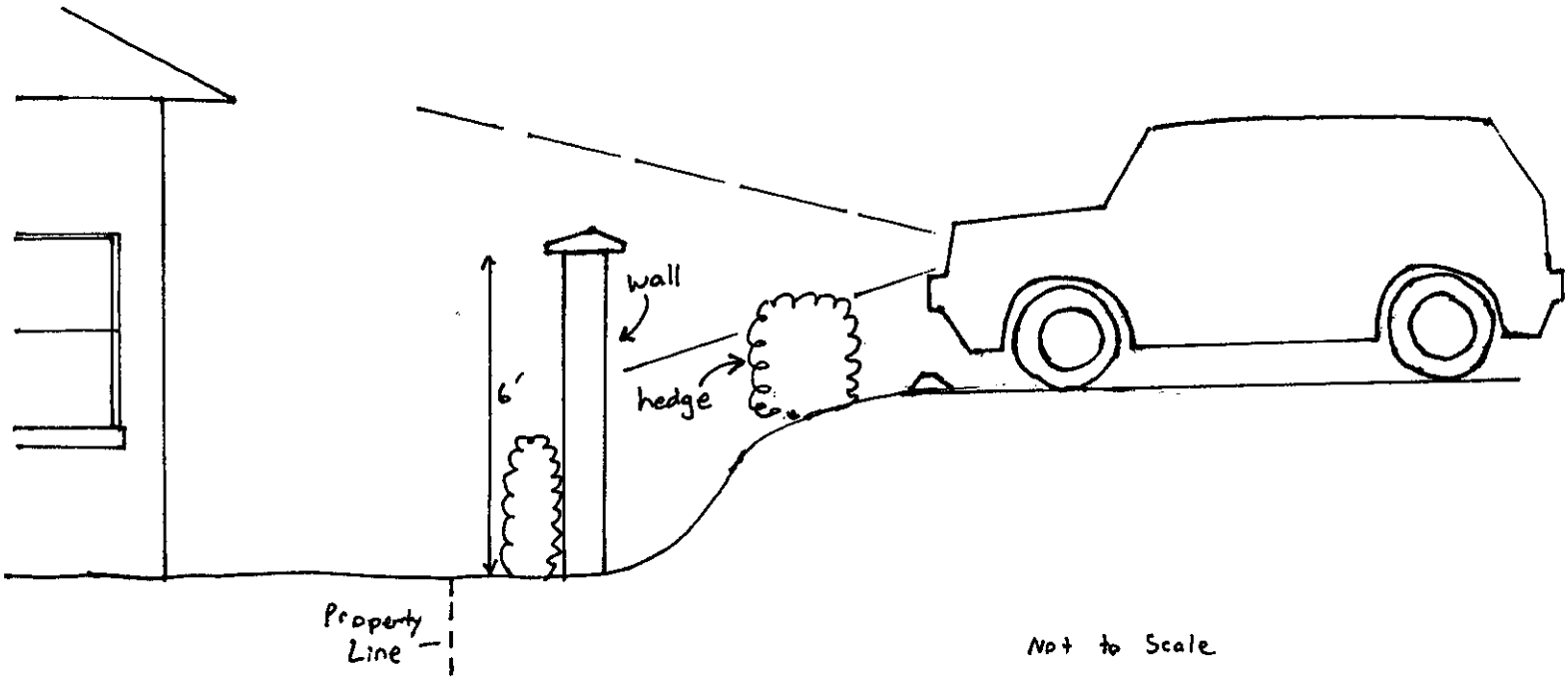


YES

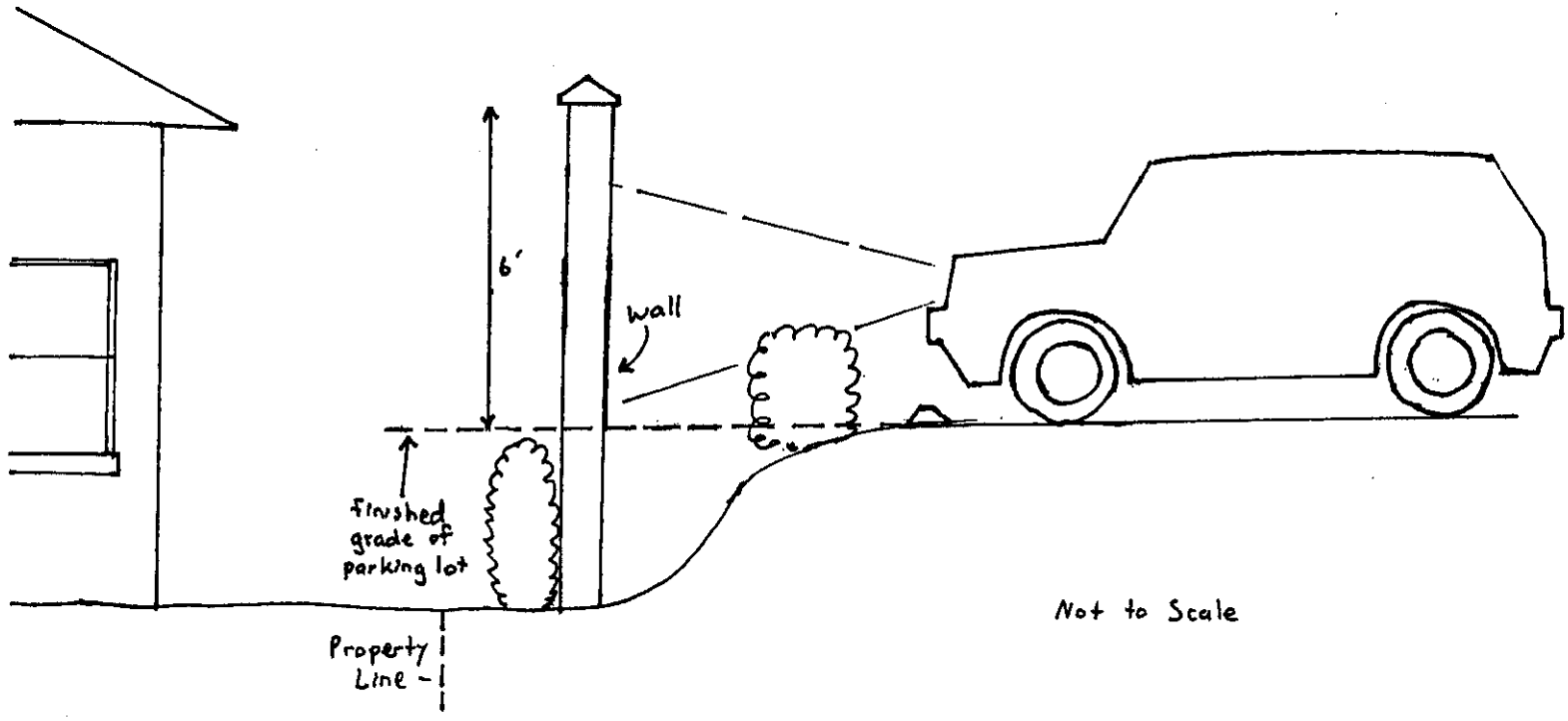


NO

Exhibit "D"



Allowed by existing Code



Proposed Requirement