

## **One Year later – A Review of Enforcement of Richmond Residential Fence Zoning Requirements**

Tom Butt, Richmond City Council  
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After months of rancor, Richmond's revised ordinance regulating residential fences was passed by the City Council on December 16, 2003 (first reading) and January 6, 2004 (second reading).

The ordinance set the height of front yard fences at a maximum of 4 feet, but allowed exceptions following public noticing of an application and completion of a site and Administrative Design Review by the Zoning Administrator resulting in the following findings (15.04.810.039):

1. The proposed fence will not create or exacerbate a public safety hazard.
2. The proposed fence is of design, materials, scale and color that are compatible and harmonious with the subject site, site improvements and other properties within the immediate vicinity.
3. Front yard fencing that prohibits access to the home shall be equipped with a doorbell device.



5 foot high Fence approved in November 2004

The process of approving one fence exceeding 4 feet was recently reviewed at the request of a neighborhood council president. An application to the Planning Department was made for a Residential Fencing Permit to construct a 5 foot high steel picket fence at a corner lot on November 4, 2004.

On November 23, 2004, the Zoning Administrator issued a Notice of Zoning Administrator Decision, which included only the following information about the proposed fence:

“Notice is hereby given that the Zoning Administrator of the City of Richmond has tentatively approved the following application: 1101444 Five foot front fence at \_\_\_\_\_ (APN \_\_\_\_\_).”

Also on November 23, 2004, a letter was sent to the applicant from the Zoning Administrator stating that approval had been granted and that the decision could be appealed within 10 days.



Block adjacent to applicant shows at least one “deemed approved” fence (higher than 4 feet and one 6 foot fence in violation of 15.04.810.035.A

There was no staff report on the application and no documentation from the Zoning Administrator about how the three conditions of approval listed in 15.04.810.039 had been evaluated, what findings had been made or what they were based on. There were no conditions imposed, such as the requirement for a doorbell device.

Upon inquiry by a neighborhood council president, the Zoning Administrator explained:

“In determining whether the requested exception is compatible with the immediate vicinity, all front yard fences within view of the subject site are considered. Since nonconforming fences existing prior to the date of adoption of the ordinance amendment were “deemed approved,” those fences must be considered by the Zoning Administrator when determining compatibility.”

When the fence ordinance was amended, there were those who believed that a compelling case would have to be made to exceed the 4 foot height. Granted, the condition that the “design, materials, scale and color that are compatible and harmonious with the subject site, site improvements and other properties within the immediate vicinity” calls for a very subjective judgment, there should be some guidelines or standards to guide both applicants and potential challengers and to establish consistency in the process.

In the subject case, there are no fences exceeding 4 feet in the immediate vicinity of the applicant, although there are some visible in adjacent blocks.

Apparently, the Zoning Administrator’s standard is, in the absence of a challenge, to approve the application if a fence taller than 4 feet can be seen from the applicant’s location. Is this what the City Council and the citizens who supported this ordinance had in mind?

There are other troubling aspects to the amended fence ordinance. First, fences not conforming to the “deemed approved” provisions were to be modified or removed within 6 months, which would have been in July of 2004 (15.04 810.035.A). Second, existing non-conforming fences, even though “deemed approved” were to be registered and permitted in a process determined by the Planning Director (15.04 810.035.B).

At the passage of the ordinance, the Planning Director has neither enforced the exceptions to the “deemed approved” provisions nor initiated an effort to register non-conforming fences. Add to that a failure to develop any guidelines for evaluating applications for height exceptions or providing conventional staff reports documenting the required findings.