

pub. hr 11-1-10
2nd rd 11-1-10

3rd rd 11-15

4th rd 12-26

5th rd 12-20

6th rd 12-20

✓ amended

Bayan Legal Blank, Inc.

Fences

ORDINANCE No. 0-26-2010

7th rd 1-18-11

* Dog runs
require permit

AN ORDINANCE REPEALING SECTION 1149.09 AND AMENDING SECTION 521.07 OF THE CODIFIED ORDINANCES OF THE CITY OF TROY, OHIO

WHEREAS, Council has reviewed Sections 1149.09 and 521.07 of Codified Ordinances of the City of Troy, Ohio, and determined that changes are necessary,

NOW, THEREFORE, BE IT ORDAINED by the Council of the City of Troy, Ohio, as follows:

SECTION I: That Section 1149.09 of the Codified Ordinances of the City of Troy, Ohio, attached hereto and marked Exhibit "A" is hereby repealed.

SECTION II: That Section 521.07 of the Codified Ordinances of the City of Troy, Ohio, attached hereto and marked Exhibit "B" is hereby repealed.

SECTION III: That Section 521.07 of the Codified Ordinances of the City of Troy, as set forth in the attached Exhibit "C" is hereby enacted and adopted.

SECTION IV: That this Ordinance shall be effective at the earliest date allowed by law.

Adopted: January 18, 2011

Martha A Baker
President of Council

Approved: January 18, 2011

Attest: Eric H Knight
Clerk of Council

Michael I Bernick
Mayor

Exhibit "C"

521.07 FENCES

A fence may be erected, placed, or maintained, upon a lot, subject to the following conditions:

(a) No person or owner of a property shall erect, construct, or allow to remain, any fence charged with electrical current.

(b) No person or owner of a property shall erect, construct, or allow to remain, any fence consisting of barbed wire fence which abuts or is adjacent to any public street or sidewalk. This subsection does not prevent the placement and use of not more than three strands of barbed wire on top of a fence other than a barbed wire fence, provided that such strands are not less than seventy-two inches (72") from the ground and the fences within the M-2 and M-3 zoning districts. The rolling of barbed wire is prohibited. Barbed wire may be erected and maintained as provided in Ohio R.C. 971.03.

(c) No person or owner of a property shall erect, construct, or allow to remain, any fence constructed of corrugated metal, chicken wire, rabbit wire, rope, string, fabric, razor wire, or similar materials subject to deterioration from the effects of weather. This subsection does not prevent the placement and use of corrugated metal fencing within the M-3 zoning district only.

(d) No person or owner of a property shall erect, construct, or allow to remain, any fence, constructed of discarded materials such as shipping crates or pallets; or of tires, stacked tires or automobile parts; or stacked building materials, salvaged garage doors, or similar new or used materials.

(e) After the effective date of this legislation no person or owner of a property shall erect, or construct a fence with a height greater than forty-two (42) inches above the ground level within a front yard setback as defined by the City of Troy Zoning Code, or within a corner side yard of a corner lot, or within a rear yard of a through lot except in the case of double frontage lots where no access is permitted to the more heavily traveled roadway. Only decorative, open style fences such as wrought iron or picket shall be permitted within a front yard setback.

(f) After the effective date of this legislation no person or owner shall construct a chain link fence at a height of more than four (4) feet or a privacy fence at a height of more than six (6) feet, two (2) inches, above the ground level, except a fence located within a front yard setback as defined by the City of Troy Zoning Code, or within a corner side yard of a corner lot, or within a rear yard of a through lot except in the case of double frontage lots where no access is permitted to the more heavily traveled roadway. In the case of a privacy fence, there shall be a gap of two inches from the bottom of the fence to the ground to allow for drainage. In industrial zoning districts (M-1, M-2 and M-3), the maximum height of any type of fence shall be eight (8) feet.

(g) No person or owner shall fail to maintain any fence in good repair. Missing or broken parts; rotted or deteriorated wood parts; or collapse of a part of a fence, or leaning of a portion of a fence by more than 10 degrees from vertical shall be prima-facie evidence of violation of this subsection.

(h) After the effective date of this legislation, except in the case of dual faced fences or walls, all supporting post must be located on the side facing the interior of the property, upon which they are located, and may exceed the height of the posts next to the fence or wall height by no more than 6 inches.

(i) All approved chain link fences shall remain open. No chain link fence shall be erected or constructed in a front yard. The installation of slats made of vinyl, aluminum, or any other material shall be prohibited.

(j) Nothing in these regulations shall prevent a person or owner from repairing or maintaining an existing fence that is not in compliance with subsection (e) or (f) listed above, with a fence at the same location on the lot and maintaining the same height and material previously used.

(k) There shall be no more than one (1) fence between adjacent property owners on or adjacent to the adjoining property lines. A second fence shall be allowed only upon the following conditions:

- (1) Provide or restrict access to or screen a swimming pool or hot tub, or
- (2) Provide a dog run or kennel enclosure in the rear yard, or
- (3) On a drainage easement line or utility easement line with written approval from the City Engineer.
- (4) On any side where a legally preexisting fence was constructed off of the property line prior to the enactment of Section (k) (4), provided that there is a minimum of five (5) feet between adjacent fences. The applicant shall make every effort to avoid a second fence where feasible

A dog run or kennel enclosure is defined as an enclosed area within the rear yard that does not exceed twenty-five (25) percent of the rear yard.

(l) No fence shall be erected unless it contains at least one (1) access gate.

(m) Privacy fences, once erected, shall be maintained and repaired with similar materials. Continuous portions of the fence shall consist of the same materials. Continuous portions are defined as sections of fencing that are connected until separated by a corner.

(n) It is the sole responsibility of the applicant for a fence permit to determine the property line.

(o) Swimming Pools, Spas and Hot Tubs. Private swimming pools, hot tubs and spas containing water more than twenty-four (24) inches in depth shall be completely surrounded by a fence or barrier at least four (4) feet in height above the finished ground level measured on the side of the barrier away from the pool. All gates or doors opening through such enclosure shall be equipped with a self-closing and self-latching device for keeping the gate or door securely closed at all times when not in actual use, and all gates or doors opening through such enclosure shall be designed to permit locking and shall be kept locked when the pool is not in actual use or is left unattended. This requirement shall be applicable to all new swimming pools or family pools hereafter constructed, other than indoor pools, and shall apply to all existing pools which have a minimum depth of twenty-four inches of water. No existing pool enclosure shall be removed, replaced, or changed in a manner that reduces its effectiveness as a safety barrier. Above-ground swimming pools with ladders/steps that can be removed or locked to prohibit access shall be exempt from the provisions of subsection (o). Spas or hot tubs with a safety cover that complies with ASTM F 1346 shall be exempt from the provisions of subsection (o).

(p) No fence shall be constructed unless the owner or erector of such fence receives a fence permit from the Planning Division. Applications for such a permit shall include a drawing showing the shape and dimension of the property upon which the fence is being erected; height, location, type of material of the proposed fence; the location of all buildings on the lot; and any other information deemed necessary by the Planning Division. The Director of Public Service and Safety shall establish a fee for the permit and the format of the application form, which shall require each applicant to certify that the fence does not encroach upon another owner's lot or parcel of land.

The City shall furnish inspection as it deems necessary to determine that the fence is constructed in accordance with plans submitted for the permit and the requirements of this section. Any inspection provided shall not be construed to mean that the City has determined that the fence is on the appropriate lot, nor relieve any property owner of their duty imposed by law.

(q) All fences, except fences located within the Agricultural, Agricultural-Residential, or R-1 zoning districts, shall be placed upon the lot lines, or as near as practicable, unless the rear lot line abuts a public Right-Of-Way, with the exception that fences may be allowed to intrude into the required rear and side yards to provide for enclosure for the fenced in area. Fences located in the frontyard setback are not required to be on the property line.

(r) Appeals and Variances.

(1) Authorization. The Board of Zoning Appeals (BZA) may authorize variance from the terms of this section only in those specific instances enumerated herein and then only when the BZA has made findings of fact, based upon the standards set out in Section 521.07(r)(5) that owing to special conditions a literal enforcement of the provisions of this section will result in practical difficulties or unnecessary hardship for the owner, lessee, or occupant of land or structures.

(2) Application. An application for a variance shall be filed in duplicate with the Secretary of the BZA. Such an application shall not be filed until a fence permit has been applied for and refused by the Planning Division in accordance with Section 521.07(p). The application fee shall be established by the Director of Public Service and Safety. The application shall contain the following information as well as such additional information as may be prescribed by general rule of the BZA:

A. The particular requirements of this section which prevent the proposed use or construction.

B. The characteristics of the subject property, which prevent compliance with, said requirements of this section.

C. The reduction of the minimum requirements of this section which would be necessary to permit the proposed use or construction.

D. The particular hardship, which would result if, said particular requirements of this section were applied to the subject property.

E. The names and addresses of property owners contiguous to and directly across any street or alley of the parcel or parcels of land in the application.

(3) Hearing. The BZA shall hold a hearing on an application for a variance within thirty (30) days after the application has been filed unless otherwise agreed by the applicant. Public notice of such hearing shall be published at least once in a newspaper of general circulation in the City not less than five (5) nor more than twenty (20) days before such hearing. Such notice shall contain the date, time, and place of the hearing, a brief description of the relief sought. Written notice shall be given at least five (5) days before the hearing to owners of property abutting the applicant's property and owners of property directly across any street or alley, as they appear on the application. The BZA may give such additional notice as it may from time to time by general rule provide. Any party in interest may appear and be heard at the hearing in person, by agent, or by attorney.

(4) Authorized Variances. Variances from the regulations of this section shall be granted by the BZA only in accordance with the standards set out in Section 521.07(r)(5) and may be granted only in the following instances, and in no others:

A. To vary the applicable setback requirements, or

B. To vary the applicable height regulations.

(5) Standards.

A. The BZA shall not grant a variance as authorized in Section 521.07 (r)(4) unless it shall, in each case, make specific findings of fact directly based upon the particular evidence presented to it, which support conclusions that:

1. The variance requested arises from a condition which is unique, that is, a condition which is not ordinarily found in the same zoning district and the condition is created by the regulations of this section and not by an action or actions of the property owner or the applicant.

2. The granting of the variance will not adversely affect the rights of adjacent property owners or residents.

3. The strict application of the provisions of this section from which a variance is requested will constitute unnecessary hardship upon the property owner represented in the application.

4. The variance desired will not adversely affect the public health, safety, morals, convenience, comfort, prosperity, or general welfare.

5. The variance desired will not be opposed to the general spirit and intent of this section.

B. In determining whether the evidence supports the conclusions required by this section as set out above, the BZA shall consider and specifically detail in the findings of fact the extent to which the evidence demonstrates that:

1. The particular physical surroundings, shape, or topographical condition of the specific property involved would result in a practical difficulty or unnecessary hardship upon or for the owner, lessee, or occupant, as distinguished from a mere inconvenience, if the provisions of this section were literally enforced.

2. The request for a variance is not based exclusively upon a desire of the owner, lessee, or occupant, or applicant to realize economic gain.

3. The granting of the variance will not be materially detrimental or injurious to other property or improvements in the neighborhood in which the subject property is located.

4. The proposed variance will not impair an adequate supply of light or air to adjacent property, substantially increase the congestion in the public streets, increase the danger of fire, endanger the public safety, or substantially diminish or impair property values within the neighborhood.

(6) Conditions and Restrictions. In granting a variance, the BZA may impose such conditions, safeguards and restrictions upon the premises benefited by the variance as may be necessary to comply with the standards set out in Section 521.07(r)(5) so as to reduce or minimize any potential injurious effect of such variance upon other property in the neighborhood, and to carry out the general purpose and intent of this section.

(7) Decisions and Records. The BZA shall render a written decision on an application for a variance without unreasonable delay after the close of a hearing, but in all cases, within thirty (30) days from the close of the hearing. The Secretary of the BZA shall maintain complete records of all actions of the BZA with respect to applications for variances from the section.

(8) Period of Validity. No variance granted by the BZA shall be valid for a period longer than six (6) months from the date on which the BZA grants the variance, unless within such six (6) month period a Fence Permit is obtained and construction is started. The Planning Division, upon written application, may grant an extension not exceeding six (6) months.

(s) Fences constructed for security purposes at governmental installations and if allowed or mandated by state or federal law may exceed height, setback and material requirements, such as barbed wire and razor wire or other similar materials, with written consent from the City Engineer.

(t) Whoever violates this section is guilty of a misdemeanor of the fourth degree, punishable as provided in Section 501.99 of the Codified Ordinances of the City of Troy, Ohio and each day such a violation is continued shall constitute a separate offense. If the offender has previously been convicted of a violation of this section, then a subsequent violation shall constitute a misdemeanor of the third degree, punishable as provided in Section 501.99 of the Codified Ordinances of the City of Troy, Ohio and each day such a violation is continued shall constitute a separate offense.