

City of Amesbury, MA

Tuesday, May 31, 2016

## Chapter 278. Fences

[HISTORY: Adopted by the Town of Amesbury as Art. 49 of the 1990 Bylaws. Amendments noted where applicable.]

### § 278-1. Definitions.

For purposes of this chapter, the following terms shall have the meanings indicated:

#### **ABUTTING OWNERS**

Owners of the real property immediately adjacent to the boundary line, or portion thereof, of property on which a boundary fence (as hereinafter defined) is to be installed. If a boundary fence is to be installed along only a portion of the length of a boundary line, only those abutters whose property immediately abuts such portion of the boundary line shall be included in the term "abutting owners."

#### **BOUNDARY FENCE**

Any fence or fence-like structure that is, or is intended to be, installed on or within five feet of a real property boundary line as determined by the Board of Fence Viewers of the Town of Amesbury.

#### **FENCE or FENCE-LIKE STRUCTURE**

A hedge, structure or partition erected for the purpose of monumenting the boundary of a piece of land, enclosing a piece of land, dividing a piece of land into distinct portions, separating two contiguous parcels or otherwise enclosing a field or other area of land or an object located on land, preventing intrusions from without the land enclosed or straying from within the land enclosed, or providing security or protection to persons, animals, objects or structures located on or occupying land, shielding land or the occupants thereof from noise or view, etc., including but not limited to structures or partitions made of wood, stone, metal or other materials, including trees and shrubs to be planted by an owner to act as a fence as defined herein. This definition does not apply to trees, shrubs or other vegetation already growing at the time this chapter is passed.

#### **OWNER**

Any owner of real property located in the Town of Amesbury upon which a fence or fence-like structure subject to this chapter is located or is to be installed. The term "owner" shall include a tenant of such property if a tenant is the one who is responsible for or who will be installing a fence, except that a tenant shall, in addition to the application procedures required under this chapter, submit along with the application written permission from the owner of the property for the tenant to install the fence.

### § 278-2. Permit to install fence in zoning setback areas.

- A. Prohibition against erecting fence in zoning setback areas without permit. No owner of real property located in the Town of Amesbury shall install a fence or fence-like structure on such property within the front, side or rear setback areas set forth in Section VI (Dimensional and Density Regulations) of

the City's Zoning Bylaw, as amended from time to time, without first making application for and obtaining a permit from the Board of Fence Viewers based upon a determination that such fence or fence-like structure is not a boundary fence and/or otherwise complies with this chapter, the Zoning Bylaw, any other statutes or ordinances or any other regulations regarding fences issued by the Board of Fence Viewers, the Municipal Council or any other board, commission or agency of the City or the Commonwealth of Massachusetts.

- B. Application for permit to install fence in setback areas and for determination as to whether boundary fence. Any such owner intending to install a fence or fence-like structure within such setback area(s) shall file an application for a fence permit with the Board of Fence Viewers at the City Clerk's office on a form to be promulgated by such Board. Such application should be filed with the City Clerk's office not less than 30 days before the date installation of the fence is to commence. Such application shall be accompanied by:
- (1) An application fee of \$25; and
  - (2) A copy of such portion of the City's Assessors' Map as is sufficient to show the owner's property and the property of all abutting owners, together with a sketch on such copy showing the approximate length, width and location of the existing and/or proposed fence and sufficient tape or survey measurements to enable the Board of Fence Viewers to determine whether the fence may be within the Zoning Bylaw setback area(s).
- C. Action by the Board on the application for fence permit; additional information; timing. If such owner has submitted a completed application in accordance with Subsection **B**, the Board of Fence Viewers shall issue a written determination within 30 days of the submission of the application, unless the Board reasonably believes that additional information is necessary for it to make its determination, in which case the Board shall mail to the owner, within such 30 days, a notification to that effect together with identification of the particular additional information the Board is requesting. Upon submission of such additional information by the owner, the Board shall have an additional 14 days to issue its determination. The Board's determination shall be considered issued upon being filed with the City Clerk and mailed to the applicant at such address as the applicant has provided in the application.
- D. Approval of permit. If the Board's determination is that the fence or fence-like structure is not a boundary fence and to approve the application without further proceedings, then the Board shall issue a permit to install the fence with whatever conditions the Board deems appropriate under the circumstances. If the Board fails to issue a determination one way or the other within the time periods set forth herein, then the application shall be deemed approved and the installation shall be permitted in accordance with the application without further action of the Board. In the latter event, the owner may obtain from the City Clerk a certificate that no determination was filed within the time periods herein provided.
- E. Denial of permit based on determination that fence may be a boundary fence or may violate other ordinances, regulations or statutes. If the Board's determination is that the fence or fence-like structure as proposed is or may be a boundary fence and the installation thereof falls within the procedures set forth in this chapter for a boundary fence, the Board shall so notify the owner and direct the owner to follow those procedures. If the Board determines that the fence will violate any other ordinances, statutes, regulations or bylaws, the Board shall so inform the owner and shall, to the extent possible, direct the owner as to possible actions the owner may take in order to comply or direct the owner to the appropriate authority for further action on the matter.
- F. Appeal of Board's decision. If the owner is aggrieved by a determination of the Board on the application for a fence permit, the owner shall have the same appeal rights as otherwise set forth in this chapter in the case of boundary fences.
- G. Fines and penalties. Violations of this section of this chapter shall carry the same fines, penalties and

enforcement procedures as otherwise provided in this chapter for boundary fences.

### § 278-3. Permit to install boundary fence.

- A. Application for boundary fence permit. Notwithstanding the provisions of § 278-2 of this chapter, no owner of real property located in the Town of Amesbury shall install a boundary fence without first obtaining a permit therefor from the Board of Fence Viewers. Whether as an original application under this section or as a result of a determination made pursuant to an application for a fence permit under § 278-2 of this chapter that a proposed fence is or may be a boundary fence, any such owner intending to install a boundary fence shall file an application for a boundary fence permit with the Board of Fence Viewers at the City Clerk's office on a form to be promulgated by such Board. If not already filed as part of an application for fence permit under § 278-2, such application should be filed with the City Clerk's office not less than 30 days before the installation of the boundary fence is to commence but in sufficient time to assure compliance with the thirty-day abutting owner notice requirements set forth in §§ 278-4 and 278-5 of this chapter.
- B. Instruments to accompany application. To the extent not already provided as part of an application for a fence permit under § 278-2, such application for a boundary fence permit shall be accompanied by:
- (1) A copy of such portion of the City's Assessors' Map as is sufficient to show the owner's property and the property of all abutting owners, together with a sketch on such copy showing the approximate length, width and location of the proposed boundary fence and sufficient tape or survey measurements to enable the Board of Fence Viewers to determine the proximity of the proposed boundary fence location to the boundary line of the property;
  - (2) A copy of the deed of the property to the owner showing the complete description of the property; and
  - (3) An application fee of \$45, provided that a credit shall be given for the application fee of \$25 already paid if the owner followed the procedures under § 278-2 first.

### § 278-4. Notice of intention to install boundary fence.

Any owner of real property located in the Town of Amesbury intending to install a boundary fence on such owner's property shall provide written notice (the "boundary fence notice") of such intention to all abutting owners. The boundary fence notice shall be sent to all abutting owners by certified mail, return receipt requested. For purposes of the boundary fence notice, the abutting owners shall be deemed to be those persons who, according to the records of the Town of Amesbury Tax Assessors' office ("Assessors' records"), appear to be the abutting owners as of the day immediately prior to the date of mailing of the boundary fence notice. The boundary fence notice shall be sent to the abutting owners at their mailing address as shown in the Assessors' records and shall be postmarked not less than 30 days prior to breaking any ground for the purpose of installing the boundary fence.

### § 278-5. Marking of proposed fence location; contents of notice.

Prior to mailing the boundary fence notice, in addition to the sketch required in § 278-2 above, the owner shall mark on the ground the proposed location of the entire boundary fence by a means of temporary marking, such as biodegradable paint, or by inserting stakes and running string or tape between the stakes. Such marking of the proposed location of the boundary fence shall be maintained until a final determination of the Board of Fence Viewers is made on the application for a boundary fence permit. The

boundary fence notice shall be made on a form to be promulgated by the Board of Fence Viewers and available at the City Clerk's office, which form shall require, at a minimum, the furnishing of the following information:

- A. A statement that the owner is proposing to install a fence on or within five feet of the boundary line (a "boundary fence") between the owner's property and the abutting owner's property.
- B. A copy of the portion of the Assessors' Map with the sketch of the boundary fence as submitted with the boundary fence permit application to the City Clerk under the requirements of § 278-3 above, together with:
  - (1) A statement that the owner, in the case of an existing fence to be replaced, intends to replace the fence in its current location or, in the case of a new fence or the relocation of a fence, that the owner has also marked the location of the proposed boundary fence on the ground; and
  - (2) A description of the method used to mark the location (e.g., by stakes and string).
- C. A statement that, if the abutting owner wishes to object to the location of the boundary fence, the abutting owner must file a written objection with the Board of Fence Viewers within 14 days from the date of the postmark of the notice, either by delivery to the City Clerk's office at the Amesbury City Hall or by certified mail, return receipt requested, to the Board of Fence Viewers, care of the City Clerk's office, Amesbury City Hall, and that any such objection must provide reasons for the objection.
- D. The mailing address of the owner for receipt of a copy of any written objection filed with the Board of Fence Viewers.

## § 278-6. Objection by abutting owners.

Abutting owners shall have 14 days from the postmark of the boundary fence notice to object to the location of the owner's boundary fence. Such objection must be in writing, must include reasons for the objection, and must be filed with the Board of Fence Viewers within 14 days from the date of the postmark of the notice, either by delivery to the City Clerk's office at the Amesbury City Hall or by certified mail, return receipt requested, to the Board of Fence Viewers, care of the City Clerk's office, Amesbury City Hall. A copy of the written objection shall be mailed to the owner at the address the owner has provided in the boundary fence notice. If all abutting owners fail to timely object in accordance with this section, then the Board of Fence Viewers shall issue the boundary fence permit within seven days after the fourteen-day objection period expires, unless the Board itself has any objections, in which case the Board shall mail a notice of its objections to the owner within such seven-day period. The owner shall have seven days from the postmark date of the notice of objection to file with the Board a written rebuttal to any objections.

## § 278-7. Hearing on objections based on dispute over location of boundary line.

If any abutting owners object to the boundary fence permit application based on a claim that the location of the boundary line between the owner's property and the objecting abutting owner's property is in dispute, the Board of Fence Viewers shall hold a hearing on the objection within 14 days after the expiration of the objection period and shall mail written notice of the date, time and place of the hearing to the owner and the objecting abutting owner not less than seven days prior to the hearing. Such hearing shall be scheduled so as to be reasonably convenient for all parties concerned, and the Board shall allow for a reasonable request for rescheduling by the owner or the objecting abutting owner. In the notice of the hearing, the Board may include such requests for documents, maps, plans, surveys or other information to be provided at the hearing as the Board may deem appropriate to its hearing on the objection. The Board shall make such rulings based on the evidence presented as it deems appropriate and

consistent with this chapter and with the provisions of MGL c. 49, including but not limited to the provisions of §§ 14 and 15 of said chapter.

### **§ 278-8. Other objections; discretionary hearing.**

If objections to the owner's application are made based on reasons other than a disputed boundary line, the Board of Fence Viewers, in its discretion, may, but shall not be required to, hold a hearing as set forth in § 278-7 and, if so, shall use the same procedures and shall have the same powers. Alternatively, the Board may make such determinations as it deems appropriate based on the owner's application, any written objections filed by abutting owners, any rebuttal filed by the owner and any other relevant information before the Board, including but not limited to the results of any site view of the proposed boundary fence location undertaken by the Board.

### **§ 278-9. Survey plan.**

In addition to the rights of the Board of Fence Viewers under MGL c. 49, § 14 relative to the employment of a surveyor by the Board, in the event that the evidence presented to the Board is deemed by the Board to be insufficient to establish by a preponderance of the evidence either the precise location of the disputed boundary or that the proposed location of the boundary fence will not cause any portion of the fence to encroach over the property line into the objecting abutting owner's property, the Board of Fence Viewers may deny the boundary fence permit pending receipt by the Board of a survey plan prepared by a Massachusetts registered land surveyor certifying the location of the boundary line and pending a further reasonable opportunity for the objecting abutting owner (if the survey is provided by the owner installing the fence) or the owner installing the fence (if the survey is provided by the objecting abutting owner) to review the survey and the surveyor's certification and either agree or raise further written objection. The Board, in its discretion, may provide a reasonable time for further objection and rebuttal and may hold a further hearing as it deems appropriate. After considering such additional evidence, if the Board is still unable to make a determination that the proposed location of the boundary fence will not result in any portion of the fence encroaching over the property line, the Board may deny the permit and order that no fence be installed in the proposed location until a final judicial determination as to the location of the property line is made and such judicial determination conclusively establishes that the proposed location of the boundary fence will not result in any portion of the fence encroaching into the abutting owner's property.

### **§ 278-10. Boundary fences installed without permit.**

If the owner has already installed a boundary fence or is in the process of installing it and an abutting owner files a written objection with the Board of Fence Viewers, the Board shall forward a copy of the objection to the owner together with an order to cease and desist pending further order of the Board and an order to comply with the application for boundary fence permit procedures set forth above to the extent applicable in light of any abutting owner objection already having been filed. In the event that the Board determines that the boundary fence, or any portion constructed up to that point, encroaches over the property line, the Board shall issue an order to the owner to either move or remove the fence. Upon failure of the owner to comply with any such order of the Board within a reasonable time as set forth in the Board's order, the remedies provided under §§ 278-11 and 278-12 of this chapter as well as MGL c. 49, §§ 14 and 15 shall apply.

### **§ 278-11. Violations and penalties.**

A. Fines. In addition to any other remedies provided by MGL c. 49 or any other laws or ordinances,

violations of this chapter shall carry a penalty of \$50 for each violation. Each day a violation continues shall be deemed to be a new violation and any fine imposed shall apply to each such violation.

- B. Penalty for frivolous or malicious action. In addition, the Board of Fence Viewers or any other enforcing authority may impose a fine or penalty of \$300 on any party involved in a boundary fence dispute if the party has taken any action which, in the opinion of the Board of Fence Viewers or other enforcing authority, was taken in bad faith (i.e., lacking a reasonable basis in fact or law) or with malicious intent toward an opposing party (i.e., pursuing an objection or an argument as a mere pretext to hinder, delay or impede the other party's lawful right to erect or contest the erection of a boundary fence). In addition, the Board of Fence Viewers or other enforcing authority may order the offending party to pay some or all of the opposing party's costs, expenses, legal fees and survey costs. If the party assessed a fine or penalty fails to pay the same and judicial enforcement becomes necessary, the assessed party shall be liable to the City for its costs, expenses and attorney fees incurred enforcing the fines or penalties and costs.<sup>[1]</sup>
- [1] *Editor's Note: Amended at time of adoption of Code (see Ch. 1, General Provisions, Art. II).*
- C. Forced removal of fence in violation. In addition to and not in limitation of the foregoing, the Board of Fence Viewers or other enforcing authority shall have the authority to order the removal of any fence or fence-like structure which violates any provision of this chapter or any other ordinance, bylaw, regulation or statute and to set a reasonable time for such removal, such authority to include the authority to order removal of encroachments of fences or fence-like structures from lands, ways or easements owned, maintained or controlled by the Town of Amesbury or from any other public ways in accordance with MGL c. 86, §§ 3 and 5. In addition to any other fines or penalties imposed pursuant to this chapter or any other provisions of law, upon the failure of any owner to remove a fence or fence-like structure within the time set by the Board of Fence Viewers or other enforcing authority, the Board or other enforcing authority may undertake the removal of the fence or fence-like structure in conjunction with the Police Department and/or the Department of Public Works, and the owner shall be liable to the City for all costs associated with such removal, including labor, materials and costs associated with the use of machines or vehicles.
- D. Joint and several liability of fencing businesses. Any person or entity in the business of constructing or erecting fences who constructs or participates in constructing a boundary fence in violation of this chapter and who knew or reasonably should have known of this chapter and its applicability to the fence in question shall be jointly and severally liable with the owner for any fines imposed under Subsection **A** or for any costs assessed the owner under Subsection **C**.

## § 278-12. Enforcement.

- A. The officials responsible for the enforcement of this chapter shall be pursuant to Chapter 1, Article I of this Code and MGL c. 40, § 21D, noncriminal disposition:
- (1) The Amesbury Police Department.
  - (2) The Amesbury Board of Fence Viewers.
  - (3) The Amesbury Building Commissioner's office.
- B. Each of the above shall be authorized either collectively or in their individual capacity to issue citations, hearing notices and violations of these provisions.

## § 278-13. Installation near right-of-way or intersection; maintenance of boundary fences.

- A. No fence shall be installed or maintained so as to encroach into or hinder the use of a public way or any private right-of-way or easement, nor shall any fence be installed or maintained at the intersection of two roads so as to prevent or impede a safe view of the intersection or oncoming pedestrians or vehicles approaching the intersection. The Board of Fence Viewers shall have the authority to decide upon the height and type of fencing at road intersections in order to ensure safety and proper view of pedestrians and traffic.
- B. A boundary fence shall be maintained by the owner thereof in a reasonably safe condition. In the event that the Board of Fence Viewers deems a fence to be in an unsafe condition so as to pose a danger of falling or otherwise causing injury to people, animals or property because of poor construction, faulty maintenance or age, the Board may order such fence removed and shall have all the authority and remedies provided in § 278-11C of this chapter.

## § 278-14. Forms and regulations.

The Board of Fence Viewers shall have the authority to promulgate forms and regulations in furtherance of the powers and authority granted by MGL c. 49 and this chapter; provided, however, that such regulations are presented to and approved by the Municipal Council at a regularly scheduled meeting and thereafter duly filed with the City Clerk.