

PENFIELD TOWN BOARD RESOLUTION NO. 23T- 054

DATE: January 18, 2023

BY: Councilman Drawe

Law & Finance Committee

NAME Adopt a Local Law to Amend Town Code Sections 250-7.1 and 250-2.2 (Fences, hedges and screen plantings)

WHEREAS, the Town Board of the Town of Penfield wishes to amend Section 250-7.1 of the Penfield Town Code (Zoning and Land Use) to clarify regulations governing the type and location of fencing and location of hedges and plantings; and

WHEREAS, the changes to the Town Code Section 250-7.1 require additions and revisions to definitions contained in Town Code Section 250-2.2, Terms Defined; and

WHEREAS, the Penfield Town Board acted as "lead agency" within the meaning of the State Environmental Quality Review Act (SEQRA), reviewed the action's potential impacts and made a negative declaration, which concluded SEQRA.

NOW, THEREFORE, BE IT

RESOLVED, AND HEREBY ENACTED BY THE TOWN BOARD OF THE TOWN OF PENFIELD AS FOLLOWS:

Local Law No. 2 of 2023, set forth in attached Schedule A; and

BE IT FURTHER RESOLVED, after its adoption by the Town Board of the Town of Penfield, this local law shall take effect immediately upon its filing with the Office of the Secretary of State of the State of New York.

Moved: Drawe

Seconded: Kohl

Vote:	Cinti	<u>Absent</u>
	Drawe	<u>Aye</u>
	Kohl	<u>Aye</u>
	Lee	<u>Absent</u>
	Ockenden	<u>Aye</u>

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 PENFIELD, N.Y.
 TOWN CLERK

Schedule A
Town of Penfield
Local Law No. 2 - 2023

Section 1. The Town is amending Town Code Section 250-7.1 Fences, hedges and screenings to clarify the provisions governing the location, restrictions and requirements for the installation of fencing, hedges and plantings on private property. The existing Section 250-7.1 of Penfield Town Code shall be replaced in its entirety with following regulations:

§ 250-7.1 Fences, hedges and screen plantings.

Fences, hedges and screen plantings installed shall meet the requirements set forth in this section.

- A. No fence, hedge or screen plantings shall be installed within a town, municipal, or utility easement, unless the property owner receives approval from the town, municipality, or utility prior to installation. For Town of Penfield easements, Town review and approval is required prior to installation.
- B. All permanent fences shall be installed in accordance with manufacturer's specifications or constructed with standard fence materials (e.g., wood, PVC, vinyl, metal, and similar.) Fences shall have their finished or decorative side facing the adjacent properties.
- C. Fences shall be maintained structurally sound and in good repair.
- D. Except for deer fencing, construction and seasonal fencing, and other temporary fencing as defined within this section, all fencing shall comply with the following location and height restrictions, which are based on the use of the property:
 - (1) Residential Dwellings (Single-family, two-family and townhomes)
 - i. Front Yard Fencing. Maximum fence height shall be three (3) feet.
 - ii. Side and Rear Yard Fencing. Maximum fence height shall be six (6) feet.
 - iii. Corner Lots, Through Lots, or Irregularly Shaped Lot Fencing. Within 20 feet of a side or rear property line abutting a street, right-of-way or highway, maximum fence height shall be three (3) feet.
 - (2) Industrial and Public Utility Uses
 - i. Maximum fence height shall be eight (8) feet. Fencing shall be approved by the board having jurisdiction or by the Code Enforcement Official.
 - ii. Barbed wire fencing may be approved when it demonstrates one or more of the following:

- (a) It is required by state or federal regulations and/or standards.
- (b) It is needed to protect the public from accessing dangerous conditions and/or is being utilized to protect the health, safety or welfare of the public as determined by the board having jurisdiction or by the Code Enforcement Official.

(3) Land Used in Agricultural Production

- i. Maximum fence height shall be eight (8) feet.
- ii. Barbed-wire tip or an electric shock fence shall be permitted when it meets one or more of the following:
 - (a) The fence is intended to protect the public from accessing dangerous conditions.
 - (b) The fence will prevent entry to an area which could be hazardous to the health, safety or welfare of livestock or farm animals.
 - (c) The fence is needed to secure an area where materials and/or equipment are stored.
 - (d) The fence is needed to keep farm animals or kenneled animals, excluding household pets, from leaving the site.
 - (e) For electrified fencing, signs must be posted a minimum of every 150 feet to clearly alert people the fence is electrified.

(4) All Other Uses. Maximum fence height shall be six (6) feet, unless otherwise permitted in applicable zoning district regulations. The fence location and type shall be determined through the required review process set forth for all other uses.

E. Deer fencing is permitted provided it meets the following requirements:

- (a) Shall be no more than eight (8) feet in height.
- (b) Shall not be permitted in the front yard.
- (c) Shall be structurally sound. Deer fence may have solid posts and cross members but must be comprised of more than 75 percent wire, open mesh or other open-style material that allows light and air to pass through in each panel or section of deer fencing installed.
- (d) Shall be designed to enclose existing fruit/vegetable garden area or active orchard or to enclose a proposed fruit/vegetable garden area or active orchard that will be planted within one year of construction.

(e) Shall be located a minimum distance of 20 feet from any property line abutting a street, right-of-way line or highway and 10 feet from any other property line.

F. Seasonal and other temporary fencing shall be used or installed as follows:

- (1) Snow fencing shall not exceed four feet in height and may only be installed during the time period when winter parking restrictions are in effect, pursuant Town Code Section 220-15, as amended or changed.
- (2) Construction fencing shall not exceed 8 feet in height and only be installed in conjunction with active demolition, construction and/or development projects and must be removed once the project has been completed.
- (3) Any other temporary fencing may be installed no more than 45 days in a calendar year.

G. Fencing for Pools and Spas. When fencing is required by NYS Uniform Code to enclose pools and spas, said fencing shall conform to the applicable state regulations for fence design, as amended or changed.

H. Except for barbed wire or electrified fencing that conforms with the requirements set forth herein, fences or fence materials installed with the intent to cause harm or injury are expressly prohibited. This includes, but is not limited to, objects protruding horizontally from the vertical fence line, wires strung across open areas, and the like.

I. Solid hedges and solid screen plantings may not exceed three (3) feet in height within 20 feet of any property line abutting a street, right-of-way or highway.

J. Fences, hedges, or screen plantings lawfully existing at the time of the passage of this chapter shall be deemed nonconforming appurtenances and shall be treated as nonconforming structures under this chapter.

Section 2. Article II, Section 250-2-2 “Terms Defined”

The following revisions, additions and deletions are proposed. New terms or words are underlined; deleted text marked with strike through.

FENCE

A construction or assembly of materials, including, but not limited to, wood, vinyl, masonry, stone, wire, metal, etc. intended to be used as a boundary, enclosure, means of protection, confinement, privacy, screening, or to restrict access.

FENCE, CONSTRUCTION

Fencing installed to restrict the public’s access to construction and/or development sites.

FENCE, DEER

A fence, including any gates in such fence, enclosing a fruit or vegetable garden or active orchard for the intended purpose of restricting access to such garden or active orchard by deer.

FENCE, SNOW

A slatted fence placed across the path of prevailing winds to protect an area from drifting snow and designed to deposit the snow on the leeward side of the fence.

FENCE, TEMPORARY

A fence erected for a defined and limited period of time.

GARDEN, FRUIT OR VEGETABLE

A contained area where vegetables and fruits are grown for consumption.

HEIGHT, FENCE

The vertical distance measured from the adjoining grade to the top of the fence, excluding posts, caps or similar structural or ornamental vertical projections provided such projections do not extend more than six (6) inches above the top of the fence.

INDUSTRIAL USE

A legal use that consists of the assembling, disassembling, fabricating, finishing, manufacturing, packaging, repair or processing of products, parts or goods for commercial gain.

LAND USED IN AGRICULTURAL PRODUCTION

Land used for agricultural production as defined in all parts of Subdivision 4 of § 301, NYS Agriculture and Markets Law, as amended or changed.

LOT, CORNER

A lot at the junction of and fronting on two or more intersecting streets.

LOT, THROUGH

A lot that has a pair of opposite lot lines along two substantially parallel streets and is not a corner lot.

LOT LINE, FRONT

The boundary line(s) between a lot and the adjacent public or private road, street, right-of-way, or highway boundary. On corner lots, through lots, and irregularly shaped lots, the front lot line shall be determined by the Code Enforcement Official.

LOT LINE, REAR

The boundary line parallel to the front lot line on lots with four boundary lines. On corner lots, through lots, and irregularly shaped lots, the rear lot line, if any, shall be determined by the Code Enforcement Official.

LOT LINE, SIDE

Any lot line that is not a front or rear lot line.

PRINCIPAL STRUCTURE OR USE

A use authorized or allowed alone in a specified use district for the preservation or promotion of which the use district is established and subject to the requirements of the regulations and standards of such use district, and to which all other uses are accessory, special, conditional or noneonforming.

PRINCIPAL STRUCTURE

The building(s) in which legally permitted principal use(s) is housed or conducted.

PRINCIPAL USE

A use permitted in a specified zoning district by right, by conditional use permit, special permit, or special use permit. Principal uses are subject to the requirements of the regulations and standards of applicable zoning district(s).

PUBLIC UTILITY; PUBLIC UTILITY BUILDING; PUBLIC UTILITY FACILITY; UTILITY

An entity which operates as a monopoly, and whose rates charged to customers are established by a utility commission. A public utility or utility facility, structure, or use is a facility, structure, or use which is operated by a public utility, and which provides electric, gas, steam, CATV, telephone or other communication service, water or sewerage directly to the general public. In no event shall "public utility," "public utility building," "public utility facility," or "utility" be construed to mean, be, include, or authorize within the Town a natural gas compression facility, natural gas processing facility, or any other explicitly prohibited use.

RIGHT-OF-WAY LINE, HIGHWAY LINE or FRONT PROPERTY LINE

The line which is the common boundary line between a lot and a street or highway boundary. The line separating the boundary of public streets or highways from adjacent lots.

YARD, FRONT

The land area extending between the lot line and the front wall of the principal structure for the full width of the lot. On corner lots, irregularly shaped lots, or in the case of an irregularly placed principal structure on a lot, the Code Enforcement Official shall utilize the location of adjacent streets and rights-of-way and/or the location of the front wall of the principal structure to determine the front yard location.

YARD, REAR

The land area extending between rear wall of the principal structure and the rear lot line for the full width of the lot. On corner lots, irregularly shaped lots, or in the case of an irregularly placed principal structure on a lot, the Code Enforcement Official shall determine the location of the rear yard based on the location of the rear wall of the principal structure.

YARD, SIDE

Any yard that is not the front or rear yard. On corner lots, irregularly shaped lots or in the case of an irregularly placed principal structure on a lot, the side yard shall be based on the Code Enforcement Official's determination of front yard.

Section 3. Severability

The invalidity of any word, section, clause, paragraph, sentence, part, or provision of this Local Law shall not affect the validity of any other part of this Local Law, which can be given effect without such part or parts.

Section 4. Effective Date

This local law shall take effect immediately upon filing in the office of the Secretary of State of New York as provided by law.