
SALT LAKE CITY COUNCIL STAFF REPORT

DATE: October 7, 2004

SUBJECT: Petition No. 400-04-26/Legislative Action initiated by Council Member Dave Buhler, request to re-evaluate sections of the Zoning Ordinance pertaining to regulations for fences in front yard areas in residential zoning districts.

AFFECTED COUNCIL DISTRICTS: City-wide

STAFF REPORT BY: Jan Aramaki

ADMINISTRATIVE DEPT. AND CONTACT PERSON: Planning Division
Joel Paterson, Senior Planner

NOTICE REQUIREMENTS: Newspaper advertisement and written notification 14 days prior to the Public Hearing.

WORK SESSION SUMMARY/NEW INFORMATION:

On September 14, 2004, the City Council received a briefing from the Administration and held a discussion regarding proposed changes to amend Section 21A.40.120.D of Salt Lake City Code pertaining to regulations for fences in front yard areas in residential zoning districts. The proposed changes were in response to Council Member Dave Buhler's Legislative Action following the receipt of a constituent's letter (attached) expressing concern regarding the fence regulations.

Planning staff briefed the City Council on the proposed changes. Key points from the Work Session briefing are summarized below (shown in italicized **BOLD**). Council Members may wish to request that the City Attorney's office prepare a revised ordinance.

1. Allowing a six foot fence to extend along the entire length of the interior side yard to the front yard setback line will inhibit abutting property owner's view of the streetscape and adequate light and sight of the neighborhood. The Zoning Ordinance currently allows additional fence height through the Board of Adjustment Special Exception process. (Consideration must be given to the established character of the affected neighborhood and streetscape, maintenance of public and private views and matters of public safety.)

At the Work Session briefing, Planning staff reiterated that the location of residential structures on properties throughout the City vary from the front property setback line. Therefore, they perceive it is an equity issue to allow residents to have their six foot

fencing in place from the front setback line rather than the front façade of the residential structure.

2. The proposed ordinance lacks language relating to fence materials and finishing; therefore a fence can be left unfinished and seam side out. (Some communities require that property owners put the finished side toward the public or their neighbors. The Salt Lake City code is silent on this. Some property owners argue that if they are paying for the fence they should have the option of having the "finished" side of the fence face their property rather than that of their neighbors.)

At the Work Session briefing, Council Member Nancy Saxton stated at one time when she conducted research on fences, she recalls there was a section of State Code that addresses the unfinished side of fences and the property owner who is responsible for maintenance. Council staff conducted a research of State Code, and found Title 4, Chapter 26, Section 5 that is part of Utah Agricultural Code. This section of Utah Code pertains to fences in agricultural areas and addresses property owner's responsibilities consistent with those noted by Council Member Saxton. (See the attached copy of the code for details.) Council staff also inquired via telephone with the State Legislature, and was informed that this is the only section of Utah State Code that pertains to fences that addresses the unfinished side and maintenance responsibility.

3. The proposed ordinance lacks language addressing obstructions from any potential visual obstruction. For example, a large evergreen tree with branches down to the ground may provide a complete visual impairment within the sight distance triangle but since it is not a "fence, wall or hedge" it is not addressed anywhere in the zoning regulations.

At the Work Session briefing, Planning staff pointed out that the current sight distance triangle definition in the Zoning Ordinance precludes any visual impairment within the triangle area. "Sight distance triangle" is defined as a triangular area formed by a diagonal line connecting two (2) points located on intersecting right of way lines (or a right of way line and the edge of a driveway). For both residential driveways and nonresidential driveways, the points shall be determined through the site plan review process by the development review team. The purpose of the sight distance triangle is to define an area in which vision obstructions are prohibited. (See attached illustration.)

4. Council Member Buhler requested that Community Council Chairs receive a copy of the proposed ordinance and be adequately notified of the City Council's public hearing scheduled for October 12, 2004. Planning staff indicated they would take the necessary steps to ensure adequate notification is provided to the Community Councils.

POTENTIAL MOTIONS:

1. ["I move that the Council"] Adopt an ordinance amending Section 21A.40.120.D of Salt Lake City Code pertaining to regulations for fences in front yard areas in residential zoning districts.

2. ["I move that the Council"] **Oppose the proposed ordinance amending Section 21A.40.120.D of Salt Lake City Code pertaining to regulations for fences in front yard areas in residential zoning districts.**
 3. ["I move that the Council"] **Request that the City Attorney's office prepare a revised ordinance.**
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The following information was provided previously. It is provided again for your reference.

KEY ELEMENTS: (Ordinance)

- A) The proposed ordinance has been prepared for the Council's consideration to amend the Zoning Ordinance regulating residential fences in response to Council Member Buhler's Legislative Action approved by the City Council on June 2003.
- B) Council Member Buhler's Legislative Action requested that the Administration re-evaluate sections of the zoning ordinance relating to fences in front yard areas in residential zoning districts. A District Six constituent expressed concern that there are loopholes and inconsistencies in sections of the City's zoning ordinance that apply to fences particularly in residential zoning districts. The constituent noted that a neighbor was allowed to install fences that appear to inhibit adequate sight, light, views and create safety hazards in the neighborhood.
- C) In a related matter, a revision to fence height regulations in residential zoning districts was initially included in the Zoning Ordinance fine-tuning (Petition 400-02-20) adopted by the City Council this spring. The Administration indicated that six sections of the fine-tuning need further discussion and development including the proposed fence height revision. The Council agreed to remove these items from the proposal. The Legislative Action initiated by Council Member Buhler resulted in a separate and more expansive proposed text amendment.
- D) Council Member Buhler's Legislative Action raised three issues for the Administration's reevaluation (highlighted in **BOLD**):
 1. **"The Zoning Ordinance does not address whether or not a fence higher than 4-feet can be constructed in the front yard behind the required setback. The Administration reported that they interpret the area that exists between the designated setback line and the face of a residential structure as "buildable area" and has allowed six-foot fences in the past."**

The Administration proposes the following language to be added to the text of the Zoning Ordinance:

"No new fence, wall or hedge shall be erected to a height in excess of four feet (4') between the front property line and the front façade of the principal structure, except that a six foot (6') fence, wall or hedge on the property line may extend along the entire length of the interior side yard to the front yard setback line."

Section 21A.62.040 of the Zoning Ordinance defines a front yard as “a yard extending between side lot lines and between the front lot line and the required front yard setback line.” Prior to Council Member Buhler initiating his Legislative Action, Building Services staff provided feedback to Council staff noting that if the required front yard setback for the district is 20 feet, such as in the R-1/7000 zoning district, the Zoning Ordinance does not address whether a fence in excess of four feet in height can be erected between the 20 foot setback and the front façade of the residential structure. The area between the 20 foot setback and the front of the structure is considered a “buildable area” which previously resulted in certain instances when interpretation allowed six foot fences to be erected. By eliminating “front yard” from the proposed amendment, the proposed language is intended to clarify that a fence constructed between the front property line and the front façade of a residential structure cannot be in excess of four feet (4’)--the potential to allow a six foot fence in the “buildable area” will be eliminated. Thus, a property owner could have a six (6’) foot fence along the side property line up to the required front yard setback but could not put a six foot fence across the property, for example, in front of the house.

2. **“The fence regulations note that where there is a difference in grade of the properties on either side of a fence, wall or hedge, the height of the fence shall be measured from the average grade of the adjoining properties. The Administration has noted that, in the case of fences, staff measures grade change at the mid-point thus allowing a property owner to increase the fence height by 1-foot. The Building Code requires grade be measured 6-feet away from any wall or fence.**

According to Planning Staff’s findings, current ordinance language has been difficult for community members to understand and for City staff to implement and enforce. The Administration proposes to delete the following language from the Zoning Ordinance:

“Where there is difference in the grade of the properties on either side of a fence, wall or hedge, the height of the fence, wall or hedge shall be measured from the average grade of the adjoining properties; provided that in such instance a minimum of four foot (4’) high fence, wall or hedge shall be allowed.”

3. **“The Zoning Ordinance currently includes regulations intended to ensure adequate line of sight for corner lots, driveways and alleys for traffic and pedestrian safety. The Administration noted the need to amend the zoning regulations to provide consistency with current transportation engineering standards. Such revisions would include:**
 - **Standards to better distinguish and identify the right of way line and the edge of a driveway, alley, sidewalk, pedestrian walkway, roadway and curb.**

Planning staff’s transmittal points out that it is a property owner’s responsibility to determine private property lines (at owner’s expense). The Administration does not deem it feasible to propose any standards to better distinguish and identify the right of way line.

- **Define height clearance areas between 2.5-feet and 7-feet for passenger vehicles and 2.5-feet and 8- feet for commercial trucks.**

According to Planning Staff's transmittal, Section 21A.40.120.D.2, 3 and 5 of the Zoning Ordinance includes an illustration for sight distance triangle (see page 3 of the Administration's transmittal). The proposed ordinance amendment includes language that defines the clearance area setting a maximum fence height within defined sight triangles:

- a) 3-feet for solid fences when located within the sight distance triangle extending 30 feet from the intersection of the right of way lines on any corner lot;
- b) Thirty (30") inches for solid fences located near the intersection of a driveway or an alley with the public way;
- c) 4-feet for see-through fences that are at least 50% open.

- **Provide City Traffic Engineers discretion to evaluate projects on a case-by-case basis including defined parameters and criteria for analysis.**

Proposed amendment language states: "To provide adequate line of sight for driveways and alleys, the Zoning Administrator, in consultation with the Development Review Team, may require alternative design solutions including but not restricted to requiring increased fence setback and/or lower fence height, to mitigate safety concerns created by the location of buildings, grade changes or other pre-existing conditions."

- E) As part of the Zoning Ordinance Fine-tuning Petition 400-02-20, the public process included a Public Open House held on July 31, 2002. At that time, all community council chairs received a copy of the fine-tuning proposed amendment which included proposed changes to section of City Code 21A.40.120D Height Restrictions for Fences, Wall and Hedges.
- F) The City's Planning, Permits, and Transportation Divisions have reviewed and provided input to the proposed amendment.
- G) On October 17, 2002, the Planning Commission held a public hearing on the Zoning Ordinance Fine-tuning Petition 400-02-20 which included proposed changes to section of City Code 21A.40.120D Height Restrictions for Fences, Wall and Hedges. According to Planning staff, the Planning Commission voted unanimously recommending that the City Council make numerous amendments to the text of the zoning ordinance.

On June 23, 2004, under the "Report of the Director" section of the Planning Commission's agenda, Mr. Zunguze referred to the Zoning Ordinance Fine-tuning petition earlier approved by the Planning Commission as noted above. Issues discussed on June 23rd by the Planning Commission hearing included:

1. Fence heights should be limited to four (4') feet in height in the front of a residential

structural façade.

2. Add language to clarify that along the property line one could build a six foot high fence up to the front setback line.
3. Eliminate the average grade provision.
4. The need to provide a public education process by the City regarding fence regulations such as including information in residents' public utilities bills and mail information to fence contractors.
5. Another public hearing before the Planning Commission is not necessary, but publishing material and distributing it accordingly would suffice.
6. The Planning Commission adopted a motion to approve the proposed fence height regulations as presented in response to Council Member Buhler's Legislative Action.

MATTERS AT ISSUE /POTENTIAL QUESTIONS FOR ADMINISTRATION:

- A) As part of Council Member Buhler's legislative action, he asked that the Administration propose "standards to better distinguish and identify the right of way line and the edge of a driveway, alley, sidewalk, pedestrian walkway, roadway and curb." The Administration's response is that it is the property owner's responsibility to determine private property lines. The Council may wish to discuss this issue in further detail with the Administration. For example, if the City receives a constituent complaint about a neighbor's fence height, the City would make an evaluation to determine if it is properly installed within the sight distance requirements. If findings show that the fence is out of compliance, the property owner is asked to comply. However, there is the potential for instances to occur when there is uncertainty as to the location of the right of way line.
1. Under a circumstance of this nature, is it the City's intent to place the burden on a property owner to bear financial costs to identify the right of way line, specifically when the Administration's evaluation finds that a fence is in compliance within a sight distance triangle?
 2. Should the property owner be required to bear the financial costs when findings indicate the fence is in compliance?
 3. If the City were to accept the responsibility for situations of this nature, what would the potential administrative cost be and what other areas might the City be asked to survey once the City steps in to the arena of resolving property line questions?
- B) The Planning staff noted that although the International Building Code (IBC) does not require a permit to erect a fence, Salt Lake City requires a building permit be obtained prior to erecting fences and walls in the Foothill and Historic Preservation Overlay zoning districts. The Planning Commission is recommending that an educational outreach program be implemented to provide the information to residents and fencing contractors if the proposed amendment is adopted. They foresee that there could be potential enforcement issues that may arise since certain areas of the City are not required to obtain a building

permit to erect a fence. Council Members may wish to discuss this issue in further detail with the Administration including:

1. What steps are proposed to implement the program?
2. Can the program be implemented with existing resources and funding levels?
3. If not, what is the estimated cost in additional resources and funding?

C) Council Members may wish to discuss with the Administration whether there has been adequate public notification. As noted earlier in this report, the proposed amendments were not listed/advertised as an agenda item on the Planning Commission's agenda on June 23, 2004. According to the Planning Commission minutes, the proposed amendments were discussed as part of the "Report of the Director" section of the Commission's agenda. In addition, the Administration's transmittal notes:

1. Amendments to the fencing provisions were distributed to all Community Council Chairs as part of the Zoning Ordinance fine-tuning petition in June 2002.
2. In response to the Legislative Action request, the Planning staff revised the amendments reviewed by the Planning Commission as part of the Zoning Ordinance fine-tuning petition.
3. Planning staff presented the proposed amendments to the Planning Commission on June 23, 2004.
4. The Planning Commission recommended that the proposed amendments to the fence provision be transmitted directly to the Council without an additional public hearing before the Commission. The proposed amendment includes additional information since the amendment was presented to the public in 2002 -- issues 1 and 3 raised in Council Member Buhler's Legislative Action were not included in the amendment at that time.

D) Council staff contacted the District Six constituent who expressed concern regarding the fence regulations to provide an opportunity to submit in writing to the City Council Office any concerns or questions relating to the proposed Zoning ordinance changes. Key points are summarized below. (Please refer to the attached letter for details.) Council Members may wish to discuss the issues with the Administration and determine whether it would be appropriate to request that the City Attorney's office prepare a revised ordinance.

5. Allowing a six foot fence to extend along the entire length of the interior side yard to the front yard setback line will inhibit abutting property owner's view of the streetscape and adequate light and sight of the neighborhood. The Zoning Ordinance currently allows additional fence height through the Board of Adjustment Special Exception process. (Consideration must be given to the established character of the affected neighborhood and streetscape, maintenance of public and private views and matters of public safety.)

- a) According to Planning staff, the location of residential structures on properties throughout the City vary from the front property setback line. Therefore, they perceive it is an equity issue to allow residents to have their six foot fencing in place from the front setback line rather than based upon the front façade of the residential structure.
6. The proposed ordinance lacks language relating to fence materials and finishing; therefore a fence can be left unfinished and seam side out. (Some communities require

that property owners put the finished side toward the public or their neighbors. The Salt Lake City code is silent on this. Some property owners argue that if they are paying for the fence they should have the option of having the “finished” side of the fence face their property rather than that of their neighbors.)

7. The proposed ordinance lacks language addressing obstructions from any potential visual obstruction. For example, a large evergreen tree with branches down to the ground may provide a complete visual impairment within the sight distance triangle but since it is not a “fence, wall or hedge” it is not addressed anywhere in the zoning regulations.

MASTER PLAN & POLICY CONSIDERATIONS (FOR PLANNING ISSUES):

- A. According to Planning staff’s transmittal, the proposed amendment is consistent with the purposes, goals, objectives and policies of the adopted general plan of Salt lake City, addresses safety and urban design issues, supports City policies relating to compatibility and preservation of neighborhood character, is consistent with the adopted overlay zoning districts, and will not affect the delivery of public services or impact public facilities.
- B. The City’s Comprehensive Housing Plan policy statements address a variety of housing issues including limiting impacts and protecting neighborhood character, quality design, public and neighborhood participation and interaction, transit-oriented development, encouraging mixed-use developments, housing preservation, rehabilitation and replacement, zoning policies and programs that preserve housing opportunities as well as business opportunities.
- C. The City’s Strategic Plan and the Futures Commission Report express concepts such as maintaining a prominent sustainable city, ensuring the City is designed to the highest aesthetic standards and is pedestrian friendly, convenient, and inviting, but not at the expense of minimizing environmental stewardship or neighborhood vitality. The Plans emphasize placing a high priority on maintaining and developing new affordable residential housing in attractive, friendly, safe environments and creating attractive conditions for business expansion including retention and attraction of large and small businesses.
- D. The Council’s growth policy notes that growth in Salt Lake City will be deemed the most desirable if it meets the following criteria:
 1. Is aesthetically pleasing;
 2. Contributes to a livable community environment;
 3. Yields no negative net fiscal impact unless an overriding public purpose is served; and
 4. Forestalls negative impacts associated with inactivity.
- E. The City’s 1990 Urban Design Element includes statements that emphasize preserving the City’s image, neighborhood character and maintaining livability while being sensitive to social and economic realities.

KEY DATES:

- July 31, 2002 – Zoning ordinance fine-tuning open house (included revisions to the fence regulations)
- October 17, 2002 – Planning Commission Public Hearing for Zoning Ordinance fine-tuning revisions.
- June 3, 2003 – City Council approves Council Member Buhler's legislative action.
- June 16, 2003 – Administration determined six sections need further discussion and development. This included a revision to the fence regulations.
- June 23, 2004 – Planning Commission discussion of proposed amendments to the fence regulations. Planning Commission recommended that the issue be referred to the City Council without an additional hearing.

cc: Sam Guevara, Rocky Fluhart, DJ Baxter, Ed Rutan, Lynn Pace, Lee Martinez, David Dobbins, Louis Zunguze, Brent Wilde, Doug Wheelwright, Cheri Coffey, Joel Paterson, Orion Goff, Larry Butcher, Alan Hardman, Tim Harpst, Kevin Young, Barry Walsh, Laura Howat, Barry Esham, Diana Karrenberg, Janice Jardine, Annette Daley, Gwen Springmeyer, Sylvia Jones, Marge Harvey, and Lehua Weaver

File location: CD/Planning Division/Zoning Ordinance Text change/Fence Height Regulations

Laura Howat
1850 E. Logan Ave
Salt Lake City, UT 84108
September 7, 2004

David Buhler
Salt Lake City Councilman
City County Building, Room 304
451 South State Street

Dear Councilman Buhler:

Thank you for initiating an action item requesting administration to re-evaluate sections of the zoning ordinance relating to fences in front yard areas in residential zoning districts on June 3, 2003. Zoning administration has recently submitted the attached proposed changes to the regulation of fences, walls and hedges.

Unfortunately the Zoning proposal is not only inadequate but it codifies the problem of allowing six foot high fences in front yard areas. For the reasons below, I strongly urge the council to vote against the proposed changes to the regulation of fences.

A review of Salt Lake City's website on Housing and Zoning provides "Front yard fences are allowed to be a maximum of 4 feet in height, except for corner lots." This explanation of front yard fencing has been on the website for years. Most citizens would follow neighborhood protocol and the intention of the preceding statement. This statement is consistent with SLC master plans promoting livable neighborhoods, encouraging interaction with neighbors, providing adequate sight, light and views. However, the underlying zoning law addressing this issue is not consistent with this statement and the proposal before you on front yard fencing codifies a severe problem with the ability of a property owner to actually have a six foot fence beyond the frontline of the property structure.

According to zoning law, a front yard is an arbitrary area beginning with the front property line and ending 20 feet in back of the front property line. Your average citizen calls a front yard the area in front of the house. In my neighborhood, our houses are set back 30 feet from the front property line. This configuration is not uncommon in my entire district. The old law allows and the proposed law codifies that you can have a 6 foot high fence along the property line provided it is behind the front yard setback of 20 feet. In my neighborhood example, this means that a property owner can extend a six foot high fence 10 feet in front of the setback line of the house. The effect of this is to take away the ability of abutting neighbors to see the streetscape, the ability to have views, the ability to have adequate sight and light, all from living area within the front of the house. I fully realize the impact of this proposal as we live next door to this very situation. In addition, as there is no mention of materials, etc, the property owner can build their front six foot high fence and leave it unfinished and seam side out. This is an unsightly situation in a front yard. The message from such a fence is to not only block out the neighborhood but negatively influence your neighbors ability to interact with the neighborhood. I will venture to say that those of us with the larger yards greatly value our streetscapes and the extra open space

that larger yards provide. The proposed front yard fencing regulation will most negatively impact those of us who have significantly invested in our yards via purchasing large lots.

Zoning administration's perception that this proposal is necessary to make fair the possibility that housing front facade setbacks may vary and neighbors should have equal ability to have fencing is misplaced. The housing situation in most SLC districts is mature. Citizens buy properties knowing the particulars of where the house is situated on the property. Thankfully many property owners do not just accept the warts of their particular property but go about improving such property within the parameters of neighborhood protocol and zoning laws. Many citizens of SLC appreciate the unique streetscapes offered within the city and seek to participate with their neighbors rather than blocking the neighborhood out via the six foot front yard fence. If a property configuration does not allow fair usage, there is already a process whereby an owner can seek a special exception through the Board of Adjustments.

Another issue Zoning administration raises is that the arbitrary front yard set back line of 20 feet is necessary as a buildable line. I fully support the concept of the buildable line. The difference is that when someone builds the structure up to the setback, the property owner is investing in the neighborhood. The situation of fencing up to the setback line is the opposite as the property owner is not only shutting out the neighborhood but essentially does the same for abutting property owners.

I applaud the part of the proposed changes addressing the requirement of the sight distance triangle along driveways. This proposal will help provide safe passage for our young children walking along sidewalks and streets to insure drivers have adequate sight when backing out of driveways. There is one weakness with the proposal, however. The proposal provides that solid fences, walls and hedges cannot be more than 30 inches high when along a driveway or an alley for ten feet back of the property line. The wording should also address any potential visual obstruction. For example, a large evergreen tree with branches down to the ground may provide a complete visual impairment within the sight distance triangle but since it is not a "fence, wall or hedge" it is not addressed anywhere within the zoning regulations.

For the reasons above, I strongly urge the council members to vote against the current proposed changes to the regulation of fences and to suggest specific changes to Zoning administration addressing the issues I have raised.

Sincerely,



Laura Howat

Title 4 Utah Agricultural Code
Chapter 26 Dead Animals - Enclosures and Fences

4-26-5. Adjoining landowners -- Partition fences -- Contribution.

If two or more persons agree to a **fence** enclosure or to the construction of a partition **fence**, the cost of construction and maintenance of the **fence** shall be apportioned between each party to the agreement based upon the amount of land enclosed. A person who is a party to such agreement and who fails to maintain such person's part of the **fence** is liable in a civil action for any damage sustained by another party to the agreement as a result of the failure to maintain the **fence**. If a person has enclosed land with a **fence** and the owner of adjoining land desires to enclose land adjoining the **fence** so that the existing **fence** or any part of it will become a partition **fence** between such tracts of land, the owner of the adjoining land shall before making the enclosure pay to the owner of the existing **fence** one-half of the value of all that part of the **fence** that will become a partition **fence**; and when one party ceases to improve or cultivate his land or opens his enclosure he must not take away any part of the partition **fence** belonging to him, if the owner or occupant of the adjoining enclosure within 30 days after notice, pays for the value of such **fence**; nor shall the partition **fence** be removed if the crops enclosed by it will be exposed to injury.

Enacted by Chapter 2, 1979 General Session

4-26-5.1. Definitions -- Qualified landowners' and qualified adjoining landowners' partition fences -- Contribution -- Civil action for damages.

(1) As used in this section:

(a) "Qualified adjoining landowner" means a private landowner whose land adjoins the land of a qualified landowner and is used for grazing livestock or as habitat for big game wildlife and:

(i) is land which qualifies under the definition of "conservation easement" as defined in Section 57-18-2, under Title 57, Chapter 18, Land Conservation Easement Act; or

(ii) is "land in agricultural use" that meets the requirements of Section 59-2-502.

(b) "Qualified landowner" means a private landowner whose land is used for grazing livestock and:

(i) is land which qualifies under the definition of "conservation easement" as defined in Section 57-18-2, under Title 57, Chapter 18, Land Conservation Easement Act; or

(ii) is "land in agricultural use" that meets the requirements of Section 59-2-502.

(2) A qualified landowner may require the qualified adjoining landowner to pay for 1/2 of the cost of the **fence** if:

(a) the **fence** is or becomes a partition **fence** separating the qualified landowner's land from that belonging to the qualified adjoining landowner;

(b) the cost is reasonable for that type of **fence**;

(c) that type of **fence** is commonly found in that particular area; and

(d) the construction of the **fence** is no more expensive than the cost for posts, wire, and connectors.

(3) If the qualified adjoining landowner refuses, the qualified landowner may maintain a civil action against the qualified adjoining landowner for 1/2 of the cost of that portion of the **fence**.

(4) The cost of the maintenance of the **fence** shall also be apportioned between each party based upon the amount of land enclosed. A party who fails to maintain his part of the **fence** is also liable in a civil action for any damage sustained by the other party as a result of the failure to maintain the **fence**.

Enacted by Chapter 331, 2004 General Session

ILLUSTRATION - I
SIGHT DISTANCE TRIANGLE

