

# Memo

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From: Mason Schirmer, Clerk-Treasurer

To: Freeport City Council

Date: October 21, 2014

Re: A Request that the City Repeal Denial of a Building Permit for 126 7<sup>th</sup> St SW

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Property Owner Rodney Atkinson submitted an application to construct an 8' wood fence upon his property at 126 7<sup>th</sup> St SW.

Typically, applicants are able to construct fences after obtaining a zoning permit; however, Atkinson's proposed fence would be elevated two feet above the surface of the ground. Due to the uncommon design, I deferred to the city's land use professional for an opinion. Along with this memo is a letter, from Principal Cynthia Smith-Strack of Municipal Development Group, detailing her opinion regarding Atkinson's request.

I denied the application for a building permit based on the opinion of Smith-Strack. Atkinson is appealing the decision.

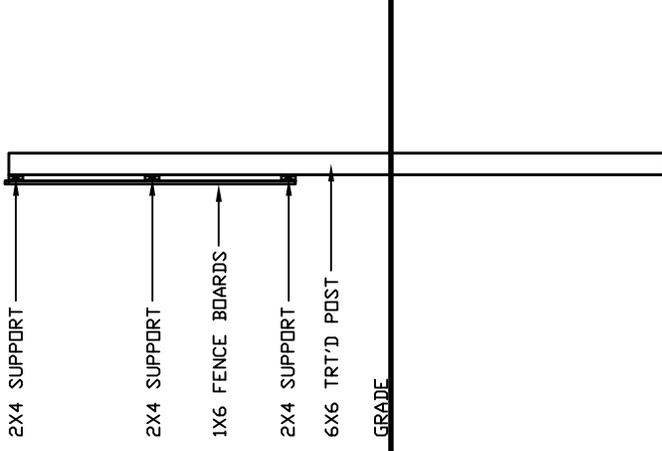
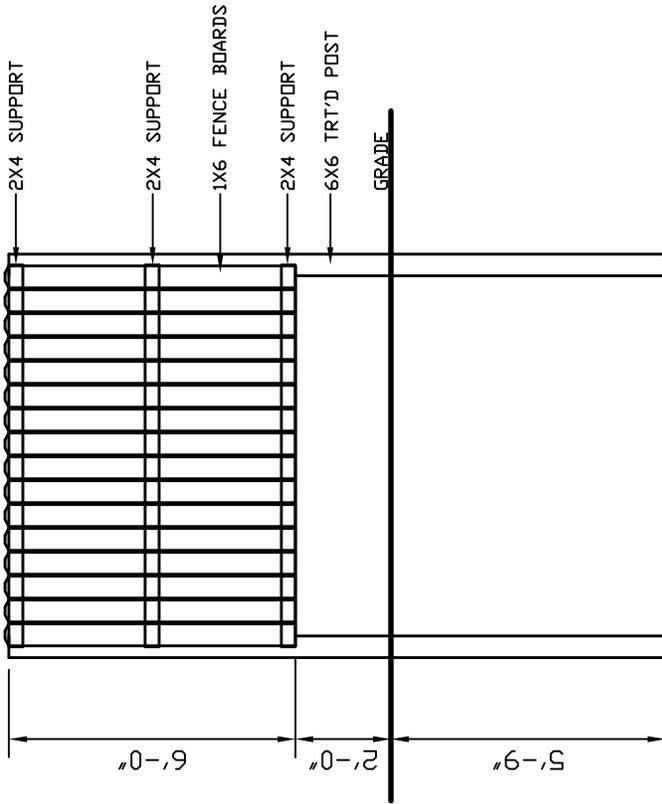
**Therefore, the City may:**

**1. Uphold the decision to deny the building permit**

**OR**

**2. Repeal the decision and approve the building permit**

\*If the building permit is approved, does the City therefore consider the fence to be 8' of screening?



8' FENCE SECTION (DUPLICATED)

1X6 DOG-EARED FENCE BOARDS  
 1/2" SPACING BETWEEN FENCE BOARDS FOR WIND CONCERNS  
 2X4 BOARDS WILL BE ON THE PROPERTY OWNER'S SIDE, FACING INWARD

Hennen Lumber  
 Freeport, Minnesota 836-2135

Project for:

R & W Company LLC

Drawn by: Steve Borgerding

Date: 10/15/14 1/4" = 1'-0"

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To: Mason Schirmer, City Clerk/Treasurer  
From: Cynthia Smith-Strack, Municipal Development Group, Inc.  
Date: October 14, 2014  
Re: Fencing Standards Vs. 'Fence' Two Feet Off Ground

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As requested I've reviewed the intent of the fence ordinance relative to a request to place a fence two feet above the ground. I find such action is not appropriate and recommend denial of a permit to erect an 'eight' foot fence two feet off of the ground.

The recommendation is based on the following:

1. Ordinance 2014-02, the Zoning Ordinance, Section 500.06 defines a fence as a "partition, wall, hedge, or row(s) of continuous vegetative plantings that are erected as a dividing marker, visual, or physical barrier, or enclosure". A fence erected two feet off of the ground would not meet the literal definition in that it would not create a physical barrier (things can get under it), an enclosure (things can get around it), or a visual barrier (one can see unobstructed under it) due to the fact it is proposed to be two feet above the ground surface.
2. Ordinance 2014-02, Section 505.05, Subd. 6 provides that "*Whenever in any zoning district a use is neither specifically permitted nor denied, the use shall be considered prohibited*". Therefore, since a fence erected at a point of two feet off the ground is neither specifically permitted nor denied it is and shall be considered prohibited. It is noted Section 505.05, Subd. 6 allows for "*The City Council or property owner, may, if appropriate, initiate an amendment to the Zoning Ordinance to provide for the particular use under consideration or may find that the use is not compatible for development within the City*". This is a remedy available to the Property Owner and/or City Council. The Property Owner as a member of the City Council should likely recuse himself from discussion.
3. Section 500.64, Subd. 4 of the Zoning Ordinance provides "*Any person, firm or corporation objecting to the ruling of any official on the administering of the provisions of this Ordinance shall have the right to appeal to the Board of Zoning Adjustment*". The City Council acts as the Board of Zoning Appeals. As such, the Property Owner may appeal this recommendation and interpretation to the City Council. The Property Owner may present his appeal to the City Council but shall not vote aye or nay on the appeal.

If you have any questions, please feel free to contact me at your convenience at (612)232-7399 or by email at [cstrack@municipaldevelopmentgroup.com](mailto:cstrack@municipaldevelopmentgroup.com)