

## ORDINANCE NO. 283

### **AN ORDINANCE TO AMEND ORDINANCE NUMBER 116, BEING THE ZONING ORDINANCE OF THE CHARTER TOWNSHIP OF LARKIN, COUNTY OF MIDLAND, MICHIGAN, AND TO ESTABLISH THE OFFICE OF FENCE VIEWER, AND TO PROVIDE FOR THE DUTIES AND RESPONSIBILITIES THEREOF.**

The Township of Larkin, County of Midland, Michigan ordains, pursuant to the authority vested in it by Public Act 110 of 2006 of the Public Acts of the State of Michigan, the Michigan Zoning Enabling Act, MCL 125.3101, *et seq.*, as amended, the following amendments to Ordinance 116, the Larkin Township Zoning Ordinance, and pursuant to the authority vested in it by Public Act 34 of 1978, being MCL 43.51, *et seq.*, the establishment of the office of Fence Viewer and providing for the duties and responsibilities thereof.

#### Section 1.

Article 2. Definitions, is amended to add the following definitions:

Fence - An outdoor structure of masonry, wood, chain link, wire, plaster or other durable building material, serving to enclose, divide or protect an area.

Screening- A method of visually shielding or obscuring one abutting or nearby structure area or use from another using landscaping, berm, live vegetation, or hard screening materials such as wood, brick or an equivalent building material.

Decorative Fence- A fence or outdoor structure constructed for aesthetic purposes only constructed of material such as wood pickets, lattice work, decorative metal, masonry or stone, meeting the requirements of this section.

Electrical Fence- An outdoor structure that contains an electrically charged or partially charged metallic material designed to discourage crossing by either man or animal.

Fence Viewer - A township appointed resident as defined by Public Act 34 of 1978, being MCL 43.51, *et seq.*

Wall - An outdoor area enclosure of masonry, wood, plaster or other approved building material serving to enclose, divide or protect an area.

Spite Fence - A "spite fence" is one built with malicious intent and solely to obstruct a neighbor's light, air, view, or use of property.

#### Section 2.

Article 15 is amended by the addition of new Section 15.20, which shall read as follows.

#### 15.20 Fence and Screening.

1. *Statement of Intent.* It is the intent of this section to allow fences with restrictions so that fences: a) do not obstruct access by emergency personnel; b) are not within the road or drain right-of-way and c) are not closer than three (3) feet of adjacent property without a survey having been completed.

A. Excluded fences: The following fences shall not be regulated by this section:

(1) Agricultural fences that are used for general farming and horticultural uses, field or garden crop and fruit farming, or raising and keeping of animals.

(2) Temporary fences such as snow fences placed during the winter to control drifting snow or safety or environmental control fences during construction,

(3) A Decorative Fence no taller than three (3) feet.

(4) Fences intended to prevent crop destruction from wild animals. These fences must be constructed in a manner that leaves 50% or more of the fence surface area open.

B. Screening is allowed whenever a commercial or industrial use is located adjacent to a residential use.

C. Pre-existing fencing shall be allowed and not subject to change under this Ordinance unless existing fencing is replaced. Upon replacement, fencing shall be required to meet current standards.

#### 2. General Provisions for Fences.

A. *Height.* Fences not more than (6) feet in height from the highest finished grade adjacent to the fence are permitted along the side or rear property line. Fences not more than (4) feet in height from the highest finished grade adjacent to the fence are permitted along the front property line parallel to the road. Any portion of a fence along the front property line that is higher than 2.5 feet must be constructed in a manner that leaves 50% or more of the surface area open.

- B. Fences may not encroach upon any right-of-way, drainage or access easement, or floodway.
- C. No new fence shall be erected on any lot that will obstruct the view of drivers in vehicles approaching an intersection of two roads or the intersection of a road and a driveway.
- D. A fence that is determined to be a Spite Fence or determined to unreasonably interfere with a neighbor's use and enjoyment of his property by the Township Fence Viewer shall not be allowed and shall be removed or modified as required by the Township Zoning Enforcement Officer.
- E. *Maintenance of Fence.* Fences must be maintained in a neat and safe condition so as not to endanger life or property. Any fence which, through lack of repair, type of construction or otherwise, endangers life or property is hereby deemed a nuisance. The Zoning Enforcement Officer shall notify the owner, agent, or person in control of the property on which such fence is located of the existence of such nuisance and shall specify the required repairs or modifications to be made to render the fence safe or require that the unsafe fence or any portion thereof be removed.
- F. *Material Specifications.* Fences shall be constructed of wood, metal, masonry, or other durable materials. Materials shall be treated in a manner to minimize rust and corrosion, and/or rot and decay. Razor wire and barbed wire shall not be allowed.

[Editor's Note: Section 2 of this Ordinance has been incorporated and codified into Ordinance No. 116, the Larkin Charter Township Zoning Ordinance.]

### Section 3.

#### 1. Appointment of Fence Viewer.

- A. A Fence Viewer shall be appointed by the Township Board with duties as prescribed under Public Act 34 of 1978, being MCL 43.51.
  - 1 If engaged under section 4(2), a fence viewer shall do 1 or more of the following:
  - 2 Determine if a property owner or tenant in possession of property is using a fence constructed or maintained by an adjoining property owner, and if so, what percentage of the cost of construction and maintenance of the fence the property owner or tenant using the fence is responsible for.

- 3 Assess the amount of damage if an animal of a property owner or of a tenant in possession of property causes damage to an adjoining property owner's fence.
  - 4 Not more than 7 days after a Fence Viewer renders a decision under subsection (1), the Fence Viewer shall notify in writing the appropriate property owners or tenants of that decision.
  - 5 A Fence Viewer is not charged with the responsibility of settling boundary disputes or determining the location of a boundary. Boundary disputes shall be settled and boundaries determined pursuant to state law.
  - 6 A party to the decision of a Fence Viewer may appeal the decision to a court of competent jurisdiction.
2. All unresolved disputes shall be addressed by the Township Zoning Enforcement Officer or Township Planning Commission. In the absence of a Township Zoning Enforcement Officer, the Township Supervisor shall act as Enforcement Officer.

B. Effective Date.

This ordinance shall become effective seven (7) days after the publication in a newspaper circulating within the Charter Township of Larkin, Midland County, Michigan.

Adopted April 9, 2024. Effective May 4, 2024.