

ORDINANCE NO. 520

An Ordinance to amend Zoning Code §230.21.1 E (1) to permit fence or wall “structures” by special exception on properties formerly zoned Industrial (I) and Service Commercial (SC), but now zoned Downtown Gateway (DG).

WHEREAS, the Downtown Gateway (DG) zoning district was established by Ordinance no. 477 adopted by the City Council on or about August 13, 2013; and

WHEREAS, certain properties currently located in the Downtown Gateway zoning district were formerly zoned Industrial (I) and Service Commercial (SC); and

WHEREAS, Ordinance no. 477 included a savings clause codified at §230-21.1 E that permitted those properties formerly zoned Industrial (I) or Service Commercial (SC) to continue to be utilized in a manner consistent with their prior Industrial (I) or Service Commercial (SC) zoning classifications, subject to certain conditions; and

WHEREAS, one of those conditions was that “No new structures shall be erected, and no existing structures expanded, exception for uses permitted by the Downtown Gateway (DG) zone”; and

WHEREAS, several owners of DG properties formerly zoned Industrial (I) and Service Commercial (SC) have expressed interest in erecting fencing on their properties; and

WHEREAS, section 230-1 of the Zoning Code of the City of New Castle defines the word “structure” as including fences and walls; and

WHEREAS, City Council desires to permit fences and walls on a discretionary basis by special exception granted by the Board of Adjustment depending on the facts and circumstances of each individual case and subject to the considerations and limitations set forth below.

NOW, THEREFORE, be it ordained by the Council of the City of New Castle, as follows:

SECTION 1: Section 230.21.1 E (1) of the Zoning Code is hereby amended so that such subsection shall read, in its entirety, as follows:

- (1) Only structures existing as of the effective date of §230.21.1 may be utilized in a manner consistent with their prior Industrial (I) or Service Commercial (SC) zoning classification. No new structures shall be erected, and no existing structures expanded, except for uses permitted by the Downtown Gateway (DG) zoning classification. Notwithstanding the foregoing prohibition on the construction or expansion of new or existing structures, the Board of Adjustment shall have jurisdiction to approve, reject, limit or condition the installation of fencing or wall structures by special exception in situations where the Board determines special circumstances, privacy or security concerns exist that cannot be practically addressed through other reasonable alternatives. In making its determination, the Board of Adjustment shall consider, among other things:

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- (a) whether the size or configuration of the proposed fence provides a reasonable fenced area for the owner’s proposed use or purpose without creating significant harm to adjacent properties or the neighborhood;
- (b) Wood, vinyl or iron fencing shall be preferred. Walls shall be constructed of brick or stone. Where chain link or similar forms of security fencing are required they should be reasonably screened from the view of adjoining streets, open space and properties by landscaping which is primarily evergreen.
- (c) The height of the fence or wall must not exceed six (6) feet. Any wall or fence must be constructed so the finished side (i.e. the side that does not contain the horizontal fence supports and the in-ground fence posts) faces adjacent streets and/or properties.
- (d) A fence or wall must be constructed so that it does not extend into the front yard of the property beyond the face of the building erected thereon.
- (e) All other provisions of Article VIII, Chapter 230 of the City Code pertaining to special exceptions and hearings before the Board of Adjustment not in conflict herewith shall apply.

SECTION 2: If any section, subsection, sentence, clause or phrase of this Ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this Ordinance.

SECTION 3: In the event any existing Ordinances or parts of Ordinances are in conflict herewith, the provisions of this Ordinance shall control.

SECTION 4: This Ordinance shall become effective immediately upon passage.

First Reading July 9, 2019

Second Reading October 24, 2019

Signed this _____ day of _____, 2019

Linda Ratchford, President of Council

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I hereby certify that the foregoing Ordinance was duly approved by the Council of the Mayor and Council of New Castle upon the dates above set forth and signed by the President of Council.

Brian G. Whitaker, City Clerk

Approved this _____ day of _____, 2018

Michael J. Quaranta, Mayor