

August 3, 2015

**RECEIVED**  
AUG - 3 2015

***HAND-DELIVERED***

Scott Gustin, AICP, CFM  
Senior Planner  
Dept. of Planning & Zoning  
149 Church Street  
Burlington, VT 05401

DEPARTMENT OF  
PLANNING & ZONING

**Re: Dr. Barry W. Heath; Fence Application for 281 Shelburne Street,  
Burlington, VT 05401**

---

Dear Scott:

I attach a Notice of Appeal regarding Dr. Heath's application for a fence for their front yard. The fence was installed consistent with advice to Dr. Heath's contractor from the City's zoning and planning office (according to the contractor). Dr. Heath filed this application to ensure compliance, but as you know the application was denied because: (1) the fence is purportedly in the State of Vermont Right of Way for Shelburne Street/U.S. Route 7; or (2) the installation allegedly does not provide for adequate sight triangles under the ordinance or, alternatively, is too high in the sight triangle area. Dr. Heath will attempt to resolve your concerns, but he believes this appeal is necessary to protect his interests.

With respect to issue 1, I have spoken with Assistant Attorney William Rice for the Vermont Agency of Transportation (VTRans). He confirmed that VTRans does not own or control any portion of Shelburne Street within the City of Burlington; nor does there seem to be any proof offered other than anecdotal evidence that the fence is in fact in a right of way. Irrespective, the application need only be signed by the property owner, not a holder of a right of way. Dr. Heath is a property owner in this case.

With respect to item 2, Dr. Heath will attempt to work with the City to meet the standard in the ordinance if possible or seek the appropriate relief; however, it is does not appear to be the practice of the City to adhere to the standard stated in the denial, which would not make sense for this property.

Scott Gustin, AICP, CFM  
August 3, 2015  
Page 2

Thank you for consideration of this appeal.

Cordially yours,

PAUL FRANK + COLLINS P.C.



Mark G. Hall

MGH:jtg

Enclosures

---

cc with enclosure:

Barry W. Heath, M.D.

6516036\_1:12142-00001

**RECEIVED**

AUG - 3 2015

DEPARTMENT OF  
PLANNING & ZONING



**ZONING REQUEST DENIAL**

**FENCE**

City of Burlington, Vermont  
Department of Planning and Zoning

Application Date: 06/23/2015

Appeal Expiration Date: 08/04/2015

**Project Location: 281 SHELBURNE STREET**

District: RL

Owner: Barry W Heath

Ward: 5S

Address: 281 SHELBURNE STREET  
BURLINGTON, VT 05401

Tax ID: 057-3-004-000

Project Type: Residential - Site Imp/Landscaping/Parking/Fence

Project Description: Installation of fence around portion of front yard.

|                          |         |                               |        |
|--------------------------|---------|-------------------------------|--------|
| Construction Cost:       | \$7,500 | Lot Size (Sq Ft):             | 12,500 |
| Net New Habitable Sq Ft: | 0.00    | Net New # of Housing Units:   | 0      |
| Existing % Lot Coverage: | 0.00    | Existing # of Parking Spaces: | 0      |
| Proposed % Lot Coverage: | 0.00    | Proposed # of Parking Spaces: | 0      |
| Net New % Lot Coverage:  | 0.00    | Required # of Parking Spaces: | 0      |

Zoning Permit #: 15-1386FC

Decision By: Administrative

Level of Review: 1

Decision: Denied

See Reasons for Denial

Decision Date: July 20, 2015

Project File: NA

Zoning Administrative Officer

*An interested person may appeal a decision of the Zoning Administrator to the Development Review Board until 4 pm on August 4, 2015.*

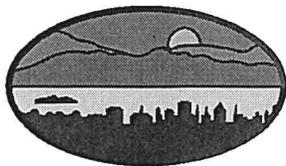
| Fee Type                | Amount                | Paid in Full | Balance Due: \$0.00 |
|-------------------------|-----------------------|--------------|---------------------|
| Application Fee:        | \$50.00               | Yes          | Date Paid: _____    |
| Development Review Fee: | \$0.00                | NA           | Check # _____       |
| Impact Fee:             | <i>Not Applicable</i> |              |                     |

Building Permit Required: **Not Applicable**

Received by: \_\_\_\_\_

Date: \_\_\_\_\_

## Zoning Permit - Fences – Reasons for Denial



City of  
Burlington, Vermont  
149 Church Street

ZP #: 15-1386FC

Tax ID: 057-3-004-000

Issue Date: July 20, 2015

Decision: Denied

Property Address: 281 SHELBURNE STREET

**Description:** Installation of fence around portion of front yard.

### Reasons for Denial:

1. Both the metal fence and the single section of new wooden fence exceed 3 feet in height and both encroach into clear sight triangles per Sec. 6.2.2, *Review Standards, (m) Landscaping and Fences*, of the Comprehensive Development Ordinance. The metal fence encroaches into the clear sight triangle for the property's driveway and Shelburne Street/U.S. Route 7, and the wooden fence encroaches into the clear sight triangle for the Champlain School's service driveway and Shelburne Street/U.S. Route 7. For driveways, clear sight triangles extend 15 feet along the driveway into the property and 25 feet away from the driveway along the front property line. Within the clear sight triangle, fences shall be limited in height to just 3 feet above the curb.
2. The entire length of metal fence that parallels Shelburne Street/U.S. Route 7 is located within the public street right-of-way. This public street right-of-way extends approximately 7 feet from the sidewalk towards the home. As a result, approximately 6 feet of the fence that parallels the property's driveway and the new section of wooden fence are also located within this public street right-of-way. The permit application form contains no signature from the Vermont Agency of Transportation or the U.S. Department of Transportation as co-applicant. Per Sec. 3.2.2, *Application Types and Submission Requirements (b) Awning and Fence Applications, item 1 A*, of the Comprehensive Development Ordinance, such co-application is required as the right-of-way extends beyond the subject private property and is under the jurisdiction of said transportation agencies.



Department of Planning and Zoning

149 Church Street, City Hall
Burlington, VT 05401-8415
Phone: (802) 865-7188
Fax: (802) 865-7195

www.burlingtonvt.gov/pz

RECEIVED JUN 23 2015

DEPARTMENT OF PLANNING & ZONING

Zoning Permit Application

Use this form for ALL zoning permit applications. See the relevant checklist for specific requirements.

PROJECT LOCATION ADDRESS: 281 Shelburne St

PROPERTY OWNER\*: BARRY HEATH + JENNIFER LAURENT

APPLICANT: SAME

\*If condominium unit, written approval from the Association is also required

POSTAL ADDRESS: 281 SHELBURNE ST

POSTAL ADDRESS:

CITY, ST, ZIP: BURLINGTON, VT 05401

CITY, ST, ZIP:

DAY PHONE: 802-804-1569

DAY PHONE:

EMAIL: jlaurent@uvm.edu

EMAIL:

SIGNATURE: [Signature]

SIGNATURE:

I am the owner. In addition, I duly authorize the applicant (if noted) to act on my behalf for all matters pertaining to this zoning permit application.

Description of Proposed Project: DECORATIVE FENCING

Existing Use of Property: [X] Single Family [ ] Multi Family: # \_\_\_ Units [ ] Other: \_\_\_

Proposed Use of Property: [X] Single Family [ ] Multi Family: # \_\_\_ Units [ ] Other: \_\_\_

- Does your project involve new construction, addition, alteration, renovation, or repair to a structure that is heated or cooled? Yes [ ] No [X]
Will 400 sq ft or more of land be disturbed, exposed and/or developed? Yes [ ] No [X]
For Single Family & Duplex, will total impervious area be 2500 sq ft or more? Yes [ ] No [X]
Are you proposing any work within or above the public right of way? Yes [ ] No [X]

Estimated Construction Cost (value)\*: \$ 7500

(\*Estimated cost a typical contractor would charge for all materials and labor, regardless of who physically completes the work)

Within 30 days of submission, the permit application will be reviewed for completeness, and, if complete, will be processed administratively or referred to a board for review. All permit approvals or denials are subject to an appeal period (15 days for administrative permit; 30 days for board permit). A building (and/or electrical, mechanical, plumbing, curb cut) permit will also be required. Contact the Department of Public Works at 802-863-9094 to inquire. Please ask for assistance if you have any questions about filling out this form. Call the Planning and Zoning at 802-865-7188, or visit the office in the lower level of City Hall, 149 Church Street.

Office Use Only: Zone: RL Eligible for Design Review? 4 Age of House 1924 Lot Size 2500
Type: SN \_\_\_ AW \_\_\_ FC [X] BA \_\_\_ COA 1 \_\_\_ COA 2 \_\_\_ COA 3 \_\_\_ CU \_\_\_ MA \_\_\_ VR \_\_\_ HO \_\_\_ SP \_\_\_ DT \_\_\_ MP \_\_\_
Check No. 2471 Amount Paid 50 Zoning Permit # 15-13867C



## Department of Planning and Zoning

149 Church Street, City Hall  
Burlington, VT 05401-8415  
Phone: (802) 865-7188  
Fax: (802) 865-7195

[www.burlingtonvt.gov/pz](http://www.burlingtonvt.gov/pz)

RECEIVED  
JUN 23 2015

### Fence Application Checklist

DEPARTMENT OF  
PLANNING & ZONING

Use this checklist for all applications for replacement fences and new fences - See Sec. 3.2.2 of the Zoning Ordinance.

In order for your application to be considered complete, the following information must be provided, as applicable:

- A completed application form signed by the property owner;
- The application fee of \$50, in cash or check (no cards). Checks to be made out to the 'City of Burlington'. (There will also be a \$35 fee to request the Final Certificate of Occupancy when the project is complete, if requested within the two year time limit);
- Photographs of the subject property showing the location of the project (and neighboring properties if applicable);
- A site plan of the subject property, that is accurate and to scale, including the following, as applicable:
  - Identifying information including the record owner of land, north arrow, date (including any revision dates) and scale (recommended at not smaller than 1 inch equals 40 feet);
  - Lot dimensions and location of property lines, abutting streets, the location and dimensions of the existing house and driveways;
  - Location of the proposed fence per Sec 6.2.2(m) Landscaping and Fences, (i.e. clear sight triangle and setback as indicated on page 2).
  - Location and ownership of rights-of-way or easements affecting the property;
  - Required setbacks from property lines and/or public rights-of-way;
  - Grading changes with minimum 5 ft. contours;
- Visual representation of the style, materials, and dimensions of the proposed fence (specification sheet or photograph of an example).

Note: If unsure of your front property boundary, you may assume the property line is one foot behind existing sidewalks. If a sidewalk is absent, assume the property line is ten feet from the curb of the roadway. If unsure, contact your neighbors, the Department of Public Works to obtain the street width, or hire a surveyor to delineate the boundaries for you (a survey is not a requirement, but is the most official way to clarify boundaries if there is a dispute).

**See page 2 for the rules on fences from the Comprehensive Development Ordinance**

## Scott Gustin

---

**From:** Theodore Miles  
**Sent:** Monday, July 06, 2015 12:17 PM  
**To:** Scott Gustin  
**Cc:** Mary O'Neil  
**Subject:** 281 Shelburne st

Scott,  
I put these notes in AMANDA for the fence permit that has been applied for at this address. A photo is attached to show the new wood section of fence that is referenced.

"Ted: Did some measuring of the right of way on Shelburne st. The ROW is 99 feet. There is a survey marker across the street that identifies where the property line exists. In measuring from this point to the 99 feet, the right of way goes 9 feet from the sidewalk on the west side of the road. This would coincide with the location of the wooden fence that was installed a number of years ago that lines the access drive to the school department. The fence would have to be moved back to the line of the old fence. The new wood section of fence and the new metal fence is in the right of way."

Ted Miles  
Code Enforcement  
City of Burlington, Vermont  
(802)863-0442  
(802)865-7563

*Met w. onsite 7/16/15. App. w. let me know  
now wishes to proceed by 7/21 or 22.*



07/06/2015 09:48



## Scott Gustin

---

**From:** Scott Gustin  
**Sent:** Monday, July 13, 2015 9:45 AM  
**To:** 'jlaurent@uvm.edu'  
**Subject:** 281 Shelburne Street fence

Good morning Jennifer,

I'm following up on a voicemail I left at the beginning of this month. The fence permit application you've submitted cannot be approved. The fence is located within the Route 7 right-of-way. It is also too tall within the 15 ft. clear sight triangle where your driveway connects with Route 7 (3 ft is the height limit in the clear sight triangle). You could modify your application to pull the fence back onto your property and to reduce its height by the driveway, or you could withdraw the application and remove the fence. Otherwise, I will have to deny your application. Please let me know how you'd like to proceed by this coming Friday July 17. Feel free to call me with any questions you may have.  
Scott

---

Scott Gustin, AICP, CFM  
Senior Planner  
Dept. of Planning & Zoning  
149 Church Street  
Burlington, VT 05401  
(802) 865-7189

RECEIVED

JUN 23 2015

June 18, 2015

DEPARTMENT OF  
PLANNING & ZONING

Jennifer Laurent  
Barry Heath  
281 Shelburne Street  
Burlington, VT 05401  
Phone 802.864.1569  
[jlaurent@uvm.edu](mailto:jlaurent@uvm.edu)

ATTN: Elsie Tillotson  
Department Secretary  
City of Burlington  
Planning and Zoning

---

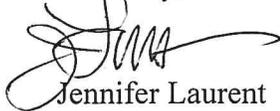
RE: Decorative Fence Installation

Dear Ms. Tillotson,

Per your discussion with my husband, Barry Heath, we are enclosing a zoning application, fee, and pictures of the property as requested regarding our fence that was recently installed by Middlebury Fence.

To recap our situation, Middlebury Fence contacted the city of Burlington to inquire about installing a decorative fence around the front lawn for a residential home. We were informed that there needed to be 1-foot distance between fence and sidewalk. They did not obtain the proper zoning permit and were not aware of any other zoning ordinances. Subsequently, the fence has been installed. It was not our intention to violate city ordinances and we relied on the fencing company to conform to these standards. Please let us know what our next steps are or should there be further questions.

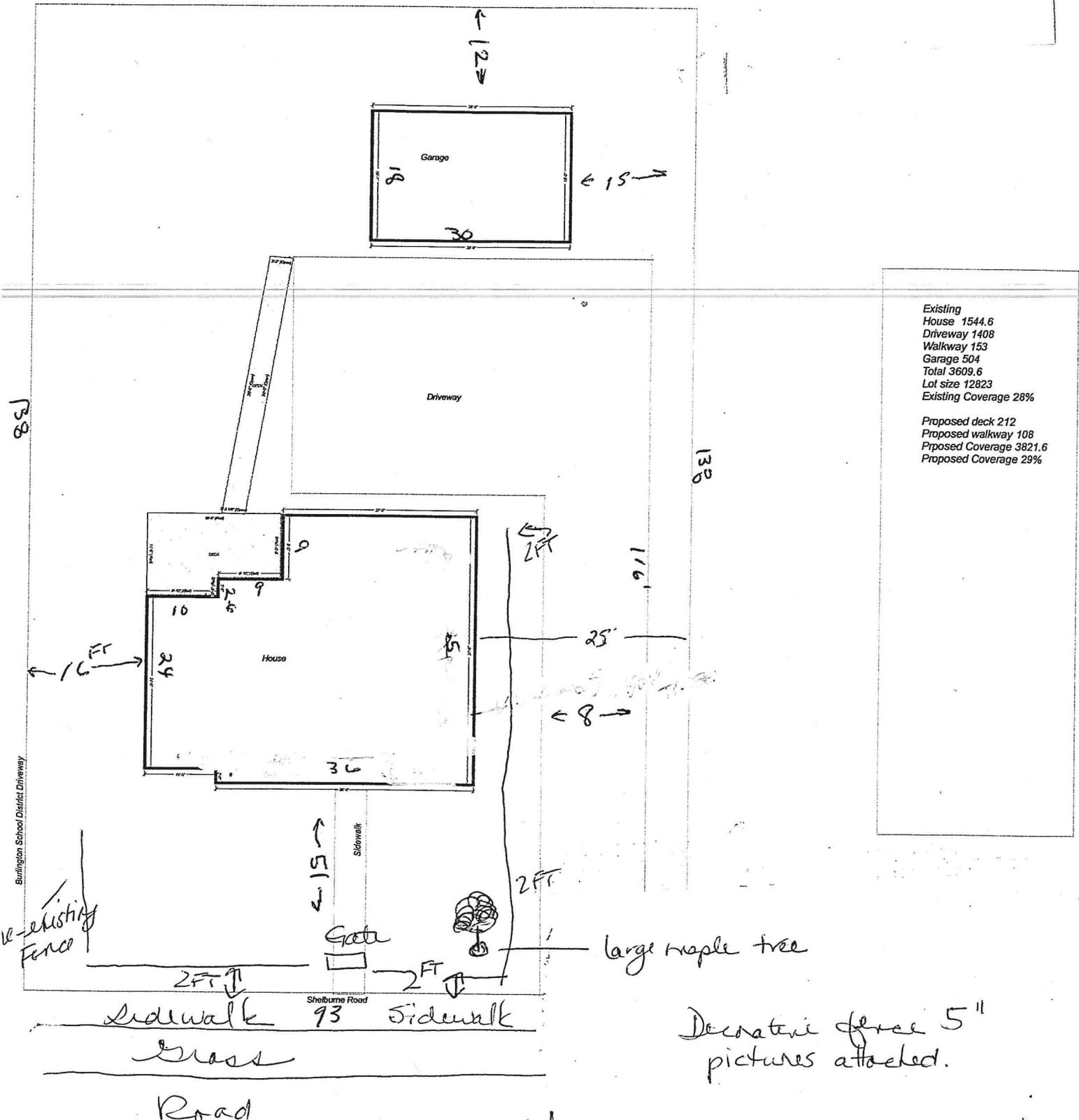
Sincerely,

  
Jennifer Laurent

RECEIVED

JUN 23 2015

DEPARTMENT OF PLANNING & ZONING



130

130

Burlington School District Driveway

existing fence

large maple tree

Decorative fence 5" pictures attached.

201 Shelburne Rd



**CODE ENFORCEMENT OFFICE**

645A Pine St, PO Box 849

Burlington, VT 05402-0849

**VOICE (802) 863-0442**

**FAX: (802) 652-4221**

2015-06-09

BARRY W HEATH  
JENNIFER S LAURENT  
281 SHELBURNE STREET  
BURLINGTON, VT 05401

**RECEIVED**  
JUN 23 2015

DEPARTMENT OF  
PLANNING & ZONING

RE: 281 Shelburne Street Burlington, Vermont

Dear Owners,

According to our records, you are the owner of record of the above-referenced property. This letter is to inform you that the Code Enforcement Office has received the following complaint(s) regarding this property:

- **Fence installed without Zoning Approval**

Our office has initiated an investigation regarding the complaint(s), however, as of this date; a final determination has not been made. Should you have any information that you believe will be useful to us during our investigation, please submit it to the Code Enforcement Office, **in written form, within the next ten (10) business days**.

This is your opportunity to provide information to refute the allegation(s) prior to our issuance of a formal determination and possibly a Notice of Violation. Information that may be helpful includes, but is not limited to, the following:

- Permits which document that the condition that is alleged to be in violation has been approved by the City.
- Photographs of the property and/or other documents (both current and historical with verifiable dates) that demonstrate the alleged violation does not exist, has been remedied, or has existed for more than 15 years.
- Affidavits from yourself and other persons who are aware of facts relevant to the allegation(s) that testify to the fact that the alleged violation does not exist, has been remedied, or has existed for more than 15 years.

Please note, while any information from you as the property owner is useful, the investigation will occur with or without the information. This letter is intended to give you notice of the alleged complaint(s) against your property and to provide you an opportunity to refute the allegation prior to a formal determination being issued.

Should you have questions, please don't hesitate to call me at 863-0442.

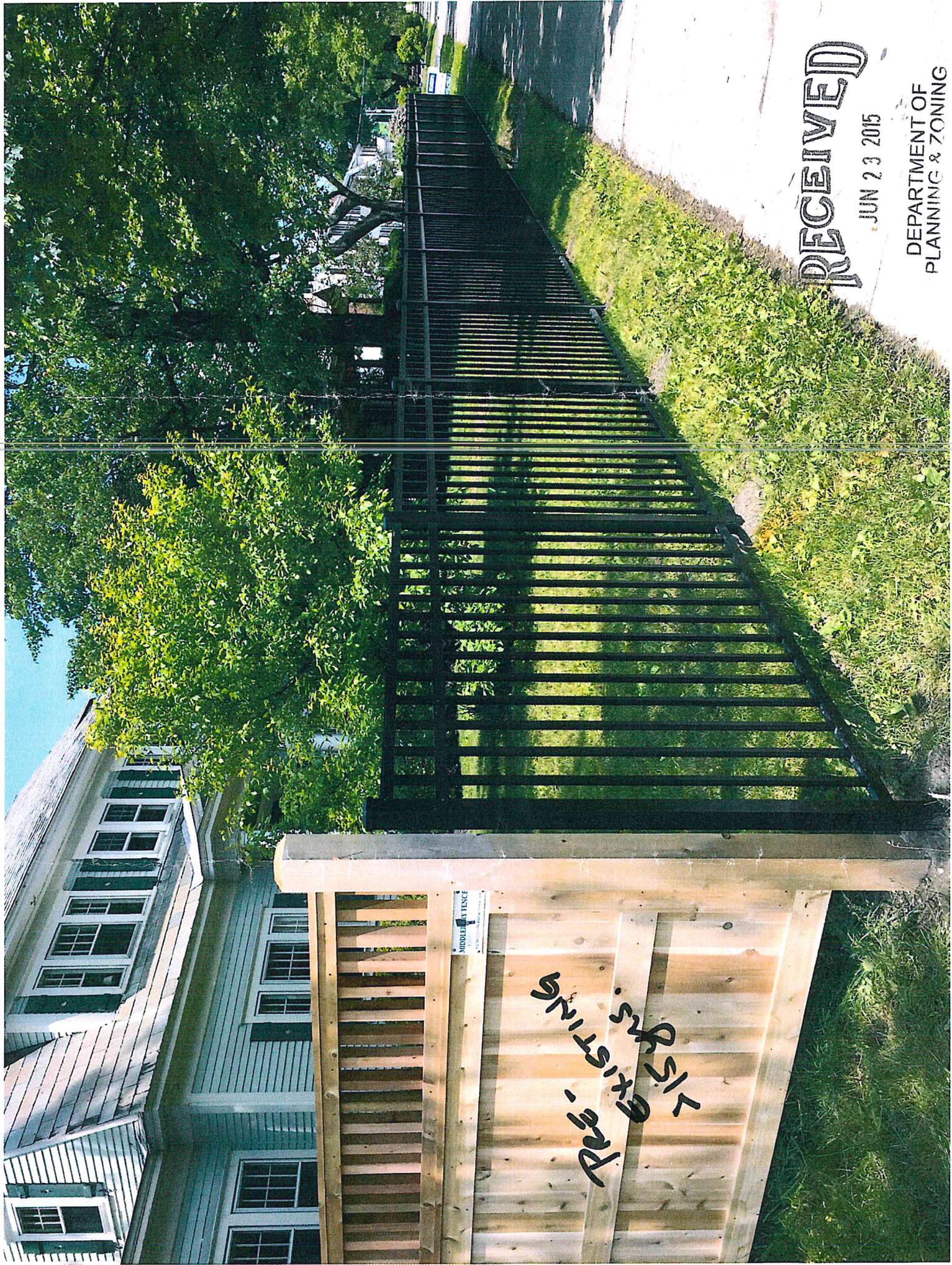
Sincerely,

Jeanne Francis, Zoning Specialist



RECEIVED

JUN 23 2015



MIDDLEWAY FENCE

15 yrs.  
existing

RECEIVED

JUN 23 2015

DEPARTMENT OF  
PLANNING & ZONING

