



**CITY OF NEWPORT BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT  
PLANNING DIVISION ACTION REPORT**

TO: CITY COUNCIL, CITY MANAGER AND PLANNING COMMISSION  
FROM: Seimone Jurjjs, Community Development Director  
SUBJECT: Report of actions taken by the Zoning Administrator and/or Planning Division staff for the week ending December 22, 2017.

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**COMMUNITY DEVELOPMENT DIRECTOR  
OR PLANNING DIVISION STAFF ACTIONS**  
(Non-Hearing Items)

- Item 1: Retail Sale of Alcohol with an accessory tasting room PC -6 Lido Peninsula Planned Community Regulations - Director's Determination No. DD2017-003 (PA2017-257)  
Site Address: 201 Shipyard Way, Suite 3  
Action: Approved Council District 1
- Item 2: Santa Ana Heights Specific Plan SP-7- Regulation of Accessory Uses and Structures - Director's Determination No. DD2017-004 (PA2017-260)  
Site Address: City-Wide  
Action: Approved Council District 3

APPEAL PERIOD: An appeal or call for review may be filed with the Director of Community Development or City Clerk, as applicable, within fourteen (14) days following the date the action or decision was rendered unless a different period of time is specified by the Municipal Code (e.g., Title 19 allows ten (10) day appeal period for tentative parcel and tract maps, lot line adjustments, or lot mergers). For additional information on filing an appeal, contact the Planning Division at 949 644-3200.

Wendy Joe, Civilian Investigator, NBPD (*Massage Therapy – ABC License*)  
Sgt. Brad Miller, NBPD (*Massage Therapy - ABC License*)



## Director's Determination

**To:** Mr. Anthony Curci  
**From:** Seimone Jurjis, Community Development Director  
**Date:** December 20, 2017  
**Re:** Retail Sale of Alcohol with an accessory tasting room PC -6 Lido Peninsula Planned Community Regulations 201 Shipyard Way, Suite 3  
Director's Determination No. DD2017-003 (PA2017-257)

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### **Background – Lido Peninsula Zoning and Land Use**

In 1974, the City Council adopted a Zoning Code amendment that rezoned the referenced property and the surrounding Lido Peninsula from Industrial Districts to PC-6 - Lido Peninsula Planned Community. However, the rezone did not include a planned community development plan, development standards, or use regulations. According to the administrative record (staff reports and public hearing minutes) the intent of the zoning amendment was to make the zoning consistent with the General Plan designations of Recreational and Marine Commercial (RMC) and Multi-Family Residential (RM). Discussion at the time of the amendment anticipated and intended future development to include marine and recreation-oriented commercial uses, with emphasis on marine repair and service uses in association with boat sales, restaurants, nightclubs, hotels, motels, and specialty shops.

The City Council staff report that established PC-6 in November 1973, suggested that the existing uses be allowed to continue, and that repairs, replacements, and remodels consistent with those uses be encouraged. The report also indicated that repairs, replacements, and remodels of existing uses and buildings that enlarge the scope or changes the character of such uses should require a use permit. Furthermore, substantial changes to existing uses shall comply with an area plan (PC Development Plan) intended to be prepared by the property owner(s) and subsequently reviewed and approved by the City. Since adoption of the Zoning Code amendment, an area plan (PC Development Plan) has not been proposed or adopted. As a result, development standards and use regulations have not been established for properties within the PC-6 - Lido Peninsula Planned Community.

The current General Plan and the Coastal Land Use Plan designate the subject property as Recreational Marine Commercial (CM). This land use category is listed under Commercial Districts and Corridors and is intended to provide for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor-serving and recreational uses, and encourage physical and visual access to the bay on waterfront commercial and industrial building sites on or near the bay. The CM land use category is implemented by the CM Zoning District and CM Coastal Zone that provides a list of allowed uses. The list of permitted and conditionally allowed uses has been determined to be consistent with the CM land use category. The CM list of uses is the closest equivalent to the use that would otherwise be considered for PC-6. Retail sales including a retail store specializing in wine and wine-related products (Alcohol Sales-Off-Sale) with an accessory, on-site tasting area would be allowed with the approval of a minor use permit by the Zoning Administrator in the Commercial Recreational and Marine (CM) Zoning Districts.

### **Planning and Zoning Section 20.12.020E - Unlisted Uses of Land**

Pursuant to NBMC Section 20.12.020E, the Director may determine that a proposed land use that is not listed in the zoning regulations of a property, which in this case is PC6 Zoning District, may be allowed if the following findings can be made:

#### Finding:

- A. *The characteristics of, and activities associated with, the proposed use are equivalent to those of one or more of the uses listed in the zoning district as allowable, and will not involve a greater level of activity, population density, intensity, traffic generation, parking, dust, odor, noise, or similar impacts than the uses listed in the zoning district;*

#### Facts in Support of finding:

1. A retail store specializing wine and wine related products (Alcohol Sales Off-Sale) with accessory wine tasting is a permitted use in the CM Zoning District and the CM Coastal Zoning District with the approval of a minor use permit by the Zoning Administrator.
2. The use is classified in the Zoning Code as general retail, which has a parking requirement of 1 space per 250 square feet of gross floor area. This is the same parking requirement as the existing general office use with no intensification of the parking demand.
3. This area in PC-6 is developed with restaurants, general offices, and general retail land uses.

4. On-site noise would be consistent with other non-residential uses and future uses would be required to comply with Chapter 10.26 of the Newport Beach Municipal Code (NBMC).

Finding:

- B. The proposed use will meet the purpose/intent of the zoning district that is applied to the location of the use;*

Facts in Support of finding:

1. As discussed in the zoning code amendment that adopted PC-6, the intent of the PC for the commercial area is to be consistent with the CM General Plan designation and the CM Coastal Land Use. The CM Zoning District and the CM Coastal Zone District (which typically implement the CM General Plan and CM Coastal Land Use) allow the retail use with an accessory wine tasting alcohol beverage license with the approval of a minor use permit by the Zoning Administrator.
2. Adjacent and nearby land uses include shipyards, restaurants and offices. A retail wine shop use is potentially consistent with the surrounding area subject to the review and approval of a minor use permit. The retail wine shop will serve the coastal visitors from the docks as well as residents from the surrounding neighborhoods. General retail such as the wine shop is considered a supportive business for the commercial marine area, encourage visitor-serving uses, and is a permitted use in the CM Zoning District and the CM Coastal Zone.

Finding:

- C. The proposed use will be consistent with the goals, objectives, and policies of the General Plan, or any applicable specific plan*

Facts in Support of finding:

1. The CM General Plan and CM Coastal Land Use designation is intended to provide for areas appropriate for commercial development on or near the bay in a manner that will encourage the continuation of coastal-dependent and coastal-related uses, maintain the marine theme and character, encourage mutually supportive businesses, encourage visitor-serving recreational uses.
2. A retail wine shop with accessory wine tasting use are allowed in zoning districts that implement the CM land use designation. The general retail use such as the wine shop is considered a supportive business serving the visitors and residents alike in the marine commercial area. It will provide an additional service to the immediate area.

Finding:

*D. The proposed use is not listed as allowable in another zoning district;*

Fact in Support of finding:

1. PC 6 does not include any use standards or zoning districts; therefore, there are no listed uses.

Finding:

*E. The proposed use is not a prohibited or illegal use.*

Fact in Support of finding:

1. The retail wine store with accessory wine tasting is not a prohibited or illegal use.

**Directors Determination**

In this particular case, findings can be made to allow the existing office space to be converted to a retail wine shop (Alcohol Sales Off-Sale) with accessory wine tasting as an allowed use subject to the approval of a minor use permit in the PC-6 Zoning and Coastal Zoning District.

Please note that a call for review or appeal may be filed within 14 days following the date of this determination. For more information, please contact me at 949-644-3221.



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Seimone Jurjis, PE, CBO  
Community Development Director



**CITY OF NEWPORT BEACH  
COMMUNITY DEVELOPMENT DEPARTMENT**

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Newport Beach, California 92660

949 644-3200

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## Director's Determination

**To:** Planning Division  
**From:** Seimone Jurjjs, Community Development Director  
**Date:** December 21, 2017  
**Re:** Santa Ana Heights Specific Plan SP-7- Regulation of Accessory Uses and Structures - Director's Determination No. DD2017-004

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### Summary

It has come to my attention that when the City annexed the Santa Ana Heights area into the City in 2003 and incorporated the Santa Ana Heights Specific Plan into the Newport Beach Municipal Code, an error was made within the Residential Equestrian (REQ) District development standards. A 25-foot rear setback for structures housing animals was inadvertently omitted. Additionally, uncertainty exists regarding the regulations applicable to accessory uses and structures. The intent of this determination is to clarify the regulations applicable to accessory uses and structures within the Specific Plan area shall be as originally regulated by the County of Orange prior to annexation and in accordance with the provisions of Orange County Zoning Code Section 7-9-137.

### Background

The Santa Ana Heights Specific Plan (SP-7) Area (Annex Area) was annexed into the City in 2003 pursuant to terms of a Pre-Annexation Agreement between the County of Orange and the City executed on September 10, 2002. The agreement states that the land use regulations applicable to the Annex Area will remain as specified in the County Specific Plan and the City will not amend the Specific Plan or its General Plan as they pertain to the Annex Area without the County's prior written consent. Furthermore, the Agreement states that the City agrees that in the event of conflict between the County and City Specific Plan with regard to land uses or other zoning or land use regulations, the County Plan shall prevail.

### REQ District – Rear Setback for Structures Housing Animals

Within the Residential Equestrian (REQ) District of the Specific Plan, the keeping of animals for the recreational enjoyment of persons residing on the same building site is a permitted accessory use, subject to a number of restrictions. The County

Specific Plan included minimum setbacks for structures housing animals and open exercise areas as follows:

	From Ultimate Street Right-of-Way Line		From Property Line Abutting REQ or BP Districts		From Property Line Abutting REQ Districts	
	Front	Side	Side	Rear	Side	Rear
<b>All structures housing animals (i.e., corrals, stalls, pens, cages, doghouses)</b>	50	20	25	25	5*	5*
<b>Exercise areas</b>	25	10	0	0	0	0

\*Required for covered portions of structures only.

Unfortunately, when the Specific Plan was incorporated into the City Zoning Code, the “rear” setback from a property line abutting REQ or BP Districts was inadvertently listed as a “front” setback. This unintentional error resulted in the removal of a required 25-foot rear setback for accessory structures housing animals, which is inconsistent with the intent of the original Specific Plan. Given that this was clearly an error and not a change in land use specifically approved by the County, the City should implement the rear setback for such uses consistent with the County Specific Plan.

#### Regulations Applicable to Accessory Uses and Structures

Throughout the various land use districts of the Specific Plan, Accessory Uses and Structures are permitted. However, the County Specific Plan clearly stated that such uses were permitted per Orange County Zoning Code Section 7-9-137. Section 7-9-137 permits the encroachment of accessory structures into required setback areas subject to specific height and coverage limitations (Attachment No. A). For example, a detached accessory building such as a garage could encroach into a rear setback area, provided it does not exceed a height of 12 feet or result in a site coverage of more than 25-percent of the setback area.

Unlike the County Specific Plan that specifically referenced the use of County Code Section 7-9-137 for regulating accessory structures, the City Specific Plan does not reference a specific code section. Utilizing the City’s Zoning Code Section 20.30.110 for regulating accessory structures would significantly limit the placement and development of accessory structures in the Specific Plan Area inconsistent with the terms of the Pre-Annexation Agreement and the County Specific Plan. For example, the encroachment of an accessory structure into a rear setback would be limited to a maximum height of 6 feet and an area of 150 square feet.

Newport Beach Municipal Code Section 20.12.020.D states that if conflict occurs between the requirements of the Zoning Code and the standards as part of a specific plan or annexation agreement, the requirements of the specific plan and annexation agreement shall prevail. Therefore, for the purposes of regulating accessory uses and structures within the land use districts of the Santa Ana

Heights Specific Plan, Orange County Zoning Code Section 7-9-137 shall continue to be utilized.

  
Seimone Jurjis, PE, CBO  
Community Development Director

Attachments:

A Orange County Zoning Code Section 7-9-137



**Sec. 7-9-137. Accessory Uses and Structures.**

All references to this section shall include sections 7-9-137.1 through 7-9-137.8. These regulations apply to all districts, planned communities, and specific plan areas, unless otherwise specified.

(a) Permitted accessory uses and structures.

- (1) In addition to the principal uses and structures expressly included in a zoning district, planned community, or specific plan, accessory uses and structures which are customarily associated with and subordinate to a permitted principal use on the same building site and which are consistent with the purpose and intent of the applicable zoning district, planned community, or specific plan are permitted. Whenever there is a question as to whether a specific use or structure is permitted as an accessory use, the Director, EMA, shall make the determination.

(b) Discretionary action required.

Accessory uses and structures shall be subject to a discretionary action per section 7-9-150 (i.e., approved permit, amended permit, or changed plan) when one or more of the following apply:

- (1) Required by other zoning regulations, or
- (2) The principal use is subject to a discretionary permit and the accessory structure is over six (6) feet in height, not including travel direction signs.

(c) Location of certain attached accessory structures.

Accessory structures that are attached to a main building, are enclosed, and are over eight (8) feet in height shall comply with the setback requirements for a main building, except as provided in sections 7-9-137.1 through 7-9-137.8.

(d) Location of other accessory structures.

Accessory structures other than in "(c)" above shall be permitted anywhere on the building site except within the following areas, unless otherwise permitted by sections 7-9-137.1 through 7-9-137.8:

- (1) Within the ultimate right-of-way.
- (2) Within the area designated on an approved building line plan as a setback area applicable to accessory buildings.
- (3) Within those areas where fences and walls are limited to a maximum height of three and one-half (3½) feet, as specified in section 7-9-137.5.
- (4) Within the required front setback area unless provided for by a use permit approved by the Zoning Administrator.
- (5) Within the panhandle portion of a panhandle building site.

(e) Height limit.

Accessory structures which are within the required setback areas shall be limited to twelve (12) feet in height, unless it is within three (3) feet of a property line, in which case it shall be limited to eight (8) feet in height. However, the height limit may be increased to the maximum allowed in section 7-9-129 with a use permit approved by the Zoning Administrator.

(f) Building site coverage within setback areas.

Accessory structures shall be limited to the following site coverage within the required setback area:

Required Setback Area	Enclosed Structure	Unenclosed Structure
Front	0%	0%*
Rear	25%	50%
Side	25%	50%

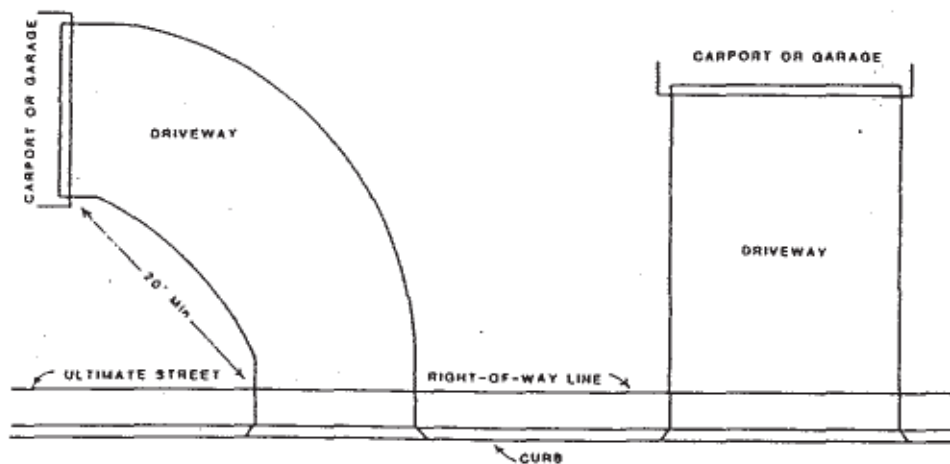
\*Note: Up to 25 percent building site coverage of the required front setback area shall be allowed for unenclosed structures if provided for by a use permit approved by the Zoning Administrator.

**Sec. 7-9-137.1. Garages and carports.**

The placement or construction of garages and carports on any building site used for residential purposes, including residential areas within planned communities and specific plans, shall comply with the setback requirements for a main building except as otherwise specified as follows:

(a) Garage entry location.

When the building line is closer than twenty (20) feet from the ultimate right-of-way of a street or from a common driveway providing primary access and circulation to other dwelling units, attached and detached garages shall be located so that the garage entry is a minimum of twenty (20) feet, at the closest point from the sidewalk (or curb line, if no sidewalk exists). However, if the garage has a roll-up door, that distance may be reduced to eighteen (18) feet. See illustration for garage entry location.



(b) Garage access from alleys and driveways.

When alleys, private streets or common driveways are provided specifically as vehicular access to garages and carports and when separate access and circulation systems are provided for pedestrians, guests and emergency vehicles, attached and detached garages and carports may be placed anywhere within the rear setback area to within a minimum of five (5) feet from such alley, private street or common driveway.

(c) Detached garages and carports.

Except as otherwise specified in subsections (a) and (b) preceding, detached garages and carports may be placed or constructed any place within the required rear or interior side setback area except within those areas where fences and walls are limited to a maximum height of three and one-half (3½) feet as specified in section 7-9-137.5.

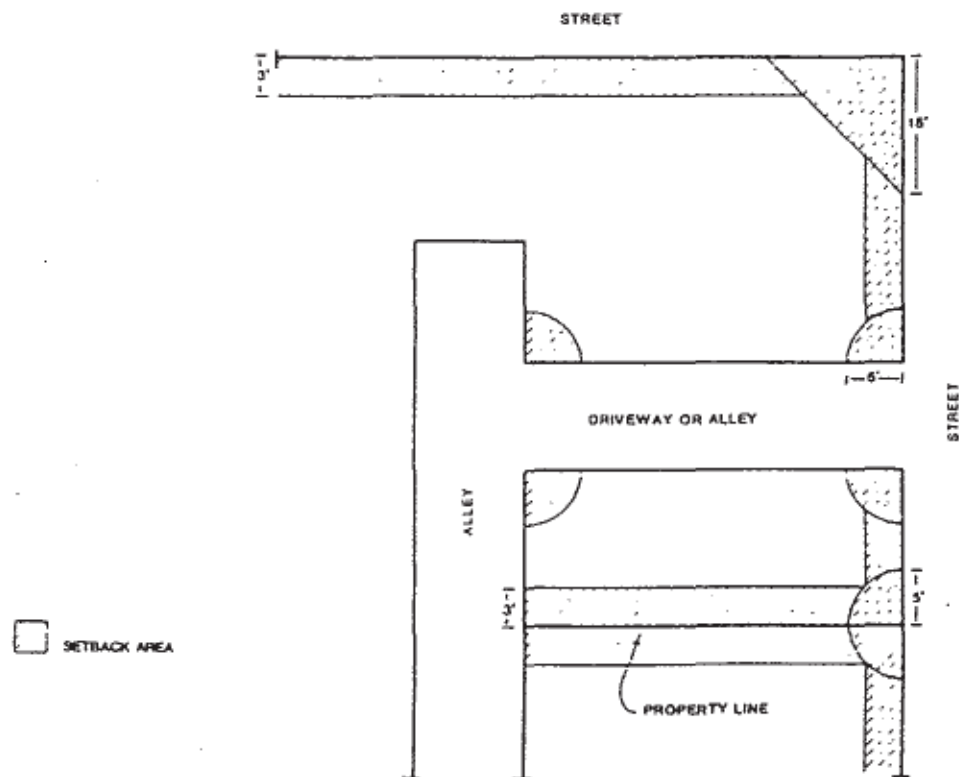
Sec. 7-9-137.2. Reserved.

Sec. 7-9-137.3. Satellite dish antennas.

Satellite dish antennas shall be permitted in any residential district if one meter or less in diameter and permitted in any commercial or industrial district if two meters or less in diameter. Exceptions may be permitted subject to the approval of a site development permit per section 7-9-150.

Sec. 7-9-137.4. Swimming pools.

Swimming pools shall not be constructed within three (3) feet of an ultimate vehicular right-of-way or property line or within those areas described by sections 7-9-137.5(d) and (e). See illustration for swimming pool setbacks.

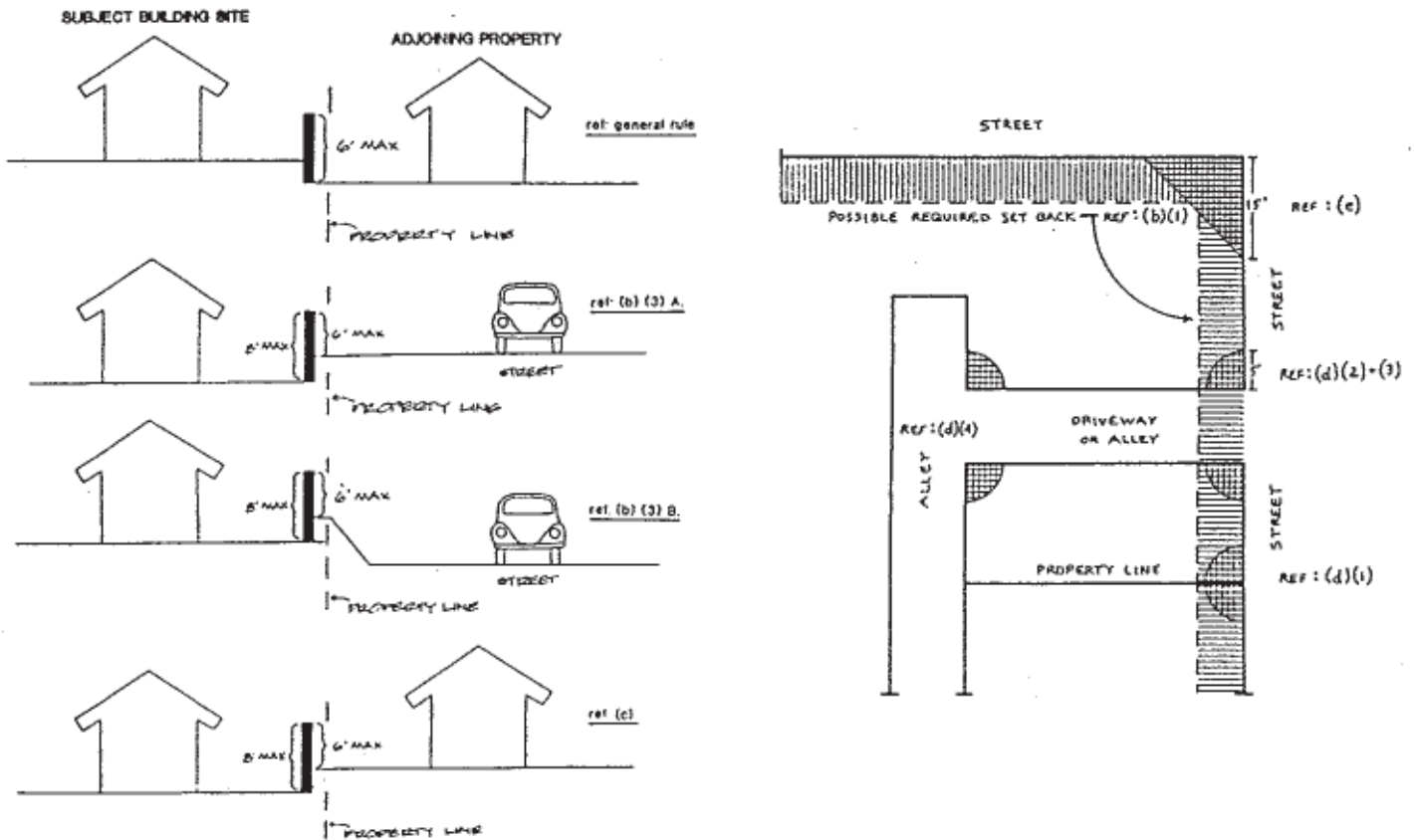


**Sec. 7-9-137.5. Fences and walls.**

For purposes of this section, "fences and walls" include any type of fence, wall, retaining wall, sound attenuation wall, or screen. Fences/walls shall be in compliance with the following regulations. However, walls that are located within the interior of an approved tract map and are part of the initial development of that tract map shall be exempt from these regulations. Subsections "(d)" and "(e)" only shall also apply to hedges, or thick growth of shrubs, bushes or trees. Fence/wall heights shall be measured from the base of the fence/wall to the top on interior or exterior side, whichever is greater. See fence/wall heights illustration.

## Permitted Fence/Wall Heights

Sec. 7-9-137.5



(a) Main building area.

In the area where a main building may be constructed, the district building height regulations apply.

(b) Setback areas bordering streets.

- (1) The maximum height shall be three and one-half (3½) feet within any required front setback area and six (6) feet within any rear or side setback area (through which no vehicular access is taken) adjoining a public street, up to a maximum depth of twenty (20) feet.
- (2) That portion of a building site where vehicular access rights have been dedicated to a public agency may have a six (6) feet high fence/wall.
- (3) Fences/walls for County required sound attenuation which border freeways or major arterial highways may be six (6) feet high and as high as eight (8) feet if:
  - a. The freeway/major arterial is elevated two (2) feet or more above the building site elevation, or
  - b. The exterior side measurement of the wall is not more than six (6) feet in height.

(c) Setback areas not bordering streets.

The maximum height shall be six (6) feet within any required front, rear, or side setback area not adjoining a public street. However, where the elevation of an adjoining building site to the side or rear is higher than the base of the fence or wall in the side or rear setback area, the height of the fence or wall may be measured from the elevation of the adjoining building site to the top of the fence or wall. However, in no case shall such a fence or wall exceed eight (8) feet from the base of the fence/wall to the top.

(d) Access intersection areas.

Notwithstanding "b" above, the maximum height shall be three and one-half (3½) feet within five (5) feet of the point of intersection of:

- (1) An ultimate street right-of-way line and an interior property line;
- (2) An ultimate street right-of-way line and the edge of a driveway or vehicular accessway;
- (3) An ultimate street right-of-way line and an alley right-of-way line; and
- (4) The edge of a driveway or vehicular accessway and an alley right-of-way line.

(e) Street intersection areas.

Notwithstanding "b" above, the maximum height shall be three and one-half (3½) feet within the triangular area formed by drawing a straight line between two (2) points located on, and fifteen (15) feet distant from, the point of intersection of two (2) ultimate street or highway right-of-way lines extended.

(f) Modifications permitted.

Exceptions and modifications to the fence and wall height provisions may be permitted subject to the approval of a use permit by the Zoning Administrator per section 7-9-150. In addition to the findings required by section 7-9-150, the following findings shall also be made prior to the approval of a fence or wall height use permit application:

- (1) The height and location of the fence or wall as proposed will not result in or create a traffic hazard.
- (2) The location, size, design and other characteristics of the fence or wall will not create conditions or situations that may be objectionable, detrimental or incompatible with other permitted uses in the vicinity.

**Sec. 7-9-137.6. Reserved.**

**Sec. 7-9-137.7. Reserved.**

**Sec. 7-9-137.8. Elevated driveway on steep topography.**

Except as otherwise limited by the provisions of section 7-9-137, where the ground surface slopes down from the street providing vehicular access to a building site, an elevated driveway connecting the dwelling and garage with the street may be installed within the setback area in compliance with the following provisions:

- (a) The ground surface elevation of the building site along a line twenty (20) feet from and parallel to the street right-of-way line shall be a minimum of at least five (5) feet lower than the street elevation.
- (b) The maximum width of the driveway shall be twenty (20) feet.
- (c) A handrail not exceeding three and one-half (3 1/2) feet in height may be installed along the edges of the driveway.
- (d) A stairway may be constructed from the driveway to the ground surface.