

**VILLAGE OF NEHAWKA**

**ORDINANCE 2023-4**

**AN ORDINANCE TO BE ADOPTED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF NEHAWKA, CASS COUNTY RELATING TO THE DESIGN, SET BACK, PERMITTING, PROHIBITION, INSTALLATION, SPECIAL EXCEPTIONS, AND PENALTIES RELATING TO FENCES WITHIN THE VILLAGE OF NEHAWKA.**

**BE IT ORDAINED BY THE BOARD OF TRUSTEES OF THE VILLAGE OF NEHAWKA, CASS COUNTY, NEBRASKA AS FOLLOWS:**

**A. FENCE OVERVIEW**

Fences are a permitted accessory use in any district and may be erected provided that the fence is maintained in good repair, that the finished or decorative side of the fence shall face the adjoining property, and comply with the following requirements:

1. **Residential fences.** Residential fences, including solid fences, are permitted, upon issuance of a building permit, in the side and rear yards of residential districts, but shall not exceed a height of six (6) feet, and shall not extend into the front yard or any street yard (See Attached Drawing). No fence shall be located closer than three (3) feet to any alley right-of-way line.
2. **Decorative fences.** A decorative fence is a fence that is 50% or more open. Decorative fences are permitted, upon issuance of a permit, adjacent to the lot line in any district, but shall not exceed a height of four (4) feet when located in a front yard or street yard in a residential district (See Attached Drawing). Wrought iron fence is an example of a decorative fence.
3. **Security fences.** Security fences are permitted, upon issuance of a building permit, adjacent to all property lines in all districts except residential districts, but shall not exceed a height of ten (10) feet. The Village Board of Trustees shall determine, before the issuance of a building permit, the opacity of security fences, based upon consideration of the need to screen materials and upon safety considerations. Security fences shall comply with the vision triangle requirements set forth in Paragraph D.
4. **Good Neighbor fences.** A fence constructed of solid or spaced boards, where the face boards are installed at the center of the posts so that the fence looks the same from both sides.
- 5.

**B. SETBACK REQUIREMENTS**

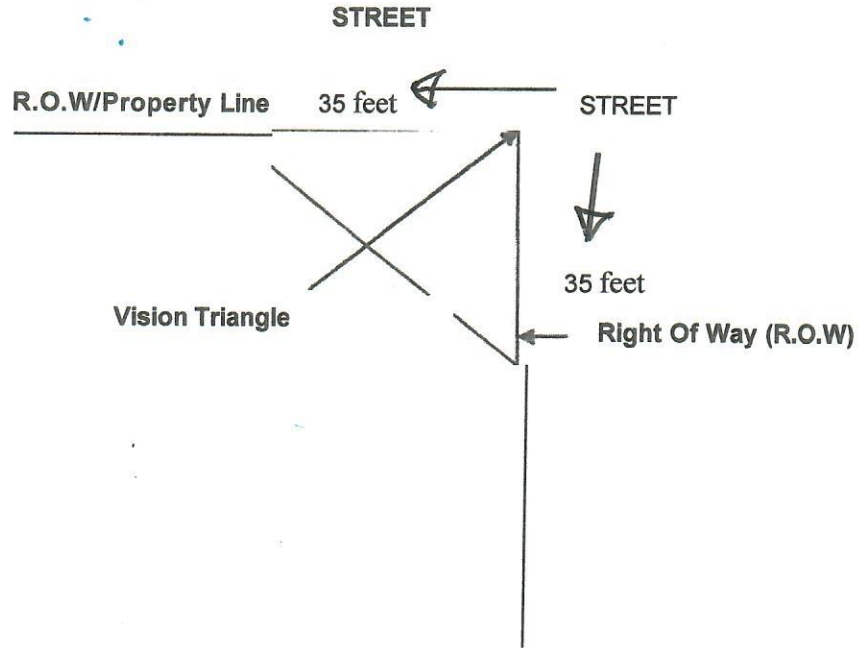
Any fence hereby erected shall be placed a minimum of six inches from any property line and twenty-four inches from the front property line. Survey stakes or pins shall be identifiable for inspection to insure proper placement at inspection.

**C. FENCES ALONG STATE AND COUNTY HIGHWAYS,**

If a fence abuts or is adjacent to a state or county highway, the fence construction shall comply with all state laws and county ordinances with regard to setbacks and fences.

**D. VISION TRIANGLE REQUIREMENTS.**

Fences shall comply with the following diagram to ensure adequate vision at corner lots:



#### E. BUILDING PERMIT.

1. **Permit Required.** No fence shall be installed, constructed, erected, reconstructed, rebuilt or replaced in the Village of Nehawka without first obtaining a building permit and complying in all respects with the terms and conditions of this Ordinance. A building permit is not required for painting, maintenance, or minor repair.

2. **Permit Application.** A building permit application shall be filed with the Village Clerk, consisting of the following:

- a) A fully completed building permit application and payment of the permit fee.
- b) A drawing, site plan or plat map displaying property boundaries, the location of the buildings and structures on the property, the proposed location of the fence and its distances from the existing structures on the property. Also to be included is the style of the fence, with picture, and the proposed color.
- c) If the fence is to be installed on rented or leased property, include written consent of the property owner(s).
- d) If a fence is being built by multiple individuals or parties, include a legal agreement documenting construction and maintenance responsibilities.
- e) Other information as may be required to assist in the review of the application.

#### F. PROHIBITED FENCES.

1. No fence shall be constructed, erected, reconstructed, rebuilt or replaced which exceeds six (6) feet in height.
2. No electrically charged or other inherently dangerous fence shall be permitted in Nehawka Village limits. This includes barbed wire, chicken wire, and/or agricultural type fencing.
3. Exceptions.
  - a) In an industrial area where barbed wire is used, the lowest strand shall be a minimum of six (6) feet above the grade.
  - b) Electrically charged invisible pet fences are permitted in residential areas if the wire is buried at least one (1) inch below the surface of the ground.

### G. SPECIAL PURPOSE FENCES.

Fences for swimming pools, confining dogs, gardens, etc. shall not exceed six (6) feet in height and shall be no larger than necessary for such purpose and shall conform to Paragraph B, setback requirements.

1. **Fencing required.** No swimming pool shall be used, constructed, erected or maintained within the Nehawka Village jurisdiction limits unless said swimming pool, or the property on which it is located, shall be surrounded by a fence or a wall no less than four (4) feet in height above the ground which shall have a gate with a lock so as to prevent uncontrolled access by children to the pool water.
2. **Definition.** A swimming pool is any structure intended for swimming or recreational bathing that contains water at any point of greater than 1 ½ feet in depth. This includes in-ground, aboveground and on-ground swimming pools, hot tubs and spas.
3. **Garden Fence.** Purpose of which to keep wildlife out of personal garden space. Special approval can be obtained for alternate building materials for this purpose.

### H. FENCE INSTALLATION.

1. **General Requirements.** No fence shall be installed, except in strict compliance with this Ordinance, site specific permit conditions, and the following requirements:
  - a) The height of any fence erected under this Article shall be determined by the measurement from the highest point of the fence to the existing ground level of the property.
  - b) The height of walls and fences shall be measured vertically from the finished grade on the exterior side of the fence. Raising the finished grade by placing fill solely for the purpose of adding additional height to a fence is prohibited. If a fence is placed on a berm, the berm shall be included in the height of the fence and the height shall be measured vertically from the base of the berm.
  - c) All fences shall be no closer than twelve (12) inches to the public sidewalk. Fences shall be installed plumb and level and the top finish of the fence shall be uniform. Fences shall follow the contour of the ground to the extent practical.

- d) Fences shall be installed with the finished side facing the adjacent property or public right-of-way, and the fence posts must be located on the inside of the fence facing the property on which the fence is located, except when the style of fence commonly described as a "Good Neighbor Fence" is installed.
2. **Modifications.** All modifications to any existing fence shall comply with this Ordinance.
3. **Approved Fence Materials.** All fences shall meet the following material requirements:
- a) Fences to be situated in side and/or rear yards shall be constructed using materials suitable for residential-style fencing, including, but not limited to, brick, wrought iron, vinyl, chain link (which requires top rail support).
  - b) No fence shall be constructed of used or discarded materials that are in disrepair, or any other items including, but not limited to, pallets, tree trunks, trash, , junk, or other similar items. Materials not specifically manufactured for fencing, such as railroad ties, wooden doors, landscape timbers or utility poles shall not be used for, or in the construction of a fence.
  - c) Agricultural/Farm fences shall only be permitted in agriculturally zoned or use districts and shall not exceed six (6) feet in height.
  - d) Residential front yard fences shall be fifty (50%) percent open (see-through) and be of split rail, wrought iron or picket design.

#### 4. **Fence Maintenance**

Fences shall be maintained in a manner as to prevent rust, corrosion and deterioration. They will not become a public or private nuisance. They will not be a danger to adjoining property owners or the public. Fences shall not create an appearance of patchwork, which is indicative of a state of disrepair. Every fence installed shall be maintained by the owner in such a way that it will remain plumb, level, and in a good state of repair.

### I. NONCONFORMING FENCES

Any fence which existed at the time of adoption of this Ordinance which does not conform to the provisions set forth herein shall not be altered without making the entire fence conform to the provisions of this Ordinance.

## I. SPECIAL EXCEPTIONS.

The Village Board is authorized to grant a special exception to waive or modify any requirements of this Ordinance if, in the judgment of the Village Board, it would be inappropriate to apply literally the provisions of this Ordinance due to exceptional circumstances, to the extent deemed just and proper on a case-by-case basis. The procedures and standards to be applied are as follows:

1. A party seeking a special exception shall file a petition with the Village Clerk.
2. The petition shall include all of the following:
  - a) A plot map drawn to scale showing the land in question, its location, the length and direction of each boundary thereof, the location and existing use of all buildings on such land and the principal use of all properties within 300 feet of such land.
  - b) The names and addresses of the owners of all properties within 300 feet of any part of the land included in the proposed change.
  - c) A detailed description of the intended development or use.
  - d) Any further information as required by the Village Staff or Village Board to facilitate the making of an evaluation of such request, such as a site plan depicting proposed buildings, parking, traffic impact, landscaping treatment, drainage, sanitary sewer, erosion control and other factors as would be pertinent including the impact on public facilities.
3. The Village Board shall hold a public hearing upon receipt of such petition.
4. An application for a special exception may be approved, denied, or approved with conditions. In order to approve the special exception, the Village Board must find that the applicant has demonstrated all of the following:
  - a) That the Petition seeks approval of a structure that was constructed pursuant to a building permit issued by the Village, in accordance with the plans filed with the permit application and all conditions of the permit approval, and only after completing construction was the structure found to be in violation of the yard, height or area requirements of this Ordinance.

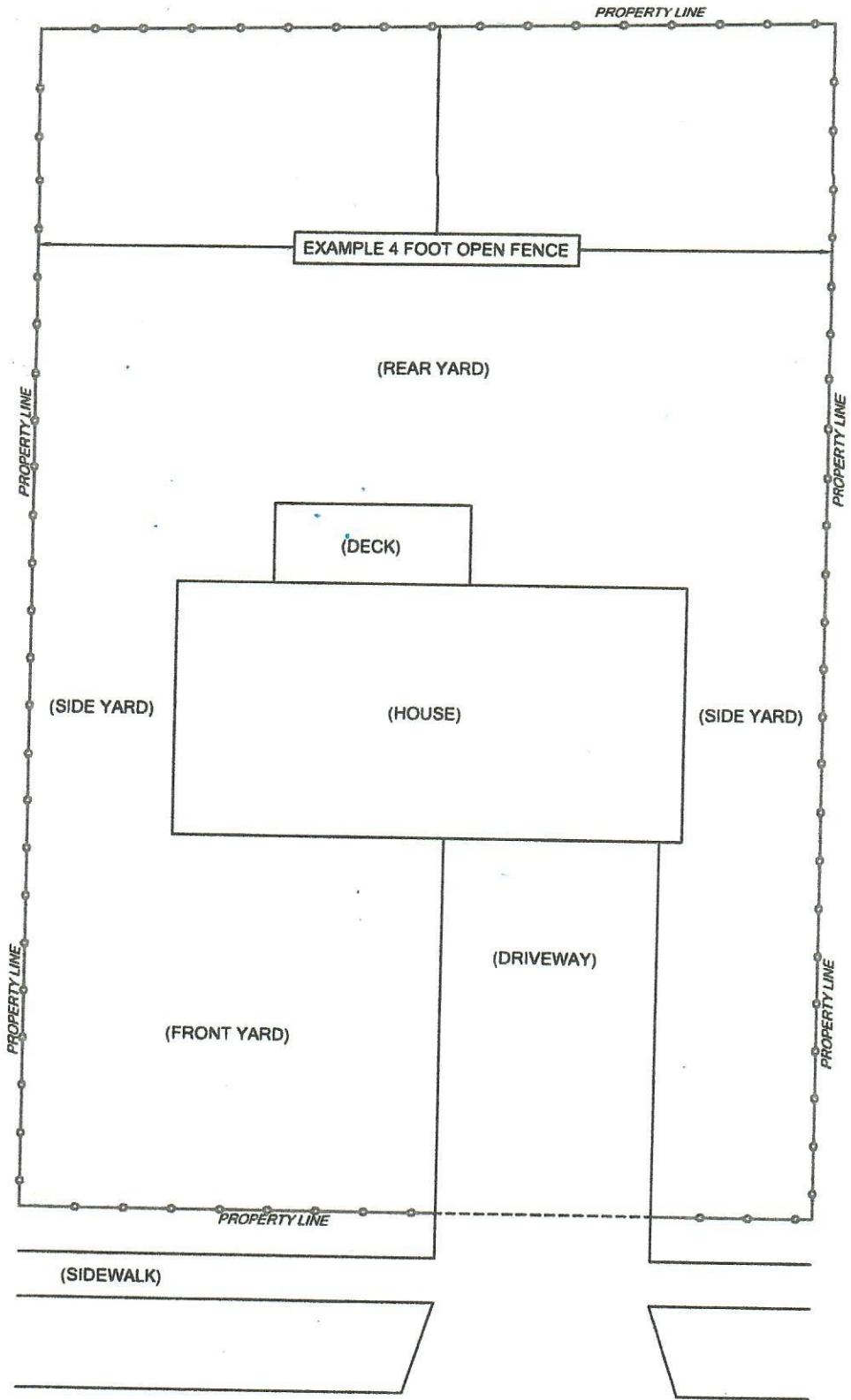
- b) That there are exceptional, extraordinary, or unusual circumstances or conditions applying to the lot or parcel, structure, use, or intended use, such that a literal enforcement of the requirements of this Ordinance would result in a severe burden; and, also, that such circumstances do not apply generally to other properties or uses in the same district, or are of such a recurrent nature as to suggest that the Ordinance should be changed.
  - c) That the special exception is necessary for the preservation and enjoyment of substantial property rights possessed by the applicant, and is not inconsistent with substantial property rights possessed by other properties in the same vicinity.
  - d) That the special exception will not create substantial detriment to adjacent property or the general desirability of the Village and its environs, and will not materially impair or be contrary to the purpose and spirit of this Ordinance or the public interest.
5. The action of the Village Board shall be stated in writing, and shall include findings of facts setting forth the basis for the decision. If a special exception is granted, or is conditionally granted, it shall be subject to the written approval to the applicant. The decision of the Village Board shall be final, and shall not be subject to appeal.

**K. PENALTIES for OFFENSES**

Any person, firm or corporation or his or her agent, servant worker or employee violating any provisions of this chapter shall be punishable by a fine not exceeding \$500 or by imprisonment for not more than 30 days, or both. Each day's continuance of a violation after notice to cease or correct shall be deemed a separate and distinct offense and shall be punishable accordingly.

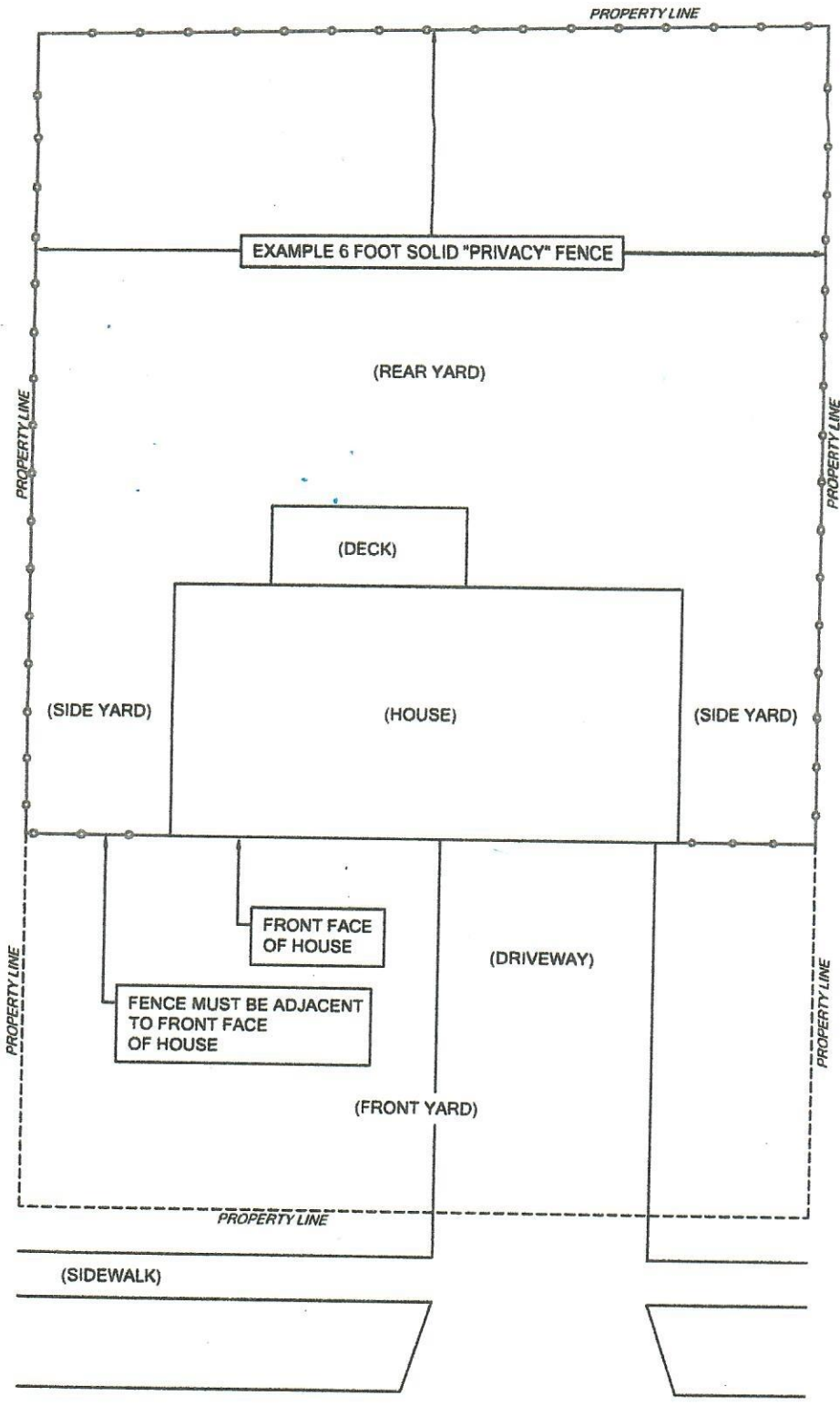
**L. EFFECTIVE DATE**

Any prior ordinances that conflict with the terms herein is hereby repealed. This Ordinance shall take effect and be in full force 15 days from and after its passage, as required by law.



EXAMPLE 4 FOOT OPEN FENCE FRONT/SIDE/REAR YARD INSTALLATION





EXAMPLE 6 FOOT SOLID "PRIVACY" FENCE REAR/SIDE YARD INSTALLATION

FIRST READING: Waived

SECOND READING: Waived

THIRD READING: Waived

PASSED AND ADOPTED THIS 11<sup>th</sup> DAY OF October, 2023.

BY:   
Chairman

ATTESTED AND PUBLISHED BY POSTING AT THE COMMUNITY BUILDING, POST OFFICE, AND BANK WITHIN 15 DAYS OF PASSAGE ON THE 11 DAY OF October, 2023.

Attest: 

Village Clerk  
Date: 10-11-2023