

**INTRODUCED BY: ALDERMAN DELL'ORCO**

**AN ORDINANCE AMENDING WARSON WOODS MUNICIPAL CODE SECTIONS 415.050 AND 415.060 PERTAINING TO NON-CONFORMING FENCES IN THE RESIDENTIAL DISTRICTS.**

**Whereas**, on January 23, 2020, the Planning and Zoning Commission considered proposed amendments to the City's Zoning Code pertaining to pre-existing fences in the "A" and "B" residence districts (the Amendments), and after reviewing the matter, recommended that the Amendments be approved; and,

**Whereas**, on February 18, 2020, the Board of Aldermen held a duly noticed public hearing regarding the Amendments; and,

**Whereas**, after reviewing the Amendments, public comments, and all other information and data available to it, the Board finds that approval of the Amendments is in the best interest of the citizens of the City of Warson Woods;

**NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF WARSON WOODS, MISSOURI, AS FOLLOWS:**

**Section 1:** Section 415.050, "Non-Conforming Uses and Structures" is hereby amended by adding a new definition for "Non-Conforming Fence" to Subsection A ("Intent and Purpose"), to read as follows:

**NON-CONFORMING FENCE**

Any fence on a lot of record at the time of passage of this Chapter or amendments thereto which does not conform after the passage of this Chapter or amendments thereto with the fence type, height, setback, and yard regulations of Section 415.060(A)(3).

**Section 2:** Section 415.050(B), "Non-Conforming Structures" is hereby amended by adding the underlined words, to read as follows:

**B. *Non-Conforming Structures: Fences.***

1. *Continuation.* Any non-conforming structure that is devoted to a use which is permitted in the zoning district in which it is located may continue to exist so long as it remains otherwise lawful, subject to the restrictions in Subdivisions ~~(4)~~ (2) through ~~(4)~~ (5) hereof. Any non-conforming fence may continue subject to Subdivision (6) hereof.
2. *Repairs and alterations.* Any such structure described in Subdivision (1) above may be maintained, repaired or remodeled provided that no such maintenance, repair or remodeling shall either create any additional non-conformity or expand or increase all or any part of the non-conforming portion of such structure. Nothing in this Code shall be deemed to prevent the strengthening or restoring of a structure to a safe condition in accordance with an order of a public official who is charged

with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition (where such restoration will not be in violation of this Section).

3. *Damage, decay, destruction.* In the event that any non-conforming non-residential structure is damaged, becomes extensively deteriorated or is destroyed by any means to an extent equaling greater than fifty percent (50%) of its then current fair market value, such structure shall not be restored except in conformity with all applicable provisions of this Chapter including the regulations of the zoning district in which the building is situated. However, such non-residential structure may be restored if the Planning and Zoning Commission finds a compelling public necessity requiring the continuance of the non-conformity. When a structure, the use of which does not conform to the provisions of this Chapter, is damaged or becomes extensively deteriorated or is destroyed by any means to an extent of more than twenty-five percent (25%) but less than fifty percent (50%) of its then current fair market value, it may only be restored on the issuance of a permit by the Building Commissioner with the approval of the Board of Aldermen. If such damage is twenty-five percent (25%) or less of its fair market value, then restoration may be made as otherwise provided by all applicable ordinances of the City.

Any non-conforming residential structure or conforming residential structure on a non-conforming lot, that is damaged, becomes extensively deteriorated or is destroyed, may be restored on the issuance of a permit by the Building Commissioner provided that the structure stays within the same footprint and does not exceed the prior height of the former primary residence.

4. *Extension of conforming use within non-conforming building.* Any conforming use may be extended throughout any part of a non-conforming structure which was manifestly arranged or descended for such use at the effective date of this Zoning Code or any amendments thereto, but no such use shall be extended to occupy land outside of such non-conforming structure.
5. *Moving.* No structure described in this Section shall be moved in whole or in part for any distance whatever to any other location on the same or any other lot, unless the entire structure shall thereafter conform to the provisions of the zoning district in which it is located after being moved.
6. *Non-conforming Fence.* A Non-conforming Fence may be maintained, repaired or replaced, in whole or in part, provided that no such maintenance, repair or replacement creates an additional non-conformity or expands or increases all or any part of the non-conforming portion of the fence. Furthermore, a Non-conforming Fence may be replaced on the same footprint as the existing fence and with similar materials, or different but conforming materials, so long as the following conditions are met:
  - a. The Non-conforming Fence does not encroach on adjoining property;
  - b. The replacement fence is no taller than the height of the existing Non-conforming Fence;

- c. The replacement fence meets the location requirements of Section 415.060(A)(3)(e);
- d. The replacement fence meets the fence type and design requirements of Section 415.060(A)(3)(a-b);
- e. The Non-conforming Fence was not removed (i.e., the use discontinued) more than sixty (60) days prior to application for a fence permit for the replacement fence; and,
- f. A fence permit is obtained prior to replacement.

**Section 3:** The first paragraph of Subsection A.3 of Municipal Code Section 415.060, “Additional Height Area, Fence and Screen Exceptions,” is hereby amended by adding the underlined words and illustrations, and by deleting the struck-through words below, to read as follows:

**Section 415.060. Additional Height, Area, Fence and Screen Exceptions.**

A. The foregoing height and area requirements shall be subject to the following exceptions and regulations:

3. Fences.

- d. Confined to rear yard; interpretation. Except for Non-conforming Fences pursuant to Section 415.050(B), all All fences are to be confined to the rear yard ~~except that, subject to the provisions of subsection (e), a fence may extend up to, but may not cross, the rear and side lot lines. ....~~

**Section 4:** This Ordinance shall be in full force and effect from and after its passage and approval.

THIS BILL PASSED AFTER HAVING BEEN READ IN FULL TWO TIMES PRIOR TO PASSAGE BY THE BOARD OF ALDERMEN OF THE CITY OF WARSON WOODS, MISSOURI, THIS 18<sup>th</sup> DAY OF FEBRUARY, 2020.

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Laurance M. Howe, Mayor

ATTEST:

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Kathy Mahany, City Clerk