

To: City of the Village of Douglas Planning Commission
Date: April 19, 2024
From: Sean Homyen, Planning & Zoning Administrator
RE: Zoning Text Amendment –16.16(3)(a) & 16.16(3)(c) –
Swimming Pools



The Village of Friendliness – Since 1870

BACKGROUND

Recent applications for pools within the City have revealed some outdated language in the Zoning Ordinance pertaining to the requirements for fencing. As you know, swimming pool installation requires a zoning permit and a building permit before construction can begin. The Zoning Ordinance and building codes both have the intent to prioritize safety. The building codes can change more frequently as technology and building materials evolve for more efficiency and safety. The Zoning Ordinance should usually reflect this type of change as well, as the two codes tend to work in unison. The Zoning Ordinance can be *more restrictive* than building codes, but cannot be *less restrictive* as zoning codes mainly regulate land use, and building code regulations are mainly for ensuring safety with any structure or appurtenance that humans will occupy or use. In 2015, the Michigan Residential Code made some changes to the barrier requirements for swimming pools and spas which would provide exceptions to the requirement to install a fence, and for the safety of building walls to serve as a barrier.

Michigan Township Services building inspectors administer the 2015 International Swimming Pool and Spa Code 2015, which perhaps may be more comprehensive than the requirements within the Michigan Residential Code. Sections from the 2015 International Swimming Pool and Spa Code are shown below for the Planning Commission's reference.

305.2.1 Barrier height and clearances.

Barrier heights and clearances shall be in accordance with all of the following:

- 1. The top of the barrier shall be not less than 48 inches (1219 mm) above grade where measured on the side of the barrier that faces away from the pool or spa. Such height shall exist around the entire perimeter of the barrier and for a distance of 3 feet (914 mm) measured horizontally from the outside of the required barrier.*
- 2. The vertical clearance between grade and the bottom of the barrier shall not exceed 2 inches (51 mm) for grade surfaces that are not solid, such as grass or gravel, where measured on the side of the barrier that faces away from the pool or spa.*
- 3. The vertical clearance between a surface below the barrier to a solid surface, such as concrete, and the bottom of the required barrier shall not exceed 4 inches (102 mm) where measured on the side of the required barrier that faces away from the pool or spa.*

4. *Where the top of the pool or spa structure is above grade, the barrier shall be installed on grade or shall be mounted on top of the pool or spa structure. Where the barrier is mounted on the top of the pool or spa, the vertical clearance between the top of the pool or spa and the bottom of the barrier shall not exceed 4 inches (102 mm).*

305.4 Structure wall as a barrier.

Where a wall of a dwelling or structure serves as part of the barrier and where doors or windows provide direct access to the pool or spa through that wall, one of the following shall be required:

1. *Operable windows having a sill height of less than 48 inches (1219 mm) above the indoor finished floor and doors shall have an alarm that produces an audible warning when the window, door or their screens are opened. The alarm shall be listed and labeled as a water hazard entrance alarm in accordance with UL 2017.*

In dwellings or structures not required to be Accessible units, Type A units or Type B units, the operable parts of the alarm deactivation switches shall be located 54 inches (1372 mm) or more above the finished floor. In dwellings or structures required to be Accessible units, Type A units or Type B units, the operable parts of the alarm deactivation switches shall be located not greater than 54 inches (1372 mm) and not less than 48 inches (1219 mm) above the finished floor.

2. *A safety cover that is listed and labeled in accordance with ASTM F 1346 is installed for the pools and spas.*
3. *An approved means of protection, such as self-closing doors with self-latching devices, is provided. Such means of protection shall provide a degree of protection that is not less than the protection afforded by Item 1 or 2.*

The current ordinance language does not permit a building wall to serve as a barrier if it has windows or doors. Building codes have changed to require the alarms on doors and windows so that it is known when a door to the pool area is opening. The Zoning Ordinance amendment proposes to remove language that allows a building wall to serve as a barrier if doors or windows are not present. The amendment also proposes to change the minimum fencing height to 4' instead of 5' to both match the applicable building codes, and eliminate any special ordering of fence panels, since most standard fence panels come in 4' and 6' in height. We have also added an optional exception to preclude the fencing requirement when a power safety cover has been installed.

Proposed Amendment. Based on discussions held at the April meeting, there seemed to be a consensus regarding on *keeping* the fence requirement, regardless of the applicable building code's exception to fencing when a power safety cover is installed. We have made the practical changes to the ordinance, as noted above, that have had an impact on recent applications for swimming pools, and we have added the option to add an exception to the fencing requirement if the Planning Commission is comfortable with it. An ordinance to amend has been drafted for your review and can be changed before it goes to the City Council, depending on whether the Planning Commission chooses to add part e to Section 16.16(3).

The proposed amendment is below with the language that is proposed for removal shown as highlighted and stricken to make the changes clear.

Section 16.16 Swimming Pools:

- 3) Fencing: Yard areas with pools are to be fenced to discourage unsupervised access.
 - a. Such fencing is to be a minimum of ~~five (5)~~ four (4) feet high and equipped with a self-closing and self-latching gate/door.
 - b. Latching devices are to be located at a minimum height of four feet above the ground.
 - c. Such fencing may be omitted where building walls ~~without doorways or windows~~ abut the pool area, provided that the entire perimeter of the pool area is secured.
 - d. [OPTIONAL]: EXCEPTION: The installation of a *safety cover* that is *listed* and *labeled* in accordance with ASTM F 1346 may preclude the requirement to install a fence in accordance with 16.16(3)a. through c. when installed according to the manufacturer's instructions and inspected and approved by the building inspector.

Procedures. Section 28.02 provides procedures for the review and approval of amendments. The City Council is the final reviewing authority for any amendment to the Zoning Ordinance. Therefore, the Planning Commission is tasked with making a recommendation, rather than an approval, of the proposed text amendment.

In addition, Section 28.04 outlines the requirements for holding a public hearing and the proper publication of the public hearing notice which informs the public in a newspaper of general circulation that the Planning Commission will hold a public hearing to consider the amendment on May 9, 2024.

Analysis of Amendment Criteria. Section 28.06 provides a list of considerations the Planning Commission must keep in mind when reviewing a proposed amendment to the ordinance. The majority of these considerations are not applicable to a text amendment of the Zoning Ordinance and apply mostly to amendments of the zoning map (rezonings), which is an integral part of the Zoning Ordinance. The criteria that are applicable to a zoning text amendment are highlighted:

- a. *What, if any, identifiable conditions related to the application have changed since the existing zoning district was established which justify the proposed amendment?*
- b. *What are the precedents and the possible effects of such precedent which might result from the approval or denial of the petition?*
- c. *What is the impact of the amendment on the ability of the City and other governmental agencies to provide adequate public services and facilities, and/or programs that might reasonably be required in the future if the proposed amendment is adopted?*
- d. *Does the petitioned district change adversely affect environmental conditions, or the rights of a neighboring property owner?*

- e. *Is the class of uses permitted in the district appropriate for the location proposed to be rezoned?*
- f. *Does the petitioned district change generally comply with the Tri-Community Comprehensive Plan, or a subsequent document that guides land use and development decisions in the City of the Village of Douglas?*
- g. *What is the ability of the property in question to be put to a reasonable economic use in the zoning district in which it is presently located?*

The Planning Commission may find that there is not likely to be any detrimental effects on properties neighboring properties with swimming pools, nor is there a type of precedent that is being set, other than the practice of amending the text of the ordinance from time to time to keep up with other changing codes, so that the ordinance is not unnecessarily burdensome to those who wish to install a pool.

RECOMMENDATION

Based on the findings noted in this staff report, we would recommend the Planning Commission provide a favorable recommendation to the City Council to approve the amendment of Section 16.16(3) of the City of Douglas Zoning Ordinance. The Planning Commission must determine if the power cover should preclude the fencing requirement, and reflect this in its motion as suggested below:

SUGGESTED MOTION

I move to forward a favorable recommendation to the City Council for the adoption of the text amendment to Article 16, General Provisions, Section 16.16, Swimming Pools, Subsection 3, Fences, parts a. and c. of the City of the Village of Douglas Zoning Ordinance, per the specific language stated in the Ordinance to Amend the Zoning Ordinance, and based on the findings stated in the Planning and Zoning Administrator's report dated May 3, 2024.

If the Planning Commission feels comfortable with adding on part e to section 16.16.(3), then the following language should be added to the motion:

“and the addition of part e pertaining to exceptions to the installation of a fence when a power safety cover is installed”

Feel free to reach out to me with any questions on this proposed amendment.

CITY OF THE VILLAGE OF DOUGLAS

ALLEGAN COUNTY, MICHIGAN

ORDINANCE NO.05-2024

AN ORDINANCE TO AMEND THE ZONING ORDINANCE

CITY OF THE VILLAGE OF DOUGLAS, ALLEGAN COUNTY, MICHIGAN

An ordinance to amend the City of the Village of Douglas Zoning Ordinance, Ordinance No. 02-2009, as amended, to amend Article 16, General Provisions, Section 16.16, Swimming Pools, Subsection(3) Fencing. This ordinance repeals all ordinances or parts of ordinances in conflict therewith.

THE CITY OF THE VILLAGE OF DOUGLAS HEREBY ORDAINS:

SECTION 1: PREAMBLE

WHEREAS The City of the Village of Douglas acknowledges the modernization and updates to applicable building codes that regulate swimming pools; and

WHEREAS The City's Zoning Ordinance must be updated from time to time to keep up with changing codes applicable to structures and activities that are also regulated by zoning; and

WHEREAS The regulations within the Zoning Ordinance may be more restrictive, but not less restrictive than applicable building codes.

SECTION 2: AMENDMENT. An ordinance to amend article 16, General Provisions, Section 16.16, Swimming Pools, Subsection 3, Fencing, which shall read as follows:

- 3) Fencing: Yard areas with pools are to be fenced to discourage unsupervised access.

- a. Such fencing is to be a minimum of four (4) feet high and equipped with a self-closing and self-latching gate/door.
- b. Latching devices are to be located at a minimum height of four feet above the ground.
- c. Such fencing may be omitted where building walls abut the pool area, provided that the entire perimeter of the pool area is secured.

SECTION 2. SEVERABILITY. If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

SECTION 3. REPEALER. All other ordinances or portions of ordinances inconsistent with this ordinance are hereby repealed.

SECTION 4. PUBLICATION. Within fifteen (15) days of its adoption, this Ordinance or a notice of adoption summarizing this Ordinance, as required by law, shall be published by the City Clerk in a newspaper of general circulation in the City in accordance with Act 110 of 2006.

SECTION 5. EFFECTIVE DATE. This Ordinance shall become effective twenty (20) days after the date of publication.

[SIGNATURES ON FOLLOWING PAGE]

Ordinance Offered by: _____

Ordinance Supported by: _____

Ayes: _____

Nays: _____

Abstain: _____

Absent: _____

First Reading: _____

Second Reading: _____

Date of Publication: _____

Effective Date: _____

ORDINANCE DECLARED ADOPTED THIS _____ DAY OF _____ 2024

Cathy North, Mayor

Laura Kasper, City Clerk

CERTIFICATION

I, _____, the duly appointed Clerk of the City of the Village of Douglas, do hereby certify that the foregoing is a true and complete copy of an Ordinance adopted by the Douglas City Council at a regular meeting held on Monday, _____, 2024, in compliance with the Open Meetings Act, Act No. 267 of the Public Acts of Michigan, 1976, as amended, the minutes of the meeting were kept and will be or have been made available as requires by this Act.

CITY OF THE VILLAGE OF DOUGLAS

By: _____

City Clerk, City of the Village of Douglas