



## **A RESOLUTION ESTABLISHING RULES AND REGULATIONS REGARDING ORNAMENTAL FENCES**

WHEREAS, pursuant to the *Georgia Property Owner's Association Act* and the *Magnolia Ridge Residential Declaration of Protective Covenants, Conditions and Restrictions (the "Declaration")*, the Association, acting through its Board, has the right to adopt reasonable rules and regulations which are binding on all Owners, Lessees, Licensees and Occupants; as those terms and others herein are defined in the Declaration. The Board therefore may issue reasonable rules and regulations for the express purpose of curing any ambiguity in or any inconsistency between the provisions contained in the Declaration; and

WHEREAS, the Declaration at ARTICLE II., defines a "fence" as an "Improvement", which is subject to the development standards of ARTICLE VI., and the submission of plans to the Architectural Control Committee (the "Committee") for review and approval prior to commencing any construction or alteration. Section 1. B), of ARTICLE VI., bars the placement or construction of fences "of any kind" nearer to the front property line than the rear corner of the residence. Section 12., of ARTICLE VI., lists materials that fences must be constructed of, and bars any fence lower than five feet in height or constructed of chain link. The Declaration fails to make clear what type of fence is described in these provisions, but clearly the Declaration anticipated more than one kind of fence; and

WHEREAS, the City of Fayetteville Code at Section 94-401. (a)., defines a fence as falling into one of two categories:

1. *Non-ornamental fences shall mean all fences other than ornamental fences and walls, including, but not limited to, stockade fences, all masonry, block, brick, rock walls, chain-link fences, wire fences, wire-mesh fences, screening fences, privacy fences, and all fences of any type over four feet in height; and*
2. *Ornamental fence shall mean a wrought iron fence or a picket style fence with a height of no more than four feet, which contains vertical members, which vertical members are uniformly fixed so that at least 50 percent of the vertical plane created by the fence is open with no visual obstructions.*

Furthermore, Sub-section (c) thereof provides: "*Non-ornamental fences may be located, erected, or maintained in rear or side yards only, on or behind the front building line.* However, Fayetteville Code permits ornamental fences in any yard. The Board assumes that the intent of the Declaration was to primarily describe non-ornamental fences sited on property lines or in close proximity thereto to provide privacy and/or define a boundary; and

WHEREAS, since there are no other guidelines in the Declaration specifically covering the development of ornamental fences, the strict application of Sections 1. B), and 12., of ARTICLE VI., creates ambiguity in or inconsistency between those provisions and the broad language of Section 1. B), of ARTICLE VI., as to fences "of any kind", and fails to meet the real and demonstrated needs of the Owners, Lessees, Licensees and Occupants to construct or

reconstruct ornamental fences on the interior of their lots. Furthermore, the strict application of these provisions creates practical difficulties and unnecessary hardship upon the Owners, Lessees, Licensees and Occupants; and

WHEREAS, based on the above findings, the Board deems it necessary to enact Rules and Regulations regarding the construction or reconstruction of ornamental fences. The Board believes that this action meets both the letter and intent of the Declaration at ARTICLE IV., Section 5., as cause for the Board to grant reasonable variance from the provisions of the Declaration.

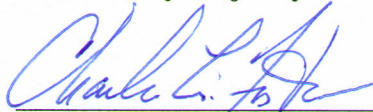
NOW, THEREFORE, be it resolved by the Board of Directors of the Magnolia Ridge Homeowners Association, Inc., that the following Rules and Regulations are applicable to the construction or reconstruction of ornamental fences, and shall have the same force and effect as if written into ARTICLE VI., DEVELOPMENT STANDARDS of the Declaration:

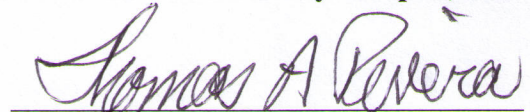
**Ornamental Fences:**

1. **Definition:** Ornamental fence shall mean a wrought iron fence or a picket style fence with a height of no more than four feet, which contains vertical members, which vertical members are uniformly fixed so that at least 50 percent of the vertical plane created by the fence is open with no visual obstructions.
2. **Placement:** Ornamental fences may be located, erected or maintained in rear yards only, behind the rear line of the residence, but only if confined by a non-ornamental fence otherwise constructed in accordance with Article VI., of the Declaration.

The above Rules and Regulations shall become effective on the date of this Resolution and shall remain in full force and effect until rescinded, amended or replaced.

**Resolved by majority vote of the Board of Directors on the Sixteenth day of April, 2019**

  
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President of the Association

  
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Vice President of the Association