



MEMORANDUM FOR AGENDA ITEMS

TO:	Planning Commission
FROM:	Gregg R. Adams, Planner
DATE:	March 9, 2024
SUBJECT:	An Ordinance Amending Zoning Ordinance Section 350-42(e) Fences and Retaining Walls to Require a Zoning Permit for All Fences and Retaining Walls
COPY TO:	T. Petrucci, D. Manhardt, L. Harrier, H. Bender, M. Elias, J. Zator, Esq., J. Alderfer, Esq., A. Tallarida, S. Pidcock

• Background Information:

Staff has been aware of an issue within the Zoning Ordinance with regard to fences and retaining walls. The current Section stipulates that fences four feet in height and under do not require a permit. However, staff has noticed a number of small fences that have appeared within clear-sight triangles of intersections, on Township easements and within Township rights-of-way. Additionally, any fence requiring holes be dug also requires a PA One Call. Staff requests that the requirement for fences to secure a permit be extended to all fences so that such issues may be caught before the fence is installed.

The original proposed Ordinance amendment was included in the Zoning Ordinance Service Pack 2C, which was reviewed by the Planning Commission at their July 21, September 15, October 20, and December 15, 2022 meetings. The proposed Ordinance amendment, as part of the Zoning Ordinance Service Pack 2C, was recommended for approval by the Planning Commission at their December 15, 2022 meeting.

Since that meeting, staff has recommended a number of further changes to the language to:

- clarify the need for building permits in certain situations
- to add clear sight requirements to proposed fence locations
- to remove exemptions to the requirement for a Zoning permit
- to add the requirement for a PA One Call and clear marking of the fence location prior to installation

At their January 11, 2024 meeting, the Planning Commission reviewed and made comments to the amendment language, including requesting the definition of the term “Fence”, the whether the Ordinance would apply to the clear-sight triangles of private streets, the process a property owner would undergo if found with an unpermitted fence, and whether the Ordinance would apply to “invisible” fences.

Staff reviewed the Planning Commission’s comments and determined the following:

- Staff has included in the language the current definition of “Fence” within in the Zoning Ordinance for clarification.

- Staff clarified that the proposed language within the amendment to ensure that the Section also applies to the clear-sight triangles of private streets that accept public traffic.
- Staff recognizes the difficulty of constructing a definition of “Fence” to encompass all possible situations and has determined that relying on the Zoning Officer’s interpretation is the most practical approach to the issue, with the understanding that:
 - an applicant would have to submit a permit to the Zoning Officer to obtain a review, or
 - an unpermitted fence would have to generate a complaint before being brought to the Zoning Officer’s attention, and
 - the Zoning Hearing Board may review the Zoning Officer’s interpretation if deemed to be egregious by the property owner.

At their February 8, 2024 meeting, the Planning Commission reviewed and made comments to the amendment language, including opposition to having no exceptions, opposition to requiring a permit application for any fence, no matter how small, suggestions to exempt garden, decorative or small fences and walls, suggestions to allow the Zoning Officer to use her judgement in determining where the permit would apply, and suggestions to educate and encourage residents to check with the Township before installing any fence.

Staff reviewed the Planning Commission’s comments and determined the following:

- Staff has altered the amendment to exempt fences below 24 inches in height above grade.

To correct an earlier statement, it was clarified that “invisible fences” typically do not require an electrical permit application nor a PA One Call.

- **Action Requested:**

Review and possible recommendation for the language of the proposed amendment.

- **Attachments:**

Proposed Language of the Amendment

Amend Section 350-42(e) FENCES AND RETAINING WALLS to Require Permits for All Fences:

The existing Section 350-05(c) Definitions:

FENCE – An artificially constructed barrier of wood, masonry, stone, wire, metal or other manufactured material or combination of material erected for the enclosure of areas.

The existing Section 350-42(e):

(1) Permit Required. Any Fence or wall four (4) feet or taller, except Fences for agricultural purposes, shall be subject to the Zoning Officer’s issuance of a zoning permit therefor, or his approved notation therefor, upon a previously issued and still valid zoning permit for the premises. All such permitted fences shall be installed such that the side closest to an adjoining property be finished.

(2) Setbacks. Fences may be placed up to the property line.

(3) Maximum Height.

(A) Fences more than thirty percent (30%) solid shall not be taller than six (6) feet. Open wire mesh Fences and Fences less than thirty percent (30%) solid shall not be taller than ten (10) feet.

(B) Retaining walls may not be taller than six (6) feet above the uphill (retained side) of the adjacent ground.

(4) Prohibited Fences. The following Fences and fencing materials are prohibited:

(A) Barbed wire except that surmounting a “man-proof” Fence and at least six (6) feet above ground level except in rural, residential and agricultural districts or where land is being used for agricultural, horticultural, or nursery uses, including raising and keeping of farm Animals.

(B) Fabric.

(C) Electrically charged Fences except as permitted in subsection (A) above.

(D) Broken glass surmounting a wall.

(E) Junk including but not limited to discarded vehicles (such as automobiles, trucks, busses, trailers, etc.), appliances (such as refrigerators, washers, dryers, etc.), assembled or partially assembled materials (such as tanks, construction materials, bales, barrels, etc.), and/or raw materials (such as stone, cement, sand, mineral ore, coal, wood, dirt, etc., except those used for the construction of a permanent dyke, dam or berm).

(F) No Fence shall be erected within any South Whitehall Township utility or drainage Easement, unless approved by the Board of Commissioners.

(5) Exempt Fences and Walls. Temporary Fences and walls such as snow Fences, Fences or barriers around construction sites and construction shoring which are not to stand more than one (1) year are exempt from the permit and height requirements of subsections (1), (2) and (3) above.

→Staff recommends that Section 350-42(e) be amended as follows:

(1) Permits Required. ~~Any Fence or wall four (4) feet or taller, except Fences for agricultural purposes, shall be subject to the Zoning Officer's issuance of a zoning permit therefor, or his approved notation therefor, upon a previously issued and still valid zoning permit for the premises.~~ *Any fence or wall twenty-four (24) inches or more above grade shall require an approved Zoning Permit. All fences greater than six (6) feet and walls greater than four (4) feet in height above grade shall also require an approved Building Permit.* All such permitted fences shall be installed such that the side closest to an adjoining property be finished.

(2) Setbacks. Fences may be placed up to the property line.

(3) Maximum Height.

(A) Fences more than thirty percent (30%) solid shall not be taller than six (6) feet. Open wire mesh Fences and Fences less than thirty percent (30%) solid shall not be taller than ten (10) feet.

(B) Retaining walls may not be taller than six (6) feet above the uphill (retained side) of the adjacent ground.

(4) Prohibited Fences *and Fencing Materials*. The following Fences and fencing materials are prohibited:

(A) Barbed wire except that surmounting a “man-proof” Fence and at least six (6) feet above ground level except in rural, residential and agricultural districts or where land is being used for agricultural, horticultural, or nursery uses, including raising and keeping of farm Animals.

(B) Fabric.

(C) Electrically charged Fences except as permitted in subsection (A) above.

(D) Broken glass surmounting a wall.

(E) Junk including but not limited to discarded vehicles (such as automobiles, trucks, busses, trailers, etc.), appliances (such as refrigerators, washers, dryers, etc.), assembled or partially assembled materials (such as tanks, construction materials, bales, barrels, etc.), and/or raw materials (such as stone, cement, sand, mineral ore, coal, wood, dirt, etc., except those used for the construction of a permanent dyke, dam or berm).

~~(F5)~~ *Prohibited Locations*. No Fence shall be erected:

(A) within any South Whitehall Township utility or drainage Easement; ~~unless approved by the Board of Commissioners,~~

(B) *within the Clear Sight Triangle of the intersection of two or more public streets, private streets open to public traffic, or combination thereof.*

(C) *so that it interferes with the clear sight of a vehicle exiting a driveway onto a public street or private street open to public traffic.*

~~(5) Exempt Fences and Walls. Temporary Fences and walls such as snow Fences, Fences or barriers around construction sites and construction shoring which are not to stand more than one (1) year are exempt from the permit and height requirements of subsections (1), (2) and (3) above.~~

(6) Issuance of Permit. Prior to issuance of a zoning permit for a fence or retaining wall:

(A) The location of the fence shall be clearly marked for site inspection.

(B) A PA One-Call number for the fence or retaining wall shall be received by the Zoning Officer.

The proposed Section 350-42(e):

(e) Fences and Retaining Walls.

(1) **Permits Required.** Any fence or wall twenty-four (24) inches or more above grade shall require an approved Zoning Permit. All fences greater than six (6) feet and walls greater than four (4) feet in height above grade shall also require an approved Building Permit. All such permitted fences shall be installed such that the side closest to an adjoining property be finished.

(2) **Setbacks.** Fences may be placed up to the property line.

(3) **Maximum Height.**

(A) Fences more than thirty percent (30%) solid shall not be taller than six (6) feet. Open wire mesh Fences and Fences less than thirty percent (30%) solid shall not be taller than ten (10) feet.

(B) Retaining walls may not be taller than six (6) feet above the uphill (retained side) of the adjacent ground.

(4) **Prohibited Fences and Fencing Materials.** The following Fences and fencing materials are prohibited:

(A) Barbed wire except that surmounting a “man-proof” Fence and at least six (6) feet above ground level except in rural, residential and agricultural districts or where land is being used for agricultural, horticultural, or nursery uses, including raising and keeping of farm Animals.

(B) Fabric.

(C) Electrically charged Fences except as permitted in subsection (A) above.

(D) Broken glass surmounting a wall.

(E) Junk including but not limited to discarded vehicles (such as automobiles, trucks, busses, trailers, etc.), appliances (such as refrigerators, washers, dryers, etc.), assembled or partially assembled materials (such as tanks, construction materials, bales, barrels, etc.), and/or raw materials (such as stone, cement, sand, mineral ore, coal, wood, dirt, etc., except those used for the construction of a permanent dyke, dam or berm).

(5) **Prohibited Locations.** No Fence shall be erected:

(A) within any South Whitehall Township utility or drainage Easement

(B) within the Clear Sight Triangle of the intersection of two or more public streets, private streets open to public traffic, or combination thereof.

(C) so that it interferes with the clear sight of a vehicle exiting a driveway onto a public street or private street open to public traffic.

(6) **Issuance of Permit.** Prior to issuance of a zoning permit for a fence or retaining wall:

(A) The location of the fence shall be clearly marked for site inspection.

(B) A PA One-Call number for the fence or retaining wall shall be received by the Zoning Officer.