

**BOROUGH OF SWARTHMORE
ORDINANCE NO. 1043**

**AN ORDINANCE OF THE BOROUGH OF SWARTHMORE AMENDING SECTION
1264.05 OF THE CODIFIED ORDINANCES OF THE BOROUGH OF SWARTHMORE
RELATING TO THE PLACEMENT AND REGULATION OF FENCES IN THE BOROUGH**

The Borough Council of the Borough of Swarthmore hereby enacts and ordains as follows:

- A. Purpose. The purpose of this Ordinance is to protect the health, safety and welfare of all Borough residents and visitors and to maintain the character of the community. This Ordinance is intended to address residents' legitimate needs to provide safety and privacy where conditions warrant, while, to the extent possible, retaining Swarthmore's traditional sense of openness and community cohesion.
- B. Applicability.
- (1) The requirements of this Ordinance apply to fencing as defined below. Retaining walls are regulated by the Borough Building and Housing Code, and are not regulated by this Ordinance.
 - (2) All fences not permitted or otherwise regulated herein are prohibited.
- C. Definitions. As used in this Ordinance:

Boundary Fence – A permanent barrier that is more than eighteen inches (18”) in height and more than three feet six inches (3’6”) in length lying parallel to the property line for the purpose of enclosing or separating a parcel of ownership, including earthen berms but not planted living material. Walls, except retaining walls, are included in this definition.

Building Line – An imaginary line running along the front or rear façade of a principal building on a lot and extending on either side of the principal building the full width of the lot.

Deer Fence – A fence intended to prevent deer from entering an area that is constructed of dark, heavy-weight open mesh plastic material ranging from 1.5 inches x 1.5 inches and 2 inches x 2.5 inches that allows a clear view through the fence. Posts may be constructed of wood, metal, or fiberglass.

Major Arterial Street – Baltimore Pike.

Open and Solid Fences A fence shall be considered “open” if every segment of the fence (e.g. a section between posts) is composed of at least fifty percent (50%)

open spaces and no more than fifty percent (50%) solid materials. All other fences are considered “solid” fences.

Privacy or Utility Fence – A permanent barrier located within a lot which separates, encloses or blocks from view a portion of a lot.

Retaining Wall – A wall for sustaining a bank of earth liable to erosion that does not exceed the height of earth intended to be supported.

Streets of High Traffic Density -- Fairview Avenue, Michigan Avenue, Swarthmore Avenue, Chester Road, Yale Avenue, and Cedar Lane from Baltimore Pike to Swarthmore Avenue.

D. General Design Standards.

- (1) As a general design principle, owners are encouraged to consider the design, style and materials of the principal structure on the property when choosing the style and type of fence they intend to erect. Acceptable materials are brick, wood, stone, concrete (except concrete block that has not been coated) and metal (except non-coated chain link) or other material that provides a reasonable duplication of such materials.
- (2) All fences shall be maintained in good repair and safe condition. No fence with barbed wire, spikes, exposed nails or other sharp objects shall be permitted. No fence with any type of electrical current is permitted, provided, however, that a buried pet electronic confinement system shall be permitted.
- (3) All fences shall be erected with the finished side facing the adjacent property or street. For a wood or metal fence, this shall mean that the finished side shall be considered the side without the structural supporting members. For fences made of any other material, the finishes must be equal on both sides. The tops of decorative post caps and finials may exceed the maximum permitted height for the fence by up to 6 inches.
- (4) Fences shall be maintained and installed so that they are straight and do not sag, lean in any direction, or extend over the property line outward from the lot into a right-of-way or other pedestrian-accessed area on which the fence or wall is located. Gates or other points of entry in fences and walls shall not swing outward across the property line.
- (5) Fences shall be erected only at the natural grade of the property and shall not be erected on berms or artificial mounds. No fence shall impede the natural flow of water in any watercourse, ditch or swale.
- (6) No fence shall constitute an obstruction to vision as described in the Borough Zoning Code and/or Building and Housing Code or the Commonwealth of

Pennsylvania Motor Vehicle Code.

- (7) Except as permitted below in (a) and (b) below, no fence of any kind is permitted within fifty feet (50') of the centerline of any street.
- (a) Properties with yards that are adjacent to a major arterial street shall be permitted fences that are eight feet (8') in height in the yard that abuts such major arterial street. Such fences may be "solid" fences as defined in this Ordinance.
 - (b) As a Special Exception, properties with front yards that are adjacent to streets of high traffic density shall be permitted fences that are three feet six inches (3' 6") in the front yard abutting the street of high traffic density.
 - (c) Fences allowed under this subsection (7) shall be subject to the following additional regulations:
 - (i) All fences shall be set back a minimum of four feet (4') from the right-of-way line of the abutting street, but at least four feet (4') from the edge of the sidewalk closest to the dwelling. This four foot (4') strip is intended as a planting area.
 - (ii) During the next fall or spring immediately following the installation of the fence, vegetation shall be planted so that, when the plantings mature, at least one-half (1/2) of the full length of the fence will be screened from view from the street. Such plantings shall thereafter be maintained.
 - (iii) Such fences shall not in any way create an obstruction to vision as specified in Section D(6) of this Ordinance.

E. Location and Height Restrictions for Boundary Fences

- (1) A boundary fence must be located within five feet (5') of a side or rear property line, except that a fence intended to enclose a yard may be extended at a right angle from the property line providing that the fence extension is located at or behind the rear building line of the principal building.
- (2) The maximum height of any boundary fence, except those limited under (D) (7), shall be six feet (6').

- (3) Any boundary fence greater than four feet (4') in height must be an "open" fence. Any fence four feet (4') in height or less may be a "solid" fence.
- (4) Notwithstanding the requirements of D(7) and E(2) above, the owner of a residential property whose side and/or rear yard abuts a commercial or institutional use property, a commercial HVAC unit or permanent dumpster location, or railroad right-of-way, or a multi-family dwelling with more than four units, may erect a "solid" boundary fence to screen such use having a maximum height of eight feet (8'), with its finished side facing the owner's residential property.

F. Location and Height Restrictions for Other Fences

- (1) A privacy or utility fence of up to six feet (6') in height of either solid or open design is permitted subject to the following:
 - (a) The fence cannot be located in front of the front building line.
 - (b) The fence meets the rear and side yard setback requirements for primary structures in the applicable zoning district in which the fence is located.
- (2) A deer fence is permitted subject to the following:
 - (a) The fence is located at least ten feet (10') from the side and rear property lines and is not greater than eight feet (8') in height.
 - (b) The fence is located behind the rear building line.
- (3) A fence of no greater than three feet six inches (3'6") in height is permitted anywhere on the property so long as it maintains the required distance of fifty feet (50') from the centerline of any adjoining street.

G. Permits Required for All Fences.

- (1) A building permit must be applied for, approved, received, and posted on the property prior to the start of any work other than work required in connection with performing a survey. The fee for the permit shall be included in the annual Borough of Swarthmore Permit and Fee Resolution.
- (2) Before the installation of a boundary fence, the landowner, or the applicant with the landowner's permission, shall submit a copy of a certified survey, or photographic proof of boundary markers either installed by a surveyor or approved in writing by the adjoining property owner, as well as a detailed plan showing the location of the fence on the property, the type of the fence, the height from the natural grade, all openings and other related information with the

building permit. The Borough may field inspect the property prior to issuing or rejecting a permit application to determine the existing condition of a fence, the placement of boundary markers or other related conditions.

- (3) Prior to the installation of any boundary fence, a string line inspection will be made by the Code Inspector or other designated Borough official.
- (4) At no time may a person or persons installing a boundary fence encroach onto the adjacent property without the written approval of the adjacent property owner, a copy to be submitted to the Borough office and attached to the permit.
- (5) Before a boundary fence is installed, removed, altered or replaced, the property owner shall give written notice and a copy of the proposed plan to adjoining property owners. A copy of the written notice shall be given at least five (5) working days prior to the start of work, and a copy of such notice shall be attached to the permit application when submitted to the Borough.

H. Non-Conforming Fences.

Any lawful non-conforming fence that is damaged, destroyed or removed, either in part or in whole, may be reconstructed provided that all necessary permits for construction shall be applied for within one year of date of such damage, destruction, or removal and the reconstruction shall be completed within two years of the date of such damage, destruction or removal, and provided that the replacement fence is:

- a) the same height or lower than the fence that was removed, but in no case greater than six feet;
- b) constructed of the same material as the fence that was removed, unless that material is no longer allowed under the provisions of Section D(1) of this Ordinance, in which case the replacement fence shall be made of the materials allowed under the provisions of Section (D)(1) of this Ordinance;
- c) the same style as the fence that was removed;
- d) in the same location as the fence that was removed, except as noted in (e) below;
- e) installed in compliance with Section D(3) of this Ordinance; and
- f) installed in compliance with the permit procedures outlined in Section G of this Ordinance.

I. Severability.

The provisions of this Ordinance are severable, and if any section, sentence, clause, part, or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, or parts of this Ordinance. It is hereby declared to be the intent of the Borough Council that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional sections, sentence, clause, part, or provision had not been included therein.

J. Inconsistent Ordinance Repealed.

All resolutions or ordinances, or parts thereof, which are inconsistent herewith are hereby repealed to the extent of the inconsistency.

K. Adoption.

This Ordinance shall take effect and be in force from and after its enactment as required by law.

ENACTED AND ORDAINED THIS 9TH DAY OF MAY, 2011.

SWARTHMORE BOROUGH COUNCIL

SUSAN D. SMYTHE
PRESIDENT

APPROVED THIS 9TH DAY OF
MAY, 2011

ATTESTED THIS 9TH DAY OF
MAY, 2011

RICHARD H. LOWE
MAYOR

JANE C. BILLINGS
BOROUGH MANAGER/SECRETARY