

GENERAL GUIDANCE FOR FENCES IN THE HIGHWAY RIGHT-OF-WAY

The following "Guidance" should be used when responding to permit application requests to construct fences in the State's highway right-of-way. This guidance also addresses pre-existing, non-permitted fences and compliance. As with drives, the District should process residential fencing permit requests, and the Utilities & Permits Unit will handle commercial requests.

Farm/Livestock Fences: Agricultural fencing is allowed to be placed in the State highway right-of-way providing it is the typical light duty easily removed type (ie: electric fences). This type of fencing is not a safety hazard to the traveling public. Owners of this type of fencing generally remove it in the Fall, realizing that State snow plowing operations will damage it. The light duty temporary livestock fences may be constructed without applying for a permit to occupy the State right-of-way. The more permanent agricultural fencing such as stone walls, stump, and heavy duty wire fences with steel posts or wooden posts larger than four (4) inches in diameter should be constructed outside the State's highway right-of-way or, at a minimum, outside the highway safety clear zone limit.

Residential/Commercial Fences: These types of fences are generally permanent structures such as stone walls, wood rail, hedges, concrete block, ornamental iron, chain link, etc., and must be kept outside the State right-of-way. They present a safety hazard to the traveling public, restrict sight distances, disrupt maintenance operations, compete with allowed right-of-way uses for public utilities and sidewalks, and can become a cost liability to the State if they need to be removed or relocated to accommodate highway construction.

Pre-Existing Non-Permitted Fences: These permanent type fences can range from historical stone walls to junk cars lined end-to-end. Time permitting, these non-permitted fences should be inventoried and property owners reminded by letter that their fences are on State property by suffrage only and the State may, when necessary, exercise its right to have them removed for the public good. Again, common sense must prevail when dealing with historic fences and the like.

Compliance: Whenever a new permanent fence structure is observed being built in the State highway right-of-way without benefit of a permit, the Owner should be notified immediately to stop construction. Only after a permit is issued should construction be allowed to proceed, otherwise the property owner should remove what has been built and rehabilitate any damages caused by the construction.

Site circumstances and common sense should always be factors when reviewing permit applications for permanent fencing. The width of the State highway rights-of-way, historical significance, speed limit, rural/urban environment, etc. should be considered. In all cases, when permitting permanent type fences in the State's highway rights-of-way it must be done with the provision that the fence is only being allowed until such time the State requires the right-of-way for highway intended uses including routine maintenance operations. At such time a fence needs to be removed, it must be done so at the Owner's expense within thirty (30) days of being notified by the State. Failure to comply will result in the State back charging the Owner for removal and landscaping rehabilitation costs.