

**TOWNSHIP OF LOWER MERION**  
***Building & Planning Committee***  
**Issue Briefing**

**Topic:** Fences in Floodplains

**Prepared by:** Robert E. Duncan, Assistant Township Manager

**Date:** July 7, 2017

**I. Action To Be Considered By The Board:**

The Board of Commissioners is requested to consider an amendment to the Zoning Code to allow fences in the floodway fringe of the Schuylkill River. There are two ordinances being presented for the Board to consider. One would allow fences in the floodway fringe of the Schuylkill River and establish limited fence opening standards and the other would bring many of the existing fences on the River Road properties into compliance with the code.

**II. Why This Issue Requires Board Consideration:**

The Board of Commissioners is required to approve any ordinance amendment.

**III. Current Policy or Practice (If Applicable):**

The Board of Commissioners is required to review and adopt ordinances amending the code.

**IV. Other Relevant Background Information:**

Under the current zoning code, fencing is not permitted in the floodplain. Both of the two proposed amendments, if adopted, would permit fences in the limited area of the floodplain along the floodway fringe of the Schuylkill River. Fences will continue to be prohibited within the floodway portion of the Schuylkill River floodplain and in floodplain areas throughout the balance of the Township.

Staff has previously prepared an ordinance (Option A) that permits fencing in this floodway fringe area but limits the amount of openings in the fence to allow floodwaters to continue to pass through the fences. This ordinance, if adopted, would bring some of the existing fences into compliance with the code but not all existing fences.

Staff has also prepared an ordinance (Option B) at the request of the River Road Ward Commissioner that would bring all of the existing fences into compliance with the code. This amendment would allow solid fences in the Schuylkill River floodway

fringe area but would continue to prohibit fences in the floodway. This ordinance would also allow solid fences up to 6' in height in the front yard setback on the River Road properties.

If the less restrictive ordinance is adopted, it is staff's understanding that the Ward Commissioner will request that the more stringent ordinance be re-introduced and considered for adoption the following month. This approach would bring the existing fences into compliance with the code and many of these same fences would become non-conforming if the more restrictive ordinance is adopted the following month.

The previous Issue briefing memo has been included as an attachment to provide the Board with the more detailed background information associated with the fences on River Road.

**V. Impact on Township Finances:**

There is no impact on Township finances.

**VI. Staff Recommendation**

The draft ordinance is listed for advertisement and scheduling a public hearing and consideration for adoption in September. The Board of Commissioners will have to determine which ordinance they would like to authorize for a public hearing in September.

## **TOWNSHIP OF LOWER MERION**

### **Issue Briefing**

**Topic:** Fences in Floodplains

**Prepared by:** Robert E. Duncan, Assistant Township Manager

**Date:** May 15, 2017

#### **VII. Action To Be Considered By The Board:**

The Board of Commissioners is requested to consider an amendment to the Zoning Code to allow fences in the floodway fringe of the Schuylkill River subject to standards that are intended to minimize increased flood risks that result from the installation of fences in flood prone areas and to preserve the scenic viewshed of the Schuylkill River.

Under the current code, fencing is not permitted in the floodplain. The amendment, if adopted, would permit fences in the limited area of the floodplain along the floodway fringe of the Schuylkill River. Fences will continue to be prohibited in other floodplain areas, including any areas within the floodway portion of the floodplain.

#### **VIII. Why This Issue Requires Board Consideration:**

The Board of Commissioners is required to approve any ordinance amendment.

#### **IX. Current Policy or Practice (If Applicable):**

The Board of Commissioners is required to review and adopt ordinances amending the code.

#### **X. Other Relevant Background Information:**

In 2015 the Building & Planning Department received a complaint with regards to fencing constructed within the floodway fringe of the Schuylkill River. An inspection of the property revealed that newer fences had been installed within the floodway fringe on numerous properties along River Road in violation of the Floodplain District, which was originally enacted in 1973. Violation letters were sent to the property owners with violations, including a number of homes that were constructed within the last 10 years. Staff did not send violation letters to property owners with fences where the age of older fencing could not be documented.

The affected property owners appealed the Zoning Officer's enforcement notice and determination and in the alternative sought a variance to allow the fences to remain. In order to improve the cost effectiveness and timeliness of a decision from the

Zoning Hearing Board, many of the property owners were allowed to submit a single application for their affected properties. In 2016 the appeal and the requested variances were denied by the Zoning Hearing Board. The Zoning Hearing Board decision states, *“Where a number of properties are similarly impacted by a physical condition in the neighborhood (like a floodplain), any relief from the condition must come through legislation. In this instance, if the Board were to grant the Appellant and the other seven River Road property owners variances from the floodplain regulations and allow the fences, the Board would be essentially rewriting the Zoning Code for the River Road neighborhood to simply allow fences.”* As a result, staff was asked to prepare an ordinance amendment establishing reasonable standards that would allow fences within the floodway fringe taking into consideration the underlying goal of minimizing any increased flood risks that result from the installation of fences in flood prone areas.

The Floodplain District is intended to reduce future flood risks in the community. Floodplain standards are required for the Township to participate in the National Flood Insurance Program (NFIP), which enables property owners in the community to purchase insurance protection against losses from flooding. The current prohibition of fences in the floodway fringe is more restrictive than the requirements of the NFIP.

The properties located in the floodway fringe are located in a high risk area identified on FEMA’s Flood Insurance Rate Maps as Zones AE. Properties in Zones AE have been studied by FEMA and are subject to inundation by the 1-percent-annual-chance flood event (also referred to as a 100-year flood).

The primary concern is that fences in flood prone areas not act as obstructions to the flow of water and change the way flood water moves through a floodplain. These changes can be minor when a fence on one small property boundary is considered. However, when a number of fences are flooded their impact can be significant, causing disruption to the passage of floodwater which in turn can raise flood levels and result in more significant flood damage. This is referred to as a cumulative impact and is a key consideration in the approval of fences in flood prone areas. With this in mind, the proposed Floodplain District amendment has been prepared to allow fencing that has a minimal impact on the flow of water. The fence height and opening standards are intended to allow for optimal water flow on the most susceptible portions of the properties along the Schuylkill River.

This ordinance was presented to the Building & Planning Committee last year and in January of 2017 but staff was directed to seek the advice of the Solicitor to determine whether the ordinance could exclude the current group of properties with fences that do not comply with the floodplain requirements. The Solicitor has determined that the Board of commissioners do not have the authority to exclude certain properties from the floodplain fencing ordinance being considered since there has been no evidence provided that these fences were legal when built.

**XI. Impact on Township Finances:**

There is no impact on Township finances.

**XII. Staff Recommendation**

The draft ordinance is listed for advertisement and scheduling a public hearing and consideration for adoption in July. Staff recommends that Board proceed with this authorization.