FENCES

Good fences make good neighbors until attempts are made by ordinance to restrict height or type of fence! This relatively unimportant topic can be the subject of immense controversy.

The Text of a Model Zoning Ordinance, with Commentary, by Fred H. Bair, Jr. and Ernest R. Bartley, Public Administration Clearing Service of the University of Florida, 1958.

Historically, courts have recognized the importance of the right to fence property. In many of the western states this right was turned into a responsibility. Settlers who wanted to keep cattle out of their corn had to fence the fields. However, common law, as evolved in most eastern states, generally requires a property owner to fence in his animals to keep them from trespassing on his neighbor's property. Special agencies have been developed through court action and state legislation to handle rural fencing problems. The days of shooting it out with the neighbors about fencing the waterhole are over except on TV.

There are lengthy fence statutes in many states. Generally speaking, they apply only to agricultural land, but sometimes all land in the state is covered by a fence act. Fence districts created for the purposes of erecting and maintaining fences are sometimes provided for by law. Fence viewers -- an appeal board that settles fence disputes -- also stem from state acts.

Of particular interest because it is common in urban areas, as well as rural, is the partition fence. A form of division or property line fence, it is usually erected jointly by adjoining landowners. State law may establish the rights and duties of the two proprietors. Both are equally responsible for maintenance and construction unless they arrange otherwise by agreement or written contract. In case of disagreement, appeal may be made to fence viewers or to the courts.

In urban areas, attitudes toward fences are different from those in rural areas and the fences serve different purposes. Joint building and maintenance is probably less common. From experience, the urban property owner

---


Copyright, American Society of Planning Officials, 1958
is cautioned to build his fence several inches back from the property line to avoid legal entanglements due to opposition from a neighbor or to faulty surveying. To stave off spite fence battles, dealers in fencing materials often advise a prospective fence builder to tactfully approach his neighbors and explain why he wants to put up a fence. Another graceful gesture advised is to turn the best side of the fence toward the neighbors. In some residential areas, covenants should be checked because they may prohibit or strictly limit fences. These notes of caution are testimony to a changed attitude toward fences: our ancestors built fences because they wanted privacy and independence; we fight fences because we want everyone to conform to new norms of sociability and neighborliness.

The contemporary pattern of residential development is the single-family dwelling near the center of a lot and surrounded by yards, most of which are open to public view. Little privacy is possible, even in the back yard. However, there are many situations in which fences are appropriate and necessary. They can be used to guard a toddler, to keep a dog in the yard, to protect a lawn or garden, and to safeguard against the dangers of yard pools. Moreover, fences and walls can block off the hot sun and break the cold wind; they can shield against unsightly neighboring yards, outside noises, and inquisitive eyes.

But these considerations seldom take into account the right of adjoining property owners to light, air, and view. However, fence regulations can be drawn so they serve both the property owner and the public -- his neighbor, for the most part -- with little conflict. Fence controls should, of course, be determined on the basis of what is appropriate for a particular community.

This report first considers general municipal regulation of fences, including control of materials that might cause injury. Because much of the impetus for fence provisions in zoning ordinances comes from citizen interest in preventing spite fences, they and how they are handled in zoning ordinances are discussed. Regulation of other fences, walls, and hedges through zoning ordinances is reviewed. Vision clearance provisions are also analyzed. Finally, some developing issues in the use and control of fences are explored.

* * * * * * * * *

Barbed wire and electric fences, and fences and walls with spikes, broken glass, or other sharp points that can cause injuries are usually forbidden by municipal regulations. In many instances, however, a barbed wire top to an open wire mesh fence is allowed, provided the barbed wire is of sufficient height above the ground -- usually eight feet. Sometimes the barbed wire must face away from the side of the fence that fronts on a sidewalk or other public way. The purpose of that restriction is to prevent projections that might cause injury to people falling upon them, running into them, or carelessly touching the fence. Regulations dealing with the safety of fences are sometimes incorporated into a zoning ordinance provision on fences.

Gates and doors swinging outward across a sidewalk are generally permitted. Such swinging obstructions have been held not to be nuisances per se but may become so by negligent use and by interference with pedestrian traffic. 2

The control of unsightly fences and walls is also a problem. Nevertheless, most courts would probably not look kindly upon an ordinance that required fences and walls to be built of specific materials or in a particular pattern just because they might be better looking. For example, the issue of fence materials arose in a junk yard fencing case, City of New Orleans v. Southern Auto Wreckers, 193 La. 895, 192 So. 523 (1939). The court said that the ordinance under attack (not a zoning ordinance) was "an arbitrary and unreasonable exercise of the police power, because the requirement of a tight board fence instead of a substantial fence built of other materials, in no way tends toward the accomplishment of the object for which the city's power was exercised in this case."

Spite Fences

Any discussion by laymen of legal technicalities calls for statements of principles that are carefully qualified. The following remarks on spite fences attempt to present only broad principles.  

The layman regards a spite fence as one built to annoy his neighbors. Often it is considered such because the neighbors' feelings are hurt; they feel snubbed by being cut off from contact with the fence builder. If the fence is obnoxious in appearance, damage to neighborhood ego is compounded and the neighbors are all the more sure of the spiteful intentions of the builder. Formerly, when a spite fence builder was brought to court, the courts believed they could not recognize such psychological "injury" in assessing damages or issuing an injunction. Other tests had to be developed.

The general common law rule is that a property owner must so use his property as not to injure others.  However, courts usually hesitate to restrict the property owner in the use of his land and often give him the benefit of doubt because property rights are a major cornerstone of our law.  So long as he refrains from "actively wrongful, negligent, or unskillful acts causing unnecessary injury to adjoining premises," according to Corpus Juris Secundum, 6 "he may make any reasonable and proper use of his property in accordance with his own tastes, and any injurious consequences to adjacent premises are without liability."

Of special interest because of the relationship to spite fences is the prin-

---

3 For further legal discussion see Spite Fences and Other Spite Structures, 133 American Law Reports (A.L.R.) 691 (1941).

466 Corpus Juris Secundum (C.J.S.) Nuisances sec. 8.


principle that obstruction of light, air, and view is not cause for action by neighboring landowners.\(^7\)

Since the doctrine of ancient lights generally does not apply in the United States, a building or structure cannot be considered a nuisance merely because it interferes with passage of light and air to adjoining property, nor does the fact that a structure obstructs the view of neighboring property constitute a nuisance.\(^8\) Of course, in extreme cases the courts may protect the neighbor.

Suits involving spite fences for years were not actionable as private nuisance cases in many courts because of the long recognized right of a property owner to erect a fence to separate his land from adjoining plots (e.g., Rose v. Lindeman, 147 Mich. 372, 110 N.W. 939 (1907)). Because of the unwillingness of courts to handle spite fence cases as private nuisance actions, several states (including Connecticut, Maine, Massachusetts, New Hampshire, Vermont, Washington, New York, and Kentucky) have made spite fences a cause for action by plaintiff through state statutes. Such laws usually spell out grounds for identifying a spite fence and recognize the spite fence as a cause for action through a private nuisance suit.

Spite fence statutes were based on principles that developed slowly in the courts of a few states -- principles under which it was held that a fence cannot be built for the sole reason of annoying or injuring a neighbor. Motive as the principal test of spite developed from the case of Gallagher v. Dodge, 48 Conn. 387 (1880).\(^9\) In that decision the court said that "a structure is erected for spite when from its character, or location, or use, it would strike the ordinary beholder as manifestly erected with a leading purpose to annoy the adjoining owner or occupant in his use of his premises." (See also Burke v. Smith, 69 Mich. 380, 37 N.W. 838, 8 A.L.R. 184 (1887).

For lists of states allowing or disallowing consideration of motive, see 133 A.L.R. 691.)

The statute approach was taken by some states because spite fence cases are in an area of law that courts have been slow to enter, and because when an action becomes a nuisance action largely because of the public's emotion, there are many conflicting principles.

In most nuisance cases, the intent or motive of a person is not considered in determining whether there is a nuisance.\(^10\) But, a spite fence is primarily defined by the presence of intent to annoy. This finding must be coupled with a finding that the fence is not serving some useful and reasonable purpose.

If a defendant can show that he erected his fence for purposes other than to annoy and that he draws some benefit from the fence, the courts will

\(^7\) C.J.S. Adjoining Landowners secs. 47-52.

\(^8\) C.J.S. Nuisances sec. 25.


\(^10\) 66 C.J.S. Nuisances sec. 10.
probably find that it is not a spite fence. In a case reported in ZONING DIGEST, Vol. 4, page 69, Livingston v. Davis, 50 N.W.2d 592 (Iowa, 1951), the court held that a six-foot wood fence around a playground erected without the motive of spite or malice could not be enjoined even though the adjoining property owner was annoyed by it.

It is generally held that spite fence laws do not apply to buildings even though they are built to annoy, nor do the laws apply to fences not "substantially adjoining" the property line. (However, statutes are not confined to fences actually on boundary lines unless the laws are limited by definition.)

As a means of defining spite fences, some state laws, such as the New York real property law, declare fences exceeding a certain height that are maliciously erected and maintained to spite or annoy the owners or occupants of adjoining land, a private nuisance, and the law provides a remedy. The New York law places the height limit at ten feet if the barrier excludes the owner or occupant of the adjoining property from the enjoyment of light and air.

Regulation of Spite Fences Through Zoning

Zoning purposes, as expressed in the rationale for yard requirements, are contrary to common law. Common law generally holds that a landowner may build in such a manner as to deprive adjoining owners of the light, air, and view that they had before the structure was built. Moreover, under common law it has been held that no legal injury is inflicted by obstruction. Zoning, on the other hand, has as one of its purposes the protection of access to light and air and since fences are obstructions to them, zoning is used to regulate fences.

In addition, safety (especially vision clearance at corners) has been a strong reason for regulation of fences. Because access of view is largely an aesthetic matter when applied to fences, it has not been used as a justification for fence controls through zoning. However, view is most certainly a major element in a spite fence argument, because there may be malice in cutting off a good view by putting up a fence.

In a case reported in 10 ZD 89, State v. Zumpano, 146 N.E.2d 871 (Ohio App. 1956), the court held that the fence provision in a zoning ordinance (clearly aimed at forbidding spite fences, rather than protecting access to light and air) was invalid because no clear standards of what constitutes a spite fence were established. The ordinance prohibited as an accessory use "unnecessary structures, including a fence, the apparent purpose of which is to annoy or damage the owner of adjacent property . . ." The court, in holding the prohibition invalid, asked who was to determine what is "unnecessary," or who would determine the "apparent purpose" and whether it "dam-


12 2 C.J.S. 44, Adjoining Landowners, sec. 50.

August 1958
ages owners of adjacent properties." The court said that there is no uniform fence regulation in the section of the zoning resolution in question and pointed out that uniformity is abandoned "... because enforcement is left to a next door neighbor, a more distant neighbor, or to a zoning official."


CONTROL OF FENCES THROUGH ZONING

"Fence" Defined

It does not seem necessary to define "fence" in most zoning ordinances. "Fence" has a clear meaning for which a dictionary definition will usually suffice. Fence provisions also usually cover walls, retaining walls, hedges, shrubbery, trees, "other growth," plants, flowers, screens, and "similar obstructions."

The principal use of a definition probably arises when a city wants to specifically include or exclude fences from the category of structures regulated by the ordinance. The Milford, Connecticut ordinance (1952) says ". . . the word 'building' includes the word 'structure' but does not include the word 'fence'." However, the Philadelphia ordinance (proposed 1957) defines a fence as "an unroofed barrier or unroofed enclosing structure, including retaining walls." [Editors' underscoring.] Definition of a fence as a structure may be of importance in determining location of fence provisions within the zoning ordinance.

When a fence is not considered a structure, it is usually regulated as an encroachment or projection into yard spaces. When it is considered a structure, it is usually regulated as an accessory structure.

When a fence is treated as an encroachment, the fence provisions often appear in the supplementary regulations section, which also covers such details as vision clearance, exceptions to height regulations, and other types of projections and encroachments. Fences occupy space in yards that otherwise is supposed to be unoccupied.

A typical provision in which fences are considered encroachments is that in the Denver ordinance (1957).

Fences or walls not exceeding 42 inches in height may be erected on any part of the Zone Lot between the front line of the Zone Lot and the front setback line for structures, and on any other part of the Zone Lot may be erected to a height of not to exceed 72 inches. The height of such walls or fences shall be determined by measurement from the ground level at the lowest grade level within three feet of either side of such walls or fences. Fences or walls permitted hereunder shall not be in-
cluded in computing compliance with Outside Area of Window Ex-
posure.

If a fence is regulated as an accessory structure, fence rules generally
appear in the district regulations. The zoning ordinances of Erie, Pennsyl-
vania (1950) and Faribault, Minnesota (1952), for example, treat fences,
walls, and hedges as accessory uses in residential districts. To be an ac-
cessory use, a fence must be an entity as opposed to a projection that is
part of another entity. It is interesting, therefore, to note that in State
v. Zumpano the court held that a fence is a structure within the terms of
the township zoning enabling statute, and that the phrase "uses of buildings
and other structures" contemplated the right to control the erection of fenc-
es through a zoning resolution. (See also City of Chicago v. Pielet, 342
Ill.App. 201, 95 N.E.2d 528 (1950), a nuisance case, in which it was held
that a fence was a structure.)

Height Limitations

Where it is desirable to provide for different heights for different kinds
of yards (as in the Denver ordinance provision quoted earlier), the defini-
tion of yards should be kept in mind and the height permitted in each set
forth. For example, a model zoning ordinance for Florida13 contains a
fence section as a supplementary district regulation for residence districts,
which reads:

Notwithstanding other provisions of this ordinance, fences,
walls, and hedges may be permitted in any required yard, or
along the edge of any yard, provided that no fence, wall or
hedge along the sides or front edge of any front yard shall be
over two and one-half feet in height.

The writers comment that "The maximum of two and one-half feet for front
yard fences or hedges is preserved as a safety factor, particularly where
small children are concerned. Some cities include maximum height provisions
on side and rear yard fences. The matter is one of policy for the individual
city."

Strict controls over the height and opacity of fences and similar obstruc-
tions appear in some ordinances. El Dorado, Kansas (1951) limits height to
five feet and limits solidity to 50 per cent. Mount Lebanon Township, Penn-
sylvania (1955) has the strictest provisions of any ordinance reviewed for
this report. Fences are limited to four feet in height, permitted in side
or rear yards only, and the ratio of open to closed spaces must be not less
than four to one. Tiffin, Ohio (1950) does not permit a fence to extend in
front of the building line. North Hempstead, New York (1945) also limits
height to four feet, as does Erie, Pennsylvania. Wheeling, Illinois has an
ordinance provision (1949) that allows a fence"... in which the openings
between the materials of which the fence is constructed represent less than

13Fred H. Bair, Jr. and Ernest R. Bartley, The Text of a Model Zoning Ordi-
nance, with Commentary, Studies in Public Administration No. 16 (Gainesville:
Public Administration Clearing Service of the University of Florida, 1958),
p. 35-36.

August 1958
seventy per cent of the total surface [to] be erected to a height not exceeding four feet along the boundaries of the lot" and ". . . wire fences and other fences in which the openings between the materials of which the fence is constructed represent more than seventy per cent of the total are [to] be erected to a height of six feet."

A specific reference point for measuring height such as that in the Denver ordinance is a necessary detail. Because height limits are sometimes established in state spite fence statutes, it is desirable to check the statutes before setting heights in the zoning ordinance, so that the local maximum is not higher than the state's.

Along streets -- A provision governing height of fences in side yards when they border on a public way is sometimes added: ". . . and those in . . . any required side yard or extension thereof, shall not exceed three and one-half (3½) feet in height when side yard or its extension borders upon a street" (Midland, Michigan -- 1956). A variation of this appears in the San Diego County ordinance (1954): "Between an abutting front or side street and the minimum distance, the nearest main building is required to be set back from such street forty-two inches (42"')."

In front yards -- The heights permitted in front yards are usually lower because of the safety aspect, as well as in the interest of preserving an unobstructed view of open, green lawns. There is little difference between restriction of vision by a wall or by a high, thick hedge. Both are hazards to cars coming into and out of driveways because they block the view of the driver. However, the precise effect of either can only be determined in a particular case because there is a wide variation from city to city and within a city of the relationships between (1) street width, (2) radius of driveway returns, and (3) curb line, planting strip, sidewalk, and property line location and distances. For example, there is a tendency today to plant trees between the sidewalk and the building line, which gives drivers a better view of pedestrians and cars.

There is a provision in the Santa Barbara, California ordinance (1957), which says in the interests of safety, presumably, ". . . no fence, screen, wall, or hedge located within ten (10) feet of a driveway shall exceed a height of three and one-half (3½) feet."

Over hedges and other obstructions -- In addition to fences, some ordinances attempt to control walls, screens, hedges, and shrubbery because these obstructions pose many of the same problems that fences do. For example, the San Diego County ordinance provides: "Trees, shrubs, flowers, and plants shall be permitted in any yard, except that no hedge shall be grown or maintained at a height greater than that permitted by this ordinance for a solid fence."

The Oyster Bay, New York ordinance (1953) notes in the fence provisions that "The provisions hereof shall also apply to hedges or other densely growing shrubbery."

14The dissenting opinion in In re Appeal of Parker (214 N.C. 51, 197 S.E. 706 (1938)) is partially based on a lack of clarity in establishing a point for height measurement.
The implication in distinguishing between hedges and other trees, plants, or shrubs is that a hedge obscures much more light, air, and view because it is denser and more opaque. However, the ordinance for the town of North Hempstead, New York specifically exempts "hedge, privet, trees, or other shrubbery" from height limitations. And Mount Lebanon Township, Pennsylvania permits "... trees, shrubs, and other planting ... in required yards provided they do not unduly block a clear view or vision for vehicular traffic."

Differentiation is sometimes made between obstructive and ornamental plantings. The city of Chico, California in a 1958 amendment to the zoning ordinance says that "This provision is limited in its application to fences, shrubs, hedges, screen plantings and similar obstructions which are primarily intended or designed for fencing purposes; and this provision shall not be construed to prevent or prohibit shrubs, trees, or other ornamental plantings which are primarily intended or designed for landscaping purposes." Administration of such a provision might be difficult, however.

Exceptions

For openness -- Fences can sometimes be built above the height limit if they are ornamental; such provisions usually require that the fence be largely open above the height limit. For instance, the Sarasota, Florida ordinance (1954) provides that "an ornamental fence may be higher than six feet when all of the structure above the six-foot height shall have a ratio of solid portion to open portion not in excess of one to four." Similar provisions are found in the Chicago (1957), Erie, Pennsylvania, and Faribault, Minnesota zon office ordinances. Tiffin, Ohio allows "an ornamental fence to a reasonable height in excess of five feet." And the Chicago ordinance provides that "visibility at right angles to any surface of such fence not be reduced by more than 20 per cent" for open type fences exceeding five feet in height.

Inside building lines -- A distinction should be made between walls and fences within the building or yard setback lines and those built on property lines or within yards. So long as the required front, side, and rear yards are provided, many ordinances permit a wall or fence almost without restriction, save that the height not exceed the limit for the main building. The San Diego County ordinance explicitly states that "within any area where a main building is permitted the height limit for fences shall be the same as for the main building."

The question that arises at this point is whether a fence within the building line may be damaging to owners of abutting property. Where required side and rear yards are narrow, a fence as high as the main building is obviously an unwelcome obstruction; and there could be a strong suspicion of spite in a fence that was nearly as high as the main building.

The only defense that a community has against such an abuse is to limit heights within building lines as well as within yards. A reasonable height limit can be decided upon by considering the height of walls and fences erected for legitimate purposes, such as one used to enclose a formal garden.

August 1958
Light computations -- Fences inside yards on narrow lots can come close to shutting out light and air from windows opening on them. The six-foot high fences allowed under some ordinances in side yards virtually necessitate a side yard wider than usual.

The Denver ordinance takes special note of the possibility of blocking light by walls and fences. It exempts walls and fences from the category of obstructions in calculating units of light access, or, as put in the ordinance, "outside area of window exposure." This exemption can be justified on the grounds that most fences and walls are limited to a height that will not greatly obstruct light.

Consent Provisions

No doubt with the thought in mind that a principal cause of fence trouble is the resentment that neighbors feel when a fence is built -- rather than the loss of light and air -- some ordinances require that the written consent of owners of abutting property be secured before a fence is built.

The El Dorado, Kansas ordinance provides, for example, that "no fence or wall more than fifty (50) per cent solid or more than five (5) feet in height shall be erected along any front or side street line nor within the limits of any side yard or rear yard abutting another lot without the written consent of such abutting lot owner." The Sarasota, Florida ordinance has a similar provision. The El Paso, Texas ordinance (1955) says that owners of abutting property may jointly build a fence closer to their front lot lines and higher than permitted under the ordinance if they put their agreement in writing and file it with the department of public inspection before they start construction.

Since consent provisions are not considered good practice, this procedure is not recommended.

Special Problems

The Beverly Hills, California (1947) ordinance contemplates abuses that might arise in fence and wall construction. The first paragraph, quoted below, controls the bulk of a wall or fence (when coupled with height control), insures a minimum passageway between a fence that parallels a building on a lot, and provides for enclosed spaces, such as a patio, by allowing a wall or fence to be attached to a building. The second paragraph prohibits the use of a wall as a structure or building not otherwise permitted in yards.

Walls, gates, and/or fences, if built, erected or constructed within three feet (3') of any common property line of lot shall not have a thickness in excess of three feet (3') measured at right angle to said lot line. No portion of any wall shall be constructed nearer than two feet (2') to any portion of any building on the same lot except a porte cochere portion, provided that at its end a wall may be in contact with a building, and may be returned at its end and contact a building.
No interior space in any portion of any wall built, erected or constructed within three feet (3') of any common property line of lot shall be used for storage, housing, or other purposes unless such portion of such wall is at a greater distance from the street or streets upon which a setback is established or maintained than the setback distance.

Fences around public property -- Under some ordinances, fences and walls around public property, particularly schools and playgrounds, are exempt from fence provisions or are specially treated. The Santa Barbara ordinance says "an open mesh type fence to enclose an elementary or high school site may be located and maintained in any required yard." Mount Lebanon Township, Pennsylvania allows "for schools, playgrounds, and parks in any District, an open fence with a ratio of the open portion to the solid portion of not less than six to one (6:1), not more than ten (10) feet in height, in a side and rear yard." An example of another exemption appears in the Midland, Michigan ordinance: "This regulation shall not apply to chain link fences erected on public recreational areas, school grounds and in industrial districts."

Retaining walls -- Retaining walls are also considered in some ordinances. Two provisions that illustrate opposing approaches are given below:

Retaining walls shall not extend above the surface of the ground which they support. -- North Hempstead, New York

Retaining walls shall be considered as fences and controlled under this paragraph to the extent that such walls protrude above the actual ground level at the highest point of such walls. -- Philadelphia (proposed)

It seems reasonable to allow retaining walls to extend above the finished grade to substitute for fencing needed to prevent people from falling off the embankment. The dissent in the Parker case, cited earlier, takes note of the need for a clearly worded provision on retaining walls as a base for measuring maximum height.

Variation by zone -- Although there is probably more to be said for not varying fence height limits by residence districts than for varying them, it may be desirable to place a more restrictive height limit on fences in certain districts or where yards are especially narrow or lots are small. The court in State v. Zumpano stated that a variation in regulations from district to district may be justified.

Administrative variances -- It seems undesirable to grant to boards of appeal, building inspectors, or municipal legislators the power to make exceptions to fence heights at will, as some ordinances provide. In the interests of uniformity, variation in maximum fence heights should not be allowed freely within a zoning district. However, exceptional cases may be handled under the general power given to boards of appeal to grant variances.

Safety

Instead of general municipal control over hazardous fences, provisions prohibiting dangerous fence materials sometimes appear in zoning ordinances.

August 1958
However, the zoning ordinance is usually not the proper place for such detailed regulations.

A typical provision appears in the El Paso, Texas zoning ordinance, which says "no electrified fence or wall or any fence or wall containing broken glass, barbed wire, or other substances reasonably calculated to do bodily harm shall be permitted." And under the Santa Barbara ordinance: "... no barbed wire shall be used or maintained in or about the construction of a fence, screen, wall or hedge along the front, side or rear lines of any lot, or within three (3) feet of said lines, and no sharp wire or points shall project at the top of any fence or wall less than six (6) feet in height."

**Vision Clearance**

A provision regulating vision clearance at street intersections is more common in zoning ordinances than in general fence regulations. The chief differences among vision clearance provisions are height limits, setback distances, and the method of determining setback distances. Setback distances are most commonly measured from the intersection of property or right-of-way lines at corners. The usual practice is to forbid obstructions over a certain height in a triangle established by measuring a certain distance back from the property line intersection and then connecting the two points established by measurement. The hypotenuse of the triangle becomes the setback line. A typical provision follows:

On a corner lot in a residence or neighborhood business zone no fence, wall, shrubbery, sign, marquee, or other obstruction to vision between a height of three and one-half feet and ten feet above the center line grades of the intersecting streets shall be erected, placed, planted, allowed to grow, or maintained within the triangular yard space formed by the intersecting street lines and a line joining points on such street lines thirty feet from the point of intersection of the street lines.

Where applicable -- Vision clearance regulations mostly affect residential zones but sometimes include neighborhood business districts where front yard setbacks have been established. Because land is usually expensive in main business districts and because those areas are often built up when a zoning ordinance is first adopted, it is not customary to require front yards in such districts. On the other hand, it is common practice to require front yards in neighborhood business districts so that contiguous business and residential zones appear similar and surrounding residential properties are not depreciated by the nearby businesses.

An addition to the applicability of the basic regulation was noted in the Colorado Springs, Colorado ordinance (1954) in which vision clearance setbacks must be made at the intersection of streets and railroads.

**Height measurement** -- Within the vision clearance triangle, heights are usually limited to between two and one-half and three and one-half feet. The most restrictive limit found in the ordinances examined was two feet --
in the Milford, Connecticut ordinance. A maximum of four feet was permitted by Sarasota, Florida. Under some ordinances, overhanging objects within the triangle, such as marquees or tree limbs, are allowed only if they are above a certain height, usually from eight to ten feet above the base point. Colorado Springs, Colorado prohibits overhangs except above 12 feet. The most common base point for measuring heights is the level of the street pavement at the point where the street center lines intersect.

In the model zoning ordinance for Florida mentioned earlier, comments are made on the height to be permitted within the triangle:

The 2 1/2 foot requirement is practical, and, from the safety standpoint, the maximum that should be allowed. Drivers of small European sports cars coming up to an intersection where the hedge is more than 2 1/2 feet above the center grade line of the street simply cannot see over it. Most children can be seen over a 2 1/2 foot hedge or solid fence. If the limit is raised to 3 or 4 feet, the requirement might just as well be omitted. Allowing obstructions above 10 feet is necessary because of tree limbs; such an obstruction in no way affects safety factors.

Triangle measurement -- Distances to be measured along the street line vary from five feet in North Hempstead, New York to 75 feet in Santa Barbara, California. However, a report titled Municipal Regulation of Traffic View Obstructions suggests a different method of establishing a vision clearance triangle.

... it is recommended that zoning ordinances require setbacks in residential districts as required by a city's zoning ordinance maps and that a sight triangular area at all corners be established by measurements along intersecting street lines, and within the sight triangular area and within the setback area along the street, the ordinance should declare it to be unlawful to install, to set out, or maintain, or to allow the installation, setting out, or maintenance of any structures, signs, hedges, shrubbery, natural growth, or other obstruction to view, higher than three feet six inches above the level of the center of the adjacent intersection. This should not apply retroactively to permanent structures; public utility poles; trees trimmed (to the trunk) to a line at least eight feet above the level of the intersection; saplings, or plant species of open growth habits and not planted in the form of a hedge, which are so planted and trimmed as to leave at all seasons a clear and unobstructed cross-view; supporting members of appurtenances to existing structures; official warning signs or signals; to places where the contour of the ground is such that there can be no cross-visibility at the intersection; or to signs mounted 10 feet or more above the ground and whose supports do not constitute an obstruction. . . .

The triangular area should be determined by measuring 80 feet along the center line of intersecting streets from the point of intersection of the same, thus providing for a sight triangle across the corner lots. Regardless of the width of the intersecting rights-of-way or the amount of required zoning setback, this stopping distance of 80 feet for 20 M.P.H. speed or 90 feet for 25 M.P.H. speed always is obtained with a triangular area free from sight obstructions under the combination of zoning setback and corner sight triangle as recommended above.

The use of street center lines instead of right-of-way lines to determine the vision triangle appears to be a superior method, in that traffic engineering measurements of effective stopping sight distances for speeds common in residential areas can be used to determine length of the sides of the triangle.

One modification that might be necessary is to lengthen the sides of the triangle as the width of the streets increases in order to account for drivers in right-hand lanes. The speed figures recommended above are postulated on the presumption that the maximum street width in residential areas will be 60 feet.

Another point about which there might be disagreement is the exemption of corners where topography limits cross-visibility. Some ordinances require that there be no "blind" corners even if high banks must be cut down to open up a vision triangle.

**SOME ADDITIONAL CONSIDERATIONS**

**Privacy—the Patio and Outdoor Room**

Attention is being given to means of increasing the number of dwelling units an acre by using row house types. And an essential element of plans for row house developments is privacy in the face of high densities. Fences and walls are means of achieving privacy in outdoor spaces around such dwellings. Provisions for unusual wall and fence heights may be warranted under the circumstances. The precedent for houses with walled-in courts and patios comes from the Spanish influence, as seen in New Orleans, Savannah, and towns in southwestern United States.

The Redevelopment Authority of the City of Philadelphia made a study of row house developments that shows the value of fences and walls as devices for privacy.\(^{16}\) The report says:

> The adoption of the "outdoor room" concept imposes certain design requirements, whether between house and street or in inverted houses \(\text{[with the living room in the rear]}\). This outdoor area is valuable and should be private. Extensions of

---

party walls or the provision of wood walls, trellises or fences are indispensable to the best exploitation of these spaces.

Ordinances might provide for such experiments by varying regulations by zone or through the exceptions that are allowed for large-scale housing developments.

Light

If obstruction of light by walls and fences seriously lowers residential standards, it may be necessary to not only restrict fences and walls to protect the neighbors, but also to protect the property of the man who builds the fence or wall. For instance, if the housing code requires a certain amount of light and air by window, light and air -- and view -- should be protected by the imposition of angle of light obstruction, units of light access, or other formulae. (See Information Report No. 111, Floor Area Ratio, pages 24 and 25, for brief explanations of these terms.) At most, of course, these specialized controls result only in forcing the builders of fences and walls to set them back from windows short distances.

Air Flow

Air flow over and around fences and planting screens, as well as around buildings, is now being investigated. Soon it should be possible to know with fair precision how to get the most out of favorable cooling breezes in summer and how to protect against chill winds in winter. Some studies on fence design point to surprising conclusions about the effects of various types of fences on wind currents. For example, the solid fence permits the quickest return to normal wind velocities on the lee -- or protected -- side (recovery with 35 feet). Therefore, a solid barrier design might be the most favorable if complete privacy and summer breezes are both desired. Many other fences would be excellent as windbreaks; wind velocities fail to recover in distances up to 100 feet in the lee of some fences.

Noise Control

Fences, walls, and hedges used as screen or shields against neighborhood noises can do much to cut down air-borne noises and make residential prop-

17 For additional readings on the subject, see the following:


August 1958
erties more livable. For instance, the Pasadena, California zoning ordinance (1954) takes notice of the value of buffers for "property exposed to exceptional hazards of traffic, trespass, dust or noise," and allows higher fences to meet such conditions under a variance procedure.

THE COURTS ON FENCE REGULATIONS

The attitude of the courts toward fence regulation through zoning is not well established except on vision clearance provisions, which have frequently been upheld -- on safety grounds. But in two reported cases (not vision clearance regulations) the courts held zoning fence regulations invalid on grounds that they imposed strict height limits.

In the case of Wondrak v. Kelly, 129 Ohio St. 268, 195 N.E. 65 (1935), the court ruled invalid a limit of three and one-half feet on division line fences (presumably side and rear yard property line fences). The court said that such a low height had no reasonable relation to the public safety, although evidence given by police and fire chiefs was considered.

In the case of Lamkin v. City of Bellaire, 308 S.W.2d 70, 10 ZD 88 (Tex. Civ.App. 1958) the court held invalid a zoning ordinance provision that did not permit fences, walls, or similar enclosures in the front yard. The city had brought suit to have four-foot side yard fences and a two and one-half-foot front yard fence removed. The court of appeals held that for a zoning ordinance to prohibit fences in the front yard was so unreasonable concerning the two and one-half-foot fence in question as to be unenforceable.

In a case not involving zoning, Williams v. City of Hudson, 219 Wis. 119, 262 N.W. 607 (1935), the Wisconsin Supreme Court held a fence ordinance invalid, stating that common law has always protected the landowner in the right to fence his property; this was a property right that could not be interfered with unreasonably. The court said "to deprive one of this right to use his yard and home in a way which does not interfere with the usual and lawful commerce and life of a community would be exercising a high power that is not to be used except when the public welfare requires it." The restrictions were not considered by the court as being an exercise of the police power.

Although the language of the court at that time was broad, changing judicial attitudes may have modified the need for restraint in fence regulations that this case emphasizes.

The Parker case cited earlier is largely a vision clearance case. Although often used in support of the idea that the courts may considered a five- or six-foot fence limit in front and rear yards reasonable, the principal issue was a 15-foot wall at the intersection of a street and alley. 18 Possible

18 However, in the dissenting opinion it was pointed out that the ordinance provision at issue was not aimed at vision clearance, although the majority opinion was largely based on safety hazards at the corner.
fire hazards from difficulties of access to the property were also dis-
cussed.19

A SEPARATE FENCE-ORDINANCE?

Perhaps the most important point to be made concerning both vision clear-
ance and general fence regulations is that such provisions probably do not
belong in the zoning ordinance. Several municipalities regulate fences,
particularly the vision clearance and dangerous materials aspects, through
separate ordinances.

Chicago controls barbed wire fences and fences as right-of-way obstructions
under a special ordinance. The city of San Diego's "fence ordinance" makes
reference wherever necessary to the zoning ordinance (relating permitted heights
to residential and certain commercial zones, for instance). Enactment of
fence controls in a separate ordinance would help to reduce the length and
the profusion of detail in "catchall" zoning ordinances.

CONCLUSIONS

Fences, walls, and plantings in residential areas can prove to be trouble-
some, though minor problems. But for purposes of privacy, shade, wind-
breaking, and noise control, fences, walls, and hedges are justified. Com-
munities contemplating prohibition or restriction of fences in an effort to
keep yards open should also recognize their positive values.

Although fences, walls, and plantings have been extensively regulated through
zoning ordinances, it seems more desirable to control them through a separ-
ate fence ordinance. However, such regulations should be coordinated with
the zoning ordinance. Such problems as dangerous materials and vision clear-
ance are especially suited to treatment in a special ordinance.

Fences probably have been regulated by zoning because they are an aspect of
neighborhood environment. However, zoning ordinances have been used in a
mistaken effort to control spite fences in some instances. The courts have
not been sympathetic to zoning provisions in which the language revealed
that the aim was spite fence control. The only direct control a municipali-
ity can have over spite fences is height.

In addition to height, zoning regulations can control openess, location,
and materials. However "openness" provisions are not believed to be wise

19One reason given for the requirement of side yards has been that they
provide fire lanes between buildings, which allow access for fire fighting
equipment. Fences are certainly a block to easy access. See Philip P.
Green, Jr., Zoning in North Carolina (Chapel Hill, N.C.: University of
because enforcement is difficult. A few ordinances contain consent provisions and allow some height exceptions. Neither practice is recommended.

Vision clearance provisions should be more closely related to traffic engineering calculations of effective stopping sight distances, if city officials believe that vision clearance is a necessary supplement to traffic control devices.

The use of fences, walls, and plantings for both functional and decorative landscaping is being studied. The effect of such landscape elements on light and air can now be fairly well predicted and controlled. The use of fences, walls, and plantings to provide privacy for patios and "outdoor rooms" suggests that conventional ordinance provisions may have to be reconsidered.