



**Governor's Advisory Council for Exceptional Citizens (GACEC)**  
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**MEMORANDUM**

**DATE:** March 30, 2017

**TO:** The Honorable Members of the Delaware General Assembly

**FROM:** Dafne A. Carnright, Chairperson  
GACEC

**RE:** **House Bill No. 83 (DelDOT Right of Way Maintenance)**

The Governor's Advisory Council for Exceptional Citizens (GACEC) has reviewed **House Bill No. 83** which enables county government to enact an ordinance that concerns the maintenance of sidewalks in residential subdivisions. House Bill No. 83 would authorize, but not require, counties to adopt and enforce maintenance ordinances in Delaware Department of Transportation (DelDOT) rights of way. Council would like to share the following observations on the proposed legislation.

Under current law, the responsibility over many public roads and rights of way is under the "absolute care, management and control of the Department and shall be maintained, repaired and reconstructed by the Department". See lines 7-9 and 51-57. This "absolute" standard disallows counties from enforcing normal maintenance standards designed to facilitate travel.

Consider the following New Castle County examples.

1. Consistent with the NCC Property Maintenance Violations overview, bushes, fences, and low tree limbs are not allowed to encroach on a sidewalk.
2. Consistent with NCC Ordinance 302.8.5.3, oversized recreational vehicles and boats can only be parked in the side or rear yard of properties under two acres. Otherwise, they would often block a sidewalk if parked in the main driveway.
3. Consistent with NCC Ordinance 4.02.003, dog and cat owners must remove feces deposited by their animals on sidewalks within one hour of "deposit".

Persons with mobility impairments are disproportionately affected by violations of any of the standards mentioned above. Individuals who rely on wheelchairs, canes, or assistive technology cannot simply

divert their travel onto a lawn or over a curb. They can typically invoke a consumer-friendly County complaint system to promptly resolve right of way issues violating County standards. Consistent with the NCC “Code Enforcement” overview, a Code Inspector responds to complaints and property owners are given 12 days to self-correct prior to issuance of a ticket.

Unfortunately, this standard complaint option is not available if the violation is occurring in a DelDOT right of way. For example, a portable basketball hoop system placed in a residential curb cut a few years ago in a suburban development was observed for months. A complaint was submitted to the County but was referred to DelDOT for enforcement since the sidewalk was deemed within the jurisdiction of DelDOT. Although DelDOT did eventually resolve the issue, it would have been easier and quicker to use the County complaint system.

From a public policy standpoint, there are at least three advantages to approving this authorization.

First, it would facilitate travel by persons with disabilities who could invoke the normal, streamlined county code enforcement system.

Second, it may obviate duplication of government services. In many cases the problem in the right of way may be the “tip of the iceberg”. For example, an abandoned property may present several Code violations (high weeds; unsafe conditions; standing water) which are already being addressed by the County. Requiring DelDOT to separately and independently address sidewalk issues is not cost-effective.

Third, county enforcement may save the State money. Consistent with a January 16, 2014 News Journal article, DelDOT spent \$260,000 to remove snow from sidewalks in one month. If a county ordinance required at least some property owners to remove snow, the responsibility of the State would be reduced.

Thank you for your time and consideration of our observations. Please feel free to contact me or Wendy Strauss at the GACEC office should you have any questions.