

THE CORPORATION OF THE MUNICIPALITY OF WEST ELGIN

BY-LAW NO. 2015-56

Being a by-law to prescribe the height and description of fences in certain areas of the Municipality of West Elgin

WHEREAS Section 9 of the *Municipal Act* 2001, S.O. 2001, c.25, as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act; and

WHEREAS Section 11 of the *Municipal Act* provides that a lower-tier municipality may pass by-laws respecting matters within the spheres of jurisdiction described in the *Municipal Act* and subject to certain provisions as outlined in the *Municipal Act*; and

NOW THEREFORE the Council of the Municipality of West Elgin enacts as follows:

1 DEFINITIONS

In this by-law:

- 1.1 Built-Up Area, shall mean on lands zoned Residential First Density (R1), Residential Second Density (R2), Residential Third Density (R3), Hamlet Residential (HR), Lakeshore Residential (LR), Rural Residential (RR).
- 1.2 Construct a Fence means to construct, erect, build, install, alter, reconstruct or replace a fence, or cause or permit another person to do so.
- 1.3 Designated Official means a By-law Enforcement Officer or Chief Building Official for the Municipality of West Elgin, or as otherwise determined by the Municipality.
- 1.4 Division Fence means a fence marking the boundary between abutting parcels of land.
- 1.5 Fence means a barrier or partition erected or grown, including shrubs and hedges, which may or may not define the boundary line of a property but shall not include a building or structure as defined in the *Ontario Building Code* or regulations for the Municipality of West Elgin Zoning By-law.
- 1.6 Fence of open construction means a fence constructed so that at least one third (1/3) of its vertical surface area is open space, enabling motorist and pedestrians to have a clear view through such fence.
- 1.7 Height means the vertical distance measured between the average finished grade and the highest point of the fence. In the case of a fence located on top of a retaining wall or berm, height means the combined vertical distance between the lowest point of the retaining wall or berm and the highest point of the fence.
- 1.8 Lot means all contiguous land under one ownership.
- 1.9 Lot, Through means a lot which has street access on two or more streetlines, other than a corner lot.
- 1.10 Lot, Corner means a lot situated at the intersection of two or more streets, or a lot abutting one or more parts of the same street, where such intersections have an angle of intersection of 135 degrees or less or located on the curve of a street where the angle of intersection of the projected tangents of the streetline does not exceed 135 degrees.
- 1.11 Lot Line means any boundary of a lot and the vertical projection thereof.
- 1.12 Lot Line, Front means the lot line that abuts the street except that;
 - (a) in the case of a corner lot or through lot, the shorter line abutting a street shall be deemed the front lot line;

- (b) in the case of corner or through lots, with two lot lines of equal length abutting streets, the lot line that abuts the wider street shall be deemed to be the front lot line. Where the streets are of equal width, the lot line that abuts the County road shall be deemed to be the front lot line.
- 1.13 Lot Line, Rear means the lot line opposite to the front lot line except where the side lot lines intersect, as in the case of a triangular lot, in which case the rear lot line shall be represented by the point of intersection of the side lot lines.
- 1.14 Municipality means the Corporation of the Municipality of West Elgin.
- 1.15 Owner means an owner, lessee, tenant, mortgagee in possession and the person in charge of any property.
- 1.16 Person shall include a Firm Partnership, Company, Corporation or Contractor of Owner.
- 1.17 Public Highway means a street or highway under the jurisdiction of the Province of Ontario, the County of Elgin or the Municipality of West Elgin, or assumed by the municipality or being constructed under an agreement with the municipality.
- 1.18 Shrubs and Hedges means a continuous line of plantings or plant material arranged to form a fence or boundary.
- 1.19 Sight Triangle means an area free of buildings or structures higher than 0.6 metres (2 feet) which is determined by measuring from the point of intersection of streetlines on a corner lot to a prescribed distance or by measuring from the point of the intersection of any streetline and driveway to a prescribed distance.
- 1.20 Structure means anything constructed or erected which requires location on or in the ground or is attached to something having location on or in the ground but shall not include a fence, a retaining wall less than 0.6 metres (2 feet) in height, lawn ornament or a shrub or hedge.
- 1.21 Yard means an uncovered area on a lot lying between the lot line and the nearest part of any building or structure on the lot.
- 1.22 Yard, Exterior Side means a side yard immediately adjacent to a street or a reserve abutting a street, extending from the front yard to the rear yard of any lot.
- 1.23 Yard, Front means a yard extending across the full width of the lot between the Front Lot Line of the lot and the nearest part of the nearest building or structure on the lot.
- 1.24 Yard, Interior Side means the yard between the side lot line and the nearest part of any building or structure extending from the front yard to the rear yard of a lot.
- 1.25 Yard, Rear means the yard extending across the full width of the lot between the rear lot line of the lot and the nearest part of the nearest building or structure on the lot.
- 1.26 Yard, Side means the yard between the side lot line and the nearest part of the nearest building or structure extending from the front yard to the rear yard of a lot.
- 1.27 Unopened road allowance means lands owned by the municipality but which have yet to be designated as a public highway by enactment of a by-law.
- 1.28 Zone means a zone category in a By-law enacted pursuant to Section 34 of the *Planning Act*, as amended, or a predecessor of that Section.
- 2 RESTRICTIONS ON FENCES
- 2.1 This by-law shall apply to Built-Up Area of the Municipality of West Elgin as defined in this by-law.

- 2.2 This by-law shall not apply to fencing around swimming pools, which are governed by By-law 98-47 as amended by By-law No. 2012-10.
- 2.3 No person shall use any barbed wire or other barbed material of a nature which could be injurious to the public in the construction of, or in connection with, any fence in the Municipality, except where such a fence is located within an industrial zone and provided such materials are used at a height of at least 6 feet (1.8 metres) above the finished grade.
- 2.4 No person shall permit a fence or any attachment to a fence to be used as a conductor of an electrical current.
- 2.5 No person shall erect a fence on or in any municipal easement unless the fence is constructed in accordance with the applicable easement document. Furthermore, the Municipality shall not be responsible for any damage to a fence during the course of or regular or emergency maintenance within such easement.
- 2.6 No person shall construct a fence that contains a gate structure that abuts Municipality owned property without being granted an exemption from the Municipality.
- 2.7 No person shall construct a fence that is greater than 0.6 metres (2 feet) in height along any point of a Sight Triangle and such fence must be of open construction.
- 2.8 No fence shall be erected between two abutting dwellings where the distance between such dwellings is 0.6 metres (2 feet) or less.
- 2.9 No fence shall be erected closer than 0.3 metres (1 foot) from any lot boundary abutting a public highway.
- 2.10 Notwithstanding the provisions of section 2.3, the maximum height of any fence shall be 6 feet (1.8 m) in any zone unless specified by section 4 of this by-law.

3 FENCES IN RESIDENTIAL ZONES

For any residential use in the Built-up Area, the following shall apply:

3.1 Fences in Rear Yards

No fence erected in a rear yard shall exceed 1.8 metres (6 feet) in height.

3.2 Fences in Front Yards

No fence erected in a front yard shall exceed 1.8 metres (6 feet) in height and shall be constructed as a fence of open construction.

3.3 Fences in Interior Side Yards

- (a) No fence erected in an interior side yard shall exceed 1.8 metres (6 feet) in height.
- (b) Notwithstanding Section 3.2, if a fence is a division fence, the subject fence may be erected to a point opposite the front corner of the building nearer the road.

3.4 Fences in Exterior Side Yards

- (a) No fences erected in an exterior side yard shall exceed 1.8 metres (6 feet) in height.

3.5 Fences in Through Lots

A fence having a maximum height of 1.8 metres (6 feet) may be erected along the side lot lines. A fence may not be closer than 7.5 metres (25 feet) to the front or rear lot line. However, it may extend to the dwelling if the dwelling is within this setback.

4 FENCES IN COMMERCIAL, INDUSTRIAL, INSTITUTIONAL AND OPEN SPACE ZONES

In a commercial, industrial, institutional or open space zone, the following shall apply:

- 4.1 No fence shall exceed 3.04 metres (10 feet) in height.
- 4.2 No fence shall be erected having a height in excess of 1.8 metres (6 feet) from the exterior side lot line to the established building line of the main building erected on the lot.
- 4.3 No fence shall be erected having a height in excess of 1.23 metres (4 feet) between the established building line of the main building on the lot, and a setback of 3.04 metres (10 feet) from the front lot line.
- 4.4 A fence shall be of open construction.

5 CONSTRUCTION AND MAINTENANCE

- 5.1 All fences shall be maintained in good repair.
- 5.2 All fences shall be constructed and maintained in a structurally sound condition.
- 5.3 All fences shall be maintained to prevent an unsafe or unsightly condition.
- 5.4 Where fifty percent (50%) or more of any fence is to be replaced or repair such replacement and or repairs shall meet the requirements of this By-law.

6 VARIANCES

- 6.1 Notwithstanding the provisions of this by-law, nothing shall prevent the construction and maintenance of a fence constructed for public services by the Municipality or any other government agency.
- 6.2 Notwithstanding any provisions respecting the height of fences in this by-law, where the Municipality has entered into a subdivision or site plan agreement requiring any fence to form part of a required architectural or noise attenuation feature, such fence shall be exempt from the height restrictions set out in the by-law for such fence and shall be the height set forth for such applicable subdivisions or site plan control agreement.
- 6.3 The requirements of this by-law do not apply to a fence that was constructed lawfully prior to the day on which this by-law came into force.

7 ADMINISTRATION, ENFORCEMENT AND PENALTY PROVISIONS

- 7.1 In the event that complaints are received in writing by the Municipality, the Designated Official shall inspect the fence subject to the complaint.
- 7.2 If, in the opinion of the Designated Official, the said fence does not comply with the provisions of this by-law, the Designated Official shall notify in writing, the owner, agent or person responsible for the said fence of the requirement to bring the fence into compliance with the provisions of the by-law.

Notice in writing shall be deemed delivered when it has been:

- (a) Personally served; or
 - (b) Sent by registered mail to the address of the owner, as shown on the last assessment roll, on the fifth (5th) day after mailing; or
 - (c) When posted on the offending fence.
- 7.3 Failure to comply with the written direction of the Designated Official constitutes a contravention of this by-law for which the owner, agent or person responsible can be subject to the penalty set out in Section 12 of this by-law.

8 TITLE

- 8.1 This by-law shall be cited as the "Boundary Fence By-law".

9 EFFECTIVE DATE

- 9.1 This by-law shall come into force upon the date of final passing thereof.

Read a first and second time this 13th day of August, 2015.

Read a third time and finally passed this 13th day of August, 2015.

"Bernie Wiehle"
MAYOR

"Norma I. Bryant"
CLERK