

THE CORPORATION OF THE MUNICIPALITY OF LAMBTON SHORES

BY-LAW 80-2008

A By-law to Prescribe the Height and Type of Fences

WHEREAS pursuant to the Municipal Act, S.O., 2001, C. 25, S. 11 a Council may pass a by-law respecting matters within the spheres of jurisdiction regulating structures, including fences and signs;

AND WHEREAS it is deemed expedient and desirable to pass a by-law to regulated the erection and maintenance of fences:

NOW THEREFORE the Municipal Council of the Corporation of the Municipality of Lambton Shores enacts as follows:

1. **DEFINITIONS**

For the purposes of this by-law, the following definitions shall apply:

“Building Inspector” means a Building Inspector of the Corporation of the Municipality of Lambton Shores;

“By-law Enforcement Officer” shall mean a By-law Enforcement Officer appointed by the Corporation of the Municipality of Lambton Shores;

“Council” means the Council of the Municipality of Lambton Shores;

“Corner Visibility Triangle” means the portion of a corner lot within the triangular area formed by measuring 7.5 metres (25 feet) in each direction from the point where two property lines intersect at the street lot line corner; (See “Diagram 1”)

“Driveway” means a vehicle access provided between a street and a parking area/space or a loading space;

“Driveway Visibility Triangle” means the triangular area formed by measuring 4.5 metres (15 feet) down the driveway and 4.5 metres (15 feet) down the side lot line abutting a street, regardless of whether or not the DVT is on the subject lot or the adjacent neighbour’s property. (See “Diagram 1”)

“Electrical Fence” means a fence through which electricity passes;

“Erect” includes alter, construct, plant, grow, place and relocate;

“Fence” includes a railing, wall, line of posts, wire, masonry, gate, boards or pickets or other similar substances, used to enclose or divide in whole or in part a yard or other land, or to establish a property boundary, and includes a continual hedge, but does not include a retaining wall;

“Fence – open type construction” means a fence constructed so that its vertical surface area is unobstructed, enabling motorists and pedestrians to have a clear view through such fence (e.g. a fence of chain link construction, wrought iron, etc);

“Fence – solid type construction” means a fence constructed so that its vertical surface is obstructed, preventing motorists and pedestrians from having a clear view through such fence;

“Height” is measured from the ground where the fence posts are embedded to the top of the fence.

“Hydro Massage Pool” includes pools commonly referred to as hot tubs, whirlpools, a Jacuzzi or a spa;

“Lot” means any parcel of land which can be occupied or used or otherwise disposed of separately and apart from any abutting lands, whether or not such parcel is described in a registered deed or shown on a registered plan of subdivision;

“Owner” means the person who holds legal title to a piece of property or has an equitable interest in the same;

“Pond” means a confined body of water (which may contain fish and/or plants) which is located in an area zoned to permit residential development but does not include farming areas or ponds located more than 150 metres (500 feet) from an area zoned to permit residential development.

“Street” shall mean a public highway which provides the principal means of vehicular access to abutting lots and includes its sidewalks and boulevards;

“Street Line” means the boundary between a street and a lot separating the lot from the abutting street;

“Swimming Pool” means a privately-owned outdoor swimming pool, constructed or fabricated and located for swimming, wading, diving, and bathing and which when filled is capable of containing a depth of 75 cm (29.5”) or more of water, has a surface area of more than 1 square metre (10.8 sq. feet), but does not include a wading pool which is not capable of containing a depth of more than 75 cm (29.5”) of water and which may be emptied on a daily or frequent basis, not does it include a pond or reservoir utilized solely for farming purposes;

“Swimming Pool Area” means the swimming pool plus any area which lie within the swimming pool enclosure;

“Swimming pool enclosure” means the fence and gate or gates around a privately-owned outdoor swimming pool/pond restricting access, and includes the wall of a building or structure;

“Yard” means that part of a lot not covered or occupied by any building;

“Yard, exterior side” means a side yard immediately adjoining a street, extending from a front yard to the rear lot line;

“Yard, front” means a yard that extends across the full width of the lot from the front lot line to the nearest wall of the main building on the lot;

“Yard, rear” means a yard that extends across the full width of the lot from the rear lot line to the nearest wall of the main building on the lot;

“Yard, side” means a yard that extends from the front yard to the rear yard and from the side line of a lot to the nearest wall of the main building on the lot.

2. **GENERAL PROVISIONS**

The requirements of this by-law apply to all properties within the geographic limits of the Municipality of Lambton Shores, except where specified otherwise. No permit is required for a fence that complies with the requirements of this by-law.

a) **Visibility - Obstruction – prohibited**

Notwithstanding any of the regulations set out in this by-law, no person shall erect, construct or permit to be erected or constructed a fence that, in the opinion of the By-Law Enforcement Officer:

- (i) obstructs pedestrian or vehicular traffic; or
- (ii) obscures clear visibility of normal approaching pedestrian or vehicular traffic

b) **Erection – Fence- Non-compliance – Prohibited**

No person shall construct, erect, or permit to be erected or constructed any fence within the Municipality of Lambton Shores that does not comply with the provisions of this by-law. A fence that was erected prior to the passing of this by-law and was erected in compliance with the predecessor of this by-law and is not moved, replaced, altered or enlarged in any way shall be considered a “legal fence”.

c) **Maximum Height – Front Yards and Exterior Yards (See Diagram 1)**

No person shall erect, construct or permit to be erected or constructed, a fence in a front yard or an exterior side yard unless such fence:

- (ii) does not exceed a maximum height of 0.91 metres (3 feet) measured from the ground level if a solid type construction or a maximum height of 2 metres (6.5 feet) measured from the ground level if of open type construction

d) **Maximum Height – All Other Yards (See Diagram 1)**

No person shall erect, construct, or permit to be erected or constructed a fence in an interior side yard or rear yard unless such fence:

- (i) does not exceed a height of 2 metres (6.5 feet) measured from the ground level;
- e) **Fence – Condition of Development or Redevelopment**

Notwithstanding any other provision in this By-law, a fence, which is required and approved as a condition of a site plan agreement for the development or redevelopment of land, shall be deemed to be in conformity with the provisions of this by-law

f) **Variances**

Any person may apply to the Committee of Adjustment for a minor variance from the requirements of this by-law.

i) The Committee may grant a minor variance if, in its opinion, the general intent and purpose of the Fence By-law are maintained or if the Committee is satisfied, after allowing input from the applicant and property owners within 60 metres (200 feet), that the variance is appropriate.

ii) The Committee may attach terms and conditions to the minor variance.

iii) A minor variance shall be invalid if the terms and conditions are contravened.

3. **FENCES AND VEGETATION WITHIN A CORNER VISIBILITY TRIANGLE AND/OR A DRIVEWAY VISIBILITY TRIANGLE**

- a) No person shall erect or cause to be erected a fence, hedge or shrubs within a Corner Visibility Triangle or a Driveway Visibility Triangle as shown on Diagram 1, unless:
 - i) it is of open-type construction and does not obstruct the visibility of motorists and pedestrians; or
 - ii) it is of solid-type construction and does not exceed 0.9 m (30 inches) in height above effective ground level.

4. **FENCES WITH BARBED WIRE OR OTHER BARBED MATERIAL**

- a) No person shall erect or cause to be erected on any land used for residential or commercial purposes, a fence which either contains, or is constructed of, barbed wire or other barbed or sharp material.
- b) Barbed wire or other barbed or sharp material may be used on the top and to the outside of fences that are erected on a lot, which meet all the following criteria:
 - i) the lot is zoned Industrial in the Zoning By-law;

- ii) the barbed wire is located not less than 1.52 metres (5 feet) above ground level;
- iii) the outward projection of the barbed wire does not project onto a neighboring property;
- c) Barbed wire may be used on fences lawfully used for agricultural purposes on land zoned Agricultural, as long as such fence does not abut a residential zone.

5. ELECTRICAL FENCES

- a) Except as provided in section (b), no person shall erect or cause to be erected an electrical fence on any land;
- b) An electrical fence using direct current only may be erected on land while it is being lawfully used for agricultural purposes, provided such fence:
 - i) is designed and erected solely to contain animals;
 - ii) does not abut a residential zone.

6. FENCES AROUND A HYRDO MASSAGE POOL AND SWIMMING POOLS

- a) A “Hydro Massage Pools” must be adequately secured by a cover with a locking device and locked when not in use.
- b) The owner and/or occupant of any lands on which a pool is located shall erect and maintain a “swimming pool enclosure” that complies with the provisions of this by-law, either around the entire yard containing the pool or the “swimming pool area”.
- c) A swimming pool enclosure shall extend from a maximum of no more than 5 cm (2 inches) vertically above ground level to a height that is at least 150 cm (5 feet), above ground level;
- d) Fences forming part of the prescribed swimming pool enclosure shall not contain barbed wire, electrical wiring, sharp projections or any other dangerous characteristics either on the outside or the inside;
- e) If an above-ground swimming pool has as an integral part of its construction, a deck that is level with the top of the pool and a Fence around the deck which has an effective combined height of 150 cm (5 feet) above grade, the fence may be considered as being part of the required swimming pool enclosure;
- f) The walls of an above-ground swimming pool may be used as part of the fence.

GATES AND ENTRANCES TO THE POOL AREA

- g) Gates which form part of the swimming pool enclosure shall be:

- i) of such construction as will provide a degree of safety and rigidity equivalent to or greater than that of a required fence;
 - ii) supported on substantial hinges; and
 - iii) self-closing and self-latching with the latching device a minimum of 1.2 metres (4 feet) from grade and on the inside of the Gate;
- h) Any gate which forms part of the swimming pool enclosure shall be kept closed and locked at all times when not attended by a responsible, adult person.

7. **LINE FENCES IN AN AGRICULTURAL AREA**

The requirements of the Line Fences Act are to be used for fences on lands designated “Agricultural” in the Official Plan and Zoning By-law.

8. **GENERAL**

- a) In this by-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the feminine gender shall include the masculine and, further, the converse of the foregoing also applies where the context so requires.

b) **Conflicts – other by-laws**

In the event of any conflict between provisions of this by-law and any provisions of any other Municipality of Lambton Shores By-laws, relating to fencing, the provisions of this by-law shall prevail.

9. **ADMINISTRATION AND ENFORCEMENT**

- a) In the event that the Municipality receives complaints regarding a fence, the By-law Enforcement Officer shall inspect such fence. If, in the opinion of the By-law Enforcement Officer, the fence does not meet provisions of the by-law, the By-law Enforcement Officer shall require, in writing, the owner, agent or person responsible for the fence to comply with the provisions of this by-law. Failure to comply shall be considered a contravention of the by-law which is subject to the penalty set out in Section 10 of this by-law.

Notice in writing is deemed delivered when it has been:

- i) personally served;
- ii) sent by regular mail to the address of the owner, as shown on the last revised assessment roll, on the seventh day after mailing; and/or
- iii) when posted on the offending fence.

10. **PENALTY**

Every person who contravenes any provisions of this by-law is guilty of an offence and subject to the provisions of The Provincial Offences Act.

11. **SEVERABILITY**

If a court of competent jurisdiction declares any Section or Subsection of this by-law invalid, the remainder of this by-law shall continue in force unless the court makes an order to the contrary.

12. **TITLE**

The short title of this by-law is the “Lambton Shores Fence By-law”.

13. **REPEAL OF PREVIOUS BY-LAWS**

By-laws passed by the Municipality of Lambton Shores and the former municipalities including the Village of Arkona, the Town of Bosanquet, the Village of Grand Bend, the Town of Forest and the Village of Thedford that are inconsistent with the provisions of this by-law are hereby repealed.

14. **DATE BY-LAW COMES INTO FORCE**

This by-law comes into force and effect when finally passed.

Read a FIRST and SECOND time this 17th day of November, 2008.

READ A THIRD TIME AND FINALLY PASSED THIS 17TH DAY OF NOVEMBER 2008.

“Gord Minielly”
MAYOR

“Carol McKenzie”
CLERK

By-Law 80-2008
Diagram 1.

