

THE CORPORATION OF THE TOWN OF HAWKESBURY

By-law N° 51-2008

A by-law respecting the erection and maintenance
of fences including swimming pool fences

(consolidated with By-law N° 42-2011)

WHEREAS paragraph 7 of Subsection 11(3) of the Municipal Act, 2001 states that a lower-tier municipality may pass by-laws, subject to the rules set out in subsection (4), respecting structures, including fences and signs;

AND WHEREAS the Council of the Corporation of the Town of Hawkesbury deems expedient to revise the by-laws on fences and on swimming pools both adopted respectively in 1999 and 1995.

NOW THEREFORE the Council of the Corporation of the Town of Hawkesbury enacts as follows:

DEFINITIONS

In this by-law:

“Chief Building Official” means the official as appointed from time to time by the Municipal Council of the town of Hawkesbury, or his/her authorized representative.

“Construct/erect” means to build, reconstruct or relocate, and includes any preliminary physical operations such as cutting, grading, excavating, filling or draining, or any altering of any existing fence by the addition, extension or any other structural change.

“Division fence” means a fence marking the boundary between adjoining parcels of land and that shall be of a minimum of 1 meter in height. (Added by By-law N° 42-2011)

“Existing” means existing as of the date of the passing of this by-law.

“Fence” means a freestanding structure, other than a building, erected at grade for the purpose of screening, safeguarding, delineating the boundaries of a property, restricting ingress to or egress from a property, providing security or protection to property, and does include hedges and retaining walls except for fences required under division fence section thereafter and temporary fences. (amended by By-law N° 42-2011)

“Front lot line” has the same definition that in the town’s Zoning by-law, as amended from time to time.

“Gate” means any swinging or sliding barrier used to fill in or close an access in a fence.

“Grade” means the elevation of the finished level of the ground adjoining the fence exclusive of any artificial embankment or berms.

“Hedge” means a continuous line of thick shrubs or trees, which is densely planted and intended to be maintained at an even height.

“Highway” means a common and public highway, and includes any bridges, trestle or viaduct or other structure forming part of the highway and except as otherwise provided, includes a portion of a highway.

“Lot line” means the boundary of a lot.

“Non conforming” means a structure which does not conform, comply, or agree with the regulations of this by-law on the date of its final passing thereof.

“Non residential property” means land used for other than residential purposes and includes land used for both residential and other purposes.

“Owner” means the owner of land registered in the Prescott Land Registry Office. (Added by By-law N° 42-2011)

“Person” means an individual, group, firm, corporation, association or partnership.

“Residential property” means land used for residential purposes and includes vacant land abutting residential property.

“Retaining wall” means any structure constructed of concrete, wood, stone, metal, brick or other similar materials which are erected for the purpose of confining earth material and which are of a maximum height of 1 meter.

“Spa” means a hot tub of varied forms, provided with hydro-jets and holes by which escapes compressed air, the water of which is warmed and in continuous movement.

“Swimming Pool” means an artificial privately-owned outdoor, above or in-ground pool of water for bathing, swimming, wading or reflecting and which may contain water to a depth exceeding 0.61m (2 feet) at any point and includes inflatable swimming pools. A swimming pool does not include:

- (a) a beach;
- (b) a natural swimming area; or
- (c) a water garden;

“Temporary fence” means a fence that is installed for the sole purpose of safeguarding a construction site. It includes a snow fence that may be installed during the winter months for protecting shrubs, hedges and other from snow drifting. (Added by By-law N° 42-2011)

“Town” means the Corporation of the town of Hawkesbury.

“Yard, front” has the same definition that in the town’s Zoning by-law, as amended from time to time.

“Yard, required front” has the same definition that in the town’s Zoning by-law, as amended from time to time.

“Yard, rear” has the same definition that in the town’s Zoning by-law, as amended from time to time.

“Yard, side” has the same definition that in the town’s Zoning by-law, as amended from time to time.

“Zoning by-law” means the town of Hawkesbury Zoning by-law N° 84-94 as amended from time to time, or any version replacing the Zoning by-law N° 84-94.

SECTION 1 - GENERAL REGULATIONS

- 1.1 All persons erecting a fence or causing a fence to be erected shall be responsible to ensure that they have a legal right to erect the fence on the proposed location. The town will not be involved in property ownership disputes regarding property line location, private right-of-ways and easements.
- 1.2 All persons erecting a fence or causing a fence to be erected shall be responsible for the respect of the dispositions of this by-law, as amended.
- 1.3 No person shall erect a fence or cause a fence to be erected unless the fence is:
 - a) stable;
 - b) vertical;
 - c) made of material of good quality;
 - d) suitable for the purpose, and;
 - e) constructed and supported in a manner commensurate with the design of the entire fence.

- 1.4 Every person who erects a fence or cause a fence to be erected shall keep such fence:
- a) in good repair;
 - b) in a safe and structurally sound condition;
 - c) free from accident hazards, and;
 - d) protected by paint, preservative or other weather resistant material, except for wooden fences made of cedar, redwood or treated wood.
- 1.5 No person shall erect a fence or cause a fence to be erected:
- a) which is wholly or partly constructed of barbed wire, chicken wire or other barbed or sharp materials;
 - b) which is constructed of demolition material, used or new metal roofing, used or new corrugated tin or fibreglass, or the like;
 - c) which contains a device for projecting an electric current. (Amended by By-law N° 42-2011)
- 1.6 No person shall erect a fence or cause a fence to be erected on town property, including any public highway.
- 1.7 No person shall erect a fence or cause a fence to be erected in any way that would alter the existing grades or drainage patterns of the premises, and the neighbouring properties, unless otherwise approved by a professional engineer.
- 1.8 No person shall erect a fence or cause a fence to be erected unless the fence is constructed and finished in such a manner as to present an acceptable finished side toward the public highway and the neighbouring properties.
- 1.9 Notwithstanding paragraph a) of Subsection 1.5, where required for the safety or protection of non-residential property, the portion of any fence above two hundred and fifty centimetres (250 cm) may be wholly or partially constructed of barbed wire. In such case, owner or occupant shall keep, clearly posted, signs warning people of the presence of barbed wire.
- 1.10 Unsightly markings, stains or other defacements on the exterior surfaces of fences shall be removed and the surface shall be refinished when necessary.
- 1.11 No person shall erect or cause to be erected, on residential property or on lot lines of non-residential property abutting residential property, a chain link fence that is not vinyl or powder coated.
- 1.12 No person shall install a temporary fence during the months of April to October unless the premises where the fence is to be erected thereon has been issued a demolition or construction permit from the building department and until said permit remains valid. (Added by By-law N° 42-2011)
- 1.13 No person shall use a temporary fence for a division fence. (Added by By-law N° 42-2011)

SECTION 2 - CALCULATION OF HEIGHT

- 2.1 The height of a fence at any given point shall be measured from the grade at the base of the fence, as follows:
- a) to the top of the fence where erected at grade and where there is no grade difference between the two sides of the fence; or
 - b) from the higher grade to the top of the fence where erected at grade and there is a grade difference between the two sides of the fence.

SECTION 3 - SPECIFIC REGULATIONS

- 3.1 No fence shall be erected or cause to be erected which obscures a clear view at street intersections, pedestrian or bicycle pathways, driveways, or other points of ingress or egress of vehicular or pedestrian traffic or within the sight triangle as per described in the town's Zoning by-law.

Residential property

- 3.2 No person shall erect a fence or cause a fence to be erected exceeding 2 metres in height in any side yard or rear yard or exceeding 1 metre in height in any front yard.
- 3.3 Where the front yard abuts to a street, no person shall erect a fence or cause a fence to be erected without respecting a 1 metre setback from the front lot line.
- 3.4 Notwithstanding Subsection 3.2, where a property is abutting a non-residential property, and such fence is contiguous to the non-residential property, the height of the fence shall not exceed 2.5 metres.
- 3.5 Fences around tennis courts, in other than a required front yard, may be erected to a maximum height of 3.7 metres.
- 3.6 Notwithstanding Subsection 3.2, in side yard or rear yard:
- a) gates may exceed the height restrictions by a maximum of thirty centimetres (30 cm);
 - b) archways forming part of an entrance may exceed the height restrictions to a maximum of two hundred and fifty centimetres (250 cm); and
 - c) decorative caps on structural posts may exceed the height restrictions to a maximum of fifteen centimetres (15 cm).
- 3.7 No retaining wall exceeding 1 meter shall be erected or cause to be erected in any side yard or rear yard without respecting the provisions of the Ontario Building Code. In such a case, a permit might be required from the Chief Building Official.

Non-residential property

- 3.8 No person shall erect a fence or cause a fence to be erected exceeding 2.5 metres in height in any side yard or rear yard.
- 3.9 Where the front yard abuts to a street, no person shall erect a fence or cause a fence to be erected without respecting a 1 metre setback from the front lot line, and exceeding 1 meter in height unless a site plan agreement with the town is agreed upon by both parties.
- 3.10 Fences around tennis courts on lands used for non-residential purposes may be erected to a maximum height of 4.3 metres.

SECTION 4 - EXCLUSION

- 4.1 Notwithstanding the dispositions of this by-law, an agreement may be concluded with a property owner allowing the erection of a fence on land belonging to the town, provided that the land abuts the front, rear or side lot lines of the owner party to the agreement.
- 4.2 Subsections 3.2, 3.3 and 3.4 do not apply to a fence erected upon, or abutting land, which is used for a railway right-of-way, or for hydro, telephone or utility installation, or for public work installations which are hazardous to the public.
- 4.3 An agreement under Section 41 of the Planning Act, as amended from time to time, approved by the Municipal Council, may require a fence not respecting the provisions of this by-law as a condition.
- 4.4 The provisions of this by-law do not apply to a non conforming fence lawfully erected prior to the enactment of this by-law.

SECTION 5 - GENERAL PROHIBITION

- 5.1 No person shall erect a fence, cause a fence to be erected, or maintain a fence on private property within the town that does not comply with this by-law.

SECTION 6 – FENCES AS SWIMMING POOL OR SPA ENCLOSURES

- 6.1 This section shall apply to all swimming pools and spas, except spas respecting the provisions of Subsection 6.15, constructed, existing or replaced, within the town. This by-law does not apply to existing swimming pools and spas which have been legally constructed or installed prior to the passing of this By-Law.
- 6.2 No person shall construct or install a swimming pool or a spa, or have another individual build or install a swimming pool or a spa, without first filling an application form in order to obtain a swimming pool permit from the Chief Building Official of the town.
- 6.3 No person shall fill a swimming pool or a spa with water unless the pool is enclosed by a fence and gates in accordance with the provisions of this by-law.
- 6.4 No person shall remove any part of a fence if the swimming pool or the spa is filled with water.
- 6.5 No person shall allow water to remain in a swimming pool or in a spa in the town unless the prescribed fences and gates have been erected in accordance with the provisions of this by-law.
- 6.6 Privately-owned outdoor swimming pools that may contain 0.61m (2 feet) of water or less shall comply with the provisions of this by-law unless it is emptied of its water after each use.
- 6.7 No person shall fail to ensure that:
 - a) all gates forming part of the pool fence provide protection equivalent to the fence;
 - b) be at least the same height as the fence;
 - c) be equipped with self-closing and latching device and lock at the upper inside of the gate.
 - d) all entranceways to a pool fence through a wall of a building shall be equipped with locking devices.
 - e) all gates forming part of a pool fence are locked when the area is not in active use and supervised.
- 6.8 Every fence for a swimming pool shall be of a close-boarded, chain link or other approved design with maximum openings of 4 inches including the space below the fence, to reasonably deter children from climbing it to gain access to the fence-in area.
- 6.9 In the case of an in ground swimming pool, the fence shall be at least 1.52m (5 feet) in height and in the case of an above ground swimming pool or spa, if the walls of the swimming pool or spa are less than 1.22m (4 feet) high above the grade for a distance of at least 1.22m (4 feet) from the wall, the fence shall be at least 1.22m (4 feet) in height or the walls of a pool can be extended with an approved manufactured fence for a total height of at least 1.22m (4 feet) above the grade.
- 6.10 Barbed wire or energized fencing shall not be used as an enclosure for a swimming pool or a spa.
- 6.11 Equipment, filtering system or materials cannot be located, stored or kept within 1.22m (4 feet) from the swimming pool measured horizontally to prevent climbing.
- 6.12 Decks, platforms, stairs or ladders associated with swimming pools shall comply with the requirements of the Ontario Building Code and the access to such decks, platforms, stairs or ladders must be adequately enclosed in accordance with subsections 6.7 to 6.10 hereof inclusive.
- 6.13 When a wall or portion thereof of any building located on the same property as the swimming pool forms part of the pool fence, no entrances to the enclosed pool area shall be permitted through such wall, unless:
 - a) any door at the entranceway is self closing and equipped with a self latching device in compliance with Subsection 6.7 as relevant.
 - b) be equipped with a locking device.

- 6.14 Every owner of a swimming pool shall be responsible to take all steps necessary to control any access point to the swimming pool or spa area at all times.
- 6.15 No person shall install a spa without it being completely surrounded with a fence, according to the requirements of a swimming pool fence or be provided with a lid having locks. The lid must be put back in place and locked as soon as the bathing is ended.

SECTION 7 - DIVISION FENCE

- 7.1 The *Line Fences Act*, except for section 20 of that act, shall not apply to land located within the Town of Hawkesbury.
- 7.2 A division fence to be constructed alongside a public highway, including land that is owned by the town or any public authority shall be the responsibility of the owner entirely.
- 7.3 In a residential area, an agreement on the apportionment of the cost and the material chosen shall be concluded between adjacent owners before a division fence is constructed. If no agreement is reached, the owner requesting the construction of the division fence shall:
- 7.3.1 notify the adjacent owner by registered or hand-delivered mail of his request for constructing a division fence;
- 7.3.2 the notice shall include one written quote from a reputable fencing business for the type of fence intended to be constructed, and another quote for a basic chain-link fence respecting the following conditions:
- 1.22 meter in height;
 - made of not less than 12 gauge (minimum 0.095 inches thickness) galvanized steel mesh of not more than 5.7 centimeters in size;
 - supported by galvanized steel terminal posts of not less than 5 centimeters in diameter set in concrete footings that are below the frost line and by galvanized steel line posts of not less than 4 centimeters in diameter and installed less than 3.04 meters apart. Galvanized post caps and other accessories required by the manufacturer shall be installed;
 - with a galvanized steel top rail of not less than 3 centimeters in diameter and a galvanized steel bottom wire of not less than 9 gauge.
- 7.3.3 both quotes shall specify separately the cost for material and labour plus applicable taxes;
- 7.3.4 indicate the date, not earlier than twenty-one days after the notice is delivered, that the construction of the division fence shall commence.
- 7.4 The adjacent owner shall be given seven days from the delivery of the notice to seek a quote from another reputable fencing business for a basic chain-link fence.
- 7.5 If both parties, after quotes have been exchanged, do not agree to the share of costs, the apportionment shall be as follows:
- 7.5.1 the adjacent owner shall be responsible to pay fifty percent of the cost of the basic chain-link fence and the proposed type of fence the owner intends to construct, whichever is less, and;
- 7.5.2 the owner shall be responsible to pay the difference from the total costs and the amount paid by the adjacent owner.
- 7.6 The apportionment specified in the present section applies not only to the construction of a new division fence but also to the maintenance and repair to an existing one by using the same method of assessing the costs and the same notice requirements.
- 7.7 In a commercial, trade and industry areas, division fence shall be apportioned between adjacent owners on a 50-50% basis and the basic chain-link fence shall be for a height of 2.5 meter
- 7.8 Where the owner or the adjacent owner fails to pay the cost of a division fence in accordance with the provisions of this by-law, these costs may be recovered by means of legal proceedings by the

party not being in default against the other party. The town shall not be responsible for any legal proceedings nor for getting involved in any dispute on division fence.

SECTION 8 - OFFENCE

- 8.1 Any person who contravenes any of the provisions of this by-law is guilty of an offence, and is liable upon conviction to a fine under the *Provincial Offences Act*.
- 8.2 When a person has been convicted of an offence under this by-law, any court of competent jurisdiction thereafter, may in addition to any other penalty imposed on the person convicted, issue an order prohibiting the continuation or repetition of the offence or the doing of any act or thing by the person convicted directed toward the continuation or repetition of the offence.
- 8.3 An owner or occupant desiring to enforce the provisions of this by-law shall serve or cause to be served on the abutting landowner, a notice by registered mail requiring compliance with this by-law, and if such compliance does not take place within thirty (30) days after service of the notice, the owner may take appropriate proceedings at the Ontario Court of Justice or any court of competent jurisdiction to obtain an order imposing compliance upon that owner of abutting property.

SECTION 9 - ADMINISTRATION

- 9.1 This by-law shall be enforced by the Chief Building Official or any other person duly appointed by the Municipal Council.

SECTION 10 - VALIDITY

- 10.1 If a court of competent jurisdiction should declare any section or part of a section of this by-law to be invalid, the remaining sections shall remain in effect until repealed.
- 10.2 Where a provision of this by-law conflicts with the provisions of another by-law in force in the town, the provisions that establish the higher standards to protect the health, safety and welfare of the general public shall prevail.

SECTION 11 - REPEAL

- 11.1 By-laws N° 17-99 and N° 33-95 are hereby repealed.

SECTION 12 - EFFECTIVE DATE

- 12.1 This by-law shall come into force and take effect upon adoption.

**CONSOLIDATED VERSION SIGNED
THIS JULY 5, 2011**

René Berthiaume, Mayor

Christine Groulx, Clerk