

# THE CORPORATION OF THE TOWN OF HAWKESBURY

## By-law N°35-2013

### A By-law respecting the erection and maintenance of Fences including Swimming Pool Fences

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**WHEREAS** paragraph 7 of subsection 11 (3) of the *Municipal Act, 2001*, S.O. 2001, c. 25 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-law on Fences adopted in 2008.

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

#### **TITLE**

This By-law may be known as the “**Fence By-law**” of the Corporation of the Town of Hawkesbury.

#### **DEFINITIONS**

In this By-law:

“**Chief Building Official**” means an officer or employee of the Town charged with the duty of enforcing the provisions of the *Building Code Act, 1992*, S.O. 1992, c.23, as amended and similar by-laws of the Town or his/her authorized representative.

“**Committee**” means the Fence Review Committee.

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

“**Council**” means the Council of the Corporation of the Town of Hawkesbury.

“**Division Fence**” means a Fence marking the boundary between adjoining parcels of land.

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

“**Fence**” means a freestanding man-made structure, other than a building, or any earthwork or greenery that fulfils the same function, 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 Sections 2 and 8.

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

**“Grade”** means the average elevation of the finished grade of the ground immediately surrounding such structure, exclusive of any artificial embankment or entrenchment.

**“Hazardous”** means a Fence that by its location, its proximity with neighbouring properties, its height, or its material is considered dangerous for the health, safety and well-being of a Person or property, or has a potential of causing damages or injuries to a Person or a property.

**“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 a boundary line of a lot.

**“Lot Line, Front”** has the same definition that in the Zoning By-law.

**“Lot Line, Rear”** means the lot line furthest from, and opposite to, the Front Lot Line.

**“Non-Complying”** means an existing structure which does not comply, or fails to meet with one or more of the provisions 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 person or organization who owns the land in or on which a land use is located and who may be responsible for the establishment or operation of that land use.

**“Person”** means an individual, an association, a chartered organization, a firm, a partnership, a corporation, an agent or trustee and the heirs, executors or other legal representatives of a person to whom the context can apply according to law.

**“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 any body of water, permanently located outdoors on privately owned property, contained by artificial means, and used and maintained for the purpose of swimming, wading, diving or bathing 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 plastic fence and the like installed during the winter months for protecting shrubs, hedges and other from snow drifting.

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

“**Yard**” means a space, appurtenant to a building or structure, located on the same lot as the building or structure, and which space is open, uncovered and unoccupied from the ground to the sky except for such buildings, uses or structures as are specifically permitted in the Zoning By-law.

“**Yard, Front**” means the space extending across the full width of a lot between the front lot line and the nearest part of any main wall of any building or structure of the lot.

“**Yard, required front**” means the minimum yard required by the provisions of the Zoning By-law.

“**Yard, Rear**” means the space extending across the full width of a lot between the Rear Lot Line and the nearest part of any rear wall of any main building or structure on the lot. In the case of a lot with no Rear Lot Line, the Rear Yard shall be the area between the point where the side Lot Lines meet and the nearest part of any rear wall of any main building or structure and the lot.

“**Yard, Side**” means the space extending from the Front Yard to the Rear Yard and from the side Lot Line to the nearest part of any side wall of any main building or structure on the lot. In the case of a lot which has no Rear Lot Line, the Side Yard shall extend from the Front Yard to the opposite Side Yard.

“**Zoning By-law**” means the Town of Hawkesbury Zoning By-law N° 20-2012 as amended from time to time, and any version replacing the Zoning By-law N° 20-2012.

## 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 shall not be involved in property ownership disputes regarding Lot Line, private right-of-ways, easements and the like. Furthermore, all Persons shall be responsible to obtain all underground locates from concerned utilities and the Town before any excavation, digging or planting be undertaken.
- 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 No Person shall fail to keep such Fence:
- a) in good repair;
  - b) in a safe and structurally sound condition;
  - c) free from accident hazards;
  - d) protected by paint, preservative or other weather resistant material, except for wooden Fences made of cedar, redwood or treated wood;
  - e) where comprised in whole or in part of shrubs, cedars, bushes or other planting material, regularly pruned, trimmed or otherwise maintained.
- 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.
- 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 the design recommended by a professional engineer is prior approved in writing by the Town.
- 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, no Person shall fail to keep, clearly posted, signs warning people of the presence of barbed wire.
- 1.10 No Person shall fail to remove unsightly markings, stains or other defacements on the exterior surfaces of Fences and to refinish the surface 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 a Residential Property, a chain link Fence that is not vinyl or powder coated.

## **2 TEMPORARY FENCE**

- 2.1 No Person shall install a Temporary Fence during the months of April to October unless the premises where the Temporary Fence is to be erected thereon has been issued a demolition or construction permit from the building department and until said permit remains valid.
- 2.2 No Person shall use a Temporary Fence for a Division Fence.

## **3 CALCULATION OF HEIGHT**

- 3.1 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.

## 4 SPECIFIC REGULATIONS

- 4.1 No Person shall erect or cause to be erected a Fence 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 Zoning By-law.

### Residential property

- 4.2 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.
- 4.3 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.
- 4.4 Notwithstanding Subsection 4.2, 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.
- 4.5 Fences around tennis courts, in other than a required Front Yard, may be erected to a maximum height of 3.7 metres.
- 4.6 Notwithstanding Subsection 4.2, no Person shall in side yard or rear yard install or cause to be installed:
- a) Gates that exceed the height restrictions by a maximum of thirty centimetres (30 cm);
  - b) archways forming part of an entrance that exceed the height restrictions to a maximum of two hundred and fifty centimetres (250 cm); and
  - c) decorative caps on structural posts that exceed the height restrictions to a maximum of fifteen centimetres (15 cm).
- 4.7 No Person shall erect or cause to be erected Retaining Wall exceeding 1 meter in any Side Yard or Rear Year without respecting the provisions of the Ontario Building Code.

### Non-Residential Property

- 4.8 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.
- 4.9 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.

- 4.10 Fences around tennis courts on lands used for non-residential purposes may be erected to a maximum height of 4.3 metres.

## **5 EXCLUSION**

- 5.1 Notwithstanding the dispositions of this By-law, the Town may conclude an agreement with an 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 property of the Owner which is a party to the agreement.
- 5.2 Subsections 4.2, 4.3 and 4.4 do not apply to a Fence erected upon, or abutting land, which is used for a railway right-of-way, for hydro, telephone or public utilities installation or equipment, or for public works installations or equipment which are dangerous to the public safety and well-being.
- 5.3 An agreement under Section 41 of the *Planning Act, R.S.O. 199, Chapter P.13*, as amended, approved by Council, may require a Fence not respecting the provisions of this By-law as a condition.
- 5.4 The provisions in Subsections 4.2 to 4.10 inclusively of this By-law do not apply to a Fence that has been lawfully erected and is in existence prior to June 23, 2008. The onus of the proof shall lie with the Owner of the property. Non-complying Fences may be maintained and repaired with the same material, height and dimensions as they existed.
- 5.5 Notwithstanding the provision of Subsection 5.4, an existing Fence that is deemed by the Chief Building Official to be Hazardous, or to be unreasonably obstructing a view, shall comply with the provisions of this By-law. The Chief Building Official may issue an order to comply with the provisions of this By-law to an Owner of a Fence deemed by the Chief Building Official to be Hazardous or a view obstruction. The order to comply issued by the Chief Building Official may be appealed in accordance with the provisions of section 10 hereof.

## **6 GENERAL PROHIBITION**

- 6.1 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.

## **7 FENCES AS SWIMMING POOL OR SPA ENCLOSURES**

- 7.1 This Section shall apply to all Swimming Pools and Spas, except Spas respecting the provisions of Subsection 7.15, 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 June 23, 2008.
- 7.2 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 filing an application form in order to obtain a Swimming Pool permit from the Chief Building Official of the Town.
- 7.3 No Person shall fill a Swimming Pool or a Spa with water unless the Swimming Pool or Spa is enclosed by a Fence and Gates in accordance with the provisions of this By-law.
- 7.4 No Person shall remove any part of a Fence if the Swimming Pool or the Spa is filled with water.
- 7.5 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.
- 7.6 No Person who owns a privately-owned outdoor Swimming Pool that may contain 0.61m (2 feet) of water or less shall fail to comply with the provisions of this By-law unless it is emptied of its water after each use.
- 7.7 No Person shall fail to ensure that:
- a) all Gates forming part of the Swimming Pool Fence provide protection equivalent to the Fence;
  - b) all Gates forming part of the Swimming Pool Fence are at least the same height as the Fence;
  - c) all Gates forming part of the Swimming Pool Fence are equipped with self-closing and latching device and lock at the upper inside of the Gate;
  - d) all entranceways to a Swimming Pool Fence through a wall of a building shall be equipped with locking devices;
  - e) all Gates forming part of a Swimming Pool Fence are locked when the area is not in active use and supervised.
- 7.8 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 fenced-in area.

- 7.9 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 Swimming Pool can be extended with an approved manufactured device for a total height of at least 1.22m (4 feet) above the Grade.
- 7.10 No person shall use barbed wire or energized fencing as an enclosure for a Swimming Pool or a Spa.
- 7.11 No person shall locate, store or keep or cause to be located, stored or kept equipment, filtering system or materials within 1.22m (4 feet) from the Swimming Pool measured horizontally to prevent climbing.
- 7.12 No person shall fail to comply with the requirements of the Ontario Building Code for decks, platforms, stairs or ladders associated with Swimming Pools and with the requirements of Subsections 7.7 to 7.9 for the access to such decks, platforms, stairs or ladders.
- 7.13 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 Person shall fail to ensure that entrances to the enclosed Swimming Pool area through such wall by a door at the entranceway is self-closing and equipped with a self-latching device in compliance with Subsection 7.7 or be equipped with a locking device.
- 7.14 No Person shall fail to take all measures and precautions necessary to control any access points to the Swimming Pool or Spa area at all times.
- 7.15 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 which lid shall be put back in place and locked as soon as the bathing is ended.

## **8 DIVISION FENCE**

- 8.1 The *Line Fences Act*, as amended except for section 20 of that *Act*, shall not apply to land located within the Town of Hawkesbury.
- 8.2 Division Fence shall be at least 1.22 meter in height.
- 8.3 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.

8.4 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 (thereafter “the Petitioner”) of the Division Fence shall:

8.4.1 notify the adjacent Owner by registered or hand-delivered mail of his request for constructing a Division Fence;

8.4.2 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.

8.4.3 both quotes shall specify separately the cost for material and labour plus applicable taxes;

8.4.4 indicate the date, not earlier than twenty-one days after the notice is delivered, that the construction of the Division Fence shall commence.

8.5 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.

8.6 If both parties, after quotes have been exchanged, do not agree to the share of costs, the apportionment shall be as follows:

- 8.6.1 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 Petitioner intends to construct, whichever is less, and;
- 8.6.2 the Petitioner shall be responsible to pay the difference from the total costs and the amount paid by the adjacent Owner.
- 8.7 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.
- 8.8 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 meters.
- 8.9 Where the Petitioner 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 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.

## 9 OFFENCE

- 9.1 Every Person who contravenes any of the provisions of this By-law is guilty of an offence, and is liable upon conviction to a fine as provided for by the *Provincial Offences Act, R.S.O. 1990, c.P. 33*, as amended.
- 9.2 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.
- 9.3 An Owner or occupant desiring to enforce the provisions of this By-law shall serve or cause to be served on the abutting Owner, 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.

## 10 APPEAL

- 10.1 A committee of three (3) persons is hereby constituted as the Fence Review Committee.
- 10.2 For the purpose of the present Section, a person who files an appeal shall be recognized as the “Applicant”.
- 10.3 An order to comply sent by the Chief Building Official under Subsection 5.5 for an existing Fence may be appealed to the Fence Review Committee by the Owner.
- 10.4 A Person filing a complaint on an existing Fence may also appeal the decision of the Chief Building Official to the Committee.
- 10.5 The Applicant shall pay the appeal fees as established by Council in the Administrative Fees By-law, as modified from time to time.
- 10.6 The Committee shall have jurisdiction over any dispute concerning an order to comply for an existing Fence to this By-law, the interpretation of Hazardous Fence or Fence obstructing the view provided in Subsection 5.5 as well as the decision by the Chief Building Official to reject a complaint on an existing Fence.
- 10.7 Upon receipt of notice of an appeal, the Committee shall be supplied with the appeal application and a report from the Chief Building Official.
- 10.8 Upon receipt of the documents described in Subsection 10.7, the Clerk’s office shall determine the time and date of the review hearing and shall give said notice in writing to the Applicant, and such other persons as the Clerk deems appropriate. The notice shall be served personally or by registered mail to the Applicant at the address as shown on the application.
- 10.9 The appeal hearing shall be open to the public except when the Committee is of the opinion that:
  - a) matters involving public security may be disclosed, or;
  - b) intimate financial or personal matters may be disclosed at the appeal hearing and avoiding disclosure is in the interest of any person affected or in the public interest.
- 10.10 The Applicant and any other person served with a notice may be represented by a counsel, or an agent, call and examine witnesses, present his/her arguments and submissions and cross-examine witnesses at the hearing to reasonably bring forward all the facts of the matter before the Committee.

- 10.11 The Committee shall render a decision in writing within twenty-one days of the appeal hearing.
- 10.12 A copy of said decision shall be sent by registered mail or served personally to the Applicant and to any other person who has requested a copy of the decision.
- 10.13 The decision of the Committee is final and binding on all parties and is conclusive as to the applicability of this By-law to the matter in appeal.
- 10.14 The Committee is not liable to compensate the Owner, occupant or any other person by reason of anything done by or on behalf of the Town in the reasonable exercise of its powers this, or any other section of, this By-law.

## **11 ADMINISTRATION**

- 11.1 Council hereby delegates to the Chief Building Official the function of determining compliance with the provisions of this By-law, and without restricting the generality of the foregoing, the assessment of whether a Fence is Hazardous, or creates an unreasonable obstruction of a view, and the issuance of orders to comply with the provisions of this By-law.
- 11.2 This By-law shall be enforced by the Chief Building Official or any other person duly appointed by Council.

## **12 VALIDITY**

- 12.1 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.
- 12.2 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.

## **13 REPEAL**

- 13.1 By-law N° 51-2008 is hereby repealed.

**14 EFFECTIVE DATE**

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

**READ A FIRST, SECOND AND ADOPTED UPON THIRD READING  
THIS 10<sup>th</sup> DAY OF JUNE 2013.**

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René Berthiaume, Mayor

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Christine Groulx, Clerk