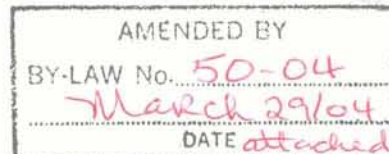




The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 51-2003

BEING A BY-LAW TO REGULATE THE ERECTION OF FENCES IN THE TOWN OF FORT ERIE AND TO REPEAL BY-LAW NO. 19-2000



WHEREAS Subsection 11(1).7 of the *Municipal Act, S.O. 2001*, c.25, authorizes a municipality to pass by-laws respecting structures, including fences, and

WHEREAS Subsections 9(1)(a) and 9(1)(b) of the *Municipal Act, S.O. 2001*, c.25, provide that Section 11 shall be broadly interpreted so as to confer broad authorities on municipalities to enable them to govern their affairs as they consider appropriate and to enhance their ability to respond to municipal issues; and

WHEREAS Subsection 9(3)(a) of the *Municipal Act, S.O. 2001*, c.25, provides that a by-law under Section 11 respecting any matter may regulate or prohibit respecting the matter, and

WHEREAS the Council of the Corporation of the Town of Fort Erie deems it expedient to pass a by-law respecting fences in the Town of Fort Erie, and

NOW THEREFORE the Municipal Council of the Corporation of the Town of Fort Erie enacts as follows:

1. DEFINITIONS:

- (a) "**Chief Building Official**" means the Chief Building Official appointed by the Council, pursuant to the *Building Code Act, S.O. 1992* c.23 as amended from time to time or any successors thereto, together with any regulations made thereunder, or his authorized agent.
- (b) "**Construct**" means to do anything in the erection, installation, extension or material alteration of a fence, and "construction" has a corresponding meaning.
- (c) "**Corner Lot**" means a lot having two or more street lines intersecting at an angle of not more than 135°, provided that where the street lines of a lot are curved, the angle of intersection of such street lines shall be deemed to be the angle formed by the intersection of the tangents to the street lines, drawn through the extremities of the interior lot lines, and the corner of the lot shall be deemed to be the point of intersection of the said tangents.
- (d) "**Corporation**" means the Corporation of the Town of Fort Erie.
- (e) "**Council**" means the Council of the Corporation.
- (f) "**Fence**" means any hedge, free standing wall, structure or partition grown, consisting of or constructed of any material or combination of materials, enclosing, partly enclosing or dividing land or being used for decorative purposes.
- (g) "**Fence Construction**" means any structure of posts and boards, wood, wire, plastic, concrete, stone, metal, hedge or combination thereof of fencing constructed of a strength

that provides an adequate degree of safety along any highway or separating or purporting to separate any parcel of land from the parcel of land immediately adjacent thereof.

- (h) **"Fence of Open Construction"** means a fence constructed so that at least one third of its vertical surface area is of open space, enabling motorists and pedestrians to have a clear view through the fence.
- (i) **"Front Lot Line"** means:
 - the lot line that divides the lot from the street, but;
 - in the case of a corner lot the shorter street line shall be deemed to be the front lot line and the longer street line shall be deemed to be a side lot line, but;
 - in the case of a corner lot with two (2) street lines of equal length, the lot line that abuts the wider street, or abuts a Regional Road or Highway shall be deemed to be the front lot line, and in the case of both streets being under the same jurisdiction, or of the same width, the lot line where the principal access to the lot is provided shall be deemed to be the front lot line;
 - in the case of a through lot, the front lot line shall be deemed to be the street line where the principal access to adjoining lots is provided.
- (j) **"Front Yard"** means a yard extending across the full width of a lot and lying between the front lot line of the lot and that part of a building nearest to the front lot line.
- (k) **"Front Setback Line"** means the distance required to be maintained from the street line to the nearest part of any existing building or structure on a lot or in the case where there is no building or structure on the lot, the distance required by the Zoning By-law for any building to be constructed.
- (l) **"Grade Level of the Street"** shall mean the grade level of the centre of the travelled portion of any street.
- (m) **"Hedge"** means closely planted row of shrubs, bushes or low trees enclosing, partly enclosing or dividing land or being used for a decorative purpose.
- (n) **"Municipality"** means the Corporation of the Town of Fort Erie.
- (o) **"Owner"** means a Person, Firm or Corporation controlling the property under consideration.
- (p) **"Residential Zone"** means any residential zone as delineated and contained in the relevant Comprehensive Zoning By-law of the municipality.
- (q) **"Side Yard"** means a yard extending from the front yard to the rear yard of a lot and from the side lot line of such lot to the nearest part of any building or structure on such lot.
- (r) **"Sight Triangle"** means the triangular shape formed by street lines of a corner lot where such lot is located at the intersection of two or more streets and the line drawn from a point in one street to a point in the other street, each such point being 10.5 metres from the point of intersection of the streets measured along the said street lines provided that where the two streets do not intersect at a point, the point of the intersection of the street lines shall be deemed to be the intersection of the projected tangents to the street lines drawn

through the extremities of the interior lot lines. Such triangular shape may also be called a daylighting triangle.

- (s) "**Street**" means a public highway or public road under the jurisdiction of either the Corporation, the Regional Municipality, the Niagara Parks Commission or the Province of Ontario, and includes any highway as defined by the *Municipal Act*, R.S.O. 1990 cM45 as amended from time to time or succession thereto, but does not include a lane or private right-of-way.
- (t) "**Street Line**" means the lot line that divides the lot from the street or a private right-of-way.
- (u) "**Vehicle**" means a motor vehicle, an automobile, a tractor, a truck, a motorcycle or motor assisted bicycle and any other vehicle propelled or driven otherwise than by muscular power.
- (v) "**Zone**" means the zone specified in the Town of Fort Erie Comprehensive Zoning By-law 129-90 and amendments thereto or any successors thereto.

2. ADMINISTRATION

This by-law shall be enforced by the Chief Building Official and/or designated representative.

3. GENERAL PROHIBITION

No person(s) shall construct or permit the erection in any area zoned residential, commercial industrial, rural or agricultural by the Municipality's Comprehensive Zoning By-law in effect at any time, of any fence prohibited by this By-law.

4. FENCES & HEDGES AT INTERSECTIONS & CORNER LOTS

No persons(s) shall construct or permit the erection or existence in any zone of any fence, hedge, or other barrier more than 0.7 metres in height above the grade level of the street within a sight triangle.

5. FENCE HEIGHT IN RESIDENTIAL ZONES

- (a) No person shall erect or cause to be erected within 4.5 metres of the street line in a front yard on any land used for residential purposes:
 - (i) a fence of closed construction or a hedge which is greater than 1.0 metre above ground level;
 - (ii) a fence of open construction which is higher than 1.25 metres above ground level; and
- (b) Where a building or a part of a building is closer to the front lot line than 4.5 metres, the nearest distance shall prevail.

- (c) Except as otherwise provided in this By-law, no person shall construct or permit to be erected or maintained any fence or hedge in any rear and/or side yards in any residential zone from the rear lot line to the front setback line of a height greater than 2.3 metres above the adjoining ground level. (See Schedule "A" annexed to and made part of this by-law).

6. COMMERCIAL & INDUSTRIAL LANDS:

Subject to Section 4 of this by-law, and notwithstanding any other provisions of this by-law, a wire, ornamental or chain link fence not exceeding 2.6 metres in height above the adjoining ground level, may be constructed around the perimeter of any parcel of land in any commercial or industrial zone.

7. PROHIBITED MATERIALS:

(a) Barbed Wire

- (i) No person shall construct or permit to be erected or maintained any fence composed wholly or partly of barbed wire, metal spikes or other sharp or pointed materials, along any highway, street, etc. within the Town of Fort Erie provided, however, that barbed wire, metal spikes or any other sharp or pointed material may be used in any area zoned Rural or Agricultural in the Zoning By-law of the Municipality in effect at the time or along the top of any fence enclosing property in an industrial zone, when such fence enclosing industrially zoned property is 2.0 metres or more in height above adjoining ground level or at a height prescribed by the Chief Building Official.
- (ii) No person shall construct or permit to be erected or maintain any fence wholly or partly of barbed wire, metal spikes or any other sharp or pointed material on any lands located in a Residential zone.

(b) Used Vehicle Tires

- (i) No person shall construct or permit to be constructed any fence composed wholly or partially of used vehicle tires on any property within the Town of Fort Erie.
 - (ii) No person shall maintain or keep, or permit to be maintained or kept, any fence composed wholly or partially of used vehicle tires on any property in the Town of Fort Erie.
- (c) In respect of any fence which has been constructed or erected using, in whole or in part, any material or materials which are prohibited by this section, and which is in existence as of the date of enactment of this by-law, or which may come into existence at any later date, the owner of the property upon which the fence is situated shall remove such fence within 90 days from the date of receiving a notice from the municipality to do so.

8. **FENCES AROUND POOLS**

Fences around pools and swimming pools shall comply with the Municipality's Swimming Pool By-law in effect at the time but where this By-law conflicts with the Swimming Pool By-law the most restrictive By-law shall prevail.

9. **GENERAL**

- (a) All natural and non-natural fences, erected, constructed or grown shall be solely contained within the limits of the owner and/or owner's property including all foundations and footings, except where adjacent owners construct a jointly owned fence.
- (b) Any requisition of the Town for a statement of conformity with 9(a) above shall be accompanied by a legal survey.
- (c) No person shall erect a fence unless it is constructed, using suitable materials. Notwithstanding the forgoing, used chainlink or hedge wire fencing may be reused in the construction of a fence as may split wooden rails.
- (d) Save in an Agriculture or Rural Zone, no person shall erect an electric fence in any Residential Zone, Commercial Zone, Industrial Zone, Institutional Zone, Environmental Zone or Holding Zone. An electrical fence means a fence through which electricity passes.
- (e) Where a non-Residential Zone abuts a Residential Zone, the provisions of this by-law governing fences in a Residential Zone shall prevail.

10. **EXCEPTIONS**

- (a) None of the provisions of this By-law relating to the height of fences, except the provisions of Section 4 of this By-law, shall apply to land owned or leased and used by:
 - (i) The Corporation of the Town of Fort Erie.
 - (ii) Regional Municipality of Niagara.
 - (iii) Ontario Hydro and Canadian Niagara Power.
 - (iv) Any Department or Agency of the Federal, or Provincial Government, including the Niagara Parks Commission and the Peace Bridge Authority.
 - (v) The District School Board of Niagara.
 - (vi) The Niagara Catholic District School Board.
 - (vii) Any person for the purpose of temporarily protecting any excavation or construction site.

11. **STONE/BRICK WALLS, SHRUBS, TREES, FENCES ETC. ON TOWN PROPERTY**

No stone/brick walls, shrubs, trees or fences shall be erected on any highway in the Town or Town properties unless the said stone/brick walls, shrubs, trees or fences is authorized by the Council of the Town of Fort Erie by way of an encroachment agreement with the Town of Fort Erie.

12. PARTIAL INVALIDITY

If any term of this by-law or the application thereof shall, to any extent, be invalid or unenforceable, the remainder of this by-law and/or the application of such term to circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby and each term of this by-law shall be separately valid and enforceable to the fullest extent permitted by law.

13. PENALTIES FOR NON-COMPLIANCE

Any person who contravenes this By-law is guilty of a provincial offence and is liable upon conviction to a fine in accordance with the Provincial Offences Act.


14. RELIEF FROM BY-LAW


Any person can make application to the Council to amend any provision of this by-law and the Council shall consider such application in an expeditious manner.

15. REPEAL OF PREDECESSOR BY-LAW

By-law No. 19-2000 of the Corporation of the Town of Fort Erie is hereby repealed.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 31st DAY OF MARCH, 2003.



MAYOR


CLERK

I, Carolyn Kett, Clerk of the Corporation of the Town of Fort Erie hereby certify the foregoing to be a true certified copy of By-law No. 51-2003 of the said Town. Given under my hand and the seal of the said Corporation this ____ day of _____, 200 .
