



The Municipal Corporation of the Town of Fort Erie

BY-LAW NO. 69-2013

BEING A BY-LAW TO AMEND COMPREHENSIVE ZONING BY-LAW NO. 129-90 AS AMENDED (FENCE REGULATIONS)

WHEREAS By-law No. 129-90, as amended, being the Comprehensive Zoning By-law for the Town of Fort Erie was passed on May 28, 1990, and

WHEREAS at the Council-in-Committee meeting held on January 14, 2013 the Municipal Council of the Town of Fort Erie approved Report No. CDS-06-13 directing staff to make the necessary modifications to the Official Plan, Zoning By-law, Fence By-law and User Fee By-law to enable variances from the Fence By-law to be directed to the Committee of Adjustment, and

WHEREAS Section 13.2 of the Official Plan permits the regulation of fences through the Comprehensive Zoning By-law No. 129-90, and for the Committee of Adjustment to grant variances to the regulations, and

WHEREAS Subsection 34 (1) of the *Planning Act*, R.S.O. 1990, c.P. 13 authorizes councils of municipalities to regulate the use of lands and the character, location and use of buildings and structures within the municipality, and

WHEREAS Subsection 34 (12) requires the council before the passing of a by-law under this section of the Act to ensure that sufficient information is made available to the public to generally understand the zoning proposal and to hold a public meeting, and

WHEREAS notice of Public Meetings was provided pursuant to Subsection 34 (13) of the *Planning Act*, R.S.O. 1990, c.P.13 on February 7, 2013 and May 16, 2013, and

WHEREAS Public Meetings pursuant to Subsection 34 (12) of the *Planning Act*, R.S.O. 1990, c.P.13 were held on March 4, 2013 and June 10, 2013, and

WHEREAS at the Council-in-Committee Meeting held on July 8, 2013, the Municipal Council of the Town of Fort Erie approved Report No. CDS-63-2013 recommending an amendment to Comprehensive Zoning By-law No. 129-90 to include regulations relating to fences, and

WHEREAS it is deemed desirable to amend Comprehensive Zoning By-law No. 129-90, as amended, to include regulations relating to fences;

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

1. **THAT** Section 5.112 of By-law No. 129-90, as amended, is hereby repealed and replaced with the following:

“5.112 Fence or Fencing” means any hedge, free standing wall, structure, partition, or barrier grown, consisting of or constructed of any material or combination of materials, enclosing, partly enclosing or dividing land or being used for decorative purposes. The following definitions apply to fences or fencing:

- 5.112.1 "Chief Building Official"** means the Chief Building Official appointed by Council and charged with the duty of enforcing the provisions of the *Building Code Act, 1992, S.O, 1992, c.23*, and the provisions of the Building By-law.
- 5.112.2 "construct"** means to erect, install, extend or make material alterations or repairs.
- 5.112.3 "corner lot"** means a lot having 2 or more street lines intersecting at an angle of not more than 135 degrees, 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 that point on the street line nearest to the point of intersection of the said tangents.
- 5.112.4 "driveway triangle"** means the triangular shape formed by the intersection of a street line and a driveway where the driveway is within 4.5 metres of a lot line of the adjacent lot. The triangular shape shall be measured as a right angled triangle with 4.5 metre sides along the street line and driveway.
- 5.112.5 "effective ground level"** means the mean level of the ground within a radius of 1.25 metres of the fence location being considered.
- 5.112.6 "electric fence"** means a fence through which electricity passes.
- 5.112.7 "fence or fencing"** means any hedge, free standing wall, structure, partition, or barrier grown, consisting of or constructed of any material or combination of materials, enclosing, partly enclosing or dividing land or being used for decorative purposes.
- 5.112.8 "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 an unobstructed view through the fence.
- 5.112.9 "fence of closed construction"** means a fence constructed of solid material, without open spaces, such that views through the fence are substantially obstructed.
- 5.112.10 "front lot line"** means the lot line that divides the lot from the street, including a private street but;

- i) 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;
- ii) 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;
- iii) 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.

- 5.112.11** **"front yard"** means a yard extending across the full width of a lot between the front lot line of such lot and the nearest part of any building or structure on such a lot.
- 5.112.12** **"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.
- 5.112.13** **"grade level of the street"** shall mean the grade level of the centre of the travelled portion of any street.
- 5.112.14** **"hedge"** means closely planted row of shrubs, bushes, vegetation, grasses or low trees enclosing, partly enclosing or dividing land or being used for a decorative purpose.
- 5.112.15** **"lot line"** means any boundary line of a lot.
- 5.112.16** **"officer"** means a municipal by-law enforcement officer, building inspector, chief building official or any other person appointed or employed by the Town for the enforcement of the by-laws and includes a peace officer.
- 5.112.17** **"owner"** means a registered owner, but also includes an occupant, lessee, tenant or any other person in charge of or in control of the premises.
- 5.112.18** **"person"** includes an owner and may be a natural person, firm, corporation, partnership or association.
- 5.112.19** **"privacy screen"** means a visual barrier used to shield any part of a yard from view from any adjacent property or street.

- 5.112.20** "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.
- 5.112.21** "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.
- 5.112.22** "street" means a public highway or public road under the jurisdiction of the Town, the Regional Municipality, the Niagara Parks Commission or the Province of Ontario, and includes any highway as defined by the *Municipal Act, 2001* as amended from time to time, but does not include a private lane or right-of-way.
- 5.112.23** "street line" means a lot line dividing a lot line from a street and is the limit of the street allowance.
- 5.112.24** "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.
- 5.112.25** "zone or zoned" means the Zone specified in the Town of Fort Erie Comprehensive Zoning By-law No. 129-90 and amendments thereto or any successors thereto. "

2. THAT By-law No. 129-90, as amended, is further amended by adding immediately after Subsection 6.53 of "Section 6-General Provisions", the following:

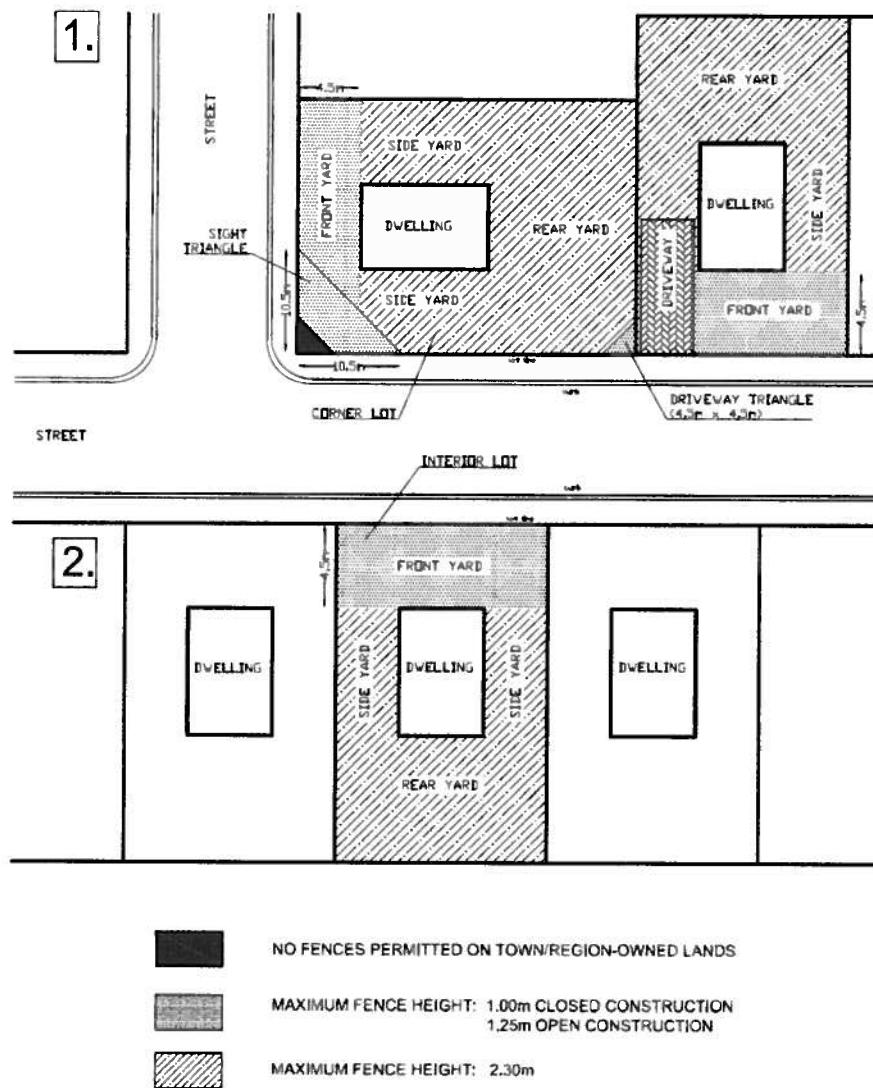
"6.54 FENCES

(a) Fence Heights

- (i) Except as otherwise provided in this By-law, no person shall construct or permit to be constructed or maintained any fence of a height greater than 2.3 metres above the effective ground level in any rear and/or side yards from the rear lot line to the front setback line.
- (ii) When the rear yard of one property abuts the front yard of an adjoining property, no person shall construct or permit to be constructed or maintained within the driveway triangle:
 - a fence of closed construction that exceeds 1 metre in height above effective ground level, or

- a fence of open construction that exceeds 1.25 metres in height above effective ground level.
- (iii) No person shall construct or permit to be constructed or maintained within 4.5 metres of the street line in a front yard:
- a fence of closed construction of a height greater than 1.0 metre above effective ground level; or
 - a fence of open construction of a height greater than 1.25 metres above effective ground level.

Where a building or a part of a building is closer to the front lot line than 4.5 metres, this distance shall be known as the front yard setback line and 6.54 (a)(iii) is applicable from this front yard setback line, as illustrated in the following figures:



- (iv) No person shall construct or permit to be constructed or maintained within a sight triangle:
 - a fence of closed construction of a height greater than 1.0 metre above effective ground level; or
 - a fence of open construction of a height greater than 1.25 metres above effective ground level.

- (v) No person shall construct or permit to be constructed, any fence exceeding 2.6 metres in height above the effective ground level, around the perimeter of any parcel of land in in any Commercial, Industrial, Rural, Agricultural, Public or Urban Entertainment Centre Zone.

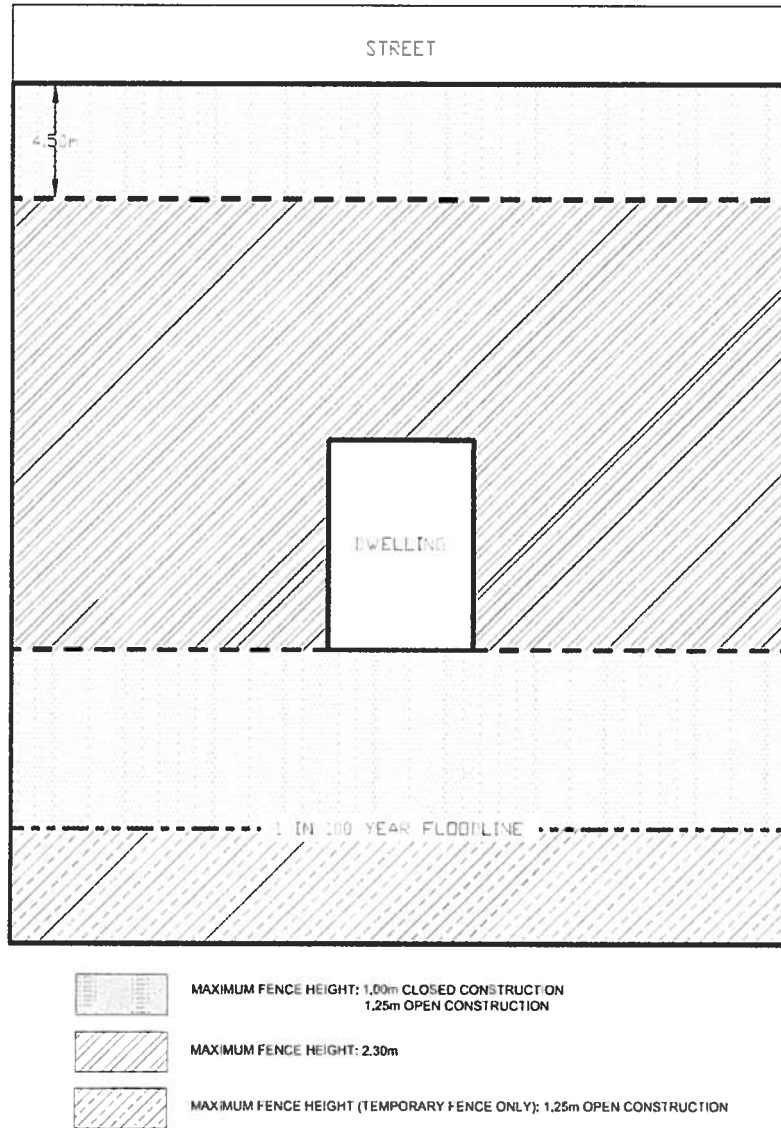
- (vi) Where a Commercial, Industrial, Rural, Agricultural, Public or Urban Entertainment Centre Zone abuts any other zone, the provisions of Section 6.54 (a) (v) of this By-law shall prevail.

(b) Fence Heights along Lake Erie

- (i) No person shall construct or permit to be constructed or maintained between the rear of a dwelling and the 1 in 100 year flood elevation of Lake Erie, as determined by the Niagara Peninsula Conservation Authority:
 - a fence of closed construction of a height greater than 1.0 metre above effective ground level; or
 - a fence of open construction of a height greater than 1.25 metres above effective ground level.

Notwithstanding the foregoing, privacy screens are permitted in accordance with Section 5.55 of this By-law, between the rear of dwellings and the 1 in 100 year flood elevation as determined by the Niagara Peninsula Conservation Authority.

- (ii) No person shall construct or permit to be constructed or maintained below the 1 in 100 year flood elevation of Lake Erie, any fence, except a temporary fence of open construction with a height less than 1.25 metres above effective ground level, as illustrated in the following figure. For the purposes of this section, "temporary" shall mean not to remain between October 1st and April 30th of any year.



(c) Barbed Wire Fences

Except as otherwise provided in this By-law, no person shall construct or permit to be constructed or maintained any fence composed wholly or partly of barbed wire along any street, or on lands located in any zone except any rural or agricultural zone; or in an industrial zone if the fence encloses the property and is a minimum of 2.0 metres in height above effective ground level and does not exceed 2.6 metres above effective ground level.

(d) Restrictions on Fence Materials and Construction

- (i) No person shall construct or permit to be constructed or maintained any fence composed wholly or partially used vehicle tires or sheet metal in any zone.

- (ii) No person shall construct or permit to be constructed or maintained an electric fence, except in an agricultural or rural zone.
- (iii) No person shall erect a fence or privacy screen on property owned by the Town or Regional Municipality of Niagara, including any street, Regional or Town daylighting triangles or on an easement in favour of the Town or Region of Niagara without the express prior written consent of the Town and/or Region of Niagara.

(e) Heights for Privacy Screens

- (i) No person shall construct or permit the construction of a privacy screen in a residential zone unless complying with the following conditions:
 - (i) maximum height: 2.5 metres above effective ground level
 - (ii) maximum length in any yard: 6 metres
 - (iii) maximum combined length: 12 metres
 - (iv) minimum setback from a street line: 9 metres
 - (v) minimum setback from a side lot line: 1 metre
 - (vi) minimum setback from a rear lot line: 1.5 metres.

(f) Fence Height Exemptions


- (i) The provisions of this By-law relating to the height of fences, except the provisions of Section 6.54 (a) (iv) of this By-law, do not 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.
- (ii) The erection of an acoustical barrier shall be exempt from the provisions of this by-law provided it is erected under approval or requirement of an agreement with the Town or as a local improvement.

3. **THAT** pursuant to the provisions of Sections 23.1 to 23.5 inclusive of the *Municipal Act, 2001*, as amended, the Clerk of the Town of Fort Erie is hereby authorized to effect any minor modifications or corrections solely of an administrative, numerical, grammatical, semantical or descriptive nature or kind to this by-law or its schedules as such may be determined to be necessary after the passage of this by-law.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 15th DAY OF JULY, 2013.



MAYOR



CLERK

I, Carolyn J. Kett, the Clerk, of The Corporation of the Town of Fort Erie hereby certifies the foregoing to be a true certified copy of By-law No.69 -2013 of the said Town. Given under my hand and the seal of the said Corporation, this day of _____, 20
