

CORPORATION OF THE MUNICIPALITY OF CHATHAM-KENT

By-law No. 223-2003

BEING A BY-LAW TO PRESCRIBE THE HEIGHT, DESCRIPTION AND MANNER OF BUILDING AND MAINTAINING FENCES.

WHEREAS Section 210 paragraphs 25-30 of the Municipal Act, R.S.O. 1990, c. M.45, as amended, provides that Councils of local municipalities may prescribe the height and description and manner of building and maintaining fences.

AND WHEREAS it is deemed desirable to establish regulations concerning fences for the Municipality of Chatham-Kent

NOW THEREFORE the Council of the Municipality of Chatham-Kent enacts as follows:

Definitions:

1. For the purpose of this by-law:

"Agricultural Lot" means any lot in which the primary use complies with the "Agricultural Use" as defined by the Zoning bylaw.

"Alley" means a public right-of-way that affords a secondary means of access to the abutting lots;

"Building" means any permanent structure used or intended to be used for the shelter, accommodation or enclosure of persons, animals or goods, but does not include a lawful boundary wall or fence;

"Chief Building Official" means the person appointed as such by the Council of the Municipality under Section 3 of the *Building Code Act, 1992*, S.O. 1992, c.23, as amended..

"Corner Lot" means a lot situated at the intersection of and abutting upon two streets, or upon two parts of the same street, the adjacent sides of which street or streets (or, in the case of a curved corner, the tangents of the street extremities of the side lot line) contain an angle of not more than 135 degrees. In the case of a curved corner the corner of the building lot shall be the point on the street line nearest to the point of intersection of the said tangents.

"Fence" means any continuous barrier made of chain, wood, stone, masonry, lattice work, screen or other such material used to enclose or divide in whole or in part a yard or other land or constructed, installed along the perimeter of lands so as to give the inference that the barrier is intended to delineate the boundaries of the lands and also includes a privacy screen as defined in this By-law. Any berm, retaining wall or other such man-made structure upon which a fence is built shall be deemed to be part of the fence. .

"Gate" means any part of a fence that opens on hinges or which is not rigidly fixed in position.

"Ground Level" means the ground level at the fence line, but where the ground levels are not the same on both sides of the fence, the higher of such levels shall be considered as ground level for the purpose of the fence.

"Hedge" means any vegetation, tree, bush or plant growth.

"Height" means the distance measured from the ground level to the top of the said fence or part thereof. In the case of a hedge, the distance from ground level to the top of the growth.

"Hot Tub" means a structure, basin, chamber or tank containing or capable of containing water which;

- has a depth of more than 60 cm (24 in.) at any point;
- is intended to be used for wading or soaking;
- is not intended to be used for swimming; and
- is equipped with a lockable cover.

"Locking Device" a device used to secure a door, gate or cover.

"Lot Line" means any boundary of a lot.

"Municipality" means the Corporation of the Municipality of Chatham-Kent.

"Non-Residential Lot" means any lot not zoned residential in the Zoning By-law and includes but is not restricted to Industrial Zones, Commercial Zones, Institutional Zones, Open Space Zones and Environmental Zones.

"Outdoor Swimming Pool" means a structure, basin, chamber, or tank containing or capable of containing water and is designed to be used for swimming or wading and which;

- has a depth of more than 60 cm (24 in.) at any point;
- has a surface area of more than 1.0 sq. m (10.8 sq. ft.);
- is not completely inside a building; and

- is not owned by government or a local board or commission constituted under any By-law or statute;

A pond or reservoir to be utilized for farming purposes and storm water management ponds shall be deemed not to be an “Outdoor Swimming Pool” for the purposes of this by-law.

The words “Swimming pool” and “pool” shall have a corresponding meaning.

“Privacy Screen” means a visual barrier used to shield any part of a yard from view from any adjacent yard, parcel or highway.

“Residential Lot” means any lot in which the primary use complies with the “Residential Use” as defined by the Zoning bylaw.

“Salvage Yard” means any land or structure used for the storage of used motor vehicles, farm machinery, metal, plastic, vinyl and household appliances, in whole or in part for the purpose of wrecking or dismantling them or salvaging parts thereof for sale or other off-site disposal.

“Self-Closing Device” means a mechanical device or spring that returns a gate to a closed position within 30 seconds after it has been left open.

“Self-Latching Device” means a mechanical device or latch that is engaged each time the gate it secures is closed; a self-latching device must not allow the gate to be reopened by pushing or pulling on the gate, it must remain fastened until unlatched.

“Visibility Triangle” means a triangular area formed within a lot by

- (a) intersecting streets and a straight line connecting them 7.6 m (25 ft.) from their point of intersection; or
- (b) the intersection of a street and any portion of a driveway within 7.6 m (25 ft.) of a property line and a straight line connecting them 7.6 m (25 ft.) from their point of intersection.
- (c) the intersection of an alley and a street, or two alleys and a straight line connecting them 3.0 m (10 ft.) from their point of intersection.

“Yard, Front” means a yard extending across the full width of the lot between the front lot line of the lot and the nearest part of the main building on the lot. Where adjacent residential lots have differing building lines, the main building closest to the front lot line shall apply. Where a lot is a corner lot, the shortest line abutting the street is the front lot line.

“Yard, Rear” means a yard extending across the full width of the lot between the rear lot line of the lot and the nearest part of the main building on the lot.

“Yard, Side” means a yard extending from the front yard to the rear yard and from the side lot line of the lot to the nearest part of the main building on the lot.

“Yard, Side, Exterior” means a side yard immediately adjoining a public street.

“Yard, Side, Interior” means a side yard other than an exterior side yard.

“Zone” means an area delineated on a Map Schedule of the Zoning By-law.

“Zoning By-law” means any By-law administered by the Municipality that was passed pursuant to section 34 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended.

2. No person shall erect, construct, maintain, cause or permit to be erected, constructed or maintained, any fence that does not comply with the provisions of this By-law, unless such fence was erected in compliance with a predecessor of this bylaw and has not been moved, altered or enlarged in any way.
3. No person shall, without having authority to do so, erect, construct or maintain or cause or permit to be erected, constructed or maintained, in or upon any street, alley or highway any fence, pole, post, pillar or wire or other such construction.

Fences on Residential Lots

4. No person shall erect, construct or cause or permit to be erected or constructed, a fence on a residential lot except in accordance with the following:
 - (1) A fence within any front yard shall not exceed a height of 76 cm (30 in.).
 - (2) A fence within any rear yard or side yard shall not exceed a height of 2.1 m (7 ft.).
 - (3) No fence or hedge exceeding a height of .76 m (30 in.) shall be erected within any visibility triangle.
 - (4) Notwithstanding subsection 4(1) herein, where a front yard abuts a rear yard of an adjacent corner lot, a fence not exceeding a height of 2.1 m (7 ft.) may be erected along that portion of the lot line between said lots provided, however, that the restrictions in subsection 4(3) with respect to visibility triangles must be complied with.

Fences on Non-Residential or Non-Agricultural Lots

5. No person shall erect, construct or cause or permit to be erected or constructed, a fence on a lot that is not a Residential or an Agricultural lot except in accordance with the following regulations:
- (1) A fence within any front, rear or side yard shall not exceed a height of 3.0 m (10 ft.).
 - (2) A fence to enclose a front yard shall be set back from the front lot line a minimum of 4.6 m (15 ft.)
 - (3) No fence or hedge exceeding a height of .76 m (30 in.) shall be located in any visibility triangle.
 - (4) No fence exceeding a height of 2.1 m (7 ft.) shall be located within any front, rear or side yard that abuts a residential lot.

Fences on Agricultural Lots

6. No person shall erect, construct or cause or permit to be erected or constructed, a fence on an Agricultural lot except in accordance with the following regulations:
- (1) A fence within any front, rear or side yard shall not exceed a height of 2.1 m (7 ft.).
 - (2) No fence or hedge exceeding a height of .76 (30 in.) shall be erected in any visibility triangle.
 - (3) Notwithstanding 6(1) herein, where a front yard abuts the rear yard of an adjacent corner lot, a fence not exceeding a height of 2.1 m (7 ft.) may be erected along that portion of the lot line between said lots provided, however, that the restrictions in subsection 6(2) with respect to visibility triangles must be complied with.

Fencing of Outdoor Swimming Pools

7. (1) Notwithstanding any other provision of this By-law, no person shall construct or maintain an outdoor swimming pool unless the pool is fenced or enclosed in accordance with the provisions of this section.
- (2) No person shall erect, construct or cause or permit to be erected or constructed any fence to enclose an outdoor swimming pool, except in accordance with the following provisions:
- (a) A fence constructed under this section shall be not less than 1.5 m (5 ft.) in height.
 - (b) A chain link fence shall be constructed of not lighter than 11 gauge standard 3.8 cm (1.5 in) mesh supported by top and bottom rails firmly fastened to the upright posts. Fences of wood construction shall have vertical boarding spaced not more than 3.8 cm (1.5 in.) apart and attached to a top and bottom rail in such a manner so as not to facilitate climbing from the outside. Other materials and construction of an equivalent degree of strength and safety may be used. Fence designs with horizontal members that facilitate climbing are not permitted.
 - (c) The clearance between the ground level and the lower fence limit shall not exceed 10.0 cm (4 in.).
 - (d) The fence shall be adequately supported top and bottom so as to restrict unauthorized entry.
 - (e) The fence shall have a gate or gates of similar materials and height as the fence. Such gate or gates shall be equipped with a self-closing device and self-latching device placed at the top and inside of the gate. Such gate or gates shall be erected and maintained so that no access to the swimming pool may be made except through the gate or gates provided.
 - (f) Nothing in this By-law shall prevent the use of an existing or proposed wall or walls of a structure located on the same property as one or more sides of the fence. Provided however that such wall or walls shall be of equal or greater strength and height than the required fence.
 - (g) The fence shall not be located within a visibility triangle.
- (3) When an adult person is not present outdoors in the area of the swimming pool, supervising such pool, every owner of an outdoor swimming pool shall ensure that the gate or gates are closed and locked.
- (4) Every owner of an outdoor swimming pool shall, prior to the initial filling of such pool with water, have the fence surrounding the pool inspected by the Chief Building Official or his/her designate.
- (5) The provisions of this section shall not apply to:
- (a) A fence that was erected in compliance with a predecessor of this By-law provided that the said fence has not been moved, altered or enlarged.
 - (b) A structure known as a "hot tub" provided that it may be adequately secured by a cover equipped with a locking device, and that such cover is closed and locked in place over the "hot tub" if the "hot tub" is not in use.

Existing Outdoor Swimming Pools

8. (1) The Building Inspector, when made aware of an unfenced swimming pool, shall give notice to the affected property owner that a fence be installed in compliance with the provisions of this By-law within a reasonable length of time.
- (2) The provisions of this By-law shall not apply to existing outdoor swimming pools legally installed prior to the passing of this By-law

Fencing of Salvage Yards

9. (1) Notwithstanding any other provision of this By-law, no person shall establish, operate or maintain or cause or permit the establishment, operation or maintenance of a salvage yard unless the land on which the salvage yard is located is fenced.
- (2) No person shall erect or construct or cause or permit to be erected or constructed, a fence on a lot used as a salvage yard except in accordance with the following provisions:
 - (a) Except as provided in clause (c) of this subsection, a fence within any front, rear or side yard shall be not less than 3.0 m (10 ft.) and not greater than 4.6 m (15 ft.).
 - (b) A fence to enclose a front yard shall be set back from the front lot line a minimum of 4.6 m (15 ft.).
 - (c) Notwithstanding clauses (a) and (d) of this subsection, no fence exceeding a height of 76cm (30 in.) shall be erected in any visibility triangle.
 - (d) Except as provided in clause (c) of this subsection, a fence in any yard shall be of consistent height and material and shall be fully screened.

Fencing of Manure Storage Tanks/Pits

10. (1) Notwithstanding any other provision of this By-law, no person shall construct or maintain a manure storage tank/pit unless the tank/pit is effectively fenced or enclosed.
- (2) No person shall erect, construct or cause or permit to be erected or constructed, a fence enclosing a manure storage tank/pit except in accordance with the following provisions:
 - (a) A fence shall be constructed to a total height of not less than 2.1 m (7 ft.) above the surrounding grade level.
 - (b) The fence shall be adequately supported top and bottom so as to restrict unauthorized entry.

Barbed Wire Fences

11. (1) No person shall erect or construct or cause or permit to be erected or constructed, a fence composed wholly, or in part, of barbed wire or any other barbed material except in accordance with the following regulations:
 - (a) Barbed wire is permitted in a non-residential zone on the top of a fence, provided it projects inwards to the area enclosed by the fence. The height of the said fence shall be not less than 2.1 (7 ft) prior to the addition of the barbed wire, provided further, however, that this shall not be construed to prohibit a barbed wire fence enclosing land assessed for farm purposes.
 - (b) Barbed tape shall be permitted on the top of a fence erected on a non-residential lot, provided that the fence height is not less than 2.1 m (7 ft.) prior to the addition of the barbed tape.

Electric Fences

12. No person shall erect or construct or cause or permit to be erected or constructed any fence equipped with a device for transmitting an electric current on or through a fence except in accordance with the following provisions:
 - (1) Electric fences are only permitted in areas zoned Agricultural by the applicable Zoning By-law;
 - (2) Notwithstanding subsection 12(1), electric fences shall not be permitted on residential lots.
 - (3) An electric fence shall have permanent signs, identifying the presence of electrical current, affixed to it. Such signs shall be clearly visible at a distance of 7.6 m (25 ft.);
 - (4) No electric fence shall be located adjacent to any residential lot.

Privacy Screens

13. Notwithstanding Sections 1 and 4 of this By-law, no person shall construct or use a privacy screen in any front yard of a residential lot. Compact evergreen hedges and other similar organic barrier are permitted, but remain subject to the height limitations as specified in Section 4 of this By-law.

Minor Variance

14. (1) The staff appointed Committee of Adjustment of the Municipality is hereby appointed a Standing Committee of the Council for the purpose of enquiring into and reporting on any applications for minor variances from the provisions of this By-law.
(2) The Committee may recommend that any application be refused or that such relief as it considers appropriate to be granted either absolutely or subject to conditions.
(3) The Committee is directed to follow its usual procedure on such application, as may be practical.
(4) The Clerk shall place all reports made by the Committee of Adjustment under this section before the Council for approval.
(5) The Council's usual rules respecting delegations will apply to persons desiring to make representations in support of or against a Committee of Adjustment recommendation made under this section.
15. This By-law shall be enforced by the Chief Building Official.
16. Every person who contravenes any provision of this By-law is guilty of an offence and is liable, upon conviction to a fine not exceeding five thousand dollars (\$5000.00) exclusive of costs for each offence recoverable under the *Provincial Offences Act*, R. S.O. 1990, c. P.33, as amended.
17. It is hereby declared that each and every part of the foregoing provisions of this By-law are severable. If any provision of this By-law should for any reason be declared invalid by any Court, it is the intention and desire of this Council that each and every one of the then remaining provisions herein shall remain in full force and effect.

Repeals

18. The following by-laws are hereby repealed.

Town of Blenheim By-law No. 21.92
Town of Blenheim By-law No.1659
Town of Bothwell Bylaw No. 295-75
Township of Camden By-law No. 7-77
Township of Chatham By-law No. 76-79
Township of Chatham By-law No. 89-52
City of Chatham By-law No. 10221
City of Chatham Bylaw No. 9572
Township of Dover Bylaw No. 96-33
Township of Dover By-law No. 94-58
Town of Dresden By-law No. 1062
Town of Dresden By-law No. 1196 Section 6.14, 6.25(a)(iii)
Village of Erie Beach By-law No. 1997-16
Village of Erieau By-law No. 586 Section 3.5.1, 3.5.2
Township of Harwich By-law No. G-129/88
Township of Harwich By-law No. G-114/92
Township of Raleigh By-law No. G-5295-90
Town of Ridgetown By-law No. 81-18
Village of Thamesville By-law No. 833-76
Town of Tilbury By-law No. 2260-96
Town of Tilbury By-law No. 2259-96
Township of Tilbury East By-law No. 2470-86. Section 3.21(v)
Town of Wallaceburg By-law No. 92-26
Town of Wallaceburg By-law No. 92-27
Village of Wheatley By-law No.964

This By-law shall come into full force and effect on the final passing thereof.

READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED this 2nd day of September, 2003.

SIGNED

Mayor – Diane Gagner

SIGNED

Deputy Clerk