

THE CORPORATION OF THE VILLAGE OF WESTPORT

BY-LAW No. 2020-16

BEING A BY-LAW TO PROVIDE UNIFORM STANDARDS FOR THE CONSTRUCTION OF FENCES WITHIN THE VILLAGE OF WESTPORT

WHEREAS Section 11(3)7 of the Municipal Act, 2001, S.O. 2001 c. 25, as amended, provides that a municipality may pass by-laws respecting structures, including fences and signs;

AND WHEREAS Section 9 of the Municipal Act, 2001, S.O. 2001, c. 25 as amended, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS Section 8 of the Municipal Act, 2001, provides that the powers of a municipality as granted by the Act or any other Act shall be interpreted broadly so as to (a) enable the municipality to govern its affairs as it considers appropriate and, (b) enhance the municipalities ability to respond to municipal issues;

AND WHEREAS Sections 425 (1) of the Municipal Act authorizes a municipality to pass by laws providing that a person who contravenes a by-law passed under this act is guilty of an offence;

AND WHEREAS the Council of the Corporation of the Village of Westport deems it necessary to regulate the building and maintenance of fence structures within the Village of Westport;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE VILLAGE OF WESTPORT HEREBY ENACTS AS FOLLOWS:

1.0 SHORT TITLE

This By-law may be cited as the "Fence By-law".

2.0 DEFINITIONS

"building" means a structure occupying an area consisting of a wall, roof and floor or any of them or a structural system serving the function thereof.

"Chief Building Official" shall mean the Chief Building Official as appointed, on behalf of the Village of Westport, and his or her designate.

"corner lot" means a lot situated at the intersection of two or more streets provided that the angle of intersection of such streets is not more than 135 degrees.

"driveway" means that portion of a lot exclusively used for the parking of motor vehicles and includes, without limiting the foregoing, the entrances, the parking and queuing aisles, the parking spaces, delivery and loading spaces, but shall not include any part of a street, highway or private road.

"driveway visibility triangle" means a triangular area formed by the intersection of the lateral limit of the travelled portion of a driveway and the street, lane or sidewalk, whichever is closest to the lateral limit of the driveway, or the projections thereof, and a straight line connecting them 3.0 metres (9.8 feet) from their point of intersection along a rear, side or exterior lot line.

"erect" means to build, construct, reconstruct, alter or relocate.

"exterior side yard" means the yard of a lot located between a front yard and a rear yard commencing at an exterior side lot line and extending to the building and is adjacent to a street.

"fence" means a barrier erected or grown dividing two or more lot lines, which marks or substantially marks the boundary of a property and includes any hedge or grouping of shrubs used for the same purpose.

"fence-viewer" means a fence-viewer appointed by the Council of the Corporation of the Village of Westport pursuant to the Line Fences Act, R.S.O. 1990, c. L. 17.

"front yard" means a yard extending across the full width of the lot between the front lot line and the nearest wall of the building on the lot, or a distance of 4.5 metres (14.8 feet) from the front lot line toward the main building on the lot, whichever is the greater distance.

"ground level" means the level of the grade adjacent to the fence excluding any gardens, flower planters or built up landscaping to allow the fence to be higher than regulated under this by-law.

"hedge" means a fence formed by a row of closely planted shrubs or bushes.

"height" means the distance measured from the effective ground level where the fence posts are embedded to the top of the said fence or posts, provided that where a fence is located on top of a retaining wall, "height" means the vertical distance measured between the top of the retaining wall and the highest point of the fence or posts.

"legal non-conforming" means a fence that is not recognized in this By-law but which lawfully existed on the day the previous Fence By-law was passed (March 29, 1993).

"lot line" means the line marking the legal boundary of a lot.

"Officer" means a Municipal Law Enforcement Officer appointed by the VILLAGE as a Municipal Law Enforcement Officer pursuant to S. 15 of the Police Services Act, R.S.O. 1990, c. P. 15, as amended, or an Ontario Provincial Police Officer.

"Owner" means the registered owner of a property, a lessee, tenant, mortgage in possession, or person otherwise in charge of any property, acting as the authorized agent of the owner.

"Person" means an individual, firm, corporation, association or partnership.

"pool" means a privately owned outdoor swimming pool which includes any body of water or pool located outdoors on privately owned property contained in part or in whole by artificial means and used or intended for swimming, diving or bathing, but does not include:

- i. a pond used for decorative, landscape, agriculture or storm water management purposes; and
- ii. a body of water or pool that is less than 0.4m (18 in.) in height or depth, or a combination thereof.

"rear yard" means a yard extending across the full width of a lot between the rear lot line and the nearest wall of any main building or structure on the lot.

"**setback**" means the distance between the lot line and the nearest main wall of any building and extending the full width or length of the lot.

"**side yard**" means a yard extending from the front yard to the rear yard of a lot between a side lot line and the nearest wall of any building or structure on the lot.

"**sight triangle**" means a triangular area formed within a corner lot by the intersecting lot lines abutting the streets or the projections thereof and a straight line connecting them of no less than 6.0 metres (19.69 feet) from their point of intersection.

"**Village**" means the Corporation of the Village of Westport.

"**Zoning By-law**" means any by-law administered by the Village passed pursuant to section 34 of the *Planning Act*, R.S.O. 1990, c.P.13, or a predecessor or successor thereof, as may be amended from time to time.

3.0 GENERAL PROVISIONS

3.1 The provisions of this by-law apply to all lands within the Village of Westport.

3.2 All fences shall be maintained in a good state of repair and in a safe condition.

4.0 RESIDENTIAL FENCE

4.1 No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained a fence on a lot used for residential purposes except in accordance with the following regulations:

- a) A fence erected within a rear or side yard shall not exceed a height of 2.13 metres (7 feet).
- b) A fence erected within a driveway visibility triangle shall not exceed a height of:
 - i) 2.13 metres (7 feet) when the fence is located along the inner boundary of the driveway visibility triangle; or
 - ii) 1.0 metres (3.3 feet) when the fence is located along the outer boundaries of the driveway visibility triangle.
- c) A fence erected within a front yard or exterior side yard shall not exceed a height of 1.0 metres (3.3 feet).
- d) A fence erected along a front yard or exterior side yard adjacent to a street shall be set back from the lot line a minimum of 1.0 metres (3.3 feet)

5.0 NON-RESIDENTIAL FENCE

5.1 Notwithstanding any other provision herein, a person may have, erect, construct, maintain or permit to be erected, constructed or maintained a fence to enclose land used as a salvage yard, or for commercial or industrial purposes as defined in the Zoning By-law provided that such fence:

- a) Does not exceed a height of 3.0 metres (9.8 feet) in any side yard or rear yard;
- b) maintain a minimum setback of 7.6 metres (25 feet) from the front lot line not exceeding a height of 1.0 metres (3.3 feet).

6.0 POOLS

6.1 Fences around pools shall comply with the Village's Pool By-law. In the case of any conflict, the more restrictive requirements shall apply.

7.0 RESTRICTED FENCING MATERIALS

7.1 No person shall have, erect, construct, maintain, or permit to be erected, constructed or maintained any fence comprised of sheet metal or corrugated metal or any material of a nature which could be injurious to the public in the construction or use of a fence.

7.2 Barbed Wire

7.2.1 No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained any barbed wire fence, except that barbed wire is permitted:

- a) on a fence erected on land used for agricultural purposes for the keeping of livestock;
- b) on the top of a fence erected on a lot used for commercial or industrial uses provided that it projects inwards to the area enclosed by the fence; or
- c) on the top of a fence erected for security reasons around any facility owned, operated or maintained by any level of government or a utility provider.

7.3 Electric Fences

7.3.1 No person shall have, erect, construct, maintain or permit to be erected, constructed or maintained any fence equipped with a device for transmitting an electric current thereon or there through, except on agricultural land used for the purpose of keeping livestock provided that the maximum electrical current does not exceed 120 volts at .04 amps and complies with all other applicable legislation, or approved invisible fencing running under the ground used for the purpose to contain household pets.

7.4 Non-Metallic Materials

All non-metallic materials used in the erection of a fence shall be of durable and rigid fence building substances (in accordance with this by-law) that shall withstand damage caused by wind, rain and sun.

8.0 LEGAL NON-CONFORMING FENCE

8.1.1 Restoration to a Safe Condition

Nothing in this By-law shall prevent the alteration, strengthening, or restoration of any legal non-conforming fence to a safe condition provided that:

- a) major alterations, including the length or height of the fence, repairs or replacement of any portion of the fence is not required.

8.1.2 Reconstruction of Damaged Fence

Nothing in this By-law shall prevent the reconstruction of any legal non-conforming fence damaged by forces beyond the control of the owner provided that: b) the fence shall only be reconstructed to the extent of its pre-damaged state; and c) the fence shall only be reconstructed to the extent of its pre-damaged dimensions and height.

9.0 EXEMPTIONS

9.1 Agreements

- 9.1.1** Notwithstanding any other provision herein, a fence which is constructed as required in a registered agreement or agreements entered into with The Corporation of the Village of Westport pursuant to Sections 41 or 51 of the *Planning Act*, as amended, or any plans approved by the Village in accordance with those sections shall be deemed not to contravene the provisions of this by-law.

9.2 Vegetation

- 9.2.1** Large hedges or a line of trees acting as a barrier or fence within a side yard or rear yard that do not cause any visual obstruction to persons or vehicles while entering or exiting a driveway or travelling along a street, lane or sidewalk shall be exempt from the provisions of this by-law.

9.3 Acoustic / Noise Fence

- 9.3.1** Acoustic and noise fencing is exempt from the provisions of this by-law, as long as the fence is not causing a visual obstruction to persons or vehicles while entering or exiting a driveway or travelling along a street, lane or sidewalk.

10.0 FENCE VARIANCE

- 10.1** A variance may be authorized by the Chief Building Official, if in the Chief Building Official's opinion, the fence is not causing a visual obstruction to persons or vehicles while entering or exiting a driveway or travelling along a street, lane or sidewalk.
- 10.2** Any application to vary from this By-law shall be made by completing and submitting:
- a. the application form prescribed by the Chief Building Official;
 - b. the applicable drawings, plans or specifications for the proposed fence; and
 - c. the applicable application fee as set out in the Fees and Service Charges By law.
- 10.3** In considering the application for a variance, the Chief Building Official shall have regard for:
- a. whether there are any special circumstances or conditions applying to the property or building(s) on or surrounding the property;
 - b. whether such special circumstances or conditions are pre-existing; and
 - c. whether the fence that is subject of the variance application will cause any safety hazards to the proposed location or cause a visual obstruction to persons or vehicles while entering or exiting a driveway or travelling along a street, lane or sidewalk.
- 10.4** The Chief Building Official shall keep a record with respect to the justification for any variance approval or denial. The Chief Building Official's decision shall be final.

11.0 LINE FENCES ACT

- 11.1** Any awards provided by fence-viewers shall comply with the provisions of this by-law with respect to the construction, reconstruction or repair and location of a fence.

12.0 ENFORCEMENT

12.1 The provisions of this By-law shall be enforced by a Municipal Law Enforcement Officer or a Police Officer.

13.0 PENALTY

13.1 Every person who contravenes any of the provisions of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for in the Municipal Act, 2001, S.O. 2001 c. 25, as amended and/or the Provincial Offences Act, R.S.O. 1990, c.P.33.

14.0 VALIDITY, SEVERABILITY AND INTERPRETATION

14.1 Should a court of competent jurisdiction declare a part or whole of any provision of this By-law to be invalid or of no force and effect, the provision or part is deemed severable from this By-law, and it is the intention of Council that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under law.

14.2 Whenever any reference is made in this By-law to a statute or regulation of the Province of Ontario, such reference shall be deemed to include all subsequent amendments to such statute or regulation and all successor legislation to such legislation.

14.3 Words importing the singular number shall include the plural, and words importing the masculine gender shall include the feminine, and the converse of the foregoing also applies, unless the context of the By-law otherwise requires.

15.0 EXISTING BY-LAW REPEAL

15.1 That all previous By-laws, Resolutions, Motions or Actions of Council that are in contravention of this By-law are hereby repealed

16.0 ENACTMENT

16.1 THAT this by-law shall come into full force and effect on the date of final passage hereof at which time all by-laws that are inconsistent with the provisions of this by law and the same are hereby amended insofar as it is necessary to give effect to the provisions of this by-law.

ENACTED AND PASSED this 7th day of April 2020.

MAYOR

CLERK

SCHEDULE A TO BY-LAW NO. 2020- ____

FENCES-RESIDENTIAL LOTS



