

THE CORPORATION OF THE TOWNSHIP OF WELLESLEY

BY-LAW NUMBER 53/2017

**A BY-LAW TO REGULATE HEIGHT AND DESCRIPTION OF FENCES AND
TO REPEAL BY-LAW 30/2012
FOR
THE TOWNSHIP OF WELLESLEY**

WHEREAS pursuant to section 9 of the *Municipal Act, 2001 S.O.2001*, chapter 25, (the Act) as amended, 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 pursuant to section 8.(1) of the Act, as amended, sections 9 and 11 shall be interpreted broadly so as to confer broad authority on municipalities (a) to enable them to govern their affairs as they consider appropriate; and (b) to enhance their ability to respond to municipal issues;

AND WHEREAS pursuant to section 11.(2) of the Act as amended, a lower-tier municipality has the authority to pass By-laws respecting the health, safety and well-being of persons;

AND WHEREAS pursuant to section 11.(3) of the Act, as amended, a lower-tier municipality has the authority to pass By-laws respecting structures, including fences and signs;

AND WHEREAS pursuant to section 436 of the Act, as amended, a municipality has the power to pass By-laws providing that the municipality may enter on land at any reasonable time for the purpose of carrying out an inspection to determine compliance of a By-law of the municipality passed under this Act;

AND WHEREAS pursuant to section 438 of the Act, as amended, a municipality has the power to pass By-laws providing that the municipality may, in the circumstances set out in the by- laws, undertake inspections pursuant to orders under section 438 of the Act;

AND WHEREAS the *Municipal Act, 2001*, S.O. 2001, c.25, ss 23.1 authorizes a municipality to delegate powers and duties to a person or body;

AND WHEREAS the Council of the Corporation of the Township of Wellesley deems it necessary to regulate fences within the Municipality;

NOW THEREFORE, the Council of the Corporation of the Township of Wellesley ENACTS AS FOLLOWS:

1. Short Title:

1.1. The short title of this By-law shall be cited as the “Fence By-law” for the Corporation of the Township of Wellesley.

2. Definitions:

2.1 Non-defined terms

Definitions of words and phrases used in this By-law that are not included in the list of definitions shall have the meanings which are commonly assigned to them in the context in which they are used in this By-law taking into account the specialized use of terms with the various trades and professions to which the terminology applies.

- 2.2. “Chief Building Official” means a person appointed by Council to the position of Chief Building Official of the Township in accordance with s.3(2) of the Building Code Act, 1992, S.O. 1992 c. 23, as amended (the “Building Code Act, 1992”), or his or her designate;
- 2.3. “Corner Daylight Triangle” means the triangle area formed by measuring 6.0 m (20 feet) in each direction at the property lines from the point where two property lines intersect at the street property line corner and as illustrated in Schedule “A” to this By-law;
- 2.4. “Council” means the Council of the Township of Wellesley;
- 2.5. “Driveway Daylight Triangle” means the triangular area formed by measuring 4.0m (13 feet) down the driveway at the property line and 4.0m (13 feet) down the side property line abutting a street and as illustrated in Schedule “A” to this By-law;
- 2.6. “Erect” shall include alter, construct, plant, place, relocate and any work preparatory to *erection*, and “*erection*” has a corresponding meaning;
- 2.7. “Exterior Side Yard (flankage)” means the space, extended to the rear lot line, between the longer lot line abutting a public highway and the nearest wall of the main building or the building line on a corner lot;
- 2.8. “Farm Fence” means any fence erected in an agricultural zone as defined by the applicable zoning By-law;
- 2.9. “Fence” means any structure (including a gate or door), except a structural part of a building, used to wholly or partially screen from view, enclose or divide a yard or other land, or mark or substantially mark the boundary between adjoining land;
- 2.10. “Front Yard” means a yard extending across the full width of the lot between the front lot line of the lot and the nearest main wall of any main building or structure on the lot;
- 2.11. “Height” means the vertical distance above grade or, if another reference point acceptable by the Township is specified, vertical distance above the other reference point;
- 2.12. “Law Enforcement Officer” means a municipal law enforcement officer of the Township appointed by Council pursuant to s. 15 of the Police Services Act, R.S.O. 1990, c P15, as amended;
- 2.13. “Owner” when used in relation to a swimming pool or swimming pool enclosure shall mean the owner of the property or any person having care and control of the property upon which the pool is located;
- 2.14. “Permit” or “Pool Enclosure Permit” means written permission or written authorization from the Chief Building Official to perform work regulated by this By-law;
- 2.15. “Rear Yard” means a yard extending across the full width of the lot between the rear lot line of the lot and the nearest main wall of any main building or structure on the lot;
- 2.16. “Side Yard” means a yard extending from the front yard to the rear yard and from the side lot line of the lot to the nearest main wall of any building or structure on the lot;
- 2.17. “Swimming Pool” means any outdoor structure, object or thing located on privately owned property that is intended to be used for swimming, wading, diving, bathing or soaking (as in a hot tub) and includes the area enclosed by a fence;
- 2.18. “Swimming pool enclosure” shall mean a fence or wall or combination thereof including any doors or gates surrounding a swimming pool;
- 2.19. “Township” means the Township of Wellesley.

3. General Provisions (In Any Residential Zone defined by Township Zoning By-law)

3.1. Height & Location

- a) no part of any fence shall exceed 2.03 metres in height in a side or rear yard;
- b) no part of any fence shall be erected, nor any shrubs or foliage be planted or maintained that exceed 0.8 metres in height in a driveway daylight triangle or in a corner daylight triangle and as illustrated in Schedule "A" to this By-law;
- c) no private fence shall be located on Township or Public lands;
- d) no private fence shall be located within 1.0 metre of any fire hydrant; and
- e) no part of any fence located in a front yard shall exceed 0.8 metres.

3.2. Type

- a) no fence shall be made of materials such as barbed wire or sharp metal protruding objects;
- b) no fence shall be an electric fence;
- c) no snow fencing shall be used as a permanent fence; and
- d) all fences shall have a surface that is painted, stained, varnished or protected with a similar; protective finish, unless the material itself possess characteristics that offer protection against deterioration such as but not limited to cedar, plastic or chain link galvanized metal.

4. Swimming Pool – Permits

- (a) Every owner who wishes to construct or erect a swimming pool shall submit to the Chief Building Official plans showing details of the proposed swimming pool enclosure;
- (b) The plans shall be reviewed by the Chief Building Official who can refuse to issue a permit where the erection of the swimming pool enclosure would be contrary to the provisions of any Township By-law or applicable law;
- (c) Upon being satisfied that the plan meets the requirements of Township By-laws and other applicable legislation and upon receipt of the permit fee as set out in the Township of Wellesley Fees and Charges By-law, as amended, the Chief Building Official shall prepare and issue a permit certifying approval of the swimming pool enclosure plan.

5. Upon completion of the swimming pool enclosure the owner shall contact the Township to request a final inspection. If, upon inspection, the swimming pool enclosure is found to be in compliance with the provisions of this By-law, the owner shall be issued a Certificate of Approval, as set out in Schedule 'C', forming part of this By-law.

6. A permit is not required in the case of a swimming pool which has been dismantled and is being reconstructed in the exact same manner and in the exact same position, provided a permit was obtained for the original swimming pool enclosure and provided that the enclosure is not being altered in any way.

7. Fencing of Privately-Owned Swimming Pools

7.1. No person shall construct or maintain any privately-owned swimming pool unless the pool or the land on which such pool is located is fenced or enclosed in accordance with the following provisions:

- a) all swimming pools capable of holding a water depth equal to or greater than 0.8 metres require a fence and building permit;

- b) all swimming pool fences shall have a minimum height of 1.52 metres and shall not exceed 2.03 metres;
- c) where the swimming pool fence is chain link, the diamond mesh shall not have any openings greater than 3.8 centimetres;
- d) all swimming pool fences and closed gates shall have not openings greater than 10 centimetres;
- e) all swimming pool fences shall be constructed so that the only means of entry is by gates or doors of not less than 1.52 metres in height and such gate or door is capable of being locked;
- f) all swimming pool gates must be self-closing and self-latching with the latch device at the top and on the inside of the gate and locked at all times unless under competent supervision;
- g) all swimming pool fences shall not permit access through an unlocked access or by jumping, climbing or crawling;
- h) a dwelling, building or accessory building, or part thereof, may be used to enclose a pool;
- i) in the case of an above ground pool where the walls and or guards of the pool satisfy all of the requirements otherwise required for fences which enclose swimming pools including no related climbing devices (i.e. step, ladder), no other fence is required.

8. Hot Tubs

- a) all Hot Tubs shall be fitted with a tight fitted cover, with a working locking device or be protected with a minimum 1.52 metres high fence or enclosure; and
- b) if required by 8.a), all Hot Tub fences shall be constructed so that the only means of entry is by gates or doors of not less than 1.52 metres in height and such gate or door is capable of being locked.

9. Other

- 9.1. Notwithstanding any other provisions of this By-law, nothing shall prevent the construction and maintenance of farm fences in an agricultural zone or open space zone as defined by the Township Zoning By-law.
- 9.2. The use of any device for projecting electric current through or in conjunction with a fence is prohibited except on farm fences in an agricultural zone as defined by the Township Zoning By-law.
- 9.3. The provisions of this By-law shall not apply to the erection of fences for public safety by the Corporation of the Township of Wellesley or any local boards thereof, any utilities commission, including but not limited to Bell Telephone, Union Gas and Waterloo North Hydro, all Boards of Education, The Regional Municipality of Waterloo and all agents of the Crown, the Provincial and Federal Government.

10. Fence Variance Committee

- 10.1. The Township hereby establishes a Fence Variance Committee for the purpose of granting minor variances from the provisions of this By-law on application by owners.
- 10.2. The Fence Variance Committee shall consist of the members appointed by By-law to sit as the Committee of Adjustment, as amended from time to time. The term of office shall run concurrently with Council's term of office which is from December 1 of an election year until November 30 of the following election year.

- 10.3. The owner of the property, or authorized agent of the owner, may make an application to the Fence Variance Committee for a minor variance from the provisions of this By-law. Such application shall be accompanied by the fee set out in the Township of Wellesley Schedule “D” of this By-law.
- 10.4. The Fence Variance Committee shall, as much as is practical in the circumstances, adhere to Council’s procedural rules for delegations in respect of persons desiring to make representations in support of or against a minor variance application.
- 10.5. The Fence Variance Committee may grant or refuse any application for a minor variance as the case may be and that such relief as it considers appropriate be granted either absolutely or subject to conditions.
- 10.6. The decision of the Fence Variance Committee is final and binding.

11. Offence

- 11.1. Every person who contravenes any provision of this By-law is guilty of an offence.

12. Penalty

- 12.1. Every person who contravenes any provision of this By-law is guilty of an offence and upon conviction is liable to a penalty subject to the provision of the *Provincial Offences Act* and such penalty shall be recoverable pursuant to the *Provincial Offences Act*.
- 12.2. If a person fails to do a matter or thing, including comply with an order under this By-law, as directed or required by this By-law, the Township may, in default of it being done by the person directed or required to do it, do the matter or thing at the person’s expense. The Township may recover the costs of doing a matter or thing from the person directed or required to do it by action or by adding the costs to the tax roll and collecting them in the same manner as municipal taxes.
- 12.3. The costs referred to above shall include interest calculated at a rate of 15 per cent, calculated for the period commencing on the day the Township incurs the costs and ending on the day the costs, including the interest, are paid in full.

13. Enforcement

- 13.1. The Municipal Law Enforcement Officer shall be responsible for the Enforcement of this By-law except whereas otherwise specified in this By-law.
- 13.2. The Chief Building Official shall be responsible for the administration and enforcement of Section 2.5 of this By-law.

14. Inspection

- 14.1. The Township, by its employees or agents, may enter on land at any reasonable time to conduct an inspection or inspections pursuant to Section 436 of the Municipal Act, 2001 to determine whether or not this By-law has been complied with.

15. Schedules

- 15.1. Schedules “A” ,“B” and “C” form part of this By-law.

16. Severability

- 16.1. If any Section or Sections of this By-law or parts of it are found by any Court to be illegal or beyond the power of the Council to enact, such Section or Sections or parts of it shall be deemed to be severable and all other Sections or parts of this By-law shall be deemed to be separate and independent and shall continue in full force.

17. Repeal

17.1 That By-law 30/2012 and all By-laws amending the same and any other By-law inconsistent with the provisions of this By-law are hereby repealed.

18. Coming into Force

18.1 This By-law shall come into force and take effect on the date of passing thereof.

Read a first and second time this 7th day of November, 2017.

Mayor Joe Nowak

Grace Kosch, Clerk

Read a third and final time and passed this 7th day of November, 2017.

Mayor Joe Nowak

Grace Kosch, Clerk

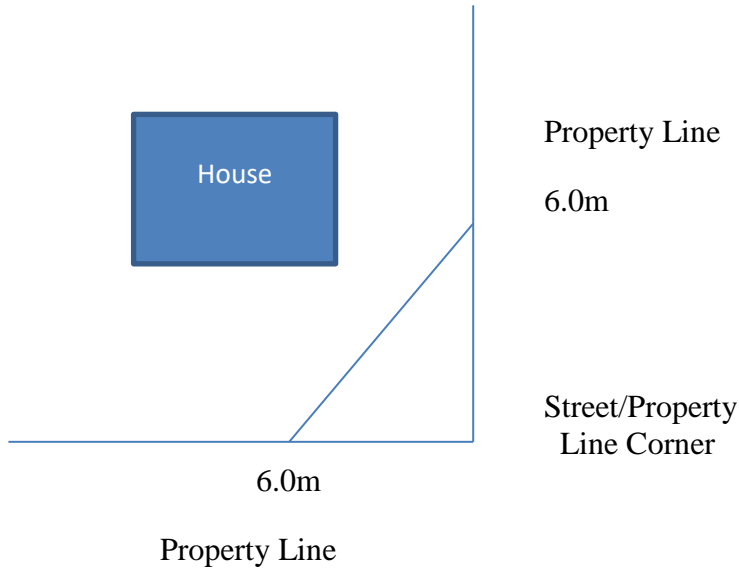
THE CORPORATION OF THE TOWNSHIP OF WELLESLEY

SCHEDULE "A"

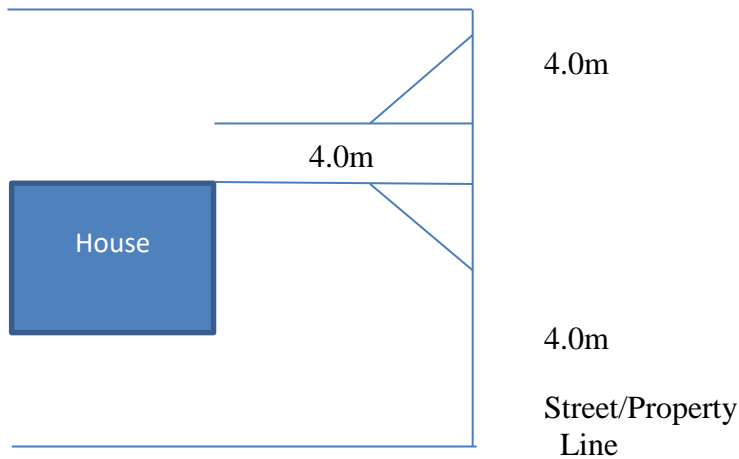
to

By-law 53/2017

CORNER DAYLIGHT TRIANGE



DRIVEWAY DAYLIGHT TRIANGE



Read a first and second time this 7th day of November, 2017.

Mayor Joe Nowak

Grace Kosch, Clerk

Read a third and final time and passed this 7th day of November, 2017.

Mayor Joe Nowak

Grace Kosch, Clerk

THE CORPORATION OF THE TOWNSHIP OF WELLESLEY

SCHEDULE "B"

to

By-law 53/2017

Application Form

Please return completed form with required documentation to the Township of Wellesley:

Building Department
Township of Wellesley
4639 Lobsinger Line
ST. CLEMENTS, Ontario N0B 2M0

Applicant/Property Owner

Owner(s) Name: _____

Address: _____ Postal Code: _____

Phone: _____ Email Address: _____

Applicant(s) Name: _____

Address: _____ Postal Code: _____

Phone: _____ Email Address: _____

Subject Property Address: _____

Lot _____ Plan / Conc. _____

Signature of applicant or agent

Date

The Owner shall provide with a completed application form and site plan, the following supporting documents and drawings:

- a) showing the location of all existing structures (including septic system) on the property in relation to the lot lines;
- b) showing the location of all existing easements, right-of-ways and swales;
- c) showing the location of the proposed Pool and Enclosure including setbacks to all the lot lines;
- d) showing the location and size of proposed structures (sheds, decks, retaining walls, etc..) including setbacks to all the lot lines;
- e) showing the location of all gates, labelled as "self-closing" and "self-latching";
- f) showing the location of all of doors within walls of building or structure proposed to form part of the Pool Enclosure.
- g) construction specifications and/or drawings of all permanent Enclosure fences and walls;
 - (i) showing all materials proposed to be used and their orientation
 - (ii) showing all proposed openings, with dimension
 - (iii) indicating overall height(s) of enclosure fences or walls
 - (iv) If applicable, specification documents of protective covers proposed for use on hot tubs, whirlpools, and spas.
- h) Lot grading plan (if required by the Township)

In addition to the foregoing items, other information may be required to enable the Chief Building Official to determine whether the proposed work conforms to this By-law.

THE CORPORATION OF THE TOWNSHIP OF WELLESLEY

SCHEDULE "C"

to

By-law 53/2017

CERTIFICATE OF APPROVAL

This is to certify that the swimming pool enclosure located at

_____ was inspected

by _____ on

_____, 20____, and did comply with the Township of Wellesley
Fence By-law Number xx/2017 at the time of inspection

_____, 20____

Building Inspector



FENCE VARIANCE APPLICATION

Schedule "D"

to

BY-LAW 53/2017

GUIDELINES AND EXPLANATORY NOTES

Introduction:

This form must be completed and accompanied with the required fee prior to consideration by the Committee of Adjustment. The purpose of these Guidelines is to assist persons in completing the Fence Variance Application. Should you require clarification on any matter covered by this application form, please contact the Secretary Treasurer of the Committee of Adjustment or the Office of the Clerk at the address at the bottom of the page.

Application Fees:

Each application must be accompanied with a \$625.00 application fee in the form of a cheque/cash/money order payable to the Township of Wellesley. This fee is used to pay all associated costs with respect to the processing of the subject application.

Authorization:

If the applicant is not the owner of the subject land, a written statement by the owner must accompany the application which authorizes the applicant to act on behalf of the owner as it relates to the subject application.

Drawing:

All applications must include an accurate and to scale sketch. In some cases, it may be preferable, but not necessary, that this plan be prepared by a qualified professional. This sketch should show the location and dimensions of the proposed and/or existing structure (fence) in relation to any existing structures on the subject property or adjacent lands.

Approval Process:

It is required that an original copy of this application be filed at the Township of Wellesley Municipal Offices, Crosshill, together with one (1) copy of the drawing, accompanied by a fee of Six Hundred and Twenty-Five Dollars (\$625.00) in cash, money order or by cheque made payable to the Township of Wellesley. Upon receipt of an application and the required fee, the Township of Wellesley will notify the applicant and the owners of the adjacent properties of the date the application will be heard by the Committee. The applicant or agent will be requested to attend a public meeting to present the proposal. Please note that it is in the applicant's best interest to ensure that they are represented at this meeting. The applicant and any other parties requesting notice will be provided with a notice of any decision made by the Committee. Please note that the Committee's decision is final, there is no appeal process. It is recommended that the applicant discuss the proposal with the Chief Building Official of the Township of Wellesley prior to filing the application.

Further Information:

Office of the Clerk
Wellesley Municipal Offices
4639 Lobsinger Line, R.R. #1,
St. Clements, Ontario NOB 2MO
Phone: 519 699-3946 Fax: 519 699-4540



Submission No.: _____

Date Received: _____

Roll No.: _____

APPLICATION FOR FENCE VARIANCE

1. Name of Owner

Address

Telephone Number

2. Name of Agent (if any).....

Address

Telephone Number

Note: Unless otherwise requested, all communications will be sent to the applicant.

3. Nature and extent of relief applied for:

4. Legal description of subject land or Municipal address:

5. Existing use(s) of the subject property:

6. Existing fence: yes no

Height of fence: Setback from property line:

When was fence constructed (if known):

Who built fence (if known):

Building material: wood wrought iron chain link other

7. Proposed fence (not yet built): yes no

Proposed height of fence: Setback from property line:

When will the fence be constructed?

Who will be building the fence?

Proposed Building material: wood wrought iron chain link other

I, _____ hereby authorize _____
to act on my behalf in regard to the above application for fence variance.

Dated at the .._____ of _____
this _____ day of _____, 20 _____

Signature of Owner(s)

I _____ of the _____ of _____
in the _____ of _____ solemnly declare that all
all statements contained in this application are true.

Signature of Applicant of authorized agent

SWORN BEFORE ME AT the _____ of _____ in the Province of Ontario

On _____ 20_____
date

Commission for Taking Affidavits (print name below if signature is illegible)

FOR OFFICE USE ONLY:

Reviewed by the Chief Building Official

Comments : _____

