

The Corporation of the Town of Shelburne

By-law #33-2024

Being a By-law to regulate fences and privacy screens within the Town of Shelburne and to Repeal By-law 13-1974.

WHEREAS subsection 8 (1) of the *Municipal Act, 2001*, S. O. 2001, c. 25 (the "Municipal Act, 2001 ") provides that the power of a municipality as granted by the *Municipal Act, 2001* or any other Act shall be interpreted broadly so as to enable the municipality to govern its affairs as it considers appropriate and enhance the municipalities' ability to respond to municipal issues;

AND WHEREAS pursuant to paragraph 11 (3) 7 of the *Municipal Act, 2001*, provides that a lower-tier municipality may pass by-laws prescribing the height and description of lawful fences;

AND WHEREAS subsection 436(1) of the *Municipal Act, 2001*, authorizes a municipality to pass by-laws to authorize the right to enter land under certain circumstances;

AND WHEREAS Council deems it expedient for the purpose of public safety and to control nuisances to regulate fences and privacy screens;

NOW THEREFORE the Council of the Corporation of the Town of Shelburne enacts as follows:

PART 1- ADMINISTRATION AND INTERPRETATION

Short Title

1.1 This by-law may be referred to as the "Fence By-law".

Administration

1.2 This by-law applies to any residential property, as defined.

1.3 The Clerk will be responsible for the administration of this by-law.

1.4 The Clerk may delegate any of their powers and authorities under this by-law to any Town employee as they deem appropriate.

Interpretation

1.5 A word interpreted in the singular number has a corresponding meaning when used in the plural.

1.6 The imperial measurements included in this by-law are for information only and are intended to be an approximate conversion of the metric measurements, which shall prevail in the event of any conflict.

Exemption

1.7 This by-law does not apply to:

- a) any fence or privacy screen erected for government or other public purposes by the Town, the County of Dufferin or any Provincial or Federal governmental authority;
- b) any property that is subject to a site plan agreement under section 41 of the *Planning Act, R.S.O., 1990*;
- c) any fence that has been installed pursuant to a subdivision agreement under section 51 of the *Planning Act, R.S.O., 1990*;
- d) hedges wholly located in an interior side yard and rear yard;
- g) any fence that has received written permission from the Town; and
- e) fences used solely for agricultural purposes located on properties zoned to permit agricultural uses in the Town's Zoning By-law.

Reference to Legislation

- 1.8 Reference to any act, regulation or by-law is reference to that act, regulation or by-law as it is amended or superseded from time to time.

Conflict

- 1.9 Where there is a conflict between a provision of this by-law and a provision of any other Town by-law, legislation and/or regulation relating to fences or privacy screens, the provision that establishes the highest standards to protect the health and safety of the public shall apply.
- 1.10 Where any provision of this by-law conflicts with any provincial or federal act, the regulations at the highest jurisdictional authority shall prevail.

PART II -DEFINITIONS

Definitions

2.1 In this by-law, unless the context otherwise requires:

- a) "Clerk" means the Director of Legislative Services/Clerk or their designate of the Town.
- b) "Corner Lot" means a lot situated at the intersection of and abutting onto two or more streets or two sections of the same street, provided that the angle of intersection of such street(s) is not greater than 135 degrees.
- c) "Council" means the elected Council of the Corporation of the Town of Shelburne.
- d) "Driveway Sight Triangle" means an area of land contained within and determined by measuring from the point of intersection of a street line and a driveway, a distance of 4 metres (13.1 feet) along such street line and 6 metres (20 feet) along such driveway, joining such points with a straight line to form a triangle.
- e) "Erect" means to construct, put up, assemble, install, alter, reconstruct or replace a fence or privacy screen or to cause or permit another person to do so.
- f) "Fence" means a barrier constructed of materials including but not limited to posts, boards, panels, wood, fiberglass, lattice, chain link, masonry, wrought iron or similar materials or any combination thereof used to define a property lot line or to enclose any outdoor area, but does not include hedges or privacy screens.

- g) "Grade" means the level of the ground authorized by grading plans approved by the Town adjacent to the fence or privacy screen.
- h) "Hedge" means a continuous barrier of shrubs, bushes, trees or other plantings used to define a property lot line.
- i) "Height" means the vertical distance measured between the grade and the highest point of a fence, hedge, or privacy screen or any part thereof, directly above. In the case of a fence, hedge, or privacy screen located on top of a retaining wall, height shall mean the vertical distance between the top of the retaining wall and the highest point of the fence, hedge or privacy screen directly above.
- j) "Highway" includes a common and public highway, street, lane, avenue, parkway, square, place, bridge, viaduct or trestle, any part of which is intended for or used by the general public for the passage of vehicles and includes the area between the lateral property lines thereof.
- k) "Lot Line" means a boundary of a lot including its vertical projection.
- l) "Lot Line, Exterior Side" means a side lot line which abuts a highway on a corner lot.
- m) "Lot Line, Front" means:
 - i. in the case of an interior lot, shall be the lot line abutting a highway;
 - ii. in the case of a corner lot, the shorter lot line that abuts a highway;
 - iii. in the case of a corner lot with two street lines of equal length, the Municipality may designate either street line as the front lot line;
 - iv. in the case of a through lot, shall be the longer boundary dividing the lot from the street. In the case that both such lot lines shall be of equal length, the Municipality may designate either street line as the front lot line.
- n) "Lot Line, Rear" means the lot line or intersection of the side lot lines, opposite to, and most distant from, the front lot line.
- o) "Lot Line, Side" means a lot line, other than a front or rear lot line. In the case of a corner lot, the lot line that abuts a street shall be identified as the exterior side lot line.
- p) "Officer" includes a person appointed and responsible for the enforcement of the provisions of this by-law and includes:
 - i. Municipal Law Enforcement Officers appointed by the Town;
 - ii. Police Officers appointed under the *Community Safety and Policing Act, 2019*.
- q) "Open Type Fencing" shall mean open chain link fencing or wrought iron fencing spaced no closer than 10 centimetres (4 inches) apart or similar type of construction with posts no larger than 5 centimetres (2 inches), that does not obstruct the view of motorists or pedestrians.
- r) "Owner" means the registered owner, occupant, lessee, tenant, mortgagee in possession and/or the person in charge of any property.
- s) "Person" means an individual, business, firm, body corporate, corporation, association, or municipality.

- t) "Privacy Screen" means a visual barrier used to shield any part of a yard from view from any adjacent property or highway but does not include a fence or hedge.
- u) "Residential Property" means land used for residential purposes.
- v) "Sight Triangle" means the area within a triangle formed by measuring 6 metres (20 feet), or the applicable distance prescribed for a required Sight Triangle in the Town's Zoning By-law, whichever is greater, along two specified intersecting lines along the roadway and a third line joining the terminal points of the two measured lines.
- w) "Street Line" means the boundary between a public highway or private street and a lot.
- x) "Town" means The Corporation of the Town of Shelburne.
- y) "Yard" means an open, uncovered space on a lot appurtenant to a building.
- z) "Yard, Exterior Side" means the yard of a corner lot extending from the front yard to the rear yard between the exterior side lot line and the nearest main wall of the principal building or structure on the lot.
- aa) "Yard, Front" means a yard extending across the full width of a lot between the front lot line and the nearest main wall of the principal building or structure on the lot.
- bb) "Yard, Interior Side" means a yard other than an exterior side yard, extending from the front yard to the rear yard between the interior side lot line and the nearest main wall of the principal building or structure on the lot.
- cc) "Yard, Rear" means a yard extending across the full width of a lot between the rear lot line and the nearest main wall of the principal building or structure on the lot.

PART III - GENERAL PROVISIONS

- 3.0 From and after the date of enactment of this by-law, the provisions of the Line Fences Act, shall no longer apply to the Town of Shelburne.
- 3.1 No person shall erect a fence or privacy screen which:
 - a) is wholly or partly constructed of barbed wire, chicken wire or other barbed or sharp material;
 - b) is wholly or partly constructed from sheet metal or corrugated metal panels, manufactured chipboard, wafer board, plywood, or similar manufactured wood products;
 - c) is located wholly or partly on Town property, including a highway, unless written permission has been granted by the Town; or
 - d) contains a device for projecting an electric current, other than to confine livestock for agricultural purposes on a property where agricultural uses are permitted by the Town's Zoning By-law.
- 3.2 No person shall construct a fence or privacy screen so as to obstruct access to any water meter or meter reading device by any employee, Officer or agent of the Town of Shelburne.

- 3.3 No person shall erect a fence or privacy screen that is located within 45 centimetres (18 inches) of a Town sidewalk.
- 3.4 A hedge in the front yard shall not be in excess of the height limits contained within this by-law.
- 3.5 No person shall erect a fence within a sight triangle.
- 3.6 No person shall erect a fence within a driveway sight triangle.
- 3.7 No person shall erect any fence, privacy screen or hedge, which creates a visual obstruction within any highway.
- 3.8 No person shall erect a fence which contains an opening, gate or similar structure that abuts Town property without receiving written permission from the Town.

PART IV - HEIGHT REQUIREMENTS

- 4.1 No person shall erect a fence in excess of the following height requirements:
 - a) Rear Yard: No fence erected in a rear yard shall exceed 2.1 metres (7 feet) in height;
 - b) Interior Side Yard: No fence erected in an interior side yard shall exceed 2.1 metres (7 feet) in height;
 - c) Exterior Side Yard: No fence erected in an exterior side yard shall exceed 2.1 metres (7 feet) in height; and
 - d) Front Yard: No fence erected in a front yard shall exceed 0.9 metre (3 feet) in height.
- 4.2 No person shall erect a fence across the front property line of their property unless located on a corner lot or for the purposes of an entranceway/ornamental gate in compliance with this by-law.
- 4.3 Where the rear or side yard of any lot abuts the side or rear yard of any other lot, the fence to be erected shall not exceed the requirement of any fence that may be erected on any such abutting lot, that is to say the more restrictive provisions of this by-law shall apply except in those situations set out in clauses 4.1 (a) and 4.1 (b) above; and
- 4.4 Notwithstanding Section 4.1 (d) and 4.5 (a) of this by-law, no open type fencing shall exceed 1.2 metres (4 feet) in height.

Corner Lots

- 4.5 No person shall erect a fence on a corner lot except in accordance with the following regulations:
 - a) a fence not exceeding 0.9 metres (3 feet) in height may be erected within any part of a front yard; and
 - b) a fence having a maximum height of 2.1 metres (7 feet) may be erected in an exterior side yard and rear yard.
- 4.6 No person shall erect a fence or privacy screen within a sight triangle.

- 4.7 No person shall erect a fence, landscaping, hedging, trees or structures in such a manner as to create an obstruction within a sight triangle or driveway sight triangle.

PART V- MAINTENANCE

- 5.1 All fences and privacy screens shall be:
- a) maintained in good repair;
 - b) maintained in a structurally sound condition; and
 - c) maintained so that it is not in an unsafe or unsightly condition and reasonably plumb to the ground.
- 5.2 For the purpose of this section, maintenance of a fence or privacy screen with a surface that has been previously painted, stained, varnished or which has been treated with other similar protective finishes shall be maintained so that such finish does not visibly deteriorate.

PART VI - PRIVACY SCREENS

- 6.1 No person shall erect a privacy screen:
- a) that is located within a front yard;
 - b) within 0.6 metre (2 feet) of any lot line or street line;
 - c) in excess of 3 metres (10 feet) in height if constructed at grade level;
 - d) in excess of 2 metres (6.5 feet) in height measured from the deck surface if constructed on a deck.
- 6.2 Notwithstanding Section 6.1 (a), a privacy screen may be located in a front yard when erected between adjacent independent entrances of semi-detached, townhouse and link dwellings providing that:
- a) the privacy screen does not extend more than 1.2 metres (4 feet) from the principal building wall;
 - b) the privacy screen does not exceed 1.8 metres (6 feet) in height; and
 - c) the privacy screen is located at least 45 centimetres (18 inches) from a Town sidewalk and is located wholly on private lands.

PART VII - VARIANCE FROM FENCE BY-LAW

- 7.1 Where a proposed or existing fence, hedge or privacy screen does not comply with the provisions of this by-law, the owner of the lot, or an authorized agent of the owner, may request a variance from any of the applicable provisions of this by-law.
- 7.2 A request for a variance shall be submitted to the Clerk on the application form prescribed by the Town and shall only be deemed to be complete and ready by the Clerk if it includes:
- a) the name, address and contact information of the applicant;
 - b) the address of the lot relevant to the variance request;

- c) reference to the specific section(s) of the by-law from which the variance is sought;
- d) a detailed description explaining why the applicant requires the variance;
- e) a description of the fence, hedge and/or privacy screen including the dimensions and the specifications of the construction and installation;
- f) a survey or site plan of the lot identifying the location of the fence, hedge and/or privacy screen; and
- g) payment of the non-refundable fee as outlined in the User Fees and Charges By-law.

7.3 Upon reviewing an application for a variance the Clerk shall consider:

- a) whether it is in accordance with the general intent and purpose of the by-law;
- b) if approved, would the resulting fence, hedge or privacy screen be in keeping with the surrounding area and would there be any negative impact on adjacent lands;
- c) are there any special circumstances and would strict application of the provisions of this by-law result in unnecessary difficulty or hardship for the applicant;
- d) comments from the public resulting from the circulation of the application;
- e) and would approval of the variance result in any impacts to the health, safety or welfare of the public.

7.4 The Clerk shall inform the applicant, as well as any abutting neighbours that submitted objections, by way of written notice setting out the grounds for the decision with reasonable particulars and the right to appeal such decision.

7.5 A request for exemption cannot be made to erect a fence on Town property.

Appeal

7.6 A request for an appeal may be made by the applicant or any abutting owner.

7.7 A request for an appeal shall be made in writing to the Clerk setting out the reasons for the appeal within 10 days after service of the written notice of decision and shall be accompanied by an appeal fee set out in the User Fees and Charges By-law to the Town.

7.8 Where a request for an appeal is received, the appeal will be considered during a regular council meeting and the applicant shall be provided reasonable written notice thereof.

7.9 Where an applicant makes a request for an appeal and fails to appear at the time and place scheduled for the hearing or requests an adjournment on the day of the scheduled hearing, the applicant shall pay to the Town administrative fees established under this By-law in accordance with Schedule "A".

Final Binding

7.10 Where any person fails to appeal within the prescribed time, the decision of the Clerk is final and binding.

7.11 All decisions made by Council are final and binding.

7.12 No person shall fail to comply with a decision of Council or Clerk.

PART VIII - ENFORCEMENT

Enforcement

8.1 This by-law may be enforced by officers, and without limiting or restricting any other power, duty or function granted by this by-law, officers may carry out and/or direct whatever inspections are reasonably required to determine compliance with this by-law or direction or order made under this by-law.

Power of Entry- Inspection

8.2 An Officer may enter onto property for the purpose of carrying out an inspection to determine whether or not the following are being complied with:

- a) any provision of this by-law;
- b) an order issued under this by-law; or
- c) an order made under section 431 of the *Municipal Act, 2001*.

8.3 The power of entry may be exercised by an employee, officer, or agent of the Town.

Obstruction

8.4 No person shall hinder or obstruct, or attempt to hinder or obstruct, any officer who is exercising a power or performing a duty under this by-law.

Order

8.5 If an Officer is satisfied that a contravention of this by-law has occurred, the Officer may make an order requiring the work to be done to correct the contravention.

8.6 An order issued under the authority of this by-law, shall set out:

- a) the municipal address of the property on which the contravention
 - a. occurred;
- b) the date of the contravention;
- c) the reasonable particulars of the contravention of the by-law;
- d) the date by which there must be compliance with the order;
- e) the date on which the order expires, and
- f) notice that if the work is not done in compliance with the work order by the deadline, the municipality may have the work done at the expense of the owner and the cost of the work may be recovered in the same manner as municipal taxes.

Service of Orders

8.7 An order may be served by an Officer:

- a) personally upon an owner by serving it to a person on the owner's property who is over the age of 18;
- b) by posting it in a conspicuous place upon some part of the owner's property and by sending a copy by ordinary mail, which shall be deemed to have been served on the 5th day after mailing; or
- c) by sending it by prepaid registered mail to the owner at their last known address, where it shall be deemed to have been served on the 5th day after mailing.

ADMINISTRATIVE FEES

8.8 The owner of any property against which proceedings are brought or action taken under this By-law shall pay administrative fees in accordance with Schedule 'A'.

8.9 Fees in respect of orders, appeals of orders and prosecutions shall be paid within thirty days of the date on which the order becomes final or the date on which a conviction is pronounced.

8.10 Overdue fees imposed under this section shall be added to the tax roll of the owner and collected in the same manner and with the same priorities as municipal property taxes.

Offence and Penalty

8.11 No person shall fail to comply with an order issued pursuant to this by-law.

8.12 Every person who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine as provided for by the *Provincial Offences Act, R.S.O. 1990, Chapter c. P. 33*, as amended.

8.13 Any person who is in contravention of any provision of this by-law, or who fails to comply with an order issued under this by-law shall be deemed to be committing a continuing offence for each day that the person remains in contravention or for each day that they fail to comply with the order.

PART IX - VALIDITY & SEVERABILITY

9.1 Notwithstanding any section, subsections, clause, paragraph or provision of this by-law, or parts thereof may be declared by a court of competent jurisdiction to be invalid, unenforceable, illegal or beyond the powers of Council to enact, such section or sections or parts thereof shall be deemed to be severable and that all other sections or parts of this by-law are separate and independent therefrom and enacted as such as a whole. Same shall not affect the validity or enforceability of any other provisions of this by-law or of the by-law as a whole.

PART X- REPEAL TRANSITIONAL AND EFFECTIVE DATE

10.1 By-law #13-1974 is hereby repealed in its entirety.

Effective Date

11.1 This By-law shall come into force and take effect on the date it is enacted.

BY-LAW READ A FIRST, SECOND AND THIRD TIME AND PASSED IN OPEN COUNCIL THIS 26TH DAY OF AUGUST 2024.

MAYOR

CLERK

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SCHEDULE 'A'
ADMINISTRATIVE FEES

Appeal Fence By-law Order

Where the order is not entirely quashed on appeal, for each order issued pursuant to this Chapter in respect of any property.

\$150.00

Attend Hearing

Where the order is not quashed on appeal, for each Officer who attends a hearing before Council.

\$150.00

Inspections where the owner fails to comply with an Order

Owner who failed to comply with a confirmed Order shall pay the fee for each inspection to determine if contraventions of this By-law observed on an initial inspection have been corrected where the contraventions have not been remedied by the time provided for in the said Order.

\$135.00/per inspection

Town undertakes to complete the work

Where the town undertakes to complete the work 100% of the required to comply with any final order, for cost of all work performed necessary work, plus a further administrative fee of an additional.

30%

Certificate of Compliance

Where after inspecting a property, an officer may, or on the request of the owner, issue the owner a certificate of compliance.

\$100.00