

The Corporation of the Township of Guelph/Eramosa

By-law Number 52/2007

A By-law to Regulate Fences in the Residential Areas of The Township of Guelph/Eramosa

Whereas Section 11 of the Municipal Act 2001, S.O., c.25, as amended, establishes spheres of jurisdiction within which municipalities may pass by-laws; and

WHEREAS Section 11(3) of the *Act* provides that a lower tier municipality may pass by-laws respecting structures, including fences and signs; and

WHEREAS the Council of the Corporation of the Township of Guelph/Eramosa considers it necessary and desirable to regulate fences within the residential areas of the Township of Guelph/Eramosa;

NOW THEREFORE, the Council of the Corporation of the Township of Guelph/Eramosa enacts as follows:

1. Definitions

In this by-law:

“Agricultural Use” means a use of land, buildings or structures for farming or agriculture and includes apiaries; aviaries; berry or bush crops; breeding, raising or training horses or cattle; greenhouses; farms devoted to the hatching, raising and marketing of chickens, turkeys, or other fowl or game birds, animals, fish or frogs; farms for grazing; flower gardening; muck farms; field crops; research and/or breeding station; mushroom farms; nurseries; orchards; riding stables; the raising of sheep or goats, the raising of swine; or the breeding, boarding or sale of domestic animals; tree crops; truck gardening; woodlots; and such uses or enterprises as are customarily carried on in the field of general agriculture, and may include accessory packing, treating, storing, and sale of produce produced on the premises but does not include an abattoir, a kennel, or a rendering plant. A farm includes a detached dwelling house accessory to the main farming or Agricultural Use.

“Building” means any structure used or intended to be used for shelter, accommodation or enclosure of persons, animals or chattels but does not include a fence, sign, travel trailer or vehicle.

“Committee” means the Property Standards Committee appointed pursuant to Section 7 of this by-law.

“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 one hundred and thirty-five (135) degrees.

“Daylighting Triangle” also known as “Sight Triangle”, means an area free of buildings or structures and which area is to be determined by measuring from the point of intersection of street lines on a Corner Lot, the distance required by the Zoning By-law (7.62m [25.0ft]) along each such street line and adjoining such points with a straight line. The triangular-shaped land between the intersecting street lines and the

straight line joining the points the required distance along the street lines, is the Sight Triangle.

“Driveway Sight Line Triangle” means an area free of Building or structures and which area is determined by measuring from the corner of the driveway away from the driveway along the sidewalk or curb closest to the lot line 4.0m (13.1 ft) and from the corner of the driveway into the property along the driveway edge 5.0m (16.4 ft) and adjoining such points with a straight line. The triangular-shaped land is the Driveway Sight Line Triangle.

“Effective Ground Level” means the existing ground level upon which a Fence is erected or to be erected upon.

“Erect or Construct” means to build, construct, reconstruct, place, or relocate and, without limiting the generality of the word, also includes alteration to any existing fence by an addition enlargement, extension or other structural change. Constructed and construction shall have corresponding meanings.

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

“Farm Fence” means a fence erected for the purpose of containing livestock, enclosing crops, water areas, woodlots, buildings, fields or laneways or any “Agricultural Use” as defined in this by-law;

“Fence” means a structure of vertical or horizontal members erected as a barrier, enclosure or delineation along any street or property line or separating or purporting to separate any parcel of land from the parcel of land immediately adjacent thereto. A hedge shall not be considered a fence for the purposes of this bylaw.

“Front Lot Line” means in the case of an interior lot, the line dividing the lot from the street. In the case of a Corner Lot, the shorter lot line abutting a street shall be deemed the front lot line and the longer lot line abutting a street shall be deemed an exterior side lot line. In the case of a through lot, the lot line where the principal access to the lot is provided shall be deemed to be the front lot line.

“Front Yard” means a yard extending from side lot line to side lot line and from and parallel to the Street Line, to the nearest wall of Building or structure on the lot, disregarding open or uncovered terraces or steps or minor architectural projections; and for the purposes of this By-law includes the Exterior Side Yard of a Corner Lot to the mid point of house.

“Hazardous” means that which may pose a danger or unsafe condition to persons or animals.

“Height” means the distance measured from the Effective Ground Level where the Fence posts are embedded to the top of the Fence.

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

“Lot Area”, means the total horizontal area within the lot lines of a lot.

“Owner” means the registered owner of the land, the person managing or receiving the rent for the land or premises or the person who wishes to Erect a Fence.

“Rear Lot Line” shall mean the lot line farthest from and opposite to the front lot line.

“Rear Yard” means a yard extending from side lot line to side lot line and from Rear Lot Line (or apex of the side lot lines if there is no rear line), to the rear of the main Building or structure on the lot, disregarding open or uncovered terraces or steps or minor architectural projections.

“Residential Area” means any properties zoned for residential purposes in the Township Zoning By-law that includes the following zones: Rural Residential (RR), Village Residential Low Density (R1), Village Residential Medium Density (R2), Residential First Density Zone (R1), Residential Second Density Zone (R2), Residential Multiple One (RM1) in addition to residential uses in mixed use zones that includes Hamlet Mixed Use (C3), Residential Mixed Use One (RMU1), Residential Mixed Use Town (RMU2) and Residential Mixed Use Three (RMU3)

“Scrap” means fragments, odds and ends or bits and pieces of anything put together to form a fence that is not commonly used for the construction of fences, which includes, but is not limited to tires, packing crates, scrap metal, or leftover fencing material that is unsightly, such as broken boards, peeling paint, etc.

“Street Line” means the limit of the street allowance and is the dividing line between a lot and a street.

“Township” means the Corporation of The Township of Guelph/Eramosa.

“Yard” means a space appurtenant to Building, structure or excavation, located on the same lot as the Building, structure or excavation, and which space is open, uncovered and unoccupied from the ground to the sky except for such accessory buildings, structures or uses as are specifically permitted in the Township of Guelph/Eramosa Zoning By-law.

“Zoning By-law” means any by-law administered by the Township of Guelph/Eramosa passed pursuant to Section 34 of the *Planning Act* or a successor thereof, as may be amended from time to time.

2. General Provisions

2.1. No person shall Construct, Erect, maintain or keep within a Residential Area any Fence in contravention of the provisions of this by-law unless such Fence existed prior to the passing of this by-law and is not moved, altered or enlarged in any way.

2.2 This By-law does not apply to:

- (a) Fences erected under Township’s Swimming Pool By-law No. 30-2005, or a successor thereof, as may be amended from time to time.
- (b) any lands that constitute a public highway, including lands abutting a public highway that are held as a reserve by a municipality or other public authority, or to lands that are being held by a municipality or other public authority as an unopened road allowance or for future public highway purposes;
- (c) noise barriers located on public lands;
- (d) a Fence erected upon or abutting land which is used for industrial purposes, for a railway right-of-way, or for hydro,

telephone or utility installations, or for public works installations which are hazardous to the public or to municipal recreational facilities;

- (e) fences used for the purpose of enclosing a privately owned outdoor tennis court, provided the Fence is of chain link construction;
- (f) a Fence erected in compliance with the Buffer Strip provisions (Section 5.10) of the Township Zoning By-law.

- 2.3 Notwithstanding the other provisions of this by-law, nothing shall prevent the construction and maintenance of a Farm Fence.
- 2.4 Fences shall not impede, obstruct or alter the flow of water drainage.
- 2.5 Every Fence shall be constructed of durable materials, suitable for its intended use and be capable of supporting the intended structural loads.

3. Line Fences Act

- 3.1 The *Line Fences Act*, R.S.O. 1990, c. L17, as amended, shall apply to Fence disputes between neighbours regarding a shared boundary line Fence construction/reconstruction.
- 3.2 Where a residential use abuts an Agricultural Use, the *Line Fences Act* shall apply to the mutual lot line(s).

4. Prohibited Fences

- 4.1 No person shall Erect a Fence on a municipal road allowance or right of way unless such Fence has been so authorized by a written encroachment agreement with the Township of Guelph/Eramosa.
- 4.2 No person shall Erect, cause or permit to be erected or maintain in a Residential Area a Fence which contains, or is constructed of barbed wire, chicken wire, wire or cable.
- 4.3 No person shall Erect or cause to be erected, an electrical Fence in a Residential Area.
- 4.4 No person shall Erect, cause or permit to be erected or maintain a Fence constructed with plywood, railway ties, scrap or Hazardous material.

5. Fence Regulations

5.1 Height and Location

- (a) No person shall, within a Front Yard, Erect or cause to be erected or maintain or permit a Fence exceeding 1.07 metres (3 feet, 6 inches) in Height from the Effective Ground Level, as shown on the attached sketch (Area 1).
- (b) No person shall, within a Daylighting Triangle, Sight Triangle, or Driveway Sight Line Triangle, Erect or cause to be erected or maintain or permit a Fence exceeding 1.07

metres (3 feet, 6 inches) in Height above the travelled portion of the abutting streets, as shown on the attached sketch (Area 4).

- (c) No person shall within an Interior Side Yard, from the rear of Building to the front of Building, or Exterior Side Yard, from the rear of the Building to the Rear Lot Line, Erect or cause to be erected or maintain or permit a Fence exceeding 1.9 metres (6 feet, 2 inches) above Effective Ground Level as shown on the attached sketch (Area 2).
 - (d) No person shall within a Rear Yard Erect, cause to be erected or maintain or permit a Fence exceeding 2.5 metres (8 feet, 2 inches) above Effective Ground Level, as shown on the attached sketch (Area 3).
 - (e) Notwithstanding 5.2(c) above, a Fence located in an Exterior Side Yard, not exceeding 2.5 metres (8 feet 2 inches) above Effective Ground Level, may be erected 4 metres (13 feet, 1 inch) back from the property/street line, from the midpoint of the house to the Rear Lot Line, as shown in the attached sketch (Area 3)
- 5.2 Notwithstanding any provision set out in this By-law, no person shall Erect, cause to be erected, maintain or permit a Fence that obstructs the view of a motorist or is determined to be Hazardous under this or any other legislation or by-law, as determined by the Manager of Public Works and/or the By-law Officer for the Township of Guelph/Eramosa.
- 5.3 Notwithstanding any provision set out in this By-law, no person shall Erect, cause or permit to be erected or maintain a Fence that obscures clear visibility of normal approaching pedestrian or vehicular traffic, as determined by the Manager of Public Works for the Township of Guelph/Eramosa.
- 5.4 An Invisible Fence shall not be installed outside of the Lot Area as defined in this by-law.

6. Regulations under the Township of Guelph/Eramosa Zoning By-law

- 6.1 A Fence within or abutting a Daylighting Triangle, Sight Line Triangle or Driveway Sight Line Triangle shall, notwithstanding anything to the contrary within this by-law, also comply with the regulations and definition set out in the Township of Guelph/Eramosa Zoning By-law.
- 6.2 The provisions of the Zoning By-law regarding yard encroachments, temporary uses and setbacks and any other restrictions pertaining to the erection of a Fence in a Residential Area shall apply and supersede this by-law in the event of a conflict.

7. Variance from By-law

- 7.1 The Owner of a property may apply in writing in the prescribed form and fee to the Township of Guelph/Eramosa Property Standards Committee to request a variance from the requirements of this By-

law. The Clerk's Department will set the date and time for the hearing.

- (a) The Committee upon reviewing the application for a variance of this By-law, shall consider:
 - i. whether the request is minor in nature;
 - ii. whether the proposed variance is desirable and in keeping with the Fences in the area; and
 - iii. whether the proposed variance detrimentally affects safety or sight lines.
- (b) The Committee, upon hearing an appeal for a variance under this by-law may authorize or deny a variance from the provisions of this by-law.

7.2 Application and Hearing Process

- (a) The Owner, before the Committee hears any application for variance, shall give notice of the hearing in a manner and containing the information set out in Section 7.2 of this by-law.
- (b) The Owner shall give written notice of hearing in the prescribed form and manner established by the Township from time to time, to all property owners within 60 meters of the subject property and post the notice on the subject property at least ten (10) days prior to the day of the hearing and provide proof to the Clerk that such notice was given.
- (c) Notice of a hearing on an application for a variance to this by-law shall be circulated by the Clerk's Department to the following, for comments:
 - i. By-law Enforcement Officer,
 - ii. Public Works Manager, and
 - iii. The Chief Building Official.
- (d) The notice of a hearing shall include the following:
 - i. The date, time and location of the hearing;
 - ii. An explanation of the purpose and effect of the proposed variance
 - iii. A description of the subject land or the municipal address
 - iv. How to obtain additional information regarding the application
 - v. How to obtain a copy of the decision of the Committee.
- (e) The hearing shall be held in public and the Committee shall hear the applicant and every other person who desires to be heard in favour of or against the application.
- (f) No decision of the Committee is valid unless it is concurred with by the majority of the Committee members hearing the application and the decision of the Committee shall be in writing and shall set out the reasons for the decision.

Any authority or permission granted by the Committee may be for such time and subject to such terms and conditions as the Committee considers advisable and as are set out in its decision.

- (g) The Clerk's Department shall, not later than ten (10) days from the making of the decision, send one (1) copy of the decision to:
 - i. The applicant,
 - ii. Each person who appeared in person or by counsel or by agent at the hearing and who filed with the Clerk's Department a written request for notice of the decision,
 - iii. The By-law Enforcement Officer,
 - iv. The Public Works Manager, and
 - v. The Chief Building Official.
- (h) The decision of the Committee regarding an application for a variance shall be final and binding.

8. Penalties

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

9. Severability

If a court of competent jurisdiction declares any section or part of this by-law invalid, the remainder of this by-law shall continue in force unless the court makes an order to the contrary.

This by-law shall come into force and effect on the date it is passed.

READ three times and finally passed
this 7th day of **August, 2007**.

Chris White, Mayor

Janice Sheppard, Clerk