

## **CORPORATION OF THE TOWNSHIP OF WARWICK**

### **BY-LAW NO. 92 OF 2016**

#### **A BY-LAW TO PRESCRIBE THE HEIGHT AND DESCRIPTION OF AND THE MANNER OF ERECTING AND MAINTAINING FENCES AND GATES WITHIN THE TOWNSHIP OF WARWICK**

**WHEREAS** Section 9 of the Municipal Act, S.O. 2001, provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Act;

**AND WHEREAS** Section 8 of the Municipal Act, 2001, provides for broad interpretation so as to confer broad authority on municipalities to enable municipalities to govern their affairs as they consider appropriate and, enhance their ability to respond to municipal issues;

**AND WHEREAS** Section 11 of the Municipal Act, 2001, provides a Municipality the power to pass By-laws on matters within their sphere of jurisdiction;

AND WHEREAS pools and fences fall within a municipality's sphere of jurisdiction and are a matter that can be regulated by by-law;

**NOW THEREFORE**, the Council of the Corporation of the Township of Warwick hereby enacts as follows:

No person shall construct, erect, maintain, keep or permit with the Township of Warwick any fence that is in contravention of any of the provisions of this By-Law upon final reading receiving The Corporation of the Township of Warwick's final passing.

#### **1. Definitions:**

- a) "**BUILDING**" means a structure whether temporary or permanent, used or intended for sheltering any use or occupancy but shall not include a boundary wall, fence, travel trailer, camping trailer, truck camper, motor home, or tent. This definition may include a roof supported by columns or walls.
- b) "**BUILDING INSPECTOR**" means the officer or employee appointed by the Township of Warwick for duties of Building Inspector.
- c) "**CORNER LOT**" means a Lot, situated at the intersection of and abutting upon two or more streets, provided that the angle of intersection of such streets is not more than one hundred and thirty-five (135) degrees.

- d) **“CHIEF BUILDING OFFICIAL AND/OR BYLAW ENFORCEMENT OFFICER”** means the officer or employee appointed by the Township of Warwick for duties of Chief Building Official and/or By-Law Enforcement Officer.
- e) **"EXTERIOR SIDE LOT LINE"** - on a Corner Lot, means the Lot line abutting a street which does not contain a primary entrance.
- f) **"EXTERIOR SIDE YARD"** means a Side Yard immediately adjoining a Street, extending from the Front Yard to the Rear Lot Line.
- g) **“FENCE”** means a wall, structure or other barrier which separates or divides any parcel of land or used to establish property boundary. Includes railings, hedge, shrubs, posts, masonry, gate, boards, or other similar materials.
- h) **"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 Lot line containing the primary entrance shall be deemed the Front Lot Line and the remaining Lot line abutting a street shall be deemed the Exterior Side Lot Line. In the case of a Through Lot or a Corner Lot whose exterior Lot Lines are the same length, the Lot line where the principle access to the Lot is provided shall be deemed to be the Front Lot line.
- i) **"FRONT YARD"** means a yard extending across the full width of the Lot between the Front Lot Line of the Lot and the foundation of any main building on the Lot.
- j) **"FRONT YARD DEPTH"** means the least horizontal dimension between the Front Lot Line of the Lot and the foundation of any building or structure on the Lot, or the nearest open storage use on the Lot.
- k) **“HEIGHT”** means the distance measured from the grade where the fence posts are embedded or other supporting structures are located to the top peak of the fence.
- l) **"INTERIOR LOT"** means any Lot which has a street access, other than a Corner Lot.
- m) **“INTERIOR SIDE LOT LINE”** - means a Side Lot Line other than an Exterior Side Lot Line.
- n) **"INTERIOR SIDE YARD"** means a Side Yard other than an Exterior Side Yard.

- o) "**LOT**" means land within a registered plan of subdivision (but not including plans deemed not to be registered pursuant to Section 50(4) of The Planning Act, R.S.O. 1990, Chap. P. 13, as amended) or any land that may be legally conveyed under the exemption provided in clause (b) or (f) of subsection 3 or clause (a) or (f) of subsection 5 of Section 50 of The Planning Act, R.S.O. 1990, Chap. P. 13 as amended, the boundaries of which are recorded in the Registry Office for the Registry Division of the County of Lambton.
- p) "**LOT**" means any parcel of land which can be occupied or used or otherwise disposed of separately and apart from any abutting lands, whether or not such parcel is described in a registered deed or shown on a registered plan of subdivision.
- q) "**LOT**" means a parcel of land in one ownership which is capable of being legally conveyed in accordance with the Planning Act or is described in accordance with a registered plan of subdivision
- r) "**LOT**" means an area of land registered in the County of Lambton land registry office as not more than one parcel of land.
- s) "**LOT LINE**" means any boundary of a Lot or the vertical projection thereof. There shall be deemed to be 2 Lot Lines in cases where a Lot Line changes by a direction which is less than 135 degrees. There shall be deemed to be one continuous Lot Line in cases where the change in direction is greater than 135 degrees.
- t) "**NON-RESIDENTIAL LOT**" means any lot not zoned as residential in the Township of Warwick Zoning By-Law.
- u) "**PERMIT**" means a permit issued by the Township of Warwick or on behalf of the Township of Warwick certifying review and approval of the plans of the fences to be erected and maintained around the proposed swimming pool.
- v) "**REAR YARD**" means a Yard extending across the full width of the Lot between the Rear Lot Line of the Lot and the foundation of any main building on the Lot. If there is no Rear Lot Line, there shall be deemed to be no Rear Yard.
- w) "**REAR YARD DEPTH**" means the least horizontal dimension between the Rear Lot Line of the Lot and the foundation of any building or structure on the Lot, or the nearest open storage Use on the Lot.
- x) "**REAR LOT LINE**" means in the case of a Lot having four or more Lot Lines, the Lot Line farthest from and opposite to the Front Lot Line. If a Lot has less than four Lot Lines, there shall be deemed to be no Rear Lot Line.

- y) **"RESIDENTIAL LOT"** means any lot zoned as residential zone in the Township of Warwick Zoning By-Law.
- z) **"RESIDENTIAL USE"** means any lot or dwelling unit which is associated with a residential use regardless of the zoning designation in the Township of Warwick Zoning By-Law.
- aa) **"REQUIRED YARD"** means a Yard with the minimum Front Yard Depth, Rear Yard Depth, or Side Yard Width required by the provisions of this By-law. A required Side Yard shall extend from the required Front Yard to the required Rear Yard, or in the case of a Lot which has no Rear Lot Line, the required Side Yard shall extend from the required Front Yard to the opposite required Side Yard.
- bb) **"SIDE LOT LINE"** means a Lot Line other than a Front or Rear Lot Line, and shall include Interior Side Lot Line and Exterior Side Lot Line.
- cc) **"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 foundation of any Main Building on the Lot. In the case of a Lot, which has no Rear Lot Line, the Side Yard shall extend from the Front Yard to the opposite Side Yard.
- dd) **"SIDE YARD WIDTH"** means the least horizontal dimension between the Side Lot Line of the Lot and the foundation of any Building or Structure on the Lot, or the nearest open storage use on the Lot.
- ee) **"SIGHT TRIANGLE"** means the triangular space formed by the Street Lines of a Corner Lot and a line drawn from a point in one street line to a point in the other street line, each such point being a minimum distance specified in the Township of Warwick Zoning By-law from the point of intersection of the street lines (measured along the street lines). Where the two street lines do not intersect at a point, the point of intersection of the street lines shall be deemed to be the intersection of the projection of the street lines or the intersection of the tangents to the street lines.
- ff) **"SWIMMING POOL" or "POOL"** shall mean any construction of fabricated pool used for swimming, wading, diving, or bathing, which could, when filled, contain a depth of 0.62m (24.5 inches) or more of water.
- gg) **"THROUGH LOT"** means an Interior Lot having street access on two or more street lines, other than a Corner Lot.
- hh) **"YARD"** means a space, appurtenant to a building or structure, located on the same Lot as the building or structure, 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 elsewhere in this By-law.

- ii) **“ZONING BY LAW”** means any by-law administered by the Township of Warwick passed pursuant to the provisions of the Planning Act R.S.O 1990, or a predecessor or successor thereof, as may be amended from time to time.

## **2. Provisions:**

### **a) Erection- fence - noncompliance**

No person shall erect, construct or permit to be erected or constructed, any fence in the Township of Warwick that does not comply with the provisions of this By-Law.

### **b) Fence -condition- development**

Notwithstanding any other provisions of this By-Law, a fence which is required and approved as a condition of development or redevelopment of land shall be deemed to be in conformance with the provisions of this provision.

### **c) Exemptions**

The provisions of this by-law shall not apply to the erection of fences by the Township of Warwick or any local boards thereof, any utility companies, union gas and boards of education.

### **d) Administered**

This provision shall be administered and enforced by the Chief Building Official and/or the By-law Enforcement Officer.

## **3. Residential Lots:**

### **a) Regulation- construction**

No person shall erect, permit to be erected or constructed, a fence on a residential lot except in accordance with the regulations set out in this By-Law.

### **b) Front yard - maximum height**

A fence within a front yard shall not exceed a height of 1m (3').

### **c) Rear-(side) yard - maximum height**

A fence within any rear yard shall not exceed a height of 1.83m (6').

**d) Interior-(side) yard - maximum height**

A fence within an interior side yard shall not exceed a height of 1.83m (6').

**e) Exterior-(side) yard-maximum height**

A fence within an exterior side yard shall not exceed a height of 1.83m (6') having regard to the sight triangle requirements of section 3.f).

**f) Sight triangle-maximum height**

No fence exceeding a height of 1m (3') may be erected within the sight triangle as defined in the Township of Warwick Zoning By-Law.

#### **4. Non-Residential lots**

**a) Regulations**

No person shall erect, construct or permit to be erected or constructed, a fence on a non-residential lot except in accordance with the regulations set out in this by-law.

**b) Maximum height**

A fence within any yard shall not exceed a height of 3m (10').

**c) Set back-front yard**

A fence to enclose a front yard shall be set back from the front lot line a minimum of 4.6m (15').

**d) Sight triangle**

No fence exceeding a height of 1m (3') shall be erected within any sight triangle as defined in the Township of Warwick zoning By-law.

**e) Abutting-residential lot**

No fence exceeding a height of 1.83 m (6') shall be erected within any yard on a non-residential lot that abuts a residential lot.

#### **5. Swimming Pools**

- a) That every owner of a privately owned outdoor swimming pool in an associated "Residential use area" shall erect and maintain a chain link fence of not less than 14 gauge with 1 ½ inch mesh or a fence of vertical board, fibreglass, plastic or steel or other such material, which is satisfactory to the Building Inspector, and

not less than 1.5m (5 feet) in height, adequately supported top and bottom, around such pools. The walls of an above ground pool may be considered as part of the fence provided that additional material adequately installed to the satisfaction of the Building Inspector is used to meet the 1.5 m (five foot) height requirement and to prevent the sides from being climbed and provided that access is denied by a self-closing, self-latching gate or other means satisfactory to the Building Inspector.

- b) That when a responsible person is not present supervising the pool, the gate or gates are to be kept closed and locked. Such fences and gates shall be erected and maintained so that no access to the swimming pool may be made except through the gate or gates provided or through a door from a structure whose wall is used as a portion of the fence. Nothing in this By-law shall prevent the use of any existing or proposed wall or wall of a structure located on the same property as one or more sides of the fence, provided however, that such wall shall be of greater strength and height than the required fence and shall be approved by the Building Inspector.
- c) That the provisions of this by-law apply to all permanent outdoor swimming pools. All existing pools that are already fenced and safeguarded in accordance with this by-law shall be permitted. Existing outdoor swimming pools not having fencing in accordance with this by-law shall comply with the provisions of this by-law. As fencing deteriorates it shall be replaced in accordance with the provisions of this by-law. For the purpose of this by-law the building inspector is hereby empowered to order by notice in writing the owner of any pool to alter, repair or make safe such pool enclosure in order to comply with the provisions of this by-law. Water from a pool shall not be discharged onto or permitted to run or drain onto adjacent properties
- d) That this by-law shall be enforced by the Building Inspector. It shall be the responsibility of every owner of new private swimming pools to ensure that the provisions of this by-law are satisfied before they may place water in such pools. A temporary fence to the satisfaction of the Building Inspector may be used where construction requires water to be placed in the pool prior to completion. The Building Inspector shall not issue a final inspection report until the provisions of this by-law are satisfied.

## **6. Swimming Pool Fence Fees**

- a) It shall be the duty of every owner of a private swimming pool to obtain a permit for a fence as outlined above. The permit fee shall be **\$300**.
- b) That any owner or owners of an outdoor swimming pool who contravenes any of the provisions of this By-law shall upon convictions therefore, forfeit and pay for

each such offence, a penalty of five hundred dollars (\$500.00) on first conviction exclusive of costs.

## **7. Barbed Fences**

### **a) Regulations**

No person shall erect, construct or permit to be erected or constructed, a fence composed wholly or partly of barbed wire or any other barbed material within the Township of Warwick, except with in accordance with the provisions 6.b and 6.c.

### **b) Top of fence**

Barbed wire is permitted in a non-residential zone on the top of a fence, provided that it projects inwards to the area enclosed by the fence, the height of which said fence shall not be less then 1.83m (6') prior to the addition of the barbed wire.

## **8. Electric Fences**

- a) No person shall erect, construct or permit to be erected or constructed any fence equipped with a device for transmitting an electric current within a residential use area in the Township of Warwick.

## **9. Permits**

- a) No person shall excavate for, construct or erect a pool or cause any of the foregoing to take place without first obtaining a permit and paying all associated fees under this by-law with respect to such a pool;
- b) An application for a permit shall be submitted to the Building Inspector together with plans in duplicate showing details of the proposed pool, fences and gates and their location with respect to property lines and existing buildings;
- c) If the application and the plans appear to comply with the provisions of this by-law and if the permit fee prescribed in this By-law is paid, the building inspector may issue the permit on behalf of the Township of Warwick.
- d) If the issuance of a permit is refused the permit fee paid to the corporation in connection with the application shall be repaid to the applicant, and



- e) A permit may be refused on the grounds that any such fences and gates if erected would be contrary to this or any other by-law of the Township of Warwick.

## **10. Enforcement**

- a) Any person who contravenes any provisions of this by-law is guilty of an offence and upon conviction is liable to a fine or penalty of not more than the general penalty for an offence as set out in this by-law.

- b) **Contravention-fine**

If any person, firm or Corporation who deliberately fails to comply with the regulations as set out in this by-law; shall immediately comply to the provisions set out in this by-law and be assessed a penalty of:

- I) Five hundred Dollars (\$500) for the first offence
- II) One Thousand Dollars (\$1000) for the second offence
- III) Two Thousand Dollars (\$2000) for the third or more Offence(s).

## **11. Installation, Guidelines and Restrictions**

- a) Any person who erects a fence is responsible for repair, replacement and maintenance without visible deterioration.
- b) Utilize survey stakes or have a survey completed and have the property lines clearly noted prior to construction of the fence.
- c) No fence shall be erected on municipal property; road allowances; or encroach on municipal property; since they may create a safety hazard and it could potentially create a liability to the Township of Warwick and the installer.
- d) All fences are to be erected on privately owned lands within the surveyed property boundaries.
- e) Each of the abutting land owners are to be consulted with prior to erection of the fence.
- f) If the fence is mutually built onto the property line, then the responsibility is of both owners to share the cost, agree on design and maintain the fence together.
- g) If the fence is to be exclusively owned and maintained by one property owner it is suggested that they ensure the entire fence post holes (footings included), fence boards are constructed wholly on their property. Of course, they will need

permission from the neighbor to access any part of the neighboring property while constructing or in the future for any maintenance thereof. The exclusively owned fence must be paid for, erected and maintained by this owner only.

- h) No person shall erect, construct or permit to be erected or constructed, any fence in the Township of Warwick that does not comply with the provisions of this By-Law. Unless such fence was erected prior to the passing of this By-Law and is not moved, altered or enlarged in any way.
- i) This By Law shall come into full enforcement on the final passing.

**READ A FIRST, SECOND AND THIRD TIME AND FINALLY PASSED THIS 31<sup>st</sup> DAY OF October, 2016.**

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Mayor – Todd Case

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Administrator/Clerk – Amanda Gubbels