

**THE CORPORATION OF THE
TOWNSHIP OF ASPHODEL-NORWOOD**

BY-LAW No. 2009-25



Being a by-law to regulate the height, location, character and construction materials of fences in residentially designated zones.

WHEREAS the Municipal Act 2001, S.O. 2001, s. 8 states that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under the Municipal Act or any other Act; and

WHEREAS the Municipal Act 2001, S.O. 2001, s. 11 states that a municipality may pass by-laws respecting matters within a list of identified spheres of jurisdiction that includes fences; and

WHEREAS the Municipal Act 2001, S.O. 2001 s. 9 states that Sections 8 and 11 of the Act shall be interpreted broadly so as to confer broad authority on municipalities to enable them to govern their affairs as they consider appropriate, and to enhance their ability to respond to municipal issues.

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF ASPHODEL-NORWOOD ENACTS AS FOLLOWS:

1. APPLICATION OF THIS BY-LAW

- (a) This by-law shall apply to all Residential zones as set out in the Comprehensive Zoning By-laws of the Township of Asphodel-Norwood as amended or replaced from time to time.
- (b) This by-law shall be applied to ensure that any fence constructed is built in such a manner so as not to unduly obstruct the neighbour's view.

2. DEFINITIONS

Fence

A *fence* for the purpose of this bylaw shall mean any barrier or structure constructed of chain link, metal, wood, stone, brick or other similar materials or combinations of such materials which is erected for the purpose of screening, safeguarding, retaining or enclosing property or delineating property lines. A fence may include a solid or continuous hedge as a component.

Front Yard

A *front yard* for the purpose of this bylaw shall mean a yard extending across the full width of a lot between the front lot line and the nearest wall of any building or structure on the lot.

Height of Fence

The *height* of a *fence* for the purpose of this bylaw shall be defined as the dimension from the established grade to the top of the finished fence and shall follow, where possible, the terrain of the property with minor variations in height allowed for when dealing with changes in grade.

Rear Yard

The *rear yard* for the purpose of this bylaw shall mean a yard extending across the full width of the lot between the rear lot line and the nearest wall of the main building or structure on the lot. Where there is no rear lot line, the *rear yard* shall be measured from the intersection of the side lot lines to the closest point of the main wall of the main building.

Side Yard

The *side yard* for the purpose of this by-law shall mean a yard extending from the front yard to the rear yard between the side lot line and the nearest wall of the main building or structure on the lot.

Exterior Side Yard

The *exterior side yard* for the purpose of this by-law shall mean a side yard immediately adjoining an improved public street and shall extend from the front yard to the rear lot line.

Sight Triangle

For the purpose of this bylaw a *sight triangle* shall mean the triangular area enclosed 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 9.0 metres from the point of intersection of the street lines (measured along the street lines). Where the two (2) 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.

Property Lot Line

For the purpose of this bylaw the *property lot line* shall mean a boundary line of a lot.

3. FENCE HEIGHT

- (a) The height of a *fence* shall be measured from the higher adjacent grade where there is a grade difference on each side of the fence.
- (b) No person shall erect or cause to be erected in a *front yard* or *exterior side yard* a *fence* that is higher than 1 metre (39.5 inches) above grade.
- (c) No person shall erect or cause to be erected in a *rear yard* or *side yard* a *fence*, which is higher than 2 metres (79 inches) above grade.
- (d) Where a residential zone abuts an Industrial or Commercial zone, the height of the *fence* shall be no higher than 3 metres (118 inches) in the *rear yard* and *side yard* only.
- (e) Where an industrial zone abuts a Rural or Agricultural zone, the height of the *fence* shall be no higher than 3 metres (118 inches) in the *rear yard* and *side yard* only.

4. FENCE CONSTRUCTION MATERIALS

- (a) No material or part of any *fence* shall consist of or be constructed from barbed wire or other material having dangerous characteristics or include any device for projecting an electric current through said fence.
- (b) The finished side of the *fence* shall face toward the adjacent neighbours.
- (c) Where an Industrially zoned parcel of land abuts a Residential or Rural parcel of land, the *fence* type shall be constructed of chain link fencing.

5. FENCE LOCATION

- (a) The location of the *fence* shall either be located directly on the lot line as determined by a registered survey prepared by an Ontario Land Surveyor; or shall be located on the inside of the lot line.
- (b) Where there is a dispute by neighbours about the location of the lot line, the Municipality does not become involved in these civil disputes. A survey will be required to be completed by one of the parties at their own expense.

6. FENCES NEAR WATER COURSES

- (a) A site plan and sketch cross section of the proposed *fence* must be submitted to the municipality for approval prior to construction of a *fence* on all lots that front or back on a public watercourse. The criteria that shall be applied to a fence proposed on such lots will be;
 - (i) The municipality may require alteration to a proposed *fence* that obstructs existing views of the watercourse by adjacent land owners and require that the *fence* be limited in height to 1.22 metres (48 inches)
 - (ii) The municipality may require such alteration only where the *fence* extends beyond 9.1 metres (30 feet) from a residential building.

7. SIGHT TRIANGLES

No person who uses the land or erects buildings or structures thereon shall place in or on a corner lot any wall, *fence*, tree, hedge or other barrier, which would obstruct visibility above a height of 1 metre (39.5 inches) above the grade.

- (a) within a triangle formed by the boundaries of the lot common within the road allowance lines and a straight line connecting points on each of the said boundaries measured a distance of 9 metres (30 feet) from the point where they intersect,
- (b) in a case where the lot boundaries abutting the intersecting roads are joined by a curve, the area between the chord joining the beginning and ending of such curve and the road line.

8. FENCING AROUND SWIMMING POOLS

The fencing that is required to enclose swimming pools shall be referenced in the "Swimming Pool" by-law. If there are any conflicts between the "Fence by-law" and the "Swimming Pool" by-law, the most restrictive clause shall prevail.

9. SHRUBBERY AND HEDGES IN LIEU OF FENCING

If one chooses to use shrubbery or hedges in lieu of a wooden fence on a property lot line as defined by a registered survey, the party who planted the barrier is only allowed to maintain the barrier from his or her own side of the property.

10. MAINTENANCE OF FENCE

- (a) The owner of the land on which a fence is erected shall maintain such fence in good state of repair as follows:
 - (i) the fence is complete and in a structurally sound condition and plumb and securely anchored;
 - (ii) the fence is protected by weather-resistant materials;
 - (iii) the fence components are not broken, rusted, rotten or in a hazardous condition;
 - (iv) all stained or painted fences are maintained free of peeling;
 - (v) the fence does not present an unsightly appearance deleterious to the abutting property.

11. ADMINISTRATION AND ENFORCEMENT

- (a) Any fence in existence at the date of passing of this By-Law, which does not conform to the provisions herein, and which anytime thereafter, is in need of replacement or reconstruction, shall be built in conformity with the provisions of this By-Law.
- (b) The Municipal By-Law Enforcement Officer, upon written complaint by a property owner of the Township of Asphodel-Norwood and/or by direction of a resolution passed by the Council of the Township of Asphodel-Norwood, shall administer and enforce the provisions of this By-Law.
- (c) Any person who contravenes any of the provisions of this By-Law is guilty of an offence and upon conviction is liable to a fine or penalty for each offence, exclusive of costs as prescribed by the Provincial Offences Act. R.S.O. 1990.
- (d) Every provision of this By-Law is declared to be severable from the remainder of the By-Law, and if a court of competent jurisdiction shall declare any provisions of this By-Law invalid, such declaration shall not affect the validity of the remainder of the By-Law.

12. DISPUTES RESPECTING FENCES

Section 2 of The Line Fences Act states that the Council of every local municipality shall by by-law appoint such number of fence-viewers as are required to carry out the provision of The Line Fences Act.

Section 4 of The Line Fences Act states that an owner may request fence-viewers to view and arbitrate the matters in dispute respecting the fence. Following the viewing, the fence-viewers shall make an award respecting the matters in dispute. The award shall state that a fence shall be constructed and maintained and kept up to mark the boundary between adjoining lands, and shall specify the location of the fence, the description of the fence, including the materials to be used, the date by which the construction or reconstruction shall be commenced, and the date by which such work shall be completed, and the proportion of the costs to be paid by each party.

If the parties involved have a dispute with respect to the location of the fence, the materials being used to construct or reconstruct the fence, the apportionment of the cost of constructing or reconstructing the fence, or other related issues, the owner may notify, in the prescribed form, the Clerk of the local municipality in which the land is situated, that the owner desires fence-viewers to view and arbitrate the matters in dispute.

Section 10 of The Line Fences Act provides that an owner dissatisfied with the award may appeal therefore to the referee for the appeals division, within fifteen days of receiving a copy of the award. The decision of the referee is final.

13. REPEAL

Township of Asphodel-Norwood Fence By-Law number 2003-4

Read a first and second time this 19th day of May, 2009.

Read a third time and finally passed this 19th day of May, 2009.

Douglas J. Percy, Reeve

Valerie Przybilla, CAO/Clerk