

Schedule 'A' to Town of Whitby Fence By-law # 4394-99, as amended – Exemptions from the Fence By-law

Overview

The Municipal Act, 2001 allows municipalities to pass by-laws regulating structures, including fences. The Council of the Town of Whitby adopted Fence By-law # 4394-99, as amended (the Fence By-law), for the purpose of prescribing the height and description of fences.

The provisions of the Fence By-law are absolute, however there are circumstances where flexibility from certain provisions contained in the Fence By-law are appropriate.

The purpose of this Schedule is to outline the process for seeking exemptions to the provisions of the Fence By-law, the types of exemptions that may be granted, and to provide an overview of the administration of the exemption process.

Responsibilities

The Municipal Licensing and Standards Committee (MLSC) shall be responsible for considering all Fence By-law exemption applications.

The MLSC is an independent quasi-judicial body appointed by Council. Council does not ratify and cannot appeal a decision of the MLSC related to Fence By-law exemptions.

The MLSC is authorized to provide the following exemptions from the provisions of the Fence By-law:

- Exemptions from the height maximums in the Fence By-law, noting that exemptions for minimum fence heights required for pool enclosures or other minimum fence heights identified in other Town By-laws (e.g., salvage yard fencing) are not eligible for exemptions; and,
- Exemptions from the setback distances of fences from an intersection in the Fence By-law, noting that fences that create unsafe conditions, obstruct the visibility of motorists, or obstruct traffic signs or control devices are not eligible for exemptions.

Requests for exemptions from other provisions of the Fence By-law are not available and shall not be considered by the MLSC or Council.

Applications

An owner may apply for an exemption from the height maximums and/or the setback distances from an intersection in the Fence By-law by providing the following to the Town's Legal and Enforcement Services Department:

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- A Fence By-law exemption application on a form to the satisfaction of the Commissioner, Legal and Enforcement Services/Town Solicitor, or their designate;
- The applicable fee for an exemption application as identified in the Town of Whitby Fees and Charges By-law, as amended, has been paid in full;
- A description of the fencing, the exemption being sought, and any circumstances, including the grading of surrounding lands, that support the request for an exemption;
- A drawing of the property clearly identifying the location of the fence;
- In the case of an existing fence, photographs of the fence; and,
- Any other information that, in the opinion of the Commissioner of Legal and Enforcement Services/Town Solicitor, or their designate, is necessary for the assessment of the exemption application.

Circulation of Applications

Upon receipt of a complete Fence By-law exemption application, the Commissioner of Legal and Enforcement Services/Town Solicitor, or their designate shall circulate notice of the application to adjacent property owners directly affected by the application to determine if there are objections to the application.

In instances where a Fence By-law exemption application abuts or may otherwise potentially impact Town property, the Commissioner of Legal and Enforcement Services/Town Solicitor, or their designate, shall circulate the application to relevant Town departments for review and comment.

Hearing of Applications, Guiding Principles and Limitations

When considering exemptions from the provisions of the Fence By-law, the MLSC shall:

- Review the application and any supporting documents;
- Review any related staff reports and written submissions, including any objections;
- Meet in a public forum (in-person or virtual format) and hear presentations by applicants and any other interested party; and,
- Make a decision based on the reports, submissions, and public presentations to approve with or without conditions, refuse, or table the application.

Further to the section above, an exemption shall not be granted as a matter of course, or as-of-right. In determining whether an exemption shall be granted, the MLSC shall take the following into consideration when assessing the appropriateness of exemptions from the provisions of the Fence By-law:

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- Whether there is a need for the exemption, or whether an exemption is desirable for the lands in question;
- Whether the exemption maintains the general intent and purpose of the Fence By-law;
- Whether an exemption would create a negative impact to adjacent property owners and residents; and,
- For exemptions from the height maximums, the grading of surrounding land and the perceived height of fencing from the perspective of neighbouring properties.

When considering exemptions from the height maximums in the Fence By-law, maximum fence heights of up to 2.60 metres in total height may be provided by the MLSC where deemed appropriate, in consideration of the factors noted above. Maximum fence heights of 2.60 metres shall generally be reserved for exterior side yard, interior side yard, and rear yard fencing. Fence height exemptions above 2.60 metres in total height are not available.

When considering exemptions from the setback distances from an intersection in the Fence By-law, only open fencing located wholly on private property that provides sufficient visibility through the fence structure to maintain pedestrian and motorist sight lines shall be permitted.

Applicability of Other Legislation

Fences that are approved for exemptions to the Fence By-law remain subject to the provisions of the Division Fence By-law # 3657-95 and the Line Fences Act, R.S.O. 1990, c. L.17.

Schedule 'A' to Town of Whitby Fence By-law # 4394-99, as amended – Exemptions from the Fence By-law is hereby approved by Council Resolution ###-24 on this [INSERT DAY] day of [INSERT MONTH], [INSERT YEAR].