

For Information Only

Enforcement of Fence and Hedge Height Regulations

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Recommendation

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Background

A report regarding by-law requirements for height and sight lines for fencing including hedgerows, was requested by the Operations Committee during their meeting of Monday, August 12, 2013.

The height and sight lines for fencing, including hedgerows is regulated by the Zoning By-law, 2010-100Z as amended.

Table 4.1 to Zoning By-law 2010-100Z as amended regulates structures and ornamental features that may encroach in the required yard in a zone as outlined in the table attached to this report. (See attachment 1) In Residential and Commercial Zones, fences and hedgerows 1 m or less in height are permitted in all yards. Fences and hedgerows greater than 1 m in height are permitted in all yards except the front and corner side yards. The by-law also regulates any portion of a fence above 2 m in height shall not be opaque.

Sight Triangles are defined in the Zoning By-law and are required at the intersection of at least 2 streets and/or a railway right of way. The by-law regulates the use of the land within the sight triangle to ensure buildings, parked vehicles, grading of land and landscaping materials do not impede or obstruct the field of view across the sight triangle of motorists driving on abutting roads. All items within the sight triangle must not exceed 1 m in height.

Both the height of fences, including hedges, and sight triangles were regulated in the former City of Sudbury Zoning By-law, 95-500Z to a height of 1 m in the front and exterior side yards and 1 m in height within a sight triangle.

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Zoning by-laws from the former municipalities, 83-300, 83-301, 83-302, 83-303 and 83-304, regulated the height of fences and landscaping in the sight triangles to a maximum of 0.9 m, and regulated fences in exterior yards to a maximum height of 1m. The height of hedges in exterior yards outside of the sight triangles were not regulated by these former Zoning By-laws.

Analysis

Both the height of items permitted in a sight triangle and the height of fences and hedgerows in front and side corner lots are consistently regulated to a maximum height of 1 meter.

The purpose of regulating the use of the sight triangle is to provide unobstructed vision to motorists travelling on abutting roads, as stated in the by-law, and indirectly increases safety to other members of the public using the roadway. The same is true for the regulation of fence and hedgerow heights in the front yard and side corner lots. A 1 meter height restriction increases visibility to pedestrians using the side walk and cyclists using bike lanes. The height restriction also increases visibility for motorists when driving out of driveways to access the road safely.

Restricting the height of fences and hedgerows in the front yard increases safety for residents and the community. Having an unobstructed view of the front of a house from the street will increase visibility of house numbers and reduce response time for fire, police and ambulance emergency services. The police also identify increased visibility to the front of a residence from the street as a method of crime prevention.

Municipal Survey

A number of Ontario's municipalities were surveyed for information on the regulation of height and sight lines for fencing, including hedges. (See table 2 attached to this report). Some regulate the height of fences through a separate Fence By-law pursuant to the Municipal Act. Of the municipalities surveyed, the City of Windsor is the only one that regulates the height of hedges in the same manner as fences. All municipalities have regulations to restrict the use of a property within a sight triangle, including height of all items within it, including fences and hedges.

Enforcement

To date, the Compliance and Enforcement Section has received 208 cases requesting investigation of the height and placement of hedgerows (153) and fences (55) to determine compliance with the standards in the zoning by-law. Most cases detail safety concerns related to visibility impairments of motorists due to the placement and height of hedges and fences in the front and side corner yards.

The procedure followed by By-law Enforcement Officers is to gain voluntary compliance with the by-law. The Officers first inspect the property to determine if there is a violation of the by-law, by measuring the fence and/or hedge and determine its location on the property. If the standard in the by-law is not met, the officer will notify the owner or occupant of the property and negotiate a date for compliance. There may be a Notice of Violation issued to the owner or occupant outlining the particulars of the by-law and formalizing the date for compliance. If the recipients of a Notice require additional time to comply the officer may use discretion in enforcement and extend the deadline to effect compliance.

There are generally 2 options available to effect compliance with a Notice of Violation; adjust the fence or hedge to comply with the standards in the by-law or apply for a minor variance to the by-law to permit the fence or hedge. If application has been made requesting a minor variance, enforcement action is stayed

until the outcome of the application is determined. If a request for minor variance is denied by the Committee of Adjustment, the applicant is afforded an appeal of that decision through the Ontario Municipal Board. Since 2010, fourteen (14) minor variances to the by-law have been granted to permit fences and hedges on private property exceeding the maximum height in the front and corner side yards.

If all attempts to gain voluntary compliance fail, the officer then proceeds with the process of prosecution for offences of the zoning by-law, pursuant to the Provincial Offences Act. A summons is issued to the offender to attend at the Ontario Court of Justice to answer to the charges and the responsibility of determining outcome is transferred to the court and the prosecutor. The officer will continue to inspect the property during this process to provide the court with ongoing status updates. Upon conviction the court may impose monetary penalties or a Court Order to Comply. The officer will continue to follow up after the prosecution if required by the outcome of the court.

Conclusion

In 2010, Council enacted the Zoning By-law containing height restrictions for hedges and fences and items within the sight triangle. Standards are established through enactment of this by-law for fences and hedgerows in front yards to maintain open views for the safety of motorists, pedestrians, residents and the community.

The standards are upheld through enforcement of the by-law reactively upon receipt of a complaint or when staff identifies a safety concern. The standards may be adjusted through a public process by application for a variance to the by-law where specific details of the property may be assessed to determine a decision by the Committee of Adjustment. Staff will continue to enforce the standards established by Council using existing procedures with the goal to resolve all non-compliance issues through voluntary compliance.

Permitted Structure or Feature	Applicable Required Yard(s)	Required Setback or Permitted Encroachment
<u>All Zones</u> Chimneys	Any yard and Court	May encroach 0.6 m into the <i>required yard</i> or <i>required court</i> .
<u>All Zones</u> Functional and ornamental roofless <i>structures</i> including but not limited to drop awnings, clothes poles, flag poles, lighting fixtures, mail boxes, fountains, statues, monuments, benches, cenotaphs, memorials, planters, garden trellises, <i>patios</i> , walkways, <i>retaining walls</i> less than 1.0 m in <i>height</i> or other similar accessory <i>structures</i> (By-law 2012-67)	Any <i>required yard</i> or <i>court</i> .	Permitted
<u>In Residential (R) and Commercial (C) Zones</u> <i>Fences</i> and hedgerows 1.0 m or less in height (By-law 2012-67Z)	All Yards	Permitted
<u>In Residential (R) and Commercial (C) Zones</u> <i>Fences</i> and hedgerows more than 1.0 m in height provided that any portion of a <i>fence</i> above 2.0 m in height shall not be opaque (By-law 2012-67Z)	All Yards other than the <i>Front</i> and or <i>Corner Side Yards</i>	Permitted
<u>All Zones except Residential(R) and Commercial (C) Zones</u> <i>Fences</i> and hedgerows with no maximum height (By-law 2012-67Z)	All Yards	Permitted

Attachment 2 – Municipal Survey of Fence and Hedge Regulations

Municipality	Fence By-law or Zoning? #	Does Fence include Hedge?	Height Restrictions?	Any other restrictions? Sight lines?	Exemptions?	Enforcement Reactive or Proactive?
North Bay	Fence By-Law 2002-105	No	Yes	0.9 metres on a corner lot.	No	Reactive and Proactive
Kawartha Lakes	No Pool Enclosure	No	No	No	No	
Ottawa	Fence By-Law 2003-462	No	7 ft – side & rear yard. 3 feet front	75cm on a corner lot	No	Reactive
Markham	Fence By-Law 277-97	No	1.20 metres front, 1.80 metres side, 1.80 metres rear	1.2 metres on a corner lot	No	Reactive and Proactive
Brampton	Zoning	No repealed 2013	2 m rear and side, 1m front	6 metres from intersection and .8 metres from street	No	Reactive
Barrie	Zoning	No	1meter front yard 2metre interior side yard 2 metre exterior side yard (corner lots) 2 meter Rear Yard 2meter Rear Yard (corner lot)	0.30 m setback required from all lot-lines which abut street	No	Reactive
Windsor	Fence By-Law #170-2012 Zoning By-Law	Yes	Rear and side yard defined in Zoning By-Law	2.2m side or rear yard 1.2 m font yard including hedge 2.5 m on any property abutting publicly owned walkway or alley, excluding a hedge. 0.9 m from effective grade within a visibility triangle	No	Reactive
Kingston	By-Law 2003-405	No	2.4 metres rear or side	1.0 metre within a sight triangle	Yes	Reactive