

**DATE:** September 23<sup>rd</sup>, 2020

**REPORT NO:** COA-003-20

**SUBJECT:** **Recommendation Report**  
Application for Fence Variance by RVL Homes & Julias Futacs  
File No. A13/2020WL

**CONTACT:** Gerrit Boerema, Planner II  
Brian Treble, Director of Planning and Building

**OVERVIEW:**

- The Township of West Lincoln passed a bylaw to regulate the maintenance and erection of fences within West Lincoln known as Bylaw No. 2017-99, the Fence Bylaw.
- The Fence Bylaw permits a maximum height of 2 metres (6 feet, 6-3/4 inches) for residential uses.
- Section 5.4 of the Fence Bylaw permits property owners to make applications to the Committee of Adjustment to request variances from the provisions of the Fence Bylaw.
- An application for a variance to the Fence Bylaw has been made by RVL Homes and Julias Futacs for their respective properties, 371 Station Street and 369 Station Street.
- The owners have requested a variance to permit a fence height of 2.44 metres (8 feet) along the north property line of 369 Station Street between the residential properties but located wholly on 369 Station Street, whereas only 2 metres is permitted.
- The purpose for the variance is to construct a fence of sufficient height to provide privacy to the existing surrounding residential uses from the four new residential units along Spring Creek Road being constructed by RVL Homes.
- Due to the nature of this request, Planning Staff recommend that the variance be permitted, subject to one condition; That the fence be setback a distance no less than 3.66 metres (12 feet) from the east property line of 371 Station Street, to ensure that the fence does not cause sight line issues for either of their driveways

**RECOMMENDATION:**

That the application for a variance to the Township Fence Bylaw, 2017-99, made by RVL Homes and Julias Futacs, as outlined in Report COA-003-20, to permit a residential fence height of no greater than 8 feet (2.44 metres) along the north property line of 369 Station Street and a portion connecting to the residential dwelling on 371 Station Street, BE APPROVED, subject to the following condition:

1. That the fence be setback a distance no less than 3.66 metres (12 feet) from the east property line of 371 Station Street.

**ALIGNMENT TO STRATEGIC PLAN**

- **Strategic Responsible Growth**

**BACKGROUND:**

The subject properties are located within the urban area of Smithville, near the intersection of Spring Creek Road and Station Street. RVL Homes has severed 371 Station Street into a total of 4 residential lots intended for single detached dwellings, one of which is already constructed. These lots share a southern property line with two existing residential lots.

Due to the close proximity of the proposed dwellings, and the creation of the infill lots, the property owners have agreed to install a new fence with a height of 8 feet (2.44 metres), however, the Township Fence Bylaw, approved by Council in 2017, limits the height for a fence on a property with a residential use to 2 metres (6' -6 ¾").

**CURRENT SITUATION:**

Planning Staff have reviewed the variance request against the provisions of the Township Fence Bylaw and with regards to the surrounding residential development.

The fence variance is requesting to go 0.44 metres higher than what is currently permitted for the purposes of providing greater privacy for both the existing development and the proposed and existing new single detached dwellings.

The picture to the right shows the location where the new fence will be located after removal of the existing fence.



Planning Staff can recommend support this request for a variance based on the following factors:

1. The owners all agree upon a higher fence for privacy reasons.
2. The proposed fence is located 3.66 metres (12 feet) from the east property line of 371 Station Street providing for adequate sight lines for both residential driveways.
3. The increase in height is minor as it is only 0.44 metres taller than what is currently permitted.
4. All other provisions of the fence bylaw will be maintained.

Planning Staff recommend approval subject to the following condition:

2. That the fence be setback a distance no less than 3.66 metres (12 feet) from the

front property line.

**FINANCIAL IMPLICATIONS:**

There are no financial implications associated with this application.

**PUBLIC AND DEPARTMENT COMMENTS:**

Notification was mailed to all neighbouring properties within a 60m radius of the subject lands on September 9, 2020. A notice was posted to the Township's website on the same day, and a yellow notice sign was posted on the property a minimum of 10 days before the hearing.

Planning Staff have not received any comments from the public at the time of preparing this report.

The Township Building Department, Public Works Department and Drainage Superintendent have no objections to the proposed variance.

**CONCLUSION:**

A request for a variance to the Fence Bylaw was made by RVL Homes and Julias Futacs for the properties located at 369 and 371 Station Street, on the corner of Station Street and Spring Creek Road in Smithville. The request was to permit a fence with a height of 2.44 metres (8 feet) whereas the maximum permitted height for a fence in a residential zone is 2 metres (6'-6 ¾") in order to provide greater privacy between existing residential uses and a new development.

Based on the factors listed above, Planning Staff recommend support for this variance request, subject to the one condition, provided that all other provisions of the Fence Bylaw and Township Zoning Bylaw are maintained.

**ATTACHMENTS:**

1. Location Map
2. Application
3. Site Sketch
4. Fence Bylaw 2017-99

**Prepared by:**

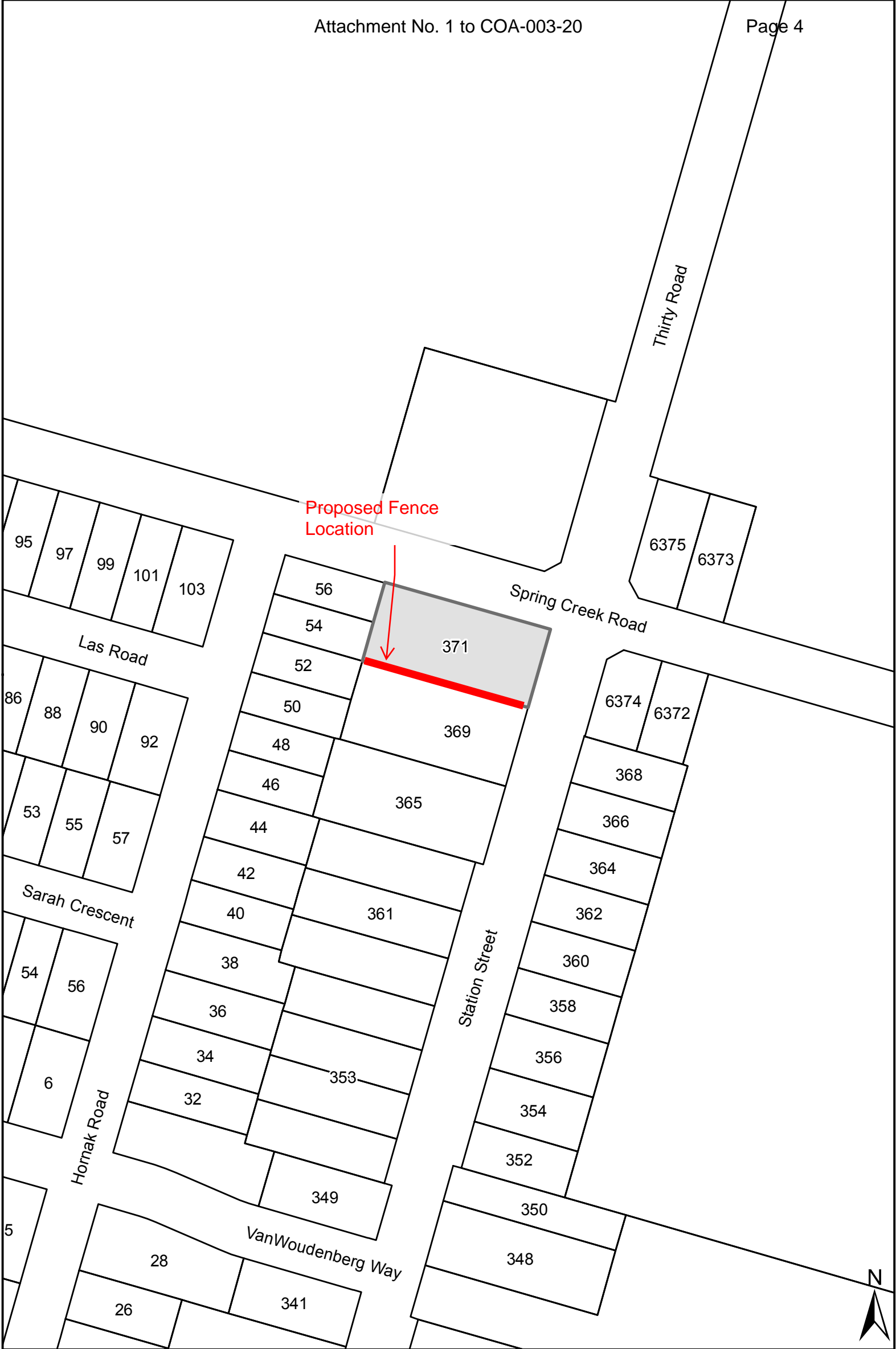


**Gerrit Boerema**  
**Planner II**



**Brian Treble, RPP, MCIP**  
**Director of Planning and Building**

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**Location Map**  
**371 Station Street**



**Legend**

Subject Lands

*June 2019*

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# Request for Variance to the Fence By-Law

Updated: June 2018

## A. Project information

Street Address: 371 Station St. Smithville Unit No. \_\_\_\_\_ Lot/Con: \_\_\_\_\_  
 Corner Lot: ☒ Yes ☐ No

## B. Applicant

Applicant is: ☒ Owner or ☐ Authorized Agent of Owner (if selected complete and attach authorization form)  
 Last Name: VanLeeuwen First Name: Richard Corporation or Partnership: RVL Contracting Inc  
 Street Address: 2 Main St E Box 429 Unit No. \_\_\_\_\_ Lot/Con: \_\_\_\_\_  
 Municipality: Grimsby Postal Code: L3M4H8 Province: ON  
 Telephone Number: 905 651 3625 Cell Number: \_\_\_\_\_ Email: info@rvlhomes.ca

## C. Owner (if different than the Applicant)

Last Name: Futacs First Name: Julias Corporation or Partnership: \_\_\_\_\_  
 Street Address: 269 Station St Unit No. \_\_\_\_\_ Lot/Con: \_\_\_\_\_  
 Municipality: Smithville Postal Code: L0R 2A0 Province: ON  
 Telephone Number: \_\_\_\_\_ Cell Number: \_\_\_\_\_ Email: \_\_\_\_\_

## D. Variance details

Variance from: ☒ fence height (2.1.1) ☐ fence location (2.2.1) ☐ privacy screen height (3.1.1) ☐ privacy screen location (3.3.1)  
☐ other: \_\_\_\_\_ pertaining to article / clause: \_\_\_\_\_

Request justification:

Starting 12 feet from property line (3.66m) we would like to install an 8ft high fence to the west corner of the new lot called 6384 Spring Creek Road.  
8ft high fence = 2,4384 m

## E. Declaration of applicant

I the applicant, acknowledge that the information contained in this application, attached plans and specifications, and other attached documentation is true to the best of my knowledge and that if the owner is a corporation or partnership, I have the authority to bind the corporation or partnership.

Date: Sept 2, 2020

Signature: 

Personal information contained in this form is collected under the authority of the *Municipal Act*, and will be used in the administration of the municipal Fence By-law. Any questions about the collection of personal information may be addressed to the Chief Building Official of the Township of West Lincoln.

## Completing this Form

### Required Supplemental Information

In addition to the submission of this completed form the submission must also include a drawing of the site, referenced to a legal plan of survey, illustrating the subject property on which the fence / privacy screen will be constructed. The drawing shall include all dimensions for the size of the lot, dimensions to the fence / privacy screen from property lines and buildings, the location and width of any easements on the property, and any other feature or encumbrance which could affect or be affected by the proposed fence / privacy screen construction.

### Scheduled Meetings

Requests for variance are discussed at a meeting of the Committee of Adjustment where by the Committee of Adjustment will hear the arguments of all relevant parties and make a decision based on the information presented. These meetings are typically held once per month and deadlines exist for submission of an application prior to the scheduled meeting to allow for appropriate time to prepare. Please contact the local Secretary to the Committee of Adjustment at the Township of West Lincoln at 905 957 3346 to discuss deadlines and scheduled meeting dates.

### Process Timeline

As the matter is heard by the Committee of Adjustment and subsequently subject to a period for appeal, the process may take several months from the time an application is submitted to the time when action can be taken resulting from the decision. Please allow for appropriate time in your project to account for any delays that may be caused by the request for variance process.

### Variance Decision

The Committee of Adjustment considers several matters in making their decision including the report prepared by Township staff, their site visit, as well as the comments and concerns of the involved parties. The Committee has the ability to approve or decline the request in whole or to decide to vary or set conditions to the approval as the Committee sees fit. Once a decision is made, an appeal of any decision can only be made in writing within twenty (20) days of the date of decision by the Committee. Any appeals to the decision of the Committee are forwarded to Township Council to be heard and decided upon at a scheduled Meeting of Council.

### Fee

The fee associated with the request for variance is established within the fence by-law and is required prior to processing any request for variance application. This fee is non-refundable regardless of the outcome of the Committee decision.

### For Use by Township Staff (Principal Authority)

Request for Variance Submission Date:

Committee of Adjustment Meeting Date:

Committee of Adjustment Decision Date:

Expiration of Appeal Period Date:

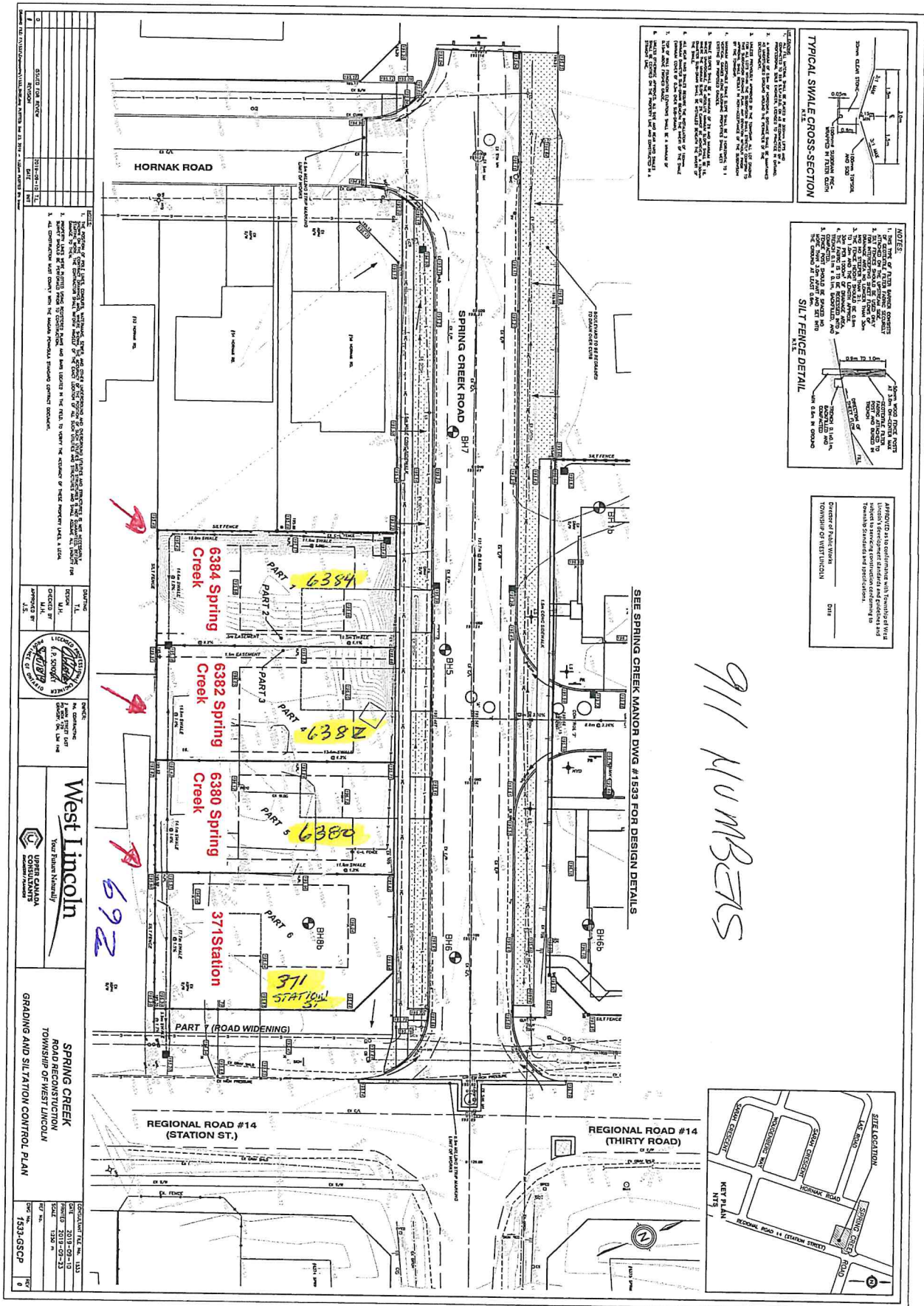
Council Meeting Date:

Decision: ☐ Approved ☐ Declined ☐ with Conditions

Appeal Submitted: ☐ Yes ☐ No; Date:

Report Number:





## THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN

### By-law No. 2017-99

#### A BY-LAW TO REGULATE THE MAINTENANCE AND ERECTION OF FENCES IN THE TOWNSHIP OF WEST LINCOLN

**WHEREAS** subsection 8(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, provides that the powers of a municipality under any 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;

**AND WHEREAS** subsection 11(3) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, authorizes a municipality to pass by-laws respecting structures, including fences and signs;

**AND WHEREAS** subsection 98(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, provides that a local municipality may provide that the Line Fences Act does not apply to all or any part of any municipality;

**AND WHEREAS** subsection 391(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, provides that a municipality may pass by-laws imposing fees or charges on any person for services or activities provided or done by the municipality or done on behalf of it;

**AND WHEREAS** section 425 of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, authorizes a municipality to pass by-laws providing that a person who contravenes a by-law of a municipality passed under that Act is guilty of an offence;

**AND WHEREAS** subsection 436(1) of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, provides that a municipality may pass by-laws providing for the entry onto land at any reasonable time for the purpose of carrying out an inspection to determine compliance with a by-law;

**AND WHEREAS** section 444 of the *Municipal Act, 2001, S.O. 2001, c. 25*, as amended, provides that a municipality may make an order to require a person to discontinue contravening a by-law and to do the work required to correct the contravention;

**AND WHEREAS** By-law 2002-112 to establish the Committee of Adjustment has been amended to empower the Committee to make decisions on fence variance applications;

**AND WHEREAS** the Council of The Corporation of the Township of West Lincoln deems it expedient to provide that the Line Fences Act does not apply within the Township of West Lincoln;

**AND WHEREAS** the Council of The Corporation of the Township of West Lincoln deems it expedient to pass a by-law respecting fences in the Township of West Lincoln

**NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF WEST LINCOLN ENACTS AS FOLLOWS:**

#### **SECTION 1    GENERAL PROVISIONS**

##### **1.1        SHORT TITLE**

1.1.1      This by-law shall be known as the "Fence By-law".

##### **1.2        DEFINITIONS**

1.2.1      For the purpose of this by-law:

- (1)        "*agricultural operation*" means an *agricultural*, *aquacultural*, *horticultural* or *silvicultural* operation that is carried on in the expectation of gain or reward;
- (2)        "*Chief Building Official*" means the *Chief Building Official* appointed by *Council* under the *Building Code Act, 1992, S.O. 1992, c. 23*, as amended, or the *person* to act in that capacity in his or her absence;



- (3) “*Committee*” means the Committee of Adjustment as appointed under provisions of the *Planning Act R.S.O. 1990 c. P. 13*, as amended and empowered in accordance with By-law 2002-112, as amended from time to time;
- (4) “*corner lot*” means a *lot* at the intersection of two or more public streets or upon two parts of the same public street with such street or streets containing an angle of not more than 135 degrees;
- (5) “*Council*” means the Council of the Corporation of the Township of West Lincoln;
- (6) “*division fence*” means a *fence* built on a *property* line marking the boundary between abutting parcels of *land*;
- (7) “*erect*” means to conduct any action involved in the *erection*, installation, construction, extension or material alteration of a *fence*;
- (8) “*fence*” means a vertical structure, including a railing, *hedge*, line of posts, shrubs, wire, gate, boards or pickets or other similar substances used to enclose or divide in whole or in part a *yard* or other *land* or to establish a *property* boundary line, but does not mean a *privacy screen*;
- (9) “*fence of closed construction*” means a *fence* where less than two thirds of its vertical surface is open space;
- (10) “*fence of open construction*” means a *fence* constructed so that at least two thirds of its vertical surface is open space;
- (11) “*ground level*” means the natural level of grade immediately adjacent to the *fence* and where the *ground level* is higher on one side of the *fence*, the *height* of the *fence* shall be measured from the side of the *fence* with the greater *height*;
- (12) “*hedge*” means a closely planted row of bushes, shrubs or low trees forming a *fence* or boundary, but shall not include trees having a caliper dimension of 50mm [2”] or greater at any point.
- (13) “*height*” means the vertical distance measured from the average finished *ground level* to the highest point of the *fence* or *privacy screen*;
- (14) “*highway*” means a common or public *highway*, street, avenue, parkway, driveway, square, place, bridge, viaduct or trestle, and any part of which that is intended for or used by the general public for the passage of vehicles and includes the area between the lateral *property* lines thereof;
- (15) “*land*” means an area of *property* and includes *lands*, tenements, and hereditaments, and any estate or interest therein, and any right or easement affecting them;
- (16) “*lot*” means any parcel of *land* which can be alienated 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 survey or subdivision;
- (17) “*lot line*” means any boundary of a *lot*;
- (18) “*lot line, exterior side*” means the *lot line* of a *corner lot*, other than the *front lot line*, which divides the *lot* from a public street;
- (19) “*lot line, front*” means the *lot line* that divides the *lot* from a public or private street provided that for a *corner lot*, through *lot*, or through *corner lot*.
  - (a) the shortest of the *lot lines* that divide the *lot* from the public or private street shall be deemed to be the *front lot line*;

- (b) where such *lot lines* are of equal length and where one *lot line* abuts a Regional Road or Provincial *highway*, the *front lot line* shall be deemed to be that *lot line* which abuts the Regional road or Provincial *highway*; and
  - (c) where such *lot lines* are of equal length and where both *lot lines* abut public streets under the same jurisdiction, the *Township* may designate which *lot line* is the *front lot line*.
- (20) "*lot line, interior side*" means the *lot line* other than the *front, rear* or *lot line*;
  - (21) "*lot line, rear*" means the *lot line* opposite to, and most distant from the *front lot line*, but where the side *lot lines* intersect, the *rear lot line* shall be the point of intersection of the side *lot lines*;
  - (22) "*Officer*" means an Enforcement *Officer*, a Building Inspector, a *Chief Building Official*, or other *person* appointed or employed by the *Township* for the enforcement of by-laws;
  - (23) "*owner*" means a *person* or corporation who legally owns or controls the *property* in question;
  - (24) "*person*" means and includes an individual, firm, corporation, association or partnership and includes an occupant or an *owner* of a *property*;
  - (25) "*privacy screen*" means a visual barrier used to shield any part of a *yard* from view from any adjacent *land* or *highway*;
  - (26) "*property*" means any grounds, *yard* or vacant *lands*;
  - (27) "*sight triangle*" means a triangular area on a *lot* determined by measuring a specified distance along each *street line* and joining such point with a straight line, as prescribed in the *Township's* Zoning By-law, as amended;
  - (28) "*street line*" means any *lot line* that divides a *lot* from a public street;
  - (29) "*substantially altered*" means the removal, alteration or replacement of the primary structural elements of the *fence* or *privacy screen* or where more than 75% of the *fence* or *privacy screen* is removed, altered or replaced;
  - (30) "*Township*" means The Corporation of the Township of West Lincoln or the geographical area of the municipality, as the context requires;
  - (31) "*use*" means the purpose for which any *lot*, building, structure or premises is arranged, designed, intended, occupied or maintained;
  - (32) "*use, agricultural*" means the *use* of *land*, buildings or structures for the growing of crops, raising of livestock, raising of other animals for food, fur or fiber, including poultry and fish; aquaculture; apiaries; agro-forestry; and maple syrup production;
  - (33) "*use, industrial*" means the *use* of *land*, buildings or structures for manufacturing, processing, fabricating, assembling, warehousing or storing of raw materials or goods and any related accessory *uses*;
  - (34) "*use, non-residential*" means the *use* of *land*, buildings or structures any *uses* other than those identified by this by-law to be of *residential use*;
  - (35) "*use, residential*" means the *use* of *land*, buildings or structures to serve as dwellings which shall include any related accessory buildings;
  - (36) "*yard*" means an open, uncovered, unoccupied space around and appurtenant to the whole or part of a building and *used*, or capable of being *used* in connection with a building;
  - (37) "*yard, exterior side*" means the *yard* of a *corner lot* extending from the *front yard* to the *rear yard* between the *exterior side lot line* and the nearest wall of a building or structure on the *lot*;

- (38) “*yard, front*” means a *yard* extending across the full width of the *lot* between the *front lot line* and the nearest wall of the main building or structure on the *lot*;
- (39) “*yard, interior side*” means a *yard* other than an *exterior side yard* that extends from the *front yard* to the *rear yard* between the *interior side lot line* and the nearest wall of a building or structure on the *lot*; and
- (40) “*yard, rear*” means 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*.

### 1.3 INTERPRETATION

- 1.3.1 In this by-law statutory references are to Statutes of Ontario and the regulations made thereunder and shall be deemed to refer to such statutes and regulations as amended, consolidated, re-enacted and in force from time to time.
- 1.3.2 This by-law shall be read with all changes of gender and number required by the context or circumstances.
- 1.3.3 For the purpose of this by-law:
  - (1) “m” means metres;
  - (2) “mm” means millimetres;
  - (3) ‘ means feet (i.e. 5’ = 5 feet);
  - (4) “ means inches (i.e. 5” = 5 inches);
  - (5) values contained in [ ] denote imperial equivalents to the prescribed metric value.

### 1.4 APPLICATION

- 1.4.1 The provisions of this by-law shall regulate the *erection of fences and privacy screens erected* on all *property* within the boundaries of the *Township* on and after the date of enactment of this by-law.
- 1.4.2 Any *fence* enclosing a private outdoor swimming pool shall be subject to the requirements of the *Township’s* Swimming Pool By-law, as amended, and where regulations provided in this by-law conflict with those in the Swimming Pool By-law, the more restrictive of the two shall apply.
- 1.4.3 Where a *lot line* is shared between properties of both *residential* and *non-residential uses*, the provisions prescribed in this by-law for the *non-residential use* shall prevail.
- 1.4.4 Where a *property* contains both *residential* and *non-residential uses*, the provisions prescribed in this by-law for the *non-residential use* shall prevail.
- 1.4.5 The regulations in this By-law shall not serve to exempt a *fence* or *privacy screen* from complying with the requirements of any other applicable legislation, including but not limited to, the Ontario Building Code or the Ontario Heritage Act, R.S.O. 1990, c. O.18.

### 1.5 EXISTING FENCES AND PRIVACY SCREENS

- 1.5.1 Except as provided in articles 1.5.2 and 1.5.3, notwithstanding the provisions of this By-law, any *fence* or *privacy screen* that was in lawful existence and lawfully established prior to the effective date of this By-law shall be deemed to comply with this By-law and may be maintained or repaired to the same location, *height* and dimension as previously existed.
- 1.5.2 Any *fence* or *privacy screen* that was in lawful existence and lawfully established prior to the effective date of this By-law shall be required to comply with the provisions of subsections 4.2, 4.3 and 4.4 of this by-law for prohibited materials.

1.5.3 Where an existing *fence* or *privacy screen* is *substantially altered* and / or replaced, the alteration and / or replacement shall be *erected* in accordance with the provisions of this By-law.

1.6 EXEMPTIONS

1.6.1 The regulations provided in this By-law shall not serve to prohibit the *erection* or maintenance of a *fence* or *privacy screen erected* under or for the following provisions:

- (1) *erected* under approval or requirement of an engineering, planning or similar agreement;
- (2) *erected* as a noise attenuation barrier under approval or requirement of an engineering, planning or similar agreement, or as a local improvement;
- (3) *erected* to protect an excavation, construction site, or any emergency or hazardous area;
- (4) *erected* in accordance with a variance having been previously granted pursuant to the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13;

1.6.2 Save and except for the requirements of subsections 2.3 and 3.4, of this by-law, the *persons* listed below shall be exempt from the remaining provisions of this by-law:

- (1) The Corporation of the *Township* of West Lincoln;
- (2) The Regional Municipality of Niagara;
- (3) any provider of utility services, such as but not limited to telecommunications, gas, electricity, or water;
- (4) any Department or Ministry of the Federal or Provincial government; or
- (5) any recognized school board, such as but not limited to the District School Board of Niagara or the Niagara Catholic District School Board.

1.7 LINE FENCES ACT

1.7.1 From and after the coming into effect of this by-law, the *Line Fences Act* shall no longer be applied or in effect in the *Township* of West Lincoln.

SECTION 2 FENCES

2.1 HEIGHT

2.1.1 Except as provided in articles 2.1.2, 2.1.3 and 2.1.4, the maximum *height* of a *fence* shall be not more than that of the maximum permitted *height* prescribed in Table 2.1.1 for the given *use* measured from *ground level*.

TABLE 2.1.1 – maximum permitted *fence heights*

Property Use	Maximum Permitted <i>Height</i>
<i>residential use</i>	2m [6'-6 3/4"]
<i>non-residential use</i>	3m [9'-10"]

2.1.2 The provisions of article 2.1.1 do not apply to a person who erects or *causes* to be *erected* a *hedge*, provided that the *hedge* does not exceed 3m [9'-10"] in *height* above *ground level*.

2.1.3 The provisions of article 2.1.1 do not apply to a *fence* being *used* for the purpose of containing livestock as part of an *agricultural operation*.



2.1.4 Notwithstanding the provisions with respect to *height of fences* as provided above, a *fence* may be *erected* in a *rear* or *side yard* enclosing any tennis court or similar private sports facility, not including a private outdoor swimming pool, provided:

- (1) the *fence* is not greater than 3.66m [12'-0"];;
- (2) the *fence* is a *fence of open construction*;
- (3) the minimum setback from either *rear* or *side lot lines* is not less than 0.6m [1'-11 1/2"]; and
- (4) the *side yard* or *rear yard* in which the private sports facility is located is not less than 230m<sup>2</sup> [2,475 square feet] in area.

## 2.2 FENCES IN FRONT YARDS

2.2.1 Notwithstanding the provisions of subsection 2.1, no person shall *erect* or cause to be erected within 3.0m [9'-10"] of the nearest *street line* in a *front yard*.

- (1) a *fence of closed construction* with a *height* greater than 0.8m [2'-7 1/2"] above *ground level*;
- (2) a *hedge* with a *height* greater than 0.8m [2'-7 1/2"] above *ground level*; or
- (3) a *fence of open construction* with a *height* greater than 1.2m [3'-11 1/4"] above *ground level*.

2.2.2 The provisions of article 2.2.1 do not apply to the *erection* of an ornamental gateway, entranceway or similar structure.

2.2.3 The provisions of article 2.2.1 do not apply to the *erection* of a *fence* on any *land* of an *agricultural* or *industrial use* provided it is a *fence of open construction*.

2.2.4 Where a building or part of a building is closer to the *street line* than 4.5m [14'-9"], the nearest distance shall prevail.

## 2.3 FENCES IN SIGHT TRIANGLES

2.3.1 No person shall *erect* or cause to be erected, in any *yard* or on any *land*, a *fence* within a *sight triangle* unless such a *fence* is a *fence of open construction* and does not obstruct the visibility through the *sight triangle*, and the *height* of the *fence* does not exceed 0.8m [2'-7 1/2"] above *ground level*.

## 2.4 DIVISION FENCES

2.4.1 Each of the *owners* of adjoining occupied *land* shall repair, replace or maintain a just proportion of any *division fence* heretofore or hereafter erected which marks the boundary of their respective properties, or shall bear a just proportion of the cost of any work or *erection*, repair, replacement or maintenance which has been carried out.

2.4.2 Where *owners* of adjoining *land* cannot agree on the type or kind of *fence* to be erected between them as provided by article 2.4.1 of this by-law, no contribution to the cost thereof shall be payable unless the party erecting the *fence* constructs

- (1) a 9 strand page wire fence, for lands where one or more of the properties being marked by the division fence has an active agricultural operation; or
- (2) a chain link *fence* 1.2m [3'-11 1/4"] in *height* on all other applicable properties

Only upon such *fence* being constructed shall the provisions of article 2.4.1 of this by-law apply respecting the apportionment of costs of the said *fence*. In the event any other type or kind of *fence* is erected, there shall be no apportionment of costs with respect thereto but where repair or maintenance is carried out under this by-law, a just proportion of the cost of the work may be recovered under article 2.4.3 of this by-law.

- 2.4.3An *owner* desiring to enforce the provisions of article 2.4.1 and 2.4.2 of this by-law shall deliver to the *owner* or occupant of the adjoining *land* a notice by registered mail requiring them to comply with the by-law and if such compliance does not take place within thirty (30) days after service of the notice, the *owner* serving the notice, may do the work that the by-law authorizes and may take the necessary proceedings to recover the value of the work and the cost, from the said adjoining *owner* or occupant upon validation of the court.
- 2.4.4If any tree is fell by accident or otherwise so as to cause damage to a line fence, the owner or occupant of the land on which the tree stood shall forthwith remove the tree and repair the fence.
- 2.4.5On the neglect or refusal of the owner or occupant of the land on which the tree stood so to do for forty-eight hours after notice in writing to remove the tree, the adjoining land-owner may remove it in the most convenient and inexpensive manner, and may make good the fence so damaged, and may retain the tree to remunerate the adjoining land-owner for such removal.
- 2.4.6A person who repairs a fence under article 2.4.5 may recover the costs of the work in the same manner as an owner under article 2.4.3 may recover the value of the work done by that owner.
- 2.4.7For the purpose of such removal described in articles 2.4.4 and 2.4.5, the respective property owner may enter into and upon the adjoining land doing no unnecessary spoil or waste.

**SECTION 3**     **PRIVACY SCREENS**

**3.1**     **HEIGHT**

- 3.1.1No *person* shall *erect* or cause to be erected on any *yard* or on any *land*, a *privacy screen* which is greater than 3m [9'-10"] above *ground level*.

**3.2**     **PRIVACY SCREENS IN FRONT YARDS**

- 3.2.1No *person* shall *erect* or cause to be erected a *privacy screen* in a *front yard*.

**3.3**     **PRIVACY SCREENS IN SIDE AND REAR YARDS**

- 3.3.1Except as provided in article 3.3.2, the minimum setback from the prescribed *lot line* shall be not less than that of the minimum required setback for *privacy screens* prescribed in Table 3.3.1.

**TABLE 3.3.1 – minimum required setback for *privacy screens***

Line	Minimum Required Setback
<i>street line</i> (not in a <i>front yard</i> )	4.5m [14'-9"]
<i>rear lot line</i>	1.2m [3'-11 1/4"]
interior <i>lot line</i>	1.2m [3'-11 1/4"]

- 3.3.2Notwithstanding the provisions prescribed in article 3.3.1, a *privacy screen* located to provide a visual barrier between dwelling units divided by a common wall shall be subject to a required setback of not less than 0.6m [1'-11 1/2"] from the mutually shared interior *lot line*.

**3.4**     **PRIVACY SCREENS IN SIGHT TRIANGLES**

- 3.4.1No *person* shall *erect* or cause to be erected, in any *yard* or on any *land*, a *privacy screen* with a *sight triangle*.

**SECTION 4    PROHIBITIONS****4.1      GENERAL PROHIBITIONS**

- 4.1.1    No *person* shall, without statutory authority to do so, *erect* or cause to be erected, any *fence* or *privacy screen* on *lands* owned by the *Township*, Region of Niagara, or the Provincial or Federal government including any Department of Ministry thereof or within a road allowance.
- 4.1.2    No *person* shall *erect* or cause to be erected any *fence*, *hedge* or *privacy screen* which is prohibited by the provisions of this by-law.
- 4.1.3    No *person* shall *erect* or cause to be erected any *fence* or *privacy screen* on *property* containing a *residential use* which is constructed in whole or in part of sheet metal or corrugated metal panel members.
- 4.1.4    No *person* shall *erect* or cause to be erected, or keep in any *yard*, or on any *land* within the *Township*, a *fence*, *hedge* or *privacy screen* which is not in a good state of repair and is not in accordance with the provisions of the *Township* of West Lincoln Property Standards By-law as amended.

**4.2      ELECTRIC FENCES**

- 4.2.1    No *person* shall *erect* or cause to be erected an electric *fence*.
- 4.2.2    Notwithstanding the provisions of article 4.2.1, an electric *fence* using direct current may be erected on *land* while it is being lawfully used for an *agricultural operation*, provided that such *fence*:
- (1)      has a maximum of 12 volt trickle charge;
  - (2)      is designed and erected solely to contain animals; and
  - (3)      has attached thereto, at intervals not to exceed 15m [49'-2 1/2"], a sign warning that the *fence* carries electricity.

**4.3      BARBED WIRE**

- 4.3.1    No *person* shall *erect* or cause to be erected or maintained any *fence* composed wholly or partially of barbed wire, metal spikes or other sharp or pointed materials, within the *Township*.
- 4.3.2    Notwithstanding the provisions of article 4.3.1, barbed wire may be used in the construction of a *fence*:
- (1)      on *land* while it is being lawfully used for an *agricultural operation*; or
  - (2)      on *land* containing an *industrial use* provided that the portion of *fence* containing the barbed wire is not less than 1.8m [5'-11"] above *ground level*.

**4.4      VEHICLE TIRES**

- 4.4.1    No *person* shall *erect* or cause to be erected any *fence* or *privacy screen* composed wholly or partially of vehicles tires, used or otherwise, on any *property* within the *Township*.
- 4.4.2    No *person* shall maintain or keep, cause to be maintained or kept, any *fence* or *privacy screen* composed wholly or partially of vehicle tires, used or otherwise, on any *property* within the *Township*.

**SECTION 5    ADMINISTRATION AND ENFORCEMENT****5.1      OFFICERS**

- 5.1.1    The *Chief Building Official* is assigned the responsibility of administering and enforcing this By-law and may assign duties to such *persons* as necessary to carry out the provisions of this By-law.

- 5.1.2 *Persons* appointed or assigned for the purposes of administering or enforcing this By-law are *Officers* and have authority to carry out the duties assigned to *Officers* under this By-law, and may enforce the provisions of this By-law.
- 5.1.3 An *Officer* acting under this By-law or any *person* acting under their instruction may at any reasonable time, and upon producing proper identification, enter upon any *property* without a warrant for the purpose of administering or enforcing this by-law.
- 5.1.4 No *person* shall hinder or obstruct an *Officer*, appointed under this by-law or employed to enforce by-laws for the *Township*, from carrying out their duties to administer and enforce this by-law.

## 5.2 ORDERS FOR NON-CONFORMITY

- 5.2.1 If an *Officer* is satisfied that a contravention of this By-law has occurred, the *Officer* may issue an order to the *owner* and such other *persons* affected by it as the *Officer* determines and a copy of the order may be posted on the *property* to require that the materials or conditions be brought into compliance with this By-law.
- 5.2.2 An order as described in article 5.2.1 shall:
- (1) state the municipal address or the legal description of the *property* on which the infraction has occurred;
  - (2) give reasonable particulars of the contravention adequate to identify the contravention and the location on the *land* on which the contravention has occurred;
  - (3) the date or dates by which compliance with the order must be achieved; and
  - (4) be served or caused to be served on the *owner* and such other *persons* affected by the order by:
    - (a) personal service;
    - (b) registered mail to the last known address known to the *Township* for that *person* which shall be considered to be served five business days after the date the order was mailed; or
    - (c) posting the order in a conspicuous place upon the *property* on which the instance of non-conformity was found by the *Officer*.
- 5.2.3 An *Officer* may grant extensions of time for compliance beyond that specified in any order issued in accordance article 5.2.1 in any case where:
- (1) valid reasons exist in the opinion of the *Officer* for the extension; and
  - (2) apart from such reasons, the *Officer* is satisfied that the order will be complied with.
- 5.2.4 Any such extension of time for compliance beyond that specified in the order as permitted by article 5.2.3 shall be provided in writing. An extension received in any other manner shall not be considered valid or applicable.
- ## 5.3 POWER OF TOWNSHIP TO REPAIR OR REMOVE
- 5.3.1 Where an *owner* fails to *erect* or maintain a *fence* or *privacy screen* in accordance with the provisions of this by-law, or fails to cause or permit the repair, relocation or removal of a *fence* or *privacy screen* in accordance with an order issued under this by-law, an *Officer* may, with such assistance by others as may be required, immediately, at the expense of the *owner*, repair, relocate or remove the *fence* or *privacy screen*.
- 5.3.2 Where it is required for the *Township* to have work conducted to remedy a non-conformity as described in article 5.3.1, the *Township* may charge an administration fee of 15% of such expense with a minimum fee of \$125.00 which shall be added to the expense of the work.



- 5.3.3 The *Township* may recover any expenses incurred in undertaking the work described in article 5.3.1, including the administration fee as prescribed in article 5.3.2, by action or by adding the costs to the tax roll and collecting them in the same manner as taxes.

#### **5.4 VARIANCES OF THIS BY-LAW**

- 5.4.1 The *owner* of a *property*, or authorized agent of the *owner*, may make an application to the *Committee* to request consideration of a variance from the provisions of this by-law with respect to their *property*. Such application shall be made in the form as described in sentence 5.4.2 and accompanied by the fee as prescribed in the Schedule of Fees, being Schedule A to this By-law, along with any other information relating to the application as may be required by the *Chief Building Official*.
- 5.4.2 Applications for variance from the provisions of this By-law shall be made in writing on a form as prescribed by the *Chief Building Official* and shall include:
- (1) The name, address, telephone number and contact information of the *person* making application for the variance;
  - (2) specific reference made to the applicable article(s) of the by-law from which exemption is being sought;
  - (3) a statement as to the reason why the provisions of the by-law are unable to be met;
  - (4) a site plan, referenced to a legal plan of survey, indicating the location on the *property* where the subject variance is being requested; and
  - (5) the applicable fee.
- 5.4.3 Applications for variance to the *fence* by-law shall be made to the *Committee* in accordance with procedures established by that *Committee* and the following requirements:
- (1) Notice of hearing shall be given to every *owner* of abutting *land* by personal service, prepaid personal mail or electronically, where permitted; and
  - (2) Appeals of the decision of the *Committee* shall be to *Council* and shall be formally requested in writing within twenty (20) days of the date of decision by the *Committee*.
- 5.4.4 The *Committee* may grant or deny a variance with respect to sections 2 and 3 of this by-law. All decisions of the *Committee* shall be in writing and are revocable only by a motion of *Council*.
- 5.4.5 The *Committee* shall act in accordance with the Terms of Reference approved by *Council*.

#### **5.5 PENALTIES**

- 5.5.1 Every *person* who contravenes any provision of this by-law is guilty of an offence and upon conviction is liable to a fine of not more than \$5,000.

#### **5.6 FEES**

- 5.6.1 Any fee required by or described in this by-law shall be as set out in Schedule "A" to this by-law.

#### **5.7 VALIDITY**

- 5.7.1 Should a court of competent jurisdiction declare a part or whole of any provision of this by-law to be invalid or of no force and effect, the provision or part is deemed severable from this by-law, and it is the intention of *Council* that the remainder survive and be applied and enforced in accordance with its terms to the extent possible under the law so as to protect the public.

- 5.7.2 Where the regulations of this by-law conflict with those of another by-law, Act, or Regulation in force within the *Township*, the regulation that establishes the higher standards to protect the health and safety of *persons* shall prevail.

## **SECTION 6   ENACTMENT**

### **6.1      DATE OF ENACTMENT**

- 6.1.1 This by-law shall come into force and effect October 15, 2017.

**READ A FIRST, SECOND AND THIRD  
TIME AND FINALLY PASSED THIS  
25<sup>TH</sup> DAY OF SEPTEMBER 2017.**

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**MAYOR DOUGLAS JOYNER**

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**CAROLYN LANGLEY, CLERK**

SCHEDULE ‘A’

By-law 2017–99: Fence By-law

SECTION 1 FEES

1.1 FEES

1.1.1 Every application for consideration of a variance to this By-law shall be subject to a fee as prescribed below.

Table A 1.1.1: Fence By-law Variance Application Fees

Request	Fee
<i>variance of fence regulations</i>	\$475
<i>variance privacy screen regulations</i>	\$475
<i>appeal of decision of Committee of Adjustment</i>	\$1,000

1.1.2 The fees collected for consideration of a variance do not in any way guarantee the granting of the requested variance or appeal and at no time shall the collected fee be refundable in whole or in part.

SCHEDULE ‘B’

The Corporation of the Township of West Lincoln  
Part I Provincial Offences Act  
By-law 2017–99: Fence By-law

SECTION 1 SET FINES AND SHORT FORM WORDING

1.1 SET FINES AND SHORT FORM WORDING

1.1.1 For the purpose of the enforcement of this by-law the short form wording and set fines shall be as prescribed in the table below as provided for in the *Provincial Offences Act, R.S.O. 1990, c.P-33*, as amended.

Table B 1.1.1: Fence Set Fines and Short Form Wording

No.	column 1 Short Form Wording	column 2 Provision Creating or Defining Offence	column 3 Set Fine
1	<i>erect fence on municipal road allowance or Township property</i>	Article 4.1.1	\$200
2	<i>erect prohibited fence or privacy screen</i>	Article 4.1.2	\$200
3	<i>erect fence or privacy screen using sheet metal – residential zone</i>	Article 4.1.3	\$200
4	<i>failure to maintain fence</i>	Article 4.1.4	\$200
5	<i>erect fence or privacy screen using electric fence</i>	Article 4.2.1	\$200
6	<i>erect fence or privacy screen using barbed wire</i>	Article 4.3.1	\$200
7	<i>erect fence or privacy screen using vehicle tires</i>	Article 4.4.1	\$200
8	<i>maintain a fence or privacy screen made of vehicle tires</i>	Article 4.4.2	\$200
9	<i>hinder an Officer</i>	Article 5.1.4	\$200
10	<i>failure to comply with an order</i>	Article 5.2.1	\$200

NOTE: The general penalty provision for the offences listed above is Article 5.5.1 of By-law 2017-99, a certified copy of which has been filed.