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# HALDIMAND COUNTY

## Report BME-01-2025 Fence By-law Amendments

For Consideration by Council in Committee on April 29, 2025

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### Objective:

To present amendments to the Fence By-law which regulates the construction, maintenance, and repairs to fences in Haldimand by providing for an appeal process, housekeeping definition and delegated authority to staff respecting a fence of open type construction.

### Recommendations:

1. THAT Report BME-01-2025 Fence By-law Amendments be received;
2. AND THAT Fence By-law 2217/20 be amended as outlined in Report BME-01-2025 and approved at a future Council meeting;
3. AND THAT User Fees and Service Charges By-law 2560/24 be amended to reflect the new and revised user fees as outlined in Report BME-01-2025 and approved at a future Council meeting.

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**Respectfully submitted:** Mike Evers, MCIP, RPP, BES, General Manager, Community & Development Services

**Approved:** Mark Merritt, CPA, CA, Acting Chief Administrative Officer

### Executive Summary:

Staff are proposing amendments to the Fence By-law 2217/20 to create a more flexible tool for the construction of fences in the County, including an option to apply for a variance to the standards (complete with appeal process). If adopted, property owners could request a variance to the maximum fence heights, the materials and/or the material sizes or dimensions used in the construction of a fence as is not otherwise provided for in the by-law, while still responding positively to concerns about the fence curb appeal.

### Background:

On November 23, 2020, Council enacted the Fence By-law 2217/20 (By-law) in order to fill the regulatory gap of removing fence provisions from the harmonized Zoning By-law. In June of 2021, Council approved a housekeeping amendment in order to clarify the definition for corner sight triangles. Over a number of years of administration, staff have identified a collection of amendments that would improve the overall function and efficacy of the By-law. This includes adding some level of flexibility to the By-law (as requested by numerous residents over time) to respond to variations in fence design, placement and materials where appropriate to do so.

## Analysis:

Fence construction continues to be a dynamic aspect to a property owner's land enhancements and the reasons for the construction of a fence can be different for each property owner. Fences serve many functions, including security, privacy, enclosing a yard for children or pet, hazard control or may simply be an architectural or aesthetic improvement. With all these possible functions, a property owner may desire a fence which consists of a variety of fence types, styles and materials.

The current Fence By-law has served Haldimand County well over the past 4 years, regulating various aspects of the construction, including the provision for maximum heights reflecting specific characteristics in both residential and non-residential zones. In this regard, the By-law provides for varying maximum heights within any yard, required yard, corner sight triangle, driveway, visibility triangle, and including yards that abut Lake Erie.

Staff over the past few years, have noted a rise in the number of fences constructed in Haldimand County where the By-law could be more flexible while maintaining public interests around safety and aesthetics. Staff have identified a number of fence constructions that do not negatively impact safety or the street scape in the area, however, the fences do not comply with the by-law forcing owners to rethink their approach to building a fence, including a costly reconstruction or less desirable design.

To that end, staff are recommending a series of amendments to the Fence By-law that are described in the table below. The main amendments are as follows:

- Variance process – the proposed amendment would provide for an opportunity to make an application for a variance from the maximum fence heights as provided for in the By-law. This process would be similar to that of a variance to the Haldimand Sign By-law and Zoning By-law (both processes are through the Committee of Adjustment). Consideration for the variance would take into account overall appearance, function, impacts to sight lines, neighbourhood standards, etc. It is proposed that the Committee of Adjustment would be the decision making body for these applications. Any decision by the Committee of Adjustment would be appealable to Council which, should it occur, would be decision final.
- Fence of Open Type Construction – Definition and Appeal Process: Separate amendments, specifically with regards to a Fence of Open Type Construction, provide a definition as to when a fence is visually unobstructed, including the ability for staff to consider additional construction options. These amendments would provide flexibility for a property owner to bring their fence into compliance with the by-law.

Defining when a fence is “visually unobstructed” sets a bench mark, however, cannot account for all the varying combinations of the materials and the material sizes or dimensions that could be used in the construction of a Fence of Open Type Construction. Providing an appeal mechanism—where owners may make submissions detailing how they plan to construct a Fence of Open Type Construction—giving an opportunity for the Chief Building Official (CBO) to review their plans and consider approvals where the construction of the fence maintains the general intent and purpose of the Fence By-law. Note, Attachment “B” for examples of Fences of Open Type Construction.

- Front Yard fence heights – Many residents choose to enclose their front yards for reasons previously noted in the report. Current provisions within the Fence By-law restrict the maximum height of a fence in a Required Front Yard to 0.9 metres (3 feet) and the maximum height of a Driveway Visibility Triangle to 0.75 metres (2 feet, 6 inches). These provisions are in place to ensure that pedestrians walking along a sidewalk, motorists exiting a property or motorists passing the driveway are able to clearly see in order to avoid collisions. Residents and staff recognize the need for safety in this regard, however, staff are hearing that there remains a desire to enclose front yards and driveway with higher fences. Staff are recommending that

Fences of Open Type Construction may increase to a maximum height of 1.2 metres (4 feet) in a Driveway Visibility Triangle or Required Front Yard. This balances the need for safety with the resident desire for higher and aesthetically pleasing fences in these areas.

The following chart summarizes existing sections of the by-law and the corresponding proposed amendments:

<b>Fence By-law 2217/20</b>	
<u>Existing Sections</u>	<u>Proposed Additional Sections</u>
<b>Definitions</b>	<b>Definitions</b>
<p><b>“Open Type Construction”</b> means any Fence which is <b><u>Visually Unobstructed</u></b> throughout its Length and Height except for necessary line posts, corner posts, top rails, and other normal accessories which includes a Fence constructed of chain link, wood, composite, vinyl, aluminum or iron where the pickets when constructed are visually unobstructed throughout its Length and Height.</p> <p>There is currently no clarification of the meaning of “Visually Unobstructed” in the By-law.</p>	<p>“Visually Unobstructed” refers to the materials and the material sizes or dimensions which are permitted to be used in the construction of a Fence. For the purposes of this By-law, a Fence that can be accepted as Visually Unobstructive as follows:</p> <ol style="list-style-type: none"> <li>Posts, supporting the rails, when of wood, composite, vinyl, aluminum or iron, shall not be more than .15 metres x .15 metres (6 inches x 6 inches) in diameter and situated distance not less than 1.83 metres (6 feet) between the posts, and</li> <li>Vertical pickets, attached to the supporting rails, when of wood or composite that shall not be more than 0.07 metres (2-3/4 inches) wide and have a spacing of not less than .13 metres x .13 metres (5 inches x 5 inches) between vertical pickets.</li> <li>Vertical pickets, attached to the supporting rails, when of vinyl, aluminum or iron shall not be more than 0.02 metres (3/4 inches) wide and have a spacing of not less than 0.01 metres (4 inches) between vertical pickets.</li> <li>Vinyl, aluminum or iron vertical pickets that do not comply with Subsection (c) above, must be in accordance with subsection (b) of this definition to be considered as Visually Unobstructed.</li> <li>Chain link mesh shall not have openings less than 40 mm (1-1/2 inch).</li> <li>Posts supporting chain link mesh shall not be more than .07 metres (3-1/2 inches) in diameter and supporting the rails shall not be more than 0.04 metres (1-1/2 inches) in diameter.</li> </ol>
Staff do not have the ability to accept or consider alternative fence construction.	The Chief Building Official may deem acceptable any combination of the materials and the materials sizes or dimensions used in the construction of a Fence of Open Type Construction.
<p><b>Exemptions:</b></p> <ul style="list-style-type: none"> <li>existing fences in compliance with former By-laws;</li> <li>fence replacements, however, the replacements will need to comply with this by-law;</li> <li>as a Normal Farm Practice.</li> </ul>	A fence construction to within 98% of the applicable provision(s), shall be deemed to comply with this By-law.

Does not permit a Fence of Open Type Construction.	A Fence of Open Type Construction may be erected within any Driveway Visibility Triangle or within the required front yard.
<b>Fence Location:</b> Driveway Visibility Triangle, maximum height of .75 metres (2 feet, 6 inches). <b>Fences in Residential Areas:</b> Required Front yard, maximum Heights of 0.9 metres (3 feet).	A Fence of Open Type Construction permitted to a maximum height of 1.2 metres (4 feet): <ul style="list-style-type: none"> <li>a. any Driveway Visibility Triangle, or</li> <li>b. in the Required Front Yard.</li> </ul>
<b>Remedial Action</b>	<b>Remedial Action</b>
No process to appeal Fence By-law Regulations.	Provide for an application for a variance or an appeal from any provision of this By-law, excluding Part VI respecting Division Fences. Amend the User Fee By-law to include an application fee of \$237.00 The County may on the application of a person: <ul style="list-style-type: none"> <li>a. authorize a variance or appeal from the provisions of this By-law where in the opinion of the County: <ul style="list-style-type: none"> <li>i. there are special circumstances or conditions applicable to the property or building where the fence is proposed to be erected and these circumstances or conditions are not shared by others with similar properties or buildings; or,</li> <li>ii. strict application of the provisions of this By-law would create practical difficulties or unusual hardship for the applicant; or,</li> <li>iii. the special circumstances or conditions were not created by the applicant; or,</li> <li>iv. approval of the variance will not alter the character of the area where it is located; and,</li> <li>v. approval of the variance will not affect public safety; and,</li> <li>vi. approval of the variance maintains the general intent and purpose of this By-law.</li> </ul> </li> <li>b. Authorize a variance or appeal to this By-law to permit a Fence which does not comply with this By-law.</li> </ul> A variance or appeal from the provisions of this By-law may be authorized by Council, or if Council so delegates, by a Committee of Council, designated by Council. Where Council has delegated approval of a variance or appeal to a Committee of Council and the Committee of Council refuses the application, the applicant may appeal the refusal and Council shall consider the appeal and decide.

### **Financial/Legal Implications:**

The proposed amount for the “Variance Application or Appeal – Fences” fee (i.e., \$237.00) was calculated utilizing the approved methodology within “Schedule R” in the Council-approved User Fees and Service Charges By-law. The fee also aligns with the already approved Sign Variance fee as the processes and required staff time are similar.

The proposed fee amendment is to be incorporated in the Haldimand County’s User Fees and Service Charges By-law, replacing the existing “Schedule Q – Planning & Development”. A draft by-law enacting this amendment is attached to this report (Attachment 3) and is to be approved by Council.

Taking into consideration the minimal issues staff have encountered regarding fences over the years, the annual revenue from application fees is projected to be approximately \$1,000.00, which equates to 4 variance applications per year.

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### **Stakeholder Impacts:**

The draft Fence By-law amendment will create clarity and positive impacts, in that, it will provide a flexible and comprehensive standard for the construction, maintenance and repair for fences.

The Committee of Adjustment is recommended as the decision making authority for Fence By-law variances. Training would be required to understand the mechanics of the By-law as well as the Committee’s role in assessing any variances it receives. Staff are of the opinion that the annual application volume would be low and can be accommodated within the current workload of the Committee.

### **Report Impacts:**

Agreement: No

By-law: Yes

Budget Amendment: Yes

Policy: No

### **References:**

None.

### **Attachments:**

1. Fence By-law 2217/20 Amendment.
2. Examples of Fences of Open Type Construction.
3. User Fee By-law Amendment - Schedule Q.
4. User Fee By-law Amended Schedule Q.