

# Memorandum

To: Peter Valore  
From: Jeffrey W. Nanson  
Date: December 5, 2017  
Re: Proposed Fence By-Law Provisions

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I have been asked to review paragraphs 3.2(e), 6.1, and 6.2 of The Corporation of the Town of Kingsville (the "Town") proposed "By-Law to Regulate the Height, Location, and Description of Fences". This Memorandum is intended to provide my opinion with respect to proposed sections.

It is important to note that these proposed changes can only be enforced moving forward. If a property owner has a fence installed at the time that this By-Law is passed, the new provisions cannot be enforced against the pre-existing fence structures. This also holds to true modifying the way in which current Salvage Yards are being operated prior to the proposed changes being enacted.

## **PROPOSED CHANGE #1:**

### **GENERAL PROVISIONS - RESIDENTIAL ZONES**

**3.2 (e)** Notwithstanding any Section of this by-law to the contrary a fence shall not be constructed within 1m of any building or structure or any manner that would prohibit access for maintenance purpose to the wall of said building or structure.

### **Discussion:**

This section is problematic for a number of reasons:

- A. It is vague and will be very difficult to enforce;
- B. This paragraph contradicts other sections of the By-Law that require items to be completely enclosed by a fence. For example, the swimming pool sections and the proposed Salvage Yard Fencing sections;

- C. This section also limits an owner's ability to erect a fence that would completely enclose portions of their property or connect to their own residential structure;
- D. It appears this proposed section is attempting to remedy an issue specific to one or a few properties within the municipality with a By-Law provision that could have impact on all properties;
- E. This paragraph appears to be intended to provide access by one property to a neighbouring property.
- F. In my opinion, granting or withholding access to an owner's property is the right of the owner, subject to potential historical uses. If there is a dispute between property owners, that dispute is best solved by the owners without the Town's involvement. For example, an owner being denied access that is necessary to a neighbour's property is entitled to bring a civil application before the Superior Court of Justice to resolve that issue.

**Recommendation:**

I recommend removing this paragraph for the reasons set out above.

**PROPOSED CHANGE #2**

**SALVAGE YARD FENCING**

- 6.1** Notwithstanding any other provision of this By-Law, no person shall establish, operate or maintain or cause or permit the establishment, operation or maintenance of a salvage yard unless the land on which the salvage yard is located is fenced.
- 6.2** No person shall erect or construct or cause or permit to be erected or constructed, fence on a lot used as a salvage yard except in accordance with the following provisions:
- a) Except as provided in clause (c) of this subsection, a fence within any front, rear, or side yard shall not be less than 3.0m and not greater than 4.6 m in height.
  - b) A fence to enclose a front yard shall be setback from the lot line a distance equal to the front yard setback requirement of the zone in which the salvage yard is located.
  - c) Except as provided for in clause (c) of this section, a fence in any yard shall be of consistent height and material and shall be fully screened.
  - d) A fence on a lot used as a salvage yard shall not be constructed using any of the following: shipping containers, sea cans, truck bodies, truck trailers, bus bodies, used

building materials unless erected on a stable support system and painted a single neutral colour.

**Discussion:**

The Town is permitted to regulate fencing. It is ultimately the decision of the Town how it wishes to regulate "Salvage Yard Fencing".

I again remind you that it is important to note that these proposed changes can only be enforced moving forward. If a property owner has a salvage yard being operated in a manner that contradicts these fencing regulations that owner will likely have the right to continue operating in the same manner as they have in prior to the provision being enacted.

**Recommendation:**

If the Town wishes to regulate Salvage Yard Fencing in the manner proposed it appears appropriate. Alternatively, the Town can enact a separate By-Law to address Salvage Yard Fencing.