

STAFF REPORT: BUILDING & BY-LAW DEPARTMENT



REPORT TO: Planning & Building Committee
MEETING DATE: April 4th, 2011
REPORT NO.: B.11.20
SUBJECT: Swimming Pool Fence By-law
Amendment
PREPARED BY: David Finbow, Director, Planning &
Building Services

A. Recommendations

THAT COUNCIL receive Staff Report B.11.20 and adopt an amendment to Swimming Pool By-law No. 2002-08, as amended, as it relates to the property known municipally as 95 Napier Street West so as to permit a swimming pool fence enclosure to be located 15.0 metres from the swimming pool and to permit a 1.8 metre high stone wall, having a length of approximately 6.0 metres, to serve as part of the swimming pool enclosure.

B. Background

The owner of the premises known municipally as 95 Napier Street West has requested relief from the Swimming Pool Fence By-law so as to enclose an existing swimming pool on the premises with fencing that will be located 15.0 metres from the swimming pool instead of the maximum 10.0 metres and to permit a 1.8 metre high stone wall, having a length of approximately 6.0 metres, to serve as part of the swimming pool enclosure.

The subject premises is located on the south side of Napier Street West, west of Victoria Street, with the actual pool located 106 metres from Victoria Street and approximately 41.5 metres from Napier Street West.

Area of Requested Relief

10.0 Metre Setback – Pool Fence to Pool's Edge

The applicant's desire to extend the fencing beyond the maximum 10.0 metres is to integrate an existing seating area and cedars on the property into the enclosure area. It is noted that the Swimming Pool By-law exempts properties located in Registered Plans of Subdivision from this requirement and in Registered Plans of Subdivision enclosures are frequently located beyond 10.0 metres from the pool's edge. In addition, it is noted that the Swimming Pool Fence By-law exempts properties where the swimming pool is more than 200 meters from an adjacent house and from a public right-of-way.

Swimming Pool Enclosure

The applicant has also requested permission to have a 1.8 metre high retaining wall to serve as part of the swimming pool enclosure. The Swimming Pool Fence By-law requires that swimming pool enclosures be constructed of elements that prevent easy climbing. Given the location of the subject premises, the location of the retaining wall,

the limited extent of the retaining wall and the proximity of the enclosure to an adjacent house, Town staff are of the opinion that the proposed retaining wall will prevent easy climbing but feel that an amendment to the Swimming Pool By-law is required as the element is not a fence as anticipated by the By-law.

C. The Blue Mountains' Strategic Plan

"Providing a strong, well managed municipal government."

D. Financial Impact

N/A

E. Addendums

- A. Aerial Photo
- B. Site Plan
- C. Landscape/Swimming Pool Plan
- D. Copy of the Swimming Pool Fence By-law, Office Consolidation – 2002-8
- E. Draft Amending By-law

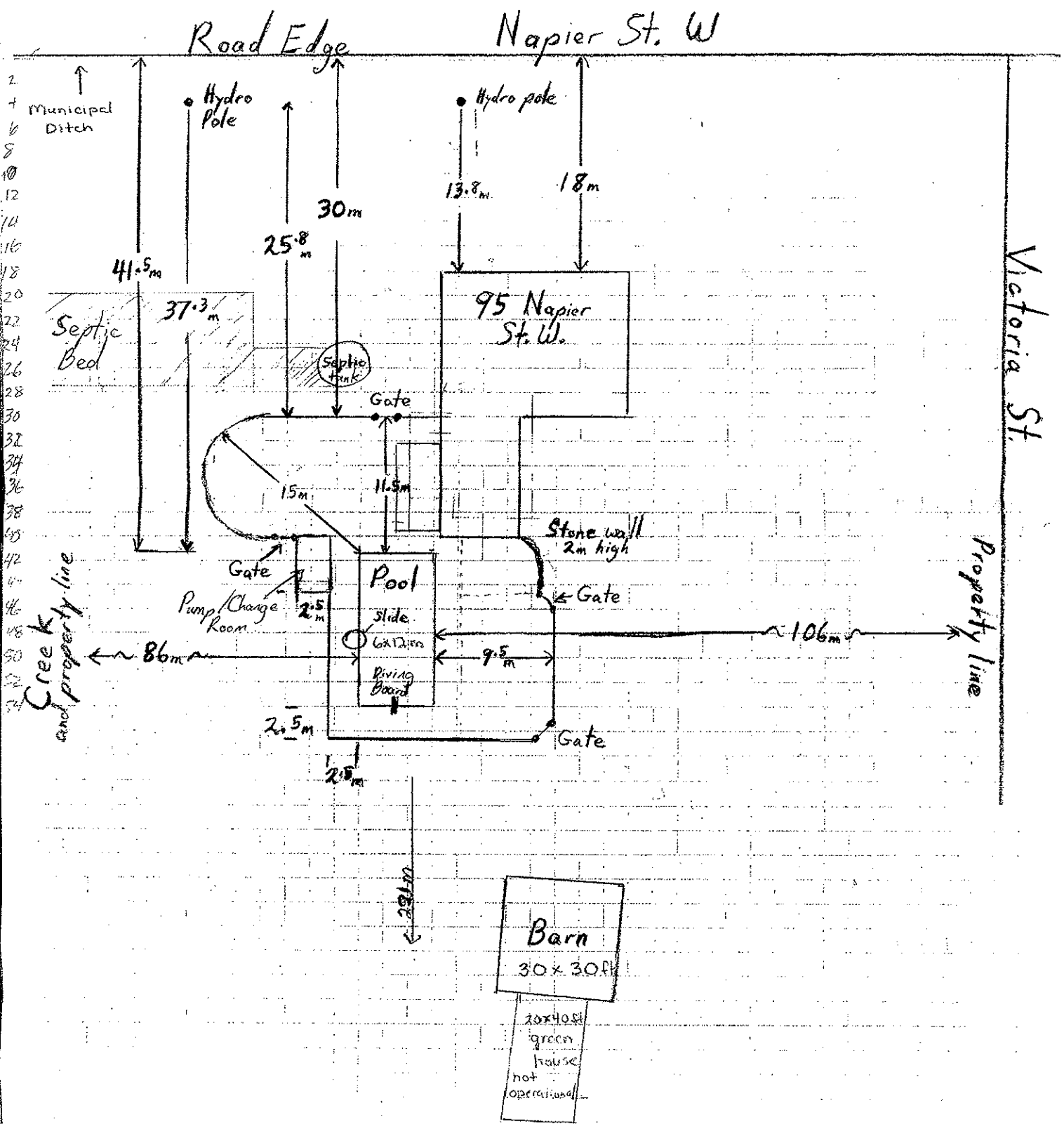
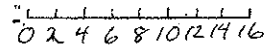
Respectfully submitted by:

David Finbow
Director, Planning & Building Services

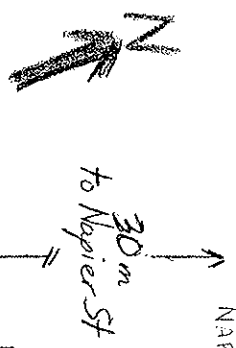




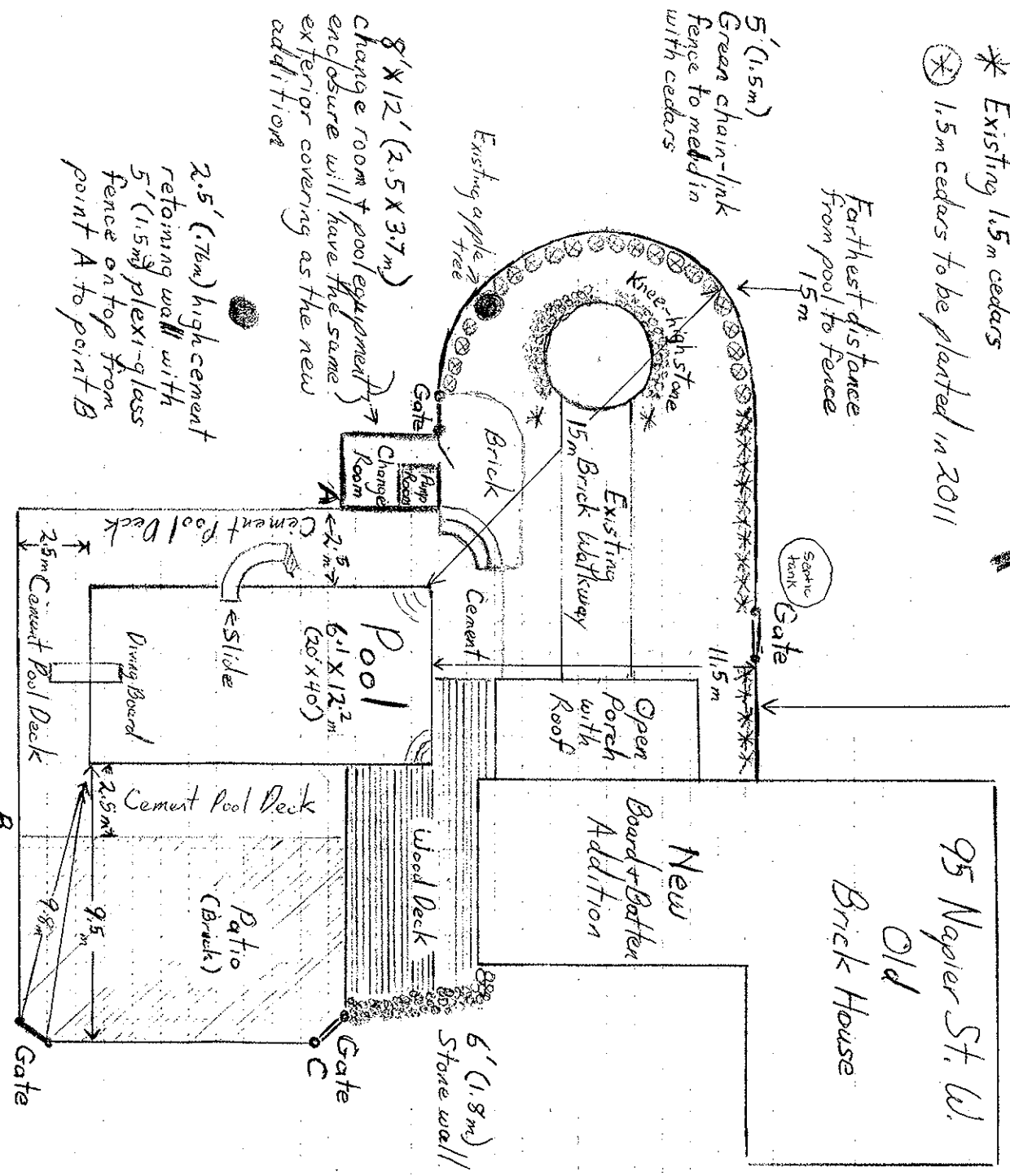
To scale Each square = 2m x 2m



- * Existing 1.5m cedars
- * 1.5m cedars to be planted in 2011



To scale:
Each square = 1m X 1m



Note: All four gates are self-closing and self-latching wrought-iron gates 5' high.

2.5' (.76m) high cement retaining wall with 5' (1.5m) plexi-glass fence on top from point A to point B

D

THE CORPORATION OF
THE TOWN OF THE BLUE MOUNTAINS

By-Law No. 2002 - 8

As amended by By-law #2003-07, 2008-9, 2009-34

OFFICE CONSOLIDATION

WHEREAS Section 210 (30) of the *Municipal Act*, R.S.O. 1990, c. M.45, as amended, permits a council of a local municipality to pass a by-law to require owners of privately-owned outdoor swimming pools to erect and maintain fences and gates around such swimming pools, for prescribing the height and description of, and the manner of erecting and maintaining, such fences and gates, for prohibiting persons from placing water in privately-owned outdoor swimming pools or allowing water to remain therein unless the prescribed fences and gates have been erected, for requiring the production of plans of all such fences and gates, for the issuing of a permit certifying approval of such plans without which permit no privately-owned outdoor swimming pool may be excavated for or erected and for authorizing the refusal of a permit for any such fences or gates that if erected would be contrary to any by-law of the municipality.

AND WHEREAS Council of the Town of The Blue Mountains deems it expedient to pass such a by-law;

AND WHEREAS section 220.1 of the *Municipal Act*, R.S.O. 1990, c. M.45, as amended by section 10 of Schedule M of the *Savings and Restructuring Act*, 1996 provides that a council may by by-law impose fees for services and activities provided or done by or on behalf of The Corporation of the Town of The Blue Mountains;

AND WHEREAS Council of the Town of The Blue Mountains deems it expedient to impose a fee for the issuance of a permit for the fences and gates associated with a privately-owned outdoor swimming pool;

NOW THEREFORE the Council of The Town of The Blue Mountains enacts as follows:

**PART 1
SHORT TITLE**

- 1.1 This By-law may be cited as the "Swimming Pool Fence By-law".

**PART 2
DEFINITIONS**

In this by-law:

- 2.1 "**Chief Building Official**" shall mean the person appointed by Council to such position pursuant to the *Building Code Act*.
- 2.2 "**gate**" shall mean any part of a swimming pool fence which opens on hinges and includes a door located in the wall of an attached or detached garage or carport which forms part of the swimming pool fence but shall not include a door from a dwelling on the same premises as the swimming pool that gives direct access to the swimming pool area.
- 2.3 "**hydro massage pool**" shall include those pools commonly referred to as a hot tub, a whirl pool, a Jacuzzi or a spa.
- 2.4 "**maintain/maintained**" shall mean to carry out repairs of any part or parts of a swimming pool fence so that it can properly perform the intended function.
- 2.5 "**replacement**" shall mean the construction of a swimming pool fence that takes the place of a swimming pool fence previously constructed.
- 2.6 "**self-closing device**" shall mean a mechanical device or spring which returns a swimming pool fence gate to its closed position within 30 seconds after it has been opened.
- 2.7 "**self-latching device**" shall mean a mechanical device or latch which is engaged each time the swimming pool fence gate is secured to its closed position which will not allow the swimming pool fence gate to be re-opened by pushing or pulling, and which will ensure the swimming pool fence gate remains closed until unlatched by either lifting or turning the device itself directly or by a key.
- 2.8 "**swimming pool**" shall mean a structure, basin, chamber or tank containing or capable of containing water, and is designed to be used for swimming or wading which,
- a) has a depth of more than 75 cm (29.5 inches) at any point;
 - b) has a surface area more than 1.0 square metre (10.8 square feet);
 - c) is not under the jurisdiction of the *Building Code Act* and/or the Ontario Building Code;
 - d) is not completely inside a building;
 - e) is not a pond;

- f) is not a reservoir to be utilized for farming purposes;
 - g) excludes hydro massage pools; and,
 - h) excludes storm water management ponds.
- 2.9 "swimming pool fence" shall mean a wall, a structure or a building which encloses a swimming pool where structures include a fence combined with a deck.
- 2.10 "Town" shall mean the Town of The Blue Mountains.

PART 3 GENERAL PROVISIONS

- 3.1 **Administration - Chief Building Official**
This by-law shall be administered by the Chief Building Official.
- 3.2 **Application of by-law**
This by-law shall apply to all privately-owned outdoor swimming pool fences that have been constructed, that are to be constructed or that are to be replaced in the Town.
- 3.3 **Existing swimming pool fences - constructed**
The provisions of this by-law shall not prevent the use of an existing swimming pool fence if such swimming pool fence was constructed and has enclosed a swimming pool from the date of its construction on or before the date of passing of this By-law provided that the existing swimming pool fence is maintained.
- 3.4 **Maintain - swimming pool fencing - compliance with previous by-law**
Where any swimming pool fence was constructed to enclose a swimming pool in accordance with the regulations that existed on or before the date of passing of this By-law, the swimming pool fence may be maintained in accordance with such regulations.
- 3.5 **Replacement - swimming pool fencing - compliance - required**
At such time as an entire existing swimming pool fence is replaced, the replacement swimming pool fence shall be constructed in accordance with this By-law.
- 3.6 **Gate - self-closing and self-latching device - required**
Notwithstanding Sections 3.3 and 3.4 of this By-law, gates within swimming pool fences shall be equipped with self-closing and self-latching devices in accordance with the provisions of Sections 6.9 and 6.10 of this By-law.

PART 4 PROHIBITIONS

- 4.1 **No construction - without permit**
No person shall construct or cause to be constructed a swimming pool without having first obtained a swimming pool fence permit from the Chief Building Official.
- 4.2 **Swimming pool - not enclosed by a fence**
Except as provided in Sections 3.3 and 3.4 of this By-law, no person shall place water in a privately-owned outdoor swimming pool or allow water to remain therein, unless a swimming pool fence as prescribed by this By-law has been erected.
- 4.3 **Swimming pool fence - location**
No person shall locate a swimming pool fence less than 1.8 metres and more than 10.0 metres from the privately-owned outdoor swimming pool to which it applies.
- 4.4 **No construction - without temporary fencing**
No person shall fail to enclose a swimming pool with temporary fencing during construction.
- 4.5 **Construction - fence - non-conforming**
No person shall construct or cause to be constructed a swimming pool with a swimming pool fence that does not conform to the requirements of this by-law.
- 4.6 **Gate - without self-closing - self-latching device**
No person shall fail to equip a swimming pool fence gate with a self-closing device and a self-latching device.
- 4.7 **Gate - self-latching device - distance above ground**
No person shall construct or maintain a swimming pool fence gate with an outside opening self-latching device less than 122 cm (48 inches) above ground level.
- 4.8 **Storage of materials - against outside of fence**
No person shall place or store materials against the outside of a swimming pool fence.
- 4.9 **Fencing - dangerous characteristics prohibited**
No part of a swimming pool fence shall consist of barbed wire or possess similar dangerous characteristics or any device designed for conducting an electric current through such enclosure.

- 4.10 Grading - no increase in drainage onto adjacent properties**
The installation of any swimming pool or its enclosure shall not alter in any way the existing grades or drainage pattern(s) of the premises, unless approved by the Town. The finished grade of the premises after the swimming pool is completed shall not be such that it causes an increase in drainage onto adjacent properties.
- 4.11 Replacement - existing fence - without permit**
No person shall replace a swimming pool fence without having first obtained a swimming pool fence permit from the Chief Building Official.
- 4.12 Swimming Pool Fence - maintain - in accordance with by-law**
No person shall fail to maintain a swimming pool fence except in accordance with this By-law.
- 4.13 Exception - Swimming Pool Fence Location - Registered Plans of Subdivision**
The provisions of Section 4.3 with respect to the maximum distance permitted for a swimming pool fence to be located from a privately owned-outdoor swimming pool shall not apply to lots located within a Registered Plan of Subdivision. (#2003-07)

PART 5 APPLICATION FOR SWIMMING POOL FENCE PERMITS

- 5.1 Application - to Chief Building Official - in writing - owner**
An application for a permit to erect a new swimming pool fence or for the replacement of an existing swimming pool fence shall be made by the owner or his or her agent, in writing to the Chief Building Official on such forms as may be prescribed.
- 5.2 Application - documentation to accompany - set out**
All such applications shall be accompanied by the following:
- (a) Except as required in subsection (b); Plans showing the location of the proposed swimming pool including all enclosing swimming pool fences, together with full details of each entrance and showing the location of all proposed swimming pool equipment such as filters, slides and heaters;
 - (b) A grading plan prepared by the Developer's or Owner's Consulting engineer where the proposed swimming pool is within a Registered Plan of Subdivision or Condominium where the grading has not been certified; or where the Registered Plan of Subdivision has not been assumed and/or the maintenance period for assumption of the Works by the Town has not expired. The grading plan shall indicate the location of the proposed swimming pool, all enclosing swimming pool fences and the proposed finished grade elevations.
 - (c) A completed Memorandum of Understanding and Indemnity for the Installation of Private Pools signed by the property owner;
 - (d) The applicable fee as prescribed in Schedule "A" of this By-law; and
 - (e) An undertaking to repair damage to Town property as required by this By-law. (#2009-34)
- 5.3 Permit issue by Chief Building Official - conditions**
The Chief Building Official shall issue a permit for a swimming pool fence where the plans submitted comply with all applicable regulations and where the requirements of this By-law have been complied with.

PART 6 SWIMMING POOL FENCE REGULATIONS

- 6.1 Height - minimum requirements**
Every swimming pool shall be enclosed by a swimming pool fence which shall extend from the ground to a height of not less than 153 cm (60 inches).
- 6.2 Swimming pool fence - location**
Every swimming pool fence shall be located not less than 1.8 metres and not more than 10.0 metres from the privately-owned outdoor swimming pool to which it applies.
- 6.3 Opening - maximum diameter**
Except as provided in Section 6.4 of this By-law, every swimming pool fence shall not have any openings that would allow the passage of a spherical object having a diameter greater than 3.8 cm (1.5 inches).
- 6.4 Opening - maximum diameter - exception - conditions**
For other than chain link fences, where the vertical distance between each horizontal rail measured from the top of each rail is 1.2 m (4 feet) or greater, the openings in the fence are permitted to be greater than 3.8 cm (1.5 inches) but not greater than which would allow the passage of a spherical object having a diameter of 10 cm (4 inches).
- 6.5 Ground clearance - maximum**
Every swimming pool shall be enclosed by a swimming pool fence which has a clearance from the ground to the under side of the swimming pool fence than would prevent the passage of a spherical object having a diameter of 10 cm (4 inches).

- 6.6 Structural members - prevent easy climbing - required**
Every swimming pool shall be enclosed by a swimming pool fence which has all its horizontal structural members located inside the enclosure to prevent easy climbing unless the swimming pool fence has no openings greater than 3.8 cm (1.5 inches) and the horizontal members are at least 0.6 m (2 feet) apart.
- 6.7 Construction - to prevent unauthorized entry**
Every swimming pool shall be enclosed by a swimming pool fence which is of sturdy construction, capable of preventing unauthorized entry.
- 6.8 Height - measurement - from ground level**
The height of the swimming pool fence shall be measured from ground level on the outside of the enclosure.
- 6.9 Gate - self-closing - self-latching - locking device**
Every gate on a swimming pool fence shall be equipped with a self-closing device and a self-latching device.
- 6.10 Gate - self-latching device – requirements**
A self-latching device that can be opened without a key from the outside shall not be less than 122 cm (48 inches) above ground level.
- 6.11 Temporary fence - required - during construction**
During all phases of construction, temporary fencing shall be in place such that unauthorized access is prevented.
- 6.12 Deck forms part of swimming pool fence**
Where a deck forms part of the swimming pool fence, it shall meet all regulations in Part 6 of this by-law.
- 6.13 Exception - Swimming Pool Fence Location - Registered Plans of Subdivision**
The provisions of Section 6.3 with respect to the maximum distance permitted for a swimming pool fence to be located from a privately owned-outdoor swimming pool shall not apply to lots located within a Registered Plan of Subdivision. (#2003-07)

PART 7 UNDERTAKING TO ENSURE REPAIR

- 7.1 Boulevard crossing - by vehicles - deposit - calculation**
Every person erecting, altering, repairing or demolishing a swimming pool fence within the Town of The Blue Mountains who permits the crossing of curbing, sidewalks, boulevards, etc. within the Town right-of-way by vehicles delivering materials to or removing materials from abutting lands, shall deposit with the Chief Building Official upon application for a swimming pool fence permit and prior to the commencement of any work, a completed undertaking to repair any damage to Town property.
- 7.2 Debris on streets - prevention - cleaned - by owner**
The owner of any lands on which any swimming pool fence is being erected, altered, repaired or demolished shall take all necessary steps to prevent building material, waste or soil from being spilled or tracked onto the public streets by vehicles going to or coming from the lands during the course of the erection, alteration, repair or demolition and shall be responsible to the Town for the cost of removing such building material, waste or soil and the cost of repairing any damaged curbing, sidewalks, or paved or grassed boulevards.

PART 8 EXCEPTIONS

- 8.1** Notwithstanding any other provision of this By-law, a swimming pool fence is not required in the following instances:
- a) A swimming pool fence is not required where a swimming pool has a height in excess of 1.2 metres above adjacent grade; has smooth sides; and, where any ladder, ramp or deck giving access to the swimming pool has a mechanism that allows for the ladder, ramp or deck to be collapsed when the pool is not in active use such that the pool surface is not accessible from said ladder, ramp or deck.
 - b) A swimming pool fence is not required on that portion of a lot that directly abuts Nottawasaga Bay, where such land had riparian rights.
 - c) A swimming pool fence is not required on a lot having a minimum area of 4 hectares (40,000 square metres) and the swimming pool is located a minimum distance of 200 metres from any adjacent residence or public right-of-way. (*By-law 2008-93*)

PART 9 ENFORCEMENT

- 9.1 Fine - for contravention**
Any person who contravenes any provision of this by-law is, upon conviction, guilty of an offence and is liable to any penalty as provided in the *Provincial Offences Act*.

9.2 Default - not remedied - done at owner's expense

Where anything required to be done in accordance with this By-law is not done, the Chief Building Official for The Corporation of the Town of The Blue Mountains appointed pursuant to the Building Code Act may, upon such notice as he deems suitable, do such thing at the expense of the person required to do it and such expense may be recovered by action or in like manner as municipal taxes.

**PART 10
REPEAL**

10.1 Repeal

By-Law No. 16-1982 of the former Town of Thornbury is hereby repealed.

**PART 11
ENACTMENT**

11.1 Effective date

This by-law comes into force on the date on which it is passed by the Council of the Town of The Blue Mountains.

Read a first and second time this 28 day of January, 2002.

Read a third time and passed this 28 day of January, 2002.

SIGNED

Ross Arthur, Mayor

SIGNED

Stephen Keast, Clerk

SCHEDULE "A"

SWIMMING POOL FENCE PERMIT FEE

Swimming Pool Fence Permit Fee	\$50.00
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**MEMORANDUM OF UNDERSTANDING AND INDEMNITY
FOR THE INSTALLATION OF PRIVATE POOLS**

For use by Principal Authority		
Application number:	Permit number (if different):	
Date received:	Roll number:	
Project Information		
Owner	Unit number	Lot/con.
Building number, street name		
Municipality: The Blue Mountains	Postal code	Plan number/other description

THIS MEMORANDUM OF UNDERSTANDING AND INDEMNITY made the ____ day of _____, 20__.

BETWEEN: _____
(hereinafter called the "Owner")

- and -

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS
(hereinafter called the "Town")

WHEREAS the Owner is the Owner of certain land as described above;

AND WHEREAS Swimming Pool Fence By-law No. 2002-8, as amended, requires the owner to obtain a pool fence permit prior to the installation or erection of a pool;

AND WHEREAS Alteration and Fill By-Law No. 2002-78, prohibits or regulates the placing or dumping of fill or the alteration of the grade of land, within the Town;

AND WHEREAS the property is subject to a Subdivider's Agreement or a Condominium Agreement and the acceptance of the Works and the assumption of same has not commenced;

AND WHEREAS the owner of the subject lands proposes to construct a pool on the property that may affect the lot grading and drainage;

NOW THEREFORE THIS MEMORANDUM OF UNDERSTANDING WITNESSETH that the owner agrees and acknowledges as follows:

- 1. Not to affect the existing lot grading or intended design of the drainage patterns within 1.0 metres of all property boundaries.*
- 2. To remediate any lot grading and drainage concerns associated with the installation of the pool to the satisfaction of The Blue Mountains.*
- 3. The undersigned owner further agrees to indemnify The Blue Mountains for any loss or damages and all such costs resulting in the alteration to the approved drainage and grading plan.*
- 4. The undersigned owner agrees to register this notice on title for any subsequent owners; the contents of this Memorandum of Understanding and Indemnity prior to the sale transaction unless released from this obligation by The Blue Mountains.*
- 5. The undersigned owner hereby acknowledges that in issuing any building permit or permit for a swimming pool fence, the Corporation of The Town of The Blue Mountains does not permit or approve of any changes to the elevations or grading and drainage of the property which would adversely affect or cause damage to the surrounding properties.*

The owner further acknowledges where an issue with respect to drainage and/or grading arises during the construction activities associated with this acknowledgment; may be considered a civil matter and may be actionable.

SIGNATURE OF HOMEOWNER(S) _____ **DATE:** _____
(D/M/YYYY)

**THE CORPORATION OF THE TOWN OF
THE BLUE MOUNTAINS**

BY-LAW 2011 -

Being a By-law to amend By-law No. 2002-08, as amended, "The Swimming Pool Fence By-law", as it relates to 95 Napier Street West.

WHEREAS the *Municipal Act* permits municipalities to enact by-laws respecting structures, including fences;

AND WHEREAS the Corporation of the Town of The Blue Mountains has enacted By-law No. 2002-08, as amended, "The Swimming Pool Fence By-law";

AND WHEREAS it is deemed expedient to pass a by-law to amend The Swimming Pool Fence By-law as it relates to the property known municipally as 95 Napier Street West;

NOW THEREFORE the Council of the Corporation of the Town of The Blue Mountains hereby enacts as follows:

- 1. Section 8.1 of By-law No. 2002-08 is hereby amended by adding the following:
 - d) A swimming pool fence enclosure located a maximum distance of 15.5 metres from the swimming pool edge and partially enclosed by a retaining wall having a height of 1.8 metres is permitted on the premises known municipally as 95 Napier Street West.

Enacted and passed this _____ day of April, 2011.

.....
E. Anderson, Mayor

.....
C. Giles, Town Clerk