

STAFF REPORT: BUILDING & BY-LAW DEPARTMENT



REPORT TO: Finance & Administration Committee
MEETING DATE: August 19th, 2008
REPORT NO.: SRB.08.40
SUBJECT: Swimming Pool Fence By-law Variance
– Pt. Lot 27, Concession 10 – 788132
Grey Road 13
PREPARED BY: Sharon Long, Administrative Assistant
Building & By-law

A. Recommendations

THAT Council receive Staff Report No. SRB.08.40 and approve the requested variance to By-law No. 2002-8, Swimming Pool Fence By-law, Section 6.2 to 16.0 metres.

B. Background

On August 27th, 2007 Building Permit No. 2007-348 was issued for the construction of a 16 x 32 inground swimming pool.

Section 6.2 of By-law No. 2002-8, being the Swimming Pool Fence By-law, indicates that 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.

On May 15th, 2008 this office received a request to erect the fence at a 16 metre setback on the north side of the pool to align the northern boundary fence with the pool house building. The deck and building take up the majority of the space within the 16 metre setback and will act as a natural boundary on the north side of the pool.

Given the size of the site (19.5 acres), the request for the placement of the fence another 6 metres is not a concern.

C. Environmental Impacts

N/A

D. Budget Impact

N/A

E. Addendums

- A. By-law No. 2002-8
- B. Letter from D.C. Slade Consultants setting out variance requested.

Prepared by:

Sharon Long
Sharon Long
Administrative Assistant
Building & By-law

Respectfully submitted:

David Finbow
David Finbow
Director Building & By-law/CBO

THE CORPORATION OF THE TOWN OF THE BLUE MOUNTAINS

By-Law No. 2002 - 8

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.

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) 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) the applicable fee as prescribed in Schedule 'A' of this By-law; and,
- (c) an undertaking to repair damage to Town property as required by this By-law.

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 that 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.

**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
ENFORCEMENT**

8.1 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*.

8.2 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 9
REPEAL**

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By-Law No. 16-1982 of the former Town of Thornbury is hereby repealed.

**Part 10
ENACTMENT**

9.1 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 28th day of January , 2002.

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



Ross Arthur, Mayor



Stephen Keast, Clerk

SCHEDULE "A"
SWIMMING POOL FENCE PERMIT FEE

Swimming Pool Fence Permit Fee **\$50.00**

THE CORPORATION OF
THE TOWN OF THE BLUE MOUNTAINS

By-Law No. 2003 - 7

WHEREAS the *Municipal Act, 2001*, permits a council of a local municipality to regulate matter related to the health, safety and well-being of the inhabitants of the municipality;

AND WHEREAS Council of the Town of The Blue Mountains has enacted By-law No. 2002-8 with respect to requiring owners of privately-owned outdoor swimming pools to erect fences and gates and for prescribing the height and description of such fences and gates;

AND WHEREAS Council of the Town of The Blue Mountains deems it expedient to amend By-law No. 2002-8 with respect to the location of required fences and gates associated with privately-owned outdoor swimming pools;

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

1. Part 4 of By-law No. 2002-8 is hereby amended by adding the following:


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.

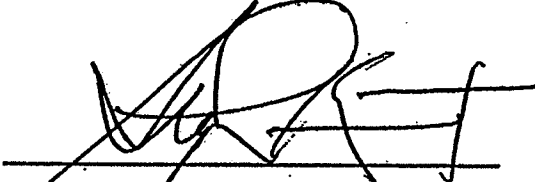
2. Part 6 of By-law No. 2002-8 is hereby amended by adding the following:

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.

Read a first and second time this 13th day of January , 2003.

Read a third time and passed this 13th day of January , 2003.


Ross Arthur, Mayor


Stephen Keast, Clerk

B.

8/12/08.

May 15, 2008

Wayne Dewitt
Municipal Law Enforcement Officer
26 Bridge Street
P.O. Box 310
Thornbury, ON
N0H 2P0

Dear Wayne:

**RE: Pool House – Building Permit Approval
788132 Grey Road 13, Clarksburg, ON, N0H 1J0
The Town of The Blue Mountains, County of Grey**

Location and Property Description:

The subject lands are located at 788132 Grey Road 13, just south of Clarksburg, Ontario. The subject lands are 7.9 ha (19.5 ac.) in size. There is currently a single detached residential dwelling on the property.

Purpose:

To provide justification for increasing the permitted setback from a pool to a boundary fence from the maximum 10 m distance to 16 m on one side of the pool. The other 3 sides of the pool to fence setbacks will be less than the 10 m maximum.

Standard:

The Swimming Pool Fencing Requirements state that:

Swimming Pool Fence – location

Every swimming pool fence shall be located not less than 1.8 meters and not more than 10 meters from the privately owned outdoor swimming pool to which it applies.

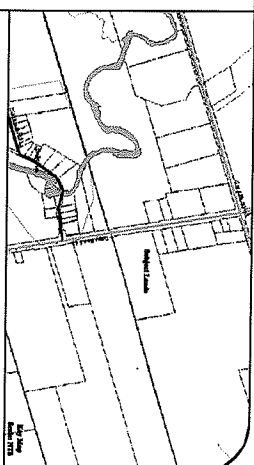
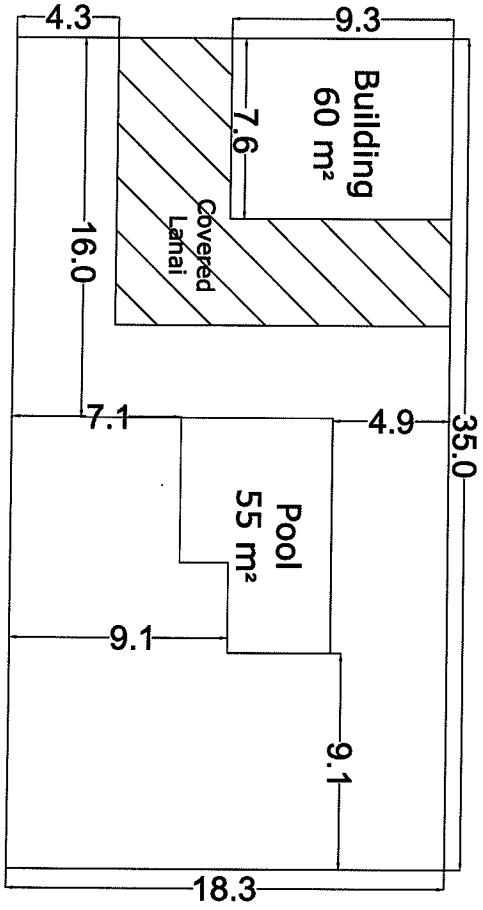
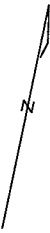
Please refer to the attached schedule (i.e. Proposed) which explains visually that the 16 m setback will be located on the north side of the pool. The reason for the increase in the setback is to align the northern boundary fence with the pool house building. The deck and building take up the majority of the space within the 16 m setback and will act as a natural boundary on the north side of the pool.

Recommendations:

Approve the fence setback variance from 10 m to 16 m.

Regards,
D.C. Slade Consultants Inc.

Andrew Pascuzzo, B.E.S.



PROPOSED POOL AREA

788132 Grey Road 13

Clarksburg, ON

TOWN OF THE BLUE MOUNTAINS

COUNTY OF GREY

METRIC
DIMENSIONS SHOWN ON THIS PLAN ARE IN METRES AND CAN BE CONVERTED TO FEET BY
MULTIPLYING BY 3.281

DRAWN: AP

DWG: PROPOSED

DCS D.C. Stade Consultants Inc.
Planning & Development
201 University Avenue, Clarksburg, ON
K0A 1R0