

FENCE BY-LAW APPEAL PROCEDURE

Procedure Pursuant to paragraph 10(a)(ii) of By-law No. 4778-14, being a By-law to Provide Uniform Standards for Construction of Fences in the Town of Niagara-on-the-Lake (the "Fence By-law")

1. The applicant for a fence variance (the "Applicant"), or any other person who has an interest in the matter and who appeared in person, by counsel or by approved agent, at the hearing before the Committee of Adjustment, and made submissions (the "Interested Parties" or "Interested Party"), may, within twenty (20) days of the making of the decision(s) appealed from, appeal in writing to Council ("Council") of the Town of Niagara-on-the-Lake (the "Town") pursuant to paragraph 10(a)(ii) of the Fence By-law. The individual who commences an appeal pursuant to this section shall be referred to herein as an "Appellant".
2. The right to appeal a decision of the Committee of Adjustment on a fence variance is exercised by:
 - a. Giving to the Clerk's Department written notice of appeal that includes particulars of all grounds upon which the appeal is made; and by
 - b. Paying the fee that may, from time to time, be prescribed by the Town.
3. Where written notice of appeal in accordance with section 2 is not received within the time indicated at section 1, no further opportunity to file a notice of appeal will be granted, and the decision of the Committee of Adjustment shall be final and not subject to further review, including review by any Court.
4. The Clerk's Department, upon receipt of a notice of appeal, shall forthwith provide a copy to the Committee of Adjustment and shall request the complete record from the hearing before the Committee of Adjustment.
5. The Committee of Adjustment shall provide the Clerk's Department with the complete record that was before the hearing of the Committee of Adjustment within seven (7) days of receipt of the notice of appeal.
6. Upon receipt of the complete record before the hearing of the Committee of Adjustment, the Clerk's Department shall schedule the appeal before Council and shall:
 - a. provide at least ten (10) days notice to the Appellant and all Interested Parties, as follows:

- i. The notice shall be provided by personal service or regular lettermail and shall include the following:
 1. the date, time and location of the appeal hearing;
 2. a statement that the appeal is being held pursuant to the authority granted pursuant to paragraph 10(a)(ii) of the Fence By-law;
 3. a statement that the appeal will be conducted in accordance with the within procedure;
 4. the decision of the Committee of Adjustment with respect to the fence variance application;
 5. a copy of the notice of appeal submitted; and
 6. a statement that if the party notified, or their representative, does not attend at the appeal hearing, Council may proceed in the recipient's absence and the recipient will not be entitled to any further notice in the appeal proceeding.
 - b. provide all members of Council with a copy of the notice of appeal, the complete record before the hearing of the Committee of Adjustment, and a copy of the notice of the appeal hearing.
7. Where the Appellant fails to appear at the time and place scheduled for a hearing of the appeal, the Appellant's appeal shall be deemed to be dismissed and the Appellant shall pay to the Town such administrative fee(s) as from time to time may be prescribed by the Town.
 8. Subjection to section 7, Council shall not decide the appeal unless Council has given the Appellant, and any other Interested Parties present or represented at the appeal hearing, an opportunity to be heard at the time and place scheduled for the hearing of the appeal.
 9. The hearing of every appeal shall be held in public, and Council shall hear Town Staff, the Appellant and every other Interested Parties who desires to be heard in favour of or against the appeal, in the following order:
 - a. The Town's planner(s) and/or any other Town staff, and/or any other witness(es) retained by the Town shall give evidence as to the position of Town staff concerning the minor fence variance sought on appeal, and upon completion of the Town's

- evidence, those individuals who gave evidence on behalf of the Town shall be subject to questioning by the Appellant and by Council;
- b. Any Interested Parties against the minor fence variance sought on appeal shall present their evidence, and upon completion of their evidence, such Interested Parties shall be subject to questioning by the Appellant and by Council.
 - c. Any Interested Parties in favour of the minor fence variance sought on appeal shall present their evidence, and upon completion of their evidence, shall be subject to questioning by the Appellant and by Council.
 - d. The Appellant shall present his or her evidence, and may call witness in support of his or her position, and upon completion of the Appellant's evidence, the Appellant and his or her witnesses, shall be subject to questioning by the Applicant (in situations where the Applicant is not the Appellant) and by Council.
10. All individuals giving evidence before Council on the appeal hearing shall testify under an oath or solemn affirmation.
11. All questions of Council should be directed through the Chair, unless the Chair orders otherwise. The Chair shall be the individual acting as the Chair pursuant to the Town's Procedure By-law No.: 4675-13.
12. Upon hearing of all evidence pursuant to section 9, the Chair shall ask for a motion for each decision under appeal, that each variance sought either be approved because it meets the following test, or that it be denied because it does not meet the following test:
- a. Is the fence variance sought minor?
 - b. Is the fence variance sought desirable for the appropriate development of the lands in question?
 - c. Is the general intent and purpose of the Fence By-law maintained?
 - d. Is the general intent and purpose of the Zoning By-law maintained?
 - e. Is the general intent and purpose of the Official Plan maintained?
13. The motion(s) required by section 12 with respect to each decision under appeal shall be seconded and shall be read by the Clerk before debate and shall be read against by the Clerk before being voted on.

14. Once seconded, the motion(s) may be debated by Council. In situations where more than one decision is under appeal, each shall be debated separately and voted on, separately.
15. Every member of Council, upon rising to speak to the motion(s), shall address their remarks through the Chair.
16. No member of Council, without leave of the Chair, shall speak more than once to the same motion, except in explanation of a material part of their speech which may have been misconceived and, in doing so, shall not introduce any new matter.
17. The Chair may permit a motion to be considered informally. Informal discussion permits members of Council to speak as many times as they are recognized by the Chair to speak.
18. Once each member of Council has had an opportunity to state their position on the minor variance appeal before it, the Chair shall call for a recorded vote.
19. Where a motion was considered informally, the request for the call for a recorded vote will immediately end the informal consideration and immediately return to the regular rules of debate.
20. When a recorded vote is called for, the members of Council present shall immediately take their respective places and shall remain seated until the Chair has declared the result of the vote.
21. All members of Council present shall, in alphabetical order, with the Chair voting last, announce his or her vote to the motion openly and the Clerk shall record each vote.
22. Council may adjourn the appeal hearing.
23. Council may make any decision that the Committee of Adjustment could have made pursuant to the Fence By-law.
24. The decision of Council is final and not subject to review including review by any Court.
25. No decision of Council on an appeal is valid unless it is concurred in by the majority of the members of Council that heard the appeal, and the decision of Council, whether granting or refusing an appeal, shall be in writing and shall be signed by the members of Council who concur in the decision.
26. Any authority or permission granted by Council may be for such time and subject to such terms and conditions as Council considers advisable and as are set out in the decision.

27. The Clerk's Department shall not later than ten (10) days from the making of the decision by Council sent one (1) copy of the decision to:

- a. the Appellant;**
- b. to the Interested Parties who gave evidence in the appeal hearing; and**
- c. to By-law Enforcement Department of the Town.**

28. An appeal to Council operates as a stay of any pending prosecution under the Fence By-law relating to the property at issue until Council has made its decision respecting the appeal.