

THE CORPORATION OF THE VILLAGE OF NEWBURY

BY-LAW NO. 131-09

**BEING A BY-LAW TO REGULATE
POOL ENCLOSURES WITHIN THE VILLAGE OF NEWBURY**

**PART 1
DEFINITIONS AND INTERPRETATION**

1. For the purpose of this by-law, the following terms shall have the meanings indicated:

(a) **“Arc of Operation”** means the normal opening and closing operation area of a gate;

(b) **“Property or Boundary Fence”** means any barrier or structure constructed of chain link metal, wood, stone, metal, concrete, brick or other similar materials or combination of such materials, which is erected for the purpose of screening, safeguarding, retaining or enclosing property or delineating property lines (see Figure 1);

(c) **“Building”** means any permanent and/or temporary structure used or intended to be used for shelter, accommodation, or enclosure of persons, animals, or goods, but shall not include a lawful boundary fence;

(d) **“Child-Resistant Window”** means a window equipped with a window guard that limits the window opening to less than 100mm;

(e) **“Fence Height”** means the height measured from the finished floor level or ground level at any point along the length of the fencing to the top of the fence, measured on the outside of the fencing;

(f) **“Finished Floor Level”** means a permanent stable surface, such as the top of wood, concrete or brick;

(g) **“Finished Ground Level”** means a permanent ground level, such as grass, soil or gravel;

(h) **“Four-Sided Fence”** means a fence or building wall that fully restricts a child’s access to the pool from the house. A four-sided fence that uses a building wall for one of its sides may include a window, but not a door (see Figure 2);

Figure 1: Property Fencing

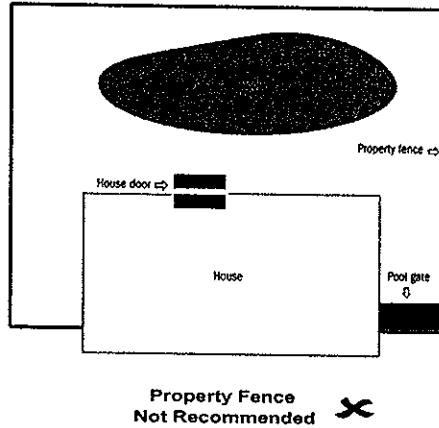
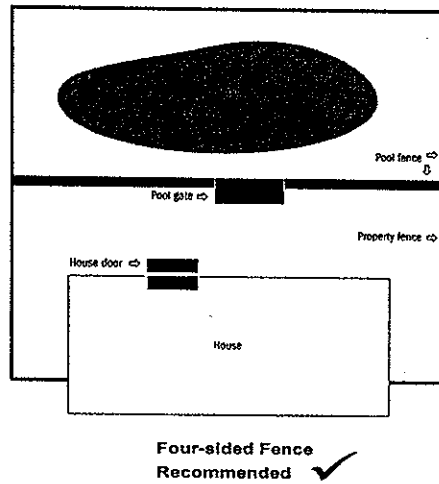
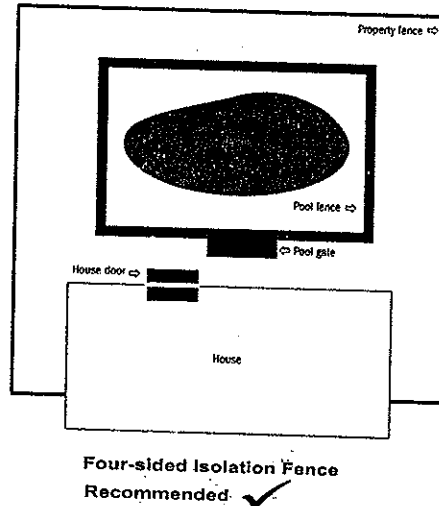


Figure 2: Four-Sided Fencing



- (i) **“Hydro-Massage Pool”** or pools commonly referred to as hot tubs, Jacuzzis, whirlpools, spas and other similar products means a pool as defined in this by-law;
- (j) **“Immediate Pool Area”** means the surrounding area that contains items used for pool activities, including pool equipment, changing sheds, patio furniture and similar items used in conjunction with the use of the pool;
- (k) **“Inside of the Pool Enclosure”** means that side of the fence or gate that faces the pool area;
- (l) **“Inflatable Pool”** means a pool, as defined in this by-law, consisting of an air supported structure that contains or is capable of containing water with a depth in excess of 0.61m (2 feet) at any point;
- (m) **“Isolation Fencing”** means a continuous fence that is effectively the same as a four-sided fence except that all ancillary structures (not related to the function of the swimming pool) are excluded from the pool area. The fence completely separates the pool from the house and the rest of the property (see Figure 3);

Figure 3: Isolation Fencing



- (n) **“Maintain”** means to keep a pool enclosure in a condition that meets the requirements of this by-law and to preserve the condition of the pool enclosure from failure or decline in order to ensure safety and strength.
- (o) **“Outside of the Pool Enclosure”** means that side of the fence or gate that faces away from the pool area;
- (p) **“Owner”** includes the registered owner of any property; the person for the time being managing or receiving the rent of the land or premises in connection with which the word is used, whether on the person’s own account or as agent or trustee of any other person, or who would so receive the rent if such land and premises were leased, and a lessee, tenant, mortgagee in possession, or person occupying or in charge of the property;
- (q) **“Pool”** means an excavation, structure or product, which is:
 - (i) located outdoors on private property;
 - (ii) capable of being used for the purposes of swimming, wading, paddling or bathing;
 - (iii) capable of holding water in excess of 0.61m (2 feet) in depth at any point;
 - (iv) an open exposed water surface of 1m² (10.7 ft²);

and includes a hot tub and/or spa pool and landscape pond meeting the above criteria, but for the purposes of this by-law does not include any pool which is:

- (1) a pond or reservoir to be utilized for farming purposes or as part of a golf course;

- (2) a pool owned by any public or governmental body, agency or authority, or;
 - (3) an existing natural body of water or stream;
 - (4) a privately owned stormwater management facility;
- (r) **"Pool Enclosure"** means a permanent 4-sided fence, constructed wall or other structure, building or combination thereof, which includes a self-closing and self-latching gate and/or child-resistant windows, and which surrounds a pool with the intention of restricting access of young children;
 - (s) **"Permit"** or **"Pool Enclosure Permit"** means a permit issued under this by-law by the [PERMIT ISSUING OFFICER/CHIEF BUILDING OFFICIAL];
 - (t) **"Self-Closing Device"** means a mechanical device or spring that returns a pool enclosure to its closed position within 30 seconds after it has been opened;
 - (u) **"Self-Latching Device"** means a mechanical device or latch that is engaged each time the gate is secured to its closed position, which will not allow the gate to be re-opened by pushing or pulling, and which will ensure the pool enclosure gate remains closed until unlatched by either lifting or turning the device itself directly or by a key;
 - (v) **"Temporary Pool"** means an inflatable pool or other pool that is designed to be removed periodically on a seasonal or more frequent temporary basis;
 - (w) **"Three-Sided Fence"** means a fence that uses a wall or side of a building with a door to enclose the pool area; and
 - (x) **"Young Child"** means a child under the age of six years.
2. The requirements of this by-law are expressed in metric measurements. Any imperial measurements included in this by-law are approximate and are provided for convenience only.

PART 2 GENERAL PROVISIONS

Application of By-Law

- 3. This by-law shall apply to all pool enclosures constructed, or replaced, within the Village of Newbury.
- 4. In the event of any conflict between the provisions of this by-law and any provision of the Fence By-law, as may be amended or replaced from time to time, the provisions of this by-law shall prevail.
- 5. Notwithstanding Section 4,
 - a) no conflict exists between the provisions of this by-law and the provisions of any other by-law or approval if it is possible to comply with both by-laws by choosing an alternate type, design or location for a pool enclosure or pool;

- b) nothing in this by-law permits the location of a pond, deck, platform or other structure in a location that is not permitted under the [INSERT MUNICIPALITY] Zoning by-law.

**PART 3
PROHIBITIONS**

6. No person shall excavate, construct, install, or situate a pool; or cause a pool to be excavated, constructed, installed, or situated; or commence the excavation, construction, installation, or placement of a pool without first obtaining a pool enclosure permit from the [PERMIT ISSUING OFFICER/CHIEF BUILDING OFFICIAL].
7. No person shall excavate, construct, install, or situate a pool; or cause a pool to be excavated, constructed, installed, or situated; or commence the excavation, construction, installation, or placement of a pool that is not completely enclosed by a pool enclosure in accordance with this by-law.
8. No person shall construct or cause to be constructed any pool enclosure that does not conform to the requirements of this by-law.
9. No person shall fill a pool with water or cause a pool to be filled with water or allow water to remain in a pool unless:
 - a) the pool is enclosed by a pool enclosure, other than an approved temporary pool enclosure, meeting the requirements of Section 19, 20, 21 and 22 of this by-law; and
 - b) if the pool is a newly constructed pool, the [PERMIT ISSUING OFFICER/CHIEF BUILDING OFFICIAL] has been notified and the pool enclosure has been inspected and approved.
10. No person shall remove any part of a pool enclosure if the pool is filled with water.
11. No person shall alter or replace a pool enclosure without having first obtained a permit to do so from the [PERMIT ISSUING OFFICER/CHIEF BUILDING OFFICIAL].
12. No owner shall fail to ensure that:
 - a) all gates forming part of the pool enclosure meet the standards of this by-law;
 - b) all entranceways to a pool enclosure through a wall of a building meet the standards of this by-law;
 - c) all gates forming part of a pool enclosure are locked when the area is not in active use;
13. No person shall place, pile, attach or lean any object or material against or near a pool enclosure so as to facilitate climbing of the pool enclosure, diminish the structural integrity of a pool enclosure or render the pool enclosure in non-conformity with the provisions of this by-law.
14. No person shall erect a fence adjacent to an existing pool enclosure that does not comply with the requirements of this by-law.

Prohibited Fences

15. No barbed wire, chicken wire or other barbed or sharp material shall be used in the construction of a pool enclosure.
16. No pool enclosure shall be used as a conductor of electricity.

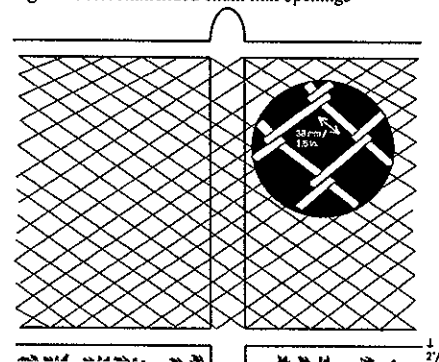
PART 4 APPLICATIONS FOR PERMITS

17. Every application for a pool enclosure permit shall be in a form specified by the [PERMIT ISSUING OFFICER/CHIEF BUILDING OFFICIAL] and accompanied by:
 - a) 2 sets of plans showing the location of the pool, all proposed pool equipment (such as filters, slides and heaters) and proposed landscape features in relation to property lines, buildings (including decks and shed), and easements;
 - b) complete details of the proposed pool enclosure, including the location and type of proposed fence and gate; and
 - c) the permit fee(s) specified in the [Fee Schedule];
 - d) the proposed access route for construction of the pool from any public right of way to the proposed pool location;
 - e) if the proposed pool is within an unassumed plan of subdivision, the written approval of the developer/owner of the subdivision.
18. The [PERMIT ISSUING OFFICER/CHIEF BUILDING OFFICIAL] shall issue a permit for a pool enclosure where the plans submitted comply with the requirements of this by-law and all applicable regulations and by-laws or approvals. Without limiting the generality of the foregoing, the [PERMIT ISSUING OFFICER/CHIEF BUILDING OFFICIAL] shall not issue the permit for the pool enclosure unless a site alteration permit, if required, has been obtained and the proposed location of the pool and pool enclosure complies with the Zoning By-law and any other applicable regulations, by-laws or approvals.

PART 5 STANDARDS FOR POOL ENCLOSURES

19. The owner of a privately-owned outdoor pool shall erect and maintain a pool enclosure that is designed to prevent climbing, restrict access to young children and satisfies the following standards:
 - a) **Height:** the pool enclosure shall extend from the ground to a height of not less than 1.22m (4 feet). Height shall be measured from the

Figure 4: Recommended chain link openings

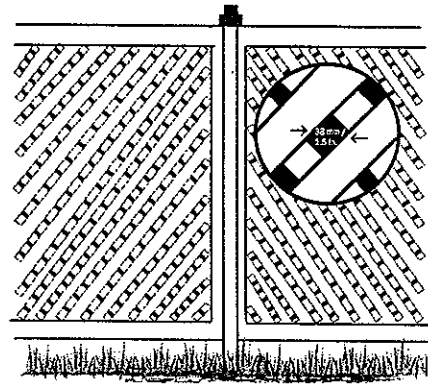


finished ground level on the outside (not the pool side) of the pool enclosure;

b) Opening and Materials:

- i) where the pool enclosure is constructed of chain link fence, the pool enclosure shall not have any openings that would allow the passage of a spherical object having a diameter exceeding 38mm (1.5 inches) (see Figure 4);
- ii) where the pool enclosure is constructed of wood lattice (diagonal members), the pool enclosure shall not have any openings that would allow the passage of a spherical object having a diameter exceeding 38mm (1.5 inches) (see Figure 5);
- iii) where the pool enclosure is constructed of vertical and horizontal members, if the horizontal structural members are greater than 114.3cm (45 inches) apart, the horizontal members can be located on the outside of the pool enclosure and the spacing between each vertical member shall not exceed 100mm (4 inches) (see Figure 6);
- iv) where the pool enclosure is constructed of vertical and horizontal members, if the horizontal structural members are less than 114.3cm (45 inches) apart, the horizontal members must be located inside the pool enclosure and the spacing between each vertical member should not exceed 44.45mm (1.75 inches) (see Figure 7).

Figure 5: Recommended wood lattice openings



- c) **Ground Clearance:** the space at any point between the pool enclosure and the finished ground level and/or finished floor level must not exceed 50mm (2 inches) and the ground beneath the pool enclosure cannot be loose gravel or other material that can be easily removed so as to afford access under the pool enclosure (see Figure 6);

Figure 6: Recommended vertical and horizontal member spacing and recommended ground clearance

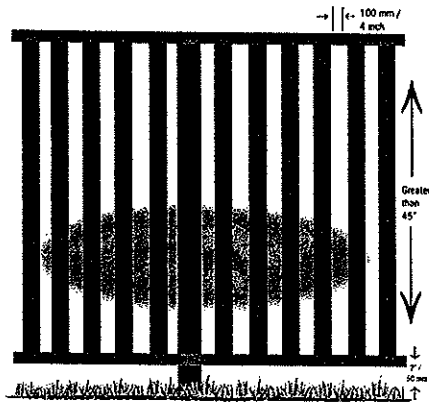
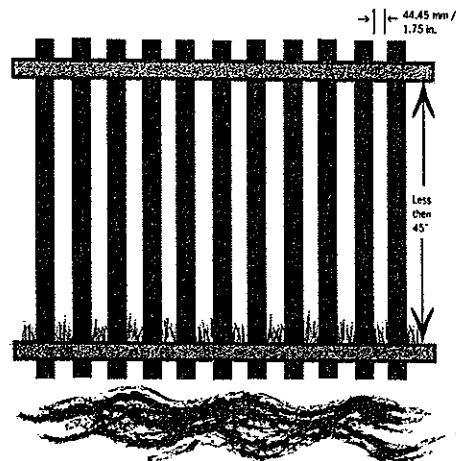


Figure 7: Recommended vertical and horizontal member spacing



- d) **Framing and Braces:** except as specified in Section 19.b) iii) all horizontal structural members must be located inside of the pool enclosure as to prevent easy climbing; and
- e) **Location:** subject to section 19(f), the pool enclosure should only enclose the immediate pool area and shall be located:
 - i) not less than 0.61m (2 feet) from any enclosure that does not meet the requirements of this by law; and
 - ii) for pools other than hydro-massage pools, on a level surface being not less than 0.91m (3 feet) from the water's edge of the pool, provided, if the wall of a building is used as part of the pool enclosure, the wall of the building shall be at least 1.22m (4 feet) from the water's edge of the pool; and
 - iii) for hydro-massage pools, not less than 0.91m (3 feet) from the hot-tub, provided if the wall of a building is used as part of the pool enclosure, the hot tub may be placed against the wall.
- f) **Location (access points):** any gate or entranceway forming part of a pool enclosure shall be at least 1.52m (5 feet) from the water's edge of the pool.

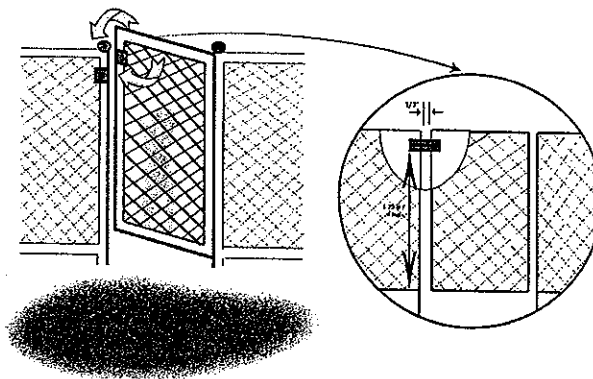
GATES AND OTHER ACCESS POINTS

Gates

20. Every owner shall ensure that every gate forming part of a pool enclosure:

- (a) is constructed in accordance with the standards prescribed in section 19 of this by-law;
- (b) is supported on substantial hinges, capable of supporting 90.72kg (200 lbs.) in body weight;
- (c) is equipped with a self-closing device;
- (d) is equipped with a self-latching device that is located at least 1.22m (4 feet) above the finished floor level and/or finished ground level, and is located on the inside of the pool enclosure (see Figure 8);
- (e) is equipped with a lock located on the inside of the pool enclosure;

Figure 8: Self-closing and self-latching gate installed out of reach of young children



(f) does not have any member on the outside of the pool enclosure that would facilitate climbing of the gate; and

(g) has an arc of operation outside of the pool enclosure as to prevent young children from inadvertently pushing and opening the gate and gaining unsupervised access to the pool area.

21. If the gate to the pool enclosure is a double gate access, made up of two gates at the same location:

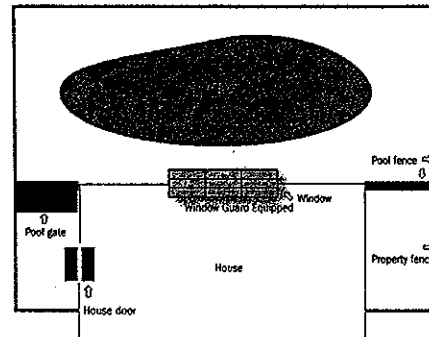
(a) one of the two gates shall have a self-closing device and self-latching device; and

(b) the gate of this double gate access without a self-closing device and a self-latching device shall have a device permanently affixed to the ground or other non-movable object, which prevents access through this gate without lifting or removing this device and then releasing the latch.

Entrances through Buildings

22. When a wall or portion thereof of any building located on the same property as the pool forms part of the pool enclosure, no entrances to the enclosed pool area are permitted through such wall, unless a window, which provides access from the building to the pool area, is a child-resistant window that limits access of young children (see Figure 9);

Figure 9: Four-sided pool fence with window guard equipped window



TEMPORARY FENCE DURING CONSTRUCTION

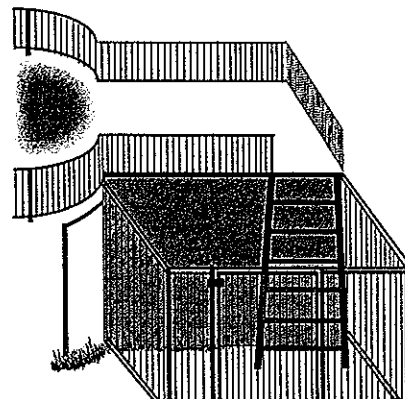
23. The owner shall ensure that temporary fencing meeting the requirements of this section is in place during all phases of construction of the pool such that unauthorized access to the site is prevented. Temporary fencing shall be of 1.22m (4 feet) high snow fence, or such other fencing material with similar visibility, height and rigidity as may be approved by the [PERMIT ISSUING OFFICER/CHIEF BUILDING OFFICIAL] in writing, and shall be securely attached at any opening when the area is left unattended.

24. Notwithstanding Section 9(a) of this by-law, if a pool enclosure is damaged and requires replacement or repair, water may remain in a pool enclosed by a temporary pool enclosure with the permission in writing of the [PERMIT ISSUING OFFICER/CHIEF BUILDING OFFICIAL] pending the replacement or repair of the pool enclosure, subject to any time limits that may be imposed by the [PERMIT ISSUING OFFICER/CHIEF BUILDING OFFICIAL].

PART 6 SPECIAL PROVISIONS

Above-Ground Pools

25. The vertical walls of an above-ground pool can be used as part of a pool enclosure provided that the vertical walls are at least 1.22m (4 feet) in height and do not possess any horizontal members that may facilitate climbing;



26. The ladder area, which provides access to the above-ground pool, must be enclosed by a pool enclosure as defined in this by-law (see Figure 10);

Temporary Pools

27. If a pool enclosure permit has been obtained with respect to the pool enclosure for a temporary pool, the temporary pool may be reinstalled and refilled with water without additional permits or inspections provided there have been no alterations to the pool enclosure.

**PART 7
ADMINISTRATION**

28. Every person who contravenes any provision of this by-law is guilty of an offence, and is liable upon conviction to a fine under the *Provincial Offences Act*, of not more than \$5,000.00 exclusive of costs.

READ a first and second time this 23rd day of November, 2009.

READ a third time and finally passed this 23rd day of November, 2009.



REEVE DIANE BREWER



CLERK / TREASURER BETTY D. GORDON