

TOWNSHIP OF ST. CLAIR

BY-LAW NUMBER 83 of 2005

Being a by-law of the Township of St. Clair dealing with fences within the Township of St. Clair and amending By-law 5 of 2004 Township of St. Clair

WHEREAS pursuant to the Municipal Act, R.S.O., 1990, Chapter M.45, Section 210, Paragraphs 25 to 30 inclusive, Council may pass by-laws dealing with fences;

AND WHEREAS it is deemed expedient and desirable to pass such a by-law;

NOW THEREFORE the Municipal Council of the Corporation of the Township of St. Clair enacts as follows:

1. That no person shall construct, erect, maintain or keep within the Township of St. Clair any fence in contravention of the provisions of this by-law.

2. **DEFINITIONS**

For the purposes of this by-law, the following definitions shall apply:

- (a) "Building Inspector" means the Building Inspector of the Corporation of the Township of St. Clair and includes his/her designate;
- (b) "By-law Enforcement Officer" shall mean the By-law Enforcement Officer appointed by the Corporation of the Township of St. Clair or his/her designate;
- (c) "Council" means the Council for the Corporation of the Township of St. Clair;
- (d) "corner lot" means a lot located at the intersection of two or more streets having an angle of intersection of not more than one hundred and thirty five degrees (135^o);
- (e) "daylighting triangle" means that portion of a corner lot within the triangular space formed by the street lines and a straight line drawn from a point in one street line to a point in the other street line, each such point being 5 metres (16.4 feet) measured along each street line from the point of intersection of the street lines, as shown on Schedule "A";
- (f) "driveway" means a vehicle access provided between a street and a parking area/space or a loading space;
- (g) "effective ground level" means the mean level of the ground within a radius of 2.5 metres (8 feet) of the ground location being considered;
- (h) "electrical fence" means a fence through which electricity passes;
- (i) "erect" includes alter, construct, plant, grow, place and relocate;
- (j) "fence" includes a railing, wall, line of posts, wire, masonry, gate, boards or pickets or other similar substances, used to enclose or divide in whole or in part a yard or other land, or to establish a property boundary;

- (k) “fence - open type construction” means a fence constructed so that its vertical surface area is unobstructed, enabling motorists and pedestrians to have a clear view through such fence (e.g. a fence of chain-link construction);
- (l) “fence - solid type construction” means a fence constructed so that its vertical surface is obstructed, preventing motorists and pedestrians from having a clear view through such fence;
- (m) “lot” means any parcel of land which can be occupied or used or otherwise disposed of separately and apart from any abutting lands, whether or not such parcel is described in a registered deed or shown on a registered plan of subdivision;
- (n) “permit” means a permit issued by the Building Inspector of the Corporation of the Township of St. Clair;
- (o) “pond” means a confined body of water (which may contain fish or plants) which is located in an area zoned to permit residential development but does not include farming areas or ponds located thereon greater than 150 metres (500 feet) from an area zoned to permit residential development.
- (p) “street” shall mean a public highway which provides the principal means of vehicular access to abutting lots and includes its sidewalks and boulevards;
- (q) “street line” means the boundary between a street and a lot separating the lot from the abutting street;
- (r) “swimming pool” means a privately-owned outdoor swimming pool, constructed or fabricated and located for swimming, wading, diving and bathing and which when filled is capable of containing a depth of 60 centimetres (24”) or more of water, but does not include a wading pool which is not capable of containing a depth of more than 60 centimetres (24”) of water and which may be emptied on a daily or frequent basis, and includes a pond;
- (s) “swimming pool area” means the swimming pool and/or pond plus any areas which lie within the swimming pool/pond enclosure;
- (t) “swimming pool enclosure” means the fences and gate or gates around a privately-owned outdoor swimming pool/pond, restricting access thereto.
- (u) “yard” means that part of a lot not covered or occupied by any building;
- (v) “yard, front” means a yard that extends across the full width of the lot from the front lot line to the nearest wall of the main building on the lot;
- (w) “yard, rear” means a yard that extends across the full width of the lot from the rear lot line to the nearest wall of the main building on the lot;
- (x) “yard, side” means a yard that extends from the front yard to the rear yard and from the side line of a lot to the nearest wall of the main building on the lot.

3. **APPLICATION OF BY-LAW**

- (a) This by-law applies to fences in the Township of St. Clair whenever erected.
- (b) Fences lawfully erected prior to the passage of this by-law or as previously approved by Council, are exempt from the provisions of this by-law unless, in the opinion of the Operations Superintendent, they constitute a view obstruction or like hazard, in which case the pertinent provisions apply.
- (c) In the event of any conflict between the provisions of this by-law and any provisions of the Township of St. Clair Zoning By-laws, relating to fencing,

the provisions of those by-laws shall prevail over the provisions of this by-law.

- (d) No person shall erect, construct or maintain a fence more than 1.83 metres (6 feet) in height above the effective ground level with this height limitation to include the top of all posts and decorative design or finish.
- (e) An owner, wishing to construct a fence that would be in contravention of any section or provision of this by-law may apply to Council for an exemption. Council may grant such exemption if, in its opinion, such a fence would not create a visual impairment. Prior to the granting of such an exemption, Council shall notify the owners within 60 metres of the subject property of the date of the meeting at which time the exemption will be considered. Such notice shall be sent at least 14 days prior to the date of the meeting by regular prepaid mail.
- (f) This by-law shall not necessarily apply to any commercial or industrial property which is subject to the site plan control process and where variances from the provisions of this by-law are deemed to be expedient and desirable.
- (g) The provisions of this by-law do not apply to municipally owned property where Council deems that variances to the provisions of this by-law are in the interest of public health and safety.

4. **ADMINISTRATION AND ENFORCEMENT**

- (a) In the event that complaints are received by the Township, the By-law Enforcement Officer shall inspect such fence. If, in the opinion of the By-law Enforcement Officer, the said fence does not meet provisions of this by-law, it shall be the duty of the By-law Enforcement Officer to notify, in writing, the owner, agent or person responsible for said fence to comply with the provisions of this by-law. Failure to so comply shall be considered a contravention of the by-law which is subject to the penalty set out in Section 14 of this by-law.

Notice in writing is deemed delivered when it has been:

- i) personally served;
- ii) sent by regular mail to the address of the owner, as shown on the last revised assessment roll, on the seventh day after mailing;
- iii) when posted on the offending fence

5. **FENCES AND VEGETATION ADJACENT TO MUNICIPAL SIDEWALKS AND THE ST. CLAIR RIVER TRAIL**

- (a) No person shall erect or cause to be erected a fence, hedge or shrubs within that area adjacent to a municipal sidewalk and a driveway as illustrated on Schedule "B", unless such fence:
 - i) is of open-type construction and does not obstruct the visibility of motorists and pedestrians; or
 - ii) is of solid-type construction and does not exceed 75 cm (29.5 inches) in height above effective ground level.

6. **FENCES ON PROPERTY FRONTING ON AND FENCES WEST OF THE ST. CLAIR PARKWAY**

Notwithstanding any provisions of this by-law no person shall erect a fence in any rear or side yard from the rear building line to the waters edge, except as may be provided for in Section 3 of the this by-law.

7. **FENCES ON PROPERTY FRONTING ON AND EAST OF THE ST. CLAIR PARKWAY**

Notwithstanding any provisions of this by-law no person shall erect a fence in any front or side yard from the front established building line to the St. Clair Parkway road allowance, except as may be provided for in Section 3 of this by-law

8. **FENCES AND VEGETATION WITHIN DAYLIGHT TRIANGLES**

(a) No person shall erect or cause to be erected a fence, hedge or shrubs within a daylighting triangle as illustrated on Schedule “A”, unless such fence:

- i) is of open-type construction and does not obstruct the visibility of motorists and pedestrians; or
- ii) is of solid-type construction and does not exceed 75 cm (29.5 inches) in height above effective ground level.

9. **FENCES AND VEGETATION ON PROPERTY ABUTTING RIVERSIDE DRIVE - PLAN 27, PORT LAMBTON**

Notwithstanding any provisions of this by-law no person shall construct any fence in the area of the municipality known as Riverside Drive, Plan 27, more particularly described as Lots 14 to 46, Lots 50 to 73 and closed portion of Central Ave., Lots 140 to 144 and Lots 149 to 156, all inclusive, except as required in Sections 11 of this by-law requiring fencing for swimming pools, and no owner in this area will allow shrubs or tree vegetation planted in such a fashion as to form a hedge or visual barrier to grow to exceed 1.2 metres (4 feet) in height in such a fashion to obstruct the view for a neighbouring property.

10. **FENCES WITH BARBED WIRE OR OTHER BARBED MATERIAL**

(a) No person shall erect or cause to be erected on any land used for residential purposes, a fence which either contains, or is constructed of, barbed wire or other barbed or sharp material.

(b) Barbed wire or other barbed or sharp material may be used on the top and to the outside of fences that are erected on lots, which meet all the following criteria:

- (i) the lots are zoned Industrial or Commercial in the applicable Zoning By-law.
- (ii) they are occupied by either an industrial or commercial use; and
- (iii) the barbed wire is located not less than 1.52 metres (5 feet) above the effective ground level.
- (iv) the outward projection of the barbed wire does not project onto a neighbouring property.

(c) Barbed wire may be used on fences lawfully used for agricultural purposes.

11. **ELECTRICAL FENCES**

(a) Except as provided in Subsection (b) of this Section, no person shall erect or cause to be erected an electrical fence on any land.

- (b) An electrical fence using direct current only may be erected on land while it is being lawfully used for agricultural purposes, provided such fence:
 - (i) has a controller which meets CSA (Canadian Standards Association) Standard C22.2 103-M1983);
 - (ii) is designed and erected solely to contain animals;
 - (iii) does not abut a residential use or zone.

12. **FENCES AROUND SWIMMING POOLS OR PONDS:**

The requirements for fencing around privately owned swimming pools or ponds form Appendix A to this by-law.

13. **LINE FENCES IN AN AGRICULTURAL AREA:**

The requirements for line fences in an agricultural area form Appendix B to this by-law.

14. **GENERAL**

- (a) In this by-law, unless the context otherwise requires, words imparting the singular number shall include the plural, and words imparting the feminine gender shall include the masculine and, further, the converse of the foregoing also applies where the context so requires.

15. **PENALTY**

- (a) Every person who contravenes any provision of this by-law is guilty of an offence and subject to the provisions of The Provincial Offences Act.

16. **SEVERABILITY**

- (a) If a court of competent jurisdiction declares any Section or Subsection of this by-law invalid, the remainder of this by-law shall continue in force unless the court makes an order to the contrary.

17. **SCHEDULES**

- (a) Schedules "A" and "B" attached to this by-law for part thereof.

18. The short title of this by-law is the "Fence" by-law.

19. By-laws passed by the former Township of Sombra and the former Township of Moore that are inconsistent with the provisions of this by-law are hereby repealed.

20. This by-law comes into force and effect when finally passed.

FINALLY PASSED this 3rd day of October, 2005.

MAYOR

CLERK

Appendix A

to By-law 83 of 2005

Fences Around Privately-owned Swimming Pools and Ponds

PERMITS

1. (a) No person shall excavate for, construct or erect a pool or cause any of the foregoing to take place without first obtaining a Permit under this By-law with respect to such pool;
- (b) An application for a Permit shall be submitted to the Building Inspector together with plans in duplicate showing details of the proposed pool, Fences and Gates and their location with respect to property lines and existing buildings;
- (c) If the application and the plans appear to comply with the provisions of this by-law and if the permit fee prescribed in the Building By-law is paid, the Building Inspector may issue the permit on behalf of the Corporation;
- (d) If the issuance of a Permit is refused the Permit fee paid to the Corporation in connection with the application shall be repaid to the applicant; and
- (e) A Permit may be refused on the grounds that any such Fences and Gates if erected, would be contrary to this or any other By-law of the Corporation.

REQUIRED SWIMMING POOL AND/OR POND ENCLOSURE

2. (a) The owner and/or occupant of any lands on which a pool is located shall erect and maintain in good condition a Swimming Pool Enclosure, which shall be a minimum of 1.52 metres (5 feet) in height and a maximum of 1.83 metres (6 feet) in height, compliant with the provisions of this By-law around the entire Pool area;
- (b) No person shall place water in a pool or allow water to remain in it unless the prescribed Pool Enclosure has been erected for that Pool;
- (c) Every owner of a pool shall, in the absence of a responsible adult person supervising such pool, keep every gate which provides access to such pool, closed, latched and locked;
- (d) A Pool Enclosure shall extend from a maximum of no more than 5 cm (2") vertically above ground level to a height that is at least 150 cm (5 feet), above Effective Ground Level;
- (e) The Pool Enclosure shall be located at least 1.2m (4 feet) distant from any outside structure or tree on this property which might afford a means whereby the Enclosure could be scaled from the outside by anyone. The By-law Enforcement Officer shall be the sole judge of whether or not an enclosure infringes this section;
- (f) The required Pool Enclosure shall have no attachments on the exterior face such as horizontal or diagonal bracing, horizontal rails or other members which would facilitate climbing, within 1.2m (4 feet) of each other measured vertically, excepting that where a common fence divides two adjacent pool enclosures, such common fence need not comply with this clause;
- (g) The Pool Enclosure shall be constructed in accordance with Schedule "A" of this by-law;

- (h) Fences forming part of the prescribed Pool Enclosure shall:
 - i) contain no barbed wire, electrical wiring, sharp projections or any other dangerous characteristics either on the outside or the inside; and
 - ii) be located not less than 1.2 metres (4 feet) from the nearest pool wall or water's edge.

GATES AND ENTRANCES TO THE POOL AREA

- 3. (a) Gates which form part of the Pool Enclosure shall be:
 - i) of such construction as will provide a degree of safety and rigidity equivalent to or greater than that of a required fence;
 - ii) supported on substantial hinges; and
 - iii) self-closing and self-latching with the latching device 1.2 metres (4 feet) from grade and on the inside of the Gate;
- (b) All Gates which form part of the Pool Enclosure shall be kept locked closed at any time when the pool contains 60 cm (24") or more of water and is not attended by a responsible, adult person.
- 4. (a) For the purpose of this by-law above-ground pools are considered to be the same as in-ground swimming pools, and require the same enclosures around the entire pool;
- (b) If an above-ground swimming pool has as an integral part of its construction a deck level with the top of the pool and a Fence around the said deck which has an effective combined height of 150 cm (5 feet) above grade, the said integrally constructed fence may be considered as being the required pool enclosure;
- (c) The combined deck and Fence shall have no horizontal members or other appurtenances on its exterior face, closer than 1.2 metres (4 feet) above effective ground level which could facilitate climbing;

5. CONSTRUCTION

- (a) A fence of wood construction shall:
 - i) have upright posts a minimum of 9 cm x 9 cm (4" x 4") or 15 cm (6") in diameter;
 - ii) have posts located not farther than 2.4 metres (8 feet) apart;
 - iii) have posts extended at least 1 metre (40") below grade
 - iv) have top and bottom rails of at least 4 x 9 cm (2" x 4") nominal dimensions; and
 - v) have vertical boards of 2 cm (1") minimum thickness attached to a top and bottom rail from the outside, if boards are attached on the inside, the horizontal top and bottom rails shall not be closer than 1.2m (4 feet) which could facilitate climbing, such vertical boards being spaced not more than 5 cm (2") apart.
- (b) A fence of chain link construction shall:

- i) have upright metal corner posts of not less than 5 cm (2") diameter, and line posts of not less than 3.5 cm (1 1/4") diameter, or heavy duty T bars with caps to hold the top rail;
- ii) have posts located not farther than 3 metres (10 feet) apart;
- iii) have posts that extend at least 1 metre (40") below grade;
- iv) have posts galvanized or treated with a rust resistant finish;
- v) have a top rail of at least 3 cm (1 1/4") diameter, and a bottom wire of at least 9 gauge;
- vi) have a mesh not greater than 3.8 cm (1 1/2") consisting of not lighter than 9 gauge steel wire, and have the equivalent strength.

6. MAINTENANCE

- i) Water from a pool shall not be discharged onto or permitted to run or drain onto adjacent properties;
- ii) Every Pool Enclosure including decks around the pool shall be kept in good repair, any deteriorated lumber, or other materials for the enclosure shall be replaced to maintain the integrity of the enclosure;
- iii) For the purpose of this By-law the By-law Enforcement Officer is hereby empowered to order by notice in writing the owner of any pool to alter, repair or make safe such pool enclosure in order to comply with the provisions of this by-law;
- iv) The notice referred to in Sub Section (iii) of this by-law may be hand delivered to the owner, posted on the property, or mailed to the owner by prepaid certified mail to the address of the owner as shown on the last revised assessment roll. The mailing of the aforesaid notice shall be deemed to be good and sufficient delivery of notice, which shall be deemed to have been received on the 5th day after mailing notices hand-delivered or posted on the property are deemed received immediately;
- v) Wherever this by-law requires any matter to be done, in default of its being done by the owner, such matter may be performed by the Township of St. Clair under direction of the By-law Enforcement Officer at the expense of the owner, and the Corporation may recover the expenses incurred remedying such matters in like manner as municipal taxes.

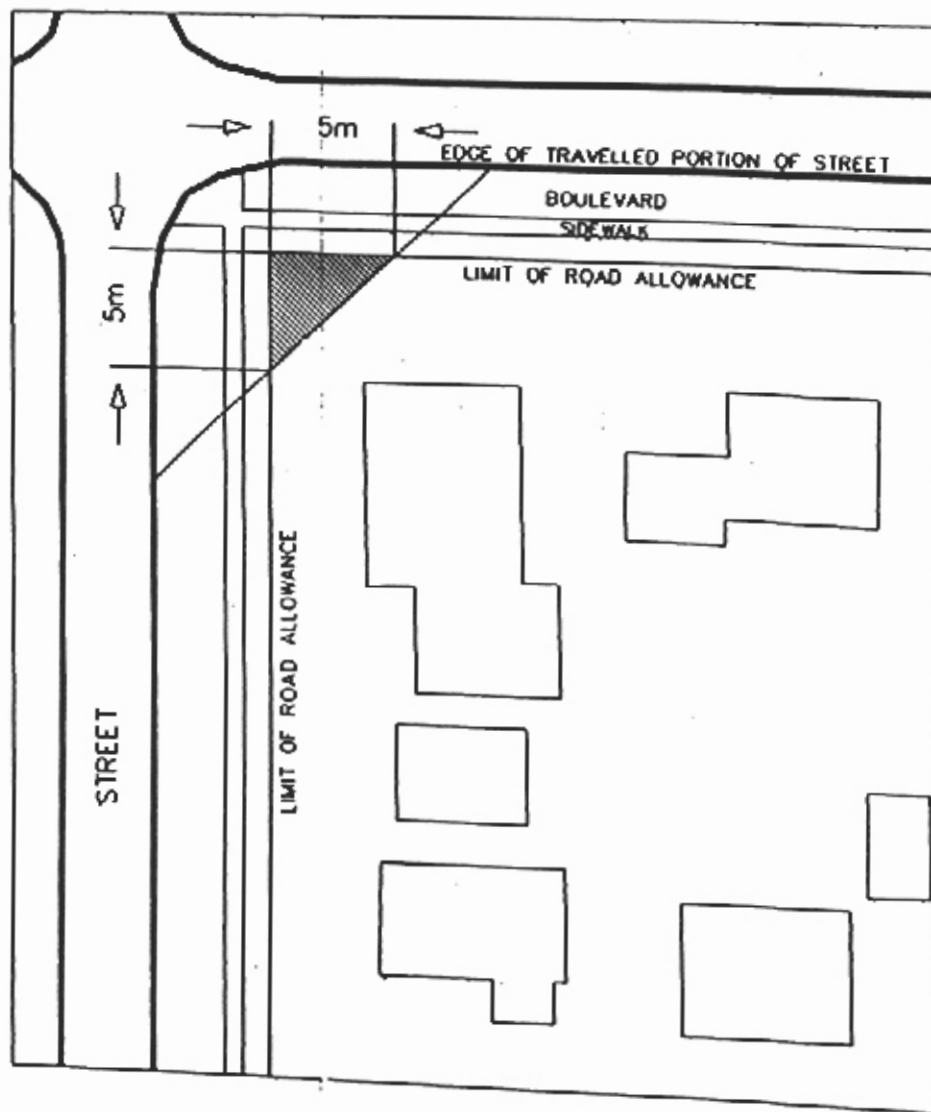
Appendix B

to By-law 83 of 2005
Line Fences in an Agricultural Area

1. A lawful line fence in the rural or agricultural area of the Township of St. Clair shall be a woven fence, 9 lines, 48 inches high or 8 lines, 42 inches high with a barb wire on top. Barb wire shall be not less than three inches or more than six inches above the top wire of the woven fence. All woven fence shall be of No. 9 3/4 gauge or high tensile page fencing, and the wooden posts not less than 5 1/2 inches in diameter, or standard steel posts may be used, and not to be less than thirty inches in the ground, and not more than twenty feet apart from centre to centre of the posts. That the first and lowest wire shall not be more than three inches from the ground on the average, and the spacing of the wires shall be according to the different standard wire fences, and sufficiently stayed with upright wire stays, not more than sixteen and one-half inches apart and of a nine and three quarters gauge or high tensile wire.
2. No barb wire shall be used in the construction of a line fence in the rural or agriculture area of the Township of St. Clair except the top wire when used over an 8 line or more woven fence, unless the written consent of adjacent property owner or owners has been first obtained.
3. That fences along highways shall be built in the same manner as line fences. (Clause 1).
4. All questions or disputes arising or pertaining to line or high-way fences under this by-law shall be adjusted by three Fence Viewers of the Municipality according to the Line Fences Act, 1986, Chapter 47, as amended from time to time, and shall state by which of the said parties the costs of the proceedings shall be paid. The decision of any two of them shall be finding upon all parties; And the enforcement of this by-law and the collecting of any costs so apportioned shall be done according to The Line Fences Act, 1986, Chapter 47, and as amended from time to time.

And be it further enacted, that each fenceviewer shall be entitled to a minimum fee of \$100.00 per day for every day's work under this by-law.

SCHEDULE 'A' TO BY-LAW 83 OF 2005
DAYLIGHTING TRIANGLE



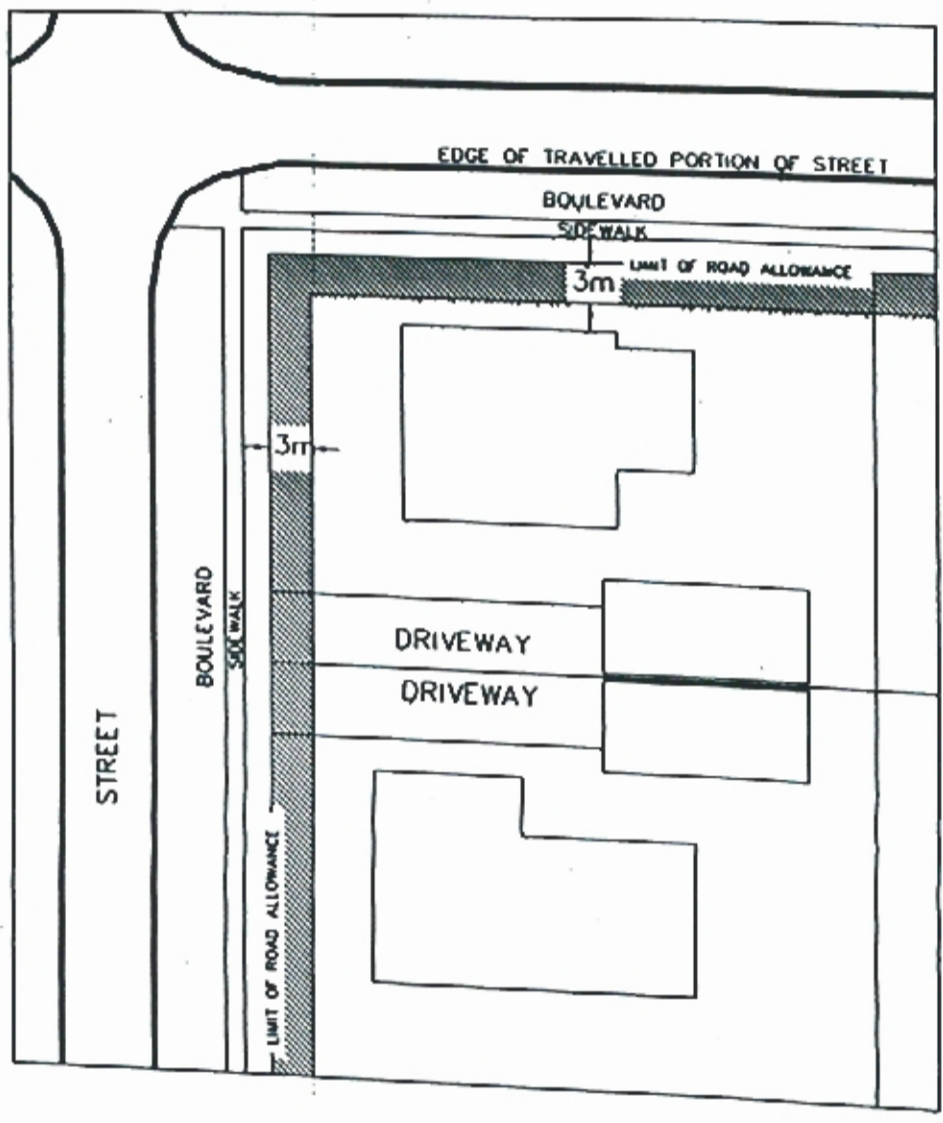
 NO FENCE HIGHER
THAN 75cm (29.5 INCHES)

NOT TO SCALE

UPDATED MARCH/2002

ST. CLAIR TOWNSHIP
SCHEDULE "A"

SCHEDULE 'B' TO BY-LAW 83 OF 2005
ADJACENT TO MUNICIPAL ROAD ALLOWANCE



 NO FENCE HIGHER THAN 75cm (29.5INCHES)

NOT TO SCALE

UPDATED MARCH/2002

ST. CLAIR TOWNSHIP
SCHEDULE "B"