



**MUNICIPALITY OF THE
TOWNSHIP OF WENTWORTH**

**MINOR DEROGATIONS BY-LAW NUMBER 2022-
010**

April 2022

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CHAPTER I DECLARATORY, ADMINISTRATIVE AND INTERPRETIVE PROVISIONS

SECTION A – DECLARATORY PROVISIONS

1. By-Law Title

The present By-Law is entitled “Minor Derogations By-Law 2022-010”.

2. Repeal

This By-Law repeals and replaces, for all intents and purposes, the *Minor Derogation By-Law Number 2018-012* and its amendments, as well as all inconsistent provisions of any other municipal by-law in force.

This repeal shall not affect permits and certificates issued under the authority of the repealed by-law, nor shall it affect rights acquired before the coming into force of the present By-Law.

3. Territory of Application and Persons Subject to this By-Law

This By-Law applies to all persons and to the entire territory of the Municipality of the Township of Wentworth.

4. Purpose of the By-Law

The purpose of this By-Law is to enable persons to apply for an derogation to certain planning by-laws, and to enable the Municipal Council to grant or refuse this derogation based on the evaluation criteria set forth herein.

5. Compliance

Compliance with this by-law does not diminish the obligation of complying with any other provincial or federal government law or regulation in force or any other municipal by-law applicable in the case at hand.

6. Adoption by Parts

This By-Law has been adopted chapter by chapter, section by section, article by article, and paragraph by paragraph such that any judgment rendered by a court to the effect that any part hereof is null and void shall have no effect on any other part contained herein, except where the meaning or scope of the By-Law or one of its provisions is altered or modified.

SECTION B – ADMINISTRATIVE PROVISIONS

7. Administration of the By-Law

The administration and application of this By-Law are entrusted, by resolution of the Municipal Council, to any person hereinafter referred to as a “designated officer”. The duties of the designated officer are set out in the *Planning Administration By-Law*.

SECTION C – INTERPRETIVE PROVISIONS

8. Rules of Interpretation

The following rules of interpretation apply to this By-Law in the event of a contradiction between two or more provisions:

1. A specific provision prevails over a contradictory general provision;
2. The most restrictive provision prevails;
3. In the event of contradiction between a chart, a diagram or a title and the text, the text prevails.

9. Numbering

The numbering method used in this By-Law is as follows:

Chapter I : Chapter

Section A – Section

1. Article
 - Paragraph
 1. Paragraph
 - a) Subparagraph

10. Definition

Unless the context indicates a different meaning, all words and expressions have the meaning assigned to them in the *Zoning By-Law*. If a word or expression is not defined, it is understood to have its common dictionary definition.

CHAPTER II PROCEDURAL PROVISIONS

SECTION A – ADMISSIBILITY OF AN APPLICATION

11. Evaluation of the Admissibility of an Derogation Application

An application for a minor derogation must be made at the time of application for a permit or certificate in accordance with the *Planning Administration By-Law* and must comply with all provisions of the zoning, subdivision and construction by-laws that are not the subject of the application for a minor derogation.

The designated officer shall assess whether the application is admissible for the minor derogation procedure based on the provisions of this section.

If the designated officer concludes that the application is not admissible, he shall inform the applicant in writing of the reasons for the decision within 60 days following the submission of the application.

12. Special Provisions for an Application in Respect of Work in Progress or Already Completed

If the application for a minor derogation is submitted in respect of work in progress or already completed, this work must have been authorized by a permit or certificate at the time of its execution if such a permit or certificate was required under the by-laws in force at the time.

13. Zoning Provisions that may be the Subject of an Application

The provisions of the *Zoning By-Law* may be the subject of an application for a minor derogation, with the exception of provisions relating to:

1. Land uses, whether they are main, additional, accessory or temporary;
2. Land occupation density, expressed in terms of dwellings per hectare;
3. Regulatory provisions adopted pursuant to paragraphs 16 or 16.1 of the second paragraph of Section 113 of the *Act Respecting Land Use Planning and Development* (CQLR, c. A-19.1), that is, in a place where land occupation is subject to special constraints for reasons of public safety, health, or general well-being.

14. Subdivision Provisions that may be the Subject of an Application

The provisions of the *Subdivision By-Law* may be the subject of an application for a minor derogation, with the exception of provisions relating to:

1. The contribution for parks, playgrounds or natural areas;
2. Regulatory provisions adopted pursuant to paragraphs 4 or 4.1 of the second paragraph of Section 115 of the *Act Respecting Land Use Planning and Development* (CQLR, c. A-19.1), that is, in a place where land occupation is subject to special constraints for reasons of public safety, health, or general well-being.

SECTION B – CONTENTS OF THE APPLICATION

15. Submitting the Application for Derogation

The person requesting a minor derogation must submit the application to the designated officer by completing and signing the form provided for that purpose.

The application, submitted in one (1) paper copy and one (1) digital copy (PDF), must be accompanied by the following plans and documents:

1. The full contact information of the applicant and, where applicable, a power of attorney from the owner of the immovable;
2. The deed establishing that the site of the immovable that is the subject of the application is the property of the applicant;
3. Details of any proposed and existing derogation, the reasons why the project cannot be completed in accordance with the prescribed By-Laws, and demonstration that the application meets the evaluation criteria set forth herein;
4. For a derogation relating to siting, a draft site plan prepared by a land surveyor. If the work is in progress or already completed, a certificate of location prepared by a land surveyor must be submitted;
5. For a derogation relating to a structure or part thereof, the plans of the proposed structure. If the work is in progress or already completed, the "as-built" plans must be submitted, identifying the differences with respect to the approved plans and the requested derogation.
6. For a derogation relating to height, the height must be established by a land surveyor;
7. Photographs, taken within 30 days prior to the filing of the application, of the immovable that is the subject of the application and the buildings located on the adjacent properties;
8. Any other information, plans and documents necessary for the assessment of the application with regard to the criteria set forth herein.

16. Study and publication fees

Fees for the study of an application for a minor derogation and for the publication of public notices are set out in the *Planning Administration By-Law*.

In all cases, these fees are non-refundable and do not cover the charges for issuing a permit or certificate.

17. Completed Application

An application for a minor derogation is considered complete when all required documents and plans have been filed with the designated officer and the study fees have been paid.

SECTION C – APPLICATION PROCEDURE

18. Verification of the Application

Once the application is complete, the designated officer shall verify the compliance of the application with planning by-laws. At the request of the designated officer, the applicant must provide any additional information required for a clear understanding of the application.

If the plans and documents provided by the applicant are inaccurate, erroneous, insufficient or non-compliant, the designated officer shall notify the applicant that the application verification process has been suspended in order for the applicant to provide accurate, corrected and sufficient information, plans and documents for the verification of the application.

Once the designated officer has verified the compliance of the application, the application is transmitted to the Planning Advisory Committee within 60 days.

19. Opinion of the Planning Advisory Committee

The Planning Advisory Committee shall issue an opinion in the form of a recommendation to the Municipal Council with respect to the application for a derogation based on the

evaluation criteria set forth herein. If it deems it appropriate, the Committee may also suggest conditions to mitigate the impact of the derogation.

At the Planning Advisory Committee meeting, members may hear interested persons if they ask the designated officer in advance.

20. Public Notice

The Clerk-Treasurer of the Municipality must, no later than 15 days before the meeting at which the Municipal Council is to decide on the minor derogation application, publish a notice in accordance with the terms governing the publication of municipal public notices.

The notice shall indicate the date, time and place of the meeting of the Municipal Council and the nature and effects of the requested derogation. This notice contains the designation of the immovable affected using the street name and civic number or, failing that, the cadastral number, and shall indicate that any interested party may be heard by the Municipal Council with respect to the application.

21. Decision of the Municipal Council

After receiving the recommendation of the Planning Advisory Committee and after hearing any interested person wishing to be heard concerning this application, the Municipal Council shall grant or refuse the minor derogation at the meeting on the date mentioned in the public notice.

A resolution by which the Municipal Council grants a minor derogation may include any condition with respect to the jurisdiction of the Municipality, to mitigate the impact of the derogation.

A resolution by which the Council refuses an application shall state the grounds for the refusal.

A copy of the resolution shall be sent to the applicant.

22. Transmission of the Resolution to the MRC d'Argenteuil

When the resolution grants a minor derogation in a place where land occupation is subject to special constraints for reasons of public safety or health, environmental protection or general well-being, the Municipality shall forward a copy of the resolution to the MRC d'Argenteuil.

The Council of the MRC may, within 90 days after receiving the copy of the resolution, if it considers that the decision authorizing the derogation exacerbates safety or public health risks or affects the quality of the environment or general well-being:

1. Impose any condition referred to in the second paragraph of Article 21 herein to reduce the risk or potential harm or modify, for those purposes, any condition prescribed by the Municipal Council;
2. Disallow the decision authorizing the derogation where it is impossible to reduce the risk or potential harm.

A copy of every resolution passed by the MRC shall be sent to the Municipality without delay.

In such a case, the minor derogation shall take effect:

1. On the date on which the MRC notifies the Municipality that it does not intend to avail itself of the powers provided for in the second paragraph;
2. On the date of the entry into force of the resolution of the MRC which imposes or amends the applicable conditions on the derogation;
3. On the expiry of the delay provided for in the second paragraph, if the MRC has not availed itself, within that time, of the powers provided for in that paragraph.

The Municipality must send the resolution of the MRC to the person who applied for the derogation or, in the absence of such a resolution, inform the person of the effective date of its decision granting the derogation.

23. Issue of the Permit or Certificate

The permit or certificate may be issued by the designated officer once he has obtained a certified copy of the resolution by which the Municipal Council granted the minor derogation or, where applicable, the resolution of the MRC Council.

The designated officer shall issue the permit or certificate if the stated conditions are met at the time of issuance, or thereafter in accordance with the terms set out in the resolution and if it complies with the terms of the *Planning Administration By-Law* that are not the subject of the derogation granted.

24. Nullification of the Resolution Granting the Minor Derogation

The resolution granting the derogation shall be null and void if the proposed work that is the subject of the resolution has not started within 12 months following the date of the resolution.

25. Minor Derogation Registry

The minor derogation application and the Council resolution are entered in the register established for that purpose.

SECTION D – CRITERIA FOR EVALUATING DEROGATION APPLICATIONS

26. Application Evaluation Criteria

Minor derogation applications are evaluated according to the following criteria:

1. The application respects the objectives of the *Planning Administration By-Law*;
2. Application of the by-law would create serious damages for the applicant;
3. The minor derogation does not affect the enjoyment of property rights by the owners of neighbouring buildings;
4. The minor derogation does not exacerbate public safety risks;
5. The minor derogation does not exacerbate public health risks;
6. The minor derogation does not affect the quality of the environment;
7. The minor derogation does not affect general well-being;
8. If work is in progress or has already been completed, this work was done in good faith;
9. The derogation is minor in nature.

CHAPTER III FINAL PROVISIONS

27. Sanctions

Any person who contravenes or allows or tolerates the contravention of a provision of this By-Law, maintains construction work done without a permit, or maintains a state of affairs requiring a certificate without having first obtained one, commits an offence and is liable to a fine of \$300 to \$1,000 in the case of a natural person, and \$600 to \$2,000 in the case of a legal person.

In the event of a repeat offence, the fine is \$600 to \$2,000 if the offender is a natural person and \$1,200 to \$4,000 if the offender is a legal person, plus costs.

If the offence is of a continuous nature, it constitutes a separate offence with respect to each day, and the offender is liable to the fine mentioned above for each day during which the contravention continues.

The deadlines for the payment of fines and fees imposed under this By-Law and the consequences of failure to pay such fines and fees within the prescribed time, are established in accordance with the *Québec Code of Penal Procedure* (RSQ, c. C-25.1).

28. Civil Law Recourse

Notwithstanding recourse through penal actions, the Municipality may exercise, before tribunals of jurisdiction, all civil law recourse necessary to ensure compliance with the provisions of this By-Law, when the Council deems it necessary, or may exercise all these recourses cumulatively.

29. Penal Actions

Penal sanctions are instituted, for and on behalf of the Municipality, by the person designated for that purpose by a resolution of the Council.

30. Coming into force

The present By-Law comes into force in accordance with the law.