

## **Maintenance of Fence Fronting 139 Old Forest Hill Road and on the Darwin Road Flank (North Toronto)**

*(City Council on December 14, 15 and 16, 1999, adopted this Clause, without amendment.)*

**The Toronto Community Council recommends that City Council approve the maintenance of the wooden fence within the public right of way fronting 139 Old Forest Hill Road and on the Darwin Road flank, subject to the owners:**

- (a) reducing the height of the fence fronting 139 Old Forest Hill Road and on the Darwin Road flank to a maximum height of 1 m and 1.8 m, respectively;**
- (b) entering into an encroachment agreement with the City of Toronto, as prescribed under Chapter 313 of the former City of Toronto Municipal Code; and**
- (c) maintaining the City property between the edge of the curb and the fence to the satisfaction of the Commissioner of Works and Emergency Services.**

**The Toronto Community Council submits the following report (November 16, 1999) from the Right of Way Management, Transportation Services, District 1:**

Purpose:

To report on the homeowner's request to maintain a wooden fence within the public right of way fronting 139 Old Forest Hill Road and on the Darwin Road flank which exceeds the maximum height permitted under Chapter 313, Streets and Sidewalks, of the former City of Toronto Municipal Code. As this is a request for variance from the by-law, it is scheduled as a deputation item.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendation:

It is recommended that:

- (1) City Council approve the continued maintenance of the wooden fence at its existing height within the public right of way fronting 139 Old Forest Hill Road and on the Darwin Road flank, subject to the property owner entering into an encroachment agreement with the City of Toronto, as prescribed under Chapter 313 of the former City of Toronto Municipal Code;**

**OR**

- (2) City Council approve the maintenance of the wooden fence within the public right of way fronting 139 Old Forest Hill Road and on the Darwin Road flank, subject to the owners:
  - (a) reducing the height of the fence fronting 139 Old Forest Hill Road and on the Darwin Road flank to a maximum height of 1 m and 1.8 m, respectively; and
  - (b) entering into an encroachment agreement with the City of Toronto, as prescribed under Chapter 313 of the former City of Toronto Municipal Code.

Background:

The owners of 139 Old Forest Hill Road, in their communication dated October 7, 1999, have requested permission to maintain their newly constructed wooden fence within the public right of way at its current height.

Comments:

The construction and maintenance of fences within the public right of way are governed under the criteria set out in § 313-33 of Municipal Code Chapter 313, Streets and Sidewalks, of the former City of Toronto Municipal Code, which provides for fences to be constructed to a maximum allowable height of 1.9 m on the flank of a property and up to 1.0 m in height in front of a property. In addition, fences must be set back 0.46 m from the rear edge of the City sidewalk or a minimum of 2.1 m from the curb where no sidewalk is present.

On June 18, 1999, Street Allowance Construction Permit No. 60672 (expiry date December 18, 1999) was issued to the owners of 139 Old Forest Hill Road, Toronto, Ontario M5N 2N7, authorizing the installation of a wooden fence ranging in height from 0.91 m to 1.8 m within the public right of way fronting 139 Old Forest Hill Road and on the Darwin Road flank. In addition, because a number of City-owned trees would be enclosed by the fence and due to maintenance issues, Economic Development Services, Culture and Tourism, Forestry Section required that access gates be provided within the fence.

Our records show that a similar proposal for the fence construction was submitted in 1994 by the owners of the property and subsequently permission was granted authorizing the construction of a wooden fence fronting 139 Old Forest Hill Road and on the Darwin Road flank. At the same time, the owners signed the requisite encroachment agreement for the maintenance of the fence within the public right of way. In addition to the height limitations as noted above, the proposed fence on the Darwin Road flank was allowed to set back 1.2 m from the curb rather than 2.1 m.

For your Committee's information, Darwin Road is a short street that extends from Old Forest Hill Road northerly to the dead end of Darwin Road, as shown on the attached sketch (Attachment No. 1). Premises No. 139 Old Forest Hill Road abuts the majority of the boulevard of the west side of Darwin Road together with 141 Old Forest Hill Road. On the east side of Darwin Road there are a number of residential properties (1A, 3, 5, 7 and 9 Darwin Road, and 123 Old Forest Hill Road). There are no sidewalks on Darwin Road.

In response to the owners' request (1994) to install the fence as affecting Darwin Road 1.2 m back of the curb rather than 2.1 m, we determined that the owners' request was acceptable given that Darwin Road is a short residential street with minimal vehicular and pedestrian traffic and the likelihood of future development that would require improvements to the street unlikely. For these reasons, the 2.1 m requirement was waived.

Upon completion of the fence installation, site inspection has determined that the fence has been constructed in excess of the permitted limits. The fence on the frontage varies in height from 1.15 m to 1.49 m rather than 1 m and the fence on the flank varies in height from 1.21 m to 2.04 m rather than 1.9 m. Inspection also showed that the owners have installed access gates to the boulevard via Darwin Road, however, the gates swing outward onto the City boulevard. Gates must swing inward and not onto the adjacent boulevard.

During the course of the fence construction, we received a copy of a letter dated July 9, 1999 addressed to Councillors Anne Johnston and Michael Walker from the property owners of 3, 5, 7 and 9 Darwin Road in opposition to the fence (Attachment No. 2). To assist the Committee with the evaluation of the issues raised by the residents of Darwin Road in their letter to Councillors Johnston and Walker, they are summarized below along with staff's response.

Concern # 1                      Given that the residential properties look directly across the street at 139 Old Forest Hill Road, they will be facing a fence rather than grass and trees which have been their view for a number of years.

Staff's Response:              No comments as this deals with aesthetic issues.

Concern # 2                      The fence is too close to the street and will be an impediment to snow removal.

Staff's Response:              As noted, the fence has been set back a 1.2 m from the curb and therefore, there is sufficient space to accommodate any snow which may be displaced onto the adjacent boulevard by City snow ploughing operations.

Concern #3                      The fence will be less than pleasant to look at from the houses at 3 to 9 Darwin Road and may detract from the value of those properties.

Staff's response:              We cannot comment.

In consideration of the area residents concerns, staff met with Councillor Walker and various residents of Darwin Road on August 13, 1999. Staff explained that given the recent request was similar to the original request in 1994 and that a permit had been previously issued and an agreement had been signed to maintain the fence, notwithstanding that the owners did not proceed with the construction of the fence, we felt that we were obliged to renew the permit under the same conditions of approval. It is my understanding that the owners did not proceed with the construction of the fence at that time was due to the fact that they wanted to undertake renovations to their property prior to proceeding with the fence construction. As a result of the site meeting, the residents requested us to notify the owners of 139 Old Forest Hill Road to reduce the height of the fence to the permitted limits.

Subsequently, we notified the owners in writing on September 2, 1999, that they had deviated from Construction and Paving Permit No. 60672 requesting that they reduce the height of the fence as approved. In addition, the owners were requested to modify the gates of the fence to swing inward towards private property.

In response to our letter, the owners have forwarded a letter dated October 7, 1999, requesting an appeal of the Department's request to modify the fence. They feel that the fence does meet the requirements of the Municipal Code when measured from the highest point of grade of any section of the fence. With respect to modifying the gate, they have indicated that due to the grade differential, it would be impossible to have the gate swing inward without having a clearance of more than 0.31 m before striking the hill. Furthermore, they have indicated that when the gate is fully opened it does not encroach onto the roadway.

Staff have inspected the area in the immediate vicinity of this property and have concluded that, with the exception of a slight deviation in the height of the fence, it does not impact negatively on the public right of way. Although the opening of the gates onto the boulevard is not a desirable situation, because of the change in grade behind the fence as noted by the owners and the fact that the gates when open do not extend onto the travelled roadway is acceptable.

Details of this fence are retained on file with this Department.

Conclusions:

On hearing of depositions, the Toronto Community Council must decide whether to allow the present height of the fence fronting 139 Old Forest Hill Road and on the Darwin Road flank to remain or require the owners to reduce the height of the fence fronting 139 Old Forest Hill Road and on the Darwin Road flank to 1 m and 1.8 m as approved.

Contact:

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The Toronto Community Council reports, for the information of Council, having also had before it during consideration of the foregoing matter, the following communications, and a copy thereof is on file in the office of the City Clerk:

- (December 1, 1999) from Ms. Edye and Mr. Charles Webster;
- (November 30, 1999) from Ms. Joy Lipkin; and
- (December 1, 1999) from Ms. Rochelle Rubinstein

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The following persons appeared before the Toronto Community Council in connection with the foregoing matter:

- Ms. Joy Lipkin; and
- Ms. Edye Webster

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(A copy of the letters of objection (Attachment No. 2) referred to in the foregoing report was forwarded to all Members of the Toronto Community Council with the agenda for its meeting on December 2, 1999, and a copy thereof is on file in the office of the City Clerk)

Insert Map – Attachment No. 1 – Shallmar Parkette