

Clause embodied in Report No. 7 of the Midtown Community Council, as adopted by the Council of the City of Toronto at its meeting held on October 2, 3 and 4, 2001.

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**Maintenance of a Wooden Fence Within  
the Public Right of Way - 241 Belsize Drive  
(St. Paul's - Ward 22)**

*(City Council on October 2, 3 and 4, 2001, adopted this Clause, without amendment.)*

The Midtown Community Council recommends adoption of Recommendation Nos. (3) and (4) contained in the following report (August 22, 2001) from the Manager, Right of Way Management, Transportation Services, District 1; viz:

**“That City Council approve the maintenance of the wooden fence within the public right of way fronting 241 Belsize Drive, subject to the owner:**

- “(a) realigning the westerly portion of the fence so it does not encroach onto the public right of way fronting 239 Belsize Drive; 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.”;**

**and, further, that the wooden fence be permitted to remain ‘as is’ on the public right-of-way fronting 241 Belsize Drive:**

Purpose:

To report on the property owner's request to maintain a wooden picket fence within the public right of way fronting 241 Belsize Drive. As this is a request from a variance to the by-law and the Department has received a letter of objection for this proposal, this matter is scheduled as a deputation item.

Financial Implications and Impact Statement:

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

Recommendations:

It is recommended that City Council approve the maintenance of the wooden fence within the public right of way fronting 241 Belsize Drive, subject to the owner:

- (1) modifying the fence to eliminate the spike tops;

- (2) modifying the swing of the gate in towards the property owner's home;
- (3) realigning the westerly portion of the fence so it does not encroach onto the public right of way fronting 239 Belsize Drive; and
- (4) entering into an encroachment agreement with the City of Toronto, as prescribed under Chapter 313 of the former City of Toronto Municipal Code.

Comments:

The construction and maintenance of fences within the public right of way are governed under the criteria set out in 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, and are considered to be neither hazardous nor unsightly in appearance. 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.

Arising from a complaint received from Mr. John Brady, property owner of 239 Belsize Drive, site inspection showed that a wooden picket fence with gates and a wooden trellis had been constructed within the public right of way fronting 241 Belsize Drive without the authority to do so and the requisite street allowance construction permit. The fence ranges in height from 1.33 m to 1.02 m and is set back 0.05 m from the rear edge of the City sidewalk. In addition, the fence has been constructed with pointed tops and a gate that swings out onto the City sidewalk. The trellis is 2.21 m high and has been constructed over the walkway and is located 0.11 m from the rear edge of the City sidewalk.

Furthermore, it had been determined through a survey provided by the property owner of 239 Belsize Drive that the westerly portion of the fence which runs perpendicular to the City sidewalk, encroaches onto the frontage of 239 Belsize Drive both within the limits of private property and the City boulevard.

For the information of the Midtown Community Council, the Municipal Code permits the installation of fences along property lines. Fences situated within private property fall within the purview of Urban Development Services, Municipal Licensing and Standards and we have been advised by a representative of that respective department that with respect to fences extending onto adjoining neighbour's property that this is a civil matter between the affected parties.

Accordingly, a notice was left at 241 Belsize Drive advising that no authority had been granted for the construction of the fence requesting that the owner contact us. Subsequently staff met with Ms. Pauline Reinboth to discuss the various issues regarding the fence. Ms. Reinboth alleged that the fence had been in existence in excess of 20 years without any problems and she wanted the opportunity to speak to her lawyer. She further added that the encroaching fence onto the frontage of the neighbour's property would be removed. Mr. Brady was apprised of the results of the meeting.

Subsequently, a letter of application was submitted on behalf of Ms. Reinboth by Mr. Robert E. Barnett, 503 Davenport Road, Toronto, Ontario M4V 1B8, requesting permission to maintain the picket wooden fence within the public right of way fronting 241 Belsize Drive. Mr. Barnett alleges that the original fence fronting the location was built more than twenty years ago and several years ago, the wood fence was replaced and a higher gate installed to hold roses on the trellis surrounding the entrance to the property. Mr. Barnett further indicates that the fence has always been located west of the property line. Mr. Barnett feels that the fence is quite attractive and a feature to the neighbourhood. Mr. Barnett is asking that Ms. Reinboth be allowed to keep the fence in its present location until it needs to be reconstructed.

As indicated, the picket wooden fence fronting 241 Belsize Drive varies in height from 1.33 m to 1.02 m, which exceeds the maximum height of 1.0 m allowed for in Chapter 313 of the former City of Toronto Municipal Code. In addition, the wooden fence is set back only 0.05 m from rear edge of the City sidewalk rather than the required 0.46 m. Furthermore, the fence had been constructed with pointed tops and the gate to the fence swings out onto the City sidewalk, thereby creating a potentially hazardous situation.

In the interest of public safety and keeping with the provisions of the Municipal Code, the owner must remove the pointed tops of the fence, modify the swing of the gate in towards the property owner's home to eliminate any potential hazards.

To satisfy the concern raised by the property owners of 239 Belsize Drive, the westerly portion of the wooden fence must be re-aligned, so it does not encroach onto the public right of way fronting 239 Belsize Drive.

A copy of the survey prepared by Anton Kikas Limited, Ontario Land Surveyors dated June 19, 1989 showing the fence encroaching onto the frontage of 239 Belsize Drive is retained on file with this Department.

Staff have inspected the area in the immediate vicinity of this location and have determined that the picket wooden fence along with the wooden trellis do not negatively impact the public right of way providing that the owners make adjustments to the fence as described above.

#### Conclusions:

As the wooden fence and trellis do not impact negatively on the public right of way, the fence and trellis should be permitted to remain provided that the owner of 241 Belsize Drive relocates the fence to the property, modifies the fence to eliminate the pointed tops and modifies the gate to swing inward and not over the City sidewalk.

#### Contact:

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(Attachments appended to the foregoing report were forwarded to all Members of the Midtown Community Council with the agenda for its meeting on September 12, 2001, and copies thereof are on file in the office of the City Clerk, North York Civic Centre.)

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

- Pauline Rienboth; and
- Julie Brady.