



## STAFF REPORT ACTION REQUIRED

### 238 Rosedale Heights Drive - Privacy Fence Appeal

<b>Date:</b>	January 25, 2007
<b>To:</b>	Toronto and East York Community Council
<b>From:</b>	Manager, Right of Way Management, Transportation Services Toronto and East York District
<b>Wards:</b>	Toronto Centre-Rosedale – Ward 27
<b>Reference Number:</b>	Te07002te.row

#### SUMMARY

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This report considers an appeal for the maintenance of a 1.7 m high privacy fence within portions of the public right of way fronting 238 Rosedale Heights Drive.

Although the fence exceeds the allowable height under the Municipal Code, it does not impact negatively on the public right of way. Therefore, staff recommend the approval of the maintenance of the privacy fence at this location, subject to the property owner entering into an encroachment agreement with the City of Toronto.

The owner will be given an opportunity to make a deputation before Community Council.

#### RECOMMENDATIONS

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**Transportation Services recommends that Council approve:**

1. the maintenance of the privacy fence within portions of the public right of way fronting 238 Rosedale Heights Drive, subject to the owner entering into an encroachment agreement with the City of Toronto, agreeing to but not limited to the following:
  - a. indemnify the City from and against all actions, suits, claims or demands and from all loss, costs, damages and expenses that may result from such permission granted and providing of an insurance policy for such liability for the lifetime of the Agreement in a form as approved by the Deputy City Manager and Chief Financial Officer and in the amount not less than

\$2,000,000 or such greater amount as the Deputy City Manager and Chief Financial Officer may require;

- b. maintain the privacy fence at his/her own expense in good repair and a condition satisfactory to the General Manager of Transportation Services and will not make any additions or modifications to the encroachment beyond what is allowed under the terms of the Agreement;
  - c. obtain approval for associated work on private property from the Toronto Building Division;
  - d. remove the privacy fence upon receiving 90 days written notice to do so;
  - e. accept such additional conditions as the City Solicitor or the General Manager of Transportation Services may deem necessary in the interest of the City; and
2. in the event of sale or transfer of the property abutting the encroachment, Legal Services and/or the General Manager of Transportation Services extend the Encroachment Agreement to the new owner, subject to the approval of the General Manager of Transportation Services.

### **Financial Impact**

There is no financial impact.

### **ISSUE BACKGROUND**

An application has been submitted requesting permission to maintain a privacy fence fronting 238 Rosedale Heights Drive that extends onto the public right of way. With respect to the frontage, encroachments also include a retaining wall and a column, along with the 1.7 m high privacy fence.

### **COMMENTS**

#### **Applicable regulation**

The construction and maintenance of fences within the public right of way are governed under the criteria set out in Chapter 313-33, which provides for fences to be constructed to a maximum height of 1.9 m on the flank of a property and up to 1.0 m in height in front of a property if they are 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.

#### **Reasons for approval**

Staff have reviewed the application and determined that the privacy fence, even though it is higher than the allowable height under the Municipal Code, does not impact negatively on the public right of way. Of note, staff have noted that there are similar fences within the immediate area.

Details of the encroachment are on file with Transportation Services.

Photos of the property are shown on Appendix 'A'.

**CONTACT**

Ken McGuire, Supervisor, Right of Way Management  
Tel: 416-392-7894, Fax: 416-392-7465, E-mail: kmcguire@toronto.ca

**SIGNATURE**

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Angie Antoniou  
Manager, Right of Way Management

**ATTACHMENTS**

Appendix 'A' - photos

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