

**Encroachment Agreement Request
11 McBain Avenue**

Date:	April 14, 2008
To:	North York Community Council
From:	District Manager, Municipal Licensing and Standards, North York District
Wards:	Ward 25 - Don Valley West
Reference Number:	IBMS No. 07-259157

SUMMARY

This Staff Report is about a matter that the Community Council has delegated authority to make a final decision, provided that it is not amended, so that it varies with City policy or by-laws.

The purpose of this report is to consider a request by the owner(s) of 11 McBain Avenue, being a one-family detached dwelling, seventh density zone (R7), for an encroachment agreement. The existing encroachments consist of a cedar fence, natural stone retaining walls, brick edging and landscaping. The proposed encroachment consists of a Japanese Maple tree located on the City road allowance.

RECOMMENDATIONS

Municipal Licensing and Standards recommend that the Encroachment application be approved, subject to the following conditions:

1. That the owner(s) remove two bricks from the east side edge of the driveway at Broadway Avenue to the satisfaction of Transportation Services, North York District.
2. That the owner(s) enter into an Encroachment Agreement with the City, to the satisfaction of the City Solicitor and the Executive Director of Municipal Licensing and Standards;

3. That the appropriate City Officials be authorized to take the necessary action to give effect thereto;
4. That no claims will be made against the City by the owner(s) for damages occurring to the area of the encroachment or its elements during snow removal;
5. That the life of the Agreement be limited to 10 years from the date of registration on title or to the date of removal of the encroachment at which time, the City may consider the Agreement for further extension, if requested by the applicant;
6. The indemnification to the City by the owner(s) of the encroachment for all liability relating in any way to the encroachment and providing of an insurance policy for such liability for the lifetime of the Agreement in a form as approved by the City Solicitor, in an amount no less than \$2,000,000.00 or such greater amount as the City Solicitor may require;
7. In the event of sale or transfer of the property abutting the encroachment, Legal Services be authorized to extend the Encroachment Agreement to the new owner, subject to the approval of the Executive Director of Municipal Licensing and Standards;
8. The owner(s) pay the following fees:
 - a. Application Fee of \$456.32 (paid).
 - b. Legal Administration Cost and Registration on Title, plus disbursements, including G.S.T.
 - c. One-time fee of \$441.25 plus G.S.T., totalling \$463.31.

FINANCIAL IMPACT

There is no financial impact anticipated resulting from the adoption of this report.

DECISION HISTORY

The application was received from the property owner(s) in September 2007 and was circulated to Transportation Services and the following Utilities: Enbridge, Bell Canada, Cable and Hydro.

ISSUE BACKGROUND

The encroachments on the City road allowance are as follows:

- (a) A cedar fence extends 1.93 metres into the road allowance and runs parallel to McBain Avenue for a distance of 10.46 metres, and varies in height from 0.90 metres to 1.4 metres.
- (b) Shrubs located on the flankage yard of McBain Avenue at a height of 1.26 metres for a distance of 4.50 metres;
- (c) Natural stone retaining walls on both sides of driveway at McBain Avenue;

- (d) Brick edging on the east side of the driveway at Broadway Avenue
- (e) Landscaping gardens located beside the natural stone retaining walls.
- (f) Japanese Maple tree.

COMMENTS

Utilities have provided clearance letters indicating that they have no objection.

Transportation Services, North York District staff, as part of their review, have indicated that two bricks from the east side edge of the driveway on Broadway Avenue be removed.

CONTACT

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SIGNATURE

Bryan Byng, District Manager
Municipal Licensing and Standards
North York District

ATTACHMENTS

1. Site plan
2. Photos