



## STAFF REPORT ACTION REQUIRED

### Maintenance of Boulders and Planters - 2035 and 2037 Yonge Street

<b>Date:</b>	June 17, 2008
<b>To:</b>	Toronto and East York Community Council
<b>From:</b>	Manager, Traffic Planning/Right of Way Management Transportation Services, Toronto and East York District
<b>Wards:</b>	St. Paul's - Ward 22
<b>Reference Number:</b>	Te08031te.row

#### SUMMARY

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This staff report is about a matter which Community Council has delegated authority from City Council to make a final decision.

Transportation Services has assessed a request from the owner and business operator of the "Grano Restaurant", 2035 and 2037 Yonge Street, to allow the ongoing maintenance of five boulders together with removable decorative planters that encroach within portions of the City sidewalk fronting 2035 and 2037 Yonge Street.

Transportation Services does not recommend approval of the maintenance of the boulders as they would interfere with winter operations (mechanical snow and ice removal) and present an obstruction to physically challenged-persons and the visually impaired.

With respect to the ongoing maintenance of the removable planters, the applicant's proposal meets the requirements of the Municipal Code and can be dealt administratively.

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

#### RECOMMENDATIONS

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**Transportation Services recommends that Toronto and East York Community Council:**

1. deny the request for the ongoing maintenance of the five boulders which encroach within portions of the City sidewalk fronting 2035 and 2037 Yonge Street.

### **Financial Impact**

There is no financial impact to the City as a result of this report.

### **ISSUE BACKGROUND**

An application has been received from the property owner and business operator of the Grano Restaurant, 2035 and 2037 Yonge Street, requesting permission to maintain five boulders together with decorative planters which encroach within portions of the City sidewalk fronting 2035 and 2037 Yonge Street.

For the information of the Toronto and East York Community Council, the sidewalk along this portion of Yonge Street measures 4.87 m in width and there is an area of private property measuring approximately 0.4 m in width between the City sidewalk and the face of the building. The boulders are situated within portions of private property and extend anywhere from 0.77 m to 1.02 m onto the public right of way. Decorative planters have been placed on the City sidewalk and do not extend beyond the limits of the boulders.

Of note, the City is responsible for the mechanical clearing of the sidewalk for snow and ice removal during the winter season along this portion of Yonge Street.

Photos of the boulders and the planters are shown on Appendix 'A'.

### **COMMENTS**

#### **Applicable regulation**

There are no provisions within the Municipal Code to allow for the placement of boulders within the public right of way and therefore, we are required to report on the owner's request.

The maintenance of the encroaching planters can be considered under the provisions of Municipal Code Chapter 313, Streets and Sidewalks, of the former City of Toronto Municipal Code, and can be dealt with administratively.

#### **Reasons for refusal**

Municipal Code Chapter 313, Streets and Sidewalks, provides for various encroachments within the public right of way but does not include decorative boulders.

Transportation Services has reviewed the application and determined that the ongoing maintenance of the boulders fronting 2035 and 2037 Yonge Street does negatively impact the public right of way. Transportation Services is responsible for the mechanical clearing of snow and ice from the City sidewalk along this portion of Yonge Street and the presence of the boulders poses a potential conflict with the City's sidewalk snow

clearing and ice removal operations. In addition, the presence of the boulders creates an obstruction to physically challenged-persons and an impediment to the visually impaired.

### **Alternate recommendations**

Should Toronto and East York Community Council decide to grant approval for the maintenance of the boulders within portions of the public right of way fronting 2035 and 2037 Yonge Street, Transportation Services recommends:

1. that the property owners enter 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 boulders at their own expense in 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. remove the boulders from October 1st of one year to March 31st of the next following year to assist the City's crew while performing sidewalk snow clearing operations;
  - d. remove the boulders upon receiving 30 days written notice to do so; and
  - 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;
2. direct Legal Services and/or the General Manager of Transportation Services to extend the Licence Agreement to the new owner, in the event of sale or transfer of the property abutting the encroachment, subject to approval of the General Manager of Transportation Services; and
3. request Legal Services to prepare and execute the Encroachment Agreement.

### **CONTACT**

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## **SIGNATURE**

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Angie Antoniou, Manager  
Traffic Planning/Right of Way Management

## **ATTACHMENTS**

Appendix 'A' – photos

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