



**STAFF REPORT
ACTION REQUIRED**

Various Encroachments – 308 Rushton Road

Date:	July 3, 2008
To:	Toronto and East York Community Council
From:	Director, Transportation Services Toronto and East York District
Wards:	St. Paul’s - Ward 21
Reference Number:	Te08047te.row

SUMMARY

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 on behalf of the owners to allow the ongoing maintenance of various encroachments within the public right of way including a paved outdoor activity area, a stone planter, a concrete step, two metal decorative lamp posts, a stone retaining wall, and an address post fronting 308 Rushton Road and on the Humewood Gardens flank.

There are no provisions within the former City of Toronto Municipal Code Chapter 313, Streets and Sidewalks, to allow for the outdoor activity area, lamp posts and an address post; therefore we are required to report on the matter.

In addition, a 1.65 m high wrought iron fence together with gates and a concrete step exist on the Humewood Gardens flank which are set back 1.36 m and 1.9 m respectively from the curb, rather than the required 2.1 m setback. Similarly, the stone planter and stone retaining wall do not meet the setback requirements as they are set back 1.9 m and 1.6 m from the curb of Humewood Gardens. As these encroachments do not meet the requirements of the Municipal Code, they must be considered as a deputation item.

The applicant is also applying to maintain a sprinkler system and a stone retaining wall that have been installed within portions of the public right of way which can be dealt with administratively.

Although the wrought iron fence with gates, concrete step, stone retaining wall and stone planter do not provide the required setback from the curb in keeping with the Municipal

Code requirements, these encroachments do not impact negatively on the public right of way in this instance; Transportation Services recommends approval of their ongoing maintenance.

RECOMMENDATIONS

Transportation Services recommends that Toronto and East York Community Council:

1. approve the maintenance of the paved outdoor activity area, stone planter, 1.65 m high wrought iron fence with gates, two metal lamp posts, concrete step, address post, and stone retaining walls within portions of the public right of way fronting 308 Rushton Road and on the Humewood Gardens flank, subject to the property owners entering into an encroachment agreement with the City of Toronto, agreeing to but not limited to the following:
 - a. maintain the encroachments at their 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;
 - b. 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 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 an amount not less than \$2,000,000 or such greater amount as the Deputy City Manager and Chief Financial Officer may require;
 - c. remove the encroachments upon receiving 90 days written notice to do so;
 - d. arrange for an inspection by the Electrical Safety Authority for the maintenance of the lamp posts and provide a copy of their approval to the General Manager of Transportation Services;
 - e. provide “as constructed” drawings within receiving 60 days of written notice to do so;
 - f. pay an administrative fee in the amount of \$463.31 to cover the cost for the preparation of the agreement for the various encroachments; and
 - g. 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. direct Legal Services and/or the General Manager of Transportation Services to extend the Encroachment Agreement to the new owner, in the event of sale or transfer of the property abutting the encroachment, subject to the approval of the General Manager of Transportation Services.

Financial Impact

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

ISSUE BACKGROUND

The agent on behalf of the owners of 308 Rushton Road submitted an application requesting permission to create a permanent driveway access servicing a parking spot on private property via Humewood Gardens flank. The driveway is currently serviced by an asphalt ramp. The cost of the permanent ramp installation in the amount of \$1,505.04 was conveyed to the agent and the owners in our letter of June 24, 2008.

While investigating the application for ramping facilities, inspection by Transportation Services determined that various streetscape improvements had been undertaken within the public right of way as affecting Rushton Road and the Humewood Gardens flank without prior approval to do so and the requisite construction permit.

COMMENTS

The 1.65 m high wrought iron fence with gates and concrete step are situated on the Humewood Gardens flank of the property and are set back 1.36 m and 1.9 m respectively from the City curb, rather than the required 2.1 m in keeping with the Municipal Code requirements. There is no sidewalk along this portion of Humewood Gardens.

“Front lot line” as defined in Zoning By-law No. 438-36 means the lot line that divides a lot from the street provided that in the case of a corner lot the shorter lot line that abuts a street is deemed to be the front lot line and the longer lot line that so abuts is deemed the “flank” of the lot. In this particular case the shorter lot line is Rushton Road and therefore, Humewood Gardens is deemed to be the flank of the property. Of note, the main entrance to the property is situated on Humewood Gardens.

The outdoor activity play area includes a basketball net is located on the front and flank of the property, enclosed by a large hedge adjacent to Rushton Road and the Humewood Gardens flank. It is paved with interlocking brick. The 0.2 m high stone planter is located approximately 2.0 m back of the City curb on Humewood Gardens within the activity area.

With respect to the decorative metal lamp posts, they are situated 2.5 m back from the City curb on Humewood Gardens and having regard that the lamps are illuminated, the owners will be required to arrange for an inspection by the Electrical Safety Authority and provide a copy of their approval to Transportation Services.

In addition, a stone retaining wall has been installed within the public right of way of Humewood Gardens and is set back 1.6 m from the City curb.

The 1.5 m high address post has been installed within the public right of way fronting 308 Rushton Road and is situated 0.6 m back from the City sidewalk.

Applicable regulation

The construction and maintenance of fences within the public right of way are governed under the criteria set out in the former City of Toronto Municipal Code Chapter 313, Streets and Sidewalks, 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 curb where no sidewalk is present.

There are similar provisions within the Municipal Code to allow for the installation of steps, retaining walls and underground sprinkler systems under specific criteria and may be dealt with administratively.

Reasons for approval

Transportation Services has reviewed the request and determined that notwithstanding the reduced setback from the curb for the various encroachments as affecting Humewood Gardens, the outdoor activity area, wrought iron fence with gates, stone planter, two metal decorative lamp posts, two stone retaining walls, concrete step and address post do not impact negatively on the public right of way and could be permitted. In addition, the owners will be required to enter into an encroachment agreement for those encroachments that can be dealt with administratively.

Details of the encroachments are on file with Transportation Services.

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

CONTACT

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SIGNATURE

Andrew Koropeski, P.Eng.
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ATTACHMENTS

Appendix 'A' - photos

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