



STAFF REPORT ACTION REQUIRED

180 Pendrith Street - Fence and Retaining Wall

Date:	December 12, 2007
To:	Toronto and East York Community Council
From:	Manager, Right of Way Management, Transportation Services Toronto and East York District
Wards:	Trinity-Spadina - Ward 19
Reference Number:	Te08010te.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 from the owners of 180 Pendrith Street to allow the ongoing maintenance of a 1.0 m high closed board divisional wooden fence together with a 0.6 m high stone retaining wall that encroach within the public right of way fronting 180 Pendrith Street.

Although the fence and retaining wall do not meet the allowable set back under the Municipal Code, they do not impact negatively on the public right of way. Therefore, Transportation Services recommends approval of the encroachments.

The owners together with any interested parties will be given an opportunity to make a deputation before Community Council.

RECOMMENDATIONS

Transportation Services recommends that Toronto and East York Community Council:

1. approve the maintenance of the 1.0 m high closed board divisional wooden fence together with the 0.6 m high stone retaining wall within the public right of way fronting 180 Pendrith Street, 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. obtain approval for associated work on private property from Toronto Buildings;
 - c. remove the encroachments upon receiving 90 days written notice to do so; and
 - d. accept such additional conditions as the City Solicitor or the General Manager of Transportation Services; 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 to 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

A request has been received from the property owners of 180 Pendrith Street requesting permission to maintain a 1.0 m high closed board divisional wooden fence together with a 0.6 m high stone retaining wall that encroach within the public right of way fronting 180 Pendrith Street.

Arising from a complaint, inspection by Transportation Services determined that a 1.8 m high closed board fence had been constructed within the public right of way fronting 180 Pendrith Street without the authority to do so and the requisite street allowance construction permit. The fence is situated 0.2 m back of the sidewalk and runs perpendicular to the sidewalk and the building along the property line separating 178 and 180 Pendrith Street. In addition, a 0.6 m high stone retaining wall had been constructed which replaced an existing retaining wall. The new stone wall is situated immediately back of the City sidewalk.

For the information of the Toronto and East York Community Council, the grade of the boulevard fronting 178 Pendrith Street rises to approximately 0.6 m above the sidewalk level. This is also consistent with a small portion of the area fronting 180 Pendrith Street.

The owners were requested to reduce the height of the fence to 1.0 m in keeping with the Municipal Code requirements and given that the retaining wall was replacing an existing wall, staff had no objections to the ongoing maintenance of the retaining wall. The fence

was reduced in height and Construction Permit No. 40301510 was issued on November 1, 2007 to authorize the work as described above.

During the investigation, it became apparent that the owners of 178 Pendrith Street have concerns about the position and height of the newly constructed fence. According to the owners the fence obstructs the view of the street, particularly of their view and sightline obstructions for motorists exiting their driveway.

Of note, the driveway which serves 178 Pendrith Street is situated approximately 5.8 m east of the fence. Staff have concluded that the fence does not pose any problems for motorists exiting the neighbour's driveway. Pendrith Street operates in an east and west direction and the speed limit on Pendrith Street in the vicinity of the properties is 40 km.

COMMENTS

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 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, all encroachments 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.

There are similar provisions within the Municipal Code to allow for the construction of retaining walls.

Reasons for approval

Transportation Services has reviewed the application and determined that even though the encroachments within the public right of way do not meet the required setback requirements as set out in the Municipal Code, the fence and retaining wall do not impact negatively on the public right of way.

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

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ATTACHMENTS

Appendix 'A' – photos

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