



STAFF REPORT ACTION REQUIRED

Fence – 730 Dovercourt Road, 323 Rusholme Road and 357 Rusholme Road

Date:	October 28, 2008
To:	Toronto and East York Community Council
From:	Manager, Right of Way Management, Transportation Services Toronto and East York District
Wards:	Davenport – Ward 18
Reference Number:	Te08058te.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 agent of the owners of 730 Dovercourt Road, 323 Rusholme Road and 357 Rusholme Road to allow the ongoing maintenance of a 1.62 m high steel fence that encroaches within the public right of way fronting 730 Dovercourt Road, 323 Rusholme Road and 357 Rusholme Road.

Although the height of the steel fence exceeds the Municipal Code requirements, this encroachment does not impact negatively on the public right of way and Transportation Services has no objections to its maintenance.

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 a 1.62 m high steel fence bound by Dovercourt Road, Rusholme Road and Hepbourne Street, that includes 730 Dovercourt Road, 323 and 357 Rusholme Road, subject to the owners 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 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;
 - b. maintain the fence 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;
 - c. remove the fence 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 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.

COMMENTS

The agent on behalf of the owners of 730 Dovercourt Road, 323 Rusholme Road and 357 Rusholme Road submitted an application requesting permission to maintain a 1.62 m high steel fence that encroaches within the public right of way fronting 730 Dovercourt Road, 323 Rusholme Road and 357 Rusholme Road.

In support of their application the owners have submitted a letter of appeal stating that the fence was erected to protect the property, which includes the public right of way, from loitering, littering and disregard of the landscaping features, i.e., the grass, trees and flowers. The fence does permit access to the property and public right of way, through designated pedestrian and vehicular entrances. These entrances direct pedestrians to the extensive walkway system the owner has provided, along with driveway entrances which lead to parking within private property. The owners are of the opinion that the fence is a beneficial addition to the property and has added value to the surrounding area.

The height of the fence is consistent around the lot and maintains the setback required within the former City of Toronto Municipal Code, Chapter 313-33, Streets and Sidewalks. The fence is mainly on Dovercourt Road and Rusholme Road, both

considered to be the flanks of the lot. These sections of the fence meet the requirements of the former City of Toronto Municipal Code, Chapter 313-33, Streets and Sidewalks. Hepbourne Street is considered the front of the lot, therefore, as the fence is 1.62 m in height, approval from Community Council is required.

“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 Hepbourne Street and therefore, Dovercourt Road and Rusholme Road are deemed to be the flanks of the property. Of note, there are three buildings within this lot, which include 730 Dovercourt Road, 323 and 357 Rusholme Road.

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.

Reasons for approval

Transportation Services has reviewed the request and determined that notwithstanding the height of the fence on Hepbourne Street, the fence does not impact negatively on the public right of way and could be permitted, provided that the owners enter into an encroachment agreement with the City of Toronto.

It has also been determined that there are similar fences within the neighbourhood.

Details of the encroachments are on file with Transportation Services.

A photo of the property is shown on Appendix ‘A’.

CONTACT

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SIGNATURE

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ATTACHMENTS

Appendix 'A' - photo

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