

**Application for Fence Exemption  
28 Bernice Avenue**

<b>Date:</b>	October 30, 2013
<b>To:</b>	Etobicoke York Community Council
<b>From:</b>	Eletta Purdy, District Manager, Municipal Licensing and Standards
<b>Wards:</b>	Ward 5, Etobicoke - Lakeshore
<b>Reference Number:</b>	Municipal Licensing and Standards Folder 13-286244 and 13-241690

**SUMMARY**

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This Staff report is in regard to a matter for which the Etobicoke York Community Council has delegated authority from City Council to make a final decision.

The purpose of this report is to consider an application submitted by the property owner of 28 Bernice Avenue for a Fence Exemption to maintain a newly constructed 2.44 metres (8 feet) high aluminium framed tempered glass fence for an ice skating/hockey rink and an existing pool enclosure that comprises of a 1.83 metres (6 feet) vinyl fence, a partly enclosed bench structure that is 0.91 metres (3 feet) away from the edge of the pool, and a 1.71 metres (5 feet 7½ inches) high metal picket fence with vertical supports spaced at 4.0 metres (13 feet) apart. The fences are in violation of the height restriction and pool enclosure requirements for the rear yard as set out in Chapter 447 of the City of Toronto Municipal Code.

**RECOMMENDATIONS**

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**Municipal Licensing and Standards recommends that:**

1. Etobicoke York Community Council refuse the application submitted by the property owner of 28 Bernice Avenue for a Fence Exemption to maintain at his rear yard: a newly constructed 2.44 metres high aluminium framed tempered glass fence for an ice skating/hockey rink, and an existing pool enclosure that comprises of a 1.83 metres vinyl fence, a partly enclosed bench structure that is 0.91 metres away from the edge of the pool, and a 1.71 metres

high metal picket fence with vertical supports spaced at 4.0 metres apart, as the fence does not comply with the provisions of the City of Toronto Municipal Code, Chapter 447, Fences.

## **Financial Impact**

There are no financial implications resulting from the adoption of this Staff Report.

## **DECISION HISTORY**

An application for a fence exemption was submitted by the property owner. The subject fence is erected at the rear yard of 28 Bernice Avenue, therefore the adjoining property owners have been notified by the City Clerk's office of the date that the application will be considered by the Etobicoke York Community Council.

## **ISSUE BACKGROUND**

The property owner has obtained a permit for installation of a swimming pool enclosure at his back yard. During the inspection of the pool enclosure, the Municipal Standards Officer found a number of issues with the enclosure as built as well as a fence for the ice skating/hockey rink that do not comply with the provisions of the City of Toronto Municipal Code, Chapter 447, Fences (Attachments 1, 2, 4 and 6).

The by-law infractions include the following:

1. The 1.83 metres vinyl fence that forms part of the pool enclosure does not meet the construction standards in terms of the materials being used for pool enclosures [section 447-3E(2)] (Attachments 2, 5 and 6);
2. The partly enclosed bench structure that forms part of the pool enclosure is 0.91 metres (3 feet) instead of the regulated 1.2 metres (4 feet) away from the edge of the pool [section 447-3E(1)(a)] (Attachments 2, 4 and 6);
3. The vertical supports for the 1.71 metres high metal picket fence that forms part of the pool enclosure are spaced at 4.0 metres instead of the regulated 2.4 metres apart {section 447-3E(2)(c)[2]} (Attachments 2, 3 and 6); and
4. The aluminium framed tempered glass fence for an ice skating/hockey rink is 2.44 metres high, which is in excess of the maximum permitted height of 2.0 metres for a single residential building (section 447-2B) (Attachments 2, 4 and 6).

Having considered the findings of the Municipal Standards Officer, the owner submitted an application for Fence Exemption, as he considers that the variances are relatively minor and the enclosure is constructed in a good workmanlike manner. In addition, the owner advised that they have endeavoured to take all necessary steps to control and prevent a child from gaining access into the pool area. In regard to the 2.44 metres high tempered glass fence for the hockey rink, the owner advised it was constructed at this

height to prevent hockey pucks from causing injury to the neighbours and damage to adjacent properties.

## **COMMENTS**

The vinyl fence meets the height and non-climbability requirements in the City of Toronto Municipal Code, Chapter 447, Fences, however, as a pool enclosure, is technically in violation as it is not constructed of an allowable material for a pool enclosure as specified in the Code (Attachment 5).

Section 447-3E(1)(a)] requires a swimming pool enclosure, including any structure that forms part of the pool enclosure, to be no closer than 1.2 metres horizontally to the water's edge in the pool to ensure a safe passage. There is a section of approximately 1.5 metres of the passageway between the pool and the hockey rink bench structure (as part of the pool enclosure) that is 0.3 metres (12 inches) short of the required passage width (Attachment 6).

The metal picket fence erected between the house garden area and the pool is supported on one side by a vertical post embedded in 900 millimetres deep concrete and the other side is attached to a shed that is sitting on a concrete foundation, over a length of 4.0 metres. Chapter 447 requires all horizontal rails of a metal picket fence to be supported on substantial posts spaced no more than 2.4 metres apart and embedded in concrete to a minimum depth of 900 millimeters below grade. The applicant acknowledged the deficiency and is prepared to install intermediate vertical posts spaced at 1.2 metres apart anchored directly to the interlocking stones (Attachment 6).

Should the staff recommendation not be accepted and the request by the applicant be approved, the following conditions of approval should include:

1. Intermediate vertical posts spaced no more than 1.2 metres apart are to be incorporated in the metal picket fence securely anchored to the interlocking stones to provide strength and stability; and
2. When the fence is replaced, it is to be constructed in compliance with City of Toronto Municipal Code, Chapter 447 – Fences, or its successor by-law.

## **CONTACT**

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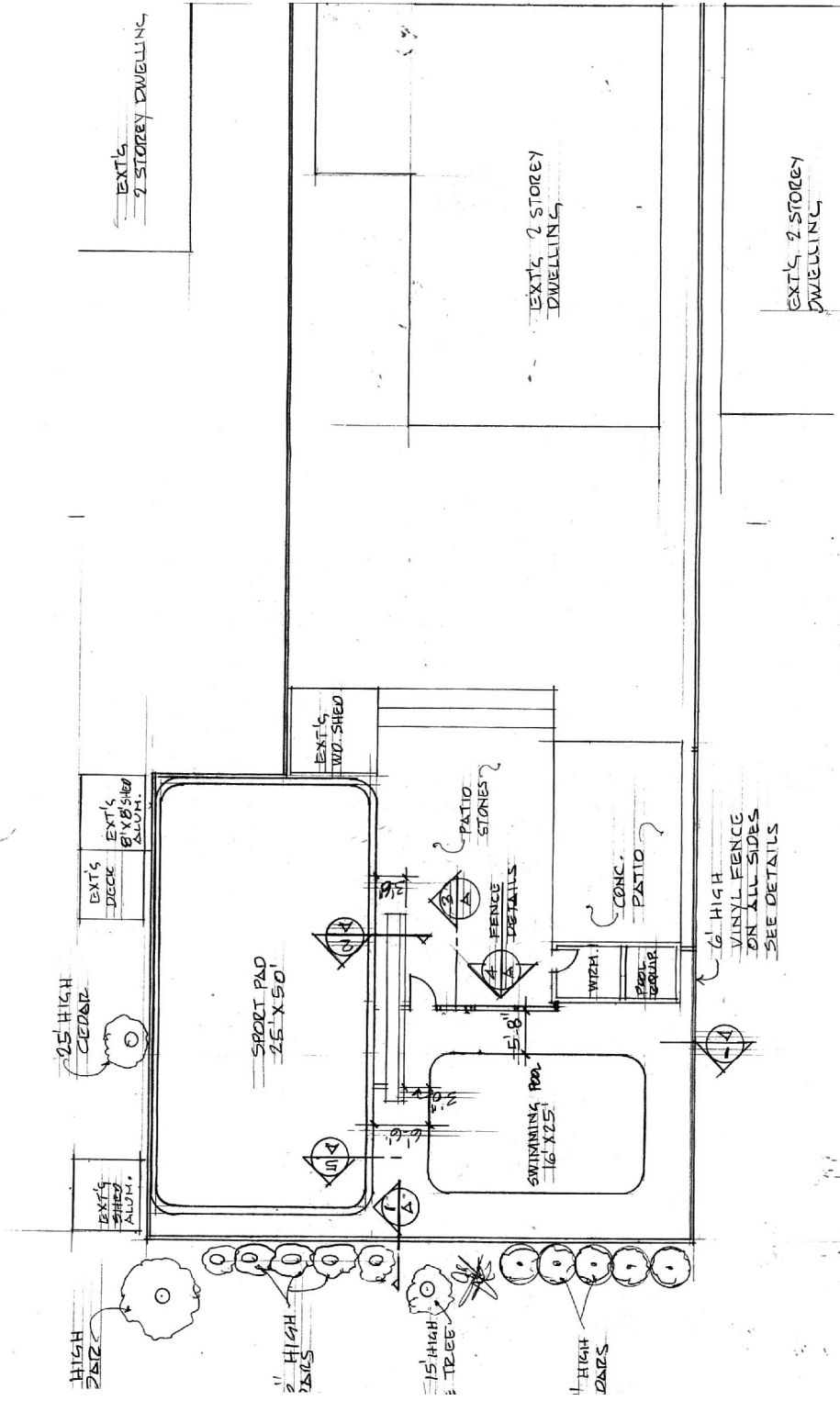
## **SIGNATURE**

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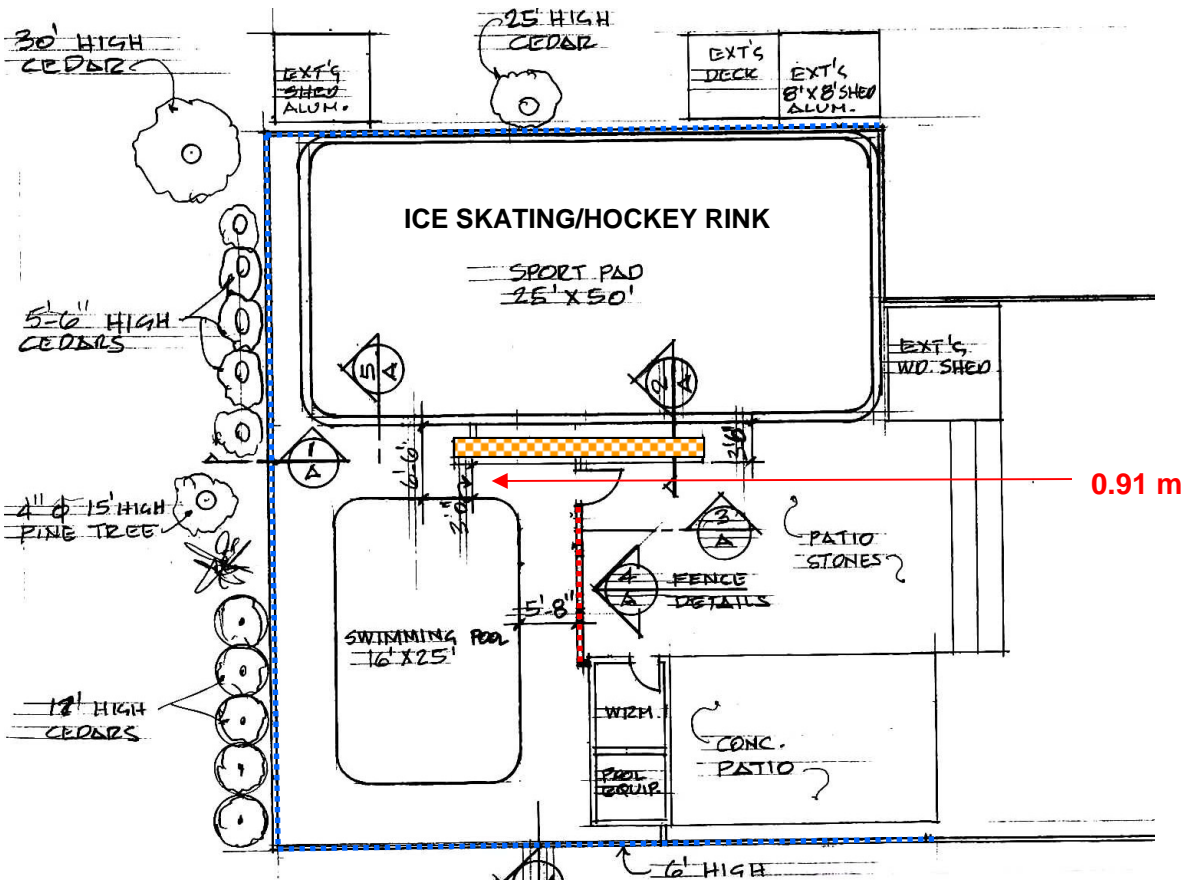
Eletta Purdy, District Manager  
Municipal Licensing and Standards  
Etobicoke York District

## **ATTACHMENTS**

- Attachment 1: General Site Plan
- Attachment 2: Site Plan showing Fences Issues
- Attachment 3: Metal Picket Fence Detail
- Attachment 4: Rink Bench and Fence Detail
- Attachment 5: Vinyl Fence Detail
- Attachment 6: Photos showing Pool Enclosure and Hockey Rink Fence



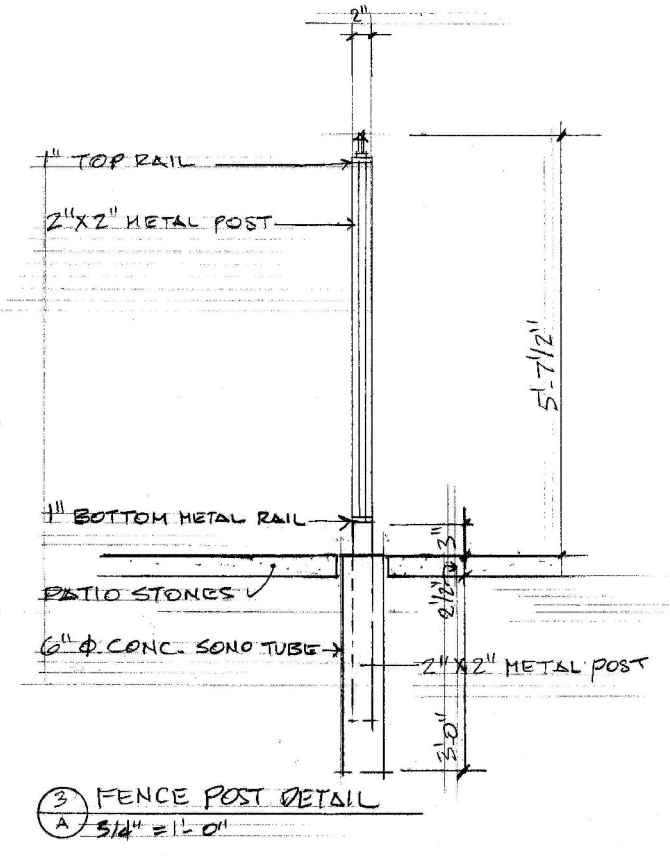
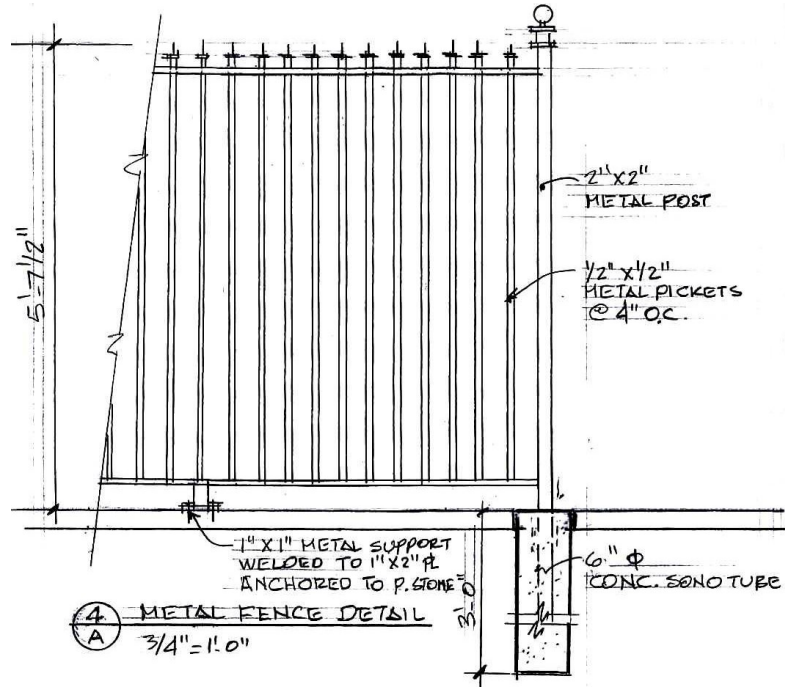
**Attachment 1: General Site Plan**



**Pool Enclosure Legend:**

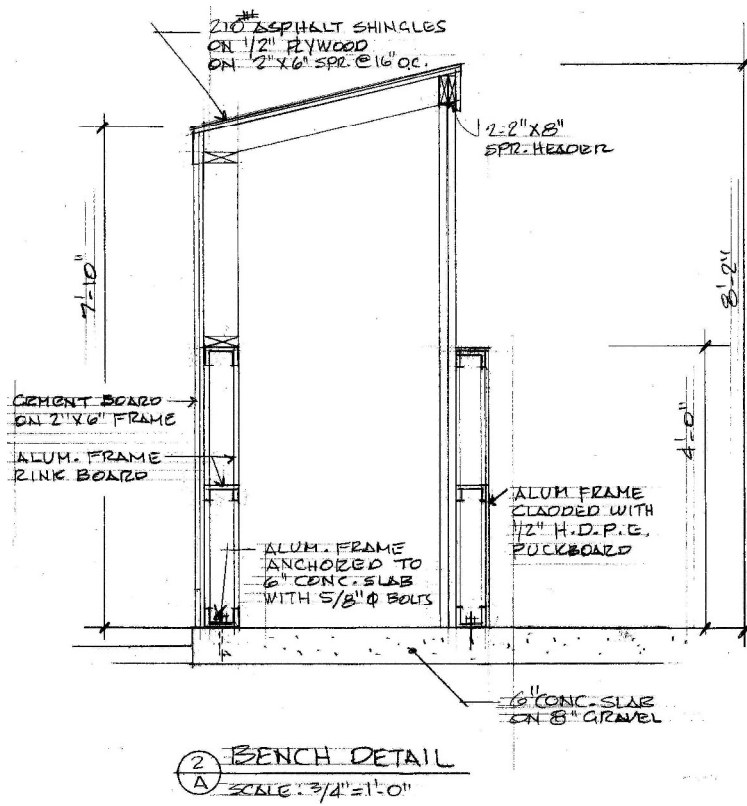
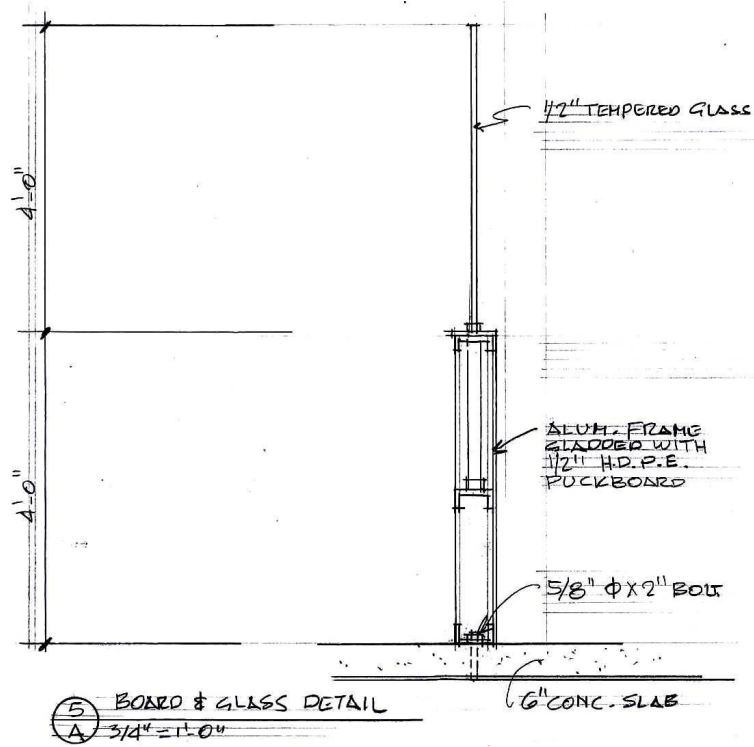
- ..... Metal Picket Fence
- ..... Vinyl Fence
- Hockey Bench

**Attachment 2: Site Plan showing Fence issues**



**Attachment 3**

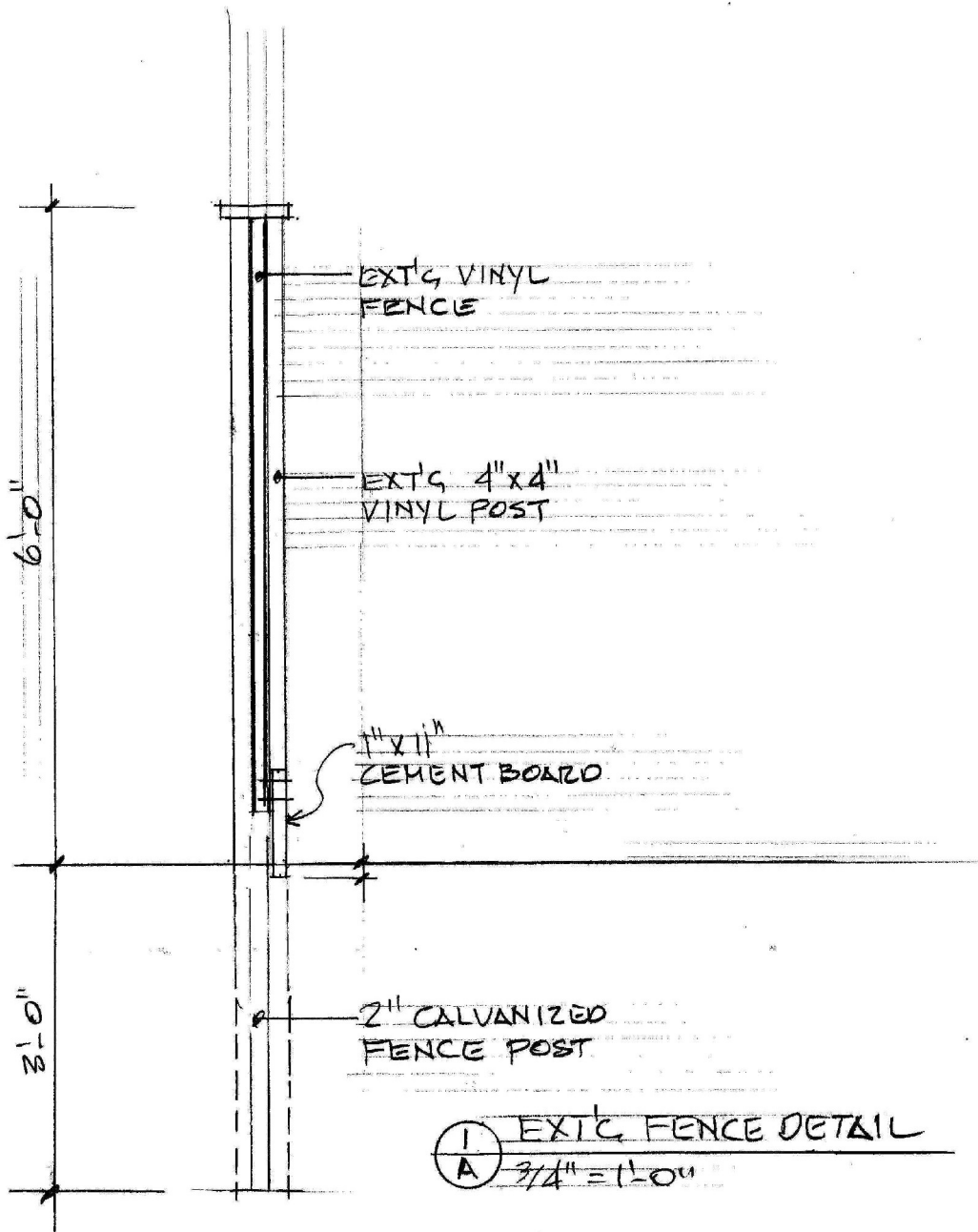
**Metal Picket Fence Detail**



#### Attachment 4

#### Rink Bench and Fence Detail





**Attachment 5: Vinyl Fence Detail**



Vinyl Fence

Metal Picket Fence

Hockey Bench Structure



**Attachment 6: Photos showing Pool Enclosure and Hockey Rink Fence**