Fence Encroachment Appeal – 15 Deforest Road

Date: April 19, 2013
To: Etobicoke York Community Council
From: Director, Transportation Services – Etobicoke York District
Wards: Ward 13 – Parkdale - High Park
Reference Number: p:\2013\Cluster B\TRA\EtobicokeYork\eycc130081-tp

SUMMARY

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

Transportation Services has received an application from the property owner of 15 Deforest Road to install a 2.0 metre high, solid screen wood fence in the municipal boulevard adjoining the Kennedy Road flankage of their property. The proposed fence does not comply with the requirements of Chapter 743 (Use of Streets and Sidewalks) of the Toronto Municipal Code, and the property owner appealed our refusal of their application. The owner will be given an opportunity to make a deputation before Community Council.

RECOMMENDATIONS

Transportation Services recommends that Etobicoke York Community Council:

1. Refuse the applicant’s request to install a solid screen fence in the municipal boulevard abutting the subject property.

Financial Impact
There are no financial implications resulting from adopting this report.

ISSUE BACKGROUND

The owner of 15 Deforest Road submitted an application to install a solid screen wood fence in the municipal boulevard abutting the Kennedy Road flankage of their property. A review of their application found that the location of the fence and design does not comply with the
requirements of Article IV (Encroachments in Streets) of Chapter 743 (Use of Streets and Sidewalks) of the Toronto Municipal Code.

Attachment 1 illustrates the site and surrounding area. Attachment 2 shows the design and location of the proposed fence.

Article IV of Chapter 743 allows property owners to install fences in municipal boulevards, without the need for an encroachment agreement, providing that the fence satisfies the following conditions:

1. The fence is less than 0.90 metre in height, measured from the travelled surface of the adjoining road, is located not less than 0.50 metre from the back edge of sidewalk or 0.50 metre from the back edge of curb, and three metres from the travelled surface of the road for streets without curbs.

2. It does not conflict with vehicle or pedestrian sight lines, or interfere with traffic control devices, sidewalks or utilities.

3. The fence does not extend into the boulevard area of any neighbouring property.

Fence installations that comply with the above-noted criteria are allowed in the municipal boulevard “as of right,” and do not require the payment of annual fees. A permit is needed to construct the fence in our road allowance, but this permit is issued free of charge provided that the proposed installation satisfies these requirements.

Article IV specifies that non-screen/open fencing, such as chain link or post and rail that is between 0.90 metre and 1.20 metre in height, and between 0.90 metre and 1.80 metre in height, is allowed within the municipal boulevard abutting a property’s frontage and flankage, respectively. For these fences, an encroachment agreement and construction permit is required, at the applicant’s expense. Transportation Services Staff is delegated to approve the installation provided that it complies with the following conditions:

1. The fence provides the minimum set backs from curb and sidewalk described previously, and does not obstruct vehicle/pedestrian sight lines, interfere with traffic control devices, sidewalks, or utilities, and must not extend into the boulevard of any neighbouring property.

2. To provide an unobstructed view of approaching pedestrians, if the fence is located within 3.0 metre of a private driveway and adjacent a sidewalk, or within 3.0 metre of any road without curbs, the fence shall not exceed a height of 1.0 metre, measured from the grade of the adjoining driveway.

Article IV prohibits fences that exceed the above-noted maximum heights, as well as any solid screen or privacy fence taller than 1.0 metre that is located within 70.0 metre of the intersection of a public road. The latter is particularly significant. Average driver eye level height is 1.05 to
1.08 metre, and solid screen and privacy fencing that is taller than 1.0 metre obstructs a motorist’s view of approaching traffic.

**COMMENTS**

The applicant proposes to install a 2.0 metre high solid screen privacy fence along the Kennedy Road flankage of the above-noted property contrary to the requirements of Chapter 743.

Staff refused the applicant’s request for the fence since it does not comply with the requirements of Chapter 743, specifically:

1. The fence is of a solid screen/privacy type that is higher than 1.0 metre and is located within 70 metre of an intersection of two public roads.

2. The fence exceeds the height limitation specified by Chapter 743.

The applicant appealed our refusal pursuant to Article IX of Chapter 743.

Our review of the proposed fence indicates that it does not create a sight restriction for vehicle or pedestrian traffic; regardless, the fence does not comply with the requirements of Chapter 743 and we cannot support the application.

While not a requirement of Chapter 743, staff has notified property owners immediately adjoining the property that we received a request to maintain an over-height, solid screen fence at this location, and that they can contact this Division if they have any questions or concerns with the application. Notice of this appeal was posted on the Community Council website.

Municipal Licensing and Standards has been notified of this application should the installation of the proposed fence affect any by-law under their jurisdiction.

**Alternate Recommendations**

Should Community Council find merit in this request to install a fence, it could be approved subject to the following conditions:

1. The property owner enters into an encroachment agreement with the City.

2. The property owner obtains a construction permit to install the fence in the Kennedy Road, road allowance.

3. The property owner complies with any other conditions considered necessary by the Director, Transportation Services, Etobicoke York District.
4. The applicant satisfies these conditions at no expense to the City within one year of Community Council’s approval.

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SIGNATURE

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Steven T. Kodama, P.Eng.
Director, Transportation Services – Etobicoke York District

ATTACHMENTS

Attachment 1: Map
Attachment 2: Fence Design and Location