



**STAFF REPORT
ACTION REQUIRED**

Public Laneway between 45 and 47 Albemarle Avenue

Date:	October 21, 2015
To:	Toronto and East York Community Council
From:	Director, Toronto and East York District Transportation Services
Wards:	Toronto-Danforth, Ward 30
Reference Number:	Te.2015040.te.row.doc

SUMMARY

The purpose of this report is to highlight the history of various access and right-of-way issues related to the City-owned public laneway which runs between the properties located at 45 and 47 Albemarle Avenue.

RECOMMENDATION

Transportation Services recommends that Toronto & East York Community Council:

1. Receive for information the report (October 21, 2015) from the Director, Transportation Services, Toronto and East York District respecting the Public Laneway between 45 and 47 Albermarle Avenue.

FINANCIAL IMPACT

There are no costs associated with the adoption of the above-noted recommendation.

DECISION HISTORY

At its meeting on April 14, 2015, Toronto and East York Community Council adopted Item TE5.84 and requested the General Manager of Transportation Services to report back to Toronto and East York Community Council on the condition, enforcement history, ownership, and historical use, including options for permanent closure, of the City laneway between 45 and 47 Albemarle Avenue.

Furthermore, Toronto and East York Community Council also requested the General Manager of Transportation Services to consider placing on hold all enforcement

measures relating to the removal of the private garage in the laneway until the requested report is complete.

ISSUE BACKGROUND

Staff have received numerous complaints regarding a garage that is located partially on the property at 47 Albemarle Avenue and partially on the City-owned public lane that runs between 45 and 47 Albemarle Avenue.

Specifically, the complaint is that the existence of the garage on the public lane, together with parking of a vehicle in front of the subject garage, is impeding the owners of 45 Albemarle from being able to use the lane to access their parking at the rear of their property. Staff have been advised that the prior owner of 47 Albemarle did not own a car, so the prior owners of 45 Albemarle parked their car on the lane in front of the garage. This arrangement no longer works, as the current owners of both properties have cars.

Repeated attempts to resolve this neighbour dispute between the two parties have ended without a resolution and, therefore, Transportation Services staff was contacted by the owner of 45 Albemarle Avenue to have the subject garage removed from the public laneway.

COMMENTS

Existing Conditions

A north-south oriented public laneway is located between 45 and 47 Albemarle Avenue, the paved portion of which extends approximately mid-way alongside the rear yards of the subject properties. No other properties have access to this laneway. The laneway, which is concrete, is in good condition.

Sparkhall Avenue is an east-west oriented local roadway which bounds the rear yards of the subject properties. A one foot reserve runs parallel along the Sparkhall Avenue right-of-way. There is a steep grade at the back of the subject properties which, despite the one foot reserve, physically precludes any practical extension of the laneway to connect with Sparkhall Avenue. Moreover, an extension of this laneway is not identified, nor contemplated, as a potential future transportation connection in the Official Plan.

A garage is located at the end of the paved portion of the public laneway and is used by the owners of 47 Albemarle Avenue. Approximately 80 percent of the garage is on the City's laneway, with the remaining 20 percent on the private property of 47 Albemarle. A property survey is illustrated in Appendix A, and with photos shown in Appendix B.

Toronto Buildings staff have advised that there are no records of a building permit being issued for the garage, nor is there any other evidence (ie. registrations on title, or encroachment agreement) to indicate that the City ever consented to the construction of

the garage on the public laneway. Accordingly, it is not known how long the garage has been in existence.

To provide some context and history, a summary of key dates related to property ownership and other relevant facts are outlined below:

- 1890 – lane established as a public highway and one-foot reserve created on Sparkhall Avenue as part of Plan of Subdivision 60E
- 1969-2012 – 47 Albemarle Avenue owned by members of the same family
- August 2011 - 45 Albemarle purchased by current owners
- September 2011 - Date of first logged complaint from owners of 45 Albemarle regarding garage on City laneway
- January 2012 - 47 Albemarle purchased by current owner
- March 2012 - Date of Committee of Adjustment (CofA) application by owner of 47 Albemarle to construct an addition at the back of 47 Albemarle. A variance was also requested to the zoning by-law requirement for a minimum of one parking space on-site as, in this case, there would be zero parking spaces provided for on-site.
- May 2012 – Approximate date of construction of addition at 47 Albemarle
- July 2014 - Date of request by 47 Albemarle for encroachment agreement to permit garage to remain on the public lane

Garage Encroachment and Applicable City By-laws

Pursuant to City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use Of, unless specifically authorized by Code Chapter 743, no person shall place any unauthorized encroachment on, over, along, across, under, or in a street except as permitted by Code Chapter 743 or any other City by-law (Subsection 743-9A). The 47 Albemarle garage is not otherwise permitted under Code Chapter 743 and, as such, is currently considered an unauthorized encroachment and is in contravention of the Code Chapter.

According to Subsection 743-31F of Code Chapter 743, all encroachments not specifically permitted under certain provisions of Code Chapter 693, Signs, Chapter 694, Signs, General, Chapter 918, Parking on Residential Front Yards and Boulevards, or certain sections of Code Chapter 743, are prohibited except under an agreement with the City or as provided in Code Chapter 743. The General Manager of Transportation Services does not have the delegated authority under Code Chapter 743 to enter into an agreement to permit the encroachment of the 47 Albemarle garage.

Although the owners of 47 Albemarle did approach Transportation Services staff for an encroachment agreement in order to comply with Code Chapter 743, staff did not consider the encroachment to be appropriate/permisable, as it occupies almost the full width of the rear of the lane and interferes with the primary and mutual operation of the laneway as a public lane. Permitting an encroachment that occupies almost the full width of the lane may be inconsistent with or may obstruct the intended purpose of the public

lane and could raise legal concerns.

Options for Permanent Closure of the Laneway

As the subject laneway effectively only serves two properties and is not necessarily required from a Transportation perspective, the possibility of closing and selling all or part of the laneway was discussed with the subject property owners.

Closure options could include the following:

i. Closing and selling the rear portion of the lane only:

This option would involve closure of only the rear portion of the lane, commencing at the front of 47 Albemarle's garage and extending back to Sparkhall Avenue. Subject to compliance with the City's surplus land requirements, an offer to purchase this portion of the lane could be invited:

- (a) from the owners of 47 Albemarle, advising them that if they do not purchase this portion of the lane that they must remove the garage; or
- (b) from each of 45 and 47 Albemarle. If 45 Albemarle buys all or part of the lane, then it becomes a private property matter between 45 and 47 Albemarle as to what happens with the garage.

This option would resolve the issue of the illegal encroachment on the City's land, but it would not necessarily resolve the issue between the owners of 45 and 47 Albemarle.

ii. Closing and selling the entire lane:

This option would involve closing and selling the entire length of the lane to one or both of the owners at 45 and 47 Albemarle. However, in this situation, the City would need to grant a right of way for mutual driveway purposes over at least the front portion of the lane to the adjoining owner(s) who does not purchase the lane in order to maintain vehicular access to the rear of both properties. This option would require the co-operation of both owners.

Transportation Services Staff have made numerous attempts to facilitate a mutually acceptable arrangement with both property owners regarding the continued use of the laneway and/or garage, including potential sale options.

As both property owners have not been able to arrive at a mutually acceptable solution, Transportation Services staff have since issued a notice to the owner(s) of 47 Albemarle Avenue to remove the garage in accordance with Code Chapter 743. However, Transportation staff have now paused any further enforcement actions pending the submission of this report.

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SIGNATURE

Kyp Perikleous
Director, Toronto East York District

ATTACHMENTS

Appendix A – Study Area Map and Survey Plan
Appendix B – Area Photo

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