



STAFF REPORT ACTION REQUIRED

Request for a Fence Exemption – 95 Stuart Avenue

Date:	April 13, 2016
To:	North York Community Council
From:	Pat Burke, District Manager Municipal Licensing & Standards, North District
Wards:	Ward 23 - Willowdale
Reference Number:	IBMS No. 16-126553

SUMMARY

This staff report concerns a matter for which the North York Community Council has delegated authority from City Council to make a final decision.

The purpose of this report is to advise Community Council concerning an application by the property owner of 95 Stuart Avenue for a site-specific Fence Exemption, pursuant to Section 447-5.C of Toronto Municipal Code, Chapter 447- Fences. The property owner is seeking Community Council's permission to maintain the existing wooden fence as part of the swimming pool enclosure in lieu of complying with various requirements for swimming pool enclosures stipulated in the City of Toronto Municipal Code Chapter 447.

RECOMMENDATIONS

Municipal Licensing & Standards recommends that the North York Community Council:

1. Refuse to grant the application for an exemption permit, by the property owner of 95 Stuart Avenue, for the existing wooden fence in lieu of complying with various requirements for swimming pool enclosures stipulated in City of Toronto Municipal Code Chapter 447.

OR

2. Grant the application for a fence enclosure exemption, without conditions, thereby allowing the swimming pool enclosure to be maintained, as constructed and permit the wooden fence at the west elevation, as installed. Direct and require that the installation be maintained in good repair without alteration. Direct and require that at such time as replacement of the fence enclosure is required that such installation will comply with Municipal Code Chapter 447, or its successor by-law.

OR

3. Grant the application for a fence exemption permit, subject to any conditions as imposed by the North York Community Council. One condition to be considered is:

That the property owner/applicant files amended drawings detailing the final as built swimming pool enclosure fencing/conditions and obtain the required approvals for the amendments to the swimming pool enclosure permit under File # 15-173439.

Financial Impact

There is no financial impact anticipated in this report.

DECISION HISTORY

No previous decision history.

ISSUE BACKGROUND

The subject property is a single family dwelling situated 8 blocks south of Sheppard Avenue West and five blocks west of Yonge Street, in Ward 23 (*Attachment # 1*).

On June 19, 2015, a permit was issued under File # 15-173439 to permit the installation of a swimming pool enclosure in compliance with Chapter 447(*Attachment # 2*). This permit approved 1.82 metre high wood fences around the perimeter of the rear lot/yard at the west, east and south elevations and other fence features so as to comply with the regulations for swimming pool enclosures found in Chapter 447 - Fences. The site remains under construction with work on the pool and enclosure not completed at time of filing.

On March 7, 2016, the property owner applied for a fence exemption, outlining a proposal in which the existing west elevation fence would form part of the swimming pool enclosure. This west elevation wood fence has horizontal boards on the side facing the neighbour at # 97 Stuart Avenue which are not permitted. As required by Section 447-5(C), Municipal Licensing & Standards has responded to the fence enclosure exemption application by preparing this report for North York Community Council's

consideration, and, the City Clerk has sent all requisite notifications of the date that the North York Community Council will consider the application.

Municipal Licensing Standards' review of the swimming pool fence enclosure installation has determined that it does not comply with Toronto Municipal Code, Chapter 447-Fences, as detailed in the following chart:

GENERAL LOCATION	SPECIFIC LOCATION	DEFICIENCY	BY-LAW SECTION & REQUIREMENT*
West Elevation	West Side of Property where the Rear Yard Fence faces the neighbour's property at # 97 Stuart Avenue	Swimming pool enclosure is constructed with horizontal slats/elements. Namely, the wooden boards are to be installed in a vertical manner. The existing wooden boards at the west elevation of the rear yard are installed in a horizontal manner which would require an exemption.	Section 447-3E.(2)(b) A wood fence used in a swimming pool enclosure shall be constructed in a good, workmanlike manner as follows: [1] Vertical boards shall be not less than 19 millimetre by 89 millimetre lumber and shall be spaced not more than 38 millimetres apart where horizontal rails are spaced less than 1.2 metres apart and not more than 100 millimetres apart where horizontal rails are spaced at least 1.2 metres apart; and [2] Vertical boards shall be attached to horizontal rails that are not less than 38 millimetre by 89 millimetre lumber and that are supported on substantial posts with a minimum dimension of 89 millimetres spaced not more than 2.4 metres apart and embedded to a minimum depth of 900 millimetres below grade.
West Elevation	West Side of Property where the Rear Yard Fence faces the neighbour's property at # 97 Stuart Avenue	Swimming pool enclosure is constructed with horizontal slats/elements. Namely, the existing wooden elements at the west elevation fence in the rear yard are installed in a horizontal manner between 100 millimetres and 1.2 metres which would facilitate climbing.	Section 447-3E.(c) Have no element or attachment between 100 millimetres and 1.2 metres above grade that may facilitate climbing the outside of the enclosure.

COMMENTS

The property owner is proposing that in lieu of complying with the deficiencies noted in the chart above and that are contrary to the by-law and the issued permit under file # 15-173439, that the existing horizontal board fence profile at the west elevation be permitted, instead. (*Attachments # 3, 4, 5, 6,*)

Horizontal fence slats/elements, as installed over time may warp, crack or with enough pressure applied, create larger gaps or the potential for toe-holds thereby making the swimming pool fence/enclosure easier to facilitate climbing. These conditions could compromise the minimum level of safety that the prescribed by-law regulations intend to establish/maintain.

The intent of the swimming pool enclosure provisions in the by-law is to establish a certain level of safety or protection from an unauthorized breach of the enclosure. Any non-compliant enclosure [which makes potential access to the swimming pool area easier] can only be deemed to not meet this intended minimum level of safety.

We recommend that the swimming pool enclosure be installed so as to comply with all provisions of the City of Toronto's Municipal Code, Chapter 447- Fences.

CONTACT

Italo Joe Luzi, North District Supervisor
Municipal Licensing & Standards Division
Tel. (416) 395-7013
Fax (416) 395-7056
E-mail: jluzi@toronto.ca

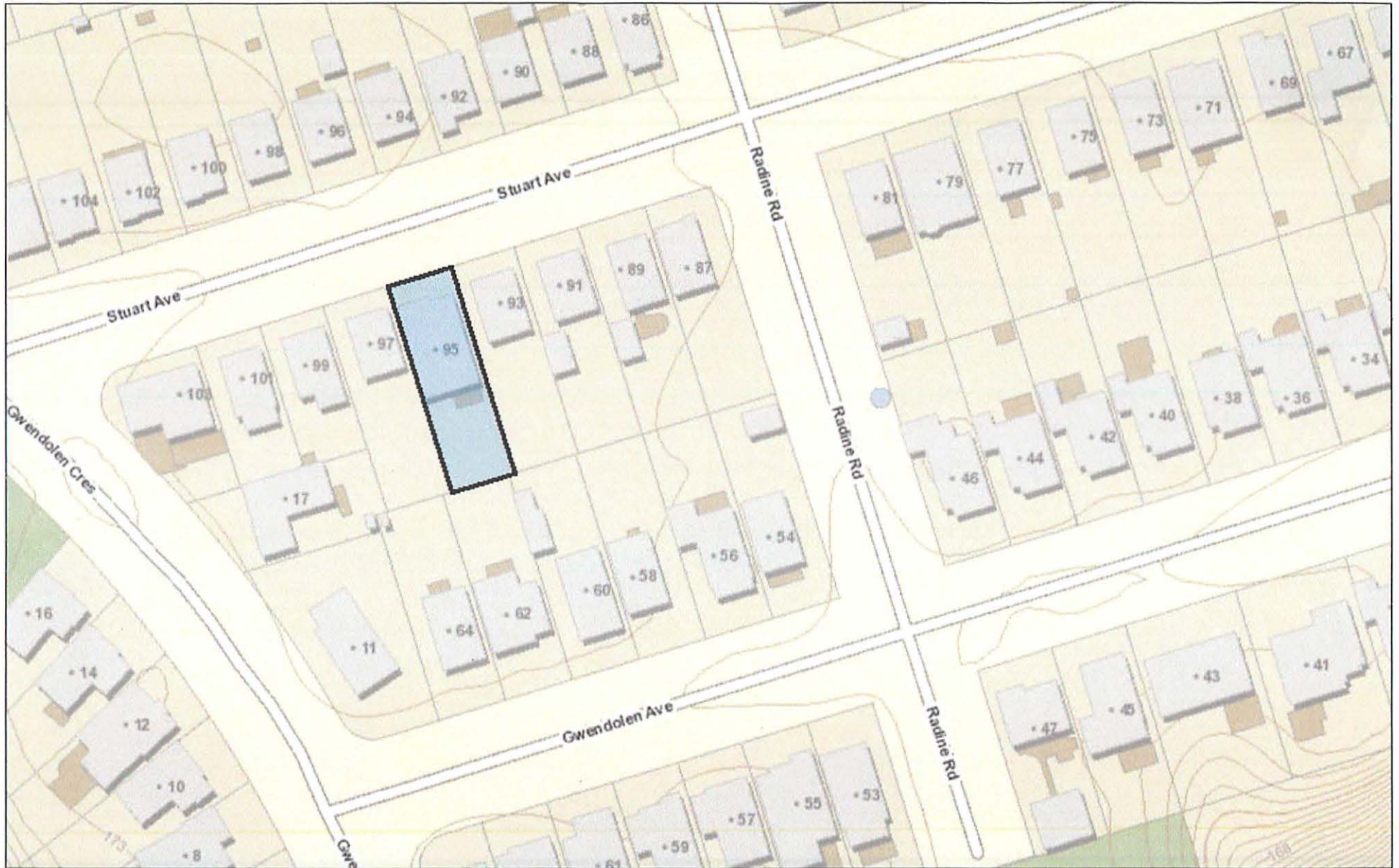
SIGNATURE



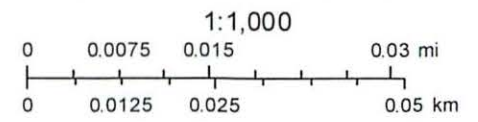
Pat Burke, North District Manager
Municipal Licensing & Standards Division

ATTACHMENTS

- Attachment 1 – Areal map of 95 Stuart Avenue
- Attachment 2 – Permit drawing for File # 15-173439
- Attachment 3 – Photo # 1 of West Elevation Fence Profile on Neighbour's Side
- Attachment 4 – Photo # 2 of West Elevation Fence Profile on Neighbour's Side
- Attachment 5 – Photo of West Elevation Fence Profile on Subject Address Side
- Attachment 6 – Photo of South and East Elevation Fence Profiles



April 8, 2016



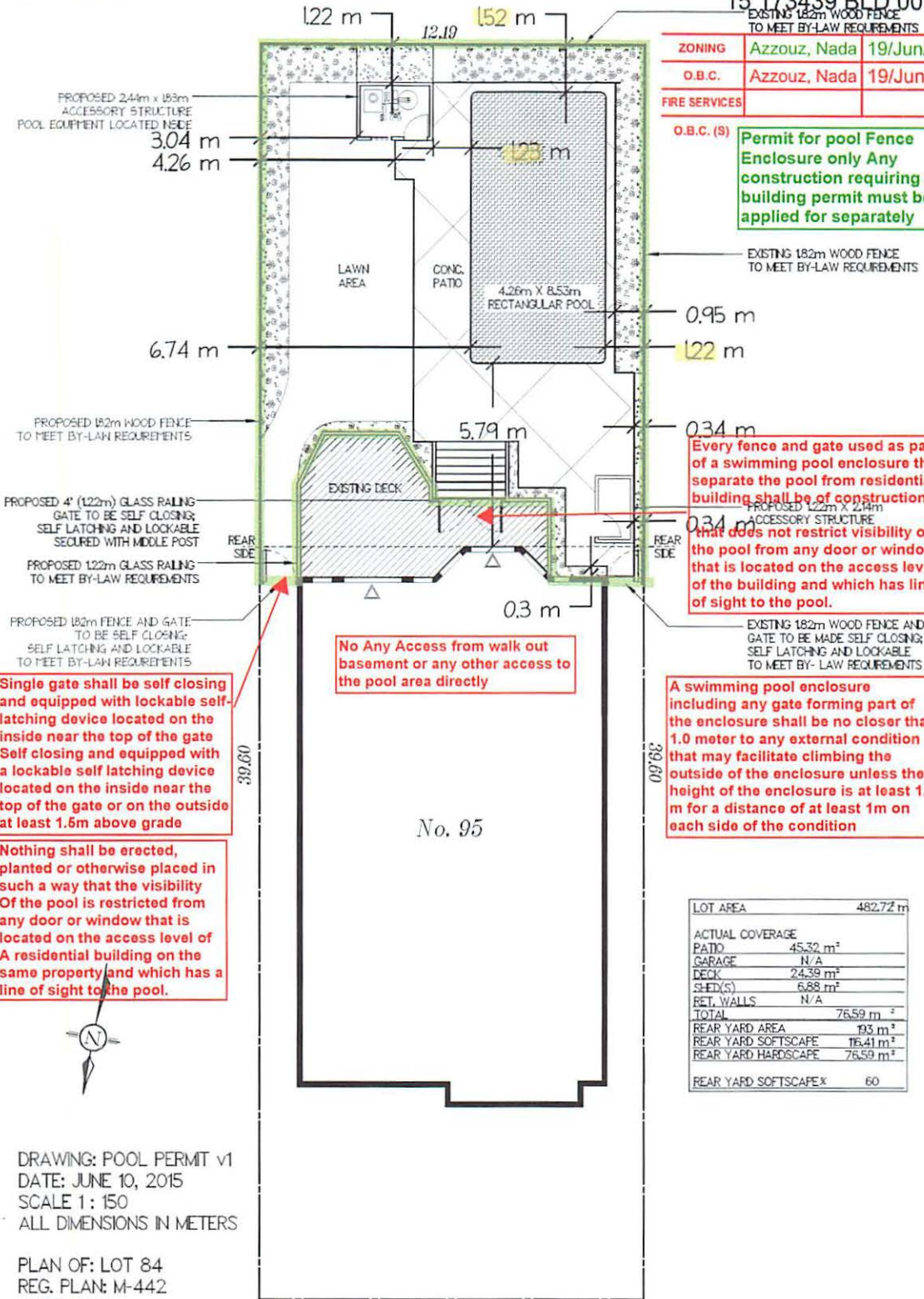
**FOLLOW GENERAL
REQUIREMENT FOR FENCE
ENCLOSURE-ATTACHED**

15 173439 BLD 00

EXISTING 182m WOOD FENCE
TO MEET BY-LAW REQUIREMENTS

ZONING	Azzouz, Nada	19/Jun/2015
O.B.C.	Azzouz, Nada	19/Jun/2015
FIRE SERVICES		

O.B.C. (S) **Permit for pool Fence
Enclosure only Any
construction requiring a
building permit must be
applied for separately**



EXISTING 182m WOOD FENCE
TO MEET BY-LAW REQUIREMENTS

**Every fence and gate used as part
of a swimming pool enclosure that
separate the pool from residential
building shall be of construction
that does not restrict visibility of
the pool from any door or window
that is located on the access level
of the building and which has line
of sight to the pool.**

EXISTING 182m WOOD FENCE AND
GATE TO BE MADE SELF CLOSING;
SELF LATCHING AND LOCKABLE
TO MEET BY-LAW REQUIREMENTS

**A swimming pool enclosure
including any gate forming part of
the enclosure shall be no closer than
1.0 meter to any external condition
that may facilitate climbing the
outside of the enclosure unless the
height of the enclosure is at least 1.8
m for a distance of at least 1m on
each side of the condition**

**No Any Access from walk out
basement or any other access to
the pool area directly**

**Single gate shall be self closing
and equipped with lockable self-
latching device located on the
inside near the top of the gate
Self closing and equipped with
a lockable self latching device
located on the inside near the
top of the gate or on the outside
at least 1.6m above grade**

**Nothing shall be erected,
planted or otherwise placed in
such a way that the visibility
Of the pool is restricted from
any door or window that is
located on the access level of
A residential building on the
same property and which has a
line of sight to the pool.**

LOT AREA	482.72 m ²
ACTUAL COVERAGE	
PATIO	45.32 m ²
GARAGE	N/A
DECK	24.39 m ²
SHED(S)	6.88 m ²
RET. WALLS	N/A
TOTAL	76.59 m ²
REAR YARD AREA	793 m ²
REAR YARD SOFTSCAPE	16.41 m ²
REAR YARD HARDSCAPE	76.59 m ²
REAR YARD SOFTSCAPE X	60

DRAWING: POOL PERMIT v1
DATE: JUNE 10, 2015
SCALE 1 : 150
ALL DIMENSIONS IN METERS

PLAN OF: LOT 84
REG. PLAN: M-442
NORTH YORK
TORONTO







