TORONTO

REPORT FOR ACTION

Application for Fence Exemption- 38 Norgrove Crescent

Date: May 26, 2017
To: Etobicoke York Community Council
From: Kim Kilburn, District Manager Municipal Licensing and Standards
Wards: Ward 4, Etobicoke Centre

SUMMARY

This staff report is in regards 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 owner of 38 Norgrove Crescent to maintain the existing swimming pool enclosure, which does not meet all of the requirements specified in City of Toronto Municipal Code, Chapter 447, Fences.

RECOMMENDATIONS

Municipal Licensing and Standards recommends that the Etobicoke York Community Council give consideration to the exemption application and decide to:

1. Refuse to grant the application for an exemption, by the property owner of 38 Norgrove Crescent, for the existing swimming pool enclosure which does not meet the minimum standards, and is contrary to the regulations found in the City of Toronto Municipal Code Chapter 447. Direct that a second un-appealable Notice of Violation be issued under City of Toronto Municipal Code, Chapter 447, Fences.

   or

2. Grant the application for a fence exemption by the property owner of 38 Norgrove Crescent, without conditions, thereby allowing the existing swimming pool enclosure conditions to be maintained, as built. Direct and require that the swimming pool enclosure be maintained in good repair without alteration. Direct and require that at such time as replacement of the swimming pool enclosure is required that such installations will comply with Municipal Code Chapter 447, or its successor by-law.

Financial IMPACT

There is no financial impact anticipated in this report.

DECISION HISTORY

No previous decision history.

COMMENTS

The subject property is a single family dwelling situated west of Royal York Road and three blocks north of Eglinton Ave West in Ward 4 (Attachment # 1).

The property owner is proposing to maintain a swimming pool enclosure for an above-ground pool which is only approximately 900 millimetres in height, contrary to Sections 447-3B.(1) and 447-3F.(1) of Chapter 447 of the Toronto Municipal Code. An application for a fence exemption was filed on May 24, 2017.

The Municipal Licensing and Standards Division received a formal complaint on or about October 5, 2015 about the swimming pool area on the subject property not being adequately protected. A Notice of Violation dated October 27, 2015 was issued and subsequently re-issued on May 8, 2017 which remains outstanding pending the outcome of this exemption application request.

As required by Section 447-5(C), Municipal Licensing & Standards has responded to the fence exemption application by preparing this report for Etobicoke York Community Council's consideration, and, the City Clerk has sent all requisite notifications of the date that the Etobicoke York Community Council will consider the application.

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

LOCATION	ORIENTATION	DEFICIENCY	BY-LAW SECTION*
Rear Yard	1. The rear yard above-ground swimming pool and enclosure was erected without a permit.	1.No person shall excavate for or erect, or cause or permit excavation for or erection of, a swimming pool without first obtaining a permit from the Chief Building Official for a swimming pool enclosure for the proposed pool.	Section 447-3B.(1)
	2. The height of the swimming pool enclosure immediately around the above ground pool is only approximately 900 millimetres.	2. The minimum height of a swimming pool enclosure is 1.2 metres.	Section 447-3D.(1)
	3. The lot perimeter fencing and the guard around the above-ground pool have horizontal elements between 100 millimetres and 1.2 metres above grade that facilitate climbing.	3. A swimming pool enclosure, including any gate forming part of the enclosure, shall have no element or attachment between 100 millimetres and 1.2 metres above grade that may facilitate climbing the outside of the enclosure.	Section 447-3E.(1)(c)
	4. The enclosure around the above-ground swimming pool is less than 1.2 metres to the water's edge.	4. A swimming pool enclosure, including any gate forming part of the enclosure, shall be no closer than 1.2 metres horizontally to the water's edge in the pool.	Section 447-3E.(1)(a)

The subject property has a 2.0 metre high board on board wooden fence completely enclosing the rear lot, complete with the required gates fitted with self-closing, self-latching devices, and the required locks. These wooden fences have climbable or horizontal elements between the 100 millimetre and 1.2 metres height. In addition, the guard [or enclosure] around the above-ground swimming pool, separating the dwelling from the pool is less than the minimum required height, also has climbable elements on the dwelling-side and is less than 1.2 metres from the water's edge.

No records of any permits for the original swimming pool/enclosure were found. Hence, the swimming pool enclosure was not erected lawfully/in compliance with any previous regulations to enjoy any grand-fathering privileges. The property owners seek the exemption as they have a special needs child with a disability and complying with all the provisions of Chapter 447, would be impracticable (Attachments # 2, 3, 4, 5 and 6).

When considering the provisions for the current fence by-law and the exemption application, it should be noted that the regulations, italicized below, include the following clauses [that are not applicable in this case]:

Subsections C(3), E(3), E(4) and E(5) may apply conditionally to a swimming pool enclosure for which an exemption has been granted by Community Council, and such an exemption shall only be granted if:

(a) The reason for seeking the exemption is because one or more of the standards in Subsections C(3), E(3), E(4) and E(5) are not practicable because of a disability, as defined in the Ontarians with Disabilities Act, 2001, of an occupant of the building; and

(b) The applicant for the exemption agrees to comply with any other conditions imposed by Community Council to prevent a young child from gaining access to the pool area.

Despite Subsection F(3), when the need for which the exemption was sought ceases to exist, the pool enclosure shall be reinstated to comply fully with the provisions in Subsections C(3), E(3), E(4) and E(5).

These italicized by-law excerpts strictly refer to grandfathering privileges and visibility issues relative to an identified disability. The infractions with the existing swimming pool enclosure, identified in the table above, are not captured by these by-law excerpts.

Notwithstanding the provisions within Chapter 447 that allow for considerations to be made where there is a recognized disability, the existing deficiencies do not contribute to any ease of accessibility into the pool area. The perimeter fencing with climbable features on the outside of the pool area is a safety concern as it contributes to the ability of unauthorized access into the pool area, the height of the fence along the top of the above-ground pool area is not of sufficient height and the pool decking area does not provide adequate the minimum 1.2 metre required walking space around the pool area.

We recommend that the swimming pool enclosure be installed so as to comply with all provisions of the current City of Toronto's Municipal Code, Chapter 447- Fences. However, should the Committee decide to grant the exemption, such exemption should include and require the property owners to file for and obtain a swimming pool enclosure permit and the permit be issued pursuant to any granted exemption, and exemption conditions.

CONTACT

Italo Joe Luzi
Municipal Licensing and Standards
Etobicoke York District
Tel: 416-395-7013 Fax: 416-394-2904
Email: ItaloJoe.Luzi@toronto.ca

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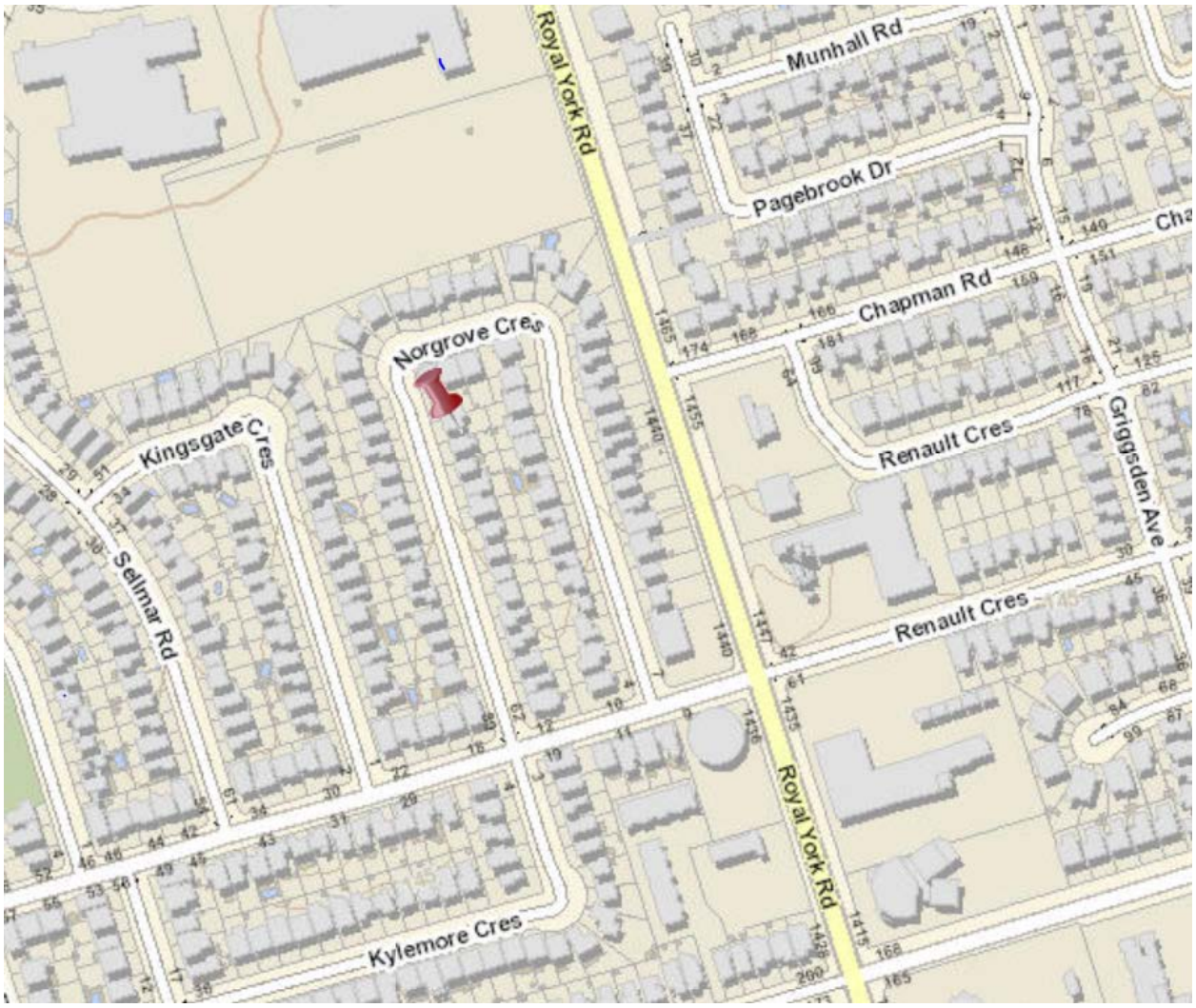
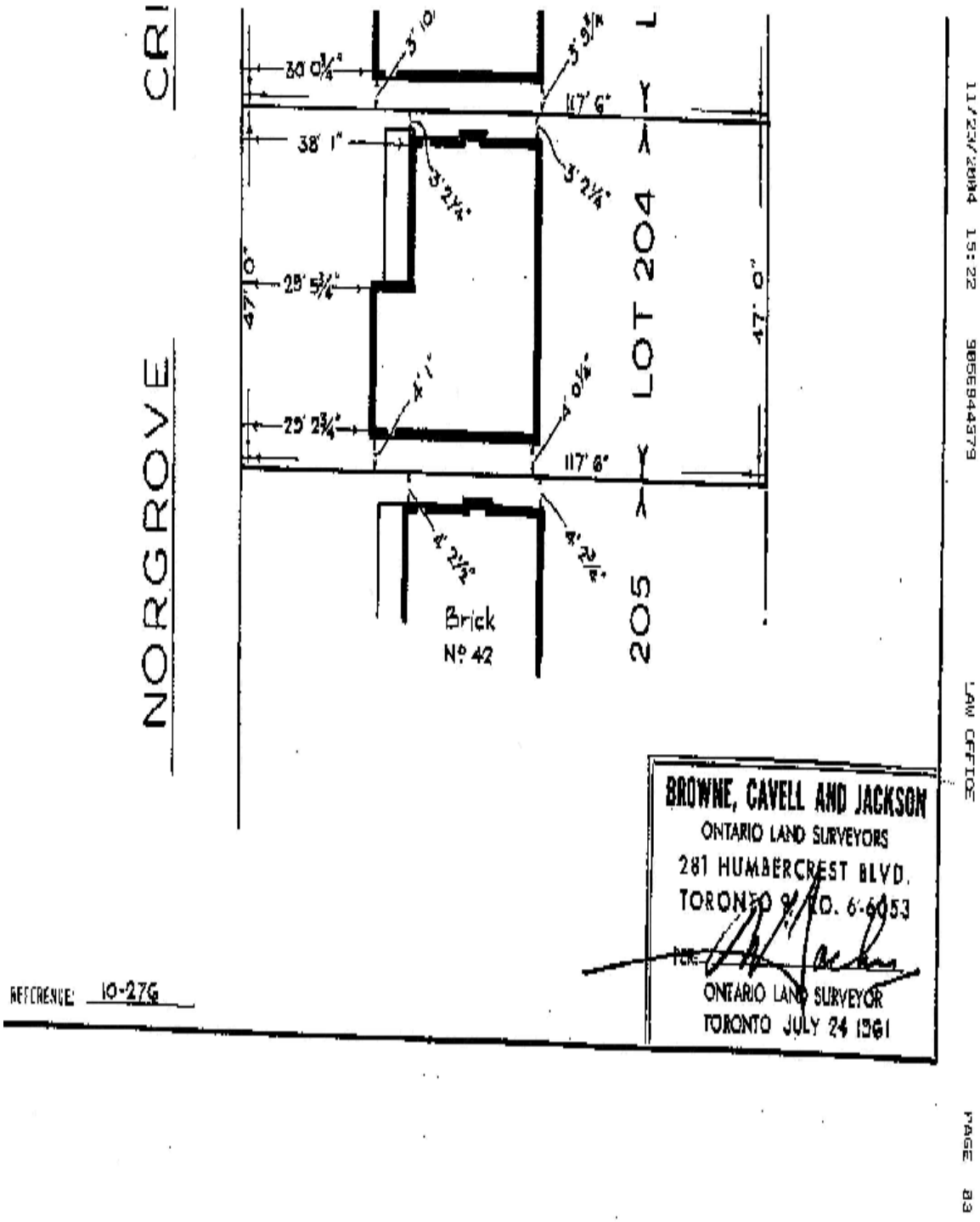
Kimberley Kilburn, Etobicoke York District Manager
Municipal Licensing and Standards
Tel: 416-392-7735 Fax: 416-394-2904
Email: kkilbur@toronto.ca

ATTACHMENTS

Attachment 1: Aerial map of 38 Norgrove Crescent
Attachment 2: Site Plan for 38 Norgrove Crescent
Attachment 3: Photo Showing the Above-ground Pool and Enclosure
Attachment 4: Photo of Enclosure with Climbable Members
Attachment 5: Photo of Enclosure Close to Water's Edge
Attachment 6: Photo of Enclosure with Climbable Elements on Each Side of Fencing



Attachment 1: Aerial map of 38 Norgrove Crescent



Attachment 2: Site Plan for 38 Norgrove Crescent



Attachment 3: Photo Showing the Above-ground Pool and Enclosure



Attachment 4: Photo of Enclosure with Climbable Members



Attachment 5: Photo of Enclosure Close to Water's Edge



Attachment 6: Photo of Enclosure with Climbable Elements on Each Side of Fencing