

Request for a Fence Exemption – 48 Joel Swirsky Boulevard – Toronto Municipal Code, Chapter 447

Date: April 27, 2022
To: North York Community Council
From: District Manager, Municipal Licensing & Standards, Etobicoke & York District
Wards: Ward 6 – York Centre

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 consider an application submitted by the property owners of 48 Joel Swirsky Boulevard for a site-specific Fence Exemption, pursuant to the Toronto Municipal Code, Chapter 447, "Fences", under subsection 447-1.5B.

This request is in response to a Fence Notice of Violation, issued by Municipal Licensing and Standards, for a swimming pool enclosure that does not comply with the standards set out in subsection 447-1.3(A)(1).

48 Joel Swirsky Boulevard is a detached house located on a residentially zoned lot in Ward 6.

RECOMMENDATIONS

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

1. Refuse to grant the request of the property owners of 48 Joel Swirsky Boulevard for a site-specific exemption from Toronto Municipal Code, Chapter 447, "Fences", under subsection 447-1.5B, for a swimming pool enclosure that that does not comply with the standards set out in subsection 447– 1.3(A)(1).

OR

2. Grant the request of the property owners of 48 Joel Swirsky Boulevard for a site-specific exemption from Toronto Municipal Code, Chapter 447, "Fences", under

subsection 447-1.5B, for a swimming pool enclosure that that does not comply with the standards set out in subsection 447– 1.3(A)(1) on the conditions that:

- a. The swimming pool enclosure is maintained in good repair, in compliance with Toronto Municipal Code, Chapter 447, "Fences", except for the exemption as granted;
- b. If the swimming pool enclosure is replaced, the replacement complies entirely with Toronto Municipal Code, Chapter 447, "Fences", or its successor bylaw; and
- c. Any other conditions as decided by the North York Community Council.

FINANCIAL IMPACT

The recommendations in this report have no financial impact.

DECISION HISTORY

After receiving a Fence Notice of Violation, dated April 1, 2022, the property owners requested a Fence Exemption for their swimming pool enclosure, in writing, on April 11, 2022. The application requests a site specific exemption to be granted, under Toronto Municipal Code, Chapter 447, subsection 447-1.5(B), with respect to an existing swimming pool enclosure that does not comply with subsection 447-1.3(A)(1).

As required by subsection 447-1.5(B), Municipal Licensing & Standards has responded to the fence exemption request by preparing this report for the North York Community Council's consideration. The City Clerk has sent all requisite notices of the date that the North York Community Council will consider this request.

COMMENTS

Municipal Licensing and Standards reviewed the proposed application and determined that the existing swimming pool enclosure located on the sliding door does not comply with Toronto Municipal Code, Chapter 447, subsection 447-1.3(A)(1).

The table below describes the existing swimming pool enclosure and the deficiencies under Toronto Municipal Code, Chapter 447:

General Location	Specific Location	Current/ Existing Construction & Deficiency	By-Law Section & Requirement
Rear Yard	North side of the property, located on the ledge of the rear sliding door	The existing swimming pool enclosure consists of 2 glass panels; a fixed panel and a panel which acts as the gate for the enclosure. The enclosure is located in front of the section of the sliding door that opens and provides access to the rear yard from inside the home. The enclosure is flush with the frame of the sliding door. From the ledge of the sliding door to the top of the glass, the enclosure is approximately 1.1 metres in height (45 inches). The gate is self-closing and equipped with a lockable, self-latching device. However, the lock is located on the top of the glass panel, on the outside of the gate, which is accessible from inside the home.	Chapter 447–1.3(A)(1)

As per Toronto Municipal Code, Chapter 447, the minimum height requirement for a swimming pool enclosure is 1.2 metres (approximately 48 inches). This was outlined on the original approved site plan (Attachment D).

Additionally, the lock for any gate of a swimming pool enclosure must be located on the inside of the gate near the top of the gate or on the outside, at least 1.5 metres (approximately 59 inches) above grade. The property owners have been made aware that the location of the current lock is not permitted.

Lastly, under Toronto Municipal Code, Chapter 447, if the wall of any building, or any portion of it, forms part of the swimming pool enclosure, there shall be no access to the enclosed pool area through the wall. The current enclosure allows access through the sliding door.

The refusal of the request will result in a second Notice of Violation being issued to the property owners requiring compliance with the standards to which the refusal applies.

The grant of the request will result in the cancellation of any Notice of Violation that had been issued to the property owners requiring compliance with the standards covered by the granted exemption.

In their request for an exemption, the property owners provided a letter outlining their reasons for an exemption and a letter of support from their neighbour at 192 Faywood Boulevard (located directly behind 48 Joel Swirsky Boulevard). They have also included an updated site

plan illustrating the location of the current enclosure, and a photo of the enclosure in relation to the steps and rocks in the rear yard.

CONTACT

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SIGNATURE

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ATTACHMENTS

Attachment A – GIS Map of 48 Joel Swirsky Boulevard

Attachment B – Letter from Property Owners – "Reasons for Fence Exemption"

Attachment C – Letter of Support from Neighbour

Attachment D – Original Site Plan Submitted by Property Owners

Attachment E – Original Approved Site Plan

Attachment F – Revised Site Plan Submitted by Property Owners

Attachment G – Photograph of Swimming Pool Enclosure, Steps, and Rocks Submitted by Property Owners

Attachment H – Photograph of Swimming Pool Enclosure

Attachment I – Photograph of Lock on Outside of Gate

Attachment A

GIS Map of 48 Joel Swirsky Boulevard



Attachment B

Letter from Property Owners – "Reasons for Fence Exemption"

Reasons for Fence Exemption

The city issued a permit to our contractor, Joe Barbarino according to his drawing. Unfortunately, the contractor did not show up to work regularly and we had to fire him before he completed the project. His drawing lacked accuracy in the area of our sliding doors and steps, where a pool enclosure was proposed. The drawing indicated the enclosure around a landing at the top of our steps which does not exist. It cannot be built in such a manner as the railings would not be high enough and the existing landscape surrounding it is rocks. Posts could therefore not be installed.

Upon realizing that it could not be built as drawn, I called the city on March 24, 2021 and asked for an inspector to come and consult on a proposed solution. Alessandro Cioffi came for a site visit as per my request on March 28, 2021. I explained the reasons why we could not build as indicated on our plan and he saw our steps and landscape. He verbally told me that as long as we built a gate and fixed panel that completely blocked the sliding doors and entrance to our home that was 4 feet high and with a lock on the outside, it would ensure safety as required. The intent of the bylaw is to ensure that a child cannot access the pool from the inside of the house via any exterior door.

The approved site plan includes similar glass panels across our other sliding doors. That set of doors does not have steps, and is not deemed an entranceway. We were allowed to completely block those doors with a glass panel of the same height. After receiving verbal permission to proceed with building a similar glass gate and panel directly in front of the sliding entranceway doors, we did so in July 2021 and believed it would be perfectly acceptable. It certainly ensured safety and we didn't anticipate any violations whatsoever. We followed what the bylaw officer said we could do.

On November 16, 2021 officer Mary Jane Limberis inspected the property and spoke to my husband, Randy Fisher. She noted 2 problems, neither of which was the pool enclosure around our sliding doors. Randy took notes that indicated we must put the lock on the opposite side of the glass gate (which we realized was done incorrectly and will correct) and the other was that we needed to put a spring and lock on one side of our wooden gate before opening the pool, which we agreed to do.

I called the city again in early March 2021 to ask a question about the placement of our side fence before ordering it. I wanted to ensure we ordered correctly and that it would comply with the bylaw. I asked Mary Jane to come back and consult. She did a site visit on March 9, 2021. She said we could move the gate over from where it was in the drawing to accommodate pool equipment as long as it completely blocked our side door entrance. That day she also came around back and took pictures of our glass pool enclosure and again, did not note any issues with it whatsoever.

She shared the pictures with her supervisor back at the office, Gurinder Purba. He noted that the glass pool enclosure we built did not match the drawing and as it exists is not according to

the bylaw. We were never asked to submit new drawings and at this point, it was one year since Alessandro had come for his site visit.

Gurminder told me he'd come to see it and visited with Mary Jane and another supervisor, Simi Dhillon. I was then told that we'd be issued a violation and had 2 options. Either build according to specifications or apply for a fence exemption. At this point, I called a reputable pool enclosure company to see if we could build it according to the drawing. I spoke with Tal, owner of ProWeld which builds glass pool enclosures. I sent pictures asking if he could rebuild it for us according to the drawing. He said that what we built was the only option to ensure safety given the existing landscape. Furthermore, he said he has routinely built the same sort of gates in Toronto with inspectors providing both verbal and written permission in emails to do so. We didn't ask for any written permission. I did speak with the initial inspector Alessandro who said that at the time he had been called to so many pools during the pandemic that he didn't recall the specifics of ours and what he advised.

In closing, we built a completely safe pool enclosure that varies from the initial approved site plan. The gate cannot be climbed, can be locked and it ensures that no child can enter the pool from our sliding doors. We are very concerned with the safety and well-being of any child and this is demonstrated by my calling the city multiple times and requesting site visits to ensure that what we built was allowed and completely ensured safety. As such, we intend to leave it as is as there isn't a way to rebuild it in any other safe manner. Our neighbour, Susie Smith with whom we share the largest wooden fence has written a letter of support. We have also obtained written assurance that our city counsellor, James Pasternak will support the fence exemption after reviewing the pictures and drawings.

Attachment C

Letter of Support from Neighbour

Keely: Please feel free to forward my email below to the City Hall. Thanks. Susie

To Whom It May Concern

My neighbour Keely Fisher explained to me that City Hall asked for their neighbours' support for their security glass gate.

From what I see, the glass gate can be locked, is of the required height and completely blocks the sliding door of the house. She joked that even her mother could not climb over it.

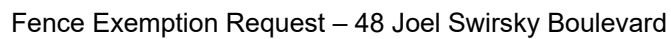
I have known Keely and Randy to be a caring, conscientious and professional couple who would take every step to ensure the safety of their children. The gate ensures the security of all.

Hope this email helps.

Sincerely,

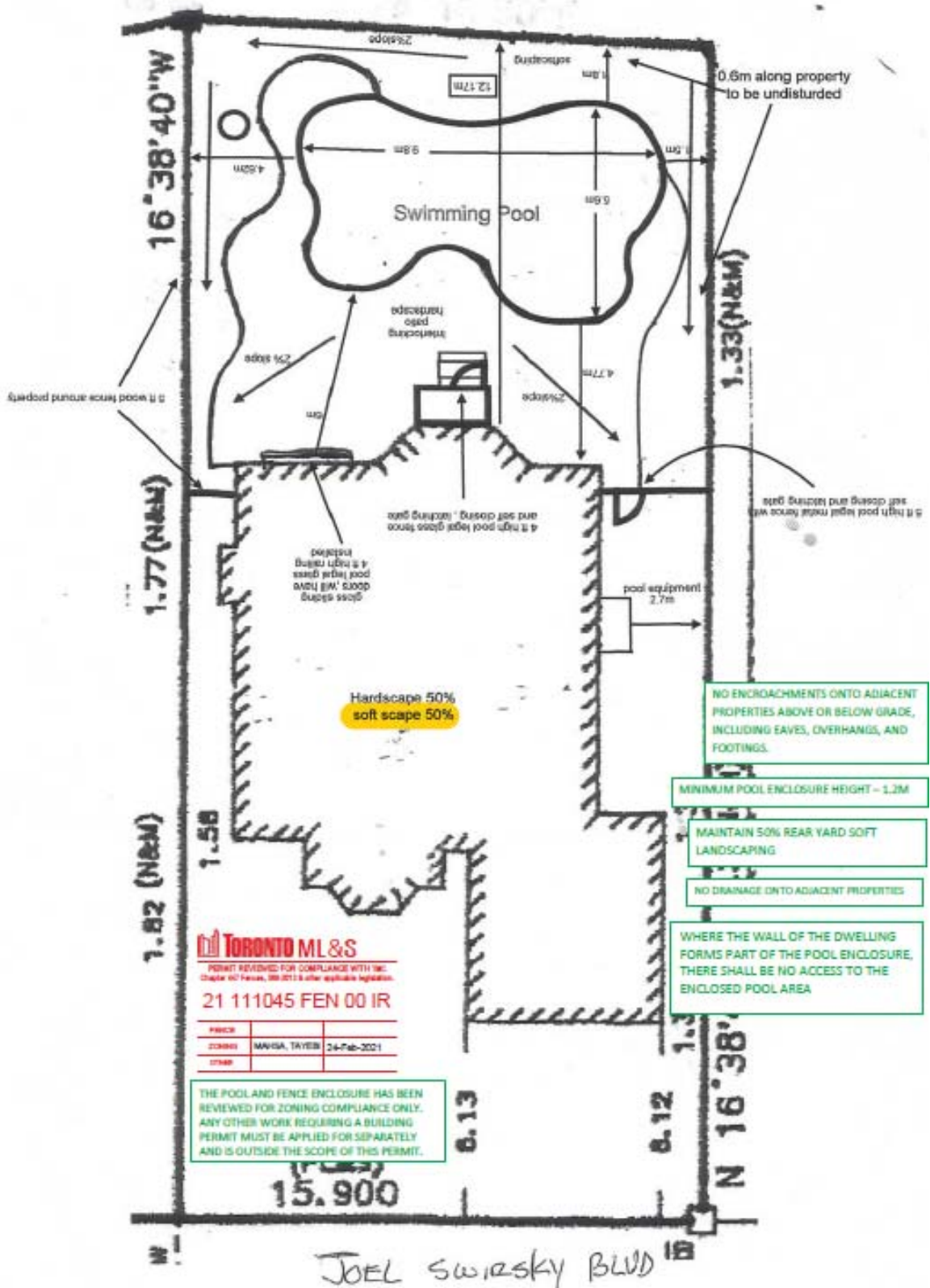
Susie Smith
192 Faywood Blvd.
Toronto, Ontario

Original Site Plan Submitted by Property Owners
(Included in Fence Exemption Application)

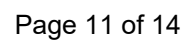


Attachment E

Original Approved Site Plan



Revised Site Plan Submitted by Property Owners
(Included in Fence Exemption Application)



Attachment G

Photograph of Swimming Pool Enclosure, Steps, and Rocks Submitted by Property Owners
(Included in Fence Exemption Application)



Attachment H

Photograph of Swimming Pool Enclosure



Attachment I

Photograph of Lock on Outside of Gate

