

Request for a Fence Exemption – 338 Hillhurst Boulevard Toronto Municipal Code, Chapter 447

Date: June 9, 2022
To: North York Community Council
From: District Manager, Municipal Licensing & Standards, Etobicoke & York District
Wards: Ward 8 - Eglinton-Lawrence

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 owner of 338 Hillhurst 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 pool fence enclosure that does not comply with the standards set out in subsection 447-1.3(C)(3).

338 Hillhurst Boulevard is a detached house located on a residentially zoned lot in Ward 8.

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 338 Hillhurst Boulevard for a site-specific exemption from Toronto Municipal Code, Chapter 447, "Fences", under subsection 447-1.5B, for a pool fence enclosure that that does not comply with the standards set out in subsection 447– 1.3(C)(3).

OR

2. Grant the request of the property owners of 338 Hillhurst Boulevard for a site-specific exemption from Toronto Municipal Code, Chapter 447, "Fences", under subsection 447-1.5B, for a pool fence enclosure that that does not comply with the standards set out in subsection 447– 1.3(C)(3) on the conditions that:

- a. The pool fence enclosure is maintained in good repair, in compliance with Toronto Municipal Code, Chapter 447, "Fences", except for the exemption as granted;
- b. If the pool fence 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 May 25, 2022, the property owner requested a fence exemption, in writing, on May 27, 2022. The application requests a site specific exemption to be granted, under Toronto Municipal Code, Chapter 447, "Fences", subsection 447-1.5(B), with respect to an existing pool fence enclosure that does not comply with the subsection 447-1.3(C)(3).

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 pool fence enclosure on the private portion of the property does not comply with TMC Chapter 447, subsection 447-1.3(C)(3) – If the wall of any building, or any portion of it, forms part of the pool enclosure, there shall be no access to the enclosed pool area through the wall.

The table on page 3 describes the existing pool fence enclosure and the deficiencies under Toronto Municipal Code, Chapter 447, "Fences":

General Location	Specific Location	Current/ Existing Construction & Deficiency	By-Law Section & Requirement
Rear Yard	North side of the property, located at the rear exit door in the rear yard	The existing pool enclosure is constructed using an aluminum picket gate in a "Juliet balcony" style, located at the rear exit door in the rear yard of the property. The aluminum picket gate is approximately 1.42 metres in height (56 inches) and approximately 0.99 metres wide (39 inches). The vertical pickets are spaced less than 100 millimetres apart (4 inches). The height, width, and space between the vertical pickets comply with the provisions of the Bylaw. The current aluminum picket gate allows access through the rear exit door, which is a contravention of the Bylaw.	Chapter 447–1.3(C)(3)

On February 9, 2022, a Bylaw Enforcement Officer attended the property and met with the property owner's architect and pool contractor. The Officer informed the contractors that if any construction of the pool fence enclosure deviates from the original approved site plan, an amended site plan must be submitted and approved through Municipal Licensing and Standards prior to constructing the pool fence enclosure.

On April 19, 2022, the property owner's contractor emailed an updated site plan to MLSWest@toronto.ca (general email for Investigation Services, West District office), illustrating a 4-foot chain link "Juliet balcony" style enclosure located at the rear exit door. The site plan was not approved by Municipal Licensing and Standards.

On May 19, 2022, a Bylaw Enforcement Officer attended the property and conducted an inspection. The Officer observed the subject enclosure and informed the property owner that the enclosure was not permitted under Toronto Municipal Code, Chapter 447, "Fences".

In their request for an exemption, the property owners provided a letter outlining their reasons for an exemption. They have also included an updated site plan illustrating the location of the current enclosure.

The refusal of the request will result in a second Notice of Violation being issued to the property owner 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 owner requiring compliance with the standards covered by the granted exemption.

Lastly, the existing pool fence enclosure does not contravene any other provisions of Toronto Municipal Code, Chapter 447, "Fences".

CONTACT

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SIGNATURE

Joe Magalhaes, District Manager
Municipal Licensing & Standards
Investigation Services – Etobicoke & York District

ATTACHMENTS

Attachment A – GIS Map of 338 Hillhurst Boulevard

Attachment B – Photograph taken of the existing aluminum picket gate

Attachment C – Photograph taken of the height of the existing aluminum picket gate

Attachment D – Photograph taken of the width of the existing aluminum picket gate

Attachment E – Letter from the property owner

Attachment F – Approved site plan

Attachment G – Unapproved site plan submitted by the property owner on April 19, 2022

Attachment H – Unapproved site plan included in the Fence Exemption application by the property owner of the current pool fence enclosure and layout of the rear yard

Attachment A

GIS Map of 338 Hillhurst Boulevard



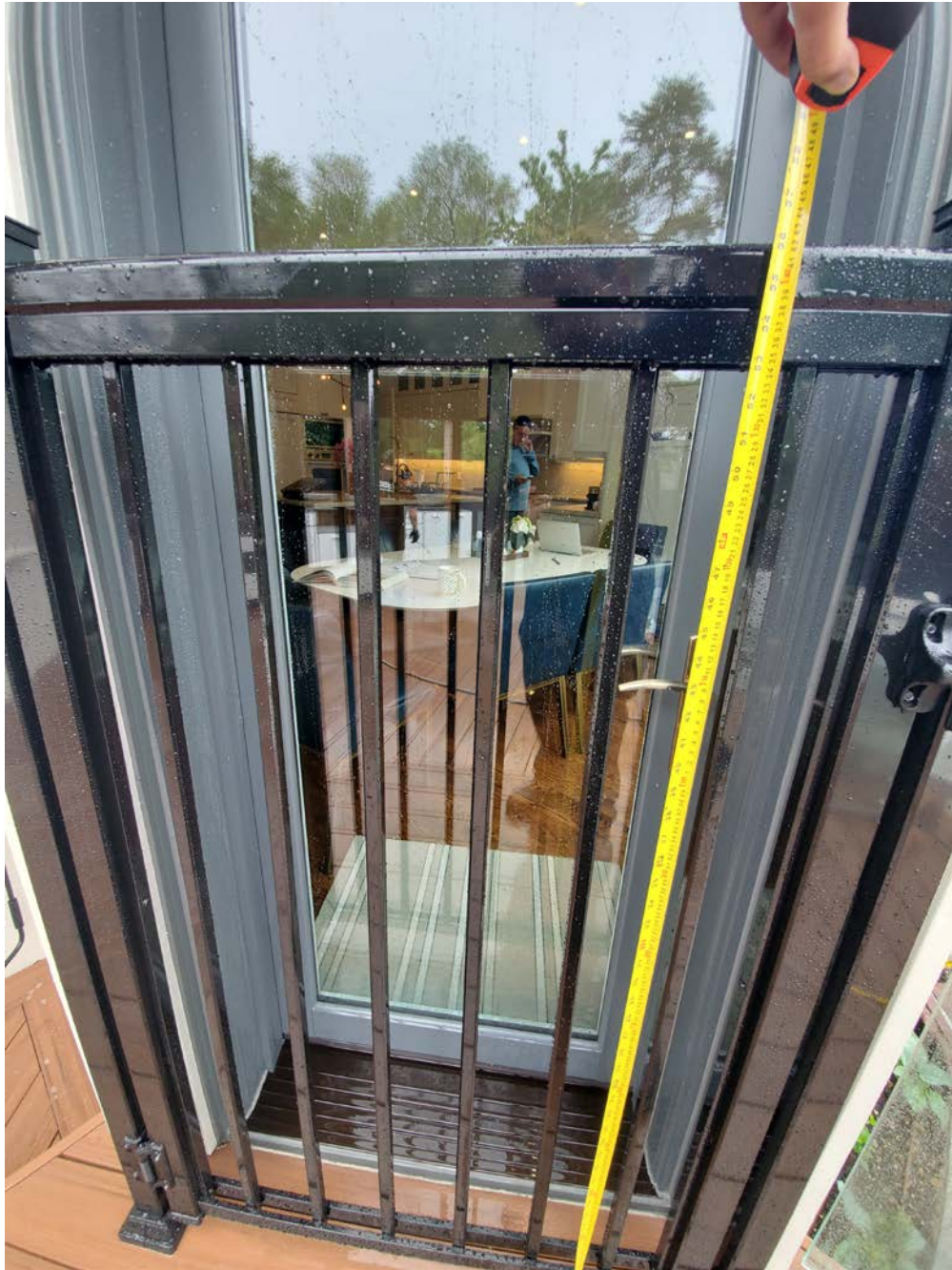
Attachment B

Photograph taken of the existing aluminum picket gate



Attachment C

Photograph taken of the height of the existing aluminum picket gate



Attachment D

Photograph taken of the width of the existing aluminum picket gate



Attachment E

Letter from the property owner

May 26, 2022

West District, Etobicoke Civic Centre,
399 The West Mall, North Block, 3rd Floor
Toronto, ON M9C 2Y2

Re: Fence Exemption - 338 Hillhurst Blvd.

To whom it may concern,

We had a pre-inspection with Stephan Tetrault, Municipal Standards Officer, on February 8, 2022 at the site of 338 Hillhurst Blvd. At that meeting, Mr. Tetrault gave us direction as to what would be an acceptable enclosure under the relevant by-laws. At that meeting were 3 professionals that have been in business many years: our landscape architect, our pool builder/landscaper, and our gate/deck builder.

At the conclusion of the meeting Mr. Tetrault informed the team that we should submit the new drawings to the City as per the on site discussions and once the enclosure was built to match the new drawing, we should schedule a final inspection.

On April 19, 2022, a representative of Aqua Spa Pools submitted the updated drawings to the City. I have attached that drawing in this submission.

We scheduled Mr. Tetrault to come for final inspection on May 17, 2022 at 10am. We expected the aluminum enclosure to be complete by that time.

Mr. Tetrault arrived promptly at 10am but the enclosure was not done by then. (It was completed less than 20 minutes later). Understandably, Mr. Tetrault needed to leave to attend to his other appointments. He informed me that any future inspections would be undertaken by a new inspector as he was no longer servicing our ward. Mr. Tetrault provided me with the contact information of the supervisor in charge, Ms. Simi Dhillon, in order to expedite another inspection.

I contacted Ms. Dhillon who was gracious and amazing and she managed to expedite an inspection for May 19, 2022.

Mr. Vito Roppo arrived on May 19th for inspection. We went through the details and I informed him about our previous meeting with Mr. Tetrault and how we followed his advice to the tee in order to pass inspection.

On May 25, 2022 I received a letter from Mr. Roppo stating that there's been a Notice of Violation issued and that the new plans were not submitted to the Buildings Department. I demonstrated to Ms. Dhillon immediately thereafter that in fact there was an updated drawing submitted to the City and that we followed the drawings to the tee in constructing the enclosure.

Ms. Dhillon informed me today (while working on her day off!) that despite all of the above we would need to file for a Fence Exemption.

So, in addition to the above and the details in the attached application and the photos taken by Mr, Roppo, I submit the following in seeking this exemption:

1. The Juliet style, locking balcony gate which we constructed as per the advice of Mr. Tetrault, meets the height and width of Code, and also has the proper spacing between pickets.
2. We've also added window limiters on all necessary windows as per the advice of Mr. Tetrault.
3. These were not cheap solutions and we went out of our way to follow the detailed advice provided to us by the City inspector.
4. We began the plans pool permit process in August of 2020. With the COVID situation the project has consumed nearly 2 years of our lives and has caused us a lot of distress.
5. The emotional and monetary cost of coming up with an alternative solution would really be too much to bear. Our family has had an extremely difficult and mentally challenging time with COVID over the last 2 years and this is really something we'd have difficulty getting through if we had to wait much longer to enjoy the simple pleasure of being in the outdoors of our residence.

Thank you in advance for considering our exemption.

Sincerely,

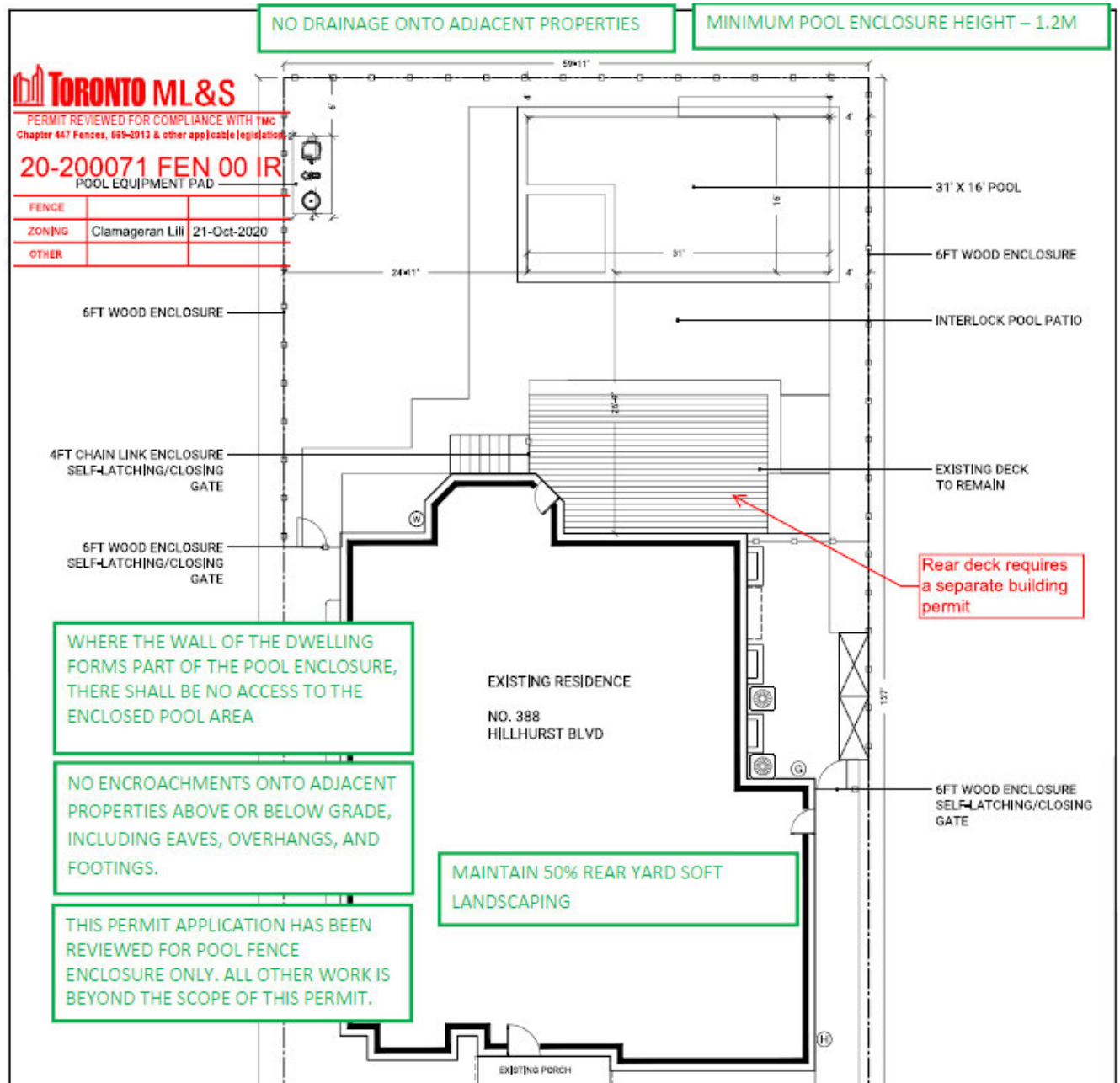


Avi Wachsmann

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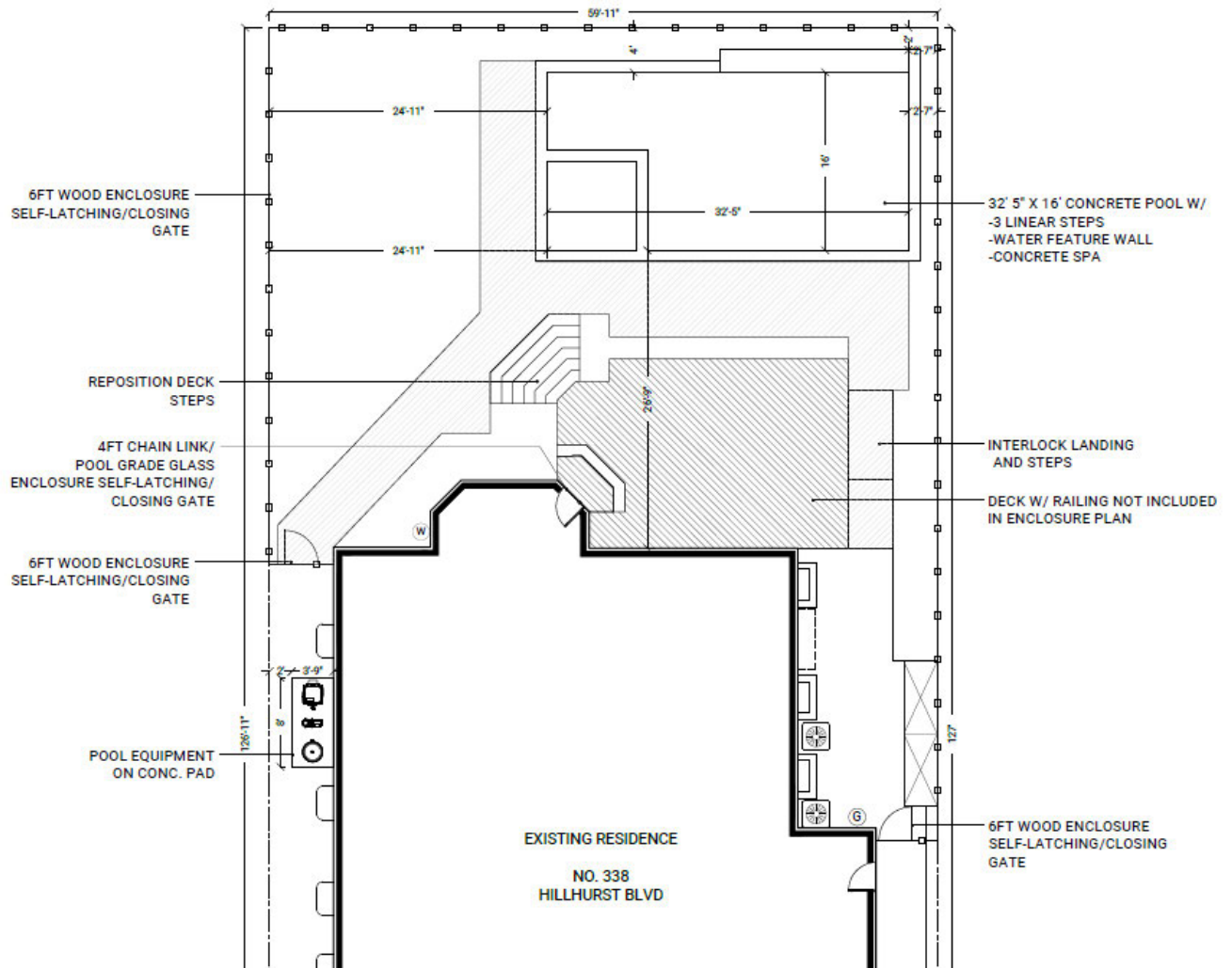
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Approved site plan



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Unapproved site plan submitted by the property owner on April 19, 2022



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Unapproved site plan included in the Fence Exemption application by the property owner of the current pool fence enclosure and layout of the rear yard

