

Encroachment Appeal - Pergola - 2149 Yonge Street

Date: June 6, 2023

To: Toronto and East York Community Council

From: Director, Permits and Enforcement, Transportation Services

Wards: Ward 12, Toronto-St. Paul's

SUMMARY

This staff report is about a matter that Community Council has delegated authority from City Council to make a final decision.

Transportation Services has reviewed an application to maintain an encroachment within the public right-of-way at 2149 Yonge Street, formerly known as 2131 Yonge Street. The encroachment consists of a covered extruded aluminum and glass pergola which is in contravention of City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use Of. Specifically, the pergola does not meet the required set-backs from the intersection and inside edge of the sidewalk.

Although the pergola is in contravention of the requirements under Code Chapter 743, Transportation Services is requesting authority to enter into an encroachment agreement with the property owner, subject to conditions.

RECOMMENDATIONS

The Director, Permits and Enforcement, Transportation Services recommends that:

1. Toronto and East York Community Council authorize the General Manager of Transportation Services to negotiate and enter into an encroachment agreement (the "Agreement") with the property owner of 2149 Yonge Street, to permit the construction and maintenance of the requested covered extruded aluminum and glass pergola, subject, but not limited to, the following conditions:
 - a. The property owner shall indemnify the City from and against all actions, suits, claims or demands and from all loss, costs, damages, and expenses that may result from such permission granted;
 - b. The property owner shall maintain the covered extruded aluminum and glass pergola at their own expense in good repair and a condition satisfactory to the

General Manager of Transportation Services and will not make any additions or modifications to the encroachment beyond what is allowed under the terms of the Agreement;

c. The property owner shall accept such additional conditions as the City Solicitor or the General Manager of Transportation Services may deem necessary in the interest of the City;

d. The property owner shall remove the encroachment if required by the General Manager of Transportation Services, at any time upon receiving written notice to do so, in a timely manner deemed appropriate by the General Manager of Transportation Services; and restore the City right-of-way to the satisfaction of the General Manager, Transportation Services;

d. The property owner shall agree that the City and/or utility companies may remove the encroachments at any time in order to install or maintain services within the affected public right-of-way with no obligation to replace them;

e. The property owner will enter into an encroachment agreement with the City of Toronto, at the applicant's expense, and assume all liability and damages related to the encroachments; and

f. The property owner and/or occupant must obtain all Municipal Licensing and Standards approvals prior to commercial use of the encroachment.

FINANCIAL IMPACT

There is no financial impact to the City as a result of this report.

DECISION HISTORY

This report addresses a new initiative.

COMMENTS

An encroachment application was received in May 2022, from the agent of the owner of 2149 Yonge Street, requesting permission to maintain a covered extruded aluminum and glass pergola within the public right-of-way on Hillsdale Avenue flanking the subject premises. The pergola consists of steel supports with extruded aluminum and glass guards, which are affixed into the public right-of-way.

The pergola structure extends out from the exterior building wall 3.51m in total, which encroaches 0.77m into the public right-of-way on Hillsdale Avenue. This encroachment narrows the travelled portion of the sidewalk from approximately 2.6m in width to 1.9m in width. This encroachment into the sidewalk contravenes the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, article 743-31E.(2) requirement that "E. Unless otherwise specified in this chapter, no encroachments other than soft

landscaping are permitted: (2) Within 0.50 metres of the edge of sidewalk located closest to the street line;"

The pergola structure is built 7.22m east from the curb line of Yonge Street with a height of 3.5m. This encroachment contravenes the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, article 743-34A.(2)(a)[1] requirement that "No solid screen fence, privacy fence, railing, bollard, arbour, pergola, ornamental or retaining wall located within 70 metres of the intersection of any two or more streets shall exceed a height of one metre, with the height measured from the surface of the intersecting road;".

The applicant was notified that the pergola encroachment is not eligible for an encroachment agreement as it does not meet the required set-backs as outlined in the City of Toronto Municipal Code Chapter 743, Streets and Sidewalks. An appeal was subsequently received from the agent of the property owner.

A site plan of the existing encroachment is shown in Attachment 1 with rendering of the encroachment shown in Attachment 2.

Transportation Services is seeking authorization for the City to enter into an encroachment agreement with the property owner to maintain the pergola encroachment within the City's right-of-way.

The Ward Councillor has been advised of the recommendations in this report.

CONTACT

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SIGNATURE

Antonia Markos
Director, Permits and Enforcement, Transportation Services

ATTACHMENTS

Attachment 1: Site Plan - Enlarged - A201 2 - 2149 Yonge St
Attachment 2: Rendering of final installation - 2149 Yonge St

Attachment 1 - Site Plan - Enlarged - A201 2 - 2149 Yonge Street

Attachment 2 - Rendering of final installation - 2149 Yonge Street

