



January 24, 2023

VIA EMAIL

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Toronto and East York Community Council
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Dear Community Council Members:

**RE: TE2.20 – 191 Dunvegan Road – Application for Fence Exemption (Ward 12)
Toronto and East York Community Council – January 26, 2023 Meeting
Our File: 1694**

We are counsel to Norman and Elaine Freedman, the owners of 189 Dunvegan Road. Their property neighbours the one located at 191 Dunvegan Road, whose owners have applied for a fence exemption with respect to a fence separating their property from 189 Dunvegan Road. Our clients are opposed to the fence exemption application.

The application previously came before Toronto and East York Community Council at its November 30th, 2022 meeting. After hearing the deputations made on behalf of both the Freedmans and the applicant, Community Council deferred the matter to its next meeting. Although Council was inclined toward denial of the application, the deferral was to provide an opportunity for the applicant to reach out to the Freedmans so that they could work toward an amicable resolution.

Mr. and Mrs. Freedman were hopeful that a resolution could be reached during that time. They were disappointed not to receive any communications on behalf of the applicant until January 20, 2023. That communication did not propose any modifications to the proposal or the fence exemption application. It merely reiterated the stated reasons for the application and concluded that – as currently constituted – it remains the “most reasonable solution”.

The Freedmans continue to disagree. The fencing that is the subject of the application is large, unsightly, and (most importantly) unnecessary.

Mr. and Mrs. Freedman are retired and in their late-70's. They have lived at 189 Dunvegan Road for more than 30 years. During that time, and to the present, they have cared for the property assiduously. It is large, well-maintained, and substantially improved with a spa, pool, and raised deck for outdoor dining and entertaining. The Freedmans have spent considerable time and money to bring their backyard to its current standard.

The backyard has been developed into its present state because the Freedmans do not have a summer cottage. Their backyard functions as, essentially, a stand-in for a cottage

and is where they entertain and spend time with their family and friends regularly. It is an area of rest, relaxation, and solitude for them. Visual enjoyment of the backyard is therefore very important to the Freedmans. Unsightly visual intrusions interfere with and detract from their enjoyment of their own backyard.

The fence that is at issue in this application is such a visual intrusion. It is higher than permitted and given that 191 Dunvegan Road is about three feet higher than the Freedmans property at 189 Dunvegan Road, feels like it towers over their yard even more than would be expected.

The Freedmans property is the only one that is impacted by the fence. It is an eyesore that visually intrudes on their enjoyment of their property, and likely its value. But perhaps most importantly, it is not necessary. The premise behind the fence application is supposedly to prevent basketballs from coming over the property line and into the Freedmans yard. Yet this is not something that is of particular concern to the Freedmans. Prior to the installation of the fence if a basketball came into their yard (which was rare), they threw it back over. They had no issue with that situation and are content for it to continue.

No one's safety is put at issue by the possibility of errant basketballs traversing the property line. The deck and occupied areas of the Freedmans backyard are located well back from the fence and they are not at risk of being hit by a basketball coming over it. The Freedmans backyard is securely fenced in with a closed gate and is approximately 50 feet wide with many mature trees separating it from neighbouring properties. It is extremely unlikely that a basketball would escape the yard and go anywhere else.

The applicant has also justified the application because of the Freedmans opposition to their minor variance in 2018 that allowed (among other things) the installation of the sports court and basketball net on their property. Although the Freedmans did oppose the minor variance in 2018, it was granted and the sports court was installed. The Freedmans have accepted that and their concerns, such as they were, did not come about. Both sides settled into the status quo and seemed (as far as the Freedmans are concerned) content with it.

That the Freedmans concerns were the basis for the fence exemption application is not supported by the timing of the applications. Comments on the minor variance were made in 2018. The fence exemption application was not filed until 2022 – about four years later. During that time, there were no complaints by the Freedmans. They neither requested, nor want, the fence that has been installed and that is the subject of this exemption application. Given that the fence is supposedly for their benefit, that should be reason enough to deny the application.

Compounding the lack of necessity is the fact that the sports court seems to be sparsely used. The Freedmans (who use their backyard frequently) have not noticed any basketball being played next door since sometime in June 2022. This reduces even further the potential for basketballs coming over the fence and the need for anything to prevent it.



The Freedmans are opposed to the application. The fence is a significant visual intrusion that interferes with their use and enjoyment of their property. They do not view that intrusion as necessary to prevent basketballs from coming into their backyard and are content with the status quo of returning them to the applicant if they do. This is less of an intrusion than the placement of the fence. Given that the people for whose benefit the fence was supposedly installed do not want it and did not request it, that alone renders the exemption application unnecessary. If the applicant's concerns remain, they have other options available to them (such as reorienting or moving the basketball hoop) that do not affect the Freedmans.

Reducing the height of the fence to comply with existing regulations, as noted by the applicant in their January 20th letter, is a significant visual improvement from the perspective of the Freedmans. Removing the fence entirely – which the Freedmans are not opposed to – would be even better. For these reasons, and those as expressed in our deputation at the November 30th, 2022 Community Council meeting, the Freedmans request that the fence exemption application be denied.

We will be observing the upcoming meeting on January 26th, 2023 but do not intend to make a further deputation. If the Community Council has any questions about the issues raised in this letter we would, nonetheless, be prepared to address them.

Sincerely,

RAYMAN BEITCHMAN LLP



Conner Harris
CH/rf