

Encroachment Appeal – 86 Kilbarry Road – Fence and Bollards

Date: June 19, 2025

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.

The purpose of this report is for Toronto and East York Community Council to consider an appeal from the property owner of 86 Kilbarry Road regarding their encroachment application. The encroachment consists of aluminum metal fence which includes three stone pillars, an automated sliding driveway gate, an electrical pedestrian gate, and associated electrical conduits and four steel automated retractable bollards and associated electrical conduits, which is in contravention of City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use Of.

The property owner is seeking authority from Toronto and East York Community Council to allow the aluminum metal fence and steel bollards to be constructed and maintained within the public right-of-way at 86 Kilbarry Road, which is in contravention of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use Of.

RECOMMENDATIONS

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

Toronto and East York Community Council not authorize the City to enter into an encroachment agreement with the owners of 86 Kilbarry Road permitting the aluminum metal fence (which includes three stone pillars, an automated sliding driveway gate, an electrical pedestrian gate, and associated electrical conduits) and four steel automated retractable bollards and associated electrical conduits.

FINANCIAL IMPACT

There are no financial impacts resulting from the adoption of the recommendations in this report.

DECISION HISTORY

This report addresses a new initiative.

COMMENTS

An encroachment application was received on March 16, 2025, from the owners of 86 Kilbarry Road requesting permission to construct an aluminum metal fence which includes three stone pillars, an automated sliding driveway gate, an electrical pedestrian gate, and associated electrical conduits, and to maintain four steel automated retractable bollards and associated electrical conduits within the public right-of-way on Kilbarry Road of the subject premises. The applicant was notified that the aluminum metal fence and steel bollards are not eligible for an encroachment agreement, as the depth of the bollards exceed what is permitted in Municipal Code Chapter 743, Streets and Sidewalks, The Use Of ("Chapter 743") and cannot provide the required setback from the sidewalk, and the height of the fence exceeds what is permitted in Chapter 743. An appeal was subsequently received from the property owner.

Transportation Services has reviewed the application, and the property located at 86 Kilbarry Road. The proposed encroachment contravenes Chapter 743 as follows:

- The proposed aluminum metal fence which includes three stone pillars, an automated sliding driveway gate, and an electrical pedestrian gate will be built to a maximum height of 2.54 metres, which contravenes Chapter 743 article 743-34A.(2)(a) "A fence located within a street can be built to a maximum height of 1.20 metres for that portion of the fence fronting the property, and 1.80 metres for any fence located in the flankage of the property, provided that to ensure unobstructed driver and pedestrian sight lines"
- The proposed aluminum metal fence which includes three stone pillars, an automated sliding driveway gate, and an electrical pedestrian gate will be built to a maximum height of 2.54 metres, which contravenes Chapter 743 article 743-34A.(2)(a)[2] requirement that "No solid screen fence, privacy fence, railing, bollard, arbour, pergola, ornamental or retaining wall located within three metres of a driveway that is adjacent a sidewalk, or the travelled surface of any road without curbs, shall exceed a height of one metre, measured from the grade of the adjoining driveway".
- The installed four steel automated retractable bollards are installed at a setback of 0.25 metres from the back of the sidewalk, which contravenes Chapter 743 article 743-31E.(2) "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 installed four steel automated retractable bollards are installed at a depth of 1.40 metres, which contravenes Chapter 743 article 743-31E.(2)(b) "The footings for the fence, railing, bollard, arbour, pergola, ornamental or retaining wall that are located within the street shall not exceed a depth of 1.20 metres measured from the surface of the adjoining boulevard"

Transportation Services staff have reviewed the application and determined that the proposed fence causes a sightline concern at the property's driveway access and only provides a 1.0 metre setback instead of Chapter 743's 3.0 metre requirement. The proposed fence dimensions and requirements are outside what is considered normal. As such, the sightline created cannot be mitigated without reducing the height, which would compromise the intended security function the applicant is seeking. As proposed, the fence would obstruct sightlines for pedestrians using the sidewalk and for vehicles exiting the property and vehicles traveling along Kilbarry Road.

As a result, Transportation Services does not recommend Toronto and East York Community Council authorize the encroachment appeal application and direct the encroachment be removed and/or modified to comply with Toronto Municipal Code Chapter 743.

Alternate Recommendations

If, despite the findings above, Toronto and East York Community Council decides to authorize the General Manager, Transportation Services to enter into an encroachment agreement with the property owner of 86 Kilbarry Road permitting aluminum metal fence (which includes three stone pillars, an automated sliding driveway gate, an electrical pedestrian gate, and associated electrical conduits) and four steel automated retractable bollards and associated electrical conduits, it may approve the following:

1. Toronto and East York Community Council authorize the General Manager of Transportation Services to enter into an encroachment agreement with property owner of 86 Kilbarry Road, to permit the aluminum metal fence which includes three stone pillars, an automated sliding driveway gate, an electrical pedestrian gate, and associated electrical conduits, and four steel automated retractable bollards and associated electrical conduits:
 - a. The property owner will indemnify the City of Toronto 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 will maintain the subject fence and bollards 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 will 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. Remove the subject fence and bollards upon receiving written notice to do so;
- 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;
- f. The property owner will ensure all electrical wirings and connections to the subject fence and bollards are provided from the building located at 86 Kilbarry Road and all work to be in accordance with Electrical Safety Authority requirements;
- g. Maintain soft landscaping at a height not exceeding 1.2 metres;
- h. No spikes or pointed tops are permitted on the fence, gate or pillars; and
- i. The property owner will ensure the bollards will always either be fully extended or full retracted and will not interfere with City of Toronto road maintenance operations.

As required by Section 743-48 of the Toronto Municipal Code, Transportation Services has responded to the appeal by preparing this report for Toronto and East York Community Council consideration and to provide the applicant with an opportunity to be heard.

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

A site plan and detail drawing of the proposed encroachments are shown in Attachments 1, 2, 3 and 4, and digital photos of the existing site conditions are included Attachment 5.

CONTACT

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SIGNATURE

Antonia Markos
Director, Permits and Enforcement, Transportation Services

ATTACHMENTS

Attachment 1: Site Plan of Proposed Encroachment – 86 Kilbarry Road

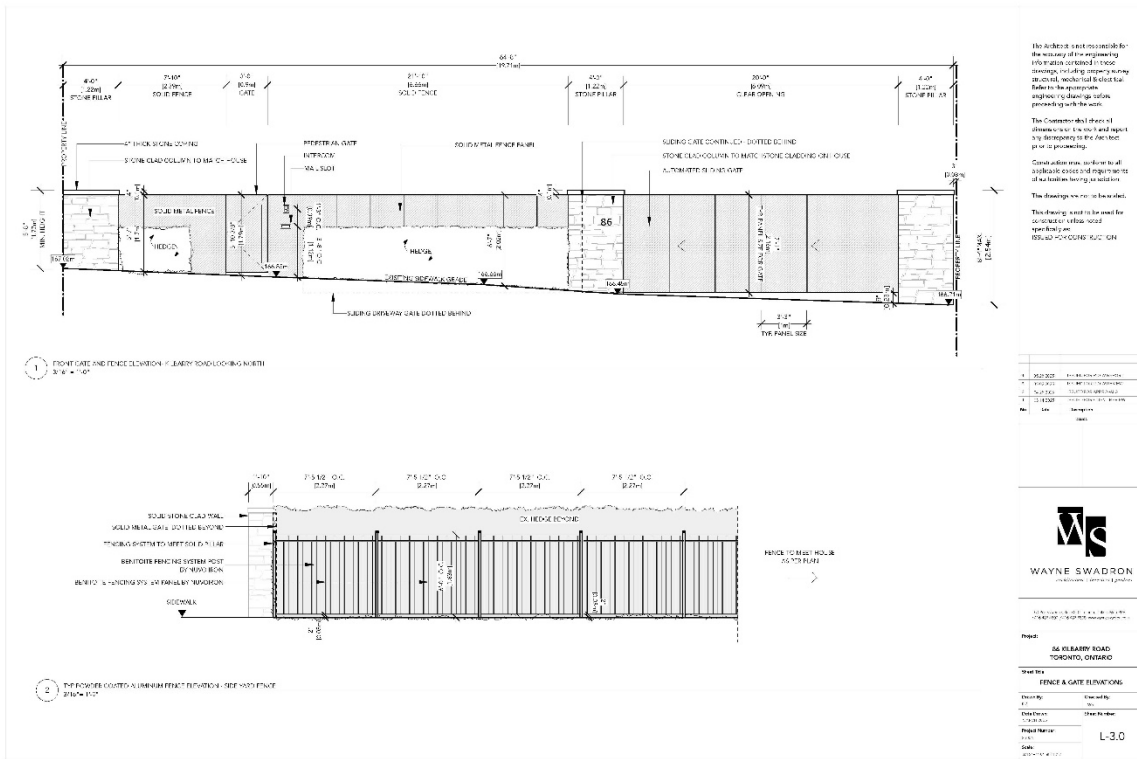
Attachment 2: Elevation Details of Proposed Encroachment – 86 Kilbarry Rd

Attachment 3: Landscape Details of Proposed Encroachment – 86 Kilbarry Road

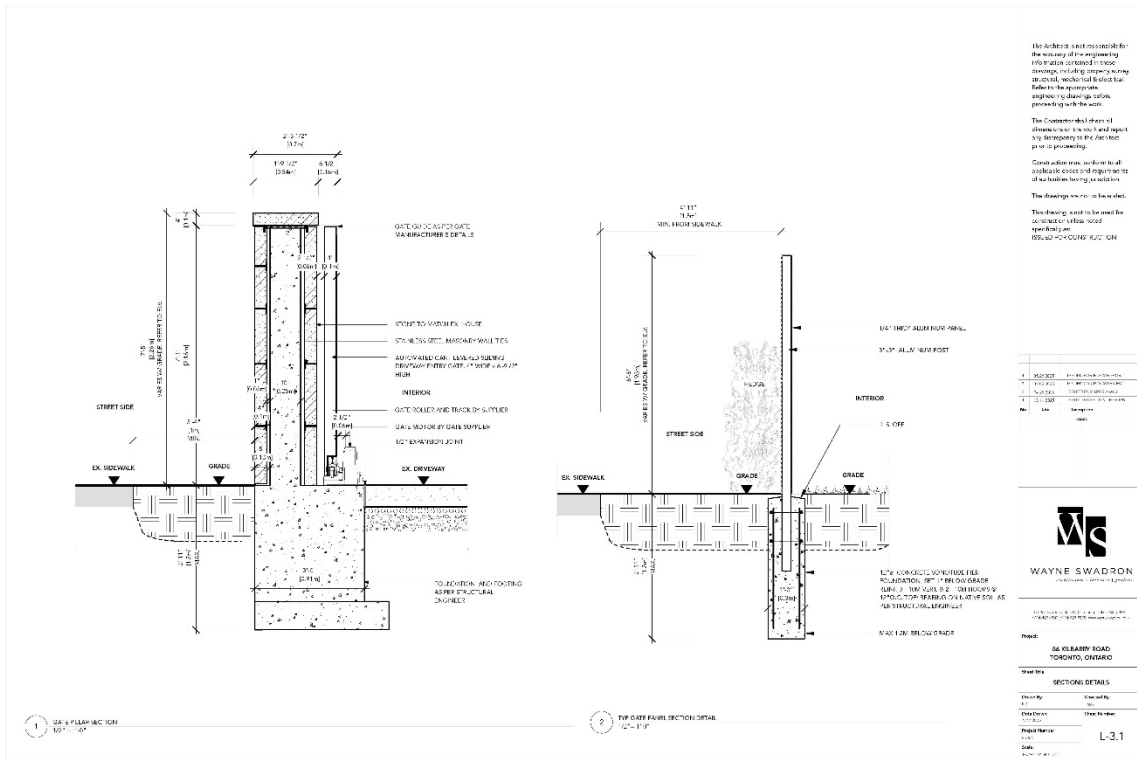
Attachment 4: Landscape Details of Existing Encroachment – 86 Kilbarry Road

Attachment 5: Photos of Existing Conditions and Encroachment – 86 Kilbarry Road

Attachment 2: Elevation Details of Proposed Encroachment – 86 Kilbarry Rd



Attachment 3: Landscape Details of Proposed Encroachment – 86 Kilbarry Road



Attachment 5: Photos of Existing Conditions and Encroachment – 86 Kilbarry Road – June 5, 2025

