

## **87 Delemere Avenue - Encroachment Appeal – Privacy Fence**

**Date:** March 13, 2026

**To:** Etobicoke York Community Council

**From:** Director, Street Permits, Transportation Services

**Wards:** Ward 5, York South-Weston

### **SUMMARY**

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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 Etobicoke York Community Council to consider an appeal from the property owner of 87 Delemere Avenue regarding their encroachment application. The encroachment consists of an existing wooden privacy fence that does not comply with City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, Use Of. The fence measures approximately 2.0 metres in height along the flankage and 2.5 metres at the rear.

The property owner is seeking authorization from the Etobicoke York Community Council to allow the continued maintenance of the wooden privacy fence within the public right-of-way at 87 Delemere Avenue. Transportation Services does not recommend that authority be granted.

### **RECOMMENDATIONS**

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The Director, Street Permits, Transportation Services recommends that:

1. Etobicoke York Community Council not authorize the City to enter into an encroachment agreement with the owners of 87 Delemere Avenue permitting the wooden privacy fence that ranges from approximately 2.0 to 2.5 metres in height.
2. Etobicoke York Community Council require the owner of 87 Delemere Avenue to remove the encroachment to the satisfaction of the General Manager of Transportation Services.

## **FINANCIAL IMPACT**

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

## **DECISION HISTORY**

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This report addresses a new initiative.

## **COMMENTS**

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An encroachment application was received on February 10, 2026, from the owners of 87 Delemere Avenue requesting permission to maintain an existing wooden privacy fence within the public right-of-way along the Scarlett Road flankage and the rear of the property. The fence measures 2.0 metres in height along the flankage and 2.5 metres at the rear.

The applicant was advised that the wooden privacy fence is not eligible for an encroachment agreement as it contravenes City of Toronto Municipal Code Chapter 743, Streets and Sidewalks, The Use Of ("Chapter 743"). Specifically, the fence exceeds the maximum permitted height and does not provide the required 3.0 metre setback from the driveway at 99 Scarlett Road. An appeal was subsequently submitted by the property owners.

Transportation Services has reviewed the encroachment application for the property at 87 Delemere Avenue, as well as the neighbouring property at 99 Scarlett Road, whose driveway is adjacent to the existing wooden privacy fence. The proposed encroachment does not comply with the provisions of Chapter 743 for the following reasons:

- The wooden privacy fence ranges from approximately 2.0 to 2.5 metres in height, 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 wooden privacy fence ranges from approximately 2.0 to 2.5 metres in height, which contravenes Chapter 743 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 existing wooden privacy fence exceeds the permitted height of 1.0 metre and is setback 0.50 metres from the sidewalk, rather than the required 3.0 metre setback,

immediately adjacent to the driveway of 99 Scarlett Road. This condition contravenes City of Toronto Municipal Code Chapter 743-34A.(2)(a)[2], which states 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."

Transportation Services staff have reviewed the application and determined that the proposed fence causes a sightline concern at the driveway of the neighbouring property at 99 Scarlett Road and provides only a 0.92 metre setback, rather than the 3.0 metre setback required under Chapter 743. In addition, the fence's dimensions exceed what is considered standard for structures within the public right-of-way.

The sightline issue can be mitigated by providing a 3.0 metre x 3.0 metre vision splay (i.e., at a 45-degree angle) at the southwest corner of 87 Delemere Avenue. In its current configuration, the fence obstructs visibility for pedestrians on the sidewalk, vehicles exiting the driveway at 99 Scarlett Road, and vehicles traveling southbound on Scarlett Road.

Accordingly, Transportation Services does not recommend that Etobicoke York Community Council authorize the encroachment appeal and instead recommends that the fence be removed or modified to comply with the requirements of Toronto Municipal Code Chapter 743.

### **Alternate Recommendations**

If, despite the findings above, Etobicoke York Community Council decides to authorize the General Manager, Transportation Services to enter into an encroachment agreement with the property owner of 87 Delemere Avenue permitting the wooden privacy fence that ranges from approximately 2.0 to 2.5 metres in height, it may adopt the following:

1. Etobicoke York Community Council authorize the General Manager of Transportation Services to enter into an encroachment agreement with property owner of 87 Delemere Avenue, to permit the maintenance of the existing wooden privacy fence that ranges from approximately 2.0 to 2.5 metres in height, subject, but not limited to the following conditions:
  - 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 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. The property owner will remove the subject fence upon receiving written notice from Transportation Services 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 alter the wooden privacy fence to provide a 3.0 metre x 3.0 metre vision splay (i.e., at a 45-degree angle) at the southwest corner of their property; and
- g. No spikes or pointed tops are permitted on the fence, gate or pillars.

As required by Section 743-48 of the Toronto Municipal Code, Transportation Services has responded to the appeal by preparing this report for Etobicoke 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.

Sketches of the existing encroachment are shown in Attachments 1 to 4.

## **CONTACT**

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## **SIGNATURE**

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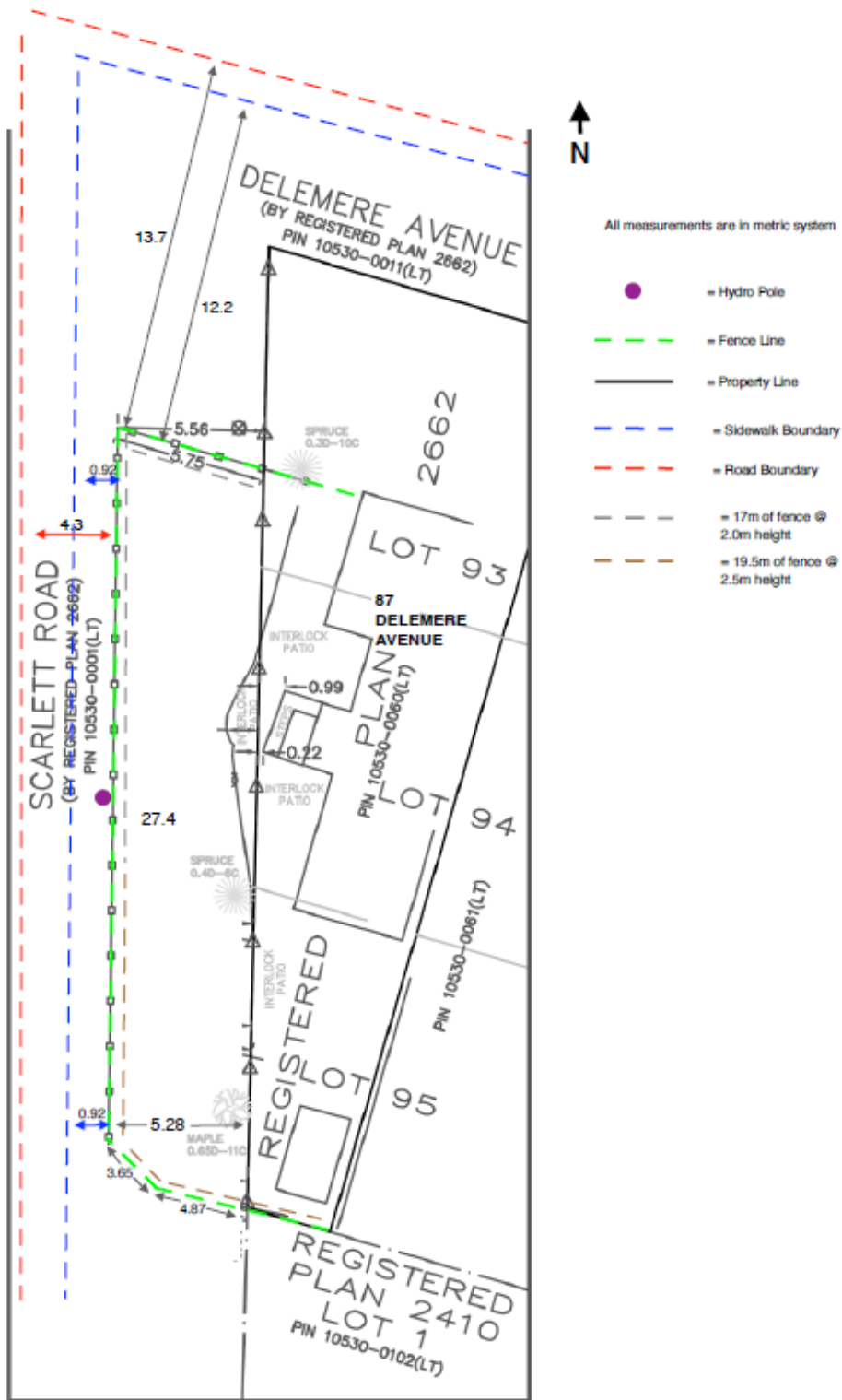
Nazzareno A. Capano, P.Eng.  
A/Director, Street Permits, Transportation Services

## **ATTACHMENTS**

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Attachment 1: Plan View Sketch of Existing Encroachment – 87 Delemere Avenue  
Attachment 1: Sketch of Existing Condition – Looking South at 87 Delemere Avenue  
Attachment 3: Sketch of Existing Condition – West Elevation of 87 Delemere Avenue  
Attachment 4: Sketch of Existing Condition – Looking North at 87 Delemere Avenue  
along Scarlett Road

Attachment 1: Plan View Sketch of Existing Encroachment – 87 Delemere Avenue



Attachment 2: Sketch of Existing Condition – Looking South at 87 Delemere Avenue



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Scarlett Road

Delemere Avenue

Attachment 3: Sketch of Existing Condition – West Elevation of 87 Delemere Avenue.  
Looking South along Scarlett Road



Attachment 4: Sketch of Existing Condition – Looking North at 87 Delemere Avenue along Scarlett Road

