



Report to: Development Services Committee

Meeting Date: November 9, 2020

SUBJECT:	Appeal of Heritage Permit Application for a Fence 3 Victoria Lane, Unionville, File: HE 20 125034 (Ward 3)
PREPARED BY:	Regan Hutcheson, Manager, Heritage Planning, ext. 2080
REVIEWED BY:	Ron Blake, Senior Development Manager, ext. 2600

RECOMMENDATION:

- 1) That the Report titled “Appeal of a Heritage Permit Application for a Fence, 3 Victoria Lane, Unionville, File: HE 20 125034 (Ward 3)” dated November 9, 2020 be received;
- 2) That the Heritage Markham Committee resolution of September 9, 2020 recommending denial of the Heritage Permit for the unauthorized chain link fence from a heritage perspective, be received as information;
- 3) That the Heritage Permit application HE 20 125034 in support of a chain link fence at 3 Victoria Lane be approved subject to the submission of the Heritage Permit application fee for unauthorized work;
- 4) That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to seek direction as to whether a Heritage Permit application in support of a chain link fence installed by the owners of 3 Victoria Avenue without the City’s approval should be approved or denied.

BACKGROUND:

A heritage permit application has been submitted for a chain link rear yard fence

A Heritage Permit application has been submitted for the installation of a rear yard fence by the owner of 3 Victoria Lane, which is located in the residential portion of the Unionville Heritage Conservation District (See Location Map Figure 1). The fence is located between the subject property (a modern infill dwelling) and 31 Victoria Avenue (a historic dwelling c. 1885) as well as along the south side of the Victoria Avenue pedestrian pathway leading to the adjacent valley open space.

As the properties are located in the Unionville Heritage Conservation District, they are designated under Part V of the Ontario Heritage Act. Therefore, alterations to the exterior of the properties, including the installation of fences, are subject to review and approval by the Municipality to ensure that the proposed work complies with the City’s by-laws and heritage policies.

Heritage permits are required for fencing in heritage conservation districts

Fences in Markham are regulated by the Fence By-law (277-97, as amended) which is enforced by the By-law Enforcement Department. The installation of a fence does not require a permit (except in heritage conservation districts), but does require the owner to comply with the provisions of the Fence By-law. The Fence By-law states that “*any division fence constructed or repaired within an area designated as a heritage conservation district pursuant to part V of the Ontario Heritage Act is subject to all requirements for obtaining a permit pursuant to such legislation*” (Section 13.1).

In a heritage conservation district, a Heritage Permit is required for the installation of a fence. Each Heritage District Plan provides guidance on appropriate fence designs. New fences are typically approved by Heritage Planning Staff if in conformity with the policies and guidelines of the Heritage District Plan.

The owner of 3 Victoria Lane erected a rear yard chain link fence without obtaining approval

In August of 2020, a complaint was received by staff regarding the installation of a new 5 foot high black chain link fence along the property boundary at 3 Victoria Lane, including how it negatively impacted the historic character of the Unionville Heritage Conservation District (See Figure 2 - Aerial View). The fence was installed without the approval of the City or the support of the neighboring property owner (31 Victoria Ave). The applicant had been advised by the local Ward Councillor to obtain a heritage permit for the fence before commencing any work. (See Figure 3 - Photographs of the chain link fence).

In response to By-law Enforcement, the owners of the property submitted a Heritage Permit seeking approval for the fence.

By-law Enforcement staff advised the owners of 3 Victoria Lane to either remove the fence, or seek approval by submitting a Heritage Permit to the City. A Heritage Permit application was submitted on August 18, 2020 seeking retroactive approval for the chain link fence.

The Heritage District Plan provides guidance on appropriate fences

The Unionville Heritage Conservation District Plan contains guidelines on the types of fences which are appropriate for front, as well as for rear yards (see Appendix ‘A’). The District Plan identifies chain link fences as being inappropriate for front yards due to their modern appearance and lack of compatibility with the heritage district context, but the Plan is silent on whether a chain link fence is appropriate for rear yards.

For rear yard situations, the Plan indicates that wooden fences are preferred with a straight board fence or a board-on-board fence identified as appropriate styles. In cases where rear yard fences are adjacent to a street and are visible, the Plan recommended that “special attention should be paid to ensure that the fencing treatment is compatible with the heritage context of the district”.

In Markham’s two newest heritage district plans - Thornhill Heritage Conservation District Plan (2007) and Buttonville Heritage Conservation District Plan (2011) - the

guidelines for backyard fencing indicate that wooden fences are preferred, but “*if a chain link fence is used, it should be black or dark green in colour*”. These Plans appear to assume the use of chain link would be in a back yard situation where visibility from the public realm would be minimal. The Markham Village Heritage District Plan (1989) provides no guidance on rear yard fencing, but does indicate “*fencing is an integral part of establishing the heritage character of an area and an important visual element in the streetscape. Modern chain link fences do not, for example, help create a heritage character*”.

The Heritage Permit was referred to Heritage Markham for comment

Most heritage permit applications are addressed by Heritage Planning staff if the work complies with approved policies or practice. As the policies and guidelines for fences contained in the Unionville Heritage District Plan do not address the appropriateness of chain link fences in side and rear yards, this matter was sent to Heritage Markham Committee on September 9, 2020 for its advice. The Committee reviewed the application and recommended denial because the fence was deemed to be visible from the public realm and therefore inappropriate for maintaining the heritage character of the District. (See Appendix ‘B’ for Heritage Markham Recommendation)

In making this recommendation, the members of the Committee were also aware that the owner of 31 Victoria Avenue had submitted an application to install a heritage compatible wooden painted picket fence on the shared property boundary between the two properties. (See Figure 4 – Location and Image of wooden picket fence by owner of 31 Victoria Avenue)

The applicant has chosen to seek approval of the chain link fence

In response to Heritage Markham’s recommendation that the Heritage Permit be denied, the applicant has elected to seek approval for the chain link fence from Council.

OPTIONS/ DISCUSSION:

There is limited policy direction as to the utilization of chain link for rear yards in Unionville

As noted, the Unionville Heritage Conservation District Plan is silent on the use of chain link fencing in the rear yard, although the Plan notes that wooden fences are preferred. Both of the City’s newer heritage conservation district plans (Thornhill and Buttonville) do allow black or dark green chain link in the rear yard. These particular colours significantly reduce the visibility of the fence, especially when installed in conjunction with vegetation.

Black chain link fencing has also been used as a barrier to the train tracks in the heart of the District near the historic Unionville train station and Stiver Mill (See Figure 5).

The chain link fence is visible from the public pedestrian realm

Although the black chain link fence is not readily visible from Victoria Avenue or Victoria Lane, it is visible from the public realm of the pedestrian pathway that connects the end of Victoria Avenue to the trails of the adjacent Denby Valley and Bruce’s Creek.

The chain link is also visible in the rear/side yard of the adjacent neighbour's property (31 Victoria Ave) which is a significant cultural heritage resource.

Is the chain link fencing considered detrimental to the heritage character of the Unionville Heritage Conservation District?

Staff always prefer the use of wooden fences in all of our heritage conservation districts as it is a natural material and generally complementary to the district character.

However, upon review of all the information related to this specific situation, the use of chain link fencing is considered acceptable for the following reasons:

- Chain link is not identified as the preferred type of rear yard fencing in this area, but it is not prohibited and is permitted in other heritage conservation districts in the City. It has also been installed along parts of the railway ROW in the District for public safety;
- Dark colour chain link fencing often visually disappears especially if vegetation is planted adjacent to it.
- The use of chain link fencing appears visually less intrusive adjacent to the vegetation found along the City's pedestrian pathway than would a solid wood board fence. Chain link will allow existing vegetation to grow through the openings.
- The chain link fencing cannot be seen from Victoria Lane or Victoria Avenue.
- Although a chain link fence may not be the type of fence the owner of the historic house at 31 Victoria Avenue prefers, this fence is not negatively impacting any heritage attributes and the owner can apply for other types of fencing to be installed along the mutual property boundary.

Options for consideration

The Development Services Committee could recommend the complete removal of the unauthorized chain link fence or approve it in its entirety. Alternatively, the Committee could also recommend that the portions of the fence most visible from the public realm, such as the portion that is adjacent to the pedestrian pathway be removed due to its higher visibility while permitting the portions of the fence on the mutual property boundary to remain.

If Committee supports the staff recommendation to accept the chain link fence in its entirety, a condition of the approval should be the submission of the \$581 fee for the processing of a Heritage Permit for unauthorized work after the work is completed.

FINANCIAL CONSIDERATIONS

Not applicable.

HUMAN RESOURCES CONSIDERATIONS

If the Heritage Permit is denied by Council, By-law Enforcement would be responsible for ensuring the removal of the fence.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Not applicable.

BUSINESS UNITS CONSULTED AND AFFECTED:

Reviewed by the Heritage Markham Committee.

RECOMMENDED BY:

Biju Karumanchery, M.C.I.P., R.P.P.
Director of Planning & Urban Design

Arvin Prasad, M.C.I.P., R.P.P.
Commissioner of Development Services

ATTACHMENTS:

Figure 1	Location map
Figure 2	Location of chain link fence
Figure 3	Photographs of chain link fence
Figure 4	Location and Design of wooden picket fence proposed by owner of 31 Victoria Ave.
Figure 5	Photograph of existing black chain link fence around railway tracks
Appendix 'A'	Fence guidelines from Unionville Heritage Conservation District Plan
Appendix 'B'	Heritage Markham Extract of September 9, 2020

Figure 1- Location Map



Figure 2- Location of chain link fence



Figure 3 –Photographs of the chain link fence



Looking south showing the east boundary between 31 Victoria Ave and 3 Victoria Lane



Looking south across the property at 31 Victoria Ave to the fence in the distance



Close up view of the fence near the pedestrian pathway



Figure 4- Location and Image of wooden picket fence proposed by owner of 31 Victoria Ave.



Figure 5- Photograph of existing chain link fence around railway tracks



Appendix A- Fence Guidelines from Unionville Heritage Conservation District Plan

9.7 Landscape Features

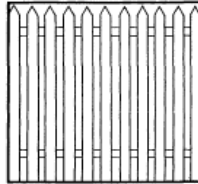
9.7.2.1 front yard fencing - appropriate

Front yard fences are traditional landscape features found in the District. Picket fences were used frequently in historical Unionville and while there are different varieties, only a few are common to the area. Low, cast iron fencing, was also found in Unionville, although considerably rarer.

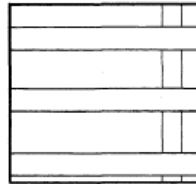
In all cases, it is encouraged that fencing be sensitive to the heritage character of the District.

Guidelines

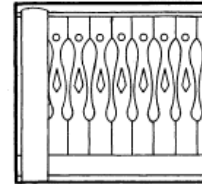
1. Traditional wood picket fences (3 ft. high) are encouraged as a front yard landscaping treatment in the District.
2. Low, cast iron fences (less than 2 ft.) are appropriate for landscape bed border treatment.
3. Where historic fences or hedges exist, they should be retained.



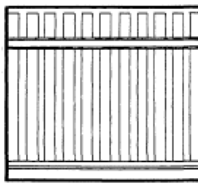
Appropriate: pointed picket



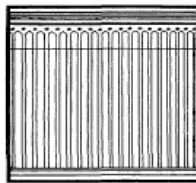
Appropriate: open horizontal



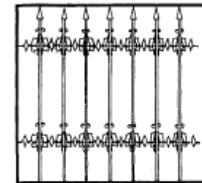
Appropriate: decorative picket, turn of the century



Appropriate: plain picket



Appropriate: sturdy decorative

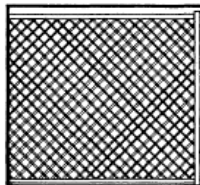


Appropriate: low, cast iron

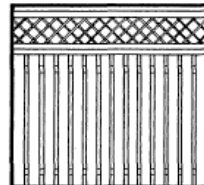
9.7 Landscape Features

9.7.2.2 front yard fencing - inappropriate

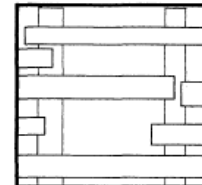
While traditional wood picket fencing is encouraged in the District, the examples of modern fencing at right are not compatible with the Heritage District context and should be avoided.



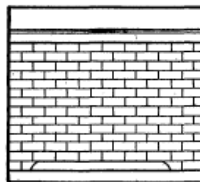
Inappropriate: chain link



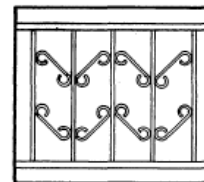
Inappropriate: pressure treated wood



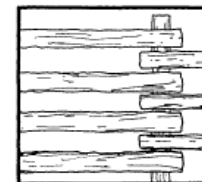
Inappropriate: abstract fence



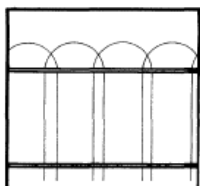
Inappropriate: brick or stone walls



Inappropriate: wrought iron



Inappropriate: cedar rail



Appendix A- Fence Guidelines from Unionville Heritage Conservation District Plan

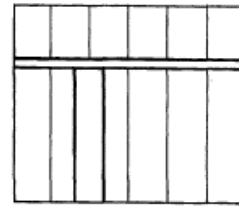
9.7 Landscape Features

9.7.3 backyard fences

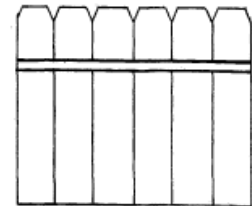
As a result of the historic lot plan of Unionville, it is often the case that rear yard fencing runs along the street, and is visible. In these cases in particular, special attention should be paid to ensuring that the fencing treatment is compatible with the Heritage District context. The general rule that simplicity is preferred should apply with regard to rear yard fencing in the District.

Guidelines

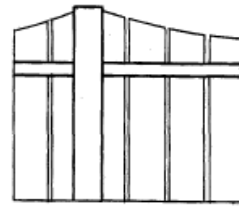
1. Wooden fences are preferred in the District. A straight board fence or a board on board fence are appropriate styles.
2. Where historic fences or hedges exist, they should be retained.



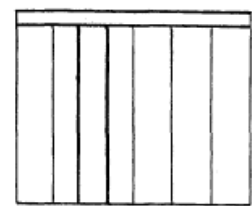
Clean straight fence top



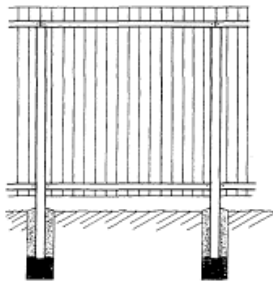
Dog-eared fence top



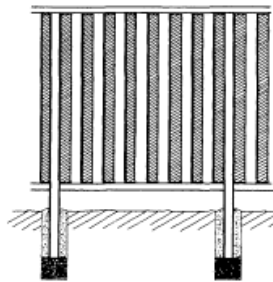
Beveled fence top (shallow curve only)



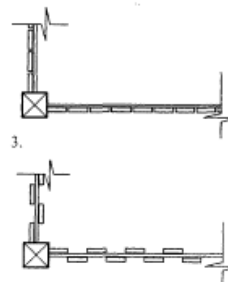
Fence top flush with stringer



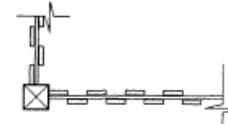
1.



2.



3.



4.

1. **Far left:** Straight board fence with regular placement of boards, showing ground connection.

2. **Second from left:** Board-on-board fence showing alternating placement of boards and ground connection.

3. **Top:** plan of straight board fence, corresponding to fence section at far left.

4. **Bottom:** plan of board on board fence corresponding to fence section second from left.

Appendix B- Heritage Markham Extract of September 9, 2020**6. PART FOUR - REGULAR****6.1 HERITAGE PERMIT APPLICATION****3 VICTORIA LANE AND 31 VICTORIA AVENUE
UNAUTHORIZED CHAIN LINK FENCE AND PROPOSED WOODEN
PICKET FENCE (16.11)
FILE NUMBERS: HE 20 125034 & HE 20 125580**

Councillor Reid McAlpine declared a conflict on this item. (He is a neighbour and friend of the applicants.)

Regan Hutcheson, Manager, Heritage Planning, addressed the Committee and summarized the details outlined in the staff memorandum.

Shanta Sundarason, owner of 31 Victoria Avenue, addressed the Committee and expressed concerns with the unauthorized chain link fence installed at 3 Victoria Lane, including the incompatibility of the fence with the character of the Unionville Heritage Conservation District as well as its high visibility from the neighbouring property and public realm. Ms. Sundarason requested that the Committee express its objection to the heritage permit application submitted by the applicant and recommend the removal of the fence.

There was discussion regarding the retroactive timing of the heritage permit application submitted for the chain link fence at 3 Victoria Lane. Members of the Committee expressed concerns regarding the applicant's installation of the fence prior to seeking approval from the City and without consultation with the neighbouring property owner. Concerns were also expressed regarding the visibility of the chain link fence from the pedestrian pathway and right-of-way as well as the mature vegetation removed along the pathway to install the fence.

Recommendation:

1. That the heritage permit application seeking permission to install a new wooden picket fence along the mutual property line of 31 Victoria Ave. and 3

Victoria Lane be approved from a heritage perspective and subject to complying with the City's Fence By-law; and,

2. That the heritage permit seeking approval for the chain link fence installed without approval be denied from a heritage perspective and that the existing chain link fence be removed.

Carried