

Memorandum to Council

Legal and Enforcement Services

Legal Services Division



To: Mayor and Members of Council

CC: Roger Saunders - Commissioner, Planning and Development Services
Peter Angelo – Director, Engineering

**Acknowledged by M. Gaskell,
Chief Administrative Officer**

From: Francesco Santaguida – Commissioner, Legal and Enforcement Services/Town Solicitor

Date: September 3, 2024

File #: N/A

Subject: Request for Exception from Fee By-law #7220-17 – Driveway encroachment for 89 Garden Street

Background

Mr. Paul Mason, owner of the home located at 89 Garden Street, made a request to the Town to encroach into adjacent Town-owned land to expand his driveway to accommodate the parking of an additional vehicle at his property. Mr. Mason's request is included as **Attachment 1** to this Memorandum. Mr. Mason would be losing a portion of the driveway apron due to the construction and capital improvements on Garden Street. A map of the property and the proposed encroachment is included as **Attachment 2** to this memorandum. The neighbouring Town-owned lands are a part of Lynde Creek and zoned "Open Space" (the "Town Lands").

Staff have reviewed Mr. Mason's request for an encroachment, and do not oppose his request. In order to facilitate the construction of the addition to his driveway, 89 Garden Street requires three (3) minor variances, two for his property and one for the Town Lands. An encroachment agreement with the Town would also be required.

Mr. Mason has asked that the Town's fees pursuant to Fee By-law #7220-17 be waived to facilitate the extension of his driveway and encroachment, as he has indicated that it would not be needed but for the changes the Town is making to Garden Street.

Discussion

Mr. Mason would be liable for \$4,164 in Fees for his request

In order to facilitate the extension of his driveway into the Town Lands, Mr. Mason would be liable for the following fees:

Fee	Quantity	Cost (no HST applicable)
Minor Variances for 89 Garden Street	2 @ \$1,000.00 each	\$2,000.00
Minor Variances for Town Lands	1 @ \$1,000.00	\$1,000.00
Encroachment Application	1 @ \$385.00	\$385.00
Encroachment Agreement	1 @ 564.00	\$564.00
Encroachment Annual Fee*	1 @ \$215.00/year	\$215.00
TOTAL		\$4,164.00

* The annual fee is based on an encroachment area of greater than 10 square meters (100 square feet), and would be payable every year the encroachment is in place.

Staff support a reduction in the Encroachment Annual Fee, and do not support the exception of any other fees for 89 Garden Street

Both the fees for the minor variances and encroachments have been paid by multiple residents and businesses throughout the Town, and staff do not support an exception for those fees.

The fees are meant to recover the Town's costs in evaluating and preparing the applications and agreements, and a waiver or exception from the fees would mean those costs are recovered through the tax roll. Further, it would not be fair to the residents and businesses who willingly pay these fees to achieve their goals. While the need for additional parking and the encroachment may be a result of Town works, the lost parking area is within the boulevard (windrow) in front of 89 Garden Street, which is also owned by the Town and technically not permitted for vehicle parking. It is important to note that the property has a double car garage and a double car driveway, which exceeds the Town's minimum parking requirements outlined in the Zoning By-law.

A review of the Encroachment process is currently underway. The author anticipates that the review will result in annual residential encroachment fees being reduced. On a one-time basis, the author would be willing to waive the annual encroachment fee recognizing that Mr. Mason previously had the benefit of using the boulevard in front of his home for vehicle parking.

Although not related to the request for the encroachment, Engineering Staff have met with the Garden Street residents, including Mr. Mason, to receive input related to on-street parking and parking options for the residents fronting onto Garden Street. A report from the Engineering Division of Planning and Development Services is forthcoming in the Fall.

Next Steps

Any reduction or exception for minor variances under Fee By-law #7220-17 requires the authorization of Council. The author has the authority to waive fees related to encroachments in exceptional circumstances. In the opinion of the author, this is not an exceptional circumstance.

In order for the required fees to be reduced and/or waived, a Member of Council must contact the Office of the Town Clerk on or before **Friday, September 20, 2024** to request that this matter be considered by Council. Should no request be received by that date, Town staff will consider the request refused.

Should you have any questions, please contact the author.

From: [Narraway, Kevin](#)
To: [Narraway, Kevin](#)
Subject: FW: Encroachment agreement - 89 Garden St.
Date: August 23, 2024 6:54:56 PM

From: Paul Mason [REDACTED]
Sent: Sunday, June 23, 2024 10:07 PM
To: Internet, Clerk <clerk@whitby.ca>
Cc: Narraway, Kevin <narrawayk@whitby.ca>
Subject: Encroachment agreement - 89 Garden St.

[EXTERNAL EMAIL]

Good afternoon,

Over 2 years ago I inquired about an encroachment agreement for a small section of land to the north of my property. The reason I inquired was due to the loss of a section of our driveway apron due to modifications to Garden Street.

At the time I was led to believe my only cost would be if I were to pave that small piece of land.

I held off proceeding when I received a letter from the Town informing me it would be \$2000 just to apply, that it would likely be denied, and if approved would be another \$1,000 plus \$110 to \$220 per year.

I am now told the Town no longer has an objection to the minor loss of open green space. I am writing this email to ask that all fees in this project be waived.

To reiterate, the only reason I'm asking for an encroachment agreement is due to the shortening of our driveway apron. I found out about it accidentally when inquiring about the signal light being installed just north of our property. The town not notifying us of this has been frustrating. At no point did they ever send an official notice.

Furthermore, now that the project is complete, it is clear to me that modifications to the road widening project could have been made to reduce or even eliminate the loss of the apron by widening more on the west side. The town said they didn't want to incur any cost in redesign. I don't believe we should incur any cost either (except for eventually paving the space).

The shortened apron has decreased maneuverability and safety as we move vehicles around.

We can no longer have vehicles pull in after ours and not completely block the sidewalk. We also used to be able to park a vehicle perpendicularly across the apron when necessary. Now it's impossible with a large vehicle and at best unsafe with a small vehicle.

Thanks for your help with this. I look forward to hearing back from the Town Council.

Regards,
Paul



89 Garden Street
Encroachment Area