

Town of Whitby

Staff Report

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Report Title: Fence exemption request for 400 St. John Street

Report to: Committee of the Whole

Date of meeting: April 13, 2026

Report Number: LS 04-26

Department(s) Responsible:

Legal and Enforcement Services

Submitted by:

Francesco Santaguida, Commissioner of
Legal and Enforcement Services/Town
Solicitor

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

For additional information, contact:

Andre Gratton, Sr. Manager of
Enforcement Services

1. Recommendation:

1. That Report LS 04-26 be received for information; and,
2. That Council provide direction to staff regarding the fence exemption request for 400 St. John Street by approving or denying the request and applying any conditions Council deems appropriate.

2. Highlights:

- The property in question 400 St. John Street, is in the Centre Ward and is zoned R2-DT under Zoning By-law # 2585. The property is also designated under Part V of Heritage Act - Werden's Plan Neighbourhood Heritage Conservation District (the "**Property**").
- A complaint was received regarding the fence construction, removal of the pool enclosure, and construction of a stone wall adjacent to King Street.
- The Property owners have obtained a heritage permit from the Town's Planning and Development Department.

- The fence construction in question also forms a Pool Enclosure (or PE) and as such would require all safety elements outlined in Section 6 of the Town of Whitby Fence By-law # 8228-25 (the “**Fence By-law**”).
- The proposed wrought iron/concrete fence design would violate the Fence By-law, as the by-law restricts a fence in a front yard to have a maximum height of 1 metre (3 feet, 3 inches).
- The proposed fence would form a pool enclosure on the Property, which would require a minimum 1.2 metre (4’ foot) fence.
- The Property owners have made an application for Council approval to construct a fence along the front- and side-yards of the Property, varying in height from 1.5 metres (5 feet) to 2.35 metres (7’7” feet) which borders St. John Street and King Street. These have been included in **Attachment 1**, pages 1-5.
- Staff circulated the application to neighbouring property owners and have not received any comments or concerns.
- Neither staff nor the Municipal Licensing and Standards Committee have delegated authority to approve the front yard portion of this request. Staff are bringing the side yard request to Council for approval to ensure that Council may consider the application received by the Town in its totality.
- Should Council approve the application for a fence height exemption, staff have included recommended conditions of approval as **Attachment 2**.

3. Background:

At the end of 2025, Enforcement Services received a complaint regarding work underway in the exterior yards of the Property related to the enclosure of an existing pool. Upon inspection, Enforcement Services noted the removal of the properties pool enclosure and the construction of a concrete fence. An investigation determined that the height of the newly constructed concrete fence exceeded the maximum fence height permitted by the Fence By-law. The Property has an existing pool for which a pool enclosure permit was issued.

Description of the Property

400 St John Street is located in the Werden’s Plan neighbourhood of Downtown Whitby, in Centre Ward. The Property is a corner lot located at the northwest corner of St. John Street and King Street and has frontage on both streets. The Property is zoned R2-DT in accordance with Zoning By-law #2585. The property is designated under Part V of Heritage Act - Werden's Plan Neighbourhood Heritage Conservation District. As such, all works occurring in the exterior yards of the property require a Heritage Permit.

The Fence Height Exemption Request

The Property owners submitted an application on March 17, 2026, requesting an exemption to Section 9.4 of the Fence By-law to permit a front-yard fence on the Property which exceeds the maximum 1 metre (3 feet, 3 inch). The front-yard fence

design along St. John Street varies in height from 1.5 metres (5 feet) with two (2) 0.6 x 0.6 metre (2 feet x 2 feet) stone columns measuring 2.1 metres (7'7" feet) tall. The columns frame a 1.8 metre (6 foot) gate.

The submitted design also includes a side-yard fence along King Street which varies in height from 1.8 metres (6 feet) wrought iron fence, a 2.0 metre (6 feet, 6 inches) stone wall, and two (2) stone columns at 2.1 metres (7 feet). The King Street frontage is considered an exterior side-yard and the maximum permitted fence height is 2.0 metres (6 feet 6 inches).

While an exemption for the side-yard portion of proposed fence could be reviewed by the Commissioner of Legal and Enforcement Services under the delegated authority of Section 18.1 of the Fence by-law, given the complexity of the request and varying factors, staff recommend the request be reviewed in its totality by Council.

Front yard fence Pool Enclosure considerations

The Property owner is requesting a 1.5 metre fence along the St. John Street (front yard) frontage to allow it to act as a pool enclosure fence for the property. The minimum height for a pool enclosure is 1.2 metres (4 feet), and it must be constructed in a manner that discourages it from being climbed. The previous pool enclosure was a 1.2 metre (4 foot) chain-link fence located around the pool and pool deck.

4. Discussion:

Comments from the Heritage Whitby Advisory Committee

As the Property is located in the Werden's Plan Neighbourhood Heritage Conservation District, the Property owners were required to obtain a Heritage Permit for the fence they seek to build. The Heritage Whitby Advisory Committee ("HWAC") considered the Property owner's request at its meeting on February 10, 2026, (See [Item 4.1 of the Meeting Minutes](#)).

HWAC had a lengthy discussion regarding the proposed concrete and stone fence, the materials in context with the historical nature of the property, using vegetation as a privacy screen rather than concrete or stone, and using landscaping to minimize the visual impact of the requested concrete and stone fence.

Ultimately, HWAC recommended allowing the Heritage Permit based on the following motion:

That the Heritage Whitby Advisory Committee recommends that the heritage permit application be granted for a perimeter fence at 400 St. John Street West subject to remedial actions consisting of:

1. Year round landscape screening on the street side of the stone fence;
2. Inserting wrought iron panels into the stone fence; and,
3. That the applicant continue to work with staff on the remediation.

HWAC does not have authority to permit the requested fence height under the Fence By-law. While a delegated decision maker, or Council, may consider the decision of HWAC, its decision to issue a permit is not binding on whether to grant a height exemption. The Planting Plan and Approval letter are included as pages 6-10 of Attachment 1.

Traffic Sightline considerations

After reviewing the proposed design and site plan, Transportation Staff recommend the following also be implemented as conditions of approval.

1. The proposed sight triangle at the intersection of St. John Street and King Street is acceptable. As shown, there should be no columns installed in the corners of the sight triangle at the corner of the property.
2. There should be no plantings placed between the fence and sidewalk to maintain visibility.
3. A clear line of sight is to be maintained through the fence on intersection approaches – 10m from end of curb radius at intersection on both approaches.

Circulation to Neighbouring Property Owners

In accordance with the Fence By-law, Enforcement Services staff circulated the notice of application to adjacent property owners directly affected by the application. No comments, concerns or objections were received by Town staff from the adjacent directly affected property owners.

Enforcement Services Review of Exemption Request

This application is a remedial application as construction of the fence was underway at the time the complaint was filed. Enforcement Services staff only consider fence material insofar as it could affect the climb-ability of a fence for a pool enclosure. In this instance, Enforcement Services is satisfied that the design and material of the fence would discourage climbing.

The Heritage Whitby Advisory Committee's conditions regarding the landscaping, as well as the proposal contained in Attachment 1, will require an encroachment agreement for the planting in the Town's right of way along King Street.

If approved, Town staff will ensure all elements of the fence meet the conditions that Council has established.

5. Financial Considerations:

The fee for "Fence Height Exemption Applications (More than 3 metres)", in the amount of \$2,500, has been received from the applicant.

6. Communication and Public Engagement:

Staff have circulated the request to neighbouring property owners for comment. No comments were received.

7. Input from Departments/Sources:

Staff have received comments from Transportation and Policy & Heritage Divisions of the Planning and Development Services Department.

8. Strategic Priorities:

N/A

9. Attachments:

Attachment 1 – Fence Exemption for 400 St. John Street West Application Materials

- Pg. 1:** 400 St. John St. Whitby-King St Fence Elevation (South)- March 18th
- Pg. 2:** 400 St. John St. Whitby-King St Fence Elevation North Gate by Garage - March 18th
- Pg. 3:** 400 St. John St. Whitby-Site Plan
- Pg. 4:** 400 St. John St. Whitby-St John St Fence Elevation - March 18th
- Pg. 5:** Description of the Reason for Request- 400 St. John Street
- Pg. 6-8:** 400 St. John St West_Planting Plan
- Pg. 9-10:** Approval Letter

Attachment 2 – Recommended Conditions should Council approve the Application