



## Town of Niagara-on-the-Lake

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**REPORT #:** OPS-24-046 **COMMITTEE DATE:** 2024-10-22  
**REPORT TO:** COTW-General **DUE IN COUNCIL:** 2024-10-29  
**SUBJECT:** Encroachment Agreement for 134 Victoria Street

### 1. RECOMMENDATION

It is respectfully recommended that:

- 1.1. Council approves the encroachment agreement for the property known as 134 Victoria Street to recognize an existing front porch and steps into the municipal right of way, and that the agreement be forwarded to the Owners for signature; and
- 1.2. Staff be directed to prepare the necessary By-law to be forwarded to Council for approval.

### 2. EXECUTIVE SUMMARY

- The existing front porch and steps at 134 Victoria Street are encroaching into the municipal right of way.
- This report is seeking Council approval to address the existing encroachment by entering into a permanent encroachment agreement with the property Owners to permit the continued use of the dwelling and to protect the Town's interests.
- Encroachment agreements permit regulated occupancy without requiring the removal or renovation of heritage buildings, irrigation systems and other structures while indemnifying the Town against liability and outlining clear expectations.
- All costs for the preparation and registration of the encroachment agreement will be borne by the Owner(s) of 134 Victoria Street.

### 3. PURPOSE

The purpose of this report is to request Council's approval to recognize existing encroachments through an agreement concerning a property located at 134 Victoria Street.

### 4. BACKGROUND

The subject lands are located at 134 Victoria Street, in the urban area of Old Town.

The need to enter into an encroachment agreement arose from a minor variance application (A11-24) for a property located at 134 Victoria Street and is necessary to govern an existing building that has historically occupied a portion of the public road allowance. This section of Victoria Street has a full width road allowance with an improved curb and gutter roadway and 1.25 metre sidewalk. No improvements other than resurfacing are anticipated in the foreseeable future and the encroachment does not interfere with Town operations.

As a condition of approval of the minor variance application, the Owner(s) are required to enter into an encroachment agreement with the Town with the following condition:

That the Owners regulate the encroachment of their front porch and steps onto the Victoria Street road allowance through an encroachment agreement with the Town to permit the continued use of the dwelling partially located on 30R-16285 shown as Part 1 (known as 134 Victoria Street) as **Appendix II** subject to the satisfaction of the Operations Department; or if a permanent encroachment agreement is currently in effect, that the agreement be amended to provide for a separate legal description and title as created by the proposed severance, subject to the satisfaction of the Operations Department.

## 5. DISCUSSION / ANALYSIS

Further research indicated that there has never been an agreement governing this encroachment.

An encroachment agreement protects the Town's interest by:

- Providing indemnification against harm should anything untoward occur on the portion of the road allowance being occupied by the structure;
- Providing a mechanism to recover the use of the occupied portion of the road allowance for Town purposes upon 90 days' notice to the Owner; and
- Asserting the Town's ownership of the occupied portion of the road allowance to prevent a claim of adverse possession.

It should be noted that this situation arises primarily where historic buildings were erected before the implementation of rigorous site control. A draft agreement for the subject property has been prepared and is attached as **Appendix I**.

## 6. STRATEGIC PLAN

The content of this report supports the following Strategic Plan initiatives:

### Pillar

3. Enrich Community Assets, Environment, & Infrastructure

### Priority

3.3 Infrastructure

### Action

Other

## 7. OPTIONS

- 7.1 **Option 1:** Regulate the encroachments through the attached draft agreement. **(Recommended).**
- 7.2 **Option 2:** Allow the encroachments to continue in an unregulated state. *(Not recommended)*

- 7.3 **Option 3:** Engage in a process to have the encroachments, including portions of a building, removed from the public road allowance. This process would be lengthy and expensive. *(Not recommended)*

## 8. FINANCIAL IMPLICATIONS

The Owner(s) of 134 Victoria Street will bear all costs associated with the preparation and registration of the encroachment agreement. No costs to the Town are anticipated.

## 9. ENVIRONMENTAL IMPLICATIONS

Not applicable. There is no environmental impact associated with this report.

## 10. COMMUNICATIONS

Upon Council passing a resolution, Staff will advise the property Owner(s) of Council's decision and execute and register the encroachment agreement attached hereto as a draft.

## 11. CONCLUSION

It is in the interests of both the Town and the Owner(s) that occupancy of any portion of the road allowance be subject to an encroachment agreement. Such agreements permit regulated occupancy without requiring the removal or renovation of heritage buildings, irrigation systems and other structures while indemnifying the Town against liability and outlining clear expectations should the Town require the use of the occupied portion of the road allowance for its own purposes.

Planning-related applications continue to provide an opportunity to identify and appropriately regulate historical encroachments which are challenging to address by other means.

## 12. PREVIOUS REPORTS

- N/A

## 13. APPENDICES

- **Appendix I** – Preliminary Draft Encroachment Agreement for 134 Victoria Street
- **Appendix II** – 30R-16285 134 Victoria Street

Respectfully submitted:

**Prepared by:**



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**Submitted by:**



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