

Town of Niagara-on-the-Lake

1593 Four Mile Creek Road
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Report: OPS-22-017

Committee Date: June 13, 2022

Due in Council: June 20, 2022

Report To: Committee of the Whole - General

Subject: Encroachment Agreement - 409 Mississagua Street

1. RECOMMENDATION

It is respectfully recommended that:

- 1.1. Council approves the encroachment agreement for the property known as 409 Mississagua Street to recognize an existing building and eaves encroaching 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 building and eaves at 409 Mississagua Street, on the southwest corner of Mississagua Street and William 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 Owner 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 409 Mississagua 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 409 Mississagua Street.

4. BACKGROUND

The subject lands are located on the southwest corner of Mississagua Street and William Street, in the urban area of Old Town.

The need to enter into an encroachment agreement arose from a consent application for a property located at 409 Mississagua Street and is necessary to govern an existing building that has historically occupied a portion of the public road allowance.

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

1. That the Owner enters into a permanent encroachment agreement with the Town to permit the continued use of the dwelling partially located on Part 2 (known as 409 Mississagua Street) 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.

The encroachments are shown within Part 1 of the draft reference plan (**Appendix I**).

5. DISCUSSION / ANALYSIS

On August 10, 2021, the Operations Department assisted with implementing an encroachment agreement.

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 II**.

6. STRATEGIC PLAN

Pillar(s)

1. Protect Distinctive Community Assets

Objective(s)

- 1.1 Preserve unique community elements

Tactic(s)

- 1.1 b) Support residences and businesses in protecting their valuable heritage assets

7. OPTIONS

- 7.1 **Option 1:** Regulate the encroachments through the attached draft agreement. (***As 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 409 Mississagua Street will bear all costs associated with the preparation and registration of the encroachment agreement. No costs to the Town are anticipated.

9. ENVIRONMENTAL IMPACT

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

- Not applicable.

13. APPENDICIES

- **Appendix I** – Plan 30R-15935 (Reference Plan)
- **Appendix II** – 54XX-22-409 Mississagua Street – Encroachment Agreement

Prepared by:



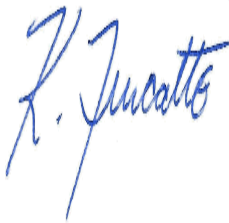
**Michael Komljenovic
Manager of Public Works (Acting),**

Recommended by:



**Ralph Walton
Town Clerk**

Recommended by:



**Kevin Turcotte
Director, Operation (Acting)**

Submitted by:



**Marnie Cluckie, MS.LOD, B.ARCH, B.ES
Chief Administrative Officer**