

Staff Report

Report To: City Council
Report From: Kristen Van Alphen, Manager of Legislative Services
Meeting Date: October 23, 2023
Report Code: CR-23-090
Subject: Encroachment Application – 2080 8th Avenue East

Recommendations:

THAT in consideration of Staff Report CR-23-090 respecting an Encroachment Application for 2080 8th Avenue East, City Council directs staff to:

1. Bring forward a by-law to execute a Limited Encroachment Application with the owners of the subject property for approximately 8'6" of fence, provided that within three (3) months of this resolution, the applicant delivers to the City a letter from a Professional Engineer licensed in the Province of Ontario confirming that the footing of the fence as installed is sufficient to withstand the hourly wind pressures as outlined in the Ontario Building Code; and
2. Ensure that, if no letter is provided within three (3) months, the encroaching portion of fence is removed at the owner's expense.

Highlights:

- The application is for an existing panel of fencing that extends onto the City's road allowance.
- A Limited Encroachment Agreement (which gives six months' notice of removal) is recommended.
- Staff support the application provided confirmation of the suitability of the fence is provided prior to executing an agreement.

Strategic Plan Alignment:

This report supports the delivery of Core Service.

Climate and Environmental Implications:

There are no anticipated climate or environmental impacts.

Previous Report/Authority:

[Encroachment By-law](#)

Background:

The City has received an encroachment application respecting a panel of fence that is approximately 8 feet high and extends into the City's road allowance. The applicant is seeking approval to keep the fence in its present location. The subject property is located with frontage on 8th Avenue East.

The encroachment does not affect the integrity of the main building on the property and, therefore, would be suitable for a Limited Encroachment Agreement. A Limited Encroachment Agreement, if approved, would allow the fence to remain indefinitely unless the City requests the removal at a future date. If the City does request removal, it would be on six (6) months' notice to the owner.

Analysis:

Staff in Building, By-law Enforcement, Engineering, Fire, Parks & Open Space, and Planning have provided comments on the application.

By-law Enforcement, Fire, Parks & Open Space, and Planning support the application without conditions.

The City's Building and Engineering Divisions recommend that, before an agreement is executed with the owners of the subject property, a letter be required from a Professional Engineer licensed in the Province of Ontario confirming that the footing of the fence as installed is sufficient to withstand the hourly wind pressures as outlined in the Ontario Building Code. This is due to the height of the fence, the associated wind pressure and the known condition of high bedrock in the area of the fence installation.

If a letter is not furnished to the City within three (3) months of approval of this application, staff recommend that the encroaching portion of fence be removed to protect the City from any liability associated with the fence failing. Staff also note that this application will not set a precedent for fences of this height because the City is currently developing a fence by-law that will govern the height and method of fence construction.

Financial Implications:

The applicant has paid an application fee and will be required to pay an agreement fee if the application is approved. The agreement fee will cover all costs to have the agreement registered on title to the property. If the recommended engineering letter is not provided, the fence will need to be removed at the owner's expense.

Communication Strategy:

The applicant will be notified of the City's decision and, if approved, the agreement will be registered on title to the property.

Consultation:

By-law Enforcement Officers; Chief Building Official; Fire Chief; Manager of Engineering Services; Manager of Parks & Open Space; and Manager of Planning & Heritage

Attachments:

1. Diagram showing fence encroachment
2. Photo of the encroaching fence

Recommended by:

Kristen Van Alphen, Manager of Legislative Services
Briana Bloomfield, City Clerk
Kate Allan, Director of Corporate Services

Submission approved by:

Tim Simmonds, City Manager

For more information on this report, please contact Kristen Van Alphen, Manager of Legislative Services at kvanalphen@owensound.ca or 519-376-4440 ext. 1228.