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Council-In-Committee Meeting – June 14, 2022

Subject: 43 Washington Street, Waterford Encroachment
Report Number: CAO-22-075
Division: Office of the Chief Administrative Officer
Department: Clerks and By-law
Purpose: For Decision

Recommendation(s):

THAT Report CAO-21-82 regarding 43 Washington Street, Waterford Encroachment Application be received as information;

THAT The Corporation of Norfolk County execute and register an Encroachment Agreement with Deborah Vandalen, being the current owner of the property located at 43 Washington Street, Waterford, legally described as Lot 23, Block C, Plan 19B, Norfolk County (PIN 50278-0261 (LT)), to recognize the encroachment of portions of the existing dwelling onto park lands and Washington Street, Waterford;

AND THAT the applicant pays all costs associated with the Encroachment Application including the registration on title of the Agreement;

AND FURTHER THAT the necessary by-law authorizing the Mayor and Clerk to execute the said Encroachment Agreement be presented to Council for adoption.

Executive Summary:

The purpose of this report is to seek Council's direction regarding an application for an Encroachment Agreement received from Deborah Vandalen.

Discussion:

The applicant is seeking for the County to enter into an Encroachment Agreement for the dwelling and air conditioner located at 43 Washington Street, Waterford which is encroaching onto the municipally-owned street named Washington Street as well as the former railway lands that Norfolk County acquired in 2009 from The Canada Southern Railway Company. Washington Street is legally described as Washington Street, Plan 19B, Lying North of Nichol Street, Norfolk County (PIN: 50278-0254 (LT)) and the former railway lands is legally described as Part Lots 5 and 6, Concession 8, Townsend, being Parts 1, 2 and 3 on 37R-10071, Norfolk County (PIN: 50278-0275 (LT)).

The applicant's property is legally described as Lot 23, Block C, Plan 19B, Norfolk County (PIN 50278-0261 (LT)). The applicant's encroachment onto municipally owned lands has existed since prior to 2015 according to aerial photography.

Staff evaluated the application based on the General Guidelines outlined in Policy CAO-13: Encroachments upon Municipal Property. The Planning Department determined that this encroachment is major in nature.

Financial Services Comments:

The applicant has paid both the initial and secondary application fee.

The applicant is required to pay all costs associated with the transaction including the application fees, Reference Plan costs, and the costs of the registration of the Encroachment Agreement in accordance with the policy established by Norfolk County. Therefore, there are no expected financial implications to Norfolk County.

Interdepartmental Implications:

Realty Services Specialist and the Agreement and Development Coordinator will be included in developing the Encroachment Agreement, if approved by Council.

Consultation(s):

Clerk's consults with staff in the following departments for each encroachment application: Realty Services, Planning, Roads, Risk Management, Building, By-law Enforcement, Accessibility, and Engineering.

Realty Services

On review of the property in GIS, it can be seen that the structure has encroachments on portions of both Alice Street and Washington Street. The encroaching areas onto Washington Street will need to be surveyed by the property owner and a reference plan will need to be deposited on title in order for an Encroachment Agreement to be registered on title.

Planning

The subject lands is Designated Urban Residential in the Norfolk County Official Plan and is zoned R1-A in the Norfolk County Zoning By-Law. It cannot be determined if the dwelling was inadvertently constructed. Through the use of air photography, it appears the dwelling has existed in this manner since 2015 but not before 2010. The property appears to be currently in use. The property and the building on the property does not appear to pose a safety hazard to the public and does not raise potential liability as a result. It does not appear to damage adjacent lands, the natural environment or undermine the County's stewardship. The structure appears to conflict with the required front yard setback of the zone and does not appear to take into consideration the surrounding area.

Building

There is an open building permit for an interior renovation.

Engineering

Sanitary lateral for 43 Washington Street also encroaches on former railway lands known as Alice Street and it is unknown if easement is in place.

No concerns were raised from Roads, Risk Management, By-Law Enforcement and Accessibility for this encroachment review.

Strategic Plan Linkage:

This report aligns with the 2019-2022 Council Strategic Priority "Foster Vibrant, Creative Communities".

Explanation: To ensure that the County's beautiful neighborhoods remain safe and a great place for people, the encroachment review process allows staff the opportunity to consider if encroachments pose a potential risk to public safety and the common good. Likewise, an Encroachment Agreement permits applicants the freedom to continue to use their property as desired and to utilize the physical structures which abut municipal lands. The encroachment review process is a streamlined process with line of sight to a common sense approach and an improved client experience.

Conclusion:

Should Council approve staff's recommendation, an Encroachment Agreement will be registered on the title to the property at 43 Washington Street, as well as the affected portions of Washington Street, to protect the future interests of the County and to provide notice to any future owners of the property.

The applicant is required to maintain property insurance on a replacement cost basis for any property and building(s) against fire and such other perils including liability in the amount of two million (\$2,000,000) dollars per each occurrence showing the County as an additional insured, and including cross liability in respect of the named insured, and non-owned automobile coverage. The applicant will provide Norfolk County with a certificate of insurance at each annual renewal. By approving an Encroachment Agreement, the applicant will be able to maintain the current structures on their property which have existed for a significant amount of time while at the same time protecting Norfolk County from litigious risk by indemnifying the County from accidents which may occur on the encroached areas.

Attachment(s):

- Attachment A: Plan of Survey for 43 Washington Street, Waterford

- Attachment B: 43 Washington Street, Waterford Aerial Photos

Approval:

Approved By:
Al Meneses
Chief Administrative Officer

Reviewed By:
Teresa Olsen
County Clerk

Prepared By:
Aren Plante, M.P.A.
Committee Coordinator