



A People Place, A Change of Pace
SHELBURNE
ONTARIO, CANADA

Meeting Date: Monday, October 18, 2021

To: Mayor Mills and Members of Council

From: Jim Moss, Director, Development and Operations

Report: DO2021-08

Subject: 604 Owen Sound Street, Encroachment on Municipal Property and Parking Concern Follow Up

Recommendation

Be it Resolved that Council of the Town of Shelburne:

Receives the report DO2021-08 604 Owen Sound Street, Encroachment on Municipal Property and Parking Concern Follow Up dated October 18, 2021, for information purposes:

AND THAT Council directs Staff to proceed with the recommendation noted in the report, to have the owner comply with the zoning by-law by not encroaching on to the Town's right of way, thus providing parking for patrons on the paved area of the right of way:

AND THAT Staff contact and work with the owner of 604 Owen Sound Street to bring the property into compliance with the Town's Zoning By-law #38-2007

Report Director, Development and Operations DO2021-08

Background

At the June 28th Council meeting Staff presented a report on parking concerns and congestion on Jane Street (Appendix 1). The report did outline the current noncompliance with the Zoning By-law and the potential liability of the Municipal Right of Way being used for commercial operation. During the discussion, Council was concerned about the impacts on the business owner by enforcing the by-law and requested that Staff again contact the owner for his opinion and options for a solution.

Analysis

Staff contacted the owner of the property September 29th, 2021. Staff informed the owner of the recommendation to Council from the June 28th report and that Council had passed a resolution to defer the matter until there had been further consultation with the owner. The owner of the property stated again that his preferred solution to the issue would be to make the north side of Jane Street a "No Parking" zone from Owen Sound Street west and to have painted markings on the street to delineate the area. This would allow the owner to continue placing produce within the Town owned property.

For this option to work a "No Parking" zone approximately 40 meters long would need to be created from Owen Sound Street west on Jane across the frontage of the property stopping at the west property line. This would still allow residents parking for the Post Office Boxes on the paved shoulder/right of way off the traveled portion of the street immediately to the west of this location. Painted lines or hash marks through this section of street would not work as it would create confusion for traffic on the north side and restrict the two live lanes of traffic pushing vehicles to the south side into oncoming traffic. Appendix #2 shows the right of way currently.

To go with this option does still leave liability issues with the use of the Town right of way by a property owner where a Road Occupancy Permit would be required as it is when Town right of ways are used for service installations or special events. This would also necessitate proof of insurance for at least 2 million dollars.

Town Staff have been dealing with residents over the course of the summer encroaching onto the Town right of way and placing structures such as brick pillars, plantings and markers at the curb side as shown in Appendix 3 without Town approval. These structures will inhibit winter control operations

as they will not be visible when the snow is deep enough. They will inevitably be hit by the wings of the plow trucks attempting to get the snow back and off the street as far as possible or restricting clearance for sidewalk plows, in some cases. This will result in damage to the structure as well as to the Town's snow removal equipment. Staff have been issuing letters to these homeowners requiring these structures encroaching onto Town property be removed prior to this winter season (Appendix 4).

If the property at 604 Owen Sound is allowed to deviate from the Town's Zoning By-law Staff is concerned that this could set a precedence for other property owners to request the same consideration to use the Town's right of way and allowing the structures noted above to remain.

Financial Impact

With the Staff recommendation to enforce the Zoning By-law there would not be any financial impacts to the Town.

If Council prefers to move forward with the property owner's preference of the "No Parking" zone Staff will need to cut the asphalt on Jane Street to install the no parking signs. The minimum spacing for no parking signs in an urban setting is no more than 50 meters apart. To be effective in this location Staff would suggest 6 signs be installed across the frontage on Jane Street or about every 6.5 meters. With post hardware and installation time, Staff estimate a cost of approximately \$500.

Policies & Implications

With the Staff recommendation, Staff would work with the property owner for the implantation of Zoning By-law #38-2007 and the removal of structures and produce within the right of way.

With the property owner's preference for no parking, alterations to By-law #8-1983 as amended, would need to be made to accommodate the Jane Street location and be returned to Council for approval.

Consultation and Communications

Town Planner
Director of Legislative Services/Clerk
Municipal Law Enforcement Officer

Supporting Documentation

Appendix #1- June 28, 2021, Report to Council DO 2021-05

Appendix #2- Current Picture of Jane Street Road Lanes

Appendix #3- Picture of Encroachment Hazards being Placed in Right of Way

Appendix #4- Notice to Residents Requesting Removal of Obstructions Placed in Right of Way

Respectfully Submitted:

Jim Moss, Director, Development and Operations

Reviewed by:

Denyse Morrissey, CAO



Meeting Date:	Monday, June 28, 2021
To:	Mayor Mills and Members of Council
From:	Jim Moss, Director of Development and Operations
Report:	DO 2021-05
Subject:	604 Owen Sound Street, Encroachment on Municipal Property and Parking Concerns

Recommendation

BE IT RESOLVED THAT Council receives report DO2021-05 604 Owen Sound Street, Encroachment and parking concerns dated June 28, 2021, for information purposes;

AND THAT Council directs staff to proceed with the recommendation noted in the report, to have the owner comply with the zoning by-law by not encroaching on to the town's right of way, thus providing parking for patrons on the paved area of the right of way;

AND THAT staff contact and work with the owner of 604 Owen Sound Street to bring the property into compliance with the Town's Zoning By-law #38-2007.

Background

At the September 14, 2020, Council meeting, Council members discussed parking concerns, traffic congestion and encroachment of retail product onto the municipal right of way at 604 Owen Sound Street during Council inquiries. As inclement weather was setting in it was decided to review this item in 2021 when weather conditions had improved.

Analysis

Staff have reviewed the concerns noted regarding with 604 Owen Sound Street.

By-law No. 10-1992 was passed on February 24th, 1992, to amend Zoning By-law 10-1972 to permit the following on the property at 604 Owen Sound Street:

- A restaurant and variety store with a maximum area of 111.48 square metres in the existing single detached dwelling
- Notwithstanding the parking requirements of Section 3.19 (b) Parking Area Requirements and Section 3.19(d) Ingress and Egress parking spaces for 604 Owen Sound Street for commercial uses may have direct access to Jane Street

The above special zoning was carried forward in the Town-wide Zoning By-law #16-1992 passed on May 11, 1992, the property was re-zoned to C2 when the current Zoning By-law #38-2007 was passed in September 2007. The C2 Zone permits a Food Store but does not specifically permit parking spaces for commercial uses with direct access from Jane Street; however, if direct access parking spaces from Jane Street existed on the property prior to By-law #38-2007 and continued since then, that parking configuration can continue under the original permission granted in 1992. If parking spaces are no longer provided on the property with direct access from Jane Street, that parking configuration is no longer permitted.

Of note, the original zoning established in 1992 and the current zoning do not permit nor infer permission for any type of structural or retail display encroachment on the Jane Street right-of-way, nor any special permission for on-street parking along Jane Street, on-street parking must be in compliance with the Town's traffic by-law.

In the Summer of 2011, the Town's Director of Public Works contacted the Town Planner with concerns regarding the encroachment of the canopy structures and retail display areas on the Jane Street right-of-way. A meeting was scheduled to meet on site with the current owner, in August 3rd, 2011. The on-site discussion with owner indicated that the retail goods and canopy structures were not permitted to be located on the Town's right-of-way and should be pulled back to inside the property line, the owner took some measures to comply with this request as there is no indication of further follow-up regarding this issue since 2011.

When Jane Street was re-surfaced / re-constructed, roll-over curbs with paved shoulders were provided to maintain some space for parking for the existing use, with the objective of directing parking off of the through travel lanes.

In short, any encroachments on the Jane Street right-of-way that are limiting the safe parking of vehicles in the paved shoulder areas are not permitted by the Zoning By-law, and it is completely within the discretion of the Town whether to permit the use of any part of the Town's right-of-way for retail display and sales.

If the use of the Town's right-of-way is to be permitted for the commercial operations on the property, a permit or similar documentation of that permission will need to be considered to detail which part(s) of the right-of-way may be used, for what purpose(s) and when that may occur. In conjunction with liability insurance requirements in the amount of \$2 million dollars.

As for the parking of vehicles on the street, the current traffic by-law is silent regarding parking restrictions on the north and south side of Jane Street between Owen Sound and Willow Streets. A traffic by-law amendment will be required should Council wish to have parking restrictions in that area. Should parking restrictions be requested, it is anticipated that parking of vehicles will then take place on the west side of Owen Sound Street thus creating additional traffic hazards and unsafe conditions on Owen Sound Street.

It is staff's recommendation to enforce the Town's current zoning by-law and not permit any encroachment onto the Town's right-of-way as paving of the parking area on the right-of way during the sister street reconstruction was to provide onsite parking for the business and owner of the property, to which the owner has decided to use it for storage of retail material instead.

Financial Impact

Non applicable currently.

Policies & Implications

Town of Shelburne Zoning By-law #38-2007

Consultation and Communications

Town Planner
Municipal Law Enforcement Officer

Council Strategic Priorities

Council's Strategic Priorities has three Goals - Sustainable, Engaged and Livable. There are a total of 12 targets with the three Goals.

The updated Town Hall Dedicated Standby Generator Report relates to the following Goals:

Target T7: Promote partnerships and collaboration

Supporting Documentation

Prepared and submitted by:

Jim Moss, Director of Development and Operations

Reviewed by:

Denyse Morrissey, CAO







DATE, 2021

Dear.....

This letter is to advise that you have landscaping material and/or accessory structures encroaching on municipal property within the municipal right-of-way.

It is important to keep the areas next to your property in their natural state.

Encroachments can:

- damage the environment and sensitive ecosystems
- result in injury or private property damage
- increase taxpayer costs for restoration of public lands
- create operational conflicts or hazards during the winter season when snow covers the ground

Private property encroachments such as, but not limited to, landscaping materials, driveways, driveway curbing, irrigation systems, stakes, delineation markers, large boulders, replacing sod with river run stones, shall not be placed on the municipal right of way. No building or structure shall encroach onto municipal property

If an encroachment is identified, the Town may require the encroachment to be removed and the lands returned to its original state to the satisfaction of the Town. All costs related to the removal of the encroachment shall be at the encroaching party's expense.

Encroachments will not be permitted in the following circumstances:

- The encroachment creates an unsafe condition or poses a danger to the public, such as but not limited to:
 - impedes or restricts sight lines,
 - impedes normal access,
 - obstructs vision of traffic or pedestrians,
 - creates operational conflicts or creates hazards during the winter season when snow covers the ground, such as rocks, boulders, wires, lines, etc.



This letter is to advise that removal of the encroachment (photo attached) and restoration of the property back to its original state is required to be completed by DATE, 2021. Please relocate the landscaping material to your own private property.

If you have any questions, please feel free to contact myself directly at the information provided below.

Regards,

Town Staff Signature