



**City of Kingston  
Report to Council  
Report Number 24-164**

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**To:** Mayor and Members of Council

**From:** Paige Agnew, Commissioner, Growth & Development  
Services

**Resource Staff:** Brandon Forrest, Director, Business, Real Estate &  
Environment

**Date of Meeting:** June 4, 2024

**Subject:** Encroachment Agreement – 115 Lower Union Street

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**Council Strategic Plan Alignment:**

Theme: Corporate business

Goal: See above

**Executive Summary:**

The subject property is municipally known as 115 Lower Union Street, which is situated within the Old Sydenham Heritage Conservation District. The foundation and the eaves on the existing house and shed-roof addition on the subject property encroach onto a City-owned property, the side of the existing building at 113 Lower Union Street. This longstanding encroachment was identified as part of a required pre-application process with Planning Services in May 2022, which identified complete application requirements to permit a rear addition to the house. An encroachment agreement was identified as a required condition of a future *Planning Act* approval, to permit the expansion of the legal non-conforming building. The owner obtained approval for permission to expand the legal non-conforming building from the Committee of Adjustment on February 26, 2024. One of the conditions of the Committee's approval requires the owner to enter into an encroachment agreement with the City to recognize the existing encroachments.

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**Recommendation:**

**That** Council direct the Mayor and City Clerk to execute an encroachment agreement, in a form satisfactory to the Director of Legal Services, with the owners of 115 Lower Union Street for the encroachment of the foundation and the eaves from the property at 115 Lower Union Street onto the City property at 113 Lower Union Street.

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**Authorizing Signatures:**

ORIGINAL SIGNED BY COMMISSIONER

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**Paige Agnew, Commissioner,  
Growth & Development Services**

ORIGINAL SIGNED BY CHIEF

ADMINISTRATIVE OFFICER

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**Lanie Hurdle, Chief  
Administrative Officer**

**Consultation with the following Members of the Corporate Management Team:**

Jennifer Campbell, Commissioner, Community Services	Not required
Neil Carbone, Commissioner, Corporate Services	Not required
David Fell, President & CEO, Utilities Kingston	Not required
Peter Huigenbos, Commissioner, Major Projects & Strategic Initiatives	Not required
Brad Joyce, Commissioner, Infrastructure, Transportation & Emergency Services	Not required
Desirée Kennedy, Chief Financial Officer & City Treasurer	Not required

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**Options/Discussion:**

The side yard of the residential property known as 115 Lower Union Street abuts the City's property at 113 Lower Union Street – currently occupied by Tipi Mozza. The owners at 115 Lower Union Street underwent a required pre-application process with Planning Services in May 2022, to permit a rear addition to the house, which brought to light an existing encroachment onto 113 Lower Union Street. An encroachment agreement was identified as a required condition of a future *Planning Act* or *Heritage Act* approval, to permit the expansion of the legal non-conforming building and to permit alterations to a property designated under the *Ontario Heritage Act*.

A heritage permit was approved by City Council on June 20, 2023, for the alteration to the heritage property. One of the conditions of Council's approval of the heritage permit was that an encroachment agreement be registered on title of the property with respect to the encroachment onto 113 Lower Union Street, to the satisfaction of the City. Further information is found in report [HP-23-013](#).

The owner obtained approval for permission to expand the legal non-conforming building from the Committee of Adjustment on February 26, 2024. Consistent with the heritage permit approval, one of the conditions of the Committee's approval requires the owner to enter into an encroachment agreement with the City to recognize the existing encroachments. Further information is found in report [COA-24-020](#).

The lot is small, and it is not unusual in historic areas like the Old Sydenham Heritage Conservation District for buildings to encroach onto the road and other properties at a time when surveying techniques were not as they are today. A current survey shows the foundation encroaches onto the City's property at 115 Lower Union Street by 6 inches and the eaves of the roof by 2.6 feet as shown on Exhibit A. As a condition of approval of the permission application (File Number D13-069-2023), an encroachment is required to be entered into with the City to recognize the existing side yard encroachments. Any new construction will be restricted to the current encroachment property limits at 115 Lower Union Street.

The City has a policy with respect to encroachments on City Road allowances; however, it does not apply to encroachments on any other type of property owned by the City. These non-road allowance encroachments are typically addressed on an individual basis and are rarely approved favouring the removal of the offending encroachment as a first principal. In cases such as this, where the encroachment has existed for several decades, the removal of the encroachment would create undue hardship. The City's property at this location is part of the building's kitchen area at the side of the building. Approval of the encroachment has no impact on the use of the City property and presents a low-risk condition. The applicant will provide the City with an indemnification. Part of the new addition will encroach onto the City's property as per the approved plans received by the city.

**Financial Considerations**

The applicant will be paying the City's administrative costs for the agreement.

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**Contacts:**

Steve Biro, Property Specialist, Business, Real Estate & Environment Services, 613-546-4291 extension 3169

**Other City of Kingston Staff Consulted:**

Jenna Morley, City Solicitor

**Exhibits Attached:**

Exhibit A Map of Property

Photo and drawings of encroachment shown approximately in red





