

Municipality Of Chatham-Kent
Infrastructure and Engineering Services
Public Works

To: Mayor and Members of Council
From: Ryan Brown, P.Eng,
Director of Public Works
Date: November 4, 2020
Subject: Encroachment Agreement – 114 West St., Chatham

Recommendations

It is recommended that:

1. The General Manager of Infrastructure and Engineering Services be authorized to enter into an encroachment agreement, to be drafted and approved by the Director of Legal Services, for paving a portion of the municipal right-of-way abutting the property legally described as PIN 00506-0347, municipally known as 114 West Street, Chatham.
2. The attached by-law confirming the encroachment (Appendix “B”), be approved.

Background

Administration has received a request from Kushtrim Koka operating as Koka's Pizza to enter into an encroachment agreement for the purpose of paving a portion of the municipal right-of-way, with the intent to utilize the untraveled area for parking.

This request was originally received in September through the Technical Advisory Committee (TAC), and Administration and the owners have been working on the details of the design and agreement since. The final proposed parking lot expansion will extend 140 inches (3.55 metres) west towards West Street, stopping 36 inches (0.91 metres) from the existing sidewalk.

Comments

In reviewing the encroachment as described in Appendix “A” (attached), it is the opinion of Administration that pavement of the right-of-way will not obstruct the Municipality in maintaining the right-of-way on West Street. All costs to keep and maintain the encroachment area in good repair will be the responsibility of Koka's Pizza.

In the event that the Municipality requires access for municipal purposes, the Municipality shall attempt to provide Koka's Pizza with at least 30 days' notice, but may

terminate the agreement immediately in the event that the encroachment poses a safety risk, or that there is an emergency.

Areas of Strategic Focus and Critical Success Factors

The recommendations in this report support the following areas of strategic focus:

Economic Prosperity:

Chatham-Kent is an innovative and thriving community with a diversified economy

A Healthy and Safe Community:

Chatham-Kent is a healthy and safe community with sustainable population growth

People and Culture:

Chatham-Kent is recognized as a culturally vibrant, dynamic, and creative community

Environmental Sustainability:

Chatham-Kent is a community that is environmentally sustainable and promotes stewardship of our natural resources

The recommendations in this report support the following critical success factors:

Financial Sustainability:

The Corporation of the Municipality of Chatham-Kent is financially sustainable

Open, Transparent and Effective Governance:

The Corporation of the Municipality of Chatham-Kent is open, transparent and effectively governed with efficient and bold, visionary leadership

Has the potential to support all areas of strategic focus & critical success factors

Neutral issues (does not support negatively or positively)

Consultation

Legal Services has reviewed the encroachment by-law and found it acceptable. Legal Services will draft an encroachment agreement to be entered into between the Municipality and Koka's Pizza upon Council approval of this encroachment.

Financial Implications

There are no financial implications resulting from the recommendations.

Prepared by:

Ryan Brown, P.Eng.
Director, Public Works

Reviewed by:

Thomas Kelly, P.Eng, MBA
General Manager
Infrastructure and Engineering Services

Consulted and confirmed the content of the consultation section of the report by:

David Taylor
Director, Legal Services

Attachments: Appendix A – Proposed Drawings
Appendix B – Draft By-law

c Director, Legal Services

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114 West St. Chatham.Docx

BY-LAW NUMBER _____

OF THE CORPORATION OF THE
MUNICIPALITY OF CHATHAM-KENT

A By-law to permit the paving a portion of the municipal right-of-way abutting the commercial property legally described as PIN 00506-0347, municipally known as 114 West Street, Chatham

FINALLY PASSED THE ____ day of _____, 2020.

WHEREAS Kushtrim Koka operating as Koka's Pizza (the "Owner"), is the registered owner of 114 West Street, Chatham, in the Municipality of Chatham-Kent legally described as PT LT 6 S/S RICHMOND ST PL OLD SURVEY AS IN 622418; CHATHAM-KENT; (the "Owner's Property").

AND WHEREAS the Municipality is the registered owner of the abutting part of West Street, Chatham PIN 00506-0008 legally described as WEST ST PL OLD SURVEY BTN RICHMOND ST & LORNE AV; CHATHAM-KENT (the "Municipality's Property"), which abuts 114 West Street.

AND WHEREAS the Owner wishes to pave a portion of the municipal right-of-way on the Municipality's Property with the intent of utilizing the un-traveled portion of the road for parking (hereinafter referred to as the "Encroachment") as depicted on Schedule B attached hereto.

AND WHEREAS the Owner has applied for permission to maintain the Encroachment.

BE IT THEREFORE ENACTED by the Council of the Corporation of the Municipality of Chatham-Kent as follows:

1. The Owner shall be entitled to maintain the Encroachment on the Municipality's Property until the Corporation of the Municipality of Chatham-Kent in its sole and absolute discretion requires possession of the Municipality's Property for municipal purposes or until the Owner removes the Encroachment from the Municipality's Property, whichever event shall first occur.
2. That the permission granted by this By-law shall enure to the benefit of and the obligations resulting therefrom as herein set out to be binding

upon the heirs, executors, administrators, successors and assigns of the Owner and of the Corporation of the Municipality of Chatham-Kent.

3. The Owner shall, as a condition of the granting of permission hereunder, enter into an Agreement with the Corporation, and the General Manager of Infrastructure and Engineering Services is authorized to execute such Agreement.
4. Notwithstanding anything herein contained, the permission to maintain and use the said Encroachment shall be terminated and the Owner shall remove such Encroachment and restore the Municipality's Property occupied by such Encroachment to a suitable condition for use by the Municipality of Chatham-Kent for the purposes of a street upon the Corporation of the Municipality of Chatham-Kent giving thirty (30) days written notice to the Owner that the Municipality's Property occupied by such Encroachment are required.
5. This By-law affects the lands described in Schedule "A" annexed hereto.
6. This By-law shall come into force and effect upon being finally passed.

THIS By-law shall come into full force and effect upon the final passing thereof.

READ A FIRST, SECOND AND THIRD TIME this ____ day of _____, 2020.

Mayor – Darrin Canniff

Clerk – Judy Smith

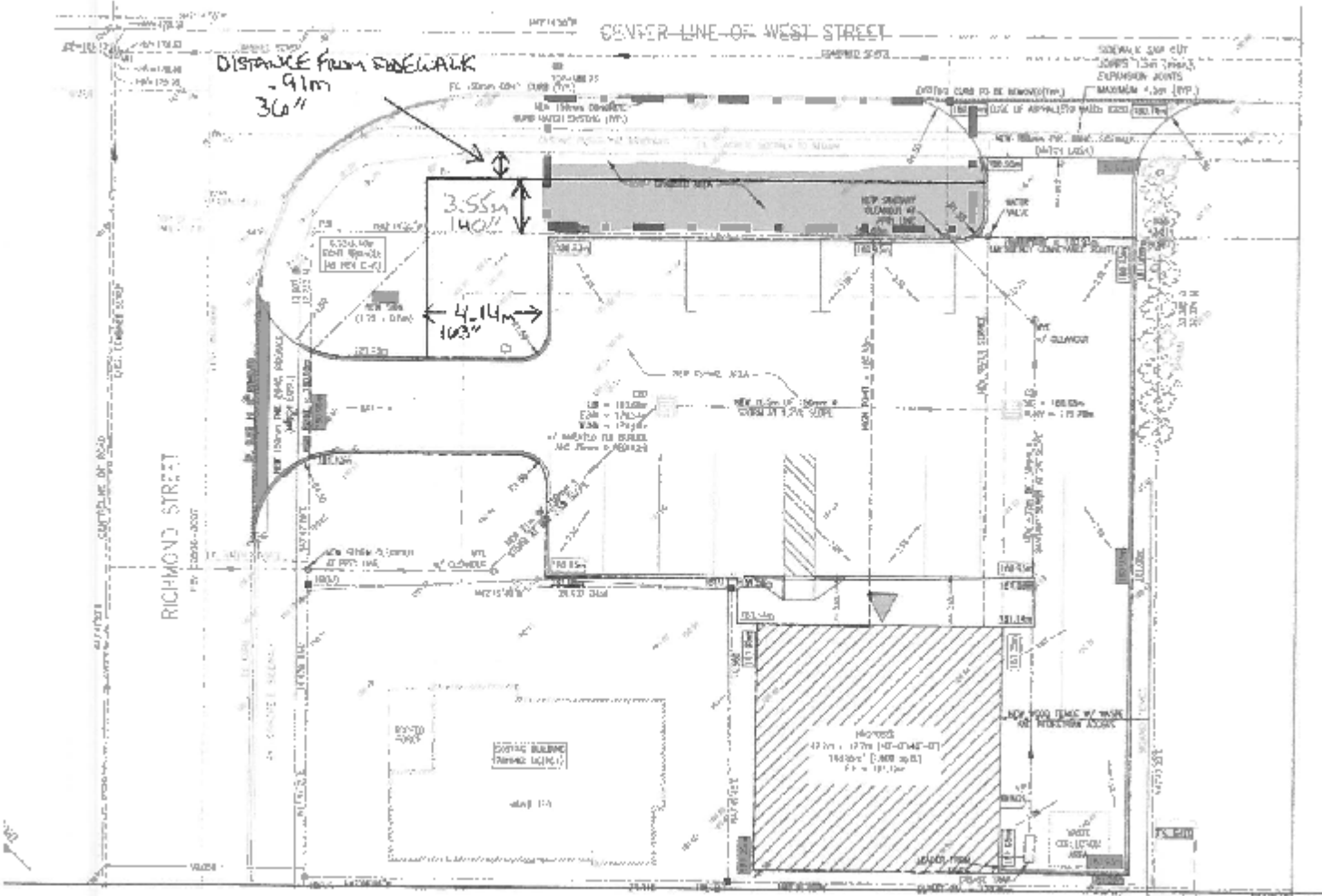
SCHEDULE A

PIN: 00506-0347

Owner: Kushtrim Koka

Legal Description: PT LT 6 S/S RICHMOND ST PL OLD SURVEY AS IN
622418; CHATHAM-KENT

KOKA'S PIZZA 114 WEST ST, CHATHAM



SCHEDULE B