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TO:	CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE MEETING ON JULY 31, 2017
FROM:	GEORGE KOTSIFAS MANAGING DIRECTOR, DEVELOPMENT COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL
SUBJECT:	LIMITING DISTANCE (NO-BUILD) AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF LONDON & JOSE PEREIRA (320 PHYLLIS STREET)

RECOMMENDATION

That on the recommendation of the Managing Director, Development and Compliance Services and Chief Building Official, the following actions be taken in respect of a limiting distance (no-build) agreement between the Corporation of the City of London and Jose Pereira for the property at 320 Phyllis Street:

- a) the proposed by-law (attached as Appendix A) **BE INTRODUCED** at the Municipal Council meeting on August 22, 2017, to delegate authority to the Managing Director, Planning and City Planner to execute, on behalf of The Corporation of the City of London as the adjacent property owner, a limiting distance (no-build) agreement for the property at 320 Phyllis Street; and
- b) the Managing Director, Development and Compliance Services and Chief Building Official **BE AUTHORIZED** to execute, on behalf of The Corporation of the City of London as the Approving Municipality, a limiting distance (no-build) agreement for the property at 320 Phyllis Street.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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January 28, 2009 Report to Board of Control, submitted by the Director of Building Controls to amend the Apointment By-law authorizing the Chief Building Official to bind the Corporation of the City of London while exercising his duties in executing limiting distance agreements.

BACKGROUND

The purpose of this report is to authorize the Managing Director, Planning and City Planner to execute into a limiting distance agreement on behalf of the Corporation of the City of London as the owner of the adjacent property. The Corporation is the owner of the (open space) property to the west of 320 Phyllis Street.

The owners of the property situated at 320 Phyllis Street namely, Jose Pereira have applied for a building permit to build a 2,378.8 sq.ft. (221.0 sq. m) single detached dwelling. The west exposed building face of the house, due to its proximity to the property line, is limited to 9% unprotected openings (windows) as per the provisions of the Ontario Building Code (OBC).

The OBC provides relief from these construction requirements (i.e. 9% openings) by allowing for a virtual property line to be established. This requires that the affected owners enter into a limiting distance or otherwise commonly known as a “no-build” agreement with the municipality.

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Through the agreement, one of the affected owners covenants that no building or structure will be erected or placed on the portion of the property wherein the virtual property line has been shifted upon. This, in essence, allows the other owner to construct a building closer to the actual property line and thus being 'relieved' from the requirements of the OBC with respect to how the wall is to be constructed from a fire resistance standpoint.

Jose Pereira , (referred in the agreement as 'Owner'), approached the Building Division with a proposal to enter into a "no-build" agreement which would eliminate the otherwise required 9% opening restriction and result in a more aesthetic wall design.

As previously mentioned, the OBC (Division B -Article 3.2.3.1 (11) allows for a municipality to enter into a "no-build" agreement with the property owners affected. The agreement is registered on the titles of the lands in question.

Article 3.2.3.1.(11) states:

(11) *The required limiting distance for an exposing building face is permitted to be measured to a point beyond the property line that is not the centre line of a street, lane or public thoroughfare if,*

(a) the owners of the properties on which the limiting distance is measured and the municipality enter into an agreement in which such owners agree that,

(i) each owner covenants that, for the benefit of land owned by the other covenantors, the owner will not construct a building on his or her property unless the limiting distance for exposing building faces in respect of the proposed construction is measured in accordance with the agreement,

(ii) the covenants contained in the agreement are intended to run with the lands, and the agreement shall be binding on the parties and their respective heirs, executors, administrators, successors and assigns,

(iii) the agreement shall not be amended or deleted from title without the consent of the municipality, and

(iv) they will comply with such other conditions as the municipality considers necessary, including indemnification of the municipality by the other parties, and

(b) the agreement referred to in Clause (a) is registered against the title of the properties to which it applies.

The Corporation of the City of London (referred in the agreement as 'Adjacent Owner'), is the owner of the property to the west. Considering the property is (zoned) open space, entering into a "no-build agreement" with Jose Pereira and the Corporation as the adjacent property owner is considered a feasible option that would result in the elimination of the 9% opening restriction rating of the west exposed building face of the building and any future additions.

A site plan depicting the proposed addition is attached in Appendix 'B' and a copy of the "no-build agreement" is attached as Schedule 'A' to the proposed by-law.

CONCLUSIONS

Previously, City Council has resolved to authorize the Chief Building Official to bind the Corporation in executing the limiting distance agreements, exercising his duties under the provisions of the Ontario Building Code.

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The purpose of this report is to authorize the Managing Director, Planning and City Planner to execute a limiting distance agreement on behalf of the Corporation of the City of London in its capacity as the Adjacent Owner. The Corporation is the owner of the open space property to the west of 320 Phyllis Street.

The agreement, a provision under the Ontario Building Code, would allow the owner of 320 Phyllis Street to increase the percentage of wall openings and essentially result in a more feasible west wall design.

PREPARED BY:	SUBMITTED BY:
A.DICICCO MANAGER OF PLANS EXAMINATION DEVELOPMENT & COMPLIANCE SERVICES BUILDING DIVISION	P.KOKKOROS, P.Eng., B.A.(Econ) DEPUTY CHIEF BUILDING OFFICIAL DEVELOPMENT & COMPLIANCE SERVICES BUILDING DIVISION
RECOMMENDED BY:	
G.KOTSIFAS, P.ENG. MANAGING DIRECTOR DEVELOPMENT AND COMPLIANCE SERVICES AND CHIEF BUILDING OFFICIAL	

July 17/2017
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APPENDIX 'A'

Bill No.
2017

By-law No. A.- _____

A By-law to delegate authority to the Managing Director, Planning and City Planner to execute, on behalf of the City of London as the adjacent property owner, a limiting distance (no-build) agreement for the property at 320 Phyllis Street.

WHEREAS section 5(3) of the *Municipal Act, 2001* S.O. 2001, c.25, as amended, provides that a municipal power shall be exercised by by-law;

AND WHEREAS section 9 of the *Municipal Act, 2001* provides that a municipality has the capacity, rights, powers and privileges of a natural person for the purpose of exercising its authority under this or any other Act;

AND WHEREAS section 23(1) of the *Municipal Act, 2001* authorizes the municipality to delegate its powers and duties to a person;

AND WHEREAS it is deemed expedient for The Corporation of the City of London (the "City") to delegate authority to the Managing Director, Planning and City Planner to execute, on behalf of the City of London as the adjacent property owner, a limiting distance (no-build) agreement for the property at 320 Phyllis Street;

NOW THEREFORE the Municipal Council of The Corporation of the City of London enacts as follows:

1. The Agreement attached as Schedule "A" to this By-law, being a limiting distance (no-build) agreement for the property at 320 Phyllis Street between The Corporation of the City of London and the property owner, Jose Pereira is hereby AUTHORIZED AND APPROVED.
2. The Managing Director, Planning and City Planner is hereby delegated the authority to execute, on behalf of the City of London the agreement authorized and approved under section 1 of this by-law.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council _____, 2017

Matt Brown
Mayor

Catharine Saunders
City Clerk

First reading
Second reading
Third reading

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SCHEDULE 'A'

INTRODUCTION TO NO-BUILD AGREEMENT

Jose Pereira, owner of lands which requires the no-build agreement to allow for an increase of allowable glazed openings.

The Corporation of the City of London adjacent property owner granting the no-build on their property.

THIS AGREEMENT made in duplicate this ____ day of ____, 2017.

BETWEEN:

Jose Pereira

(hereinafter called the "OWNER")

of the FIRST PART

- and -

THE CORPORATION OF THE CITY OF LONDON

(hereinafter called the "CITY")

of the SECOND PART

- and -

THE CORPORATION OF THE CITY OF LONDON

(hereinafter called "ADJACENT OWNER")

of the THIRD PART

WHEREAS the Owner is the registered owner of the lands described in Schedule "A" (the "Owners' Lands");

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AND WHEREAS Adjacent Owner is the registered owner of lands described in Schedule “B” (the “Adjacent Lands”);

AND WHEREAS the Owner’s Lands abut and are immediately to the East of the Adjacent Lands;

AND WHEREAS the Owner’s have applied to the City for permission to be exempted from certain provisions of the Ontario Building Code pertaining to unprotected openings in the wall of a house constructed on the Owner’s Lands;

AND WHEREAS the west face of the house will abut the Adjacent Lands;

AND WHEREAS the City wishes to ensure that no building or structure will be erected on the Adjacent Lands within 6 metres of the west face of the house on the Owner’s Lands;

NOW THEREFORE THIS AGREEMENT WITNESSES that in consideration of the sum of \$2.00 and other good and valuable consideration now paid by each of the parties hereto to the other, the receipt and sufficiency of which is hereby acknowledged, the City, the Owner and Adjacent Owner hereby covenant and agree as follows:

1. The Adjacent Owner irrevocably agrees with the Owner not to construct any building or structure within 6 metres of the west face of the house on the Owner’s Land; failing which, the Adjacent Owner shall be fully liable for all costs of the work to be performed pursuant to the requirements of the Ontario Building Code.
2. The Adjacent Owner acknowledges and agrees that the 6 metre line as established by this agreement shall be the “limiting distance” for the purposes of the determining unprotected openings or fire rating on the wall as required by the Ontario Building Code, of the west face of any building subsequently erect on the Adjacent Lands.
3. For the purposes of this agreement “limiting distance” shall mean a line 6 metres from the west wall of the house on the Owner’s Lands.

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) _____
 Adjacent Owner
) per:
) _____
) Authorized Officer
) per:
) _____
) Authorized Officer

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SCHEDULE 'A'

Jose Pereira Lands are described as follows:

PLAN 488 PT LOTS 922 TO 924 RP 33R18433 PART 5 IRREG 7184.05SF 91.59FR D

SCHEDULE 'B'

Adjacent Lands owned by the Corporation of the City of London are described as follows;

PLAN 817 PT BLKS B AND E AND RP 33R16867