

<b>TO:</b>	<b>CHAIR AND MEMBERS PLANNING AND ENVIRONMENT COMMITTEE MEETING ON FEBRUARY 18, 2020</b>
<b>FROM:</b>	<b>G. KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT &amp; COMPLIANCE SERVICES &amp; CHIEF BUILDING OFFICIAL</b>
<b>SUBJECT:</b>	<b>LIMITING DISTANCE (NO-BUILD) AGREEMENT BETWEEN THE CORPORATION OF THE CITY OF LONDON AND MJ LONDON PROPERTIES INC. (515 BURBROOK PLACE)</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Development & Compliance Services & 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 MJ London Properties Inc. (515 Burbrook Place):

- a) the attached proposed limiting distance agreement for the property at 515 Burbrook Place between the Corporation of the City of London and MJ London Properties Inc. **BE APPROVED**; and
- b) the attached proposed by-law **BE INTRODUCED** at the Municipal Council meeting of March 2, 2020 to approve the limiting distance agreement between the Corporation of the City of London and MJ London Properties Inc. for the property at 515 Burbrook Place, and to delegate authority to the Managing Director, Environmental & Engineering Services & City Engineer to execute the agreement on behalf of the City of London as the adjacent property owner.

<b>PREVIOUS REPORTS</b>
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January 28, 2009 – Report to Board of Control, submitted by the Director of Building Controls to amend the Appointment 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.

<b>BACKGROUND</b>
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The purpose of this report is to authorize the Managing Director, Environmental & Engineering Services & City Engineer, to execute into a limiting distance agreement on behalf of the Corporation of the City of London (Corporation) as the owner of the adjacent property. The Corporation is the owner of the laneway to the north of 515 Burbrook Place.

The owner of the property situated at 515 Burbrook Place namely, MJ London Properties Inc. obtained a building permit for interior alterations and to add new dormers.

Upon site inspection, it was discovered that the northwest corner of the building was situated on the property line and a new window (36”h x 64”w) was installed on the north dormer. As a result of this new unprotected window, the north exposed building face of the dormer would require a minimum 1.2m setback from the north property line as per the Ontario Building Code (OBC).

The OBC provides optional relief from any setback restrictions, by allowing a *virtual* north property line to be established. This requires the property owner to enter into a limiting distance, or otherwise commonly known as a “no-build”, agreement with both the adjacent owner(s) and the municipality.

Through the agreement, the adjacent owner covenants that no building or structure will be erected or placed within the portion of the property wherein the virtual property line has been shifted upon. This, in essence, allows the other owner to either construct or retain a building closer to the actual property line and thus being ‘relieved’ from the requirements of the OBC with respect to the percentage of unprotected wall openings and wall construction type from a fire resistance standpoint.

MJ London Properties Inc. (referred to in the agreement as ‘Owner’), concurs with the Building Division to enter into such an agreement which would eliminate the need to have the window protected or removed, and have the dormer’s exposed wall face designed with a fire resistance rating.

As previously mentioned, the OBC (Division B – Articles 9.10.14.2.(4) and (5)) allows for a municipality to enter into a limiting distance(no-build) agreement with the property owners affected.

Articles (4) and (5) state:

*(4) 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.*

*(5) Where an agreement referred to in Sentence (4) is registered against the title of a property, the limiting distance for exposing building faces in respect of the construction of any buildings on the property shall be measured to the point referred to in the agreement.*

The agreement will also be registered on the titles of the lands in question.

The Corporation (referred to in the agreement as ‘Adjacent Owner’), is the owner of the property to the north. Considering the property is a public laneway, entering into this agreement with both the Owners and the Corporation is considered a feasible option. This would result in the retention of the dormer window and would eliminate the need for the dormer’s wall face to have a fire resistance rating.

The Building Division consulted with the Managing Director, Environmental & Engineering Services & City Engineer, with respect to the agreement, and was advised that there was no objection with this proposal.

A site plan depicting the building at 515 Burbrook Place as well as a digital image depicting the dormer window on the north side are included in Appendix 'A' of this report.

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

The purpose of this report is to authorize the Managing Director, Environmental & Engineering Services & City Engineer, to execute a limiting distance agreement on behalf of the Corporation in its capacity as the Adjacent Owner. The Corporation is the owner of the public laneway to the north of 515 Burbrook Place.

The agreement, a provision under the Ontario Building Code, would allow the owner of 515 Burbrook Place to retain the installed window on the dormer of the north elevation and eliminate the need for the vertical face of the new dormer to have a fire resistance rating.

<b>PREPARED BY:</b>	<b>RECOMMENDED BY:</b>
<b>PETER KOKKOROS, P.ENG. DEPUTY CHIEF BUILDING OFFICIAL, DEVELOPMENT &amp; COMPLIANCE SERVICES</b>	<b>GEORGE KOTSIFAS, P. ENG. MANAGING DIRECTOR, DEVELOPMENT &amp; COMPLIANCE SERVICES &amp; CHIEF BUILDING OFFICIAL</b>

c.c:

Kelly Scherr, Managing Director, Environmental & Engineering Services & City Engineer  
Dave Mounteer, Solicitor II

Bill No.

By-law No.

A By-law to approve a limiting distance agreement between the Corporation of the City of London and MJ LONDON PROPERTIES INC. for the property at 515 Burbrook Place, and to delegate authority to the Managing Director, Environmental & Engineering Services & City Engineer, to execute the agreement on behalf of the City of London as the adjacent property owner.

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 it is deemed expedient for The Corporation of the City of London (the "City") to enter into a limiting distance agreement with MJ LONDON PROPERTIES INC. for the property at 515 Burbrook Place (the "Agreement");

AND WHEREAS it is appropriate to delegate authority to the Managing Director, Environmental & Engineering Services & City Engineer, to execute the agreement on behalf of the City of London as the adjacent property owner;

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

1. The Agreement substantially in the form attached as Schedule "A" to this by-law and to the satisfaction of the City Solicitor, being limiting distance agreement between the Corporation of the City of London and MJ LONDON PROPERTIES INC. for the property at 515 Burbrook Place, is hereby APPROVED.
2. The Managing Director, Environmental & Engineering Services & City Engineer, is hereby authorized to execute the Agreement approved under section 1 of this by-law on behalf of the City of London as the adjacent property owner.
3. This by-law shall come into force and effect on the day it is passed.

PASSED in Open Council, March 02, 2020

Ed Holder  
Mayor

Catharine Saunders  
City Clerk

First reading – March 02, 2020  
Second reading – March 02, 2020  
Third reading – March 02, 2020

**SCHEDULE "A"**

**THIS AGREEMENT** made in duplicate this \_\_\_\_ day of March, 2020.

**BETWEEN:**

**MJ LONDON PROPERTIES INC.**  
(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 "Owner's Lands");

**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 South of the Adjacent Lands;

**AND WHEREAS** the Owner has applied to the City for permission to be exempted from certain provisions of the Ontario Building Code pertaining to unprotected openings and fire rating of the north face of the dormer wall of a Single Detached Dwelling on the Owner's Lands;

**AND WHEREAS** the north face of the Single Detached Dwelling abuts the Adjacent Lands;

**AND WHEREAS** the City wishes to ensure that no building or structure will be erected on the Adjacent Lands within 1.2 metres of the north face of the Single Detached Dwelling 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 1.2 metres of the North face of the Single Detached Dwelling 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 1.2 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 South face of any building subsequently erect on the Adjacent Lands.
3. For the purposes of this agreement "limiting distance" shall mean a line 1.2 metres from the North wall of the Single Detached Dwelling on the Owner's Lands.
4. This restriction shall run with the Owner's Lands and the Adjacent Lands and shall bind all Parties hereto, their successors and assigns.
5. The Owner covenants and agrees with the City, that the Owner will forthwith bring the North wall of the Single Detached Dwelling into compliance, as is prescribed by the Ontario Building Code then in effect, coincidental with the construction of any building or structure upon the Adjacent Lands, which is within 1.2 metres of the North face of the Single Detached Dwelling on the Owner's Lands.
6. The Owner, successors and heirs of the subject property at 515 Burbrook Place agree to restore to the City's satisfaction any disturbance of the laneway immediately adjacent to the north.
7. Removal of this agreement from the title of either property shall require the written agreement of all parties (or their heirs or assigns) to this agreement.



**SCHEDULE 'A'**

PLAN 473 LOT 73 PT LOT 74 30.50FR 127.92D (Municipal Address: 515 Burbrook Place)



**SCHEDULE 'B'**

Lane abutting Lot 73 on Registered Plan 473(C) in the City of London and County of Middlesex.  
Part of PIN 08288-0327

APPENDIX 'A'

(Site Plan and North Elevation view)



Figure 1. 515 Burbrook Place site plan



Figure 2. Image depicting the north dormer window (courtesy: Google Street View)