# **Report to Planning & Environment Committee**

To: Chair and Members

**Planning and Environment Committee** 

From: Peter Kokkoros, P.Eng., B.A. (Econ)

**Director, Building and Chief Building Official** 

Subject: Limiting Distance (No-Build) Agreement between the

Corporation of the City of London and the owners of

**34 Princeton Terrace** 

Date: February 28, 2022

# Recommendation

That, on the recommendation of the Director, Building 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 Chantal McQueen and Paul McQueen (34 Princeton Terrace, London, Ontario):

- a) the attached proposed limiting distance agreement for the property at 34 Princeton Terrace between the Corporation of the City of London and Chantal McQueen and Paul McQueen **BE APPROVED**; and
- b) the attached proposed by-law **BE INTRODUCED** at the Municipal Council meeting of March 22, 2022, to approve the limiting distance agreement between the Corporation of the City of London and Chantal McQueen and Paul McQueen for the property at 34 Princeton Terrace, and to delegate authority to the Deputy City Manager, Environment and Infrastructure to execute the agreement on behalf of the City of London as the adjacent property owner.

### **Executive Summary**

The purpose of this report is to authorize the Deputy City Manager, Environment and Infrastructure, 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 lot to the south of 34 Princeton Terrace.

# Linkage to the Corporate Strategic Plan

Growing our Economy

- London is a leader in Ontario for attracting new jobs and investments. Leading in Public Service
  - The City of London is trusted, open, and accountable in service of our community.
  - Improve public accountability and transparency in decision making.

# **Analysis**

# 1.0 Background Information

Previous report:

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.

### 2.0 Discussion and Considerations

The owners of the property situated at 34 Princeton Terrace namely, Chantal McQueen and Paul McQueen will be applying to obtain a building permit for the construction of a new single detached dwelling.

The Ontario Building Code (OBC) provides optional relief from any setback restrictions, by allowing a *virtual* 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.

The virtual property line, for the purposes of the limiting distance agreement is proposed to be established at 1.90 m to the south of the property line between 34 Princeton Terrace and the lands owned by the City of London (BLOCK 45).

Chantal McQueen and Paul McQueen (referred to in the agreement as 'Owners'), concur with the Building Division to enter into such an agreement which would eliminate the need to have the south wall openings protected and the south 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 optionally 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 south. Considering the south property is open undeveloped space, entering into this agreement with both the Owners and the Corporation of the City of London is considered a feasible option. This would result in the elimination of the need to protect the south exposed building face wall openings and would also eliminate the need for the south wall to have a fire resistance rating.

The Building Division consulted with the Deputy City Manager, Environment and Infrastructure, with respect to the agreement, and was advised that there was no objection with this proposal.

A site plan depicting the proposed building at 34 Princeton Terrace as well as a south wall elevation are included in Appendix 'A' of this report.

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.

### Conclusion

The purpose of this report is to authorize the Deputy City Manager, Environment and Infrastructure, 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 lot to the south of 34 Princeton Terrace.

The agreement, a provision under the Ontario Building Code, would allow the owner of 34 Princeton Terrace to eliminate the need to protect the south wall openings and also eliminate the need for the proposed south wall face to have a fire resistance rating.

Submitted by: Peter Kokkoros, P.Eng.

Director, Building & Chief Building Official Planning and Economic Development

c.c:

Kelly Scherr, Deputy City Manager, Environment and Infrastructure Aynsley Anderson, Solicitor II Jeff Bruin, Manager, Parks Planning and Design Bill No.

By-law No.

A By-law to approve a limiting distance agreement between the Corporation of the City of London and Chantal Jacoba McQueen and Paul Matthew McQueen for the property at 34 Princeton Terrace and to delegate authority to the Deputy City Manager, Environment and Infrastructure, 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 Chantal Jacoba McQueen and Paul Matthew McQueen for the property at 34 Princeton Terrace (the "Agreement");

AND WHEREAS it is appropriate to delegate authority to the Deputy City Manager, Environment and Infrastructure, 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 Deputy City Manager, Legal Services, being limiting distance agreement between the Corporation of the City of London and Chantal Jacoba McQueen and Paul Matthew McQueen for the property at 34 Princeton Terrace, is hereby APPROVED.
- 2. The Deputy City Manager, Environment and Infrastructure, 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 22, 2022

Ed Holder Mayor

Michael Schulthess City Clerk

First reading – March 22, 2022 Second reading – March 22, 2022 Third reading – March 22, 2022

#### **SCHEDULE "A"**

**Chantal and Paul McQueen:** Owners of lands which require the no-build agreement to allow for an unrated wall construction and unprotected glazed openings.

**The Corporation of the City of London:** Adjacent property owner granting no-build on their property.

THIS AGREEMENT made in duplicate this 07 day of February 2022

#### **BETWEEN:**

Chantal and Paul McQueen (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 also described in Schedule "A" (the "Owners' Lands");

**AND WHEREAS** the Adjacent Owner is the registered owner of lands described in Schedule "A" (the "Adjacent Lands");

**AND WHEREAS** the Owner's Lands abut and are immediately to the north and west of the Adjacent Lands;

**AND WHEREAS** the Owners have applied to the City for permission to be exempted from certain provisions of the Ontario Building Code pertaining to glazing and fire rating in the wall of a house to be constructed on the Owners' Lands;

**AND WHEREAS** the south property line of the Owners' Lands will abut the Adjacent Lands;

**AND WHEREAS** the City wishes to ensure that no building will be erected on the Adjacent Lands within 1.9 metres from the south property line of the Owners' Lands;

**NOW THEREFORE THIS AGREEMENT WITNESSES** that in consideration of the sum of TWO DOLLARS (\$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 1.9 metres from the south property line of the Owners' Lands; 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 1.9 metre line as established by this agreement shall be the "limiting distance" for the purposes of the determining glazing or fire rating on the wall as required by the Building Code, of the north face of any building subsequently erected on the Adjacent Lands.
- 3. For the purposes of this agreement, "limiting distance" shall mean a line 1.9 metres from the south property line of the Owners' Lands
- 4. This restriction shall run with the Owners' Lands and the Adjacent Lands and shall bind all Parties hereto, their successors and assigns.

- 5. The Owners covenant and agree with the City that the Owners will forthwith bring the south wall of the house 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 located 1.9 metres from the south property line of the Owners' Lands
- 6. 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.

**IN WITNESS WHEREOF** the parties hereto have hereunto duly executed this agreement.

SIGNED AND DELIVERED in the presence of:		
OWNERS	$\alpha$	
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	FOLG:	-

# THE CORPORATION OF THE CITY OF LONDON

Per:
Peter Kokkoros, P.Eng. Director, Building and Chief Building Official
Authorized Officer

ADJACENT OWNER: THE CORPORATION OF THE CITY OF LONDON Per:

Kelly Scherr, Deputy City Manager, Environment and Infrastructure Authorized Officer

# Schedule "A"

Owner's Lands: 34 Princeton Terrace, London, ON, N6K 0L5 Lot 38, Plan 33M-811; London

Adjacent Lands: Block 45, Plan 33M-811, part of CON 1 PT LOT 44; London

# **APPENDIX 'A'**

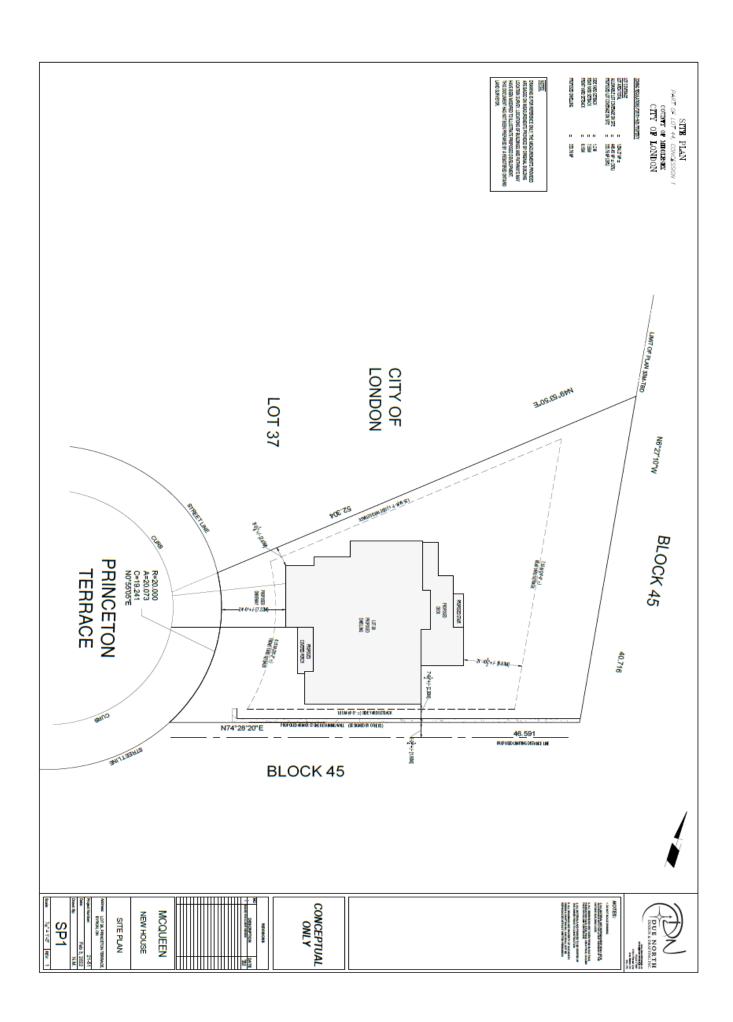


Figure No.1 Proposed Site Plan

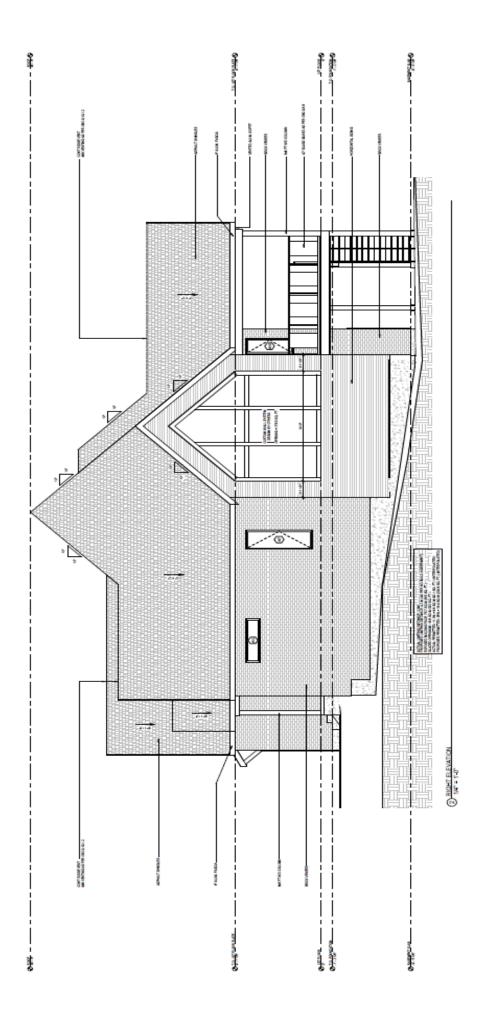


Figure 2. Proposed South Elevation