

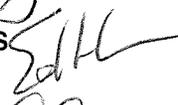
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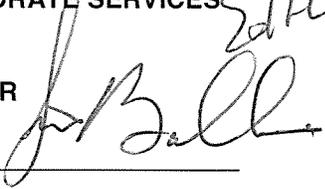
**TO:** GENERAL COMMITTEE

**SUBJECT:** ENCROACHMENT AGREEMENT, 49 MARY STREET

**PREPARED BY AND KEY CONTACT:** LAURA M. JOHNSTON, SUPERVISOR, AGREEMENTS & NOTICES, EXT. 4553

**SUBMITTED BY:** I. PETERS, DIRECTOR OF LEGAL SERVICES 

**GENERAL MANAGER APPROVAL:** E. ARCHER, CMA, GENERAL MANAGER OF CORPORATE SERVICES 

**CHIEF ADMINISTRATIVE OFFICER APPROVAL:** JON M. BABULIC, CHIEF ADMINISTRATIVE OFFICER 

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**RECOMMENDED MOTION**

1. That the Mayor and City Clerk be authorized to enter into an encroachment agreement with Gord Knox and Laura Knox, current owners of the property known municipally as 49 Mary Street, to permit the pre-existing encroachment of landscape improvements on City owned land subject to the following:
  - a) That the existing landscaping features which incorporate tiered flower gardens, stone retaining wall and a central stone stairway and path leading from the sidewalk to the front patio and building entrance be subject to building code standards and approval.
  - b) The owners provide proof of public liability insurance in the amount of \$2,000,000.00 and naming the City of Barrie as an additional insured and be required to pay the annual encroachment fee as established by Council.
  - c) The owner's be permitted to assign the Encroachment Agreement to Marco Orlando owner of The North Restaurant when the proposed sale closes.
  - d) The contents of the agreement be to the satisfaction of the Director of Legal Services and that all costs associated with the agreement be the responsibility of the owners.

**PURPOSE & BACKGROUND**

2. The purpose of this staff report is to request approval of an existing encroachment of landscaping features that incorporate tiered flower gardens, stone retaining wall and a central stone stairway and path leading from the sidewalk to the front patio between the sidewalk and the building frontage.
3. The present owners of 49 Mary Street installed the landscape features approximately four years ago and have now submitted an application to permit the outdoor landscaping features to remain on site.
4. The landscape feature occupies an area of approximately 3.5M x 11 M as per the attached drawing on Schedule "A" and consists of a tiered flower garden with stone retaining walls and a central stone stairway and path leading from the sidewalk to the front patio and building entrance.

5. The owner of The North Restaurant is proposing to purchase 49 Mary Street from Gord and Laura Knox. The owner of The North Restaurant has made application to the Building Department for an Addition and Change of Use Permit, however, until such time as the encroachment application has been approved the Building Department is unable to issue the building permit. The addition is to the rear of the property and is not part of the encroachment application.
6. No permanent structural part of the building occupies City owned land and the encroachment will have no effect at the sidewalk level, pedestrian traffic or City maintenance.
7. All appropriate City Department's have been circulated with the application and no objections or concerns were presented.

### **ANALYSIS**

8. The intent of encroachment agreements is to control unauthorized use of City property and protect against liability that may occur should there be personal or property damage caused by the encroachments onto City property.
9. The City is promoting downtown businesses to beautify their space. The landscaping features that have been installed create a pleasing environment to the area that does not conflict with City operations.

### **ENVIRONMENTAL MATTERS**

10. There are no environmental matters related to the recommendation.

### **ALTERNATIVES**

11. There is one alternative available for consideration by General Committee:

#### **Alternative #1**

General Committee could deny the recommendation to enter into an encroachment agreement.

This alternative is not recommended as it is the City's desire to encourage formalization of existing encroachments and the non-intrusive ongoing maintenance and improvements to privately owned property.

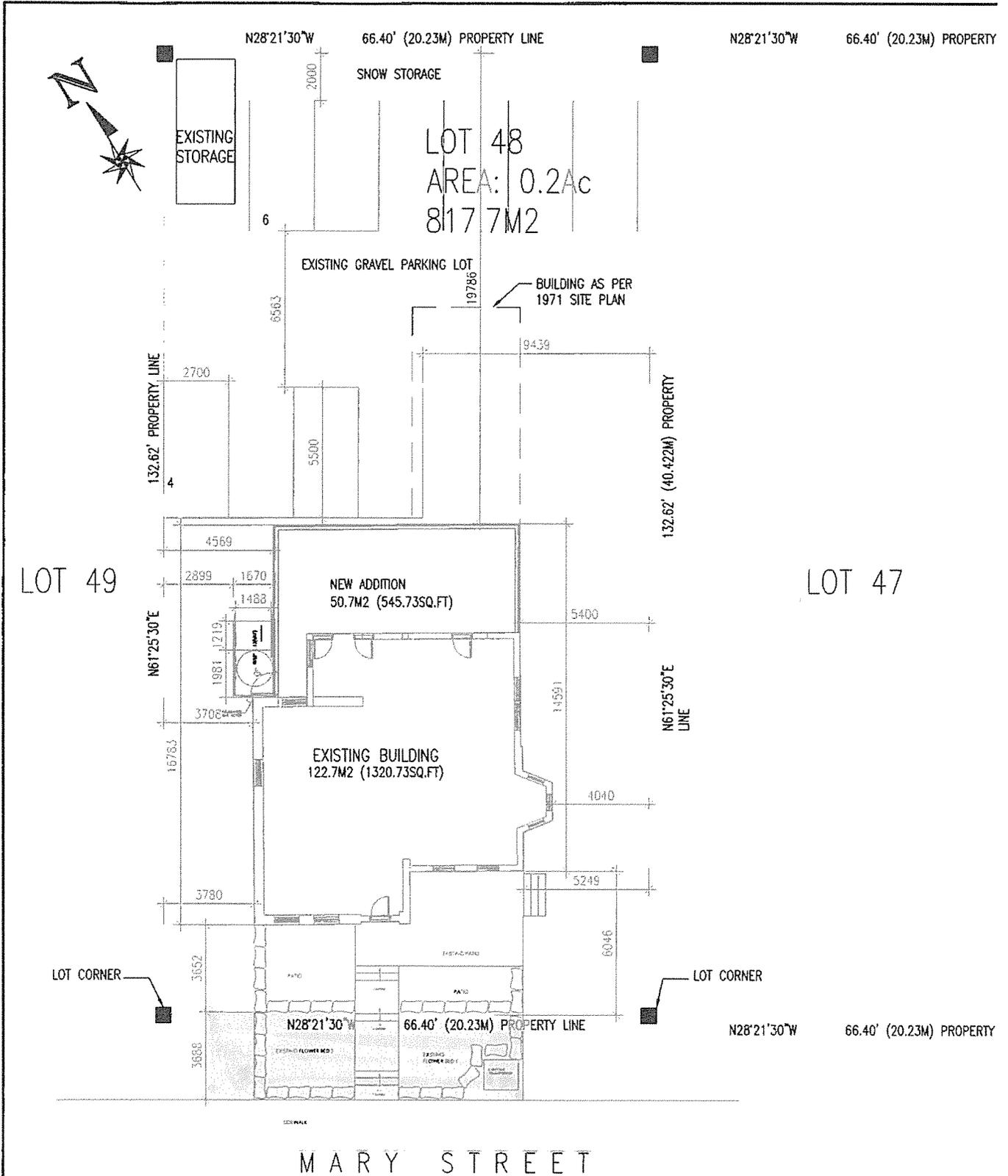
### **FINANCIAL**

12. The Owner will be responsible for all costs associated with the preparation of the agreement including the City's legal costs and any survey requirements. The Owner will be responsible to pay the annual encroachment fee as established by Council and provide proof of liability insurance in the amount of \$2,000,000.00 naming the City as an additional insured.

### **LINKAGE TO 2010-2014 COUNCIL STRATEGIC PLAN**

13. The recommendation(s) included in this Staff Report are not specifically related to the goals identified in the 2010-2014 City Council Strategic Plan.

**SCHEDULE A**



DATE: 2011.03.04	DRAWN BY: BK	FILE NO. 3613	CAD FILE NAME 49 MARY ST.	IAN S. MALCOLM ARCHITECTS 126 WELLINGTON STREET WEST SUITE 207, BARRIE, ONTARIO L4N 1K9 TEL (705) 726-2342 FAX (705) 725-5355	CLIENT INFO: MARCO ORMONDE THE NORTH RESTAURANT 66 DUNLOP STREET WEST BARRIE, ONTARIO TEL: 705.812.2192 FAX: EMAIL: CHEF@THENORTHRES
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