



P.O. Box 1749
Halifax, Nova Scotia
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Item No. 15.1.6
Halifax Regional Council
March 5, 2024

TO: Mayor Savage and Members of Halifax Regional Council

SUBMITTED BY: Original Signed

Cathie O'Toole, Chief Administrative Officer

DATE: January 23, 2024

SUBJECT: Encroachment Agreement – decorative walls at 5960 Inglewood Drive, Halifax

ORIGIN

Requested by Jason Ghosn of Grafton Developments Inc. for an encroachment in front of his father's property at 5960 Inglewood Drive in Halifax (PID 00000802).

LEGISLATIVE AUTHORITY

Halifax Regional Municipality Charter. SNS 2008, c. 39, subsection 324(2) provides:

324(2) The Council may, by by-law, regulate encroachments upon, under or over streets, including stipulating the period of time an encroachment may remain and the entering into of agreements, including terms and conditions, for particular encroachments.

By-Law E-200, respecting Encroachments Upon, Under or Over a Street, subsections 3 and 4 provide:

3 No person shall construct or maintain any encroachment or make use of a street for construction or restoration purposes in the Municipality unless an encroachment license has been issued by the Municipality.

4B An encroachment license shall not be issued unless the encroachment is authorized by Council...

RECOMMENDATION

It is recommended that Halifax Regional Council:

Not approve the attached Encroachment License Agreement for the decorative walls encroaching upon the street right of way.

BACKGROUND

Inglewood Drive is a cul-de-sac situated in the South End of Halifax between Point Pleasant Park and the Northwest Arm. There is an “extension” of the public street, beyond the end of the cul-de-sac bulb, that was created in the late 1960s or early 1970s in order to provide driveway access for three properties (5960, 5961, and 5965) after the original parcel was subdivided. The property at 5960 Inglewood Drive was purchased by Grafton Developments Inc. in November 2020.



Figure 1: Image showing the approximate street right of way boundary (in red) on Inglewood Drive

Staff were made aware of the construction of a brick wall within the street right of way after receiving two separate complaints through the 311 Contact Centre on July 13, 2023 (CSR# 2338517 & 2338521). These complaints were forwarded to a Right of Way Infrastructure Inspector for investigation, and they subsequently engaged the property owner.

The property owner indicated that “someone from HRM” had visited the property two days prior and stated that the brick wall was not an obstruction which is why they continued with construction. On July 18, 2023, the Inspector directed the owner to stop work within the street right of way and to apply for an encroachment license and an associated construction permit so that staff can properly review the plans.

On July 21, 2023, Jason Ghosn contacted staff by email on behalf of the property owner, his father Nassim Ghosn, in order to begin the application. Staff explained what was required to be submitted for review and followed up with Mr. Ghosn in August and again in October. An ultimatum was given to submit the necessary documents for review within 14 days or be directed to remove the encroaching infrastructure without consideration for approval by Council. Mr. Ghosn submitted his application 14 days later on October 18, 2023.

The encroaching infrastructure does not fall under categories that may be authorized by the Engineer as described in the *Encroachment By-Law*¹, therefore approval is being sought through Regional Council.

¹ See [Encroachment By-Law](#)

DISCUSSION

Jason Ghosn has indicated in his application letter (Attachment 1) that the wall was installed with the intent to satisfy Section 421(1) of the *Regional Centre Land Use By-Law*²; however, the *Land Use By-Law* does not apply as he suggests, since the wall is constructed in the public street right of way and not the front yard of the private property. Such private construction within the street right of way is governed by the *Streets By-Law*³ and the *Encroachment By-Law*.

Mr. Ghosn has also referenced two other potential encroachments, located at 5965 and 5961 Inglewood Drive. Regarding 5965, the brick columns on either side of the driveway are understood to be located on or just inside the property line and were constructed by a previous property owner. Regarding 5961, the stairs, which are also understood to have been constructed by a previous property owner, were confirmed to encroach and the current property owner has agreed to have them removed by June 30, 2024.

A survey plan, prepared by DesignPoint Engineering & Surveying Ltd. and provided by Mr. Ghosn, shows three pieces of encroaching infrastructure:

- a “stone wall” near the northern edge of the property
- a “brick wall” on the north side of the driveway
- another “brick wall” on the south side of the driveway

In addition to the construction of the two new brick walls, it appears that the stone retaining wall has been modified from its original “L-shape” configuration to a new linear configuration that encroaches on the street right of way. Figures 2 and 3 below have been marked up to highlight the changes that have been made: the stone wall is outlined in red; the pavers are outlined in yellow; and a utility pole is highlighted with a white dashed line as a point of reference.

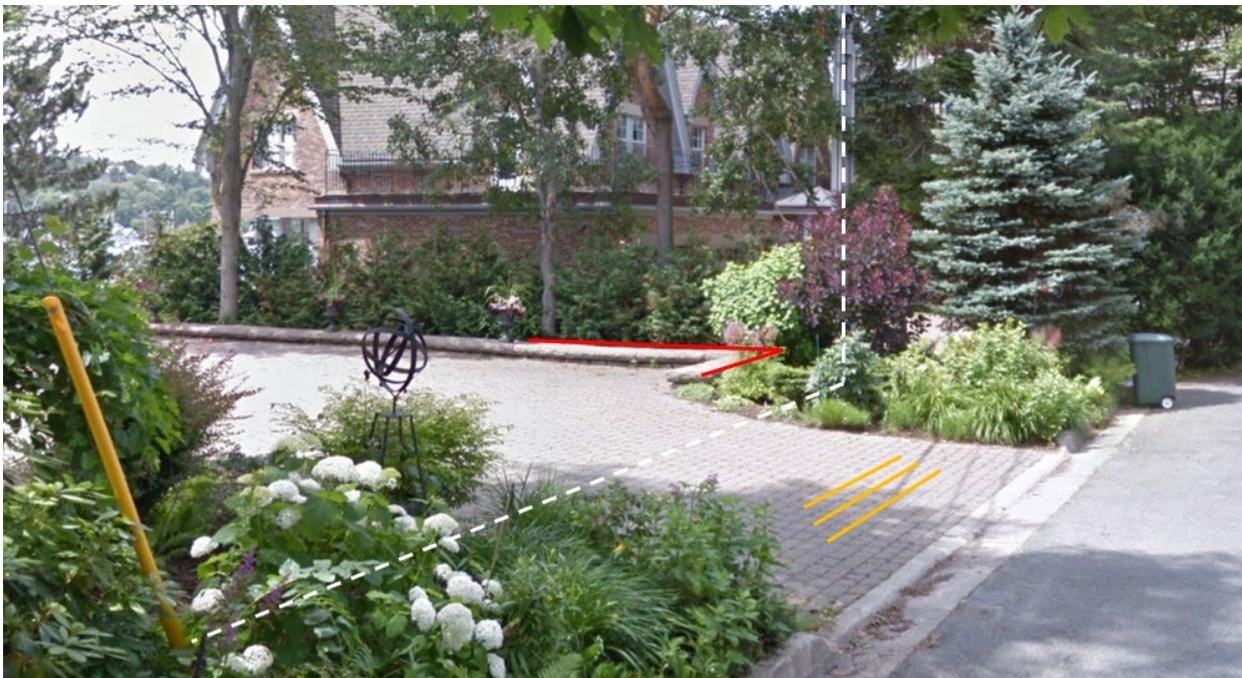


Figure 2: Driveway access for 5690 Inglewood Dr (from Google Streetview 2014)

² See [Regional Centre Land Use By-Law](#)

³ See [Streets By-Law](#)



Figure 3: Driveway access for 5690 Inglewood Dr (from site visit 2023)

The brick wall on the south side of the driveway has been constructed approximately 0.5 metres in front of the anchors that support Nova Scotia Power's (NSP) utility pole, as shown below in Figure 4. NSP has indicated that the brick wall is not anticipated to obstruct access to their overhead infrastructure; however, the wall would obstruct any excavation that may be required to repair or replace the support anchors. If NSP had to relocate the anchors to work around the wall then they may also need to install additional stub poles, guy wires, and anchors, as well as carry out the associated excavation and tree trimming to maintain force equilibrium on the utility pole. This wall will negatively impact NSP's ability to maintain its infrastructure.



Figure 4: Showing brick wall relative to utility pole anchors and stakes marking a private easement (2023)

The brick walls appear to include wiring for light fixtures. The “customer-owned” underground power conduit presents a potential risk to construction workers should there be a need to excavate this part of the street right of way as part of roadway or utility maintenance. This is because encroachment license agreements are not registered nor is the infrastructure associated with a utility company so the property owner would be responsible for locating and marking the underground infrastructure in advance of any excavation. If the encroachment is approved then staff recommend a wireless installation for any light fixtures, powered by solar panels or batteries or some combination thereof, in order to eliminate this risk.

There are two easements registered against this this property: a 30-foot-wide easement through the backyard for a combined sewer, and a 6-foot-wide easement along the southern property boundary providing water access by foot. Figure 4 above shows two wooden stakes demarcating the water access easement.

HRM’s Infrastructure Maintenance & Operations department has advised that the wall could be damaged during snow removal operations given its proximity to the roadway.

If Regional Council accepts the recommendation and does not approve the encroachment, then the property owner will be given notice by the Engineer to remove the encroaching infrastructure at their own cost.

FINANCIAL IMPLICATIONS

If Regional Council does not approve the encroachment, as recommended by staff, there are no financial implications for the Municipality.

If Regional Council decided to approve the encroachment, then the applicant will be required to pay a one-time license fee of \$125 plus an annual rental fee of \$222, as described in the *Encroachment By-Law and Administrative Order Number 15 respecting License, Permit and Processing Fees*⁴. The 5-year estimated financial implications can be summarized as follows:

Fiscal Year	2023/24	2024/25	2025/26	2026/27	2027/28
Operating – Cost Centre R112	\$347	\$222	\$222	\$222	\$222

Per the encroachment license (Attachment 2), both HRM and the Licensee are able to terminate the agreement and in doing so no further revenue would be realized.

RISK CONSIDERATION

There are no significant risks associated with the recommendations in this report. The risks considered rate low, and to reach this conclusion consideration was given to financial, environmental, operational impacts as well as alignment with strategic initiatives.

COMMUNITY ENGAGEMENT

Community engagement, as described in the *HRM Community Engagement Strategy*⁵, is not applicable to this process.

ENVIRONMENTAL IMPLICATIONS

⁴ See [Administrative Order Number 15](#)

⁵ See [HRM Community Engagement Strategy](#)

No environmental implications were identified.

ALTERNATIVES

Regional Council could choose to approve the attached Encroachment License Agreement (subject to non-substantive amendments, if any) for the decorative walls encroaching upon the street right of way.

ATTACHMENTS

1. Application Letter & Survey Plan
2. Council Approved Encroachment License (New Construction)

A copy of this report can be obtained online at halifax.ca or by contacting the Office of the Municipal Clerk at 902.490.4210.

Report Prepared by: Nick Peters, CTech., Engineering Assistant, Public Works, 782.640.5134
 Ben Daisley, P.Eng., Right of Way Engineer, Public Works, 902.471.9684



Grafton Developments Inc.
1901 Gottingen St. Suite 100
Halifax, NS, B3J 0C6

September 18, 2023



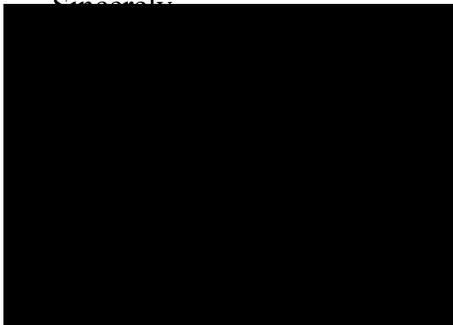
Request for Encroachment License: 5960 Inglewood Drive

I am seeking an encroachment license for a decorative stonework wall installed at 5960 Inglewood Drive, Halifax, NS. The wall was installed to comply with Section 421(1) of the Regional Centre Land Use By-Law, which requires that all parts of the front yard not employed for driveways, parking, off-street loading spaces, walkways, wheelchair ramps, stairs, or accessory structures must be either hard or soft landscaped. The stonework wall is a permissible form of “hard landscaping” under the definition in the Land Use By-Law.

The encroachment includes a masonry fence constructed using brick on either side of the driveway. There are columns on either end of the two portions of the fence that extend above the fence height and include lighting mounts. The fence was designed to complement the brick home behind and similar masonry features constructed on neighbouring properties. Supporting images are included in Appendix A.

The location of the encroachment (relative to property lines, property pins, a municipal asset like a utility pole and the total footprint of the encroachment) can be found in Appendix B.

Sincerely,



Appendix A

Supporting Images



Figure 1: Masonry brick fence at 5960 Inglewood Drive



Figure 2: Columns and lighting mounts



Figure 3: Masonry columns with lighting at 5965 Inglewood Drive

Appendix B

Survey

This **Encroachment License Agreement** made this _____ day of _____, 20_____.

BETWEEN:

HALIFAX REGIONAL MUNICIPALITY, a body corporate
(“HRM”)

and

GRAFTON DEVELOPMENTS INC., a body corporate
(the “Licensee”)

Recitals

A. **Whereas** the Licensee owns property at **5960 Inglewood Drive in Halifax (PID 00000802)** and wishes to construct **decorative walls with wireless light fixtures** (the “Encroachment”) within the HRM street right of way as shown and described in Schedule “A”;

B. **And Whereas** by resolution of the Halifax Regional Municipal Council on **March 5, 2024**, the HRM agreed to grant the Licensee an encroachment license in accordance with the terms and conditions set out in Halifax Regional Municipality By-law E-200, being the Encroachment By-law, and as contained in this license agreement.

In consideration of the mutual promises contained in this agreement the parties agree as follows:

License

1. HRM hereby grants this License to the Licensee for the Encroachment, giving the Licensee, its servants, agents and contractors, the non-exclusive right at all times to enter on, over and under that portion of **Inglewood Drive in Halifax** identified in Schedule “A” to construct and maintain the Encroachment, on the terms and conditions of this Agreement.

Ownership

2. The Licensee retains ownership of the Encroachment.

Relocation and Replacement

3. If the Encroachment must be relocated for HRM purposes, as determined at the sole discretion of HRM, such relocation will be at the sole expense of the Licensee. Should the Licensee wish to relocate or replace the Encroachment, such shall be done only upon receipt of the written consent of HRM, which may be withheld at the sole discretion of HRM and said relocation or replacement shall be at the sole expense of the Licensee.

Permits

4. (1) The Licensee agrees to comply with all municipal By-laws including the Streets By-law, S-300 for the original construction and maintenance of the Encroachment and all subsequent work which involves the excavation of the street.

(2) The application for a Streets & Services permit shall include an engineering plan and profile of the Encroachment stamped by a professional engineer. The engineering plan shall clearly indicate area (in square metres) of the Encroachment proposed over, on, or under the HRM street right of way.

(3) The final location of the Encroachment shall be subject to the approval of the Engineer of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the “Engineer”).

(4) For the purposes of the construction of the Encroachment, the Licensee agrees:

- (a) to engage the services of a professional engineer, licensed to practice in the Province of Nova Scotia;
- (b) to file with the Engineer a written undertaking stating that the professional engineer has been engaged by the Licensee to supervise and set out the Encroachment;
- (c) that the Encroachment will be done in accordance with the approved plans; and
- (d) that the project shall be subject to full time inspection and approval by the professional engineer or his representative.

(5) For the purposes of the construction of the Encroachment, the Licensee agrees to arrange a preconstruction meeting with HRM staff.

(6) Upon completion, the Licensee shall provide HRM with a certificate from a professional engineer certifying that the Encroachment was completed according to the approved drawings, any applicable municipal services specifications and standard drawings, and approved changes.

Record Drawings

5. The Licensee shall provide a copy of the record drawings immediately upon completion of the Encroachment, and immediately upon completion of any temporary or minimal relocation.

Maintenance

6. The Licensee agrees, at its sole expense, to maintain the Encroachment in a safe condition and so that it is not dangerous or hazardous to traffic, pedestrians, the environment or the public at large.

7. HRM may at any time and without notice inspect the Encroachment and, to the extent required to inspect the Encroachment, enter upon the Licensee’s land.

8. If HRM determines in its sole discretion that the Encroachment is unsafe or dangerous, HRM may:

(1) Notify the Licensee that the Licensee, at its sole expense, shall repair or alter the Encroachment in any manner that HRM determines in its sole discretion is necessary to make it safe; and

(2) If the Licensee does not, within fifteen (15) business days of receiving notice to repair or alter the Encroachment, begin the repair or alteration, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs of the repair, alteration and restoration of the street right of way, and for all expenses incurred by HRM for the work.

9. If HRM determines in its sole discretion that the Encroachment is an immediate safety issue, danger or hazard, HRM may without notice and without compensating the Licensee remove the Encroachment and restore the street right of way or remedy the safety issue in any manner.

10. (1) The Licensee agrees to reimburse HRM for the cost of all work done by

HRM and all expenses incurred by HRM under sections 8 and 9 within fifteen (15) business days of receiving notice of the costs of the work or expense incurred.

(2) HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM for the work.

Street Maintenance

11. HRM shall not be responsible for any loss or damage to the Encroachment, however caused, occurring as a result of required street maintenance, snow and ice removal, and street cleaning.

Indemnity

12. (1) The Licensee agrees to indemnify and save harmless HRM, its Mayor, Councillors, employees, agents, contractors and volunteers from all claims, including actions for negligence, death, and injurious affection, liabilities, damages and expenses of any kind in any way related to or connected with the grants of the rights set forth in this license agreement or from the existence or operation of the Encroachment however caused, except to the extent that the loss arises out of the gross negligence of HRM.

(2) This section shall survive the termination of this license agreement.

Insurance

13. A Licensee that is not a natural person shall purchase and maintain, during the term of this license agreement, commercial general liability insurance in the amount of not less than \$2 million in a form and with an insurer acceptable to HRM and with HRM named as an additional insured with respect to any claim arising out of the maintenance or use of the Encroachment or out of this license agreement. Evidence of such insurance shall be provided to HRM at the time of applying for this license and at any renewal of the insurance.

Fees

14. The Licensee shall be invoiced for, and shall pay, the fees set out in Encroachment By-law E-200 and Administrative Order 15, as amended, and for the purpose of the calculation of said fees, it is agreed that the space occupied by the Encroachment is **22.2 square metres**.

15. The Licensee acknowledges that the fee prescribed by Administrative Order 15 is subject to review by HRM Council and may be increased at any time by HRM Council.

Occupational Health and Safety Act, SNS 1996, c 7

16. The Licensee agrees to comply with the requirements of the *Occupational Health and Safety Act* and all regulations enacted pursuant thereto. Specifically, the Licensee agrees to exercise the due diligence required by the Act in ensuring that to the extent possible the requirements of the *Occupational Health and Safety Act* and its regulations are followed by its employees, contractors or agents.

Termination

17. (1) HRM may terminate this license agreement, in writing, at any time. Upon receipt of notice that HRM intends to terminate this license agreement, the Licensee shall:

- (a) pay to HRM all encroachment fees owing;
- (b) pay to HRM the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9; and
- (c) at its sole expense, remove the Encroachment and restore the street right of way to the satisfaction of HRM within sixty (60) calendar days,

unless otherwise agreed to between the parties.

- (2) The Licensee may terminate this license agreement under the following conditions:
- (a) notification to HRM in writing of its intention to terminate this licence agreement;
 - (b) payment to HRM of all encroachment fees owed;
 - (c) payment to HRM for the cost of all work done by HRM and all expenses incurred by HRM under sections 8 and 9;
 - (d) at the Licensee's sole expense, removal of the Encroachment and restoration of the street right of way to the satisfaction of HRM within sixty (60) calendar days of notice to HRM, unless otherwise agreed to between the parties; and
 - (e) any other terms and conditions as may be necessary in the opinion of the Building Inspector for the Municipality, (the "Inspector"), or the Engineer of the Municipality as defined by the *Halifax Regional Municipality Charter*, SNS 2008, c 39, (the "Engineer") for the restoration of the street.
- (3) If the Licensee does not, within the sixty (60) calendar days or such other time agreed to between the parties, remove the Encroachment and restore the street right of way, HRM may cause the work to be done and the Licensee shall be fully responsible for all costs and expenses of the work. HRM may, in addition to any other remedies available at law, lien the Licensee's property for any of the costs or expenses owed to HRM.
- (4) The termination of this license agreement shall not be effective until the Licensee has paid all fees, costs and expenses owed to HRM under this license agreement and restored the street right of way to the satisfaction of HRM.

Notices

18. Any written notice or communication relating to the administration of this license agreement to be given or delivered by one party to the other shall be deemed to be duly given or delivered by hand, by fax or by courier to the following addresses or such other address that may subsequently be provided:

**Halifax Regional Municipality
Executive Director of Public Works
P.O. Box 1749
Halifax, N.S. B3J 3A5**

and

**Grafton Developments Inc.
1901 Gottingen Street
Suite 100
Halifax, N.S. B3S 0C6**

19. This license agreement shall not be assigned without the written permission of the Engineer. Where the Engineer grants such permission, the assignee takes the place of the Licensee under this license agreement.

20. This license agreement shall enure to the benefit of and be binding upon the parties hereto, their heirs, executors, administrators, successors in title and permitted assigns.

21. The Licensee shall not acquire any right, title or interest in or to HRM property or

HRM's public road allowance, or the portion thereof affected by the Encroachment, except the right to maintain the Encroachment in accordance with this license agreement.

22. This license agreement shall be construed according to the laws of the Province of Nova Scotia.

23. The parties agree this is a public document within the meaning of Part XX of the *Municipal Government Act*, SNS 1998, c 18.

24. If the Licensee is not a natural person the signatory declares that he or she has the authority to bind the corporation or organization.

IN WITNESS WHEREOF the parties hereto have executed this license agreement as of the day and year first above written.

SIGNED, SEALED AND DELIVERED in
The presence of:

GRAFTON DEVELOPMENTS INC.

Witness

Name:
Title:

Witness

Name:
Title:

HALIFAX REGIONAL MUNICIPALITY

Witness

Mayor

Witness

Municipal Clerk

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared _____ a subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that _____, one of the parties thereto, signed, sealed and delivered the same in his presence

A Commissioner of the Supreme Court of Nova Scotia

PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX, NOVA SCOTIA

ON THIS ____ day of _____, A.D., 20__, before me, the subscriber personally came and appeared before me _____ the subscribing witness to the within and foregoing Indenture, who, having been by me duly sworn, made oath and said that the **Halifax Regional Municipality**, one of the parties thereto, caused the same to be executed and its Corporate Seal to be thereunto affixed by the hands of _____, its Mayor and _____, its Municipal Clerk, its duly authorized officers in his presence.

A Commissioner of the Supreme Court of Nova Scotia

Schedule "A"

Description of the encroachment:

- The encroachment includes three distinct pieces of infrastructure in front of 5960 Inglewood Dr in Halifax, as shown in the survey plan:
 - near the northern edge of the property, a "stone wall" assumed to be 1 metre wide (2.4sqm)
 - on the north side of the driveway, a "brick wall" (2.7sqm) and the area behind it (12.4sqm)
 - on the south side of the driveway, another "brick wall" (1.8sqm) and the area behind it (2.9sqm)
- The total size of the encroachment is 22.2 square metres.
- The light fixtures attached to the brick walls are wireless; they are powered by solar panels, batteries, or some combination thereof.

