

# Staff Report

Presented By: Jessica Rodgers, Asset Management Supervisor

Meeting Date: January 5, 2026

Subject: Perkins Encroachment Application

Attachment(s): Encroachment Application  
Draft Encroachment Agreement - Perkins

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## **Recommendation**

That Council direct staff to return with a Section 35 By-law and a By-law to execute an encroachment agreement.

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## **Report Summary**

Jody Perkins, on behalf of herself and Charles Lee Perkins, has requested an agreement that would allow for their personal use of part of the Town laneway that is situated between two properties that they own. The purpose is to form an enlarged and fenced residential back yard. This report sets out the evaluation of the request. The proposed draft encroachment agreement is attached.

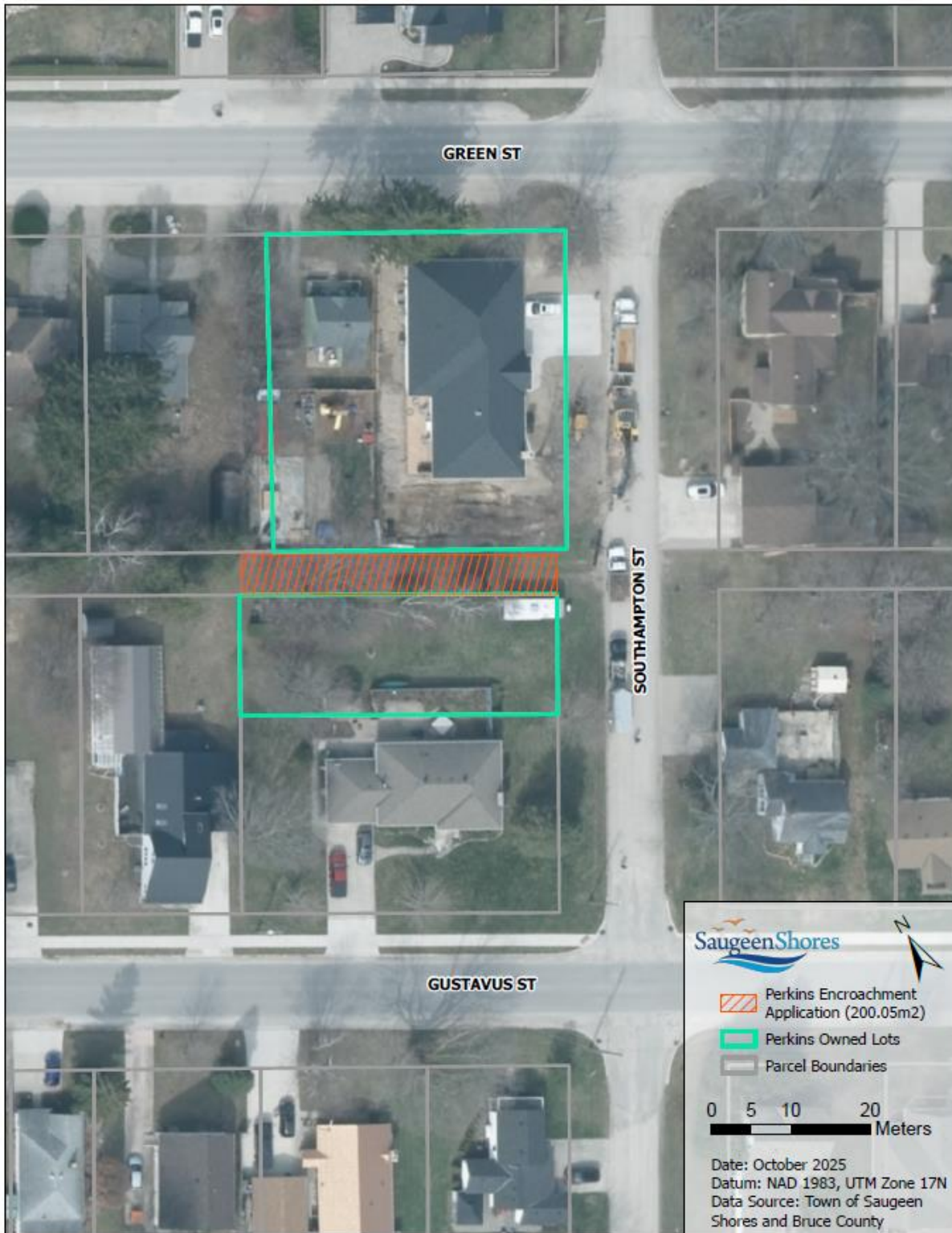
## **Background/Analysis**

Jody Perkins and Charles Perkins (“the applicants”) currently own 440 Green Street in Port Elgin and PLAN 180 PT LOTS 16 AND 17; RP 3R10892 PART 1 in Port Elgin as part of a recent severance from 435 Gustavus Street.

The lane currently between the two properties runs east-west from Southampton Street to Bruce Street, mid-block between Gustavus Street and Green Street (see sketch Location Map, Survey and Site Photos below).

The applicants would like to fence an area that would include the intervening lane with the two properties resulting in an enlarged yard for the 440 Green Street residence. The laneway is approximately 39.8 m by 5.05 m (200.05 square metres).

**Location Map:**





**Site Photos:**

Laneway looking west from Southampton Street



Laneway looking east from Bruce Street  
(the shed at the center of the picture is on the south side of the laneway)



The following sections set out the criteria/analysis and the main elements of the proposed encroachment agreement.

### Policy Analysis

The Encroachment on Town Lands Policy sets out a number of points to be considered in an evaluating an encroachment request. The items most relevant to this request are discussed below in the form of questions:

1. Does the encroachment create an unsafe or hazardous condition or pose a danger to the health, safety and well being of any person?

No. The use and fencing of this portion of the laneway for residential amenity space is not anticipated to create an unsafe condition.

2. Does the encroachment diminish or restrict the public's right of usage, such as but not limited to, impeding vehicular, pedestrian, bicycle and/or other passage or access by the public along, on or over a travelled portion of a highway?

Yes. While the lane does not have a paved or gravel surface and it is not a well travelled portion of laneway, the fencing of the laneway would restrict access. In its current state, the laneway is not easily passable by pedestrians or cyclists due to vegetation overgrowth. The Bruce Street end of the lane has a curb which restricts access.

A legal consideration is that if the applicant is permitted to fence a portion of the Town's lane thereby obstructing passage over this portion of the lane, it will be necessary to pass a By-law pursuant to Section 35 of the *Municipal Act*, 2001. Section 35 allows a municipality to remove or restrict the common law right of passage by the public over the lane (which is deemed to be a public highway) as well as the common law right of access to the lane by abutting landowners.

3. Is the applicant able to reasonably demonstrate a need for the encroachment?

No. It would not be considered a reasonable need to expand the back yard as the applicant's lot in its current configuration is not undersized or unsuitable for residential uses and contains a reasonably sized yard.

4. Does the encroachment involve fencing that delineates municipal property?

No. It is noted that the fencing would physically restrict and divide municipal property.

5. Does the encroachment adversely affect municipal operations, work plans, efforts or initiatives of the Town to maintain municipally owned lands or undertake capital works projects?

Yes. From a public works standpoint, the proposed fence across the lane raises operational concerns. There are multiple municipal and boundary trees located within the lane that require periodic maintenance. Although, the fence would not interfere with

existing municipal services, there may be a need to service infrastructure in the future that would require access to the proposed area. The lane's access point for such work is from Southampton Street, as there is no suitable access available from Bruce Street. Restricting this entry would adversely affect municipal operations.

6. Does the encroachment interfere with any public utility or other similar installation located on municipally-owned lands including underground infrastructure?

Yes. The survey shows an overhead hydro line located just inside the applicant's property line on the north side of the laneway. There also appear to be secondary buried lines, and telecommunication pedestals, on Town land. Future requests from utility companies to access their infrastructure within or from the laneway are anticipated and the installation of a fence would hinder this access. The lane's access point for such work is from Southampton Street, as there is no suitable access available from Bruce Street.

7. Does the encroachment create a risk to the Town that cannot be mitigated through an agreement?

No. Potential liabilities could be addressed in an agreement and insurance is required.

### Conclusion

It is noted that many landowners use Town lanes and road allowances in a manner that incorporates Town land into their amenity space without seeking permission from the Town. In this case, it is appreciated that the applicants have approached the Town and offered to enter into a public and legal process.

Given the potential interference with municipal operations and utility access, an agreement permitting fencing across the laneway would need to include a provision for the Town or utility companies to have access to the lane at any time without restriction. This could be addressed via a requirement for of a gate of specific width and design to the satisfaction of the Town.

An agreement could be supported with appropriate conditions addressing the points noted below:

- Non-exclusive permission to use the licenced area for personal use and to place fencing, subject to the Town's prior approval.
- Provision wherein the Licensee recognizes the infrastructure that exists and will not impede the Town or utility companies' ability to gain access to maintain infrastructure.
- The fence will require gates to the satisfaction of the Town and the fence footings cannot interfere with infrastructure or be placed on areas where there is infrastructure.
- The Licensee shall be responsible for ensuring all individuals and contractors are insured, qualified, and are working in compliance with all legislated requirements, prior to, and while undertaking work on the municipal land.
- The Licensee is to maintain the Encroachment, at its sole cost and expense, and in a state of good order, condition, and repair, to the satisfaction of the Town, acting reasonably, and will comply with all the requirements of the Town.

- If requested by the Town, the Licensee acknowledges and agrees that it will relocate or remove completely the Encroachment to allow for any capital infrastructure projects on the municipal property.
- Maintenance is at sole cost of the licensee and maintenance requirements are set out.
- Term is 15 years with an annual fee.
- Indemnification of the Town from liability.
- Insurance is required.
- Termination provisions are set out, including for early termination on behalf of the Town if the Town requires the land for a municipal purpose.
- The term is 15 years with potential renewal for an additional 5 years.
- Transfer (assignment) to a future owner is possible subject to prior written consent of the Town and a further written agreement with the new licensee.
- Other provisions that are normal for this type of agreement.

### Annual Fee

The annual fee of \$2,108.53 based on 200.05 m<sup>2</sup> at a rate of \$10.54 per m<sup>2</sup> as set out in the 2026 Fees and Charges By-law. The fee will increase annually in line with the annual Fees and Charges increase.

### Recommendation

It is recommended that Council direct staff on the request that would allow for the personal use of part of the Town laneway to enlarge and fence an expanded residential yard. It is noted that the encroachment agreement should not be executed until a Section 35 By-law is successfully passed. The intent of the Section 35 Bylaw is to recognize the restriction to common law access to that portion of the lane that will be fenced and as such will require notice to the public. For this reason, it is recommended that Council direct if it wishes staff to return with both a Section 35 By-law and a By-law to execute an encroachment agreement.

### **Linkages**

- Strategic Plan Alignment: Pillar 4: Fostering a Vibrant Place to Live and Visit
- Business Plan Alignment: Development Services Business as Usual

### **Financial Impacts/Source of Funding**

The annual licence fee is \$2,108.53.

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