

# Report



Municipal Planner  
Report #2013-04

**To:** Mayor and Council  
**From:** Faye Flatt, Municipal Planner  
**Date:** 4 May 2013  
**Re:** 400 Butler Avenue - Encroachment

## **Purpose:**

This report will provide information on an encroachment of the building at 400 Butler Avenue into the road allowance of Church Street and recommends that the Town enters into an Encroachment Agreement with the owner.

## **Background:**

The above property is in the process of being sold and as generally occurs, a request was received for confirmation that the property and buildings located on it complied with zoning regulations.

The property is occupied by a one storey residential dwelling that was constructed in 1925. This building does not have the required setback to the south and actually encroaches into the road allowance of Church Street. Structures that predate zoning are considered legal as existing structures but this status does not apply to encroachments. To correct the situation, the vendors solicitor was advised to request an encroachment agreement from the Town.

Rather than proceed as recommended, a request to purchase a portion of the road allowance was received. For reference I have attached a copy of my letter of compliance, survey dated July 21, 1988 and recent letter from Don Taylor dated April 3<sup>rd</sup>. The standard format agreement, in addition to indemnification, insurance, maintenance provisions, contains a clause that would compel the owner to remove the offending structure upon 30 days notice by the Town. In my communication with Mr. Taylor's office, the intimation was that the Town was aware of the situation but took no action to correct it even though we had a survey on file, had issued permits and granted variances.

Generally speaking we do not compel a property owner to correct zoning violations or get a minor variance for structures that are not directly related to a construction proposal as this could be viewed as punitive and not good customer service, and although one of the permits issued was for a sunroom over an existing deck (for which a variance was applied for and granted) one can only speculate that the encroachment issue was not included in that variance because the footprint of the long standing structure was not being increased.



This written request is the second one received. The first was verbal and was responded to by this writer in the same manner. Staff could have also responded to this written request but it was thought that a decision by Council would conclude the matter and eliminate any subsequent requests.

**Considerations:**

Initially Mr. Taylor was advised verbally that a transfer of part of the road allowance would benefit his client but would serve no benefit to the Town. The written request was circulated to Operations and Facilities Division and we are in agreement that

- repair of municipal services located within the road allowance may be hindered;
- removing part of a road allowance may interfere with snow removal;
- there is a potential to access the Shevlin woodyard property if it is vacated and redeveloped in future;
- an agreement has long been used to resolve encroachment issues and conveying part of a road allowance as a means of correction, could create a precedent for other similar situations. Although the agreement permits the Town to require the property to remove an encroachment upon request, the owner has never been required to remove an encroachment.
- the preferred minimum width of a municipal roadway is 20 metres (was a requirement in the 1998 Official Plan), unless transfer includes entire width, is to accommodate a street narrowing, is because property is surplus, or other such initiative; and
- there is no benefit to the Town to sell part of the road allowance.

**Recommendation:**

It is recommended that the request by Don Taylor Law Office, on behalf of the owner of 400 Butler Avenue, to purchase a portion of the Church Street road allowance to correct an encroachment of the residential dwelling, be denied.

Planning and Development Executive Committee supported the above recommendation at it's meeting held May 6, 2013.

Respectfully submitted,



<p><b>COUNCIL APPROVAL OF THIS REPORT WILL:</b> deny the request from Don Taylor Law Office (dated April 3, 2013) to purchase part of the Church Street road allowance for the benefit of the owner of 400 Butler Avenue.</p>
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Administration & Finance Division  
Civic Centre

Operations & Facilities Division  
Fifth Street & Wright Avenue  
Phone: 807-274-9893  
Fax: 807-274-7360

Civic Centre  
320 Portage Avenue  
Phone: 807-274-5323  
Fax: 807-274-8479  
email: town@fort-frances.com



3-1-152

Planning & Development Division  
Civic Centre

Community Services Division  
740 Scott Street P9A 1H8  
Phone: 807-274-4561

Mailing Address:  
320 Portage Avenue  
Fort Frances, Ontario  
P9A 3P9

www.fort-frances.com

8 March 2013

Lawrence A. Eustace  
Barrister and Solicitor  
510 Portage Avenue  
Fort Frances, On  
P9A 2A3

Dear Sir:

Re: 400 Butler Ave. (R# 3-1-152)

This is in response to your enquiry regarding zoning compliance of the above noted property.

The following has been determined from information obtained from our property file records, Municipal Property Assessment Corporation as well as an outdated building location survey from 1988.

1. This property is located in an Residential R3 zone with a single detached dwelling occupying the property. Single detached dwellings are permitted in an R3 zone but must comply with regulations of an R2 zone. The lot does not have the frontage required but is considered as an existing lot of record.
2. The main building (constructed in 1925) complies with the regulations for permitted use for this zone except that it does not have the required front yard setback nor the required sideyard setback to the south.

Notwithstanding the foregoing, it is noted that this building encroaches into the road allowance of Church Street by 0.76 ft and although the structure is considered legal noncomplying in regards to the setback provisions noted, this status does not apply to encroachments. There is no record of an encroachment agreement on file.

In 1993 a screened-in addition was authorized by permit #063. The survey does not show this updated structure and as such cannot be relied upon for purposes of confirming zoning compliance.

3. The survey shows an accessory building (frame garage) and a proposed garage. Although a permit was issued to authorize the demolition of the frame garage (88.164) and the construction of a 19' x 24' garage (88.165), the building constructed was larger (19' x 35') and exceeded the maximum lot coverage permitted of 10%. A variance granted in 1990 (File A18/90) corrected this violation but since the implementation of the current zoning by-law increased the standard to 15%, the structure is now compliant with the noted regulation.

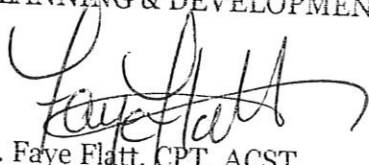
Notwithstanding the foregoing, and with exception of lot coverage, I am unable to confirm that the accessory building complies with applicable zoning regulations because the building in it's completed state is not shown on the survey.

4. There is no record of outstanding work orders on file with this department with respect to this property.

The foregoing information is given for your convenience only and it should be clearly understood that you must satisfy yourself as to whether the premises and the existing or proposed use thereof is or would be in conformity with all applicable by-laws and regulations of the Town of Fort Frances.

Yours very truly

PLANNING & DEVELOPMENT DIVISION



N. Faye Platt, CPT, ACST  
Municipal Planner

\*ff

Encl.

BUTLER

328.3

N 0° 16' 10" E

1" 18  
(SM - 76)

66.0 PLAN AND SET

SSIB

65.68 proportion

66.0 PLAN AND SET

"AXLE"

WALL  
0.76 SOUTH

WALL  
0.47 SOUTH

24.0  
1 STOREY FRAME  
DWELLING

PARCEL

FRAME  
GARAGE

8129 R.R.

PROPOSED  
GARAGE

N 89° 56' W

N 89° 55' 30" W

PARCEL

290

9733 R.R.

N 1/2, 290

S 1/2, 290

MIN. 155.0

TO BE  
DEMOLISHED  
10.0

SIB BENT  
SET SIB

N 0° 15' E

CHURCH STREET

N

125.0

89°

56'

W

285

18 (1011)

504 Armit Avenue, Fort Frances, ON P9A 2H7  
Phone: (807) 274-7811 or (807) 274-8491

Fax: (807) 274-8485  
e-mail: dalaw@shaw.ca

File No. 13-016

April 3, 2013

Town of Fort Frances  
320 Portage Avenue  
Fort Frances, ON P9A 3P9

Attention: Mr. Mark McCaig, Chief Executive Officer

Dear Mr. McCaig:

**RE: 400 Butler Avenue (R#3-1-152)**

Please be advised that I am the solicitor for Mr. Gregory Foran, the current registered owner of the above property.

My client was never aware that there was a survey deposited with the Town of Fort Frances which shows an encroachment of the south wall of the house onto Church Street. Please find enclosed herewith a copy of the Survey prepared by B. Maskell Limited dated July 21, 1988 together with a copy of the zoning memorandum addressed to Mr. Lawrence Eustace and dated March 8, 2013, for your information and assistance. This encroachment has likely existed since the house was constructed in 1925. Presumably the Town of Fort Frances has been aware of this encroachment since 1990 or earlier.

Mr. Foran would like to acquire sufficient property from the Town of Fort Frances to rectify the building encroachment, which I estimate to be approximately 2.5 to 3 feet. Kindly provide confirmation as to whether the Town of Fort Frances is prepared to facilitate same. This portion of Church Street is a dead end at the mill yard and there really is no adverse affect to the Town's interest.

I trust the foregoing to be satisfactory and look forward to hearing from you.

Yours truly,



Donald A. Taylor

DAT/st

Enclosures

cc. **N. Faye Flatt, Municipal Planner**

Greg Foran

Chad Jack, Cousineau Real Estate