

The Corporation of the Municipality of Brockton



By-Law 2023-058

Being a By-Law to Enter into an Encroachment Agreement with 205 Cargill Road

Whereas the Municipal Act S.O. 2001, c 25, Section 5(3), as amended provides that a municipal power, including a municipality's capacity rights, powers and privileges under section 9, shall be exercised by By-Law;

And Whereas the Owner, Phyllis Spitzig, of Cargill Country Variety, a business located at 205 Cargill Road in the Hamlet of Cargill within the Municipality of Brockton desires to construct a ramp providing access to the store front from Cargill Road.

And Whereas the Council of The Corporation of the Municipality of Brockton deems it expedient to enter into an Encroachment Agreement with Phyllis Spitzig (Cargill Country Variety);

Now Therefore the Council of the Corporation of the Municipality of Brockton enacts as follows;

- 1.0 That the Council of The Corporation of the Municipality of Brockton hereby enter into an Encroachment Agreement attached hereto and that this Encroachment Agreement be marked as Schedule "A" to this By-Law and shall form an integral part of this By-Law;
- 2.0 That the Mayor and Clerk be and are hereby authorized on behalf of the Corporation to sign this Agreement and any other related documentation;
- 3.0 This By-Law shall come into full force and effect upon final passage.
- 4.0 This By-Law may be cited as the "205 Cargill Road (Cargill Country Variety) Encroachment Agreement By-Law".

Read, Enacted, Signed and Sealed this 23rd day of May, 2023.

Mayor – Chris Peabody

Director of Legislative and Legal Services (Clerk)
– Fiona Hamilton

Schedule "A" to By-Law 2023-058

This Agreement made this 23rd day of May 2023.

Between:

The Corporation of the Municipality of Brockton
Hereinafter referred to as "The Municipality" of the First Part

And

Phyllis Spitzig
Hereinafter referred to as "The Licensee" of the Second Part

Whereas the Licensee is the registered owner of lands and premises situated at 205 Cargill Road, and legally described as, CONCESSION A PART LOT 23 Municipality of Brockton, County of Bruce, and Roll number 41-04-340-004-02500-0000 and known municipally as 205 Cargill Road, Cargill, Ontario.

And Whereas there is erected on the said land a building which encroaches upon Cargill Road as depicted on the plan survey attached hereto as Schedule "A" to this agreement;

And Whereas the Licensee is requesting permission from the Municipality of Brockton to maintain the said encroachment on Cargill Road as set out in the attached plan and marked as Schedule "A" to this agreement.

Now Therefore This Agreement Witnesseth that in consideration of the premises and the covenants and agreements hereinafter contained on the part of the Licensee to be observed, fulfilled and performed, the Municipality of Brockton hereby grants to the Licensee (insofar as the Municipality can legally do so) permission to encroach on Cargill Road and to maintain the encroachment as hereinafter set out.

And in Consideration of the granting of such permission, the Licensee hereby covenants and agrees with the Municipality of Brockton as follows:

1. That nothing herein contained shall be construed as giving to the Licensee anything more than permission (insofar as the Municipality can legally do so) to maintain the encroachment in its proposed position as shown on Schedule A.
2. In the event of the Municipality at any time undertaking the widening of the said Cargill Road and in connection therewith requiring the removal of the encroachment the Municipality shall not be liable to pay any compensation whatsoever for or in respect to the encroachment upon or over the said street and the Licensee at his own cost and expense and to the satisfaction of the Municipality shall remove the encroachment from the said Cargill Road.
3. In the event of the Licensee transferring or selling the land mentioned herein or any part thereof, the Licensee shall forthwith notify in writing the Clerk of the Municipality of such transfer or sale together with the name and address of the transferee or purchaser.
4. That all such costs, charges and expenses so paid or incurred by the Municipality as aforesaid shall form and constitute a charge or lien on the said lands until fully discharged by payment thereof.
5. The Licensee further agrees that they will make no change to the existing structure within the encroachment area.
6. The Licensee further agrees that should the portion of the building encroaching on Cargill Road be removed or destroyed, for whatever reason or cause, the Licensee will not reconstruct on the encroachment area.

- 7. That for the purpose of this agreement notice may be given to the Licensee by mailing the same postpaid and addressed to the Licensee at his address last known to the said Municipal Clerk.
- 8. The Licensee will always indemnify and keep indemnified the Municipality against all actions, suits, claims and demands which may be brought against or made upon the Municipality and against all loss, costs, damages, charges or expenses whatsoever of the encroachment over and upon the said Cargill Road or otherwise by reason of the exercise by the Licensee of the permission hereby granted to maintain the encroachment over and upon the said Cargill Road and the Licensee hereby grants to the Municipality full power and authority to settle any such actions, suits, claims and demands on such terms as the Municipality may deem advisable and hereby covenant and agrees with the Municipality to pay to the Municipality on demand all moneys paid by the Municipality in pursuance of any such settlement and also such sum as shall represent the reasonable costs of the Municipality or its solicitor in defending or settling any such actions, suits, claims or demands.
- 9. That this agreement and everything herein contained shall respectively ensure to the benefit of and be binding upon the said parties hereto, their heirs, executors, administrators, successors and assigns, respectively.

In Witness Whereof the Parties hereto have hereunto executed this Agreement.

The Corporation of the Municipality of Brockton

Per: _____
Mayor – Chris Peabody

Per: _____
Clerk – Fiona Hamilton

We have the authority to bind the Corporation.

Signed, Sealed and Witnessed in the Presence of:

Per: _____
Witness - _____

Per: _____
Licensee/Owner - Phyllis Spitzig