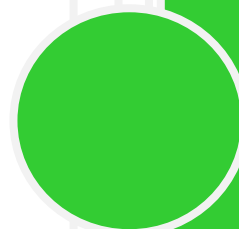


# ENCROACHMENT AGREEMENT PROCESS



The City of Cornwall - Planning Division

Revised 2016



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## ENCROACHMENT AGREEMENT APPLICATION PROCESS & PROCEDURES

### DEFINITION:

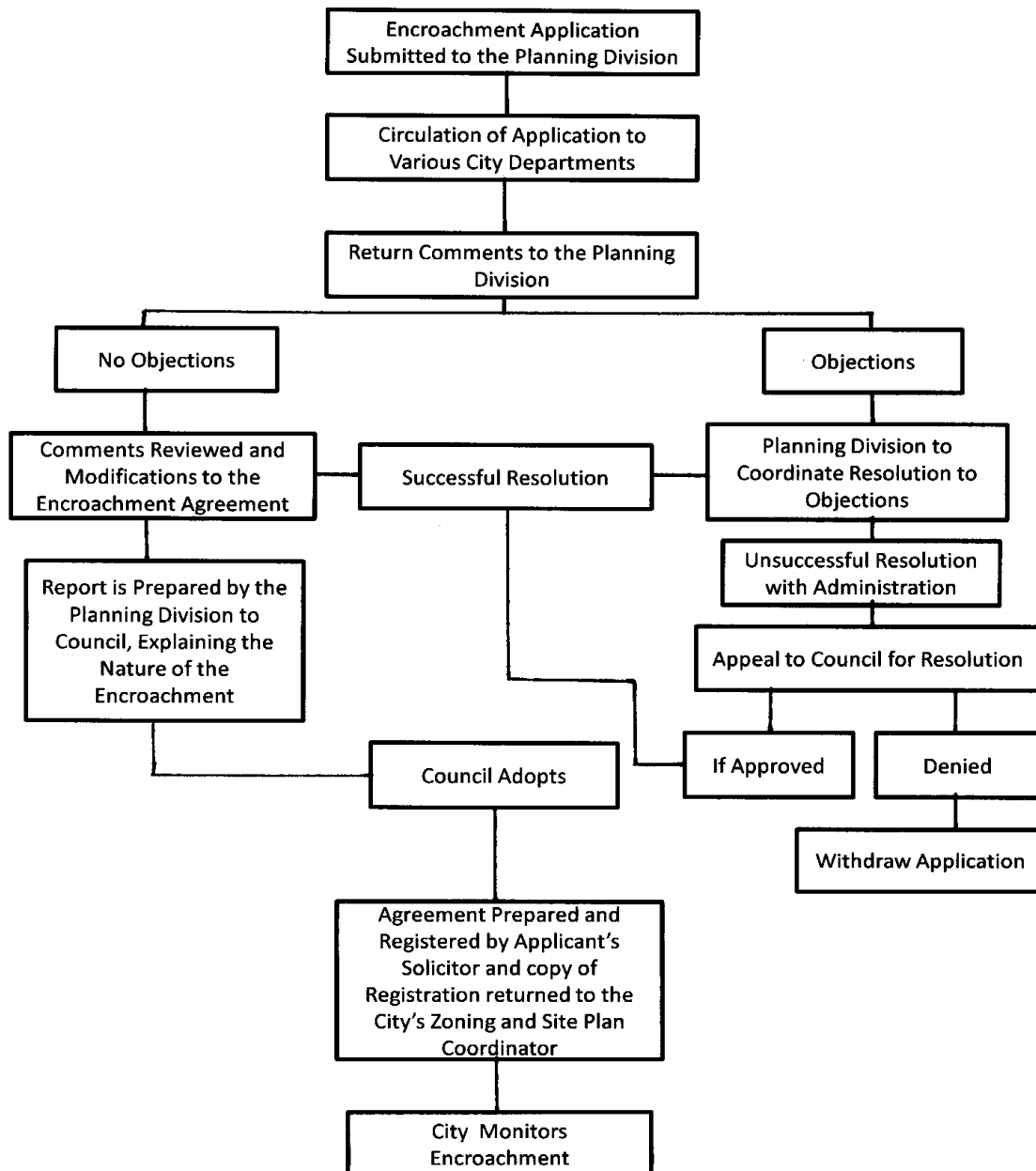
An encroachment agreement is a legally binding document signed by the Operator and the parties involved when a property encroachment exists. It states the agreed-upon resolution to the encroachment, which becomes binding between the parties.

To apply to the City of Cornwall for an Encroachment Agreement, the applicant shall:

- Step 1.** Submit a completed application form along with 5 copies of the necessary sketches, details and an application fee of \$370.00. **(Refer to submission requirements if application is for a street-side spot patio)**  
(This application will be circulated to the various Municipal Departments for review).
- Step 2.** **A report is prepared by the Planning Department with Staff comments and presented to City Council at a regularly scheduled meeting, and a decision is made by Council. Council may approve or deny the request or approve the conditions.**
- Step 3.** If approved by Council, the applicant can then have his solicitor prepare all the necessary forms which consist of:
  - 4 copies of the proposed encroachment agreement as per example; (sample agreement attached); and
  - 4 copies of a Schedule "A" which comprises of the legal description of the abutting building and a detail of the encroachment; and
  - 4 copies of the Affidavit of Subscribing Witness; and
  - A **certified cheque made payable to the City of Cornwall** in the amount of two dollars (\$2.00).
- Step 4.** Submission of the prepared Agreement and accompanying documents will go to the Zoning & Site Plan Coordinator, for review.
- Step 5.** The copies of the Agreement will then be forwarded to the City Clerk for signature by the Mayor and City Clerk.
- Step 6.** Upon arrival, the applicant's solicitor will register the Agreement.
- Step 7.** Two Registered copies to be returned to Zoning & Site Plan Coordinator.

Further information if necessary may be obtained by contacting the Zoning and Site Plan Coordinator at the Planning Division at 613-930-2787 ext. 2365.

## ENCROACHMENT AGREEMENT PROCESS FLOWCHART



NAME OF APPLICANT		
ADDRESS		
PHONE	CELL	EMAIL

ENCROACHMENT DETAILS

LOCATION
DESCRIPTION
1 - TYPE OF CONSTRUCTION?
2 - WHY IS AN ENCROACHMENT NECESSARY?
3 - WHAT ALTERNATIVES HAVE BEEN CONSIDERED?
4 - HOW MUCH OF AN ENCROACHMENT IS BEING REQUESTED?
5 - PROPOSED HEIGHT ABOVE GRADE?
6 - OTHER PERTINENT INFORMATION

**NOTE: 5 COPIES OF DRAWINGS MUST ACCOMPANY THE APPLICATION**

SIGNATURE: \_\_\_\_\_

DATE: \_\_\_\_\_

FEE - \$370.00 CHQ# \_\_\_\_\_

ACCEPTED BY: \_\_\_\_\_



**ENCROACHMENT AGREEMENT**

THIS AGREEMENT made in duplicate this\_\_\_\_\_ day of \_\_\_\_\_, 20 .

Between:

**THE CORPORATION OF THE  
CITY OF CORNWALL,**

A Municipal Corporation in the  
County of Stormont, in the Province of Ontario  
(Hereinafter called the PARTY)

OF THE FIRST PART

AND

A Corporation Incorporated  
pursuant to the laws of the Province of Ontario  
and having its head office at

(Hereinafter called the PARTY)

OF THE SECOND PART

WHEREAS:

1. The party of the First Part is the Owner of the land and premises known as \_\_\_\_\_ (street) \_\_\_\_\_ as shown on Registered Plan \_\_\_\_\_ (or reference) \_\_\_\_\_, in the City of Cornwall, County of Stormont, as described on Schedule 'A' attached hereto.
2. The party of the Second Part is the Owner (tenant) of the land and premises known municipally as \_\_\_\_\_ (municipal address) \_\_\_\_\_ in the City of Cornwall, and being composed of \_\_\_\_\_ (legal description) \_\_\_\_\_. Registered Plan No. \_\_\_\_\_ (or reference) \_\_\_\_\_, City of Cornwall on file in the Registry Office for the Registry Division of Stormont.
3. \_\_\_\_\_ (Description of Encroachment) \_\_\_\_\_ located on the property owned by the party of the Second Part encroach over the land of the Party of the First Part as described in Schedule 'B' 20\_\_\_\_, prepared by \_\_\_\_\_, Cornwall Ontario, which plan is attached hereto as Schedule 'B'.
4. The Party of the Second Part doth hereby covenant and agree to indemnify and save harmless the Party of the First Part from any liability whatsoever arising out of this encroachment.
5. The Grantee agrees to maintain sufficient Commercial Liability Insurance during the period allowed for the operation of the patio and shall provide to the Corporation Proof of such insurance before the signing of this agreement by the Grantor, in the form of a certificate of liability issued by an insurance company licensed to write property casualty insurance in the Province of Ontario and providing as a minimum requirement the following;
  - (i) \$2,000,00.00 primary limits (or primary plus excess commercial liability coverage equaling \$2,000,00.00) or greater for general commercial liability, coverage to include bodily injury and property damage; policies to be written on an occurrence basis;
  - (ii) Certificates must provide thirty (30) days notice to the Corporation in the event of cancellation

or non-renewal of an insurance policy or pertinent coverage;

(iii) Certificates shall name the Corporation of the City of Cornwall as additional insured with respect to the operation of the sidewalk and/or street-side patio.

6. The covenants on the part of the Grantee and the Grantor shall enure to and bind not only the parties hereto, but their respective heirs, executors, administrators, successors and assigns.
7. The party of the First Part has agreed that the encroachment may continue only in accordance with the terms of this agreement and party the Second Part agrees to remove the  (name item causing encroachment)  if required to do so upon six months notice by Registered Mail from the party of the First Part without compensation whatsoever.

NOW THIS AGREEMENT WITNESSETH that, in consideration of the sum of TWO DOLLARS (\$2.00) the receipt of which is hereby acknowledged, the party of the First Part agrees that the encroachment may continue but shall be deemed to be with the license of the party of the First Part to the intent that they party of the Second Part shall not acquire an easement therefore.

In the event that the  (name item causing encroachment)  herein before referred to are substantially destroyed, the right of the party of the Second Part to the encroachment shall cease.

For the purpose of this agreement, it is agreed by the parties hereto that the  (name item causing encroachment)  shall be considered substantially destroyed in the event that the extent of the destruction if fifty percent (50%) or more. In the event that the parties are unable to agree on the extent of such destruction, the matter shall be submitted to the Chief Building Official for arbitration and his decision shall be final and binding upon the parties to this agreement.



This agreement shall enure to the benefit and be binding upon the heirs, executors, administrators and assigns of the party respectively.

IN WITNESS WHERE OF the parties have hereunto set their hand and seals.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF

**THE CORPORATION OF THE CITY OF CORNWALL**

PER \_\_\_\_\_

(Mayor)

PER \_\_\_\_\_

(Clerk)

**NAME OF COMPANY**

PER \_\_\_\_\_

(Print name and title)

PER \_\_\_\_\_

(Print name and title)

## **LOCATION REQUIREMENTS FOR STREET-SIDE SPOTS**

### **GENERAL**

The City will only consider street-side spots at locations which satisfy all the following:

1. At a location where parking is allowed at all times.
2. At a location that does not have a ground floor outdoor patio and does not have the opportunity for one.

### **SITE SPECIFIC**

1. The City will assess the proposed location based on operational, accessibility and safety considerations.
2. The maximum length of the street-side spot is the frontage of the applicant's business. Applicants who do not have street frontage or who wish to expand their street-side spot into the space in front of an abutting business, may do so with written permission provided by the business owner(s) along which the street-side spot fronts.
3. Running slope (along the road) of 5% or less and a cross slope (from curb to outer limit of the street-side spot) of 2% or less.
4. Where the street-side spot is located mid-block, a parking space of at least 7 metres in length must remain at each end or determined by the City's Traffic Engineer.
5. Located a minimum of 15 metres away from the intersection. A bike corral, bulb-out, or other physical barrier that would protect the street-side spot in a corner location may allow the City to waive the minimum distance on a case-by-case basis.
6. If adjacent to a driveway entrance, must be setback a minimum of 1.5 metres from the driveway or determined by the City's Traffic Engineer.
7. Street-side spots are not permitted above a fire hydrant shut-off valve or over utility or manhole covers. If a fire hydrant is located within 3 metres of the spot, Cornwall Fire Services will review the location to ensure that there is sufficient space for their use.

## DESIGN REQUIREMENTS

### GENERAL

Street-side spots are to be well designed, accessible and safe. As such, they must comply with the following requirements:

1. Be created by a certified designer or engineer.
2. Be designed for easy removal and must be of sturdy construction.
3. The platform cannot be fastened to the street or sidewalk.
4. Be compliant with Accessibility Design Standards.
5. The street underneath the platform surface must be accessible for emergency maintenance by any utility through access panels, or removable pavers.
6. The street-side spot cannot impede the flow of curbside drainage.
7. Furniture and other appurtenances are not to be secured to trees, City street furniture, or buildings.

### SAFETY

1. Reflective soft hit posts must be placed at the outside corners of the street-side spot and wheel stops used if adjacent to parking spaces.
2. The street-side spot is to be defined by a vertical barrier with a visible connection to the street.
3. The vertical barrier is attached to the platform and is a minimum of 1.06 metres in height.
4. The vertical barrier forms the outer limit of the street-side spot structure and must be minimum of 0.5 metres from the traffic lane and 1 metre inside each end. The 1 metre is not required on ends that are not adjacent to a parking space.
5. If a vertical barrier is used adjacent to the sidewalk, it shall be no more than 2 metres in height. **(Refer to Example)**
6. Any opaque portions of any barrier shall not be more than 1.06 metres in height, measured from the surface of the road. Fabric, canvas, or similar material is not to be used for the vertical barrier.
7. The clear height from the platform surface to any obstruction such as an umbrella must be a minimum of 2.13 metres.
8. Visible sight lines must be provided.

## REQUIREMENTS OF THE APPLICANT

The applicant is responsible for the following:

1. Complying at all times with all applicable federal and provincial legislation or regulations and all applicable City by-laws (eg. Ontario Building Code, Liquor Sales Licence and Noise By-law).
2. All costs associated with the application and submission requirements to the City. Application fees are non-refundable. Costs will also include construction, maintenance, materials and equipment, and removal of materials and equipment.
3. For winter maintenance purposes, removal of the street-side spot between November 1<sup>st</sup> and March 31<sup>st</sup>. Availability of the street-side spot may be delayed past April 15, due to ongoing spring operations in the event of an extended winter season.
4. Installation of the platform by a certified contractor.
5. Provide access to any City or public utility company that may have underground conduits beneath the street-side spot. Access may require temporary removal of all or a portion of the constructed street-side spot. In cases of emergencies, little or no notice will be provided.
6. Ensure storm water drainage is not blocked at any time.
7. The street-side spot and all amenities are maintained in a safe condition at all times.
8. The street-side spot and its outside perimeter are kept clean and free of debris, including graffiti.
9. Plants are kept in good health and pruned as necessary and do not extend outside of the limits of the perimeter.
10. The applicant shall obtain and maintain during the continuance of the permit, the following insurance policies:
  - a. Commercial General Liability Insurance issued on an occurrence basis for an amount of not less than \$2,000,000 per occurrence for any negligent acts or omissions by the applicant relating to their obligations under this agreement. Such insurance shall include, but is not limited to bodily injury and property damage including loss of use; personal injury; contractual liability; premises, property and operations; non-owned auto-mobile; broad form property damage; owners and contractors protective; occurrence property damage; products and completed operations; employees as additional insured(s); contingent employers liability; cross liability and severability of interest clause. Such insurance shall be in the name of the applicant and add the City of Cornwall as an additional insured.

- b. Evidence of such insurance shall be provided prior to the issuance of the permit and upon the anniversary date(s) of all applicable policies described herein.
  - c. The City reserves the right to amend the amount of the Commercial General Liability Insurance required based on the nature of the street-side spot.
- 11. At night, any non-permanent seating, tables and other appurtenances are to be moved indoors or secured in a suitable manner to prevent theft or damage.
  - 12. At all times, ensure that smoking is not permitted and ensure that no ashtrays are placed or allowed to remain in place within the street-side spot.
  - 13. Repairing any damage caused by the structure to the sidewalk or boulevard at their expense and to the satisfaction of the City of Cornwall, if not, the work may be done by the City at the applicant's expense.
  - 14. The applicant shall have no claim against the City for any loss or damage arising from the cancellation of the permit.
  - 15. With due notice, the City reserves the right to revoke the street-side spot agreement at any time in the following circumstances:
    - a. The street-side spot is not in compliance with all applicable federal, provincial or City regulations or by-laws.
    - b. The City or a public utility wishes to make use of that part of the highway on which the street-side spot is situated.
    - c. The applicant fails to maintain the street-side spot and keep in proper repair.

## STREET-SIDE SPOTS APPLICATION REQUIREMENTS

### STEP 1 - APPLICATION

Submit the following:

- A non - refundable one time application fee of \$370.00 **(if the applicant modifies an approved patio encroachment agreement in a subsequent year, then a new application and fee will apply)**
- Complete application form
- Project description: project narrative and all materials to be used in the construction and operation of the street-side spot
- Site Plan: a measured drawing that shows the footprint of the proposed street-side spot and 9m on either side of the proposed installation
- Photos of existing site conditions
- Elevation Drawings: measured drawings that show the proposed street-side spot from all angles and positive drainage flow
- Building permit application (deck, fence, sign) **(DECKS ARE TO BE STAMPED AND DESIGNED BY A PROFESSIONAL ENGINEER)**
- Neighbourhood Support (recommended): Letters of support from neighbouring businesses, local BIA, Councillor, community associations and residents

### STEP 2 - APPROVAL REQUIREMENTS

- Upon approval of the street-side spot
- Proof of \$2M Commercial General Liability Insurance
- Copy of your valid business license
- Copy of your valid Liquor Licences , if applying for a Street-side Patio and will be selling alcohol
- Public Health requirements, if specified

**Note: It is strongly recommended that applicants refrain from purchasing materials or equipment for the purposes of a street-side spot before receiving approval and securing the appropriate permits. Any purchase of these items prior to receiving approval from the City are at the applicant's sole and complete risk**

### **STEP 3 - PERMITTING**

City staff will conduct an on-site pre-construction inspection. The applicant is responsible for construction of the street-side spot according to the plans submitted. No changes will be accepted after the street-side spot has been approved.

### **STEP 4 - POST INSTALLATION INSPECTION**

After construction, it is the applicant's responsibility to contact the Building Division to receive a final inspection notice prior to using the patio.

## STREET-SIDE SPOTS SUBMISSION REQUIREMENTS

### PROJECT DESCRIPTION

Provide a short project description explaining your street-side spot along with a completed application form. Applicants are to describe the following:

1. Intended use of the space
2. Benefits of a street-side spot in the proposed location
3. Creativity in the design of the space
4. Proposed months, days, and hours of operation (**Seasonal - April 1<sup>st</sup> - October 31<sup>st</sup>**)
5. Material list to be used in the construction and operation, including platform surface, vertical barriers, all appurtenances such as canopies, umbrellas, tables, chairs, barrier, other furniture or equipment, plantings, lighting, etc. Remember, live plants.

### SITE PLAN

A site plan showing the existing street and sidewalk environment is required.

A subsequent site plan should show the footprint of the proposed street-side spot and all street and sidewalk elements at least 9 metres on either side of the proposed street-side spot location. The site plan is to show the design of the street-side spot.

Site plans must be drawn to scale, legible and include all applicable elements below:

1. Project title and location
2. Name and address of owner and applicant
3. Certified designer, contractor or engineer
4. Legend (including bar scale and written ratio scale in metric, and any graphic symbols used on the plan)
5. The applicant's building and any other adjacent buildings the street-side spot will front and their addresses and location of building entrances
6. Proposed street-side spot dimensions and setback dimensions (1 metre from adjacent parking spaces and 0.5 metres from the traffic lane)

7. Dimensioned locations of existing site features and landscape elements within 9 metres of the development limit.

- Curb cuts and driveways
- Sidewalk width(s)
- Bus stops
- Parking spaces, parking zone, and any pavement markings that denote parking Existing
- Pay Machine location
- Utilities under, on and over the right-of-way
- Utility access panels
- Poles
- Streetlights
- Storm water drainage or catch basin
- Fences
- Steps
- Fire hydrants
- Waste receptacles
- Benches
- Mail / ewspaper boxes
- Bike racks
- Trees
- Flower planter boxes

8. If electricity (ex. for lighting) is considered, access to and ownership of a power source must be shown on the plans. **Wiring is not to create a tripping hazard.**

9. Description of any signage, street furniture, pay and display machines, ring and post bike parking racks etc. that may need to be removed or relocated. **NOTE: This may involve additional costs for the applicant.**

## **SITE CONDITIONS PHOTOS**

Photos of existing site should clearly show:

1. Your building and any other adjacent buildings the street-side spot will front.
2. Existing site features and landscape elements within 9m of the street-side spot.
3. Photos should be taken from multiple angles around the proposed site and be clearly labelled
4. Include additional photos of all utilities, storm water drainage, sidewalk, and pavement anomalies.

**NOTE: We recommend that you take your pictures early to avoid any risk of an early snow fall.**

## **ELEVATION DRAWINGS**

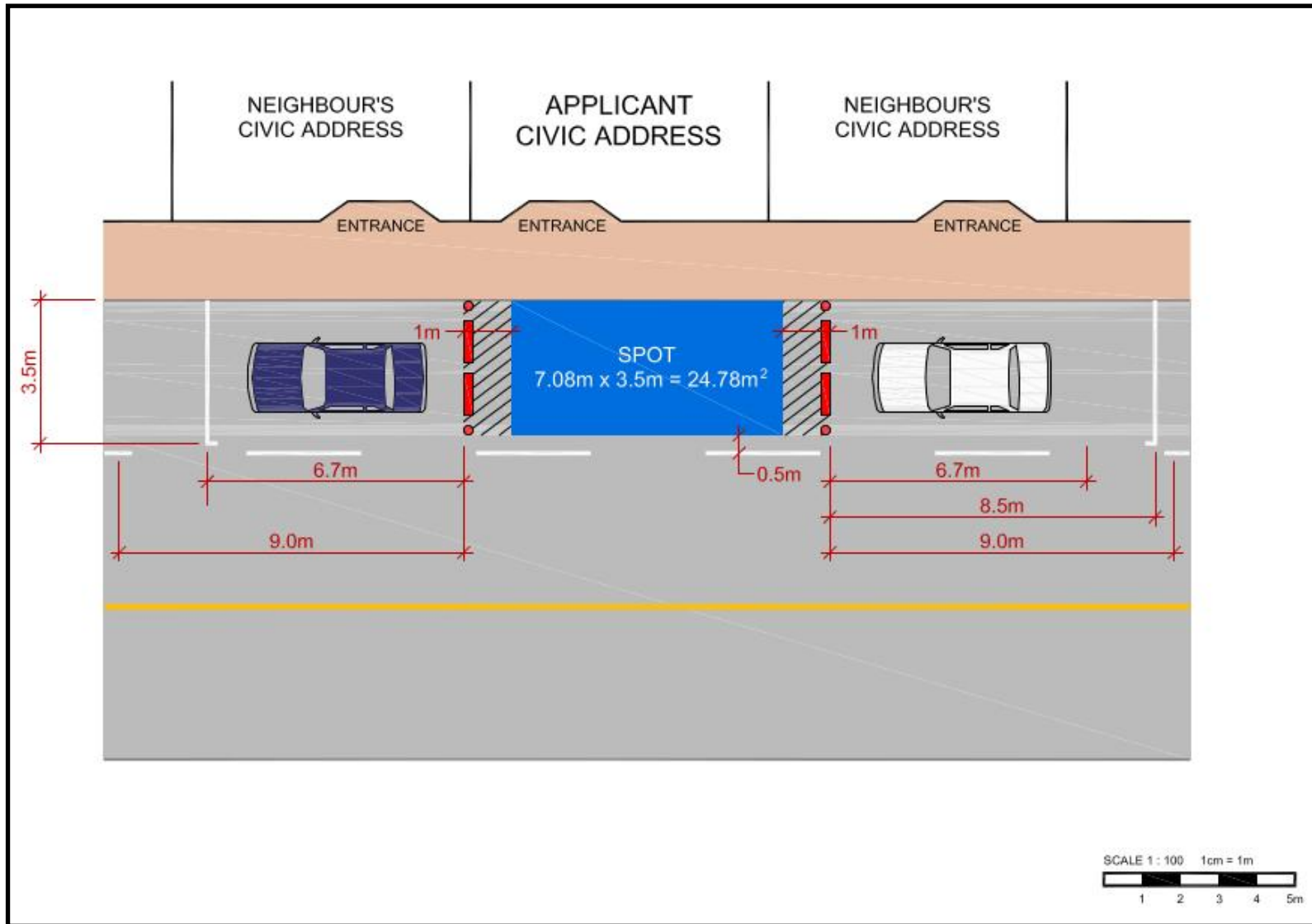
The Elevation Drawings must show:

1. Dimensioned elevations from all four sides to show the dimensions of the street-side spot, elements and buffer areas as well as the details of the elements and construction materials included in the design
2. How positive drainage flow will be maintained along the curb line

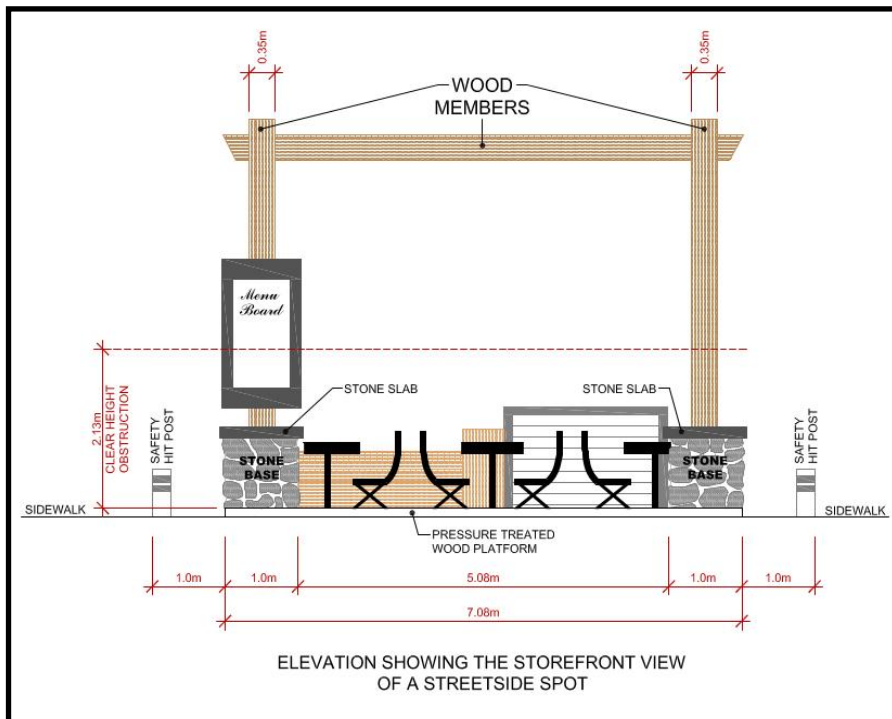
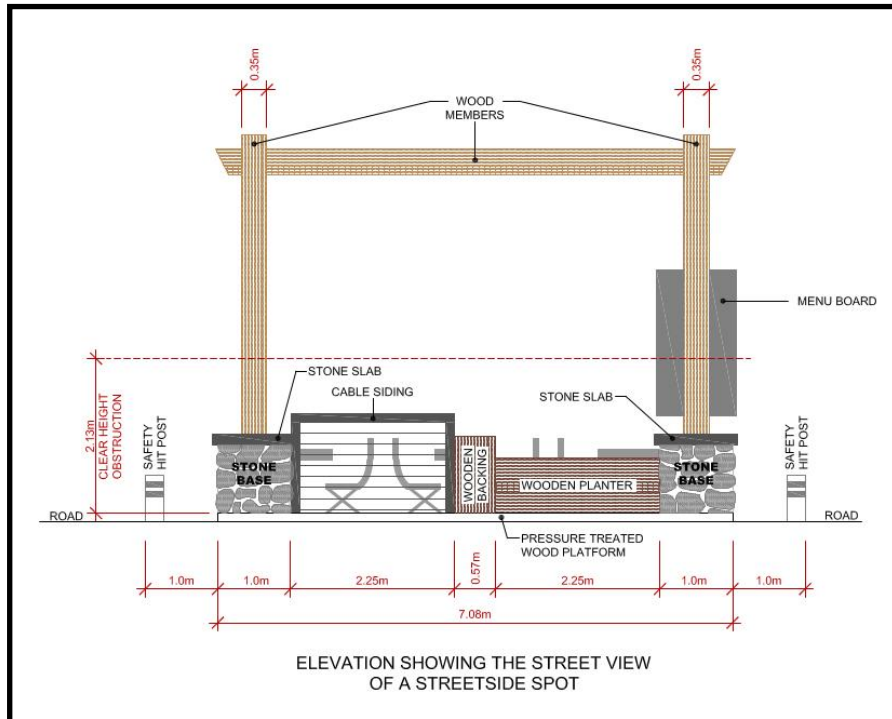
## **NEIGHBOURHOOD SUPPORT**

Applicants are strongly encouraged to include letters of support from neighbourhood stakeholders including businesses on either side, other local businesses, the local BIA, Councillor, community associations, residents, etc. Letters should highlight the benefits of the proposed street-side spot for the local community and the number of parking spaces the street-side spot will occupy. Letters should also include contact information for the person signing.

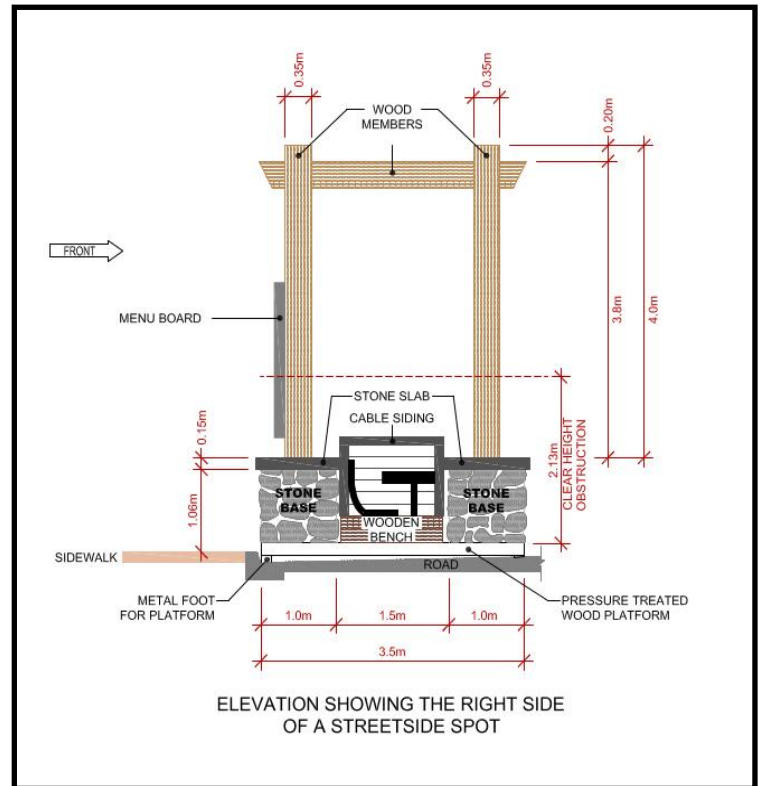
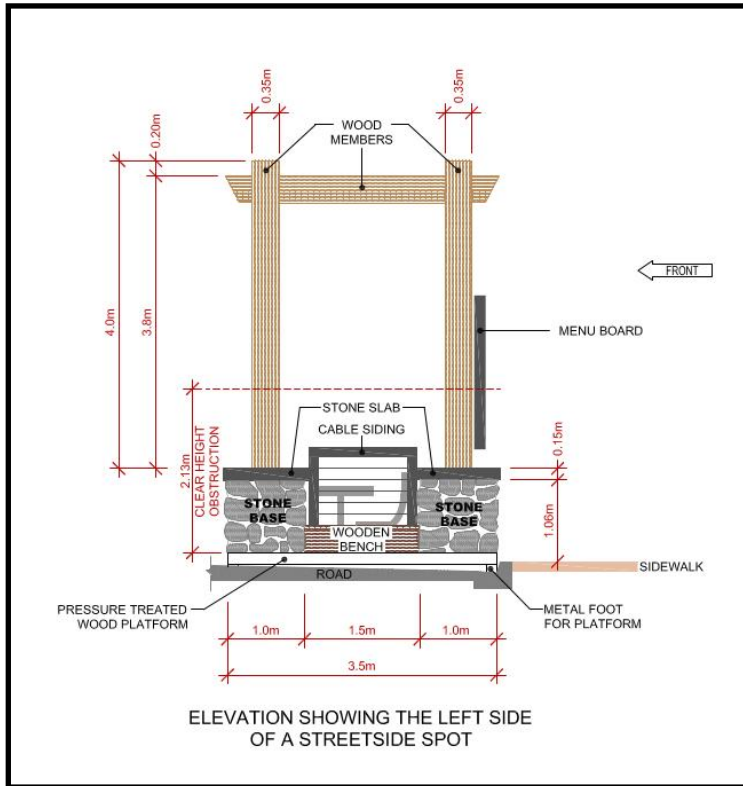
## SITE PLAN - EXAMPLE



## ELEVATIONS - EXAMPLE



## ELEVATIONS - EXAMPLE



## EXAMPLES - EXTENSION OF PEDESTRIAN PATHWAY OVER PAID PARKING

SOURCE CREDIT; KARL DOYLE



SOURCE CREDIT; BLOGSPOT



## EXAMPLES - STREET-SIDE PATIOS

SOURCE CREDIT; CBC NEWS



SOURCE CREDIT; CBC NEWS





## STREET-SIDE SPOT PATIO PRIORITY AREA - LE VILLAGE DISTRICT

