

RE: CANOPIES AND AWNINGS PROJECTING OVER PUBLIC ROAD ALLOWANCES

MUNICIPAL MANAGER'S RECOMMENDATION:

1. THAT the recommendations of the Director Planning & Building Inspection be adopted.

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TO: MUNICIPAL MANAGER 1987 MAY 26

FROM: DIRECTOR PLANNING &
BUILDING INSPECTION

RE: CANOPIES AND AWNINGS PROJECTING OVER PUBLIC ROAD ALLOWANCES

RECOMMENDATIONS:

1. THAT Council approve in principal the approach outlined in this report to permit canopies and awnings to project over public highway rights-of-way.
2. THAT a copy of this report be forwarded to the Ministry of Transportation and Highways for informational purposes.
3. THAT staff be authorized to prepare the required bylaw amendments on the understanding that a further report will be submitted in this regard.

REPORT

1.0 INTRODUCTION

The purpose of this report is to recommend an approach for permitting suitably fixed canopies to project over rights-of-way where appropriate, in accordance with a Council motion on the subject matter. This motion was the result of continuing interest expressed by commercial users in buildings with minimal or nil setbacks from public rights-of-way. In such cases, owners have wished to install canopies to improve the aesthetic appearance of the storefront, provide shelter for pedestrians, and to provide an opportunity for sign display. With nil setbacks, however, it would be necessary for such building projections to be built over the public rights-of-way. At the present time, however, such encroachments are not permitted under the Municipal by-laws.

2.0 ANALYSIS

2.1 - DEFINITION

For the purpose of this report, a canopy or awning is described as a lightweight rigid frame covered by stretched fabric or membrane capable of displaying a sign which is cantilevered from a building face but does not form a part of the actual building structure.

2.2 - AFFECTED AREAS

The issue arises for buildings which have been constructed in commercial zoning districts which permit nil building setbacks from highway rights-of-way. Specifically, the C2 and C3 zones permit nil front and flanking side yard setbacks, while the C4 District permits nil flanking side yard setbacks.

In the majority of cases, the subject zoning districts and the request for projecting canopies occur adjacent to arterial roads such as Kingsway and Hastings Street which represent the major commercial corridors in the Municipality.

2.3 - ISSUES

The approval of private structures over public road allowances does involve a number of issues and complications as noted further in this report.

A) - Access to Engineering Services and Utilities

The portion of the road allowance located between curb and property line typically accommodates a variety of engineering services and utilities located both below and above ground. Construction of canopies and awnings may reduce the accessibility of such services by machinery and equipment, and, in some cases, may conflict with the installation of additional elements such as, for example, traffic signals or light standards. Consequently, it will be necessary for provisions to be made to minimize or eliminate concerns in this regard.

B) - Urban Design Considerations

The public space available between the curb of a roadway and the adjacent property line is generally quite restricted, typically having a width of 10 feet (or in some cases, a temporarily greater width only pending future road widening. This ten foot strip is utilized for a sidewalk, generally five feet in width and located adjacent to the property line, as well as a boulevard between the sidewalk and curb. This five foot boulevard typically accommodates street trees, street and traffic signage, light standards, traffic signals, bus stops and other street furniture such as waste receptacles, benches, newspaper vending machines and telephone booths. While provision of canopies over the public sidewalk may have some negative effects on visibility and pedestrian open space, they do provide a functional contribution to the community in terms of weather protection and, in general, improve the architectural and aesthetic appearance of older building facades and, as such, merit consideration in an urban municipality.

C) - Use of Public Property for Private Development

Canopies and awnings, whether or not incorporating commercial signage, clearly constitute a part of the private development to which they are attached, and in most zoning districts, due to setback requirements, will continue to be located on private property. The equity of permitting construction of such private elements over public property could, therefore, be questioned, particularly in the case of negative impacts (such as reduced visibility on adjacent premises). For these reasons, Council should consider limiting such projections over public property to a maximum of five feet.

D) - Installation, Maintenance and Repairs

As the proposed structures occur over public rights-of-way, the Municipality will have a strong interest in ensuring that any canopy installations are properly installed and maintained from the point of view of structure, public safety and visual appearance. This might potentially become a particular concern where businesses move or premises become vacant for extended periods of time.

E) Liability

Municipal liability is a major consideration in permitting such encroachments. In this regard, it is recommended that the granting of the permit be supported by a covenant pursuant to Section 215 of the Land Title Act whereby the owner of the property would agree to indemnify and save harmless the Corporation of Burnaby against any claims or actions in consequence of or incidental to the granting of the permit. In addition, the owner of the property will be required to add the Corporation as an additional named insured to his comprehensive liability insurance policy.

F) Jurisdiction On and Over Arterial Highways

As noted previously in the report, the majority of the C2, C3 and C4 Commercial zoned sites that permit nil building setbacks occur adjacent to Provincial arterial highways, e.g. Kingsway and Hastings Street. In this regard, the authority to permit and regulate sign structures over arterial highways lies with the Ministry of Transportation and Highways under Section 213 of the Motor Vehicle Act. As such, applications which fall within this category would, as a result, require approvals from both the Ministry and the Municipality.

3.0 PROPOSED APPROACH

In order to address both the concerns and requirements of the general public and the Municipality, it is recommended that by-law amendments be enacted to avoid potential future conflicts with respect to size, height clearances and projection of canopy structures.

This recommendation is based on consideration of urban design quality, liability to the Corporation, questions of equality for property owners, and the long term protection of developers' investments in weather protection.

Specifically, it is recommended that a canopy projection not exceed five feet (1.52 m) into the right-of-way. In addition, such structures should be cantilevered and observe a minimum nine ft. height clearance from grade to the lowest point of the canopy.

4.0 IMPLEMENTATION

4.1 - ADMINISTRATION

The initial licencing procedure for canopies over public road allowances would involve referral to and approval by Engineering, Finance, Legal and the Planning & Building Inspection Departments.

The Engineering Department's involvement would be related to the use of road rights-of-way, traffic visibility, determining possible impact on existing or future services and utilities and issuance of the necessary licence. Preparation and processing of any legal agreements and contracts will be the responsibility of the Legal Department while the Finance Department would determine the amount of insurance coverage required.

The Planning & Building Inspection Department would process the required Preliminary Plan Approvals and Building Permits. To ensure public safety and to limit Municipal liability, it may be necessary for staff to have the applicant refer their Building Permit drawings to a Professional Engineer for review and certification where it is felt that the structural adequacy of the installation is in question. It should also be noted that in certain cases where such structures project over Provincial Highways, referral to and approval from the Ministry of Transportation and Highways will also be required.

As these Licences impact on road allowances for which the Engineering Department is primarily responsible and also involve a number of legal technicalities, the prime responsibility for administering the subject licences would appropriately fall with the Engineering and Legal Departments. The licences would include provisions to permit the Director Engineering to order or effect removal of the improvements over public property where this is necessary for reasons such as access to public services, or lack of maintenance or abandonment creating a public hazard.

In the implementation of this program, it would be appropriate to institute a fee schedule for issuance of the initial approval and subsequent annual renewals (similar to that currently in effect for In-law Suite Permits). The fees established should reflect all administrative costs to the Municipality.

4.2 - REQUIRED BYLAW AMENDMENTS

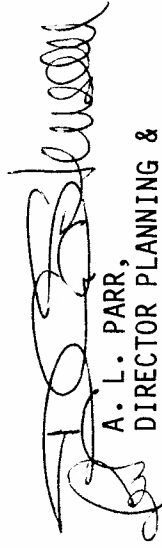
On the basis of a preliminary analysis, staff have determined that the implementation of the approach outlined in this report would require additions and amendments to numerous sections of various by-laws, including the following:

- a) Zoning Bylaw #4742
 - Section 3 - Definitions
 - Section 6.12
 - Section 6.13
 - Section 6.16
 - Section 7.13
 - Sections 302.6, 302.7
 - Sections 303.6, 303.7
 - Section 304.7
- b) Sign Bylaw #6163
 - Section 2 - Definitions
 - Section 3 - Application
 - Section 5.3 - General Siting & Locational Standards
 - Section 5.4
 - Section 6.0
 - Section 6.5
 - Schedule No. I
 - Schedule No. IV
 - Schedule No. V
- c) Street & Traffic Bylaw #4299
 - Section 28
 - Section 24

5.0 CONCLUSIONS

It is recommended that Council approve the approach proposed in this report and authorize staff to initiate steps towards its implementation.

Given Council's adoption of the recommendations contained in this report, a further report will be submitted to deal with the specific bylaw amendments required and other related issues. Due to provincial responsibility governing road allowances and arterial highways, it is also recommended that this report be forwarded to the Ministry of Transportation and Highways, with a request for its endorsement of the approach outlined.


A. L. PARR,
DIRECTOR PLANNING &
BUILDING INSPECTION

JCu:ad
cc: Municipal Solicitor
Director Engineering
Chief Building Inspector
Director Finance
Chief Licence Inspector

