

Open Space Encroachment Policy

1. Policy Accountable Owner: Genesee Environmental Management GEM

2. Policy Name: Open Space Encroachment Policy

3. Purpose for policy:

- a. To define the policies governing and the processes for dealing with open space encroachment.

4. Policy details:

- a. This Common Property/Open Space Encroachment Policy is adopted by the Genesee Foundation Board of Directors in order to address situations in the Genesee community in which residences, decks, driveways and other residential improvements intended or anticipated to be constructed on individual lots in Genesee encroach outside of the boundaries of the lots and onto adjacent common property or open space (collectively referred to as “Open Space”) owned by Genesee Foundation. These encroachments have historically arisen in two primary situations. First, in a number of circumstances subsequent to completion of construction of improvements on residential lots within Genesee, it has been discovered that through mistake or inadvertence, all of the improvements have not been constructed within the boundaries of the lot and improvements encroach onto adjacent Open Space owned by Genesee Foundation. Second, in certain circumstances prior to construction of improvements and during the architectural review committee review process, it has been determined that driveway access to a number of lots in Genesee is better provided by constructing a portion of the driveway across Open Space in order to preserve vegetation, address drainage concerns, deal with topographic challenges, and for other reasons. This policy will separately address driveway encroachments and encroachments of other improvements onto Open Space.
- b. The Declaration of Covenants, Conditions and Restrictions for Genesee specifically allows the Foundation to grant private access easements over and across Open Space owned by Genesee Foundation. The policy set forth in Section I, below, is adopted in recognition of that power of Genesee Foundation and in recognition of the fact that topographic conditions, drainage conditions, considerations for the preservation of trees and other vegetation and rock outcroppings, and other concerns may make it more desirable for driveways to encroach onto Open Space in certain limited situations. It is also recognized that driveway easements or access easements include the necessary grading improvements, retaining walls, and other elements necessary to allow for the construction and maintenance of a driveway.
- c. The Declaration does not contain a similar express power for the grant of easements or other accommodations to allow for the encroachment of building improvements, i.e., residences, decks, patios, garages, or any improvements other than access improvements (collectively “Building Improvements”) onto Open Space. Notwithstanding, circumstances have arisen in Genesee where Building Improvements have been constructed in such a fashion that they encroach onto Open Space through mistake, inadvertence or approval of building plans allowing encroachments onto Open Space by the Genesee Architectural Review Committee. Historically, these situations have been addressed by granting an easement permitting the building encroachment, however, in these circumstances, it may not be possible for property owners of the affected improvements to secure building permits or other land use entitlements for additions or remodeling on their property from Jefferson County without elimination of the encroachment through a minor lot line adjustment process or such similar process

as may be in place from time to time in Jefferson County. In recognition of the general purpose for the existence of Genesee Foundation, i.e., to preserve, protect and enhance the values and amenities in the community as a whole and to promote the health, safety and welfare of the residents within Genesee, Section II, below, of the Open Space Encroachment Policy has been adopted by the Genesee Board of Directors

i. Driveway Encroachments.

1. For driveways (including grading, retaining wall and other associated access encroachments) encroachments onto Open Space that are discovered after completion of construction of the driveway, Genesee Foundation will consider granting an easement to allow the encroachment, subject to compliance with the following requirements and consideration of the following criteria:
 - a. The request for grant of an easement shall first be considered by the Architectural Review Committee (“ARC”) and the ARC will make a recommendation to the Genesee Foundation Board of Directors (“BOD”). The BOD will only be referred requests in which the ARC is recommending approval of the grant of an easement.
 - b. Any driveway easement must be approved by an affirmative vote of a majority of the BOD.
 - c. Prior to the ARC meeting at which the requested easement is on the agenda, the property shall be posted for a period of ten (10) days and all other publication and notice requirements involved in the ARC process shall be complied with by the property owner and the Foundation.
 - d. The property owner shall pay all costs and expenses incurred by the Foundation associated with the consideration of the grant of the easement, including, but not limited to, surveying expenses and legal expenses, whether or not the easement is granted. Also including future maintenance of driveway, drainage improvements, retaining walls or any other element associated with the construction for the driveway easement.
 - e. In reviewing requests for driveway encroachment easements, the ARC and the BOD will consider the extent of the encroachment, the interference which the encroachment creates on the use of Open Space, the feasibility of relocation of the driveway access to the residence, the disturbance which would be created by relocation of the driveway access to the residence, any participation or knowledge that the property owner may have been involved in or had with respect to the encroachment prior to its creation, the length of time the encroachment has been in place, the hardship to the property owner and Genesee Foundation of either eliminating or allowing the encroachment, any review criteria contained in the Genesee ARC Standards, any objections to the proposed encroachment from Genesee property owners, and any other considerations which the ARC or the BOD deem relevant in considering a request for a driveway encroachment easement.

- f. The determination of whether to grant or deny a driveway encroachment easement and the terms and conditions associated with the grant of the easement shall be made in the sole ultimate discretion of the BOD, subject to the requirement of a recommendation of approval of the easement by the ARC, it being recognized that an easement for a driveway encroachment on Open Space is and should be allowed only for exceptional situations.
2. For driveways (including grading, retaining wall and other associated access elements) encroachments onto Open Space that are proposed prior to construction of improvements (i.e., either a new residence, an addition, or remodel), Genesee Foundation will consider granting an easement to allow the encroachment, subject to compliance with the following requirements and consideration of the following requirements and consideration of the following criteria:
 - a. The request for grant of an easement for a driveway encroachment onto Open Space shall be identified by the property owner and presented to the ARC during the pre-submittal meeting in the case of new construction and at the time of preliminary submittal in other instances. The ARC will consider the request for an easement independently and in advance of review of the submittal and shall make a recommendation to the BOD. This is intended to provide for early consideration of the encroachment issue and prior to incurring of substantial expenses by a property owner in developing plans and submittals that may be dependent on approval of an encroachment onto open space.
 - b. Any driveway easement must be approved by an affirmative vote of a majority of the BOD, after a recommendation for approval by the ARC.
 - c. Prior to the ARC meeting at which the requested easement is on the agenda, the property shall be posted for a period of ten (10) days and all other publication and notice requirements involved in the ARC process shall be complied with by the property owner and the Foundation.
 - d. The property owner shall pay all expenses incurred by the Foundation associated with the consideration of the grant of the easement, including, but not limited to, surveying expenses and legal expenses, whether or not the easement is granted.
 - e. In reviewing requests for driveway encroachment easements associated with new construction, the ARC and the BOD will consider the viability of alternatives for driveway construction and access on the subject lot without encroachment onto open space, the relative disturbance to vegetation and topography for driveway construction entirely within the lot versus on Open Space, the extent of the encroachment, the interference which the encroachment will create on the use of Genesee Foundation

open space, any review criteria contained in the Genesee ARC standards, any objections to the proposed encroachment from Genesee property owners, and any other considerations which the ARC or the BOD deem relevant in considering a request for a driveway encroachment easement.

- f. The determination of whether to grant or deny a driveway encroachment easement and the terms and conditions associated with the grant of the easement shall be made in the sole ultimate discretion of the BOD, subject to the requirement of an ARC recommendation for approval, it being recognized that an easement for a driveway encroachment on Open Space is and should be allowed only in exceptional situations.

ii. Encroachments for Other Improvements.

1. Construction of Building Improvements from and after the date of adoption of this Policy in such a fashion that they encroach onto Open Space will not be considered, approved or permitted. It is the responsibility of a property owner and their retained architects, engineers and contractors to assure that all Building Improvements are constructed within the boundaries of their Lot and in such a fashion that they do not encroach onto Genesee Open Space.
2. In circumstances where the construction of Building Improvements erected or constructed prior to the date of adoption of this Policy encroach onto Open Space, the BOD will consider participating in a minor lot line adjustment process or similar process in order to legally eliminate the encroachment by adding the area occupied by the encroachment to the residential lot, subject to compliance with any following requirements and consideration of the following criteria:
 - a. Any participation in a minor lot line adjustment process or similar process to eliminate the encroachment must be approved by an affirmative vote of a majority of the BOD.
 - b. Prior to the BOD meeting at which the requested participation in a minor lot line adjustment process or similar process is on the agenda, the property shall be posted for a period of ten (10) days and all other publication and notice requirements involved in the regular or special meeting process for the BOD shall be complied with by the property owner and Genesee Foundation.
 - c. The property owner shall pay all costs and expenses associated with the consideration for participation in the minor lot line adjustment or similar process and the actual participation in that process, if approved by the BOD, including, but not limited to, Jefferson County application fees, all surveying expenses, all legal expenses, and any and all other expenses incurred by Genesee Foundation.
 - d. Any proposed minor lot line adjustment process or similar process must result in their being no "net" loss of Open Space area owned by Genesee Foundation. In other words, any Open Space which is added to and included within the boundaries of a lot as part of the process must be offset by an equal amount of

property being eliminated from the lot and added to Open Space as part of the process.

- e. In reviewing requests for minor lot line adjustments or other processes for the elimination of building encroachments, the BOD will consider the nature and extent of the encroachment, the feasibility of there being an equal exchange of Open Space area being converted to lot area and lot area being converted to Open Space area, the feasibility of elimination of the encroachment versus allowing the encroachment to remain in place, the nature of the Building Improvement within the encroachment area, the cost of elimination of the building encroachment, the length of time the building encroachment has been in place, any review criteria in the Genesee ARC standards which may be applicable, any objections to the participation in the minor lot line adjustment or similar process from Genesee property owners and any other considerations which the BOD deems relevant in considering the request for relief.
- f. The determination of whether to participate in a minor lot line adjustment process or similar process in order to cause a building encroachment to be legally eliminated shall be made in the sole discretion of the Genesee Foundation Board of Directors.

APPROVED BY: Board of Directors
SUPERCEDES: February 9, 2011
APPLICABILITY: All encroachments on Open Space
APPROVAL DATE: February 9, 2011, January 11, 2017
REVIEWED DATE: February 9, 2011, January 11, 2017
EFFECTIVE DATE: February 9, 2011, January 11, 2017
REVIEW DATE: 2022 (5 years)

See below for process and forms.

OPEN SPACE ENCROACHMENT POLICY/PROCESS DRIVEWAY

ENCROACHMENTS

EXISTING

1. Owner: Submit to the ARC at the Foundation office, a survey of existing encroachment, along with a legal description. Form - Driveway Open Space Encroachment.
2. Foundation: Post property for a period of 10 days prior to the next regularly scheduled ARC meeting.
3. ARC: Review submittal: **Approve or Disapprove**
 - a. If **approved** - Submit ARC file to Board of Directors for review at next regularly scheduled board meeting. Submittal shall be placed on published public agenda.
 - b. If **disapproved** - ARC to give alternatives and date for removal.
4. Board of Directors: Review submittal: **Approve or Disapprove**
 - a. If **approved** – Office will forward to Attorney for easement document. Once Office receives easement document, arrange for execution and payment of all associated legal fees. Once executed and payment received, record easement document with Jefferson County, copy to file and to owner.
 - b. If **disapproved** - Back to ARC for alternatives and date for removal.

NEW

1. Owner: At pre-design meeting, submit to the ARC at the Foundation office, a survey of proposed encroachment, along with a legal description. Form - Driveway Open Space Encroachment. If not a new building, submit as a preliminary submittal.
2. Foundation: Post property for a period of 10 days prior to the next regularly scheduled ARC meeting.
3. ARC: Review submittal: **Approve or Disapprove**
 - a. If **approved** - Office will submit ARC file to Board of Directors for review at next regularly scheduled board meeting. Submittal shall be placed on published public agenda.

b. If **disapproved** - ARC to give alternatives.

4. Board of Directors: Review submittal: **Approve or Disapprove**

a. If **approved** - forward to Attorney for easement document. Once office receives easement document, arrange for execution and payment of all associated legal fees. Once executed and payment received, record easement document with Jefferson County, copy to file and to owner.

b. If **disapproved** - Back to ARC for alternatives.

OTHER IMPROVEMENTS

EXISTING

1. Owner: Submit to the Board at the Foundation office, a survey of existing encroachment, along with a legal description. Include number of square feet of existing encroachment. Indicate on survey by red-line drawing, proposed lot line adjustment including number of square feet. Form - Open Space Encroachment.
2. Foundation: At next ARC meeting, ARC Land Use professional, Open Space Coordinator and Owner reviews lot line adjustment. Open Space coordinator may refer issue to GEM chair or GEM committee for further consideration. No posting required for ARC meeting.
3. ARC Professional/Staff: Review submittal: **Recommendation to owner**
4. Owner: Create survey and legal description of complete lot line adjustment and submit to Board of Directors.
5. Board of Directors:
 - a. Submittal shall be posted (sign at property) for 10 days prior to the next regularly scheduled board meeting.
 - b. Submittal shall be placed on published public agenda for next regularly scheduled board meeting after the 10-day posting period.
 - c. Submittal shall be placed on the “What’s New” page of the Foundation web site.
 - d. Submittal to be reviewed prior to board meeting by legal council for comments.
 - e. Review submittal: **Approve or Disapprove**

c. If approved -

1. Notify owner.
2. Office to prepare invoice for all legal fees to this point. Payment received.
3. Owner to receive written documentation from Board of Directors.
4. Genesee Foundation/Owner submit jointly to Jefferson County for Minor Adjustment process and approval. Owner to pay all associated legal fees in conjunction with County process.

d. If disapproved -

1. Revise plan, starting at step 1 (above) or;
2. Remove encroachment if wish to proceed with building alteration and meet Jeffco requirements

NEW

1. Not permitted

DRIVEWAY OPEN SPACE ENCROACHMENT FORM

DATE _____ FILING AND LOT _____

OWNER _____

PROPERTY ADDRESS _____

PHONE NUMBER WHERE YOU CAN BE REACHED THE MORNING OF THE ARC

MEETING _____

OWNERS' SIGNATURES _____

SUBMITTAL PROCESS

EXISTING ENCROACHMENT:

1. Submit **DRIVEWAY OPEN SPACE ENCROACHMENT FORM** to Genesee Foundation Office including:
 - a. Survey of existing encroachment.
 - b. A legal description of encroachment.
2. ARC will take action on your submittal at a regular meeting within 30 days after submittal.
3. If approved Foundation Office will submit documents for placement on next Genesee Foundation Board Agenda.

NEW ENCROACHMENT:

1. Submit **DRIVEWAY OPEN SPACE ENCROACHMENT FORM** with **PRE-DESIGN FORM** to Genesee Foundation Office including:
 - a. Survey of proposed encroachment.
 - b. A legal description of proposed encroachment.
2. ARC will take action on your submittal at a regular meeting within 30 days after submittal.
3. If approved Foundation Office will submit documents for placement on next Genesee Foundation Board Agenda.

POSTING GUIDELINES

The posting will be for a minimum of ten (10) calendar days prior to the meeting.

GENESEE FOUNDATION ARC APPROVAL

Signature: _____ Date: _____

COMMENTS: _____

GENESEE FOUNDATION BOARD APPROVAL

Signature: _____ Date: _____

COMMENTS: _____

OPEN SPACE ENCROACHMENT FORM

DATE _____ FILING AND LOT _____

OWNER _____

PROPERTY ADDRESS _____

OWNERS' SIGNATURES _____

SUBMITTAL PROCESS

EXISTING ENCROACHMENT:

1. Submit **OPEN SPACE ENCROACHMENT FORM** to Genesee Foundation Office including:
 - a. Survey of existing encroachment. Indicate on survey by red-line drawing, proposed lot line adjustment including number of square feet.
 - b. A legal description of existing encroachment.
2. ARC Professional, Open Space Coordinator and Owner will review lot line adjustment at a regular ARC meeting within 30 days after submittal.
3. If approved, Owner will submit a final survey and legal description of lot line adjustment for placement on next Genesee Foundation Board Agenda.

NEW ENCROACHMENT:

1. Not Permitted.

POSTING GUIDELINES

Posted for ten (10) days prior to Genesee Foundation Board Meeting

GENESEE FOUNDATION OPEN SPACE COORDINATOR

Signature: _____ Date: _____

COMMENTS: _____

GENESEE FOUNDATION BOARD APPROVAL

Signature: _____ Date: _____

COMMENTS: _____