Minute No. 531
Report - Standing Policy Committee on Property and Development - May 2, 2006

Item No. 7 Zoning Agreement Amendment – 1725 Henderson Highway
File ZAA 5/2005 (c/r DAZ 226/74A and DAZ 243/81)

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That Zoning Agreement Caveat No. 238202 under File DAZ 226/74A dated December 17, 1974 (By-Law No. 872/75), be amended as follows:

   A. That Clause 2 be deleted and substituted with the following:

      i. That the following uses shall not be permitted on the land:

         a. automobile, including motorcycle: rental, sales, including accessory repair, service, installation of supplies/parts
         b. automobile, including motorcycle: supplies/parts, sales
         c. beer: sales
         d. bingo parlour
         e. bowling alley
         f. bus station
         g. contractors' establishment
         h. exterminator
         i. farm supplies: sales
         j. fuel: sales kiosk
         k. hotel, including motel, limited to guest rooms
         l. liquor: sales
         m. machinery/heavy equipment supplies and parts:sales, installation, service
         n. mobile home park
         o. motors or machines, recreational or utility, including power toboggans, outboard motors, lawn mowers: rental, sale, service
         p. parking area, non-accessory
         q. pawnshop
         r. tattoo parlour
         s. terminal for haulage, motor freight station, excluding an intermodal terminal

Report - Standing Policy Committee on Property and Development - May 2, 2006

COUNCIL DECISION (continued):

t. terminal for courier/delivery/ express service, cleaning service, key and lock service, security service, taxi, or similar service
u. tire: sales, service

ii. That there shall be no advertising signs, mobile signs, poster signs and A-frame signs on the entire site, except that a mobile sign shall be permitted on the site for a period of thirty (30) days in association with a new occupancy permit.

iii. That no illuminated signage be erected on the north, south or east side of the building.

iv. That prior to the issuance of any occupancy permits all garbage containers be fully enclosed by a brick/concrete and/or wood barrier fence that is at least six (6) inches above the top of the garbage container, and thereafter maintained to the satisfaction of the Director of Planning, Property and Development.

v. That the hours of operation for any business being conducted shall not fall within 12:00 midnight and 6:00 a.m., with the exception of deliveries which are permitted until 1:00 a.m. on Saturday and Sunday.

vi. That for the development of any building, accessory parking area or signage, plans shall be submitted showing the location and design of the proposed buildings, the location and design of accessory parking areas, private approaches, garbage enclosures, loading areas, fencing, landscaping and signage to the East Kildonan – Transcona Community Committee and the Director of Planning, Property and Development. for plan approval prior to the issuance of any building or development permit and the applicant shall maintain the landscaping and fencing to the satisfaction of the Director of Planning, Property and Development.

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 226/74A (By-law No. 872/75) dated December 17, 1974, as approved in aforesaid Recommendation 1.

3. That Zoning Agreement Caveat No. 81-26459 under File DAZ 243/81 dated September 16, 1981 (By-Law No. 3196/82), be amended as follows:

Report - Standing Policy Committee on Property and Development - May 2, 2006

COUNCIL DECISION (continued):

A. That for the development of any building, accessory parking area or signage, plans shall be submitted showing the location and design of the proposed buildings, the location and design of accessory parking areas, private approaches, garbage enclosures, loading areas, fencing, landscaping and signage to the East Kildonan-Transcona Community Committee and the Director of Planning, Property and Development for plan approval prior to the issuance of any building or development permit and the applicant shall maintain the landscaping and fencing to the satisfaction of the Director of Planning, Property and Development.

B. That prior to the issuance of any occupancy permits all garbage containers be fully enclosed by a brick/concrete and/or wood barrier fence that is at least six (6) inches above the top of the garbage container and thereafter maintained to the satisfaction of the Director of Planning, Property and Development;

4. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 243/81 (By-law No. 3196/82) dated September 16, 1981, as approved in aforesaid Recommendation 3.

5. That the Proper Officers of the City are hereby authorized to execute said Amending Agreement.

6. That the City Solicitor/Manager of Legal Services be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

Report - Standing Policy Committee on Property and Development - May 2, 2006

DECISION MAKING HISTORY:

Moved by Councillor De Smedt,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 17, 2006, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the East Kildonan-Transcona Community Committee and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On May 2, 2006, the Standing Policy Committee on Property and Development concurred in the recommendation of the East Kildonan-Transcona Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On April 11, 2006, the East Kildonan-Transcona Community Committee concurred in the administrative recommendation with the following amendment, namely:

- That Recommendation No. 1.A.v. be amended by deleting the word "p.m." in the second line thereof and substituting the word "midnight" and by adding the following words at the end thereof:

  "with the exception of deliveries which are permitted until 1:00 a.m. on Saturday and Sunday.",

and submitted its recommendation to the Standing Policy Committee on Property and Development.

On January 17, 2006, the East Kildonan-Transcona Community Committee adjourned the public hearing to its meeting on April 11, 2006.

On September 6, 2005, the East Kildonan-Transcona Community Committee adjourned the public hearing to its meeting to be scheduled in January 2006.

Report - Standing Policy Committee on Property and Development - May 2, 2006

DECISION MAKING HISTORY (continued):

COMMUNITY COMMITTEE RECOMMENDATION (continued):

On July 5, 2005, the East Kildonan-Transcona Community Committee adjourned the public hearing to its meeting on September 6, 2005, and requested the Administration to report back on altering the Henderson Highway approach to a right in/right out approach and limiting access to Fortier Avenue as a left turn egress only.

RE: **Zoning Agreement Amendment – 1725 Henderson Highway**
File ZAA 5/2005 [c/r DAV 336809/2004D]

For submission to: **The Standing Policy Committee on Property and Development**

Prepared by: **Inga K. Skundberg, Clerk,**
East Kildonan-Transcona Community Committee

Report date: **April 24, 2006**

COMMUNITY COMMITTEE RECOMMENDATION:

On April 11, 2006, the East Kildonan-Transcona Community Committee concurred in the administrative recommendation, as amended, and recommends to the Standing Policy Committee on Property and Development:

1. That the Zoning Agreement Caveat No. 238202 under File DAZ 226/74A, dated December 17, 1974 (By-Law No. 872/75), be amended as follows:

    A. That Clause 2 be deleted and substituted with the following:

        i. That the following uses shall not be permitted on the land:
            a. automobile, including motorcycle: rental, sales, including accessory repair, service, installation of supplies/parts
            b. automobile, including motorcycle: supplies/parts, sales
            c. beer: sales
            d. bingo parlour
            e. bowling alley
            f. bus station
            g. contractors' establishment
            h. exterminator
            i. farm supplies: sales
            j. fuel: sales kiosk
            k. hotel, including motel, limited to guest rooms
            l. liquor: sales
            m. machinery/heavy equipment supplies and parts:sales, installation, service
            n. mobile home park
            o. motors or machines, recreational or utility, including power toboggans, outboard motors, lawn mowers: rental, sale, service
            p. parking area, non-accessory
            q. pawnshop
            r. tattoo parlour

s. terminal for haulage, motor freight station, excluding an intermodal terminal
t. terminal for courier/delivery/ express service, cleaning service, key and lock service, security service, taxi, or similar service
u. tire: sales, service

vii. That there shall be no advertising signs, mobile signs, poster signs and A-frame signs on the entire site, except that a mobile sign shall be permitted on the site for a period of thirty (30) days in association with a new occupancy permit;

viii. That no illuminated signage be erected on the north, south or east side of the building;

ix. That prior to the issuance of any occupancy permits, all garbage containers be fully enclosed by a brick/concrete, and/or wood barrier fence that is at least 6 inches above the top of the garbage container, and thereafter maintained to the satisfaction of the Director of Planning, Property and Development;

x. That the hours of operation for any business being conducted shall not fall within 12:00 ~~***p.m.***~~ ***midnight*** and 6:00 a.m., ***with the exception of deliveries which are permitted until 1:00 a.m. on Saturday and Sunday.***

xi. That for the development of any building, accessory parking area or signage, plans shall be submitted showing the location and design of the proposed buildings, the location and design of accessory parking areas, private approaches, garbage enclosures, loading areas, fencing, landscaping and signage to the East Kildonan – Transcona Community Committee and the Director of Planning, Property and Development. for plan approval prior to the issuance of any building or development permit; and the applicant shall maintain the landscaping and fencing to the satisfaction of the Director of Planning, Property and Development.

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 226/74A (By-Law # 872/75) dated December 17, 1974, as approved in aforesaid Clause 1.

3. That the Zoning Agreement Caveat No. 81-26459 under File DAZ 243/81 dated September 16, 1981 (By-Law # 3196/82), be amended as follows:

A. That for the development of any building, accessory parking area or signage, plans shall be submitted showing the location and design of the proposed buildings, the location and design of accessory parking areas, private approaches, garbage enclosures, loading areas, fencing, landscaping and signage to the East Kildonan – Transcona Community Committee and the Director of Planning, Property and Development. for plan approval prior to the issuance of any building or development permit; and the applicant shall maintain the landscaping and fencing to the satisfaction of the Director of Planning, Property and Development.

B. That prior to the issuance of any occupancy permits, all garbage containers be fully enclosed by a brick/concrete, and/or wood barrier fence that is at least six (6) inches above the top of the garbage container, and thereafter maintained to the satisfaction of the Director of Planning, Property and Development;

4. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 243/81 (By-Law # 3196/82) dated September 16, 1981, as approved in aforesaid Clause 3.

5. That the Proper Officers of the City are hereby authorized to execute said Amending Agreement.

6. That the City Solicitor/Manager of Legal Services be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

Note: The wording in bold and italics denotes amendments made by the Community Committee.

The East Kildonan-Transcona Community Committee provided the following supporting reasons for its recommendation:

1. There was significant concern by existing stakeholder initially; however, Chicken Delight has done everything in its ability to earn the support of surrounding neighbours.

2. No complaints have been received by the Ward Councillor regarding the current operation at 1725 Henderson Highway.

PUBLIC HEARING SUMMARY

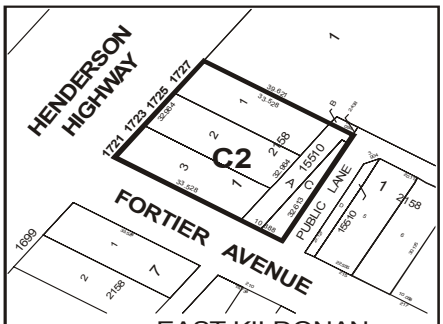
File: ZAA 5/2005 [c/r DAV 336809/2004D]

Before: East Kildonan-Transcona Community Committee
Councillor Lubosch, Chairperson
Councillor Wyatt

Public Hearing: April 11, 2006
January 17, 2006
September 6, 2005
July 5, 2005
Community Committee Chambers, 755 Henderson Highway

Applicant: Chicken Delight of Canada Ltd. (Eneas Smythe)

Subject:



EAST KILDONAN TRANSCONA COMMUNITY

APPLICANT : CHICKEN DELIGHT OF CANADA LTD.

FILE : ZAA 5/05

PROPOSAL : To amend the Zoning Agreement affecting the land shown outlined above by deleting the restriction that the land and any building or structure thereon shall not be used and no building or structure shall be erected, altered or enlarged on the land for any use except retail store and/or office premises not exceeding one (1) storey in height. **For information, phone Mr. J. Wintrup, Planner at 986-5102.**

Premises Affected: 1725 Henderson Highway

Exhibits Filed:

1. Application dated June 10, 2005
2. Notification of Public Hearing dated June 13, 2005
3. Manitoba Status of Title 2086004
4. Surveyor's Building Location Certificate and Sketch dated December 1, 1976

5a. Letter of authorization dated November 4, 2004 from Albert Redekopp, President, H.W. Redekopp Holdings Ltd. to Ronko Foods Ltd.

5b. Letter of authorization dated January 11, 2005, from Mary Redekopp, Executrix for the Estate of Albert H. Redekopp, H.W. Redekopp Holdings Ltd., to Ronko Foods Ltd. to operate a Chicken Delight franchise

6. Plans (2 pages)
7. Report from the Manager of Planning and Land Use dated June 27, 2005
8. Inspection Report
9. Communication dated July 4, 2005, from Terry and Denise Bondarenko in opposition to the application
10. Communication from Rudy Hintz in opposition to the application submitted at the public hearing held on July 5, 2005
11. Petition in opposition to the application purporting to contain the signatures of 136 people submitted by Daryl Chicoine at the public hearing held on July 5, 2005
12. Report from the Traffic Assessment Engineer, Transportation Division, Public Works Department, dated September 1, 2005
13. Petition in support of the application purporting to contain the signatures of 547 area residents, submitted by Angus Murray at the public hearing held on April 11, 2006
14. "Take Out Sales" statistics submitted by Angus Murray at the public hearing held on April 11, 2006

REPRESENTATIONS:

In Support:
Lynvic Foley
David Meyer
Angus Murray
Jean Reuther, D-7 Property Management
Marie Sahulka
Eneas Smythe

In Opposition
Denise Bondarenko
Randy Brown
Daryl Chicoine
Roman and Beth Dzladyk
J. Goertzen
Rudy Hintz
Bruce Jensen
Don Kasprick
Tom Lloyd and Viktoria Klincak
Wade Power
Jerry Sklar

For Information:
Terry Bondarenko

For the City:
Mr. J. Wintrup, Planner, Planning, Property and Development Department

SUMMARIZATION OF REPRESENTATIONS AND SUBMISSIONS
MADE AT THE PUBLIC HEARING

July 5, 2005

Eneas Smythe appeared in support of the application.

Angus Murray appeared in support of the application. He advised that the applicant is proposing a 1402 square foot unit, as opposed to a 1475 square foot unit, which he purported equates to one less required parking stall. In addition, he requested that the administrative recommendation

with respect to the hours of operation on Fridays and Saturdays be amended from 12:00 p.m. and be allowed to remain open until 1:00 a.m. instead. He expressed his opinion that the dine-in part of the business would equate to less than 20% of their business and occur mostly during the lunch hour, with the balance of the business being take-out. He advised that in the 20 years that he has been associated with Chicken Delight, he reportedly has not received a noise or smell complaint.

Beth Dzsadyn appeared in opposition to the application and expressed concern regarding the following, namely; noise factor, traffic, crime, and odour.

Rudy Hintz appeared in opposition to the application, and submitted a written presentation, filed as Exhibit 10.

Jerry Sklar appeared in opposition to the application, and expressed concern regarding traffic congestion in the area.

Wade Power appeared in opposition to the application, and advised that he resides six houses up the street from the proposed project. He expressed concern regarding the following, namely; smell, traffic, impact on property values, and patrons utilizing residential driveways.

Tom Lloyd appeared in opposition to the application, and expressed concern regarding traffic, garbage, and noise.

Don Kasprick appeared in opposition to the application, and advised he is a hairstylist at the neighbouring business. He indicated that his biggest concern is with respect to enough parking spots. In addition, he expressed concern regarding the smell, and the approach.

Daryl Chicoine appeared in opposition to the application, and submitted a petition in this connection, filed as Exhibit 11. He advised that he is a lawyer and on behalf of his client, Henderson Chiropractic, expressed concerns regarding lack of parking and noise. He commented that the ventilation system is from the roof of the building and that his client's air intake and the restaurant's exhaust are on the roof.

Councillor Lubosch questioned if Daryl Chicoine's client was approached by the applicant with respect to the application, to which confirmation was given that consultation concurred with the immediate tenants.

In rebuttal, Angus Murray advised that a meeting did occur with the landlord and that because they had not received any complaints from neighbouring residents of previous applications, they did not consult with the neighbouring residents of the subject application.

Eneas Smythe advised that the air unit is a state of the art equipment and will be sucking the exhaust back into the subject building. In this connection, he expressed his opinion that odour should not be an issue.

With respect to street traffic late at night, Angus Murray expressed his opinion that the majority of the business will be between 4:00 and 8:00 p.m., and that the late night business is typically of a delivery type. In this connection, he commented that the business should not create a major traffic problem.

Councillor Wyatt commented that traffic should not be an issue as the subject application is not a huge retail operation; however, parking may be a concern. In this connection, Angus Murray commented that parking should not be a concern as take-out and delivery will be approximately 85% of their business.

Councillor Lubosch questioned that as consultation has occurred with the immediate stakeholders, if the applicant would be prepared to consult with neighbouring residents, to which Angus Murray responded in the affirmative.

Councillor Lubosch reiterated some of the concerns expressed, such as hours of operation, odours, and traffic, and indicated that he felt they should be discussed and resolved.

September 6, 2005

Angus Murray appeared in support of the application. He indicated that although the subject application has the support of the civic administration, the application was adjourned from its initial public hearing on July 5, 2005, to enable the Administration to report back on altering the Henderson Highway approach and to limit access to Fortier Avenue.

Eneas Smythe appeared in support of the application, and advised that Chicken Delight intends on opening a take-out restaurant at the location if the subject application does not proceed.

Rudy Hintz appeared in opposition to the application, and advised that he resides across the back of the subject property. He expressed concern regarding the following, namely: extended hours of operation; increased traffic utilizing Fortier Avenue; noise; and, insufficient parking. He also expressed his opinion that the proposal is incompatible with the neighbouring area.

Bruce Jensen appeared in opposition to the application. He advised that his business is adjacent to the proposed location, and also that he has been a resident in the area for several years. He expressed his opinion that parking is already a problem and that adding a restaurant to the site that will accommodate 20 people will further exasperate the problem. He indicated that his major concern is the access for clients to his chiropractic office considering the aging population and existing parking problem. He also expressed concern regarding odour resulting from the use of the proposed location.

With respect to the concern expressed regarding the establishment of a restaurant use with seating for patrons, Angus Murray advised that only approximately 15% of their business is dine-in while the balance is attributed to take-out and delivery. He commented that the timing of the subject application is important.

Eneas Smythe provided comments with respect to concerns related to parking, traffic and odour. He expressed his opinion that different uses other than the proposed use may generate more traffic and parking problems than what could be attributed to the subject application. Regarding concerns expressed about odour resulting from the subject application and the proposed use, he commented that Chicken Delight has not purportedly received an odour complaint in 40 years.

Councillor Wyatt questioned the definition of a "retail" use, to which John Wintrup, Planner, City of Winnipeg, clarified the definition.
Councillor Lubosch questioned the equipment to be purchased with regard to developing the premises for the production of food, to which Angus Murray responded by advising that a larger size will be considered if there is dine-in seating.

Councillor Lubosch commented that Chicken Delight's take out business may occur at the subject location regardless of the outcome of the subject public hearing. In this connection, he indicated that he will be recommending that the subject application be adjourned until January 2006 to allow the applicant the opportunity to pursue the concerns raised by the tenants of the subject commercial building and the neighbouring residents.

January 17, 2006

Angus Murray appeared in support of the application, and advised that the Administration has indicated their support for the amendment to the zoning agreement as well as the variance application. He indicated that the application would allow a restaurant to accommodate a maximum of 20 seats, which he purported equates to less than 10% of Chicken Delight's business. He purported that a number of fast food restaurants have entrances and exists off residential streets, and confirmed that communication had occurred with the building's tenants.

E. Smythe appeared in support of the application.

Councillor Lubosch questioned the applicant regarding the consensus building for the subject application and if there had been any progress with respect to the parking issue, which he felt was the major project concern. In response, Angus Murray commented that the delivery aspect of the business should not affect the parking situation.

Jean Reuther appeared in support of the application and advised that D-7 Property Management has done everything possible to communicate with the tenants regarding the vacant space. In an attempt to locate a good tenant, she indicated that the management company checked the past

records of Chicken Delight and found no complaints. She confirmed that the take-out aspect of Chicken Delight has not yet opened, and indicated that the property management company is willing to negotiate the allocation of parking stalls.

Bruce Jensen appeared in opposition to the application and advised that his chiropractic business has been established for over 20 years next to the subject location. He commented that in his lengthy relationship with the landlord, he had repeatedly been told that the subject location would be occupied as office space and was therefore surprised to learn of Chicken Delight's application. He indicated that he welcomes Chicken Delight as neighbours operating as a take-out business; however, is not comfortable with the establishment of a 20 seat restaurant. He expressed concern regarding the following; parking spaces dominated by Chicken Delight, the construction of a 2 hour fire wall and the possibility of a fire; odour; and, accessibility to his office, especially considering that a number of his patients rely on canes, walkers and motorized scooters. He indicated that he would be prepared to observe the impact on parking over the next several months as it relates to the take-out business.

Councillor Wyatt commented that seating for 20 people would likely equate to five tables and parking for a maximum of five cars at any one time.

Roman Dzladyk appeared in opposition to the application and advised that he has resided kitty corner to the subject building for 13 years. He indicated that he is not opposed to Chicken Delight operating as a take-out business. He purported that it is difficult to access the building parking lot and questioned where any overflow parking would go. He expressed concern regarding the following, namely: noise, hours of operation; and, parking occurring on Fortier Avenue.

Terry Bondarenko appeared for information and advised that he resides on the north side of Fortier Avenue. He expressed concern regarding the following, namely: patrons utilizing his driveway to turn around; Fortier Avenue becoming a speedway; tight access onto Henderson Highway; insufficient room to establish a restaurant at the subject location; and, garbage.

In rebuttal, Angus Murray responded to the concerns expressed by the residents and reiterated that Chicken Delight is not known for its dine-in business, but rather for its take-out. He indicated that their peak times of lunch hour, and supper hours from 5:00 to 8:00 p.m., would likely be different than the peak hours of other tenants in the building. He commented that some of the dine-in business would be walk-in customers and therefore not impact on parking. With respect to traffic concerns, he commented that any business situated in the complex will impact traffic, and not be impacted solely by the Chicken Delight business.

E. Smythe addressed concerns expressed regarding odour and in this connection, advised that a contractor purportedly determined that Chicken Delight's exhaust fan and air intake is three times the mandated distance from the chiropractor's business intake. With respect to fire concerns, he advised that the 2 hour fire separation is in accordance with building codes and that

Chicken Delight has installed a very extensive automatic fire suppression system. He further advised that the different business peak hours will allow parking stalls to be shared during the day, and for the supper hour at 6 or 7 p.m., the parking lot would virtually be empty except for Chicken Delight's patrons.

Councillor Lubosch commented that the property manager has indicated willingness to discuss parking with the tenants. In this connection, he questioned the applicant if it is their intention to pursue discussions with the tenants once the business is operational, to which Angus Murray responded in the affirmative.

Councillor Lubosch advised that he will be recommending that the subject application be adjourned for 90 days to allow more opportunity for consensus building, which he indicated would allow both sides to observe what the impact Chicken Delight's take-out business will have when it is operational.

April 11, 2006

Angus Murray, on behalf of Chicken Delight of Canada Ltd., appeared in support of the application, and advised the applicant has endeavoured to appease the neighbours of the subject affected premises. He indicated that the proposed 20 seat restaurant will be situated in a 1350 square foot unit, a smaller area than indicated in the administrative report. He further advised that he is in support of the administrative recommendations, with the exception of Condition No. 1.A.v. as it pertains to the hours of operation, and requested in this connection that the hours of business be extended from 12:00 midnight to 1:00 a.m. Saturday and Sunday to allow for deliveries only. He submitted a petition in support of permitting a dine-in restaurant at the subject location, filed as Exhibit 13, and a chart entitled "Take out Sales" indicating peak hours of service, filed as Exhibit 14.

Marie Sahulka, Manager of the subject Chicken Delight, appeared in support of the application and advised that she has been a manager for 10 years. She purported that customers have expressed disappointment that there has been no dining room since the relocation to 1725 Henderson Highway.

Exhibit "7" referred to in File ZAA 5/2005 [c/r DAV 336809/2004D]

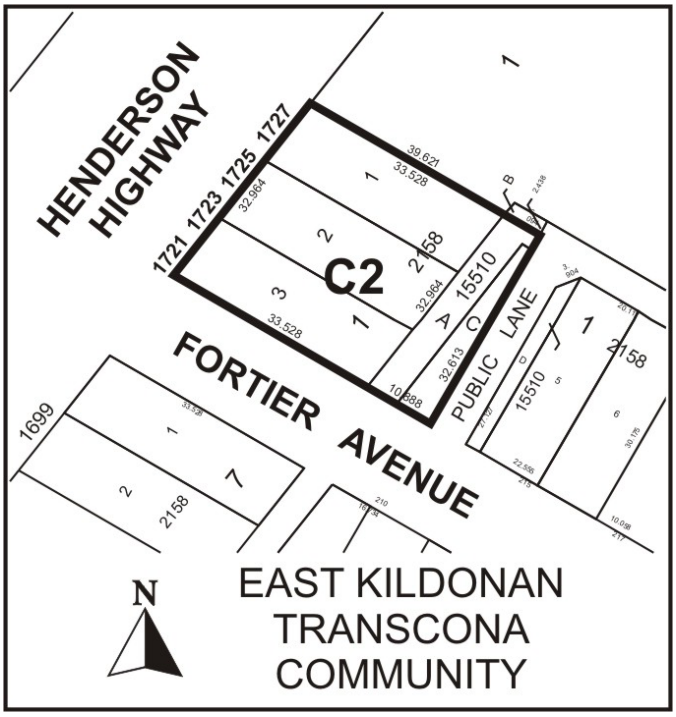
Winnipeg

Planning, Property and Development Department Report

To the East Kildonan - Transcona Community Committee

Date: **June 27, 2005**
File: **ZAA 5/05**
Related Files: **DAZ 226/74A; DAZ 243/81; DAV04-336890D**
Subject: **Amend zoning agreement to expand the permitted land-uses and the height of the building.**

Location: **1725 Henderson Highway**



Applicant: **E. Smythe (Chicken Delight)**
Owner: **HW Redekopp Holdings Ltd.**

Recommendation: **Approval**

Report Summary:

- The Zoning Agreement restricts the land-uses to two, *office* and *retail store*.
- The multi-tenant building has four (4) units and one-storey.
- The applicant intends to develop a vacant unit in the commercial building.
- The applicant is proposing a **20 seat** restaurant in a **1,475 square foot unit**.

Site Description

The site is **11,765 square feet** (1093 square metres) located on the northeast corner of Henderson Hwy and Fortier Avenue in the River East neighbourhood of the North Kildonan Ward. The site is zoned "C2" Commercial District. Adjacent properties include a multi-family building zoned "RM-7" to the north. Surrounding lands include commercial lands to the north and south along Henderson Hwy zoned "C2" commercial.

Background

*The property was previously zoned commercial in 1975 under **DAZ 226/74A.** The adjacent commercial property to the rear of the building was purchased from the City of Winnipeg and zoned commercial in 1981 to permit the construction of a parking area to service the building at 1721- 1727 Henderson Hwy.*

Description of the Proposed Development

The applicant intends to re-develop a commercial unit in an existing commercial building. Plans submitted indicate a new 1,475 square foot restaurant with seating for 20 patrons will be developed. The submitted plans do not indicate the existing built form will be altered or the parking area changed.

Analysis

PLAN WINNIPEG
The proposed concept is consistent with Plan Winnipeg regarding commercial uses along transportation corridors.

SECONDARY PLAN
The North Henderson Hwy Secondary Plan was adopted in 1976. The subject property is within this Secondary Plan area. The proposed amendment is consistent with the Second Plan: the subject property is identified as "Commercial' with no restrictions in regards to height or uses.
ZONING

- The **"C2" Commercial District**:
    - There are 104 Permitted Uses including restaurant to a maximum of 2,500 square feet.
    - There are 47 Conditional Uses.
    - A maximum building height of 45 feet.

- Zoning Agreement **No. 238202** prohibits all uses except the following:
    a) Retail store.
    b) Office.

- The Zoning Agreement requires site plan approval for landscaping, building location and design by the Director of Planning, Property and Development.

- The Zoning Agreement restricts the height of the building constructed on the land to **one story**.

- Zoning Agreement **No. 81-26459** affects the adjacent commercial property to the east, which is owned by the same land owner. These land described as Lots A and C appear on the ground to be the rear yard of the commercial building at 1725 Henderson Hwy.

- The Zoning Agreement restricts the land to being used only for automobile parking for person employed on the adjacent land commonly known as 1721 to 1727 Henderson Hwy.

- There is no requirement for garbage enclosures or plan approval for any new construction.

- There is an associated variance for substandard parking in relation to a restaurant use.

LAND USE BY-LAW ISSUES
A "C2" Commercial District is intended to regulate intensive commercial sites that do not have a local or neighbourhood orientation. These land-uses tend to cater to a community wide market. For example, commercial land-uses along Henderson Highway are "C2". They serve the local residents down the street as well as the surrounding North Kildonan area but not necessary a city wide market. This zoning category is common throughout the City of Winnipeg especially along major transportation corridors like Henderson Hwy.

SITE PLAN
The current Zoning Agreement requires site plan approval by the Director of Planning, Property and Development for landscaping, and building design. The submitted site plan indicates that the

existing building foot print will be retained (**Figure 3**). There does not appear to a garbage enclosure located on the commercial property despite the indication of such a structure on the submitted site plans. A site inspection also revealed that the existing tenants have garbage sitting in the open on Lots A and C, which are to the rear of the building. Parking for 11 vehicles will be in the front with the existing landscaping being retained.

Recommendation

*The Administration has no concern regarding the specific changes to the list of land-uses. Only two (2) uses (*Retail Store and Office) *are permitted under the Zoning Agreement whereas the Zoning By-law allows* 104 Permitted Uses *and* 47 Conditional Uses. *The conditional uses can be evaluated during the application process.*

The Administration is recommending that Zoning Agreement **No. 238202** *be amended to expand the number of permitted and conditional uses, and that Zoning Agreement* **No. 81-26459** *be amended to ensure garbage bins are enclosed. The recommendations are subject to a number of conditions that will ensure the commercial development remains compatible with the adjacent residential neighbourhood. The conditions required to mitigate any negative impacts are:*

- site plan approval for landscaping, fencing, buildings, and signage by the East Kildonan – Transcona CC and the Director of Planning;
- list of prohibited uses especially those that generate significant negative sounds, sights, and smells;
- no mobile signs;
- signage be restricted from the north, south, east sides of the building to ensure adjacent residents are not negatively impacted;
- the hours of business operation restricted after midnight.

Recommended Conditions of Approval

1. That the Zoning Agreement Caveat **No. 238202** under file no. **DAZ 226/74A**, dated, **December 17, 1974** (**By-Law # 872/75**), be amended as follows:

   A. That Clause 2 be deleted and substituted with the following:

      i. That the following uses shall NOT be permitted on the land:

         a. automobile, including motorcycle: rental, sales, including accessory repair, service, installation of supplies/parts
         b. automobile, including motorcycle: supplies/parts, sales
         c. beer: sales
         d. bingo parlour
         e. bowling alley

f. bus station
g. contractors' establishment
h. exterminator
i. farm supplies: sales
j. fuel: sales kiosk
k. hotel, including motel, limited to guest rooms
l. liquor: sales
m. machinery/heavy equipment supplies and parts:sales, installation, service
n. mobile home park
o. motors or machines, recreational or utility, including power toboggans, outboard motors, lawn mowers: rental, sale, service
p. parking area, non-accessory
q. pawnshop
r. tattoo parlour
s. terminal for haulage, motor freight station, excluding an intermodal terminal
t. terminal for courier/delivery/ express service, cleaning service, key and lock service, security service, taxi, or similar service
u. tire: sales, service

ii. That there shall be no advertising signs, mobile signs, poster signs and A-frame signs on the entire site, except that a mobile sign shall be permitted on the site for a period of thirty (30) days in association with a new occupancy permit;

iii. That no illuminated signage be erected on the north, south or east side of the building;

iiii. That, prior to the issuance of any occupancy permits, all garbage containers be fully enclosed by a brick/concrete, and/or wood barrier fence that is at least 6 inches above the top of the garbage container, and thereafter maintained to the satisfaction of the Director of Planning, Property and Development;

iiv. The hours of operation for any business being conducted shall not fall within 12:00 pm and 6:00 am.

iv. That for the development of any **building, accessory parking area or signage,** plans shall be submitted showing the location and design of the **proposed buildings, the location and design of accessory parking areas, private approaches, garbage enclosures, loading areas, fencing, landscaping and signage** to the East Kildonan – Transcona Community

Committee and the Director of Planning, Property and Development. for plan approval prior to the issuance of any building or development permit; and the applicant shall maintain the landscaping and fencing to the satisfaction of the Director of Planning, Property and Development.

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement **DAZ 226/74A** (**By-Law # 872/75**), dated, **December 17, 1974** as approved in aforesaid Clause 1.

3. That the Zoning Agreement Caveat **No. 81-26459** under file no. **DAZ 243/81**, dated, **September 16, 1981** (**By-Law # 3196/82**), be amended as follows:

   A. That for the development of any **building, accessory parking area or signage,** plans shall be submitted showing the location and design of the **proposed buildings, the location and design of accessory parking areas, private approaches, garbage enclosures, loading areas, fencing, landscaping and signage** to the East Kildonan – Transcona Community Committee and the Director of Planning, Property and Development. for plan approval prior to the issuance of any building or development permit; and the applicant shall maintain the landscaping and fencing to the satisfaction of the Director of Planning, Property and Development.

   B. That, prior to the issuance of any occupancy permits, all garbage containers be fully enclosed by a brick/concrete, and/or wood barrier fence that is at least 6 inches above the top of the garbage container, and thereafter maintained to the satisfaction of the Director of Planning, Property and Development;

4. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement **DAZ 243/81** (**By-Law # 3196/82**), dated, **September 16, 1981** as approved in aforesaid Clause 3.

5. That the Proper Officers of the City are hereby authorized to execute said Amending Agreement.

6. That the City Solicitor/Manager of Legal Services be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

This Report Submitted by:
Planning, Property and Development Department
Planning and Land Use Division

Report Prepared by: John S. Wintrup
PPD File # 4.418



Figure 1: Existing Land-Uses for subject property and Surrounding Area.

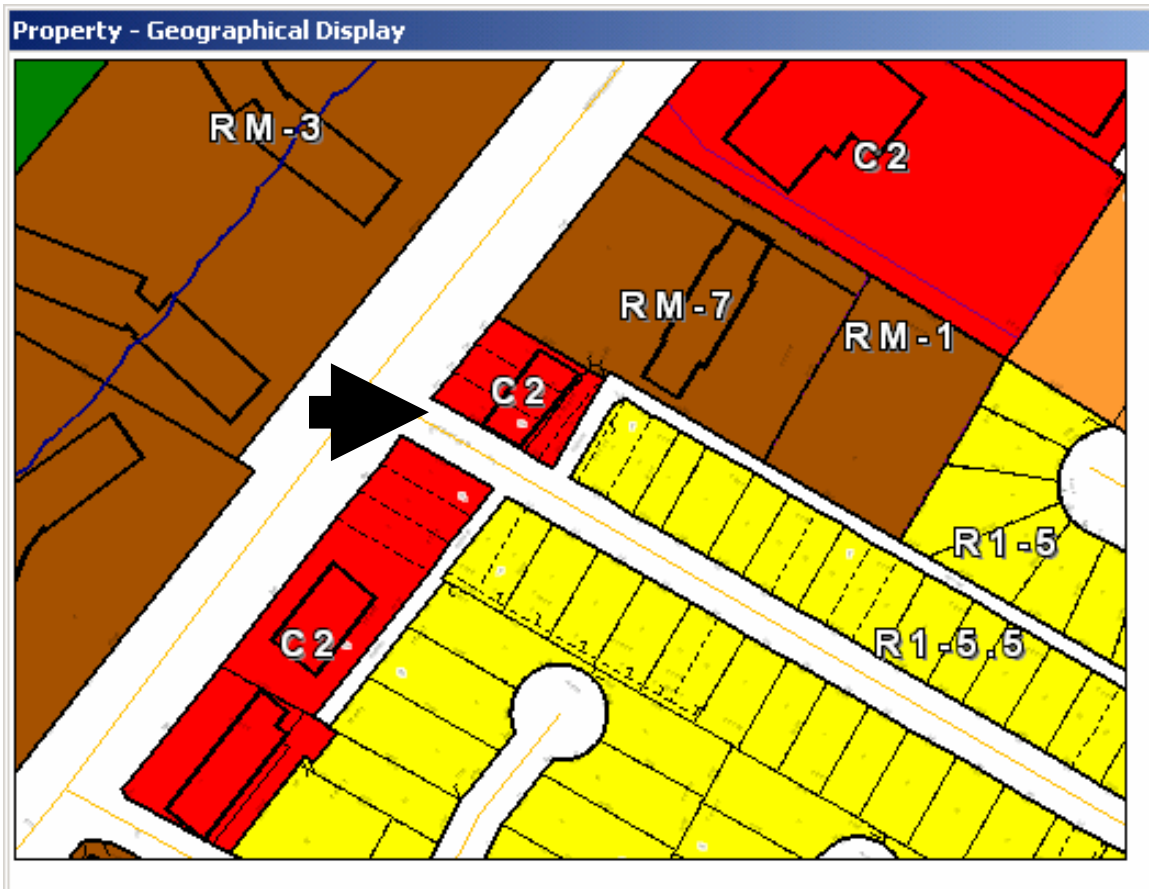


Figure 2: Existing Zoning for subject property and Surrounding Area.

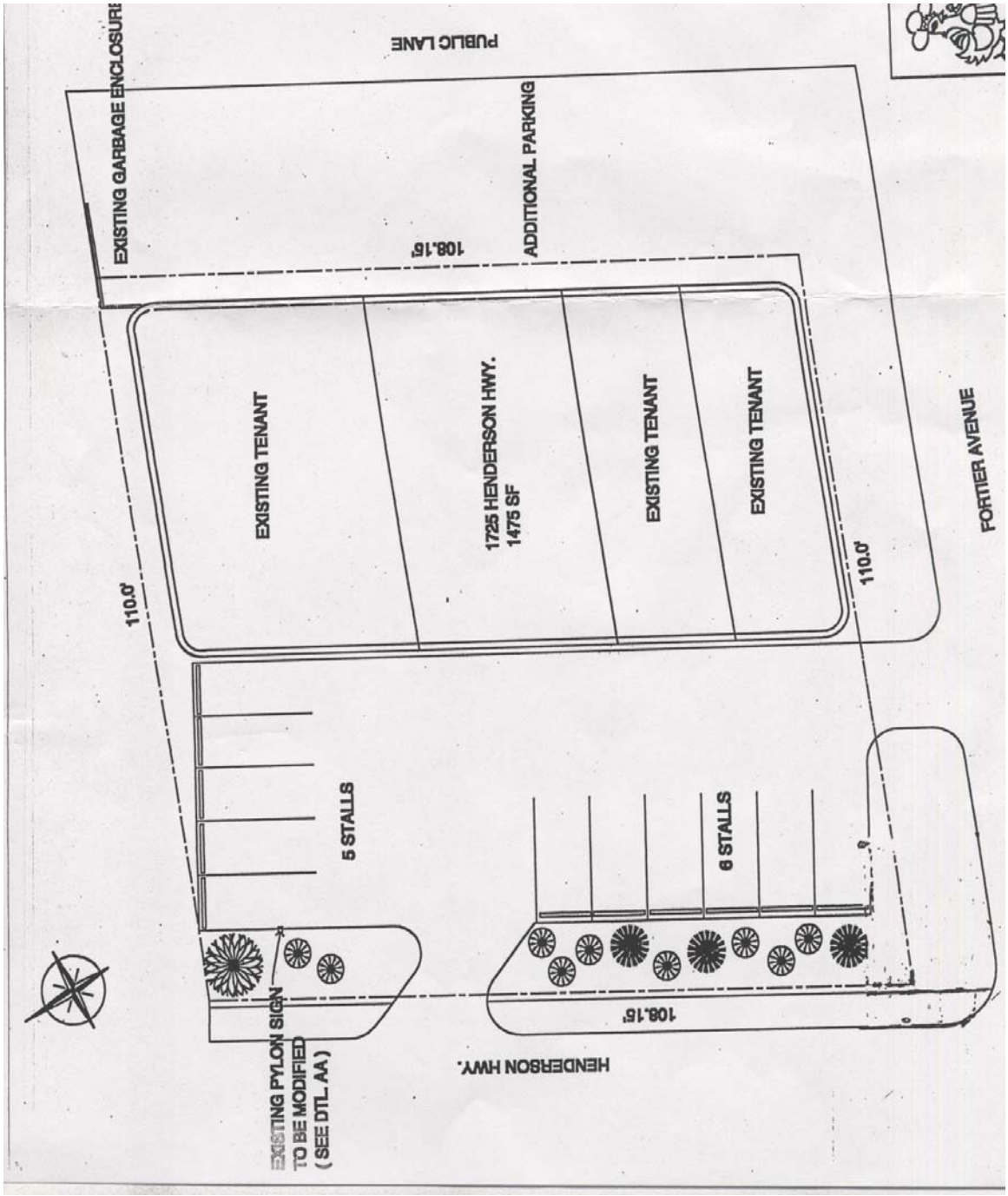


Figure 3: Site plan of existing building.

Exhibit "12" referred to in File ZAA 5/2005 [c/r DAV 336809/2004D]

From: Hartmann, Roy
Sent: Thursday, September 01, 2005 11:39 AM
To: Skundberg, Inga
Cc: Wintrup, John
Subject: ZAA 5/05 - 1725 Henderson Highway

Regarding the above-referenced application and the Community Committee's disposition of July 5, 2005 the following are our comments:

1.) The existing Henderson Highway approach is a right-in/right-out approach by virtue of the median that exists on Henderson Highway in this area which effectively prevents left-turn movements.

2.) The existing Fortier Avenue approach permits both right and left turn in and out movements and is not unlike a number of other approaches on the side streets abutting similarly developed properties along Henderson Highway. It would be possible to both sign the approach as right-in/out only and/or to reconstruct the approach with a triangular shaped island to encourage right-in/out movements, however neither of these alternatives will entirely preclude the left-turn movements from occurring.
There is no traffic engineering reason to preclude left-turn movements at this private approach.

R. J. Hartmann, P. Eng.
Traffic Assessment Engineer
Transportation Division
Public Works Department
3rd Floor - 100 Main Street