Minute No. 52
Report - Standing Policy Committee on Property and Development – November 1, 2005

Item No. 9 Zoning Agreement Amendment - 434 St. Anne's Road
File ZAA 15/2005 [c/r DAZ 211/92]

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. 1568928 under File DAZ 211/92 dated July 8, 1992, (By-law No. 5986/92) be amended by revising Clause 5 to read "any building built on the land shall have a north side yard of not less than 6.45 feet".

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 211/92 (By-law No. 5986/92) dated July 8, 1992, as approved in aforesaid Recommendation 1.

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

4. 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 – November 1, 2005

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 November 16, 2005, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the Riel Community Committee and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On November 1, 2005, the Standing Policy Committee on Property and Development concurred in the recommendation of the Riel Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On October 18, 2005, the Riel Community Committee concurred in the administrative recommendation and submitted its recommendation to the Standing Policy Committee on Property and Development.

RE: **Zoning Agreement Amendment - 434 St. Anne's Road**
File ZAA 15/2005

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

Prepared by: **Marc A. Pittet, Clerk**
Riel Community Committee

Report date: **October 25, 2005**

COMMUNITY COMMITTEE RECOMMENDATION:

On October 18, 2005, the Riel Community Committee concurred in the administrative recommendation and recommends to the Standing Policy Committee on Property and Development:

1. That the Zoning Agreement Caveat No. 1568928 under File DAZ 211/92 dated July 8, 1992, (By-law No. 5986/92) be amended by revising Clause 5 to read "any building built on the land shall have a north side yard of not less than 6.45 feet".

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 211/92 (By-law No. 5986/92) dated July 8, 1992, as approved in aforesaid Recommendation 1.

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

4. 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.

The Riel Community Committee provided the following supporting reason for its recommendation:

1. The Riel Community Committee agreed with the administrative comments contained in the report from the Manager of Planning and Land Use dated October 11, 2005.

PUBLIC HEARING SUMMARY

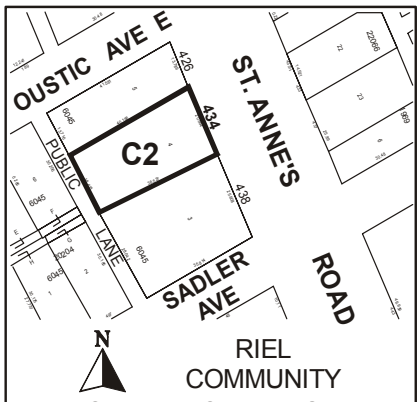
File: ZAA 15/2005

Before: Riel Community Committee
Councillor Steeves, Chairperson
Councillor Magnifico
Councillor Swandel

Public Hearing: October 18, 2005
Community Committee Chamber, 604 St. Mary's Road

Applicant: Luc Dupuis

Subject:



RIEL
COMMUNITY

APPLICANT: LUC DUPUIS
FILE : ZAA 15/05
PROPOSAL : To amend the Zoning Agreement affecting the land shown outlined above to permit a building with a north side yard of 6.45 feet instead of 8 feet as required by the Agreement. **For information, phone Mr. K. Lalor, Planner at 986-5069.**
DEMANDEUR : LUC DUPUIS
N° DE RÉFÉRENCE : MCZ 15/05
PROJET : Modification de la convention de zonage des biens-fonds indiqués ci-dessus en vue de permettre un bâtiment laissant une marge latérale nord de 6,45 pieds au lieu de 8 pieds ainsi que l'exige la convention. **Pour plus de renseignements, veuillez communiquer avec M. K. Lalor, urbaniste, au 986-5069.**

Premises Affected: 434 St. Anne's Road

Exhibits Filed:

1. Application dated September 1, 2005
2. Notification of Public Hearing dated September 12, 2005
3. Manitoba Status of Title 2072254
4. Surveyor's Building Location Certificate and sketch dated February 28, 2005
5. Letter of authorization dated August 3, 2005 from Richard Mailhot to Luc Dupuis
6. Report from the Manager of Planning and Land Use dated October 11, 2005
7. Inspection Report

REPRESENTATIONS:

In Support:
Luc Dupuis
Richard Mailhot

In Opposition
Nil

For the City:
Kevin Lalor, Senior Planner, Planning, Property and Development Department

SUMMARIZATION OF REPRESENTATIONS AND SUBMISSIONS MADE AT THE PUBLIC HEARING

Luc Dupuis and Richard Mailhot appeared in support of the application and provided an overview of the proposal.

Exhibit "6" referred to in File ZAA 15/2005

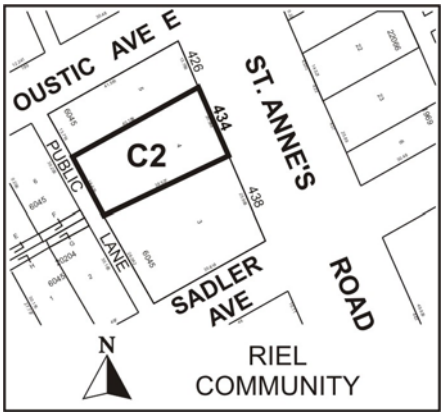
Winnipeg

Planning, Property and Development Department Report

To the Riel Community Committee

Date: October 11/05
File: ZAA 15 /05
Related Files: NA
Subject: To amend Clause 5 of the zoning agreement which states that "any building on the land shall have a north side yard of not less than 8 feet" to read "any building on the land shall have a north side yard of not less than 6.45 feet".

Location: 434 St. Anne's Road
Legal Description: Lot 4, Plan 6045



Applicant: Luc Dupuis
Owner: Luc Dupuis & Richard Mailhot

Recommendation: (Approved with Conditions)

Site Description

The subject property is situated on the west side of St. Anne's Road midway between Sadler Ave. and Oustic Ave. E. There is a metal clad one story commercial building on the site with parking at the front . The property is zoned C2 Commercial. The adjoining property to the south is zoned C1 Commercial and occupied with a 7 Eleven outlet. To the immediate north is a zoned C1 property. And to the rear across an existing lane right-of-way is a residential housing area zoned R1-5.

Description of the Proposed Development

When the subject property was zoned commercial fifteen years ago, concerns were raised by the owner of the property at 426 St. Anne's to the north about the proximity of a new commercial building to his south property line. It was stipulated in the zoning agreement at that time that any building constructed on the property at 434 St. Anne's had to provide a north side yard of not less than 8 feet. The applicant , at that time agreed to that condition. However, it was determined much later, long after the building was constructed, that the NW corner of the structure was in fact only 6.45 feet from the north property line. To legitimize the existing situation, the applicant is applying for an amendment to the old agreement which would permit the existing encroachment into the north side yard.

Analysis

In this particular situation, it is our view, that the builders of the subject building acted in good faith when they originally constructed the structure at 434 St. Anne's Road. The owner may or may not have realized that there was a partial encroachment; however, in the final analysis, the encroaching part of the wall is deemed to be a minor breach of the original agreement and has, in all likelihood, not adversely affected the adjacent property owner. Furthermore, it should be noted that under the current By –Law requirements for commercial interior side yards no north side yard at all would be required. It does however have to be rectified. The Planning and Land Use Division , is of the opinion, that Clause 5 of the original agreement can and should be amended to allow for a 6.45 foot minimum north side yard instead of the original specifies 8 feet minimum.

Recommendation

The Planning and Land Use Division recommends approval for the following reason:

- It is the opinion of the Planning and Land Use Division that most of the north side wall of the existing commercial building complies with the original setback requirement under the original agreement. The one corner of the building that has encroached into the north side yard over the intervening years has not , in our view, adversely affected the adjoining property owner.

Recommended Conditions of Approval

I. That the Zoning Agreement Caveat No. 1568928 under file no. DAZ 211/92, dated July 8/92, (By-Law # 5986), be amended *by revising Clause 5 to read " any building built on the land shall have a north side yard of not less than 6.45 feet".*

II. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 211/92 (By-Law # 5986), dated July 8/92, as approved in aforesaid Clause I.

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

IV. 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: (Kevin Lalor)
PPD File # (.526)