Minute No. 42
Report - Standing Policy Committee on Property and Development - December 3, 2002

Item No. 1 Proposed Zoning Agreement Amendment - 1620 McGillivray Boulevard File ZAA 13/2002 [c/r DAZ 222/2000, DCU 228/2002]

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

The Executive Policy Committee laid over consideration of Item 1 to the meeting of the Committee scheduled for January 22, 2003.

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DECISION MAKING HISTORY:

Moved by Councillor Clement,

That consideration of Item 1 be laid over to the meeting of the Executive Policy Committee scheduled for January 22, 2003.

Carried

STANDING COMMITTEE RECOMMENDATION:

On December 3, 2002, the Standing Policy Committee on Property and Development did not concur in the recommendation of the City Centre Community Committee and recommended to Council that the administrative recommendation be concurred in:

1. That Zoning Agreement DAZ 222/2000 be amended as follows:

    A. That the following uses be added to the list of permitted uses under Condition IA:
        - restaurant (one only with a maximum floor area of 9,000 square feet)
        - cocktail lounge

    B. That Condition 1B be replaced with the following:
        B. That the following minimum yards (no signage or buildings) be provided:
            - 20 feet, south side of Buffalo Place west of Beaver Street
            - 15 feet, south side of Buffalo Place east of Beaver Street
            - 20 feet, north side of McGillivray Boulevard
            - 20 feet, east side of Waverley Street.

    C. That the following new condition be added:
        H. That any restaurant on the site be closed to the public between the hours of 2:00 a.m. and 7:00 a.m. daily.

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 222/2000 as approved in aforesaid Recommendation 1.

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

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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 Act.

COMMUNITY COMMITTEE RECOMMENDATION:

On November 12, 2002, the City Centre Community Committee did not concur in the administrative recommendation and recommended that the application to amend the Zoning Agreement affecting the property under File ZAA 13/2002 not be proceeded with.

RE: **Proposed Zoning Agreement Amendment - 1620 McGillivray Boulevard - File ZAA 13/2002**

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

Prepared By: Carol Freeman, Clerk, City Centre Community Committee

Report date: **November 25, 2002**

COMMUNITY COMMITTEE RECOMMENDATION:

The City Centre Community Committee did not concur in the administrative recommendation and recommends that the application to amend the Zoning Agreement affecting the property under File ZAA 13/2002 not be proceeded with.

The City Centre Community Committee provided the following supporting reasons for its recommendation:

1. The Zoning Agreement clearly articulates permitted uses on the subject property.

2. The former Councillor for the area, together with residents, agreed to a list of permitted uses for the subject site, which were incorporated into the Zoning Agreement, and any change to the list of permitted uses would undermine faith in both the Civic government and the process for zoning changes.

3. A restaurant on the property is undesirable near a residential area given the availability of other locations in the area.

4. There is a degree of validity to the noise which would be generated by both increased traffic and any patio areas.

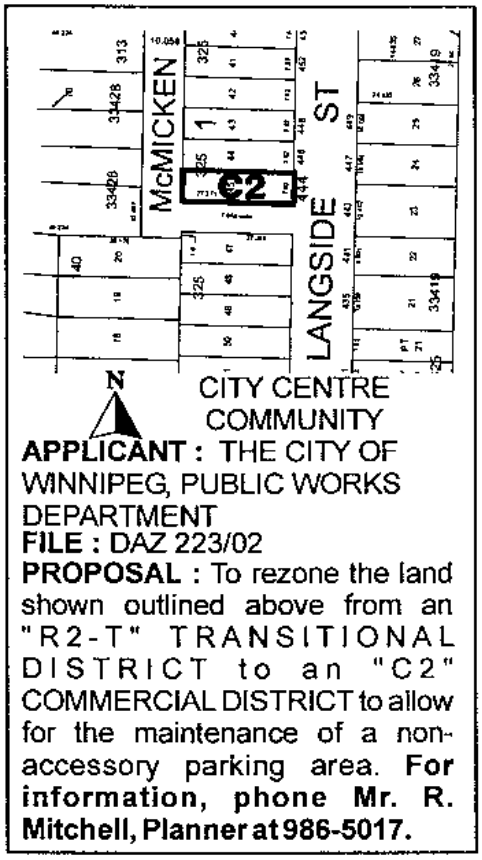
PUBLIC HEARING SUMMARY

File:	ZAA 13/2002 [c/r DAZ 222/2000, DCU 228/2002]
Before:	City Centre Community Committee Councillor Gerbasi, Chairperson Councillor Smith Councillor Steek
Public Hearing:	November 12, 2002

Community Committee Chamber, 300 Assiniboine Avenue

Applicant: GRR Holdings Ltd. (Gord Howard)
1295 Pembina Highway
Winnipeg, MB R3T 2B3

SUBJECT:



Premises Affected: 1620 McGillivray Boulevard

Exhibits Filed:

1. Application dated October 3, 2002
2. Notification of Public Hearing to Applicant dated October 9, 2002
3. Manitoba Status of Title 1579396
4. Extract from Atlas Sheet Z23
5. Light-Proof Barrier/Fence Detail and Front and Sideview of Barrier/Fence plans dated September 1997 (2 pages)

6. Report from the Manager of Planning and Land Use dated October 30, 2002
7. Photographs of the site and Inspection Notice

REPRESENTATIONS:

In Support:

Gordon Howard, 167 Waverley Street, Winnipeg, R3M 3K3
Garry Hilderman, 115 Bannatyne Avenue, Winnipeg, R3B 0R3
John Prall, 148 Elm Street, Winnipeg, R3M 3P1

In Opposition:

Julie Bubnick, 19 Shoreline Drive, Winnipeg, R3P 2B4
Renerio Carino, 58 Foxmeadow Drive, Winnipeg, R3P 1J9
Pat and Pierre Chevrier, 46 Thorncliff Bay, Winnipeg, R3P 1N5
Brian Farley, 27 Waterbury Drive, Winnipeg, R3P 1R7
Isadore M. Hnybida, 31 Hennessey Drive, Winnipeg, R3P 1P8
Scott Jones, 3 Parkroyal Bay, Winnipeg, R3P 1N9
J. Ryan Kustra, 31 Brigantine Bay, Winnipeg, R3P 1R1
Michael Nelson, 1 - 1200 Waverley Street, Winnipeg, R3T 0P4
Gary Palmer, 50 Brigantine Bay, Winnipeg, R3P 1P9
Bert Phillips, 54 Brigantine Bay, Winnipeg, R3P 1R1
Ken Skaftfeld, 66 Brigantine Bay, Winnipeg, R3P 1R1
Roland and Marilyn Storimans, 46 Brigantine Bay, Winnipeg, R3P 1P1
Stan Vivian, 62 Brigantine Bay, Winnipeg, R3P 1R1
Doug Whynot, 78 Foxmeadow Drive, Winnipeg, R3P 1T9

For the City:

Ross Mitchell, Senior Planner

SUMMARIZATION OF REPRESENTATIONS AND SUBMISSIONS
MADE AT THE PUBLIC HEARING:

Gordon Howard, appearing in support of the application, illustrated the proposed development utilizing a rendering. He indicated that GRR Holdings Ltd. had approval in principal to purchase the subject piece of property with the principal proposed use being a restaurant/cocktail lounge operating under the name “The Keg Steakhouse and Bar”.

Mr. Howard noted that the proposed restaurant would contain 180 seats, the lounge 100, and, as well a 60 seat patio(s) was anticipated for use during the summer months. He indicated that the building would be constructed where McGillivray Street and Waverley Avenue intersect, given the importance of visibility, the site would be thoroughly landscaped, the pylon signage would be

no larger than 15 feet in height and 184 parking spaces would be provided. Lighting would be as subdued and safe as it could be made, similar to the Portage Avenue and Moray Street site, with the light standards being 20 feet in height, utilizing pressure sodium, the same as most City street lights, the lighting directed mainly downward and light posts installed in the areas which would be the greatest concern.

Mr. Howard further noted that access to the site, heading north on Waverley Avenue would be right in only and exiting would head north through the lot onto Buffalo Place, to Hennessey Drive and then to Waverley Avenue and had been approved by the City. He indicated the restaurant would be located a good distance from any residential development and, in addition, excellent precautions had been taken to remove any odour from waste, which would be stored in an enclosed room. It was proposed that the restaurant would operate between the hours of 4:00 p.m. and 1:00 a.m. weekdays and 2:00 a.m. on weekends, the Keg standard operating hours, and, if there was an opportunity in the marketplace, a lunch hour service might be added.

In response to an inquiry from Councillor Steek with respect to potential future development on the balance of the site, Mr. Howard advised that it was their intention to complete the purchase of land, and build/operate a restaurant. He suggested that there might be a two or three storey office building constructed on the balance of the site or perhaps the land would be sub-divided and the cost of the Keg construction offset by having the balance of the site developed by someone else. He noted that the existing Zoning Agreement restricts uses on the land quite severely.

Garry Hilderman, appearing in support of the application, suggested that the residents view the Portage Avenue and Moray Street site, and, given that The Keg was very concerned about their exterior image the same intensity and quality would be used at the subject site. He indicated that the building façade would be stone and rustic looking.

The Senior Planner, at the request of the Community Committee, provided background information on the manner in which the subject parcels of land had been created and subsequently placed on the market by the Real Estate Division. He also provided the history of development applications, which had come forward, including a 24-hour donut shop and an application by the Administration to ensure potential uses would be compatible with the adjacent residential and industrial development.

He noted that under the terms of the Zoning Agreement, restaurants were prohibited given the uncertainty regarding the type of applications that could be received. The subject proposal, in his opinion, was a first class restaurant with limited hours of operation that would serve the adjacent industrial area as well as the residential Lindenwoods neighbourhood while the Zoning Agreement would stay in place for the entire site, amended only to allow this particular restaurant and no other. He expressed confidence that the developer would maintain their excellent quality of development.

Ken Skaftfeld, appearing in opposition to the application, advised that there was a lot of history involved with the subject property going back to the original application and the community

meeting at which a list of uses the residents felt they could live with had been developed. With the zoning posters going up, the residents feel they are back to square one, particularly since he did not believe too many residents had changed their minds about development of the property.

Mr. Skaftfeld indicated that the residents' decks face the property and proposed parking area. He noted that there was a great deal of traffic on Waverley Street at the present time, the proposed development would be an additional intrusion into the residents' privacy, there would be problems with traffic leaving at one or two a.m. as well as the noise factor. He suggested that the land use was not consistent with what had been agreed to and that most residents would rather have nothing on the property.

He further suggested that the residents would like some say about what gets built across the street from their homes and had concerns regarding the turning lane off Waverley Street as well. The preference for any development would be what already exists to the north - a three storey building housing a medical clinic or some other type of office with normal working hours, which would not generate a lot of traffic during evening hours. He indicated that the lunch hour was not much of a concern or as large an issue but anything later into the evening would raise concerns relating to noise and traffic, both from the patio when the lounge closes and people leaving the restaurant at 1:00 or 2:00 in the morning, as well as odours from cooking and exhaust fumes. He noted that traffic from the site would be within 50 to 100 from the homes on Brigantine Bay.

Gary Palmer, appearing in opposition to the application, advised that his main concern, probably as much as the traffic, was the principal basic enjoyment of their backyards and decks, both during the evenings and on weekends, that the residents on the streets to the rear of the subject site would lose during the short Winnipeg summer. He indicated that there would be an increase in the noise factor from the outdoor patio, which would face directly from the rear of the restaurant towards the backyards and decks. While acknowledging that there was traffic on Waverley Street, it was not a truck route so there was no semi-trailer traffic and at present the traffic eases in the evenings and on weekends, the time when the restaurant/patio will have heavier usage.

Bert Phillips, appearing in opposition to the application, advised that he had purchased his home in 1984, and the current proposal did not sit well with him. He indicated that the proposal for a car wash had been better than a restaurant given that establishment of a restaurant was contrary to all the correspondence he had received.

Mr. Phillips indicated he was annoyed that he had not been advised by mail of the Zoning Agreement Amendment request and felt he was being ignored. He noted that he was in concurrence with the concerns already expressed and, in addition, was concerned that the residents would be disturbed by flashing lights from vehicles leaving the parking lot. He re-iterated that a restaurant would be his last choice for the site.

Stan Vivian, appearing in opposition to the application, advised that he concurred with the concerns expressed regarding noise. He indicated that he had been a patron on the patio at the

downtown Keg the past summer and the music had been very loud and noisy. When asked to turn the music down, management had indicated it was policy to keep the music loud to attract patrons.

Mr. Vivian advised that, while the residents did not utilize their backyards every evening, the odours would be a problem during evenings and weekends, which would be peak hours for the restaurant. He advised that his first choice would be to leave the site as it exists and secondly to construct office buildings similar to those already existing.

Brian Farley, appearing in opposition to the application, indicated that this was the third public hearing regarding the subject property, all of which had been negative, precedent setting applications. He suggested that the property was attractive because of the adjacent residential development even considering the very restrictive Zoning Agreement. He advised that no one had requested the service, and, if the applicant really cared about the effect of the proposed development, the community would have been contacted and a presentation made prior to the public hearing.

He expressed concern that once one application was approved how could a second, third or fourth be turned down. He questioned why already appropriately zoned property such as Taylor Avenue, Kenaston or McGillivray Boulevards could not be utilized. He expressed concern with respect to constant cooking smells, indicating that he was already able to smell the creosote pools located at the Manitoba Hydro site on Chevrier Boulevard. He emphasized that he would like to see honoring a "deal is a deal" and restrict the zoning to allow only an office building and not a car wash, donut shop or restaurant.

Scott Jones, appearing in opposition to the application, advised that he was the President of the Lindenwoods Homeowners Association, and the President of the Victoria-Heritage Community Centre. He noted that a commitment had been made by the former Councillor for the area, Bill Clement, to consult with the Lindenwoods Homeowners Association at their Annual meeting.

Mr. Farley advised, with respect to cooking odours, that he did not want to walk his dog and smell steaks all the time. He suggested that a "rustic" look would not fit into the community and that any business owner who wanted to come into the area and fit in should contact the residents for a consultation process prior to filing a formal application.

Julie Bubnick, appearing in opposition to the application, advised that she was not directly affected by the proposed development. She indicated that she was the Past President of the Homeowners Association and had chaired the community meeting where agreement had been reached with respect to uses to be allowed on the site. She noted that there was a good history of consultation in the community, particularly if a change in zoning was required. She suggested that there was properly zoned property available in the area and questioned why the applicant did not locate on one of them. She confirmed that a previous community consultation process had been added to the end of the Annual General Meeting held in May, 2000.

Michael Nelson, appearing in opposition to the application, advised that he represented AVH Holding Corporation, who had developed the land directly north of the subject site, the Medicaid building. He advised that he was also a resident of Lindenwoods.

Mr. Nelson indicated that, when a request for proposals for the land had been advertised by the City, he had been in communication with both the City and the previous Councillor, who had correctly advertised that no retail use or restaurants would be allowed on the subject site. He noted that AVH had submitted a proposal similar to the one to the north and had been disappointed when an appropriate offer to purchase and development proposal had not been taken into consideration. He indicated he was a tenant in the building, which was occupied by an eye clinic and that a family member owned the building.

Mr. Nelson suggested that while The Keg was a business that would be a benefit to the community, he would prefer to see it developed within existing zoning. He noted that traffic in the evening and on weekends at present was virtually non-existent and the area was very quiet.

Ryan Kustra, appearing in opposition to the application, advised that while his property did not back on Waverley Street he could not think of any proposal that would more contrary to understandings reached in the past. He suggested he would not want to be responsible for the residents being woken up at 1:00 or 2:00 a.m. and there were many other locations and opportunities where The Keg could locate.

Mr. Kustra also suggested that the City should change the manner in which residents of an area are notified about requested changes. He suggested that the Adminstration examine the possibility of development with uses for the land that the neighbourhood had agreed to as well as consider ways of improving the meeting process.

Pat Chevrier, appearing in opposition to the application, questioned why the property had to be developed at all and whether it could it be rezoned green space, given it was being used as a park and looked like a park. She also questioned, when turning north from McGillivray Boulevard to Waverley Street, how far the entrance to the restaurant would be located from the intersection.

Mr. Howard advised that the company was not a developer and during the first application for the subject property had been operating their business on Pembina Highway. The subject property had not been for sale to them at that time as proposals had been open only to developers such as Shindico.

He noted that he had been unsure regarding the procedure, from a community viewpoint, of the manner in which to advise the community what was being proposed. With respect to noise from the patio, he indicated that patios were a part of their business and that although the drawings illustrate two patios, at this point in time there are no areas definitely defined, but rather that it might be something they would like to do in the future. He suggested that a commitment could be made that the company would not place a patio on the north side of the building as they could live with one patio, which was used to create an atmosphere.

Mr. Howard also suggested that traffic would overtake any noise from a patio, which would be screened with glass and as well enhanced with landscaping and hanging plants. He noted that the Portage Avenue and Moray Street location had been approved with an attached condition that the noise level not interfere with homes and the company had been agreeable to that condition. He indicated it was his belief the parking lot would be located a substantial distance from homes and that noise from a parking lot would not be a problem. He also indicated that the company had a good relationship with the residents on both Moray and Ainslie Streets where the parking lot was located about 150 feet or half the distance for the subject site.

Mr. Howard suggested that there must be a fair amount of traffic in the area even in the evenings and on weekends, and, while their parking lot might add a little, the company would be prepared to berm the west side of the property for the entire length of the first phase of the development. He noted that there was no measurement of noise levels at various times of the day, the street was a truck route, and, if there was a need to further examine the issue perhaps the City could do some noise measurements.

With respect to odour, he indicated that the height at the top of the exhaust fan was 23 to 25 feet above ground level and any exhaust was expelled at a very high velocity. He suggested that odours were not usually noticeable unless one was close to the restaurant, or there was a very strong wind. Access to the site has been approved on the west side of the property heading north on Waverley Street by the Public Works Department and, a merge lane from a yield on McGillivray Boulevard was required for a right turn to access the property.

Mr. Howard advised that he believed The Keg would be a good neighbour, the company employs 310 people at present and has been a good corporate citizen in Winnipeg since 1975. He advised that he has been involved with management for about 25 years and was not knowledgeable regarding incidents which may have caused a disturbance among residents. He further advised that the City had encouraged the application and reiterated that lunch generated ten (10%) of their business and the lounge twenty-five (25%) per cent, acknowledging that the lounge business sometimes continued until late into the evening. He did not believe the hours of operation could be altered and any adjustment might even be in violation of a franchise agreement. He also indicated they had never received a complaint about odour problems.

In reply please refer to / Référence à rappeler :

Ross Mitchell
(204) 986-5017
Fax / TJIJc. : (204) 986-3684

File No. ZAA 13/02 (c/r DCU 228/02D) October 30, 2002
Our c/f CP 500 (.148)

Ms. Carol Freeman, Community Clerk
Assiniboia Community Committee
Council Building
510 Main Street
Winnipeg, MB R3B 1B9

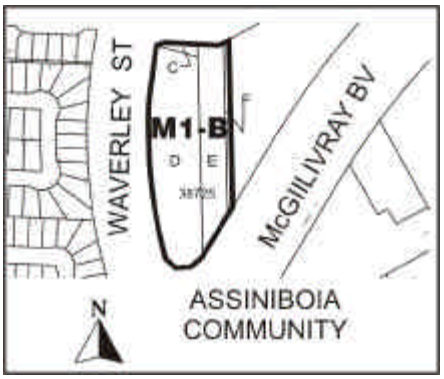
Dear Ms. Freeman:

ZONING AGREEMENT AMENDMENT
1620 McGillivray, NE corner at Waverley Street
City Centre Community
File No. ZAA 13/02

An application has been received from GRR Holdings Ltd. (Gord Howard), to amend the Zoning Agreement affecting the property shown below by:

1) amending the list of permitted uses to include a Restaurant and Cocktail Lounge,
2) amending the 20 foot yard against Waverley Street to allow the encroachment of surface parking and a restaurant patio.

RELATED FILES: DCU 228/02; BDB 31/02



SITE DESCRIPTION:

Site Area: Approximately 5.4 acres

Existing Land Use and Zoning: Vacant land previously part of the Waverley and McGillivray rights-of-way, zoned for industrial use.

Surrounding Land Use and Zoning:

North: across Buffalo Place; office development zoned "MP-2" Industrial District;
South: across McGillivray Boulevard; office and commercial development zoned "M2" Industrial District;
East: vacant industrial land zoned "M1-B"
West: across Waverley Boulevard; Lindenwoods Neighbourhood zoned "R1-5" Single-Family Residential District

DEVELOPMENT DESCRIPTION:

The proposal is to construct a Keg restaurant and cocktail lounge on the site. The site would be developed in two phases. The first phase would involve the construction of a 8,500 square foot restaurant at the south end of the site at the corner of McGillivray and Waverley. Surface parking for 184 vehicles would be provided to the north of the restaurant. The restaurant would be provided with a cocktail lounge and outdoor patios for both the restaurant (southwest corner) and cocktail lounge (northwest corner). The proposal for the second phase of the development is conceptual, but would likely involve construction of a commercial building on the north end of the site at the southeast corner of Buffalo Place and Waverley Street. Surface parking for an additional 106 cars would be developed as part of Phase 2.

ADMINISTRATIVE COMMENTS:

The Development Management Branch is prepared to support this application for the following reasons:

- The proposed restaurant and cocktail lounge uses are compatible with the adjacent industrial park and the residential neighbourhood of Linden Woods on the west side of Waverley Street.
- The site is large enough to provide parking well in excess of the by-law requirement and the adjacent street system is capable of accommodating traffic from the proposed development.
- The site will be developed to a high standard in terms of building design and landscaping and will contribute to the appearance of the area.
- The Keg restaurant will not be a 24 hour operation.
- The proposed use will provide a neighbourhood service for people living and working in the area.

- The encroachment into the 20-foot yard against Waverley only involves surface parking and a portion of the restaurant patio.
- The Zoning Agreement will remain in force to prevent the development of the balance of the site with uses that may be incompatible with the industrial or residential character of the area.

RECOMMENDATION:

I. That Zoning Agreement DAZ 222/00 be amended as follows:

a) that the following uses be added to the list of permitted uses under Condition IA.:

- restaurant (one only with a maximum floor area of 9,000 square feet)
- cocktail lounge

b) that Condition 1B be replaced with the following:

B. That the following minimum yards (no signage or buildings) be provided:

- 20 feet, south side of Buffalo Place west of Beaver Street
- 15 feet, south side of Buffalo Place east of Beaver Street
- 20 feet, north side of McGillivray Boulevard
- 20 feet, east side of Waverley Street.

c) that the following new condition be added:

H. That any restaurant on the site be closed to the public between the hours of 2:00 a.m. and 7:00 a.m. daily.

II. That the City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 222/00 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 be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Act.

Yours truly,

V. Buckley
Manager of Planning and Land Use

Per: Ross Mitchell, Senior Planner
(Assiniboia Community)
986-5017

/jc
attach.