Agenda - Council - April 23, 2008

Report - Standing Policy Committee on Property and Development - March 25, 2008

Item No. 14 Rezoning - 721 Oxford Street
(River Heights-Fort Garry Ward)
File DAZ 201/2008 [c/r DAV 104282/2008D]

On April 14, 2008, the applicant withdrew the application and, as such, the item was filed.

Report - Standing Policy Committee on Property and Development - March 25, 2008

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On April 9, 2008, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the City Centre Community Committee and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On March 25, 2008, the Standing Policy Committee on Property and Development concurred in the recommendation of the Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On March 17, 2008, the City Centre Community Committee did not concur in the recommendation of the Winnipeg Public Service and recommends to the Standing Policy Committee on Property and Development that the application for rezoning under File DAZ 201/2008 not be proceeded with.

RE: **Rezoning - 721 Oxford Street**
(River Heights-Fort Garry Ward)
File DAZ 201/2008 [c/r DAV 104282/2008D]

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

Prepared by: **Josie Marques, Senior Committee Clerk**
City Centre Community Committee

Report date: **March 18, 2008**

COMMUNITY COMMITTEE RECOMMENDATION:

The City Community Committee did not concur in the recommendation of the Winnipeg Public Service and recommends to the Standing Policy Committee on Property and Development that the application for rezoning under File DAZ 201/2008 [c/r DAV 104282/2008D] not be proceeded with.

The City Centre Community Committee provided the following supporting reason(s) for its recommendation:

1. The number of immediate neighbours who are opposition

2. The zoning change would be permanent with no guarantee of what would be operated in the future.

PUBLIC HEARING SUMMARY

File: DAZ 201/2008 [c/r DAV 104282/2008D]

Before: City Centre Community Committee
Councillor Leipsic, Chairperson
Councillor Gerbasi
Councillor Smith

Hearing: March 17, 2008
North Committee Room
Council Building, 510 Main Street

Applicant: Essential Balance Massage Therapy
(Marcia Maluk)

Subject:



Premises Affected: 721 Oxford Street

Exhibits Filed: 1. Application dated February 7, 2008

2. Notification of Public Hearing dated February 13, 2008
3. Manitoba Status of Title 2055747
4. Letter of authorization dated January 23, 2008 confirming registered owners are Stan and Marcia Maluk and Stephen and Amber Dziver
5. Surveyor's Building Location Certificate and sketch dated January 29, 2008
6. Plans (4 pages)
7. Petition in support of the application purporting to contain the signatures of 10 area residents submitted by the applicant
8. Report from the Planning and Land Use Division dated March 11, 2008
9. Inspection Report
10. List of massage therapists currently in area, in opposition to the application, submitted by Gina Scaramuzzi
11. Petition in opposition to the application purporting to contain the signatures of 23 area residents, submitted by Gina Scaramuzzi
12. Photograph of subject property, in opposition to the application, submitted by Gina Scaramuzzi
13. Audio Recording of representations

REPRESENTATIONS:

In Support:

Amber and Stephen Dziver
Marcia and Stan Maluk

In Opposition

Fred Chernoff
Fred and Gina Scaramuzzi
Fred Young

For Information:

James and Ted Griffith

For the City:

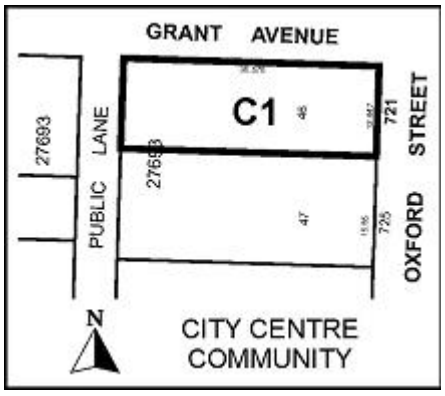
Mr. G. Doney, Senior Planner, Planning, Property and Development Departmen

Exhibit "8" referred to in File DAZ 201/2008 [c/r DAV 104282/2008D]

Planning, Property and Development Department Report

To the City Centre Community Committee

Date:	**March 11, 2008**
File:	**DAZ 201/2008**
Related Files:	**DAV 08-104282D**
Subject:	**rezone from "R1" Residential District to "C1" Commercial District to allow the establishment of a massage therapy office under Zoning By-law 6400/94**
Location:	**721 Oxford Street, southwest corner of Oxford Street and Grant Avenue**



Legal Description:	**Lot 46, Plan 27693**
Applicant:	**Essential Balance Massage Therapy, Marcia Maluk**
Owner:	**Marcia and Stan Maluk and Amber and Stephen Dziver**
Recommendation:	**Approval with Conditions**

Summary:

- The proposal is to renovate the interior of an existing single-family dwelling into a licensed massage therapy clinic staffed by up to five

full-time therapists and to demolish the existing garage and replace it with four parking spaces off the public lane.

- "C1" Commercial Neighbourhood Zoning Districts are west across a public lane and northwest and north across Grant Avenue, indicating that the proposed rezoning would be an extension of an existing commercial node.
- The proposed development is compatible with existing uses, including residential uses.

Site Description

The subject land, shown in Figure 2, is at the southwest corner of Grant Avenue and Oxford Street in the River Heights – Fort Garry Ward and is 5,058 square feet. The land is developed with a one storey, single-family dwelling constructed in 1958 with a detached garage.

Existing land uses near or adjacent to the subject land are:

- a single-family dwelling, immediately south;
- an office, two-storeys, west and southwest across a public lane;
- retail and fuel sales, northwest across Grant Avenue;
- an office, north across Grant Avenue;
- a single-family dwelling, northeast across Grant Avenue; and
- a place of worship, east and southeast across Oxford Street.

The subject land was in an R1-4A Single-Family Residential District when Winnipeg Zoning By-law 6400/94 was in effect. Presently and as shown in Figure 3, the subject land is in an R1-M Residential Single-Family District that extends south from said land. Other R1-M Residential Single-Family Districts are southeast and east, across Oxford Street and northeast across Grant Avenue and Oxford Street. C1 - Commercial Neighbourhood Zoning Districts are north and northwest, across Grant Avenue and west and southwest, across a public lane, from the subject land.

Background

Section 45 of Winnipeg Zoning By-law 200/2006 states:

> *Where a development application has been submitted for any type of approval required by the Development Procedures By-law, but no final action had been taken by the appropriate decision-making body on such application prior to the effective date of this By-law, the application shall be reviewed and considered in accordance with either the provisions of the By-law in place on the date of submittal or the provisions of this By-law, at the applicant's option.*

The applicant chose for this proposal to be reviewed and considered in accordance with the provisions of Winnipeg Zoning By-law 6400/94. If the proposed rezoning is approved by Council, the land will be rezoned to C1 Commercial District, as per said by-law. Next, the zoning will be changed to C1 Commercial Neighbourhood District as per Winnipeg Zoning By-law 200/2006. The conversion from the C1 Commercial District of Winnipeg Zoning By-law 6400/94 to the C1 Commercial Neighbourhood District of Winnipeg Zoning By-law 200/2006 is done according to rules approved by Council.

Description of the Proposed Development

The proposal is to redevelop the interior of the single-family dwelling into a massage therapy clinic staffed by up to five full-time therapists. The existing garage is to be demolished and replaced with four parking spaces off the public lane to the west.

Hours of operation are to be 8 a.m. to 9 p.m. Monday to Friday, 9 a.m. to 8 p.m. Saturday and possibly open at 2 p.m. on Sunday. Changes to the exterior of the dwelling or the site would only be done for zoning compliance. The main entrance would be the one facing Grant Avenue. The south entrance would only be used for trash/recycling removal and other incidental uses.

Analysis

Plan Winnipeg

The proposed concept complies with Plan Winnipeg in that a commercial rezoning is allowed in Neighbourhood Policy Areas.

Zoning

- **"R1-4A" Single Family Residential District** permits single-family dwellings with a minimum lot size of 4,000 square feet and lot width of 40 feet. The 'A' indicates this is within the Airport Vicinity Protection Zone that has additional requirements for sound attenuation.
- A **"C1" Commercial District** has 41 Permitted Uses and 20 Conditional Uses that provide for local commercial uses typically found in neighbourhoods. There is a front yard requirement of 20 feet and the maximum building height is 30 feet and a side yard of 10 feet.

Land Use By-Law Issues

Variance application File DAV 08-104282D is for substandard side yards for the parking and the building due to the change in zoning from R1 to C1, which have different bulk regulations.

The variance may be appealed to the Appeals Committee for an additional public hearing, whereas the recommendation by the Community Committee for a rezoning proceeds to Council without an additional public hearing.

Public Input

Ten people at nine addresses signed a form that states, by signing said form, they are not opposed to the rezoning of 721 Oxford Street to a commercial property and are aware that the intention is to operate a massage therapy clinic. Their addresses ranged from 729 to 825 Oxford Street as well as 1375 Grant Avenue.

Compatibility With Surrounding Uses

The proposed rezoning to C1 Commercial District of Winnipeg Zoning By-law 6400/94 that will be changed to C1 Commercial Neighbourhood District of Winnipeg Zoning By-law 200/2006 is compatible with the existing neighbourhood because:

- "C1" Commercial Neighbourhood Zoning Districts are west across a public lane and northwest and north across Grant Avenue, indicating that the proposed rezoning would be an extension of an existing commercial node;
- uses that are permitted, permitted with a use specific standard, conditional or conditional with a use specific standard are generally compatible with existing uses, including existing residential uses in the vicinity; and
- the subject land is at a corner of Grant Avenue – a regional street - and Oxford Street. Vehicular access to the on-site parking would use only a small portion of the public lane if coming from Grant Avenue, and staff and clients access the building via an entrance facing Grant Avenue.

Site Design

Compatibility of the proposal with existing residential uses would be increased if

- the subject land is redeveloped to include a solid fence extending alongside the entire southern limit of said land that shall be 6.5 feet in height in the south side- and rear yards and four feet in the front yard;
- the south door is only used for trash/recycling removal and other incidental uses and signed (without illumination) accordingly;
- all other signage is limited to the north side of the existing house; and

- the subject land, including buildings on said land, generally maintains a residential aesthetic.

Recommendation

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

- the proposed development and rezoning are compatible with existing uses, including residential uses; and
- the rezoning of the subject land to C1 Commercial District of Winnipeg Zoning By-law 6400/94 that will be changed to C1 Commercial Neighbourhood District of Winnipeg Zoning By-law 200/2006 would be across a public lane and across Grant Avenue from existing C1 Commercial Neighbourhood Zoning Districts.

To increase the compatibility of the proposal a requirement for approval may be submitting to the City a site plan, showing design specifics for landscaping, building façade, fencing, signage, garbage enclosure, paving and other elements of the proposed development, for approval by the Director of the Planning, Property and Development Department.

Recommended Conditions of Approval

1. That The Winnipeg Zoning By-law 6400/94 be amended by rezoning the subject land as shown on Schedule "A" for File DAZ 201/08 dated March 11, 2008, to a C1 Commercial District, subject to the following:

    A. That the applicant enter into a zoning agreement with the City of Winnipeg pursuant to Subsection 240(1) of The City of Winnipeg Charter to provide for the following:

        i. 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.

        ii. That for the development of any building and/or accessory parking area and/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, fencing, landscaping and signage to the Director of Planning, Property and Development for plan approval prior to the issuance of any building or development permit, and thereafter all to be maintained to the satisfaction of the Director of Planning, Property and Development.

2. That a ten percent (10%) dedication be made by a payment of a sum of money to the City in lieu of the requirement for land dedication based on the increase in market value of the land.

3. That in the event the application is not proceeded with expeditiously and the by-law is not enacted within twenty-four (24) months after adoption of the report by Council, the matter shall be deemed to be concluded and shall not be proceeded with unless an extension of time is applied for prior to the expiry of this twenty-four (24) month period and the extension is subsequently approved by Council.

4. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary rezoning by-law and forward same to Council for all three (3) readings.

5. That the rezoning by-law shall come into effect when the Zoning Agreement has been registered by caveat against the subject land at the Winnipeg Land Titles Office, provided that the said effective date occurs within twenty-four (24) months from the date that the said rezoning by-law is adopted by Council.

6. That the Proper Officers of the City are hereby authorized to execute said Zoning Agreement.

7. 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: J. Glen Doney
PPD File # DAZ 201/08

Schedule "A"

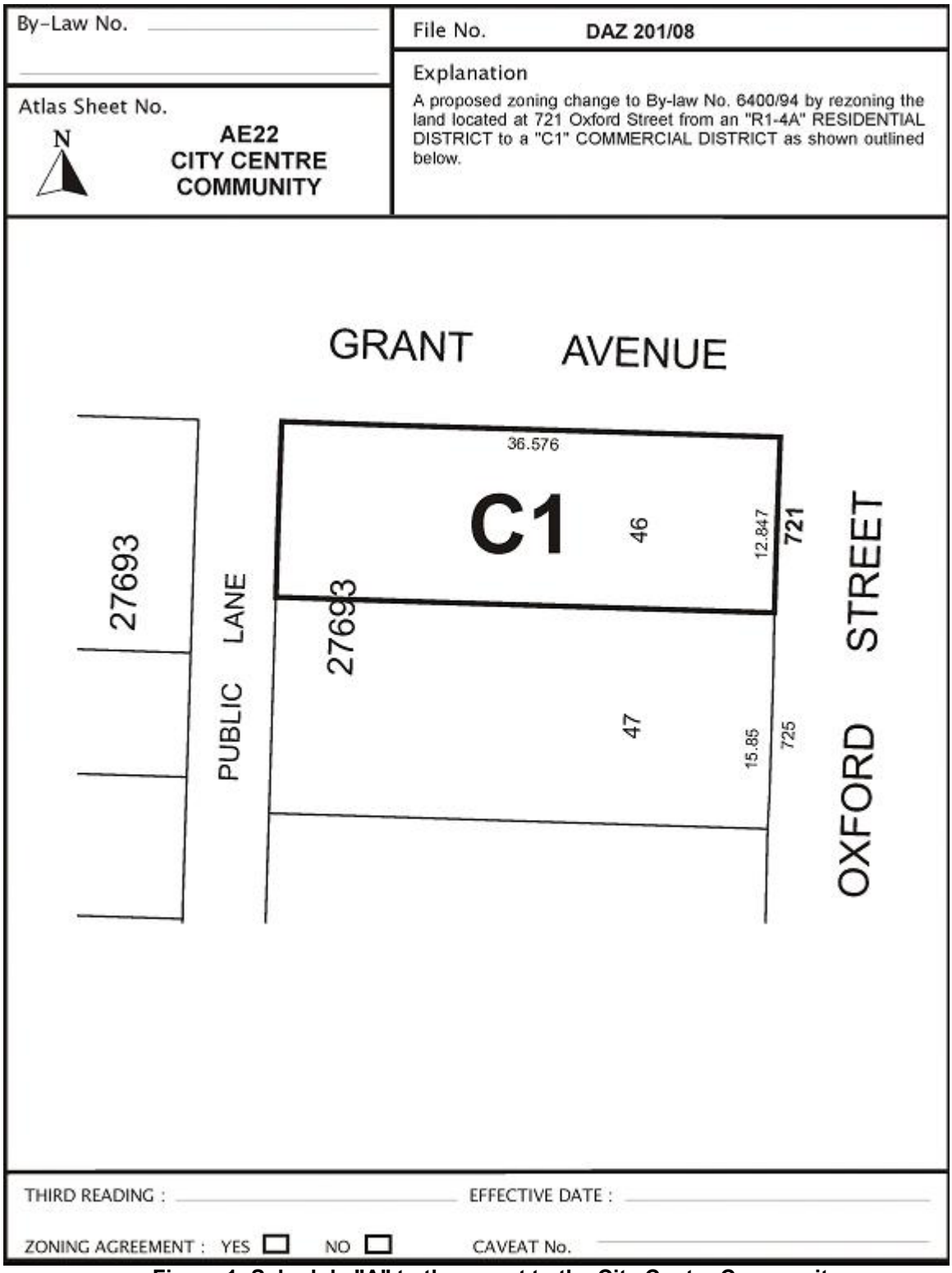


Figure 1: Schedule "A" to the report to the City Centre Community Committee for File DAZ 201/2008, dated March 11, 2008

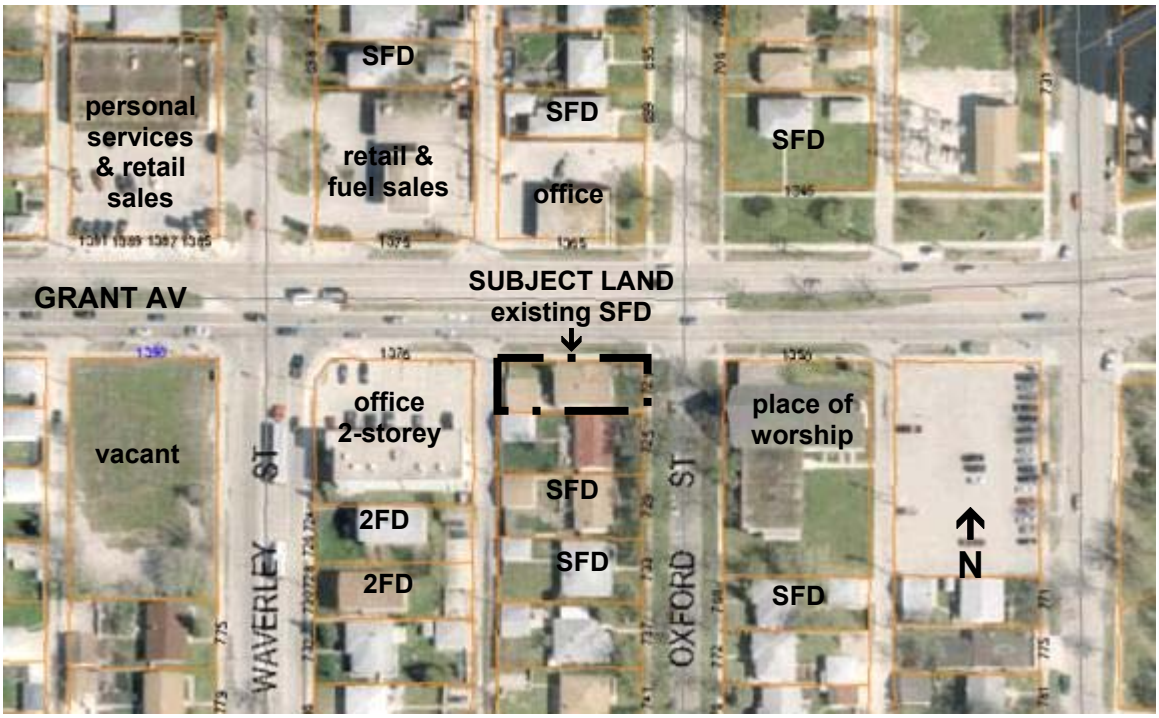


Figure 2: Existing Land Use on Subject Land & in the Vicinity, SFD = single-family dwelling & 2FD = two-family dwelling, 2005 aerial photography

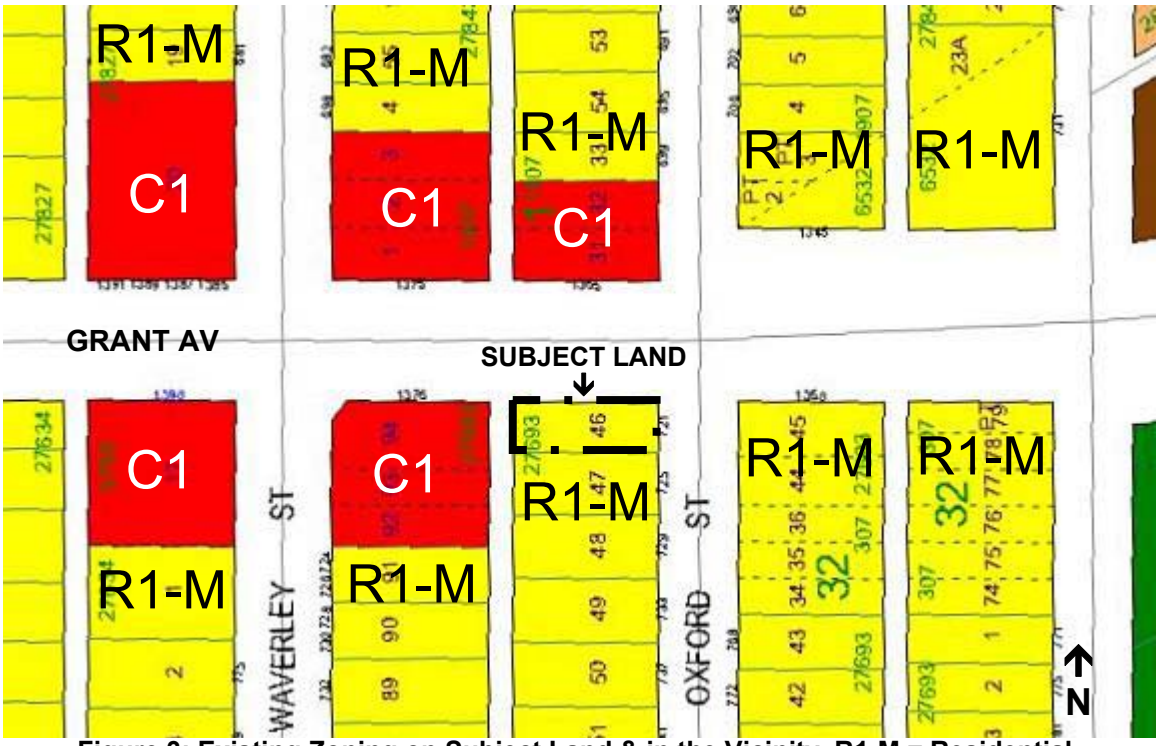


Figure 3: Existing Zoning on Subject Land & in the Vicinity, R1-M = Residential, Single-Family, Medium, C1 = Commercial Neighbourhood