Minute No. 521
Report - Standing Policy Committee on Property and Development - June 24, 2008

Item No. 4 **Zoning Agreement Amendment - 765 Dufferin Avenue (Mynarski Ward) File ZAA 3/2007**

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development that the application for a Zoning Agreement Amendment under File ZAA 3/2007 not be proceeded with.

Report - Standing Policy Committee on Property and Development - June 24, 2008

DECISION MAKING HISTORY:

Moved by Councillor Swandel,

That the recommendation of the Standing Policy Committee on Property and Development, that the application for a Zoning Agreement Amendment under File ZAA 3/2007 not be proceeded with, be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 9, 2008, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the Lord Selkirk-West Kildonan Community Committee and submits to Council that the application for a Zoning Agreement Amendment under File ZAA 3/2007 not be proceeded with.

STANDING COMMITTEE RECOMMENDATION:

On June 24, 2008, the Standing Policy Committee on Property and Development concurred in the recommendation of the Lord Selkirk-West Kildonan Community Committee and recommends to the Executive Policy Committee and Council that the application for Zoning Agreement Amendment under File ZAA 3/2007 not be proceeded with.

COMMUNITY COMMITTEE RECOMMENDATION:

On April 29, 2008, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service and recommends to the Standing Policy Committee on Property and Development that the application for Zoning Agreement Amendment under File ZAA 3/2007 not be proceeded with.

RE: **Zoning Agreement Amendment - 765 Dufferin Avenue (Mynarski Ward) File ZAA 3/2007**

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

Prepared by: **Diane Timmins, Clerk, Lord Selkirk-West Kildonan Community Committee**

Report date: **May 5, 2008**

COMMUNITY COMMITTEE RECOMMENDATION:

On April 29, 2008, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service and recommends to the Standing Policy Committee on Property and Development: that the application for Zoning Agreement Amendment under File ZAA 3/2007 not be proceeded with.

The Lord Selkirk-West Kildonan Community Committee provided the following supporting reasons for its recommendation:

1. The Lord Selkirk-West Kildonan Community Committee agreed with the comments contained in the report from the Planning and Land Use Division dated April 18, 2008

2. The applicant has been operating the business illegally which is not compatible with the area.

3. There is residential opposition to the application.

PUBLIC HEARING SUMMARY

File: ZAA3/2007

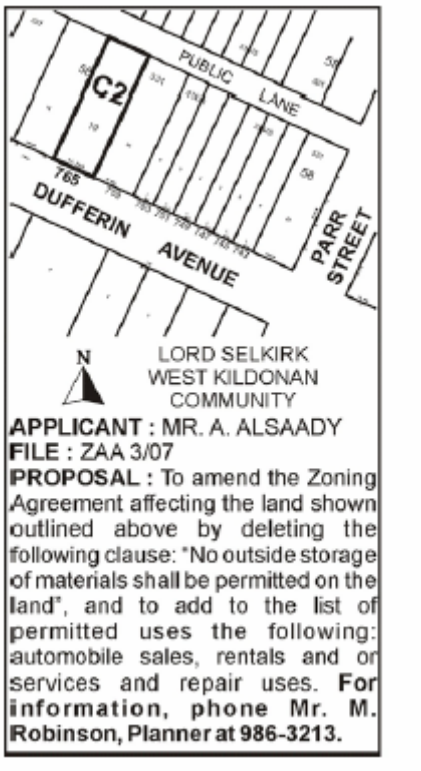
Before: Lord Selkirk-West Kildonan Community Committee
Councillor O'Shaughnessy, Chairperson
Councillor Lazarenko
Councillor Pagtakhan

Public Hearing: April 29, 2008
West Committee Room
Council Building, 510 Main Street

File: ZAA 3/2007

Applicant: Alaa Alsaady

Subject:



Premises Affected: 765 Dufferin Avenue

Exhibits Filed: 1. Application dated March 10, 2008

2. Notification of Public Hearing dated March 17, 2008
3. Manitoba Status of Title 2198947
4. Surveyor's Building Location Certificate and sketch dated January 5, 2006
5. Zoning Agreement Caveat 3342110 dated August 22, 2006
6. Variance Order DAV 112276/2006D
7. Photographs (4) of subject property
8. Report from the Planning and Land Use Division dated April 18, 208
9. Inspection Report
10. Photographs (5) of the subject property submitted by the Planner at the public hearing
11. Photographs (13) of the subject property submitted at the public hearing by William Saulnier, in opposition to the application
12. Audio Recording of representations

REPRESENTATIONS:

In Support:

Alaa Alsaady
Kadhim Alabdul
Omar Mohammaad

In Opposition

Abe Dyck
Richard Lavallee
Emile Nobess
William Saulnier

For the City:

Mr. M. Robinson, Planner, Planning, Property and Development Department

Exhibit "8" referred to in File ZAA 3/2007

Winnipeg

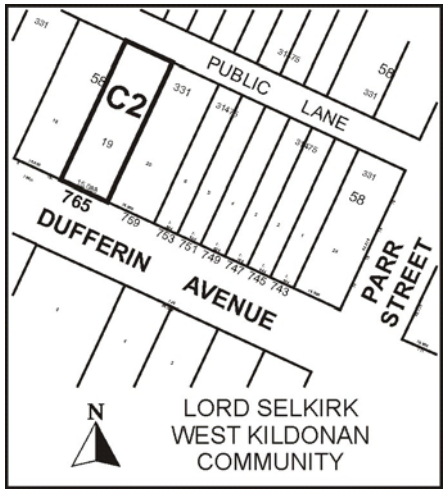
Planning, Property and Development Department Report

To the Lord Selkirk-West Kildonan Community Committee

Date: **April 18, 2008**
File: **ZAA 3/2007**
Related Files: **DAZ 202/2006, DAV 06-112276/D**
Subject: **Application to amend an existing zoning agreement in order to:**

a) Remove clause #8 that states "no outdoor storage of materials shall be permitted on the land"
b) Add "automobile sales, rentals, service and/or repair" to the list of permitted uses in clause #3

Location: **765 Dufferin Avenue**



Applicant: **Alaa Alsaady**
Owner: **Same**
Recommendation: **Denial**

Report Summary:

- **The Planning and Land Use Division recommends that the application be denied**

- **The initial zoning agreement was included in order to protect the adjoining residences from incompatible commercial uses**
- **The proposed use is intensive in nature and incorporates the outdoor storage of a number of vehicles and parts on the site, which is compatible with the abutting residential properties**

Site Description

The subject site, which is zoned "C2" Commercial, is located on Dufferin Avenue between Arlington and Parr Streets, in the Dufferin neighbourhood of the Mynarski ward.

North: Residences zoned "R2-T" Two-Family Transitional Residential
South: Industrial uses zoned "M1" Industrial
East: *Residences zoned "R2-T" Two-Family Transitional Residential*
West: Residences zoned "R2-T" Two-Family Transitional Residential

Background

In 2006, the Lord Selkirk-West Kildonan Community Committee approved a rezoning of the subject property from "R2-T" Residential to "C2" Commercial to permit the establishment an electrical and air conditioning repair business in an existing commercial building.

The rezoning included a very restrictive zoning agreement that read as follows:

1. This rezoning to "C2" is limited to the following uses
a) Contractor's establishment
b) All uses permitted in the "R2-T" Two-family Transitional District
2. That the height of all buildings be limited to 2 stories and 30 feet
3. That, there shall be no free standing identification or advertising signs including mobile sign, poster signs, and A-frames permitted on the property.
4. That no internally illuminated signage be erected on the property.
5. That no outdoor storage of materials shall be permitted on the property.
6. That no vehicular access to the property shall occur from the rear lane
7. That a minimum 4 foot high fence shall be maintained along the rear property line
8. That final plans showing the location and details of **building elevations**, **parking areas**, **landscaping, fencing, and garbage enclosures, and lighting** shall be submitted to the Director of Planning, Property and Development for approval prior to the issuing of any development or building permits; thereafter maintained to the satisfaction of the Director of Planning, Property and Development.

The reasons for the restrictive zoning agreement are specified in the administrative report for the rezoning (DAZ 202/2006). This has been attached as Appendix A.

Shortly after the property was rezoned, the applicant purchased the property and began operating it as an auto repair establishment. He was informed by our zoning enforcement branch that the subject use was not permitted under the zoning agreement and he was advised that a Zoning Agreement Amendment (ZAA) would be required in order to legally establish the use.

Description of the Proposed Development
The proponent is proposing to maintain an existing automobile /automobile parts sales and service establishment in an existing commercial building at 765 Dufferin Avenue. It is the intention of the applicant to have two employees and to operate the business between the hours of 8am-5pm, Monday through Saturday.

Analysis
Plan Winnipeg
Plan Winnipeg encourages the protection of existing residential neighbourhoods from the encroachment of incompatible uses.
3B-02
Ensure that existing neighbourhoods are protected and adopting secondary plans to govern development in existing neighbourhoods where warranted

Compatibility with existing neighbourhood and surrounding uses
The subject property is abutted by low-density dwellings on three sides. The property is also located within a neighbourhood designated as a Major Improvement Area in Plan Winnipeg, which signals that the neighbourhood and the existing housing stock are experiencing a great degree of stress.

With that said, the Division believes that situating an intensive commercial operation in the midst of this neighbourhood may contribute to a further decline of the immediate area.

Conclusion
The most appropriate use for this location continues to be either a residential use or a clean commercial operation with no outdoor storage or outside operations, as specified in the zoning agreement.

Recommendation
Thus, the Planning and Land Use Division recommend denial for the following reasons:

- The proposed use is incompatible with the surrounding low density dwellings
- **The most appropriate use for this location continues to be either a residential use or a clean commercial operation with no outdoor storage or outside operations, as specified in the zoning agreement.**

However, should the Community Committee wish to approve the application, the following conditions should be considered:

- Requiring a minimum 6 foot high opaque fence around the lot
- Limiting the number of cars to be parked on the premises at any given time to a maximum of six (6)

Recommended Conditions of Approval

1. That Zoning Agreement under File DAZ 202/2006 dated June 28, 2006 (By-law No. 172/06), be amended as follows:

   A. That clause 8 be deleted

   B. That clause 3 be amended by adding the following use:

      i. AUTOMOBILE, including motorcycle: RENTAL, SALES, including accessory REPAIR, SERVICE, INSTALLATION OF SUPPLIES/PARTS

   C. That clause 7 be deleted and the following substituted therefore: *That a minimum six foot high opaque fence shall be installed and maintained along the entire north and east property lines and along the west property line, from the public lane to the line parallel with the rear of the principal building, to the satisfaction of the Director of Planning, Property and Development.*

   D. That the following clause be added

      That a maximum of six (6) cars shall be parked on the premises at any given time.

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 202/2006 (By-Law No. 172/06) 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.

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

Report Prepared by: Michael Robinson, AICP
PPD File # ZAA 3/2007



Figure 1: Aerial Photo (Flown in 2005)