Agenda - Council - May 27, 2009

Report - Standing Policy Committee on Property and Development - May 5, 2009

Item No. 6 Zoning Agreement Amendment - 740 Maryland Street / 690 Notre Dame Avenue (Daniel McIntyre Ward) File ZAA 23/2008

STANDING COMMITTEE RECOMMENDATION:

On May 20, 2009, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the City Centre Community Committee and submits the following to Council:

1. That Zoning Agreement Caveat Number under File DASZ 26/2007 dated September 26, 2007 (By-law No. 84/2008), be amended as follows:

   A. That Clause 6 i), pertaining to a 10 foot setback from the south property line adjacent to Maryland Street, be deleted, and the remaining sub-clause be renumbered accordingly.

   B. That Clause 7 vi) be amended by adding the following:

      Beverage room, which for the purposes of this agreement, is defined as:

      A drinking establishment which is licensed as a beverage room by the Manitoba Liquor Control Commission.

2. That the Acting City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 26/2007 (By-law No. 84/2008) 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 Acting 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 5, 2009

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On May 20, 2009, the Executive Policy Committee concurred in the recommendations 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 May 5, 2009, the Standing Policy Committee on Property and Development concurred in the recommendation of the City Centre Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On April 7, 2009, the City Centre Community Committee concurred in Recommendations 1 to 4, of the Winnipeg Public Service, and forwarded the matter to the Standing Policy Committee on Property and Development.

COMMUNITY COMMITTEE DECISION:

On April 7, 2009, the City Centre Community Committee concurred in Recommendation 5 of the Winnipeg Public Service, as amended, and approved a Variance on "the land":

1. For the construction of a commercial building to permit a south side yard of 4 feet (1.22 metres).

2. For the establishment of an accessory parking and loading area to permit:

    A. no landscaping and buffering within 20 feet of a side or rear lot line adjacent to a residential zoning district.

    B. Parking directly from a lane instead of an aisle driveway,

subject to the following condition:

1. That the developer submit plans showing the street edge landscaping to the Director of Planning, Property and Development for plan approval prior to the issuance of any building or development permits.

RE: **Zoning Agreement Amendment**
File ZAA 23/2008 [c/r DAV 152158/2008D]

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

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

Report date: **April 9, 2009**

COMMUNITY COMMITTEE RECOMMENDATION:

The City Centre Community Committee concurred in Recommendations 1 to 4, of the Winnipeg Public Service and recommends to the Standing Policy Committee on Property and Development:

1. That Zoning Agreement Caveat Number under File DASZ 26/2007 dated September 26, 2007 (By-law No. 84/2008), be amended as follows:

   A. That Clause 6 i), pertaining to a 10 foot setback from the south property line adjacent to Maryland Street, be deleted, and the remaining sub-clause be renumbered accordingly.

   B. That Clause 7 vi) be amended by adding the following:

      Beverage room, which for the purposes of this agreement, is defined as:

      A drinking establishment which is licensed as a beverage room by the Manitoba Liquor Control Commission.

2. That the Acting City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 26/2007 (By-law No. 84/2008) 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 Acting 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 City Centre Community Committee provided the following supporting reason(s) for its recommendation:

1. A clearer definition provides more protection to the area residents.

PUBLIC HEARING SUMMARY

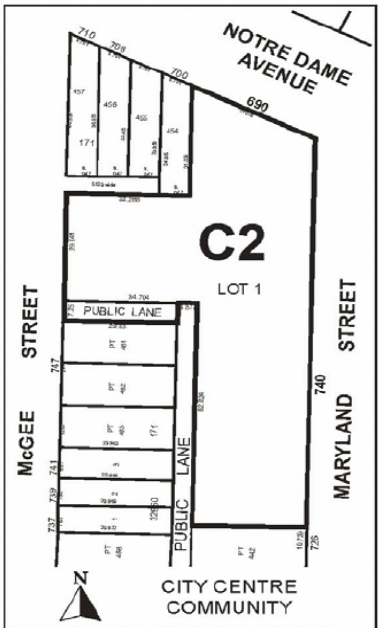
File: ZAA 23/2008 [c/r DAV 152158/2008D]

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

Public Hearing: April 7, 2009
North Committee Room
Council Building, 510 Main Street

Applicant: 3956891 Manitoba Ltd.
(Amarjeet Warraich)

Subject:



APPLICANT : 3956891 MB LTD.
FILE : ZAA 23/08
PROPOSAL : To amend clause 2.A.IV of the Zoning Agreement affecting the land shown outlined above to allow for a south side yard of 3 feet (0.91 metre) instead of 10 feet (3 metres). **For information, phone Mr. M. Robinson, Planner at 986-3213.**

Premises Affected: 740 Maryland Street / 690 Notre Dame Avenue

Exhibits Filed:

1. Application dated December 16, 2008
2. Notification of Public Hearing dated February 18, 2009
3. Manitoba Status of Titles 1957365, 1958817, 2049259, and 2232503
4. Conditional Use Order DCU 136931/2007D
5. Drawing of subject property
6. Copy of Zoning Agreement Caveat File DASZ 26/2007
7. Report from the Planning and Land Use Division dated March 24, 2009
8. Communication dated April 3, 2009 from Fred Curry in opposition to the application
9. Inspection Report
10. Presentation from Reverend Larry Gregan in opposition to the application
11. Audio Recording of representations of public hearing held on April 7, 2009

REPRESENTATIONS:

In Support:

Jessica Cummings
David Harrison
Mr. Baljinder
Dragomir Lazar
Guy Préfontaine
Erich Schattschneider
Amarjeet Warraich

In Opposition:

Douglas Bishop
Larry Gregan

For Information:

Nil

For the City:

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

Exhibit "7" for File ZAA 23/2008

ADMINISTRATIVE REPORT

RE: Zoning Amendment Agreement and Variance - 740 Maryland (Daniel McIntyre Ward)
File Nos. ZAA 23/08 and DAV 08-152158/D

REPORT DATE: March 24, 2009

AUTHORIZATION

Author	Department Head	CAO
Michael Robinson, AICP	Deepak Joshi	Glen Laubenstein

RECOMMENDATION

1. That Zoning Agreement Caveat Number under File DASZ 26/2007 dated (By-law 84/2008), be amended as follows:

   A. That Clause 6 i), pertaining to a 10 foot setback from the south property line adjacent to Maryland Street, be deleted

   B. That Clause 7 vi) be modified as follows by adding:

   Beverage room, which for the purposes of this agreement, is defined as:

   A drinking establishment which is licensed as a beverage room by the Manitoba Liquor Control Commission

2. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 26/2007 (By-Law No.84/2008) 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.

5. That DAV 08-152158/D be approved, in part, subject to the following conditions:
   i) That the applicant provide a south side yard of 4 feet (1.22 meters)
   ii) That items 2a be rejected

iii) That the nine (9) parking stalls outlined in black on the attached Appendix "A" be deleted and that this area be curbed, sodded, and planted with a minimum of 3 deciduous trees, with a minimum caliper of 2.5", to the satisfaction of the Director of Planning, Property, and Development and the Director of Public Works

REASON FOR THE REPORT

An application has been received to amend a zoning agreement and to vary By-law 200/2006. The Development Procedures By-Law (5893/92) specifies that the required public hearings shall be combined and heard by the designated committee, which is the City Centre Community Committee.

KEY ISSUES

APPLICANT: 3956891 Manitoba Ltd. (Amarjeet Warraich)
OWNER: Same as applicant
LOCATION: 740 Maryland/690 Notre Dame
PLAN WINNIPEG: Neighbourhood Policy Area
SECONDARY PLAN: N/A
ZONING: "C2" Commercial District

SITE DESCRIPTION AND SURROUNDING LAND USES
The subject property is located on the southwest corner of Notre Dame Avenue and Maryland Street, in the Daniel McIntyre neighbourhood of the Daniel McIntyre Ward.

North: Notre Dame Avenue, then the Health Sciences Centre
South: Residence zoned "RMF-M" Multiple-Family Residential
East: Maryland Street, then commercial and residential uses zoned "C2" Commercial and "RMF-M" Multiple-Family Residential
West: Residences zoned "R2" Two-Family Residential

DESCRIPTION OF PROPOSED DEVELOPMENT
The applicant is constructing a beer vendor and cocktail lounge, which was approved under File No. DASZ 26/2007, on the southern portion of the site. (See Attachment 1 – Aerial Photograph)

A. ZONING AMENDMENT AGREEMENT

1. DESCRIPTION OF APPLICATION
The applicant is requesting a zoning amendment agreement to reduce the setback along the south property line from 10 feet to 3 feet.

2. DISCUSSION

i Background
In 2007, the applicant received approval to construct a beer vendor and cocktail lounge. (DASZ 26/2007) On the initial plan submission, the vendor building was set back 10 feet from the south property line. This setback was included as a condition of approval in the zoning agreement which was appended to the property.

Since that time, the applicant has been required to relocate their southernmost approach from Maryland Street, in order to protect two existing mature trees in the boulevard. After moving the approach, they initially left the building in the same location, but this resulted in difficulties with driveway geometrics
and with the building patron's circulation.

ii. Compatibility with Existing Neighbourhood and Surrounding Uses
A reduced side yard for the vendor building is compatible with the area, provided that the setback is not modified in the front yard (the space between Maryland Street and the vendor building) and that this space is heavily landscaped. (see Attachment 2)

Maintaining the setback in the front yard will provide screening and buffering of the drive aisle and front door, where most of the activity will occur.

iii Recommendation
Given that the new Zoning By-law 200/2006 requires a 10 foot setback along the southern property line, the clause in the zoning agreement is redundant. Consequently, it is recommended that it be stricken from the agreement, rather than be modified.

iv. Other
The current zoning agreement includes a condition that beverage rooms are not permitted after September 1, 2012. However, since the time that this zoning agreement was written, beverage rooms have been eliminated as a use from the zoning by-law and replaced with a new, broader use, called drinking establishment.

In light of this, our zoning administrator has indicated that any drinking establishment on the subject property will terminate on September 1, 2012 – unless the wording in the zoning agreement is modified to set up a distinction, by definition, between beverage rooms and other types of drinking establishments.

Consequently, the Division is including a definition of beverage rooms in the zoning agreement, in order to clarify the original intent of the agreement – which was to prohibit beverage rooms and not all types of drinking establishments.

B. VARIANCE

1. DESCRIPTION OF APPLICATION
The applicant is requesting a variance to reduce the setback along the south property line from 10 feet to 3 feet. Additionally, the applicant is requesting a variance for parking directly off the lane and for no landscaping or buffering next to a residential district.

2. DISCUSSION

i. Side yard
As previously stated, the Division does not have any objections to a reduced side yard for the building. However, it is recommended that a minimum of 4 feet be provided. The applicant is agreeable to this change. In addition, the portion of the yard between Maryland Street and the front wall of the building shall be maintained at a minimum of 10 feet. (see Attachment 2)

ii. Landscaping

Lane edge landscaping is required for the new stall abutting the north/south lane and all the stalls abutting the east/west lane. The Division is prepared to waive this requirement in exchange for landscaping along the McGee Street edge. This exchange should be done through alternative compliance, rather than through a variance process.

iii. Parking directly off a lane

Public Works has indicated that the support this variance, with the exception of the 9 small car stalls at the 90 degree deflection in the lane. (see attached sketch) There comments are as follows:

We would object to the 6 small car stalls abutting the easement, as well as the 3 small stalls in the corner because space is required to accommodate larger turning vehicles at the 90° deflection in the lane.

Small car stalls are generally not well enforced, if at all, by parking lot operators and in this case if larger vehicles are parked in those 9 stalls it may not be possible for garbage/recycling trucks and snow removal equipment to negotiate the turn.

The easement is to provide room for larger vehicles, garbage/recycling trucks and snow removal equipment, to negotiate the 90° deflection in the lane.

Consequently, the Division recommends that this variance be approved, provided that the 9 stalls identified in Appendix "A" are deleted, and that this area is curbed, sodded, and planted with a minimum of 3 deciduous trees, with a minimum caliper of 2.5".

3. RECOMMENDATION

In the context of Section 247(3), the Planning and Land Use Division recommends **approval** for the following reasons:

(a) is consistent with Plan Winnipeg and any applicable secondary plan; *provided that the south side yard is a minimum of 4 feet*

(b) does not create a substantial adverse effect on the amenities, use, safety and convenience of the adjoining property and adjacent area, including an area separated from the property by a street or waterway; *provided that the south side yard is a minimum of 4 feet*

(c) is the minimum modification of a zoning-by-law required to relieve the injurious effect of the zoning by-law on the applicant's property; *provided that the south side yard is a minimum of 4 feet*

(d) is compatible with the area in which the property to be affected is situated; *provided that the south side yard is a minimum of 4 feet*

IMPACT OF THE RECOMMENDATIONS

IMPACT	YES	NO	COMMENTS
Policy		**X**	
Regulatory (ZAA)	**X**		**Will allow a development permit to be issued with a building setback of 4 feet**
Regulatory (Variance)	**X**		**Will allow a development permit to be issued with a building setback of 4 feet**
Environmental		**X**	
Human Resources		**X**	
Financial		**X**	
Legal (Contracts)		**X**	
Communications		**X**	
Council Priorities Direction		**X**	
Other, e.g. Organizational, community, etc. (Specify)		**X**	

FINANCIAL IMPACT

Financial Impact Statement

Date:

Project Name:

First Year of Program

	0	1	2	3	4
Capital					
Capital Expenditures Required	$ -	$ -	$ -	$ -	$ -
Less: Existing Budgeted Costs	-	-	-	-	-
Additional Capital Budget Required	$ -	$ -	$ -	$ -	$ -
Funding Sources:					
Debt - Internal	$ -	$ -	$ -	$ -	$ -
Debt - External	-	-	-	-	-
Grants (Enter Description Here)	-	-	-	-	-
Reserves, Equity, Surplus	-	-	-	-	-
Other - Enter Description Here	-	-	-	-	-
Total Funding	$ -	$ -	$ -	$ -	$ -
Total Additional Capital Budget Required	$ -				
Total Additional Debt Required	$ -				
Current Expenditures/Revenues					
Direct Costs	$ -	$ -	$ -	$ -	$ -
Less: Incremental Revenue/Recovery	-	-	-	-	-
Net Cost/(Benefit)	$ -	$ -	$ -	$ -	$ -
Less: Existing Budget Amounts	-	-	-	-	-
Net Budget Adjustment Required	$ -	$ -	$ -	$ -	$ -

Additional Comments:

original signed by
Chief Financial Officer

CONSULTATION

In preparing this Report there was consultation with:
N/A

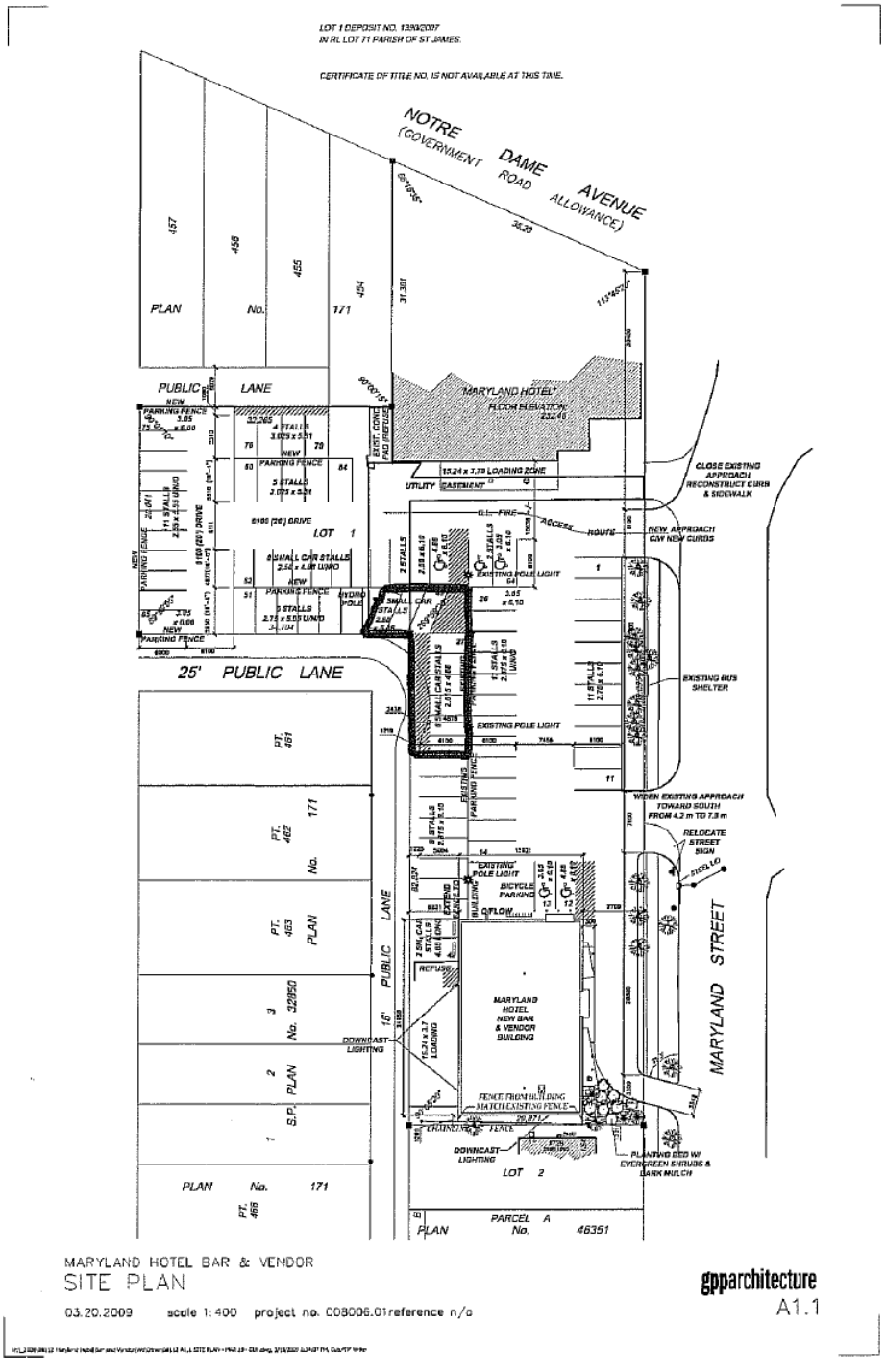
SUBMITTED BY

DEPARTMENT	Planning, Property, and Development
DIVISION	Planning and Land Use
PREPARED BY	Michael Robinson, AICP
FILE NO.	ZAA 23/08 and DAV 08-152158/D

Attachments

1. Appendix “A” – Sketch of nine parking stalls to be deleted
2. Attachment “1” – Map of planned area and surrounding properties
3. Attachment “2” – Sketch plan of landscaped front yard setback
4. Attachment “3” - DAV application

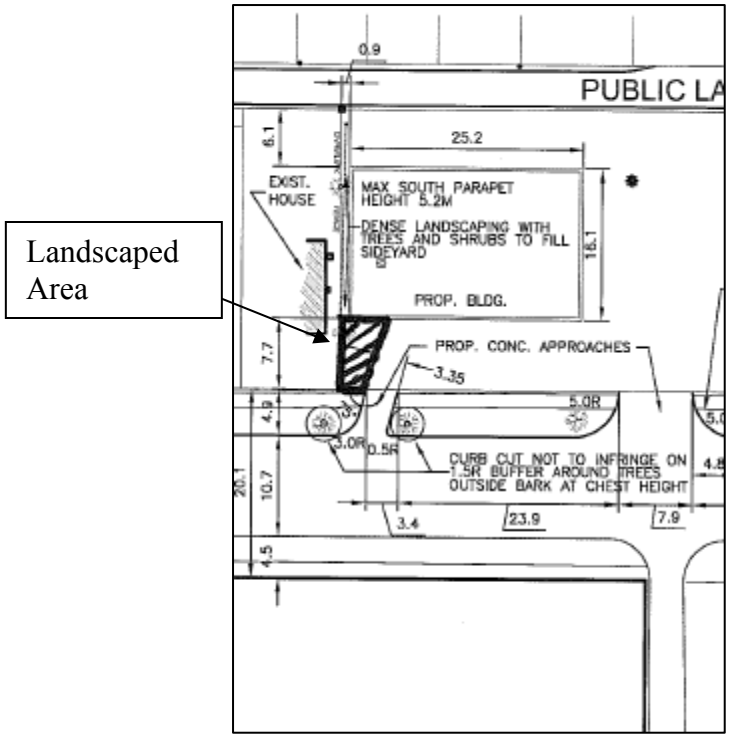
Appendix “A” – Sketch of nine (9) parking stalls to be deleted



Attachment 1 - Aerial Photograph of Planned Area and Surrounding Properties (Flown in 2005)



Attachment 2 – Sketch plan of landscaped front yard setback



Attachment 3 – DAV Application

To vary the proposed "C2" dimensional standards of Zoning By-Law No. 200/2006 to permit as follows:

1) for the construction of a commercial building to permit a south side yard of 3 feet (0.9 metres) instead of 10 feet (3 metres);
2) for the establishment of an accessory parking and loading area to permit:
    a) no landscaping and buffering within 20 feet of a side or rear lot line adjacent to a residential zoning district;
    b) parking directly from a lane instead of an aisle or driveway.