Minute No. 437
Report - Standing Policy Committee on Property and Development - June 2, 2009

Item No. 9 Zoning Agreement Amendment - 484 Stradbrook Avenue (Fort Rouge – East Fort Garry Ward) File ZAA 2/2009

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That Zoning Agreement under File DAZ 227/76 dated July 21, 1976 (By-law No. 2112/78) and amended on July 16, 1981 (By-law No. 3047/81), be further amended as follows:

   A. That Clause 2, pertaining to prohibited uses, be deleted in its entirety

   B. That subsection (a) of Clause 4, pertaining to signage, be deleted and replaced with the following clause:

      "That one fascia sign and one freestanding sign shall be permitted. Said signage shall not be internally illuminated, the total area of all signs shall not exceed 60 square feet, and the freestanding sign shall not exceed 8.75 feet in height."

   C. That a new Clause be added to prohibit the establishment of an accessory outdoor dining/drinking area.

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 - June 2, 2009

DECISION MAKING HISTORY:

Moved by Councillor Fielding,

That the recommendation of the Standing Policy Committee on Property and Development be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On June 10, 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 submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On June 2, 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 May 5, 2009, the City Centre Community Committee concurred in the recommendation of the Winnipeg Public Service, with the following amendment:

- That a new Recommendation 1.C. be added:

  "1.C. That a new Clause be added to prohibit the establishment of an accessory outdoor dining/drinking area."

and forwarded to the Standing Policy Committee on Property and Development.

RE: **Zoning Agreement Amendment – 484 Stradbrook Avenue**
File ZAA 2/2009 [c/r DCU 113822/2009D]

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

Prepared by: **Inga Skundberg, Clerk**
City Centre Community Committee

Report date: **May 6, 2009**

COMMUNITY COMMITTEE RECOMMENDATION:

On May 5, 2009, the City Centre Community Committee concurred in the recommendation of the Winnipeg Public Service, as amended, and recommends to the Standing Policy Committee on Property and Development:

1. That Zoning Agreement under File DAZ 227/76 dated July 21, 1976 (By-law No. 2112/78) and amended on July 16, 1981 (By-law 3047/81), be further amended as follows:

   A. That Clause 2, pertaining to prohibited uses, be deleted in its entirety

   B. That subsection (a) of Clause 4, pertaining to signage, be deleted and replaced with the following clause:

      "That one fascia sign and one freestanding sign shall be permitted. Said signage shall not be internally illuminated, the total area of all signs shall not exceed 60 square feet, and the freestanding sign shall not exceed 8.75 feet in height."

   C. That a new Clause be added to prohibit the establishment of an accessory outdoor dining/drinking area.

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

Note: The wording in bold and italics denotes amendments made by the Community Committee.

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

1. The subject proposal is an excellent addition that fits in with the neighbourhood plan, and has no negative impact on the community.

PUBLIC HEARING SUMMARY

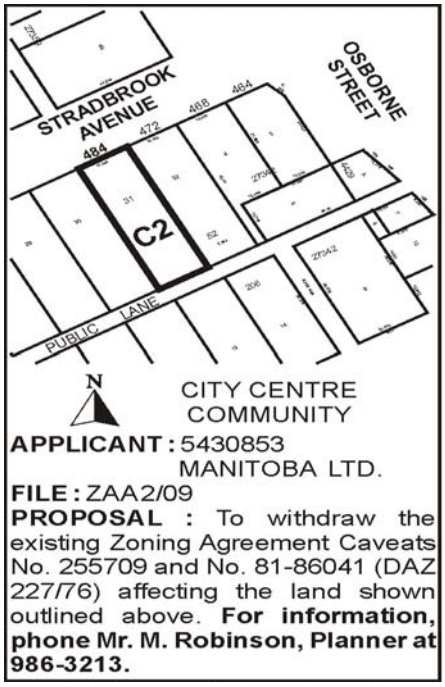
File: ZAA 2/2009 [c/r [c/r DCU 113822/2009D]

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

Public Hearing: May 5, 2009
North Committee Room
Council Building, 510 Main Street

Applicant: 5430853 Manitoba Ltd. (Mel Dickin)

Subject:



Premises Affected: 484 Stradbrook Avenue

Exhibits Filed:
1. Application dated March 6, 2009
2. Notification of Public Hearing dated April 7, 2009
3. Manitoba Status of Title 2335759
4. Surveyor's Building Location Certificate and sketch
5a. Zoning Agreement (File DAZ 227/76) dated July 21, 1976

5b. Zoning Agreement Amendment (File DAZ 227/76) dated July 16, 1981
6a. By-law No. 2112/78 (Caveat No. 255709)
6b. By-law No. 3047/81 (Caveat No. 81-86041)
7. Plans (2 pages)
8. Communication including photographs (4), dated April 21, 2009 from Carolina Konrad, Part owner, 484 Stradbrook Avenue, with respect to the application
9. Report from the Planning and Land Use Division dated April 23, 2009
10. Revised Report from the Planning and Land Use Division dated May 5, 2009
11. Inspection Report
12. Photographs (1 page) submitted by Douglas Finkbeiner at the public hearing
13. Communication dated April 30, 2009 from Sylvia Bock in support of the application submitted by Henrietta Wilde at the public hearing
14. Audio Recording of representations of public hearing held on May 5, 2009

REPRESENTATIONS:

In Support:
Sylvia Bock
Dustin Beland
Steven Chomokowski
Jason Clarke
Mel Dickin, 5430853 Manitoba Ltd.
Adam Donnelly
Douglas Finkbeiner
Jeff Gustafson
Thomas Hinds
Marian Hinds
Carolina Konrad
Ken Konrad
Fiona Sanipelli
Carlo Sobral
Florent Thézarb
Doug Vassallo
Nils Vik
Henrietta Wilde

In Opposition:
Nil

For Information:
Gordon Diakow

For the City:
Mr. M. Robinson, Senior Planner, Planning, Property and Development Department

Exhibit "10" referred to in File ZAA 2/2009 [c/r DCU 113822/2009D]

ADMINISTRATIVE REPORT

Revised Report

RE: Zoning Amendment Agreement and Conditional Use – 484 Stradbrook
(Fort Rouge-East Fort Garry Ward)
File Nos. ZAA 2/2009 and DCU 09-113822/2009D

REPORT DATE: May 5, 2009

AUTHORIZATION

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

RECOMMENDATION

1. That Zoning Agreement under File DAZ 227/76 dated July 21, 1976 (By-law 2112/78) and amended on July 16, 1981 (By-law 3047/81), be further amended as follows:

   A. That Clause 2, pertaining to prohibited uses, be deleted in its entirety
   B. That subsection (a) of Clause 4, pertaining to signage, be deleted and replaced with the following clause:

      That one fascia sign and one freestanding sign shall be permitted. Said signage shall not be internally illuminated, the total area of all signs shall not exceed 60 square feet, and the freestanding sign shall not exceed 8.75 feet in height.

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 DCU 09-113822/D be approved subject to the following condition:
   i) That the drinking establishment use shall not exceed 500 square feet of floor area

REASON FOR THE REPORT

An application has been received to delete two existing zoning agreements and for a conditional use to Zoning By-law 200/2006, to allow a drinking establishment in conjunction with a restaurant. 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: 5430853 Manitoba Ltd.
OWNER: Same as applicant
LOCATION: 484 Stradbrook Avenue
PLAN WINNIPEG: Neighbourhood Policy Area
SECONDARY PLAN: N/A
ZONING: "C2" PDO – Neighbourhood Main Street Commercial District

SITE DESCRIPTION AND SURROUNDING LAND USES
The subject property is located on Stradbrook Avenue, between Osborne and Nassau Streets, in the Osborne Village neighbourhood of the Fort Rouge-East Fort Garry Ward.

North: Surface parking lot zoned "C2" PDO - Neighbourhood Main Street Commercial District
South: Residences zoned "R2" Two-Family District
East: Commercial use zoned "C2" PDO - Neighbourhood Main Street Commercial District
West: Apartment building zoned "R2" Two-Family District

DESCRIPTION OF PROPOSED DEVELOPMENT
The applicant is seeking approval to establish a new restaurant with an accessory cocktail lounge (drinking establishment), in an existing building. The applicant indicates that the restaurant would feature Spanish tapas cuisine. It would include a dining room, with seating for 26 people, a cocktail lounge, with seating for 18 people, and an open kitchen, with seating for 4 people. The hours of operation would be Tuesday to Saturday from 11:30AM to 12:00AM and Sunday from 12:00PM to 9:30PM.

The applicant has indicated that they are not intending to build an outdoor patio at this time. However, if they decide to add an outdoor patio in the future, a conditional use would be required, if the patio is larger than 100 square feet.

ZONING AMENDMENT AGREEMENT

1. DESCRIPTION OF APPLICATION

The applicant is requesting a zoning amendment agreement to delete two previous zoning agreements.

a. Caveat 255709 (October, 1978)

This agreement was replaced by a subsequent zoning agreement in 1981. However, it still remains as a caveat on the landowners title. If this agreement is deleted, the entire zoning agreement will be removed. Consequently, it is recommended that this caveat not be removed and that the later caveat be amended instead.

b. Caveat 81-86041 (July, 1981)

This agreement includes the following clauses:

Clause 2

i. Prohibited Uses

The land and any building or structure thereon shall not be used for any of the following uses:

(a) Advertising signs or structures and billboards
(b) Amusement enterprises
(c) Automobile service station
(d) Automobile and trailer sales area
(e) Car washing
(f) Funeral parlour
(g) Hospital for small animals
(h) Needle trades
(i) Pawnshop
(j) Public garage
(k) Restaurant
(l) Tire shop
(m) Non-accessory parking area

ii. Clause 3

No building or structure, parking or loading areas, fencing, landscaping, sign, exterior alterations or addition to buildings or structures shall be erected, located, or made on the land or any building permit issued for such work on the land unless and until plans are submitted to and approved by the Commissioner of the Environment of the City and thereafter identified by that Commissioner's signature under the designation "Schedule "A" to Zoning Agreement DAZ 227/76.

iii. Clause 4

a) Any sign erected on the land shall be attached to the parallel with the front wall of a building, shall not be illuminated, and the total area of all signs erected on the land shall not exceed 60 square feet

b) A minimum of six automobile parking spaces shall be provided and maintained on the land.

2. DISCUSSION

i Prohibited Uses (Clause 2)

The uses that are listed below are, in most cases, either prohibited, or conditional, since the adoption of the "C2" PDO Neighbourhood Main Street Overlay District.

(a) Advertising signs or structures and billboards **(Prohibited)**
(b) Amusement enterprises **(Conditional use/use specific standard)**
(c) Automobile service station **(Prohibited)**
(d) Automobile and trailer sales area **(Conditional use)**
(e) Car washing **(Prohibited)**
(f) Funeral parlour
(g) Hospital for small animals
(h) Needle trades **(Prohibited)**
(i) Pawnshop **(Prohibited)**
(j) Public garage
(k) Restaurant
(l) Tire shop **(Prohibited where accessory to auto repair)**
(m) Non-accessory parking area **(Conditional use)**

In light of this, the Division believes that these uses no longer need to be restricted under the zoning agreement.

After eliminating the above uses, the only uses remaining which do not have some sort of parallel restriction under the Zoning By-law are the following:

(a) Funeral parlour
(b) Hospital for small animals
(c) Public garage
(d) Restaurant

Funeral Home, Veterinary Clinic

These uses are permitted in "C2" and are not seen as overly disruptive or incompatible with the area. Furthermore, the likelihood of either use establishing at this location is remote. For these reasons, the Division has no concerns with removing then from the zoning agreement.

Public Garage
The site in question is likely too small to establish a parkade. In view of that, the site would have to be amalgamated with other properties in order to create enough land to construct a parkade. That, coupled with Schedule "A" approval, gives the City review mechanisms on any possible parkade in the future. For these reasons, the Division has no concerns with removing this use from the zoning agreement.

Restaurant
This is prohibited use which is of most concern to the applicant. Under the Osborne Village Secondary Plan, the subject property is located within the Village Character Commercial Area. Within this area, the Plan says the following:

5.1.2.B - *Encourage mixed-use buildings, with ground floors predominantly occupied by street oriented commercial uses such as retail, restaurant, entertainment, and personal services. Upper floors should contain offices, professional services, live/work units, and residential uses.*

Further to that, this property has been used as a restaurant for the last few years without complaint. Similarly, it is currently furnished as a restaurant.

For these reasons, the Division believes that this use should be removed from the prohibited list in the zoning agreement.

ii. Clause 3&4
The Division believes that Clause 3, with respect to Schedule "A" plan approval, and Clause 4, with respect to signage, should not be removed from the zoning agreement. However, Clause 4 should be revised, as indicated in the recommendations.

B. CONDITIONAL USE

1. DESCRIPTION OF APPLICATION
The applicant is requesting a conditional use to establish a 208 square foot lounge area, with seating for up to 18 people. The lounge would be accessory to the restaurant use, which is the focus of the business. The Division is recommending that this use be approved, with a condition that it be limited to 500 square feet of floor area.

2. DISCUSSION
The purpose of this condition is to allow the current owner flexibility in business operations while avoiding a possible conversion of the building into a bar, in the event that this business was to close in the future.

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;

(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;

(d) is compatible with the area in which the property to be affected is situated;

IMPACT OF THE RECOMMENDATIONS

IMPACT	YES	NO	COMMENTS
Policy		X	
Regulatory (ZAA)	X		Will allow building and occupancy permits to be issued for a restaurant and lounge
Regulatory (Conditional Use)	X		Will allow building and occupancy permits to be issued for a restaurant and lounge
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 2/09 and DCU 09-113822/D

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



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 2/09 and DCU 09-113822/D

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

