Minute No. 589
Report – Executive Policy Committee – October 7, 2009

Item No. 2 **Zoning Agreement Amendment – 1437 Arlington Street (Mynarski Ward)**
File ZAA 6/2009

COUNCIL DECISION:

Council concurred in the recommendation of the Executive Policy Committee and adopted the following:

1. That Zoning Agreement Caveat 85-15720 under File DAZ 223/84 dated June 13, 1984 (By-Law No. 3945/85), be withdrawn.

2. That the Zoning Agreement under File DAZ 223/84 dated June 13, 1984 (By-Law No. 3945/85) be replaced with the following:

   A. That 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 and the Lord Selkirk-West Kildonan Community Committee 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.

   B. That the land be restricted as follows:

      i. The following uses shall NOT be permitted on the land:

         a. Contractor's establishment
         b. Neighbourhood rehabilitation home

   C. 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;

   D. That any free-standing use identification sign not exceed eight (8) feet above grade in height;

Report – Executive Policy Committee – October 7, 2009

COUNCIL DECISION (continued)

E. That no illuminated signage be erected on the north and/or east sides of the building or the lot;

F. That prior to the issuance of any occupancy permits, all garbage containers be fully enclosed by a brick/concrete, and/or wood barrier fence that is at least 6 inches above the top of the garbage container, and thereafter maintained to the satisfaction of the Director of Planning, Property and Development;

3. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 223/84 (By-Law No. 3945/85) as approved in aforesaid Recommendation 1 and 2.

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

5. 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.

Report – Executive Policy Committee – October 7, 2009

DECISION MAKING HISTORY:

Moved by His Worship Mayor Katz,

That the recommendation of the Executive Policy Committee be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On October, 7, 2009, the Executive Policy Committee concurred in the recommendation of the Lord Selkirk-West Kildonan Community Committee and submitted the matter to Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On September 15, 2009, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service and, via the Priority Rezoning Process, submitted its recommendation to the Executive Policy Committee.

RE: **Zoning Agreement Amendment – 1437 Arlington Street**
File ZAA 6/2009

For submission to: **Executive Policy Committee**

Prepared by: **Inga Skundberg, Committee Clerk**
Lord Selkirk – West Kildonan Community Committee

Report date: **September 16, 2009**

COMMUNITY COMMITTEE RECOMMENDATION:

On September 15, 2009, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service and, via the Priority Rezoning Process, recommends to the Executive Policy Committee:

1. That Zoning Agreement Caveat 85-15720 under File DAZ 223/84 dated June 13, 1984 (By-Law No. 3945/85), be withdrawn.

2. That the Zoning Agreement under File DAZ 223/84 dated June 13, 1984 (By-Law No. 3945/85) be replaced with the following:

    A. That 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 and the Lord Selkirk-West Kildonan Community Committee 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.

    B. That the land be restricted as follows:

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    D. That any free-standing use identification sign not exceed eight (8) feet above grade in height;

E. That no illuminated signage be erected on the north and/or east sides of the building or the lot;

F. That prior to the issuance of any occupancy permits, all garbage containers be fully enclosed by a brick/concrete, and/or wood barrier fence that is at least 6 inches above the top of the garbage container, and thereafter maintained to the satisfaction of the Director of Planning, Property and Development;

3. That the Acting City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 223/84 (By-Law No. 3945/85) as approved in aforesaid Recommendation 1 and 2.

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

5. 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 Lord Selkirk-West Kildonan Community Committee provided the following supporting reason for its recommendation:

1. The Lord Selkirk-West Kildonan Community Committee agreed with the administrative comments contained in the report of the Planning and Land Use Division dated September 3, 2009.

PUBLIC HEARING SUMMARY

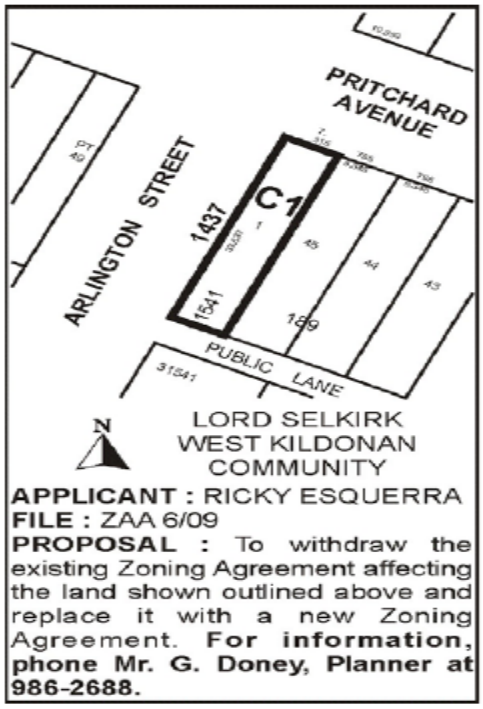
File: ZAA 6/2009

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

Public Hearing: September 15, 2009
West Committee Room
Council Building, 510 Main Street

Applicant: Ricky Esguerra

Subject:



Premises Affected: 1437 Arlington Street

Exhibits Filed:

1. Application dated July 27, 2009
2. Notification of Public Hearing dated July 31, 2009
3. Manitoba Status of Title 2262759
4. Letter of authorization dated July 22, 2009 from Brian Wayne Hamilton to Ricardo Esguerra

5. Surveyor's Building Location Certificate and sketch dated June 13, 1978
6. Zoning Agreement for File DAZ 223/84
7. Caveat 85-15720
8. Plans (2 pages)
9. Report from the Planning and Land Use Division dated September 3, 2009
10. Inspection Report
11. Audio Recording of public hearing held on September 15, 2009

REPRESENTATIONS:

In Support:

Ricardo Esguerra
Gina Guillet
Rosalina Hernandez

In Opposition

Nil

For Information:

Nil

For the City:

Ms S. Matile, Land Development Engineer, Planning, Property and Development Department
Mr. G. Doney, Senior Planner, Planning, Property and Development Department

Exhibit "9" referred to in File ZAA 6/2009

ADMINISTRATIVE REPORT

ISSUE: ZAA 6/2009 1437 Arlington Street Public Hearing

Critical Path: Lord Selkirk – West Kildonan Community Committee as per the Development Procedures By-Law and *The City of Winnipeg Charter.*

AUTHORIZATION

Author	Department Head	CFO	CAO
R. Kostiuk	N/A	N/A	N/A

RECOMMENDATIONS

1. That Zoning Agreement Caveat 85-15720 under File DAZ 223/84 dated June 13, 1984 (By-Law No. 3945/85), be withdrawn.

2. That the Zoning Agreement under File DAZ 223/84 dated June 13, 1984 (By-Law No. 3945/85) be replaced with the following:

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   B. That the land be restricted as follows:

      i. The following uses shall NOT be permitted on the land:

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C. 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;

D. That any free-standing use identification sign not exceed eight (8) feet above grade in height;

E. That no illuminated signage be erected on the north and/or east sides of the building or the lot;

F. That, prior to the issuance of any occupancy permits, all garbage containers be fully enclosed by a brick/concrete, and/or wood barrier fence that is at least 6 inches above the top of the garbage container, and thereafter maintained to the satisfaction of the Director of Planning, Property and Development;

3. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 223/84 (By-Law No. 3945/85) as approved in aforesaid Recommendation 1 and 2.

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

5. 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.

IMPLICATIONS OF THE RECOMMENDATIONS

If the recommendations of the Planning and Land Use Division are concurred in, a development permit can be issued after a Site Plan is approved by the Lord Selkirk-West Kildonan Community Committee.

CONSULTATION

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

SUBMITTED BY

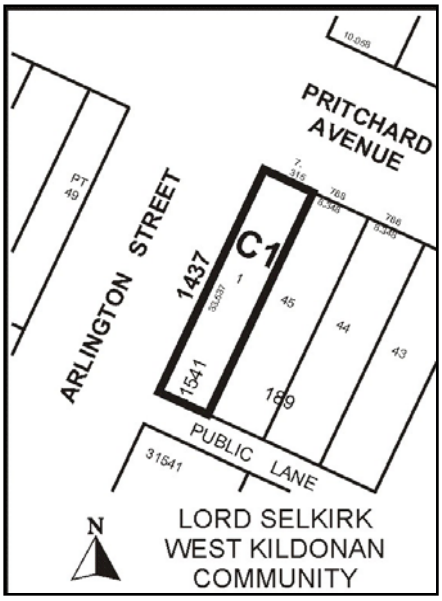
Department:	Planning, Property and Development
Division:	Planning and Land Use
Prepared by:	Robert Kostiuk, Planner
Date:	September 3, 2009
File No.	ZAA 6/09

APPENDIX "A"

Date: September 3, 2009
File: **ZAA 06/2009**
Related Files: DAZ 223/84 (By-Law 3945/85)

Subject: To withdraw the existing Zoning Agreement affecting the land and replace it with a new zoning agreement that allows for personal services (such as a hair salon) on the subject property.

Location: 1437 Arlington Street
Legal Description: Lot 1 Plan 31541



Applicant: Ricky Esguerra,
140 Selkirk Ave.

Owner: BRIAN WAYNE HAMILTON

Recommendation: Withdraw the existing zoning agreement and replace it with a new agreement.

Site Description

The subject property is approximately **2,601 square feet** (241.6 square metres) located on the southeast corner of Arlington Street and Pritchard Avenue in the William Whyte Neighbourhood of the Mynarski Ward. The site is zoned **"C1" Commercial Neighbourhood** and is currently occupied, in part, by a specialty foods store.

North: A commercial use zoned "C1" Commercial Neighbourhood
South: Commercial uses zoned "C2" Commercial Community that are within the Neighbourhood Main Streets Planned Development Overlay District
East: Residences zoned "R2" Residential Two-Family
West: School zoned "PR2" Parks and Recreation District

Background

DAZ 223/84
Council approved the rezoning of the subject property from "R3" Multiple Family District to "C1" Limited Commercial District on June 13th, 1984 under file number DAZ 223/84. Pursuant to the rezoning application, a zoning agreement was attached to the property. This zoning agreement includes the following key clauses:

2. *The land and any building or structure thereon shall not be used for, and no building or structure shall be erected, placed, altered or enlarged on the land for any use except:*
   a) *Any use permitted in the "R3" Multiple-Family District;*
   b) *Baked foods shop;*
   c) *Book or stationary store;*
   d) *Agency for laundry, clothes cleaning or pressing establishment;*
   e) *Confectionary store, not to be open between the hours of 11:00 pm and 7:00 am;*
   f) *Dressmaking or millinery shop;*
   g) *Florist or gift shop;*
   h) *Grocery, fruit or vegetable store, provided it is not open between the hours of 11:00 pm and 7:00 am;*
   i) *Jewellery store or watch repair shop;*
   j) *Meat shop or delicatessen store;*
   k) *Offices, business or professional;*
   l) *Photographer;*
   m) *Public or private parking area;*
   n) *Shoe store or shoe repair shop;*
   o) *Tailor, clothing, or wearing apparel shop;*
   p) *Accessory uses;*
   q) *Loading space as required in Section 1701 of By-Law No. 16502;*
   r) *Restaurant, tea room or café (excluding dancing or entertainment.*

3. *No flashing, scintillating or animated signs shall be located on the land.*

4. *No mobile advertising signs, roof top sign, or free-standing sign shall be located on the land.*

5. *No illuminated fascia sign shall be located on the north elevation of any building on the land.*

6. *No amusement devices as defined by the applicable zoning by-law from time to time shall be located on the land.*

7. *No new building or any addition to the existing building shall be constructed or located within the southerly 30 feet of the land.*

8. *No building or structure shall be erected or located on the land and no building permit issued for construction on the land unless and until plans including the location and design of the proposed buildings, structures, exterior materials and elevations thereof, accessory parking and loading areas and the location and design of landscaping, fencing and garbage enclosures are submitted to and approved by the Lord Selkirk-West Kildonan Community Committee and the Commissioner of Environment and thereafter identified by his signature under the designation "Schedule "A" to Zoning Agreement DAZ 223/84" and no buildings, structures or works shall be constructed or placed on the land except in accordance with that Schedule "A" to this agreement.*

9. *All fencing, landscaping and garbage enclosures shown on said Schedule "A" shall be completed within three (3) months of occupancy, in whole or in part, of any building constructed on the land, unless an extension of that time is granted by that Community Committee and those works shall be maintained in good condition to the satisfaction of that Commissioner at all times.*

Description of the Proposed Development

The applicant intends to develop a 456 square foot (42.4 square metre) hair salon that would be located at the northernmost extent of 1437 Arlington, at the corner of Pritchard Avenue and Arlington Street.

Analysis

PLAN WINNIPEG COMPLIANCE
The proposed development complies with Plan Winnipeg.

ZONING

- **C1 Commercial Neighbourhood** is intended to accommodate small, compact commercial uses within or surrounded by residential areas that are attractive and compatible in scale and character with surrounding residential uses, to serve the convenience needs of the surrounding neighbourhood. This district is not intended to accommodate businesses sized or designed to serve a trade area more than one-half mile from the business. C1 districts are generally located along local streets or at local/collector intersections.
    - There are no maximum or minimum yard standards

- The maximum height of building is thirty-nine (39) feet
- The maximum height of free-standing signs is eight (8) feet above grade
- Personal services (including hair salons) are a permitted use within this zone

- **C2 Commercial Community District** is intended to accommodate more intensive commercial sites that do not have a local or neighbourhood orientation. The district is intended to include attractive commercial, institutional, recreational, and service facilities needed to support the surrounding neighbourhoods and the broader community. C2 districts are generally located along collector streets, at arterial/collector intersections, or along portions of arterial streets with relatively shallow lots.
  - The only yard requirement is a rear yard of twenty-five (25) feet
  - The maximum height of building is forty-nine (49) feet
  - The maximum height of free-standing signs is twenty (20) feet above grade
  - Personal services are a permitted use within this zone

- **R2 Residential Two Family District** is intended to accommodate the development of single and two-family units and where appropriate limited multi-family units in lower density neighbourhoods. There is a front yard requirement of 20 feet and the maximum building height is 35 feet. The minimum lot width is 25 feet and lot area 5,000 square feet (2,500 per dwelling unit). The maximum height for free-standing signs is twenty (20) feet for a lot containing a permitted non-residential use.

NEIGHBOURHOOD COMPATIBILITY
Currently, the subject property is bordered on the north and south by Commercial uses (zoned "C1" and "C2" respectively) and is immediately north of a Neighbourhood Main Streets Planned Development Overlay District.

LAND USE BY-LAW
Personal services (including hair salons) are not a permitted use under the subject property's zoning agreement. However, personal services are a permitted use within the "C1" Commercial Neighbourhood zone under the City of Winnipeg Zoning By-Law 200/2006.

Recommendation:

The Planning and Land Use Division supports the proposed amendment to allow Personal Service uses (which would include hair salons) on this property provided that the hair salon and any future Personal Services use complies with the use specific standards outlined in the City of Winnipeg Zoning By-Law 200/2006, being:

89(1) In the RMU and C1 zoning districts, personal service uses:
a) are limited to a maximum of 5,000 square feet (unless otherwise listed)
b) are limited to operate between the hours of 9:00 am to 9:00 pm

The Planning and Land Use Division believes that the agreement was added to protect adjoining residential properties from development that could be potentially incompatible or have an adverse impact on residences. However, given the nature of the immediate surrounding area it is difficult to justify the select grouping of uses permitted within the existing zoning agreement.

The subject property is located along an arterial street. Arterials such as Arlington Street are suitable locations for local commercial services in older neighbourhoods.

Under the current City of Winnipeg Zoning By-Law 200/2006, the "C1" Commercial Neighbourhood zone has been developed to:

> *Accommodate small, compact commercial uses within or surrounded by residential areas that are attractive and compatible in scale and character with surrounding residential uses, to serve the convenience needs of the surrounding neighbourhood.*

The Planning and Land Use Division believes that this zoning district and most uses allowed within this district are appropriate for the subject property. As such, the Division recommends allowing all permitted uses within the "C1" Commercial Neighbourhood zone identified within the City of Winnipeg Zoning By-Law 200/2006, except for Contractor's Establishments and Neighbourhood Rehabilitation Homes.

The Division recommends removal of clause 7: *no new building or additions to the existing building within the southerly 30 feet of the land*. This clause was applied to address future parking concerns, however, these concerns can be adequately addressed under the City of Winnipeg Zoning By-Law No. 200/2006.

The Division does not recommend completely withdrawing the existing agreement. Restrictions regarding signage and plan approval remain appropriate restrictions that can protect the interest and concerns of neighbouring property owners. Specifically, signage restrictions are recommended to protect neighbouring residential homes to the north and east of the subject property. Recommending plan approval helps ensure that future development is compatible with neighbouring properties. These restrictions shall be updated and applied within the recommended new zoning agreement.

The Planning and Land Use Division recommends withdrawing the existing zoning agreement and replacing it with a new agreement for the following reasons:

- With respect to the list of prohibited uses, the current zoning agreement is outdated,
- The subject property is located on the corner of the block along an arterial street with other commercial properties north and south of the subject property,
- Personal services and most other permitted uses within the current "C1" Commercial Neighbourhood zoning district under the City of Winnipeg Zoning By-Law 200/2006 have been developed to accommodate commercial uses that are compatible in scale and character with surrounding residential uses.

Recommended Conditions of Approval

1. That Zoning Agreement Caveat 85-15720 under File DAZ 223/84 dated June 13, 1984 (By-Law No. 3945/85), be withdrawn.

2. That the Zoning Agreement under File DAZ 223/84 dated June 13, 1984 (By-Law No. 3945/85) be replaced with the following:

A. That, 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 and the Lord Selkirk-West Kildonan Community Committee 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.

B. That the land be restricted as follows:

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a. Contractor's establishment
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C. 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;

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F. That, prior to the issuance of any occupancy permits, all garbage containers be fully enclosed by a brick/concrete, and/or wood barrier fence that is at least 6 inches above the top of the garbage container, and thereafter maintained to the satisfaction of the Director of Planning, Property and Development;

3. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary Amending Agreement to Zoning Agreement DAZ 223/84 (By-Law No. 3945/85) as approved in aforesaid Recommendation 1and 2.

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

5. 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: Robert Kostiuk
PPD File # 3.302