Agenda - Council - March 26, 2003

Report - Standing Policy Committee on Property and Development - March 4, 2003

Item No. 10 Proposed Rezoning - 466 Academy Road
File DAZ 225/2002

STANDING COMMITTEE RECOMMENDATION:

On March 18, 2003, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the City Centre Community Committee and recommends to Council:

1. That Winnipeg Zoning By-law No. 6400/94 be amended by rezoning the subject land as shown on Schedule "A", for File DAZ 225/2002 dated January 3, 2003, 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 the use of the property be restricted to the following uses including accessory and secondary uses:
            a. Esthetician
            b. Hair Salon
            c. Massage Therapist

        ii. That, prior to the issuance of a development permit or occupancy permit, plans showing the site layout, parking, fencing, landscaping, signage, external lighting, and exterior building elevations and materials be submitted for the approval of the City Centre Community Committee.

        iii. That no free-standing or pylon signs, poster boards, mobile or temporary signs be permitted on the property and that facia or awning signage be limited to a maximum area of twelve (12) square feet with the location restricted to the north wall of the building.

        iv. That the hours of operation be limited to between the hours of 9:00 a.m. and 9:00 p.m. Monday through Friday, 9:00 a.m. to 6:00 p.m. on Saturday, with Sunday closings.

Report - Standing Policy Committee on Property and Development - March 4, 2003

v. That buildings on the site be limited to a height of one (1) storey and, should the existing building be destroyed or demolished, the yards of the current structure be maintained by new construction.

vi. That no new buildings, signs or other permanent structures be permitted within a perpendicular distance of 7 feet from the south property limit in order to accommodate the possible future widening of Academy Road.

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 the 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 Council extends that time.

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 readings.

5. That the rezoning by-law shall come into effect when the Zoning Agreement has been registered by caveat as a first charge 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.

Report - Standing Policy Committee on Property and Development - March 4, 2003

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On March 18, 2003, the Executive Policy Committee concurred in the recommendation of the Standing Policy Committee on Property and Development and the Riel Community Committee, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On March 4, 2003, the Standing Policy Committee on Property and Development concurred in the recommendation of the City Centre Community Committee, and submitted its recommendation to Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On January 14, 2003, the City Centre Community Committee concurred in the administrative recommendation as amended, namely:

- Amend Recommendation 1.A. by adding the following "1.A.i. c. Massage Therapist";

- Amend Recommendation 1.A. by deleting the requirement for the construction / maintenance of a 6 foot-high wooden privacy fence along the west and south property boundaries where abutting 174 and 178 Borebank Street;

- Renumber the balance of Recommendation 1.A. accordingly;

and submitted its recommendation to the Standing Policy Committee on Property and Development.

RE: **Proposed Zoning Change Report - 466 Academy Road**
File DAZ 225/2002

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

Prepared By: Carol Freeman, Clerk, City Centre Community Committee

Report date: **January 30, 2003**

COMMUNITY COMMITTEE RECOMMENDATION:

The City Centre Community Committee concurred in the administrative recommendation as amended, and recommends to the Standing Policy Committee on Property and Development:

1. That Winnipeg Zoning By-law No. 6400/94 be amended by rezoning the subject land as shown on Schedule "A", for File DAZ 225/2002, dated January 3, 2003, 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 the use of the property be restricted to the following uses including accessory and secondary uses:

            a. Esthetician
            b. Hair Salon
            c. ***Massage Therapist***

        ~~***2. That a 6 foot high wooden privacy fence be constructed/maintained along the west and south property boundaries where abutting 174 and 178 Borebank.***~~

        ii. That, prior to the issuance of a development permit or occupancy permit, plans showing the site layout, parking, fencing, landscaping, signage, external lighting, and exterior building elevations and materials be submitted for the approval of the City Centre Community Committee.

        iii. That no free-standing or pylon signs, poster boards, mobile or temporary signs be permitted on the property and that facia or awning signage be limited to a maximum area of twelve (12) square feet with the location restricted to the north wall of the building.

iv. That the hours of operation be limited to between the hours of 9:00 a.m. and 9:00 p.m. Monday through Friday, 9:00 a.m. to 6:00 p.m. on Saturday, with Sunday closings.

v. That buildings on the site be limited to a height of one (1) storey and, should the existing building be destroyed or demolished, the yards of the current structure be maintained by new construction.

vi. That no new buildings, signs or other permanent structures be permitted within a perpendicular distance of 7 feet from the south property limit in order to accommodate the possible future widening of Academy Road.

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 the 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 Council extends that time.

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 readings.

5. That the rezoning by-law shall come into effect when the Zoning Agreement has been registered by caveat as a first charge 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.

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

1. The property fronts Academy Road, presently contains a home business, and is adjacent to commercial properties on the west.

2. The application complies with Plan Winnipeg in that commercial rezonings of residential properties can occur in Neighbourhood Policy Areas

3. The rezoning has been recommended for approval with strict limitations on land use and site development, as set down in a Zoning Agreement that would be registered on the title.

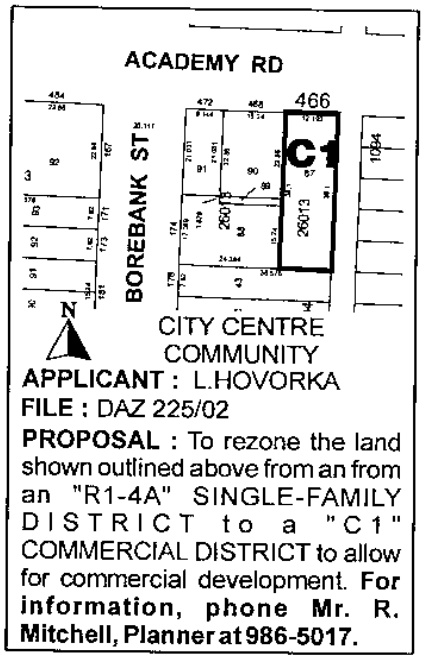
4. Any future changes to the Zoning Agreement will require a public hearing before the City Centre Community Committee, City Council or designated committee of Council.

5. The proposed rezoning is in keeping with what has been approved on Academy Road in the past.

REPORT SUMMARY

Public Hearing:	January 14, 2003 Community Committee Chamber, 300 Assiniboine Av
Before:	City Centre Community Committee Councillor Gerbasi, Chairperson Councillor Steek
Applicant:	Lori Hovorka 466 Academy Road Winnipeg, MB R3N 0C7

Subject:



Premises Affected: 466 Academy Road

Exhibits Filed:

1. Application dated November 13, 2002
2. Advertising notice dated November 21, 2002
3. Manitoba Status of Title No. 1405649
4. Surveyor's Building Location Certificate and Sketch dated August 4, 1995
5. Extract of Atlas Sheet AC21
6. Plans (3 pages)
7. Photograph of 466 Academy Road
8. Report of the Manager of Planning and Land Use dated January 3, 2003
9. Communication dated January 6, 2003, from Shirley Lush, 167 Campbell Street, in opposition to the application
10. Photographs of the site and Inspection Notice
11. E-Mail dated January 9, 2003, from Nick Enns, 178 Borebank Street, in opposition to a commercial parking facility/loading zone
12. Communication dated January 13, 2002, from Leslie Vryenhoek and David Parbery, 177 Campbell Street, in opposition to the application.

REPRESENTATIONS:

In Support:

Lori Hovorka, 466 Academy Road, Winnipeg, R3N 0C7

In Opposition:

Lorna McLarty, 173 Campbell Street, Winnipeg, R3N 1B4
Marlene and Julie M. Enns, 178 Borebank Street, Winnipeg, R3N 1E3

For the City:

Ross Mitchell, Senior Planner, Planning, Property and Development Department

SUMMARIZATION OF REPRESENTATIONS AND SUBMISSIONS
MADE AT THE PUBLIC HEARING ON THE SUBJECT MATTER

Lori Hovorka, appearing in support of the application, illustrated a revised parking plan containing two gravel parking spaces off the lane. She indicated that under the proposed revised plan the existing garage would be retained as well as the green space between the proposed parking stalls. She suggested the new parking arrangement would not be any different than anyone else down the lane, however, there would be more "in and out" traffic. She indicated that if the parking at the rear of the property was restricted to staff, it would not assist the parking problems on the street.

In response to an inquiry, Ms Hovorka advised that she resided in the premises and her current hours of operation were 10:00 a.m. to 6:00 p.m., however, that could change in the future to 9:00 a.m. to 8:00 p.m., five days a week, probably Tuesday through Saturday. She noted that the subject property was located in a strip of three commercial operations.

Lorna McLarty, appearing in opposition to the application, advised she was concerned about a rezoning to a commercial designation. She indicated she had three small children and there were six children under the age of seven in the immediate area of the first five homes off Academy Road. She also expressed concern over future use of the property should the rezoning be approved.

Ms McLarty submitted a communication dated January 13, 2002, from Leslie Vryenhoek and David Parbery, 177 Campbell Street, in opposition to the application, filed as Exhibit 12.

Julie Enns, appearing in opposition to the application, advised she had the same concerns as Ms McLarty with respect to traffic, parking and possible future uses of the property.

The Senior Planner provided an overview of the report from the Planning and Land Use Division, particularly the recommendations.

In reply please refer to / Référence à rappeler : **Ross Mitchell**
(204) 986-5017
Fax / TJlJc. : (204) 986-3684

File No. DAZ 225/02 (c/r DAV 1008/02D) January 3, 2003
Our c/f CP 500 (.620)

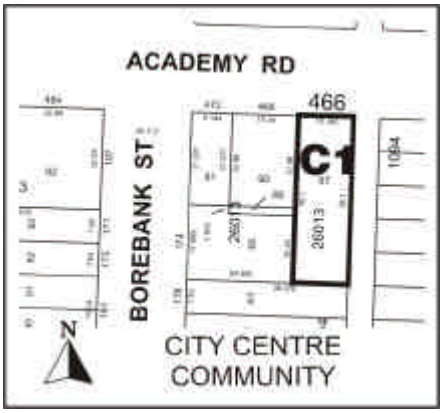
Ms. Carol Freeman, Clerk
City Centre Community Committee
Council Building
510 Main Street
Winnipeg, MB R3B 1B9

Dear Ms. Freeman:

REZONING
466 Academy between Campbell and Borebank
City Centre Community Committee
File No. DAZ 225/02

An application has been received from Lori Hovorka, to amend By-Law No. 6400/94 by rezoning the land shown below from a/an "R1-4A" Single-Family Residential District to a/an "C1" Commercial District to allow for commercial development.

RELATED FILES: DAV 1008/02D



SITE DESCRIPTION:

Site Area: 25' by 125'; 5,000 square feet

Existing Land Use and Zoning: One-storey, older single-family dwelling zoned "R1-4A" Single-Family Residential District

Surrounding Land Use and Zoning:

North: Across Academy, single-family housing zoned "R1-4A"
South: Single-family housing zoned "R1-4A"
East: Across public lane, single-family housing zoned "R1-4A"
West: Commercial building (office) zoned "C1" Commercial District; single-family housing zoned "R1-4A"

DEVELOPMENT DESCRIPTION:

The proposal is to rezone the subject dwelling to permit its permanent conversion to commercial use (esthetics/hair salon). The owner/applicant has operated her home business (Lori Hovorka Esthetics) on the premises since 1995 (DCU 201/95C). The approval was renewed under DCU 183/97, with the Order terminating in 2007 and hours limited to 9:00 a.m. to 9:00 p.m. daily. The applicant now wants to rezone the property permanently in order to expand the business by renovating the main floor and employing possibly one additional esthetician and 2 hairdressers.

The older 1-storey stucco house fronts onto Academy with a 14-foot setback from the street property line. The house has a main floor area of about 1,100 square feet. There are no plans to occupy the basement with salon space, which will not likely happen due to building code issues. The lot contains a single-car garage at the south end with lane access. A chain-link fence is erected on the property bordering the public lane behind the house to prevent additional parking off the lane. However, during a site inspection a car was observed parked beside the house off the lane.

As the application would convert the property to commercial use, new parking standards apply (see related variance under DAV 1008/02D). Given the floor space, 4 parking stalls are required in addition to a loading zone. The lot is deep enough to establish parking and loading behind the house (52.65 feet from rear property line to rear wall of house). The proposal is to locate 4 parking stalls nosing up to the rear of the dwelling (20 feet deep). These stalls would be accessed from a 20-foot parking aisle behind (south) of the stalls. The loading zoned would be located on the south side of the parking aisle in the southerly 12 feet of the lot with access from the public lane.

There are 3 lots fronting the south side of Academy between Campbell and Borebank west of the public lane. The property to the west is zoned "C1" and contains an engineering office in a converted dwelling. At the corner of Borebank and Academy is located Hilton Insurance

Services in a building zoned “R1-4A”. The above two fronting properties are only 75 feet deep. Only the corner property provides on-site parking for 2 or 3 vehicles in the rear with access off Borebank. As the subject property is deep at 125 feet, it extends southward to border the rear property line of the first residential property on Borebank at number 174. To the east of the subject site, across the public lane, are single-family houses fronting Campbell, with houses at 167, 173 and 177 Campbell immediately adjacent.

Academy is a mixed-use street with houses interspersed with compact commercial areas. Most of the businesses are located in converted houses. Typically, the scale of the businesses and the intensity of related activity are limited by the small buildings and limited or lack of on-site parking. The businesses are for the most part locally owned “boutique” style stores and services catering to the immediate neighbourhood. However, due to the traffic on Academy, the stores do capture business from through-traffic generated from the west and southwest parts of Winnipeg.

The Development Management Division rarely supports the conversion of houses to commercial use along east-west arterials in River Heights like Academy, Corydon, and Grant. The properties are generally not suited to commercial use because of the limited land and building size and the lack of parking. The proximity to adjacent housing is also a factor in terms of overflow parking onto residential streets, the impact of increased pedestrian traffic, and business hours that may not compliment the residential environment. The Division also does not want to encourage the conversion of additional houses to commercial use, or the demolition of existing houses for the construction of new commercial buildings. Having said this, there is merit in the subject proposal in that the property fronts Academy, contains a home business, and is adjacent to commercial properties on the west.

PLAN WINNIPEG:

The application complies with Plan Winnipeg in that commercial rezonings of residential properties can occur in Neighbourhood Policy Areas. However, it must be determined that the rezoning would not have a detrimental impact on the adjacent residential area.

ADMINISTRATIVE COMMENTS:

The major concern for the Division is the applicant’s plans to convert the entire rear yard of the property to parking and loading use. It is precisely this type of alteration that causes conflicts with the surrounding residential area. The Division would prefer that as much green space as possible be retained in the rear yard in keeping with the residential character of the area. To do so, it may be necessary to eliminate the loading zone and provide parking for 4 vehicles, perpendicular to the public lane, thereby eliminating the on-site aisle. Although the additional parking in such an arrangement may not be acceptable to adjacent residents, it is noted that the applicant could demolish the existing garage and establish parking stalls off the lane under the current zoning. Alternatively, the rezoning could be approved subject to the applicant seeking a variance to eliminate the need for additional parking. However, clients and staff would then have to park on the public streets.

The Division would therefore propose a compromise wherein the rezoning would be supported with strict limitations on land use and site development, as set down in a Zoning Agreement that would be registered on title. Any future changes to the Zoning Agreement would require a public hearing before the City Centre Community Committee or City Council or designated committee of council.

The Division would propose the following:

- The house be retained and the rear yard retained as green space to as great an extent as possible;
- That business type and hours of operation be limited;
- That the variance hearing be adjourned and the application readvertised to eliminate the need for a loading zone and to permit commercial parking directly off the public lane.

RECOMMENDATION:

I. That By-law 6400/94 be amended by rezoning the subject land as shown on Schedule "A", for file DAZ 225/02, attached hereto and dated, January 3, 2003, 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 591(1) of The City of Winnipeg Act, to provide for the following:

3. That the use of the property be restricted to the following uses including accessory and secondary uses:

i. Esthetician
ii. Hair Salon

4. That a 6 foot-high wooden privacy fence be constructed/maintained along the west and south property boundaries where abutting 174 and 178 Borebank.

5. That, prior to the issuance of a development permit or occupancy permit, plans showing the site layout, parking, fencing, landscaping, signage, external lighting, and exterior building elevations and materials be submitted for the approval of the City Centre Community Committee.

6. That no free-standing or pylon signs, poster boards, mobile or temporary signs be permitted on the property and that facia or awning signage be limited to a maximum area of 12 square feet with the location restricted to the north wall of the building.

7. That the hours of operation be limited to between the hours of 9:00 a.m. and 9:00 p.m. Monday through Friday, 9:00 a.m. to 6:00 p.m. on Saturday, with Sunday closings.

8. That buildings on the site be limited to a height of 1 storey and, should the existing building be destroyed or demolished, the yards of the current structure be maintained by new construction.

9. That no new buildings, signs or other permanent structures be permitted within a perpendicular distance of 7 feet from the south property limit in order to accommodate the possible future widening of Academy Road.

II. That a 10 per cent 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 the market value of the land.

III. That, in the event this application is not proceeded with expeditiously and the by-law is not enacted within twenty-four (24) months after adoption of this report by Council, the matter shall be deemed to be concluded and shall not be proceeded with unless Council extends that time.

IV. That the City Solicitor be requested to prepare the necessary rezoning by-law and forward same to Council for all three readings.

V. That the rezoning by-law shall come into effect when the Zoning Agreement has been registered by caveat as a first charge 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.

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

VII. That the City Solicitor be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Act.

Sincerely,
V. Buckley
Manager of Planning and Land Use

_____

Per: Ross Mitchell, Senior Planner
(City Centre Community)
986-5017

/mf
attach.

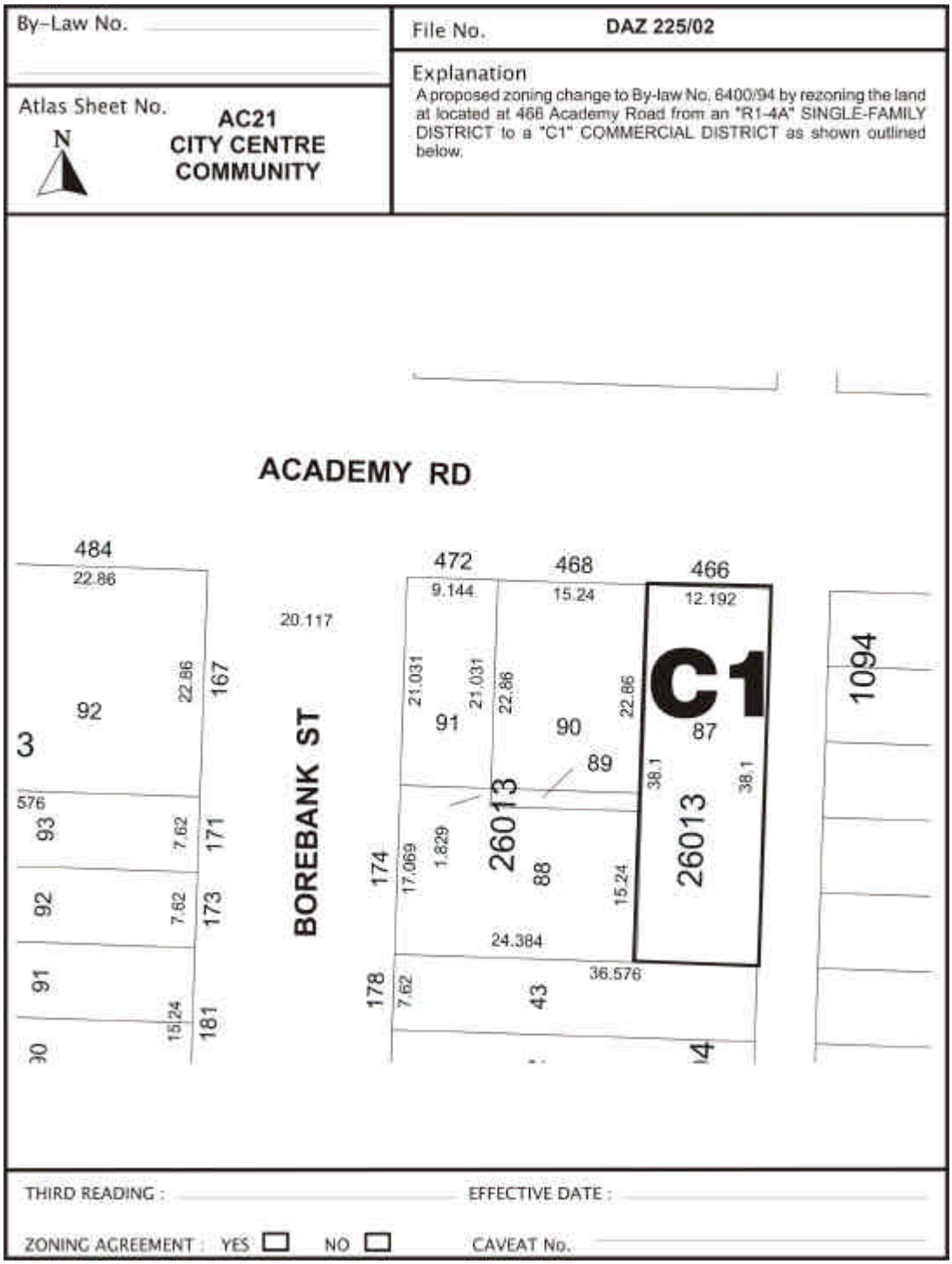


Figure 1: Schedule "A" to the report to the City Centre Community Committee for File No. DAZ 225/02, dated January 3, 2003.

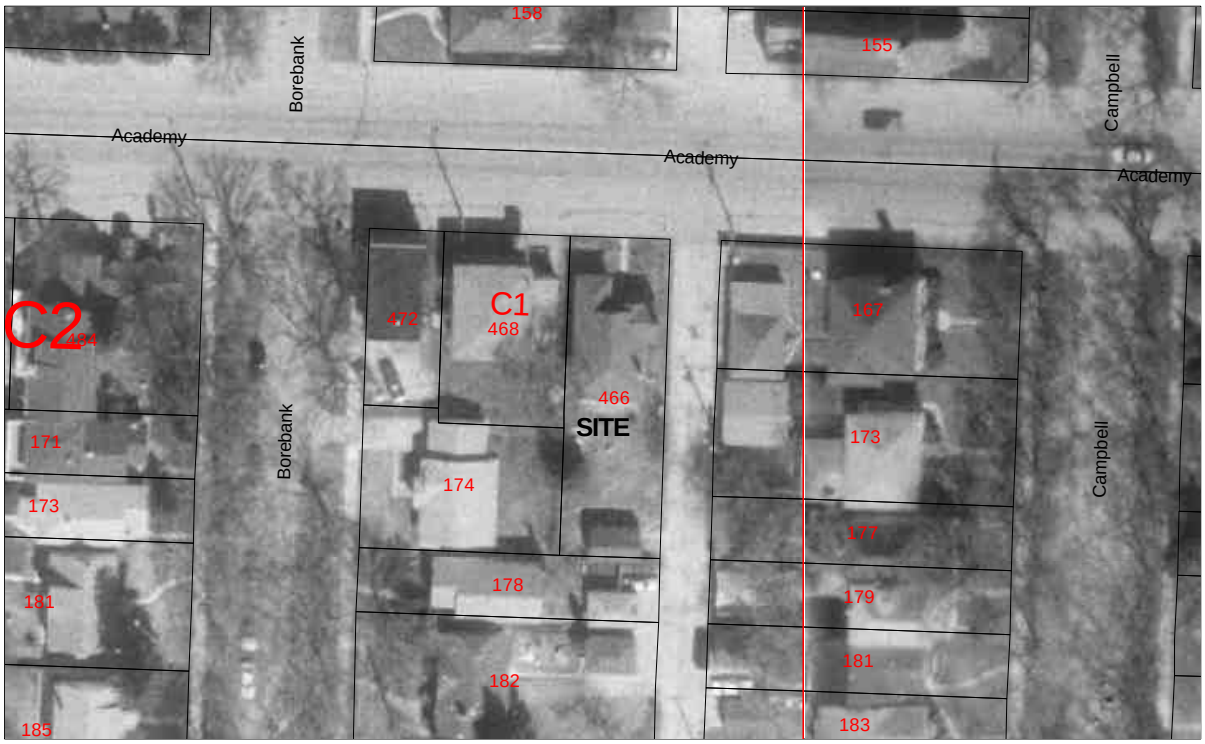


Figure 2: Site Air Photo