Agenda - Council – September 22, 2010

Report - Standing Policy Committee on Property and Development – September 14, 2010

Item No. 5 Rezoning – 11 Evergreen Place
(Fort Rouge-East Fort Garry Ward)
File DAZ 210/2010

STANDING COMMITTEE RECOMMENDATION:

On September 15, 2010, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the City Centre Community Committee and submits the following to Council:

1. That the Winnipeg Zoning By-law No. 200/2006 be amended by rezoning the subject land as shown on Schedule "A" for File DAZ 210/2010 dated June 30, 2010 to an "RMU" Residential Mixed Use 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 for the development of any new building or structure, plans shall be submitted showing the location and design of proposed buildings, the location and design of accessory parking areas, garbage enclosures, fencing and landscaping to the Director of Planning, Property and Development and the City Centre Community Committee for plan approval prior to the issuance of any building or development permit, and thereafter to be maintained to the satisfaction of the Director of Planning, Property and Development.

        ii. That non-residential uses, with the exception of home occupations, shall be permitted only in the basement and on the first and second floors.

        iii. That non-residential uses, with the exception of home occupations, shall be limited to a maximum of 10,000 square feet.

Report - Standing Policy Committee on Property and Development – September 14, 2010

iv. That the following uses shall not be permitted:
   a. Day care centre;
   b. Drinking establishment;
   c. Restaurant.

v. That the following uses be conditional:
   a. Medial/dental/optical/counselling clinic;
   b. Retail sales.

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 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 an extension of time is applied for prior to the expiry of this twenty-four (24) month period and the extension is subsequently approved by Council.

4. That the Director of Legal Services and City Solicitor be requested to prepare the necessary rezoning by-law and forward the same to Council for all three (3) readings.

5. That the zoning section of the by-law comes into force when the zoning agreement is registered in the Winnipeg Land Titles Office by caveat against the subject lands, provided that the said effective date occurs within one year from the date by-law is passed.

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

7. That the Director of Legal Services and City Solicitor be requested to do all things necessary for implementation in accordance with the terms of The City of Winnipeg Charter.

8. That the Proper Officers of the City be authorized to do all things necessary to implement the intent of the foregoing.

Report - Standing Policy Committee on Property and Development – September 14, 2010

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On September 15, 2010, 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 September 14, 2010, 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 July 13, 2010, the City Centre Community Committee concurred in the recommendation of the Winnipeg Public Service with the following amendments:

- Add the following new recommendations under Recommendation 1.A.:
  - iv. That the following uses shall not be permitted:
    - a. Day care centre
    - b. Drinking establishment
    - c. Restaurant
  - v. That the following use be conditional:
    - a. Medial/dental/optical/counselling clinic
    - b. Retail sales,

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

RE: **Rezoning – 11 Evergreen Place**
File DAZ 210/2010 [c/r DAV 125925/2010D]

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

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

Report date: **July 14, 2010**

COMMUNITY COMMITTEE RECOMMENDATION:

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 the Winnipeg Zoning By-law No. 200/2006 be amended by rezoning the subject land as shown on Schedule "A" for File DAZ 210/2010 dated June 30, 2010 to an "RMU" Residential Mixed Use 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 for the development of any new building or structure, plans shall be submitted showing the location and design of proposed buildings, the location and design of accessory parking areas, garbage enclosures, fencing and landscaping to the Director of Planning, Property and Development and the City Centre Community Committee for plan approval prior to the issuance of any building or development permit, and thereafter to be maintained to the satisfaction of the Director of Planning, Property and Development.

        ii. That non-residential uses, with the exception of home occupations, shall be permitted only in the basement and on the first and second floors.

        iii. That non-residential uses, with the exception of home occupations, shall be limited to a maximum of 10,000 square feet.

        iv. That the following uses shall not be permitted:
        a. Day care centre;
        b. Drinking establishment;
        c. Restaurant.

        v. That the following uses be conditional:

a. Medial/dental/optical/counselling clinic;
b. Retail sales.

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 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 an extension of time is applied for prior to the expiry of this twenty-four (24) month period and the extension is subsequently approved by Council.

4. That the Director of Legal Services and City Solicitor be requested to prepare the necessary rezoning by-law and forward the same to Council for all three (3) readings.

5. That the zoning section of the by-law comes into force when the zoning agreement is registered in the Winnipeg Land Titles Office by caveat against the subject lands, provided that the said effective date occurs within one year from the date by-law is passed.

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

7. That the Director of Legal Services and City Solicitor 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(s) for its recommendation:

1. The proposal aligns the zoning with what has been going on the in the building.
2. The amendment addresses the concerns on parking.
3. The proposal is consistent with the Osborne Village Neighbourhood Plan.

PUBLIC HEARING SUMMARY

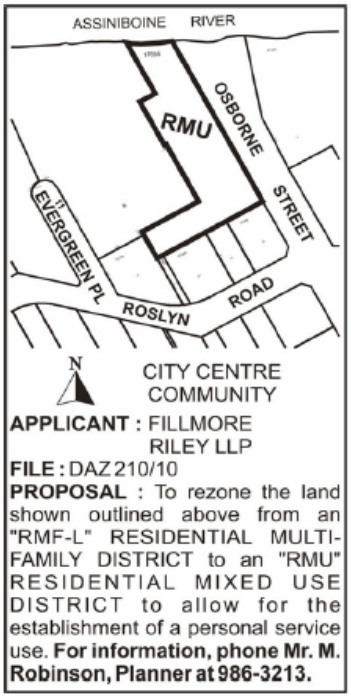
File: DAZ 210/2010 [c/r DAV 125925/2010D]

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

Public Hearing: July 13, 2010
North Committee Room
Council Building, 510 Main Street

Applicant: Fillmore Riley LLP (Doug Fawcett)

Subject:



Premises Affected: 11 Evergreen Place

Exhibits Filed:
1. Application dated May 19, 2010
2. Notification of Public Hearing dated May 28, 2010
3. Manitoba Status of Title 1697353
4. Letter of authorization dated May 5, 2010 from 57986 Manitoba Limited to Fillmore Riley LLP
5. Surveyor's Building Location Certificate and sketch dated July 19, 1984

6. Plan
7. Report from the Planning and Land Use Division June 30, 2010
8. Inspection Report
9. Copy of agreement registered between Osborne Towers Ltd. And 57986 Manitoba Limited dated June 15, 1983, submitted by Richard Buchwald, in opposition to the application
10. Copy of special conditions forming part of the undertaking to insure CMHC 530 and of the insurance policy, submitted by Richard Buchwald in opposition to the application.
11. Variance Order DAV 96/83, submitted by Richard Buchwald, in opposition to the application
12. Use Categories and Use Sub-Categories and Table 4-1: Principal Use Table excerpt from Winnipeg Zoning By-law No. 200/2006, submitted by Richard Buchwald in opposition to the application

REPRESENTATIONS:

In Support:

Doug Fawcett
Curtis Shewchuk

In Opposition:

Richard Buchwald, Pitblado LLP on behalf of Osborne Towers Ltd.
Cathy Goodman White

For Information:
Nil

For the City:

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

Exhibit "7" referred to in File DAZ 210/2010 [c/r DAV 125925/2010D]

ADMINISTRATIVE REPORT

Title: DAZ 210/10 – 11 Evergreen PLACE Public Hearing

Issue: For consideration at the Public Hearing for a rezoning for DAZ 210/10 – 11 Evergreen PLACE

Critical Path: City Centre Community Committee – Standing Policy Committee on Property and Development – Executive Policy Committee - Council as per the *Development Procedures By-Law* and *The City of Winnipeg Charter*.

AUTHORIZATION

Author	Department Head	CFO	CAO
P. Regan	N/A	N/A	

RECOMMENDATIONS

1. That the Winnipeg Zoning By-law No. 200/2006 be amended by rezoning the subject land as shown on Schedule "A" for File DAZ 210/2010 dated June 30, 2010 to an "RMU" Residential Mixed Use 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 for the development of any new building or structure, plans shall be submitted showing the location and design of proposed buildings, the location and design of accessory parking areas, garbage enclosures, fencing and landscaping to the Director of Planning, Property and Development and the City Centre Community Committee for plan approval prior to the issuance of any building or development permit, and thereafter to be maintained to the satisfaction of the Director of Planning, Property and Development.

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        iii. That non-residential uses, with the exception of home occupations, shall be limited to a maximum of 10,000 square feet

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 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 an extension of time is applied for prior to the expiry of this twenty-four (24) month period and the extension is subsequently approved by Council.

4. That the City Solicitor/Manager of Legal Services be requested to prepare the necessary rezoning by-law and forward the same to Council for all three (3) readings.

5. That the zoning section of the by-law comes into force when the Zoning Agreement is registered in the Winnipeg Land Titles Office by caveat against the subject lands, provided that the said effective date occurs within one year from the date by-law is passed.

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.

IMPLICATIONS OF THE RECOMMENDATIONS

If the recommendations of the Planning and Land Use Division are concurred in, a development permit can be issued.

CONSULTATION

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

SUBMITTED BY

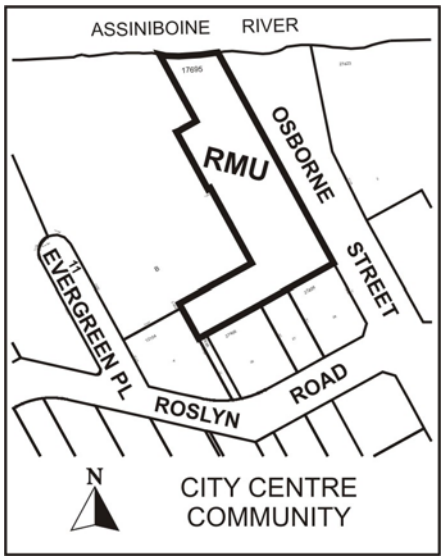
Department	Planning, Property and Development
Division	Planning and Land Use Division
Prepared by	M. Robinson, AICP
Date:	June 30, 2010
File No.	DAZ 210/10

APPENDIX 'A'

DATE: June 30, 2010
FILE: DAZ 210/10
RELATED FILES: DAV 10-125925/D
COMMUNITY: City Centre Community
NEIGHBOURHOOD #: 1.117

SUBJECT: To rezone the subject property from "RMF-L" Residential Multiple Family District (Large) to an "RMU" Residential Mixed Use District (Large) to permit the establishment of commercial uses on the first floor of the building

LOCATION: 11 Evergreen PLACE
LEGAL DESCRIPTION: PCL A PLAN 17695 42 ST B



APPLICANT: Fillmore Riley LLP (Doug Fawcett)
1700-360 Main Street
WINNIPEG MB R3C 3Z3

OWNER: 57986 Manitoba Ltd.

RECOMMENDATION: Approval with conditions

SITE DESCRIPTION AND SURROUNDING LAND USES:
The subject property, which is currently zoned "RMF-L" Residential Multiple-Family (Large), is located on the west side of Osborne Street at the south bank of the Assiniboine River, in the Osborne Village neighbourhood of the Fort Rouge-East Fort Garry ward.

North: Assiniboine River
South: Commercial use zoned "C2" Commercial and multiple-family residences zoned "RMF-L" Residential Multi-Family (Large)
East: Osborne Street
West: Multi-family residences zoned "RMF-L" Residential Multiple-Family (Large)

DESCRIPTION OF THE PROPOSED DEVELOPMENT:
The applicant seeks approval to establish a ±1,400 square foot commercial office space (speech pathologist) in the basement of the subject multiple-family residential building.

The applicant requires a rezoning to "RMU" Residential Mixed Use District, in order to allow additional commercial development within this building.

ANALYSIS AND ISSUES:

Zoning
Currently, there are a number of offices on the first floor of the subject building, which were permitted under a previous zoning approval (DAV 37/81).

However, the current use which is proposed (speech pathologist) is classified as a personal service under the Zoning By-law 200/2006, and is not permitted without a change in zoning.

It should be noted that as part of the review of Zoning By-law 200/2006, the Planning, Property, and Development Department is recommending that commercial uses be allowed as conditional uses in all multiple-family residential zoning districts. If that occurs, future buildings that wish to add mixed use would not be required to rezone their properties.

Osborne Village Neighbourhood Plan
Plan Policy
As stated on page 3 of the Plan, the overall goal of the OVNP is "*to promote high quality urban development and redevelopment in Osborne Village in a manner that supports and enhances the neighbourhood and advances the urban village concept".* Moreover, one of the principle objectives of the plans is to "*Maintain a balance of complementary land uses"*.

Throughout the development of the plan, a central point of concern for the community was the location of uses in appropriate areas. More specifically, there was significant concern about the potential spread or 'incursion' of commercial uses from Osborne Street into the surrounding residential areas. While low-intensity mixed use buildings are encouraged in the Plan in some residential areas, the majority of higher-intensity commercial uses should be contained in the Commercial designated areas of the Plan.

The proposed rezoning is consistent the goals and objectives of the plan, as there is no substantive change to the urban form of the site, the rezoning recognizes the long mixed use history of the building, and the low-intensity office and personal service uses are "complementary" with the surrounding area. Moreover, the site is immediately adjacent to Osborne Street and Village Character Commercial area, and the proposed uses will not adversely impact residential properties in the area.

4.0 Residential Element of the OVNP

As identified under 4.0 Residential Element "Issue Identification", the encroachment of commercial uses was indentified as a significant concern during development of the OVNP. The policies within the plan, specifically 4.1.1 Common Residential Policies and 4.1.4 Village High Density Residential (V-LDR) Policies, were written with the intent of prohibiting the intrusion of primarily commercial buildings and uses into the residential areas. It is not the intent of the plan to prohibit mixed-use buildings with live-work units or with low-intensity commercial or office uses on the ground floor, as outlined by the following:

4.1.1.E Discourage expansion of stand-alone commercial development into residential area, other than as indicated above

4.1.3 D Mixed use buildings combining residential with low-intensity office or commercial uses on the ground floor may be approved on River & Stradbrook avenues east of Osborne Street

4.1.4.B Mixed use buildings combining residential with low-intensity office or commercial uses on the ground floor may be approved on river avenue and Wellington Crescent.

The above policies provide guidance on where new mixed use buildings 'may' be appropriate within the Residential designated areas of Osborne Village. While 4.1.4.B is the most relevant policy in regards to the 11 Evergreen Place rezoning application, and a wide consideration of mixed-use buildings throughout the area is not advocated or endorsed, it was not the intent of the plan to prohibit the recognition or continued use of existing mixed-use buildings in the Residential designated areas, such as 11 Evergreen Plan.

The rezoning of 11 Evergreen Place to 'recognize' existing low-intensity uses in the structure that have existed for some time, and to allow for minor modification to these existing low-intensity uses is not contrary to the spirit and intent of:

- The OVNP, including its overall goals and objectives
- The Residential Element, particularly as it relates to the primary goal of prohibiting substantial commercial development and intrusion into Residential areas.

Conditions

With that said, it is recommended that the overall square footage of commercial space and the floors in which it can be located within the building be limited to ensure that commercial uses are ancillary to the principal residential use.

RECOMMENDATIONS:

The Planning and Land Use Division recommends **approval** for the following reasons:

- The rezoning recognizes existing low-intensity uses in the structure that have existed for some time
- The rezoning is not contrary to the spirit and intent of:
  - The OVNP, including its overall goals and objectives
  - The Residential Element of the OVNP, particularly as it relates to the primary goal of prohibiting substantial commercial development and intrusion into Residential areas.
- The rezoning is compatible with the area
- The rezoning will not have an adverse impact on surrounding properties

This Report Submitted by:
Planning, Property and Development Department
Planning and Land Use Division
Report Prepared by: M. Robinson, AICP
PPD File # DAZ 210/10

APPENDIX "B"

Schedule "A" for File No. DAZ 210/2010, City Centre Community Committee, dated June 30, 2010

By-Law No. _____

File No. **DAZ 210/10**

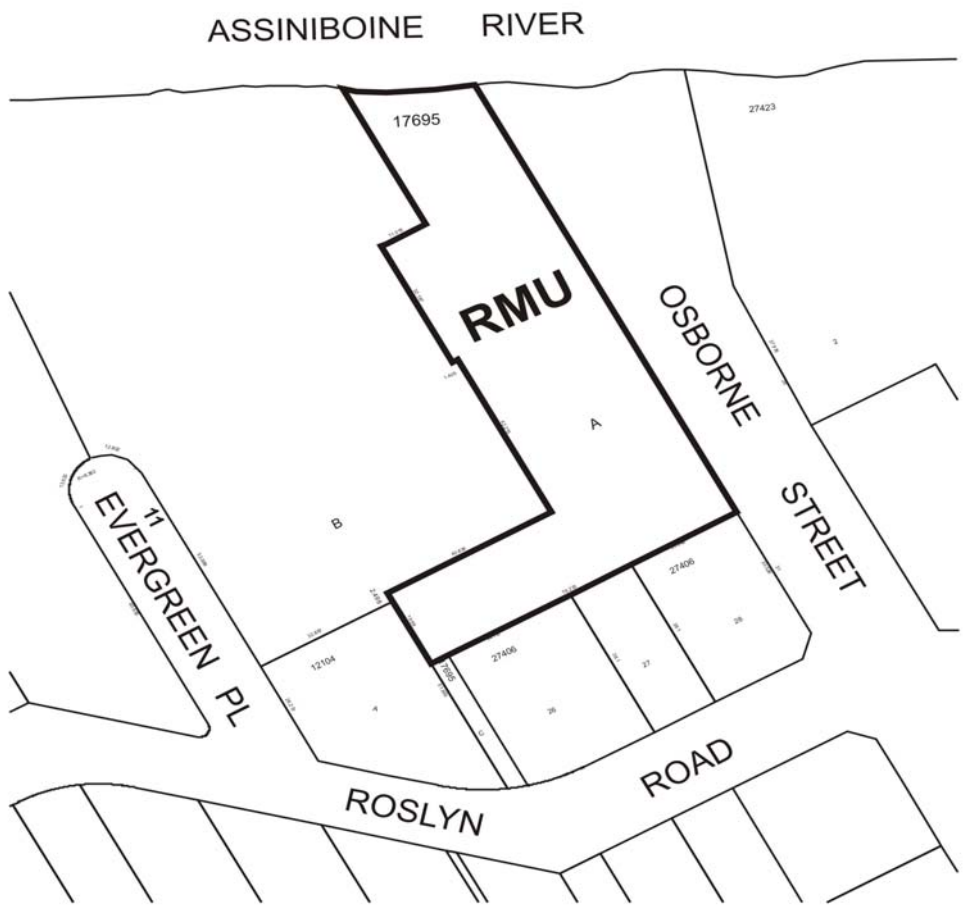
Explanation

A proposed zoning change to By-law No. 200/2006 by rezoning the land located at 11 Evergreen Place from an "RMF-L" RESIDENTIAL MULTI-FAMILY DISTRICT to an "RMU" RESIDENTIAL MIXED USE DISTRICT to allow for the establishment of a personal service use as shown outlined below.

Atlas Sheet No.

N

AB24
CITY CENTRE
COMMUNITY



THIRD READING : _____ EFFECTIVE DATE : _____

ZONING AGREEMENT : YES ☐ NO ☐ CAVEAT No. _____



Figure 1: Aerial Photo (Flown in 2009)