**Minute No. 73**
**Report "A" - Executive Policy Committee – November 28, 2012**

**Item No. 3 Zoning Agreement Amendment – 170 and 172 Fernbank Avenue (Old Kildonan Ward)**
**File ZAA 7/2012**

COUNCIL DECISION:

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

1. That Zoning Agreement under File DASZ 30/11, (By-law No. 63/12), be amended as follows:

   A. That Clause 3 be deleted and replaced with the following:

      That on Lot 10, no dwelling wall shall be closer than 20 feet to the easternmost limit of the property line that runs parallel to Main Street, as well as a projection of that property line segment straight north continuing parallel to Main Street. This setback requirement does not apply to the remaining angular segments of the actual property line abutting Main Street and Fernbank Avenue right-of-ways.

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 30/11, (By-law No. 63/12) 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 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.

**Report "A" - Executive Policy Committee – November 28, 2012**

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 November 28, 2012, 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 November 20, 2012, 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 – 170 and 172 Fernbank Avenue**
**File ZAA 7/2012**

**For submission to:** **Executive Policy Committee**

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

**Report date:** **November 21, 2012**

COMMUNITY COMMITTEE RECOMMENDATION:

On November 20, 2012, 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 under File DASZ 30/11, (By-law No. 63/12), be amended as follows:

   A. That Clause 3 be deleted and replaced with the following:

      That on Lot 10, no dwelling wall shall be closer than 20 feet to the easternmost limit of the property line that runs parallel to Main Street, as well as a projection of that property line segment straight north continuing parallel to Main Street. This setback requirement does not apply to the remaining angular segments of the actual property line abutting Main Street and Fernbank Avenue right-of-ways.

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 30/11, (By-law No. 63/12) 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 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.

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

1. The subject application helps address the need for housing in the area.

## PUBLIC HEARING SUMMARY

File: ZAA 7/2012

Before: Lord Selkirk-West Kildonan Community Committee
Councillor Pagtakhan, Chairperson
Councillor Eadie

Public Hearing: November 20, 2012
West Committee Room
Council Building, 510 Main Street

Applicant: Habitat for Humanity
(Sandy Hopkins/Christiane Pham)

Subject:




Premises Affected: 170 and 172 Fernbank Avenue

Exhibits Filed:

1. Application dated September 7, 2012
2. Notification of Public Hearing dated October 25, 2012
3. Manitoba Status of Titles 2585541/1 and 2609683/1
4. Surveyor's Building Location Certificates and sketches dated May 11, 2012 and September 8, 2012
5. Caveat No. 88 – 6877
6. DASZ 30/2011
7. Air Photo
8. Plans (8 pages)
9. Report from the Planning and Land Use Division dated November 9, 2012
10. Inspection Report
11. Audio Recording of representations

REPRESENTATIONS:

In Support:

Ronald Dacombe, Habitat for Humanity
Sandy Hopkins, Habitat for Humanity
Christiane Pham, Habitat for Humanity

In Opposition

Nil

For Information:

Nil

For the City:

Mr. N. Yauk, Planner, Planning, Property and Development Department

Exhibit "9" referred to in File ZAA 7/2012

# ADMINISTRATIVE REPORT

**Title:** ZAA 7/12 – 170 Fernbank Avenue

**Issue:** For consideration at the Public Hearing to amend the Zoning Agreement to allow:

- An east corner side yard of 5.9 feet.

**Critical Path:** Lord Selkirk – West Kildonan 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 Zoning Agreement under File DASZ 30/11, (By-law No. 63/12), be amended as follows:

   A. That Clause 3 be deleted and replaced with the following:

   *That on Lot 10, no dwelling wall shall be closer than 20 feet to the easternmost limit of the property line that runs parallel to Main Street, as well as a projection of that property line segment straight north continuing parallel to Main Street. This setback requirement does not apply to the remaining angular segments of the actual property line abutting Main Street and Fernbank Avenue right-of-ways.*

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 30/11, (By-law No. 63/12) 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 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.

## REASON FOR THE REPORT

- Habitat for Humanity is requesting a reduction to the east corner side yard for the building on Lot #10, 170 Fernbank Avenue.
- The property has a Zoning Agreement caveated on the Certificate of Title by the City of Winnipeg, of which one of the clauses restricts the east corner side yard to 26.24 feet.
- The owner has applied to amend the Zoning Agreement to allow a reduced yard, which at its smallest point will be 5.9 feet to the east property line.
- A zoning agreement amendment requires a Public Hearing as per the *Development Procedures By-law* and *The City of Winnipeg Charter.*
- The Report is being submitted for the Committee's consideration of the development application at the Public Hearing.

## IMPLICATIONS OF THE RECOMMENDATIONS

- If the recommendations of the Planning and Land Use Division are concurred in, the subject clause will be amended to allow the building footprint as proposed.

## HISTORY

**DASZ 30/11**

- On November 16, 2011, Council recommended approval of the application DASZ 30/11 to rezone the subject property to an *'R2' Residential Two-Family* District" to allow the development of duplexes for Habitat for Humanity.
- The rezoning included a Zoning Agreement.

## CONSULTATION

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

## SUBMITTED BY

| | |
|---|---|
| Department | Planning, Property and Development |
| Division | Planning and Land Use |
| Date: | November 9, 2012 |
| File No. | ZAA 7/12 |

**APPENDIX 'A'**

**DATE:** November 9, 2012

**FILE:** **ZAA 7/12**
**RELATED FILES:** DASZ 30/11

**COMMUNITY:** Lord Selkirk / West Kildonan
**NEIGHBOURHOOD #:** 3.32 (Riverbend)

**SUBJECT:** For consideration at the Public Hearing to amend the Zoning Agreement related to uses by adding amending Clause 3 which restricts the east corner side yard to a minimum of 26.24 feet.

**LOCATION:** 170 Fernbank Ave

**LEGAL DESCRIPTION:** Lot 10 (DASZ 30/11)




**APPLICANT:** Sandy Hopkins / Habitat for Humanity
60 Archibald Street
R2J 0V8

**Owner:** Sandy Hopkins / Habitat for Humanity
60 Archibald Street
R2J 0V8

**RECOMMENDATION:** Approval

**REPORT SUMMARY**

- Habitat for Humanity is requesting a reduction to the east corner side yard for the building on Lot #10, 170 Fernbank Avenue.
- The property has a Zoning Agreement caveated on the Certificate of Title by the City of Winnipeg, of which one of the clauses restricts the east corner side yard to 26.24 feet.
- The applicant has applied to amend the Zoning Agreement to allow a reduced yard, which at its smallest point will be 5.9 feet to the east property line.
- The Urban Planning Division recommends the application be approved as the building layout meets the intent of the subject zoning agreement clause and the satisfaction of the Public Works Department, the entity responsible for the inclusion of the said clause.

**SITE DESCRIPTION**

Land Use and Zoning

The subject site is located at the northwest corner of Main Street and Fernbank Avenue and is zoned “R2” Residential Two-Family District. The site is currently being developed with the construction of several side-by-side habitat for humanity duplexes. The site is located in the Riverbend Neighbourhood of the Old Kildonan Ward.

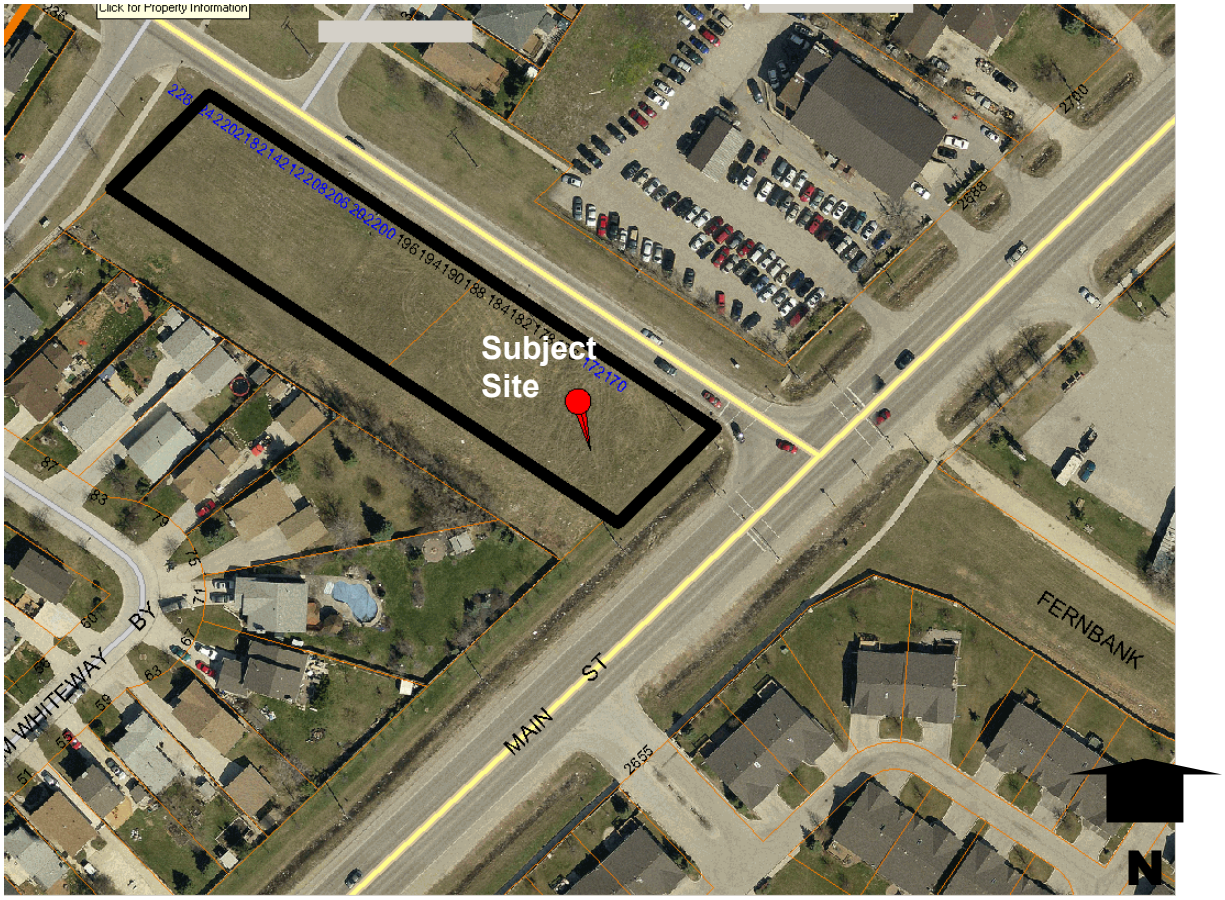


**Figure 1: Approximate Boundary of the Subject Site (Aerial Flown 2012)**

**SURROUNDING LAND USES & ZONING**

**North:** The Intersection of Main Street and Fernbank Avenue, then a church zoned "R1-M" Residential District.

**South:** A public lane, then single-family homes fronting William Whiteway Bay zoned "R1-M" Residential District.

**East:** Main Street, then duplexes zoned "RMF-M" Residential Multi-Family District

**West:** Riverstone Road, then single-family homes zoned "R2" Residential District.

**DESCRIPTION OF THE PROPOSED DEVELOPMENT**

- The applicant is in the process of constructing duplexes on the subject site and has run into an issue with a building setback required in the zoning agreement for Lot #10.
- The zoning agreement is written so as to require a setback of 26.24 feet along the length of the east property line for noise attenuation purposes. Noise attenuation considerations in the zoning agreement also include a requirement for a noise attenuation fence along the east property line. Both zoning agreement clauses were proposed by the Public Works Department.

- According to the applicant, issues have arisen with the building footprint as requirements needed to make the home wheelchair accessible have resulted in an increased building floor plate.
- It is noted that while most of the building is set back at least 20 feet from the east property line, a small portion of the building is within 5.9 feet of the east property line. It is further noted, that the shape of the lot has changed through DASZ 30/11 whereby the City acquired additional lands for the Main Street right-of-way. This has affected the site in such a way that it narrows westward moving northerly along Main Street to Fernbank Ave. Though portions of the building become closer to the east property line, they are still further away than any other portion of the building to the actual lanes of traffic on Main Street.
- Public Works has reviewed the revised plans and is comfortable with the proposed setbacks to Main Street, and the revised zoning agreement clause.
- While the zoning agreement setback effects the entire east property line, it was largely meant to consider the distance between the building and the most eastern extent of the property line, which used to continue in a straight line northward. Now, moving northward along the east property line, it tapers in to the west. This creates an angular property line and a decreased distance between the proposed home and the east property line where it tapers. The result is that the development is no closer to the lanes of traffic on Main Street than it is at any other point, but the distance between the home and the property line becomes less. The Administrative recommendation is to therefore re-write the clause to make the intent clearer.

**ANALYSIS AND ISSUES**

The merits of the proposed development have been considered in the subdivision and rezoning application, DASZ 30/11. The subject site is located within the Areas of Stability – Recent Communities policy area of the *Complete Communities Direction Strategy.*

- A key policy guiding the development of Areas of Stability is to:
    - Support low to moderate change in low-density neighbourhoods through development and redevelopment that is complementary the existing scale, character and built form.

ZONING AGREEMENT

While all of the proposed side yard setbacks meet the requirements of zoning by-law 200/2006 for the “R2” Zoning District, the zoning agreement legally requires a building setback of 26.24 feet to the east property line. This is a result of the property’s proximity to Main Street, which is a Regional Corridor. The intent of the clause, in tandem with a separate clause requiring a noise attenuation fence to be constructed along the east property line is to reduce the impact of noise from traffic on Main Street on the subject dwelling. Both clauses were proposed by the City’s Public Works Department, and therefore, added to the zoning agreement.

*The* applicant has indicated that this requirement has been difficult to meet because of the need to construct the dwelling with wheelchair accessibility in mind. This has simply increased the building footprint needed which bring the dwelling closer to the east property line.

Further complicating issues is that the zoning agreement is written in such a manner that the setback relates to the entire east property line and not the actual distance to the traffic lanes on Main street. The result is that portions of the building that are closest to the east property line are actually much further away from the travel lanes on Main Street than those set back the furthest from the east property line. As originally written this setback to the east property line presents a significant challenge to development on the site. Given the intent of the clause which is to provide a reasonable distance between the development and Main Street the Public Service recommends the clause be reworded to enable the proposed footprint and to protect the setback in the future. Simply allowing the applicant's proposed 5.9 foot setback would not necessarily guarantee an appropriate setback should site plans change in the future. For example, this would allow the southernmost portion of the building to also be moved easterly thus bringing the development even closer to Main Street. The proposed clause attempts to set a reasonable distance between the dwelling and the easternmost extent of the property where it is its widest and is closest to the lanes of traffic on Main Street and have this measurement line project straight northward, at the point where it currently tapers to the west. The existing clause is proposed to be worded as follows:

> *That on Lot 10, no dwelling wall shall be closer than 20 feet to the easternmost limit of the property line that runs parallel to Main Street, as well as a projection of that property line segment straight north continuing parallel to Main Street. This setback requirement does not apply to the remaining angular segments of the actual property line abutting Main Street and Fernbank Avenue right-of-ways.*

Should any confusion arise in the wording of the proposed clause, Figure 2 (below) illustrates the line as a red arrow to be used in measuring the east yard setback for the purposes of the zoning agreement. To lessen confusion, the east yard setback, for all intents and purposes, is measured to the former east property line as existed prior to DASZ 30/11.

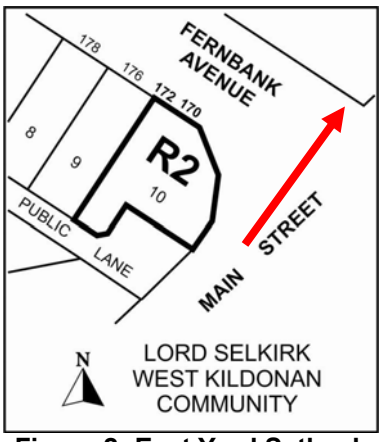


**Figure 2: East Yard Setback**

**RECOMMENDATION**

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

- The proposed amendment can accommodate a special circumstance and the original intent of the clause.
- The Public Work Department is satisfied with the proposed amendment and rephrasing of the clause.

This Report Submitted by:
Planning, Property and Development Department
Planning and Land Use Division

Report Prepared By: Noah Yauk
PPD File # ZAA 7/12