Agenda – Council – July 17, 2013

Report – Executive Policy Committee – July 10, 2013

Item No. 9 Zoning Agreement Amendment – 63 William Whiteway Bay (Old Kildonan Ward) File ZAA 5/2013

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 10, 2013, the Executive Policy Committee concurred in the recommendation of the Lord Selkirk-West Kildonan Community Committee and submitted the following to Council:

1. That Zoning Agreement under File DASZ 3/87, (By-law No. 4699/87), be amended as follows:

   A. That Clause 2 be deleted and replaced with the following:

      No portion of any wall of any principal building shall be located closer than 55.4 feet to the westerly limit of the Main Street right-of-way.

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 3/87, (By-law No. 4699/87) 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 – Executive Policy Committee – July 10, 2013

DECISION MAKING HISTORY:

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On July 10, 2013, 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 July 9, 2013, 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 - 63 William Whiteway Bay**
File ZAA 5/2013

For submission to: **Executive Policy Committee**

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

Report date: **July 9, 2013**

COMMUNITY COMMITTEE RECOMMENDATION:

On July 9, 2013, the Lord Selkirk-West Kildonan Community Committee concurred in the recommendation of the Winnipeg Public Service and, via the Priority Rezoning Process, recommended to the Executive Policy Committee:

1. That Zoning Agreement under File DASZ 3/87, (By-law No. 4699/87), be amended as follows:

   A. That Clause 2 be deleted and replaced with the following:

      No portion of any wall of any principal building shall be located closer than 55.4 feet to the westerly limit of the Main Street right-of-way.

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 3/87, (By-law No. 4699/87) 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 Lord Selkirk-West Kildonan Community Committee agreed with the administrative comments contained in the report of the Planning and Land Use Division dated July 2, 2013.

PUBLIC HEARING SUMMARY

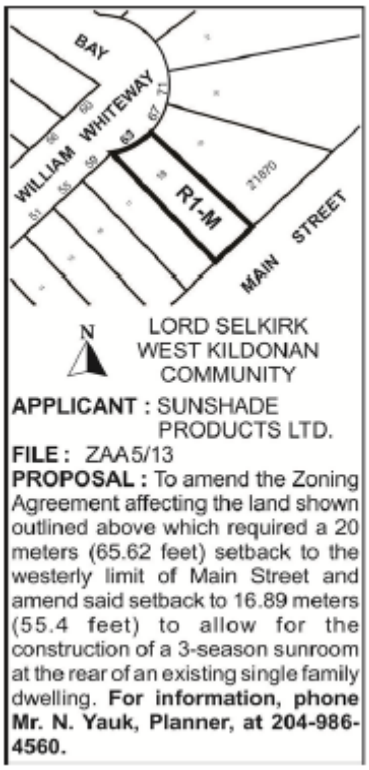
File: ZAA 5/2013

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

Public Hearing: July 9, 2013
Council Building, 510 Main Street

Applicant: Sunshade Products Ltd. (Brad DeSerrano)

Subject:



Premises Affected: 63 William Whiteway Bay

Exhibits Filed:

1. Application dated May 8, 2013
2. Notification of Public Hearing dated May 17, 2013
3. Manitoba Status of Title 1534910/1
4. Letter of authorization dated May 6, 2013 from Denis R. J. and Karen Louise Rodrigue to SunShade Products Ltd.
5. Surveyor's Building Location sketch

6. Caveat 88-6877
7. Plan
8. Report from the Urban Planning Division dated July 2, 2013
9. Inspection Report
10. Audio Recording of representations

REPRESENTATIONS:

In Support:

Brad DeSerrano, Sunshade Products Ltd.
Denis Rodrigue

In Opposition

Nil

For Information:

Nil

For the City:

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

Exhibit "8" referred to in File ZAA 5/2013

ADMINISTRATIVE REPORT

Title: ZAA 5/13 – 63 William Whiteway Bay

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

- A rear yard setback of 55.4 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
B. Smith	B. Thorgrimson	N/A	

RECOMMENDATIONS

1. That Zoning Agreement under File DASZ 3/87, (By-law No. 4699/87), be amended as follows:

   A. That Clause 2 be deleted and replaced with the following:

   No portion of any wall of any principal building shall be located closer than 55.4 feet to the westerly limit of the Main Street right-of-way.

2. That the Director of Legal Services and City Solicitor be requested to prepare the necessary Amending Agreement to Zoning Agreement DASZ 3/87, (By-law No. 4699/87) 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

- The property owner wishes to build a 3 season sunroom at the rear of their home.
- 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 yard setback to Main Street a minimum of 65.62 feet.
- The applicant is proposing a setback of 55.4 feet to accommodate the sunroom and therefore, requires a zoning amendment to do so.

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 proposed sunroom.

HISTORY

DASZ 3/87

- Council recommended approval of the application DASZ 3/87 to rezone the subject property to an *'R1' Residential Single-Family* District" to allow the development of single family homes.
- The rezoning included a Zoning Agreement. One clause of the zoning agreement is that any wall of a principal building cannot be closer than 20 metres.
- It is noted the zoning agreement setback clause was amended for 67 William Whiteway Bay under ZAA 28/88.

CONSULTATION

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

SUBMITTED BY

Department	Planning, Property and Development
Division	Planning and Land Use
Date:	July 2, 2013
File No.	ZAA 5/13

APPENDIX 'A'

DATE: July 2, 2013

FILE: **ZAA 5/13**

RELATED FILES: DASZ 3/87 (By-Law 4699/87)

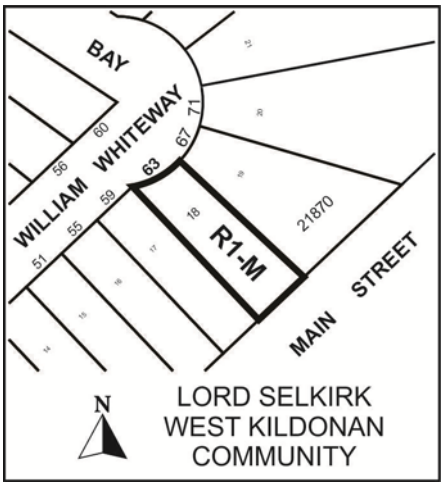
COMMUNITY: Lord Selkirk / West Kildonan

NEIGHBOURHOOD #: 3.32 (Riverbend)

SUBJECT: For consideration at the Public Hearing to amend the Zoning Agreement related to a yard setback by adding amending Clause 2 which requires a minimum setback to Main Street of 65.62 feet.

LOCATION: 63 William Whiteway Bay

LEGAL DESCRIPTION: Lot 18, Block 2, Plan 21870



APPLICANT: Sunshade Products Ltd (Brad DeSerranno)
265 Sutherland Avenue
R2W 2N5 WPG, MB

Owner: Denis and Karen Rodrique
63 William Whiteway Bay
R2W 4B7

RECOMMENDATION: Approval

REPORT SUMMARY

- The Urban Planning Division recommends the application be approved as the sunroom will still be set back more than 50 feet to the rear property line, and because there are

many other examples of residential dwellings along Main Street, approved more recently, with much smaller setbacks to Main Street.

- Precedent has been set for reduced yards along William Whiteway Bay. An example is ZAA 28/88 at 67 William Whiteway Bay, which amended the same zoning agreement clause.

SITE DESCRIPTION

Land Use and Zoning

The subject site is zoned "R1-M" Residential Single-Family District and is located on William Whiteway Bay, which backs onto Main Street between Fernbank Avenue and Red River BV W. 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: Single-Family Residences zoned "R1-M" Residential Single-Family District.
South: Single-Family Residences zoned "R1-M" Residential Single-Family District.
East: Main Street, then a series of side-by-sides and town homes zoned "RMF-M" Residential Multi-Family District.
West: William Whiteway Bay, then Single-Family Residences zoned "R1-M" Residential Single-Family District.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

- The property owner wishes to build a 3 season sunroom at the rear of their home.
- 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 yard setback to Main Street a minimum of 65.62 feet (20 metres).
- The applicant is proposing a setback of 55.4 feet to accommodate the sunroom and therefore, requires a zoning amendment to do so.

ANALYSIS AND ISSUES

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.

It is noted that the proposed sunroom does not alter the built form significantly and is consistent with OurWinnipeg.

ZONING AGREEMENT

While the proposed rear yard setback exceeds the minimum rear yard setback of 25 feet as prescribed in zoning by-law 200/2006 for the "R1-M" Zoning District, the zoning agreement legally requires a building setback of 66.62 feet. According to the Administrative Coordinating Group report from 1987, the setback is to protect the residence from traffic noise on Main Street.

Such clauses are common in zoning agreements to address concerns (such as noise) as identified in this case by the Public Work's Department. Though the proposed three season sunroom is technically part of the principal residential building that the zoning agreement setback applies to, one could argue that such a use is more accessory in nature and, therefore, meets the intent of the zoning agreement. It would be interesting to know whether the setback would have applied to a three season sunroom if one was contemplated during the rezoning stage of DASZ 3/87. The setback for a neighbouring property at 67 William Whiteway Bay was reduced to 61.87 feet under ZAA 28/88 shortly after the property was rezoned.

It should also be noted that the property is aware of any noise issues associated with having a yard that shares a property line with Main Street. In light of this, one could argue that any nuisance this development could incur would be self-imposed by the property owner. One could also argue that a the three season sunroom could increase the enjoyment or use of the back yard for its residents simply by its existence as a buffer to traffic noise on Main Street. This is suggesting that traffic noise from Main Street would be less prevalent inside a 3 season sunroom then within an unprotected rear yard.

Lastly, it is noted that a precedent for reduced yards to residential structures has already been set by newer development including the duplexes and town homes located directly across Main Street from the subject site, which were built in 1998 and contain yard setbacks of about 30 feet.

RECOMMENDATION

The Urban Planning Division recommends the application be approved because:

- The sunroom will still be set back more than 50 feet to the rear property line, and because there are many other examples of residential dwellings in the areas which back onto Main Street with much smaller setbacks to Main Street.
- Other neighbouring residential properties have much smaller setbacks to Main Street.

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

Report Prepared By: Noah Yauk
PPD File # ZAA 5/13