Minute No. 144
Report – Standing Policy Committee on Property and Development – January 13, 2015

Item No. 2 Rezoning – 154 Albany Street
(St. James – Brooklands Ward)
File DAZ 232/2014 [c/r DAV 154552/2014D

COUNCIL DECISION:

Council concurred in the recommendation of the Standing Policy Committee on Property and Development and adopted the following:

1. That the application to amend the Winnipeg Zoning By-law No. 200/2006 by rezoning the subject land as shown on Schedule "A" for File DAZ 232/2014 [c/r DAV 154552/2014D] dated November 25, 2014 to an "R1-S" Residential Single Family, Small District, be rejected.

Report – Standing Policy Committee on Property and Development – January 13, 2015

DECISION MAKING HISTORY:

Moved by Councillor Orlikow,

That the recommendation of the Standing Policy Committee on Property and Development, that the application be rejected, be adopted by consent.

Carried

EXECUTIVE POLICY COMMITTEE RECOMMENDATION:

On January 21, 2015, the Executive Policy Committee concurred in the recommendations of the Standing Policy Committee on Property and Development and the Assiniboia Community Committee, and submitted the matter to Council.

STANDING COMMITTEE RECOMMENDATION:

On January 13, 2015, the Standing Policy Committee on Property and Development concurred in the recommendation of the Assiniboia Community Committee and submitted the matter to the Executive Policy Committee and Council.

COMMUNITY COMMITTEE RECOMMENDATION:

On December 2, 2014, the Assiniboia Community Committee concurred in the recommendation of the Winnipeg Public Service and forwarded to the Standing Policy Committee on Property and Development.

RE: **Rezoning - 154 Albany Street**
File DAZ 232/2014

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

Prepared by: **Destiny Watt, Senior Committee Clerk**
Assiniboia Community Committee

Report date: **December 3, 2014**

COMMUNITY COMMITTEE RECOMMENDATION:

On December 2, 2014, the Assiniboia Community Committee concurred in the recommendation of the Winnipeg Public Service and recommended to the Standing Policy Committee on Property and Development that the application to amend the Winnipeg Zoning By-law No. 200/2006 by rezoning the subject land as shown on Schedule "A" for File DAZ 232/2014 [c/r DAV 154552/2014D] dated November 25, 2014 to an "R1-S" Residential Single Family, Small District, be rejected.

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

1. Concur with the rational of the Planning, Parks and Public Works Departments as submitted in the administration report.

2. The homeowners purchased the property with full knowledge of its present conditional zoning.

PUBLIC HEARING SUMMARY

File: DAZ 232/2014

Before: Assiniboia Community Committee
Councillor Gillingham, Chairperson
Councillor Morantz
Councillor Dobson

Public Hearing: December 2, 2014
Council Building, 510 Main Street

Applicant: Richard Wintrup and Associates
(John Wintrup)

Subject:



Premises Affected: 154 Albany Street

Exhibits Filed: 1. Application dated October 8, 2014

2. Notification of Public Hearing dated October 16, 2014
3. Manitoba Status of Title 2107236/1
4. Letter of authorization dated May 28, 2014 from Shona Scappaticci (nee Goulden) to John Wintrup
5. Surveyor's Building Location Certificate and sketch dated August 11, 2014
6. Communication dated November 24, 2014, from Jeff and Judy Horkoff in opposition to the application
7. Communication dated November 25, 2014, from Frank and Diane Roberts in opposition to the application
8. Communication dated November 25, 2014, from Ann Carney in opposition to the application
9. Communication dated November 26, 2014, from Pat and Frank Le Clair in opposition to the application
10. Report from the Urban Planning Division dated November 25, 2014
11. Inspection Report
12. Communication dated December 2, 2014, from Ellen Jenkinson in opposition to the application, submitted by Ann Carney
13. Petition in opposition to the application purporting to contain the signatures of thirty two (32) area residents, submitted by Ann Carney
14. Communication dated December 1, 2014, from Ryan Bartley, Judy Lindsay Team Realty, with respect to the application, submitted by John Wintrup at the public hearing
15. Communication dated December 1, 2014, from Kevin Olson in support of the application, submitted by John and Shona Scappaticci at the public hearing
16. Petition in support of the application purporting to contain the signatures of ten (10) area residents, submitted by John and Shona Scappaticci at the public hearing
17. Communication dated November 30, 2014, from Shawnee Scatliff in support of the application, submitted by John and Shona Scappaticci at the public hearing
18. Communication dated December 2, 2014, from Linda Kennedy in support of the application, submitted by John and Shona Scappaticci at the public hearing
19. Communication dated November 25, 2014, from Rhonda Filbey in support of the application, submitted by John and Shona Scappaticci at the public hearing

20. Communication dated December 2, 2014, from Constance Menzies in support of the application, submitted by John and Shona Scappaticci at the public hearing
21. Communication dated November 11, 2014, from Max Popp in support of the application, submitted by John and Shona Scappaticci at the public hearing
22. Communication dated November 11, 2014, from Anne McKeown in support of the application, submitted by John and Shona Scappaticci at the public hearing
23. Communication dated November 28, 2014, from Nancy Cherewayko in support of the application, submitted by John and Shona Scappaticci at the public hearing
24. Communication dated December 2, 2014, from Ron Guille, in support of the application, submitted by John and Shona Scappaticci at the public hearing
25. Communication dated December 2, 2014, from Stephen Carney in opposition to the application
26. Audio Recording of representations

REPRESENTATIONS:

In Support:
Nancy Cherewayko
Ron Guille
Rhonda Filbey
Linda Kennedy
Anne McKeown
Constance Menzies
Kevin Olson
Max Popp
John and Shona Scappaticci
Shawnee Scatliff
John Wintrup, Richard Wintrup and Associates

In Opposition
Ann Carney
Stephen Carney
Jeff and Judy Horkoff
Ellen Jenkinson
Scott and Sheelagh Komus
Pat and Frank Le Clair
Frank and Diane Roberts

For Information:
Tim Friesen
Michael Epp and Ritea Lefko

For the City:
Mr. D. Clark, Planner, Urban Planning Division, Planning, Property and Development Department
Ms D. Beaton, Landscape Architect, Urban Planning Division, Planning, Property and Development Department

Exhibit "10" referred to in File DAZ 232/2014

ADMINISTRATIVE REPORT

Title: DAZ 232/14 – 154 Albany Street

Issue: An application for consideration at the Public Hearing to rezone the land from "PR1" Airport PDO Vicinity Parks and Recreation to R1-S Residential Single Family Small Airport PDO Vicinity.

Critical Path: Assiniboia 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	N/A	N/A	

RECOMMENDATIONS

1. That the application to amend the Winnipeg Zoning By-law No. 200/2006 by rezoning the subject land as shown on Schedule "A" for File DAZ 232/14 dated November 25, 2014 to an "R1-S" Residential Single Family, Small District, be rejected.

REASON FOR THE REPORT

- The applicant is proposing to rezone the site from "PR1" Parks and Recreation to "R1-S" Residential Single-Family – Small.
- Rezoning applications require 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 Urban Planning Division are concurred in, the subject site will not be rezoned.

HISTORY

- The subject lot now known as 154 Albany Street is legally described as, Lot 1, Block 1, Plan 2115, registered in the Land titles Office in 1913.
- The lot is 33 feet wide by 105 feet in depth
- The existing single family dwelling at 154 Albany was built in 1918 prior to any Zoning By-law regulations.
- Under the St. James Planning Scheme, 1960 the land was zoned R1 which allowed the single family residential use.
- 1962 – 154 Albany and an adjacent house were hooked up to sewer and water by the City of St. James with the proviso that the City would be given first right of refusal if these houses were offered for sale.
- 1967 – A permit was issued for an 11 foot by 7 foot porch in addition to the southwest corner of the existing dwelling. The application indicated the lot was 50 feet wide, when in fact it is 33 feet wide, thus the addition was built beyond the south property line encroaching onto City land.
- October 20, 1970 the St. James – Assiniboia By-law 1558 came into force and effect and the lot was part of lands identified as Bruce Park and was zoned 'PR' Parks and Recreation.
- In 1979 the City was presented with an offer to purchase the dwelling at 156 Albany, adjacent to the subject property. On November 3, 1979, the Committee on Environment submitted a report to The Board of Commissioners requesting the approval of acquisition of the subject property for Parks purposes. On January 8, 1980 The Committee on Finance approved the acquisition and authorized the Director of Land surveys and Real state Department to negotiate acquisition of the subject property. The following is from the report submitted to Board of Commissioners:

  > *Bruce Park is an extremely attractive and well used neighbourhood park. The immediate presence of private residences within a park area is not a desirable situation regarding either the property owner or the City…It would therefore be advantageous to the City to acquire and consolidate the subject properties within the adjacent public park*.

- 2005 – 154 Albany came up for sale. The City of Winnipeg Real Estate department was not able to get authorization or the funds to purchase the property.
- Emails sent at that time by a retired City Real Estate Officer indicated discussions with Ms. Shona Goulden where she was informed by the City that the property was Park zoned and the house was subject to development/renovation constraints due to its non-conforming use status.
- Sometime after 2005 a deck was built without permits attached to the south side of the house encroaching in City Park lands.
- In 2007, the owner of the property at 154 Albany applied to the City for a rezoning of the land from PR to R1. That application was subsequently withdrawn. However, as part of the application the owner provided a survey that indicated part of the building encroached onto the City park land to the south.
- The homeowner pays $113.00 a year in an encroachment fee.
- June 7, 2013 – A letter from the City's Chief Planner was sent to the current land owner indicating a rezoning could not be supported.

CONSULTATION

In preparing this report there was consultation with:
Parks
Water and Waste
Public Works

SUBMITTED BY

Department	Planning, Property and Development
Division	Urban Planning Division
Prepared by:	Devin Clark
Date:	November 25, 2014
File No.	DAZ 232/14

List of Schedules and Attachments

1. Appendix A – Planning Discussion
2. Schedule "A" Recommended File No. DAZ 232/14 Assiniboia Community Committee, dated November 25, 2013

APPENDIX 'A'

DATE: November 25, 2014

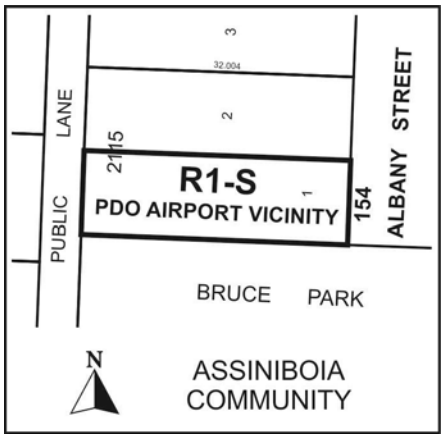
FILE: DAZ 232/14
RELATED FILES: N/A

COMMUNITY: Assiniboia
NEIGHBOURHOOD #: 2.204

SUBJECT: To rezone the land from "PR1" Parks and Recreation to "R1-S" Residential Single Family – Small

LOCATION: 154 Albany Street

LEGAL DESCRIPTION: LOT 1 BLOCK 1 PLAN 2115



APPLICANT: John Wintrup J. Wintrup Consulting Ltd.
139 ROSLYN RD UNIT 301
WINNIPEG MB R3L 0G7

OWNER: Shona Ann Shirley Scappaticci
154 Albany St.
WINNIPEG MB R3J 2A7

RECOMMENDATION: Rejection

REPORT SUMMARY

- The applicant is proposing to rezone the site from “PR1” Parks and Recreation 1 (Neighbourhood) to “R1-S” Residential Single Family – Small.
- The purpose of the rezoning is to allow the owners to expand and upgrade their existing dwelling. Details of the level of expansion and upgrades have not been included in the submitted application.
- The Urban Planning Division recommends rejection of this application

SITE DESCRIPTION

- The subject property is located north of Deer Lodge Place and takes access from a public lane in the Bruce Park neighbourhood of the St. James – Brooklands ward.
- The site is 3,465 square feet and is currently occupied by a single storey dwelling with a building area of 837 square feet. The dwelling was constructed in 1918.
- Under the Complete Communities Direction Strategy, the site is located within Areas of Stability – Mature Communities.
- The subject property is zoned “PR1” Parks and Recreation 1 (Neighbourhood) District.

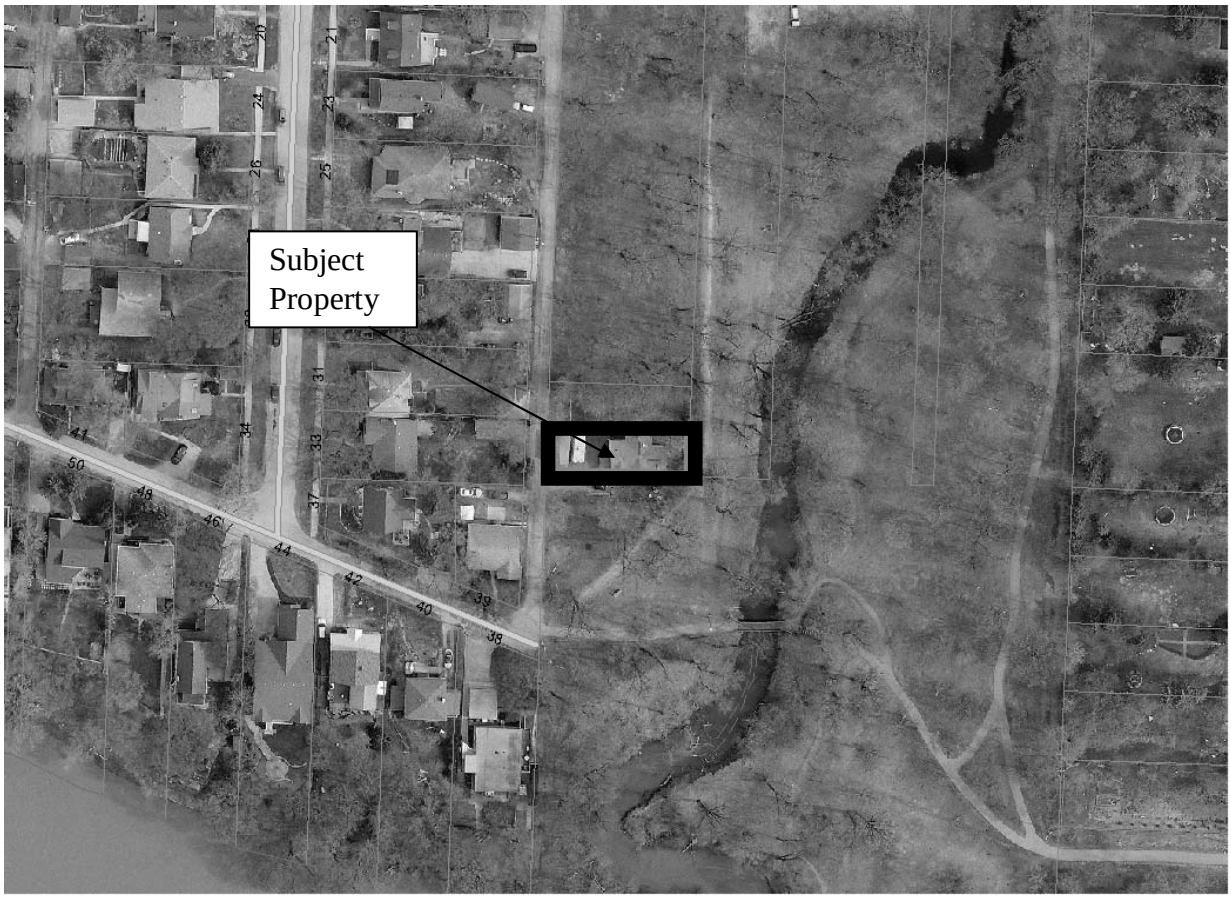


Figure 1: Aerial photograph showing subject property (flown 2014)

SURROUNDING LAND USES & ZONING (See Figure 2)

North: Park land associated with Bruce Park zoned "PR-1" Parks and Recreation 1.

South: Park land associated with Bruce Park zoned "PR-1" Parks and Recreation 1.

East: Park land associated with Bruce Park zoned "PR-1" Parks and Recreation 1.

West: Public lane then single family dwellings zoned "R1-L" Residential Single Family – Large.

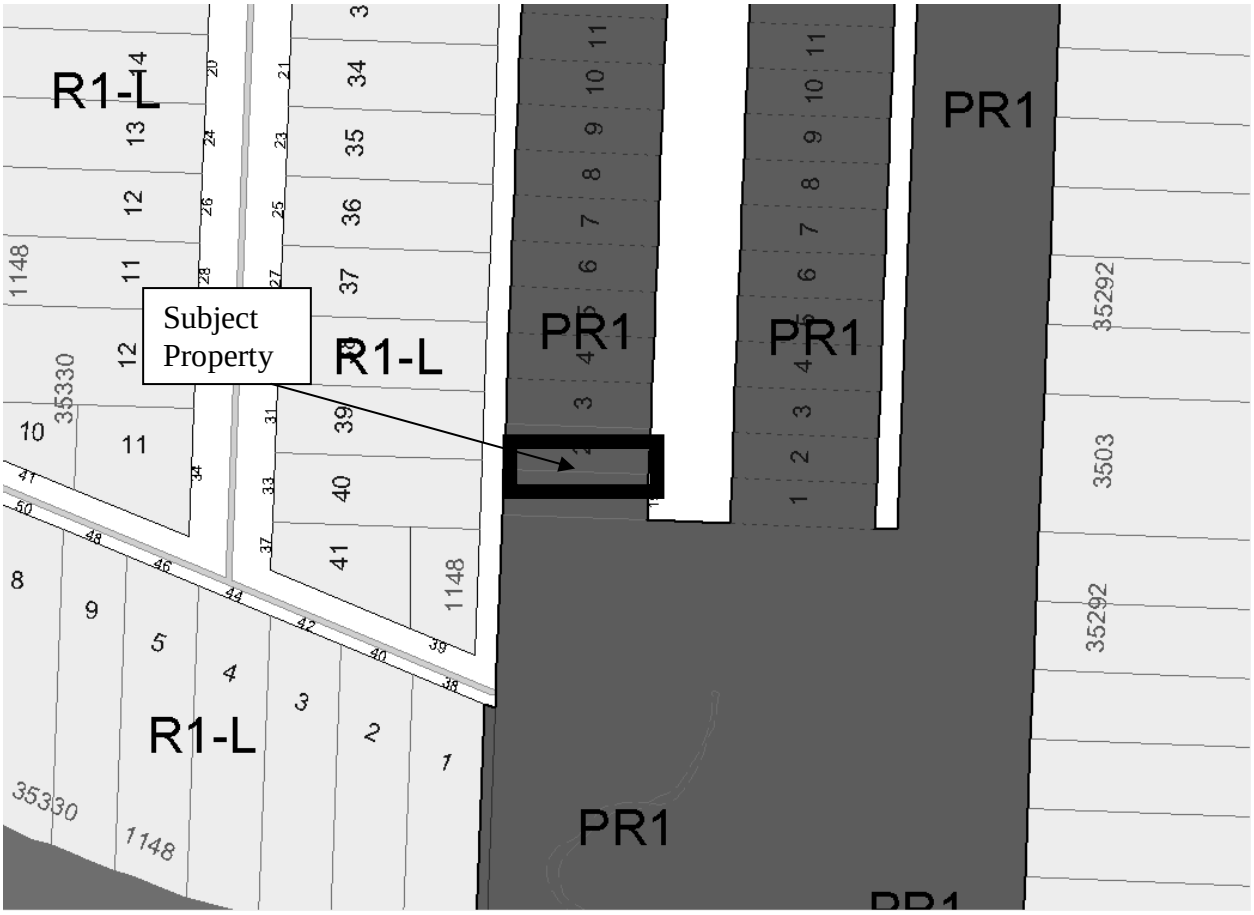


Figure 2: Zoning of the site and surrounding area.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

- The applicant is proposing to rezone the property from “PR1” Parks and Recreation to “R1-S” Residential Single Family – Small.
- The letter of intent submitted by the applicant indicates that the landowner’s intention is to:
    a) Extend the life of the structure for the residential land-use;
    b) Expand the residential building beyond the applicable district (PR1) dimensional standards but consistent & appropriate with the R1 Zoning District;
    c) Increase the floor area of the residential land-use to dimensions that are consistent & appropriate with the R1 Residential Zoning District;
    d) Repair the residential building if it is substantially damaged beyond 50 percent of the value of an equivalent building;

e) Repair and/or replace the residential building if the structure has been damaged or deteriorated from natural causes to the extent the cost of repair or renovation would exceed one hundred percent (100%) of its assessed value on the last revise roll; and

f) Secure Home Insurance for a residential dwelling.

- Detailed development plans have not been submitted with the application.

ANALYSIS AND ISSUES

OURWINNIPEG

Approach to City Building Direction 3: Promote Compact Urban Form and Manage the Extension of Municipal Services for new Growth - Enabling Strategies:

- Define 'full range of municipal services' as piped water, piped wastewater, piped land drainage, and an urban standard roadway.

- Enable the intensification of land-uses through the development application process only when a full range of municipal services is provided.

- Promote the extension of municipal services such as piped water, piped waste water, piped drainage and urban standard roadway, only in an environmentally-sound, economically and timely manner.

- Fulfill requests to extend servicing to private property through the Local Improvement process only where it can be demonstrated that there is a net financial benefit to the City of Winnipeg.

COMPLETE COMMUNITIES DIRECTION STRATEGY

- The site is located within the Areas of Stability – Mature Communities policy area. The key relevant policy guiding the development of Areas of Stability under the *Complete Communities Direction Strategy* includes:
    - Promote the form of buildings and spaces that are sensitive to the community context and address the transition between new and existing developments.
    - Focus housing growth to areas that have municipal service capacity to support intensification, in addition to commercial and recreational amenities.
    - Support Complete Communities by ensuring diverse and high quality housing stock.
    - In order to meet the full life-cycle of housing needs within the community, promote a mix of housing type and tenure, such as duplexes, low rise apartments, secondary suites, semi-detached homes, townhouses.

ZONING

"PR1" Parks and Recreation 1 (Neighbourhood)

The PR1 Zoning District is intended for sites that are generally passive neighbourhood and community parks and facilities with predominantly pedestrian and cyclist access. These sites may provide unstructured drop-in play and recreation opportunities, including play structures, passive parks, plazas and natural areas. Generally, there are no parking facilities associated with these uses. These parks and open spaces typically occur in a residential neighbourhood or riverbank context and are generally accessed by residential streets.

- Single family residential dwellings are not a Permitted or a Conditional Use in the PR1 Zoning District.
- Dimensional Standards for buildings are as follows:
    - Minimum lot area – NA
    - Minimum Lot Width – NA
    - Minimum Front Yard – 20 feet
    - Minimum Rear Yard – 25 feet
    - Minimum Side Yard – 8 feet
    - Maximum height of Building – 30 feet

"R1-S" Residential Single Family – Small

The Residential Single-Family (R1) district is intended to accommodate primarily single-family residential development in lower-density areas.

Dimensional Standards are as follows:

- Minimum lot area – 2,500 square feet
- Minimum Lot Width – 25 feet
- Minimum Front Yard – 15 feet
- Minimum Rear Yard – 25 feet
- Minimum Side Yard – 8 feet
- Maximum height of Building – 30 feet

NON-CONFORMING USES

<u>Prior Non-conformities Continue</u>

23. A protected non-conformity that existed prior to the effective date of this By-law remains a protected non-conformity for the purposes of this By-law. ***The intent of this By-law is to permit a non-conformity to continue until it is removed but not to encourage its survival.***

Structural Alterations

24. A building devoted to a non-conforming use may be structurally altered:

(1) To comply with a legal requirement;

(2) To accommodate a conforming use;

(3) To conform to the development standards of Part 5 (building dimensional standards); or

(4) In the course of an enlargement permitted in accordance with section 26, Expansion of Non-Conforming Use.

Repair or Incidental Alterations to a Non-Conforming Use

25. Repairs or incidental alterations to a building occupied by a non-conforming use may be made as follows:

(1) To the exterior of the building; and

(2) To those portions of the interior of the building occupied by the non-conforming use, or in connection with an expansion of the non-conforming use permitted in accordance with section 26, Expansion of Non-Conforming Use.

Expansion of Non-Conforming Use

26. A non-conforming use may be enlarged if:

(1) It is a single-family or two-family dwelling and the enlargement conforms to the applicable district dimensional standards; or

(2) The enlargement is required to comply with the provisions of this By-law related to off-street parking or loading spaces.

Repairs or Incidental Alterations to Non-Conforming Structure

29. Repairs or incidental alteration may be made to a non-conforming structure.

30. If a non-conforming building is damaged to the extent of 50 percent or less of the value of an equivalent new building, repairs or restoration that result in any non-conformity with the regulations for the district where it is located may be made if a building permit is obtained within 180 days of the date of damage, and restoration is actually begun within one year and is diligently pursued to completion. The determination of the reduced structural valuation will be made by the City, or, at the applicant's option, by a certified independent appraiser.

Expansion of Non-Conforming Structure

31. A non-conforming structure may be enlarged or extended, provided that the use of the structure conforms with the regulations of the applicable zoning district and the enlargement or

extension would not create a new non-conformity or increase the degree of non-conformity. The addition or enlargement shall conform to all the applicable zoning district dimensional standards in which the non-conforming structure is located.

Damage to a Non-Conforming Structure

32. The right to maintain a non-conforming structure shall terminate when;

(1) The structure is damaged, in any manner whatsoever, to the extent the cost of repairing such damage exceeds one hundred percent (100%) of the structure's assessed value on the last revised assessment roll; or

(2) The structure has been abandoned and/or deteriorated from natural causes to the extent that the cost of repair or renovation would exceed one hundred percent (100%) of its assess value on the last revised assessment roll.

- The applicant intends to rezone the property to a single family residential zoning district for the purposes of establishing the dwelling as a conforming use on the property. If the subject property is not rezoned then it must adhere to the aforementioned requirements with regard to non-conforming uses.

CITY OF WINNIPEG LAND USE BY-LAW 200/2006

Rezoning

- The applicant is proposing to rezone the land from "PR1" Parks and Recreation 1 (Neighbourhood) to "R1-S" Residential Single Family – Small for the purpose of establishing the property as a residential zoned lot.
- Zoning By-law 200/2006 indicates in section 23 that:

  The intent of this By-law is to permit a non-conformity to continue until it is removed but not to encourage its survival.

- The Urban Planning Division cannot support the rezoning as it would extend the life of a non-conforming use and encourage its survival, which is contrary to what the City wishes to see for the future of Bruce Park.

COMMENTS FROM OTHER DEPARTMENTS

Public Works

- The Public Works Department has reviewed the proposed rezoning on land located at 154 Albany Street (DAZ 232/14) and does not support this application as there is no frontage to an improved street. The public lane serving 154 Albany Street does not meet the City's current standards and during a snow event, the public lane would be the only point of access for Police, Fire and Ambulance Services. This puts extra pressure on the City's snow clearing operations and increases risk to the property residents.

- Fire and Safety has expressed concerns regarding the addressing of the property.

Parks

- In general, we do not want to support anything that is beyond what the property owners have a right to– specifically anything that would entrench this property as potentially being more permanent or more valuable.

    - This includes no yard variances or even a 1' tolerance.

- The City has always expressed an interest in the land becoming part of the park – it is unfortunate that this was never established as a caveat when services were permitted – but it was clearly stated and understood as the intended proviso. When the property wasn't purchased by the City previously, it was with the understanding that as a property with a non-conforming right, the property could only exist in its current state, (not be improved), until it was no longer habitable, or desirable, or the City was in a position to pursue acquisition. The thought at the time was that if someone could enjoy the property for a little longer then that worked fine for everyone. No one anticipated the Zoning By-law to open this property up to improvements which may make it more permanent. We'd likely have pursued acquisition with greater earnest back then.

- We are quite certain residents in the area (many of whom have been there long term) are aware of the intent for this to become part of the park, so may be concerned if the City supports anything other than what the resident has rights to currently

- We recommend the following:

    - We would not support a rezoning. That is contrary to what the long term intentions are.
    - We'd support a short term lease of the land but ONLY for the maintenance of existing features: the deck, the projecting entry way and the parking area – no additional amenities or improvements permitted within the leased area.

- We will not support a garage addition or house addition that is designed to rely on the use of the leased land for access: meaning - if a garage is added, the overhead door shall not be on the south side, such that it would forever require use of City land for access, and a building entry must provide a sufficient exterior landing so as to not require use of City land to enter or pass by it to get to the east yard.
- If the existing deck or entry area which projects onto City land is removed, modified, or damaged even if for a short period, it shall not be permitted to be replaced as a projection, but must be established within the legal property.
- The lease of City park land would terminate with the sale of the property – this should be established by Caveat.
- If at all possible, we'd like the lease to be conditional on City getting first right of refusal should the property be sold or at the very least, the lease would terminate, necessitating the removal of the projections, when the property sold.
    - Thus, if the City chooses not to renew the lease, the property owner must remove the encroachments/ projections within a timely fashion. Tto the best of my knowledge the property owner built the deck after purchasing the property without a permit – so it wasn't a pre existing condition. (photos in the Real Estate file from 2005 when the house was on the market does not have a deck).

- In the meantime, we will try to obtain permission / direction on potential funding to purchase the property, should that be the direction that the property owner wishes to pursue.

Water and Waste

- The subject property is connected to sewer and water services. 154 Albany and an adjacent house were hooked up to sewer and water by the City of St. James with the proviso that the City would be given first right of refusal if these houses were offered for sale.

Real Estate

- The Property Management Branch has received a proposal for the lease of lands adjacent to 154 Albany Street within Bruce Park.
- The lease area is part of an addition that was constructed in 1967. The addition's imprint extends beyond the owner's actual holdings and in the past the lease area has been treated as an encroachment, the rent being added to the owner's property tax bill.
- It was recently determined that the lease area cannot be considered an encroachment as it does not exist in a right-of-way and that a lease should be prepared.

RECOMMENDATION

- For the reasons stated above, the Winnipeg Public Service recommends that the application be rejected.

This Report Submitted by:

Planning, Property and Development Department
Urban Planning Division

Report Prepared By: Devin Clark
PPD File # DAZ 232/14

Schedule "A" for File No. DAZ 232/2014, Assiniboia Community Committee, dated November 25, 2014

By-Law No. _____

File No. **DAZ 232/14**

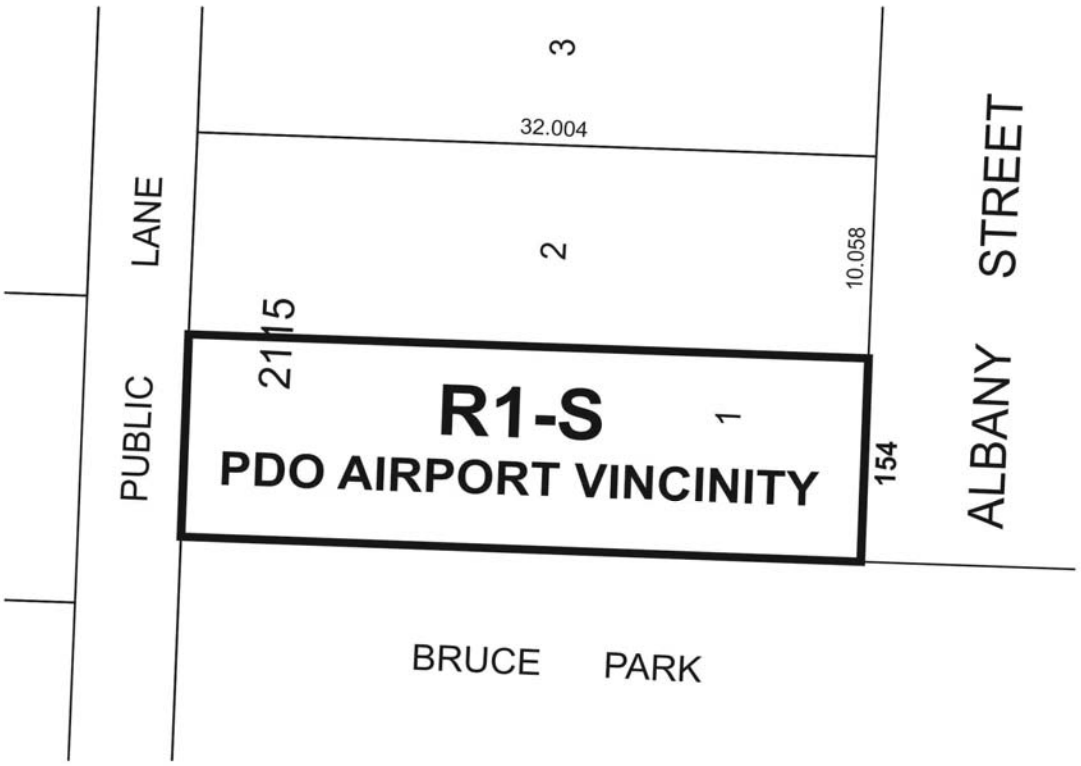
Atlas Sheet No.

N

AB18 ASSINIBOIA COMMUNITY

Explanation

A proposed zoning change to By-law No. 200/2006 by rezoning the land located at 154 Albany Street from a "PR1 PDO AIRPORT VICINITY" PARKS AND RECREATION 1 DISTRICT to an "R1-S PDO AIRPORT VICINITY" RESIDENTIAL SINGLE-FAMILY (SMALL) DISTRICT to allow for the maintenance and future expansion of an existing single family dwelling use as shown outlined below.



THIRD READING : _____ EFFECTIVE DATE : _____

ZONING AGREEMENT : YES ☐ NO ☐ CAVEAT No. _____