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File No.: Z-8152  
Planner: B. Debbert

TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	APPLICATION BY: GUS AGGELOPOULOS 404 – 408 PALL MALL STREET AND 660 COLBORNE STREET APPEAL TO THE ONTARIO MUNICIPAL BOARD MEETING ON OCTOBER 29, 2013

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning and City Planner, the following report regarding an appeal to the Ontario Municipal Board by George Namo and subsequent decision by the Ontario Municipal Board, **BE RECEIVED** for information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

May 28, 2013 – Staff report to the Planning and Environment Committee recommending approval of the requested addition of a restaurant, without a drive-through, to the list of permitted uses.

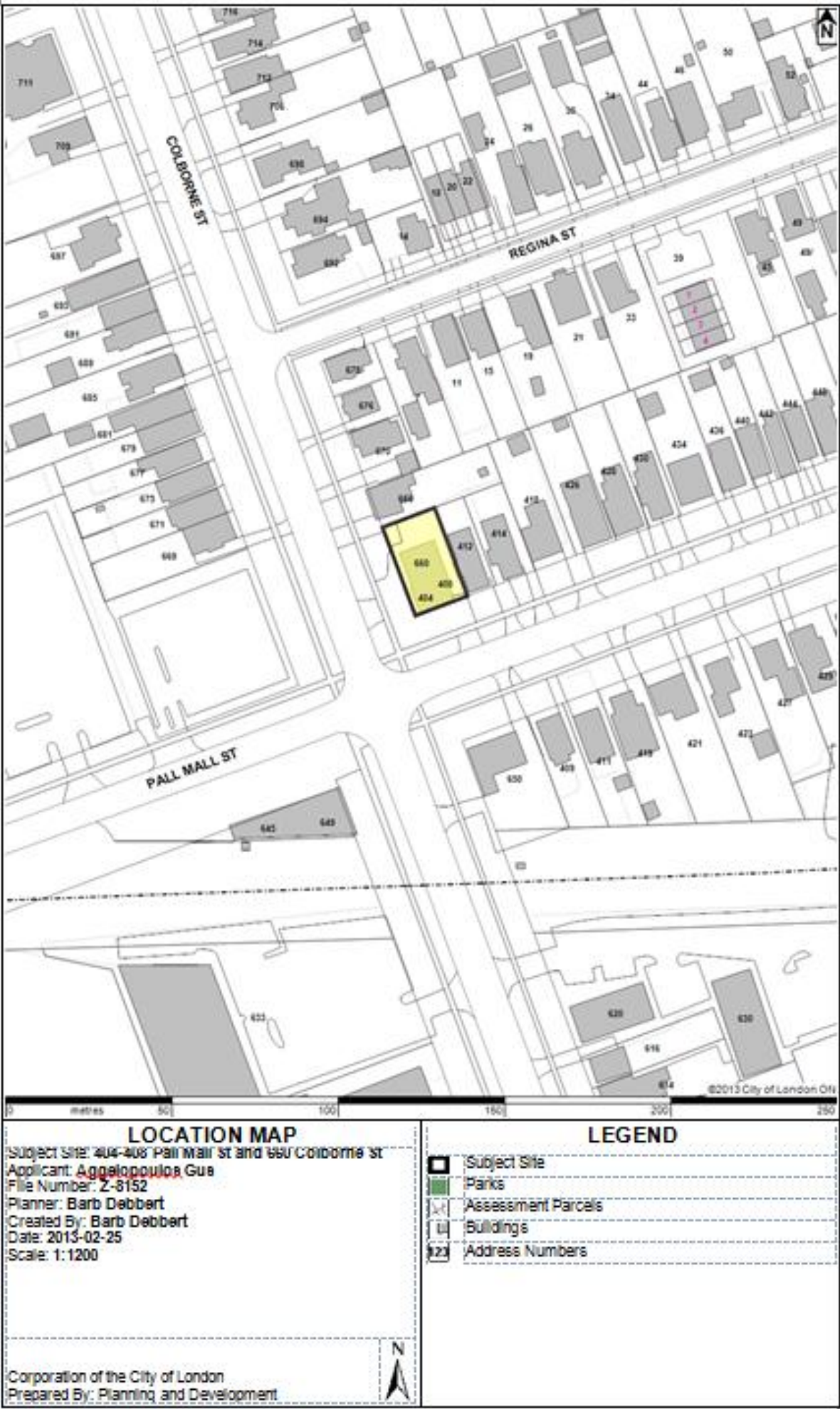
BACKGROUND

On June 11, 2013, Council approved a by-law to amend the Zoning By-law to permit a restaurant within the existing building, with a maximum gross floor area roughly equivalent to the area of the building previously occupied by Helen’s Variety.

On July 11, 2013, George Namo, the proprietor of Helen’s Variety, appealed Council’s decision, on the basis that:

- 1. *They changed my speech at the meeting, June, 2013*
- 2. *Most residents are against this amendment.*

TXK Inc. the owner of the subject property subsequently brought a motion to the Ontario Municipal Board to dismiss the appeal on the basis that there are no planning grounds.



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A telephone conference hearing was held on September 11, 2013. The OMB dismissed the appeal, and the zoning as adopted by Council is in force and effect.

PREPARED BY:	REVIEWED BY:
BARB DEBBERT SENIOR PLANNER, COMMUNITY PLANNING AND DESIGN	MICHAEL TOMAZINCIC, MCIP, RPP MANAGER, PLANNING REVIEW COMMUNITY PLANNING AND DESIGN
SUBMITTED BY:	RECOMMENDED BY:
JIM YANCHULA, MCIP, RPP MANAGER, COMMUNITY PLANNING AND DESIGN	JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER

September 23, 2013  
BD/  
Attach.  
Y:\Shared\implemen\DEVELOPMENT APPS\2013 Applications 8135 to\8152Z - 404-408 Pall Mall St & 660 Colborne St (BD)\Z-8152 - OMB re OPA referrals - ZBL appeals.docx

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ISSUE DATE:  
**September 17, 2013**



2013 L01

PL130763

Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	George Namo
Subject:	By-law No. BL.Z.-1-132197
Municipality:	City of London
OMB Case No.:	PL130763
OMB File No.:	PL130763

IN THE MATTER OF subsection 34(25) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Motion By:	Andrew C. Wright
Purpose of Motion:	Request for an Order Dismissing the Appeal
Appellant:	George Namo
Subject:	By-law No. BL.Z.-1-132197
Municipality:	City of London
OMB Case No.:	PL130763
OMB File No.:	PL130763

**APPEARANCES:**

Parties

TKX Inc.

George Namo

Counsel

Andrew Wright

City Clerk No. 29  
Subject: Re: Appeal - George Namo - PL130763 - 404-408 Pall Mall & bc  
SEP 19 2013  
Colborne St - Request for Ref. Nethercott order to be C.C. J. Page  
Ref to: J.N.J.P. **SCANNED**

**DECISION DELIVERED BY R. ROSSI ON SEPTEMBER 11, 2013 AND ORDER OF THE BOARD**

[1] TKX Inc., the Moving Party ("Applicant"), has brought a motion to the Ontario Municipal Board ("Board") seeking an Order of the Board pursuant to s. 53(31) of the *Planning Act* ("Act") to dismiss without a full hearing the appeal of George Namo, the Respondent ("Appellant") against the decision of the City of London ("City") Committee of Adjustment ("Committee") that approved the Applicant's proposal to rezone 404-408

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Pall Mall and 660 Colborne Street (the "subject lands") from a Residential R8/Convenience (R8-1/CC) Zone to a Residential R8/Convenience Commercial Special Provision (R8-1/CC(12)) Zone to permit the conversion of the main floor of the existing building from a convenience store to a small-scale espresso bar.

[2] Section 53(31) of the *Act* states

"...the Municipal Board may dismiss an appeal without holding a hearing...if, (a) it is of the opinion that, (i) the reasons set out in the notice of appeal do not disclose any apparent land use planning ground upon which the Board could give or refuse the give the provisional consent or could determine the question as to the condition appealed to it...."

[3] The Applicant submitted that it is on this basis that the Appellant's appeal should be dismissed. Counsel Andrew Wright represented the Applicant; the Appellant represented himself.

[4] The Board reviewed the affidavit of the Applicant's planning consultant Benjamin Billing (on file) as well as the wording of the Appellant's Notice of Appeal and determines that the appeal lacks any planning grounds sufficient to pursue a full hearing. Mr. Wright provided chronological evidence and he listed the Appellant's stated grounds for appealing the Committee's decision to the Board: that the minutes from the Committee's meeting changed the Appellant's words and that residents are opposed to this change of use. On the first point, the Board notes that the Appellant raised no planning issue at the Committee meeting and there were no omissions from his non-planning-related statement. On the second point, Mr. Wright advised the Board that his client met informally with area residents including the local ratepayers group and the Applicant addressed satisfactorily all planning-related concerns at that time, such that no one filed appeals of the Committee's decision. Finally, at this motion hearing, the Board learned that the Appellant is no longer a tenant of the subject lands and his business no longer operates. The Appellant also explained that he is now a full-time student at a local college.

[5] The Board determines that the Appellant's appeal lacks comprehensiveness and fails to provide any planning ground upon which the Board will require a hearing. The Board was persuaded by Mr. Wright's submissions that the Appellant has raised no apparent planning ground. In quoting language contained in the East Beach decision

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(*East Beach Community Association v. Toronto (City)* (1996), 42 O.M.B.D. No. 1850), the Board is entitled to examine whether there has been disclosure of planning grounds that warrant a hearing. That is, the Board is entitled to examine the reasons stated to see whether they constitute genuine, legitimate and authentic planning reasons, whether there is authenticity in the reasons stated, whether there are issues that should affect a decision in a hearing and whether the issues are worthy of the adjudicative process. In the Board's determination, the Appellant's Notice of Appeal raises no issue that justifies a hearing.

#### **ORDER**

[6] The Board orders that for these reasons, allows the Applicant's motion and there will be no hearing before the Board.

"R. Rossi"

R. ROSSI  
 MEMBER