

Agenda Item #	Page #

Item #
Page #

File: Z-8228
Planner: M. Tomazincic

TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	APPLICATION BY: 2376563 ONTARIO INC. 447 OLD WONDERLAND ROAD MEETING ON JUNE 15, 2015

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning and City Planner, with respect to the decision of the Ontario Municipal Board relating to the appeal by 2376563 Ontario Inc on the basis of no decision on the application within 120-days, the following report **BE RECEIVED** for information.

BACKGROUND

Chronology

On August 28, 2013, 2376563 Ontario Inc. submitted an application for a Zoning By-law amendment requesting approvals which would facilitate the development of a small scale Medical/Dental Office. The Zoning By-law amendment recommended that the subject site be rezoned from an Open Space (OS1) Zone to a Holding Restricted Office Special Provision (h-5*h-64*RO2(_)) Zone. The holding provision h-5 was recommended to ensure the project went through Public Site Plan Approval process and the h- 64 to require a noise study.

On March 25th, 2014 a report to the Planning and Environment Committee recommended approval of the above-noted Zoning By-law amendment. City Council referred the application back to Staff to consider the following:

- a) *increase the width of the landscaping;*
- b) *reduce the size of the building; and,*
- c) *meet with the applicant, the community and the Ward Councillor to discuss wider landscaped strips on certain portions of the site, landscaping with substantial trees and determine how much parking will be provided;*
- d) *the Civic Administration BE DIRECTED to give consideration to the following, in addition to the above-noted matters:*
 - i) *increasing the width of the landscaping border to 6 metres along the property line, with dense plantings of mature evergreens;*
 - ii) *enforcing the standard setback requirement of 8 metres from the street;*
 - iii) *reducing the building size to reflect the amount of parking spaces available once setback restrictions and buffer zones are applied and ensuring standard requirements for parking are fully met;*
 - iv) *the City undertaking an independent review of continuing traffic safety concerns, taking into consideration the implications for surrounding community and the associated application;*
 - v) *the City undertaking a review of the Official Plan's 'medium density' designation of Old Wonderland Road, in order to consider according the neighbourhood some protection and*

Agenda Item #	Page #

Item #
Page #

File: Z-8228
Planner: M. Tomazincic

repositioning it with the 'low density' neighbourhood that surrounds it and to which the neighbourhood feels it belongs; and,
vi) *adding a hydro-geological survey to the requirements listed by City planning staff.*

On April 16, 2014 the applicant appealed to the Ontario Municipal Board ("OMB") on the basis of non-decision by Council in 120-days.

Staff continued to undertake the direction provided by Council and a second report to the Planning and Environment Committee was presented on August 26, 2014 recommending approval of a Zoning By-law amendment to permit a modified form of development requiring a 6-metre landscaped buffer on the property line abutting residential uses to the east to mitigate concerns raised by abutting neighbours. The recommendation also added additional site-specific items for the Site Plan Approval Authority to consider as well as holding provisions requiring a public site plan meeting and a holding provision to address ground water concerns.

Council agreed with Staff's recommendation and on September 2, 2014 advised the OMB that the recommend zoning be amended as per the Staff report dated August 26, 2014. The OMB hearing was held on February 3, 2015.

OMB Hearing Outcome

The issues before the Board for decision at the hearing held on February 3, 2015 were: (1) the necessity of a holding provision (h-5) for public site plan, and (2) the inclusion of the easterly side yard setback within the zoning amendment.

With respect to the issue relating to the easterly side yard setback, the Board held that it was premature to determine the appropriate setback width at the zoning amendment stage. The Board concluded that determination of the appropriate setback width was a matter that the City, with the benefit of detailed site plan drawings, had the ability to determine through its site plan approval process.

On the issue of a holding provision for public site plan, the Board similarly held that the determination of the need for public site plan in this instance was more appropriately made by the City based on a detailed site plan and noted the mechanism available to the City via the *Site Plan Control By-law* relating to public meeting at the site plan approval stage.

Next Steps

There are no steps required to be taken by Council at this time.

As a result of this OMB decision, at the time when an application for site plan approval is submitted Council must determine whether to proceed with a public site plan meeting. A further report seeking direction from Council on that issue will be brought forward by Planning and Development Services Staff after receipt of an application for site plan approval for these lands. To date, no application has been received.

A copy of the OMB decision resulting from the hearing is attached as Appendix "1" to this report.

Agenda Item #

Page #

Item

Page #

**File: Z-8228
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PREPARED AND SUBMITTED BY:	RECOMMENDED BY:
MICHAEL TOMAZINCIC, MCIP, RPP MANAGER, CURRENT PLANNING	JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER

June 8, 2015

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Agenda Item #	Page #

Item #
Page #

File: Z-8228
Planner: M. Tomazincic

Appendix "1"

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



RECEIVED

ISSUE DATE: March 05, 2015 **MAR 12 2015** **CASE NO(S):** PL140366

City Solicitor's Office

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	2376563 Ontario Inc.
Subject:	Application to amend Zoning By-law Z.-1 – Refusal or neglect of the City of London to make a decision.
Existing Zoning:	Open Space (OS1) Zone, which permits conservation lands, conservation works, and cultivation of land for agricultural/horticultural purposes, golf courses, private parks, public parks, recreational golf courses, recreational buildings associated with conservation lands and public parks, campgrounds and managed forests.
Proposed Zoning:	Restricted Office Special Provision (R02(_)) Zone which permits clinics, medical/dental offices, medical/dental laboratories, offices.
Purpose:	To permit the development of a small scale medical/dental office
Property Address/Description:	447 Old Wonderland Road
Municipality:	City of London
Municipal File No.:	No.Z-8828
OMB Case No.:	PL140366
OMB File No.:	PL140366

Heard: February 3, 2015 in London, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
2376563 Ontario Inc.	A. Patton
City of London	N. Hall

Agenda Item #	Page #

Item #
Page #

File: Z-8228
Planner: M. Tomazincic

2

PL140366

Participants

William Bauer

David Hall

Vivien Scott

DECISION OF THE BOARD DELIVERED BY S. JACOBS

BACKGROUND

[1] The applicant, 2376563 Ontario Inc., wishes to construct a medical / dental office building at the north east corner of Wonderland Road and Teeple Terrace in the City of London ("City"). The applicant requested from the City a zoning by-law amendment to permit this use and appealed to the Board pursuant to s. 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended ("Act") for council's failure to make a decision on the application. Since the time of the appeal, the applicant and the City have worked to narrow the issues for the hearing

[2] The Board qualified and heard opinion evidence from two land use planners. Richard Zelinka, retained by the applicant, testified in support of the application. Mike Corby, a planner with the City, testified in support of the application, but also in support of the City's requested revisions to the applicant's proposed zoning by-law amendment.

[3] Frank R. Berry was qualified to provide opinion evidence in the area of transportation engineering and testified in support of the application. Ron Koudys was qualified as a landscape architect and tree expert and also testified in support of the application.

[4] Three area residents were identified as participants in the proceedings. The Board heard detailed evidence from two of these residents, David Hall and William Bauer. The third resident, Vivien Scott, did not provide evidence to the Board, as it was

Agenda Item #	Page #

Item #
Page #

File: Z-8228
Planner: M. Tomazincic

3

PL140366

determined that her interest in the development focussed solely on a strip of property adjacent to her own property that she wishes to purchase from the developer. This piece of property is not part of the application before the Board.

The Subject Property

[5] The subject site is a vacant 0.55 hectare (“ha”) parcel located at the northeast corner of Wonderland Road, a four-lane arterial road, and Teeple Terrace, a secondary-collector road. It is irregularly shaped: it has approximately 129 metres (“m”) of frontage along Wonderland Road, 53.7 m of frontage along Teeple Terrace, as well as 5.2 m of frontage along Old Wonderland Road, a residential cul-de-sac behind the property. The site is known municipally as 447 Old Wonderland Road due to this narrow frontage; however, as described above, the narrow strip of land fronting Old Wonderland Road is not part of the zoning amendment application before the Board.

[6] The site is located within a built-up area of the City, with primarily single detached residential development to the east, as well as a townhouse condominium development. There is a commercial plaza located directly to the south of the subject site, which forms the northerly limit of a community commercial node containing a range of goods and services. Directly to the north of the site is a small vacant parcel owned by the City, and there are several apartment buildings further to the north.

The Proposal

[7] The applicant wishes to construct a two-storey, 1452 square metre (“sq. m.”) office building, likely to contain medical and dental offices. The concept plan presented to the Board shows the proposed building located at the street on the southwest corner of the property, right at the street. It would have vehicular access from Teeple Terrace, directly across from the existing access to the commercial plaza to the south.

Agenda Item #	Page #

Item #
Page #

File: Z-8228
Planner: M. Tomazincic

4

PL140366

[8] The site is currently zoned Open Space (OS1) in the City Zoning By-law No. Z.-1, which Mr. Zelinka described as a “status” zone, which had been used in the By-law to describe a zone awaiting development. The lands are designated Multi-Family, Medium Density Residential in the City Official Plan (“OP”), which permits a range of multi-family residential uses as well as small-scale office uses. Mr. Zelinka explained that this site, along with the City-owned site adjacent to the north that shares the Open Space (OS1) zoning, has never functioned as a park.

[9] The applicant therefore requires a zoning amendment to change the zoning to a Restricted Office Special Provision (RO2(*)) Zone. The applicant is also requesting revisions to certain regulations of the RO2 zone, which would result in a minimum front yard depth of 0.0 m, a minimum exterior side yard setback of 0.0 m, designating the frontage along Teeple Terrace as the front lot line, a minimum parking requirement in accordance with s. 4.19(10) or 85 spaces, whichever is the lesser, and a maximum height of 9 m. The applicant’s proposed by-law is found in Exhibit 8.

[10] The City requested two revisions to the applicant’s proposed by-law, which form the basis for the issues at the hearing. First, the City requested a holding provision that would require a public site plan review process. Second, the City requested that the by-law include an east side yard setback from the parking area adjacent to the residential area, and that this setback should ideally be 6.0 m in width, or at least 3.0 m in width.

ISSUES AND ANALYSIS

[11] The Board must consider the proposal in light of provincial policy, as well as the local planning context, including conformity with the OP, potential for adverse impact on neighbouring properties, and generally whether the proposal represents good planning.

[12] In addition, the parties focussed on two sub-issues relating to the City’s requested revisions to the applicant’s proposed zoning by-law amendment:

1. Should the rezoning be subject to a holding provision requiring a public site

Agenda Item #	Page #

Item #
Page #

File: Z-8228
Planner: M. Tomazincic

5

PL140366

plan review process?

2. Should the easterly side yard setback from the parking area be included in the zoning by-law amendment?

Provincial Policy Statement

[13] Mr. Zelinka provided evidence that, in his opinion, the proposed zoning by-law amendment is consistent with the Provincial Policy Statement, 2014 (“PPS”). In Mr. Zelinka’s opinion, the proposed development would make efficient use of an underused parcel of land in an existing built up area with access to full services, consistent with s. 1.1.1, 1.1.3.6, 1.6.6.2, and 1.6.7.2 of the PPS. He also noted that the zoning by-law amendment would permit a compact commercial development on an appropriately sized parcel of land, at a scale consistent with surrounding existing development, and is transit supportive, consistent with s. 1.1.3.2, 1.1.3.4, and 1.3.1. Mr. Corby agreed that the proposed zoning by-law amendment is consistent with the PPS, and the Board concurs with these two planners.

Official Plan Conformity

[14] The subject site is designated Multi-Family, Medium Density Residential in s. 3.3. of the City’s OP, which permits a range of housing forms, including townhouses, cluster houses and apartment buildings up to four (4) storeys in height, as well as secondary uses, including small scale office developments. Small scale office developments are permitted subject to location and compatibility criteria found in s. 3.6.

[15] The location criteria requires office developments to be located on an arterial or primary collector road, and permits this type of development in established neighbourhoods only where the residential amenity of properties fronting onto the arterial or primary collector road has been substantially reduced (s. 3.6.8(i)). Mr. Zelinka provided evidence that the proposed development’s location on Wonderland Road meets the criteria, as Wonderland Road experiences high traffic volumes and related

Agenda Item #	Page #

Item #
Page #

File: Z-8228
Planner: M. Tomazincic

traffic noise with few residential properties fronting directly onto the roadway.

[16] The compatibility criteria found in s. 3.6.8(ii) and (iii) concern buffering, scale, and appearance of the proposed development. Mr. Zelinka indicated that the proposed office building would be positioned at the south west corner of the site, thereby maximizing the setback from the adjacent residential properties on Old Wonderland Road, and also acting a partial visual and noise screen from traffic along Wonderland Road. He also noted that the proposed site plan contemplates landscape areas, privacy fencing, and appropriate buildings setbacks to protect the amenity of the adjacent residential properties. In particular, he described as proposed along the east property line a landscape strip, ranging in width from 3.0 m to 5.0 m, a 1.8 m privacy fence, and large deciduous trees.

[17] Mr. Zelinka and Mr. Corby agreed that the proposed zoning by-law amendment conforms with the OP. The Board concurs.

Compatibility and Adverse Impact

[18] Both Mr. Zelinka and Mr. Corby were of the opinion that the proposed development is compatible with the surrounding area, and would not result in an adverse impact on adjacent properties. The evidence given by Mr. Hall and Mr. Bauer, both residents of Old Wonderland Road, raised more specific concerns relating to traffic and vegetation that will be addressed here.

(i) Traffic

[19] Mr. Bauer expressed concerns about traffic on Teeple Terrace, in particular the current flow of traffic turning from Wonderland Road and traffic entering and exiting the commercial plaza to the south of the subject site. In his opinion, Teeple Terrace would need to be widened to accommodate the additional traffic created by the proposed development.

Agenda Item #	Page #

Item #
Page #

File: Z-8228
Planner: M. Tomazincic

[20] Mr. Berry's firm completed a Transportation Impact Assessment in August, 2013 (Exhibit 3), with an addendum in September 2013 (Exhibit 4). His study concluded that the proposed development would generate about 36 vehicle trips in the morning peak hour and about 54 vehicle trips in the afternoon peak hour. Based on the study, it was Mr. Berry's opinion that the intersection currently operates at a good level of service, and will continue to do so with the proposed development. The study also projects the queue length of traffic traveling westbound on Teeple Terrace during the afternoon peak hour at 42.5 m, which Mr. Berry indicated would not interfere with the operation of the driveway of the proposed development, as it is located at a corner clearance distance of 68 m from Wonderland Road.

[21] It was also Mr. Berry's opinion that the proposed development would not create a negative traffic impact to the residents on Old Wonderland Road, as the only traffic generated there from the proposed development would be from residents travelling to or from the proposed development. Based on Mr. Berry's detailed evidence and projections, the Board finds that there would be no unacceptable adverse traffic impact caused by the proposed development.

(ii) Vegetation

[22] Mr. Hill provided evidence of vegetation that previously existed on the subject site, which had the effect of screening the rear of his property, and other properties, from Wonderland Road. Mr. Hill and Mr. Bauer indicated that they were concerned when this vegetation was cleared from the site in December, 2013. The Board appreciates that the residents of Old Wonderland Road may have enjoyed the privacy and screening created by the vegetation on the subject site and were surprised by its removal, however the Board heard evidence from all witnesses that this was done in accordance with the applicable City by-law.

[23] The Board heard extensive evidence from Mr. Koudys, who prepared a Vegetative Assessment for the site (Exhibit 6). Mr. Koudys studied the site itself as well

Agenda Item #	Page #

Item #
Page #

File: Z-8228
Planner: M. Tomazincic

as adjacent vegetation to determine whether construction of the proposed development would impact vegetation on neighbouring properties. He found no rare species on the site itself. In his opinion, the proposed development would not have a negative impact on adjacent vegetation, and the proposed landscape buffer strip would be more than adequate to foster the proposed vegetation as well as the existing vegetation at the property line. Based on this evidence, the Board concurs with Mr. Koudys' opinion that the proposed development will allow for adequate landscaping on site and will not interfere with adjacent vegetation.

Setback from Parking Area

[24] The Board heard evidence from both parties regarding the inclusion of a minimum easterly side yard setback from the proposed parking area. The Board understands that the applicant, in its concept plan, is proposing a setback that is 3 m in width, with one narrower area that is approximately 2.4 m in width. Mr. Corby explained that the City would prefer a 6 m setback, while Mr. Zelinka explained that the City's site plan approval control by-law would only require a 1.5 m setback for such a development. It appears, from Mr. Corby's evidence, that the City is requesting a wider setback as a buffer for the adjacent residents, as well as to address the possible need for a retaining wall. The Board notes that it heard no expert evidence regarding site grading or the need for a retaining wall.

[25] While both planners expressed the opinion that their preferred setback represents good planning, the Board finds that it is premature to make this determination at this early stage. With only a concept plan before it, there is not sufficient evidence for the Board to determine the appropriate setback width and include it in the zoning by-law amendment. This is a matter that the City, with the benefit of detailed site plan drawings, has the ability to determine through its site plan approval process.

Agenda Item #	Page #

Item

Page #

File: Z-8228
Planner: M. Tomazincic

Public Site Plan Process

[26] The City requested that the zoning by-law amendment include a holding provision that would require a public site plan process once the applicant proceeds with a site plan. The City's rationale for this request is that this is a matter of significant public interest, and that such a provision will ensure that the residents are able to participate in the site plan approval process. The applicant, in response, argued that there is no planning rationale for such a provision and that it will cause unnecessary delay.

[27] The Board heard no land use planning evidence that would justify including this holding provision in the zoning by-law amendment. The Board understands that the City typically includes such a provision where it has determined that a matter is of significant public interest; however, the Board is not in a position, based on the evidence presented at the hearing, to make this determination. The Board also understands that the City, in its Site Plan Control By-law, has delegated its site plan approval power to a site plan authority, which may preclude a public site Plan Process. However, the Board notes, based on the submissions of the parties, that council may choose to revoke that authority for a specific application, which would then result in a public site plan meeting. This again is a determination more appropriately made based on a detailed site plan, and not by the Board in this instance.

CONCLUSION

[28] The Board finds that the proposal conforms to relevant official plan and provincial policies, and represents good planning. The Board also finds, given that there was not a site plan before it, that the parking setback issue is one more appropriately dealt with through the City's site plan approval process. The Board also finds that City will be in a better position than the Board to make a determination regarding the need for a public site plan meeting as the site plan process for this development unfolds.

Agenda Item #	Page #

Item #
Page #

File: Z-8228
Planner: M. Tomazincic

10

PL140366

DISPOSITION

[29] The Board will allow the appeal and the City's Comprehensive Zoning By-law is amended in accordance with the zoning-by-law amendment contained in Exhibit 8. The Board will withhold its order pending the parties advising the Board that the site plan approval process has been completed. In the event of a dispute regarding site plan approval, the Board may be spoken to and I will remain seized.

"S. Jacobs"

S. JACOBS
MEMBER

Ontario Municipal Board
A constituent tribunal of Environment and Land Tribunals Ontario
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