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File: OZ-8463
Planner: M. Tomazincic

TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	APPLICATION BY: YORK DEVELOPMENTS (LONDON) INC. 1192 Highbury Avenue North MEETING ON FEBRUARY 1, 2016

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning and City Planner, in response to the letter of appeal to the Ontario Municipal Board, dated July 21, 2015 and submitted by Barry R. Card, Barrister and Solicitor on behalf of Econdale Limited relating to Zoning By-law No. Z.-1-152408 concerning 1192 Highbury Avenue North, the Ontario Municipal Board **BE ADVISED** that the Municipal Council has reviewed its decision relating to this matter and sees no reason to alter it.

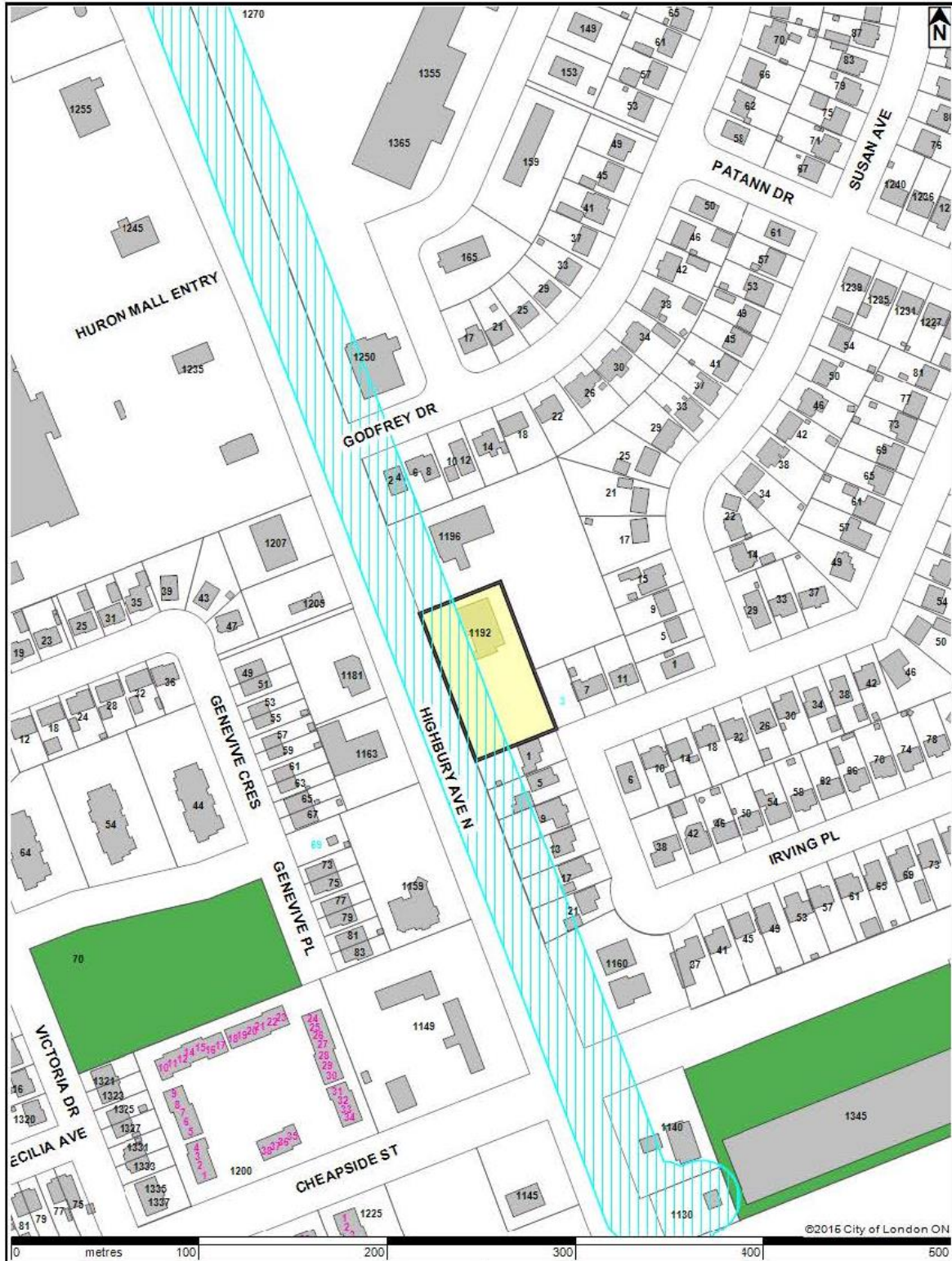
PREVIOUS REPORTS PERTINENT TO THIS MATTER
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June 15 2015 Report to Planning and Environment Committee – 1192 Highbury Avenue North (OZ-8463) – This report recommended that the requested amendment to the Official Plan and Zoning By-law, submitted by York Developments (London) Inc., intended to facilitate a redevelopment of the site to accommodate commercial uses consisting of two restaurants with drive-throughs be approved.

June 24, 2015 – Report to Planning and Environment Committee – 3 Mark Street (OZ-8463) – This report recommended that the requested amendment to the Official Plan and Zoning By-law, submitted by York Developments (London) Inc., intended to expand the site at 1192 Highbury Avenue onto the subject lands to facilitate a redevelopment of the site to accommodate commercial uses consisting of two restaurants with drive-throughs be approved.

PURPOSE AND EFFECT OF RECOMMENDED ACTION





The purpose and effect of the recommended action is to advise the Ontario Municipal Board that Municipal Council has received the appeal from Barry R. Card Barrister and Solicitor on behalf of Econdale Limited and remains in agreement with its June 25, 2015, decision to approve Zoning By-law Z.-1-152408.



LOCATION MAP

Subject Site: 1192 Highbury Ave N
 Applicant: York Developments (London) Inc
 File Number: OZ-8463
 Planner: Mike Corby
 Created By: Michael Tomazincic
 Date: 2015-06-08
 Scale: 1:2500

LEGEND

-  Subject Site
-  Parks
-  Assessment Parcels
-  Buildings
-  Address Numbers



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BACKGROUND

In March of 2015, the City received an application for an Official Plan and Zoning By-law amendment for the lands at 1192 Highbury Ave North, consisting of a former fire station building, and 3 Mark Street, consisting of an undeveloped abutting parcel that provides a pedestrian link between the interior of the neighbourhood to Highbury Avenue spanning the two sites.

The intent of the application was to facilitate the removal of the former fire station building and the development of a small commercial plaza comprised of two buildings containing a total of three commercial units consisting of: a 232.3m² (2,500ft²) drive-through fast food restaurant; a 464.5m² (5,000ft²) fast food restaurant; and, a 139.4m² (1,500ft²) retail/commercial unit.

In May 2015, the conceptual site plan was modified by the applicant to reduce the building footprint, reduce the number of commercial uses, and therefore reduce the commercial gross floor area with the result being a development of two buildings consisting of a 368m² (3,961ft²) restaurant with drive-through and a 204m² (2,200ft²) restaurant with drive-through.

However, at the time of the writing of the report for the statutory public meeting of the Planning and Environment Committee, the City of London and the applicant had not yet entered into a binding agreement to purchase the portion of the site located at 3 Mark Street. As a result, Planning Staff recommended that only the Highbury property be re-designated and rezoned to accommodate the requested uses.

On June 15, 2015 Planning Staff received confirmation from Realty Services Staff that the City and the applicant had entered into a binding agreement to purchase 3 Mark Street. This date also coincided with the date of the statutory public participation meeting of the Planning and Environment Committee. At this statutory public meeting, the Committee endorsed the Staff recommendation to approve the Official Plan and Zoning By-law amendment for the lands at 1192 Highbury Avenue North and further requested that Staff bring forward a by-law at a special meeting of the Planning and Environment Committee on June 24, 2015 to amend the Official Plan and Zoning By-law to change the designation and zoning of 3 Mark Street from one that permits a range of Low Density Residential uses to Auto-Oriented Commercial Corridor uses.

At the special meeting of the Planning and Environment Committee, Staff recommended support for the request to amend the Official Plan and Zoning By-law for 3 Mark Street. The Committee endorsed the Staff recommendation and on June 25, 2015 Council adopted the Staff recommendations.

It is prudent to bring to Council’s attention that an error was included in the June 15, 2015 Staff report pertaining to the amendments for 1192 Highbury Avenue North. As part of the analysis of the Provincial Policy Statement (“PPS”) on page 8, the Staff report concludes with the statement that, *“The proposal for both medical and dental offices with an accessory pharmacy and laboratories creates compact, mixed-use development within a building that exists at a scale which is already compatible with the area.”* This is in contrast to the intent of the application, as stated on pages 1 and 8 of the Staff report, which indicate that the intent of the requested amendments is to permit a commercial development consisting of two restaurants with drive-throughs.

A more accurate conclusion to the PPS analysis is that the recommended amendment will facilitate the redevelopment of a previously developed site and permit a mix of various commercial, retail, and automotive uses within buildings that maximizes the site’s potential in conformity to the PPS.

On July 21, 2015, a letter of appeal to the Ontario Municipal Board was submitted by Barry R. Card, Barrister and Solicitor on behalf of Econdale Limited in opposition to Zoning By-law Z.-1-152408. It should be noted that the appeal is only in opposition to the Zoning By-law passed for

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the portion of the site at 1192 Highbury Avenue North, not the site at 3 Mark Street. Furthermore, the appeal only relates to the Zoning By-law, not the adoption of the Official Plan.

In the reasons for the appeal of Council's decision to amend the Zoning By-law, the appellant states that:

- 1) Two drive-throughs is an over-intensification of the site.
- 2) The parking requirement is inadequate.
- 3) Drive-through entrances will cause adverse traffic impacts that are contrary to the Official Plan.
- 4) Lot coverage is excessive for constrained site.

A copy of the appeal letter from Barry Card, and the reasons for the appeal, are attached as appendix "A" to this report. A date for the Ontario Municipal Board hearing has been scheduled for Wednesday, February 17, 2016 at 10:00am. Planning Staff have reviewed the appeal letter and see no reason for Council to alter its decision relating to this matter.

CONCLUSIONS

Planning Staff have conducted an evaluation of the previously approved Zoning By-law No. Z.-1-152408 with regard to the stated reasons for appeal. The results of this planning analysis support the previously approved Zoning By-law and, as such, Staff see no reason for Council to alter its previous decision relating to this matter.

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

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Appendix "A"

Barry R. Card

BARRISTER & SOLICITOR
Certified Specialist - Municipal Law: Local Government/ Land Use Planning & Development Law

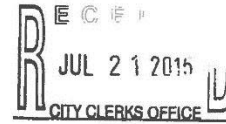
568 RIDGEWOOD CRESCENT
LONDON, ONTARIO N6J 3J2
TELEPHONE (519) 433-5117 • FACSIMILE (519) 963-0285

Internet Address: cardlaw@rogers.com

July 21, 2015

DELIVERED

Cathy Saunders
City Clerk
Corporation of the City of London
City Hall, 3rd Floor
300 Dufferin Avenue
London, Ontario
N6A 4L9



Dear Ms. Saunders:

**Re: Appeal to the Ontario Municipal Board
Zoning By-law No. Z.-1-152408
1192 Highbury Avenue N., London
Econodale Limited**

I am the solicitor for Econodale Limited. On behalf of my client, I hereby appeal to the Ontario Municipal Board with respect to enactment of the captioned Zoning By-law Amendment for the City of London.

In support of the appeal, I enclose the ZBA Appellant Form (A1) and money order in the sum of \$125.00.

I respectfully request that you proceed to forward this appeal to the Ontario Municipal Board. Please contact me if anything further is required to permit you to honour this request.

Yours very truly,

Barry R. Card

BRC:jmh
Encls.

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Appendix "A"



Environment and Land Tribunals Ontario
Ontario Municipal Board
655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5
TEL: (416) 212-6349 or Toll Free: 1-866-448-2248
FAX: (416) 326-5370
www.elt.o.gov.on.ca

APPELLANT FORM (A1)
PLANNING ACT

SUBMIT COMPLETED FORM
TO MUNICIPALITY/APPROVAL AUTHORITY

Date Stamp - Appeal Received by Municipality

Receipt Number (OMB Office Use Only)

Part 1: Appeal Type (Please check only one box)

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input type="checkbox"/> Appeal a decision	45(12)
Consent/Severance	<input type="checkbox"/> Appeal a decision	53(19)
	<input type="checkbox"/> Appeal conditions imposed	
	<input type="checkbox"/> Appeal changed conditions	53(27)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	53(14)
Zoning By-law or Zoning By-law Amendment	<input checked="" type="checkbox"/> Appeal the passing of a Zoning By-law	34(19)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – failed to make a decision on the application within 120 days	34(11)
	<input type="checkbox"/> Application for an amendment to the Zoning By-law – refused by the municipality	
Interim Control By-law	<input type="checkbox"/> Appeal the passing of an Interim Control By-law	38(4)
Official Plan or Official Plan Amendment	<input type="checkbox"/> Appeal a decision	17(24) or 17(36)
	<input type="checkbox"/> Failed to make a decision on the plan within 180 days	17(40)
	<input type="checkbox"/> Application for an amendment to the Official Plan – failed to make a decision on the application within 180 days	22(7)
	<input type="checkbox"/> Application for an amendment to the Official Plan – refused by the municipality	
Plan of Subdivision	<input type="checkbox"/> Appeal a decision	51(39)
	<input type="checkbox"/> Appeal conditions imposed	51(43) or 51(48)
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	51(34)

Part 2: Location Information

_____ 1192 Highbury Avenue North
Address and/or Legal Description of property subject to the appeal:

Municipality/Upper tier: _____ City of London _____

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Appendix "A"

Part 3: Appellant Information

Form for Part 3: Appellant Information. Fields include: First Name, Last Name, Company Name (Econodale Limited, c/o Barry R. Card, Barrister and Solicitor), Professional Title, E-mail Address (cardlaw@rogers.com), Daytime Telephone # (519-433-5117), Alternate Telephone #, Fax # (519-963-0285), Mailing Address (568 Ridgewood Crescent, London, Ontario, N6J 3J2), Signature of Appellant (Barry R. Card), and Date (July 21, 2015).

Personal information requested on this form is collected under the provisions of the Planning Act, R.S.O. 1990, c. P. 13, as amended, and the Ontario Municipal Board Act, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

Part 4: Representative Information (if applicable)

Form for Part 4: Representative Information. Fields include: I hereby authorize the named company and/or individual(s) to represent me: First Name, Last Name, Company Name, Professional Title, E-mail Address, Daytime Telephone #, Alternate Telephone #, Fax #, Mailing Address (Street Address, Apt/Suite/Unit#, City/Town, Province, Country, Postal Code), Signature of Appellant, and Date.

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her behalf and I understand that I may be asked to produce this authorization at any time.

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Appendix "A"

Part 5: Language and Accessibility

Please choose preferred language: English French

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

Part 6: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please print)

Zoning By-law No. Z.-1-152408 passed by City of London Council on June 25, 2015.
Municipal File No. OZ-8463.

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). **If more space is required, please continue in Part 9 or attach a separate page.

(Please print)

1. Two drive-throughs is an over-intensification of the site.
2. The parking requirement is inadequate.
3. Drive-through entrances will cause adverse traffic impacts that are contrary to the Official Plan.
4. Lot coverage is excessive for constrained site.

THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE *PLANNING ACT*.

a) **DATE APPLICATION SUBMITTED TO MUNICIPALITY:** _____
(If application submitted before January 1, 2007 please use the O1 'pre-Bill 51' form.)

b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:
**If more space is required, please continue in Part 9 or attach a separate page.

Part 7: Related Matters (if known)

Are there other appeals not yet filed with the Municipality? YES NO

Are there other planning matters related to this appeal? YES NO
(For example: A consent application connected to a variance application)

If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

(Please print)

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Appendix "A"

Part 8: Scheduling Information

How many days do you estimate are needed for hearing this appeal? half day 1 day 2 days 3 days
 4 days 1 week More than 1 week – please specify number of days: _____

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?

 2

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.):

 planner, traffic engineer

Do you believe this matter would benefit from mediation? YES NO
(Mediation is generally scheduled only when all parties agree to participate)

Do you believe this matter would benefit from a prehearing conference? YES NO
(Prehearing conferences are generally not scheduled for variances or consents)

If yes, why? _____

Part 9: Other Applicable Information **Attach a separate page if more space is required.

Part 10: Required Fee

Total Fee Submitted: \$ _____ 125.00 _____

Payment Method: Certified cheque Money Order Solicitor's general or trust account cheque

- The payment must be in Canadian funds, payable to the Minister of Finance.
- Do not send cash.
- PLEASE ATTACH THE CERTIFIED CHEQUE/MONEY ORDER TO THE FRONT OF THIS FORM.