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File: OZ-8463  
Planner: M. Tomazincic

<b>TO:</b>	<b>CHAIR AND MEMBERS PLANNING &amp; ENVIRONMENT COMMITTEE</b>
<b>FROM:</b>	<b>JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER</b>
<b>SUBJECT:</b>	<b>APPLICATION BY: YORK DEVELOPMENTS (LONDON) INC. 1192 Highbury Avenue North MEETING ON AUGUST 22, 2016</b>

<b>RECOMMENDATION</b>
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That, on the recommendation of the Managing Director, Planning and City Planner, the following report on the decision by the Ontario Municipal Board, relating to an appeal by Barry R. Card, Barrister and Solicitor on behalf of Econdale Limited concerning 1192 Highbury Avenue North, **BE RECEIVED** for information.

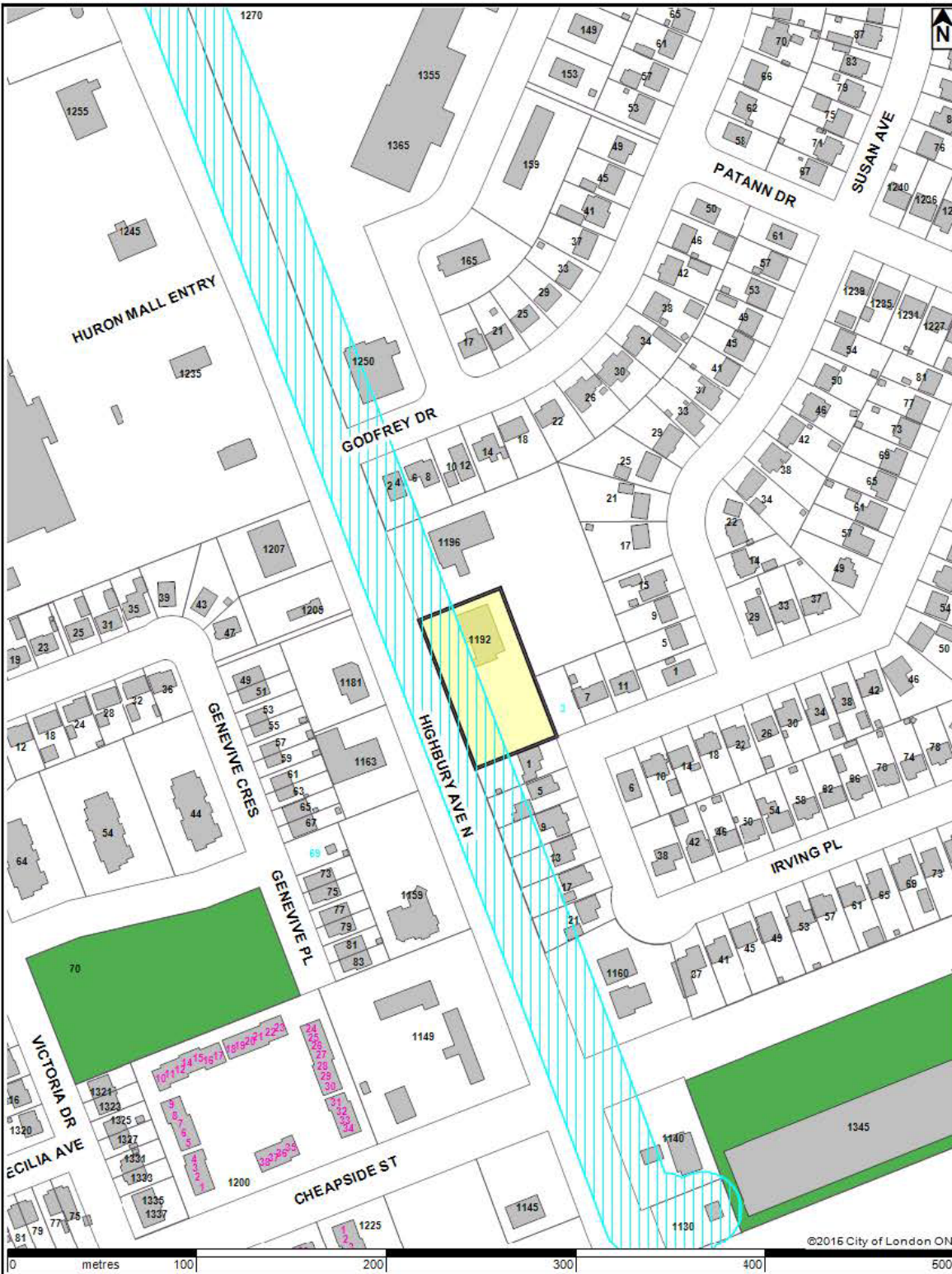
<b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b>
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**June 15 2015 Report to Planning and Environment Committee – 1192 Highbury Avenue North (OZ-8463)** – This report recommended that the requested amendment to the Official Plan and Zoning By-law, submitted 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.

**February 1, 2016 – Report to Planning and Environment Committee – 1192 Highbury Avenue North (OZ-8463)** – This report advised the Ontario Municipal Board that the Municipal Council has reviewed its previous decision relating to this matter and sees no reason to alter it.

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**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

Corporation of the City of London  
Prepared By: Planning and Development



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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 abutting undeveloped 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 232.3m<sup>2</sup> (2,500ft<sup>2</sup>) drive-through fast food restaurant; a 464.5m<sup>2</sup> (5,000ft<sup>2</sup>) fast food restaurant; and, a 139.4m<sup>2</sup> (1,500ft<sup>2</sup>) 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 368m<sup>2</sup> (3,961ft<sup>2</sup>) restaurant with drive-through and a 204m<sup>2</sup> (2,200ft<sup>2</sup>) 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.

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. The appeal was only in opposition to the Zoning By-law passed for 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 stated 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.

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The OMB appeal was heard on February 17-18, 2016. In its decision dated June 3, 2016, the OMB accepted the evidence of the City and the applicant that there will be only a negligible difference in traffic volume if there are one or two drive-through windows and that the proposal would meet the City's minimum requirements for vehicle stacking. The OMB was satisfied that transportation safety issues on Highbury and within the proposed site have been adequately addressed.

<b>CONCLUSIONS</b>
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Having reviewed all of the evidence at the hearing, the OMB found overall that the proposed development is consistent with the PPS and conforms to the OP. The Board approved the ZBA as enacted by Council and dismissed the appeal against City of London By-law No. Z.-1-152408. A copy of the OMB decision dated May 15, 2013 is attached to this report as Appendix "1".

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

August 15, 2016  
 Michael Tomazincic  
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**Appendix “1”**

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



**ISSUE DATE:** June 03, 2016

**CASE NO(S):** PL150715

**PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Econodale Limited
Subject:	By-law No. Z.-1-152408
Municipality:	City of London
OMB Case No.:	PL150715
OMB File No.:	PL150715
OMB Case Name:	Econodale Limited v. London (City)

**Heard:** February 17 and 18, 2016 in London, Ontario

**APPEARANCES:**

<u>Parties</u>	<u>Counsel</u>
Econodale Limited	B. Card
York Developments (London) Inc.	A.R. Patton
City of London	N. Hall

**DECISION DELIVERED BY M. CARTER-WHITNEY AND ORDER OF THE BOARD**

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[1] York Developments (London) Inc. (“Applicant”) applied to the City of London (“City”) for amendments to the City’s Official Plan (“OP”) and Zoning By-law No. Z.-1 (“ZBL”) to allow the redevelopment of a site (“subject lands”), made up of lands at 1192

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Highbury Avenue North (“Highbury property”), as well as a sliver of land unofficially known as 3 Mark Street (“Mark property”), to accommodate commercial uses consisting of two restaurants with drive-through windows. The Mark property was included to facilitate the redevelopment by expanding the Highbury property.

[2] The City Council approved the proposed OP amendment (“OPA”) and Zoning By-law No. Z.-1-152408 (“ZBLA”) for the Highbury property, as well as the OPA and zoning by-law amendment for the Mark property. Econodale Limited (“Appellant”) subsequently appealed the ZBLA in respect of the Highbury property to the Ontario Municipal Board (“Board”). The Appellant, however, did not appeal the OPA in respect of the Highbury property, nor did it appeal the OPA or the zoning by-law amendment in respect of the Mark property.

[3] The Appellant owns a commercial property on Highbury Avenue North (“Highbury”) well to the south of the subject lands on the opposite side of the road, at the southwest corner of Highbury and Cheapside Street. The Appellant does not oppose a commercial use on the subject lands but says that only one drive-through restaurant should be permitted, rather than two, because of transportation safety concerns arising from the potential amount of traffic to be generated by the proposed development. The Appellant provided the Board with a proposed alternate draft amending by-law.

[4] The Board heard opinion evidence from three qualified land use planners: Michael Tomazincic, on behalf of the City; Ric Knutson, on behalf of the Appellant; and Laverne Kirkness, on behalf of the Applicant. Three expert transportation engineers were also qualified to provide opinion evidence: Maged Elmadhoon, on behalf of the City; Frank Berry, on behalf of the Appellant; and Stephen Brook, on behalf of the Applicant.

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PL150715

[5] The subject lands are located on the east side of Highbury, a busy arterial road with traffic counts of approximately 30,000 vehicles per day. Mr. Tomazincic described the area as an auto-oriented commercial corridor designed to provide commercial services to the travelling public. Other uses in the vicinity of the subject lands include: fast food restaurants with drive-throughs, such as McDonald's and Tim Horton's; a place of worship; and other commercial services that include a paint store and a gas station. Until recently, a City fire station was located on the Highbury property. To the east and west of the commercial corridor, there are low density residential buildings, and there is a shopping plaza and medium density townhouses to the north. There are constraints on the site due to a high pressure gas easement and sanitary and storm sewer easements.

[6] The subject lands were designated Low Density Residential, although this designation does not reflect the commercial uses that exist on the east side of Highbury in this area. The lands on the west side of Highbury are designated Auto-Oriented Commercial Corridor, which is the designation that the Applicant sought for the subject lands. As noted above, the approved OPA for the subject lands was not appealed and is in force and effect.

[7] The zoning for the Highbury property was Neighbourhood Facility (NF1) and the Mark property was zoned Residential (R1-8). The Applicant sought to rezone the subject lands to a Restricted Service Commercial (RSC1/RSC4) zone. As noted previously, the ZBLA in respect of the Mark property was not appealed so it has now been zoned RSC1/RSC4.

[8] The two planners testifying on behalf of the Applicant and the City addressed the relevant planning policies, and both provided the opinion that the proposed development would be consistent with the Provincial Policy Statement, 2014 ("PPS") and would conform to the policies of the OP. In Mr. Knutson's opinion, however, the proposal would not be consistent with policies in the PPS concerning public safety and

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would not conform to a number of OP policies with respect to transportation and traffic safety. His opinion was based on the evidence of Mr. Berry, summarized below.

[9] On this basis, Mr. Knutson proposed an alternate draft zoning by-law amendment, which would: introduce the RSC3 zone category, in addition to RSC1 and RSC4, to permit uses such as medical and dental offices; and allow for only a single drive-through on the site. Mr. Tomazincic disagreed with the proposed addition of the RSC3 zone, noting that the public had not been notified of the additional range of uses and raising concerns that a medical or dental office use may not meet the setback required for the gas easement on the property. In closing submissions, Barry Card, counsel for the Appellant, withdrew the request that the RSC3 zone be included in the alternate amending zoning by-law proposed by the Appellant.

[10] The Board heard evidence from the transportation engineering witnesses concerning the anticipated impacts from the proposed development in relation to existing traffic patterns on Highbury and queuing on the site.

[11] The initial application for the development proposed two locations for accesses to provide ingress and egress (“driveways”) on the site, one at the northern boundary and the other at the southern boundary. Upon reviewing the application, City Transportation staff raised safety concerns about the proposed northerly access because the overlap in its relationship with the Tim Horton’s driveway, located just to the north of the subject lands on the west side of Highbury, would create an unsafe offset. City Transportation staff also stated that the need for two accesses to the proposed development was not supported.

[12] As a result of these comments, the Applicant provided a revised site plan that eliminated the northerly access, leaving one driveway at the south end. Mr. Brook conducted a Traffic Impact Assessment (“TIA”) that supports the revised proposal. The analysis in the TIA projected that, if the proposed development is built, traffic



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movements at area driveways during peak hours will continue to operate well within their capacity. The TIA recommended the replacement of a section of the existing rumble strip, in proximity to the subject lands, with a two-way left turn lane to facilitate left turns into the site. The TIA acknowledged that the proposed driveway on the subject lands is offset from the existing McDonald’s driveway but concluded that, since it would be located to the north, the opposing left turn movements from Highbury would not conflict. The TIA noted that motorists turning left to exit the site could experience some additional delay, but observed that these vehicles would be contained within the site and would not affect the flow of traffic on Highbury. Finally, the TIA concluded that the proposed drive-through lanes on the subject lands would each provide stacking for 12 vehicles from the pick-up window, which would satisfy the City’s standard for fast food restaurants.

[13] City Transportation staff accepted the revised proposal in the TIA of one access at the southern limit of the site, and agreed with the recommendation that the section of rumble strip located in the area of the proposed driveway be replaced with a two-way left turn lane.

[14] Mr. Berry provided a critique of the revised proposal, expressing concern about the proposed left turn exit from the site. In his opinion, there would be a significantly higher number of left turn movements in and out of the site than the number assessed in the TIA, resulting in an insufficient capacity to accommodate the left turn exit movements from the site. Mr. Berry stated that there would not be sufficient gaps in the traffic flow on Highbury to satisfy the demand for left turns out of the proposed development, and this would prompt some drivers wishing to avoid delays to make a right turn and use other driveways to the north to reverse their direction.

[15] Mr. Berry raised further safety concerns arising from the proximity of the McDonald’s driveway on the west side of Highbury to the proposed driveway on the subject lands, due to the uncertainty created by offset driveways. Mr. Berry was of the

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opinion that drivers would have difficulty selecting gaps in the traffic flow while also anticipating a conflicting left turn movement. He noted that the concrete rumble strip in the centre of Highbury is used as a left turn lane, although that is not its purpose, and testified that cars may stack up on it in a southbound direction while trying to make a left turn into the proposed development.

[16] The City is satisfied that the proposed development will not have an adverse impact on traffic in the area. Mr. Elmadhoon testified that the proposed offset of the southerly access to the site in relation to the McDonald's driveway is the preferred alignment under the City's Access Management Guidelines ("AMG"), filed as Exhibit 7, and is preferable to the initial proposal for a northerly access offset from the Tim Horton's driveway. With only the proposed driveway at the south end of the subject lands, there will be no overlap or conflict between the two left hand turn movements from Highbury into the respective sites, as would have been the case with the offset from the driveway originally proposed at the north end. Mr. Elmadhoon was of the opinion that the AMG had been followed and he had no concerns about safety.

[17] Mr. Brook agreed with the City's position that it would be safest to eliminate the northerly access proposed initially. He acknowledged that it is ideal when opposing driveways are aligned with each other at their centerlines, as noted in the AMG, but stated that such a situation often does not exist. Mr. Brook testified that to provide any access to the subject lands will require an offset entrance, and provided his opinion that the proposed southerly access offset is preferable and consistent with the AMG. He stated that the type of two-way left turn lane proposed for the centre of Highbury is used throughout North America, and is not a safety hazard.

[18] Regarding the recommendation that one of the two proposed drive-throughs be eliminated, Mr. Brook testified that this would have a negligible impact on traffic volumes. He referred to the Trip Generation Manual ("TGM") of the Institute of Transportation Engineers, filed as Exhibit 14, with respect to the trip generation rates for

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fast food restaurants with and without drive-through windows. Based on the TGM, Mr. Brook concluded that permitting only one drive-through would result in a total of two fewer vehicles exiting the site during the morning peak period and eight fewer exiting during the afternoon peak period.

[19] In addition to traffic safety on Highbury, Mr. Berry raised a concern about stacking of vehicles on the site of the proposed development. He suggested that there would not be enough room on the site to handle the potential queuing of cars trying to make a left turn out onto Highbury. The City does not share this concern. Mr. Elmadhoon testified that the proposed development would provide the required minimum stacking for vehicles, which would be more than sufficient to accommodate the drive-throughs. He noted that there might be some congestion when vehicles are waiting to exit the site, but stated it would not be unsafe.

[20] After considering the transportation evidence provided, the Board is satisfied that any potential traffic safety issues arising from the proposed development have been taken into consideration and addressed by the Applicant by eliminating the northerly access initially proposed.

[21] The AMG is a City guideline for access management. In s. 1.7, the AMG states as follows:

A centreline of a new driveway to the arterial road should align with the centreline of any opposing existing driveway or road. In some circumstances, an offset to the right may also be allowable.

[22] While Mr. Berry and Mr. Brook undertook their transportation studies at different times of the year and provided different traffic counts, there is no dispute that Highbury is a busy arterial road. The relevant section of the AMG specifically applies to arterial roads. It is clear that, in the best scenario, opposing driveways would be perfectly aligned. However, as Mr. Brook pointed out, this often is not possible.

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[23] As a result, Figure U.K.6.4 of the AMG provides illustrations of spacing considerations for opposing driveways to guide access management in situations where the centrelines of driveways cannot be aligned. Illustration U.K.6.4 a. shows the offset to be avoided due to overlapping left turns. This driveway configuration reflects the initial proposal for the northerly driveway on the subject lands and its relationship to the Tim Horton’s driveway, which the City Transportation staff rejected.

[24] Illustration U.K.6.4 b. shows what the AMG describes as a better offset arrangement, although it notes that weaving may be difficult. This illustration reflects the relationship between the driveway on the subject lands and the McDonald’s driveway, which is the only offset currently proposed. Mr. Elmadhoon explained that “weaving” in this context refers to a car exiting one of the driveways and entering the driveway across the street. In his opinion, this would rarely occur in the proposed situation because there are restaurants on both sites.

[25] The Board finds that the guidance set out in the AMG has been followed in situating the proposed driveway on the subject lands. The better offset arrangement has been adopted in order to avoid overlapping left hand turns. Given that the opposing left turns will not overlap, the Board is not persuaded by Mr. Berry’s opinion that the proposal will present any safety concerns. The Board notes that a two way left turn lane is to be provided, and accepts Mr. Brook’s opinion that it will not present a safety hazard.

[26] Regarding the number of vehicles potentially making a left turn to exit the site, the Board accepts the conclusion in the TIA that any delay would be contained on the site and would not affect traffic flow on Highbury. Furthermore, the Board notes Mr. Brook’s evidence that there will be only a negligible difference in traffic volume if there are one or two drive-through windows. With respect to the potential for stacking of vehicles on the site, the concern was raised but the Board was not provided with any persuasive evidence to demonstrate that this would be a problem. As a result, the

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Board prefers Mr. Elmadhoon's evidence that the proposal would meet the City's minimum requirements for vehicle stacking.

[27] For these reasons, the Board prefers the opinion evidence provided by Mr. Elmadhoon and Mr. Brook. The Board, therefore, is satisfied that transportation safety issues on Highbury and within the proposed site have been adequately addressed.

[28] Having reviewed all of the evidence at the hearing, the Board finds overall that the proposed development is consistent with the PPS and conforms to the OP. The Board approves the ZBLA as enacted by Council.

**ORDER**

[29] The Board orders that the appeal against City of London By-law No. Z.-1-152408 is dismissed.

*"M. Carter-Whitney"*

M. CARTER-WHITNEY  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elfto.gov.on.ca](http://www.elfto.gov.on.ca) to view the attachment in PDF format.

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