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File No.: Z-7887
C Smith

TO:	CHAIR AND MEMBERS BUILT AND NATURAL ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING DIRECTOR OF LAND USE PLANNING AND CITY PLANNER
SUBJECT:	APPLICATION BY: HESHAM ABDELSAYED 1472 HURON STREET NOVEMBER 14, 2011

RECOMMENDATION

That, on the recommendation of the Director of Land Use Planning and City Planner, in response to the letter of appeal to the Ontario Municipal Board, dated September 30, 2011 and submitted by Fred Tranquilli on behalf of Hesham Abdelsayed relating to an application for an amendment to the Zoning By-law No. Z.-1 which was refused by Municipal Council concerning 1472 Huron Street, 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 and that the City Solicitor and Director of Land Use Planning and City Planner **BE DIRECTED** to provide legal and planning representation at the Ontario Municipal Board Hearing to support Municipal Council's decision.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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OZ-7825 – Report to Built and Natural Environment Committee – August 15, 2011.

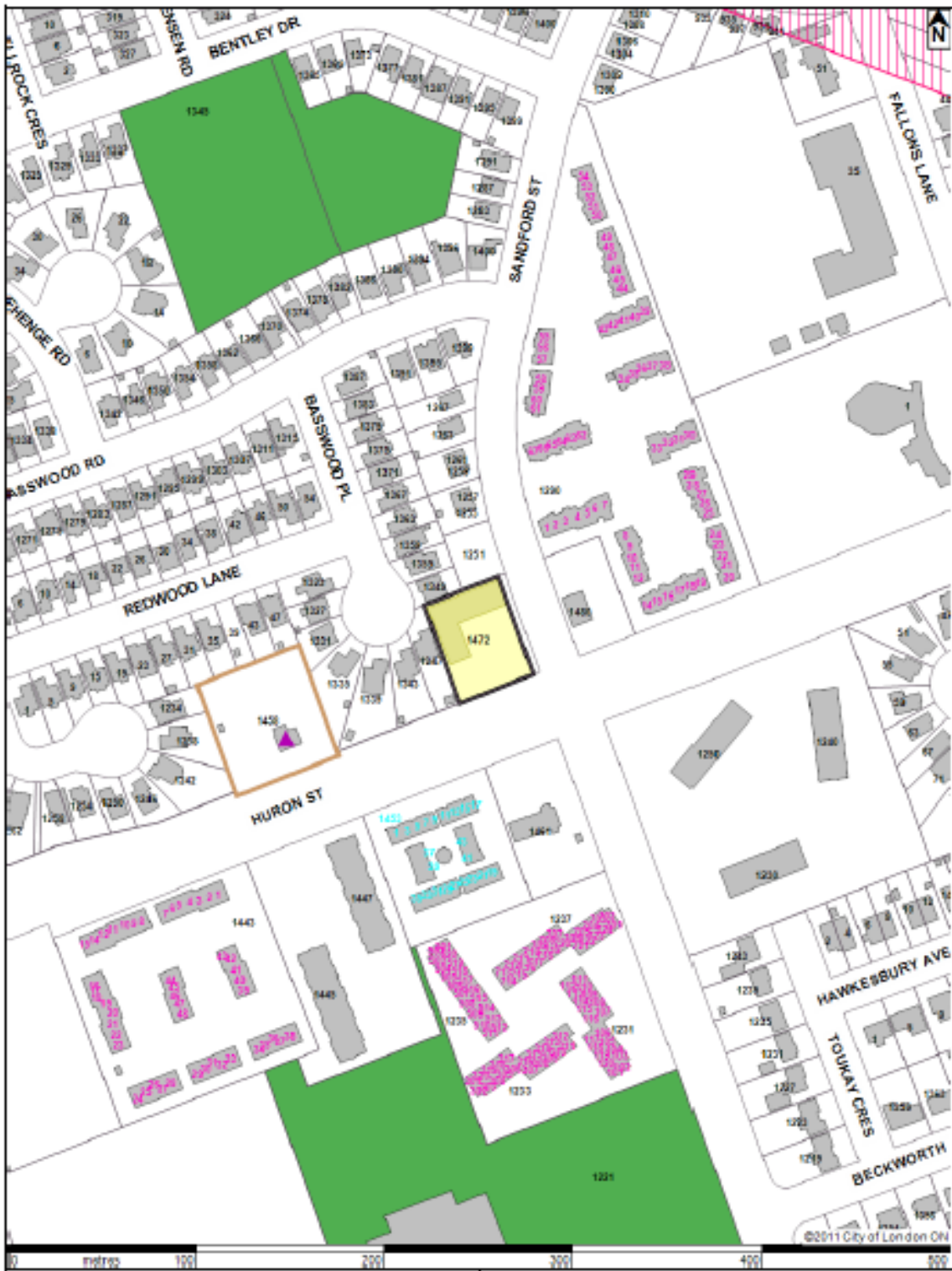
BACKGROUND

The Director of Land Use Planning and City Planner had recommended on August 15, 2011 a Zoning By-law amendment for 1472 Huron Street. The purpose and effect of the Zoning amendment was to permit a pharmacy use without a drive through, a minimum rear yard setback of 1.7m, a minimum west interior side yard setback of 1.7m, a minimum east side yard setback of 0.0m, a minimum front yard setback to a parking area of 2.1m, a minimum east side yard setback to a parking area of 0.0m, a maximum lot coverage of 35%, a minimum of 39 parking spaces including 1 handicapped parking space based on a gross floor area of 730m², and which prohibits a methadone clinic and methadone dispensary use.

Municipal Council resolved on August 29, 2011:

- a) *the request to amend Zoning By-law No. Z.-1 to change the zoning of the subject lands from a Convenience Commercial (CC2) Zone which permits convenience stores, restaurants, financial institutions without a drive through and medical/dental offices to a Convenience Commercial Special Provision (CC2 (-)) Zone which allows for the above uses and a pharmacy use without a drive through, a minimum rear yard setback of 1.7m, a minimum west interior side yard setback of 1.7m, a minimum east side yard setback of 0.0m, a minimum front yard setback to a parking area of 2.1m, a minimum east side yard setback to a parking area of 0.0m, a maximum lot coverage of 35%, a minimum of 39 parking spaces including 1 handicapped parking space based on a gross floor area of 730m², and which prohibits a methadone clinic and methadone dispensary use **BE REFUSED** for the following reason:*
 - i) *concerns with respect to the possibility of the dispensing of methadone from the proposed pharmacy and the lack of enforcement of methadone dispensing; and,*

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<p style="text-align: center;">LOCATION MAP</p> <p>Description: 1472 Huron St File Number: Z-7887 Created By: Craig Smith Date: 2011-05-24 Scale: 1:2500</p> <p style="text-align: right; font-size: small;">Prepared By: Planning and Development</p>	<p style="text-align: center;">LEGEND</p> <ul style="list-style-type: none"> Parks Assessment Parcels Flood Plains Buildings Address Numbers Parking Area 1 Parking Area 2 Parking Area 3
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- b) *The request to amend Zoning By-law No. Z.-1 to change the zoning of the lands located 1472 Huron Street from a Convenience Commercial (CC2) Zone which permits convenience stores, restaurants, financial institutions without a drive through and medical/dental offices to a Convenience Commercial Special Provision (CC6 ()) Zone which permits for the above uses with a lot coverage of 35% and 40 parking space minimum **BE REFUSED** for the following reason:*
- i) *the full range of uses in the Convenience Commercial (CC2) Zone variation uses may not be appropriate on this site;*

Fred Tranquilli, representing the applicant Hesham Abdelsayed, submitted an appeal letter on September 30, 2011, in response to Council's decision. The reasons stated in the Zoning By-law amendment appeal as submitted are:

The requested amendment was recommended for approval by the City of London Planning Division,

1. *The proposed amendment is consistent with the "Building Strong Communities" section of the Provincial Policy Statement by accommodating an appropriate range and mix of various land uses, including convenience commercial uses, to meet long term needs,*
2. *The proposed use at this location is consistent with the policies of the City of London Official Plan and is appropriate on the site as it:*
 - a. *Provides for uses at a neighbourhood scale which serves the needs of the surrounding residential development and to the traveling public;*
 - b. *Located at the intersection of two major streets; and*
 - c. *The gross floor area of the existing commercial plaza is greater than 500sq/m which can accommodate additional convenience services uses such as pharmacies.*
3. *The proposed amendment will allow for an opportunity to enter into an amended development agreement which will include improvements to the site by providing for enhanced landscaping and improvements to vehicular access.*
4. *City Council and the neighbourhood submissions of opposition to the rezoning failed to make the distinction amongst "pharmacies", methadone clinics' and "methadone dispensaries" all defined in the City's comprehensive zoning bylaw.*
5. *Other recent and similar rezoning applications in the City have been adopted by Council, that set out "prohibited uses" comprising "methadone clinics" and "methadone dispensaries", the same way as the subject rezoning was intending to do.*
6. *Council refused the rezoning on the basis of concerns over the lack of enforcement of dispensing methadone, but did not state specifically why it would be any different than enforcing other provisions of its' comprehensive zoning bylaw,*
7. *Such other reasons as may evolve and become relevant at the time of the OMB hearing.*

A copy of the appeal letter from Fred Tranquilli and the reasons for the appeal are attached as appendix "A" of this report. A date for the Ontario Municipal Board hearing has not yet been scheduled.

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PREPARED BY:	SUBMITTED BY:
C. SMITH – PLANNER COMMUNITY PLANNING AND URBAN DESIGN	JIM YANCHULA, MCIP, RPP MANAGER OF COMMUNITY PLANNING AND URBAN DESIGN
RECOMMENDED BY:	
JOHN M. FLEMING, MCIP, RPP DIRECTOR OF LAND USE PLANNING & CITY PLANNER	

November 4, 2011 cs/

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Appendix "A"

LEARNERS

Lerners LLP
Barristers & Solicitors
85 Dufferin Avenue
P.O. Box 2335
London, Ontario N6A 4G4
Telephone: 519.672.4510
Facsimile: 519.672.2044
www.lerners.ca

Fred W. Tranquilli
Direct Line: 519.640.6353
Direct Fax: 519.932.3353
ftranquilli@lerners.ca

September 30, 2011

FILE NUMBER 92794-00002

City Clerk
City of London
300 Dufferin Avenue
London ON N6A 4L9

City Clerk No. 3519
Subject 1472 Huron St
appeal - Hesham Abdelsayed

SEP 30 2011

Dear Sir/Madam:

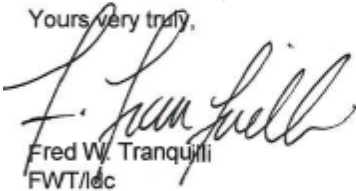
Ref. Kolakin + \$125 chq
C.C. JPB MFlora's Planning Comm

Re: 1472 Huron Street, London, Ontario

Please find enclosed Appellant Form (A1) with respect to the Ontario Municipal Board Appeal which is being filed on behalf of Hesham Abdelsayed with respect to the zoning amendment refusal regarding 1472 Huron Street, London, Ontario. A cheque in the amount of \$125.00 is enclosed.

Please do not hesitate to contact me at the above noted number of by e-mail should you require anything further.

Yours very truly,


Fred W. Tranquilli
FWT/lec

RECEIVED
SEP 30 2011

Enclosures

1. Appellant Form (A1)
2. Cheque in the amount of \$125.00

3015787.1

CITY OF LONDON
PLANNING DEPARTMENT
SEP - 8 2011
SENT TO:
MAYOR'S OFFICE
CITY CLERK
CITY ENGINEER
CITY MANAGER
CITY COMMISSIONERS

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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 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 checked="" 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

1472 Huron Street, London, Ontario

Address and/or Legal Description of property subject to the appeal:

Municipality/Upper tier: City of London, County of Middlesex

A1 Revised April 2010

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Part 3: Appellant Information

First Name: Hesham Last Name: Abdelsayed

See Part 4

Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)

Professional Title (if applicable): _____

E-mail Address: _____
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: _____ Alternate Telephone #: _____

Fax #: _____

Mailing Address: _____
Street Address Apt/Suite/Unit# City/Town
Province Country (if not Canada) Postal Code

Signature of Appellant: _____ Date: _____
(Signature not required if the appeal is submitted by a law office.)

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

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)

I hereby authorize the named company and/or individual(s) to represent me:

First Name: Fred W. Last Name: Tranquilli

Company Name: Lernalers LLP

Professional Title: Lawyer LSUC 56447J

E-mail Address: ftranquilli@lerners.ca
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: 519.640.6353 Alternate Telephone #: _____

Fax #: 519.932.3353

Mailing Address: 85 Dufferin Avenue, London, Ontario
Street Address Apt/Suite/Unit# City/Town
Province Country (if not Canada) Postal Code

Signature of Appellant:  Date: _____

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

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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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)

File No: Z-7887

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)

The requested amendment was recommended for approval by the City of London Planning Division.

1. The proposed amendment is consistent with the "Building Strong Communities" section of the Provincial Policy Statement by accommodating an appropriate range and mix of various land uses, including convenience commercial uses, to meet long term needs.

2. The proposed use at this location is consistent with the policies of the City of London Official Plan and is appropriate on the site as it:

- a) Provides for uses at a neighbourhood scale which serves the needs of the surrounding residential development and to the traveling public;***
- b) Located at the intersection of two major streets; and***
- c) The gross floor area of the existing commercial plaza is greater than 500sq/m which can accommodate additional convenience service uses such as pharmacies.***

3. The proposed amendment will allow for an opportunity to enter into an amended development agreement which will include improvements to the site by providing for enhanced landscaping and improvements to vehicular access.

4. City Council and the neighbourhood submissions of opposition to the rezoning failed to make the distinction amongst "pharmacies", methadone clinics" and "methadone dispensaries", all defined in the City's comprehensive zoning bylaw.

5. Other recent and similar rezoning applications in the City have been adopted by Council, that set out "prohibited uses" comprising "methadone clinics" and "methadone dispensaries", the same way as the subject rezoning was intending to do.

6. Council refused the rezoning on the basis of concerns over the lack of enforcement of dispensing methadone, but did not state specifically why it would be any different than enforcing other provisions of its' comprehensive zoning bylaw.

7. Such other reasons as may evolve and become relevant at the of the time of the OMB hearing.

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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:** MARCH 10, 2011
(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.**

REQUESTED CHANGE:
Change zoning By-Law Z.-1 FROM a Convenience Commercial (CC2) Zone which permits convenience stores, restaurants, financial institutions without a drive through and medical/dental offices TO a Convenience Commercial Special Provision (CC6(_)) Zone which allows for the above uses and a pharmacy use without drive through, a lot coverage of 35% and 40 parking space minimum.

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)

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 x 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?
It is anticipated three witnesses will be called. The municipality's planner; the applicant's planner and the applicant.

Describe expert witness(es)' area of expertise *(For example: land use planner, architect, engineer, etc.):*
The two experts anticipated to be called will be qualified professional planners.

- 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.

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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.