

Report to Planning and Environment Committee

To: Chair and Members
Planning and Environment Committee
From: Cathy Saunders, City Clerk
Subject: Request for Council Resolution, under section 45(1.4) of the
Planning Act, R.S.O. 1990, c. P.13 – Z-8875, 809 Dundas Street
Meeting on: April 27, 2020

Recommendation

That, on the recommendation of the City Clerk, the report dated April 27, 2020 entitled “Request for Council Resolution, under section 45(1.4) of the *Planning Act, R.S.O. 1990, c. P.13 – Z-8875, 809 Dundas Street*”, **BE RECEIVED.**

Background

The Civic Administration is seeking approval from the Municipal Council to submit a City initiated Minor Variance Application for the property known as 809 Dundas Street, with regards to a special provision for increased lot coverage that was inadvertently not included in Zoning By-law Amendment, By-law Z.-1-182709.

Section 45(1.3) of the *Planning Act, R.S.O. 1990, c. P.13* states:

“Subject to subsection (1.4), no person shall apply for a minor variance from the provisions of the by-law in respect to the land, building or structure before the second anniversary of the day on which the by-law was amended”

Section 45(1.4) of the *Planning Act, R.S.O. 1990, c. P.13* states:

“Subsection (1.3) does not apply in respect of an application if the council has declared by resolution that such an application is permitted, which resolution may be made with respect of a specific application, a class of application or in respect of such applications generally.”

At its meeting held on November 20, 2018, Municipal Council enacted By-law Z.-1-182709 to amend Schedule “A” to Zoning By-law No. Z.-1, as amended, to change the zoning applicable to the lands known as 809 Dundas Street, from an Office Residential/Business District Commercial Special Provision (OR*BDC(20)*D250*H46) Zone to a holding Business District Commercial Special Provision Bonus (h-17*h-18*BDC(20)*D250*DH46*B-54) Zone. The site plan and elevations proposed through the Bonus Zone B-54 are appended to the By-law as “Schedule 1”, and form part of the Bonus Zone.

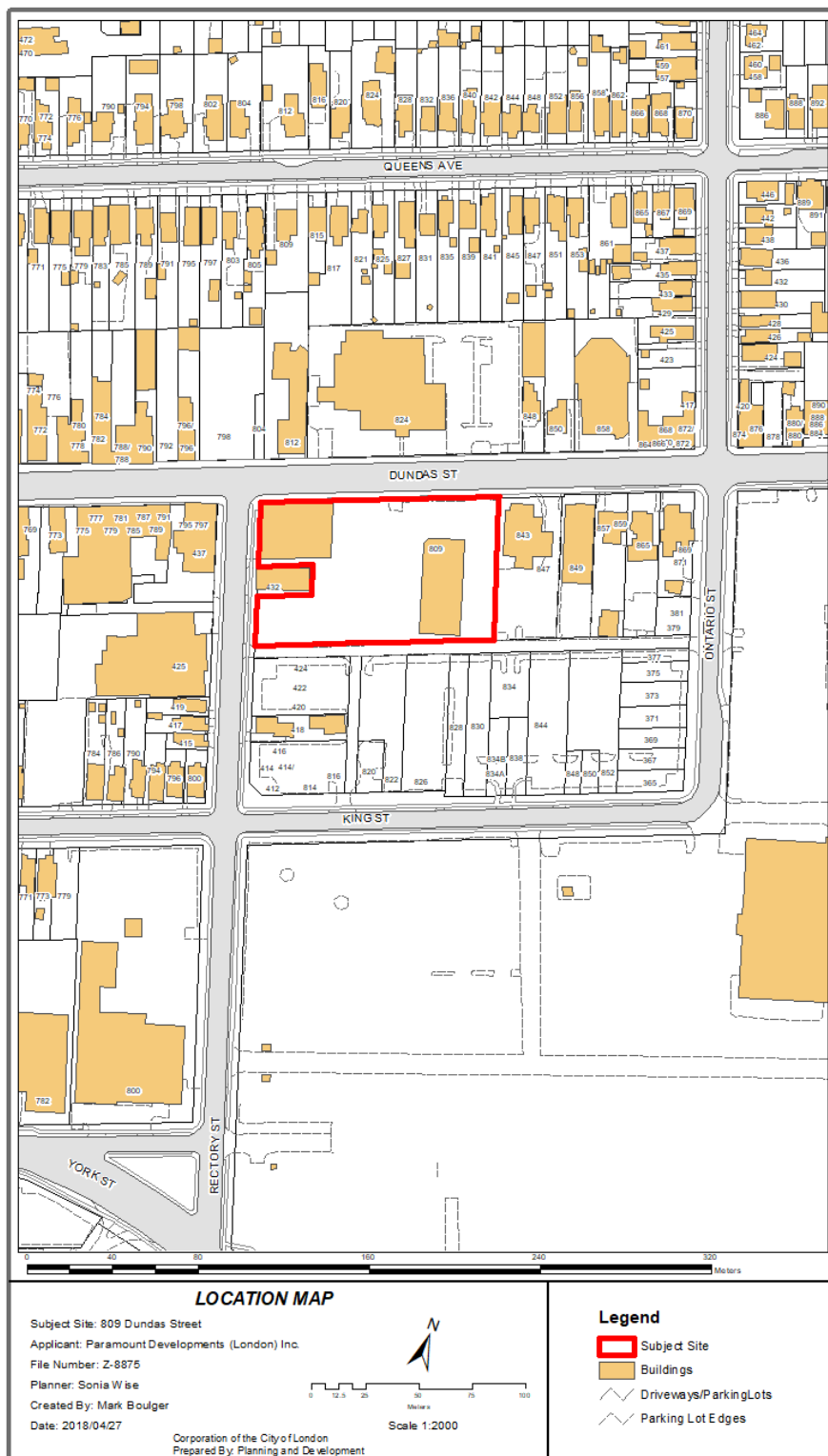
On March 5, 2020, the Civic Administration was advised by the Applicant, that the special provision for lot coverage that was requested through the Zoning Amendment Application in 2018 had not been included in the implementing By-law. The Civic Administration has reviewed the matter and has confirmed that there was an omission in the By-law for the lot coverage, which was considered as part of the overall design and site layout, but not included as a special provision in the By-law. The requested special provision was to permit an increased lot coverage of 74% maximum, whereas a maximum of 70% is currently provided for in the By-law.

To assist Municipal Council in their consideration of this matter, the balance of this report provides background information with respect to the previous *Planning Act*, R.S.O. 1990, c. P.13 Zoning By-law Amendment Application pertaining to the subject property.

1.0 Property History

The subject site currently contains two commercial buildings, including one mixed use building, with a residential dwelling on the second floor. The approved development is to include a mixed-use development with two apartment buildings of 24 storeys in height with a three storey podium containing ground floor commercial and office space. The Zoning By-law Amendment was enacted by Municipal Council on November 20, 2018 and is in full force and effect.

1.1 Location Map



1.2 Previous Reports Pertinent To This Matter

Z-8875: 809 Dundas Street - June 18, 2018 - Public Participation Meeting - Report to Planning and Environment Committee and Public Participation Meeting for a site specific bonus zone to allow for a mixed use development with two 24 storey apartment buildings.

Z-8875: 809 Dundas Street – November 12, 2018 - Public Participation Meeting - Report to Planning and Environment Committee recommending approval to permit the site specific bonus zone to allow for a mixed use development with two 24 storey apartment buildings.

1.3 Planning History

A complete Application was accepted on February 9, 2018 to amend the Zoning By-law Z.-1 to permit a mixed-use development with two 24 storey apartment buildings and ground floor commercial space. A Notice of Application was circulated on February 22, 2018, including the request for an “increased lot coverage”. A notice of Public Participation Meeting was circulated on May 30, 2018, including the request for “an increased lot coverage”, and an additional Public Participation Meeting Notice was circulated on October 24, 2018, which also included the requested “increased lot coverage”. Notices were published in *The Londoner* on February 23, 2018, May 31, 2018 and October 25, 2018, respectively, which all contained the requested special provision for an “increased lot coverage”.

Public Participation Meetings were held on June 18, 2018 and November 12, 2018, respectively, before the Planning and Environment Committee. At its meeting held on June 28, 2018, Municipal Council directed that the Civic Administration to hold an additional Public Participation Meeting, and directed the Civic Administration to include affordable housing units as part of the development, which would provide for a Bonus Zone. At its meeting held on November 20, 2018, Municipal Council enacted the By-law implementing the development of the mixed-use project with two 24 storey apartment buildings and ground floor mixed commercial and retail space.



Figure 1: Conceptual Rendering

1.4 Approved Zoning By-law Amendment

The following summarizes the provisions provided for in the Zoning By-law Amendment.

B-54 809 Dundas Street

The Bonus Zone shall be enabled through one or more agreements to facilitate the development of a high quality apartment building with a maximum of 24 storeys, 480 dwelling units and density of 710 units per hectare, which substantively implements the Site Plan and Elevations attached as Schedule "1" and Schedule "2" to the amending by-law; and

- i) Provision of one level of underground parking
- ii) Provision of Affordable Housing

The provision of 25 affordable housing units, established by agreement at 95% of average market rent for a period of 25 years. An agreement shall be entered into with the Corporation of the City of London, to secure said affordable housing units for the 25 year term.

The following special regulations apply within the bonus zone:

a) Regulations:

- i) For the purpose of this by-law the front lot line shall be deemed to be Dundas Street
- ii) Density: 710 units per hectare
(Maximum)
- iii) Height: 82 metres (269 ft)
(Maximum)
- iv) Front Stepback of Tower above the Third Storey 11m (36 ft)
(Minimum)
- v) Individual Tower floor plate above 3rd Storey 1,060m² (11,409 sq ft)
(Maximum)
- vi) Ground Floor Commercial Uses: 1,750m² (18,836 sq ft)
(Minimum)

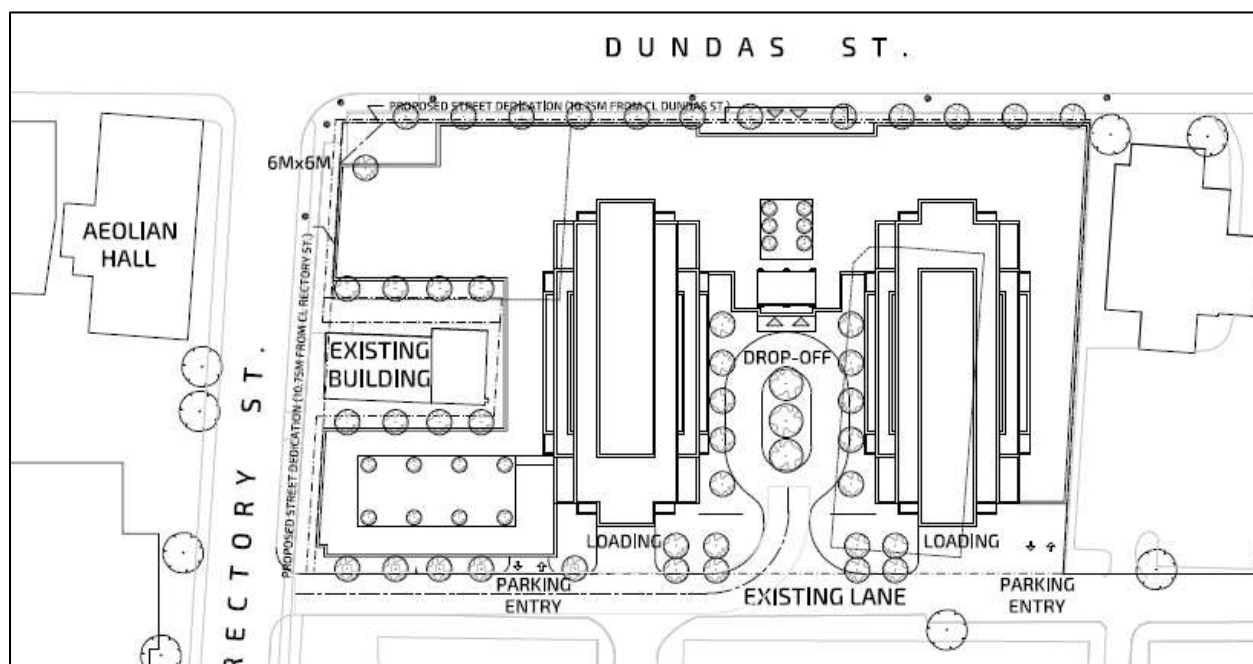


Figure 2: Schedule 1 to by-law Z.-1-182709

2.0 Policy Context

2.1 Planning Act

The *Planning Act* provides the basis for the establishment of a Committee of Adjustment to evaluate requests for relief from regulations of a Zoning By-law.

Powers of Committee

45 (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained. R.S.O. 1990, c. P.13, s. 45 (1); 2006, c. 23, s. 18 (1); 2009, c. 33, Schedule. 21, s. 10 (11).

On July 1, 2016, Bill 73 came into effect and implemented a number of legislative changes to the *Planning Act*. As part of Bill 73, Section 45 of the *Planning Act*, R.S.O. 1990, c. P.13 was amended (45 (1.3)) by putting in place a two-year moratorium for minor variance applications within two years of the date of passing of a zoning by-law amendment. The intent of the changes to the *Planning Act* were to give greater control to municipalities to prevent the reversal of zoning provisions that council determined to be important through the by-law amendment processes. It was also recognized that there may be instances where material changes to development proposals are necessary and that minor relief from regulations are required to permit the development. To address this, provisions were further included in the *Planning Act*, R.S.O. 1990, c. P.13 (45 (1.4)) to allow, by council resolution, the opportunity to submit an application for a Minor Variance.

Two-year period, no application for minor variance

45 (1.3) Subject to subsection (1.4), no person shall apply for a minor variance from the provisions of the by-law in respect of the land, building or structure before the second anniversary of the day on which the by-law was amended. 2015, c. 26, s. 29 (2).

Exception

45 (1.4) Subsection (1.3) does not apply in respect of an application if the council has declared by resolution that such an application is permitted, which resolution may be made in respect of a specific application, a class of applications or in respect of such applications generally. 2015, c. 26, s. 29 (2).

Municipal Council is requested, by way of the Planning and Environment Committee, in accordance with Section 45 (1.4), to permit such a resolution to be passed.

It should be noted that minor variance applications are deliberated by the Committee of Adjustment and that public notice to neighbouring properties would be provided should the Application be permitted to be made.

3.0 Conclusion

The Civic Administration is seeking approval from Municipal Council to provide for the Civic Administration to submit a Minor Variance Application for the property located at 809 Dundas Street to allow for a development with an increased lot coverage up to 74% maximum, whereas 70% maximum is currently permitted.

In support of this request, the Civic Administration acknowledges that the increase to the lot coverage was requested by the Applicant at the time of the submission of the Application, and this request was included in notices to the public with respect to the

Application. Additionally, the site concept plan approved as part of the enacted Zoning By-law Amendment depicts 74% lot coverage. The requested provision however, was omitted from the regulations contained in the enacted Zoning By-law Amendment (Z.-182709).

If the Municipal Council resolves that the Civic Administration may submit an application for a Minor Variance to the Committee of Adjustment, the merits of the proposed Application would be evaluated by the Committee of Adjustment. The Civic Administration will submit a Planning Report providing planning analysis of the request for the Committee of Adjustment's consideration.

To-date an Application for Site Plan Control approval has been received by the City of London as file SPA20-019.

Submitted by:	CATHY SAUNDERS CITY CLERK
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