

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*,
1919-1929 Oxford Street West
Meeting on: December 13, 2021

Recommendation

That, on the recommendation of the City Clerk, the report dated December 13, 2021 entitled "Request for Council Resolution, under section 45(1.4) of the *Planning Act, R.S.O. 1990, c. P.13* – 1919-1929 Oxford Street West", **BE RECEIVED.**

Analysis

1.0 Background Information

1.1 Request for Approval

Strik, Baldinelli, Moniz Ltd., on behalf of their client Westdell Development Corporation, London ON has submitted the attached letter, dated November 13, 2021 and received by the City Clerk's Office on November 24, 2021, seeking approval from the Municipal Council to submit a Minor Variance Application for the property known as 1919-1929 Oxford Street West to seek relief for various zoning by-law regulations with respect to the proposed development and reduced parking requirements.

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 June 29, 2020, the Municipal Council enacted By-law Z.-1-202850 to amend Schedule "A" to By-law No. Z.-1 by changing the zoning applicable to lands located at 1919 and 1929 Oxford Street West, from a Residential R1 (R1-14) Zone and a holding Convenience Commercial (h-17*CC3) Zone to a holding Residential R1 (h-94*R1-14) Zone and a holding Community Shopping Area Special Provision (h-17*CSA1(5)) Zone.

The Special Provisions of the Community Shopping Area (CSA1)(5) Zone are as follows:

- | | |
|----------|--|
| "CSA1(5) | 1919 Oxford Street West & 1929 Oxford Street West |
| a) | Regulations |
| i) | Front yard depth (Minimum) 0.6m (1.9ft) |
| ii) | Notwithstanding the provisions of Section 4.35.1) of the By-law Z.-1 to the contrary, the minimum separation distance, measured from the edge of the drive-through lane or speaker |

location, whichever is closer, to the closest residential/facility/institutional use, lot line and/or zone line shall be 10.5m (34.4ft) with a 3.2 metre (10.5ft) high noise attenuation barrier installed between the residential/facility/institutional use and the drive-through lane. A minimum 1.6 metre (5.2ft) wide landscaped strip is required along the west interior side yard consisting of new and/or existing vegetation.

- iii) Uses may be in stand-alone buildings that do not form part of a shopping centre.”

In support of this request, the Agent for the Applicant states as follows:

“The reasons for needing the Minor Variances is because the overall concept of development has changed from a gas bar, C-store and restaurant, TO having no gas bar and increasing the retails and redtails service commercial space. This has greatly altered the site design upon which the adopted zoning amendment was based. I believe that the City staff find more favour with current proposed commercial site designed without the gas bar.”

To assist the 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.

2.0 Discussion and Considerations

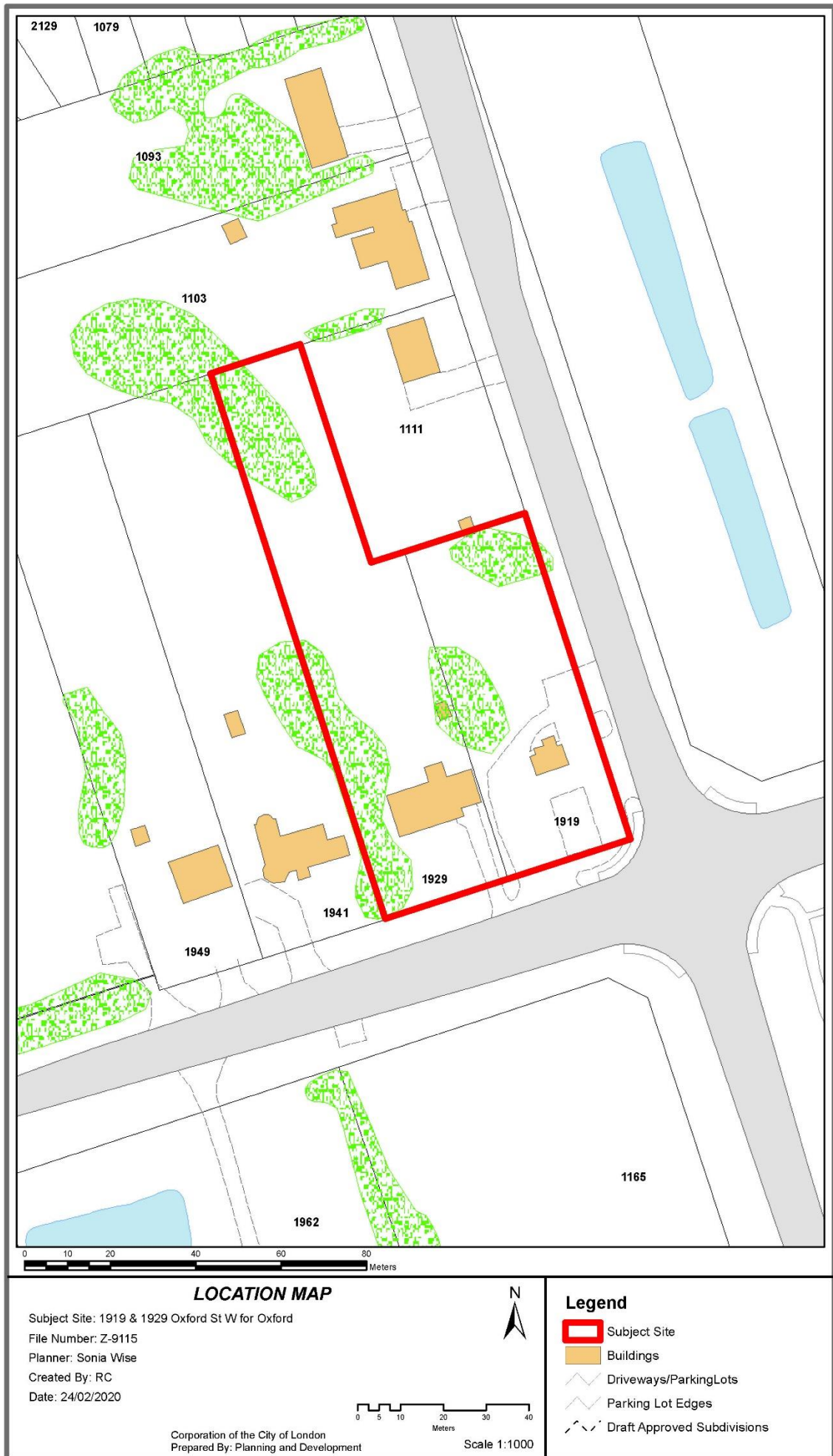
2.1 Property Description

The subject site is comprised of two properties and located at the intersection of Oxford Street West and Westdel Bourne. The corner property is currently used as a small gas bar and convenience store (Esso), and the property to the west is used as an existing single detached dwelling. The lands slope downhill to the north away from the intersection of Oxford Street West and Westdel Bourne. There are low density residential dwellings to the north and west, commercial uses to the east and future commercial and residential uses to the south.



Figure 1: 1919 & 1929 Oxford Street West – street view images

2.2 Location Map



2.3 Current Planning Information

Official Plan Designation – Community Commercial Node

- The London Plan Place Type – Shopping Area
- Existing Zoning – R1 (h-94*R1-14) Zone and a holding Community Shopping Area Special Provision (h-17*CSA1(5)) Zone.

Site Characteristics

- Current Land Use – gas station and single detached dwelling
- Frontage – 60.2m
- Depth – 79.8m
- Area – 4,804m²
- Shape – rectangular

Surrounding Land Uses

- North – existing residential
- East – mixed use
- South – vacant lands future commercial
- West – existing residential

2.4 Planning History

The Zoning By-law amendment request submitted in June 2020 was to redevelop and enlarge the existing gas bar with a new gas station, convenience store and take-out restaurant. Access is proposed from both Westdel Bourne and Oxford Street West. A portion of the site to the north is outside of the lands designated for commercial uses and will be reserved for future development. Special provisions are requested to allow for a reduced setback from the drive-through facility to the west property boundary and for reduced building setbacks.



Figure 2: Site Concept Plan

The Community Shopping Area Special Provision (CSA1(5)) Zone implements the Shopping Area Place Type and Community Commercial Node designation. A Residential R1 (R1-14) zone will continue to recognize the future residential uses on the northern portion of the site.

The approved amendment to a Community Shopping Area Special Provision (CSA1(5)) Zone is intended for the implementation of the Shopping Area Place Type and Community Commercial Node designation. Special provisions in the zone permit a reduced building setback of 0.6m from Oxford Street West, and a reduced drive-through

setback and associated noise wall height required for the west interior side yard. The h-17 holding provision is applied to both sites to ensure that sufficient municipal servicing is available prior to site operation.

2.5 Current Zoning By-law Regulations

The current zoning on the subject lands is an existing Holding Community Shopping Area Special Provision (h-17*CSA1(5)) Zone and a Holding Residential R1 (h-94*R1-14) Zone.

The CSA1(5) zone approved in June of 2020 permits a range of community-scale retail and personal service uses, as well as some office and commercial recreation uses along with additional special provisions identified in section 1.1 of this report. Through the site plan approvals process the proposed form of development was considered a "Shopping Centre" which has a parking rate of 1 space, per 15m², for Shopping Centres less than 2000m² in size. Based on the original proposal no reduction of parking was requested during the rezoning process in 2020.

An h-17 also applies to the commercially zoned lands to ensure that sufficient municipal servicing is available prior to site operation. The intent of this provision is:

To ensure the orderly development of lands and the adequate provision of municipal services, the "h-17" symbol shall not be deleted until full municipal sanitary sewer and water services are available to service the site. Permitted Interim Uses: Dry uses on individual sanitary facilities permitted by the applied Zone.

The most northerly portion of the property is located in a Neighbourhood Place Type and maintains the original Residential R1 (R1-14) zone. The R1-14 zone only permits single detached dwellings as a permitted use with a lot frontage of 30m and area of 2000m². Given that this portion of the site has no legal frontage an h-94 was recommended and approved through the rezoning in 2020.

The intent of the h-94 is:

To ensure that there is a consistent lotting pattern in this area, the "h-94" symbol shall not be deleted until the block has been consolidated with adjacent lands.

2.6 Planning Act

As noted previously in this report, 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 which 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)) to put 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 Agent for the Applicant is seeking approval from the Municipal Council to provide for the submission of a Minor Variance Application for the property known as 1919-1929 Oxford Street West to seek relieve for various regulations with respect to the proposed development and reduced parking requirements.

If the Municipal Council resolves that the Agent for the Applicant 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.

Prepared and Recommended by: Cathy Saunders, City Clerk

November 13, 2021

**Chair and Members
Planning and Environment Committee
City Hall
300 Dufferin Avenue,
London, ON N6A 4L9**

**Re: REQUEST FOR DELEGATION STATUS to adjust the Zoning Bylaw Amendment for 1919 – 1929
Oxford Street west, by Westdell Development Corporation, London ON.**

Dear Chair and Members:

As you are aware, the Civic Administration is unable to accept Planning Act applications that amend the City's Comprehensive Zoning Bylaw Z-1 for two years. Council adopted the site specific amending Bylaw Number: Z.-1-202850 on June 29, 2020. (copy of Notice attached).

I respectfully request delegation status to be present at the Planning and Environment Committee to request that the City have the authority to accept a Minor Variance application relating to the properties located at 1919-1929 Oxford Street West (at Westdel Bourne), north west quadrant. If PEC is inclined to grant the request without me appearing as a delegation, that would be quite agreeable.

The purpose of the Minor Variance application would be to consider various regulations affecting setback of buildings and a slight parking reduction.

The reasons for needing the Minor Variances is because the overall concept of development has changed from a gas bar, C-store and restaurant, TO having no gas bar and increasing the retails and retails service commercial space. This has greatly altered the site design upon which the adopted zoning amendment was based. I believe that the City staff find more favour with current proposed commercial site design without the gas bar.

Respectfully submitted,

Strik, Baldinelli, Moniz Ltd.

Planning • Civil • Structural • Mechanical • Electrical



Laverne Kirkness, BES, RPP, MCIP.

Principal Planner, Planning Division Manager

cc. Michael Pease – Manager of Site Plan Approvals

cc. Michael Corby -- Manager, Zoning cc. Westdell



300 Dufferin Avenue
P.O. Box 5035
London, ON N6A 4L9

London
CANADA

Notice of Passing of Zoning By-law Amendment

By-law Number: Z.-1-202850

Date of By-law Passing: June 29, 2020

Municipality: City of London

Date of Notice: July 9, 2020

Subject Lands: 1919 & 1929 Oxford Street W

Last Date to File an Appeal: July 29, 2020

The Municipal Council of The Corporation of the City of London passed by-law Z.-1-202850 under section 34 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, on June 29, 2020.

Explanation of By-law

An explanation of the purpose and effect of the by-law and a description of the lands to which the by-law applies are printed on the reverse side of this notice. A key map showing the land to which the by-law applies is also located on the reverse side of this notice.

Related Applications

The subject land is not the subject of an application under the *Planning Act* for a minor variance or a consent, for an amendment to an official plan, a Minister's zoning order, or for approval of a plan of subdivision.

Where to Obtain Information

For further information about this by-law, please contact S. Wise in Development Services at 519-930-3500 or developmentervices@london.ca. Please quote file no. Z-9115 when making inquiries.

A copy of this Zoning By-law may be requested in the City Clerk's Office during regular business hours, Monday to Friday from 8:30 a.m. to 4:30 p.m., via e-mail at docservices@london.ca or telephone at 519-661-4530.

Address of the City Clerk's Office

The Corporation of the City of London
3rd floor, 300 Dufferin Avenue
London, Ontario N6B 1Z2.

When and How to File an Appeal

An appeal to the Local Planning Appeal Tribunal must:

1. be filed with the City Clerk of the Corporation of the City of London at the address shown above by July 29, 2020;
2. set out the reasons for the appeal; the appellant form is available from Tribunals Ontario at www.olt.gov.on.ca; and,
3. be accompanied by the fee prescribed under the *Local Planning Appeal Tribunal Act, 2017*, payable to the Minister of Finance.

Who May File an Appeal

Only individuals, corporations and public bodies may appeal a by-law to the Local Planning Appeal Tribunal (LPAT).

A notice of appeal may not be filed by an unincorporated association or group. However, a notice of appeal may be filed in the name of an individual who is a member of the association or the group on its behalf.

No person or public body shall be added as a party to the hearing of the appeal unless, before the by-law was passed, the person or public body made oral submissions at a public meeting or written submissions to the council or, in the opinion of the Tribunal, there are reasonable grounds to add the person or public body as a party.

Dated at the City of London this July 9, 2020.

Catharine Saunders, City Clerk
The Corporation of the City of London

Purpose and Effect of the Zoning By-law Amendment

The purpose and effect of the recommended action is to facilitate the redevelopment of the subject site for a new gas bar, take-out restaurant and convenience store with drive-throughs.

Effect of Written and Oral Submissions on Decision

Public comments were received and considered by Municipal Council, which had the following effect upon Municipal Council's decision:

Municipal Council approves this application for the following reasons:

- the recommended Zoning Amendment is consistent with the Provincial Policy Statement (PPS), 2020, which encourages an appropriate range and mix of uses to meet projected requirements of current and future residents;
- the recommended amendment conforms to the in-force policies of The London Plan, including but not limited to, the Shopping Area Place Type, Our City, Our Strategy, and all other applicable London Plan policies;
- the recommended amendment permits an appropriate range of commercial and automotive uses that conform to the in-force policies of the (1989) Official Plan, including but not limited to the Community Commercial Node designation; and,
- the recommended Zoning By-law Amendment permits development that is appropriate for the site and compatible with the surrounding land uses.

Key Map

