



City of
Peterborough

TO: Members of the Planning Committee

FROM: Ken Hetherington, Manager, Planning Division

MEETING DATE: January 25, 2010

SUBJECT: Report PLPD10-002
Application for Site Plan Approval
971 Lansdowne Street West
517.8 Square Metre Gas Bar and Car Wash

PURPOSE

A report to recommend the approval of a site plan application for a gas bar and car wash at 971 Lansdowne Street West.

RECOMMENDATION

That Council approve the recommendation outlined in Report PLPD10-002 dated January 25, 2010, of the Director of Planning and Development Services, as follows:

That the Site Plan application submitted by Suncor Energy Products Inc. for the construction of a 517.8 square metre gas bar and car wash at 971 Lansdowne Street West be approved subject to the following conditions:

- a) The conveyance of a 3.048 road widening strip across the Lansdowne Street frontage of the property together with a daylighting triangle at the corner of The Parkway and Lansdowne Street.

- b) The construction of an extension to the concrete median on The Parkway along with a widening of the road at the Owner's full expense.
- c) The execution of a lease agreement with the City for a seven metre wide strip of land abutting The Parkway road allowance.
- d) The acquisition of a permit pursuant to Regulation 167/06 from The Otonabee Region Conservation Authority.

BUDGET AND FINANCIAL IMPLICATIONS

Development Charges and a Parks Levy are applicable. A lease rate has been established by the Lease Committee for the use of a seven-metre strip of land within The Parkway road allowance. The land lease will commence at a rate of \$.90 per square foot, increasing by 2.5% per annum for a 20 – year term. The payment for the first year of the lease has been calculated to be \$4,650.00.

BACKGROUND

The property at 971 Lansdowne Street West is situated at the southeast corner of The Parkway and Lansdowne Street West intersection. Previously, various restaurant establishments have used the property. However, over the past few years it has remained vacant.

Given the width of The Parkway road allowance, City Council declared a portion of the right-of-way as surplus, and resolved to sell a 5.0 metre wide parcel of land to the owner (D.J. Mac Limited), at a price of \$9.00 per square foot. The details of the road closure and sale of property are outlined in Report PLPD07-021.

The subject property is located within the floodplain of Byersville Creek.

COUNCIL APPROVAL OF THE SITE PLAN APPLICATION

Normally the Site Plan approval associated with the proposed redevelopment of the subject property represents a class of development that has been delegated to staff. However, staff have chosen to make a formal recommendation with respect to this Site Plan application, and present the facts in a report from which Council can base its decision. There are also several important legal issues and interpretations associated with the Site Plan of which Council need to be aware.

ORCA staff have advised that the application to Otonabee Conservation for the proposed development pursuant to Regulation 167/06, “the Development, Interference with Wetlands and Alterations to Shoreline and Watercourses” regulation will not be brought before their Executive Committee without the City indicating its formal support of the Site Plan application. Whether or not City Council approves the Site Plan application, ORCA staff have advised that they will not recommend the approval of the application pursuant to Regulation 167/06. Council’s approval of the Site Plan application will also serve to formally advise the ORCA Executive Committee of the City’s position on the redevelopment of the property before the Executive Committee makes its decision on any application it has to consider.

THE APPLICATION

The application for Site Plan Approval includes the reconstruction of a 271.7 square metre building next to the existing building’s location on the site. It is proposed to be a standard Suncor Energy building containing a gas bar with accessory convenience store items, and a single vehicle car wash. The gas bar canopy (over the fuel pumps) is proposed to be 276.1 square metres in area, bringing the total proposed building area for the site to be 517.8 square metres.

Two driveways are proposed: one at the present driveway entrance location off Lansdowne Street, and one at the south end of the site off The Parkway. The existing concrete median on The Parkway is to be extended to prohibit left turns into and out of the site. As well, the road must be widened to accommodate the extension of the median. The work in The Parkway road allowance is to be completed at the full expense of the Owner.

The fuel pumps are positioned on an angle for convenient vehicular access and for economy of space. The fuel pumps and overhead canopy are partially situated on the 5 metre strip of land purchased from the City, and the vehicular queuing space in advance of the pumps is situated on the 7 metre strip of land to be leased from the City.

Patrons of the car wash would travel in a northerly direction within a single vehicle width drive-thru lane. Parking is located on the south side of the building with one disabled person’s parking space on its north side directly adjacent to the main entrance of the building. The vehicle vacuums are proposed to be on the north side of the site.

The underground fuel storage tanks are shown at the south end of the site. They are ideally located for convenient tanker truck access off The Parkway.

Two 7.5 metre high free-standing (pylon) signs are shown on the Site Plan: one at the northwest corner of the site near the intersection of The Parkway and Lansdowne Street West, and one adjacent to the proposed driveway entrance off The Parkway.

As the site has special prominence being located at a major intersection, the applicant was directed to submit a professionally prepared Landscape Plan. The Plan shows the periphery of the site planted with native Red Maple and Ginkgo trees. Coniferous trees are also included with a variety of shrubs for the areas adjacent to the signs and to screen the garbage enclosure.

STORM WATER MANAGEMENT AND THE FLOODPLAIN

The Site Plan application was filed at the end of May in 2008. Over the course of time, the Storm Water Grading and Drainage Plan, along with the Storm Water Management Report has undergone intense review. Careful review was necessary because the subject property is within the Byersville Creek floodplain.

The review focused on four main issues:

- i) The relationship of the Provincial Policy Statement to the subject application;
- ii) The grading of the site to improve access during a flood event;
- iii) The objective of maintaining upstream storage of flood water while improving downstream conveyance; and
- iv) Storm water quality.

ORCA has also commented that in the opinion of ORCA Staff, approval of the subject site plan cannot be supported by the Provincial Policy Statement (PPS). The PPS states that development and site alteration will not be permitted within a floodway. Further, the PPS states that development that involves the storage of hazardous materials shall not be permitted to be located in hazardous lands and hazardous sites.

The Otonabee Region Conservation Authority (ORCA) staff have indicated that they do not support the issuance of a permit for the proposed development pursuant to Regulation 167/06, "The Development, Interference with Wetlands and Alterations to Shoreline and Watercourses Regulation".

ORCA staff have given three reasons for not supporting the proposed redevelopment of the property:

- i) The site does not have safe access during a "Regional Storm" event. Safe access is defined as less than 0.3 metres (one foot) of flooding during a "Regional Storm" event.
- ii) The storage and distribution of petroleum products on the site has the potential to result in pollution, and

- iii) The construction of new non-residential buildings or structures in areas susceptible to flooding during a Regulatory Flood will not be permitted, unless floodplain storage volume is maintained.

Ontario Regulation 167/06 allows ORCA to issue a permit for development that is otherwise prohibited by the Regulation. The applicant has applied for a permit, however, ORCA, has asked for the City's position on the Site Plan before it will proceed with processing the permit application.

City staff can advise of the following factual matters:

- i) As the site floods during a Regional Storm event, the limit for safe access will be exceeded. However, the Site Plan application proposes to re-engineer the site to effectively reduce the flooding depth, improving the flooding condition on the site. Currently, the depth may reach 1.11 meters. The proposal calls for reducing it to a maximum of 0.7 metres.
- ii) Suncor Energy Products have developed a fuel storage systems that it represents as being virtually impossible for fuel to escape the site during a flood event. The developer (Suncor Energy products Inc.) provided detailed engineering information that the ORCA Executive Committee which staff understand was deemed satisfactory by the Executive.
- iii) Pre-existing floodplain storage volumes cannot be maintained on the site because grades have to be raised to improve access. USD has approved the storm water management proposal as it represents the best available solution not necessarily the perfect solution.

THE PROVINCIAL POLICY STATEMENT

Planning Staff accept the fact that the subject property is entirely within the floodplain of the Byersville Creek and that the decisions on the site plan must be consistent with the Provincial Policy Statement (PPS). It is Planning Staff's position that the site plan is consistent with the PPS.

The subject property is designated "Commercial" on Schedule "A" – Land Use, and "Special Purpose Retail" on Schedule "I" – Commercial Area, of the City's Official Plan. The property has been zoned C.4 – Commercial since 1972 and has been used for service commercial uses for many years. The C.4 zoning district does permit the intended use without the need for any amendments or variances and although a site plan approval is required for the proposed redevelopment, no approvals at all, including an ORCA permit, would be necessary if the existing building and parking area were to be reused.

While a strict interpretation of the PPS could lead to the conclusion that any development in the floodplain is prohibited, it is staff's opinion that development can be permitted in certain circumstances. In fact, Ontario Regulation 167/06 of the Conservation Authorities Act, which prohibits development in hazardous lands, also permits the Conservation Authority to issue permits for development within the floodplain. Subsection 3.(1) states:

“The Authority may grant permission for development in or on the areas described in subsection 2(1) if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development.”

The PPS must be read with the same level of flexibility. In fact, the Ontario Municipal Board has accepted evidence that it is not the intent of the PPS to prohibit development and site alteration on the entire floodplain. If the intention of the PPS was to prohibit development within floodplains, the Conservation Authority Regulations authorizing the Authority to permit such development by way of a permit would be meaningless. This is further reinforced by the fact that Regulation 167/06 came about after the “in force” PPS.

Section 3.1 of the PPS deals specifically with natural hazards, which includes floodplain lands. While the PPS generally directs development and site alteration to areas not subject to flooding, there are instances where development is permitted within floodplain lands.

Section 3.1.2 (c) and (d) of the PPS generally do not permit development or site alterations in areas subject to flooding, however, exceptions are provided. Section 3.1.2 (c) does allow development and site alteration if it has been demonstrated that the site has safe access appropriate for the nature of the development and the natural hazard. Currently the flood depth of the site could reach 1.11 metres. The Site Plan application proposes a reduction of the flood depth from 1.11 metres to 0.7 metres as part of the redevelopment of the site. While this falls short of the Conservation Authority's definition of safe access of 0.3 metres, it is a measurable improvement over the existing situation. In this regard, the redevelopment moves the property to a position of greater conformity.

Section 3.1.3 of the PPS also provides flexibility for development and site alteration located in floodplain areas. Section 3.1.3(b) permits development that includes minor additions and non-structural uses which do not affect flood flows. The subject site plan proposes the redevelopment of an existing building of 201 square metres (2,160 square feet) with a new building with 241 square metres (2,595 square feet). The new building will have a net additional floor area of 40 square metres (435 square feet). While it could be argued that the proposed canopy is a structural use, it certainly would not affect flood flows.

The proposed site plan application also proposes storm water management quantity and quality controls for the site. Presently there are no such controls in place.

The PPS must be read in its entirety and there are many other policies that support the proposed redevelopment. Other factors that cannot be ignored include the existing official plan designation, the existing zoning and the fact that the redevelopment will improve the existing flooding conditions and implement storm water management quantity and quality controls.

Finally it is the recommendation of staff that Site Plan Approval for the subject property be conditional on the property owner securing a permit from the Conservation Authority under Regulation 167/06.

It is for all of these reasons, collectively, that it is staff's position that the site plan application does comply with the Provincial Policy Statement.

ZONING AND OFFICIAL PLAN

The subject property is zoned C.4 – Commercial District, and may be used as a service station and a car wash. The Site Plan Application is in compliance with applicable regulations of the Zoning By-law and previous variances granted by the Committee of Adjustment.

The C.4 zoning on the subject property has been in place since 1972, prior to the 1981 Official Plan. While it is intended for the Zoning By-law to implement Official Plan policy, there are instances when they conflict. In these cases, the rights associated with the zoning override Official Plan Policy.

The property has been used for service commercial uses for many years and the existing building could continue to be used for C.4 uses without any City approval. The existing site also does not provide any storm water management controls.

The proposed site plan enhances the development on the subject property and does provide some appropriate storm water management control where none presently exist.

Under Section 3.4.3 of the City's Official Plan, it is stated that development and site alteration may be permitted within floodplains provided that it is demonstrated that it can be carried out to the satisfaction of ORCA, and the development will not involve (among other uses) storage or handling of hazardous substances.

If the property were the subject of a Zoning By-law amendment application, where permission was requested to use the property as a gas bar, City staff's recommendation would be based upon different policy considerations. However, the subject application is not a request for permission to change the land use. Permission to use the land as a gas bar is firmly in place pursuant to the provisions of the Zoning By-law.

NOTICE

Notice of this application was circulated to abutting property owners as well as all concerned utilities and agencies. Comments received from utilities such as Peterborough Utilities Services Inc. and Enbridge Gas Distribution Inc. did not have an effect on the site plan application and were passed to the applicant for information. The only agency response received was from the Otonabee Region Conservation Authority. ORCA's comments have been highlighted within the body of this report.

SUMMARY

The subject property is zoned for its proposed use as a gas bar and car wash. The existing building is proposed to be demolished, and a new building constructed with a slightly greater floor area. Without an improvement to the property, it can continue to be used in its present dilapidated state, where potential flooding can significantly exceed the limit for safe access.

This recommended conditional approval serves the public interest respecting the ongoing use of this commercially zoned property.

Submitted by,

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Attachments:

Exhibit A - Land Use (Site Location) Map

Exhibit B - Site Plan

Exhibit C - Storm water Grading and Drainage Plan

Exhibit D - Landscape Plan

Exhibit E - Building Elevation Drawings