

Zoning By-law Amendment Application SC-Z19990017
VMP Properties Inc.
2085 Lawrence Avenue East
Wexford Community
Scarborough Wexford

(City Council on November 23, 24 and 25, 1999, adopted this Clause, without amendment.)

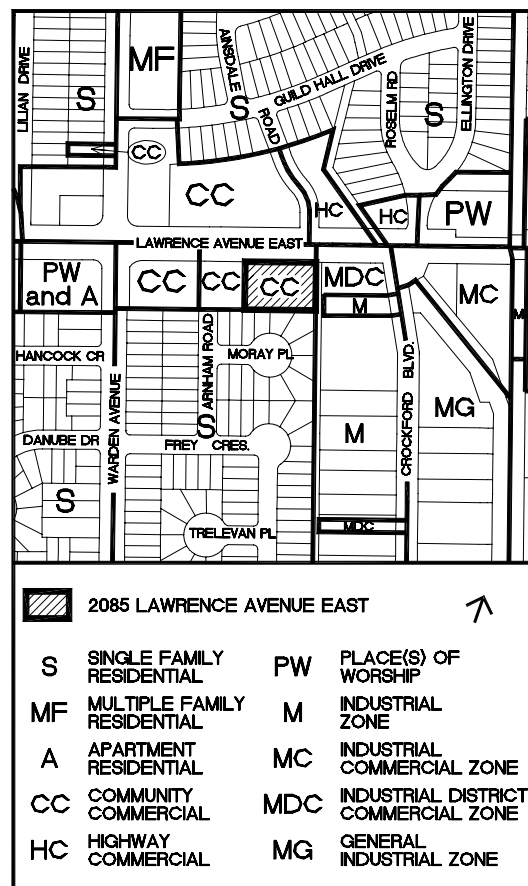
The Scarborough Community Council, after considering the deputations and based on the finding of fact, conclusions and recommendations contained in the report, dated October 8, 1999, from the Director of Community Planning, East District, recommends that the report of the Director of Community Planning, East District, be adopted, subject to adding thereto the following:

- “(3) that the Bill enacting this Zoning By-law Amendment not be passed by City Council until the existing Site Plan Agreement is amended to include the following conditions:
- (a) to require that a 1.8 metre high board-on-board fence be maintained along the rear (south) boundary of the subject property, as shown in the attached plan;
 - (b) to require a garbage storage room within the building in which the restaurant is located and to prohibit outdoor storage of garbage; and
 - (c) to require signs to be erected at the rear of the building identifying the parking spaces as employee/tenant parking spaces.”

The Scarborough Community Council reports having held a statutory public meeting on November 9, 1999, in accordance with Section 17 and Section 34 of The Planning Act and the regulations thereunder.

The Scarborough Community Council submits the following report (October 8, 1999) from the Director of Community Planning, East District:
Purpose:

This report recommends approval of this application to amend the Wexford Community Zoning By-law No. 9511, to add restaurants to the



limited list of Community Commercial Uses (CC) currently permitted on this site.

Financial Implications and Impact Statement:

None.

Recommendations:

It is recommended that City Council:

- (1) amend the Wexford Community Zoning By-law No. 9511, as amended, with respect to Part of Block B, Registered Plan 4539, known municipally as 2085 Lawrence Avenue East, by deleting the current Exceptions in the By-law, only as they apply to this site, and replacing them with a new Exception providing for the following:
 - (a) only the following uses shall be permitted:
 - (i) Banks;
 - (ii) Business and Professional Offices;
 - (iii) Ground signs which are non-accessory;
 - (iv) Marketplace signs;
 - (v) Medical Centre;
 - (vi) Retail stores;
 - (vii) Restaurant;
 - (viii) Service Shops;
 - (ix) Studios;
 - (x) Wall signs which are non-accessory;
 - (b) the permitted Restaurant shall be limited to one establishment. Preparation and cooking of meals and sale of food and beverages to the public for consumption on or off the premises shall be permitted, but no stage or dance floor is permitted. Patron entrances and outdoor patios shall be limited to the north face of the building only;
 - (c) pinball machines or other electronic or manually operated games shall be prohibited; and
- (2) authorize such unsubstantive technical, stylistic or format changes as may be necessary to the Zoning By-law to properly carry out the intent of this resolution.

Background:

The subject property, the two westerly properties at 2055-2069 and 2075 Lawrence Avenue East, and lands on the north side of Lawrence Avenue, both east and west of Warden Avenue, are designated and zoned for Community Commercial uses. Taken together, these lands comprise a Community Commercial node for the Wexford Community which under the Official Plan is

intended to provide a population of 15,000 to 30,000 people within a 1.5 kilometre radius with major food facilities and weekly shopping needs and services. All of the lands zoned Community Commercial (CC) directly abut single family residential dwellings, however the current prohibition on restaurants only applies to the three properties noted above, on the south side of Lawrence Avenue, east of Warden Avenue.

The history of various rezoning applications to permit restaurants on these three properties was detailed for Scarborough Community Council in the staff Preliminary Evaluation report on the subject application dated June 30, 1999. To summarize, the present or previous owners of all three properties have all applied for restaurant permissions. In 1981, the Council of the (former) Borough of Scarborough amended the by-law to permit restaurants on the subject property, however the decision was appealed and the Ontario Municipal Board ultimately permitted only a limited array of commercial uses excluding restaurants.

The current owner in 1992 applied again to amend the By-law to permit an expanded range of permitted commercial activities, including restaurants. The owner withdrew the restaurant request prior to Council's consideration of the application.

The property immediately to the west at 2075 Lawrence Avenue East since 1976 had been designated and zoned only for post office use. In 1992, the owner of the Wexford Plaza, who had purchased the property when it was declared surplus by Ottawa, applied to amend the Official Plan and Zoning By-law (Files P92030 and Z92051) to allow the full array of Community Commercial uses, including restaurants. Council limited the approval to permit only the activities of a Goodwill store.

As a result of the two 1992 proposals noted above, Council directed that the question of full commercial permissions on all three properties at this location be further reviewed. (Figure 3 illustrates the site plans from that period for all three properties.) Following a series of community consultations, Council in 1994 approved an expanded range of commercial uses including only banks, business and professional offices, medical centre, retail stores, service shops and studios for these properties, and again excluded restaurants.

The owners of the Wexford Plaza and 2075 Lawrence subsequently obtained 2055-2069 Lawrence Avenue East, and in 1996 applied for a rezoning of the latter site to allow a 230 square metre (2,500 square foot) restaurant. Given that the combined ownership with 2075 Lawrence enabled an integration of site access, vehicle circulation, parking, landscaping, grading and fencing over the two properties, Planning staff presented a Preliminary Evaluation Report to the (former) City of Scarborough Council recommending that community consultation be undertaken and a further report submitted. Council, however, refused the application at this stage.

That decision was appealed by the owners in 1998, and the hearing of the Ontario Municipal was held in January 1999. In its decision allowing the appeal on March 15, 1999, thereby allowing restaurants, the Board specifically noted that there are no policy constraints within either the overall Official Plan or the Wexford Community Secondary Plan to prohibit restaurants within a Community Commercial designation. The Board also found that the City's parking requirements could be adequately satisfied, and that the residents' concerns could be satisfied by restricting

public access to the restaurant to the Lawrence Avenue face of the building, prohibiting any patio exposed to neighbouring residences, and requiring a privacy fence between the commercial use and the dwellings to the rear. (The Board's Order has not yet been issued pending resolution of certain outstanding site plan and mutual easement issues.)

The current application for 2085 Lawrence Avenue is seeking a similar restaurant permission as has recently been granted by the Board for the neighbouring property to the west.

The application has been processed in accordance with Scarborough Community Council's direction of July 15, 1999 responding to the staff Preliminary Evaluation Report. No concerns have been raised by any of the departments and agencies circulated.

Comments:

Planning staff agree with the recent finding of the Ontario Municipal Board that neither the Official Plan nor the Wexford Community Secondary Plan in particular, contain an express policy basis for any limitation on the location or distribution of restaurants within the Community Commercial designation. Restaurant uses in close proximity to residential uses have often been cause for concern in the past, however. The issue is usually less one of the use itself, than the potential for nuisances generated by the use such as noise, odour, garbage handling and parking. Over the years the municipality has responded to these concerns through various mechanisms such as requiring indoor garbage rooms, standardized restaurant parking regulations, property standards enforcement and the use of Site Plan Control. In the majority of cases, certainly within the City's Community Commercial nodes, restaurants can coexist well with other businesses and neighbouring properties.

As noted in the Preliminary Evaluation report on this application, the owner currently has no plans to establish a restaurant within the existing 1,129 square metre (12,150 square foot) building, largely because the currently available parking supply for all uses is only sufficient to accommodate an approximately 28 square metre (300 square foot) restaurant. A viably larger restaurant can only be accommodated through site and building modifications, if not full site redevelopment, to ensure both adequate parking supply and protection for abutting properties.

In this case, Planning staff feel the Site Plan Control process affords the City sufficient ability to address potential nuisance issues, notwithstanding introduction of a restaurant permission at this time. Staff note, however, that the recent Ontario Municipal Board decision for 2055-2069 Lawrence Avenue goes even further by approving additional performance standards for restaurant use on that property, including a limit of one restaurant establishment not exceeding 240 square metres (2,580 square feet), that no stage or dance floor is permitted, and no public entrance or outdoor patio is permitted facing neighbouring residences. To achieve a consistent standard for restaurant uses and a consistent level of protection for all residents to the south of these commercial properties, staff are prepared to recommend the application of similar standards to the subject site with the exception of a restaurant size limitation, given the different site and building characteristics of the two properties.

The Board also stipulated that no pinball and similar arcade games are permitted. Such uses are already prohibited on all three properties, except for premises where liquor is legally sold, by

Exception in the By-law. The Board's decision would effectively supersede this permission for licensed premises. Again, to maintain consistent standards between the properties, Council may wish to also apply this further restriction by the Board to the subject lands.

Conclusions:

Restaurants are integral business elements which contribute substantially to the health and vibrancy of active, successful commercial centres and streets. They are commonly provided for in commercial districts across Scarborough. Lawrence Avenue in particular is already characterized by numerous successful restaurants in the vicinity offering a wide diversity of cuisines. The addition of a restaurant permission for the subject site is appropriate and will provide additional business opportunities for both the owner and the Lawrence Avenue business community, as well as greater public choice. Through both the proposed performance standards and the application of Site Plan Control for any site improvement necessary to accommodate a restaurant, Planning staff feel the use can be satisfactorily accommodated without undue impact on neighbouring properties.

Contact:

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The Scarborough Community Council submits, for the information of City Council, the following communication (November 4, 1999) from Mr. Joseph Feldman, Solicitor:

We understand that Scarborough Community Council intends to hold a Public Meeting, pursuant to the provisions of the Planning Act, on November 9, 1999, to consider the above-noted matter.

We are solicitors for Anthony and Thomas Kiriakou, the owners of the Wexford Heights Plaza, located on the north side of Lawrence Avenue East, east of Warden Avenue, which property is across the street from the property which is the subject matter of this application.

Council should be made aware of the fact that the applicant (through a predecessor corporation) made a similar application to permit restaurant uses in 1981. This application was rejected by the Ontario Municipal Board by Decision dated July 10, 1981. In the event that members of Council were unable to obtain a copy of that Ontario Municipal Board Decision, I am pleased to enclose a copy for your records.

One of the reasons that the application was refused by the Ontario Municipal Board was because of the inadequacy of parking. At that time, the apparent evidence was that the plaza contained 33 parking spaces. Since the applicant has not acquired any more land, nor to our knowledge has he reduced the size of its building, we assume that the same number of parking spaces are available.

While our client has no objection to including a provision in the By-law to permit restaurant uses, there is no specific indication in the material before Council as to what size of restaurant the applicant proposes be allowed on the subject site. The City's current parking performance standard with respect to restaurant uses is 1.07 per 100 square metres (approximately 10 spaces per 1000 square feet). Until the applicant can demonstrate that he has a specific area in mind for use as a restaurant and that the resultant calculation insures that the minimum parking requirements can be achieved on the site, we would suggest that the application is premature.

In the alternative, Council should insure that as a condition of the re-zoning, that the applicant be able to demonstrate that he has sufficient parking to satisfy the City's requirement, without variation.

I plan on attending the Public Meeting scheduled for November 9, 1999, should any member of Council wish to direct any questions to me with respect to the contents of this letter.

The Scarborough Community Council submits, for the information of City Council, the following communication (October 18, 1999) from Mr. Werner Herrmann:

VMP Properties Inc. has applied for an amendment several years ago to rescind Exemption 47 of By-law 9511. The OMB at that time did not approve the amendment. An appeal to the Ontario Executive Council upheld the decision of the Ontario Municipal Board. The adjoining ratepayers are now, as then, opposed to having any food related outlets in that plaza, due to the close proximity of our homes to the plaza's boundary. Exemption 47 should not be modified in any way.

The following persons appeared before the Community Council in connection with the foregoing matter:

- Mr. Christopher J. Williams, Solicitor for the owner/applicant, concurring with the findings, observations and recommendations in the staff report; pointing out to Community Council that the proposed restaurant use is for a 300 square foot establishment; that the restaurant use is permitted in this location by the Official Plan as of right; and speaking to the question of inadequate parking for a restaurant, advising that there is an existing Site Plan agreement on this site which would require amendment were his client to put an establishment of any significant size on the premises; and suggesting that the opposition of Mr. Feldman's clients is based on competition rather than inadequate parking; and expressing no objection to the proposed amendment;
- Mr. Joseph Feldman, Solicitor, reiterating his clients' concerns as described in the foregoing communication; and
- Mr. Frank Maddeaux, area resident, in opposition to the proposed restaurant use; advising that the area already has more than sufficient restaurant and food retail locations, some of which produce garbage and odour problems for the neighbourhood, and expressing concerns that additional restaurant uses at this location will only aggravate that situation.

Insert Table/Map No. 1