

- 1. SITE PLAN APPLICATION:  
189-199 MONTREAL ROAD AND 258-276 HANNAH STREET  
PROPOSED BURGER KING RESTAURANT - CITY OF VANIER**

#### COMMITTEE RECOMMENDATION

**That staff be directed to withdraw the condition of site plan approval for 189-199 Montreal Road requiring a road widening to 11.5 metres from the existing centre-line of Montreal Road, subject to a legal agreement to maintain all current public uses.**

#### DOCUMENTATION

1. Planning and Development Approvals Commissioner's report dated 9 Sept 99 is immediately attached.
2. An Extract of Draft Minute, 28 Sept 99, follows the report and includes a record of the vote.

REGION OF OTTAWA-CARLETON  
RÉGION D'OTTAWA-CARLETON

REPORT  
RAPPORT

Our File/N/Réf. Your File/V/Réf.	25 16-99-0141
DATE	9 September 1999
TO/DEST.	Coordinator Planning and Environment Committee
FROM/EXP.	Planning and Development Approvals Commissioner
SUBJECT/OBJET	<b>SITE PLAN APPLICATION 189-199 MONTREAL ROAD AND 258-276 HANNAH STREET PROPOSED BURGER KING RESTAURANT CITY OF VANIER</b>

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### DEPARTMENTAL RECOMMENDATION

**That the Planning and Environment Committee recommend that Council implement Regional Official Plan policies and Schedule C2 which permits right-of-way protection of 11.5 metres from the existing centreline of Montreal Road and this be obtained for the proposed Burger King Restaurant at Hannah Street as a condition of site plan approval and conveyed to the Region at no cost.**

### BACKGROUND

The owners, Mario and Filippa Falsetto, have requested site plan approval from the City of Vanier for a new Burger King Restaurant on the site which presently includes a vacant lot and three residential buildings. A zoning amendment accompanied this site plan application to change the zoning designation for a portion of the lot from R4 - Residential to C2/B Downtown Commercial.

The site plan as shown on Schedule "A-1", shows the applicants have set back the new building to accommodate the road widening requirement of approximately 2.5 metres. However, they have indicated that they object as a principle to providing the land at no charge. They have signed a Site Plan Agreement with the City of Vanier agreeing to convey the road widening to the Region at no cost. However, this was done "under protest".

## DISCUSSION

Under Section 41 of the Planning Act, a regional municipality may at the time of site plan approval require a landowner to provide land, at no expense for widening of roads if the "highway to be widened" and the "extent of the proposed widening" is shown in an Official Plan. Schedules C2 and D2 of the Regional Official Plan indicate the proposed widths of right-of-way for existing Regional roads.

Council's policy as stated in the Regional Official Plan is:

- 1) To protect rights-of-way for Regional roads and public transit whenever possible, by acquiring or reserving the necessary lands at the time of development or redevelopment of adjacent lands through conditions on approval for subdivision, severances, condominiums and site plans.
- 2) Where local municipalities have enacted site plan control by-laws, Council may require landowners to provide land to the RMOC for Regional road widenings as a condition of site plan approval under Section 41 of the Planning Act, based on the following principles:

Land will be conveyed at no expense to the RMOC for Regional road widening as a result of:

- a) new development;
- b) changes in use which generate significant traffic volumes;
- c) additions which substantially increase the size or usability of buildings or structures.

As this proposed development falls within the category of "new development" land for the right-of-way should be conveyed at no expense to the RMOC.

The land requirement is not intended to provide additional vehicle capacity but rather is intended to provide additional space for pedestrians, landscaping, street furniture, snow storage etc. The Region is willing to enter into a Land Use Agreement with the applicants in order to permit a private patio in the widened right-of-way until such time as the Region requires the widening for any of the public purposes noted above.

Staff have discussed this site plan with the applicants and have been unable to achieve an agreement. The applicants have objected to the principle of the conveyance of this land as a condition of site plan approval and want to be compensated at full market value even though the conveyance does not prejudice or require any alterations to the proposed site plan.

It is long established practice of the Region to exercise its authority under the Planning Act and Official Plan to obtain right-of-way at no cost the taxpayers. This is a procedure which is accepted almost without question by every developer both big and small, in 1998, for example, the Region obtained 25 widenings as a condition of site plan approval. Clearly an important principle is at stake for the Region which would undoubtedly be taken as a precedent by other developers should the Region decide not to acquire the widening.

### CONSULTATION

Staff have discussed this site plan with the applicants and have been unable to achieve an agreement. The applicants have objected to the conveyance of this land as a condition of site plan approval in principle and want to be compensated at full market value.

### FINANCIAL IMPLICATIONS

Should the Region be required to provide full market value compensation for this widening, this cost is estimated at approximately \$16,000.00. However, the financial impact of the precedent setting nature of providing compensation will be significant and has not been estimated.

### CONCLUSION

As noted above, staff recommends that this land for the right-of-way should be conveyed at no cost to the RMOC as provided in the Planning Act. To purchase this property is contrary to RMOC policy and would set a dangerous precedent for obtaining future road widening requirements when dealing with similar development applications.

*Approved by  
N. Tunnacliffe, MCIP, RPP*



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Planning and Environment Committee  
28 September 1999

SITE PLAN APPLICATION  
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PROPOSED BURGER KING RESTAURANT - CITY OF VANIER  
- Planning and Development Approvals Commissioner's report  
dated 9 Sept 99

Nigel Brereton, Senior Project Manger - District 2, Development Approvals Division, Planning and Development Approvals Department, outlined that this issue was before Committee because the applicant wished to be financially compensated for conveying a road widening to the Region. Mr. Brereton reminded Committee that both the *Planning Act* and the *Regional Official Plan* (ROP) give the Region the legislative authority to require that the necessary widenings as set out in the ROP be taken as a condition of site plan approval. He stated the taking of the widening in this site plan on Montreal Road would not prejudice development, noting the building had been set back to accommodate the 2.5 metre widening asked for. Mr. Brereton said he understood the applicant believed that on a matter of principle, the Region should buy the land rather than receive it at no cost.

Mr. Brereton explained if the widening is taken, the Region is prepared to enter into a land use agreement with the applicant. He outlined the applicant was proposing to install a patio which would occupy part of the widening, which staff had no problem with, however, at a future date, it might be necessary for the patio to be vacated. Mr. Brereton noted over time, the Region had obtained widenings on ten properties on Montreal Road. He urged Committee's support of the current practice, as a precedent might otherwise be set for developments elsewhere.

Responding to a question from Councillor Legendre regarding the current width of Montreal Road, Mr. Brereton explained the current width was 9 metres from the centre line to the limit of the property, and that the Region was asking for a widening of 2.5 metres. This would result in a width of 11.5 metres per side, or a 23 metre total. Councillor Legendre said he supported the idea of preserving the principle that when land is taken, that it be taken at no cost to the Region. However, he said he had prepared a Motion which proposed withdrawal of references to the width of Montreal Road as a condition of site plan approval in this case. The Councillor said he believed the original intent of designating the road's width at 23 metres in the ROP was to accommodate its eventual widening, but he noted this was no longer the case.

Mr. Brereton explained the intent was to accomodate uses such as landscaping, sidewalk utilities and snow storage. He said the roadway itself was currently a sub-standard 7.2 metres wide, part of which was used as a bus lane and the public sidewalk is 1.75 metres wide, below the desired width of 2.5 metres.

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Committee Chair Hunter suggested that issues such as the ability to place a bus shelter for transit users could be prejudiced if this road widening were not taken.

Mr. Brereton offered the issue was more related to utilities such as fire hydrants and street lighting poles which were currently eating into the 1.75 metre space of the public sidewalk. He suggested other aspects pertained to landscaping, and space-related issues such as where to push snow from cleared sidewalks.

Responding to a query from Councillor Beamish, Mr. Brereton acknowledged the acquisition of land from ten properties along Montreal Road did not seem like much, but he explained that acquisition was a very slow process. He stated the opportunity arose only when something came up for redevelopment, and noted there had not been much redevelopment along Montreal Road in Vanier for many years.

Councillor Beamish felt there was also an issue of fairness to be considered. He noted that in the present case, the proponent was being asked to donate his land. He suggested that if, in future, the Region were to decide to streetscape or widen sidewalks along Montreal Road, landowners would likely be compensated for the loss of their property. Mr. Brereton explained the Region may have purchased land only when it had wanted more than could have legally been acquired under the Planning Act or ROP, but that it had never paid for land within rights of way or within a widening. Mr. Brereton explained the Planning Act and ROP state that if an area is within the widening as established within the Official Plan, the Region would not pay. Mr. Brereton also noted the scenario of streetscaping mentioned by the Councillor would be a lower-tier municipal initiative, and not a Regional one.

Mr. Brereton went on to say the conveyance of land has been a long established requirement of the Planning Act and ROP. He felt the concern raised by the landowner was unique, and explained the Region normally receives these widenings as a matter of course, and without contest. Mr. Brereton said he could sympathize to an extent if the widening was prejudicing the development, but he noted the building had been set back so as not to intrude into the area, and was thus unaffected by the widening. He said he found it difficult to see a hardship in this situation.

The Committee Chair offered that often, due to setback requirements, a property owner is left with unusable land which they can either provide to the Region, or pay taxes on and be incapable of using. He noted these conveyances were rarely, if ever, contested, and were generally accepted as a cost of development. Chair Hunter said the time to object to this policy would have been at the time of the ROP review or when the policy comes up in general terms. He felt it was unwise to pick away at this policy in a piecemeal fashion.

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Councillor Beamish felt this viewpoint was valid if there was a reasonable expectation the Region was going to need the property, but he felt this particular stretch of roadway would make no difference in terms of the rest of Montreal Road.

Committee Chair Hunter felt there were other public utility uses to consider, which could include turning land over to the City for landscaping or possible public transit service improvements. Chair Hunter noted the ROP's 25 year timeframe, and emphasized that future considerations had to be anticipated.

Councillor Meilleur said she was surprised to hear debate centering on the property owner's desire for compensation, as she believed the owner's desire had been to retain possession of the property in question. She said it was her intent to ask for an exemption, and asked staff whether any other properties on Montreal Road had been exempted from ROP policy requirements.

Mr. Brereton said an exemption had been granted in the case of St. Margaret's Church, which protruded into the area of the widening. The Region had an understanding with church trustees there would be no further expansion into the widening. In the case of Wilson Office Equipment, at 45 Montreal Road, Mr. Brereton noted the building was very close to the road, and he stated the widening had not been taken when the business sought to extend the building while retaining the same street frontage. In a third case, a widening had not been taken when a building on the same block had undergone an interior reorganization rather than an exterior redevelopment. However, Mr. Brereton noted that this block, on the north side of Montreal Road and west of the Vanier Parkway, had not been exempted from the widening requirement even though no widenings had been taken. He clarified for Councillor van den Ham that exemptions were granted for very specific purposes where nothing else could be done.

Councillor Meilleur circulated photographs of the property in question which included views of the roadway and sidewalk. Councillor Bellemare noted the sidewalk consisted of interlocking paving stones, and included heritage-style street lighting. He pointed out this initiative had been spearheaded by the City of Vanier and Vanier Business Improvement Area (BIA), and asked if the costs of this beautification were known. Mr. Brereton was unaware of the costs, however, he said taking the widening would not force removal of any of the beautification measures, as the Region was not taking rights of way.

Councillor Bellemare felt the purpose of the sidewalk improvement initiative by the City and BIA was to create a better walking environment for pedestrians, and he believed this objective had been achieved. The Councillor felt the issue of primary concern was not whether or not a precedent would be set in compensating a landowner for the conveyance

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of property to the Region, but rather, whether the Region had any actual requirement to widen Montreal Road. Councillor Bellemare noted the report stated Montreal Road would not be widened to accommodate any new lanes for vehicles, and also spoke of reserving 2.5 metres to allow for a wider sidewalk in future. He felt that in light of the investment which had already been made towards street improvements, it did not make sense to withhold site plan approval from the development proposal. The Councillor offered that the proposed use of a patio for the area adjacent to the sidewalk would be more inviting to a walking experience than would a bus shelter.

Mr. Brereton explained the staff report had been worded as such in response to the applicant's concern with the principle of giving government something for free. He said he was unaware if this situation had changed.

Responding to a question from Councillor Bellemare, Mr. Brereton informed the property in question had approximately 100 feet of frontage. Councillor Bellemare noted there were buildings along Montreal which were in close proximity to the existing sidewalk, for which exceptions had been made from the widening, he questioned the sense of demanding it of other properties, which could lead to a "zig-zag" appearance for stretches of sidewalk along Montreal Road. Mr. Brereton suggested that from a pedestrian perspective, with Montreal Road being a busy thoroughfare, even inconsistent stretches of widening would be beneficial and more inviting to pedestrian traffic.

Committee Chair Hunter noted there was an issue of protection of a public amenity that had already been built. He suggested if it was turned over to a developer, the new landowner could possibly remove some of the interlocking brick. Mr. Brereton clarified that some of this public amenity was also on private property. Responding to a question from the Chair whether this was protected by any agreement, Mr. Brereton stated he was not aware of the mechanism by which the City of Vanier had established the interlocking brick onto the private property.

Councillor van den Ham spoke in support of the staff report. He felt that an individual opposed to the principle of the Region being able to take land under the planning process had a right of complaint as a prerogative. However, the Councillor felt that if Committee were to consider compensating for this land, it would only be fair to compensate for prior conveyances as well. He felt it would be unwise to vary from a significant policy that had been in effect for many years. He said if there were disagreements with certain Regional Road dimensions contained within the ROP, these needed to be addressed, but felt this was not the time to do so.

Committee Chair Hunter then read Councillor Legendre's Motion:

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That staff be directed to withdraw the condition of site plan approval for 189-199 Montreal Road requiring a road widening to 11.5 metres from the existing centre-line of Montreal Road.

Councillor Legendre noted the Motion had been provided by the Ward Councillor, but that the wording had been drafted by the Region's Legal staff.

Councillor Meilleur asked Committee to support Councillor Legendre's Motion. She believed the primary issue was not that of compensating the property owner for the loss of property, but rather of letting the property owner retain ownership of the property in question. The Councillor intoned that all arguments for conveyance of the land to the Region were irrelevant, as neither the City of Vanier nor the Region had any intentions of widening Montreal Road in the future. She also disputed statements which argued the space was needed for snow storage, and said that as Vanier's main thoroughfare, Montreal Road had adequate snow removal. She also noted the City and BIA had expended a great deal of money on the street's beautification in this section of Vanier, known as the "French Quarter". Councillor Meilleur said currently, exemptions were being granted on a lot-by-lot basis, but she suggested the City intended to ask for an exemption for the whole of the "French Quarter" from ROP policies, as there were no plans for future widenings.

Councillor Legendre also encouraged members of Committee to support his Motion. He believed great efforts had been made towards improving this section of Montreal Road, noting a marked change for the better over the years. The Councillor said this had been accomplished with the support of both the business community and individual property owners. He felt these improvements were a move in the direction in which the Region wanted to go, and were what the Region wanted to accomplish on a practical level. In closing, he said he believed an exemption was well merited.

Councillor Munter suggested that Councillor Legendre's Motion be amended by inserting a clause stating that the exemption be subject to a legal agreement to maintain all current public uses, e.g. garbage cans, benches, etc., to ensure they would remain. He put forward a motion in this regard.

Moved by A. Munter

**That the motion be amended by adding "subject to a legal agreement to maintain all current public uses".**

CARRIED

The Committee the considered the Motion as amended by Councillor Munter:

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Moved by J. Legendre

**That staff be directed to withdraw the condition of site plan approval for 189-199 Montreal Road requiring a road widening to 11.5 metres from the existing centre-line of Montreal Road, subject to a legal agreement to maintain all current public uses.**

CARRIED as amended

YEAS: D. Beamish, M. Bellemare, B. Hill, J. Legendre, A. Munter and  
W. Stewart....6

NAYS: P. Hume, G. Hunter and R. van den Ham....3