

TO: CITY MANAGER 2004 March 9

FROM: DIRECTOR PLANNING AND BUILDING

**SUBJECT: REQUEST TO AMEND A COVENANT
RESTRICTING DEVELOPMENT OF THE SITE
5510 SPRUCE STREET (see attached sketch)
AMENDED COVENANT #04-01**

PURPOSE: To seek Council authority to hold a Public Meeting to consider a proposed amendment to the covenant registered on the subject property.

RECOMMENDATION:

- 1. **THAT** the requested amendment to the covenant be considered at a Public Meeting to be held at the conclusion of the Public Hearing scheduled for 2004 April 27.

R E P O R T

1.0 INTRODUCTION:

1.1 This Department has received an application to amend the covenant (Amended Covenant #04-01) registered against the subject property in order to permit the conversion of an attached garage into recreation space and the retention of the existing detached garage which was built without a building permit. The only changes to the site in terms of the registered Covenant which would be visible from the exterior are alterations to sides of the attached garage and the retention of the existing garage. However, the proposed development plan represents a 1,017 sq. ft. addition to the 5,664 sq. ft. gross floor area which was originally approved in 1988. The current owner has indicated that he purchased the property approximately 5 years ago and the detached garage was there at that time. Under the maximum 0.60 Floor Area Ratio development density permitted under R2a zoning, the maximum gross floor area permitted for the subject site is 1,087 m² (11,702 sq. ft.).

1.0 BACKGROUND INFORMATION:

1.1 On 1988 November 7, Council gave Final Adoption to Rezoning Reference #7/88, which involved rezoning the subject site to R2a Residential District in order to permit the existing single-family dwelling to have floor area greater than that permitted under the prevailing zoning. As a condition of the completion of the rezoning, a covenant is registered against the subject property at the Land Title Office, which limits the development of the property to the plans for a single-family dwelling presented to the Planning and Building Department. The necessary covenant was prepared by the City Solicitor, executed by both parties and registered at the Land Title Office prior to Final Adoption.

It is noted that significant discussion took place between staff and the applicant for Rezoning Reference #7/88 in order to be able to present a plan of development to a Public Hearing which would allow a gross floor area beyond that permitted under the prevailing R2 District zoning, but which was still compatible with the surrounding neighbourhood.

- 1.2 Council has approved a procedure whereby the plans which are the subject of the covenant are examined in detail to determine that the proposed single-family dwelling would be compatible with the surrounding neighbourhood, through utilizing the Council-adopted R“a” District design guidelines and a site specific analysis. A Public Hearing is held in order for the adjacent residents to be given an opportunity to provide public input on the proposed rezoning.

In light of the reliance placed on covenants to ensure that the development conforms to that presented to Council and the public, Council approved a process for considering requests for certain changes to the approved plans which is similar to rezoning applications. Consideration of such requests includes its submission to a Public Meeting in place of a Public Hearing with the Public Meeting to consider the proposed amendment to the covenant to be held immediately following a regularly scheduled Public Hearing. The types of proposed changes that Council concurred should be processed through an Amended Covenant process similar to rezoning applications, are as follows:

1. altering the gross floor area permitted on the site;
2. changing the overall building bulk of the improvements on the site; or
3. altering the impact any improvements on the site would have on the adjacent properties through changes to the structures or their siting.

- 1.3 A request has been received from a representative of the current owner of the property to convert the attached garage at the front of the dwelling into recreational space. An additional detached garage exists at the rear of the site, which does not appear on the original plans approved in connection with Rezoning Reference #7/88 and for which no building permit has been issued. Therefore, the development of the site is already in contravention of the covenant registered at the Land Title Office.

The gross floor area of the development plan submitted for the site has been calculated by Building staff and it has been determined that there is a significant increase in gross floor area from that which was originally approved in 1988. In light of the proposed changes relating to all of the above criteria for assessing such requests, it is necessary to process this request through the Amended Covenant process approved by Council on 1992 June 29, which includes the holding of a Public Meeting in place of a Public Hearing.

2.0 GENERAL DISCUSSION:

2.1 The primary modification to the plan of development which was approved by Council through Rezoning Reference #7/88 involves recognition and approval of a building which was built without the necessary permits. While concern is stated regarding any attempt to disregard the City's building permit process and the sanctity of the Section 219 registered against the title of the property, the proposed amendment to the covenant has also been assessed based on its own merits. If a request were to have been submitted to staff to consider an amendment to the covenant to permit the detached garage which was built without permit, it may have been supported or supported with suggested minor changes.

Staff have examined the development plans and conducted a site visit to assess the proposal in the neighbourhood context. In consideration of the fact that it appears that the detached garage has been on the site for some time and the visible changes to the attached garage are minor in scope, the proposed amendment to the Covenant and alterations to the site are supported in principle.

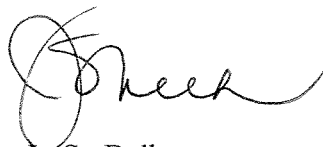
2.2 In addition to seeking an amendment to the Covenant registered against the property, an application to the Board of Variance will be required for a variance to the provisions of the Zoning Bylaw which regulate the setback requirements for accessory buildings from lanes and the maximum gross floor area for accessory buildings. The requested variances would be to permit the retention of the detached garage which was built without permit, which has a gross floor area of 702 sq. ft. and a nil setback from the rear lane, where accessory buildings with single family dwellings are permitted to have a maximum gross floor area of 602.8 sq. ft. and require a minimum 3.94 ft. setback from the rear lane.

2.3 In light of the fact that a significant portion of this proposal has already been built without permit and contrary to the covenant registered against the property, which was based on input received through the Public Hearing process associated with the original rezoning, it is recommended that the proposed amendment be considered at a Public Meeting prior to the consideration of any variances by the Board of Variance. If Council were to adopt the recommendation in this report, the application would be advanced for consideration at a Public Meeting, which could be held in conjunction with the regularly scheduled Public Hearing on 2004 April 27. The plans submitted to the Public Meeting would be considered the suitable plan of development, subject to Board of Variance approval of the two variances.

A further report would then be forwarded to Council summarizing the results of the Public Meeting and recommending the next steps in the process, which could be either conditional approval subject to consideration of the variances by the Board of Variance or recommending that the requested amendment to the covenant not be approved.

3.0 DEVELOPMENT STATISTICS

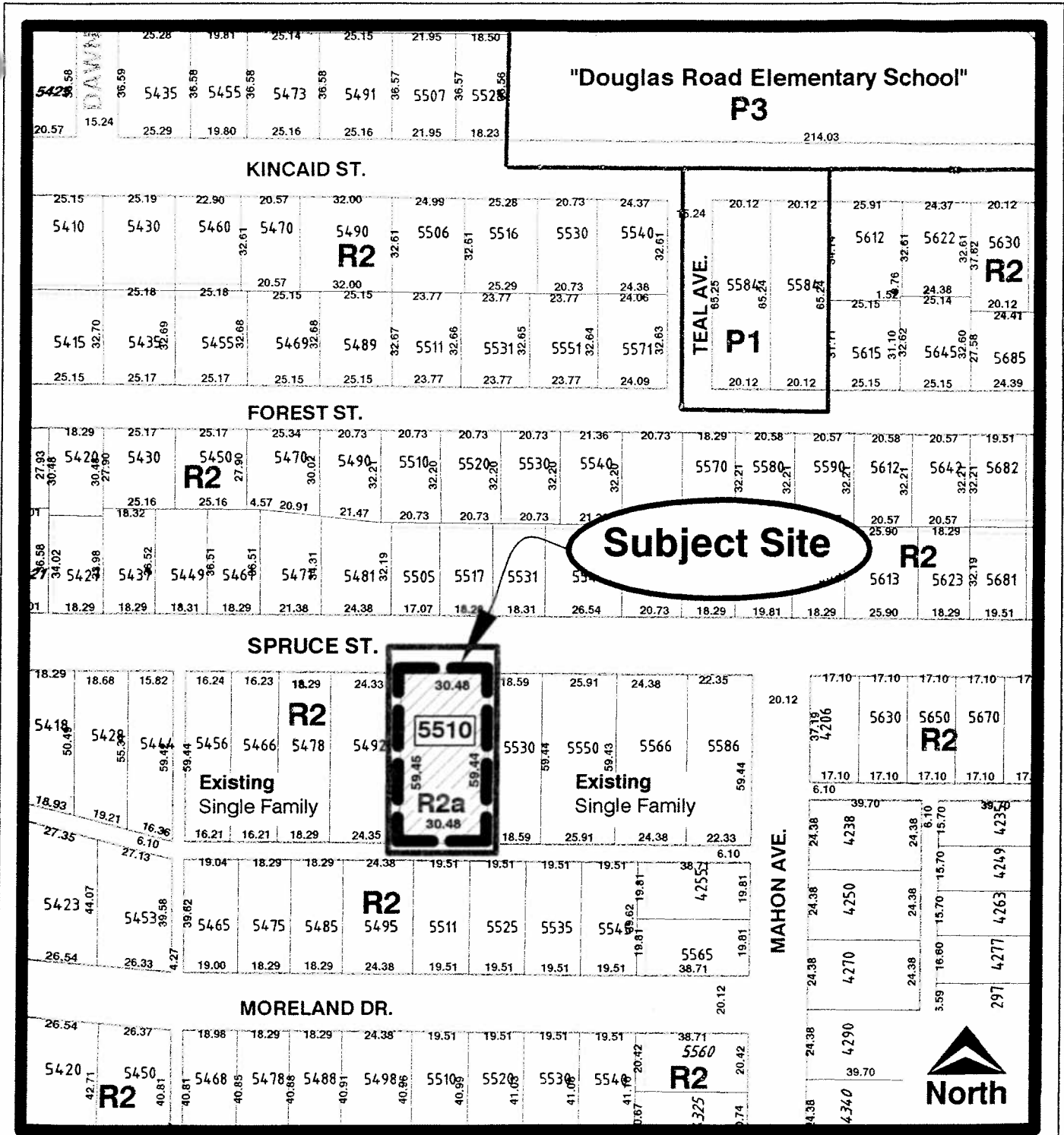
- 3.1 Site Area: - 1,811.9m² (19,503.7 sq. ft.)
 - Lot Coverage Permitted: - 40%
 - Previously Approved Lot Coverage: - 22%
 - Proposed New Lot Coverage: - 26%
- 3.2 Previously Approved Gross Floor Area: - 526m² (5,664 sq. ft.)
 - Proposed Additional Gross Floor Area: - 94.5m² (1,017 sq. ft.)
 - Proposed New Total Gross Floor Area: - 620.5m² (6,680 sq. ft.)
- 3.3 Maximum Development Density permitted under R2a zoning - 0.60 (11,702 sq. ft. for the subject site)
 - Previously Approved Floor Area Ratio: - 0.29
 - New Floor Area Ratio: - 0.34



J. S. Belhouse
Director Planning and Building

BW:gk
Attach

cc: Chief Building Inspector
City Clerk



Planning and Building Department

Scale: 1 : 1500

Drawn By: J.P.C.

Date: March 2004

**Amended Covenant AC 04 -- 1
5510 Spruce St.**

Sketch # 1

