

ISSUE DATE:

January 18, 2008



PL070386

By-law No. 07-043

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Hamilton Metal Trading Corp. and Aberdeen (Hamilton) Holdings Inc. and Trinity Property Investments Inc.
Subject: Proposed Official Plan Amendment No. 210
Municipality: City of Hamilton
OMB Case No.: PL070386
OMB File No.: O070052

IN THE MATTER OF subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Appellant: Hamilton Metal Trading Corp. and Aberdeen (Hamilton) Holdings Inc. and Trinity Property Investments Inc.
Subject: Zoning By-law No. 07-043
Municipality: City of Hamilton
OMB Case No.: PL070386
OMB File No.: R0070071

APPEARANCES:

Parties

Counsel

Hamilton Metal Trading Corp. and Aberdeen (Hamilton) Holdings Inc. and Trinity Property Investments Inc.

Joel Farber

The Gore District Land Trust Corporation
(McMaster Innovation Park)

Eric Nanayakkar

City of Hamilton

Nancy Smith

MEMORANDUM OF ORAL DECISION DELIVERED BY R. ROSSI ON 15 JANUARY 2008 AND ORDER OF THE BOARD

This is the fifth Pre-hearing conference related to these appeals. At the December 2007 Pre-hearing conference, the Municipality reached a settlement with the Gore District Land Trust Corporation (known as the McMaster Innovation Park).

Specifically, the West Hamilton Innovation District is the entire piece of land that the City has envisioned as a research and development park. A portion of these lands comprises the McMaster Innovation Park and this is the portion of land that was dealt with in the December Pre-hearing conference settlement. At that time and on consent, the Board approved both Official Plan Amendment 210, as amended, and the Zoning By-law Amendment 07-043 as it related to the City and Gore. At that Pre-hearing conference, Mr. Farber, on behalf of the "Trinity" group, expressed no objection to the settlement that the City and Gore had reached.

Mr. Farber advised the Board at today's fifth Pre-hearing conference that the owners of Aberdeen (Hamilton) Holdings Inc. and Hamilton Metal Trading Corp. wrote to Mr. Farber to dispute details of Mr. Farber's retainer. Mr. Farber provided the Board with their letter, his letter of response to the principals and a related Agreement of Purchase and Sale binding Trinity Properties Investments Inc. and Hamilton Metal Trading Corp. and Aberdeen (Hamilton) Holdings Inc. The Board received those documents and it placed the items on the file but they are not exhibits to these proceedings.

The Board met privately with the Parties to consider the matter of the disputed retainer and to determine the impact of that matter on these proceedings. After fruitful discussions, the Board determines that at the time of the December 2007 pre-hearing and the presentation of settlement details, all Parties were in agreement regarding the resolution of the Gore (McMaster) appeal. At that time, the principals in Aberdeen and Hamilton Metal had not expressed a concern with Mr. Farber's retainer. The Board determines that his clients' concern and resolution of the retainer issue are matters clearly beyond the purview of the Board's jurisdiction and do not affect the agreement reached in December 2007.

The Board also agrees with Ms Smith that the City must know with whom it is dealing and the Board is satisfied that the components of the "Trinity" group and its representing Counsel, Mr. Farber, were known to all Parties in December 2007 and that no objection to the resulting McMaster settlement was raised. The Board will provide the "Trinity" group with a period of up to four weeks to meet with Mr. Farber to discuss how they intend to proceed with the balance of the pre-hearing and hearing processes so that the City, and by extension, interested participants and the general public might

know who will represent Hamilton Metal Trading Corp. and Aberdeen (Hamilton) Holdings Inc. in respect of the balance of the appeals and these entities' relationship with Trinity Property Investments Inc. The Board also directs Mr. Farber to advise the Board on the precise nature of Trinity Property Investments Inc.'s status in these and subsequent proceedings. Mr. Farber will provide the Board with as much information as possible in this regard and furnish all relevant supporting documentation.

Mr. Farber provided some contextual information regarding the Parties he has represented during the Pre-hearing conferences. He advised the Board that the implementing planning instruments for the subject lands were approved in February 2007. The impact of that approval on the Hamilton Metal Trading Corp. and Aberdeen (Hamilton) Holdings Inc. renders the existing uses as legal nonconforming. Mr. Farber submitted that the approval hampered the development potential of those lands by removing existing uses that would have been allowed in the broader underlying K zoning that currently exists. The aforementioned two Parties have appealed those planning instruments to the board in their entirety.

In November 2007, Trinity Property Investments Inc. entered into an agreement of purchase and sale (on file) with these two vendors, at which time it assumed carriage of the appeals. The Parties' intention was to pursue a mixed-use proposal including an office component and a retail commercial component on the vendors' lands – something that would not be permitted by the planning instruments. The Board reaffirms its direction for Mr. Farber to inform all Parties as to the status of Trinity in respect of the Aberdeen and Hamilton Metal appeals.

Mr. Farber noted that there was an apparent sense of urgency on the City's and McMaster's parts to at least have the McMaster Innovation Park proposal proceed as soon as possible, which is why an April 2008 hearing date was set. However, with today's Order approving the December 2007 settlement (approving the zoning the permit the McMaster Innovation Park scheme to proceed), there is no need for the April 2008 hearing.

Could the Board reasonably require the Trinity group to proceed on the April date? The Board notes that the Trinity group joined these proceedings in November 2007, representing Aberdeen and Hamilton Metals in their appeals. With the Parties'

proximity to the McMaster lands, Mr. Farber advised the Board that there is a substantial amount of background work for the Trinity group to complete in order to justify its project. In addition to determining the feasibility of the development itself regarding environment issues, traffic, engineering, etc, there is also work to be done on the justification for the proposed land use. The Board appreciates that the Trinity group would be unable to have a complete package ready to proceed in April. Further, the City advised the Board that its planning department also requires sufficient time to review the Trinity materials and time to allow for public consultation on what they will propose.

In this regard, the Board determines that the timeframes are not feasible for all Parties to meet and it hereby cancels the April 2008 hearing date. However, the Board directs the three components of the Trinity group to have their completed materials filed with the City of Hamilton on or before June 15, 2008 and to furnish electronic copies to persons listed on the attached mailing list.

A sixth Pre-hearing conference will be held on Monday, September 15, 2008 at 10:00 a.m. in Hamilton. The Parties will keep the Board fully apprised of ongoing discussions and developments. In respect of the retainer issue, the Board may be spoken to insofar as that matter results in confirmation of Mr. Farber's status or retention of alternate counsel. The Parties must also advise the Board whether there is the potential for settlement discussions. Should such an opportunity not present itself, the Board intends to set a subsequent date for submission of a consolidated issues list shortly after the September 15th date with a hearing date set for late-Fall 2008. Parties are hereby notified through this Order to make themselves available for the Board-assigned dates. No further notice will be given.

Having now received the finalized settlement document presented at the December 2007 Pre-hearing conference, the Board orders that the appeal of The Gore District Land Trustee Corporation on behalf of The Gore District Land Trust be allowed in part. The Board amends the former City of Hamilton Official Plan with the attached Official Plan Amendment (Attachment 1) in relation to 270 and 175 Longwood Road South as shown on the Location Map (Attachment 2). The Board amends the City of Hamilton Zoning By-law with Zoning By-law No. 07-043 (Attachment 3) in relation to 270 and 175 Longwood Road South as shown on the Location Map. The Board orders that

Interim Control By-law 05-041, as extended by 06-028, be repealed over 270 and 175 Longwood Road as shown on the Location Map but will remain in full force and effect in relation to the balance of the lands to which it applies.

The Member continues to be seized for the administrative management of this file for the balance of the Trinity appeals.

So Orders the Board.

"R. Rossi"

R. ROSSI
MEMBER

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***The following wish only to receive a
copy of the order:***

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Attachment 3

**Authority: Item 14, Economic Development
and Planning Committee
Report 07-003 (PED07005)
CM: February 15, 2007**

Bill No. 043

CITY OF HAMILTON

BY-LAW NO. 07-043

**To Amend By-law 05-200 to create a new Research and Development
Industrial Zone for the City of Hamilton**

WHEREAS the City of Hamilton has in force several Zoning By-laws which apply to the different areas incorporated into the City by virtue of the City of Hamilton Act, 1999, S.O. 1999, Chap. 14;

AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law 05-200;

AND WHEREAS it is desirable to enact a new Zoning By-law to comprehensively deal with zoning throughout the City;

AND WHEREAS the said new comprehensive Zoning By-law is being enacted and is coming into force and effect in several stages;

AND WHEREAS, the first stage of the Zoning By-law, being By-law 05-200, came into force on May 25, 2005, and the second stage of the Zoning By-law, being By-law 06-166 to amend By-law 05-200, passed by Council on June 14, 2006 is under appeal;

AND WHEREAS this By-law creates a new Industrial – Research and Development Zone amending certain provisions of By-law 05-200 not including those provisions which may be affected by the appeal of By-law 06-166; and, applying to the West Hamilton Innovation District lands within the City;

AND WHEREAS the proposed change in zoning will be in conformity with Official Plan for the City of Hamilton upon finalization of proposed Official Plan Amendment No. 210.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

By-law to create a new Research and Development Industrial Zone

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1. Section 2.1 of By-law 05-200 is amended by adding the following new subsection:

"d) Industrial Classification

<u>Zone</u>	<u>Zone Symbol</u>
Research and Development Zone	M1"

2. Section 2.3 of By-law 05-200 is amended by adding reference Map numbered "908a, 949a, 950a, 991, 992a".
3. Schedule "A" of By-law 05-200 is amended by adding the following Maps numbered ~~908a, 949a, 950a, 991, 992a~~ attached in Schedule ~~"A"~~ to this By-law.
4. Section 3 of By-law 05-200 is amended by adding the following new definitions in alphabetical order:

"Biotechnological Establishment Shall mean an establishment used for the research, development, application, prototypical manufacturing and production of bio-organisms, which may or may not be used in a manufacturing process, and shall in no way be construed to be the slaughtering, eviscerating, rendering, or cleaning of meat, poultry, or fish or by-products thereof, or animal husbandry, or the raising of animals.

Communications Establishment Shall mean an establishment used for the broadcasting of information through various media, and shall include but not be limited to print, television, radio and electronic media and which may include facilities for the printing or broadcasting of information but shall not include a call centre.

Computer, Electronic and Data Processing Establishment
 Shall mean an establishment used for the research, development, input, prototypical manufacturing, processing and printing of data and which may include the design, manufacturing and

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distribution of electronic equipment and/or software.

Manufacturing

Shall mean the production, fabrication, compounding, processing, packaging, crafting, bottling, packing, recycling or assembling of raw or semi-processed or fully-processed goods or materials.

Motor Vehicle Service Station

Shall mean an establishment used for the sale of fuel, automotive accessories and/or convenience goods, the repair or replacement of parts in a motor vehicle and shall include but not be limited to the repair or replacement of mufflers, exhaust systems, shock absorbers, transmissions, gears, brakes, clutch assemblies, steering systems, tires, wheels, windshields, windows and other mechanical or electrical parts or systems, the installation of undercoating, engine tuning, lubrication and engine conversion or replacement but shall not include a Motor Vehicle Collision Repair, Motor Vehicle Sales and Service, Motor Vehicle Car Wash, and/or a Motor Vehicle Wrecking Establishment.

Pharmaceutical and Medical Establishment

Shall mean an establishment or part thereof, where research, investigation, development, manufacturing and/or technical experimentation, related to the medical field, is carried out and shall include but not be limited to clinical testing, prototype production facilities and overnight patient accommodation related to such research, clinical trials, investigation or experimentation.

Planned Business Centre

Shall mean a group of business establishments which is planned, developed, managed and operated as a unit with shared on-site parking, and

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containing four or more separated spaces for lease or occupancy.

Planting Strip

Shall mean an area of land growing ornamental shrubs or trees or both, suitable to the soil and climatic conditions of the area of land for the sole purpose of providing a buffer.

Research and Development Establishment

Shall mean an establishment or part thereof, for the purpose of conducting pure and applied research and experimentation in any field of science, medicine, technology and manufacturing and shall include but not be limited to facilities such as lecture rooms, administrative offices, laboratories, training facilities, display rooms, pilot plants, prototypical manufacturing, simulating equipment and the like, and service and machine shops to serve the Research and Development Establishment.

Science and Technology Establishment

Shall mean an establishment where scientific and technological research, investigation, development, manufacturing and/or technical experimentation is carried out and shall include but not be limited to facilities such as laboratories, pilot plants and prototype manufacturing.

Warehouse

Shall mean a building used for the bulk storage and distribution of goods, but shall not include the retailing of goods."

5. Section 3 of By-law 05-200 is amended by deleting the definition of "Medical Clinic" and replacing it with the following definition:

***Medical Clinic**

Shall mean a building, or part thereof, which is used jointly by three or more health professionals for the purpose of consultation, diagnosis and/or treatment

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of persons and shall include but not be limited to laboratories, dispensaries or other similar facilities, but shall not include overnight accommodation for in-patient care resulting from surgery."

6. Section 5.1 a) v) of By-law 05-200 is deleted and replaced with the following:

*v) Unless otherwise regulated in this By-law, parking spaces and aisles, giving direct access to abutting parking spaces, excluding driveways extending directly from the street, shall not be located within 3.0 metres of a street line, and subject to a 3.0 metre wide planting strip being required and permanently maintained between the street line and the said parking spaces or aisle.

7. Section 5.6 of By-law 05-200 is amended by adding the following new subsection:

*c) Parking Schedule for All Zones, except Downtown Zones

Column 1	Column 2
I. Residential Uses	
Multiple Dwelling	1 for each dwelling unit, except where a dwelling unit is 50 square metres in gross floor area or less, in which case parking shall be provided at a rate of 0.3 spaces for each such unit.
II. Institutional Uses	
Day Nursery	1 for each 125.0 square metres of gross floor area, which accommodates such use.
III. Educational Uses	
University, College	5 for each classroom plus 1 for every 7 seat capacity in an auditorium, theatre or stadium or 5 spaces for every classroom plus 1 space for each 23.0 square metres of the gross floor area which accommodates the auditorium, theatre or stadium, whichever results in the greater requirement.
IV. Commercial Uses	

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Conference or Convention Centre	1 for each 50.0 square metres of gross floor area, which accommodates such use.
Hotel	1 for each guest room.
Medical Clinic, Medical Office	1 for each 16.0 square metres of gross floor area, which accommodates such use.
Motor Vehicle Service Station	4 for each service bay
Office	1 for each 30.0 square metres of gross floor area, which accommodates such use.
Other Commercial Uses not Listed Above	1 for each 30.0 square metres of gross floor area, which accommodates such use.
v. Industrial Uses	
Biotechnological Establishment Communications Establishment Computer, Electronic and Data Processing Establishment Laboratory Pharmaceutical and Medical Establishment Printing Establishment Research and Development Establishment (not located in a M1 Zone) Science and Technology Establishment	1 for each 50.0 square metres of gross floor area, which accommodates such use.
Research and Development Establishment within an M1 Zone	1 for each 75.0 square metres of gross floor area, which accommodates such use, except for that portion of the building used for laboratory, warehouse or manufacturing uses where 1 for each 115 square metres of gross floor area shall be required.
Manufacturing, Warehouse	1 for each 115.0 square metres of gross floor area, which accommodates such use.

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8. By-law 05-200 is amended by adding the following new Section:

"SECTION 9: INDUSTRIAL ZONES

9.1 RESEARCH AND DEVELOPMENT (M1) ZONE

No person shall erect, or use any building in whole or in part, or use any land in whole or in part, within a Research and Development (M1) Zone for any purpose other than one or more of the following uses, or uses accessory thereto. Such erection or use shall also comply with the prescribed regulations:

9.1.1 PERMITTED USES

- Biotechnological Establishment
- Commercial Parking Facility
- Communications Establishment
- Computer, Electronic and Data Processing Establishment
- Conference or Convention Centre
- Day Nursery
- Financial Establishment
- Hotel
- Laboratory
- Manufacturing
- Medical Clinic
- Medical Office
- Motor Vehicle Service Station
- Office
- Personal Services
- Pharmaceutical and Medical Establishment
- Printing Establishment
- Repair Service
- Research and Development Establishment
- Restaurant
- Retail
- Science and Technology Establishment
- Warehouse

9.1.2 PROHIBITED USES

Notwithstanding Section 9.1.1, a drive through facility is a prohibited use, along with the following types of manufacturing uses, except if these uses are considered only as an accessory use to another permitted manufacturing use:

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- Beverage Distillation
- Manufacturing of Asbestos, Phosphate or Sulphur Products
- Primary Production of Chemicals, Synthetic Rubber, Plastic, Asphalt or Cement; not including mixing, blending, treatment or similar process
- Processing or Refining of Petroleum or Coal
- Processing, Milling or Packaging of Animal Feed
- Salvage, Recycling or Scrap Yard
- Slaughtering, Eviscerating, Rendering or Cleaning of Meat, Poultry or Fish or by-products thereof
- Smelting, Refining, Rolling, Forging, or Extruding of Ore or Metal
- Stamping, Blanking or Punch-Pressing of Metal
- Tanning or Chemical Processing of Pelts or Leather
- Vulcanizing of Rubber or Rubber Products
- Explosives Manufacturing
- Pulp and Paper Mills

9.1.3 REGULATIONS

- a) Maximum Yard Abutting a Street
 - i) Maximum 2.0 metres for the ground floor of a building, except where a visibility triangle shall be provided for a driveway access; and,
 - ii) Notwithstanding i) above, for any lot abutting the existing Frid Street and Chatham Street, no minimum or maximum yard shall apply.
- b) Maximum Building Height 38.0 metres
- c) Maximum Gross Floor Area for Office Use No office building shall have a gross floor area of 10,000 square metres or greater.

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d) Parking

- i) In accordance with the requirements of Section 5;
- ii) Notwithstanding Section 5.6.c) iv. of this By-law, no parking shall be required for any the following uses:

Financial Establishment;
 Personal Services;
 Restaurant;
 Retail.

e) Location and Screening of Outdoor Storage and Outdoor Assembly

Outdoor Storage and Outdoor Assembly of goods, materials or equipment shall be permitted only as an accessory use and shall be screened from view from any abutting street by a visual barrier in accordance with Section 4.19 of this By-law.

f) Size and Location Restriction of Commercial and Institutional Uses within a Building

- i) Except where located within an existing Planned Business Centre, the following uses shall only be permitted on the ground floor of a building in which the building has a minimum gross floor area of 2,000 square metres having a minimum 2 storey building height:

Day Nursery;
 Financial Establishment;
 Personal Services;
 Restaurant;
 Retail.

- ii) In the case of i) above, the second storey shall not be less than 75% of the gross floor area of the ground floor.
- iii) An individual retail establishment shall be restricted to a maximum gross floor area of 500 square metres.

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|---|--|
| g) Location of
Manufacturing,
Motor Vehicle Service
Station, Repair Service,
and Warehouse Uses | The following uses shall only be permitted
within an existing building:

Manufacturing;
Motor Vehicle Service Station;
Repair Service;
Warehouse." |
|---|--|

9. Schedule "C" of By-law 05-200 is amended by adding additional special exceptions as follows:

- *6. Notwithstanding Sections 9.1.1 and 9.1.3 of this By-law, within the boundaries of the lands affected by this subsection and zoned Research and Development (M1) Zone, identified on Maps 950a and 992a of Schedule "A" – Zoning Maps, the following shall apply:

- a. The existing railway use shall also be permitted, including any new use, building or structure accessory thereto, and subject to the planting strip in subsection (c) below not required for such use.
- b. The building height shall not exceed a height of 22.0 metres when located within 60.0 metres of a Residential zone; and,
- c. A 6.0 metre planting strip shall be required along that portion of the property line abutting a railway right-of-way.

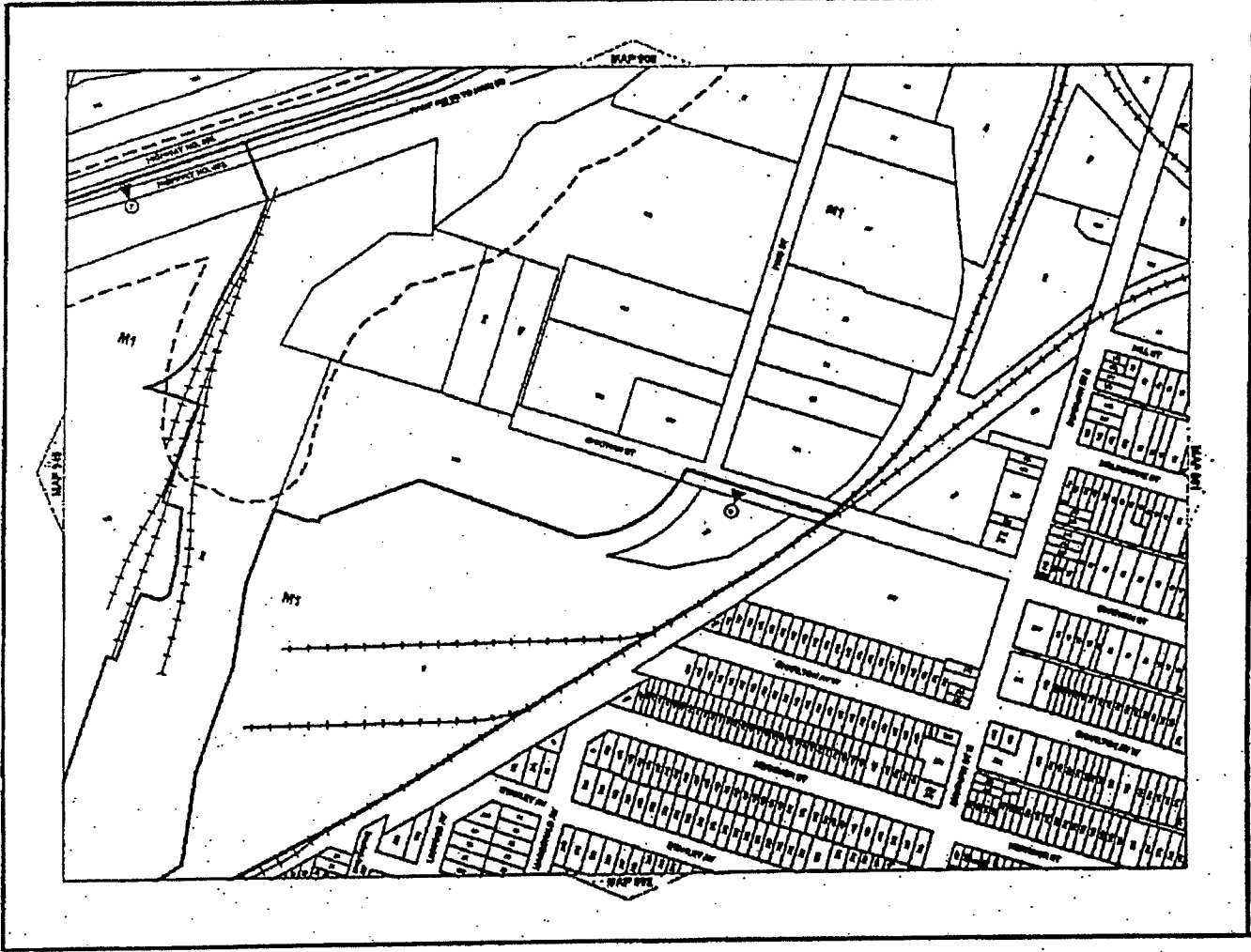
7. Notwithstanding Sections 9.1.1 and 9.1.3 of this By-law, within the boundaries of the lands affected by this subsection and zoned Research and Development (M1) Zone, identified on Maps 949a, 950a and 991 of Schedule "A" – Zoning Maps, the following shall also apply:

- a. A Museum shall also be permitted; and,
- b. Educational Establishment and Multiple Dwelling uses shall also be permitted, subject to the following regulations:
 - i. The Maximum Gross Floor Area for Educational Establishment shall be limited to 14,000 square metres and Multiple Dwelling shall be limited to 5,750 square metres;

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- ii. Notwithstanding (i) above, the Maximum Gross Floor Area for Educational Establishment(s) may be increased beyond the 14,000 square metres, to a maximum of 46,500 square metres, provided that any additional gross floor area for such educational use shall be limited to a maximum of 33% of the total gross floor area of all existing buildings, which are used for other permitted M1 uses, located on the said lands, save and except for the following uses:
1. Educational Establishments;
 2. Multiple Dwelling(s);
 3. Commercial Parking Facilities; and,
 4. Warehouse (as a primary use).
- iii. Notwithstanding (i) above, the Maximum Gross Floor Area for Multiple Dwelling(s) may be increased beyond the 5,750 square metres, to a maximum of 11,500 square metres, provided that any additional gross floor area for such multiple dwelling use shall be limited to a maximum of 8% of the total gross floor area of all existing buildings, which are used for other permitted M1 uses, located on the said lands, save and except for the following uses:
1. Educational Establishments;
 2. Multiple Dwelling(s);
 3. Commercial Parking Facilities; and,
 4. Warehouse (as a primary use).
- iv. Multiple dwellings shall be restricted to locating in a maximum of 2 buildings.
- v. Notwithstanding (ii) and (iii) above, the combined total gross floor area accommodating both Educational Establishment and Multiple Dwelling uses shall not exceed 46,500 square metres."

10. The Clerk be hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.



Map Reference Number	By-Law Number	Effective Date of By-Law

Legend
 - - - Limits of Conservation Authority Regulated Area


 © 2015
 ZONING MAP 950a
 2015-01-20-00000

PL070386



Map Reference Number	District Number	Effective Date of By-Law

Legend
--- Limits of Conservation Authority Regulated Area

