

Meeting Date: June 3, 2019
Department: Building, Planning & Waste Management
Prepared By: Matthew Stephenson, Director of Building, Planning & Waste Services
Reviewed By: Greg McClinchey, Chief Administrative Officer
SUBJECT: **105/119 Caradoc St. Site Plan Amendment (K.F.C / Starbucks)**

RECOMMENDATION: That Council **approve** the attached site plan agreement for the re-development of 105/119 Caradoc St. known as K.F.C / Starbucks.

SUMMARY HIGHLIGHTS

- The application proposes to add 'drive-through facilities' as a permitted use on the subject site to facilitate the development of two quick service restaurants.
- An Open House was held on November 15, 2018 and the Statutory Public meeting was held on December 17, 2018. Neighbouring residents attended and provided comments on the proposed rezoning and associated redevelopment plan.
- In advance of, and during the Public Meeting, written submissions were also received, including two letters and a petition. The land use planning matters noted in the letter include concern for local traffic impacts, air and noise pollution, stormwater management and land use compatibility issues.
- Staff are satisfied that the land use planning concerns articulated in the letters of opposition and the petition have been, or are capable of being satisfied through the zoning and site plan application process.
- Fencing concerns relating to separation from Residential uses and this proposal have been satisfied by the residential owners.

BACKGROUND

The subject lands are located on the east side of Caradoc Street South, just south of English Street in Strathroy. They are comprised of two properties, 105 Caradoc Street South, which is currently vacant, and 119 Caradoc Street South, which contains a single detached dwelling and detached garage. The subject lands comprise approximately 3,541.72 m² (0.88 ac) of land. The lands are located on full municipal services with frontage along Caradoc Street South (County Road No. 81) and English Street. Surrounding land uses are predominantly a mix of commercial and residential uses, including several quick service restaurants, a convenience store, and additional retail uses. Three residential dwellings are located directly adjacent to the subject site to the east and south.

The lands known municipally as 105 Caradoc Street South were previously occupied by a KFC restaurant with drive-through facilities, which has since been removed and the property left vacant. Section 4.17 (7)(a) of the Strathroy-Caradoc Official Plan states that “where a non-conforming use has been discontinued for a period of 24-months or longer, the property, building or structure may only be used for a use that conforms to this by-law.” As the ‘drive-through’ use of the property has been discontinued for an extended period of time (longer than 24 months), a rezoning application is necessary.

The applicants have proposed the removal of the residential dwelling and accessory building at 119 Caradoc Street South to facilitate the development of two quick service restaurants on the subject lands. As the zoning provisions within the ‘General Commercial (C1) Zone’ specifically prohibit drive through facilities, the applicants have submitted a zoning by-law amendment application.

The proposed restaurants face onto Caradoc Street South, with a secondary access onto English Street to help facilitate traffic flow through the site. Garbage facilities are located near English Street, adjacent to the neighbouring commercial property. New privacy fencing is proposed to be located between the site and 125 Caradoc Street South, acting as a separation between the proposed commercial and neighbouring residential dwelling. In addition, the applicants are proposing to upgrade the landscape planting strip to provide further buffer between the two uses. A copy of the preliminary site plan has been attached to this report.

The Strathroy Urban Design Guidelines provide a framework for future development and redevelopment in the Downtown, supporting new development, and ensuring that it respects the overall vision of the Downtown and contributes positively to the public realm and local economy. The site plan application will be evaluated using the guidelines for the basis of good urban design. The attached site plan was graded and is deemed to be in compliance with the above document. In addition, the landscape plan identifies the areas of concern raised by members of Council relating to lighting from vehicles in the drive thru.

It has been determined that all matters of concern raised by both Council and public have been addressed.

CONSULTATION

Andrea Bezaire has completed the attached agreement. Engineering, Fire and Building & Planning have reviewed and recommend for approval. Spriet Associates have conducted the peer review of the Engineering relating to storm water and servicing and recommend for approval.

FINANCIAL IMPLICATIONS

There are no financial implications.

ATTACHMENTS

- Proposed New Site Plan (To Be Presented at Meeting)
- Site Plan Agreement
- Approving Bylaw

**THE CORPORATION OF
THE MUNICIPALITY OF STRATHROY-CARADOC**

BY-LAW NO. 30-19

**A BY-LAW TO AUTHORIZE THE EXECUTION OF A SITE PLAN AGREEMENT
BETWEEN THE CORPORATION OF THE MUNICIPALITY OF
STRATHROY-CARADOC AND CARADOC COMMERCIAL INC.**

WHEREAS Council deems it expedient to enter into a Site Plan Agreement with Caradoc Commercial Inc. Re: a commercial development on lands that may be legally described Lots 2, 3 and 4 and Part Lot 1, 34PL299 and Part Lots 1 and 2, 34PL265 designated as Parts 1, 2 and 4 Plan 34R-1698 and that part of Lot 12, Concession 10 lying south of Lot 2, 34PL265 and lying north of Lot 1, 34PL326 (Caradoc) designated as Part 3, Plan 34R-1698 T/W ROW as in MW47589 in the Municipality of Strathroy-Caradoc, County of Middlesex as described in PIN 09610-0290; and Lot 5, 34PL299 in the Municipality of Strathroy-Caradoc, County of Middlesex as described in PIN 09610-0257.;

NOW THEREFORE BE IT ENACTED BY THE COUNCIL OF THE CORPORATION OF THE MUNICIPALITY OF STRATHROY-CARADOC AS FOLLOWS:

1. **THAT:** the Mayor and the Clerk be authorized to execute on behalf of the Corporation of the Municipality of Strathroy-Caradoc a Site Plan Agreement with Caradoc Commercial Inc. re: a commercial development.
2. **THAT:** this Bylaw shall come into force and take effect upon the date of its final passing in Open Council.

Read a FIRST, SECOND and THIRD TIME AND FINALLY PASSED IN OPEN COUNCIL this 3rd day of June, 2019.

Mayor

Clerk

SITE PLAN AGREEMENT

THIS AGREEMENT made in quintuplicate this 3rd day of June, 2019.

BETWEEN: CARADOC COMMERCIAL INC. Hereinafter called the "OWNER"
OF THE FIRST PART ;

AND: THE CORPORATION OF THE MUNICIPALITY OF STARTHROY-CARADOC
"MUNICIPALITY"
OF THE SECOND PART.

WHEREAS the Municipality has enacted a Site Plan Control By-law 15-06 pursuant to the provisions of Section 41 of the *Planning Act*, R.S.O. 1990 (the "*Planning Act*");

AND WHEREAS the Owner represents and warrants that it intends to develop the land described in Schedule 'A' to this Agreement (hereinafter called the "Land");

AND WHEREAS the Owner of the Land has submitted plans to the Municipality for approval in accordance with subsection 41(4) of the *Planning Act*;

AND WHEREAS subsection 41(7) (c) of the *Planning Act* authorizes the Municipality to require the Owner of the Land to enter into an agreement with the Municipality dealing with the provision and approval of the plans referred to in subsection 41 (4) of the *Planning Act*;

AND WHEREAS the *Planning Act*, as amended, permits the registration of this Agreement against the Land to which it applies;

AND WHEREAS the Land is zoned for the purposes proposed by the Owner;

NOW THEREFORE THIS AGREEMENT WITNESSETH that the Parties hereto agree as follows:

1. The following Schedules, being a legal description of the Land affected by this Agreement, the plans required by the Municipality pursuant to subsection (4) of Section 41 of the *Planning Act*, as amended, and particulars of the services being provided are hereby declared to form part of this agreement, comprise the Development, and are attached hereto:

<u>Schedule</u>	<u>Description</u>
'A'	- being a legal description of the Land
'B'	- being the plans showing the facilities, works, grading, elevations, landscaping and matters to be provided on the land (the "Site Plan")

2. **General Conditions:**

The attached Schedules 'A' and 'B' are hereby approved by the Municipality subject to the following conditions:

Construction in Accordance with the Plans:

- a) The Owner hereby agrees that the Development shall be carried out and completed in accordance with the attached Schedules.
- b) The following shall be provided by the Owner to the satisfaction of and at no expense to the Municipality:

Parking and Loading Facilities:

- i) All parking areas and access thereto shall be constructed with a hard surface to the satisfaction of the Municipality and shall be completed prior to occupancy.
- ii) All parking spaces shown on Schedule 'B' shall be demarcated clearly with painted lines. Parking areas shall be delineated with raised concrete curbs.

Barrier-free parking spaces shall be provided as shown on Schedule 'B'. Signs are to be installed in front of each of the barrier-free parking spaces clearly indicating that the spaces are for that purpose only.

Barrier-free access shall be provided between parking areas and other outdoor public spaces and interior building spaces in accordance with the requirements of the Ontario Building Code.

- iii) All parking spaces shown on Schedule 'B' shall comply with the required dimensions as set out in the Municipality's Comprehensive Zoning By-law.

Water Supply:

- iv) Adequate water supply shall be provided to the site and buildings prior to occupancy and this water supply shall be to the satisfaction of the Municipality.

Walkways:

- v) Internal sidewalks and walkways shown on Schedule 'B' shall be constructed with a hard surface such as concrete, pavement or interlocking brick.

Firefighting Access and Signage:

- vi) Fire routes as shown on Schedule 'B' shall be approved by the Municipality and maintained in an unobstructed manner and shall be constructed in a manner that will accommodate the Municipality's firefighting vehicles and equipment. The Owner shall install signs which denote the designated fire route prohibiting parking, storage or other obstructions.

Fire Hydrants:

- vii) The maintenance of all fire hydrants and connections shown on private property on Schedule 'B' shall be the responsibility of the Owner.

Protect and Restore Streets:

- viii) The Owner shall be responsible for protecting existing streets affected by the construction of this project and shall restore such streets to their previous condition to the satisfaction of the Municipality.

Landscaping:

- ix) All yards shall be properly graded and landscaped, in accordance with the grading plan, if applicable, as shown on Schedule 'B'. All trees and other landscaping materials will be trimmed and maintained by the Owner so as not to interfere with the passage of vehicles, particularly through areas designated as fire routes.
- x) The Owner shall complete landscaping and planting on the Land in accordance with Schedule 'B'.

xi) Fencing:

The Owner shall install solid board fencing along the perimeter of the residential lands abutting the Land in accordance with Schedule 'B'.

Lighting:

- xii) Adequate lighting shall be provided to ensure the security and safety of the public and the property. All exterior lighting shall be directed away from abutting properties.

Grading and Water Disposal:

- xiii) Any required extensions or expansions to storm, sanitary and/or water services on the site shall be installed at the expense of the Owner to the satisfaction of the Municipality's Engineer. The location and installation of any required fire hydrants

shall be approved by the Municipality's Fire Chief and Engineer. Any required hydrants will be supplied and installed at the expense of the Owner in accordance with the Municipality's standards.

Drainage:

- xiv) The property shall be drained to the satisfaction of the Municipality and in accordance with the approved Stormwater Management Plan for the site so that:
- the flow of water resulting from the Development or any grading and drainage facilities shall not create an erosion problem or aggravate an existing problem, and;
 - the flow of water shall not cause a drainage problem on the development site or on other land.

Snow Removal:

- xv) The Owner shall keep parking areas free from snow. In the event that the snow storage areas cannot accommodate the accumulated snow, the Owner shall have snow removed from the Land at its sole expense.

Garbage Collection:

- xvi) The Owner acknowledges that garbage collection and disposal are its responsibility and not that of the Municipality.

Security:

- xvii) It is further acknowledged by and between the Parties hereto that all of the aforesaid work shall be completed by the Owner to the satisfaction of the Municipality to the extent required by the Municipality prior to building occupancy. The Owner agrees to provide the Municipality, prior to the issuance of any building permits, an unconditional and irrevocable security in the amount of **[NTD: insert amount]** in order to ensure compliance with all of the requirements of this Agreement. The Owner shall ensure that the security is kept in full force and effect until advised by the Municipality that the security can be released. The security may be drawn upon by the Municipality, at its sole discretion, to repair or address any deficiency or breach related to this Agreement and will only be released upon one hundred percent (100%) of the works and facilities being completed by the Owner to the satisfaction of the Municipality; upon receipt by the Municipality of as-built drawings and as-built Site Plan as required in this Agreement; and upon evidence that any arrears of taxes outstanding against the lands have been paid. If the Owner defaults in the performance of any of its obligations with regards to this Agreement, the Municipality may at its sole discretion complete the work, perform the service and supply the materials so in default or any part thereof and the Owner shall pay the Municipality forthwith on demand the costs thereof to the Municipality. The payment of these costs shall be drawn on the said security. Should the deposit be insufficient to cover the cost of rectifying deficiencies or breaches of this Agreement, the Owner shall forthwith pay to the Municipality such sum as may be required to make up the total cost of the work.

As-Built Drawings and Site Plan:

- xviii) The Owner agrees to provide to the Municipality as-built drawings of all service installations and connections and as-built Site Plan, in both electronic and paper formats within sixty (60) days of the issue of occupancy permits.

No Development Charges:

- xix) The Owner shall be exempt from the payment of development charges to the Municipality.

Notification of Archaeological Material:

- xx) The Owner agrees to notify the Ontario Ministry of Culture in London (519-675-7742) if any deeply buried archaeological material be found during construction.

Notification of Human Remains:

- xxi) The Owner agrees to notify the Ministry of Culture and the Cemeteries Regulation Unit in the Ontario Ministry of Consumer and Commercial Relations in Toronto, as well as the municipal police and local coroner if human remains are found during construction.

Site and Roads to be Kept Tidy:

- xxii) The Owner agrees to keep the site tidy during construction so that the raising of dirt and dust is kept to a minimum and further that all roads adjacent and in the vicinity of the development are kept clean of mud and debris.

Approval from County of Middlesex:

- xxiii) The Owner shall notify and receive written approval from the County of Middlesex Public Works Department prior to undertaking any work within the Caradoc Street road allowance. The Owner acknowledges that Caradoc Street is scheduled for reconstruction in 2020. Additional coordination of works on the road right of way may be required with the County of Middlesex and the Municipality. Options of deferred works in favour of cost contributions to the Municipal projects may be possible. Negotiations of timing of works and cost contributions may continue subsequent to this Agreement.

Sole Risk and Expense of Owner:

- c) The Owner shall maintain to the satisfaction of the Municipality and at the sole risk and expense of the Owner those facilities, works or matters required to be provided under subclause 2 b) of this Agreement.

Approval to Lapse:

- d) The approval of the attached Schedule 'B' by the Municipality shall lapse if development of the land:
 - i) is not carried out and completed in accordance with the said Schedule; or
 - ii) is not completed within two (2) years of the execution of this Agreement unless an extension has granted in writing by the Municipal Council.

Planning Act Compliance:

3. The Owner hereby acknowledges and agrees that:
 - a) Pursuant to subsection 41(10) of the *Planning Act*, this Agreement is to be registered against the Land and the Municipality is entitled to enforce the provisions hereof against the Owner, and subject to the provisions of the *Registry Act* and the *Land Titles Act*, any and all subsequent owners of the Land. Any such costs relating to the preparation and registration of this Agreement are the responsibility of the Owner.
 - b) Pursuant to subsection 41(11) of the *Planning Act*, Section 446 of the *Municipal Act*, 2001 applies to any requirements made under subclauses 2 (a), (b) and (c) of this Agreement and to any other requirements made under this Agreement.
 - c) Upon completion by the Owner all of the Terms and Conditions of this Agreement and at the written request of the Owner, the Municipality shall provide a letter affirming such compliance.

Amendment of Agreement:

4. Amendments to this Agreement may be carried out at any time with the consent, in writing, of the Municipality and the registered Owner of the Land at the time of such amendment.

Breach by Owner:

5. Upon breach by the Owner of any covenant, term or condition of this Agreement, and if such breach has not been rectified to the satisfaction of the Municipality by the Owner within seven (7) days of notice from the Municipality, the Municipality at its sole option, may:
 - a) require all work on the land to cease; and
 - b) complete any necessary work and the Owner agrees to forthwith indemnify the Municipality for any expense in this regard, such expense shall form a lien against the land and may be collected by the Municipality in the same manner as realty taxes pursuant to Section 446 of the *Municipal Act, 2001*. The remedies provided in this paragraph shall be in addition to any other remedy available to the Municipality pursuant to this Agreement or at law.

Notices:

6. All payments, notices, demands, requests, approvals, representations, and consents which may be or are required to be given by either party to the other herein, shall be in writing and delivered or sent by prepaid registered mail to the parties at their respective addresses. Unless notice of change of address shall be given by either party to the other, their respective addresses shall be:

If to the Municipality, to it at:

52 Frank St.
Strathroy, ON N7G 2R4

Attention: Clerk

If to the Owner, to it at:

Caradoc Commercial Inc.
484 Waterloo Street, London, ON N6B 2P6

Attention: Lee Greenwood

and if any such notice, demand, request, approval, representation or consent is sent by prepaid registered mail, it shall be conclusively deemed to have been received on the third business day following the mailing thereof and if delivered, it shall be conclusively deemed to have been received at the time of delivery. It is agreed, however, that notwithstanding the foregoing provisions with respect to mailing, in the event that it may be reasonably anticipated that due to any strike, lock-out, or similar event involving a postal service, any payment, notice, demand, request, approval, representation or consent will not be received by the addressee within the time hereinbefore provided, then the mailing of any payment, notice, demand, request, approval, representation or consent as aforesaid shall not be an effective means of sending the same but rather any payment, notice, demand, request, approval, representation or consent must be sent by the most reasonably expeditious means of transportation available.

Governing Law and Jurisdiction:

7. This Agreement shall be governed and construed in accordance with the laws of the Province of Ontario and the courts of such Province shall have exclusive jurisdiction to ascertain any action in connection with this Agreement.

Entire Agreement and Assignment:

8. This Agreement constitutes the entire agreement among the Parties and shall not be modified, amended or assigned except with the consent in writing of the Parties hereto. A consent to any assignment required hereunder may be arbitrarily or unreasonably withheld until the proposed assignee executes and delivers such documents as, in the opinion of the legal counsel of the Municipality, are necessary to oblige himself or itself hereunder.

Enurement:

9. The provisions hereof shall enure to the benefit of the Parties hereto and their heirs, executors, administrators, successors and assigns.

Severability:

10. If any of the Terms of this Agreement shall be found to be ultra vires of the Municipality, or otherwise unlawful, such terms shall inclusively be deemed to be severable, and the remainder of this Agreement mutatis mutandis shall be and remain in full force and effect.

Interpretation:

11. The headings, subheadings, and section, subsection, clause and paragraph numbers are inserted for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

[The remainder of this page is left blank intentionally.]

IN WITNESS WHEREOF the Parties hereto have hereunto affixed their signatures and Corporate Seals attested to by the hands of their proper officers, duly authorized.

MUNICIPALITY

(SEAL)
**Corporation of the Municipality
of Strathroy-Caradoc**

Mayor

Clerk

OWNER

(SEAL)
Caradoc Commercial Inc.

Lee Greenwood, President
I have the authority to bind the Corporation

SCHEDULE 'A'

LEGAL DESCRIPTION OF LAND AFFECTED BY THE SITE PLAN AGREEMENT

Lots 2, 3 and 4 and Part Lot 1, 34PL299 and Part Lots 1 and 2, 34PL265 designated as Parts 1, 2 and 4 Plan 34R-1698 and that part of Lot 12, Concession 10 lying south of Lot 2, 34PL265 and lying north of Lot 1, 34PL326 (Caradoc) designated as Part 3, Plan 34R-1698 T/W ROW as in MW47589 in the Municipality of Strathroy-Caradoc, County of Middlesex as described in PIN 09610-0290; and

Lot 5, 34PL299 in the Municipality of Strathroy-Caradoc, County of Middlesex as described in PIN 09610-0257.

SCHEDULE 'B'
SITE PLAN

[NTD: MUNICIPALITY TO INSERT]