



STAFF REPORT INFORMATION ONLY

3385 Dundas Street West Zoning By-law Amendment (EY24.15)

Date:	February 20, 2009
To:	City Council
From:	City Solicitor
Wards:	Ward 13 – Parkdale-High Park
Reference Number:	

SUMMARY

This report responds to a request from the Etobicoke York Community Council (EY24.15) for a report directly to the February 23rd, 2009 meeting of City Council outlining measures available to ensure that the building remains a seniors' building, including any additional information that may be relevant. The Recommendations section of the report contains options as to how Council may wish to proceed.

Financial Impact

There are no financial implications.

DECISION HISTORY

At its meeting of February 9, 2009, the Etobicoke York Community Council, in its consideration of Item EY24.15, requested that the City Solicitor submit a report to the February 23, 2009 meeting of City Council, outlining measures available to ensure that the building remains a seniors' building, including any additional information that may be relevant.

ISSUE BACKGROUND

The applicant wishes to amend Comprehensive Zoning By-law No. 1-83 for the former City of York to permit the construction of a 6-storey, mixed use building at 3385 Dundas Street West, containing 118 residential units and ground floor retail. The development is intended to be a rental building for individuals 65 years of age and over. No government funding or ownership is proposed. It would be operated as a private, for profit enterprise.

The building is to be designed as an apartment building, in that all of the residential units will have full kitchens. No common dining facilities or nursing care are proposed. It is to be an apartment building oriented to senior citizens as opposed to being a “supported living environment” which one might usually associate with senior citizens.

On the basis that the building is to be occupied by people 65 years of age or older, Technical Services accepted a parking ratio which is less than the normal parking ratio for an apartment building under Comprehensive Zoning By-law 1-83 for the former City of York.

The concern is whether the City, through the tools available to it under this application, can guarantee that the building will only be occupied by people 65 years of age or older, thereby justifying the lower parking ratio. The draft zoning by-law amendment attached to the Final Report does not contain any definition of senior citizen’s dwelling unit.

Options Available to Council

In considering this matter, Council has three options available to it:

1. City Council can adopt the recommendations in the Final Report of the Director of Community Planning, Etobicoke York District, dated January 22, 2009 on the assumption that the design of the residential units and common areas of the building, as well as the owner’s marketing of the rental units, will be more attractive to senior citizens than younger individuals and that the lower parking standard set out in the proposed zoning by-law amendment would then be appropriate for the resulting seniors community within the building; or
2. City Council can amend the draft zoning by-law amendment set out in the Final Report of the Director of Community Planning, Etobicoke York District, dated January 22, 2009, to require the normal parking standards for an “apartment building” under Comprehensive Zoning By-law 1-83 of the former City of York, and adopt the Final Report as so amended, and further, that in so doing, City Council thereby determines pursuant to Section 34(17) of the Planning Act, that no further notice of the change to the zoning by-law amendment be given; or
3. City Council can refuse the draft zoning by-law amendment in its present form in the Final Report of the Director of Community Planning, Etobicoke York District, dated January 22, 2009, and request the applicant to physically redesign the building in line with a supportive living environment, including a common dining facility and limited kitchen facilities in the individual residential units, for resubmission of the proposal to Community Planning.

COMMENTS

Protection against discrimination, including discrimination based on age, is contained in the *Canadian Charter of Rights and Freedoms* (the “Charter”) and in the *Ontario Human Rights Code* (the “Human Rights Code”). However, Section 15(2) of the Charter allows for differential treatment that has as its object the amelioration of conditions of disadvantaged individuals, including those disadvantaged by age or mental or physical disability. Further, Section 15 of the Human Rights Code specifically permits age as a form of discrimination where an age of 65 years or over is a requirement, qualification or consideration for preferential treatment.

While the Charter and the Human Rights Code may permit discrimination based on age for people 65 years of age and older where preferential treatment is the intended purpose, the City must still consider other limitations on the tools or measures available to it to control occupancy by age. In the application presently before City Council, the City can only work with its authority to approve the zoning by-law amendment and site plan under the Planning Act and the City of Toronto Act. There is no municipal or other level of government funding proposed for this development, and therefore there is no form of social housing agreement available where an individual’s age could be a consideration for occupancy.

Site Plan approval pursuant to Section 114 of the City of Toronto Act generally gives the City the authority to address physical matters related to the exterior of the building and the site layout. It is not an appropriate tool to control occupancy of a dwelling unit based on age.

Section 34(1) of the Planning Act allows Council to pass zoning by-laws, which prohibit the use of land, prohibit the erection or use of buildings or structures, or regulate the character and use of a building. These powers relate to the regulation of the physical aspects of the buildings themselves, but not to the regulation of the people who may use the building. While the City can zone the use of land, it is not given the authority to zone the people using the land. This principle of “people zoning” was set out in a 1979 decision of the Supreme Court of Canada in a case involving the former City of North York; *R. v. Bell* (1979, 98 D.L.R. (3d) 255 (SCC)).

In the subsequent Ontario Municipal Board decision of *Re City of Toronto By-law 413-78* (1979), 9 M.P.L.R. 117, where the City attempted to pass a by-law allowing for a seniors citizen’s residence to be built only for people aged 55 and older, the Board adopted the “people zoning” principle from the *Bell* case and ruled that the proposed by-law was ultra vires the municipality. Council was attempting to regulate who may occupy a building based on their age, rather than regulating the use of land as permitted by Section 34(1) of the Planning Act.

Therefore, City Council does not have the ability to limit occupancy of the building to people only 65 years of age or older either through the site plan approval process or in the zoning by-law amendment. It has the authority through the zoning by-law amendment to

define the use as having general physical amenities or elements, such as common dining facilities and limited kitchens, which may make the development more attractive to elderly individuals, but it still does not guarantee that people under 65 years of age will be excluded from the building.

Council may wish to consider the options set out above. If Council is satisfied, despite the lack of supportive living design features and enforceable age related planning controls, that the building will be occupied by senior citizens, then it may wish to adopt Option 1. If Council is not satisfied that the building as proposed will only be occupied by people 65 years of age and older, then Council may wish to adopt Option 2 or 3.

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SIGNATURE

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