

1325 to 1365 Bayview Ave., 2, 4, 3 to 11 Airdrie Rd., 2 to 8 Sutherland Dr. – Demolition Application under Municipal Code Chapter 667 – Refusal Report

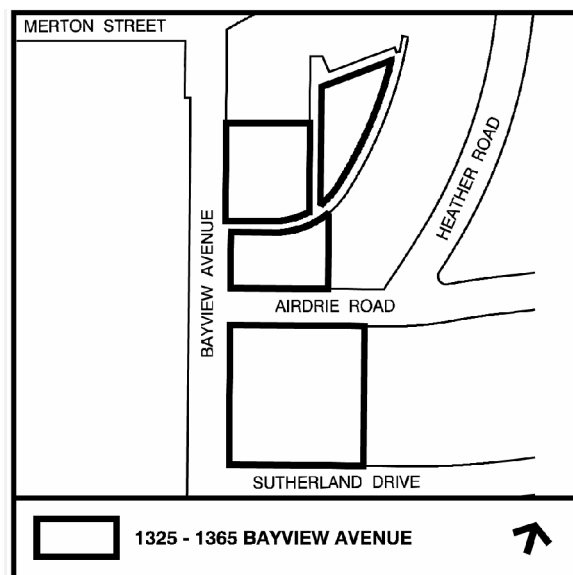
Date:	April 15, 2009
To:	North York Community Council
From:	Director, Policy and Research, City Planning Division
Wards:	Ward 26 – Don Valley West
Reference Number:	ny090014

SUMMARY

This application seeks permission to demolish the existing 116 rental units located at 1325-1365 Bayview Ave., 2, 4, 3-11 Airdrie Rd., and 2-8 Sutherland Dr. The demolition of residential rental units is prohibited under Chapter 667 of the Toronto Municipal Code unless a permit has been issued under Section 111 of the *City of Toronto Act*. Council’s decision is final and cannot be appealed to the Ontario Municipal Board.

City Council has refused the proposed Official Plan and Zoning By-law Amendment application for an 8-storey residential building and 54 townhouses, because it does not meet the intent of the Official Plan. The proposed development requires the demolition of the existing structures. The properties are designated under the Ontario Heritage Act. Council has also refused an application to demolish the heritage structures. Council’s refusals have been appealed to the Ontario Municipal Board, with a consolidated hearing scheduled to begin in August, 2009.

This report recommends refusal of the Section 111 application because the proposed replacement in the new rental apartment building of the 116 rental units



to be demolished can only be achieved through the demolition of designated heritage structures and by way of Official Plan and zoning by-law amendments which have been refused by Council for other planning reasons. Refusal of the Section 111 application would therefore be consistent with Council's refusals of the OPA/rezoning and heritage demolition applications.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council refuse the application (08 119061 NNY 00 RH) for a permit to demolish 116 rental units at 1325-1365 Bayview Ave., 2, 4, 3-11 Airdrie Rd., and 2-8 Sutherland Dr.

Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

This site is also the subject of related planning applications to amend the Official Plan and the Zoning By-law to permit the construction of an eight-story apartment building and 54 townhouses containing a total of 194 new residential units. The redevelopment would require the demolition of 116 existing rental apartment units in the eight existing 2-storey apartment buildings and related 2-storey coach houses. City Council at the July 15, 16 and 17, 2008 meeting approved the following resolutions:

1. City Council refuse the proposed Official Plan and Zoning By-law Amendment applications for the reasons outlined in the report (June 17, 2008) from the Director, Community Planning, North York District.
2. City Council authorizes the City Solicitor and City staff to attend the Ontario Municipal Board hearing, should the Official Plan and Zoning By-law Amendment applications be appealed to the Ontario Municipal Board.

The basis for the staff recommendation of refusal, as set out in the staff report, was that the proposed development does not meet the intent of the Official Plan in respecting and reinforcing the physical character of a stable residential neighbourhood; nor does it meet the intent of the Official Plan in protecting heritage resources. Within the local context and on a City-wide basis, there is no need to redesignate lands in *Neighbourhoods* to meet population goals as there are sufficient lands available in designated growth areas to accommodate the City's anticipated population increase. The related staff report dated June 17, 2008 can be viewed at the following link:

<http://www.toronto.ca/legdocs/mmis/2008/ny/bgrd/backgroundfile-14079.pdf> . The applicant has appealed Council's decision to the Ontario Municipal Board.

On October 22 and 23, 2007, City Council included the apartment buildings at 1325, 1351 and 1365 Bayview Avenue on the City of Toronto Inventory of Heritage Properties and stated its intent to designate the properties under Section 29 of the Ontario Heritage

Act (OHA). The coach houses and garages are not included in the reasons for designation. The related staff report dated June 13, 2007 and attachments thereto can be viewed at the following links:

<http://www.toronto.ca/legdocs/mmis/2007/ny/bgrd/backgroundfile-7010.pdf> .

Attachment 1

<http://www.toronto.ca/legdocs/mmis/2007/ny/bgrd/backgroundfile-7013.pdf>)

Attachment 2

<http://www.toronto.ca/legdocs/mmis/2007/ny/bgrd/backgroundfile-7014.pdf>)

Attachment 3

<http://www.toronto.ca/legdocs/mmis/2007/ny/bgrd/backgroundfile-7015.pdf>)

Attachment 4

<http://www.toronto.ca/legdocs/mmis/2007/ny/bgrd/backgroundfile-7016.pdf>)

This designation was appealed to the Conservation Review Board (CRB) by Context Developments on behalf of the owners, ADMNS Kelvingrove investments. (An application to demolish designated heritage structures under Section 34 of the OHA, discussed below, was submitted at this time). After a 4-day hearing in August, 2008, the CRB decision (non-binding), received in November, 2008, supported the heritage designation, although in a more limited manner.

Based on updated reasons for designation, City Council adopted, in February, 2009, by-laws to designate the properties at 1325 to 1365 Bayview Avenue under Part IV, Section 29 of the OHA. Council's decision on the heritage designation is final. The related staff report dated December 15, 2008 and attachments thereto can be viewed at the following links: <http://www.toronto.ca/legdocs/mmis/2009/ny/bgrd/backgroundfile-17844.pdf> .

Attachment 1 - Conservation Review Board Hearing Report

<http://www.toronto.ca/legdocs/mmis/2009/ny/bgrd/backgroundfile-17883.pdf>)

Attachment 2 - Map of Properties Recommended for Designation

<http://www.toronto.ca/legdocs/mmis/2009/ny/bgrd/backgroundfile-17884.pdf>)

Attachment 3 - Photo of Properties Recommended for Designation

<http://www.toronto.ca/legdocs/mmis/2009/ny/bgrd/backgroundfile-17885.pdf>)

Attachment 4 - Reasons for Designation - 1325 Bayview Avenue

<http://www.toronto.ca/legdocs/mmis/2009/ny/bgrd/backgroundfile-17886.pdf>)

Attachment 5 - Reasons for Designation - 1351 Bayview Avenue

<http://www.toronto.ca/legdocs/mmis/2009/ny/bgrd/backgroundfile-17887.pdf>)

Attachment 6 - Reasons for Designation - 1365 Bayview Avenue

<http://www.toronto.ca/legdocs/mmis/2009/ny/bgrd/backgroundfile-17888.pdf>)

As previously mentioned, in July 2008, Context submitted an application to demolish the designated structures pursuant to Section 34 of the OHA, even though at that time they were still contesting the heritage designation through an appeal to the CRB. In October, 2008, City Council refused the application to demolish the heritage structures. Context has appealed that refusal to the OMB, and the hearing has been consolidated with the

hearing on the OPA/rezoning application. The related Councillor's motion dated October 22, 2008 on the heritage demolition application can be viewed at the following link: <http://www.toronto.ca/legdocs/mmis/2008/pb/bgrd/backgroundfile-16521.pdf>

In addition, Context argued before the Ontario Superior Court, and on appeal, the Ontario Court of Appeal, that Council had failed to make a decision on the demolition application within the 90 days required by the OHA. The court decisions confirmed that the matter was properly before Council. The appeals of the OPA/rezoning and heritage demolition applications will now be heard by the OMB, with the main hearing beginning August 25, 2009.

ISSUE BACKGROUND

An application for a permit to demolish the existing 116 rental units on the properties, pursuant to Chapter 667 of the Toronto Municipal Code, was submitted to the City on March 13, 2008. A meeting with the tenants to discuss the proposed development, demolition and related issues of concern was held on April 30, 2008.

Section 111 of the new City of Toronto Act, 2006 authorizes Council to regulate the demolition and conversion of residential rental properties in the City. By-law No. 885-2007 (also known as the Rental Housing Demolition and Conversion By-law), which established Chapter 667 of the Municipal Code, was enacted by City Council on July 19, 2007. For most related applications under the Planning Act, the By-law is retroactive to January 1, 2007. The By-law makes it an offence to demolish, or cause to be demolished, the whole or any part of a residential rental property unless approval has been granted for a Section 111 permit for the demolition of the residential rental property. Council's decision on the Section 111 application for a demolition permit is final and cannot be appealed to the OMB.

COMMENTS

As previously mentioned, the site is currently developed with two-storey rental apartment buildings known as the Glen-Leven, Strathavon and Kelvingrove Apartments, which were constructed in 1939. The existing apartment complex contains a total of 116 rental residential units, consisting of 97 units in the 8 original apartment buildings together with 19 two-storey coach house units which were built in the 1990's and consist of dwelling units above garages along internal laneways. The Section 111 application for a demolition permit applies to all 116 rental units, including the 97 units in the buildings for which Council has passed by-laws designating the structures under the OHA. Council's decision on the Section 111 application cannot be appealed to the OMB.

The proposed 8-storey residential building is to be a rental building containing the 116 replacement rental units and an additional 24 market rental units. The applicant proposes to replace the existing rental apartment units with 116 units of the same or similar type. The rents for the 116 replacement units are proposed to be that of the rents in effect for the same or similar unit types at the time the redevelopment application was made, with a one time 4% increase for the capital improvements to the new units. For a period of at least 10 years, rents for replacement units would be the rent at first occupancy, increased

annually by not more than the Provincial Rent Increase Guideline or a similar guideline as council may approve from time to time.

In the Housing Issues Report prepared by Altus Clayton on behalf of Context Development Inc., the applicant proposed new features and amenities in the proposed new rental building including a fitness room, common room and a common amenity space on the 7th floor. The applicant has recently requested a discussion with staff with respect to the City's requirements for a Tenant Relocation and Assistance Plan, but given City Council's position with respect to the proposed redevelopment, and given that the OPA/rezoning and heritage demolition applications are currently before the OMB, staff did not pursue such a discussion.

The fact that the 116 residential rental units to be demolished could potentially have been satisfactorily replaced within the proposed development, and the prospect that a satisfactory Tenant Relocation and Assistance Plan could have been proposed in accordance with the City's policies and practices, are not factors that are material to the staff recommendation on the Section 111 rental demolition application. Council does not support the proposed demolition and development for other planning reasons. Furthermore, the 8 existing apartment buildings to be demolished are designated heritage structures. The rental replacement is proposed in a redevelopment scheme that does not meet the intent of the Official Plan, as more fully described in the staff report dated June 17, 2008 on the OPA/rezoning application (see link in the Decision History, above), and which involves the demolition of designated heritage buildings.

Refusal of the Section 111 application under the City of Toronto Act for demolition of existing rental units would be consistent with Council's refusal of the OPA/rezoning application under the Planning Act and Council's refusal of the application to demolish the designated heritage buildings under Section 34 of the OHA. Council need not await the decisions of the OMB before making a decision on the rental demolition application.

Conclusion

The development proposed in the OPA/rezoning application for the new, 8-storey residential building and 54 townhouses requires the demolition of the existing structures on the property in order to proceed. Council has refused the OPA/rezoning application, which is now before the OMB, because it does not meet the intent of the Official Plan. The application to demolish the designated heritage structures on the property under the Ontario Heritage Act has also been refused by Council and is also now before the OMB.

Council's decision on an application for a permit to demolish the 116 existing residential rental units in the existing buildings on the properties, pursuant to Section 111 of the City of Toronto Act, cannot be appealed to the OMB. A refusal of the Section 111 application would underscore Council's previous decisions that the proposed demolition and redevelopment are not appropriate and should not proceed. In order that Council's decision on the Section 111 application for a residential rental demolition permit is consistent with these earlier decisions, staff is recommending that the Section 111 application be refused.

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