

Further Report on the New Draft Zoning By-law

Date:	January 28, 2010
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning Division
Wards:	All
Reference Number:	Pg10007

SUMMARY

This report responds to the requests the Committee made at its meeting held on November 4, 2009, respecting the new draft Zoning By-law. The report indicates the process and timeline for incorporating further changes into the proposed Zoning By-law. The concerns raised by residents, businesses, stakeholder groups and members of Council are continuing to be addressed especially with respect to expressing the intent of the existing zoning permissions and minimizing the issues raised related to the harmonization of zoning standards. As a result, it is recommended that a final report, outlining the proposed changes to the draft zoning by-law, be sent to the April 21, 2010 meeting of the Committee. In addition, the report recommends that a Statutory Open House be scheduled for April 28, 2010 and a Statutory Public Meeting for May 19, 2010.

The report presents a brief, high-level review of outstanding public comments and concerns received to date. These comments and concerns will be addressed in the report to Committee scheduled for April 21, 2010. Staff will continue to consult with residents and stakeholder groups about how best to incorporate the intent of the existing by-laws.

Particular attention has been given to the brief of Matthias Schlaepfer which raises fundamental concerns regarding the conformity of the new Zoning By-law project with the Official Plan. The brief rests on a misunderstanding of the manner in which the proposed percentage lot coverage approach is to be applied. The new Zoning By-law proposes limits on the number of stories which combined with lot coverage are designed to produce limitations on residential floor space development that are directly equivalent to those achieved through the FSI method. The two systems of control are not at odds with each other.

RECOMMENDATIONS

The Chief Planner and Executive Director, City Planning Division recommends that:

1. Consultation with residents' and ratepayer associations, business and industrial associations and other key stakeholder groups continue, through February and March, with a view to agreeing on how to best incorporate the intent of existing zoning permissions.
2. A final report, outlining the proposed changes to the draft zoning by-law released in May 2009 that address the concerns raised in public forums, in written submissions and by members of City Council, be prepared and include a printed copy of the main by-law text and maps for the April 21, 2010 meeting of the Planning and Growth Management Committee.
3. A Statutory Open House be held April 28, 2010 and where printed copies of the zoning by-law text and maps will be available.
4. A Statutory Public Meeting at the meeting of the Planning and Growth Management Committee to be held on May 19, 2010.

Financial Impact

There is no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

At its meeting held on November 4, 2009, the Planning and Growth Management Committee had before it a report from the Chief Planner and Executive Director, City Planning, dated October 21, 2009.

<http://www.toronto.ca/legdocs/mmis/2009/pg/bgrd/backgroundfile-24425.pdf>

In considering the report, the Planning and Growth Management Committee requested the Chief Planner and Executive Director, City Planning, to:

1. Bring forward the new draft Zoning By-law in a report to the Committee at its meeting on February 11, 2010, for consideration as a deputation item, prior to the scheduling of a Statutory Public Meeting which will occur as early as March, 2010.
2. Conduct a Statutory Open House prior to the Statutory Public Meeting explaining the purpose and intent of the draft new Zoning By-law and providing an opportunity for members of the public to ask questions and receive answers about the draft new Zoning By-law.

3. Continue to address concerns raised in public forums, in written submissions and by Members of City Council, with a view to minimizing conflict on issues which are more related to “harmonization” than to the previously stated staff objective to “create a common language for expressing the existing zoning permissions”, and that this be done, as much as possible, prior to presentation of a proposed by-law.
4. Schedule Councillor briefing sessions on the proposed Zoning By-law.
5. Provide a detailed response to the letter (October 28, 2009) from Matthias Schlaepfer (PG33.5.2) in the form of a report to the Planning and Growth Management Committee at its meeting on February 11, 2010, for public consideration as a deputation item, prior to any decision on the scheduling of a statutory public meeting.
6. Give consideration to the following in his final report:
 - a. Making educational uses as of right in residential areas. And draft minimum space requirements for indoor and outdoor instructional capacity.
 - b. Making geo-thermal installations as of right on all school properties.
 - c. Making musical instruction as of right in all residential or mixed residential areas regardless of the configuration of the building with a limit of one class at a time.
 - d. Making Home Occupation a permitted use in all residential areas providing no chemicals listed in the Community Right to Know by-law are used or stored on site as part of the commercial operation, and further that the City’s Noise By-law is adhered to.
 - e. Proposing a FSI index in areas formerly zoned RA.
 - f. Imposing a restriction on night clubs (entertainment facilities) that restricts permission to the first floor only: Cannot be located in or next to residential properties; set parking limits, with minimum number of spots on site for staff and customers.
 - g. Exploring a minimum lot size requirement for Day Nurseries, and limit capacity of daycares to an indoor/outdoor space requirement on a per student basis.
 - h. Proposing side yard soft/hard requirements.

- i. Excluding the surface water area of swimming pools from the calculation of rear yard landscaping requirements.
 - j. Retention of maximum height of eaves in residential zones in Etobicoke.
 - k. Maintaining the 6.5m maximum height for flat roofs in residential zones in Etobicoke.
7. Bring forward a detailed report and analysis of the new requirements on the use and storage of Hazardous Chemicals to explain the rationale for the criteria selected.
 8. Consult with the General Manager of Economic Development, Culture and Tourism for input in the draft Zoning By-law process.

This report is a response to the Committee's decision.

COMMENTS

Timeframe for the Adoption of the New Zoning By-law

At its meeting held on November 4, 2009, the Committee requested that the new draft Zoning By-law be brought forward in a report to the Committee's February 11, 2010 meeting for consideration as a deputation item prior to the scheduling of any Statutory Public Meeting. The Committee also requested that the concerns raised in public forums, in written submissions and by members of Council continue to be addressed, especially with respect to expressing and maintaining the intent of the existing zoning permissions and minimizing the number of substantive changes that may be required to achieve harmonization.

The concerns expressed in public forums as well as written submissions are numerous. The next section of the report discusses the issues/concerns that have been raised to date. Work on changes to the draft Zoning By-law to accommodate these concerns has continued together with other revisions suggested during the consultation period. The process is time consuming as any particular change in one section might affect another and has to be tested to ensure the intended outcome and to avoid any unforeseen conflicts with other provisions. In addition, staff continue to meet at the request of key stakeholders or associations in order to further understand and discuss their concerns.

In order to complete the review of concerns raised by the public as well as incorporating any changes to the draft Zoning By-law while allowing for public consultation about the changes, a new timeframe for the approval of the new Zoning By-law is proposed. The proposed reporting schedule takes into account interest by both the Committee and members of the public for further opportunity to view and understand how the new zoning by-law might affect their properties as well as their communities.

As a first step, it is proposed that the final report be submitted to the Planning and Growth Management Committee scheduled for April 21, 2010. This report would describe the changes that have been made to the draft new Zoning By-law to accommodate the concerns expressed during the consultation period. Leading up to preparation of the final report, staff will continue to consult with residents and ratepayer associations, business associations and other key stakeholder groups.

Following the April 21, 2010 meeting, a Statutory Open House is proposed a week later on April 28, 2010. This timing would allow time for staff to address any issues and recommendations flowing from the Committee meeting. The Open House will include a question and answer period about the purpose and effect of the new Zoning By-law.

The Statutory Public meeting is recommended to be held on May 19, 2010, which is the regular meeting of the Planning and Growth Management Committee. This timing would allow for a further staff report emanating from the Statutory Open House.

Summary of Outstanding Issues

At the November 4, 2009 meeting of the Planning and Growth Committee there were 38 written submissions and 25 speakers on the matter of the new Zoning By-law. Below is summary of the main issues raised.

Conversion of zones using floor space index (FSI) to lot coverage

This matter received the greatest number of comments and is directed at neighbourhoods made up of house form structures. The views expressed are fairly consistent in their views that replacing the FSI control in favour of lot coverage as a method of regulating the size of the house will result in higher densities and greater floor space permissions. One comment, however, expressed the concern that the proposed lot coverage might be too low or restrictive.

Increase in building heights

The most commonly expressed concern relates to the change from measuring the height of house form buildings at the midpoint of the roof, the practice in former City of Toronto, North York and York, versus measuring the height of the building at the ridge or highest point of the roof, currently the practice in the remaining former City zoning by-laws.

Permission for three storey homes

This matter is related to how height is measured and the concerns that measuring height to the ridge will result in 3 storey buildings whereas measuring to the midpoint of the roof will not.

Flat roof houses are being encouraged

Again, related to the proposal to measure height from the ridge of the roof, some comments suggested that this approach would encourage more flat roof houses. Although not expressed in each comment, the underlying assumption is that a three storey flat roof building would be permitted as-of-right thereby creating an opportunity for those who want large houses. The concern is that the character of many neighbourhoods is defined by the predominance of pitched roof, two storey buildings.

Better definition of a pitched roof versus a flat roof building

This concern relates to protecting and encouraging pitched roof houses as an important defining characteristic of many neighbourhoods. The issue involves defining a pitched roof in a manner that does not allow for seemingly flat roofed houses to be considered 'pitched' by definition.

Decreases in side yard setbacks

There a few comments that noted some areas would see a reduction in side yard requirements which was deemed unacceptable.

Length of building

The comments on this matter relate to the concern that houses might be allowed to extend further into their backyards than adjacent dwellings. This can lead to problems of light, view and privacy.

Conformity with Section 4.1.5 of the Official Plan

This section of the Official Plan calls for development to respect and reinforce the existing physical character of neighbourhoods. It also describes the matters that make up the physical character of neighbourhoods. The concern expressed in some of the comments is that the proposed changes in the new zoning by-law, especially those concerned with converting FSI to lot coverage and the measuring of height to the ridge of the house, are out of keeping with the current physical character of neighbourhoods.

Natural hazard line setback

There were two general categories of concern with the natural hazard line setback. In some cases houses are already within 10 metres of the top of bank and residents are concerned over their rights to rebuild. A second concern relates to the value of the property diminishing if required to meet the setback.

Permitted use list for industrial zones

There were several comments directed at concern over the method of listing permitted industrial uses, in particular, manufacturing uses in new Employment-Industrial zones. The fear is that most existing industrial enterprises would become legal non-conforming.

Chemical separation distance requirements

Comments from industrial operations and their associations indicate concern over the ability to comply with the proposed chemical separation distance requirements.

Minor variance approvals

Some comments were directed at minor variance approvals and what happens to them after the new Zoning By-law is passed.

Further review, more consultation

A few of the comments expressed the view that the proposed draft Zoning By-law should undergo further review especially with respect to staying within its mandate. Other comments expressed a desire for more consultation.

Response to the Matthias Schlaepfer Letter

The Committee requested a detailed response to the letter dated October 28, 2009 from Matthias Schlaepfer be provided in the form of a report to Planning and Growth Management Committee for public consideration as a deputation item.

In his letter, Mr. Schlaepfer contends that the draft Zoning By-law exceeds its mandate, "breaks promises" given by City Council at the adoption of the Official Plan that the zoning by-law would contain precise density limits, is not in conformity with the Official Plan and contravenes Section 24(1) of the Planning Act. Mr. Schlaepfer supports his points of view by examining the proposed zoning for low-rise residential neighbourhoods, in particular, the proposed zoning for neighbourhoods in the former City of Toronto. The concerns expressed in the letter hinge on the claim that the new draft Zoning By-law increases heights and densities in these areas.

In making his argument, Mr. Schlaepfer focuses on the proposed R zone which replaces the current R2, R3, and R4 zones in the former City of Toronto. In his letter, he states that the proposed R zone would regulate the building size by way of a limit of 35% lot coverage whereas the current zoning limits the size by way of a floor space index (FSI) of 0.6, which means that the total floor area is limited to the equivalent of 60% of the lot area (the area of the lot multiplied by 0.6). Extrapolating the proposed zoning lot coverage of 35% to a hypothetical lot, a 2 storey home at maximum lot coverage would have a floor area equivalent to 70% of the lot area and a 3 storey home would have a floor area equivalent to 105% of the lot area.

However, the proposed 35% lot coverage requirement for the existing 0.6 FSI density zones includes a 5% allowance for accessory structures. On this point, it should be noted that the current zoning of 0.6 FSI excludes accessory structures. In addition, there is an allowance for additions to existing houses in the FSI system, which when added, brings the floor space index to 0.69 or a floor area equivalent to 69% of the lot.

The October 21, 2009 staff report proposed to separate the accessory building allowance from the main building coverage in the new draft Zoning By-law. This approach results in a lot coverage maximum of 30% of the lot for the main building with an additional 5% lot coverage applying to accessory structures only.

A two storey home with lot coverage requirement of 30% is equivalent to 0.6 FSI. A two storey house would be equal to 0.6 FSI, the same as the current zoning by-law requirement. The FSI approach allows an owner to build a larger building footprint restricted only by front, rear and side yard setbacks and the maximum length of building provision. The lot coverage approach limits the building's foot print to a smaller area, encouraging a second floor in order to achieve the floor area.

To limit the floor area of houses built by way of lot coverage, control of the overall height and/or number of storeys is needed. This relates to Mr. Schlaepfer's second concern of increased height limits. Mr. Schlaepfer postulates that in a zone with a 10 metre or 11 meter height limit, under a lot coverage approach, 3 storey flat roof buildings will be built in order to take advantage of the opportunity to build additional floor space. Staff considered this response and in the October 21, 2009 report indicated that flat roof buildings would be limited to 2 storeys in height in RD zones. The proposed two storey limit on flat roof buildings could be extended to all R zones throughout the City. In general, limiting the number of storeys is an approach that could be taken to help reinforce the character of any given neighbourhood.

Mr. Schlaepfer's contention that the transfer from the FSI system to a lot coverage system of control may lead to increases in height and density of residential buildings is only true if there are no restrictions on the number of storeys that can be built under the lot coverage system. However, the current Zoning By-law proposals envisage accompanying limits on the number of storeys and height of residential buildings that will render the lot coverage approach as effective as the FSI system in controlling permitted levels of residential floor space. In addition, a lot coverage approach will help ensure a smaller footprint to the building and combined with a limit on the number of storeys could help reinforce the physical character of the neighbourhood. Nevertheless, the concerns raised by Mr. Schlaepfer and similarly in other submissions will be more fully addressed in the April 21, 2010 report.

With respect to height limits, the new zoning by-law is retaining the existing limits. In the former City of Toronto 0.6 density zones, the current height limits are 10 and 11 metres, measured to the midpoint of the roof. The only change is that the zoning by-law proposes measuring height to the ridge of the roof. That results in a slight lowering of the height limits. But since 10 and 11 metre height zones are intended to allow for 2 storey homes with pitched roofs, there will be no appreciable effect on built form from this standpoint.

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SIGNATURE

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ATTACHMENTS

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