

Progress Report on the Resolution of Outstanding Issues Related to the New Zoning By-law

Date:	March 1, 2010
To:	Planning and Growth Management Committee
From:	Chief Planner and Executive Director, City Planning
Wards:	All Wards
Reference Number:	Pg10012

SUMMARY

This report provides the Committee with an update on the progress towards resolving outstanding issues that have been enunciated during the consultation process including deputations before the Committee. The resolution of the issues discussed in this report will form part of the recommended changes to the next draft of the new zoning by-law that will be before the Committee at its April 21, 2010 meeting.

Among the proposed changes is the inclusion into the new zoning by-law of the floor space index or gross floor area method of density control in areas of the City that currently employ such a method of regulation. It is proposed to limit flat-roof buildings in all RD zones to two storeys and 7.2 metres height. A height limit of 4 metres is proposed for accessory structures such as garages. A new provision allowing existing buildings within the affected Hazard Line setback area to be rebuilt in the same location is proposed. Also, with respect to the Natural Hazard Line setback, a new approach is proposed in determining the top-of-bank that will help ensure better accuracy. A revised list of 86 manufacturing uses permitted within the employment-industrial zones has been circulated for comment to industrial associations and is available on the zoning by-law project's page of the City's website. Reaction to the list of manufacturing uses and recommended changes will be included in the April report. A more detailed explanation of the Transition Protocol is included in this report. The Transition Protocol explains which sites may be excluded from the new zoning by-law at this time as well the approach that will be taken with respect to existing applications.

Financial Impact

There is no financial impact associated with this report.

DECISION HISTORY

The Planning and Growth Management Committee, at its meeting held on February 11, 2010, adopted ten recommendations with respect to Item 35.1, “Further Report on the New Draft Zoning By-law,” including the following:

Requested the Chief Planner and Executive Director, City Planning, to provide a progress report on the resolution of outstanding issues to the March 8, 2010 meeting of the Planning and Growth Management Committee.

ISSUE BACKGROUND

The new Zoning By-law Project is about creating a single zoning by-law for the City. The first draft of the new zoning by-law was released to the public in May 2009 via the City’s website. Open houses have been held and several Ward specific meetings were attended by staff to hear and address concerns with the proposed draft zoning by-law. A report on the results of the consultation was before the Committee at its meeting held on November 4, 2009. A further report addressing public comments was received by the Committee at its February 11, 2010 meeting.

COMMENTS

This report describes some of the issues that have been raised with respect to the draft zoning by-law released in May 2009. Each section begins with a description of the issue followed by a discussion of a proposed solution or whether efforts to resolve the issue are continuing. Where a proposed solution is described, it will be implemented in the next draft of the new zoning by-law which will be before the Committee at its April 21, 2010 meeting date.

Conversion of Zones from Floor Space Index to Lot Coverage

The floor space index (FSI) method, also referred to as gross floor area (GFA), of regulating low-rise, grade-related residential buildings is used exclusively in the former City of Toronto, York, Mimico, New Toronto and Long Branch zoning by-laws. It is also used in the Township of Etobicoke, Township of East York and the Leaside zoning by-laws together with lot coverage. Both the FSI and lot coverage methods of regulating the bulk and mass of a building have their advantages and disadvantages. However, the limit on the amount of total gross floor area per lot regulated under the FSI/GFA is a more definitive measure of permitted density compared to the lot coverage method which relies on setbacks and height limits to restrict floor area of the building.

For the communities familiar with the FSI/GFA system, there is some doubt that the lot coverage approach would be able to restrict building size and bulk with the same certainty. In the report tabled before the Committee at its meeting held on February 11, 2010, it was argued that the lot coverage method could be designed to achieve the same ends through additional regulations. However, to achieve the same level of precision, the lot coverage method might be viewed as more cumbersome.

As a result of further review of these two approaches of density control, the FSI/GFA approach will be included in the next draft of the new zoning by-law where it currently exists in zoning by-laws today. The same density values that exist will also be retained in their respective zones. The density factor will be added to the zone label to make it apparent at first glance which type of floor area control applies to that particular zone. Lot coverage will continue to apply in those areas of the City that have it. Similarly, the existing lot coverage values will be retained. These values will be shown on an overlay map.

Measuring Height for Buildings in Low-rise Residential Zones

The current zoning by-laws are equally divided in their approach to measuring the height of low rise residential buildings. Half the zoning by-laws of the former municipalities measure to the ridge of roof or highest point of any building and half measure to the mid-point of pitched-roof buildings and the roof level of flat-roof buildings. The proposed approach in the current draft zoning by-law is to measure all buildings to the ridge or highest point of the roof. The discussions with resident association representatives, architects and designers are focused on what are the apparent advantages of either approach.

From an enforcement perspective, the measurement to the mid-point results in widely varying heights as designers attempt to increase the size of the dwelling. Complicated roof line designs make it difficult to determine the mid-point, which is generally defined as midway between the lowest point of any eave and the highest point of any part of the roof. Some differences in opinion over the interpretations of the height of a building have resulted in court challenges. Measuring to the ridge or high point would make it easier to unequivocally determine the height.

Nevertheless, discussions with community representatives from areas that currently use the mid-point measurement are continuing in order to understand the issues. A final recommendation with respect to this issue will be contained in the next report to Committee at its meeting to be held in April.

Restricting the Height of Flat-roof Buildings

In the staff report, dated October 21, 2009, before the Committee at its meeting held on November 4, 2009, it was proposed to place a 2-storey limit and 8 metre height limit on all flat-roof buildings in the RD zones. The RD zones permit single detached housing types only and are the largest single zone category in the City when looked at in terms of area covered. These limits are derived from the current requirements found in the North York zoning by-law.

The concern with flat-roof buildings arises from the possibility of building a 3-storey building in an area that would typically see a 2-storey dwelling with a pitched-roof. A 3-storey building is thought to be inappropriate if the area is mainly 2-storey buildings with pitched-roofs. In addition, a 3-storey flat-roof building would create greater overlook issues, result in more shadowing and would generally feel more imposing than a 2-storey pitched-roof building.

In determining an appropriate height limit, the general rule of thumb is to allow 3 metres for the height of each storey. An allowance is also given for the portion of the basement permitted above ground not being counted as a storey. This height of the basement above ground is limited to 1.2 metres. Adding these amounts together for a 2-storey house gives a total of 7.2 metres. Given that the height of the building will be measured from the point on the ground where it is built, it is appropriate to establish the height limit for a 2-storey flat-roof building at 7.2 metres in addition to the limit of 2 storeys. It is recommended that the 2-storey, 7.2 metre height limit on flat-roof buildings be applied to all RD zones in the City.

The concern over 3-storey flat-roof buildings extends beyond the RD zones. In meeting with representatives of various resident and ratepayer groups, mainly from communities governed by the former City of Toronto zoning by-law, concerns with the height of flat-roof buildings in the proposed R zone was expressed. The R zone replaces the R2, R3 and R4 zones. Currently there is no limitation on the height of flat-roof buildings, other than the overall height limit. With a height of 10 and some cases 11 metres, a 3-storey flat-roof building could be developed. Discussions continue with this group of representatives and a recommendation on this issue will be part of the April report to Committee.

Height of Ancillary Structures

In the initial draft of the new zoning by-law released in May 2009, the maximum height of ancillary structures, such as garages, was proposed at 5 metres. Ancillary structures are also restricted to one storey. There was concern expressed that the proposed height would create over-shadowing problems.

Upon further review, it was noted that the 5 metre height limit represented the highest value of the height limits found in the existing zoning by-laws. It was also noted that all the existing zoning by-laws limit ancillary structures to one storey. Because of the one storey limit, it is entirely appropriate to consider a single height limit for ancillary structures across the City. The most common of height limits for ancillary structures is 4 metres. As a result, it is recommended that the height of ancillary structures be limited 4 metres in the new zoning by-law.

Hazard Line Setback

A hazard line setback distance was introduced as a new provision in the draft zoning by-law. The requirement is for a 10 metre setback of all development from the top-of-bank of ravines and the Lake Ontario shoreline. This requirement reflects Section 3.4.8 of the Official Plan wherein it states that development will be setback from the top-of-bank of

valleys, ravines and bluffs and other locations where slope stability, erosion or flooding occurs including along the Lake Ontario shoreline.

Two issues have arisen during the consultation period. One relates to the treatment of existing buildings that are currently constructed within the proposed setback area. The other relates to the accuracy of the line shown on the zoning maps as the top-of-bank.

In the case of existing buildings or structures, it is recommended that a new provision be introduced that would allow any existing building to be re-built in that location provided it is no closer to the top-of-bank. Existing buildings that are below the top-of-bank could also be re-built if their footprint is not expanded. Additions to existing buildings are also possible but would require an application to the Committee of Adjustment.

With respect to the accuracy of the setback line shown on the zoning maps, submissions filed during the consultation period regarding specific sites have been carefully reviewed. The conclusion is that the setback line indicated on the zoning maps is not entirely accurate in all cases. Consequently, a slightly different approach is being recommended.

It is proposed to create a slope and shoreline setback 'area'. This will be accomplished by identifying areas on a map that correspond with the TRCA regulation areas and some additional ravine controls. Applicants for a building permit within that area will be required to identify the top-of-bank line on their plans. Any proposed new building will be required to be set back from that line. There will be an additional requirement stating that the top-of-bank line must be confirmed by the Toronto and Region Conservation Authority. This method will achieve the accurate determination of the top-of-bank line and ensure consistency with the TRCA's approach.

Industrial Use Classification

There are two basic approaches to regulating industrial uses employed in the current zoning by-laws, prescriptive and proscriptive. The prescriptive approach lists only those uses permitted in the industrial zones. This method ensures that unwanted uses are not established as-of-right. However, it also means that new acceptable uses may be turned away. The proscriptive approach lists only those uses that are not permitted. This method eliminates the need to constantly update the permitted use list. On the other hand, it could allow for unwanted uses to establish themselves.

The new zoning by-law proposes to list the various industrial uses permitted in employment-industrial zones (ie. prescriptive approach). This approach is being recommended because all current industrial areas border, at least in part, either residential or commercial-residential zones. To assist in buffering the impact of industrial uses on sensitive uses, the new zoning by-law proposes a graduated industrial use zoning scheme whereby light industrial uses are permitted along the edges of industrial areas, next to residential areas, followed by medium industrial uses and finally heavy industrial uses placed in the middle of industrial areas furthest from sensitive use zones.

When it comes to defining the uses permitted within each zone, the new zoning by-law defines broad categories of uses, such as warehouse, wholesaling, custom workshop, and manufacturing. Manufacturing is defined in general terms as:

The use of premises for fabricating, processing, assembling, packaging, producing or making goods or commodities, and it may include ancillary repair of those goods.

The manufacturing category of use is the largest of all the industrial use categories. Most industrial properties are developed under the label of 'manufacturing use'. Some of the comments received were accepting of this definition provided it alone was used in determining what type of manufacturing use is permitted. The problem is that this approach would allow for any manufacturing use, whether of the light or the heavy variety, to locate in any industrial zone. This could be considered a proscriptive approach.

Because of the great variety of manufacturing uses that may establish in the City, a further sub-classification into light, medium and heavy permitted uses is recommended. Current zoning by-laws attempt to define some of their permitted manufacturing uses. These definitions vary among the existing zoning by-laws. The approach proposed by the new zoning by-law is to rely on the North American Industry Classification System (NAICS), an international standard. The NAICS coding of manufacturing related processes will be used to allocate the various types of manufacturing uses to their respective light, medium and heavy zone. The current NAICS list will be appended to the new zoning by-law.

This proposed approach has not been well received to date by some of the industrial sector in part because there has been insufficient information by which to judge the merit of this approach. A fear is that existing uses would be rendered legal non-conforming. That is not the intent of the recommended approach of using NAICS.

In order to help with understanding this approach, a table has been created listing the 86 manufacturing related use categories from NAICS cross-referenced to the industrial zones that would permit these uses. The table has already been distributed to the Toronto Industry Network, the South Etobicoke Industrial Employers Association and the Economic Development Division. It has also been sent to industries that corresponded on this issue. The table is available on the City website at www.toronto.ca/zoning.

In addition to the table, a comparison of the manufacturing uses listed in existing zoning by-laws to the manufacturing terms set out in the NAICS listings has been prepared. This analysis matches all the existing zoning by-law manufacturing use terms to the corresponding NAICS term. The result reveals that all the existing manufacturing land use terms are accounted for under the NAICS listing. This comparison is also available on the City website at www.toronto.ca/zoning.

It is proposed to meet with the industrial associations, Economic Development and other interested stakeholders and discuss any further concerns or questions that may remain on

this matter. A recommendation with respect to this issue will be included in the April report to Committee.

Retail in Employment-Industrial Zones

The issue of retail uses in employment-industrial zones was discussed in the staff report (October 21, 2009) before the Committee at its meeting held on November 4, 2009 but it is worth repeating as letters continue to be received on this topic.

The Official Plan recognizes only two categories of retail uses that are permitted in Employment Areas. The first category relates to small scale retail stores that serve local area businesses and workers. The second category relates to large scale, stand-alone retail stores that are permitted in Employment Areas under certain restrictive conditions (see policy statements 4.6.1 and 4.6.3 of the Official Plan).

Determining which lands qualify under the policies is still being examined. However, there are many existing retail sites in employment-industrial zones that will not qualify. It is proposed that these sites be left out of the new zoning by-law at this time. The alternative would be to zone them industrial, thereby making them legal non-conforming.

Transition Protocol

In the Staff Report dated October 21, 2009 to the November 4, 2009 Committee meeting, there was a general discussion of concepts to assist in the transition to the new Zoning By-law: such as Holes, Pipeline Projects, Prevailing By-laws, Prevailing Sections. This report will attempt to provide further clarification of the transition protocol. The general intent is to keep the zoning.

Areas and Sites excluded from the new zoning by-law – ‘holes’

As described in the reports of March 27 and October 21, 2009, some properties will be excluded from the new Zoning By-law so that the current general zoning by-laws, area and site specific amendments will continue to apply. The following is a description of the anticipated categories for type of sites that would be not regulated by the new Zoning By-law.

Conformity Concerns with the Official Plan

The Official Plan's land use designations do not always correspond with the current zoning classification, as described above with respect to retail in employment zones. While the mandate of the Zoning By-law Project is to bring forward the intent of current zoning in a similar fashion within the new Zoning by-law, Section 24 of the *Planning Act* prohibits passing a by-law that does not conform to the Official Plan. Therefore, it is proposed to leave those sites where the current zoning is in conflict with the Official Plan out of the new Zoning By-law. This would be depicted as a 'hole' in the new Zoning By-law map. This would be an interim solution, but will allow for each site to be carefully considered in the future to determine how to best bring them into the new Zoning By-law. Similarly, it is proposed to leave those sites where the Official Plan land use designation

is currently under appeal at the OMB out of the new Zoning By-law to be re-evaluated once the appeals are finally concluded.

Area-based Zoning By-law Amendments

It is proposed that lands governed by area-based zoning by-laws be left out of the new Zoning by-law. The reasoning is that this type zoning was usually enacted as part of a comprehensive development plan, involving a Secondary Plan or an Official Plan amendment, as well as sets of unique regulations developed specifically for the area in question. Taking all this exceptionality into consideration, it is proposed to exclude such areas. The Centres (in Etobicoke, North York and Scarborough), the Railway Lands, Harbourfront, the Fort York Neighbourhood, University of Toronto Downtown Campus, Liberty Village, West Don lands, the East Bayfront are examples of this type of area-based zoning that would not be included in the new Zoning By-law.

Sites Under-Development with Site Plan Approval Application

Sites with a particular development scheme and for which an application for Site Plan Approval has been submitted, whether based on an approved zoning by-law amendment, minor variance or as-of-right zoning under the current general zoning by-laws, but have not yet received a Notice of Approval Conditions building permit should be excluded from this new Zoning By-law. The reasoning is that rezoned sites under-development should be permitted to progress under the current zoning rules in order to ensure that they are developed as intended. Once the site development is completed, the intent is to include the site in the new Zoning By-law.

Applications for Site Specific Zoning By-law Amendments that will be considered by Council During it's Current Session

Any property associated with a site specific zoning by-law amendment application that will be considered by Council at its July and August meetings should be left out of the new zoning by-law. This approach is being proposed as a matter of fairness to applicants that will be just on the threshold of enactment before the new Zoning By-law is passed in July.

Site specific by-laws listed as Prevailing By-laws

Site Specific Zoning By-law Amendments – constructed or building permit issued

Ideally, all site specific zoning amendments would be incorporated into the new zoning using the language of the new by-law but retaining the specific requirements of the amendment. That is the intent in the long term. In such a case, the new zoning by-law will apply to the site and the site specific zoning amendment will become a Chapter 900 Exception. However, given the complexity of many of these by-laws, including associated Section 37 Agreements requirements that form part of the amending by-law, it is proposed that a transitional approach be adopted.

Complex zoning by-law amendments will be listed in the new zoning by-law in the form of a Prevailing By-law. These site specific by-laws will continue in force and prevail to

the extent of any conflict between it and the new zoning by-law. However, provisions in the new zoning by-law that are not in conflict with the Prevailing By-laws will apply to a site. The intent is to preserve the rights and duties found in each of the Prevailing By-laws. To that extent, and to ensure the provisions of the former zoning by-laws are used where necessary to interpret and provide context for the Prevailing By-laws only, the new zoning by-law will provide that they shall continue to apply to the extent necessary to support the continued existence and validity of the Prevailing By-laws. Insofar as minor variances have been attained against the provisions of the Prevailing By-law, it is arguable that the variances could continue to apply.

Site Plan Approval Applications

If a site plan application has been approved and received Notice of Approval Conditions or a building permit issued or is built, the site will be included as part of the new zoning by-law. If the site plan application is part of a site specific zoning amendment, the respective by-law will be listed as a Chapter 900 Exception or a Chapter 950 Prevailing By-law as described earlier in this report. If the site is not part of a site specific rezoning, the site will still be included as part of the new zoning by-law.

Minor Variances

Numerous letters have been received expressing interest in ensuring that Committee of Adjustment approved minor variances are recognized in some manner in the new zoning by-law. The October 21, 2009 staff report expressed misgivings over the City's ability to automatically accept or 'grandfather' such approvals in the new zoning by-law. Nonetheless, solutions to this concern continue to be explored and further recommendations on how to proceed will be included in the April report to the Committee.

CONTACT

Joe D'Abramo, Director (Acting)
Zoning By-law and Environmental Planning
City Planning Division
Telephone: (416) 397-0251, Fax (416) 392-3821
Email: jdabramo@toronto.ca

SIGNATURE

Gary Wright
Chief Planner and Executive Director
City Planning Division

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