



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

491 Glencairn Avenue and 278, 280 & 282 Strathallan Wood Road - Official Plan and Zoning By-law Amendment Applications - Request for Directions

Date: June 10, 2019

To: City Council

From: City Solicitor

Wards: Ward 8 - Eglinton-Lawrence

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

SUMMARY

Bathurst and Glencairn Square Limited (the "**Applicant**") is the owner of lands municipally known as 491 Glencairn Avenue and 278, 280 & 282 Strathallan Wood Road (the "**Subject Site**"). The Subject Site is located on south east corner of Bathurst Street and Glencairn Avenue. The site occupies a full block between Glencairn Avenue and Strathallan Wood Road, and is partially vacant.

The Applicant submitted Official Plan and Zoning By-law Amendment applications (the "**Applications**") to the City in January, 2014. The Application proposed a 12 storey, 38.5 metre high (excluding elevator overrun) mixed use building. The Applications were revised in November 2016, to reduce the height, the gross floor area, and the number of units, and to increase the non-residential gross floor area.

The Ontario Municipal Board (the "**OMB**"), now continued as the Local Planning Appeal Tribunal (the "**LPAT**"), conducted a hearing on the Revised Application, at which the City Solicitor and other City staff appeared in opposition. The OMB issued a decision in which it did not approve the proposed development, but in which it also did not dismiss the Applicant's appeal. The OMB allowed the Applicant the opportunity to amend its proposal in accordance with the directions outlined in its decision, and to continue discussions with the City and other parties to the appeal.

The LPAT has now scheduled a further hearing date of June 24, 2019.

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The purpose of this report is to request further instructions for the June 24, 2019 LPAT hearing.

City Planning has been involved in the preparation of this report.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to this report.
2. City Council authorize the public release of the confidential recommendations 1, 2 and 3 contained in the Confidential Attachment 1, Confidential Attachment 2, and Appendix "A" to Confidential Attachment 2, if adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 is to remain confidential at the discretion of the City Solicitor, as it contains advice and information which is subject to privilege.

FINANCIAL IMPACT

Adopting this report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

The site has previously been the subject of a planning application for Site Plan Control (File #06 191554 NNY 16 SA) for a 5 unit townhouse development submitted in 2006 and subsequently a Notice of Approval Conditions was issued on March 10, 2009. A Minor Variance application (A0833/06NY) was also submitted and approved by the Committee of Adjustment in 2008 with minor variances in relation to maximum site coverage, setbacks and lot area. This Minor Variance application was appealed to the OMB and was subsequently approved, subject to conditions.

On April 8, 2014, North York Community Council adopted the Preliminary Report on the Applications. The report can be found at the following link:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2014.NY31.24>

In 2015, the Applicant appealed the Applications to the OMB for Council's failure to make a decision.

On June 14, 2016, North York Community Council considered a Request for Direction report dated May 27, 2016, from the Director, Community Planning, North York District. The recommendations were adopted by Council on July 12, 2016 without amendment and without debate. The report can be found at the following link:

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<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2016.NY15.43>

A Hearing of the OMB was held in January and February, 2017. The OMB issued a decision with respect to this matter on November 24, 2017, which can be found at the following link:

<http://www.omb.gov.on.ca/e-decisions/pl151148-Nov-24-2017.pdf>

The LPAT has now scheduled a further hearing date of June 24, 2019.

COMMENTS

The Applicant submitted the Applications to the City in January, 2014. The Application proposed to amend the Official Plan, the former City of North York Zoning By-law 7625 and City-wide Zoning By-law 569-2013 for the Subject Site, to permit a 12 storey, 38.5 metre high (excluding elevator overrun) mixed use building containing 150 residential units, 428 square metres of commercial space at grade and 149 parking spaces in 3 levels of underground parking. The Official Plan amendment application was to redesignate the southerly portion (278, 280 and 282 Strathallan Wood Road) of the site from *Neighbourhoods* to *Mixed Use Areas*.

On July 12, 2016, City Council directed that, among other things, the City Solicitor, together with City Planning staff and other appropriate staff to attend the then-OMB hearing to oppose the Official Plan and Zoning By-law Amendment applications, and to continue discussions with the applicant to address the issues outlined in the May 27, 2016 report from the Director, Community Planning, North York District, and to report back to Council if any substantial positive changes are achieved, including proposed Section 37 contributions relating to any revised proposal, as appropriate.

In November 2016, the Applications were revised, consisting of a reduction in height from 38.5 metres (10 storeys plus a two-storey wrapped mechanical penthouse) to 32.5 metres (10 storeys plus a 5 metres mechanical penthouse), a reduced gross floor area (from 12,609 square metres to 12,309 square metres), a reduction in units (from 150 to 122) and an increase in non-residential gross floor area (from 477 square metres to 508 square metres) (the "**Revised Applications**").

In January, 2017, the OMB conducted a hearing on the Revised Applications, at which the City Solicitor and other City staff appeared in opposition.

On November 24, 2017, the OMB issued a decision (the "**Decision**") in which it did not approve the proposed development, but in which it also did not dismiss the Applicant's appeal.

Instead, the OMB made the following findings and gave the following directions in the Decision:

- The proposal as it was before the OMB does not represent appropriate land use planning.

- The planned context in this area is to have a mixed use building at the corner of Bathurst and Glencairn and to have a *Neighbourhood* development on the three lots to the south. The proposed development, is for a tall building and does not fit with the planned context. It does not provide appropriate setbacks and/or stepping down of heights, particularly to the *Neighbourhood* lands to the east.
- The proposed building is too tall and doesn't provide for good street proportion.
- The building as proposed should be looked at as a whole and has 10 residential storeys. Grade should be determined from an average elevation along Bathurst (this would be consistent with the approach of Zoning By-law No. 7625 which measures height from the centre line of the street at the mid-point of the front lot line). This would put grade at a lower elevation by approximately two metres and as such the height of the building is approximately 39.5 metres at the top of the mechanical penthouse and 34.5 metres at the main roof.
- The planned width of the right-of-way should determine the maximum overall height and ... generally, the Built Form and "Mixed-Use Areas" policies both speak to massing new buildings in a way that addresses street proportion. Performance Standard #1 of the Mid-Rise Guidelines specifically speaks to a 1:1 proportion as the maximum allowable height of buildings on the Avenues with buildings being no taller than the width of the Avenue right-of-way. The planned right-of-way for Bathurst is 27 metres and the height of the proposed building to the main roof is 34.5 metres, which means that the building is 7.5 metres higher than the planned right-of-way width, a height which more than slightly exceeds the 1:1 ratio. The guidelines also indicate that the 1:1 performance standard will be tempered by the angular plane requirements and contemplate mechanical penthouse protrusions above the right-of-way width.
- The additional shadow caused by this tall building will create significant impacts in the neighbourhood to the east. At 16:18 on March/September 21, there is significant shadow at the front of the houses on Glencairn and on the roofs of those homes immediately adjacent to the subject site along Glencairn, which have skylights on the roofs and that the fronts also have sun rooms. These will clearly be negatively impacted by the development due to its height and failure to achieve a 45 degree angular plane on the north side of the property. The review of impacts from shadow should not only be limited to looking at only impacts on the rear yards. The Board finds that shadow impacts from the proposed development have not been adequately limited.
- The Board has no issues with re-designation of the southern portion of the site from Neighbourhoods to Mixed Use Areas provided that the built form of the new building implements the intent of the Mid-Rise Guidelines with minor impacts as described in the City's evidence. The Board finds that a building of eight stories plus mechanical facilities on the roof would be more appropriate.

At the conclusion of the Decision, the OMB allowed the Applicant the opportunity to amend its proposal in accordance with the directions outlined in the Decision, and to continue discussions with the City and other parties to the appeal.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 - Confidential Recommendations and Confidential Information
2. Confidential Attachment 2 - Confidential Information
3. Confidential Attachment 2, Appendix "A", on file with the City Clerk for the purpose of the June 18 and 19, 2019 City Council meeting.