



REPORT FOR ACTION WITH CONFIDENTIAL ATTACHMENT

599 to 631 Kennedy Road – Official Plan Amendment and Zoning Amendment – Request for Directions Report

Date: May 19, 2020

To: City Council

From: City Solicitor

Wards: Ward 20 - Scarborough Southwest

Planning Application Number: 16 270250 ESC 35 OZ

REASON FOR CONFIDENTIAL INFORMATION

This report concerns litigation or potential litigation that affects the City of Toronto.

This report contains advice or communications that are subject to solicitor-client privilege.

SUMMARY

The purpose of this report is to seek further instruction in relation to a development application for a properties at 599-631 Kennedy Road and related ongoing appeals at the Local Planning Appeal Tribunal. The LPAT has requested the parties schedule a case management conference for the summer of 2020, although no dates have been set at the time of this report.

The purpose of this report is to seek City Council's direction with respect to newly filed revised plans for the site and to seek instruction with respect to the ongoing LPAT process.

City Planning has reviewed the revised application and was consulted in the preparation of this report.

This revised application proposes to amend the Official Plan to delete the subject lands from Site and Area Specific Policy No. 116 ("SASP 116") and to amend the Zoning By-law to permit redevelopment of the subject property with an 8 to 10-storey apartment building consisting of 205 apartment units having 208 parking spaces at 599 to 631 Kennedy Road.

This application as originally filed in 2016 pertained only to a proposed redevelopment of 599 Kennedy Road with an 8-storey apartment building having 29 units. The application was subsequently appealed by the previous owner on November 28, 2017 to the Ontario Municipal Board ("OMB"), now constituted as the Local Planning Appeal Tribunal ("LPAT"), on the basis of non-decision by City Council.

Subsequent to this appeal, the property was acquired in February 2018 by the current owner who assumed both the subject rezoning application and appeal to LPAT. The owner had previously acquired the abutting lands at 611 to 631 Kennedy Road in April 2017. The owner has now revised the subject rezoning application to replace the previous apartment proposals on the two properties with a modified combined new proposal for the expanded site, as discussed further in this report, for consideration as part of the pending LPAT hearing on the original appeal.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the confidential recommendations contained in Confidential Attachment 1.
2. City Council authorize the public release of Confidential Recommendations in Confidential Attachment 1 if adopted by City Council, with the balance of Confidential Attachment 1 to remain confidential at the discretion of the City Solicitor as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

The City Planning Division confirms that there are no financial implications resulting from the recommendations included in the report in the current budget year or in future years.

DECISION HISTORY

611-631 Kennedy Road

On March 21, 2013, City Council approved recommendations in the Final Report of the Director, Community Planning, Scarborough District dated February 5, 2013 in regard to rezoning application 12 113066 ESC 35 OZ applying to 611-631 Kennedy Road. The proposed development on this site consisted of a 10-storey apartment building containing 110 residential dwelling units, 9,998 square metres of gross floor area (3.7 times the site area) including a maximum 880 square metres of ground floor commercial uses and 134 parking spaces (129 spaces in two levels underground with 5 surface spaces) for the residents, visitors and commercial users. The owner subsequently entered a registered Section 37 Agreement under the Planning Act to contribute \$150,000 toward improvements to Corvette Park. Accordingly, City Council on May 10, 2013 enacted By-law 631-2013 to amend the former City of Scarborough By-law

Kennedy Park Community Zoning By-law No. 9276, as amended, to permit the proposed development. The above noted Final Report, decision of City Council and By-law No. 631-2013 can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2013.SC22.27>

On January 8, 2014, the Director of Community Planning, Scarborough District issued Notice of Approval Conditions ("NOAC") in regard to Site Plan Control application 12 139413 ESC 35 SA for the above noted building. Construction of this building has not proceeded.

599 Kennedy Road

The subject application originally applying to 599 Kennedy Road, which proposed an 8-storey apartment building having 29 dwelling units, was submitted by the previous owner on December 22, 2016. On April 4, 2017 Scarborough Community Council considered the Preliminary Report on the application dated March 7, 2017 from the Director, Community Planning, Scarborough District. City Planning staff were directed to proceed with expanded 250 metre notice for the community consultation meeting. This report and the decision of Scarborough Community Council can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2017.SC21.13>

On November 28, 2017 the previous owner then appealed the subject application, as originally submitted, to the OMB (now LPAT) on the basis of non-decision by City Council. A Pre-hearing Conference was held by LPAT on June 5, 2018, at which time the City and the owner requested a second Pre-hearing Conference be scheduled for the fall of 2018 to enable potential settlement discussions to continue.

City Council on July 23, 2018 adopted the recommendations as set out in a Request for Directions Report dated June 11, 2018 from the Director, Community Planning, Scarborough District in regard to this appeal. The City Solicitor was directed to attend LPAT with City Planning staff, subject to resolution of certain site servicing requirements raised by Engineering and Construction Services staff, in support of the Official Plan and Zoning By-law amendments proposed at that time. The above noted Request for Directions Report and decision of City Council can be viewed at:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2018.SC32.15>

599 to 631 Kennedy Road

The current owner, having previously acquired 611-631 Kennedy Road in April 2017 and 599 Kennedy Road subsequently in February 2018, assumed the original Official Plan and Zoning By-law amendment application and its appeal to LPAT, and initiated discussions with City Planning on a revised development concept on the larger consolidated property. These discussions led to the current owner also submitting Site Plan Control application 19 121941 ESC 20 SA on March 5, 2019 reflecting the current proposal. This application remains under City review and is not subject to the current appeal proceedings before LPAT.

Subsequent to the initial LPAT Pre-hearing Conference on June 5, 2018 relating to 599 Kennedy Road only, additional Pre-hearing Conferences to address the revised

proposal for the larger consolidated site were scheduled for November 1, 2018 and March 7, 2019, however these were also adjourned to enable continued City review of further revisions to the amended subject application and the more recent site plan application.

ISSUE BACKGROUND

Proposal

The proposed Official Plan amendment does not propose any changes to the current Apartment Neighbourhoods land use designation applying to the subject lands, but does seek to have the 599 Kennedy Road portion of this site deleted from SASP 116 which limits residential uses to a maximum of 50 units per hectare, or just 5 units given the size of that portion of the site. The proposed zoning by-law amendment as now revised seeks to permit the redevelopment of these former retail commercial properties with an 8 to 10-storey, 15,195 square metre mid-rise apartment development having 205 residential units at a gross floor area density of 3.95 times the site area. The proposal includes:

- Five (2 Percent) studio apartments at an average size of 50.2 square metres per unit;
- Ninety-two (44 Percent) 1-bedroom or 1-bedroom plus den units at an average size of 56.2 square metres per unit;
- Eighty-seven (42 Percent) 2-bedroom or 2-bedroom plus den units at an average size of 67.4 square metres per unit;
- Twenty-one (10 Percent) 3-bedroom or 3-bedroom plus den units at an average size of 104.8 square metres per unit;
- A total of 208 parking spaces (7 surface spaces plus 201 spaces on two underground levels) underground;
- A total of 105 bicycle parking spaces (140 long-term spaces and 15 short-term spaces);
- Two ground floor amenity rooms totalling 410.8 square metres, at a rate of 2 square metres per unit;
- Approximately 228 square metres of outdoor amenity space on the southeast portion of the site, at a rate of approximately 1.1 square metres per unit; and
- A total of 642 square metres of Green Roof (427 square metres on top of the 8th storey at the south end of the building plus 215 square metres on top of the building), representing 75 percent of the available roof space compared to the minimum 40 percent required under the Green Roof By-law.

Additional detailed project information can be found on the City's Application Information Centre at: <https://www.toronto.ca/city-government/planning-development/application-information-centre/>

See also Attachments 1 and 2 of this report for three dimensional representations of the project in context, and Attachment 3: Site Plan, for additional information.

Site and Surrounding Area

599 to 631 Kennedy Road is located on the east side of Kennedy Road, south of Corvette Avenue (see Attachment 7: Location Map). It is rectangular in shape having a combined lot area of 3,842.2 square metres, a frontage on Kennedy Road of 91.75 metres and a frontage on Corvette Avenue of 46.3 metres. The site currently contains a one-storey former retail commercial plaza on 611-631 Kennedy Road for which a demolition permit was issued by Toronto Building Division on October 3, 2019. The southern portion of the site at 599 Kennedy Road contains a one-storey former retail commercial plaza (currently tenanted for office use).

Surrounding uses include:

North: A one-storey place of worship and residential apartments of 6 and 11-storeys beyond Corvette Avenue.

South: A 3½-storey stacked townhouse condominium development at 593 Kennedy Road with a variety of single-detached houses, apartment buildings and commercial uses beyond.

East: Detached single-family dwellings on Cleta Drive and beyond, with Corvette Park and Corvette Junior Public School to the east on the north side of Corvette Avenue.

West: Opposite the site are two 2½-storey apartment buildings with a 3-storey apartment building and Massey Creek beyond. To the south-west of the site is a 2-storey medical office building with Pine Hills Cemetery and Funeral Centre beyond.

Provincial Policy Statement and Provincial Plans

Provincial Policy Statements and geographically specific Provincial Plans, along with municipal Official Plans, provide a policy framework for planning and development in the Province. This framework is implemented through a range of land use controls such as zoning by-laws, plans of subdivision and site plans.

The Provincial Policy Statement (2020) (the "PPS") provides policy direction province-wide on land use planning and development to promote strong communities, a strong economy, and a clean and healthy environment. It includes policies on key issues that affect communities, such as:

- The efficient use and management of land and infrastructure;
- Ensuring the sufficient provision of housing to meet changing needs and affordable housing;
- Ensuring opportunities for job creation;
- Ensuring the appropriate transportation, water, sewer and other infrastructure is available to accommodate current and future needs; and
- Protecting people, property and community resources by directing development away from natural or human-made hazards.

The provincial policy-led planning system recognizes and addresses the complex inter-relationships among environmental, economic and social factors in land use planning. The PPS supports a comprehensive, integrated and long-term approach to planning, and recognizes linkages among policy areas.

The PPS is issued under Section 3 of the Planning Act and all decisions of Council in respect of the exercise of any authority that affects a planning matter shall be consistent with the PPS. Comments, submissions or advice affecting a planning matter that are provided by Council shall also be consistent with the PPS.

The PPS is more than a set of individual policies. It is to be read in its entirety and the relevant policies are to be applied to each situation.

The PPS recognizes and acknowledges the Official Plan as an important document for implementing the policies within the PPS. Policy 4.6 of the PPS states that, "The official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long-term planning is best achieved through official plans."

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019)

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019) (the "Growth Plan (2019)") came into effect on May 16, 2019. This new plan replaces the previous Growth Plan for the Greater Golden Horseshoe, 2017. The Growth Plan (2019) continues to provide a strategic framework for managing growth and environmental protection in the Greater Golden Horseshoe region, of which the City forms an integral part. The Growth Plan, 2019 establishes policies that require implementation through a Municipal Comprehensive Review (MCR), which is a requirement pursuant to Section 26 of the Planning Act that comprehensively applies the policies and schedules of the Growth Plan (2019), including the establishment of minimum density targets for and the delineation of strategic growth areas, the conversion of provincially significant employment zones, and others.

Policies not expressly linked to a MCR can be applied as part of the review process for development applications, in advance of the next MCR. These policies include:

- Directing municipalities to make more efficient use of land, resources and infrastructure to reduce sprawl, contribute to environmental sustainability and provide for a more compact built form and vibrant public realm;
- Directing municipalities to engage in an integrated approach to infrastructure planning and investment optimization as part of the land use planning process;
- Achieving complete communities with access to a diverse range of housing options, protected employment zones, public service facilities, recreation and green space that better connect transit to where people live and work;
- Minimizing the negative impacts of climate change by undertaking stormwater management planning that assesses the impacts of extreme weather events and incorporates green infrastructure; and

- Recognizing the importance of watershed planning for the protection of the quality and quantity of water and hydrologic features and areas.

The Growth Plan (2019) builds upon the policy foundation provided by the PPS and provides more specific land use planning policies to address issues facing the GGH region. The policies of the Growth Plan take precedence over the policies of the PPS to the extent of any conflict, except where the relevant legislation provides otherwise.

In accordance with Section 3 of the Planning Act all decisions of Council in respect of the exercise of any authority that affects a planning matter shall conform with the Growth Plan. Comments, submissions or advice affecting a planning matter that are provided by Council shall also conform with the Growth Plan.

Planning for Major Transit Station Areas

The Growth Plan (2019) contains policies pertaining to population and employment densities that should be planned for in major transit station areas ("MTSA"s) along priority transit corridors or subway lines. MTSA's are generally defined as the area within an approximately 500 to 800 metre radius of a transit station, representing about a 10-minute walk. The Growth Plan requires that, at the time of the next municipal comprehensive review ("MCR"), the City update its Official Plan to delineate MTSA boundaries and demonstrate how the MTSA's achieve appropriate densities.

The subject property is less than a kilometre (3 bus stops) away from Kennedy Station on the Bloor/Danforth Subway (Line 2) and future Eglinton Crosstown LRT line.

Staff have reviewed the proposed development for consistency with the PPS (2014) and for conformity with the Growth Plan (2019). The outcome of staff analysis and review are summarized in the Comments section of this Report.

Toronto Official Plan

The City of Toronto Official Plan is a comprehensive policy document that guides development in the City, providing direction for managing the size, location, and built form compatibility of different land uses and the provision of municipal services and facilities. Authority for the Official Plan derives from the Planning Act of Ontario. The PPS recognizes the Official Plan as the most important document for its implementation. Toronto Official Plan policies related to building complete communities, including heritage preservation and environmental stewardship may be applicable to any application. Toronto Official Plan policies may be found here:

<https://www.toronto.ca/city-government/planning-development/official-plan-guidelines/official-plan/>

The current application is comprised of lands designated as Apartment Neighbourhoods on Land Use Plan Map 20 of the Official Plan. This designation also applies to the north and south of the subject site, while lands to the east and west are designated Neighbourhoods (see Attachment 8: Official Plan Map).

Apartment Neighbourhoods are made up of apartment buildings, parks, local institutions, cultural and recreational facilities, small-scale retail, service and office uses that serve the needs of area residents, with all land uses provided for in the Neighbourhoods designation also permitted.

The 599 Kennedy Road portion of the site is also subject to SASP 116 which limits residential uses to a maximum of 50 units per hectare, or just 5 units given the size of that portion of the site. (See Attachment 9: Site and Area Specific Policy No. 116 (Map 4 of 4.) This policy, the subject of the requested Official Plan amendment for its removal from 599 Kennedy Road, reflects and is a 'carry-over' from the provisions of the former City of Scarborough Official Plan which contemplated potential redevelopment of a number of other properties over time for residential purposes.

Official Plan Amendment 320

In December 2015, City Council adopted Official Plan Amendment No. 320 ("OPA 320"), which strengthens and refines the Healthy Neighbourhoods, Neighbourhoods and Apartment Neighbourhoods policies to support Council's goals to protect and enhance existing neighbourhoods. In July of 2016, the Minister of Municipal Affairs and Housing approved OPA 320 and the decision was subsequently appealed.

The Local Planning Appeal Tribunal (LPAT) issued an order to approve OPA 320 on December 7, 2018 bringing the policies in force for all lands except for properties that remain subject to site-specific appeals. The subject applications were submitted prior to OPA 320 being brought into force and are not subject to these new policies, however staff reviewed the application having regard to the direction provided by the new Neighbourhoods policies.

The City of Toronto Official Plan can be found here: <https://www.toronto.ca/city-government/planning-development/official-plan-guidelines/official-plan/>.

The outcome of staff analysis and review of relevant Official Plan policies, designations and the above noted SASP are summarized in the Comments section of the Report.

Zoning

As indicated on Attachment 10: Zoning Map, the northerly 611-631 Kennedy Road portion of the subject site is currently zoned Apartment Residential (A) in the Kennedy Park Community Zoning By-law No. 9276, as amended. As rezoned by City Council in 2013, a maximum 110 dwelling units, height of 10 storeys (30 metres), gross floor area of 3.7 times the site area (i.e. 9,998 square metres, including a maximum of 880 square metres of ground floor commercial space), and building coverage of 46 percent of the lot area are permitted.

The southerly 599 Kennedy Road portion of the site is zoned Highway Commercial (HC) (see Attachment 10: Zoning Map). This zoning permits automobile service stations, funeral homes, hotels and motels, libraries and art galleries, limited retail shopping, place(s) of worship, professional and business offices, recreational uses and day nurseries.

Toronto Zoning By-law No. 569-2013, as amended, does not currently apply to the subject lands.

Design Guidelines

The following Guidelines have been considered during City Planning's review of the current revised application:

- Townhouse & Low-Rise Apartments Guidelines;
- 'Greening' Surface Parking Lots;
- Bird-Friendly Guidelines;
- Drought Tolerant Landscaping;
- Complete Streets;
- Streetscape Manual;
- Bicycle Parking Facilities;
- Privately-Owned Publicly Accessible Spaces (POPS);
- Accessible Design; and
- Growing Up: Planning for Children in New Vertical Communities.

The City's Design Guidelines may be found here: <https://www.toronto.ca/city-government/planning-development/official-plan-guidelines/design-guidelines/>

Site Plan Control

The property is subject to Site Plan Control. On January 8, 2014, the Director of Community Planning, Scarborough District issued a NOAC in regard to Site Plan Control application 12 139413 ESC 35 SA for the 10-storey, 110-unit apartment building originally proposed on 611-631 Kennedy Road. The Site Plan Agreement for this development was registered on title on May 20, 2015.

The current owner submitted Site Plan Control application 19 121941 ESC 20 SA on March 5, 2019 reflecting the current development proposal for the larger consolidated site. Approval of this newer application will require that the previous 2015 site plan agreement be replaced.

Reasons for Application

As the owner is proposing to build more than five dwelling units on 599 Kennedy Road, an Official Plan amendment is required to remove those lands from the density limits applied under SASP 116. The rezoning application as originally filed for 599 Kennedy Road was required in order to establish new residential permissions and appropriate related development standards where such residential permissions do not currently apply. Amendment to the zoning standards established by Council in 2013 relating to 611-631 Kennedy Road also require updating to reflect the current proposal through one comprehensive by-law amendment applying collectively to 599-631 Kennedy Road.

Application Submission

In addition to updated architectural, landscaping and civil engineering plans, the following reports/studies have been submitted in support of the application as currently revised:

- Transportation Impact Study;
- Functional Servicing Report;
- Sanitary Analysis Report;
- Stormwater Management Report;
- Geotechnical Report;
- Hydrogeological Report;
- Energy Strategy Report;
- Energy Modelling Report;
- Shadow Study;
- Bird Friendly Study; and
- Community Services and Facilities Study.

Agency Circulation

The subject application and associated site plan application, together with the applicable reports noted above, have been circulated to all appropriate agencies and City divisions. Responses received have been used to assist in evaluating the application in order to formulate appropriate Zoning By-law standards and, if the subject application is approved by LPAT, appropriate conditions of Site Plan Control approval in due course.

Community Consultation

The subject properties have been the subject of extensive community consultations. Planning staff hosted a community consultation meeting at Corvette Junior Public School on May 29, 2012 in regard to the 2012 Zoning By-law amendment application pertaining to 611-631 Kennedy Road. The meeting was attended by approximately 55 residents. This was followed by 3 smaller working group meetings with interested residents and the Ward Councillor to discuss specific issues raised at the community consultation meeting relating traffic and parking, building design (height, massing, setbacks, etc.), wind, shadow and air quality effects on neighbouring properties, safety, privacy and potential loss of business services to the neighbourhood.

Planning staff subsequently hosted a community consultation meeting at Corvette Junior Public School on June 6, 2017 in regard to the original Official Plan and Zoning By-law amendment application for 599 Kennedy Road. The meeting was attended by six neighbouring residents having questions/concerns which largely related to clarification on aspects of the development proposal, potential traffic impacts on Kennedy Road, and current property maintenance issues.

With the subject application currently before LPAT having been so significantly modified from the previous proposals presented to the community, the Ward Councillor in consultation with Planning staff undertook to convene a community information meeting

to provide an opportunity for the community to review and comment on the revised development proposal. This meeting was held May 27, 2019 at Birchmount Community Centre and was attended by approximately two dozen residents. Concerns and questions again focussed on clarification regarding aspects of the new development proposal, potential traffic impacts on Kennedy Road and Corvette Avenue, and municipal servicing capacity. Planning staff believe that, on balance, the residents were generally receptive to the new proposals.

COMMENTS

This report is about ongoing litigation and contains advice or communications that are subject to solicitor-client privilege. The attachment to this report contains confidential information and should be considered by City Council *in camera*.

CONTACT

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SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

- Public Attachment 1: 3D Model of Revised Proposal in Context (View Looking Northeast)
- Public Attachment 2: 3D Model of Revised Proposal in Context (View Looking Southwest)
- Public Attachment 3: Site Plan as Revised
- Public Attachment 4: Building Elevation as Revised (West)
- Public Attachment 5: Building Elevation as Revised (East)
- Public Attachment 6: Building Elevations as Revised (North and South, with rear Angular Plane indicated)
- Public Attachment 7: Location Map
- Public Attachment 8: Official Plan Map
- Public Attachment 9: Site and Area Specific Policy No.116 (Map 4 of 4)
- Public Attachment 10: Zoning Map

Confidential Attachment 1: Confidential Information