

Clause embodied in Report No. 4 of the Toronto East York Community Council, as adopted by the Council of the City of Toronto at its meeting held on April 14, 15 and 16, 2003.

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**Draft Plan of Condominium -
79 and 81 Brunswick Avenue
(Trinity-Spadina, Ward 20)**

(City Council on April 14, 15 and 16, 2003, adopted this Clause, without amendment.)

The Toronto East York Community Council recommends the adoption of the report (March 4, 2003) from the Director, Community Planning, South District:

The Toronto East York Community Council reports having held a statutory public meeting on April 1, 2003 and that notice was given in accordance with the Planning Act. No one addressed the Toronto East York Community Council.

Purpose:

This report reviews and recommends approval of an application for Draft Plan of Condominium Approval for a pair of semi-detached houses containing a total of seven dwelling units at 79 and 81 Brunswick Avenue.

Financial Implications and Impact Statement:

There are no financial implications resulting from the adoption of this report.

Recommendations:

It is recommended that City Council:

- (1) authorize approval of the Draft Plan of Condominium for 79 and 81 Brunswick Avenue substantially in accordance with plans date stamped as received on June 1, 2000 on file with the Commissioner of Urban Development Services;



- (2) require the owner to meet the following conditions of Draft Approval prior to the City's consent for final registration and authorize the City Solicitor to prepare any condominium agreement for the conditions, as deemed necessary:
 - (a) the owner shall pay any outstanding development charges applicable under Chapter 415, Development of Land, Article I, Development Charges of the City of Toronto Municipal code, and/or sewer impost charges calculated under the former City of Toronto's Municipal Code, Chapter 292, Sewer, Article II;
 - (b) the owner shall provide all legal descriptions of the lands to form part of the condominium and the remainder of the site;
 - (c) the owner shall provide and maintain rodent proof garbage storage facilities of sufficient size, on private property, to accommodate the amount of separated garbage and recyclable materials generated by the residents of the project between collections;
 - (d) the owner shall obtain revised municipal numbering for the site, the application for which must include a site plan showing the location of the principal access points to the condominium lands;
 - (e) the owner shall provide a tax certificate which confirms that all municipal taxes have been paid; and
 - (f) the owner shall register the condominium within three years after the date of the Notice of Approval of this Draft Plan of Condominium, otherwise the approval shall lapse and be of no further force and effect.
- (3) request the Minister of Municipal Affairs and Housing to modify Chapter Seven of the new Official Plan, adopted by City Council on November 28, 2002, to include a Site and Area Specific Exception to permit the conversion of the existing buildings at 79 and 81 Brunswick Avenue to condominium, and if a decision from the Province issues prior to Council's adoption of this report, that Council authorize any needed amendments to the new Official Plan, adopted by Council on November 28, 2002; and
- (4) advise the owner of the need to receive the approval of the Commissioner of Works and Emergency Services for any work to be carried out within the public right-of-way.

Background:

Proposal

The proposal is to convert an existing pair of semi-detached, converted houses from rental to condominium tenure. No. 79 Brunswick Avenue contains three dwelling units and No. 81 Brunswick contains four dwelling units. The application would establish a single condominium with a total of seven residential units. Five parking units are provided at the rear of the property, accessed from the rear lane. As a condominium, individual apartment units

could be sold to current tenants or to other purchasers. The buildings may cease to operate as rental apartment buildings.

Chapter 415-17 of the Municipal Code delegates most condominium approvals to the Chief Planner, except for applications involving the conversion of rental housing to condominium. Council approval is required for this application, since it involves the conversion of rental units to condominium.

Site History

The two properties have been the subject of Committee of Adjustment decisions in recent years in conjunction with renovations.

On December 2, 1998, the Committee granted variances for 79 Brunswick Avenue permitting a rear third floor addition and deck. The decision was not appealed.

On January 4, 2000 and October 3, 2000, Committee refused variances to permit conversion of the basement of 79 Brunswick Avenue to habitable space, in order to expand the first floor apartment. The owner appealed the decision to the Ontario Municipal Board. The OMB approved a variance respecting gross floor area, subject to conditions ensuring that the basement not become a separate dwelling unit in the future.

On July 6, 1999, the Committee of Adjustment approved variances for 81 Brunswick Avenue to permit an additional dwelling unit in the basement, subject to a condition respecting the depth of rear decks. The decision was not appealed.

Site and Surrounding Area

79 and 81 Brunswick Avenue are two lots occupied by a pair of three-storey semi-detached houses constructed early in the 20th century. 79 Brunswick Avenue has been converted to three dwelling units and 81 Brunswick Avenue has been converted to four dwelling units. There are a total of three one-bedroom units and four two-bedroom units. The rear of the lots abut a north-south public lane, which provides access to 5 parking spaces at the rear of the site. The properties are surrounded by residential uses in house-form buildings.

One of the one-bedroom units is occupied by the owner. The applicant has provided information on the current monthly rents for the remaining 6 units. Rents for the one-bedroom units range from \$1550 to \$1700 per month. The two-bedroom units range from \$1425 to \$2450 per month.

Official Plan

The former City of Toronto Official Plan designates this area Low Density Residential Area, which permits residential development up to one time the area of the lot.

At its meeting of November 26-28, 2002, Council passed a new Official Plan for the City of Toronto. Once it comes into force and effect, it will designate the subject properties Neighbourhoods, permitting a full range of residential uses within lower scale buildings.

Official Plan policies respecting conversion of rental housing to condominium and their applicability to this proposal are discussed below.

Zoning By-law

The property is zoned R3 Z1.0, which permits a range of low density residential uses at densities up to one time the area of the lot.

As noted above, the Committee of Adjustment has granted minor variances to both properties which permit the existing use and development.

Site Plan Control

No new development is proposed in conjunction with the condominium application. No application for site plan approval is required.

Community Consultation and Tenant Notification

The approval process for draft plan of condominium applications does not normally involve a community consultation process. No other planning application is required in conjunction with the draft plan of condominium.

All current tenants were notified in writing at the time that they signed leases that the owner had applied to convert the buildings to condominium. Furthermore, all tenants have been informed that notwithstanding any clause of their leases, the Tenant Protection Act shall govern their rights should the buildings convert to condominium and their units be sold to new owners. Planning staff have made arrangements with the City Clerk to notify tenants of the Community Council meeting where this report and its recommendations will be reviewed.

Agency Circulation

The application was circulated to all appropriate agencies and City Departments. Responses received have been used to assist in evaluating the application and to formulate appropriate by-law standards.

Comments:

Provincial Policy

Section 51(24) of the Planning Act provides criteria for the evaluation of draft plans of subdivision and condominium. Among other considerations, the City must have regard for the health, safety, convenience and welfare of the present and future inhabitants of the municipality and for the effect of the proposal on matters of provincial interest, and whether the application is premature or in the public interest.

Section 2(j) of the Planning Act requires municipalities to have regard for the adequate provision of a full range of housing in carrying out their responsibilities under the Act.

Section 1.2.1 of the Provincial Policy Statement (1997) states that:

“Provision will be made in all planning jurisdictions for a full range of housing types and densities to meet projected demographic and market requirements of current and future residents of the housing market area . . .”

In the case of 79 and 81 Brunswick, one of the seven units is occupied by the owner. Five of the remaining six units exceed the threshold for high-end rents established by Council (1.5 times the average rental rate for each unit type across the city as reported by Canada Mortgage and Housing Corporation). The remaining unit is somewhat lower than the high-end rent threshold. As a result of these circumstances, staff are satisfied that conversion of these properties would not offend the intent and purpose of these tests.

Official Plan Compliance

The intent of the housing policy framework of the former City of Toronto Official Plan and the Metropolitan Toronto Plan is to retain and make gains in affordable and rental housing. Relevant provisions include Section 6.18 of the former City of Toronto Official Plan which prohibits conversion to condominium of duplexes, triplexes, and all other buildings originally constructed to provide one or more rental apartments until the vacancy rate for private apartments across Metro Toronto regularly returns to 2.5%.

The vacancy rate for Toronto was most recently reported at 2.4% by the Canada Mortgage and Housing Corporation (CMHC). The vacancy rate has generally been less than 1% since the early 1990s. In October 2001, the rate was reported at 0.9%, and in 2000 it was 0.6%.

In the case of 79 and 81 Brunswick, Planning staff have researched the history of the properties in the City archives. It appears that the houses were constructed as single-family residences and were originally owner-occupied. It is the opinion of staff that conversion of these properties does not offend the in-force Official Plan despite the low vacancy rate, since the buildings were not originally constructed to provide rental apartments. The intent of this policy was to not discourage the creation of converted units in single residences.

Emerging Policy Context

OPA 2

Following amalgamation in 1998, the City of Toronto initiated work on a new set of harmonized condominium conversion and rental housing demolition policies. This culminated in adoption of OPA 2, an amendment to Metroplan (By-law 147-1999) which harmonized and updated Council's policy for condominium conversion and demolition of rental housing.

At the time the application for Draft Plan of Condominium for 79 and 81 Brunswick was submitted (June 1, 2000), OPA 2 was the most recent policy direction of Council respecting condominium conversion. As such, it is a relevant consideration with respect to the application. The applicant applied for Draft Plan of Condominium approval on the basis of this policy.

OPA 2 is not in force. It was appealed to the OMB and in September 1999 the OMB issued a decision that it was illegal and invalid. The City appealed the decision to the Superior Court of Justice, Divisional Court. In a unanimous decision issued February 20, 2002, the Divisional Court held OPA 2 to be legal and valid, agreeing with the Cities of Toronto, Ottawa, and Hamilton on all three points of law raised in their appeal of the OMB decision. The appellants have subsequently been granted leave to appeal this decision to the Ontario Court of Appeal. The appeal is to be heard in June, 2003.

OPA 2 prohibits the conversion of a rental building, or a related group of buildings, with six or more units until the vacancy rate returns to 2.5 percent for a two-year period. OPA 2 includes exceptions in certain limited circumstances for equity co-operative buildings or where all units had rents at the high-end.

This application is consistent with OPA 2. The buildings at 79 and 81 Brunswick Avenue are not “related buildings” as defined in OPA 2. Although the subject buildings are a pair of semi-detached houses under the same beneficial ownership, the two buildings are not located on the same parcel of land as defined in the Planning Act. Each is located on its own lot, established by a Plan of Subdivision. Neither building contains six or more units. Due to the circumstances of these properties, the number of rental units, and that only one unit has a rent that is somewhat lower than the high-end rent threshold, staff are satisfied that this application does not offend the intent of the OPA 2.

New Official Plan

At its meeting on November 26, 27, and 28, 2002, Council adopted a new Official Plan for the amalgamated City of Toronto. The new Official Plan will come into force and effect pending approval by the Minister of Municipal Affairs, and resolution of any appeals.

The new Official Plan contains a number of policies respecting housing and underscores the need to preserve the City’s supply of rental housing.

Policy 3.2.1.8 restricts conversion of rental buildings to condominium:

“The conversion to condominium of any building or related group of buildings containing seven or more rental housing units is premature and not in the public interest unless

- (a) the rental apartment vacancy rate for the City of Toronto, as reported by the Canada Mortgage and Housing Corporation, has been at or above 2.5% for the preceding two-year reporting period; or
- (b) all of the rental housing units have rents that exceed mid-range rents at the time of the application.”

In contrast to the in-force Official Plan, the new Official Plan does not refer to the initial use of the building proposed for conversion to condominium. The new Official also defines a related group of buildings somewhat differently than OPA 2, to include properties that are part of the

same development application, such that 79 and 81 Brunswick Avenue would comprise a related group of buildings.

Although the new Official Plan is not in force and effect, it represents Council's current position on condominium conversions, as well as the most recent planning staff recommendations in this regard. Due to the circumstances of these properties, staff are satisfied that this application does not offend the intent of the new Official Plan.

Tenant Impacts

The rights of tenants who remain in the building will continue to be governed by the Tenant Protection Act (TPA), although their landlord may change, should the units be sold to new owners.

The TPA sets out the rules for security of tenure. A tenant is permitted to continue renting their unit for as long as they wish, unless they are evicted for a specific reason under the TPA or wish to end the tenancy themselves. One specific reason under the TPA for eviction is to permit the landlord or purchaser to obtain the use of the unit for themselves or a member of their family. This is commonly known as "personal use eviction."

The TPA has specific provisions to protect tenants from personal use evictions where the unit is converted to condominium. The tenant who occupies a unit at the time it is converted to condominium cannot be evicted for personal use of the unit by the purchaser. In addition, if the owner receives an acceptable offer to purchase the unit, the tenant has 72 hours to match the offer and, if they do so, the landlord must accept the tenant's offer. (This does not apply if more than one unit is being purchased as part of the same offer.) Tenants cannot be evicted if they decide not to purchase their unit.

These rights apply only to tenants who occupy the unit at the time of the conversion. Future tenants are not protected from personal use evictions and do not have a right of first refusal.

Building Condition

Under Section 9(4) of the Condominium Act, the City may require a report prepared by a qualified professional to determine any deficiencies with respect to building maintenance or other matters of concern.

Inspection staff have advised that outstanding permits and work orders on the properties have been cleared. Given the size and type of buildings involved, City Planning staff are satisfied that a building condition report is not necessary as a condition of approval. Provisions of the Condominium Act regarding comprehensive reserve fund studies, in combination with a purchaser's ability to arrange a pre-closing house-inspection, should adequately address any concerns.

Garbage Collection

The Commissioner of Works and Emergency Services has recommended as a condition of Draft Approval that the condominium be required to provide and maintain adequate rodent proof garbage storage facilities on the site to store garbage and recyclables between collections.

Municipal Numbering

The Commissioner of Works and Emergency Services has advised that the two properties should be amalgamated for assessment and Official Record municipal numbering purposes. He has requested that as a condition of Draft Approval, the owner be required to apply for revised municipal numbering.

Conclusions:

Planning staff recommend that Council authorize approval of a draft plan of condominium for two semi-detached houses with a total of seven dwelling units at 79 and 81 Brunswick Avenue, subject to a number of conditions. Staff are satisfied that given the circumstances of the properties, the proposal is in line with the in-force and the emerging policy framework with respect to conversion of rental housing to condominium.

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(Attachments referred to in the foregoing report were forwarded to all Members of the Toronto East York Community Council with the agenda for its meeting on April 1, 2003, and copies are on file in the office of the City Clerk.)