

NY 20.35.107



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November 20, 2012

**Re: November 27, 2012 City Council Meeting - Agenda Item NY 20.35
100 Ranleigh Avenue - Zoning By-law Amendment Application**

Dear Mayor and Councillors,

The Federation of North Toronto Residents' Associations (FoNTRA) is asking all members of Council to seriously consider rejecting the above Agenda Item NY20.35 when it comes before Council at its meeting of November 27.

The application concerns a request from the Board of the Bedford Park United Church for Zoning permission to replace their vacant church property at 100 Ranleigh Ave. with a four-storey mixed used apartment/condominium in the middle of a long-established neighbourhood with private detached and semi-detached residences on three sides. There is a prohibition on apartment buildings in the Bedford Park community.

This is a matter that should be of concern to all members of Council because of the strong likelihood that it will become a precedent for neighbourhoods all across the city.

FoNTRA believes that the city's planning department has erred in its advice to North York Community Council (NYCC) by failing to recognize that this is more than a zoning issue and represents a direct breach of the City's Official Plan provisions such as Policies 4.1.5 and 4.1.9.

Because places of worship across the city enjoy special privileges as to location, many are located in the middle of established neighbourhoods creating the potential for them to be redeveloped for uses that directly contradict the permitted uses in the area. This is a threat to stable residential neighbourhoods throughout the city.

Proponents of this particular development will speak of the social benefits for senior housing, but this cannot be allowed to override the rights of their neighbours or create a dangerous precedent for other neighbourhoods.

We strongly urge City Council to reject this application.

FoNTRA's October 1 letter to NYCC with detailed references to Official Plan policies and related material is attached.

Yours truly,

Geoff Kettel

Per GK

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Cc: Jennifer Keesmaat, Chief Planner and Executive Director, City Planning Division
FoNTRA Members and Other Interested Parties

The Federation of North Toronto Residents' Associations (FoNTRA) is a non-profit, volunteer organization comprised of 27 member organizations. Its members, all residents' associations, include at least 170,000 Toronto residents within their boundaries. The 27 residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not *whether* Toronto will grow, but *how*. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment and social renewal.



October 01, 2012

VIA E-MAIL: nycc@toronto.ca

North York Community Council
Attention: Ms. Francine Adamo
North York Civic Centre
5100 Yonge Street, Main Floor
Toronto Ontario M2N 5V7

NY19.24 - Statutory Public Meeting: October 10, 2012 – Zoning By-law Amendment
100 Ranleigh Avenue: The Dismantling of the City's Neighbourhood Protection Policies

Dear Councillors:

The *Federation of North Toronto Residents' Associations* (FoNTRA) is an umbrella organization currently representing 28 residents' associations. As a matter of policy, FoNTRA does not take an official position on local development issues, except in cases where an approval of a development proposal would create a negative city-wide precedent. For reasons outlined below, FoNTRA considers the development application for 100 Ranleigh Avenue as precisely such an extraordinary situation. FoNTRA had previously expressed its serious reservations about this application in letters to the Planning Department, dated March 27, 2011 and January 30, 2012 – only one of which has been acknowledged in the Final Staff Report. No response to these submissions has ever been received and the central issues raised continue to be ignored by planning staff: In violation of the Official Plan, the staff recommendations rely on the illogical notion that some legal non-conforming apartment buildings in an area where apartment buildings are prohibited by zoning could represent the benchmark under OP-Policy 4.1.9 which determines development standards compatible with those permitted by the zoning for adjacent and nearby residential properties.

1. NEIGHBOURHOOD PROTECTION AND CORRA/FoNTRA'S OFFICIAL PLAN APPEAL:

FoNTRA's interest in this matter is based on its long-standing involvement in public policy discussions at the provincial and municipal levels related to planning institutions, processes, and tools. Over many years, FoNTRA was a key partner in the appeal of the new Official Plan to the Ontario Municipal Board, spearheaded by the *Confederation of Resident and Ratepayer Associations* (CORRA) and five Willowdale Ratepayer Groups, and it invested considerable legal fees and volunteer hours in this effort. It resulted in a series of significant settlements reached with the City of Toronto, primarily focused on enhancing planning policy to guide change in residential areas in an intelligent manner. Of particular relevance in this context, to give one example, is the Partial Settlement of the OP-Appeal by CORRA et al. which was approved by City Council at its meeting of March 1, 2, and 3, 2004. The following sentence was added to Section 4.1.5 of the Official Plan: *"No changes will be made through rezoning, minor variance, consent or other public action that are out of keeping with the physical character of the neighbourhood."* All of these Partial Settlements were subsequently approved by the OMB on the basis of the express support by city planning staff, as documented in affidavits filed with the Board. For reasons outlined below, an approval of the development proposal for 100 Ranleigh, essentially, would eviscerate this significant amendment.

2. OFFICIAL PLAN AND ZONING PROHIBITION AGAINST APARTMENT BUILDINGS:

Exception 12(2)(8) of Zoning By-law 438-86 prohibits apartments and semi-detached triplexes in the R2-zone north of Lawrence Avenue, except on lots that abut the north side of Lawrence Avenue West. The applicant's position on

this Zoning By-law provision has been described as follows: *"It is our opinion that the area-specific by-law prohibiting apartment buildings in this particular R2 area of the City is antiquated and does not conform to the Official Plan policies now in place. In summary, the Official Plan contemplates this form of development and an official plan amendment is not required in support of a site-specific by-law amendment to the area-specific by-law in order to permit an apartment building in this location."* (McCarthy Tetrault letter to City Council, May 24, 2012) This assertion completely distorts the intent underlying the neighbourhood protection policies of the Official Plan, as represented to City Council when the new Official Plan was approved. The then Commissioner of Urban Development Services and the then Chief Planner and Executive Director made the following commitment to the citizens of Toronto: *"Concern has been expressed that by allowing semi-detached dwellings, townhouses and multi-residential buildings in the same designation as detached dwelling, undermines the stability of established neighbourhoods ... The type of dwellings permitted varies among neighbourhoods and these detailed residential use lists are in the established zoning by-laws which will remain in place and, as noted previously, establish the benchmark for what is to be permitted in the future"* [emphasis in original]. (Staff Report, September 16, 2002) Accordingly, not only is the prohibition against apartment buildings in this location not antiquated, it provides the benchmark for what is to be permitted now. Planning staff, while noting the existing Zoning By-law prohibition, similarly ignores it and the City's earlier commitment. Instead, it offers the following red herring: *"The proposed apartment building use and built form is not new to the neighbourhood."* (Final Staff Report, September 20, 2012) Moreover, not only does the Zoning By-law prohibit apartment buildings, it also prohibits the proposed ground floor place of worship: *"The R2 Zone permits places of worship with a qualification that the use is located in a building that is or was originally constructed for such purpose."* (Final Staff Report, September 20, 2012)

3. OFFICIAL PLAN AND PROPOSED DENSITY:

The proposal seeks to more than triple the maximum permitted Floor Space Index in the R2 Z0.6 zone of By-law 483-86 from 0.60 to 1.97. While the new Official Plan eliminated any density prescriptions, the intent underlying this elimination was for the Official Plan to rely on the Zoning By-law density limits: *"The Plan explicitly states that the zoning by-laws contain the numerical standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space and any other performance standard to implement these principles and to protect the physical character of established residential neighbourhoods. Under the new Plan, the built context and the performance criteria of the Zoning By-law become the benchmark for determining what constitutes compatible development. This is much stronger than any existing Plan's policies. The existing zoning by-laws, which most often reflect the existing neighbourhood character, will still be in effect after the passage of the Plan ... New development must reinforce the existing physical pattern of development as set out in the local by-law"* [emphasis added]. (Staff Report, September 16, 2002) Tripling the density, by definition, is not in conformance with this neighbourhood protection policy of reinforcing the existing physical pattern of development. The Planning and Growth Management Committee has focused on this very issue in its direction to staff of May 30, 2011 for the Five Year Review of the Official Plan and Municipal Comprehensive Review. On a Motion by its Chair, Councillor Peter Milczyn, the following matter was added to the scope of work for the review: *"Enhance protection of established neighbourhoods by way of ensuring that Floor Space Index/Gross Floor Area provisions in Zoning By-laws for residential neighbourhoods are given status within the Official Plan as being fundamental to the character of residential neighbourhoods."*

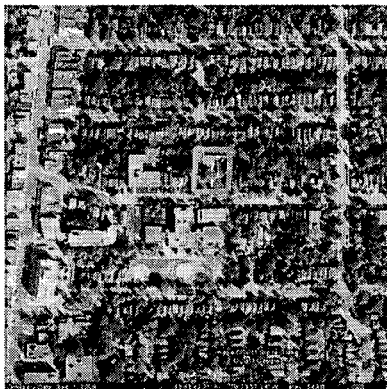


FIGURE 1: Aerial Photo

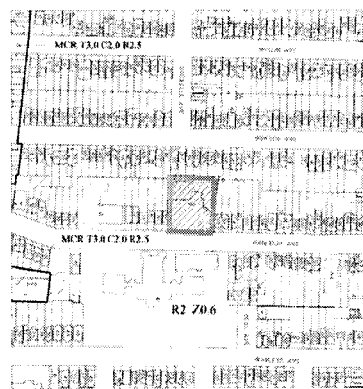


FIGURE 2: Zoning By-law 438-86

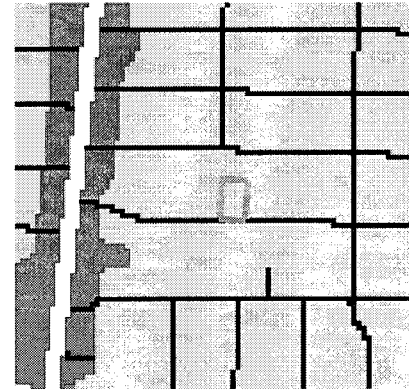


FIGURE 3: Official Plan

4. DEVELOPMENT PROPOSAL AND PREVAILING BUILDING TYPE:

As part of its justification for the proposed development form, the applicant describes the existing physical context of the development, as follows: *"We note that the Property is located within a broader urban neighbourhood of low to medium scale residential and institutional uses, as well as retail, cultural, entertainment and open space uses. A public school and community centre are located on the south side of Ranleigh Avenue, as well as two, four-storey apartment buildings, both on the north side of Ranleigh Avenue, one east and one west of the Property."* (McCarthy Tetrault letter to City Council, May 24, 2012) This self-serving description combines apples and oranges by listing uses located in areas with different Official Plan designations and Zoning By-law categories. The test under the Official Plan of what existing physical character of a neighbourhood is to be protected is the 'prevailing building type': *"Where a more intense form of development than the prevailing type has been approved on a major street in a Neighbourhood, it will not be considered when reviewing prevailing building type(s) in the assessment of development proposals in the interior of the Neighbourhood."* [emphasis added] The 'prevailing building type' relevant for the assessment of a development proposal is defined in the Official Plan with the same language used in the Staff Report of September 16, 2001: *"The type of dwellings permitted varies among neighbourhoods and these detailed residential use lists are contained in the established zoning by-laws which will remain in place and establish the benchmark for what is to be permitted in the future. If, for example, an existing zoning by-law permits only single detached houses in a particular neighbourhood and the prevailing (predominant) building type in that neighbourhood is single detached dwellings, then the Plan's policies are to be interpreted to allow only single detached dwellings in order to respect and reinforce the established physical character of the neighbourhood, except where the infill policies of Section 4.1.9 would be applicable."* The 'prevailing building type', as defined in the Official Plan, relevant for the assessment of this development proposal is the 'detached dwelling' – not public schools, apartment buildings, or retail uses.

5. INFILL DEVELOPMENT AND THE OFFICIAL PLAN:

The applicant claims to have *"spent a considerable amount of time and effort to address the items of Policy No. 9"* which sets out the development parameters specific to infill projects. (McCarthy Tetrault letter to City Council, May 24, 2012) Official Plan Policy 4.1.9 requires that infill development on properties that vary in lot size and/or configuration will *"have heights, massing and scale appropriate to the site and compatible with that permitted by the zoning for adjacent and nearby residential properties."* In spending a considerable amount of time and effort to address these items of Official Plan Policy 4.1.9, apparently, the applicant felt the need to maintain the site coverage at 55%, to increase the number of units from 57 to 60 from the original 2010 application, and, hence, to increase the residential density from 220 units per hectare (89 units per acre) to 231 units per hectare (94 units per acre). To put this residential density into perspective, the property of 100 Ranleigh Avenue corresponds to the size of six adjacent lots and, accordingly, the residential density is ten times that of the adjacent residential properties. Moreover, the site coverage is about twice that of the adjacent residential area, the number of parking spaces four times that found on the equivalent site area, and the building height 50% higher than that permitted by zoning for adjacent residential properties. Planning staff, similarly, asserts: *"The proposed four storey building has a height, massing and scale appropriate for the site and is considered to be compatible with that permitted by the zoning for adjacent and nearby residential properties."* (Final Staff Report, September 20, 2012) The suggestion that such a gross imbalance across all performance standards represents an appropriate height, massing and scale relative to the zoning permissions for adjacent and nearby residential properties – zoning permissions which explicitly prohibit any apartment buildings - is offensive and without any merit.

6. 70 ROEHAMPTON AS MODEL FOR 100 RANLEIGH:

Some suggestions have been made that the *North Toronto Collegiate Institute* re-development at 70 Roehampton Avenue represents the model which the *Bedford Park United Church* re-development at 100 Ranleigh Avenue aims to follow. Nothing could be farther from the truth. Apart from both being re-developments in North Toronto, the two situations have little in common: 70 Roehampton combines a 4-storey secondary school with two residential condominium towers of 24 and 27 floors in an area designated *Apartment Neighbourhood* in the Official Plan whereas 100 Ranleigh envisages to impose a large residential institutional mixed-use building in an area designated *Neighbourhood* where the prevalent building form, as defined in the Official Plan, is the 'detached dwelling'; 70 Roehampton is located in an area designated *Growth Centre* in the *Growth Plan for the Greater Golden Horseshoe* with prescribed growth targets prescribed by the Province whereas 100 Ranleigh is located in a neighbourhood considered a stable low-density residential area; and, 70 Roehampton required a modest 45% increase in density from 2.0 to 2.9 whereas 100 Ranleigh seeks a tripling of the permitted density from 0.6 to 2.0. A comparable 45% increase in

density would raise the density for 100 Ranleigh from 0.6 to 0.87, not 2.0. The 70 Roehampton development complies with the Official Plan; the 100 Ranleigh proposal does not comply with the Official Plan.

7. ZONING BY-LAW AMENDMENT'S LACK OF CONFORMITY TO OFFICIAL PLAN:

It is FoNTRA's respectful submission that an approval of the 100 Ranleigh Avenue application in its current form would violate Section 24(1) of the *Planning Act* which stipulates that "*where an official plan is in effect ... no by-law shall be passed for any purpose that does not conform therewith.*" The proposed Zoning By-law amendment does not conform to the following Official Plan policies:

- **Official Plan Policy 2.3.1.1:** "Neighbourhoods ... are considered to be physically stable areas. Development within Neighbourhoods ... will be consistent with this objective and will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns within these areas." The 1969 Official Plan introduced a density limit of 1.0 to low-density residential neighbourhoods across the old City of Toronto which shaped the existing physical character of these areas over many decades. The proposed doubling of the residential density, by definition, does not respect and reinforce the existing physical character of buildings, streetscapes, and open space patterns.
- **Official Plan Policies 3.1.2.3 b) and c):** "New development will be massed to fit harmoniously into its existing and/or planned context, and will limit its impacts on neighbouring streets, parks, open spaces and properties by ... b) creating appropriate transitions in scale to neighbouring existing and/or planned buildings for the purpose of achieving the objectives of this Plan; c) providing for adequate light and privacy." The proposed changes to massing, height, and setbacks do not ensure appropriate transitions in scale, create significant shadows, and result in overlook situations detrimental to the privacy of existing residents.
- **Official Plan Policy 4.1.1:** "Neighbourhoods are considered physically stable areas made up of residential uses in lower scale buildings such as detached houses, semi-detached houses, duplexes, triplexes and townhouses, as well as interspersed walk-up apartments that are no higher than four storeys" [emphasis added]. The proposed four-storey apartment building does not qualify as a walk-up apartment since the Ontario Building Code prohibits walk-up access to a fourth floor; a four-storey walk apartment building requires two-storey residential units on the top two floors with walk-up access to the units on the third floor.
- **Official Plan Policy 4.1.4:** "Apartment buildings legally constructed prior to the approval date of this Official Plan are permitted in Neighbourhoods." The proposed apartment building is particularly inappropriate in this location since Exception 12(2)(8) of Zoning By-law 438-86 specifically prohibits apartments and semi-detached triplexes in the R2-zone north of Lawrence Avenue, except on lots that abut the north side of Lawrence Avenue West.
- **Official Plan Policies 4.1.5 c), d), and f):** "Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular ... c) heights, massing, scale and dwelling type of nearby residential properties; d) prevailing building types ... f) prevailing patterns of rear and side yard setbacks and landscaped open space." And the CORRA/FoNTRA OP-Appeal Settlement added the following sentence to Section 4.1.5 of the Official Plan: "No changes will be made through rezoning, minor variance, consent or other public action that are out of keeping with the physical character of the neighbourhood." Apart from density, the most egregious breach of development standards and lack of respect for the existing physical conditions relates to site coverage. Proposed is a site coverage of 55% which is almost double the norm for the area. For residential areas across the city which are zoned with an FSI of 0.6 "the existing mean lot coverage was very close to 30%". (Staff Report, October 21, 2009)
- **Official Plan Policy 4.1.6:** "Where a more intense form of development than the prevailing type has been approved on a major street in a Neighbourhood, it will not be considered when reviewing prevailing building type(s) in the assessment of development proposals in the interior of the Neighbourhood." The prevailing building type relevant for the assessment of this development proposal is the 'detached dwelling', as prescribed in the Official Plan: "The type of dwellings permitted varies among neighbourhoods and these detailed residential use lists are contained in the established zoning by-laws which will remain in place and establish the benchmark for what is to be permitted in the future. If, for example, an existing zoning by-law permits only single detached houses in a par-

ticular neighbourhood and the prevailing (predominant) building type in that neighbourhood is single detached dwellings, then the Plan's policies are to be interpreted to allow only single detached dwellings in order to respect and reinforce the established physical character of the neighbourhood, except where the infill policies of Section 4.1.9 would be applicable."

- **Official Plan Policy 4.1.8:** *"Zoning by-laws will contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space and any other performance standards to ensure that new development will be compatible with the physical character of established residential neighbourhoods."* The Zoning By-law not only prohibits the proposed building type, it specifies a density less than a third of the proposed density.
- **Official Plan Policies 4.1.9 a) and b):** *"Infill development on properties that vary from the local patterns in terms of lot size, configuration, and/or orientation in established Neighbourhoods will: a) have heights, massing and scale appropriate for the site and compatible with that permitted by the zoning for adjacent and nearby residential properties; b) provide adequate privacy, sunlight and sky views for residents of new and existing buildings by ensuring adequate distance and separation between building walls and using landscaping, planting and fencing to enhance privacy where needed."* A doubling of the site coverage along with a 50% increase in building height, inevitably lead to physical conditions that are fundamentally incompatible with the existing built context and zoning for adjacent and nearby residential properties and, consequently, are inconsistent with these policies.

Conclusion: Since a rezoning to permit the development proposal in its present form would fail to conform to key sections of the Official Plan, it would be unlawful. Simply amending the Official Plan to bring the Zoning By-law amendment into conformity would in itself be a violation of Official Plan Policy 5.3.1.3, which provides as follows: *"Amendments to this Plan that are not consistent with its general intent will be discouraged. Council will be satisfied that any development permitted under an amendment to this Plan is compatible with its physical context and will not affect nearby Neighbourhoods or Apartment Neighbourhoods in a manner contrary to the neighborhood protection policies of this Plan."*

FoNTRA respectfully urges you to uphold the neighbourhood protection policies of the Official Plan and to reject this application.

Sincerely yours,

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Ms. Anna Kinastowski, City Solicitor
FoNTRA Members and Others

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