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Councillor Di Giorgio - 2321 & 2319 Keele Street - Zoning Violations

From: Councillor Di Giorgio
To: John Livey
Date: 9/17/2012 12:26 PM
Subject: 2321 & 2319 Keele Street - Zoning Violations
CC: Ann Borooah; Anna Kinastowski; Councillor Di Giorgio; Curtis Sealock; Earl Provost; Gary McKay; John Paton; Lance Cumberbatch; Mark Sraga; rrobins2@toronto.ca; Tracey Cook
Attachments: DOC091712.pdf; DOC091712-002.pdf

Good Afternoon John,

Please see attached from Councillor Frank Di Giorgio.

Thank you,
Viviana Gallo-Galardini for
Councillor Frank Di Giorgio



Councillor Frank Di Giorgio
Toronto City Council
Ward 12 York South-Weston



September 17, 2012

RE: 2321 and 2319 Keele St
-Zoning Violations

With the review of the zoning violations at the subject properties, it is time for City staff to recognize their obligation under the Toronto Municipal Code to ensure that my rights as a Councillor to promote and implement strong public policy adopted by Council that protects against undesirable uses and provides access to due process, are both respected and supported.

It is in the public interest to ensure that all provisions of the zoning by law are complied with because zoning regulations presumeably promote the good of all the people in the community. Even if a building permit is not required, a property owner must comply with the zoning by law when there is a change of use on a property or a change to a building that increases the usability of the site.

There are a number of reasons why I believe the OMB decision of March 2010 applies to both of the subject sites. One significant reason is that site plan control does not apply to a continuing permitted legal non conforming use such as the alleged use at 2321 Keele St. A site plan application involving 2321 Keele St only would not be necessary under the Planning Act. However, for some inexplicable and covert reason, the OMB decision includes a site plan agreement and covenants. While my supposition that any approved site plan applies to both sites is verifiable, I believe the current use at 2321 Keele St is illegal because the property



owner has failed in his attempt to comply with the covenants as they relate to both properties after the OMB decision.

The issue of the existence of a legal non conforming use at 2321 Keele St is a secondary issue because there is agreement that the owner is entitled to continue a lawfully established use.

The real issue that determines the outcome is whether the issuance of a different business license at 2321 Keele St results in a violation of Sec 6(15)(b) of the North York zoning by law as it relates to the extension of a legal non conforming use. Sec 6(15)(b) of the zoning by law states emphatically that the property owner's right to continue a non conforming use does not entitle the owner to change the use to a materially different use as of right and without required building permits.

On this matter, equity and access to due process have precedence over case law and legal opinions that rely on case law. Therefore, I have attached an affidavit that was submitted after the OMB decision by the current owner that may be compared with the affidavit submitted by Mr. John D'Ippolito. There is a need to clear up any apparent ambiguity in the section of the OMB decision referenced in the affidavit by the property owner. This apparent difference of opinion highlights the purpose of the adjournment of the original OMB hearing to crystallize the use that the owner is entitled to continue as a legal non conforming use.

It is apparent that the related business licenses at 2321 Keele St and 2319 Keele St were secured for unlawful uses with a view to legalizing the uses in the future. Consequently, it would be helpful if Municipal Licensing Standards could provide a copy of the original business licenses issued that clearly identify the conditions that the applicant had to satisfy in the future.



It is time for the City Legal Department to begin interpreting the zoning by law and the Planning Act in ways that are just and beneficial to my community. The overriding objective is to minimize the damage perpetrated by the applicant who owns both properties. Furthermore, the intent of the review is to ensure that all relevant amendments to the original application are handled and adjudicated by the Chair of the initial OMB hearing as required under Sec 45(18) of the Planning Act.

Regards,

A handwritten signature in black ink, appearing to read "Frank Di Giorgio". The signature is fluid and cursive, with the first name "Frank" and last name "Di Giorgio" clearly distinguishable.

Councillor Frank Di Giorgio

(Note: the Attachment(s) referred to herein were not included in the version filed with the City Clerk's Office.)