

**LARKIN+ ASSOCIATES** Planning Consultants Inc.  
 1168 Kingdale Road  
 Newmarket, Ontario  
 Canada L3Y 4W1

CITY CLERK'S OFFICE  
 SECRETARIAT SECTION



Phone: (905) 895-0554  
 Toll Free: (888) 854-0044  
 Fax: (905) 895-1817

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April 2, 2013

City of Toronto City Clerk  
**Attn: Ulli S. Watkiss**

Toronto City Hall  
 100 Queen Street West, 13<sup>th</sup>, Floor  
 Toronto, ON, M5H 2N2

**Re: City Wide Zoning By-law  
 Cemetery Zone (OC) Standards**

We represent Memorial Gardens Canada Limited ("MGCL") with regards to land use planning matters for their properties across Canada. MGCL owns cemetery lands within the City of Toronto, GTA, across Ontario and Canada. On behalf of our client we have reviewed the City of Toronto Recommended Zoning By-law which was considered at the Planning and Growth Committee Meeting on March 6, 2013. This letter addresses three principal issues with the proposed new Zoning By-law:

1. The classification of Funeral Visitation Centres by the Province of Ontario as "Funeral Establishments", and what this means in terms of the City's By-law; and
2. The identification of "Accessory Uses" in relation to cemeteries; and,
3. The determination of building height limits for cemetery buildings.

It should be noted as well that we made comments to the City in regards to the previous zoning by-law that was adopted by Council and subsequently repealed.

#### **1. The Classification of Funeral Visitation Centres as Funeral Establishments:**

For the purpose of the discussion herein we shall hereinafter refer to "Visitation Centres" and "Reception Centres" as "Funeral Visitation Centres" (to be consistent with the City's definition. Both terms, however, are used by the funeral industry to refer to the same facilities.

We would like to draw the City's attention to its report to the Planning and Growth Committee (Report PG21.1) regarding references to the Funeral, Burial and Cremation Services Act, 2002 (FBCSA) insofar as the report fails to recognize that on July 1, 2012 the Ministry of Consumer Services *repealed* the Cemeteries Act (Revised) and the Funeral Directors and Establishments Act, and *replaced* them with the FBCSA. Of particular note is that the new legislation removed the previous prohibition of "funeral establishments" on cemeteries, thus bringing the Province's legislation in line with the rest of Canada. However, in doing so the Province now classifies "Funeral Homes" and "Funeral Visitation Centres" as "Funeral Establishments", requiring a license to be issued by the Board of Funeral Services for their operation. This is potentially problematic for clients such as ours that have previously built "Funeral Visitation Centres" on their property in that confirmation from the municipality is required to verify that "Funeral Establishments" are a permitted use on the cemetery properties.

Our review of the City's proposed new Zoning By-law highlights this dilemma. Whereas under S.90.70 "Open Space Cemetery Zone (OC)", and more specifically, S.90.70.20.20 "Permitted Use - with Conditions", a "Funeral

Visitation Centre" is allowed in an Open Space – Cemetery OC Zone. However, in **Chapter 800 – Definitions** the Funeral Visitation Centre definition (#300) specifically states that it is "*not a Funeral Home and does not include the care and preparation of human remains*". Thus, since "Funeral Homes" and "Funeral Visitation Centres" are now both classified by the new Provincial legislation as "Funeral Establishments", there is the potential for municipalities to interpret the By-law as prohibiting "Funeral Establishments" on cemetery properties, resulting in significant hardship for the owners of such properties that currently have legal "Funeral Visitation Centres" in operation. Unfortunately, as written, the City's proposed new Zoning By-law may result in this situation.

Accordingly, we respectfully suggest that the City of Toronto Recommended Zoning By-law be revised to recognize "Funeral Visitation Centres" as "Funeral Establishments", and that "Funeral Establishments" be recognized as providing funeral services as defined by the FBSCA. Furthermore, Funeral Establishments should be included as a permitted principal use within the Open Space – Cemetery (OC) Zone in recognition that Funeral Visitation Centres are no longer classified as such by the Province, and are now considered "Funeral Establishments" by Provincial Statute.

## **2. Identification of Accessory Uses in relation to Cemeteries:**

In addition to this, we have the following concerns in regard to the language in the City of Toronto Recommended Zoning By-law with respect to polices regarding the Open Space Cemetery (OC) Zone:

### **Comment Re: Accessory Uses to a Cemetery**

The following uses are typically considered accessory to a cemetery that have not been included in this Section:

- Niche Structure,
- Crypt, and
- Chapel.

Failure to recognize these accessory uses as permitted uses in an OC zone in the language of the by-law may require a further policy amendment to permit uses that should be interpreted as accessory to a cemetery. For instance, the cemetery located at 33 Memory Gardens Lane which is within an OC Zone category has recently obtained approval for the first phase of a 4 phase Interior Niche Structure. In this regard, the building type should be included in the uses permitted on site.

## **3. The Classification of Funeral Visitation Centres as Funeral Establishments:**

### **Comment Re: Building Height**

Construction of 4 Storey buildings, up to a height of 20 meters has become a standard height at which mausoleums and niche buildings are being developed within the City to meet current demand. For instance, a policy amendment (MV) was approved by the Committee of Adjustment in November of 2007 to permit an increase in Mausoleum Height to 4 Storeys on the Glendale MG cemetery located at 1810 Albion Road. Also, the Highland MG cemetery located at 33 Memory Gardens Lane has recently obtained approval for the construction of its final phase of a 4 Storey Mausoleum and as discussed above is in the process of constructing a 4 Storey Interior Niche building in phases, up to 4 storeys in Height. Should the Recommended zoning by-law be approved with the proposed height restriction of 15.0 m, a minor variance would be required for each development application where the building height is greater than 15.0 metres. Recognizing the industry standard height for mausoleum structures within the Recommended zoning by-law allows the City of Toronto to act in the public interest by allowing for the provision of mausoleum interment options without the

need for further policy amendment and further alleviates the stress of already limited land resources within the City of Toronto for in-ground burials.

Currently the height restriction that would be placed on the Glendale MG cemetery located at 1810 Albion Road is 15.0m as there is no height restriction identified on the Height Overlay Map. For the reasons discussed, we do not believe this to be appropriate height permission on that subject site. The Highland Memorial Gardens Cemetery located at 33 Memory Gardens Lane is proposed to have a height restriction of 15.0m as well as it is not included on the Height Overlay Map, therefore the height of these properties would be a maximum of 15.0m which we do not believe is appropriate considering the future known development trends on site.

**Comment Re: Building Setbacks**

The rationale for a building to be setback greater than 7.5 metres or equal to the building height is unclear. Again, referencing the mausoleum development on the Glendale MG cemetery, the third and final phase of the four storey mausoleum has a proposed setback approximately 9.0m from the westerly property line. Plans for the development of the 3 phase Mausoleum were submitted to the City of Toronto when the first phase of development commenced in approximately August of 2007. Understanding that Glendale Cemetery is subject to a site specific zoning for the property, the proposed City of Toronto Zoning By-law, as the parent Bylaw, should include policy that reflects the appropriate setback for buildings on all cemetery lands within the City.

**Comment Re: Building Setbacks Cont'd**

Any setback from a residential zone should relate to the intended use of the building. The rationale for having such a large setback from a Mausoleum to a residential zone is not clear in the proposed zoning by-law. Rationale for the increase in setback to a Mausoleum or Columbarium of 30m is requested. Our firm has over twenty years of experience dealing with cemetery development. It is our professional opinion that the mausoleum and columbarium uses do not differ greatly from that of a commercial residential use except for the fact that the mausoleum and columbarium buildings largely remain un-occupied for the majority of any given day and are only subject to activity associated with visitation by loved ones. Accordingly, we have reviewed the regulations in the Recommended zoning by-law pertaining to setbacks to Residential zones in the Commercial Residential (CR) Zone Category; specifically the following policies:

**Section 40.10.40.70 Setbacks [Commercial Residential Zone]**

(2) Development Standard Set 2 – Building Setbacks

- (E) If a lot abuts an O, ON, or OR zone or a Residential Zone category or Residential Apartment Zone category, then every building on the lot in the CR Zone may not penetrate a 45 degree angular plane projected:
  - i. Over a shallow lot, along the entire required rear yard setback, starting at a height of 10.5 metres above the average elevation of the ground along the rear lot line; and
  - ii. Over a deep lot, along the entire required rear yard setback, starting at a height of 7.5 metres above the average elevation of the ground along the rear lot line;

Given our previous remarks regarding the similarities between the Mausoleum and Columbarium use and a Commercial Residential use, it is our opinion that a setback equal to an angular plane that would not create undue shadowing in the rear yard of an abutting residential zone would be an appropriate setback standard in the Cemetery OC Zone. We submit these comments with respect and request that planning staff review and



address our concerns prior to the Council consideration date of the recommended Zoning By-law Wednesday April 3, 2013. Should you wish to discuss these matters further, please contact the undersigned.

Sincerely,

**LARKIN+**

A handwritten signature in black ink, appearing to read "Aaron M. Gillard". The signature is written in a cursive style.

**Aaron M. Gillard, MCIP, RPP**

agillard@larkinassociates.com

CC Michael Larkin, MCIP, RPP

Mr. Cosimo Casale – Principal – Cosmopolitan Associates Inc. [cosimo@cosmopolitan.ca](mailto:cosimo@cosmopolitan.ca)