



McCarthy Tétrault LLP
PO Box 48, Suite 5300
Toronto-Dominion Bank Tower
Toronto ON M5K 1E6
Canada
Tel: 416-362-1812
Fax: 416-868-0673

Cynthia A. MacDougall
Partner
Direct Line: (416) 601-7634
Direct Fax: (416) 868-0673
Email: cmacdoug@mccarthy.ca

November 21, 2013

Mayor and Members of Council
City of Toronto, City Clerk's Office
Toronto City Hall
100 Queen Street West
Toronto, Ontario M5H 2N2

Attention: Planning and Growth Management Committee

Your Worship and Members of Council:

**RE: Agenda Item – Official Plan and Municipal Comprehensive Reviews:
Final Assessment – Request to Convert Employment Lands (PG28.2)
28 Bathurst Street, Toronto
Application No. 12 297477 STE 19 OZ
Build Toronto**

We are writing on behalf of our client, Build Toronto, with respect to the property at 28 Bathurst Street (the "Property"). Build Toronto filed applications in December of 2012 to propose the development of a mix of residential and non-residential uses on the Property in accordance with the in force policies of the Garrison Common North Secondary Plan which contemplate the same mix of uses. We do not believe the development application is a conversion of Employment Lands, given that residential uses are permitted in the existing in force Secondary Plan. However, the applications have been processed as part of the City's Municipal Comprehensive Review. Build Toronto wishes to propose modifications to the proposed OPA 231 and respectfully requests the Committee to ask Staff to report on our concerns.

Background

Build Toronto is committed to redeveloping the Property with a mixed-use development that will be a positive addition to a downtown neighbourhood. The Property is a significant site which has remained vacant since 1994 and is in need of redevelopment. Build Toronto is prepared to undertake the substantial environmental remediation required as part of the redevelopment of the Property and has received a grant from the Federation of Canadian Municipalities' (FCM) Green Municipal Fund to fund the environmental studies required to understand the contamination at 28 Bathurst. However, Build Toronto also requires financing in the form of a fully repayable loan from FCM to undertake the extensive remediation and as such requires the requested approvals to be processed in a timely manner in order to secure the requisite funding.

Request

We have proposed amendments to the map and policies as they apply to 28 Bathurst as part of the amended Site and Area Specific Policy No. 1 in the Garrison Common North Secondary Plan, in addition to proposed OPA 231. Our review of the proposed policies raise several general concerns, which we have outlined below, as well as more specific issues which are incorporated within the attached Appendix "A". We ask the Committee to direct Staff to review the general issues we have raised below and consider revisions to the proposed policies as outlined in Appendix "A".

Specifically, we note the following:

1. We believe the proposed official plan policies should not be retroactively applied to an existing active application; and
2. We suggest that Staff are inadvertently proposing official plan policies which require the Property to be consistent with the outcome of a study which has yet to be completed.

We would respectfully request a further review of the policies in light of the matters raised above, and Staff be directed to report further on the proposed policies as outlined in Appendix "A" attached.

If you have any questions, please do not hesitate to contact the undersigned.

Yours truly,



Cynthia A. MacDougall

CAM/sy

C: Councillor Mike Layton
Councillor Peter Milczyn
Nancy Martins, Planning and Growth Management Committee
Gregg Lintern
Lynda MacDonald
Tom Rees

Appendix "A"

The following is a summary of key issues and proposed modifications, in addition to those identified in the body of the letter:

1. 28 Bathurst Street is not being treated the same as the other private landowners. Proponents of any new development should be given the ability to provide for compatible living environments for sensitive uses adjacent to industry through appropriate mitigation. In addition, it is important to recognize in any required analysis that existing industries should not cause an adverse impact on existing residential and other sensitive issues, when determining the appropriate mitigation and/or buffering to be undertaken by a proponent. Please revise 1. a) i) to address reasonable obligations that should be the responsibility of industry. Please delete Section 1. c).
2. Retroactively applying provisions of the results of the Bathurst-Strachan-Wellington Area Study with an unspecified, unknown outcome to an active, complete application is not appropriate. Therefore, Sections 1. b) iv) & 1. e) requiring 28 Bathurst to be consistent with the outcome of a future study should be removed.
3. It is not appropriate for a policy document to address the lease arrangements with respect to parking, and therefore Section 1. d) i) and any other requirement regarding accommodation for or relocation of parking for the employees of 2 Tecumseth Street should be removed. It should be noted that, at the May 17, 2011 meeting, City Council passed a motion regarding the transfer of 28 Bathurst Street to Build Toronto which acknowledged that the parking agreement entered into on February 2, 2011 between Toronto Abattoirs Limited and the City of Toronto would only continue until Build Toronto required the property for development.
4. In our view, a number of items are site plan matters, not zoning matters. These items include the following:
 1. a) ii) the requirement for a Construction Phasing Plan
 1. d) the requirement for a phasing plan
 1. d) ii) the proposed mitigation measures that Construction will have on the adjoining daycare facility
 1. d) iv) the timing and phasing of required environmental remediationWe respectfully request in 1. a) ii), the words "site plan" be inserted before the word "application" in the fourth line and in 1. d), the words "as a part of the site plan application," be inserted after the word "submitted" in the second line.
5. Section 1. b) ii) requires that any residential development along the Bathurst Street frontage of 28 Bathurst Street "adheres to the City's Mid-Rise Guidelines". The test of "adhering" suggests a strict compliance with all of the adopted Guidelines, which is not the intent of a "guideline". We suggest that this requirement should be rewritten to read "the review of proposed development will have consideration for the City's Mid-Rise Guidelines or Tall Buildings Guidelines, as may be appropriate."
6. We also respectfully request confirmation that the "Bathurst Street frontage" includes those portions of the property extending from the edge of the Bathurst Street right-of-way to the 70 m buffer zone limit.

7. Section 1. d) iii) requires “the provision of 1 FSI (net required setbacks) of employment space on the lands”. Further clarification is needed regarding what is meant by “net required setbacks”. As well the term “employment space” is not defined and is unclear. We suggest that the provision should be revised to provide permission for a wide range of non-residential uses on the employment space lot, which may include office, studios, retail or live/work uses, and other uses and to clarify how FSI will be calculated.
8. The location map, on page 9 of Attachment No. 2, accompanying the Final Assessment includes not only the lands that are subject to the current development application at 28 Bathurst, but the day care, men’s shelter and public lanes as well. It should be noted that only the lands declared surplus for transfer to Build Toronto are included as part of the active development application.

In addition, the mapping accompanying the amended map and policies for the Garrison Common North Secondary Plan, redesignating 28 Bathurst from Site and Area Specific Policy No. 2 to revised Site and Area Specific Policy No. 1, also included lands which are not part of the active development application, specifically the City owned day care. Therefore, we respectfully request confirmation from City Staff if they intend to redesignate the day care to *Regeneration Areas*.

9. Recommendation 1 directs City Council to redesignate the lands at 28 Bathurst Street to *Regeneration Areas*. Proposed Map 43 of the OPA does not indicate any designation for the lands at 28 Bathurst Street and should be revised to reflect the recommended *Regeneration Areas* designation. However, we respectfully request that the proposed policies should explicitly provide for residential uses, in keeping with the in force policies which provide for residential uses.