

April 30, 2018

Toronto and East York Community Council
2nd floor, West Tower, City Hall
100 Queens St. W.
Toronto, ON M5H 2N2
Sent by email: teycc@toronto.ca

Dear Toronto and East York Community Council Members

Subject: TE32.11: Changing Lanes: The City of Toronto's Review of Laneway Suites- City-Initiated Official Plan Amendment and Zoning Amendment - Final

The ABC Residents Association is a volunteer organization committed to enhancing the quality of life in our neighbourhood through active participation in municipal issues. Originally established in 1957, we serve the residents, including condo and apartment residents, living in Toronto's Yorkville / North Midtown community between Yonge Street west to Avenue Road and Bloor Street north to the CPR tracks.

Toronto is Canada's largest, most developed, and complex city. It has major high-rise areas, low-rise residential areas, and a variety of mixes of these combined with commercial, retail, and public facilities. Other cities referenced in the Lanescape and Evergreen report are not truly comparable to the population size, density, and intensity of urban high-rise buildings that exist in Toronto.

Our hope following the Council approval of TE25:108 on July 4, 2017 was that City Planning would conduct its own studies, report on where and how laneway housing would be an option for Toronto as an appropriate and sensible form of intensification and where it would not, and what the requirements and specifications should be. Laneway housing may have positive potential under certain circumstances, but it also may not deliver on hoped for benefits and may create predictable adverse impacts.

We are writing to express our concern about agenda item TE32.11 regarding Laneway Suites in respect to a number of broad areas as well as some specific issues. Included with this letter are the following appendices:

- Appendix 1 – Laneway Housing: Comments on Official Plan Amendment and Zoning Amendment

- Appendix 2 – Commentary re Laneway Suites, from William H. Roberts, Barrister & Solicitor

PLANNING POLICY

1. Provincial

The Provincial Plans have been referenced in the staff report. The Provincial plans have their core: supporting both economic and population growth, containing urban sprawl by leveraging intensification in general and in particular outside the urban core, protecting agricultural and water shed areas, and improving connectivity within communities and within the golden horseshoe region. There are clear requirements that impact Toronto planning, housing and infrastructure development and Toronto must not be in conflict with these; however, the Provincial policies also acknowledge the implications for urban core areas will be different from its impact on other municipalities in the region.

The Provincial Policy Statement (PPS) 2014 provides policy direction on matters of provincial interest related to land use planning and development. These policies support the goal of enhancing the quality of life for all Ontarians. Key policy objectives include: building strong healthy communities; wise use and management of resources; and protecting public health and safety. The PPS recognizes that local context and character is important. Official Plans integrate all applicable provincial policies. Since the policies are outcome-oriented, the official plan is the most important vehicle for the implementation of the PPS. City Council's planning decisions are required, by the Planning Act, to be consistent with the PPS.
(Bloor-Yorkville Area City Initiated Official Plan Amendment Preliminary Report-Mar17, 2017)

We request: Toronto express and respond to Provincial requirements in ways that are both consistent with Provincial policy and make sense for its urban context and enhancement as a premier world city.

2. Toronto Official Plan Neighbourhood Policies

Polices 2, 3 and 4 of the Official Plan are often referred to as the “neighbourhood” policies. They reference the following:

Section 2.2.1 contains policies to ensure the City's *Neighbourhoods* contained within the Downtown remain generally stable over time.

Section 2.3.1 - "Healthy Neighbourhoods" indicates that while some physical change will occur to neighbourhoods over time as enhancements, additions and infill housing on individual sites, a cornerstone policy is to ensure that new development in neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood.

Section 4.1 - includes policies and development criteria to ensure that physical changes to established neighbourhoods are sensitive, gradual and generally "fit" the existing physical character.

We request: Consistent with Policies 2, 3, and 4 of the Official Plan, Laneway Suites physical character should respect and complement the primary dwelling, dwellings in the immediate proximity, and neighbourhoods in general.

3. Secondary plans and Site and Area Specific Policy

Secondary Plans and Site and Area Specific Policies (SASP) set out more refined and detailed plans and standards for specific areas. For example, SASP 211 Bloor Yorkville/North Midtown Area contains the following which defines neighbourhood character more broadly and places it in its overall urban community context:

Context

The Bloor-Yorkville/North Midtown Area is composed of a broad mix of districts with differing intensities, scales and heights in a diversity of building forms. The area includes Neighbourhoods, Apartment Neighbourhoods, Areas of Special Identity (as identified on the following Schedule) Mixed Use Areas and open space provided by parks and ravines. It forms the north edge of the Downtown and provides for transition in density and scale towards the boundaries of the area from the more intensive use and development forms to the south and within the Height Peak at Yonge and Bloor Streets shown on Map 2. This transition is important to reinforce the diversity of built form and use, to foster the stability of Neighbourhoods, and to minimize conflicts between commercial or mixed use areas and residential neighbourhoods. The intended character of specific areas and the planned transition in heights, use and built form, is described in the following sections.

a) Neighbourhoods

Ramsden Park, Yorkville Triangle & Asquith-Collier

New development in the Ramsden Park, Yorkville Triangle and Asquith-Collier Neighbourhoods will respect and reinforce the stability and the established low-rise character of these areas containing tree-lined streets and houses of two and three storey height, consistently setback from the street line. All new development will be contextually similar and appropriate to the individual settings, patterns of development, unique features, architectural and landscape character, and heritage significance within these areas.

Developments on sites near these three Neighbourhoods will be designed with sufficient setbacks and transitions in scale, through means such as angular planes and step-downs in height, to adequately limit shadow, wind and privacy impacts upon nearby residences and the public realm. Commercial and mixed use development near to these three Neighbourhoods will be designed to adequately limit negative impacts on nearby residences with respect to, among other matters, noise, traffic, odours, intrusive illumination and the location and visibility of access and service areas.

We request: A broad definition of character indicated above that includes a number of aesthetic aspects continue to apply ABCRA Neighbourhoods in accordance with SASP 211.

4. Why are neighbourhoods important?

The stability and physical character of Neighbourhoods are key to Toronto's success.

Neighbourhoods are:

- Referred to as the “***lungs of the City***”. The trees and other vegetation not only promote better air quality, but also are important in providing soft surfaces and plant material to facilitate water absorption and storm water management.

- Already providing a **diverse** range and mix of housing options in many cases. If you actually go and look at various neighbourhoods in real life as opposed to looking at a map it is apparent that many actually are diverse.
- Encircled, sometimes closely, by significantly more intense development: residential, commercial, retail, etc. and contribute to complete **communities** by providing a less intense but still diverse range and mix of housing options in their own context. They also participate and share with their broader community in terms of infrastructure, social interaction, schools, recreation, and cultural activities.
- A **respite** from pavement, tall buildings, crowds, wind, heat, and noise for pedestrians and bicycle riders. A walk from one high intensity area to another through a neighbourhood is a pleasant and refreshing journey through an area of interesting human scale architecture, green space and trees, and a generally calm and quiet area where people will often say “Hi” or smile.
- A **snapshot** of various periods in Toronto’s growth and evolution, with varied but period-specific architecture pockets (whether it has a historical designation or not).
- A **point of differentiation** from other cities that don’t have these and that contributes to Toronto being considered a unique and livable City

5. Potential Impact of Proposed OPA 403

We are concerned that the protections of OPA 2, 3, and 4, are being interpreted in narrow terms as the simple measurements of the structure. We are also concerned that SASP 211 will be overridden by OPA 403 as it stands. We have had the following advice (See Appendix 2) regarding the potential impact of proposed OPA 403:

The preamble mandates that all Neighbourhoods must have laneway suites. While sub clause 1 e) stipulates that where there is a conflict between either a Secondary Plan or another Site or Area Specific Policy in Chapter 7, that a Secondary Plan or another Site or Area Specific Policy in Chapter 7 will prevail,

this wording would indicate that those documents must specifically not permit laneway suites. Since older documents will not address laneway suites since they did not exist when they were passed the specificity of that wording in the preamble would appear to override older documents. In addition it would appear to override HCDs.

Recommend that the words, “are permitted” be replaced with the words “may be permitted” so that the preamble would read “Laneway Suites may be permitted...”

We request: The proposed OPA 403 be amended to ensure Laneway suites are subject to Polices 2, 3 and 4 of the Official Plan in similar manner to that of the primary dwelling to which second units are linked and are covered by relevant Secondary Plans, Site and Area Specific Plans, or Heritage Conservation Districts where these exist.

6. Downtown Plan

The focus of the Downtown Plan is on growth and development in mixed use area: however, it does comment on laneway in generals as follows:

Laneways

Laneways may offer an opportunity to augment the street-oriented pedestrian network by providing additional walking routes. Consultation and careful design will be needed to ensure that laneway improvements increase the utility, safety and function of the space without impacting the primary and essential use of laneways for access and servicing, especially given competition for finite right-of-way space on streets.

POLICIES

8.11. Laneways that can accommodate pedestrian use, without compromising their primary role for vehicular access and servicing, will be designed as safe and accessible walking routes by:

8.11.1. Discouraging cut-through motor vehicle traffic and designing for slower vehicle speeds;

8.11.2. Implementing design features to improve the attractiveness of the laneway;

8.11.3. Implementing safety measures for pedestrians including lighting for personal security;

8.11.4. Ensuring that development includes amenities and design features that support laneways with active ground-floor uses, clear glazing and entrances; and

8.11.5. Expanding and improving the network of laneways wherever possible

The above does not explicitly reference housing, but does reference many potential laneway policies and emphasizes careful planning being required. Laneways in Toronto vary widely in terms of their capacity and suitability for multiple diverse functions.

- Some laneways may be excellent for pedestrians (but not bikes) community events, food carts, possibly small or cart based retail, etc.
- Other Laneways may support multiple uses, such as pedestrians, bicycle and vehicular access, and housing.
- Other laneways may be extremely narrow, have very sharp turns, or dead-end behind residences, lead only to a garage or loading dock for mid or high-rise residential or commercial buildings, or only be adequate for limited individual residential vehicle access to and from a specific destination.

We request: Each laneway be considered in terms of its appropriate use.

OTHER BROAD ISSUES

1. Accountability and Balance

- a. The recommendations propose laneway suites be “as of right”. If this is the case, one property owner will be conferred rights and property owners adjacent to and across the lane will be impacted or will lose rights currently available. Prior knowledge of a building being constructed next door and COA access currently available will no longer exist. Many property owners may not be aware this change is occurring. They rely on their neighbour’s goodwill and/or the system and processes to allow them to voice their concerns. Advocates of laneway housing may be pleased with “as of right”, but it is unclear how other residents will react.
- b. Someone who wants to build an addition onto their existing house will have to undergo a more rigorous process and in many cases go to COA because they will not have access to a more liberal set of by-laws such as those permitting laneway house construction.

- c. Those building laneway rental units will likely have benefits in terms of fees and charges and expedited processes that are not available to a commercial developer where there will be more rental units created.
- d. There is limited specific supporting information on the experience of other municipalities, in terms of costs, staff resource impacts, what worked well, e.g. process, uptake, etc., OR what pressures or problems arose as a result of introducing the program, e.g. pressure for severance, condo, impact on character homes, pressure to build more than one unit, etc.
- e. The recommendations identify only limited cost as in staff training for consistency. It seems that at a minimum there would be program communication and roll out and potential lost revenue due to incentives.
- f. The program is rolled out in all of Toronto and East York and is not a pilot creating higher impact on an unknown entity.
- g. Will COA see the new by-laws and/or unpublished guidelines as a minimum and go even further beyond to provide even more flexibility with little challenge?
- h. Will City staff have wide latitude to advocate for variances at COA on a routine basis?
- i. A review is recommended after three years. It is unlikely retrenchment from the existing provisions would occur. Mitigation of adverse impacts and fine-tuning are more likely to occur. Are the standards in the recommended program a good base to build upon or aggressive to facilitate as many laneway houses as possible with unknown outcomes?

2. Affordability

There is little specific information on the experience of other municipalities on impact of affordable housing: impact on rental stock levels and prices. One of the key drivers behind the proposal was to increase affordable housing. Direction was given to ensure provision of affordable housing as part the laneway initiative. A pilot is proposed.

One participant in the consultation process asked why buildings were being shoehorned into small properties downtown without consideration of other options like garden suites in areas of the City with larger properties and possibly more affordable environments than the downtown core. Is too much weight being put on the Toronto and East York potential while not looking at areas where more affordability could be achieved?

We request: If ancillary suites are to be permitted, then the full range of options should be explored in the context opportunities across the entire city, both at present and in terms of the growth in transit access. This should not be rushed through or done in a fragmented or patchwork manner.

3. Accessibility

OPA 403 says that laneway suites may include accessible design features. The City has made accessibility a priority. Laneway houses present an opportunity to build more accessible housing in neighbourhoods that might not have had much accessible rental housing stock. Also, one of the rationales given for laneway houses was to permit elderly relatives to live in them or allow downsizing aging parents to live in a laneway house while their adult child and family live in the primary dwelling. Given the requirements of accessible housing and the rationale provided for laneway housing, it seems a disconnect to not replace in 1 b) iv) a positive requirement. (See Appendix 2)

We request: OPA 403 sub clause 1 b) v. be amended by deleting “may” and replacing it with the word “will”.

COMMENTS ON OFFICIAL PLAN AND ZONING AMENDMENTS

For additional comments on issues related to both technical details and general impacts, see Appendix 1.

CONCLUSION

ABCRA understands growth is inevitable and can contribute to the vitality of both our community and Toronto. We also are concerned about the lack of affordable housing in the City. We write with a concern that growth occurs from a balanced and sustainable perspective, in a manner that recognizes and sustains Toronto's diverse and unique communities, and promotes a quality of life for all residents. Our primary concerns at this point are issues raised in this letter and in the Appendices:

1. Open Street Access and service from the street/primary dwelling is required. Laneway houses behind a row house should be prohibited. (See Appendix 2)

2. Privacy and overlook:

The report does not address privacy and overlook issues which was one of the key reasons that laneway houses were not approved in 2006. Such a large and tall structure should not be approved now. Many of the objections in this letter and Appendix 1 and 2 relate to second story impacts;

- Height and 2 storeys being jarring and excessive when looking at the reality of a 6 metre tall structure
- Dormers breaking an angular plane defeating its purpose
- Window size, placement, transparency as a firm, i.e. by-law, requirement
- Decking at any level and balcony at any side at second floor level.
- Access to sunlight/shadow impacts
- Potential for a tall narrow house to not have primary frontage on the laneway but to be narrow and intrude into the property increasing overlook concerns.

We are not adverse to one story laneway houses provided some of the many loose ends and other concerns can be addressed. Garages are within the character of many neighbourhoods. Residential structures building upon that experience baseline are likely to fulfill many needs without many of the negative impacts.

The permission to have a basement was not anticipated. If it had been known it was an option, we would have wanted to explore the possibility of a basement suitable for habitation with a one story above do deal with privacy overlook, 6 m. height, footprint, and greenspace preservation.

3. Footprint and Green Space:

We find the foot print excessive and the green space too small. The protection of trees needs to be strengthened as per Appendix 2.

4. Severance

“Should be discouraged” is not adequate language. It should but go through a rigorous process as described in Appendix 2.

5. Language, Clarity, and Inconsistencies

The draft by-law and the OPA should be amended to remove inconsistencies between them and the existing terminology of the Official Plan and 569-2013 at a minimum. Further, we would like language to make clear that Policies 2, 3, and 4 of the Official Plan apply and provisions in Secondary Plans, SASPs, and HCDs take precedence.

6. Provision for 5 metre wide lanes and other existing standards

Further the objects of providing ancillary uses in the form of laneway suites should not undermine the existing standards for ancillary suites including separation from the centreline of the lane and clarifying that private lanes are not appropriate among other matters.

7. Flexibility

The Official Plan, OPA, and by-law should be the determining documents. Guidelines or staff recommendations should not encourage or sanction flexibility beyond the standards except in truly exceptional situations. Reviews should be prudent and proper COA review processes utilized. Variances granted by the COA should be tracked and form part of the program review including: nature of the variance, staff position/report and whether it was granted or denied.

To date representatives of ABCRA have attended both public consultations and a meeting specifically for Residents' Associations. Feedback (both positive and negative) has been provided.

In this letter and its attachments, we have raised issues of substance and have spent time and money to be as informed and responsible as possible in our comments. We believe advocates of laneway housing, City Planning, and ABCRA all have an interest in achieving a positive outcome and doing the right thing for the people of Toronto as it grows and evolves. ABCRA is looking for more protections as outlined in



this letter and its attachments and a more conservative initial approach to promote a positive outcome in the community and learning.

Thank you for your consideration of our concerns.

John Caliendo & Ian Carmichael
Co-Presidents, ABC Residents Association

Cc: Councillor Kristyn Wong-Tam
Gregg Lintern, Chief Planner and Executive Director, City Planning Division
Lynda H. Macdonald, Acting Director, Community Planning, Toronto and East
York District

Appendix #1

Laneway Housing: Comments on Official Plan Amendment and Zoning Amendment

Criteria	Per Amendment(s)	Comments/ Issues
Zone Category	R zoned lands within the boundaries of the Toronto and East York Community Council	1) Limited Implementation Area (Not City Wide) 2) Does not address Garden/Back Yard units on properties with no lane access where there may be significant width and depth.
Required Frontage on Lane	3.0-metre-wide rear or side lot line abutting a public laneway.	3 meters – “shoe-horning” units in already dense residential areas – Smaller than any other jurisdiction (Note Appendix #2 - 3.5)
Density	Laneway suites are excluded from the permitted floor space index or other density provisions.	Promotes excessive density in neighbourhoods with high square footage houses on smaller properties
Basements	Basements may be permitted in laneway suites Restricted to storage/mechanicals	If used as part of residence could be a lower/better alternative to two storey units
Separation Distance to Main House	Minimum of 5.0 metres in the case of a one-storey laneway suite, and a minimum of 7.5 metres in the case of a two-storey suite.	1. 5-meter minimum can promote shrinking of backyard sizes in some neighbourhoods 2. Could reduce a 7-metre yard by 30% 3. Will cause light / sun issues with neighbours who want to maintain a yard. 4. Suggest 7.5 m as minimum for all sizes.

Criteria	Per Amendment(s)	Comments/ Issues
Maximum Building Height	2 storey up to 6 metres (<20 feet)	<p>Concept was that suite be subordinate in height to primary building.</p> <ul style="list-style-type: none"> • 2 storey suites may higher than a bungalow on the same lot. • 6 metres presents issues regarding privacy & overlook
Landscaped Open Space	<ol style="list-style-type: none"> 1. Minimum of 50% of the rear yard with a laneway suite must be soft landscaping. 2. Lots with frontage of less than 6.0 metres will require a minimum of 40% soft landscaping. 	<p>These rear yards may be very small on narrow lots:</p> <p><i>3 m X 5 m = 15 sq. meters</i></p> <p>Reduces open space in dense neighbourhoods</p>
Wall Height	<p>Suite Facing house = 4 metres the second floor must be setback from the front wall at a ratio of 1:1 Max. wall on any side = 6 metres</p>	6 metres (approx.. 20 feet) is high for “as of right”
Laneway Suite Width & Length	<p>Max Length = 10 metres (32 feet) Max Width = 8 metres (26 feet)</p>	<p>Suite can have significant footprint.</p> <p>Regulation does not ensure suite is subordinate in size to primary dwelling.</p> <p>Laneway suite should always be positioned to abut the lane – see Appendix #2</p>

Criteria	Per Amendment(s)	Comments/ Issues
Rear Yard Setback/ Building Setback From Laneway	<p>A minimum 1.5 metre setback from the rear property line is required for a laneway suite.</p> <p>A minimum of 60% of the area within the setback from the laneway that is located on private property is required to be soft landscaping</p>	<p>1) May not be sufficient for target lane widths (5 metres → 2.5 from centre line).</p> <p>2) Unit lane-side doors could open into active laneway</p> <p>3) “landscape” or bike storage on lane side of unit will impact lane width</p> <p>The preferable additional setback for a laneway suite should allow for a 5 metre lane plus a 1.5 m setback minimum to allow safe access to the laneway suite and provide for lane-facing landscaping and bike storage.</p>
Side Yard Setbacks	No required side setback	-----
Fenestration Percentage	<p>A percentage of each wall that is allowed to have windows is contained in the proposed Guidelines. In some cases, there is no limit on fenestration and design is at the option of the builder. The City is not able to secure the percentage of windows on any building face in a Zoning By-law.</p> <p>Guidelines:</p> <ul style="list-style-type: none"> • Up to 40% of yard facing side on 2nd floor • Up to 60% of lane-facing side 	<p>Can “guidelines” be enforced?</p> <p>If no, then 2nd floors should not be granted “as of right” – as windows may look over neighbours back- yard and into their houses.</p> <p>2nd floor suite approval should be subject to variance review.</p>
Parking Requirements	<p>No parking spaces will be required on a lot that includes a laneway suite.</p> <p>A total of two bicycle parking spaces are required</p>	<p>Will push more cars to street parking – overextending demand</p> <p>WE PROPOSE: no extra street permits for addresses that surrender lane parking.</p> <p>No street permits for lane unit residents.</p>

Criteria	Per Amendment(s)	Comments/ Issues
2nd floor amenity space	No required Amenity Space. Amenity space <i>may be provided</i> in either the rear yard of the property or on a second storey balcony <u>facing the laneway</u> . A balcony is not permitted to encroach into the lane setback and must include 1.5-metre-tall visual screening on sides adjacent to a side yard.	Are 2 nd floor balconies facing the yard (main house) forbidden? If so, this should be explicit in the by-law
Horizontal and Vertical Projections	City undertook shadow analyses and considered several approaches to sculpt the 2nd storey of a laneway suite to mitigate overlook and privacy into adjacent yards	Even a one-storey suite that is 5 to 7.5 meters from main house will provide shadowing to small neighbouring yards (4 metres of height = 13+ feet)
Managing Impacts on Adjacent Properties	-----	By-law is unclear. See Appendix #2
Traffic & Transit Impacts	"The City is investing in expanded cycling infrastructure and transit in the central City"	The Yonge street subway line is currently overburdened in some areas Increased density will further increase over-crowding and wait-times Commercial traffic will be increased in the lanes (see comments in "Traffic in Lanes")
Lane widening	Public lanes serving residential lands or parks and open space will be at least five metres wide	Proposed setbacks for laneway suites may make this goal unreachable – as landscaping & bike storage may use this space
Severability	Policy will discourage severance	We need specific prohibition with a standard process - See Appendix #2 Vancouver is now discussing severability.
Can Laneway Suites Have Multiple Units?		Not clear that there is prohibition of multiple laneway suites on a property

Criteria	Per Amendment(s)	Comments/ Issues
Affordability	Pilot was referenced in text	There is no tool in place to ensure affordability – landlords will charge market rates
Short Term Rentals	Only the tenant of the secondary suite could rent out a room or the entire unit short-term.	How long can the principal suite resident be absent? Can there be “ghost” lease-holders? No sufficient controls against Air B & B usage.

Re: Attachment 3		
Draft Zoning By-law Amendment		
Criteria	Per Amendment(s)	Comments/ Issues
Exclusion in Floor Space Index	The gross floor area of an ancillary building or structure containing a laneway suite is not included for the purpose of calculating the total gross floor area and floor space index for a lot.	This can lead to over-density in neighbourhoods – and may be open to variance appeals for primary building area allowance.
Canopies and Awnings	A roof, canopy, awning or similar structure ... may encroach into a required minimum building setback to the same extent as the platform it is covering (up to 2.5 meters = approx. 8.2 feet) This applies whether the “covering” is above a platform or not.	Such structures could create shadowing on neighbouring properties – extending impact on the yards of these properties by ANOTHER 1.5 metres (reducing un-shaded neighboring rear yards down to 5m – 2.5m = 2.5 metres / or approx. 8.2 feet)
Window Projections	May encroach into a required minimum rear yard setback a maximum of 0.75 metres, if the window projections in total do not occupy more than 65% of the width of the front wall or rear main wall at each storey	Will this impact angle requirement for 2 nd floor facing rear-yard – bringing suite vertical impact closer to primary building? This 0.75 metres can reduce usable rear-lot space

Re: Attachment 3	Draft Zoning By-law Amendment	
Criteria	Per Amendment(s)	Comments/ Issues
Roof Projections	A dormer projecting from the surface of a roof may not have any wall of the dormer closer to a lot line than the required minimum building setback	<p>This will impact angle requirement for 2nd floor facing rear-yard – bringing suite's 2nd floor vertical impact closer to primary building.</p> <p>Will effectively cancel out angular plane mitigation</p> <p>NOTE: There is no maximum width (or combined width) – or % coverage guidelines for 2nd floor yard facing dormers.</p>

Other Issues

Subject	Issues
Traffic in Lanes	<p>No consideration of extra traffic in lanes: Deliveries / Fed-Ex Taxi / Uber Groceries +extra foot traffic mixed with increased vehicle traffic</p>
Neighbourhood Density	Does not take existing neighbourhood density or density in surrounding area into account – this is a “one size fits all” planning approach

Appendix #2 COMMENTARY RE LANE WAY SUITES

TO: ABC RESIDENTS ASSOCIATION

FROM: WILLIAM H. ROBERTS
BARRISTER & SOLICITOR

OPENING COMMENTS

I was retained to review and comment on the draft proposed zoning and official plan policies. In doing this review I had regard to the zoning governing ancillary structures in 569-2013. I have also drawn on my knowledge of 438-86 and its development and the policies in regard to lanes, and a recent OMB decision in regard to MCR areas and the definition of lanes.

I will first raise general concerns relating to access and the definition of lane versus laneway. I will then walk through Official Plan Amendment (OPA 403) and then the zoning by-law amendment doing a clause by clause analysis and where appropriate make recommendations for your consideration, and commentary on why the proposed amendment is appropriate.

GENERAL CONCERNS WITH THE PROVISION OF ACCESS

Of particular concern is that the OPA 403 does allow for the possibility of the severance of the laneway suite from the main lot or for the creation of a condominium on the lot, either before or after the creation of the laneway suite. The failure to set standards for access to the laneway suite will create problems when the severance or creation of the condominium occurs. The by-law should clearly specify the minimum requirements for independent access to a laneway suite.

While the Building Code may cover aspects of this, there should be provision in the by-law requiring access from the street. If it can be achieved from the lane that can be dealt with by a variance request proving that the alternate access is appropriate and desirable for the use of the structure.

An additional problem when a severance occurs, a lot which previously had access to the lane, will no longer have access. This will be particularly acute in the case of inside lots. Presently section 10.5.80.40 (3) of 569-2013, requires where a lot has access from a lane, vehicle access must be from the lane. This requirement serves two purposes. It maintains soft landscape in the front of the house, and prevents below grade and integral garages. Once the lot is severed, this provision will not apply to the remnant lot, which will introduce a physical change that will not respect and reinforce the character of the neighbourhood, in the form of either a below grade garage or an integral garage and a loss of front green space and soft landscaping.

GENERAL COMMENTS WITH LANE ACCESS

I will deal with the fact that different terms are used under the OPA 403 and the Zoning By-law amendment for “lane” in more detail later in this commentary.

At this point I wish to point out a problem with the definition of **‘lane’** under 569-2013.

In a recent OMB decision governing setbacks from a lane, the OMB ruled that while the definition of lane included the concept that it be publically accessible, it does not require that the lane be owned by the City; and, that it can include private lanes if the public can access them whether legally or not. See *Muir Park Development Inc. v. Toronto (City)*, PL 170923 issued 18 April, 2018, paragraphs [25] to [27] and [33]. In fact the definition of **“driveway”** uses the term **“lane”** thereby contaminating the thought that a lane must be public.

Given the lack of clarity created by the 569-2013 as to whether the term “lane” means public lane, as compared to 438-86 where the term used was “public lane”, it would be preferable that in both the OPA 403 and the by-law the term **“public lane”** be used instead of “laneway” or “lane” to remove any doubt.

Additionally some consideration should be given as to whether a minimum width of a public lane should be considered as a requirement, noting that the Committee of Adjustment can vary that where it is appropriate or desirable for the use of the property and the lane way suite.

ANALYSIS OF OPA NO. 403

The preamble mandates that all *Neighbourhoods* must have laneway suites. While subclause 1 e) stipulates that where there is a conflict between either a Secondary Plan or another Site or Area Specific Policy in Chapter 7, that a Secondary Plan or another Site or Area Specific Policy in Chapter 7 will prevail, this wording would indicate that those documents must specifically not permit laneway suites. Since older documents will not address laneway suites since they did not exist when they were passed the specificity of that wording in the preamble would appear to override older documents. In addition it would appear to override HCDs.

Recommend that the words, **“are permitted”** be replaced with the words **“may be permitted”** so that the preamble would read **“Laneway Suites may be permitted...”**.

I will not deal with all the clauses but will take note of those ones that are problematic.

Clause 1a)

In what I believe was an earlier version, there was a concept that the auxiliary dwelling unit will be subordinate in height and area to the principle dwelling unit, and no higher than two storeys. Two storeys may be problematic because it permits a structure that would be higher than a bungalow on the same lot. In addition the term used the phrase frontage on a public laneway was also problematic. The present form does not include these phrases but has in turn created new problems.

The usage of **adjacent** in place of the term “**frontage**” used in the earlier version is an improvement, because the term frontage implies that the front of the auxiliary dwelling unit is on the lane while in the zoning by-law this is called the **rear setback**. There should be some consistency between the two. In addition as already stated the term “**public laneway**” is undefined and does not exist in the zoning by-law. While adjacent is an improvement, it is different from the term found in 569-2013 which is “**abuts**”.

Recommend that, the appropriate term should be “**public lane**” not “**public laneway**”.

Recommend that, in addition, different terminology than “adjacent” should be used, such as “**abuts**” which is the term used for all other auxiliary structures in 569-2013. Note that the draft by-law uses “abutting” in its definition of laneway suite. To be consistent “abuts” should be used, as it is elsewhere in 569-2013, for consistency.

Secondly while it might not be appropriate to mention two storeys as was done in an earlier version of the OPA, given one of the objects of this proposal is to create affordable housing.

I note that in *Neighbourhoods* a range of building types is set out. In 4.1.1. Despite the fact the neighbourhood zoning does not permit all of such uses, and the character does not have all of those uses, the Official Plan wording has been used to argue that such uses should be permitted by variance in an area where such uses are not found.

Simply stating subordinate lacks specificity as to the matters of height and area in the earlier version. As has occurred with the interpretation of 4.1.5 subordinate with no mention of height or area leaves it wide open to have two to three storey auxiliary dwelling units since that is less than 4 storeys (maximum referenced for walk-up apartments).

Recommend that the words “**subordinate in height and area**” be reintroduced.

Clause 1 b)

Is it appropriate to stipulate that trees “should not be injured” when elsewhere in this clause “will”, is used.

Given the stress most urban trees face in the City, and the maturity of many of the trees in the backyards of inner City lots, should not the standard be higher?

Recommend that “should” be replaced with “**will**” in **1 b) iv.**

Is it appropriate to not require that the units be accessible? Given the requirements of accessible housing it seems a disconnect to not replace in 1 b) iv) a positive requirement.

Recommend that the sub clause **1 b) v.** be amended by deleting “may” and replacing it with the word “**will**”.

Is it appropriate to not require better specificity in **1 b) i** that instead of “will ensure” with the words “**will set standards that will ensure direct and safe access**”? While the Building Code has provisions that would govern this, it would be better to set out standards of access from the auxiliary dwelling unit to the front of the existing lot onto the street, much as minimum or maximum driveway widths are set out in the by-law. Which in this case would be one metre so that the movement of waste can be done, and household items be moved into the unit without blocking the lane.

Given there remains the possibility, however undesirable it may be, that the lot may be severed or becomes a condominium, the need for clear unimpeded access from the street will be critical if that occurs. This will ensure unimpeded access by the residents of the laneway suite in the case of egress where the fire is happening in the lane.

Clause 1 c)

Is it appropriate to state that a lot with a Laneway Suite is not required to provide parking? There may be different standards for different *Neighbourhoods*. This overrides this and will require an OPA if a different standard is to be incorporated for different neighbourhoods. There should be flexibility to allow for exceptions for different parking provisions for differing neighbourhoods with different physical characters.

Recommend that the words “is not” with the words “**may not**”.

As was discussed at the beginning of this commentary and in greater depth under the zoning commentary, this provision overrides the present policies discouraging

integral garages on lots that have access to lanes and this will result in lots which are presently prohibited from having front entrances to garages into now being able to have garages facing the street. This will become even more true if a severance occurs or the lot becomes a condominium. This will further compound the demands for integral garages.

It is to be noted that under 438-86 no parking was required if none existed on the lot at the time of the creation of one secondary unit in addition to the primary unit. Similar wording would be better here. While 20 years from now when driver-less cars are common the need for on site parking may diminish, it does not follow outside of the downtown core of the City that individuals will give up private vehicles for personal use.

Thus the option to have parking should not be effectively prohibited in the OPA 403.

Clause 1 d)

This clause will require further thought as to the viability of the clause. While staff are to consider this, it does not follow that the City, including Committees, Community Councils, and the Committee of Adjustment, not just planning staff, should be obliged to consider the requirements.

Recommend that clause 1 d) be amended by “City Planning Staff” and replacing those words with the words **“the City”**.

Clause 1 e)

This clause is problematic on several levels. The term **“are discouraged”** which appeared in an earlier version of the draft OPA 403, implies that they are not prohibited; however, stating that the application is not permitted, may be viewed as fettering the Committee of Adjustment. It would be better to state that they **“are not permitted by consent”**. This will take one down the subdivision route rather than going the consent route at the Committee of Adjustment.

In addition, the requirements should be more robust and be closer to the requirements for the subdivision of land.

DRAFT ZONING BY-LAW AMENDMENT

Note the draft by-law uses **“abutting”** not adjacent to a lane as in the OPA 403. Elsewhere in 569-2013 the term used, is “abuts”.

Recommend that the term **“abuts”** replace the term **“abutting”** .

Note my earlier commentary on lane.

Recommend that the word “**public**” be used in conjunction with the word “lane” to remove any doubt that using private lanes are not permissible for such uses.

The reference to a laneway suite over a detached garage raise concerns in regard to such matters as maximum height given the maximum height of a garage is 4 m. To have a laneway suite over a garage would appear to have a combined structure greater than 6 m. in height with no angular planes. It will raise the argument that in the case of an existing garage, that one cannot construct a laneway suite because of the 6 m height limit. In order to achieve two storeys as previously stated in OPA 403 one needs a variance which is permitted under the OPA 403.

(1) Minimum Lot Line

I note that the minimum front lot line for a residential building is 3.5 m.. See 10.5.30.20. It would make sense to incorporate the same standard of 3.5 m. given the effective front for rear access to the laneway suite will be the lane. An additional point to be considered is that the required frontage is measured at the front set back. That setback is often 6 or more metres back from the front lot line, so that in the case of a pie-shaped lot the frontage meets the minimum required frontage standard, by the time you reach that setback. Once again considering the possibility of a severance application, the severed lot would not comply with the minimum frontage requirements of the neighbourhood given the rear setback is 1.5 m.

Recommend that consideration of the desirability of maintaining the same minimum frontage on the lane as that required for the zone.

(2) Rear Yard Setback

It should be noted that the draft stipulates a 1.5 m. rear setback which may be more than the required setback for a garage; but, it should be noted that 569-3013 has an additional setback requirement that all ancillary structures cannot be closer than 2.5m from the original centreline of the lane. See 10.5.60.20(4).

The appendix 4B shows a 2.5 or 3 metre setback from the centreline of the lane. Appendix 4B is guideline , and such it is not applicable law, and as it has been shown over the years, a guideline has no weight at the OMB. See Muir Park Development Inc. v. Toronto (City), PL 170923 issued 18 April, 2018 where this occurred over the use of public lane in the Midrise Guidelines versus lane in 569-2013. The definition in 569-2013 prevailed.

Further points to be considered are: that you want to have the ability to have access to the laneway suite without having to stand in the lane, be able to open a door without it opening directly onto the lane, allow for bike storage and provide for soft landscaping. To allow all of this, the 1.5 m rear setback from the lane becomes necessary. The historic 2.5 m. from the original centreline was to allow for future improvements to the lane.

It follows that if you combine the 1.5 m rear setback with the 2.5 m centreline setback, that the preferable additional setback for a laneway suite should not be 2.5 m but 4 m to ensure the lane can be widened and that access to the laneway suite continues to be safe as well as providing for landscaping and bike storage.

Recommend that the following wording be added:

Amend **(C)** to **(B)**

Create new **(C)** so that it reads as follows:

(C) Despite the provisions of (2) (A) a laneway suite in a Residential Zone Category may be no closer than 4 metres from the original centreline of a lane.

I further note your Attachment 4B shows a setback from the centreline of the lane which is not presently reflected in the draft by-law.

(4) Laneway Suite with Parking Space – Rear Yard Setback

Add wording similar to (C) in (2) as follows:

Add a new (D) with the following wording

(D) Despite the provisions of (4) (A) a laneway suite in a Residential Zone Category may be no closer than 4 metres from the original centreline of a lane.

I again further note your Attachment 4B shows a setback from the centreline of the lane which is not presently reflected in the draft by-law.

(6) Rear Angular Plan

Firstly I note that this is a typo. Replace “Plan” with “**Plane**”

When reviewed, Attachment 4B, appears to show that the angular plane starts at 4m above the front main wall of the laneway suite. The use of the words “of towards the lane” appears to take the measurement from the lane and not from the main front wall of the laneway suite. Thus the draft wording is not clear. I believe that the intent was that the angular plane starts from the front main wall at the height of 4 m. rising to the maximum height. Perhaps as was done in the past for MCR angular planes in 438-86, a diagram should be included. This clause should be completely reworded since it could be read to start above the 4 m. mark.

Given the normal residential floor to ceiling height is 3 m. it follows that 4 m. may be more than needed given that the 4 m. is the maximum height for an ancillary structure which is not the case for a laneway suite.

Given residential floors have a height of 3 m. from floor to the bottom of the next floor, it would be more appropriate to start the angular plane at 3 or 3.5 m. rather than 4 metres.

It remains questionable whether as of right structures of 6 m. should be permitted.

Perhaps there should be a statement of maximum height of the front main wall of the laneway suite, followed by the requirement of 45 degree angular plane to the maximum height of 6m.

Building Length and Width

While the building length and width may be appropriate; assuming full modeling has been done, a problem may occur. It is open that an applicant may argue that these measurements will be deemed to override the setback requirements as is often the case now at TLAB where the length is argued to be the permissive length and the setbacks are optional.

There is no indication where the length will be calculated from. Length in the case of the main residential building is from the front main wall of the building while depth is from the front setback. It would make sense to add a depth provision to tie down the location of the laneway suite.

So long as the laneway suite meets the setback from the main building it could be located in the middle of a lot where it is a deep lot. There is no requirement as there is with the main residential building that it be within a certain depth from the front setback. The depth provision in prior by-laws and now in 569-2013 is to ensure that the building is not setback so far into the lot as to create overlook issues on adjacent lots. In 438-86 the control was length measured from the front setback rather than using depth.

All the modeling shows the laneway suite at the back of the lot near the lane. This amendment should ensure that this occurs. Therefore a depth provision is necessary to ensure the exact location of the laneway suite.

Add a provision;

Maximum Depth

The maximum depth for an **ancillary building** or **structure** containing a **laneway suite** is 12.0 metres from the **rear lot line**.

Should the width of the laneway suite have a sliding scale given the width of a lot and the required side setbacks may not permit a laneway suite of the width indicated in the by-law?

Maximum Height

Given additions may be made at a later date to a laneway suite after a 4 metre laneway suite is constructed, would it not be better to go simply with the 7.5 m setback regardless of the proposed height to ensure sufficient separation between the buildings?

By having a lesser separation for laneway suites that are 4 m. or less in height, opens the door, to the two step process for getting permits for a 4 m. high laneway suite and then seek a variance once the permit is issued for a lesser separation for a 6 m. high laneway suite by arguing it is not possible to move the building. It is always open to the Committee of Adjustment to vary the separation requirement where it is appropriate for the use of the land and buildings.

By keeping a single separation standard, you remove the risk of applicants trying to by-pass the standard.

Maximum Storeys

I will leave the issue of the appropriateness of two storeys or rather whether it would be more appropriate to limit the height to one storey or 1.5 storeys given the fact that the permission for two storeys may undermine the requirement for angular plane standard.

The advantage of 1.5 storeys is that it is reflective of what will occur with an angular plane.

Floor Area

While not including ancillary buildings within the main building's FSI should there be a maximum FSI for laneway suites?

In addition your modeling ignores there may be other auxiliary or ancillary structures such as garden sheds, storage units, gazebos to name just a few. There is an upper limit on the total floor area of such units. The combination of the exemption of laneway suites plus all the other potential auxiliary or ancillary structures may be a loss of soft landscaping and the resultant water runoff.

Platforms

Is it appropriate to permit balconies facing the lane, side lots or the main building on the lot? Should there be a prohibition?

I note in two there appears to be a typo "secondary".

Recommend replace the word "**secondary**" with the word "**second**".

Permitted Encroachments

This needs further review. Some of these may result in overlook into adjacent properties despite screening requirements.

Roof Projections

Dormers may prove problematic since two storeys are permitted. The only reason to have dormers would be if you are going higher than two storeys or into the angular plane.

Recommend exclusion of dormers.

Lot Coverage

This appears to conflict with what is happening with FSI areas where it is not counted. It would seem that in areas where lot coverage and storeys are used to control height and density it is included.

Access to the Laneway Suite

I note that Attachment 4B shows a 1 metre wide access to laneway suite. This is not reflected in the By-law amendment.

It would be appropriate to require a minimum of a one metre wide walkway from the street to the front of the laneway suite.

It is always open to the Committee of Adjustment to find that an alternate access is appropriate and desirable for the laneway suite.

Conclusion

The draft by-law and the OPA should be amended to remove inconsistencies between both of them and the existing terminology of the Official Plan and 569-2013 at a minimum.

Further the objects of providing ancillary uses in the form of laneway suites should not undermine the existing standards for ancillary suites including separation from the centreline of the lane and clarifying that private lanes are not appropriate among other matters.

I trust this analysis is of some use to your organization.

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