

AIRD BERLIS

Eileen Costello
Direct: 416.865.4740
E-mail: ecostello@airdberlis.com

March 11, 2020

Our File No. 156024

BY EMAIL

Toronto and East York Community Council
Toronto City Hall, 2nd Floor
100 Queen Street West
Toronto, Ontario
M5H 2N2

teycc@toronto.ca

Attn: Ellen Devlin

Dear Chair Members of the Toronto and East York Community Council:

**Re: TE14.5 - Queen Street West Planning Study - Bathurst Street to
Roncesvalles Avenue - Official Plan Amendment No. 445
Letter of Objection on behalf of 835 Queen West Inc.**

Background

Aird & Berlis LLP acts on behalf of **835 Queen West Inc.**, the owner of the properties known municipally as 835-837 Queen St. W., located on the southeast corner of Queen St. W. and Niagara St. (the "Property"). The Property is located on a corner site within the West Queen West area and fronts onto both Queen St. W. and Niagara St. The Property is currently comprised of one low rise mixed-use building.

At present, the Property is underperforming in terms of its aesthetic, functional and design contributions to the area. The current use of the Property for a one storey commercial, presently vacant, and two (2) residential units above represents a significant underutilization of land in a Mixed Use Area on an Avenue well served by transit.

Our client and its consultants have had an opportunity to review the draft policies and staff rationale for same as set out in the above-referenced matter. The following comments are provided as an input into the TEYCC's communication of the matter.

Prematurity and Relationship to HCD Plans and PPS

The adoption of OPA 445 at this time and in advance of the Heritage Conservation District plan(s) for the area is premature.

We understand from the staff report that the HCD plan(s) for the area are still in development and are anticipated to come forward to the Toronto Preservation Board for consideration and public comment in the fall of this year.

Given that work on the HCD plans and the Queen West Planning Study were undertaken concurrently, and the HCD Plans are intended to manage change (i.e. development) within the areas subject to the Plan, in our respectful submission these separate policy initiatives should be reviewed concurrently. This is particularly the case as the Ontario Heritage Act provides that the municipality shall not pass a by-law which "is contrary to the objectives" of an HCD Plan. In our respectful submission, a comprehensive understanding of the new policy framework for the area must be presented in order to afford property owners, members of Council and the broader community to understand the implications of the various initiatives.

Additionally, the OPA may also be premature because it was developed in the context of the PPS 2014. Although the new PPS does not come into force until May 1, 2020, and municipal decisions prior to that date must be consistent with the 2014 PPS, it would be prudent for the City to ensure that the policies of OPA 445 are viewed through the lens of updated Provincial land-use planning policies.

General Objection

As a general concern, many of the policies contained in OPA 445 are excessively rigid and prescriptive. By way of contrast, there is no opportunity for development to respond to site-specific conditions, as the City's Mid-Rise Guidelines promote. Development that exceeds even one of the many prescriptive built form parameters established by OPA 445 would require an OPA, even if the development is appropriate in a site-specific context and represents good planning.

Built Form Policies

As noted above, and in our client's view, many of the built form policies contained in Section 6 of OPA 445 are unnecessarily rigid and limit innovative design that is sensitive to its surroundings.

Our client's objections to a number of the built form policies are as follows:

- Policy 6.3 limits the maximum overall height of any building, including any addition to an existing building to 6 storeys, up to 20 metres, as measured to the top of the roof slab. Our client submits that this policy should be drafted in a more flexible manner to recognize, among other matters, higher floor to ceiling heights associated with commercial units and the ability to achieve greater heights on a given site through innovative design and materiality while addressing any issues related to shadowing, etc.
- Together, Policies 6.4.1 and 6.4.6 would require new buildings and additions on existing buildings, in relation to their Queen St. W. frontage, to provide a 5 metre setback above 10.5 metres and an additional 3 metre setback above 16.5 metres. Our client submits that the proposed setbacks would limit development potential on many well located sites within the area, including the Property, in a manner that is contrary to the in-force Official Plan designations.
- Policy 6.4.6 provides that new buildings and additions on existing building will be setback an additional 3 metres above a height of 16.5 metres. This prescriptive policy is provided without any guidance as to the planning or urban design goal to be achieved and ignores the fact that in many instances a lesser setback can also result in an appropriate built form relationship.

- Policy 6.5.2 provides that a new building on a corner property may incorporate a taller streetwall element or architectural corner treatment to a maximum height of 14 metres and not to exceed 10 metres in width along its Queen St. W. frontage. While this policy recognizes that corner properties should be accorded some differential treatment, it does not provide sufficient flexibility and would not appropriately address the condition of the Property which has a significant flankage on Niagara St.
- Policy 6.5.3 provide that new buildings and additions on existing buildings will provide a minimum setback of 1.5 metres above a height of 14.0 metres. This policy, combined with the requirement in Policy 6.4.1 could substantially constrain the reasonable and appropriate development of the Property.
- The built form policies regarding rooftop structures (Policies 6.7.1 and 6.7.2) may be unnecessarily restrictive, especially on smaller properties.
- The built form policy regarding the requirement for a 9.0 metre rear yard setback (Policy 6.6.2) is unnecessarily restrictive and the staff report does not indicate why the rear yard setback standard in the Mid-rise Guidelines of 7.5 metres is inadequate in the case of Queen W. In respect of this setback, the staff report notes on Page 29 that:

“This approach balances the interests of strengthening the Queen Street West character through enhanced setbacks above the streetwall, continuing to transition appropriately to the adjacent low rise areas as emphasized in consultation, enabling an appropriate level of intensification, and accommodating a building form that allows for additions to existing buildings. The prescribed setback from the Neighbourhood designation continues to provide for appropriate transition, limits privacy and overlook issues, and limits shadowing on adjacent properties, while facilitating a building form that is easier to construct and incorporate with an existing building.”

The foregoing rationale fails to indicate why a 7.5 metres setback from properties in the Neighbourhood designation (as provided in the Mid-Rise Guidelines) is inappropriate for properties on Queen W. but appropriate for other properties on Mixed-use Avenues elsewhere in the City.

Heritage Buildings

Our client is concerned that a number of the policies contained within OPA 445 refer to “heritage buildings”. This term is not defined and it is therefore unclear to the reader what buildings are considered “heritage” for the purpose of interpreting and applying the policies of OPA 445. Additionally, the draft language of OPA 445 includes reference to the term “conservation”. It is unclear if that term is consistent with the definition used in the context of an HCD which typically adopts the definition used in the *Standards and Guidelines for the Conservation of Historic Places in Canada* (2010).

The lack of coordination with the emerging HCD plan(s) is particularly an issue for this Property as the City’s intentions regarding the heritage status of 835 Queen St. W. are unclear. 835 Queen W. is not currently included on the City’s Heritage Register as it is neither a listed nor designated heritage property. However, 835 Queen W. is listed in Table 1 of Attachment 5 to the staff report as a “Context Supporting Property” with a “Main Street Commercial Row” building type that contributes to the street’s historic context. The staff report indicates that:

March 11, 2020

Page 4

"The HCD Study further reviewed built heritage resources within the Study Area to ensure that all properties of cultural heritage value or interest were appropriately identified, understood and conserved, which included both properties that are already on the City of Toronto's Heritage Register, as well as additional properties to be assessed further [my emphasis]. The latter properties include those which would be considered as Contributing within the boundaries of the proposed HCD Plans, as well as individual properties located outside these boundaries. A multiple listing report will be presented to the Toronto Preservation Board and Council in Q2 2020. The HCD Study's recommendations direct the development of the two HCD Plans, with minor modifications based on further analysis, evaluation, and community and working group consultation. The HCD Plans are still in development and staff anticipate they will be presented to the Toronto Preservation Board and Council in Q3 2020." (page 26)

Please refer to our initial comments related to the prematurity of this matter in the context of the lack of coordination with the emerging HCD plan(s) for the area.

Conclusion

Our client requests that the City consider the concerns set out above and consider revisions to the draft OPA 445 prior to bringing forward the document for further consideration. In particular, our client would urge the City to better coordinate this policy initiative with the emerging HCD plan(s) for the area so as to afford property owners a comprehensive review and understanding of the implications for their properties.

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

Yours truly,

AIRD & BERDIS LLP


Eileen P.K. Costello
EPKC/LD/gc

Cc: 835 Queen West Inc.
Andrew Dales, Dales Consulting

39154072.1

AIRD BERDIS