

Office of the Mayor
City Hall, 2nd Floor
100 Queen St. W.
Toronto, ON
M5H 2N2

Ref: Review and Request to Meet to Amend the Garden Suites OPA 554 and Zoning By-law 101-2022

Dear Mayor John Tory and City Councillors,

As you are aware, many residents have written to Council and the Mayor in support of the Garden Suites appeals to the Ontario Land Tribunal, launched by seven community associations. Residents support Garden Suites in principle but have serious concerns with the deficiencies of the Garden Suites Official Plan Amendment 554 (OPA) and Zoning By-law 101-2022 (By-law) and the implications for neighbourhoods. All residents will eventually be impacted by the lack of transparency and clarity in the OPA and accompanying By-law.

Residents have generally used a form email to express the concerns with the Garden Suites OPA and By-law, and some residents received a reply from Councillors, including an (unsigned) City Staff response, called "**Information from City Staff in Response to Form Email**" (Attachment 1) and now referred to in the rest of this letter as "Staff Response". This Staff Response misinforms Council and city residents.

QUICK OVERVIEW

The Alliance of Resident and Ratepayer Associations (Appellants of the OPA 554 and Zoning By-law 101-2022) wish to clarify its position on the Staff Response. We take this action in the interest of setting the record straight for both our Communities and City Council and respond to the key misstatements in the Staff Response.

- To advise City Councillors that as legislators they can reconsider the OPA and By-law and their right is not limited by appeals or staff directives.
- To show the lack of **clarity** in OPA 554 that undermines the intent of Council to protect the environment and grow the tree canopy while achieving modest intensification.
- Seek amendments and clarifications (not repeals) to ensure OPA 554 and Zoning By-law 101-2022 carry out the intent of City Council. **(See Schedule II)**
- We are suggesting potential amendments to OPA 554 that we believe maintain the intent of OPA 554 and do not undermine the thrust of Council. We can provide similar comments on the By-law down the road.

We ask that Council direct staff to meet with the appellants to resolve their concerns rather than seeking to litigate the matter.

The Schedules I, IB and II are a critical part to the understanding of this letter and should be read in conjunction with it.

SUMMARY OF OUR REPLY TO STAFF RESPONSE

1. City Staff has advised that the City Council can not reconsider the OPA and By-law once they are before the OLT.

In 1972 Mayor Crombie and a reform council were elected to undo the acts of the prior Council. The Quebec-Gothic by-law had been appealed to the OMB (now OLT). The OMB had finished the hearing and had reserved its decision, before it was decided the Reform Council repealed the by-law. The developer went to court. The court ruled (see Cadillac Development v. Toronto (1972) 1 O.R. (2d) 20) that Council could act to repeal the by-law before the OMB made a decision fettering Council's power and that Council's decision was one of policy taken as elected representatives within its jurisdiction and the framework of the Planning Act - this ruling remains the law on point to this date.

More recently in 2011, when Rob Ford was newly elected Mayor, Council decided to repeal the then harmonized By-Law 1156-2010 while the matter was before the OMB (now OLT). Previously Council had directed staff to meet with the appellants to see if the matter could be resolved. In the end the by-law was repealed by Council prior to the OMB matter having run its course.

2. City Staff has advised that the tree protection measures recommended by staff are more comprehensive than those in effect for any other type of low-rise construction in Neighbourhoods

"More comprehensive" does not translate into actual protection. Based on the wording of the Private Tree By-law (Toronto Municipal Code Chapter 813, Trees, Article III) and from our experience and research the OPA will not protect private trees, of any size, from as-of-right Garden Suites.

The appellants retained a consulting Arborist and Landscape Architect to review the potential impacts and assess the protections in the OPA and By-law. This Consultant concluded that a motion directing the protection of trees can be reversed at any time since it didn't amend the Private Tree By-law.

The impacts are listed in the Arborist's statements **(Schedule I)**.

See also additional references from the City of Toronto 2018 Tree Canopy Report. **(Schedule IB)**

Of greater importance is the weak language used in reference to tree protection in the OPA **(See Schedule II)**.

- 670 b) iv uses the word "**should**" not "**will**". Should is an undefined term in the Official Plan. It should read "will" which is a defined term.
- The incorrect use of "**should**" is compounded in 670 d) 1v. where the word "**will**" is used. That would not be necessary if 670 b) was "**will**".
- 670 d) states that you only have to meet one of 4 items set out which means that the protection of trees can be bargained away.

3. Staff have indicated that Garden Suites are modest in scale.

The requirement that the Garden Suite be smaller than the main building is illusory.

Garden Suites size measurements are made from the interior walls when the main building measurements are made from the exterior walls. This artificially reduces the mass of the Garden Suite compared to the main building. See OPA 554 670 b) vii.

While on paper the mass appears smaller but in fact it could be as large as the primary building if not larger.

City Council has approved the OPA that will allow, not a modest second building, but permits a building of equal or larger building in terms of an equivalent to Gross Floor Area (GFA).

4. The Alliance believes the OPA and Zoning By-law are not sufficiently robust as drafted.

Words matter and there is an absolute need to refine the wording of the OPA and By-law. There are ambiguous descriptors and definitions surrounding the city's initiative.

All residents will eventually be impacted by the lack of transparency and detail being provided in the OPA and accompanying By-law.

We have highlighted certain drafting issues in OPA 554 and our concerns with lack of tree preservation.

We have included simple grammatical changes in our Legal attachment **(Schedule II)**

The Appellants are willing to meet to discuss solutions to the drafting issues of both the OPA and By-law.

We ask that City Council direct staff to meet with the Appellants to see what can be resolved and brought forward immediately and what may take more time to resolve.

Ultimately win-wins require stakeholder dialogue. Let's sit down to amend this OPA and Zoning By-law to the benefit of everyone.



Bedford-Wanless Ratepayers Association –
North York District



Don Mills Residents Inc. – North York District



Cliffcrest Scarborough Village SW Residents
Association – Scarborough District



Long Branch Neighbourhood Association –
Etobicoke and York District



Confederation of Resident and Ratepayer
Associations in Toronto (CORRA)



South Armour Heights Residents' Association –
North York District



Swansea Area Ratepayers Group – Toronto and
East York district

Schedules and Attachments:

Schedule I: Expert Opinion - Arborist and Landscape Architect

Schedule IB: Further facts and information on the state of Toronto's Tree Canopy contained in the City of Toronto 2018 Tree Canopy Study.

Schedule II: Legal Opinion

Attachment 1: Information from City Staff in Response to Form Email

SCHEDULE I

RESPONSE TO STAFF'S ASSERTION THAT THE TREE CANOPY IS WELL PROTECTED

The Alliance of Resident and Ratepayer Associations retained a consulting arborist and landscape architect who provided the following comments in regard to Amendment 554 and Zoning By-law Amendment 101-2022.

- Garden Suite will also make it more challenging for injured and nearby existing trees, by impacting their existing conditions, which will be compounded by reduction of soil volume to grow, access to ground water by incorporation of hard surfaces, i.e., the Suites, basements and paths, potential compaction of surrounding areas from access and land disturbance. Potential severance of tree roots by trench digging for services; changes of existing water level conditions from any grading, drainage, or channelling of stormwater. Note: how the preserved or injured tree's long-term viability responds to above is dependant on tree species, age, condition of tree, and type and severity of impact.
- My experience is that the private tree By-law allows for an as of right building the removal of trees 30 cm DBH and larger within the building envelope. City Council's direction to the General Manager of PFR to deny removal can be reversed at any time by Council without notice since it is not part of the Private Tree By-law. Note: Tree(s) under 30 cm DBH do not require a permit to injury or remove.
- It will be inevitable that there will be a loss of urban tree canopy and therefore its benefits and contribution to meet Council's commitment to reach zero emissions goal by 2040 and provide for energy conservation. Trees play a major part in the many ecosystems and therefore loss of trees will impact a variety of living organisms and the interaction between them and the physical environment of the urban setting.
- An Owner may not be able to plant the required large canopy listed tree if there is no room to do so. Trees planted also will likely take many decades to grow to the size of the tree it is replacing – if it is even ever able to achieve that size again due to the changed growing conditions. So, there will be a loss of tree canopy for the lifetime of today's adult residents, until those trees that are planted, grow.
- The Tree By-law reduces the number of trees removed. It does not stop tree removal.

(Judith S. Wright, Consulting Arborist and Landscape Architect - April 30, 2022)

SCHEDULE IB

Further facts and information on the state of Toronto's Tree Canopy contained in the City of Toronto 2018 Tree Canopy Study.

Toronto has an urgent need to protect and retain its mature, healthy trees. Only **11.8%** of the trees in Toronto are 30cm DBH or greater.

54.4% of trees are on Private Property in Toronto.

The total leaf area of Toronto's urban forest **decreased** by 11% from 2008 to 2018 which translates to a loss of benefits provided by the urban forest.

Annual Air Pollution Removal went from 1,905 tonnes in 2008-2009 to just 972 tonnes in 2018 **(-49% annual decrease)**.

Gross Annual Carbon Sequestration decreased from 46,700 tonnes in 2008-2009 to 35,170 tonnes in 2018 **(-25% annual decrease)**

Five of Toronto's eight watersheds do not support the minimum desired level of 30% tree cover that contributes to somewhat healthy aquatic ecosystems. A sixth, the Don watershed, has lost tree cover since 2008 and risks falling below the 30% tree cover threshold.

(Ref: City of Toronto 2018 Tree Canopy Study)

SCHEDULE II

PUBLIC COMMENTS WILL IN FACT CURE THE DRAFTING ISSUES HAD THEY BEEN CONSIDERED.

Both the OPA and By-law have material drafting issues that could have been easily rectified had City Planning taken into account public feedback from its limited public consultation. The comments set out below focus on the OPA amendment and changes that were suggested by the public to ensure clear language was adopted to reflect the intent of the Planning and Development Report to Council.

670 a) uses the words “located on a lot within an ancillary building that is not adjacent to a public laneway”. In this case, the words “that is” can refer to either the “building” or the “lot”.

A SIMPLE SOLUTION would be to put the word “building” before “lot” so that the extract reads “within an ancillary building located on a lot that is not adjacent to a public laneway”. This change makes it clear that it is not the building, but rather the subject lot that may not be adjacent to a public laneway.

670 b) iv. States that the “Garden Suite should not result in injury or removal of a healthy tree”. Use of the word “should” is meaningless or wishful thinking at best given the subject matter of tree protection, particularly given that the City passed several motions to protect trees. As drafted, this clause undermines all of them.

A SIMPLE SOLUTION is to change “should” with the prescriptive “will” if it is in fact the intention of the City to protect trees. Note that Toronto Official Plan Policy 5.6.15 makes it clear that the word “will” is prescriptive and has the meaning of “shall”.

670 b) vii states that “the Garden Suite is less than the *gross floor area* of the residential building on the lot”.

WHY IS A DIFFERENT STANDARD BEING USED – gross floor area (GFA) is measured from the *outside* of the exterior walls? By using 2 different standards, a Garden Suite’s interior floor area can be “smaller” than the main building, but can result in a Garden Suite with a GFA that exceeds that of (i.e. larger than) the main building.

A SIMPLE SOLUTION IS TO REMOVE INTERIOR FLOOR

Drafted by William Roberts BA, LLB