

Subject: Zoning By-law Amendment – 112 and 134 Nelson Street

File Number: ACS2024-PRE-PS-0005

Report to Planning and Housing Committee on 27 March 2024

and Council 3 April 2024

**Submitted on March 18, 2024 by Derrick Moodie, Director, Planning Services,
Planning, Real Estate and Economic Development**

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Ward: Rideau-Vanier (12)

Objet: Modification du Règlement de zonage – 112 et 134, rue Nelson

Dossier: ACS2024-PRE-PS-0005

Rapport au Comité de la planification et du logement

le 27 mars 2024

et au Conseil le 3 avril 2024

**Soumis le 18 mars 2024 par Derrick Moodie, Directeur, Services de la
planification, Direction générale de la planification, des biens immobiliers et du
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Quartier: Rideau-Vanier (12)

REPORT RECOMMENDATIONS

1. That Planning and Housing Committee recommend Council approve an amendment to Zoning By-law 2008-250 for 112 and 134 Nelson Street, as shown in Document 1, to permit a nine-storey residential use building and remove the Holding Symbol as detailed in Document 2.
2. That Planning and Housing Committee recommend Council direct Legal staff to enter into a revised Section 37 Agreement on the terms outlined in Document 4.
3. That Planning and Housing Committee direct that the implementing Zoning By-law not proceed to Council until such time as the agreement under Section 37 of the *Planning Act* is executed by the Owner.
4. That Planning and Housing Committee approve the Consultation Details Section of this report be included as part of the ‘brief explanation’ in the Summary of Written and Oral Public Submissions, to be prepared by the Office of the City Clerk and submitted to Council in the report titled, “Summary of Oral and Written Public Submissions for Items Subject to *the Planning Act* ‘Explanation Requirements’ at the City Council Meeting of April 3, 2024,” subject to submissions received between the publication of this report and the time of Council’s decision.

RECOMMANDATIONS DU RAPPORT

1. Que le Comité de la planification et du logement recommande au Conseil d’approuver une modification au Règlement de zonage 2008-250 visant les 112 et 134, rue Nelson, des biens-fonds illustrés dans le document 1, en vue de permettre la construction d’un immeuble résidentiel de neuf étages et de supprimer le symbole d’aménagement différé de la désignation R5B[2664] S421-h, comme l’expose en détail le document 2.
2. Que le Comité de la planification et du logement recommande au Conseil d’enjoindre au personnel des Services juridiques de conclure une entente révisée aux termes de l’article 37, selon les modalités décrites dans le document 4.
3. Que le Comité de la planification et du logement demande que le règlement de mise en œuvre ne soit pas soumis à l’examen du Conseil avant l’enregistrement de l’entente prévue aux termes de l’article 37 de la *Loi sur l’aménagement du territoire*.

4. **Que le Comité de la planification et du logement donne son approbation afin que la section du présent rapport consacrée aux détails de la consultation soit intégrée en tant que « brève explication » au résumé des observations écrites et orales du public, qui sera rédigé par le Bureau du greffier municipal et soumis au Conseil dans le rapport intitulé « Résumé des observations orales et écrites du public sur les questions assujetties aux “exigences d’explication” aux termes de la *Loi sur l’aménagement du territoire*, à la réunion du Conseil municipal prévue le 7 mars 2024 », sous réserve des observations reçues entre le moment de la publication du présent rapport et la date à laquelle le Conseil rendra sa décision.**

BACKGROUND

Learn more about [link to Development Application process - Zoning Amendment](#)

For all the supporting documents related to this application visit the [link to Development Application Search Tool](#).

Site location

112 and 134 Nelson Street

Owner

Smart Living GP Inc.

Applicant

Fotenn Planning + Design c/o Thomas Freeman

Architect

Woodman Architect & Associates Ltd.

Description of site and surroundings

The subject site is an irregular L-shaped property of 3,642 square metres in size, with 28 metres of frontage on Nelson Street. It is located on the west side of Nelson Street between York and Rideau Streets in the Lowertown neighbourhood. It is surrounded by a mix of low- and mid-rise residential, commercial and institutional uses. Immediately adjacent to the site, to the north, is a mid-rise residential building, and to the south is a surface parking lot. Opposite it, on the east side of Nelson Street, are townhouses and the Rideau Street Loblaws. Currently present on the site are two low-rise commercial buildings and surface parking.

Brief history of application

A Zoning By-law Amendment to facilitate the redevelopment of 112 Nelson Street was initially approved by Council on July 11, 2018 ([ACS2018-PIE-PS-0086](#)), subject to the execution of an agreement under the former provisions of Section 37 of the *Planning Act*. However, the implementing by-law never proceeded to Council due to complications with the property ownership and lack of signing authority to execute the Section 37 agreement.

Therefore, on October 14, 2020, via a City-initiated Omnibus report, Council adopted By-law 2020-299 ([ACS2020-PIE-EDP-0029](#)) that carried forward the intent of the 2018 Council approval, but added a Holding Symbol to 112 Nelson Street, to maintain the requirement for the registration of a Section 37 Agreement. Such an agreement has not since been executed or registered, and ownership of the property has since been transferred to the present owner.

Subsequently, a revised proposal was received, and a new Zoning By-law Amendment and Site Plan Control application submitted in mid-2021, which did not proceed to approval. In February 2023 a third Zoning By-law Amendment application (the present application under consideration) was submitted that includes the neighbouring property, 134 Nelson Street, which has been acquired by the applicant. The outstanding Site Plan Control application (D07-12-21-0115) has been reactivated and revised in line with the current proposal and is being reviewed by staff concurrently. The new proposal, as per this report, includes a revision of the approved Section 37 provisions, which is still applicable to this proposal although it has since been amended in the *Planning Act*.

Summary of proposed development

The applicant is proposing to develop a nine-storey residential use building with 421 dwelling units, including bachelor, one-bedroom, two-bedroom and three-bedroom units. 18 resident parking spaces and 17 visitor parking spaces are proposed in an underground parking garage. 482 bicycle parking spaces are also proposed.

Summary of requested Zoning By-law amendment

The site is currently zoned R5B[2664] S421-h – Residential Fifth Density Zone on 112 Nelson Street and IG1 H(11) – General Industrial Zone on 134 Nelson Street. The purpose of the proposed Zoning By-law Amendment is to consolidate the site's zoning provisions and to permit a revised rear yard setback from between three and 6.3 metres to between three and 7.6 metres and a reduced minimum resident vehicular parking space rate from 0.4 spaces per dwelling unit after the first 12 units to 18 spaces. A commercial suffix ("-c") is proposed to be added to allow for small-scale commercial

uses in the future. A revision to the approved Section 37 provisions, as noted under Part 19 of the Zoning By-law, is also required in accordance with a revised agreement, as detailed in Document 4.

DISCUSSION

Public consultation

A public consultation was held virtually on May 4, 2023 via Microsoft Teams. The meeting was attended by approximately ten residents, the applicant team, the Ward Councillor and City staff. During the meeting, residents expressed concerns about:

- The size of units,
- Safety and security,
- The lack of motor vehicle parking,
- Privacy between neighbouring buildings,
- Shadow impacts,
- Building height, and
- Lack of green space.

These concerns were considered in subsequent rounds of application review. A Crime Prevention Through Environmental Design (CPTED) audit, for which a report was prepared, was conducted on July 6, 2023, and was attended by the Councillor, the applicant team, City staff, the community association and interested residents. The recommendations of that report have informed the present design of the proposed development.

For this proposal's consultation details, see Document 5 of this report.

Official Plan designation(s)

Under the Official Plan (2022), the site is located in the Downtown Core Transect and is designated Neighbourhood (subject to the Evolving Neighbourhood Overlay).

Development within the Downtown Core is intended to maintain and enhance an urban pattern of built form, site design and mix of uses and prioritize active transportation and public transit. Neighbourhoods within the Downtown Core are intended to accommodate a wide variety of housing types in a generally low-rise format. Building heights may be taller, however, in areas already characterized by taller buildings. Sites within the Evolving Overlay are intended to accommodate opportunities for intensification by providing a gradual change in character based on proximity to Hubs and Corridors, allow new building forms and typologies and achieve an urban built form.

Planning rationale

The proposal is consistent with the policies of the Official Plan. The proposed development will enhance the urban character of the Downtown Core Transect and contribute towards the development of 15-minute neighbourhoods through additional residential density by way of infill and by prioritizing active transportation. The proposed building incorporates sustainable design and crime prevention through environmental design (CPTED) features. A minimum of ten per cent of residential units will be three-bedroom units or larger in excess of the City's targets for large-household dwellings.

Although the proposed building height of nine storeys is beyond that generally permitted in the Neighbourhood designation in the Downtown Core, the proposal is supportable in accordance with Sections 6.3.1(2) and (3)(a) of the Official Plan as the site is located in an area already characterized by taller buildings (along Nelson Street) and zoning in the immediate area within the neighbourhood. Furthermore, the proposed Zoning By-law Amendment would have the effect of extending the existing height permissions per zoning of 112 Nelson Street across the entirety of the site to include 134 Nelson Street to achieve a more desirable built form within its context than would otherwise be the case for 112 Nelson Street alone. The addition of the commercial suffix ("-c") will allow for the possibility of small-scale commercial uses to be introduced in the future to support the local area as a 15-minute community with a mix of uses, and in recognition of the previous commercial presence on these properties.

The proposed reduction in motor vehicle parking is supportable given the location of the site within 200m of both Rideau Street and King Edward Avenue, which are frequented by transit, and within 800m of the Rideau O-Train Station. Transit Demand Management (TDM) measures to offset the reduction in motor vehicle parking include promoting

active transportation, the provision of bicycle parking space at a rate of 1.14 spaces per unit and the exploration of dedicated car share spaces within the building.

Section 37 Agreement

At the time of approval of the original Zoning By-law Amendment application in 2018, Section 37 of the *Planning Act* permitted the City to authorize increases in the height and density of a development above the levels otherwise permitted by the Zoning By-law in return for the provision of community benefits. The following Section 37 benefits were approved by Council and included in Part 19 of the Zoning By-law:

- An indexed contribution of \$300,000.00 towards a Ward 12 specific account for local area public use, traffic calming and/or park improvements, as determined by the Ward Councillor.
- At least ten percent, of the total number of dwelling units, to be constructed in the building shall be provided as three-bedroom units in compliance with the provisions of the Ontario Building Code.
- As part of the Site Plan Approval process, the Owner(s) shall provide a semi-public plaza (privately owned public space) at the front of the site between the ground floor wall and public sidewalk along Nelson Street, and the plaza space will be subject to a public surface easement, as a condition of Site Plan.
- The Owner shall enter into a separate agreement with the City of Ottawa (the “Affordable Housing Agreement”) that will require ten per cent of the dwelling units to be Affordable. A housing provider determined by the City shall administer these units. “Affordable” shall be defined as dwelling units with starting rents at occupancy not exceeding 125 per cent of the City Wide Average Market Rent (AMR) as determined by the Canada Mortgage Housing Corporation (CMHC) for a given year, subject to the provisions under the *Residential Tenancies Act*, 2006. The owner acknowledges and agrees that the Affordable Housing Agreement requires a period of affordability that shall not be less than ten years and certain eligibility/selection requirements, determined by the City, for occupancy of said Affordable units. For further clarity, dwelling units required elsewhere in the Section 37 agreement are permitted to count towards required Affordable Units.

Section 37 was repealed and replaced in September 2022 with a Community Benefits Charge system. Community Benefits Charge By-law No. 2022-307 was enacted and passed by Council on August 31, 2022. It is applicable to all eligible applications

submitted after August 31, 2022. The present application was submitted on November 15, 2022 and is thus subject to the Community Benefits Charge By-law.

Subsection 37.1(3) of the *Planning Act* provides that some of the former provisions of Section 37 as they read before the date of enactment of the Community Benefits Charge system continue to apply to lands identified in the Zoning By-law as being required to provide facilities, services or matters under the former provisions of Section 37. As the Section 37 Agreement required under Part 19 of the Zoning By-law for 112 Nelson Street has not been executed or registered to date, it remains a requirement for redevelopment of the property.

Subsection 19(2) of Part 19 of the Zoning By-law provides that the Owner and the City may modify or amend the required Section 37 Agreement, from time to time upon the consent of the City and the Owner, without further amendment to those provisions of the Zoning By-law which identify the facilities, services and matters to be secured. As the proposal has substantially changed since the approval of the original Zoning By-law Amendment and new community priorities have been identified, staff and the applicant have negotiated a revision to the required community benefits under Part 19 which are proposed to replace those previously approved. Approval and direction from Council is required in order to direct staff to enter into a revised Section 37 Agreement (see Document 4).

A new Community Benefits Charge ("CBC") by-law, pursuant to the amended Section 37 of the *Planning Act*, was adopted by Council on August 31, 2022. The *Planning Act* section 37.1 (3) exempts from CBC obligations those developments for which an existing section 37 zoning by-law, requiring a Section 37 agreement under the former regime, had been enacted by Council, as is the case here. As such, and notwithstanding the direction to amend the benefits provided under the Section 37 agreement, a CBC cannot also be levied against the proposed development.

Provincial Policy Statement

Staff have reviewed this proposal and have determined that it is consistent with the 2020 Provincial Policy Statement.

RURAL IMPLICATIONS

There are no rural implications associated with the recommendations of this report.

COMMENTS BY THE WARD COUNCILLOR(S)

Councillor Plante is aware of the application associated with this report and concurs with the proposed amendment to the Section 37 provisions for this property.

LEGAL IMPLICATIONS

There are no legal impediments to implementing the report recommendations.

Legal Services has already commenced work on drafting the Section 37 agreement, which will explicitly state that it is subject to Council approval. If the draft agreement is ready in time for the April 3, 2024 Council date, Legal Services will have the Owner sign and hold the signed agreement in escrow, so that if Council approves the recommendations of this report the implementing zoning by-law amendment may be listed on the same Council agenda for enactment. Execution of the agreement on behalf of the City and registration would occur thereafter. Should council refuse or modify the recommendations of the Report, the by-law would be removed from the April 3, 2024 agenda.

In the event that the draft agreement is not ready in time for the April 3, 2024 meeting of Council, and Council approves the recommendations of this report, the implementing by-law would be listed on the next-available Council agenda following receipt of the finalized and executed agreement from the Owner.

While the original requirement of the zoning exception was that the holding zone would not be lifted until the agreement was “registered”, and this report recommends lifting the hold upon “execution by the owner”, Legal Services supports the recommendation wording. The agreement will be enforceable as against the Owner upon their execution and Council’s approval of the report recommendations. Registration will ensure that the agreement is enforceable against future owners, but no immediate sale of the property is contemplated at this time.

Community Benefits Charges will not apply to this property pursuant to the *Planning Act* section 37.1 (3).

RISK MANAGEMENT IMPLICATIONS

There are no risk management implications associated with the recommendations of this report.

ASSET MANAGEMENT IMPLICATIONS

There are no servicing constraints identified for the proposed zoning amendment at this time. Servicing capacity requirements to be confirmed at time of site plan.

FINANCIAL IMPLICATIONS

Due to complications the Section 37 agreement was not executed, and the proposal has substantially changed since the approval of the original Zoning By-law Amendment

(ACS2018-PIE-PS-0086). New community priorities have been identified and are being revised, detailed in Document 4. The total value of the benefits to be secured being \$535,000 to the City. The specific benefits to be secured and provided are: a. An indexed contribution of \$200,000 toward a Ward 12 Specific account for such projects as area Crime Prevention Through Environmental Design improvements to public space, increases to the urban tree canopy and community safety initiatives. b. An indexed contribution of \$60,000 toward a Ward 12 Specific account for security upgrades to a daycare facility or, in the event that such project is not possible or feasible, any of the items stipulated in a. above c. An indexed contribution of \$275,000 toward a Ward 12 Specific account for local area affordable housing initiatives. d. The public benefits to be provided without a monetary contribution are: i. A minimum of ten per cent of the dwelling units to the three-bedroom units. Although Section 37 was repealed and replaced in September 2022 with a Community Benefits Charge system, the Section 37 Agreement required under Part 19 of the Zoning By-law for 112 Nelson Street has not been executed or registered to date, it remains a requirement for redevelopment of the property. These community benefits will be secured prior to the issuance of the first building permit and details on final Section 37 contributions will be contained within the Section 37 agreement and will be indexed and calculated from October 14, 2020, the date of enactment of by-law 2020-299.

ACCESSIBILITY IMPACTS

There are no accessibility impacts associated with the recommendations of this report.

ENVIRONMENTAL IMPLICATIONS

There are no environmental implications associated with the recommendations of this report.

TERM OF COUNCIL PRIORITIES

This project addresses the following Term of Council Priorities:

- A city that has affordable housing and is more livable for all.

APPLICATION PROCESS TIMELINE STATUS

This application (Development Application Number: D02-02-23-0011) was not processed by the "On Time Decision Date" established for the processing of Zoning By-law amendments due to the complexity of planning issues.

SUPPORTING DOCUMENTATION

Document 1 Zoning Key Map

Document 2 Details of Recommended Zoning

Document 3 Height Schedule

Document 4 Revised Section 37 Provisions

Document 5 Consultation Details

CONCLUSION

Staff support the proposed Zoning By-law Amendment to facilitate the redevelopment of the properties and recommend approval of the application. The proposal is consistent with the City's Official Plan. The addition of 134 Nelson Street to the project and the extension of the zoning height and setback permissions across the two parcels will result in a more appropriate site design and layout for the project. The proposed amendments to the Section 37 provisions for the property are appropriate for the proposed development. The proposed Zoning By-law Amendment represents good land use planning.

DISPOSITION

Office of the City Clerk, Council and Committee Services to notify the owner; applicant; Krista O'Brien, Program Manager, Tax Billing & Control, Finance and Corporate Services Department (Mail Code: 26-76) of City Council's decision.

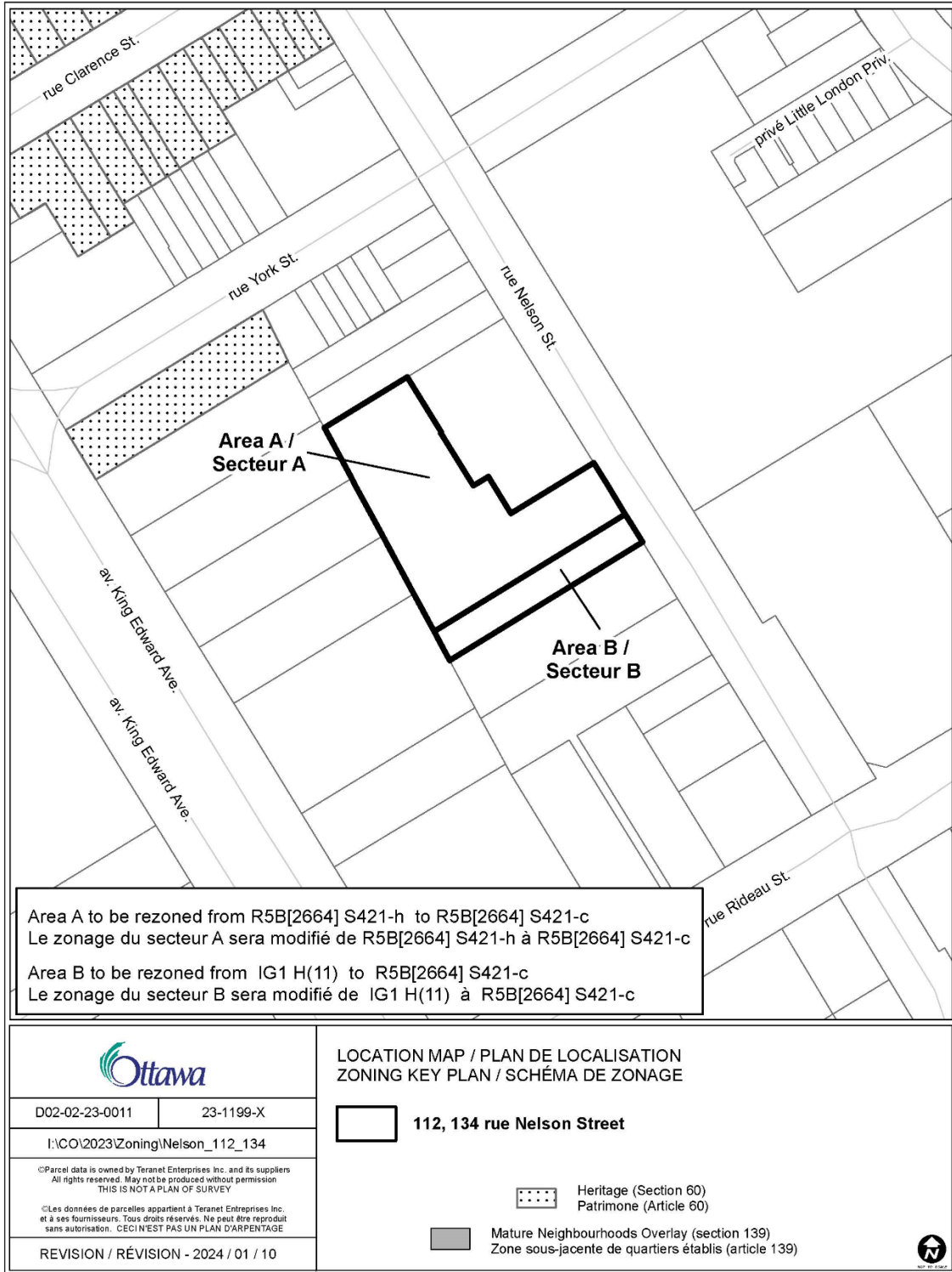
Zoning and Interpretations Unit, Policy Planning Branch, Economic Development and Long Range Planning Services to prepare the implementing by-law and forward to Legal Services.

Legal Services, City Manager's Office to forward the implementing by-law to City Council.

Planning Operations, Planning Services to undertake the statutory notification.

Document 1 – Zoning Key Map

For an interactive Zoning map of Ottawa visit geoOttawa



Area A to be rezoned from R5B[2664] S421-h to R5B[2664] S421-c
 Le zonage du secteur A sera modifié de R5B[2664] S421-h à R5B[2664] S421-c

Area B to be rezoned from IG1 H(11) to R5B[2664] S421-c
 Le zonage du secteur B sera modifié de IG1 H(11) à R5B[2664] S421-c

Document 2 – Details of Recommended Zoning

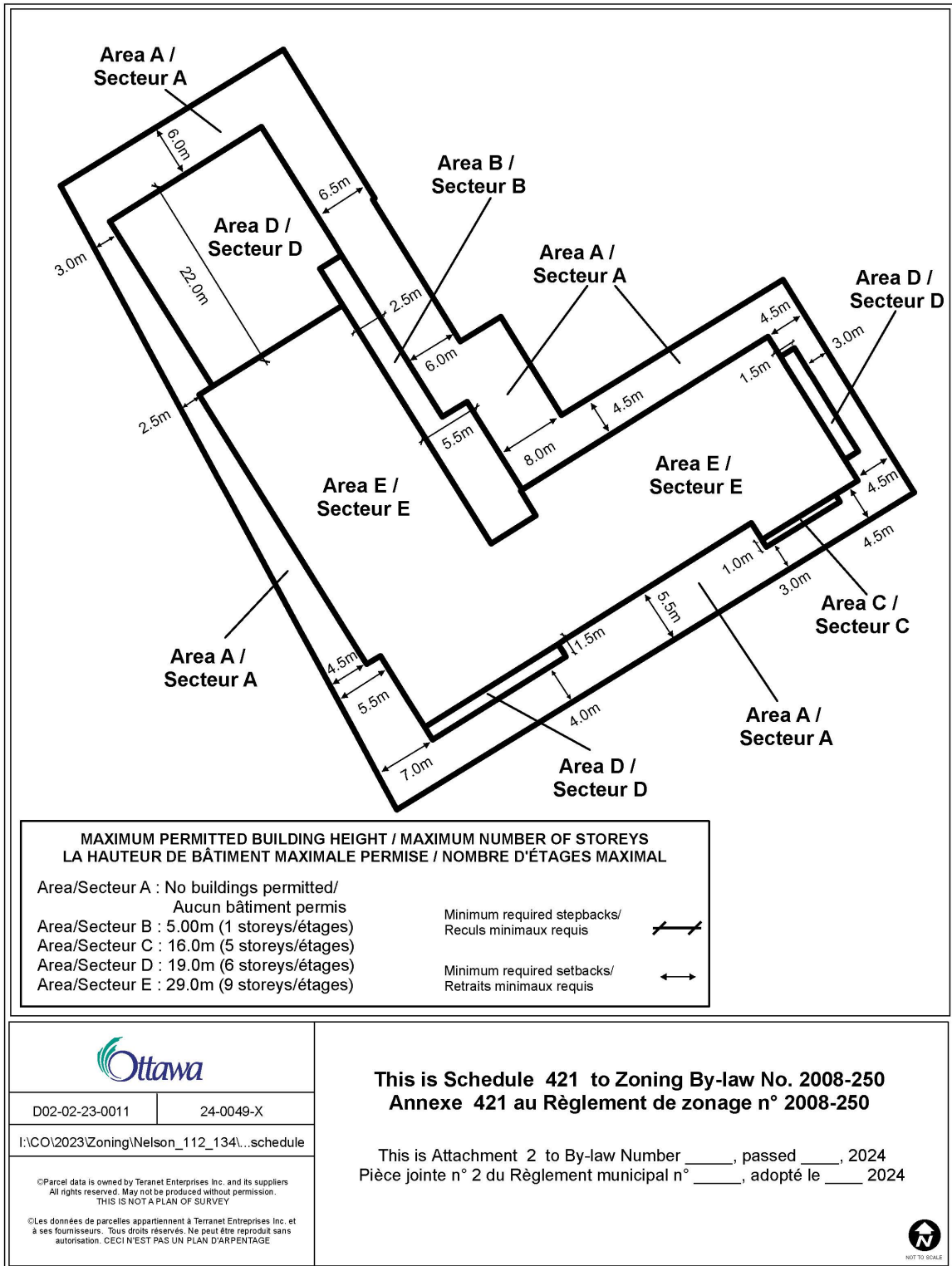
The proposed change to the City of Ottawa Zoning By-law No. 2008-250 for 112 and 134 Nelson Street:

- 1) Rezone the lands as shown in Document 1.
- 2) Amend Exception 2664 of Section 239 – Urban Exceptions of By-law 2008-250 by replacing the text of Exception 2664 with provisions similar in effect to the following:
 - a) In Column I – Exception Number, add the text, “2664”.
 - b) In Column II – Applicable Zones, add the text “R5B[2664] S421-c”.
 - c) In Column V – Provisions, remove the text:
 - “Despite Table 101, row R12, the minimum parking space rate is 0.4 per dwelling unit.”
 - “Despite Section 101, a minimum of 6 spaces are required for visitor parking.”
 - “The holding symbol may only be removed following the registration of a Section 37 agreement to the satisfaction of the General Manager of Planning, Infrastructure and Economic Development Department.”
 - d) In Column V – Provisions, add the text:
 - “The maximum building heights and minimum yard setbacks are as per Schedule 421.”
 - “Despite the maximum building heights and minimum yard setbacks per Schedule 421, projections are permitted into required yards and above maximum building heights in accordance with Sections 64 and 65 of the Zoning By-law.”
 - “Despite Table 101, row R12, the minimum parking space rate is 0.04 per dwelling unit.”
 - “Despite Table 102, the visitor minimum parking space rate is 0.04 per dwelling unit.”

- “Up to five required residential or visitor parking spaces, or a combination thereof, may be used for car-sharing spaces.”
- “The minimum required bicycle parking rate is 1 space per dwelling unit.”

2) Replace Schedule 421 with Document 3 in Part 17 – Schedules.

Document 3 – Height Schedule



Document 4 – Revised Section 37 Provisions

1. The City shall require that the owner of the lands at 112 and 134 Nelson Street enter into an agreement pursuant to Section 37 of the *Planning Act*, to be registered on title, to the satisfaction of the City Solicitor and General Manager, Planning, Infrastructure and Economic Development, to secure the public benefits noted below, and which will comprise a combination of public benefits including monies that would be paid to the City to be used for defined capital projects with the total value of the benefits to be secured being \$535,000 to the City. The specific benefits to be secured and provided are:
 - a. An indexed contribution of \$200,000 toward a Ward 12 Specific account for such projects as area CPTED improvements to public space, increases to the urban tree canopy and community safety initiatives.
 - b. An indexed contribution of \$60,000 toward a Ward 12 Specific account for security upgrades to a daycare facility or, in the event that such project is not possible or feasible, any of the items stipulated in a. above.
 - c. An indexed contribution of \$275,000 toward a Ward 12 Specific account for local area affordable housing initiatives.
 - d. The public benefits to provided without a monetary contribution are:
 - i. A minimum of 10 per cent of the dwelling units to the three-bedroom units.
2. For clarity, amounts in this agreement will be indexed in accordance with the Statistics Canada Construction Price Index for Ottawa that applies to the type of community benefit being secured, calculated from October 14, 2020, the date of enactment of by-law 2020-299.
3. Notwithstanding the foregoing, the Owner and the City may modify or amend said agreement(s), from time to time upon the consent of the City and the Owner, without further amendment to those provisions of the Zoning By-law which identify the facilities, services and matters to be secured.
4. The payment of Section 37 funds shall be provided prior to the issuance of the first building permit for the proposed development.

Document 5 – Consultation Details

Notification and Consultation Process

Notification and public consultation was undertaken in accordance with the Public Notification and Public Consultation Policy approved by City Council for Zoning By-law amendments. One public meeting was also held in the community on May 4, 2023 via Microsoft Teams.

Public Comments and Responses

Comment:

- Concerns about community safety and security.

Response:

- The applicant elected to engage the services of the Ottawa Police Service and conduct a Crime Prevention Through Environmental Design (CPTED) audit, for which a report was prepared. A site visit was conducted on July 6, 2023, and was attended by the Councillor, the applicant team, City staff, the community association and interested residents.

Comment:

- Concerns with lack of parking and street congestion.

Response:

- The proposed zoning amendment maintains the same parking rate prescribed in Urban Exception 2664. In addition, additional visitor parking spaces are provided and up to five spaces are proposed for car sharing purposes. The site is located just over 600m from the Rideau O-Train Station and the proposal prioritizes active transportation over motor vehicle use. The proposed number of parking spaces are supportable in this context.

Comment:

- Concerns with lack of green space.

Response:

- Additional tree-planting is proposed but is balanced with the need to maintain clear sight lines for Crime Prevention Through Environmental Design purposes.

Comment:

- Concerns with over-densification.

Response:

- The site design is suitable for accommodating the residential density proposed. The proposal is compatible with the surrounding neighbourhood and will not produce adverse impacts on adjacent properties.

Comment:

- Concerns with lack of units suitable for larger households.

Response:

- The applicant is proposing a minimum of ten per cent of units be three plus bedroom units, which is higher than the five per cent target for mid-rise or taller buildings on lots with 15 metres or wider frontage designated Neighbourhood within the Downtown Core Transect.

Comment:

- Concerns with lack of affordable units.

Response:

- The applicant is exploring the possibility of introducing affordable units to the development.

Comment:

- Concerns with loss of existing commercial uses.

Response

- Nelson Street is not designated as a Corridor or identified for a mix of uses; although within the Neighbourhood designation commercial uses may be accommodated. The applicant is proposing to add a commercial suffix (-c) to the zoning amendment to allow for future small-scale commercial uses.

Comment:

- Concerns with community safety.

Response:

- The applicant elected to engage the services of the Ottawa Police Service and conduct a Crime Prevention Through Environmental Design (CPTED) audit, for which a report was prepared. A site visit was conducted on July 6, 2023, and was attended by the Councillor, the applicant team, City staff, the community association and interested residents.

Comment:

- Concerns with impact of construction activities on existing buildings.

Response:

- All City by-laws related to noise and construction activities will be applicable to the project.