



MEMO / NOTE DE SERVICE

To / Destinataire	Mayor and Members of Council	File/N° de fichier: L03 01 17 HEND 203
From / Expéditeur	City Clerk and Solicitor Director, Economic Development and Long Range Planning Senior Legal Counsel, Planning, Development and Real Estate	
Subject / Objet	INTERIM CONTROL BY-LAW 203-205 HENDERSON	Date: 20 November 2017

Background

On July 12th, 2017, Council passed Interim Control By-law 2017-245 respecting Sandy Hill, Heron Park and portions of Old Ottawa East Old, Ottawa South, Centretown and Overbrook. Two appeals were received to this by-law, one of which was in respect of 203-205 Henderson Avenue in Sandy Hill.

The solicitor for the owner of 203-205 Henderson sought to bring a motion to the Ontario Municipal Board to require that documentation be placed before Planning Committee such that Committee and Council could reconsider its opinion based on information not previously before it. As a settlement to the potential motion, it was agreed that the submissions on behalf of the owner would be submitted as a Communication to Council, together with a memo from staff. The submissions from the solicitor for the owner accompany this memo.

Procedural Matters

Having reviewed this memo and the attached submission from the solicitor for the Owner, there will be three options open to Council:

1. The Communication could be received and no further action taken.
2. A Notice of Motion to repeal the interim control by-law as it applies to this property for consideration at the Council Meeting of December 13, 2017 could be introduced on November 22, 2017 at the time of introduction of Notices of Motion.
3. Waiver of the Rules to consider the motion referred to in 2) above at the November 22, 2017 Meeting of Council could be sought at the time in the agenda for Motions Requiring Suspension of the Rules.

Discussion

As stated above, Council passed the Interim Control By-Law on July 12th, 2017 that placed restrictions on development of lands within certain geographic areas of the City, including in Sandy Hill. These restrictions included the following criteria:

- No dwelling unit in any building other than a detached dwelling may contain more than 4 bedrooms and no such unit may exceed 120 m² in floor area;
- No detached dwelling may contain more than six bedrooms; and
- No multi unit dwelling with six dwelling units or fewer may exceed a total floor area of 500 m² measured from the inside of the exterior walls, including any basement, motor vehicle storage area or any other building area.

203/205 Henderson is proposed to operate as a semi-detached building split vertically and is therefore considered a multi-unit building, with each dwelling unit comprised of a principal dwelling unit occupying part of the ground floor and all of the second and third floor, and a secondary dwelling unit occupying part of the ground floor and all of the basement.

The development is in contravention of criteria (a) and (c) of the Interim Control By-Law in the following manner:

- The principal dwelling unit proposed for 203 Henderson will include 7 bedrooms, and exceeds 120 m² in floor area;
- The principal dwelling unit proposed for 205 Henderson will include 8 bedrooms, and exceeds 120 m² in floor area; and
- The total floor area of 203/205 Henderson, including both principal dwelling units and all included secondary dwelling units, exceeds 500 m² in total floor area.

Policy Framework

The zoning for the location is R4H with urban exception 480. The R4H subzone allows for semi-detached units to occur, and for low-rise apartment development to a maximum of 4 units in a building. Secondary dwelling units are permitted to occur in semi-detached dwelling units. Rooming units are a prohibited use, though exception 480 permits rooming houses provided that these may occupy up to 50% of the gross floor area of a building.

The *Official Plan* is the primary council-approved document that provides direction on how the City will develop and manage intensification. The *Plan* considers how the City will plan for future development of residential housing, and how it will accommodate intensification. When forecasting future growth and housing needs, the planning department uses a methodology that considers an anticipated household population per housing type, based upon and regularly updated in keeping with Census results as provided by Statistics Canada. These forecasts are in turn used by other planning documents and departments to consider service and funding needs, including the Infrastructure Master Plan, Development Charges By-Law, and other strategic planning documents.

The *Plan* notes that established communities such as Sandy Hill will remain stable without necessarily remaining static, permitting intensification to occur where it is in scale and character with the surroundings. This implies that it is Council's intent that the Sandy Hill established community evolve from a detached housing pattern towards more intensive low-rise ground-oriented housing patterns, but to maintain the residential character as this evolution occurs.

There is therefore the intent that the R4H zone is intended to provide housing for up to 4 households, living independently in up to 4 dwelling units. It is not unreasonable to consider that the planning intent is to provide housing for approximately 10-15 individuals on a lot at a density

in the range of 350 persons per hectare. The overlying planning policies, waste management policies, development charge and service financing mechanisms, and community service provision is based upon an expectation of that density.

The R4 Planning Issue

The Planning Department has noted that the Sandy Hill area, and other geographic areas of the City, have seen developments of this nature occurring in low-rise apartment, semi-detached and triplex housing typologies that have high numbers of bedrooms per dwelling unit far in excess of what had been considered, and do not appear to be operating as single housekeeping units.

Rather, these buildings are operating in a manner more in keeping with the definition of “rooming units” whereby residents are renting rooms that “... constitute a separate, independent residential occupancy, but which is not self-contained and which requires access to other parts of the principal dwelling or building intended to serve the residents, including shower or bathtub facilities, kitchens, eating areas or bathrooms and appear to provide independent cohabitation opportunities. (Zoning By-Law 2008-250)” The overall impact is to create occupancies that come close to the definition of a “rooming house” in a subzone where this use is restricted, but in a manner that is not subject to regulation as a Rooming House by municipal licensing.

Further, the densities associated with these developments are in excess of the planning intent for the area and create garbage, servicing, and community impacts that create adverse impacts on the surrounding neighbourhood.

In June 2017, Council considered this issue with respect to waste management practises in Sandy Hill arising from these developments. The report noted “... contributing to this growing issue is the conversion of buildings that were traditionally single family homes, to over sized dwelling units, commonly known as bunkhouses, which has resulted in an increase in the accumulation of waste and challenges related to waste storage, a phenomenon that would not be occurring if those bunkhouses had been built as true apartments with proper considerations for the storage of the amount of waste accumulated, including the location of waste receptacles, and the size and quality of bins.”

The Planning Department has concerns that the densities and community impacts associated with this style of development is out of scale and character with established communities, do not provide proper waste management commensurate to the density, are creating built typologies that are not adaptable for future household patterns, and create living arrangements that are not appropriately regulated and may pose public health concerns.

The Planning Department has recognized and clearly indicated to industry that development of this nature, where building envelopes are maximized and high numbers of bedrooms are provided, do not meet the intent of the R4 zone and do not meet the intent of the Zoning By-Law. Nor does development of this nature meet what the Official Plan intended to occur in established communities. As such, the Planning Department has been engaged in a planning study to review the Zoning By-Law and is in consultation with other municipal departments including municipal licensing and the Committee of Adjustment, to address this issue.

Specific Concerns with the Application

Floor plans submitted in support of the Site Plan Control and Committee of Adjustment applications for 203/205 Henderson indicate a layout that includes 22 bedrooms unevenly dispersed across 4 dwelling units. At minimum this considers a potential population of 22 persons per lot, and a density twice that expected in this area. It is noted that the Ontario Building Code permits 2 occupants per bedroom.

Site Plan Control Approval, in accordance with the Site Plan By-law for the Sandy Hill neighbourhood, was granted by the Planning Department in July 2017. Minor Variance approval to address deficient lot width and lot area was granted by the Committee of Adjustment in February 2017. These applications were granted based on the zoning regulations in effect at the time of approval with no specified limits pertaining to the size of units or number of bedrooms.

Aside from deficiencies to the lot width and area of one of the existing semi-detached lots, the proposed expansion was considered to be in technical compliance with the zoning requirements (including for setbacks and height) that were in effect. In the planning report sent to the Committee of Adjustment, Planning Services staff expressed concerns with the Minor Variances requested on account of the bedroom total proposed.

In approving the Minor Variances, the Committee of Adjustment decision stated: “The role of this Committee....is limited to an evaluation of the impact of this form of development, which is otherwise permitted by the Zoning By-law and may be constructed on the abutting lot as of right, on a lot which is deficient in lot area by less than twelve square metres and deficient in lot width by less than half a metre”. The decision also states that “Issues relating to the appropriateness of the size, scale and density of development that is permitted in a particular neighbourhood, and questions of how density within secondary dwelling units should be regulated, are matters for Council to consider in the development and approval of the City’s Zoning By-law”.

The Interim Control By-Law was thereby passed with the explicit intent of restricting the size of dwelling units, as well as the number of bedrooms within a dwelling unit. The building proposed for 203/205 Henderson far exceeds these limits, in both floor area and bedroom count and, regardless of previous approvals, represents a form of development that this By-law was explicitly and specifically intended to prevent.

The Interim Control By-Law, as well as the ongoing R4 review, is intended to address the issue of “reasonable density within a dwelling unit”, whether that unit is principal or secondary, and to regulate and provide clarity on developments such as 203/205 Henderson that are not meeting the intent of Council policy.

Summary Planning Opinion

In the opinion of Planning Services, the development at 203/205 Henderson does not represent good planning, and does not meet the intent of the Zoning By-Law or Official Plan. An application for relief from the Interim Control By-Law is therefore not supported.

Comparison with 70 Russell

The submission from the solicitor for the owner of 203-205 Henderson seeks to draw a comparison between that property and 70 Russell Avenue, the latter of which was exempted from the Interim Control By-law. The draft site plan approval report for 70 Russell was finalized on April 11, 2017 while the draft site plan approval report for 203-205 Henderson was finalized on June 21, 2017. Thus the Russell file was further along in the process than that of the Henderson property.

M. Rick O'Connor, CMO
City Clerk and Solicitor

John Smit
Director, Economic Development
and Long Range Planning

Tim Marc
Solicitor

cc: City Manager
General Manager, Planning, Infrastructure and Economic Development