

Summary of Written and Oral Submissions

Zoning By-law Amendment – 300, 302, 304 and 306 Elmgrove Avenue

In addition to those outlined in the Consultation Details section of the report, the following outlines the written and oral submissions received between the publication of the report and prior to City Council's consideration:

Number of delegations/submissions

Number of delegations at Committee: 2

Number of written submissions received by Planning Committee between November 18 (the date the report was published to the City's website with the agenda) and November 28, 2019 (committee meeting date): 4

Primary concerns, by individual

Charles Ficner (oral and written submission)

- raised concerns about safety due to the reduced side yard setback and the long, narrow driveways onto which three dwellings in each of the units exit
 - ❖ suggested significant potential for accidents between pedestrians exiting their dwellings and vehicles using those driveways
 - ❖ spoke to the legal responsibilities of municipalities, including building inspectors and the Chief Building Official, to ensure development complies with all requirements under the *Building Code Act*, municipal by-laws, and all other applicable law, and to ensure safety as the building is being planned and constructed
 - ❖ spoke to the requirement to ensure that development does not occur in a way that deviates from approved plans
 - ❖ suggested the report be deferred until the City has requested, considered and evaluated an impartial written report that presents the findings of thorough research into the legal risks to the City
 - ❖ noted that the driveway configuration of the property at 300-306 Elmgrove is becoming increasingly common in other developments that have been the subject of both minor variance applications and zoning amendment applications, and that even if no land use approval is required, approval of a building permit for developments, with driveways that may be non-conforming, raises the risk of liability for the

City; consequently, the potential legal exposure for the City in relation to this particular issue extends beyond this specific bylaw amendment application and the risk increases with each land use application and each building permit that is either approved or not opposed by the City

Aiman Zahran (written submission)

- opposed the requested fourth units and suggested the developers of this project are deliberately circumventing proper legal procedures by building "low rise" apartments, masked as only 3-unit apartments, and then applying for "re-zoning" after the fact, a deceitful kind of behaviour that is frequently occurring in Westboro; such behavior disrupts normal operating procedure with new buildings, and erodes confidence in the present future projects

Tara Hennessy (written submission)

- this two-step process, whereby developers add fourth units to triplexes that are still under construction or have recently been completed, should not be allowed; the developers of these triplexes have already been granted relief from the zoning requirements for three-unit dwellings, but their ultimate intention was to have these buildings end up as fourplexes, with a higher occupancy than originally expressed to the City
- these triplex buildings were squeezed onto lots that were too small to accommodate them, leaving virtually no space for greenery and amenity area, and the developers are now asking to be excused from having to meet the zoning standards for four-unit dwellings as well
- the Scott-Elmgrove-Winona-Churchill area is being overdeveloped in the absence of a solid plan for the Scott corridor and for the low- density communities adjacent to it; approval of this and similar spot rezoning applications should be postponed until their decisions can be informed by the results of infill studies already underway in the community, including the Westboro Infill Zoning Study, which is looking at patterns of intensification in Westboro and considering zoning changes that can yield infill projects more sensitive to the character of the neighbourhood

Karen Johnson, Chair, Planning Subcommittee, for Westboro Community Association (written submission)

- the Westboro Community Association does not object to intensification in general nor to four-plexes in particular but is concerned with this two-step process of converting a series of adjacent triplexes on reduced lot sizes; this type of development operates more like a 16-unit apartment building than separate four-unit building; the triplexes on this site have already been

granted reduced lot size and width through Committee of Adjustment, so do not meet the performance standards of a low rise apartment building

- the Westboro Community Association encourages Planning Committee to reject this application and asks the City to eliminate features of the site plan approval process that incentivize this two-step application approach
- the Community Association has heard from a large number of neighbours in the Elmgrove community who have concerns about this application, including the loss of green space, overdevelopment of the site, not being in keeping with the character of the neighbourhood, issues of drainage, insufficient space for snow and waste storage, concerns about on-street parking, traffic and safety
- the combined mass of four adjacent structures of this size creates an abrupt transition to neighbouring homes and looms over this short, dead-end street; requested that, should this application be approved, the City and the developer find a way to reinstate balconies (that have been moved to the rear of the buildings in this submission) at the front to provide much-needed street-level animation and interest, particularly given the loss of trees and greenspace associated with this build
- the traffic that will be generated by adding another four units to these triplexes threatens the walkability of this neighbourhood and poses a safety risk to residents and users of the gymnastics club at the end of the street; this street has no sidewalks and is already congested, and it is unclear how snowplows, utility providers, couriers, garbage trucks, property maintenance vehicles, taxis and uber will negotiate the crowded site while protecting the safety of residents and children; 2070 Scott, at the corner of Churchill, is also slated for redevelopment and has traffic implications, so this application should be considered in the broader context of concurrent development plans for the Scott-Winona neighbourhood; urge the Committee to encourage the installation of the sidewalks alluded to in the staff report
- the area of Scott-Elmgrove-Winona-Churchill is being overdeveloped in the absence of a solid plan for the Scott corridor and for the low density residential communities adjacent to it; the broader community has been vocal in their opposition to what they deem “over intensification” in Westboro, a concern driven largely by the emergence of this “multiple adjacent triplex” model, where one modest home is replaced with two triplexes, and subsequent conversion to fourplexes yields an eight-fold density increase for that lot; appreciating that this subject site is not within the area covered by several studies currently underway focused on

intensification in the community, and that the developer has been transparent in his intention to build fourth units, the reality is that adding four more units to the 12 existing will have deleterious outcomes for this neighbourhood; encouraged Planning Committee to await the results of its planning studies before approving this, or similar, applications for large density increases in residential neighbourhoods

Primary reasons for support, by individual

Murray Chown, Novatech (applicant) (oral submission)

- spoke in support of the report recommendations and in support of proposed motion N^o PLC 2019-17/5 to amend the minimum interior side yard setback

Effect of Submissions on Planning Committee Decision: Debate: The committee spent 15 minutes on the item.

Vote: The committee considered all written submissions in making its decision and carried the report recommendations with an amendment to ask Council to change the minimum interior side yard setback. The final recommendations to Council were as follows:

That Council approve an amendment to Zoning By-law 2008-250 for 300, 302, 304 and 306 Elmgrove Avenue to permit four (4) low-rise apartments with four (4) dwelling units each, as detailed in Document 2, as amended by the following:

1. The recommended interior side yard setback be a minimum of 1.1 metres to avoid a sideyard zoning deficiency; and
2. That Document 2 – Details of the Recommended Zoning be amended to change the minimum interior side yard setback from 1.2 metres to 1.1 metres; and
3. That pursuant to the *Planning Act*, subsection 34(17) no further notice be given.

Ottawa City Council

Number of additional written submissions received by Council between November 28 (Planning Committee consideration date) and December 11, 2019 (Council consideration date): 1

Primary concerns, by individual

Charles Ficner

- suggested the request to retroactively re-zone the subject site involves serious safety issues and potential liabilities for the City, noting the existing development was constructed on the basis of a number of questionable approvals and on the basis of the pretext that they were triplexes, so as to avoid the more demanding

requirements for apartments, but they were designed and built to accommodate 4 apartment units

- although the zoning for the site allows for 4-unit apartments, the lots were too narrow to allow for the four buildings that the development team intended to build, and a complex process was followed to approve the construction without complying with the requirements for apartments; the staff report confirms that the development team was up-front with the City about the plan to build the buildings first and get approvals for the apartments later; variances were approved on the basis of the pretense that the buildings were triplexes, which have less demanding setback requirements, and City staff then issued building permits on that basis, despite the fact that the buildings were designed to accommodate 4 apartment dwellings
- the required lot width was reduced from 48m to 36m, and the side yard setbacks for each of the buildings were reduced from 1.5m to 1.2m.; Council is being asked to retroactively approve those reductions, plus a further reduction in the required side yard setbacks – giving an effective total reduction of almost 32% when compared to the requirement set out in the Zoning By-law for apartments
- there are two life-threatening risks associated with this request:
 - ❖ one risk has been created by allowing the entrance doors of 12 of the 16 apartment units in the development to exit directly onto long, narrow driveways, which creates the risk of a collision between the residents using those doors and vehicles using the driveways, and is designed in clear violation of an explicit provision of the Zoning By-law
 - the risk of injury or death is particularly evident in situations where a person is hurriedly exiting one of those doors to avoid a domestic dispute, or where a person who is handicapped or unsteady, a person who is carrying a heavy or obscuring load, or a person who is distracted or inattentive for any other reason steps out onto the driveway; not only is such an arrangement unsafe, the Zoning By-law recognizes the hazard and prevents it from arising by an explicit provision that states that driveways are to be used exclusively for the purpose of driving to parking spaces, effectively prohibiting driveways being set aside and used for the dual purpose of driving vehicles to parking spaces in the rear of the buildings and serving as a pedestrian path to entrance doors
 - in light of the evident risk to members of the public and the weakness of the claim by City staff that the zoning by-law does permit the dual use, Council should, at the very least, get a fully independent legal

opinion on the matter

- ❖ the second risk may also have been created because the buildings may be closer to the property line than is allowed by the Fire Safety requirements of the Building Code; the buildings may not have been built in compliance with the setback required by the building permits and the plans that staff previously approved
 - Council may want to know why steps were not taken to ensure that the buildings complied with the plans submitted to secure the building permits – given that Section 8 (13) of the *Building Code Act* prohibits any deviation from the approved plans.
 - if the 1.1m setback is approved, at the very least, special measures will be required to ensure that the buildings do, in fact, comply – so as to prevent damage or injuries due to fires spreading to adjacent buildings.
- there are two major safety issues associated with the application:
 - ❖ the major reduction that has already been approved by staff leaves no room for a safe path for pedestrians to get to and from the 12 doors that exit directly onto the driveways
 - ❖ the buildings may have been constructed closer to the property line than is allowed both by the approved plans and by the Fire Safety requirements of the Building Code, requirements put in place to prevent injuries and deaths caused by the spread of fire between adjacent buildings
- if Council was to approve the requested retroactive re-zoning of the site, that would not resolve the safety issues associated with the non-complying driveways – and it would not deal with the potential violation of the Fire Safety requirements in the Building Code; in the case of an accident, injury or damage, the City would be open to liabilities
- the recommendation that Council retroactively approve the development on Elmgrove is not consistent with the City's duty towards the public and it is not compatible with the legal requirements set out in the Zoning By-law, the *Building Code Act* and the Building Code, nor is it compatible with the responsibility that is assigned to City Council under Sections 3 (1); 8 (2) (a); 8 (13) and 12 (2) of the *Building Code Act* to enforce the legal requirements that are set out in all laws and By-laws
- requested that Council: reject the request to approve the retroactive re-zoning of the development on Elmgrove; confirm the obvious meaning of the requirement set out in Section 100 (1) (a) of the Zoning By-law so as to avoid risks for the public

and liabilities for the City; take steps to ensure that the development on Elmgrove is brought into compliance with all of the legal requirements; take steps to ensure that adequate procedures are put in place so that no other developments are approved by City staff at any stage of development unless they fully comply with all of the requirements that City Council has the responsibility to enforce – both under the Zoning By-law and under the broader provisions that are set out in the *Building Code Act*.

Effect of Submissions on Council Decision:

Council considered all written submissions in making its decision and Carried the report recommendations as amended by Planning Committee, without further change.