



Town of Niagara-on-the-Lake

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REPORT #: CDS-23-236 **COMMITTEE DATE:** 2024-01-09
REPORT TO: COTW-Planning **DUE IN COUNCIL:** 2024-01-30
SUBJECT: 474 Simcoe Street
Zoning By-law Amendment ZBA-19-2023

1. RECOMMENDATION

It is respectfully recommended that:

- 1.1 The Application for Zoning By-law Amendment (File No. ZBA-19-2023) for lands known municipally as 474 Simcoe Street be approved as detailed in this report; and
- 1.2 The draft Zoning By-law Amendment, attached as **Appendix IV** to this report, be forwarded to Council for adoption.

2. EXECUTIVE SUMMARY

- This report provides a Staff recommendation to the Committee and Council regarding an application for Zoning By-law Amendment (the “Application”) for 474 Simcoe Street.
- The Application requests to rezone the subject lands from “Old Town Community Zoning District – Established Residential (ER) Zone” to “Old Town Community Zoning District – Established Residential (ER) Site-Specific Zone” to facilitate the creation of a total of two residential lots on the property.
- Both lots would contain site-specific provisions for required lot frontage, additional lot coverage for covered amenity areas, garage setback and garage door width, and to permit covered and unenclosed decks and porches to be subject to the same encroachment provisions as uncovered and unenclosed porches and decks.
- Since the current ER zone recognizes lot frontage and lot depth “as existing” on the date of the passing of Zoning By-law 4316-09, the Application is required to facilitate a future Consent application to create a total of two residential lots for future single-detached dwellings.
- Staff recommends approval of the Application, as detailed in this report, as the proposal conforms to *Planning Act* requirements, is consistent with the Provincial Policy Statement, and conforms to Provincial, Regional, and Town planning legislation.

3. PURPOSE

This report provides recommendations to the Committee respecting an application under the *Planning Act* seeking approval of a Zoning By-law Amendment to rezone the subject lands to a

“Established Residential (ER) Site-Specific Zone” to facilitate the creation of one new residential lot for a total of two residential lots. A sketch showing the proposed Parts and existing dwelling footprint on the subject lands is attached as **Appendix I** to this report.

4. BACKGROUND

The subject lands are located on the east side of Simcoe Street, south of Mary Street, within the urban area of Old Town. The subject lands have a total lot area of approximately 1,508 square metres and a combined lot frontage of 31.3 metres along Simcoe Street.

Part 1 is proposed to have a lot area of 752.7 square metres and Part 2 is proposed to have a lot area of 755.4 square metres. Both Parts have a proposed frontage of 15.65 metres on Simcoe Street. The existing dwelling on the subject lands is proposed to be demolished to accommodate two new dwellings. The property is serviced by municipal water and sanitary connections and future dwellings would be able to connect to such services. The surrounding lands are characterized by residential uses.

The application was deemed complete on September 22, 2023.

The subject lands are shown on **Map 1** of **Appendix II** of this report.

5. DISCUSSION / ANALYSIS

5.1 Policy and Legislative Framework

The Application has been evaluated for consistency and conformity with the relevant Provincial, Regional, and local planning policies and legislation, as discussed in the following report sections. Applicable planning legislation and policies are provided in **Appendix III** to this report.

5.1.1 *Planning Act, R.S.O. 1990, c. P.13*

The Application supports matters of provincial interest, is consistent with policy statements and conforms to provincial plans and Official Plans, as demonstrated in the analysis provided in the following sections of this report.

5.1.2 Provincial and Regional Planning Documents

The subject lands are designated as being within a “Settlement Area” according to the Provincial Policy Statement (the “PPS”) and are within a “Settlement Area” and “Delineated Built-Up Area” according to A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020 (the “Growth Plan”). The Niagara Official Plan, 2022 (the “NOP”), designates the subject lands as being within the “Delineated Built-Up Area”.

Policies in these plans support residential intensification within urban and built-up areas subject to criteria, such as demonstrating that the proposal is appropriate in relation to the surrounding area and achieving the goals of the applicable legislative documents.

The Application would facilitate a better use of municipally serviced lands within the built-up area by more efficiently using a large residential parcel to accommodate appropriate residential infill. The existing dwelling on the subject lands is proposed for removal and two

new single-detached dwellings would be constructed on Parts 1 and 2. The overall goal of complete communities is achieved by providing additional housing options where there is convenient access to services, employment, parks, and other public facilities. The Application promotes active transportation in the urban area of Old Town by allowing residents to easily access a variety of services and shops within walking or cycling distance.

The NOP outlines a minimum population of 28,900 people and 17,610 jobs in Niagara-on-the-Lake by the year 2051. Furthermore, an intensification target of 1,150 units (or a rate of 25%) is designated for the Town. The Application would remove an existing dwelling; however, the proposal would provide for one additional housing unit (for a total of two dwellings) and contribute to the forecasted growth and intensification targets of the Region by facilitating residential infill in an urban area to make more efficient use of land, services, and infrastructure.

A Stage 1-2 Archaeological Assessment Report, prepared by Detritus Consulting Ltd., dated July 27, 2022, was completed for the subject lands and has cleared the site of further archaeological concern. An acknowledgment letter from the Ministry of Citizenship and Multiculturalism indicating that the archaeological work was completed in accordance with Provincial standards will be required as a condition of the future Consent application.

Staff consider the Application to be consistent with the PPS and conform with the Growth Plan and Niagara Official Plan.

5.1.3 Town of Niagara-on-the-Lake Official Plan, 2017 Consolidation, as amended

The subject lands are designated “Established Residential” and “Built-up Area” in the Town of Niagara-on-the-Lake Official Plan, 2017 Consolidation, as amended (the “Town OP”). The Town OP designation on the subject lands is shown on **Map 2** of **Appendix II** to this report.

The Application would allow for the creation of one new residential lot (for a total of two lots) and results in a net density of 13.26 units per hectare (5.36 units per acre). The Town OP policies for intensification indicate that the minimum density is 14 units per hectare and the maximum density is 30 units per hectare. While the proposed density falls short of the minimum density as set out in the Town OP, the creation of one new lot will more efficiently utilize an oversized parcel and existing municipal services. The proposal would support additional growth and contribute to the Town's current intensification target within the Built-up Area. Therefore, Staff believe the Application results in a density that is consistent with the surrounding neighbourhood and supports growth within the urban area.

A Planning Justification Report (“PJR”) was prepared by Upper Canada Consultants, dated August 2023 and revised November 2023, and submitted in support of the proposed Application. The PJR provides analysis relating to applicable Town policies, findings from supporting studies and outlines any potential impacts the development may pose to the surrounding area. A Streetscape Design Analysis provided discussion on the block face of Simcoe Street between Mary Street and John Street West. In total, nine (9) properties were evaluated, including the subject lands and corner lots flanking Simcoe Street. The lot sizes and coverages vary along both sides of Simcoe Street. The frontages vary between 34.4 metres

and 15 metres and lot coverages of this block face range between 18.3% and 33.5%. The proposed lots would have frontages of 15.6 metres and maximum coverages of 33% for a dwelling and an additional 3% for covered outdoor amenity areas. In terms of height and architectural style of the future dwellings, the applicant has indicated that the proposed dwellings would be in keeping with the surrounding dwellings; outlining the vision for the future dwellings to be a bungalow style (a bungalow with a loft that overlooks the main floor of the dwelling).

Through the future application for consent to sever the lands, the applicant proposes to create two lots with comparable frontages and overall lot configurations relating to setbacks and coverage. While an increase in lot coverage is proposed, the increase will solely be restricted to covered outdoor amenity areas. This will ensure that the dwelling itself complies with the maximum coverage requirement of the “Established Residential (ER) Zone.” Covered amenity areas can include covered front porches or decks, which can create a more pedestrian-scaled front façade by promoting neighbourhood interaction, and/or covered rear yard areas for weather-protection in the backyard. The permitted front yard setback in the ER zone is 7.5 metres, which is considered consistent with surrounding front yard setbacks along the block face and no amendment to this provision is proposed. No relief for height provisions have been proposed, as the ER zone permits a height up to 10 metres for all residences in this zone. The immediate area is comprised of bungalow style dwellings, and the applicant has indicated that a similar style will be proposed on the new lots. It is anticipated that a condition of approval will be recommended for the Consent application to require Urban Design Committee review of the proposed dwellings prior to their construction. Staff are of the opinion that the two proposed lots are consistent and appropriate with the surrounding neighbourhood.

The policies of Official Plan Amendment #78 (OPA #78) apply to the review of this application. The proposed lot configurations are in keeping with the surrounding lands, standard setbacks of the existing zoning in the established neighbourhood continue to apply, provisions for garages have been incorporated in the proposed amendment for the lots, and municipal services would be used more efficiently. Overall, the Application is consistent with the policy intent of OPA #78.

The Town OP directs that existing trees must not be unnecessarily removed and that wherever possible, existing trees should be preserved and protected. The Town OP further states that within urban areas, where it is unavoidable that trees be removed, the proponent must plant trees of a similar or comparable species on the site or elsewhere in the Town, to the Town’s satisfaction.

An Arborist Report and Tree Inventory and Preservation Plan, prepared by Beacon Environmental, dated August 24, 2023, was submitted to evaluate the trees on or in proximity to the subject lands. The Tree Inventory and Preservation Plan is attached as **Appendix IV**. The report considered all trees on and adjacent to the subject lands and further concluded that out of 21 trees, eight (8) are identified for removal to accommodate the proposed dwellings and three (3) are proposed for removed due to poor health, for a total of 11 trees. Many of the trees to be retained are situated at the rear of the lots and provide shading and privacy to the

subject lands and adjacent properties. A tree protection zone in the form of fencing would be surrounding the retained trees to protect them during future construction.

Three mature trees (1, 2 and 3) located along the front of the subject lands are proposed for removal to accommodate the future driveways and servicing connections to the dwellings. These trees are not boulevard trees as they are on private property. As the only mature trees left along the frontages of the surrounding lots on the block face, these three trees contribute to the streetscape of Simcoe Street between Mary Street and John Street West. Staff recognize that some tree removal may be needed to accommodate the future driveways and servicing; however, efforts should be made in aligning driveways and servicing to retain as many mature trees as possible and Staff would further recommend that one of the three trees along the frontage be retained.

There are two (2) trees (4 and 5) on 474 Simcoe Street proposed for removal where the trunks of the trees at ground level appear to straddle the common property line with the neighbouring lot at 464 Simcoe Street. One additional tree (7) at the property line is proposed for removal due to its health. A "Declaration of Adjacent Property Owner" form would be required for each defined boundary tree proposed for removal, where the adjacent owner is to consent to the tree to be removed under the provisions of By-law 5139-19, which regulates the destruction or injuring of trees on private property within the urban areas.

Five mature trees (4, 5, 16, 17 and 18) are proposed for removal due to their proximity to the building envelope of the future homes. The applicant has indicated that trees proposed for removal to accommodate the development, as identified in the Tree Inventory and Preservation Plan, are not final and there may be flexibility to retain more trees once there are plans for the future dwellings. The applicant has also expressed that additional trees will be planted on the subject lands to compensate for the removed trees. Town Staff remain of the opinion that an effort should be made to preserve as many mature trees as possible, particularly those fronting the lot and any boundary trees shared between the subject lands and the property at 464 Simcoe Street. Conditions relating to trees may be imposed during the future Consent application.

Staff consider the Application, as recommended in this report, to conform to the relevant policies of the Town OP.

5.1.4 Town of Niagara-on-the-Lake Proposed Official Plan, 2019

Council adopted a proposed new Official Plan in November 2019. The proposed Official Plan has not been approved and is therefore not in effect but represents Council intent. The subject lands are designated "Established Residential" in the proposed Town of Niagara-on-the-Lake Official Plan (the "proposed Town OP"). The proposed Town OP has similar and complementary policies relating to intensification, efficient use of land and infrastructure and land use compatibility criteria.

5.2 Niagara-on-the-Lake Zoning By-law 4316-09, as amended

The subject lands are zoned “Old Town Community Zoning District – Established Residential (ER) Zone” in Zoning By-law 4316-09, as amended. The applicable zoning of the subject lands is shown on **Map 3** of **Appendix II** to this report.

The ER zone recognizes the lot frontage to be “as existing” for lots as of the date of passing the Zoning By-law 4316-09. In order to facilitate a future Consent application to sever the lands into two lots, the Application is proposing to rezone both severed and retained parcels to site-specific ER zones to address proposed lot frontages. The amendment would also permit additional lot coverage for covered amenity areas, permit encroachments of these covered amenity areas and provide provisions for garages.

The following site-specific ER zone provisions are recommended by Staff for both Parts:

- Minimum lot frontage – 15.6 metres (Zoning By-law standard “as existing”)
- Additional 3% lot coverage permitted for covered and unenclosed porches, patios and decks
- Detached or attached garage shall be setback from the main façade of the building on the ground floor a minimum of 1 metre
- Doors of an attached garage not to occupy more than 50% of the width of the dwelling façade
- Permit yard projections and encroachments for unenclosed and covered porches, patios or decks to be subject to the same required yard projections as unenclosed and uncovered porches, decks, balconies, patios or steps (Section 6.44 of Zoning By-law 4316-09 permits an encroachment of 1.5 metres into a required front or rear yard, and 0.6 metres into a required side yard)

The proposed site-specific ER zone is an appropriate category to accommodate the proposed residential lots and future dwellings. All remaining provisions of the ER zone are to be maintained on the subject lands. A draft Zoning By-law Amendment is attached as **Appendix V** to this report.

5.3 Consultation

The Application was circulated to Town departments and external agencies for review and comment. Public notice of the Application was provided as required by the *Planning Act*. Comments submitted by the public and agencies are included in **Appendix VI** to this report, and summarized as follows:

5.3.1 Town Departments

Building – No objection.

Fire – No objection.

Finance – No objection.

Heritage – No objection. The Ministry letter associated with the Stage 1-2 Archaeological Assessment will be required as a condition of the future Consent application.

Operations – No objection. Servicing and entrances will be addressed as part of the future Consent application process.

5.3.2 External Agencies

Accessibility – No objection.

Enbridge Gas – No objection.

NOTL Hydro – Relocation of the transformer would be at the applicant/owner's cost.

Niagara Region – No objection. The Town should ensure that all archaeological resource concerns have been addressed before any site disturbance.

5.3.3 Public

An electronic Open House was held on October 16, 2023, with two (2) members of the public in attendance. The statutory Public Meeting was held on November 7, 2023 and six (6) residents spoke in opposition to the proposal. A total of eight (8) letters of opposition were received for the Application. The following public concerns have been raised:

- Overall impacts of the removal of mature, healthy trees, including streetscape and environment
- Tree loss would result in a greater likelihood of flooding and impact shading and privacy of surrounding properties
- Proposed lot configuration (frontage, coverage and setbacks) is inconsistent with the area
- Concerns with the unknown height and style of the future dwellings
- Application is non-compliant with the Town Official Plan
- Inconsistency with OPA 78
- Noise and air pollution during construction

All public comments have been addressed throughout the analysis of the report except the last comment. Staff note that any future construction is required to comply with the Town's Noise By-law (4588-12), where no construction can take place between 7:00pm and 7:00am, and all day on Sundays.

6. STRATEGIC PLAN

The content of this report supports the following Strategic Plan initiatives:

Pillar

1. Vibrant & Complete Community

Priority

1.1 Planning for Progress

Action

1.1 b) Planning for Progress Initiatives

7. OPTIONS

The Committee may approve, refuse, or modify the requested Zoning By-law Amendment.

8. FINANCIAL IMPLICATIONS

Not applicable.

9. ENVIRONMENTAL IMPLICATIONS

The Arborist Report and Tree Inventory and Preservation Plan identified 8 trees for removal to accommodate the future dwellings and their driveways and service connections, and 3 trees for removal as a result of poor health. Implications resulting from tree removal have been

discussed throughout the report.

10. COMMUNICATIONS

Once Council has made a decision on the Application, notice of the decision will be given as required in the *Planning Act*. The decision of Council is subject to a 20-day appeal period. If no appeals are received during the appeal period, the decision of Council is final.

11. CONCLUSION

Community and Development Services Staff recommend approval of Zoning By-law Amendment Application ZBA-19-2023 as detailed in this report since the Application meets *Planning Act* requirements, is consistent with the Provincial Policy Statement and conforms with the Growth Plan, Niagara Official Plan, and Town Official Plan.

12. PREVIOUS REPORTS

- **CDS-23-214** – Public Meeting – 474 Simcoe Street (ZBA-19-2023) (November 7, 2023)

13. APPENDICES

- Appendix I – Survey Sketch
- Appendix II – Maps
- Appendix III – Planning Legislation and Policies
- Appendix IV – Tree Inventory and Preservation Plan
- Appendix V – Draft Zoning By-law Amendment
- Appendix VI – Agency and Public Comments

Respectfully submitted:

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