



Town of Niagara-on-the-Lake

1593 Four Mile Creek Road
P.O. Box 100, Virgil, ON L0S 1T0
905-468-3266 www.notl.com

REPORT #: CDS-24-178 **COMMITTEE DATE:** 2024-11-12
REPORT TO: COTW-Planning **DUE IN COUNCIL:** 2024-11-26

SUBJECT: Town Representation at the Ontario Land Tribunal Official Plan
Amendment (OPA-04-2022) and Zoning By-law Amendment Applications (ZBA-23-2022)
for 223 and 227 Mary Street Appeal

1. RECOMMENDATION

It is respectfully recommended that Council provide direction regarding how to proceed with the Ontario Land Tribunal by selecting one (1) of the following options:

- 1.1 Council first sets out the reasons for refusal and subsequently retains the Town's legal counsel and an external qualified land use planner to defend the decision made by Council to refuse Official Plan Amendment Application OPA-04-2022 and to refuse the Zoning By-law Amendment Application ZBA-23-2022 for 223 and 227 Mary Street at the Ontario Land Tribunal Hearing; or
- 1.2 Council first sets out the reasons for refusal and subsequently retains the Town's legal counsel and an external qualified land use planner to engage in mediation to reach a settlement with the appellant (applicant) respecting Official Plan Amendment Application OPA-04-2022 and Zoning By-law Amendment Application ZBA-23-2022 for 223 and 227 Mary Street and present such settlement to the Ontario Land Tribunal; or
- 1.3 Council instructs the Town's legal counsel to reach a settlement with the appellant (applicant) by accepting the recommendations contained within the Staff Report respecting Official Plan Amendment Application OPA-04-2022 and Zoning By-law Amendment Application ZBA-23-2022 for 223 and 227 Mary Street and present such settlement to the Ontario Land Tribunal.

2. EXECUTIVE SUMMARY

- The purpose of this report is to seek direction from Council on how to respond to the appeals filed with the Ontario Land Tribunal ("OLT") regarding decisions to refuse to pass by-laws related to Official Plan Amendment Application OPA-04-2022 and Zoning By-law Amendment Application ZBA-23-2022 for lands municipally known as 223 and 227 Mary Street.
- Applications for an Official Plan Amendment and a Zoning By-law Amendment

(collectively the “Applications”) were considered at the Committee of the Whole – Planning (“COTW-P”) meeting on September 10, 2024, and at the Council meeting on September 24, 2024. The Applications were submitted to permit the development of a four-storey apartment building containing 41 dwelling units.

- Planning Staff recommended approval of the Applications. During the September 10, 2024, COTW-P meeting, the Applications were approved in principle. During the September 24, 2024, Council meeting, the Applications were lifted for discussion via the COTW-Planning minutes and approved. Later in the same meeting, the by-laws were lifted to be voted on individually and refused based on a tie vote.
- The applicant has filed two (2) appeals respecting the decisions of Council to refuse the Applications to the OLT.
- In response to the appeals, Council may retain legal counsel and a qualified land use planner to either defend the decision to refuse the Applications or engage in mediation to reach a settlement with the appellant. Otherwise, Council should instruct the Town’s solicitor to accept Staff’s recommendations to reach a settlement with the appellant prior to the anticipated OLT hearing.
- Should Council wish to defend or mediate, Council is required to clearly set out the reasons why the Applications were refused.

3. PURPOSE

The purpose of this report is to obtain Council direction regarding the Town’s legal and planning representation at a future OLT hearing in response to appeals filed against the decisions made by Council to refuse Applications OPA-04-2022 and ZBA-23-2022 for lands known municipally as 223 and 227 Mary Street.

4. BACKGROUND

The subject lands are known municipally as 223 and 227 Mary Street and are located on the north side of Mary Street, east of Mississagua Street, south of William Street, and west of Simcoe Street within the Urban Area of Old Town.

The Applications would permit the development of 41 dwelling units within a four (4) storey residential apartment building fronting onto Mary Street. A future application for Site Plan Approval is required to facilitate the proposed development.

The Official Plan Amendment (“OPA”) proposes to redesignate the subject lands from “Established Residential” to “Medium Density Residential,” with a site-specific exception to recognize an increased density and height to accommodate the proposed development and to permit parking at the side and front of the building.

The Zoning By-law Amendment (“ZBA”) proposes to rezone the subject lands from an “Established Residential (ER) Zone” to a “Residential Multiple (RM1-H) Site-Specific Holding Zone.” Site-specific provisions are included for height, front yard setback for the building and the underground parking structure, interior side yard setback for the building and underground

parking structure, rear yard setback for the building and the underground parking structure, in addition to specific setbacks for the third and fourth storeys of the building. The proposed setbacks will regulate the location of the building on the site, as well as the underground parking area. The inclusion of a Holding (H) symbol would require that the subject lands merge in title to facilitate the proposed development and address stormwater management requirements.

Staff Recommendation Report CDS-24-108 (attached as **Appendix I** to this report) for the Applications was considered during the September 10, 2024, COTW-P meeting. Town Planning Staff recommended approval of the Applications. The Committee approved the Applications in principle, and the by-laws were forwarded to Council for adoption.

At the September 24, 2024, Council meeting, the COTW-P meeting minutes were lifted to discuss the Applications and decision at COTW-P. Following this discussion, Council voted on the recommendation and confirmed approval. Later in the Council meeting, the by-laws were lifted to be voted on individually, and both by-laws were defeated due to a tie vote, ultimately resulting in the refusal of the Applications.

5. DISCUSSION / ANALYSIS

The applicant has filed appeals with the OLT against the decisions of Council to refuse the OPA and ZBA Applications. Staff is in the process of preparing and submitting the required information to the OLT for the appeals. A Case Management Conference or a hearing date for the appeal has not been scheduled at the time of writing this report.

In accordance with Section 2.1 of the Canadian Institute of Planners Code of Professional Conduct, Registered Professional Planners are required to “provide independent professional opinion to clients, employers, the public and tribunals.” Town Planning Staff recommended approval of the Applications. Accordingly, Town Planning Staff are unable to defend Council’s decision to refuse the OPA and ZBA. Town Planning Staff anticipate being summoned by the appellant to provide planning evidence in support of the Applications at the OLT hearing.

Council’s direction is required to proceed to the OLT:

- Option 1:** Council may first set out the reasons for refusal and subsequently retain legal counsel and a qualified professional planner to defend Council’s decisions to refuse the Applications.

- Option 2:** Council may first set out the reasons for refusal and subsequently retain legal counsel and a qualified professional planner to enter into mediation through the OLT to negotiate a settlement on the Applications. Mediation is voluntary and confidential. The process provides parties an opportunity to clearly identify the issues and to explore options for a mutually acceptable solution to some or all of the issues identified.

Option 3: Council may instruct the Town's legal counsel to reach a settlement with the appellant by accepting Staff's recommendations respecting the Applications. This option would not warrant a reconsideration motion by Council.

An external qualified land use planner would need to be retained by the Town to support the decisions of Council to refuse the Applications, or to provide an independent planning opinion in a potential negotiated settlement. In order to provide direction for these options, Council must clearly set out the reasons for refusal. Otherwise, Council should instruct the Town's solicitor to accept Staff's recommendations to reach a settlement with the appellant prior to the anticipated OLT hearing.

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 1.1 b) Planning for Progress Initiatives

7. OPTIONS

The options are provided in the recommendation.

8. FINANCIAL IMPLICATIONS

Costs associated with retaining the services of legal counsel, a qualified land use planner and other potential subject matter experts are required to defend Council's decisions, including preparation for and attendance at the OLT hearing. Staff cannot estimate costs for legal, planning or other consultant services at this time. These services would be funded from Corporate legal and consultant accounts.

9. ENVIRONMENTAL IMPLICATIONS

Not applicable. There is no environmental impact associated with this report.

10. COMMUNICATIONS

Should Council decide to retain legal counsel and external planning expertise, Staff will provide the solicitor with the file materials. The solicitor will then retain a qualified land use planner and other potential subject matter experts in accordance with the procedures in the Town's Procurement of Goods and Services By-law.

11. CONCLUSION

The applicant has appealed Council’s decision to refuse Applications OPA-04-2022 and ZBA-23-2022 for lands municipally known as 223 and 227 Mary Street. Council must determine a preferred direction in response to the appeals filed with the OLT by selecting one (1) of the options set out in this report.

12. PREVIOUS REPORTS

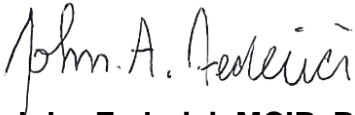
Not applicable.

13. APPENDICES

- **Appendix I** – Staff Recommendation Report CDS-24-108: 223 and 227 Mary Street – Official Plan Amendment (OPA-04-2022) & Zoning By-law Amendment (ZBA-23-2022)

Respectfully submitted:

Prepared by:



**John Federici, MCIP, RPP
Senior Planner**

Recommended by:



**Aimee Alderman, MCIP, RPP
Manager of Development Planning**

Recommended by:



**Kirsten McCauley, MCIP, RPP
Director, Community and Development
Services**

Submitted by:



**Bruce Zvaniga
Chief Administrative Officer (Interim)**