

To: Economic and Development Services Committee

From: Warren Munro, HBA, RPP, Commissioner,
Economic and Development Services Department

Report Number: ED-22-208

Date of Report: November 23, 2022

Date of Meeting: November 28, 2022

Subject: Direction on City Staff Involvement Respecting an Appeal to the
Ontario Land Tribunal of a Committee of Adjustment Decision
Concerning Lands South of Queensdale Avenue between
Keewatin Street South and Melrose Street

Ward: Ward 3

File: A-2022-71

1.0 Purpose

The purpose of this Report is to recommend that Council take no position on an appeal to the Ontario Land Tribunal (“O.L.T.”) of a Committee of Adjustment (“C. of A.”) decision concerning a proposal to increase the maximum permitted height for 11 future single detached dwellings planned to be built by Holland Homes Inc. (the “Applicant”) on lands located on the south side of the future extension of Queensdale Avenue, between Keewatin Street South and Melrose Street.

Council policy requires that the Economic and Development Services Department prepare a report to the Economic and Development Services Committee when an appeal is lodged against a C. of A. decision.

Attachment 1 shows the location of the site that is subject to File A-2022-71 under appeal, and the zoning for the area.

Attachment 2 is a copy of the plan submitted by the Applicant to the C. of A. showing the 11 lots that are subject to the C. of A. application.

Attachment 3 is a copy of the report for File A-2022-71 from the Development Services Department to the C. of A. dated August 19, 2022.

Attachment 4 is a copy of the minutes for File A-2022-71 from the C. of A. meeting held on August 24, 2022.

Attachment 5 is a copy of the August 24, 2022 C. of A. decision for File A-2022-71.

2.0 Recommendation

That the Economic and Development Services Committee recommend to City Council that, pursuant to Report ED-22-208 dated November 23, 2022, the Ontario Land Tribunal be advised that City Council takes no position on the appeal of the denial decision of the Committee of Adjustment concerning lands located on the south side of the future extension of Queensdale Avenue between Keewatin Street South and Melrose Street (File: A-2022-71) and that the City not seek party or participant status at the Ontario Land Tribunal hearing.

3.0 Executive Summary

Holland Homes Inc. submitted an application to the Committee of Adjustment for a variance to increase the maximum permitted height from 9 metres (29.53 ft.) to 10.4 metres (34.12 ft.) for 11 single detached dwellings proposed to be built on lands located on the south side of the future extension of Queensdale Avenue, between Keewatin Street South and Melrose Street.

This Department advised the Committee of Adjustment that it had no objection to the approval of the application.

The Committee of Adjustment denied the application.

The Applicant has appealed the decision to the Ontario Land Tribunal.

This Department recommends that City Council take no position on the Committee of Adjustment decision and that the City not seek party or participant status at the Ontario Land Tribunal hearing.

4.0 Input From Other Sources

4.1 Other Departments and Agencies

The following have been consulted in the preparation of this Report:

- City Solicitor

4.2 Public Comments

Oral comments from the public are included in the minutes of the August 24, 2022 C. of A. meeting, which forms Attachment 4 to this Report. The City also received written comments from several individuals.

The written and oral submissions to the C. of A. can be summarized as follows:

- The proposed increase in building height is not minor;
- The increased building height will result in a loss of privacy in surrounding residential properties;

- The increased building height will reduce the amount of sunlight on surrounding residential properties;
- The increased building height will obstruct views from surrounding residential properties;
- If the single detached dwellings are permitted greater heights, it will create a precedent for the proposed townhouses on the north side of Queensdale Avenue; and,
- The developer has failed to properly maintain the property over the last several years.

5.0 Analysis

5.1 Background

The subject site, which consists of 11 lots planned for future single-detached dwellings, is located on the south side of the future Queensdale Avenue extension, generally between Melrose Street and Keewatin Street South (see Attachment 1).

The subject site forms part of approved draft plan of subdivision S-O-2016-06 which was approved by the City in June 2017. The plan of subdivision is being advanced by Downing Street (1015 King Street) Inc. Holland Homes Inc. (the Applicant for the C. of A. application) will be the builder of the 11 single detached dwellings.

This C. of A. application does not apply to the lands owned by the Applicant on the north side of the future Queensdale Avenue extension, which are subject to active applications to amend Zoning By-law 60-94 (File: Z-2021-07), for approval of a Draft Plan of Subdivision (File: S-O-2021-02) and Draft Plan of Condominium (File: C-O-2021-01), for Site Plan Approval (File: SPA-2021-08), and for Removal of Part Lot Control (File: PLC-2021-11), all to permit 34 block townhouses and 9 street townhouses.

For the lands on the north side of the extension of Queensdale Avenue, the Applicant has appealed the above noted applications to amend Zoning By-law 60-94 and for approval of a draft plan of subdivision to the Ontario Land Tribunal on September 23, 2022. This is due to the City's failure to make decisions on these two applications within the timeframes set out in the Planning Act.

A separate report on the above noted appeals will be included on the November 28, 2022 Economic and Development Services Committee agenda. That report will be a closed report since, unlike this Report, it contains a recommended City position on the development proposal as submitted under Files Z-2021-07 and S-O-2021-02.

The subject site is designated as Residential in the Oshawa Official Plan ("O.O.P."). The O.O.P. specifies, in part, that Residential areas shall be used predominantly for residential dwellings.

The subject site is zoned R1-E "h-14" (Residential) in Zoning By-law 60-94 (see Attachment 1). The existing zoning permits single detached dwellings with a maximum building height of 9.0 metres (29.53 ft.).

The subject site is currently vacant. Downing Street (1015 King Street) Inc. is currently constructing the extension of Queensdale Avenue and is in the process of registering the 11 lots on the south side of the road. The Applicant intends to subsequently construct the single detached dwellings.

The following uses are adjacent to the subject site:

- **North** Future Queensdale Avenue extension, beyond which are vacant lands proposed to be developed by Downing Street (1015 King Street) Inc. for 34 block townhouses and 9 street townhouses
- **South** Single detached dwellings fronting onto Oriole Court
- **East** Single detached dwellings fronting onto Keewatin Street South
- **West** Single detached dwellings fronting onto Melrose Street

5.2 Committee of Adjustment Application

On August 24, 2022, the C. of A. denied the following variance contained in File A-2022-71 related to the 11 single detached dwellings proposed on the subject site:

Zoning Item	Column 1: Requested Variance	Column 2: Zoning Requirement
Maximum Height	10.40m (34.12 ft.)	9.00m (29.53 ft.)

The denial of the C. of A. application does not prevent the Applicant from constructing 11 single detached dwellings. However, the Applicant would have to design the dwellings to comply with the maximum height of 9.00 metres (29.53 ft.).

On September 12, 2022, the Applicant appealed the C. of A. decision to the O.L.T. The Applicant based their appeal on the four tests for reviewing minor variances as identified under the Planning Act. The Applicant believes the request is minor in nature, that the development is desirable, and that the general intent of Zoning By-law 60-94 and the City of Oshawa Official Plan are maintained.

5.3 Basis for Staff Recommendation

On August 19, 2022, this Department submitted a report to the C. of A. (see Attachment 3) indicating that staff had no objection to the approval of the subject minor variance application for generally the following reasons:

- The requested increase in the maximum permitted building height [i.e. an additional 1.40 metres (4.59 ft.)] is minor;
- The minor increase in the maximum height would allow for a useable third storey for each of the single detached dwellings, increasing the floor space for each of the dwellings;

- The proposed height is consistent with other special zoning regulations that have been approved in new subdivisions across the City of Oshawa, many of which permit maximum heights of 10.50 metres (34.45 ft.) to 11.50 metres (37.73 ft.) in Residential zones; and,
- The proposed increased maximum height is not anticipated to create any additional impacts to neighbouring properties beyond what would normally be associated with a new single detached dwelling on a neighbouring property.

Staff recognize that the denial decision by the C. of A. contradicts the recommendation described in the August 19, 2022 Development Services Department report to the C. of A.

The C. of A. is an independent committee appointed by Council to make decisions on minor variance applications. The C. of A. decided that the application did not meet the four tests of a minor variance, and denied the application.

It is recommended that the O.L.T. be advised that City Council takes no position with respect to the application to increase the maximum building height to 10.40 metres (34.12 ft.) from the permitted 9.00 metres (29.53 ft.), and that the City not seek party or participant status at the O.L.T. hearing.

If this recommendation is approved, the City will not expend time, effort and money for Legal and Planning staff to prepare for and attend an O.L.T. hearing at the expense of the general taxpayer. If the Economic and Development Services Committee and Council were to opt to support the C. of A. and the City seeks party status at the O.L.T. hearing, the City will be required to retain an external planning witness to support Council's position. This would be necessary given that City staff is on record as having no objection to the subject application. There will be certain costs associated with hiring an outside witness to prepare for and attend the O.L.T. hearing at the expense of the general taxpayer.

The O.L.T. has the authority, pursuant to the provisions of the Ontario Land Tribunal Act, to require certain individuals, such as the City's Planning staff, to give evidence to the O.L.T. at the hearing, notwithstanding Council's direction. In addition, other persons such as the Applicant or a member of the public who has an interest in the matter, may summon a member of the City staff to give evidence at a hearing.

6.0 Financial Implications

There are costs associated with hiring an outside witness to prepare for and attend the O.L.T. hearing on behalf of the City if Council were to opt to support the C. of A. and seek party status at the O.L.T. hearing.

There are costs related to staff time to prepare for an appearance at any O.L.T. hearing if summoned by the O.L.T., offset by a modest per diem from the O.L.T.

7.0 Relationship to the Oshawa Strategic Plan

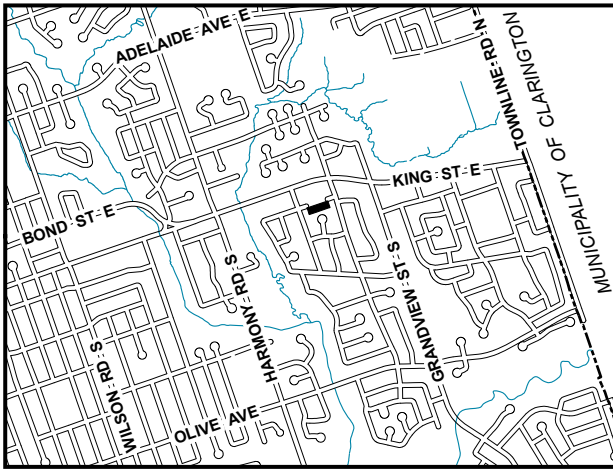
The Recommendation advances the Accountable Leadership goal of the Oshawa Strategic Plan.

A handwritten signature in blue ink, appearing to read "Tom Goodeve".

Tom Goodeve, M.Sc.Pl., MCIP, RPP, Director,
Planning Services

A handwritten signature in blue ink, appearing to read "Warren Munro".

Warren Munro, HBA, RPP, Commissioner,
Economic and Development Services Department





Item: ED-22-208
Attachment 1


Economic & Development Services

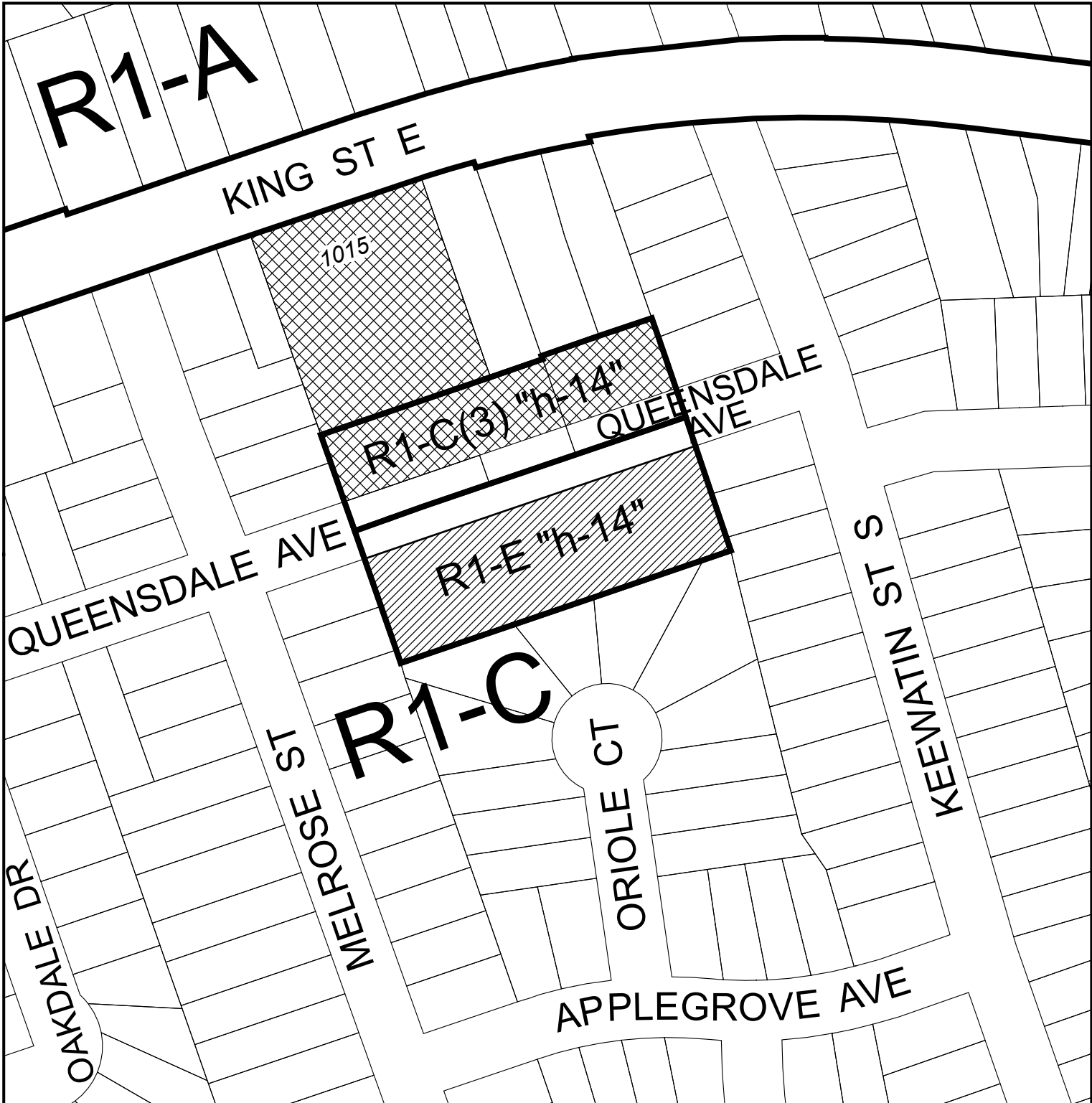
Subject: Direction on City Staff Involvement Respecting an Appeal to the Ontario Land Tribunal of a Committee of Adjustment Decision Concerning Lands South of Queensdale Avenue between Keewatin Street South and Melrose Street

Ward: Ward 3
File: A-2022-71

Subject Site 

Lands Proposed for Block Townhouses and Street Townhouses (Z-2021-17, S-O-2021-02, C-O-2021-01) 

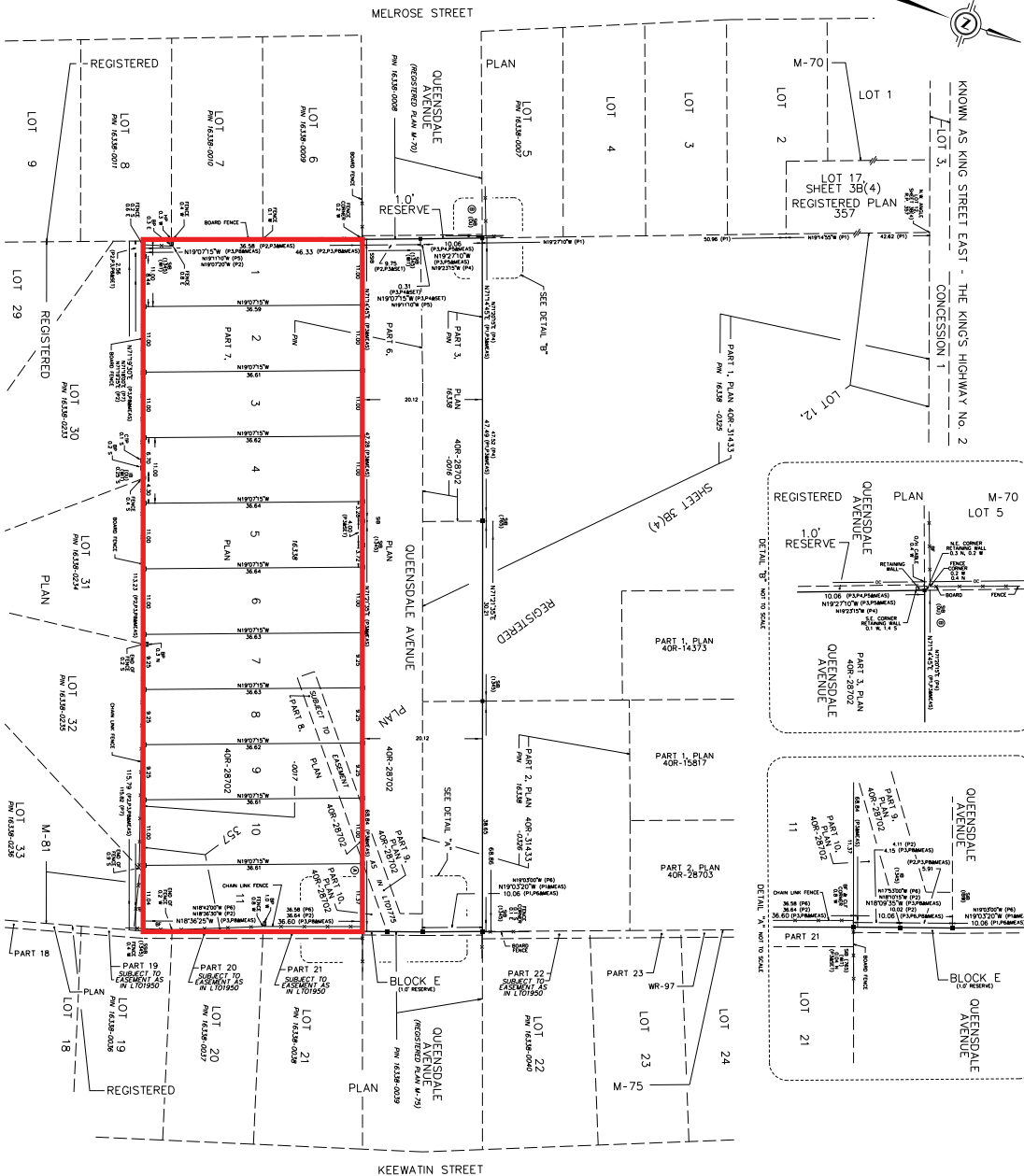




Title: Proposed Plan of Subdivision
Subject: Direction on City Staff Involvement Respecting an Appeal to the Ontario Land Tribunal of a Committee of Adjustment Decision Concerning Lands South of Queensdale Avenue between Keewatin Street South and Melrose Street
Ward: Ward 3
File: A-2022-71

City of Oshawa
Economic & Development Services

Subject Site



5-0-2016-06

PLAN 40M-

1. CERTIFY THAT THIS PLAN IS REGISTERED IN THE LAND REGISTRY OFFICE FOR THE LAND TITLES ACT AND THAT THE LAND TITLES ACT IS IN FULL FORCE AND EFFECT IN THE PROVINCE OF ONTARIO ON THE DATE OF THIS CERTIFICATE.

2. THE SUBDIVISION OF THE LAND IS IN ACCORDANCE WITH THE SUBDIVISION ACT AND THE SUBDIVISION REGULATION AND THE SUBDIVISION IS IN ACCORDANCE WITH THE SUBDIVISION ACT AND THE SUBDIVISION REGULATION.

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Report

To: Committee of Adjustment

From: Development Services Department

Date: August 19, 2022

Date of Meeting: August 24, 2022

Subject: Application for relief from the provisions of Zoning By-law 60-94 to permit 11 single detached dwellings with increased maximum height

Address: 0 Queensdale Avenue

Owner: Holland Homes Inc. on behalf of Downing Street (1015 King Street) Inc.

File: A-2022-71

The comments from this Department are as indicated below:

- ☐ We have no objection to the approval of this application.
- ☒ We have no objection to the approval of this application subject to the comments/conditions which are ☒ attached/☐ listed below.
- ☐ We request Committee reserve its decision for the reasons which are ☐ attached/☐ listed below.
- ☐ We recommend that this application be denied for the reasons which are ☐ attached/☐ listed below.



Erika Kohek, Planner A
Development Services Department

c: K. Staunton, Engineering Services

Holland Homes
108 King St E
Bowmanville, ON L1C 1N5

The purpose and effect of the application is to permit a maximum height of 10.4m (34.1 ft.) for 11 single detached dwellings on the south side of the future extension of Queensdale Avenue, whereas Zoning By-law 60-94 permits a maximum height of 9m (29.5 ft.) for a single detached dwelling in a R1-E “h-14” (Residential) Zone.

This application does not apply to the lands on the north side of the proposed Queensdale Avenue extension which is addressed as 1015 King Street East and are subject to applications for Zoning By-law Amendment (Z-2021-07), Draft Plan of Subdivision (S-O-2021-02), Draft Plan of Condominium (C-O-2021-01) and Removal of Part Lot Control (PLC-2021-11) to permit 34 block townhouses and 9 street townhouses.

The subject site is currently vacant and is part of draft plan of subdivision S-O-2016-06. Draft plan of subdivision S-O-2016-06 and a related Zoning By-law Amendment to implement the proposed draft plan were approved by City Council in 2017. The draft plan of subdivision included the proposed Queensdale Avenue extension, 11 single detached dwelling lots on the south side of Queensdale Avenue and 6 single detached dwelling lots on the north site of Queensdale Avenue. The subject application only relates to the 11 proposed single detached lots on the south side of the Queensdale Avenue extension.

The proposed increase in maximum building height from 9m to 10.4m would allow for a useable third-storey for each single detached dwelling. The proposed height is consistent with special zoning regulations that have been approved in many new subdivisions in the City. Most new subdivisions are approved with zoning that permits heights of 10.5m (34.4 ft.) to 11.5m (37.7 ft.). The proposed increase in building height to 10.4m is not anticipated to create any additional impacts to neighbouring properties beyond what would normally be associated with a new single detached dwelling on a neighbouring property.

The applicant proposes to comply with all other requirements of the R1-E Zone as required by Zoning By-law 60-94, including the minimum rear yard depth requirement of 7.5m (24.6 ft.).

This Department has no objection to the approval of the application.

Committee of Adjustment

File: **A-2022-71**

MINUTES UNDER THE PLANNING ACT

Committee of Adjustment Application for 0 Queensdale Avenue

An application has been submitted by **Holland Homes Inc. on behalf of Downing Street (1015 King Street) Inc.** for a variance from the City's Zoning By-law 60-94.

The application relates to **0 Queensdale Avenue** (PL 357 SHEET 3B PT LT 12, RP 40R-26565 PTS 2 AND 3), Oshawa, Ontario.

The purpose and effect of the applications is to permit a maximum height of 10.4m for 11 single detached dwellings on the south side of the future extension of Queensdale Avenue, whereas Zoning By-law 60-94 permits a maximum height of 9m for a single detached dwelling in a R1-E "h-14" (Residential) Zone.

A meeting of the Oshawa Committee of Adjustment was held on August 24, 2022 at 6:00 p.m. in the "C" Wing Committee Meeting Room, City Hall, Oshawa, Ontario.

Present: A. Johnson, R. Adams, F. Eismont, P. Uprety, J. Dowson
E. Kohek, D. Sappleton, C. Chase

Also Present: K. Metzner of Holland Homes Inc.
K. Barrett, 965 King Street East, Oshawa
M. Barrett, 965 King Street East, Oshawa
D. Crawford, 51 Melrose Street, Oshawa
M. Woolsey, 62 Oriole Court, Oshawa
B. Fisher, 62 Oriole Court, Oshawa

A report received from the Development Services Department stated no objection to the approval of this application.

K. Metzner provided an overview of the application. The applicant has approval for 11 single detached dwelling lots on south side of Queensdale Avenue and is requesting permission for increased heights. The lands drop down in grade across all 11 lots approximately 0.4m. West side is lowest, east side is highest.

K. Barrett expressed opposition to the application. She stated that the developer has not maintained the property appropriately, the developer has been disrespectful to neighbourhood residents and City staff, and the developer has had disagreements regarding fence lines and property lines with surrounding property owners. K. Barrett stated issue with impacts to trees.

K. Metzner replied we are the builder not the developer, and apologize for what they have been through.

K. Barrett replied that they have been fighting for 10 years. Recently the City came in to do clean up the property and was threatened to get off the property. Neighbours can't get to the other side of the fence to clean up the mess.

R. Adams stated unfortunate, hard many years, very stressful.

K. Barrett stated she is trying to be cordial, and likes the community the way it is.

M. Barret commented regarding the application and expressed opposition. He stated he does not want increased building heights at the front half of the development. He does not want new residents looking into his yard along King Street. M. Barrett there will be more parking and traffic issues.

R. Adams stated that Committee can only decide on the height for the 11 singles.

D. Crawford commented regarding the application. Lives at the southernmost part of development property. There is a 10 foot in back corner of property compared to the subject site. Elevation change between Keewatin to Melrose is significant. Questioned whether there is going to be excavation from east to the west, or build up at the west.

K. Metzner stated 1 to 2 steps on west and 3 to 4 steps on other side.

D. Crawford asked regarding the southern portion, lots tapered down?

K. Metzner replied yes, tapered down.

D. Crawford stated in the spring water runs off from property to Oriole Court properties. Questioned whether there would be a backyard storm swale to help due to the grading.

K. Metzner replied no rear yard catch basins proposed in storm drainage plans. Not a civil engineer. Maintaining existing grades on the property.

D. Crawford stated height of the homes on the south side, changing urban demographics of the area and community. Only one house on Melrose that had a 2nd storey which was a legal addition.

M. Woolsey commented regarding the application stating opposition. Lots 1-3 and part of Lot 4 back onto property, and stated the proposed height will significant change to enjoyment of property. No privacy at all with height of new homes. There is one 2-storey house in the area, everything else is bungalows. This is a mistake, 1 of 3 or 4 houses that are pie lots, enjoy family and recreation time. Builder is having lots of trouble with up-keep of the property.

In response to a question from R. Adams, E. Kohek stated that the height of proposed buildings on the north side of the subdivision is 3 storeys.

In response to a question, D. Sappleton stated other new single detached dwellings constructed in infill locations have been 11.5m and 10.5m.

F. Eismont stated that the north side of the proposed development is not part of this application.

B. Fisher commented regarding the application stating opposition. They stated the purpose of the variance is to allow the builder to make more money.

K. Metzner replied the height is for 3 storeys. Affordable house, many people coming to Durham. Young adults can't afford a home. People can't afford daycare. Separate spaces for family members.

D. Crawford stated 9m was approved now 10.4m. Asked what the height is of each floor.

K. Metzner replied 1st and 2nd floors, 9ft, 3rd floor 8ft.

M. Woolsey stated that the precedents of heights were not in areas that were hemmed in by residents. We should not be held to those precedents.

R. Adams stated that there are different definitions for affordable. Adding a storey makes them less affordable. Very few 2-storeys in this area. At this point the proposal is not desirable.

Moved by R. Adams, seconded by J. Dowson,

"THAT the application by Holland Homes Inc. on behalf of Downing Street (1015 King Street) Inc. for 0 Queensdale Avenue, Oshawa, Ontario, be denied."

Affirmative –R. Adams, F. Eismont, P. Uprety, J. Dowson

Negative – A. Johnson

CARRIED.

The Chair declared that the application BE DENIED.

The DENIAL of the application granted herein is based upon the following reasons:

1. The Committee is of the opinion that the variance is not minor.
2. The Committee is of the opinion that the granting of the variance would not maintain the general intent and purpose of the Official Plan.
3. The Committee is of the opinion that the granting of the variance would not maintain the general intent and purpose of the Zoning By-law.

4. The Committee is of the opinion that the granting of the variance is not desirable for the appropriate development of the subject property.

A handwritten signature in black ink, appearing to read "Erika Kohek", written in a cursive style.

Erika Kohek, Assistant Secretary-Treasurer

DECISION UNDER THE PLANNING ACT

Committee of Adjustment Application for 0 Queensdale Avenue

An application has been submitted by Holland Homes Inc. on behalf of Downing Street (1015 King Street) Inc. for a variance from the City's Zoning By-law 60-94.

The application relates to 0 Queensdale Avenue (PL 357 SHEET 3B PT LT 12, RP 40R-26565 PTS 2 AND 3), Oshawa, Ontario.

The purpose and effect of the applications is to permit a maximum height of 10.4m for 11 single detached dwellings on the south side of the future extension of Queensdale Avenue, whereas Zoning By-law 60-94 permits a maximum height of 9m for a single detached dwelling in a R1-E "h-14" (Residential) Zone.

This application was heard by the Committee of Adjustment on August 24, 2022 and with Notice of Hearing having been given as directed by the Committee of Adjustment, THE DECISION OF THE COMMITTEE IS THAT THE APPLICATION BE DENIED.

The DENIAL of the application granted herein is based upon the following reasons:

1. The Committee is of the opinion that the variance is not minor.
2. The Committee is of the opinion that the granting of the variance would not maintain the general intent and purpose of the Official Plan.
3. The Committee is of the opinion that the granting of the variance would not maintain the general intent and purpose of the Zoning By-law.
4. The Committee is of the opinion that the granting of the variance would not contribute to the proper and orderly development of the municipality.
5. The Committee is of the opinion that the granting of the variance is not desirable for the appropriate development of the subject property.

All written and oral submissions received by the Committee of Adjustment were considered in making this decision.

NOTE:

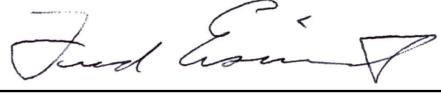
Any appeal from the above decision must be made on or before September 13, 2022.

The Planning Act provides for appeals to be filed by "persons". As groups or associations, such as residents or ratepayers groups which do not have incorporated status, may not be considered "persons" for the purposes of the Act, groups wishing to appeal this decision should do so in the name or names of individual group members, and not in the name of the group.

Andrew Johnson



Robert Adams



Fred Eismont



Prathad Uprety



Janet Dowson