

Everything you always wanted to **build***

A Response to
Zoning By-law Amendment Application No. D02-02-17-0037
by Robert Pellarin (Byron Ave. Resident)

 BUT WERE AFRAID TO ASK

As a long-time resident of Ottawa and owner of a home on Byron Ave. for 35 years, I felt it was very important that I express my concerns and opposition to the application by Peloso Construction for a Zoning By-law Amendment that would permit a 4th unit to be added to the 3-unit apartment complexes constructed at 266 & 270 Byron Ave.

I have read the documents submitted by Novatech on behalf of Peloso Construction and will comment on the rationale they have provided, but would first like to comment on the disturbing trend in our community to build first and seek variances/rezoning after the fact.

Everything You Always Wanted to Build, But Were Afraid to Ask

When Peloso Construction first submitted its plans to City Hall to undertake the construction of the two 3-unit buildings, it was aware of the zoning regulations for their property on Byron Avenue, particularly that the area was zoned for a maximum of 3 dwelling units per building, and their plan submissions reflected that.

Since I live in the area, I often passed by the construction zone and was interested to see what was being built. After the structures went up and services were being installed, I noticed that there were 4 separate gas connections on the side of each building (**Figure 1**), which I assumed meant that there would be 4 units in the building. When the construction was completed and signs were displayed advertising rental units, it appeared that there were only 3 units available for rent in each building. I thought that perhaps the basement unit would be occupied by the owner or a family member.

About six months later, while biking by, I noticed a large City of Ottawa sign in the front yard, which I knew meant that an application for a significant amendment was being sought. I didn't stop to read it at the time, but given the perplexing facts that I was aware of, I surmised that they had built that 4th unit without obtaining permission, and were now seeking a zoning by-law amendment to make it a reality. I wasn't surprised when I learned that this was indeed the case.

Peloso Construction applied for and received approval to only build two 3-unit buildings, but nonetheless went ahead and put in a 4th basement unit, fully serviced and roughed in. After waiting for about half a year, the application for rezoning was submitted.

While proceeding in this manner is not considered illegal, there certainly is an air of misrepresentation about it. Rather than making their intentions clear at the outset, the applicants have chosen to create a scenario that complicates the process, since we are now dealing with a structure that was overbuilt, with the specific intent of seeking relief in the form of a Zoning By-Law Amendment. Presumably, doing it this way is seen as more advantageous, in fact, so much so that others are following suit.

Figure 1. Gas connections at Subject Site



It's Okay to Park Here, Because Other People are Doing It

Often, when the City of Ottawa hosts special events, city staff put up “No Parking” signs on some streets, to help manage traffic. My observation has been that, inevitably, someone ignores the signs and shortly thereafter, a multitude of others follow suit. *“If that guy’s doing it, why not me?”*

It would appear that this type of behaviour is also becoming commonplace amongst builders and developers. On Ravenhill Avenue, just off Byron Avenue between Roosevelt and Golden, another building project similar to the subject site is also being undertaken. Two 3-unit apartment buildings have been built, with potentially two additional buildings to come later (**Figure 2**). I include this photo to highlight the degree to which this particular structure also does not *“complement the existing pattern and scale of development...”* The two-story home adjacent to it, which is a good example of the *“existing pattern and scale”*, is clearly dwarfed by the new structure.

I was told by one of the neighbours (who had gone through the building while it was still under construction) that, even though it was only approved for 3 units (all above ground, similar to the subject site), the basement area is completely roughed in and ready for a 4th unit. He jokingly commented that this builder would likely seek an amendment to the zoning restrictions to allow the 4th unit.

I fully expect that the Planning Committee will be entertaining another Zoning Amendment (similar to the current application) within the next year.

Figure 2 . Three-unit (?) apartment building under construction on Ravenhill Avenue



The “Rationale” (Having your cake and eating it too)

Response to Part 4.1 – Provincial Policy Statement 2014 (PPS)

In this section, the applicants seek to justify the request for a Zoning By-Law Amendment by referencing various sections of the PPS (specifically sections 1.1.1, 1.3.2 and 1.3.3). In summarizing this section of the rationale, the applicants conclude that **“The Subject Site is well suited for intensification. The proposed development is consistent with the policies of the Provincial Policy Statement.”**

In fact, the current structures, as they stand today, already meet and exceed the recommendations of the PPS. The original structure on this site that was demolished was a series of 3 attached row houses. The structures that replaced it contain 6 units, so occupancy has now doubled at this infill project, which should more than satisfy the requirements of the PPS.

In essence, the argument is being made by the applicants that a Zoning By-law Amendment is needed in order to satisfy the recommendations of the PPS, but since these requirements are shown to have already been met, the question really becomes **“what degree of intensification is appropriate?”**, and this is where reference to the city’s Official Plan is relevant.

It is important, as well, to keep in mind the following comments from Part III of the PPS (“How to Read the Provincial Policy Statement”):

“The Provincial Policy Statement recognizes the diversity of Ontario and that local context is important. Policies are outcome-oriented, and some policies provide flexibility in their implementation provided that provincial interests are upheld.”

“...Other policies refer to planning objectives that need to be considered in the context of the municipality or planning area as a whole, and are not necessarily applicable to a specific site or development proposal.”

Response to Part 4.2 – City of Ottawa Official Plan

Response to 4.2.1 - General Urban Area

The applicants comment that Policy 5 of Schedule B of the Official Plan states **“The City supports intensification in the General Urban Area where it will complement the existing pattern and scale of development and planned function of the area.”**

As I have described, the city has already demonstrated its support for intensification by granting a building permit to the applicants enabling construction of 6 units in place of 3.

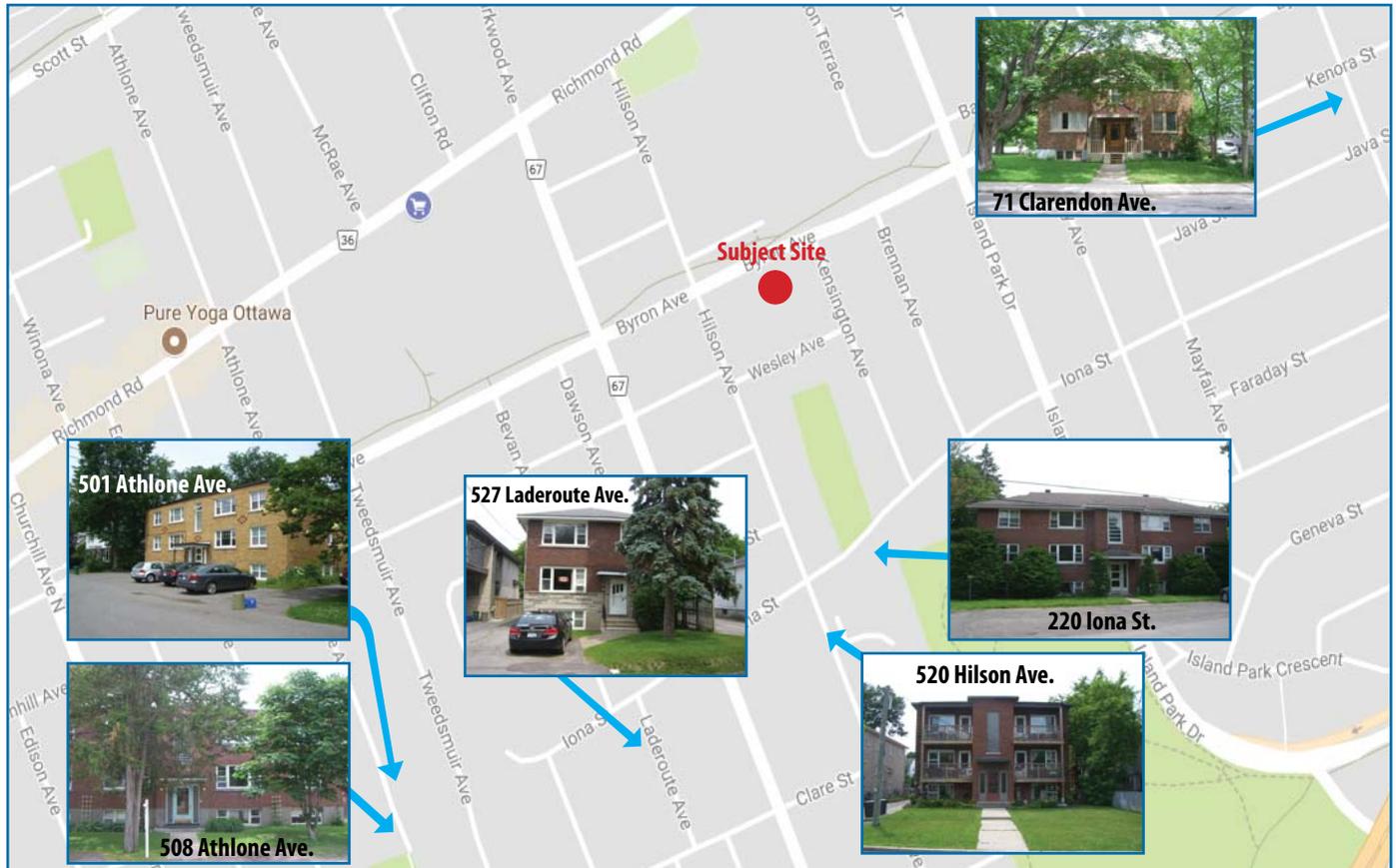
The applicants also commented that **“Allowing a low-rise apartment dwelling on the Subject Site is not out of character with the existing pattern and scale of development along this portion of Byron Avenue”**. I would disagree with that statement.

The current structures on the Subject Site are clearly a full floor higher than the adjacent low-rise apartment buildings, so they fail the “scale” test.

I have also attached a series of photographs on the following page (**Figure 3**) showing other low-rise apartment buildings, not only on Byron Avenue, but also on streets to the interior of Byron Avenue. Without exception, they are all on a scale that is one floor less than the subject structures. The explanation is very simple. All of these make use of the basement level as a unit, enabling adherence to zoning requirements (maximum 3 units) and at the same time retaining a scale that is in proportion with surrounding buildings (only two floors added above basement level).

The applicants did have the option to build similar structures, using the basement level as an apartment, thereby requiring only two additional floors above it to meet the 3-units per building zoning requirement (which they currently have). This would truly have allowed the structures to **“complement the existing pattern and scale of development...”**

Figure 3. Three-unit apartment buildings in adjacent neighbourhoods south of the Subject Site



Instead, the decision was taken by the applicants to build two much taller structures (one floor higher than others around them), leaving the ground floor vacant, which has now unfortunately led to this Zoning By-Law Amendment application to permit a 4th unit at basement level.

Response to 4.2.2 - Review of Development Applications (or "Byron Avenue Homeowners Lives Matter")

I was both shocked and disturbed by the applicants' comments regarding bullet point 4 (Relating to Policy 4.5 (Housing)...), particularly the text highlighted in red:

The proposal to convert the existing three-unit dwelling to low-rise apartments with parking located in the rear yard complements the existing characteristics and built form of the existing uses along this block of Byron Avenue. **The character along Byron Avenue differs from the character of the interior portion of the established neighbourhood. Byron Avenue provides an opportunity**

to act as a buffer or transition area to the community to the south. This edge condition is an appropriate location to facilitate intensification. The Subject Site reflects the existing front yard setbacks and parking configuration of the adjacent low-rise apartment dwellings.

This is highly reminiscent of a bygone era when developers would rationalize the wholesale demolition of neighbourhoods, simply because homes were perceived to be part of a "ghetto" and less important.

Not only is this an anachronistic, bigoted statement, but the applicants provide no evidence to support such a statement. The inference here is unmistakable; that homes and homeowners on Byron Avenue are of less consequence and therefore well suited "to act as a buffer or transition area to the community to the south". And, given our "edge condition", we are therefore useful as "...an appropriate location to facilitate intensification"?

All this seems to stem from their perception that *“The character along Byron Avenue differs from the character of the interior portion of the established neighbourhood.”* Really? In what way?

For decades, I have driven, walked and bicycled along Byron Avenue as well as all the streets adjacent to Byron and never noticed there was something different about Byron Avenue homes. Most Byron Street homes are elegant, two-story dwellings. Recently, a small, older, single-story home near the subject site was listed for \$675,000 and sold very quickly. Another two-story home two blocks away was recently listed for \$1.2 million (I guess they were unaware of their “edge condition”). And, ironically, arguably one of the grandest homes in the neighbourhood is directly beside the subject site. However, since these examples might be considered anecdotal, I will defer to an organization whose mandate is to determine the merits of Ontario’s properties.

The Municipal Property Assessment Corporation (MPAC) has a different viewpoint.

The Municipal Property Assessment Corporation (MPAC) uses the terminology “homogeneous neighbourhood (HN)” (see sidebar for an explanation) to define clusters of homes within a neighbourhood that share similar characteristics. Homes within an HN that share similar characteristics are assessed and taxed in the same way and, accordingly, will pay the same property taxes. My home, for example, which is on Byron Avenue, is in Zone F18, which comprises all homes on Byron Avenue and south as far as the Queensway in the blocks between Holland Avenue and Mayfair Avenue. Other homes further west along Byron Avenue are in different HNs, but invariably the

Homogeneous Neighbourhood

Homogeneous Neighbourhoods are defined as geographic areas located within a Locational Neighbourhood. They may be defined by natural, man-made or political boundaries and are established based on a commonality of land uses and the types and ages of buildings.

In developing Homogeneous Neighbourhoods, MPAC staff review municipal servicing maps and zoning maps. These maps ideally include the location of residential subdivisions, parks, schools, shopping malls, major industrial properties, and core business areas.

MPAC divides a municipality into Locational Neighbourhoods using these maps and their knowledge of the area and local real estate market.

The next step involves defining Homogeneous Neighbourhoods located within the Locational Neighbourhoods. During this process, MPAC gives consideration to:

- natural boundaries (e.g., ravines, topography, major streets);
- political boundaries (e.g., wards, polls, constituencies);
- similarity of housing stock (e.g., quality, size, age, type of housing);
- similarity of municipal servicing (e.g., sewer, water, power);
- similarity of physical environment (e.g., access to public transit, proximity to schools, libraries, parks, shopping centres);
- historic significance (e.g., designated heritage neighbourhood);
- desirability;
- similar stages of stability, growth or decline;
- similar marketability; and
- similar zoning.

Once the Homogeneous Neighbourhoods have been defined, MPAC visits the neighbourhood to review and confirm the established boundaries.

The Homogeneous Neighbourhoods are then applied to MPAC’s database. Every residential property in MPAC’s database is identified with a code (e.g. A16) which corresponds to its Homogeneous Neighbourhood. This ensures MPAC is able to capture this important property characteristic during its valuation of the property. It also allows MPAC the opportunity to study the real estate market’s perception of the desirability of different neighbourhoods by analyzing the sales which have occurred both within and outside the defined boundaries. Through this analysis, MPAC is able to distinguish how desirable one neighbourhood is when compared to another located within the municipality.

Since neighbourhoods are dynamic and each has its own life cycle (e.g., period of growth, stability, decline and revitalization), staff continuously review and update the Homogeneous Neighbourhood information contained in MPAC’s database to reflect changes which impact the neighbourhood, such as municipal zoning changes or the emergence of incompatible uses or development.

homes on Byron Avenue are included in the same HNs as homes to the south of Byron Avenue.

In the definition sidebar, I have highlighted 4 key characteristics of homes within a homogeneous neighbourhood, which makes it very clear that MPAC considers all homes within an HN to be of similar quality and value.

So unless the applicants would be willing to submit a Request for Reassessment on behalf of all Byron Avenue residents or can provide substantiated evidence to support their claims that *“the character along Byron Avenue differs from the character of the interior portion of the established neighbourhood”*, then I suggest this argument be dropped from consideration in the application.

Consequences of Zoning By-Law Amendment Approval

The applicants have tried to contend that the city block on which they have built their structures is unique and that the Zoning Amendment that they are seeking would not pertain to other areas within the neighbourhood, but as I have shown in **Figure 3**, other areas on Byron Avenue and on interior streets also have similar, smaller low rise apartment building similar to the ones adjacent to the Subject Site.

The argument could then be made by any builder/developer that this Zoning Amendment can and should be applied to any location with this particular zone. It would be difficult, then, to deny other developers who wish to apply for the same Zoning Amendment in other neighbourhoods to the south of Bryon Avenue the same consideration that has been given to the current applicants.

And it wouldn't necessarily have to occur in areas where there already are smaller low rises. As I have already pointed out, there is on-going construction

on Ravenhill Avenue, where the builder is mimicking the scenario at 366-370 Byron Ave. and will likely be seeking the same type of Zoning Amendment as the current applicants. This development is not on Byron Avenue and there are no low rises nearby, but if my observations are correct, and they are ultimately successful in a bid for rezoning, then the same consequences could befall any property in any neighbourhood south of and including Byron Avenue.

The current application would serve as a benchmark, and even if the Planning Committee and Council refuse other applicants, a benchmark decision in this case could serve as fodder for appeals to the OMB by developers who are unsuccessful.

I strongly suggest that this application be denied.