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PL081443

Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

2107639 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the former City of Toronto to redesignate the lands municipally known as 2-4 Neville Park Boulevard and 438-440 Lakefront Lane to permit the development of a four-storey residential building and one single-detached house  
Approval Authority File No. 07 222719 STE 32 OZ  
OMB File No. PL081443

2107639 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 438-86, as amended, of the former City of Toronto to rezone lands respecting 2-4 Neville Park Boulevard and 438-440 Lakefront Lane to permit the development of a four-storey residential building and one single-detached house  
OMB File No. PL081444

IN THE MATTER OF subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Referred by: 2107639 Ontario Inc.  
Subject: Site Plan  
Property Address/Description: 2-4 Neville Park Boulevard and 438-440 Lake Front Lane  
Municipality: City of Toronto  
OMB Case No.: PL081443  
OMB File No.: PL081234

**APPEARANCES:**

**Parties**

2107639 Ontario Inc.

City of Toronto

Linda Schuyler

Beach Lakefront Neighbourhood Association Inc.

**Counsel**

A. Brown

R. Kallio and J. Braun

D. Bronskill and N. Staubitz

D. Wood and C. Estrela

**DECISION DELIVERED BY R. ROSSI AND J. G. WONG AND ORDER OF THE BOARD**

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The proposal

The Applicant, 2107639 Ontario Inc., seeks approval of a proposed Official Plan Amendment, Rezoning and Site Plan for the construction of a development consisting of a detached house at 4 Neville Park Boulevard and a four-storey apartment building on the properties at 2 Neville Park Boulevard and 438-440 Lake Front Lane. The site is located adjacent to the south end of Neville Park Boulevard, south of Queen Street East and is part of the larger Beach neighbourhood located in the City of Toronto .

The proposal seeks assembly of three lots (438-440 Lake Front Lane and 2 Neville Park Boulevard) on which the Applicant proposes to construct an apartment building (with ten units, each to be sold as condominium units) while one, single-detached dwelling is proposed to be built on the 4 Neville Park Boulevard site. The proposed floor area ratio (FSI) of the assembled properties is 1.67. Separately, however, the apartment building's floor area ratio on its site is 1.79 FSI and the detached house's floor area ratio on its site is 1.01 FSI.

The Applicant has also asked the Board to make a determination in respect of the appropriateness of its plan to remove certain mature trees, to retain others and to provide a series of on-site, replacement plantings that would mitigate the loss of mature red oak tree canopy on the subject lands. The Beach Lakefront Neighbourhood Association Inc., which opposed the application, also asked the Board to consider the appropriateness of the proposed development in the context of a "Heritage Conservation District Study" that the Association undertook, although there is no heritage designation for this area. The Board did consider this evidence but it has determined that the most persuasive evidence on which to base its decision comprises that provided on the actual planning merits of this case in the context of the relevant and in-force planning instruments and policies before it.

The Subject Properties

The subject properties are located at 2-4 Neville Park Boulevard and 438-440 Lake Front Lane in the Beach area of the City of Toronto. They are located directly

north of Lake Ontario and border the public beach. The combined lot area of the properties is approximately 2,940 square metres.

Number 2 Neville Park Boulevard has a lot area of approximately 845 square metres. It is developed with a two-storey, detached house containing one dwelling unit and has an above-floor area of approximately 370 square metres. Number 4 Neville Park Boulevard has a lot area of approximately 446 square metres. It is developed with a three-storey, detached house containing one dwelling unit and has an above-floor area of approximately 551 square metres.

Number 438 Lake Front Lane has a lot area of approximately 795 square metres. It is developed with a three-storey, detached house that was torn down in 1995. Number 440 Lake Front Lane has a lot area of approximately 855 square metres. It is developed with a three-storey detached house containing one dwelling unit.

#### Adjacent Uses

The properties are situated in a residential area. Land uses adjacent to the site are single, two-storey detached dwellings at 6 Neville Park Boulevard and 11 Munro Park Avenue to the north, Neville Park Boulevard right-of-way to the east, 1 Munro Park Avenue to the west (formerly 434 Lake Front Lane, a two-storey, detached house containing one dwelling unit) and Lake Ontario and the public beach to the immediate south.

#### The Study Area

The Applicant's "immediate" area of study extends south of Queen Street East from Silver Birch Avenue to the west and to Nursewood Road to the east. Planner Peter Walker opined that this area is "similar in character and built form to the broader study area", characterized by north-south streets that terminate at the edge of the beach; pedestrian connectivity and no east-west street connections. This area includes single-detached dwellings, semi-detached dwellings and small apartment buildings, including three apartment buildings along the lakefront, east and west of the site (though these are smaller in size, massing and scale than what the Applicant proposes to construct), as well as an additional small apartment building on Balmy Avenue at the northwestern portion of the study area.

The three streets that comprise the subject neighbourhood - Nursewood Road, Neville Park Boulevard and Munro Park Avenue - are north-south streets that run from Queen Street East and dead end just north of the public beach. There are no east-west pedestrian or vehicular connections between them other than Queen Street East, distinguishing this area from the Applicant's broader study area that extends westward. In the Applicant's proposed area of study, all north-south streets west of Silver Birch Avenue have at least one east-west vehicular connection to an adjacent north-south street as well as the Queen Street East connection. Silver Birch Avenue enjoys a pedestrian connection to Willow Avenue near its southern terminus. This street pattern creates internal links throughout the area west of Munro Park Avenue, but the Board finds persuasive the opposing planners' evidence that this pattern establishes a distinct separation between the subject neighbourhood and this larger area.

In contrast, the City's study area is smaller, with the western edge limited to properties fronting onto Munro Park Avenue, and the rest of the area the same as that of the Applicant; that is, extending south of Queen Street East and including the properties along Neville Park Boulevard and Nursewood Road. City Planner Leontine Major advised the Board that the City's study area was chosen because it has different zoning from the remainder of the area located south of Queen Street. The City's study area is zoned entirely R1, which is the most restrictive residential zoning in the City of Toronto Zoning By-law and which only permits detached houses and converted houses. There is an additional permission in this area for duplex houses. The City's other rationale for this smaller area of study is based on a mid-1980s, detailed zoning study, which resulted in amendments related to this specific area only.

Planner Pino Di Mascio used the same area of study as the City for the same reasons. He also noted that the Applicant's area of study includes the area west of Munro Park Avenue, but this area has different zoning (R2 Z0.6) that permits apartments; has generally smaller lot areas; has a different mix of residential development; and has a different street pattern than the City's study area (some east-west streets). The area west of the subject neighbourhood, between Munro Park Avenue and Lee Avenue, has a different zoning; R2 Z0.6, which permits small scale apartments; whereas the subject neighbourhood's R1 Z0.6 zoning does not permit apartments.

There is existing three-to-four storey apartment at 2 Nursewood Road, which is a recognized exception to the R1 zoning and was constructed prior to the applicable zoning being enacted and in conformity with this zoning, no additional apartments have been constructed in the R1 zone.

Mr. Di Mascio's evidence on, and rationale for the smaller study, was articulated most persuasively for the Board. He noted that this different mix of residential development and differing street pattern distinguish the subject neighbourhood from the residential areas to the west. The City's smaller study area has developed with a distinct physical character, he opined, and it has been treated as a distinct area with regard to land use policy and zoning since the mid-1980s. In the Board's view, neither the Applicant's counsel nor planner were able to shake Mr. Di Mascio's characterization of this area and the Board determines that the City's study area is distinguishable from the larger study area and is a preferable delineation based on sound planning reasons which the Board should prefer. Mr. Di Mascio also included site and built form statistics for the residential area west of the subject neighbourhood to support his adoption of the City's' smaller study area.

The Board carefully considered the rationale provided by these planners for determining the "immediate" area of study. Planners Di Mascio and Major provided more persuasive reasons for confining the subject neighbourhood, or study area, to the neighbourhood as defined from Queen Street East to the north, the R.C. Harris Water Treatment Plant to the east along Nursewood Road, the public beach to the south and the area of Munro Park Avenue to the west. This area is distinguishable from the broader neighbourhood to the west on the basis of the study area's built form, physical character and zoning characteristics. The planners demonstrated the planning context (expanded upon below) as well as the historical zoning and earlier study of this area as worthy and justifiable reasons not to look beyond Munro Park Avenue to the west in assessing the physical character of the area. As stated above, the Board prefers and bases its findings on the City's study area, referenced throughout this decision as the subject neighbourhood.

### The Subject Neighbourhood

The subject neighbourhood's R1 Z0.6 zoning is a low rise residential category in the City's Zoning By-law. The neighbourhood is fully residential and is characterized primarily by two to three-storey detached houses. Of the approximately 85 developed lots in the neighbourhood, 77 are detached and contain one unit while 7 are detached and contain 2 units. The apartment building at 2 Nursewood Road, constructed in 1965 with a floor area ratio of 0.61, is only slightly in excess of the 0.6 floor area ratio permitted in the Zoning By-law.

Queen Street East properties are designated *Mixed Use* in the Official Plan, as opposed to the *Neighbourhood* designation for the study area. They are zoned *Commercial Residential* as opposed to *Residential* for the subject neighbourhood and comprise a different built form, which tend to be larger and built to a higher density than development south of Queen Street East. Properties on this main street are primarily mixed use, apartments and non-residential.

The opposing planners opined that the area west of Munro Park Avenue (comprising the Applicant's larger area of study) and south of Queen Street East has different zoning, generally smaller lot areas, a different mix of residential development and a different street pattern than the City's defined neighbourhood. In the Board's determination, these differences further support the City's delineation of the neighbourhood boundary and distinguish it from the residential areas to the west. It then serves to support the City's submission that this particular neighbourhood has developed with a distinct physical character and has been treated by the City as a distinct area (with regard to land use policy and zoning) for several decades.

While both the subject neighbourhood and the area west of Munro Park Avenue are designated *Neighbourhood* in the Official Plan, connoting a physically stable area, the Zoning By-law has established the forms of development deemed to be appropriate and that will not destabilize the area. For example, the R1 zone for the subject neighbourhood does not permit apartment buildings.

The Board finds persuasive the opposing planners' evidence that the area west of Munro Park Avenue has a different physical character than the subject neighbourhood. The Board notes, for example, that the lot areas, especially with regard

to Neville Park Boulevard and Munro Park Avenue, tend to be larger than lot areas west of Munro Park Avenue, though the above-floor area of detached homes is similar, on average, in the subject neighbourhood. While the subject neighbourhood comprises detached homes and one small apartment building, the area to the west is a mix of detached homes, semi-detached homes and multiplexes, in addition to townhouses and approximately ten, small-scale apartment buildings.

### The Planning Regime and Findings of the Board

#### Provincial Policy Statement (PPS) 2005

Section 3 of the *Planning Act* requires that all decisions affecting planning matters “shall be consistent with” the policies contained in the PPS. The Board considered the following policies:

#### Policy 1.1.3.3 – Managing and Directing Land Use

Planning authorities shall identify and promote opportunities for intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.

The PPS defines “intensification” as “...the development of a property, site or area at a higher density than currently exists through:

- a. redevelopment, including the reuse of brownfield sites;
- b. the development of vacant and/or underutilized lots within previously developed areas;
- c. infill development; and
- d. the expansion or conversion of existing buildings.”

“Redevelopment” is defined as “...the creation of new units, uses or lots on previously developed land in existing communities, including brownfield sites.”

The Board determines that the subject proposal is a redevelopment of the properties at 2-4 Neville Park Boulevard and 438-440 Lake Front Lane as it creates new units on previously developed land in an existing community. It is also an intensification of these properties as the redevelopment will be at a higher density than what currently exists.

The PPS directs municipalities to identify opportunities for intensification and redevelopment where it can be accommodated. This policy recognizes that not all locations can accommodate intensification and redevelopment. It establishes that there are areas that are meant to change through intensification and redevelopment, and there are areas that are meant to remain stable.

This policy also delegates the identification and promotion of opportunities for intensification and redevelopment to planning authorities, such as the City of Toronto, which is done through official plans and zoning by-laws. As the subject neighbourhood is a physically stable area and not one where intensification is to be directed, the Board finds that the Applicant has not provided any evidence to demonstrate satisfactorily why or how the City's existing policy structure is inappropriate and has also not demonstrated any public interest that supports changes to the existing policy structure as it applies to these lands.

Policy 4.5 – Implementation and Interpretation, states that the official plan is the most important vehicle for implementation of the PPS.

Comprehensive, integrated and long-term planning is best achieved through municipal official plans. Municipal official plans shall identify provincial interests and set out appropriate land use designations and policies. Municipal official plans should also coordinate cross-boundary matters to complement the actions of other planning authorities and promote mutually beneficial solutions.

Municipal official plans shall provide clear, reasonable and attainable policies to protect provincial interests and direct development to suitable areas.

In order to protect provincial interests, planning authorities shall keep their official plans up to date with this Provincial Policy Statement. The policies of this Provincial Policy Statement



continue to apply after the adoption and approval of a municipal official plan.

As stated above, the *Act* deems the appropriate location of growth and development to be a matter of provincial interest and the PPS states that official plans shall provide policies that protect provincial interests. In this vein, Policy 4.5 is the vehicle through which this protection is achieved in official plans by setting out appropriate land use designations and policies and by directing development to suitable areas.

The Board determines that 2-4 Neville Park Boulevard and 438-440 Lake Front Lane are not properties that have been identified as opportunities for *intensification* and redevelopment. The proposed development of this site does not conform to the Official Plan land use designation of *Neighbourhood*, as the subject lands are located in a physically stable area and not an area where intensification is to be directed. By extension, there is no indication in any of the documents or in the evidence presented at the hearing that the designation of the subject lands as *Neighbourhood* in the City of Toronto Official Plan is inappropriate or that there is public interest that favours change in the manner proposed. The Board finds that development in the form this Applicant envisions would create instability in the subject neighbourhood and in doing so, would encourage further similar growth and development where it has explicitly been determined to be inappropriate.

The Board determines that approval of the requested Zoning By-law Amendment and Official Plan Amendment is not consistent with these policies of the Provincial Policy Statement.

#### Places to Grow: The Growth Plan for the Greater Golden Horseshoe

This Provincial plan defines how and where long-term growth and development should occur in the Greater Golden Horseshoe region. It establishes a vision and corresponding policies that address transportation, infrastructure, land use planning, urban form, housing and natural heritage protection.

Section 2.2.2.1 – Managing Growth states that “Population and employment growth will be accommodated by...b) focusing intensification in intensification areas.”

The Growth Plan uses the same definition of “intensification” and “redevelopment” as the PPS uses. This Plan defines “intensification area” as “lands identified by municipalities or the Minister of Public Infrastructure and Renewal within a settlement area that are to be the focus for accommodating *intensification*” and the areas are identified within the Plan.

The Growth Plan states that intensification areas are to be the focus for accommodating intensification, which logically implies that not all locations are to be a focus for accommodating intensification. There are areas that are meant to change and areas that are meant to remain stable.

Section 2.2.3.6 – General Intensification states the following:

All municipalities will develop and implement through their official plans and other supporting documents, a strategy and policies to phase in and achieve intensification and the intensification target. This strategy and policies will:

- a) be based on the growth forecasts contained in Schedule 3
- b) encourage intensification generally throughout the built up area
- c) identify intensification areas to support achievement of the intensification target

In respect of Policy 2.2.3.6 a), intensification target policies and strategies in official plans will be based on growth forecasts contained in this Plan. For Toronto, the estimated population by 2031 is 3.8 million residents, whereas the City of Toronto Official Plan forecasts three million residents. The Board heard uncontradicted evidence from the opposing planners that there are sufficient opportunities for intensification within the City’s designated intensification areas that will enable the City to achieve its growth forecasts.

Policy 2.2.3.6 b) encourages intensification generally throughout the built up area and Policy 2.2.3.6 c) states that there will be specific intensification areas to support achieving the intensification target, but the Growth Plan requires official plans to include a strategy and to identify specific areas for intensification to meet the intensification target.

The subject lands are located in an area with an Official Plan designation of Neighbourhood, a physically stable area. These lands have not been identified as an area where intensification is appropriate such as the *Centres* and along *Avenues*, and the proposal does not focus intensification in an intensification area. In the Board's determination, the proposal would create instability in the subject neighbourhood by introducing a large built form that is out of character with the surrounding area; intensifies in an area where this type of intensification is neither contemplated nor appropriate; and would encourage similar growth and development in the future where it has been explicitly determined to be inappropriate.

As Ms Major opined in her evidence, the Growth Plan states that a municipality will designate growth areas in its official plan and in the case of the City of Toronto, the subject site is not located within a growth area. Growth areas in Toronto have been identified as *Downtown*, the *Centres*, the *Avenues* and *Employment Districts* – not in an area designated Neighbourhoods, and the Board finds persuasive her opinion that the replacement of two detached houses, containing three units with a combined gross floor area of 1,087.78 square metres, with a ten-unit apartment building with a gross floor area of 5,008.2 square metres (460% larger than that of existing buildings), to be characterized as intensification.

For these reasons, the Board determines that the proposal does not conform to the referenced Growth Plan policies.

#### City of Toronto Official Plan

The following policies of the Official Plan area relevant to the Board's determination:

##### Section 2.2, Policy 2 i)

Growth will be directed to the Centres, Avenues, Employment Districts and Downtown in order to: i) protect neighbourhoods, green spaces and natural heritage features and functions from the effect of nearby development.

This policy implements the direction provided in both the PPS and the Growth Plan. The overall approach of the City's Official Plan is to balance growth with stability

by defining areas where physical change is appropriate or expected (such as *Centres* and *Avenues*) and areas where physical change is not desirable, such as parks, heritage buildings and neighbourhoods of single-family homes. The Board was assisted by the City of Toronto discussion paper, released in 2000, entitled “Toronto at the Crossroads”, and which served as a background report to the Official Plan (Exhibit 26, Tab 6). The Board notes the following excerpts that supported its findings:

But the physical changes to our neighbourhoods are gradual and tend to reinforce the existing built character through house additions, decks and infill or replacement homes. The new Official Plan will recognize the stable physical character of existing neighbourhoods and include policies to ensure that civic actions and applications for development respect the general physical character of these communities; improve community amenities; promote environmental sustainability; and boost economic activity.

The paper also summarized the City Council’s intent in Residential Neighbourhoods as “reinforcing and enhancing the established physical character; improving community amenities; and promoting environmental sustainability.”

The Official Plan directs the type of growth that this proposal reflects to *Centres*, *Avenues*, *Employment Districts* and the *Downtown*, but the subject lands are located within a *Neighbourhood*. Both the Official Plan and the aforementioned background paper consider *Neighbourhoods* to be stable areas and are not areas for the type of growth that this proposal offers. Further, the Official Plan does not envision the introduction of a four-storey apartment building, which is of a larger scale than all other existing residential buildings in the subject neighbourhood, which is comprised predominantly of detached houses. The Board finds that the Applicant has not identified any public interest to support changing this “Structuring Growth” policy of the Official Plan.

### Section 2.3.1, Policy 1 – Healthy Neighbourhoods

*Neighbourhoods* and Apartment Neighbourhoods are considered to be physically stable areas. Development within *Neighbourhoods* and Apartment Neighbourhoods will be consistent with this objective and will respect and reinforce the existing physical character of buildings, streetscapes and open space patterns in these areas.

The character of the subject neighbourhood is predominantly detached houses. The character of the area west of Munro Park Avenue, the broader residential area, is predominantly smaller scale residential buildings. Even when compared to the single existing apartment building within the subject neighbourhood (at 2 Nursewood Road), the Board determines the proposed building to be out of character as it would be far larger than any built form around it or permitted by the zoning. The 2 Nursewood Road building's density of 0.61 is similar to other properties in the subject neighbourhood as its lot is proportionately larger, and the density is also only slightly greater than the 0.60 maximum floor area ratio permitted for the area in the Zoning By-law. Further, both the 2 Nursewood Road building (with its site-specific permission) in the subject neighbourhood and all of the existing apartments in the area west of Munro Park Avenue are of a smaller scale than the proposed building. The Board finds that the proposed building would not be in keeping with the character of dwellings in the neighbourhood.

In the Board's determination, the site-specific exemption accorded to that building is persuasive evidence of the City's intent to recognize the existing apartment use at 2 Nursewood Road while not subjecting that site to a legal non-conforming use status when the City removed apartment permissions for the rest of this area. In the Board's determination, its status provides persuasive evidence of the City's desire to preserve the existing character of the subject neighbourhood by ensuring that no new apartment buildings would be constructed, and certainly not of a size, massing and scale as the Applicant wishes to construct on the assembled lots. As stated, the subject proposal would have a much larger lot size, above-floor area and density than the building at 2 Nursewood Road. In fact, it would have the largest above-floor area of all residential buildings south of Queen Street East between Nursewood Road and Lee Avenue. The Board also heard evidence that all of the apartment buildings in the broader residential area have an above-floor area that is less than half of the above-floor area of the Applicant's proposed apartment building.

The Board also considered the comparison of the proposed building with the apartment building located at 30 Beech Avenue. While the subject lot is 2,551 square metres, and the building at 30 Beech Avenue is 3,781 square metres, the latter building is only two to three storeys in height and has a density of 0.60, which conforms to the site's zoning. The size of its lot, combined with the low density, limits the physical and

visual impact on surrounding properties. The proposed assembled lot would be inconsistent with all other properties in the broader residential area at nearly twice the size of the next largest existing residential lot. Moreover, all other apartments in this area are sited on lots with areas less than 2,000 square metres. In the Board's determination, this would create a building that is distinctly out of character with the subject neighbourhood.

Further, in the context of the broader residential area, the proposed apartment building would have the largest ground floor area, at 1,145 square metres, of all residential buildings south of Queen Street East between Nursewood Road and Lee Avenue. The building at 30 Beech Avenue has a ground floor area of 1,129 square metres and does not possess the height, density, massing or scale of the proposed building. The ground floor area of all other apartment buildings in this area are less than 650 square metres, just over half that of the proposed condominium building.

The Board determines that the lot size, density and height of the proposed building do not reinforce the existing physical character of the subject neighbourhood, or that of the broader residential area. The above-floor area, lot size and floor plate, combined with the four-storey height of the proposed building are significantly out of context with the scores of smaller-scale detached houses (the predominant built form) of the subject neighbourhood and out of context with the eleven, smaller-scale apartment buildings in the broader residential area.

Further, the consolidation of individual lots that do not vary significantly from the local lot pattern would create a development parcel that does not conform to the local pattern. In the Board's determination, intensification, not just on one of the lots but on the consolidated lots would create a development that would impact negatively the physical stability of the subject neighbourhood.

For all of these reasons, the Board determines that the proposal does not conform to Section 2.3.1, Policy 1 of the Official Plan and does not contribute to a "healthy neighbourhood."

### Section 3.1.2 Policy 3 – Built Form

New development will be massed to fit harmoniously into its existing and/or planned context, and will limit its impacts on neighbouring streets, parks, open spaces and properties by:

- a) massing new buildings to frame adjacent streets and open spaces in a way that respects the existing and/or planned street proportion;
- b) creating appropriate transitions in scale to neighbouring existing and/or planned buildings for the purpose of achieving the objectives of this Plan;
- c) providing for adequate light and privacy;
- d) adequately limiting any resulting shadowing of, and uncomfortable wind conditions on, neighbouring streets, properties and open spaces, having regard for the varied nature of such areas; and
- e) minimizing any additional shadowing and uncomfortable wind conditions on neighbouring parks as necessary to preserve their utility.

The Board placed significant weight on Architect Sharon McKenzie's opinion that the proposed development is "monolithic in form and size" and would negatively impact neighbours' views to the east and the views of the neighbourhood to the north. The Board finds persuasive her evidence that the proposed building will "dwarf the adjacent arts and craft home of the neighbours." The Board notes the significant height difference between the western neighbour's home and the proposed development, made more noticeable with the partial, above-grade protrusion of the underground garage. As Ms McKenzie opined:

The proposed building would have almost no side yard set back as the proposed parking garage will be built out to the property line and is partially constructed above grade. Above this, the west side of the development will be a four-and-a-half-storey uninterrupted wall facing the neighbours' home.

The Board finds persuasive Ms McKenzie's professional opinion that the design elements of the building do not change the fact that the proposed development represents an incompatible form of development in terms of type of use, size and scale, height, massing and setbacks. The proposed development does not respect the

physical character of the area and does not fit harmoniously into the existing context for the aforementioned reasons.

The Board also finds persuasive this architect's opinion that the proposed development is "a fundamentally different form of new building...that will change the existing character of the neighbourhood." The Board also finds persuasive her opinion that "[T]he two apartment buildings in the surrounding area have existed for decades and are not representative of the neighbourhood's existing physical character."

By extension, the Board was not persuaded by Architect Mark Sterling's opinion that the addition of this building would "contribute to the eclectic character of the area", particularly as he based his opinions on a larger study area that the Board has set aside in favour of the City's more appropriate focus on the narrower study area. Even if the Board were to accept Mr. Sterling's evidence that the eclectic nature of the larger area held sway here, the sheer size and massing of this large building is not, in the Board's determination, a desirable built form to be approved for this section of the Beach. The Board finds that it would be a jarring addition to the immediate area and has the potential to create instability in terms of introducing a built form that others could seek to replicate if approved. Lastly, the Board determines that the study area is comprised predominantly of ground-related houses, the scale is both low and incremental, with voids between homes that provide views through to Lake Ontario. As Ms McKenzie opined, this proposal offers no voids along its length to "mimic the neighbourhood incremental character of single-family dwellings and will be much higher than the adjacent dwellings."

Ms McKenzie's evidence was unshaken in the Board's determination and the Board finds that the proposal would not fit harmoniously within the neighbourhood and does not conform to built form policy 3 of Section 3.1.2 of the Official Plan.

#### Section 4.1, Policy 1 - Neighbourhoods

*Neighbourhoods* are considered physically stable areas made up of residential uses in lower scale buildings such as detached houses, semi-detached houses, duplexes, triplexes and townhouses, as well as interspersed walk-up apartments that are no higher than four storeys. Parks, low scale local institutions, home occupations, cultural and recreational facilities and small-



scale retail, service and office uses are also provided for in *Neighbourhoods*.

The Board determines that while a new, four-storey apartment building may be appropriate in certain neighbourhoods, it is inappropriate to develop such a building in this neighbourhood, where detached houses are the prevailing building type. The proposed building is larger than any other built form in the immediate study area and larger than any of the smaller apartment buildings in the Applicant's study area. The Board's position is that the Official Plan must be read as a whole in understanding the applicable policies to any individual property. Notwithstanding that Policy 1 states that *Neighbourhoods* may include interspersed walk-up apartments, other policies dealing with the existing neighbourhood context must be read in conjunction with this policy; that is, those policies that speak to the existing character of a neighbourhood when determining the type of development to be permitted. Moreover, the Board has also determined the City's slightly narrower study area to be the most appropriate context in which to consider the Applicant's proposal.

The reference in this policy to "interspersed walk-up apartments that are no higher than four storeys" does not permit an apartment building that is not a walk-up apartment (unlike the two existing apartment buildings located at 2 Nursewood Road and 15 Glenfern Avenue) and does not contribute to the neighbourhood's physical stability. Further, the proposed building scale for the subject neighbourhood would, in the Board's determination, negatively impact that physical stability.

The Board cannot support a proposal that seeks to demolish single-detached homes for the purpose of consolidating lots in order to allow for a substantially higher density development than exists in the surrounding context, particularly where the Applicant has offered no persuasive rationale or justifiable planning reason to do so.

The Board finds that the proposal does not conform to Section 4.1, Policy 1 of the Official Plan.

#### Section 4.1, Policy 5 – Development Criteria in *Neighbourhoods*

Development in established *Neighbourhoods* will respect and reinforce the existing physical character of the neighbourhood, including in particular:

- a) pattern of streets, blocks and lanes, parks and public buildings sites;
- b) size and configuration of lots;
- c) heights, massing, scale and dwelling type of nearby residential properties;
- d) prevailing building type(s);
- e) setbacks of buildings from the street or streets;
- f) prevailing patterns of rear and side yard setbacks and landscaped open space;
- g) continuation of special landscape or built-form features that contribute to the unique physical character of a neighbourhood; and
- h) conservation of heritage buildings, structures or landscapes.

This section also states that no change will be made through rezoning, minor variance, consent or other public action that is out of keeping with the physical character of the neighbourhood. The policy states further:

The prevailing building type will be the predominant form of development in the neighbourhood. Some *Neighbourhoods* will have more than one prevailing building type. In such cases, a prevailing building type in one neighbourhood will not be considered when determining the prevailing building type in another neighbourhood.

The Board also references the non-policy language found on page 4-3 of the Official Plan, which provides guidance on the intent of the policy language in this section:

The stability of our Neighbourhood's physical character is one of the keys to Toronto's success. While communities experience constant social and demographic change, the general physical character of Toronto's residential neighbourhood endures. Physical changes to our established Neighbourhoods must be sensitive, gradual and generally fit the existing physical character. A key objective of this Plan is that new development respect and reinforce the general physical patterns in a *Neighbourhood*.

Policy 5 found on page 4-4 lists several aspects of physical character that development in established *Neighbourhoods* must meet. The Board determines that several of these are not met and that the proposal is neither sensitive nor gradual and does not generally fit the existing character of the neighbourhood.

Policy 5b) size and configuration of lots. This proposal creates a lot size that is out of character with all other properties in the neighbourhood and the broader residential area. The proposed lot area for the apartment building is 57% larger than the lot for the apartment at 2 Nursewood Road and is more than double the size of all other lots in the neighbourhood. It is larger than all other residential lots in the broader residential area, except for the property at 30 Beech Avenue, and would serve as an anomaly property that would be inconsistent with the development pattern of the neighbourhood and the broader residential area.

Policy 5c) heights, massing, scale and dwelling type of nearby residential properties. The proposed four-storey building would be taller than all other buildings in the neighbourhood. The 2 Nursewood Road building has a height of four storeys along its southern edge but the grade is at a significantly lower elevation on this edge of the building than it is for all other properties in the neighbourhood. All other buildings in the neighbourhood are three storeys or less, the majority of which are either two or two-and-a-half storeys in height. The above-floor area of the proposed apartment building is more than four times larger than the existing apartment building at 2 Nursewood Road and is more than eight times larger than the gross floor area of all other buildings in the neighbourhood. The Board also heard evidence that virtually all of the condominium units would be larger than the average homes situated in the subject neighbourhood and would be twice as large as the largest existing apartment in the broader residential area, which is the building located at 30 Beech Avenue.

Further, the ground floor area of the proposed building would be more than three times larger than the 2 Nursewood Road building would be more than five times larger than the ground floor area of all other buildings in the subject neighbourhood. It would also have the largest ground floor area of all residential buildings in the broader residential area.

Policy 5d) prevailing building type(s). The inventory of properties referenced in the subject neighbourhood comprises detached houses and the detached house form is the prevailing building type and all buildings are of a smaller scale than the proposed apartment building.

Policy 5 states the following:

The prevailing building type will be the predominant form of development in the neighbourhood. Some *Neighbourhoods* will have more than one prevailing building type. In such cases, a prevailing building type in one neighbourhood will not be considered when determining the prevailing building type in another neighbourhood.

The non-policy text on page 4-2 of the Official Plan provides further information to the Board in respect of Prevailing Building Types:

Many zoning by-laws currently permit only single detached houses. The type of dwellings permitted varies among neighbourhoods and these detailed residential use lists are contained in the established zoning by-laws which will remain in place and establish the benchmark for what is to be permitted in the future. If, for example, an existing zoning by-law permits only single detached houses in a particular neighbourhood and the prevailing (predominant) building type in that neighbourhood is single detached dwellings, then the Plan's policies are to be interpreted to allow only single detached dwellings in order to respect and reinforce the established physical character of the neighbourhood, except where the infill policies of Section 4.1.9 would be applicable.

In the subject neighbourhood, the Zoning By-law permits single-detached dwellings with one or two units and duplexes. The prevailing building type is single-detached dwellings and as Section 4.1 of the Official Plan reveals, only buildings that reinforce the established physical character, such as single-detached dwellings and duplexes, should be permitted.

The Board finds that the proposed height is inappropriate for the subject neighbourhood, particularly in respect of the proposed massing/above-floor area and scale/ground floor area, which are out of character with all other buildings in the neighbourhood and the broader residential area. Its proximity to single detached homes

in the immediate area also means that the height of this structure would overwhelm the physically stable subject neighbourhood.

For all of these reasons, the Board finds that the proposal does not conform to Section 4.1, Policy 5 of the Official Plan and that the proposal is out of character with the prevailing building type found in the subject neighbourhood.

#### Section 4.1, Policy 8 – Development Criteria in *Neighbourhoods*

Zoning by-laws will contain numerical site standards for matters such as building type and height, density, lot sizes, lot depths, lot frontages, parking, building setbacks from lot lines, landscaped open space and any other performance standards to ensure that new development will be compatible with the physical character of established residential *Neighbourhoods*.

The Board has reviewed the zoning standards for the subject lands and has seen through the pictorial exhibits what constitutes the existing development within the neighbourhood to determine what should be considered “compatible” with the physical character of the neighbourhood. The Board notes that the proposal does not conform to the Zoning By-law and the apartment building requires a rezoning for height (14.17 metres where 12 metres is permitted); density (1.67 for the aggregate proposal and 1.79 for the apartment building alone where 0.60 is permitted); front yard set back (4.3 metres where in line with adjacent property to the north is required); rear yard setback (1.5 metres where 7.5 metres is required); and building length (greater than 14 metres where 14 metres is permitted).

No other building in proximity to the site, or in the subject neighbourhood, exceeds three storeys (save for the 2 Nursewood Road building). The majority of homes in the area are either two or two-and-a-half storeys in height. The Board also notes that the building would exceed the 12-metre height permitted in the By-law on Queen Street East, north of the neighbourhood.

While nine properties in the neighbourhood exceed the density permitted by the By-law (varying from between 0.61 to 1.24), these developments have a smaller above-floor area than the proposed condominium building and in the Board’s determination, do not vary significantly from the typical built form throughout the subject neighbourhood.

The proposed building would be the highest density development in the neighbourhood at approximately three times that permitted in the Zoning By-law.

The consolidation of lots would allow for a form of development that is not permitted nor reinforces the physical character of the neighbourhood. By extension, the proposed development could not be built without the consolidation of the lots and does not conform to several requirements of the Zoning By-law (referenced above). To approve this proposal would require several significant amendments and specific amendments for height, density and use. The ground floor area, lot area, above-floor area, density, height and building type are not in keeping with the physical character of the neighbourhood, which is an R1 zone. The Board determines that the Applicant has not demonstrated a public interest in favour of changing the existing zoning to allow for the proposed development.

The Board finds that the proposal does not conform to Section 4.1, Policy 8 of the Official Plan.

#### Section 4.1, Policy 9 – Infill Development

Infill development on properties that vary from the local pattern in terms of lot size, configuration and/or orientation in established Neighbourhoods will:

- a) have heights, massing and scale appropriate for the site and compatible with that permitted by the zoning for adjacent and nearby residential properties;
- b) provide adequate privacy, sunlight and sky views for residents of new and existing buildings by ensuring adequate distance and separation between building walls and using landscaping, planting and fencing to enhance privacy where needed;
- c) front onto existing or newly created public streets wherever possible, with no gates limiting public access; and,
- d) locate and screen service areas and garbage storage to minimize the impact on existing and new streets and residences.

In the “Toronto at the Crossroads” discussion paper, the following excerpt is illustrative of how the City treats infill development within the Official Plan:

...the City also receives applications for infill development...on properties that do not fit the local lot pattern....Often the lot configuration and standards cannot mirror that of the adjacent residential district, but the Plan should include criteria to ensure that infill developments fit in with the district and reinforce the quality of the lives of existing residents.

Additional non-policy guidance as to the intent of Policy 9 is found in the Plan:

Scattered throughout many *Neighbourhoods* are properties that differ from the prevailing patterns of lot size, configuration and orientation. Typically, these lots are sites of former non-residential uses....Due to the site configuration and orientation it is often not possible or desirable to provide the same site standards and pattern of development in these infill projects as in the surrounding *Neighbourhood*. Special infill criteria are provided for dealing with the integration of new development for these sites, and for intensification on existing apartment sites in *Neighbourhoods*.

These passages provide support for the Board's determination that the proposal does not constitute infill development as contemplated by Policy 9 in Section 4.1 of the Official Plan. This proposal would create a new lot that would vary significantly from the local pattern in terms of lot size, configuration and orientation. The existing lot sizes and configurations do not significantly vary from the local pattern. Even though they are among the largest lot areas in the neighbourhood, the Board notes that the lot areas and orientation of 2 Neville Park Boulevard and 438-440 Lake Front Lane are typical of the lot pattern and lot sizes along the lakefront between the apartment building located at 15 Glenfern Avenue to the west and the apartment building located at 2 Nursewood Road to the east.

Policy 9 a) states: "Infill development on properties that vary from the local pattern in terms of lot size, configuration and/or orientation in established *Neighbourhoods* will: a) have heights, massing and scale appropriate for the site and compatible with that permitted by the zoning for adjacent and nearby residential properties." This proposal is for properties that vary from the local pattern in terms lot size, configuration and/or orientation in the subject neighbourhood. Moreover, the Board notes that the properties are lakefront and are generally developed with detached houses that are in keeping with the physical character of the neighbourhood. Further, the Board was persuaded by the City's evidence that it is possible and desirable to provide the same site standards and patterns of development for the properties within

the development site, and that those standards are being met now. The Board finds persuasive that the consolidation of the lots will vary the lotting pattern from the existing pattern. The Board also placed significant weight on Mr. Di Mascio's opinion that the proposal is an example of "substantial intensification", rather than infill and is not in conformity, therefore, with this Policy.

Even if the Board had determined the proposal to constitute infill development as contemplated in Policy 9, the proposal would still not conform to this Policy as it states that infill development on properties that varies from the local lot pattern in established *Neighbourhoods* will have heights, massing and scale appropriate for the site and compatible with that permitted by the zoning for adjacent and nearby residential properties. As discussed above, the Board finds that these elements of the proposed design are incompatible with the zoning for nearby residential properties as the proposed building exceeds the height, density, ground floor area and above floor area of existing development on adjacent properties and on properties throughout the neighbourhood; and the height and density that the Zoning By-law permits on this site and throughout the neighbourhood.

For all of these reasons, the Board finds that the proposal does not conform to Section 4.1, Policy 9 of the Official Plan.

#### Section 5.3.1, Policy 3 – The Official Plan Guides City Actions

Amendments to this Official Plan that are not consistent with its general intent will be discouraged. Council will be satisfied that any development permitted under an amendment to this Plan is compatible with its physical context and will not affect nearby *Neighbourhoods* or Apartment *Neighbourhoods* in a manner contrary to the neighbourhood protection policies of this Plan. When considering a site specific amendment to the Plan, at the earliest point in the process the planning review will examine whether the application should be considered within the immediate planning context or whether a broader review and possible area specific policy or general policy change are appropriate.

The Board determines that this proposal requires amendments to the Official Plan that are not consistent with the general intent of the Plan. As Mr. Di Mascio opined, protecting neighbourhoods is just as central to the purpose of the Official Plan



as is managing growth and intensification. In the case at hand, the Board determines that the proposed development is out of character with the prevailing building type of the subject neighbourhood; it does not reinforce and respect the established physical character of the neighbourhood; and it does not direct growth to an area that has been identified to accommodate change but rather, directs it to a *Neighbourhood*, which is a physically stable area. In the Board's view, demolishing detached homes for the purpose of consolidating lots to allow for a development that the Board has determined to be of a significantly larger scale than all other residential developments in the neighbourhood, as well as in the broader residential area, is not within the general intent of the Official Plan and does not represent good planning. Approval of such development could also set a tone for others to consider lot assembly to promote and introduce similar types of applications in a physically stable neighbourhood that does not permit apartment buildings or contemplate development of this size. Indeed, by referencing the aerial photo exhibit, the opposing planners showed the Board other opportunities for potential lot assembly within this study area and beyond.

#### Zoning By-law 438-86

The site is zoned R1 Z0.6, a designation that permits detached houses as a residential use. Height is limited to 12 metres and the following minimum setbacks have been established: for the front yard, in line with adjacent development (4 Neville Park Boulevard); 7.5 metres for the rear yard; and for the side yard, .9 metres for a 17 metre or less building depth and 7.5 metres on that portion of the building that extends beyond 17 metres.

The site is also subject to Permissive Exception 12 (1) 243, which states the following:

None of the provisions of the By-law applies:

a) to prevent, within the area designated R1 Z0.6 located south of Queen Street East, east of Silver Birch Avenue:

- i). the erection or use of a duplex; or
- ii) the alteration or conversion of a detached house pursuant to section 6(2) 3 provided the residential building

as altered or converted, contains no more than 2 dwelling units

- b) to prevent the erection or use on the lot known in the year 1985 as 2 Nursewood Road of an apartment building.

This zoning applies to all properties on Munro Park Avenue, Neville Park Boulevard and Nursewood Road, south of Queen Street East. Other than 2 Nursewood Road, apartments are not permitted in this neighbourhood. Setback and building depth permissions in a zone that permits four-storey apartments are a requirement for front yard setbacks to be in line with adjacent development; a rear yard of 7.5 metres; a side yard setback of 0.45 metres; and a building depth of 14 metres. In the Board's determination, the proposed use of a four-storey condominium building and its density are not appropriate for an R1 Z0.6 zoning category. Zoning to the west of Munro Park Avenue is R2 Z0.6, which does permit apartment buildings, but those found in this area are smaller scale residential buildings and include detached and semi-detached houses, townhouses and multiplexes. The R1 and R2 zones permit different residential uses and the Board finds persuasive the opposing planners' evidence that these areas have developed with a different character.

The history of zoning for this area was covered extensively by the City's planning witnesses and the facts are not in dispute. As far back as the early-1980s, the City added restrictions to the existing zoning in response to community concerns that the existing zoning permitted uses other than single-detached family dwellings, such as apartment houses and double duplex dwelling houses, and that controls on density, building height and lot frontage would require more protection if the character of the area was to be maintained.

The Board has considered the vast array of documentary and visual evidence provided at the hearing as well as divergent planning and other opinions on all aspects of the proposed development. At the end of its analysis, the Board has weighed with particular care the planning evidence and determines, by virtue of its above reference to the relevant policies, its reading of those policies and the presentation of its findings on the planning merits of this proposal within the comprehensive planning policy framework, that this proposal cannot be supported. All of the planning documents reveal explicit policy provisions as well as non-policy language that speak to intent of

those policy provisions, that discourage construction of the proposed development in stable *Neighbourhoods*, particular in the R1 Z0.6 zone and where the Applicants' witnesses have presented no good or persuasive planning reasons to support such development.

The R1 designation has been protected since the 1980s. While planning does not remain static, there is sufficient evidence before the Board as cited in the policy excerpts that although official plans have changed and been updated, at least in respect of this neighbourhood, protection of this area with its zoning standards and provisions has remained unchanged. This speaks to the importance that the City places on preserving this physically stable neighbourhood from the type of development the Applicant wants on this site. It is the finding of the Board that the use and density that the Applicant proposes are not appropriate for the neighbourhood's zoning category at this location. The Board's review of the historical zoning information as provided during the hearing demonstrates that uses other than detached houses and duplexes have been expressly excluded from the subject neighbourhood's zoning, as such uses would not preserve the physical character of the area and the building types associated with those other uses would not be consistent with existing buildings; that is, detached homes (the prevailing building type). What is more, the introduction of the new Official Plan in 2006 has reinforced this perspective.

The Board has preferred the evidence of the opposing planning witnesses for the reasons given and because of their more persuasive professional opinions in respect of the policies that guide consideration of development in this area. The Applicant's witnesses did not provide sufficient reasons to support their proposal in this neighbourhood. The Board determines that the proposed dwelling is too large for the site; it towers over the traditional single-family homes around it; its proximity to the smaller dwelling to the west creates a negative impact; and the proposal fails to adhere to any of the aforementioned policies of all of the planning instruments.

The Board reiterates its determination in respect of this proposal in the context of the applicable planning regime. Approval of the requested Zoning By-law Amendment and Official Plan Amendment is not consistent with the Provincial Policy Statement, 2005. The proposal also does not conform to the Growth Plan for the Greater Golden Horseshoe. The proposal does not conform to the policies of the City of Toronto Official

Plan, in particular the policies regarding development in *Neighbourhoods* or with the standards of the Zoning By-law. The Board determines that the existing zoning implements the policy directions contained in the Growth Plan, the PPS and the Official Plan, which allows for intensification while ensuring an appropriate and compatible form of development. However, this proposal is not appropriate for the site and is not compatible with the physical character of the surrounding neighbourhood. It neither respects nor reinforces the existing physical character and is out of keeping with that physical character. The Board determines that the proposal is not infill development as contemplated by Policy 4.19 of the Official Plan. It is not an appropriate development of the site and this proposal with its proposed amendments does not constitute good planning and are most assuredly not in the public interest. Finally, the Board determines that the proponents have provided no persuasive reasons, based on planning or otherwise, to allow such a development to proceed.

Having considered all of the evidence, the Board dismisses the appeals.

So Orders the Board.

“R. Rossi”

R. ROSSI  
MEMBER

“J. G. Wong”

J. G. WONG  
MEMBER