

PLANNING OPINION

**PROPOSED OFFICIAL PLAN AMENDMENT
AND
ZONING BY-LAW**

**223-227 MARY STREET
TOWN OF NIAGARA-ON-THE-LAKE**

LEHMAN

& ASSOCIATES

For the Niagara Foundation

June 11, 2015

1.0 INTRODUCTION

This opinion reviews the planning issues applicable to the proposed development at 223-227 Mary Street in the Town of Niagara-on-the-Lake (the Town).

2.0 SUMMARY

In my opinion there are three salient planning issues raised by the applications to permit the construction of a four-storey apartment building at 232-327 Mary Street. These are:

1. Is there a requirement to meet Provincial and Regional intensification targets that would be assisted by this proposal?
2. Is the proposal consistent with the character of the neighborhood and does it meet the related policies of the Official Plans of the Town and the Region of Niagara?
3. Should such a proposal be approved without additional detail and certainty as to the built form, site plan and character of the development.

My conclusions are as follows:

1. The Town of Niagara-on-the-Lake has met the Provincial and Regional targets for the required amount of intensification.
2. There are undeveloped lands designated specifically for intensification in the Old Town and as such there is no need for additional lands to be so designated or developed.
3. The neighborhood north of Mary Street, where the proposal is located, is composed of low density homes on relatively narrow streets with a semi-rural character. The area has a wide variety of housing styles and sizes and is characterized by modest homes, wide frontages and large trees. The street pattern is one of one and two storey dwellings with a consistent proportion of building height to the separation between dwellings – a key factor in the character of a residential community. There are no multi-storey apartment buildings in the area north of Mary Street which is referred to as the Old Town.
4. The planning approvals requested would allow for the construction of a building with a mass and height that is out of character with both the immediately adjacent uses and the surrounding neighborhood. While a full analysis of character cannot be undertaken as there is no site plan application before the Town, it is clear that a four storey building located in the middle of a block is not consistent with the built form, massing or spacing of the existing homes in the area.

5. The applications, if approved, would allow for the construction of a building at a density of 190 units per hectare. This is a very high density. By comparison the City of Niagara Falls Official Plan considers the upper limit of medium density housing as 75 units per hectare. In the Built-Up Area the Niagara Falls Official Plan sets a maximum of 100 units per hectare as the upper limit for the highest density of development. The City of Hamilton Official Plan sets a maximum density of 100 units per hectare for medium density development. The proposal for 223-227 Mary Street is at a density of 190 units per hectare, an inappropriately high density that will be incompatible with the existing neighborhood.
6. It would be premature to approve amendments to the zoning by-law or Official Plan without an accompanying site plan application that would allow for a full review of compatibility and policy compliance.

3.0 PLANNING ANALYSIS

3.1 Provincial and Regional Intensification Targets

Provincial Policy Statement and Growth Plan

The Provincial Policy Statement 2015 (PPS) provides a relatively prescriptive direction to municipalities on how to plan for intensification. The proposal at 223-227 Mary Street (the Proposal) is considered as intensification by the PPS as it is the redevelopment to a higher density of an existing property in a developed area. The PPS definition is as follows:

***“Intensification:** means 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.”*

The PPS sets out the general objectives related to the promotion of development in the form of intensification in Section 1.1:

“1.1 Managing and Directing Land Use to Achieve Efficient and Resilient Development and Land Use Patterns

1.1.1 Healthy, liveable and safe communities are sustained by:

- a) promoting efficient development and land use patterns which sustain the financial well-being of the Province and municipalities over the long term;*
- b) accommodating an appropriate range and mix of residential (including second units, affordable housing and housing for older*

- persons), employment (including industrial, and commercial and), institutional uses), recreational(including places of worship, cemeteries and long-term care homes), recreation, park and open space, and other uses to meet long-term needs;*
- e) promoting cost-effective development patterns and standards to minimize land consumption and servicing costs;”*

Section 1.1.2 of the PPS establishes the requirement to make available land for intensification using a 20 year planning horizon:

“1.1.2 Sufficient land shall be made available through intensification and redevelopment and, if necessary, designated growth areas, to accommodate an appropriate range and mix of employment opportunities, housing and other land uses to meet projected needs for a time horizon of up to 20 years.

Within settlement areas, sufficient land shall be made available through intensification and redevelopment and, if necessary, designated growth areas.”

Growth is directed to Settlement Areas by this policy. Intensification and redevelopment are established as having a priority with growth that cannot be accommodated by intensification and redevelopment being directed to designated growth areas.

Section 1.1.3.2 and 1.1.3.3 direct municipalities to identify in their Official Plans where intensification and redevelopment is to occur. These Sections state:

“1.1.3.2 Land use patterns within settlement areas shall be based on:

b) a range of uses and opportunities for intensification and redevelopment in accordance with the criteria in policy 1.1.3.3. where this can be accommodated.

1.1.3.3 Planning authorities shall identify appropriate locations 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 policies of the Growth Plan establish the amount of intensification required. The Growth Plan is the provincial plan referenced in Section 1.1.3.5 of the PPS which reads as follows:

“1.1.3.5 Planning authorities shall establish and implement minimum targets for intensification and redevelopment within built-up areas, based on local conditions. However, where provincial targets are established through provincial plans, the provincial target shall represent the

minimum target for affected areas.”

The Growth Plan, in Section 2.2.3 sets out a 40% minimum target for intensification as follows:

“2.2.3 General Intensification

1. *By the year 2015 and for each year thereafter, a minimum of 40 per cent of all residential development occurring annually within each upper- and single-tier municipality will be within the built-up area.”*

The PPS policy 1.2.4 directs the Region of Niagara, as an upper-tier municipality, to identify the targets for intensification within the lower tier municipalities, which would include Niagara-on-the-Lake:

- “1.2.4 Where planning is conducted by an upper-tier municipality, the upper-tier municipality in consultation with lower-tier municipalities shall:*
- a) identify, coordinate and allocate population, housing and employment projections for lower-tier municipalities. Allocations and projections by upper-tier municipalities shall be based on and reflect provincial plans where these exist;*
 - b) identify areas where growth or development will be directed including the identification of nodes and the corridors linking these nodes;*
 - c) identify targets for intensification and redevelopment within all or any of the lower-tier municipalities, including minimum targets that should be met before expansion of the boundaries of settlement areas is permitted in accordance with policy 1.1.3.91.1.3.8;”*

To summarize, the Region of Niagara is required to set targets for each municipality in the Region for the total amount of residential growth and the proportion of that growth that is to occur through intensification. These targets can vary by municipality provided the overall 40% intensification target is met. Using these targets each municipality must establish where the growth through intensification should occur.

3.2 Region of Niagara Official Plan

The targets for intensification are set out in Section 4.C.1 of the Official Plan of the Region of Niagara (the ROP). Section 4.C.2.1 states that

“Each municipality will develop and implement through its local official plan and other supporting documents, a strategy and policies for supporting intensification and achieving the intensification targets set out in Subsection 4.C.4 of this Plan.”

This Section also sets out policies regarding the establishment of the Intensification Areas, which states in part, that the local municipalities shall:

- “b) Generally encourage intensification throughout the Built-Up Area;*
- c) Identify specific Intensification Areas to support the achievement of intensification targets, including downtowns, intensification nodes and corridors and strategically located brownfield and greyfield areas;*
- i) ensure that Intensification Areas provide appropriate densities and transitional areas to ensure relative compatibility with surrounding neighbourhoods including the use of minimum and maximum heights and densities.”*

Sections 4.C.3 and 4.C.4 of the ROP set out a target for the Town of Niagara-on-the-Lake that a minimum of 15% of development in each year should occur through intensification. This 15% is to be applied to the overall growth target of 3,395 households by 2031 as established in Table 4-1 of the ROP.

3.3 Town of Niagara-on-the-Lake Official Plan

3.3.1 Targets

Table 2 of Section 3.4 of the OP establishes the residential growth target of 3,395 households over the 2006 to 2031 period. Using the minimum 15% growth through intensification this translates to a minimum of $.15 \times 3395 = 509$ housing units to be accommodated by the Town through intensification.

The Region of Niagara monitors the achievement of housing targets annually for all municipalities in the Region. According to the Region’s report ICP 83-2011 dated September 28, 2011, over the 2006 to 2010 period there were 585 dwellings constructed in the Town of which 55% or 309 were considered as intensification. According to Report PDS 4- 2014 dated April 2, 2014 over the 2011 to 2013 period there were 585 dwellings constructed in the Town of which 50% or 292 dwellings were considered to be intensification. Thus, in total, over the 2006 to 2013 period $292 + 309 = 601$ dwellings have been constructed within in the Built-Up Area and are considered as intensification. As such the Town has met its 2031 target already according to the the Region of Niagara.

According to the data from the Region of Niagara the Town has already met, and significantly exceeded, its 2031 intensification targets. The Town is in compliance with the PPS and Growth Plan requirements for intensification even if no new units were constructed in the Town’s Built-Up Areas over the next sixteen years.

The Town of Niagara-on-the-Lake has met the Provincial and Regional targets for the required amount of intensification. There are undeveloped lands designated specifically for intensification in the Old Town and as such there is no need for additional lands to be so designated or developed.

3.3.2 Location of Intensification Areas

Section 2.0, Municipal Urban Structure sets out the basic framework of the Town, one component of which is termed “*Intensification Areas within the Built-Up Areas*”. This Section establishes that the Plan allows for a difference between existing developed areas that are to remain as stable neighbourhoods and, within those areas, pockets of land which are intended to be redeveloped over the long term, such pockets being designated for that purpose as Intensification Areas.

Section 3.0 Growth Management Objectives, states that it is an objective of the Town’s growth strategy to “f) Direct appropriate intensification to Designated Intensification Areas”. This conforms to the Provincial direction on intensification.

Section 2.5 of the Plan establishes the planned function of Intensification Areas. It states that such areas “*are planned to provide the Town with an opportunity to accommodate growth and/or redevelopment on lands within the Built-Up Area*”. These Intensification Areas are delineated on Schedules I-1 and I-2. Schedule I-1 shows the Intensification Areas that are designated by the OP in the Old Town. Six parcels of land have been designated as Intensification Areas in the Old Town. They can be found in cluster all south of John Street West between Charlotte Street and Gate Street. Schedule I-1 is reproduced as Appendix A to this report.

3.3.3 Compatibility with Growth Plan and PPS Policies

The Growth Plan sets out targets for intensification and growth for all the Regions in the Growth Plan area, including Niagara. The Region then allocates that growth to various municipalities based on research and study of the potential for growth, the availability of land within the existing communities for intensification and the capacity of the infrastructure.

The purpose of this policy structure is to ensure that growth through intensification can occur in areas and on sites where the existing community character can be enhanced rather than negatively impacted. As such the ROP set a low target for intensification for Niagara-on-the-Lake at 15% in recognition of the character of the low density and semi-rural communities in the Town. The overall intensification target for the Region, as established by the Growth Plan, is 40%.

Section 4.3 deals with the strategy of Intensification. It states that:

“The majority of the Town’s intensification will be encouraged in specific Intensification Areas, and with infilling in other locations in the Built-Up Area where the development is consistent with the land use compatibility, Urban Design and other applicable policies of this Plan and where development will not negatively impact designated heritage areas, heritage resources and estate lots.”

Section 4.4 Intensification Objectives sets out a series of related policies which include statements that the Town will ensure that “*intensification and redevelopment is consistent with*

the heritage and character of the Built-up Area". In f) of this Section it states that the Town will establish maximum densities as set out in Section 9 of the Plan.

In dealing with Urban Design the Plan notes that *"Bulk, mass and scale of new development shall fit the context within which it is located"* and that the design of intensification development *"should be consistent with the Land Use Compatibility criteria of this Plan."*

Section 4.6 sets out the Land Use Compatibility Policies. The Plan policies require that any new development be consistent with:

- The existing and/or planned built form
- The existing and/or planned densities of the surrounding neighbourhood
- The existing and/or planned height and massing of buildings within the surrounding neighbourhood
- A transition in built form between areas of different development densities to act as a buffer
- The established character and heritage of the areas with regard to street and block patterns, lot frontages and area, building setbacks, privacy and overview.

Perhaps most germane is the policy in this Section that states:

"Conflict Between Built Form and the Target – In circumstances where a proposed development supports the Town's intensification target but does not support the compatibility policies of the Plan, the compatibility policies shall prevail."

The Town's planning policies then further recognize the need to maintain community character, and the need for stability and certainty when managing change, by selecting the lands to accommodate intensification – the Intensification Areas.

The OP does give further direction to the potential location of areas for intensification. Section 3.5 Housing Mix deals directly with the potential for high density development in established residential areas. It states in part:

"Given the small Town (sic) character and heritage of Niagara-on-the-Lake, high density development will be limited especially within established residential areas where high density development may adversely impact heritage resources and the character of the area in terms of scale, mass or height".

The neighborhood north of Mary Street, where the proposal is located, is composed of low density homes on relatively narrow streets with a semi-rural character. The area has a wide variety of housing styles and sizes and is characterized by modest homes, wide frontages and large trees. The street pattern is one of one and two storey dwellings with a consistent proportion of building height to the separation between dwellings – a key factor in the character of a residential community. There are no multi-storey apartment buildings in the area north of Mary Street in what is referred to as the Old Town.

The planning approvals requested would allow for the construction of a building with a mass and height that is out of character with both the immediately adjacent uses and the surrounding neighborhood. While a full analysis of character cannot be undertaken as there is no site plan application before the Town, it is clear that a four storey building located in the middle of a block is not consistent with the built form, massing or spacing of the existing homes in the area.

There are few, if any, communities in Ontario that have the character of the Old Town of Niagara-on-the-Lake. While walkability is touted as a goal for most Ontario communities, it exists and has always existed in the Old Town. The character of the neighborhoods with large trees and yards, the Historic homes and institutions, and the generous park system focused on a main street that attracts thousands of tourists, is one that requires a very cautious approach to managing change. The Town has recognized this need and has clearly set out the locations for intensification in the future – all south of Mary Street, which can be seen as the boundary of the older portion of the Town.

3.3.4 Residential Density

The applications, if approved, would allow for the construction of a building at a density of 190 units per hectare. The Official Plan, in Section 9.3, General Residential Policies (4) Residential Density, sets out the maximum permitted densities. It states:

“Generally ... medium density residential developments will not exceed 12 units per acre (30 units per hectare) residential net density unless accompanied by the detailed site and area analysis demonstrating that there will be minimal impact on surrounding neighbourhoods and development....

Special care will be taken in the Old Town of Niagara and Established Residential designations to maintain the low-density character.”

The applicant has submitted a planning report that deals with potential physical impacts such as shadowing and traffic but does not adequately address, in my opinion, the issue of character and the compatibility of scale, mass and height.

The applications, if approved, would allow for the construction of a building at a density of 190 units per hectare. This is a very high density. By comparison the City of Niagara Falls Official Plan considers the upper limit of medium density housing as 75 units per storeys. In the Built-Up Area the Niagara Falls Official Plan sets a maximum of 100 units per hectare as the upper limit for the highest density of development. The City of Hamilton Official Plan sets a maximum density of 100 units per hectare for medium density development. The proposal for 223-227 Mary Street is at a density of 190 units per hectare, an inappropriately high density that will be incompatible with the existing neighborhood.

3.3.4 Prematurity and Need for Certainty

The proposal is for a building form that does not exist in the Old Town area of Niagara-on-the-Lake. As the applications for Official Plan Amendment and Zoning do not include a site plan

application, the form and character of the building is unknown. While drawings have been provided to demonstrate one form, location and style of building, these drawings do not form part of an application and are not binding.

It would be premature to approve amendments to the zoning by-law or Official Plan without an accompanying site plan application that would allow for a full review of compatibility and policy compliance.

4.0 CONCLUSIONS

1. The Town of Niagara-on-the-Lake has met the Provincial and Regional targets for the required amount of intensification.
2. There are undeveloped lands designated specifically for intensification in the Old Town and as such there is no need for additional lands to be so designated or developed.
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compatibility and policy compliance.

A handwritten signature in black ink, appearing to be 'R. Lehman', with a period at the end. The signature is written in a cursive style.

Robert Lehman, F.C.I.P., R.P.P
June 11, 2015