

City of Mississauga Corporate Report



Date: June 30, 2020

To: Chair and Members of Council

From: Andrew Whittemore, M.U.R.P., Commissioner of
Planning & Building

Originator's files:

T-M15/004 W5
OZ-15/008 W5

Meeting date:
July 8, 2020

Subject

Development Application Status and Enforcement of Property Standards

3233 Brandon Gate Drive

North of Brandon Gate Drive and East of Netherwood Road

Owner: Your Home Developments (Brandon Gate) Inc.

Recommendation

That the report titled "Development Application Status and Enforcement of Property Standards", dated June 30th, 2020 from the Commissioner of Planning and Building, be received for information.

Report Highlights

- Property located at 3233 Brandon Gate Drive was the subject of official plan amendment, rezoning and draft plan of subdivision applications to permit a 3 storey mixed use building and 26 semi-detached homes. The applications were approved subject to conditions of approval, including removal of an "H" – Holding Symbol from the property.
- Since receiving planning approvals, the development has not significantly advanced in either the required remediation work or the planning process and the visual appearance of the property has deteriorated.
- Staff have reviewed the *Planning Act*, the *Environmental Protection Act*, the Ontario Building Code, the City Building By-law, the Property Standards By-law, Public Nuisance By-laws, and Fencing By-law to investigate ways to compel proponents to advance their planning approvals in an expeditious manner in order to avoid derelict construction sites.
- Staff recommend that the City continue to enforce the Property Standards By-law where applicable and allow the proponent to continue to remediate the site.

Background

On June 17, 2020, Council directed staff to investigate means to ensure that development applications proceed in an expeditious manner following Council approval and do not result in derelict construction sites for extended periods of time. This report responds to Council direction in the context of the development proposal at 3233 Brandon Gate Drive. While the environmental issues at 3233 Brandon Gate Drive are unique to the site, the legislative and regulatory tools available with respect to other development sites across the City are similar.

The property located at 3233 Brandon Gate Drive was previously occupied by a neighbourhood commercial plaza that was demolished in the spring of 2017 (Demolition Permits issued April 3, 2017). Since the commercial plaza was demolished, the applicant has engaged in site remediation works but the property has visually deteriorated. The property was the subject of official plan amendment, rezoning and a draft plan of subdivision applications under Files OZ 15/008 W5 and T-M15004 W5. Council approved the applications on July 5, 2017. Through the approval of Official Plan Amendment 62, the property is now designated **Residential Low Density I and Mixed Use – Special Site 4** in the Malton Neighbourhood Character Area. The property is now zoned **H-C4-68** (Mainstreet Commercial – Exception) and **H-RM2-59** (Semi-detached – Exception) which permits a three storey mixed use building and 26 semi-detached homes, subject to the removal of an “H” – Holding provision.

In order to remove the “H” – Holding Symbol from the property, the proponent must submit a satisfactory Record of Site Condition (RSC) and final environmental report confirming that the lands have been remediated and an executed Section 37 (Community Benefits) Agreement. The applicant has not submitted an application to remove the “H” Holding Symbol or met any of the conditions to be addressed prior to the preparation of a report or By-law to be presented to Council for approval.

Although a Section 37 (Community Benefit) agreement was reached with the applicant, the City has not received copies of the executed agreement or the agreed upon sum. Details of this agreement are contained within the Section 37 Community Benefit Report that was approved by Planning and Development Committee (PDC) on June 11, 2018.

The associated plan of subdivision received draft plan approval from the Commissioner of Planning and Building on August 23, 2017 subject to conditions of approval. The conditions of draft plan approval contain a sunset clause that enables the Commissioner to extend, revoke or revise draft plan approval and the conditions thereof at the end of 3 years. All conditions of draft plan approval must be met by the applicant before the plan is released for registration.

The applicant has commenced efforts to remediate contamination on the subject lands but has not concluded the process. Although the applicant has commenced the engineering review process, they have not resubmitted plans since the City last provided comments in March 2019.

Present Status

On Wednesday, June 17, 2020, City of Mississauga Compliance, Licensing and Enforcement Officers attended the subject property and documented piles of dirt and construction debris, garbage, metal tanks and drums as well as long grass and weeds. Officers issued two Notices of Contravention pursuant to the City's Property Standards By-law 654-98 related to long grass (compliance date June 24, 2020) and debris and litter (compliance date July 17, 2020). As of the writing of this report, the landowner has complied with the Notice of Contravention related to the long grass and weeds.

Chlorinated volatile organic compounds (Cl-VOC's) that exceed Ministry of the Environment, Conservation and Parks standards have been detected in on-site groundwater. The Cl-VOC's appear to be related to a historic dry cleaning operation located on-site in the commercial plaza. The proponent of the development advises that environmental remediation work has proceeded intermittently and will restart again in the next few weeks. The proponent has committed to provide the City with the most recent groundwater sampling results from a qualified environmental consultant. These results will be reviewed upon receipt by Environmental Services staff in the Transportation and Works Department to assess the environmental condition of the property and viability of the remedial work plan and timeline. Staff will be able to more appropriately determine next steps upon receipt of the aforementioned results.

Comments

Staff investigated several legislative and regulatory controls in response to Council's concerns regarding the subject property as well as the status of development approvals.

Planning Legislation

Official Plan Amendment and Rezoning Approvals

The *Planning Act* prescribes timelines for municipalities to review and approve planning applications. Once an application has been approved and the associated appeal period has expired, the pace at which a development proposal proceeds is largely driven by the proponent.

The City of Mississauga has historically required that an implementing zoning by-law be enacted within 18 months from the date a rezoning or official plan amendment is endorsed by Council. If a by-law is not approved within this time frame, the decision of Council can be considered null and void and the applicant is required to resubmit a new development application. When an applicant is unable to complete all or some of the conditions of approval within the 18 month timeframe, they typically submit a request to –the Commissioner of Planning and Building to grant an extension. Due to shortened timeframes prescribed by the Planning Act, planning staff have begun to utilize “H” Holding provisions to protect the City from potential non-decision appeals. This process also provides certainty to applicants with respect to land use permissions and allows a development proposal to move forward faster. With respect to the subject property, an implementing by-law with an “H” – Holding Symbol was approved by Council on July 5, 2017. Therefore, the zoning of the lands are considered final,

subject only to the applicant fulfilling the remaining conditions and having Council consider and approve a by-law to remove the “H” – Holding Symbol.

Draft Plan of Subdivision Approvals

Once Council approves a draft plan of subdivision application, the Commissioner of Planning and Building can issue draft plan approval subject to conditions identified by commenting departments and agencies. Draft plan approval is valid for 36 months. Depending on the language of the conditions of approval, the Commissioner can revoke or change conditions of approval at any time during the 36 month approval period, or, once the approval period has concluded. When an applicant is unable to meet the 36 month timeframe, they typically submit a request to the Commissioner to grant an extension.

With respect to the subject property, the conditions of approval are written such that the Commissioner cannot revoke draft plan approval or change conditions thereof until the 36 month approval period has concluded. In this case, the draft plan approval is set to expire on August 23, 2020. Options available to the City at this time include revoking the approval, extending the approval, or extending the approval while changing the conditions of approval. With that said, the City is under no obligation to reissue conditions of approval following the conclusion of the 36 month approval period. At this time, staff do not recommend revoking draft plan approval as this will set the development proposal further back in the planning process and result in additional construction delays.

The City cannot use conditions of draft plan approval to compel an applicant to remediate a site within a set amount of time because the environmental remediation process falls under the jurisdiction of the Ministry of Environment, Climate and Parks and is subject to Ministry processes and procedures that at times may not align with the City's planning process.

The City can use conditions of draft plan approval to require a property be fenced, but only with respect to site security and safety, and not with respect to aesthetics.

Ontario Building Code Act and the Building By-law

The City uses the Ontario Building Code Act to ensure that properties are appropriately fenced when building or demolition permits are issued. The City's Building By-law 251-13 stipulates that where a construction or demolition site presents a hazard to the public, the Chief Building Official (CBO) can require, by Order, the erection of fencing between 1.2 m (4.0 ft.) and 1.8 m (6.0 ft.) in height. The By-law does not give the City authority to erect fencing on behalf of a landowner, but rather the ability to lay a charge when the property owner is found non-compliant with an Order. In the case of 3233 Brandon Gate Drive, there is no active building or demolition permit and no construction activity taking place on site. The site is currently secured with a 1.8 m (6 ft.) metal fence and as such, does not present a hazard to the public. Therefore the Ontario Building Code Act and City of Mississauga Building By-law cannot be utilized to require fencing in this particular circumstance.

Ministry of Environment, Conservation and Parks Intervention

The City can utilize the *Environmental Protection Act* to request the Ministry of the Environment, Conservation and Parks (MECP) to require the landowner to conduct further investigations of the property. If a significant potential health and safety risk is posed to adjoining residential properties or the natural environment, the MECP could compel the landowner to remediate the property at a more proactive pace.

City Environmental Services staff have contacted the MECP to inform them about this property, the levels of contamination identified to date and the potential risks to adjoining residential properties. Upon receipt and review of updated groundwater sampling information from the landowner, the City may request MECP to intervene if there is potential risk to residents.

Other Municipal Regulations**Property Standards By-law**

The City's Property Standards By-law 654-98 prescribes minimum maintenance standards for all properties. These standards include: the removal of accumulated materials and debris, requiring excavated lands that accumulate water to be drained, filled and graded, and requiring surfaces to be evenly graded and maintained free of potholes or uneven sections. The by-law also prescribes standards for vacant and damaged buildings including boarding and securing buildings and preventing entry of unauthorized persons or pests.

If a property is not in compliance with the by-law, the City can issue a Notice of Contravention, which includes a deadline by which the property owner must comply. If the property owner does not meet the compliance date, the City will issue a Property Standards Order outlining a compliance date with an appeal period. The by-law gives the City the power to repair or demolish buildings or structures and bring property into compliance with the By-law if owners do not comply with a property standards order. If the City undertakes work on a property in relation to a property standards order, the cost of such works is recovered by adding it to the tax roll of the offending property.

In the case of the subject property, the City has issued two Notices of Contravention. Since the Notices were issued, the applicant has complied with one of the Notices of Contravention by removing the offending weeds and tall grass. The applicant has not addressed the notice issued with respect to garbage and construction debris left on site.

The Compliance, Licensing and Enforcement Section is investigating options to amend the Property Standards By-law to improve municipal regulatory control of derelict construction sites. The amendments under consideration will focus on existing unsafe buildings and structures and/or open excavations but will not address the issues at 3233 Brandon Gate Drive.

Public Nuisance By-law

Section 128 of the *Municipal Act* permits a municipality to prohibit and regulate public nuisances, including matters that, in the opinion of Council, are or could become or cause public nuisances. Although there is no definition of "nuisance" in the *Municipal Act*, Council's decision

to deem something a nuisance is not subject to review by any court so long as the decision is arrived at in good faith. The City has two nuisance by-laws in place related to property standards. The City's Nuisance Weed and Tall Grass Control By-law 125-17 which deems tall grass (over 20 cm) and noxious weeds a public nuisance, and the Nuisance Lighting By-law 262-12 which deems flood and spot lights, or other similar high intensity lights to be a public nuisance. Council could direct staff to explore the potential of a nuisance by-law that specifically seeks to regulate and prohibit derelict construction sites.

Fencing By-law

Fencing in the City is governed by the City's Fencing By-law 397-78. A fence is defined in the by-law as a structure used to establish property boundaries and/or provide privacy. It does not include a structure used to screen vacant properties from public view. The Fencing By-law limits the construction of solid fences to 1.0 m (3.2 ft.) in height.

Financial Impact

Receipt of this report does not result in any financial impact to the City.

Conclusion

Action taken to date includes the issuance of Notices of Contravention pursuant to the City's Property Standards By-law, as well as initiation of potential MECP involvement related to site remediation. Planning staff cannot force the proponent to meet the conditions of approval imposed by the "H" – Holding symbol on the property, to advance the associated subdivision application, or to apply for site plan approval. At this time, staff do not recommend revoking draft plan approval as this will set the development proposal back in the planning process and result in additional delays. Absent any new information that suggests the environmental status of the site has deteriorated, it is recommended to continue to enforce the City's Property Standards By-law where applicable and allow the proponent to continue site remediation.

Attachments

Appendix 1: Location of Site

Appendix 2: Compliance, Licensing and Enforcement Officers Site Photos



Andrew Whitemore, M.U.R.P., Commissioner of Planning & Building

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