

**Pilon, Janet**

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**Subject:** Council Mtg - Apr 13 - Item 5.3 Planning Committee Report

**From:** Lakewood Beach Community Council

**Sent:** Monday, April 11, 2022 9:59 AM

**To:** DL - Council Only <[dlcouncilonly@hamilton.ca](mailto:dlcouncilonly@hamilton.ca)>; [clerk@hamilton.ca](mailto:clerk@hamilton.ca)

**Subject:** Council Mtg - Apr 13 - Item 5.3 Planning Committee Report

**At issue is whether or not a ZBA that changes the regulations to accommodate a deviated built form and thereby brings into question conformity issues with our Official Plan, should or should not be applied for under the Planning Act regulations dealing with Minor Variances.**

Dear Honourable Mayor and Council,

Our apologies for not being clearer in our delegation to Planning Committee.

Council's duties, to us, is one in which you don't measure the *private interests* of one member of the public (constituent) against another (constituent) when evaluating what is in the *best interests of the public*.

Although we used a situation which is in our neighbourhood, the core reason we spoke to Planning Committee on April 5, 2022 was to make you aware of a practice that cheated a large group of residents out of their democratic rights under the Planning Act and if allowed to continue, will also deny those same democratic rights to the *public at large*.

Last October, Council approved a site specific zoning amendment within 2 years of passing the initial site specific zoning amendment.

Committee was told this "was a housekeeping item", "Staff made a mistake by not capturing all the variances during the public process", the amendments "were needed to implement the Council approved Concept", "the Development Concept had not changed", the applicant did "not change their Concept" and "nothing changed from what was originally proposed to be on that property". Committee was told it was a simple technical change in zoning due to an administrative error.

***The interface of the first step back of the building to the low-rise homes to the north has increased from 4 storeys to 6 storeys***

***The interface of the building to the low-rise homes to the west has increased from 3 & 4 storeys to 11 storeys.***

***A 4<sup>th</sup> row of ground level parking spaces has been added.***

Following the meeting, we shared with Committee the before and after Concepts. We're not planners nor are we municipal lawyers. We're residents. To us the Conceptual Plan at Site Plan is much different than what Council approved previously and is beyond a mere 'housekeeping' amendment.

Some of you may recall what was provided to the public and Committee during the statutory Public Meeting held on February 18, 2020. To recap, a **great deal** of time was spent by the presenters speaking about and including slides on the ***best practices & benefits of the Concept conforming to the 45 degree Angular Plane***

and how the step backs "*were really important*", that "*both interfaces to the towns are 4 stories*", were "*purposefully designed to enhance privacy*", met the policies "*re transitioning in height*", "*compatibility*" and "*shadowing issues*". In addition, part of the rationale to recommend approval of the development Concept, as per the Staff Report was:

- the application of a 45° angular plane using a stepped back design on the north and west elevations facing the residential uses implements best practice standards for a compatible interface, in order to provide an appropriate transition from the surrounding uses and to address privacy and overlook concerns

To ensure conformity to our Official Plan by means of the application of a 45 degree angular plane, the ZBA that was approved by Council in March 2020 included the following regulation:

#### Building Height

- **Maximum 7.5 metres** for any portion of the building along a rear or interior side lot line (emphasis added)
- in addition, building height shall be equivalently increased as yard increases beyond the minimum rear and interior side yard requirements

What Council approved as a 'housekeeping item' in October 2021 was the following site- specific amendment:

- Any building height **above 11.0 metres** may be equivalently increased as the yard increases beyond the minimum yard requirement ...when abutting a Residential Zone, to a maximum of 46 metres

While we can see that there was some unclear language and typographical errors in the initial wording that would fall under 'housekeeping, ' the effect of amending 7.5m to 11m appears to have resulted in a deviation that meets the test for a minor variance application to be applied for.

It also appears to us, that the addition of another row of parking has required a variance to the Landscaped area (from 10% down to 2%)

In our respectful submission, the Zoning By-law amendment **didn't** fully fall within 'housekeeping' , **did** require leave of Council back in the Fall to waive the 2 year moratorium, and **requires approval by the Committee of Adjustments** inclusive of the public process regulated within the Planning Act.

Whether the provisions in our Minutes of Settlement agreement have or have not been adhered is irrelevant to the matter we are raising. For clarity, we did not suggest or state an opinion on that during our delegation. The filing of an appeal by 2 appellant group that was withdrawn within a few months is also irrelevant. There was no Tribunal Order issued nor was the Minutes of Settlement filed with the Tribunal. Advertising the Public Notice beyond a paywall & without the property's address last Fall is also irrelevant to the matter we are raising.

**At issue is whether or not a ZBA that changes the regulations to accommodate a deviated built form and thereby brings into question conformity issues with our Official Plan should or should not be applied for under the Planning Act regulations dealing with Minor Variances.**

This is the governance issue we had intended to be the focus of discussion at Planning (which we clearly didn't articulate very well) but which we trust we have clarified for you now.

Respectfully,

Viv / Anna/ Nancy  
Lakewood Beach Community Council