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File No.: Z-8065
Planner: Mike Corby

TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	APPLICATION BY: KAPLAND INC. 754 MAITLAND STREET NOTICE OF APPEAL TO THE ONTARIO MUNICIPAL BOARD MEETING ON NOVEMBER 26, 2012

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning and City Planner, in response to the letter of appeal to the Ontario Municipal Board, dated October 31, 2012 and submitted by Arnon Kaplansky (Kapland Inc.) relating to Zoning By-law application No. Z-8065 concerning 754 Maitland Street, the Ontario Municipal Board **BE ADVISED** that the Municipal Council has reviewed its decision relating to this matter and sees no reason to alter it.

PREVIOUS REPORTS PERTINENT TO THIS MATTER
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September 24, 2012 – Kapland Inc. This report recommended that the requested amendment to rezone the subject site from a Residential R2 (R2-2) Zone which permits single, semi, duplex and converted dwellings with a maximum of two units to Residential R3 (R3-4) to permit a converted triplex dwelling **BE REFUSED** for the following reasons: i) the current zoning for this area is appropriate, promotes neighbourhood stability, and allows redevelopment of residential properties in a manner which is compatible with the surrounding neighbourhood, consistent with the Provincial Policy Statement; ii) the Site has previously been intensified to an appropriate density in conformity with the neighbourhood and existing zoning by-law; iii) The requested amendment is not consistent with the policies of the *Provincial Policy Statement, 2005* which encourage efficient development and land use patterns which sustain the financial well-being of the municipality; iv) The proposed amendment would constitute "spot" zoning, and is not considered appropriate in isolation from the surrounding neighbourhood; the site is not unique and does not have any special attributes which would warrant a site specific amendment; v) the requested amendment is not consistent with the Council-approved Near Campus Neighbourhood Policies; vi) the requested amendment is not consistent with the Residential Intensification policies of the Official Plan; vii) the requested amendment could set a further precedent for additional multiple unit residential uses and erode the residential character of the area.

PURPOSE AND EFFECT OF RECOMMENDED ACTION

The recommended action would advise the OMB that Municipal Council is in agreement with their previous decision on October 19, 2012 to refuse the requested amendment to the Zoning By-law to permit the internal conversion of the existing duplex dwelling into 3 residential dwelling units.

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2012

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BACKGROUND

On December 5th, 2008 the owner Kapland Inc. received a building permit to construct a duplex dwelling on the site. The owner decided not to complete the previously granted severance and instead maximized the intensity on the site by creating a duplex dwelling (two units) which allows for up to 10 bedrooms. The duplex was built shortly after the permit was issued and has remained a duplex to this day. On June 5, 2012 an application for a Zoning By-law amendment was submitted requesting that the subject site be rezoned to permit the internal conversion of the existing duplex dwelling to allow for a third dwelling unit.

Planning Staff recommended that the requested Zoning By-law amendment be refused because the current zoning for this area is appropriate, promotes neighbourhood stability, and allows redevelopment of residential properties in a manner which is compatible with the surrounding neighbourhood, consistent with the Provincial Policy Statement; the Site has previously been intensified to an appropriate density; the requested amendment is not consistent with the policies of the *Provincial Policy Statement, 2005*; the proposed amendment would constitute "spot" zoning; the site is not unique and does not have any special attributes which would warrant a site specific amendment; the requested amendment is not consistent with the Council-approved Near Campus Neighbourhood Policies; the requested amendment is not consistent with the Residential Intensification policies of the Official Plan; the requested amendment could set a further precedent and erode the residential character of the area.

The policies of the PPS require municipalities to "*identify*" and "*promote*" opportunities for intensification and redevelopment where this can be accommodated. The City of London has fulfilled this PPS requirement by implementing appropriate zoning for the Piccadilly neighbourhood which "*identify*" and "*promote*" opportunities for intensification around periphery of the neighbourhood. The existing zoning facilitates the ability to construct or convert existing dwellings to accommodate a maximum of two units within Low Density Residential neighbourhood.

Section 1.1.1 of the PPS promotes healthy, liveable and safe communities by: encouraging efficient development and land use patterns which sustain the financial well-being of the municipality; accommodating an appropriate range and mix of land uses; and, promoting cost effective development standards to minimize land consumption and servicing costs. However, the requested amendments to intensify the subject site do not promote these goals of the PPS.

Although the Official Plan Residential Intensification policies recognize that, "*Areas within the Low Density Residential designation may be zoned to permit the conversion of single detached dwellings to add one or more dwelling units*", the policies also recognize the importance of considering a comprehensive planning approach by stating that, "*Site specific amendments to the Zoning By-law to allow dwelling conversions within primarily single detached residential neighbourhoods shall be discouraged.*"

The context of the surrounding established residential neighbourhood is made up of lots similar in size to the subject property and provides a mix of mainly single detached and two-unit dwellings. Abutting the subject lands to the south is a large legal non-conforming fiveplex. Though this property exists it is important to recognize that these sporadic higher intensity uses in the low density designation do not make up the character of the neighbourhood. The subject site is not unique within its context and does not have any special attributes which would warrant a site specific Zoning By-law amendment. The general approach to uses that do not conform to the policies/by-laws is to encourage their transition to, or replacement by, conforming uses and therefore non conforming uses should not be used as justification for approval of similar uses. This request for a site specific "spot" zoning amendment is contrary to the residential intensification policies of the Official Plan.

On October 31, 2012, an appeal was submitted by Arnon Kaplansky (Kapland Inc.), owner of 754 Maitland Street, in opposition to Council's refusal to adopt the requested Zoning By-law

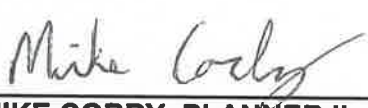
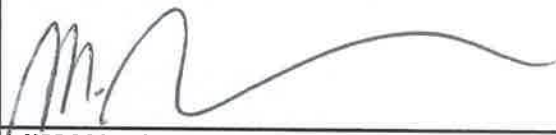

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amendment. In the reason for the appeal of Council's decision, the appellant states:

- *The planning merit of the proposed amendment has not been fairly considered.*
- *The appropriateness of increased density has not been objectively assessed.*
- *The proposed amendment has been assessed on the basis of documents which do not constitute applicable Official Plan Policy and are contrary to the PPS.*
- *The interpretation and application of applicable Official Plan policies has been done in a manner which is contrary to the PPS.*
- *Concerns regarding a "further precedent" are misconceived; the proposal is for low density residential units which respect and contribute to the residential character of the area.*
- *The proposal for site-specific zoning should be assessed on the basis of its neighbourhood context, does not constitute "spot rezoning" and is not contrary to any applicable planning policy or law*
- *The planning assessment which the Council has relied upon in making its decision raises barriers to intensification which are not consistent with the PPS.*
- *The subject site is appropriate for the proposed intensification. All necessary infrastructure and services are available and have capacity, including water, sewer, utilities, public transit, fire protection and police protection.*

Copies of the appeal from Arnon Kaplansky, and the reasons for the appeal, are attached as appendix "A" to this report. A date for the Ontario Municipal Board hearing has not yet been scheduled. Planning staff have reviewed the appeal letter and see no reason for Council to alter its decision relating to this matter.

PREPARED BY:	SUBMITTED BY:
	
MIKE CORBY, PLANNER II COMMUNITY PLANNING AND DESIGN	JIM YANCHULA, MCIP, RPP MANAGER, COMMUNITY PLANNING AND DESIGN
RECOMMENDED BY:	
	
JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER	

November 6, 2012

MC/mc

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APPENDIX "A"

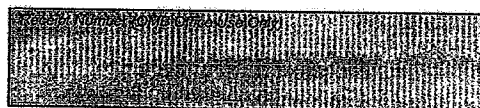
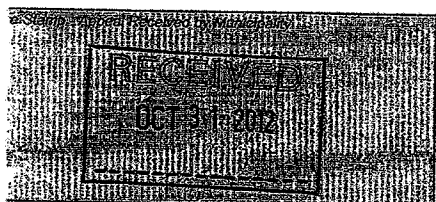


Environment and Land Tribunals Ontario
Ontario Municipal Board
655 Bay Street, Suite 1500 Toronto, Ontario M5G 1E5
TEL: (416) 212-6349 or Toll Free: 1-866-448-2248
FAX: (416) 326-5370
www.elfo.gov.on.ca

FORM

**APPELLANT FORM (A1)
PLANNING ACT**

**SUBMIT COMPLETED
TO
MUNICIPALITY/APPROVAL
AUTHORITY**



Part 1: Appeal Type (Please check only one box)

SUBJECT OF APPEAL	TYPE OF APPEAL	PLANNING ACT REFERENCE (SECTION)
Minor Variance	<input type="checkbox"/> Appeal a decision	45(12)
	<input type="checkbox"/> Appeal a decision	53(19)
Consent/Severance	<input type="checkbox"/> Appeal conditions imposed	53(27)
	<input type="checkbox"/> Appeal changed conditions	53(14)
	<input type="checkbox"/> Failed to make a decision on the application within 90 days	34(19)
	<input type="checkbox"/> Appeal the passing of a Zoning By-law	34(11)
Zoning By-law or Zoning By-law Amendment	<input type="checkbox"/> Application for an amendment to the Zoning By-law -- failed to make a decision on the application within 120 days	38(4)
	<input checked="" type="checkbox"/> Application for an amendment to the Zoning By-law -- refused by the municipality	17(24) or 17(36)
	<input type="checkbox"/> Failed to make a decision on the plan within 180 days	17(40)
Interim Control By-law	<input type="checkbox"/> Appeal a decision	22(7)
	<input type="checkbox"/> Failed to make a decision on the plan within 180 days	51(39)
	<input type="checkbox"/> Application for an amendment to the Official Plan -- failed to make a decision on the application within 180 days	51(43) or 51(46)
	<input type="checkbox"/> Application for an amendment to the Official Plan -- refused by the municipality	51(34)
Official Plan or Official Plan Amendment	<input type="checkbox"/> Appeal a decision	
	<input type="checkbox"/> Appeal conditions imposed	
	<input type="checkbox"/> Failed to make a decision on the application within 180 days	
Plan of Subdivision		

Part 2: Location Information

754 Maitland Street
Address and/or Legal Description of property subject to the appeal:

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Municipality/Upper tier: City of London

Part 3: Appellant Information

First Name: _____ Last Name: _____

Aron Kaplansky on behalf of Kapland Inc., c/o Barry R. Card, Barrister and Solicitor
Company Name or Association Name (Association must be incorporated – include copy of letter of incorporation)

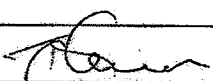
Professional Title (if applicable): _____

E-mail Address: _____
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: _____ Alternate Telephone #: _____

Fax #: _____

Mailing Address: 588 Ridgewood Crescent London
Street Address Apt/Suite/Unit# City/Town
Ontario N6J 3J2
Province Country (if not Canada) Postal Code

Signature of Appellant:  Date: October 26, 2012
(Signature not required if the appeal is submitted by a law office.)
Barry R. Card

Please note: You must notify the Ontario Municipal Board of any change of address or telephone number in writing. Please quote your OMB Reference Number(s) after they have been assigned.

Personal information requested on this form is collected under the provisions of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, and the *Ontario Municipal Board Act*, R.S.O. 1990, c. O. 28 as amended. After an appeal is filed, all information relating to this appeal may become available to the public.

Part 4: Representative Information (if applicable)

I hereby authorize the named company and/or individual(s) to represent me:

First Name: Aron Kaplansky Barry Last Name: Kaplansky Card

Company Name: Kapland Inc.


Professional Title: Lawyer

E-mail Address: _____
By providing an e-mail address you agree to receive communications from the OMB by e-mail.

Daytime Telephone #: _____ Alternate Telephone #: _____

Fax #: _____

Mailing Address: _____
Street Address Apt/Suite/Unit# City/Town
Province Country (if not Canada) Postal Code

Signature of Appellant:  Date: 31/10/12

Please note: If you are representing the appellant and are NOT a solicitor, please confirm that you have written authorization, as required by the Board's Rules of Practice and Procedure, to act on behalf of the appellant. Please confirm this by checking the box below.

I certify that I have written authorization from the appellant to act as a representative with respect to this appeal on his or her

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behalf and I understand that I may be asked to produce this authorization at any time.

Part 5: Language and Accessibility

Please choose preferred language: English French

We are committed to providing services as set out in the *Accessibility for Ontarians with Disabilities Act, 2005*. If you have any accessibility needs, please contact our Accessibility Coordinator as soon as possible.

Part 6: Appeal Specific Information

1. Provide specific information about what you are appealing. For example: Municipal File Number(s), By-law Number(s), Official Plan Number(s) or Subdivision Number(s):

(Please print)

Application to Amend Zoning By-law Z-1; refused by City of London. Municipal File Z-8065.

2. Outline the nature of your appeal and the reasons for your appeal. Be specific and provide land-use planning reasons (for example: the specific provisions, sections and/or policies of the Official Plan or By-law which are the subject of your appeal - if applicable). **If more space is required, please continue in Part 9 or attach a separate page.

(Please print)

It is evident from the "Rationale" for refusal that:

1. The planning merit of the proposed amendment has not been fairly considered.
2. The appropriateness of increased density has not been objectively assessed.
3. The proposed amendment has been assessed on the basis of documents which do not constitute applicable Official Plan Policy and are contrary to the PPS.
4. The interpretation and application of applicable Official Plan policies has been done in a manner which is contrary to the PPS.
5. Concerns regarding a "further precedent" are misconceived; the proposal is for low density residential units which respect and contribute to the residential character of the area.
6. The proposal for site-specific zoning should be assessed on the basis of its neighbourhood context, does not constitute "spot zoning" and is not contrary to any applicable planning policy or law.
7. The planning assessment which the Council has relied upon in making its decision raises barriers to intensification which are not consistent with the PPS.
8. The subject site is appropriate for the proposed intensification. All necessary infrastructure and services are available and have capacity, including water, sewer, utilities, public transit, fire protection and police protection.

THE FOLLOWING SECTIONS (a&b) APPLY ONLY TO APPEALS OF ZONING BY-LAW AMENDMENTS UNDER SECTION 34(11) OF THE PLANNING ACT.

a) DATE APPLICATION SUBMITTED TO MUNICIPALITY: JUNE 14, 2012
(If application submitted before January 1, 2007 please use the O1 'pre-Bill 51' form.)

b) Provide a brief explanatory note regarding the proposal, which includes the existing zoning category, desired zoning category, the purpose of the desired zoning by-law change, and a description of the lands under appeal:
**If more space is required, please continue in Part 9 or attach a separate page.

Kapland Inc. is requesting to rezone the subject from Residential R2 (R2-2) to Residential R3 (R3-4) to allow for the existing duplex dwelling to be converted to a triplex dwelling.

Part 7: Related Matters (if known)

Are there other appeals not yet filed with the Municipality? YES NO

Are there other planning matters related to this appeal? YES NO

(For example: A consent application connected to a variance application)

A1 Revised April 2010

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If yes, please provide OMB Reference Number(s) and/or Municipal File Number(s) in the box below:

(Please print) [Empty box for OMB Reference Number(s) and/or Municipal File Number(s)]

Part 8: Scheduling Information

How many days do you estimate are needed for hearing this appeal? half day 1 day 2 days 3 days
 4 days 1 week More than 1 week – please specify number of days: _____

How many expert witnesses and other witnesses do you expect to have at the hearing providing evidence/testimony?

Describe expert witness(es)' area of expertise (For example: land use planner, architect, engineer, etc.):
Planner

Do you believe this matter would benefit from mediation? YES NO
(Mediation is generally scheduled only when all parties agree to participate)

Do you believe this matter would benefit from a prehearing conference? YES NO
(Prehearing conferences are generally not scheduled for variances or consents)

If yes, why? _____

Part 9: Other Applicable Information * Attach a separate page if more space is required.

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Part 10: Required Fee

Total Fee Submitted: \$ 125.00

Payment Method: Certified cheque Money Order Solicitor's general or trust account cheque

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- The payment must be in Canadian funds, payable to the Minister of Finance.
- Do not send cash.
- **PLEASE ATTACH THE CERTIFIED CHEQUE/MONEY ORDER TO THE FRONT OF THIS FORM.**