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File: Z-8065  
Planner: M. Corby

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| <b>TO:</b>      | <b>CHAIR AND MEMBERS<br/>PLANNING &amp; ENVIRONMENT COMMITTEE</b>                            |
| <b>FROM:</b>    | <b>JOHN M. FLEMING<br/>MANAGING DIRECTOR, PLANNING AND CITY PLANNER</b>                      |
| <b>SUBJECT:</b> | <b>APPLICATION BY: KAPLAND INC.<br/>754 MAITLAND STREET<br/>MEETING ON<br/>JULY 23, 2013</b> |

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| <b>RECOMMENDATION</b> |
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That, on the recommendation of the Managing Director, Planning and City Planner, the following report on the decision by the Ontario Municipal Board relating to the appeal by Kapland Inc. relating to an application for an amendment to the Zoning By-law No. Z.-1 which was refused by Municipal Council concerning 754 Maitland Street, **BE RECEIVED** for information.

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| <b>PREVIOUS REPORTS PERTINENT TO THIS MATTER</b> |
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September 24, 2012 – Kapland Inc. This report recommended request to change the zoning of the subject property from a Residential R2 zone which permits a maximum of two dwelling units to an R3 zone which permits a maximum of four dwelling units be refused because the current zoning for this area is appropriate, the site had previously been intensified to an appropriate density, the requested amendment was not consistent with the policies of the *Provincial Policy Statement, 2005*, the requested amendment was not consistent with the Near Campus Neighbourhood Policies, it was not consistent with the Residential Intensification policies, it could set a further precedent for additional amendments, and it would constitute "spot" zoning, for a site which is not unique and does not have any special attributes which would warrant a site specific amendment.

November 26, 2012 – Kapland Inc. This report advised the Ontario Municipal Board that the Municipal Council has reviewed its decision made at its session held on December 11, 2012 relating to this matter and sees no reason to alter it.

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| <b>BACKGROUND</b> |
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The attached Ontario Municipal Board decision relates to the application made by Arnon Kaplansky which was accepted on June 14, 2012. The Zoning By-law amendment requested that the subject site be rezoned from a Residential R2 (R2-2) zone to a Residential R3 (R3-4) zone to allow for the internal conversion of the existing duplex dwelling into a total of 3 residential dwelling units.

Council supported the Planning Staff recommendation and the requested Zoning By-law amendment was refused on October 9, 2012. On October 31, 2012, an appeal was submitted by Arnon Kaplansky, on behalf of Kapland Inc, owner of 754 Maitland Street, from the decision of Municipal Council to refuse the requested Zoning By-law amendment.

The OMB hearing was held on April 15 and 16, 2013. The board allowed the appeal and directs the council of the Municipality to amend Zoning By-law Z-1 for the subject site from a Residential R2 (R2-2) to a Residential R3 (R3-4).

A copy of the OMB decision resulting from the hearing Conference on April 15 and 16, 2013 is attached as Appendix 1 to this report.

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| <b>PREPARED BY:</b>  | <b>SUBMITTED BY:</b>  |
|  |   |
| <b>MIKE CORBY<br/>PLANNER II, COMMUNITY PLANNING AND DESIGN</b>                    | <b>JIM YANCHULA, MCIP, RPP<br/>MANAGER OF COMMUNITY PLANNING AND DESIGN</b> |
| <b>RECOMMENDED BY:</b>   |   |
|  |   |
| <b>JOHN M. FLEMING, MCIP, RPP<br/>MANAGING DIRECTOR, PLANNING AND CITY PLANNER</b> |   |

July 8, 2013

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Appendix 1

ISSUE DATE:  
**April 29, 2013**



2013-LO1

PL121327

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

Kapland 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 to enact a proposed amendment to Zoning By-Law Z.-1 of the City of London to rezone land known municipally as 754 Maitland Street from Residential (R2-2) Zone, which permits single-detached, semi-detached, duplex and converted dwellings to Residential R3 (R3-4) Zone, which permits single-detached, semi-detached, duplex, triplex and converted dwellings to allow the existing duplex dwelling to be converted into a triplex dwelling.

OMB Case No.: PL121327  
OMB File No.: PL121327

City Clerk No. 1373

Subject Re: PL121327 -  
APPEAL to OMB - ZBA  
- 754 Maitland St.  
MAY 02 2013

**APPEARANCES:**

| <u>Parties</u> | <u>Counsel</u>                           |
|----------------|--|
| Kapland Inc.   | B. Card                                  |
| City of London | J. Page and<br>D. Gupta (student-at-law) |

Decision  
Ref. J. Nethercott  
C.C. J. Page / Scaundus  
SCANNED  
Ref to: NJP/CS (MN)

**DECISION DELIVERED BY BLAIR S. TAYLOR**

**INTRODUCTION**

[1] On April 15-16, 2013, the Board heard the appeal of Kapland Inc. (the "Owner") with regard to the refusal of a proposed zoning by-law amendment concerning the property known municipally as 754 Maitland Street (the "Subject Lands"). The proposed zoning by-law amendment had been filed with the City of London (the "City") for the purpose of converting an existing duplex into a triplex, by creating the additional unit in the lower level of the existing structure, and amending the zoning from Residential (R2-2) Zone to Residential R3 (R3-4) Zone.

**SUBJECT LANDS**

[2] 754 Maitland Street is located about mid-block on the east side of the street. It has a lot frontage of 15.6 m, an area of 601 sq m and is rectangular in shape. Maitland

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Street, although a local road, has a municipal right-of-way of 40 m. At the rear of the Subject Lands is a municipal laneway that is accessible by the Owner and other property owners in the immediate neighbourhood. The laneway leads north to Oxford Street, south to Piccadilly Street and also runs east mid-block toward William Street. The Subject Lands have access from both Maitland Street and the laneway. On the Subject Lands is a recently constructed (2008-2009) duplex, a private driveway leading to a detached garage, and via the laneway, access to five parking spaces at the rear. The duplex has a first floor unit with four bedrooms and a second floor unit with four bedrooms.

**GENERAL LOCATION**

[3] The Subject Lands are located in an older area of the City of London. To the north of the Subject Lands is Oxford Street, an arterial road with public transit, to the south is Piccadilly Street (a local street), to the east is William Street (a local street) and to the west is the western frontage of Maitland Street.

**THE PROPOSAL**

[4] The proposal is simply to convert the existing duplex to a triplex. No external changes are proposed to the structure. The additional unit would be created through the use of the lower level of the building. No site specific amendments are proposed to the City's standard R3-4 zone.

**OFFICIAL PLAN**

[5] The City of London's Official Plan designates the Subject Lands as Low Density Residential on Schedule A. Schedule A does not show local streets, but Oxford Street is shown and it has a corridor designation for Multi-Family, Medium Density Residential, both north and south of Oxford in the vicinity of the Subject Lands. It would appear that the Subject Lands are located just south of the Multi-Family, Medium Density Residential designation, in the Low Density Residential designation.

[6] The Low Density Residential designation would allow for a triplex and the parties agree that no Official Plan Amendment is required.

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**ZONING BY-LAW**

[7] The Subject Lands are currently zoned R2-2, which permits single detached dwellings, semi-detached dwellings, duplex dwellings, and converted dwellings (maximum two dwelling units).

[8] The proposal is to amend the Zoning By-law to the R3-4 zone. The R3 zone generally provides for and regulates low to low-medium density residential development permitting the same uses as the R2-2, but also triplex dwellings, four plex dwellings, and allows for the conversion of an existing dwelling. The R3-4 is a city standard variation of the general R3 zone and the R3-4 allows triplexes, (but not four plexes), and is intended to be applied to existing development on local streets.

[9] From the evidence, all the standards of the R3-4 are met by the Subject Lands and the only issue before the Board was the appropriateness of the proposed amendment in light of the Official Plan.

**THE HEARING**

[10] Over the course of two days, the Board heard evidence from two qualified land use planners and one neighbour.

[11] In support of the application appeared the Owner's planner, Richard Zelinka, who had been retained by the Owner, prepared the Planning Justification Report that accompanied the development application, and had appeared before City Council at its consideration.

[12] Mr. Zelinka testified that he had done a site visit to the Subject Property and had canvassed the surrounding neighbourhood. He had taken pictures of the Subject Lands, of the east and west streetscapes of Maitland, and also of the western portion of the north side of Piccadilly Street, showing the City laneway leading to the rear of the Subject Lands, and photos of 750 Maitland Street, the abutting property to the south.

[13] Mr. Zelinka in his evidence, "walked" the Board around the entire block within which the Subject Lands are located. *Inter alia* he pointed out that the abutting property to the south at 750 Maitland Street was a five plex, the abutting property to the north at 760 Maitland Street was a triplex, that 764 Maitland Street was a triplex, that 491 Oxford Street (diagonal to the Subject Lands) was within the Medium Density designation and

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had a six-unit townhouse development with access off Oxford and the City laneway, that 488 Piccadilly Street was a triplex, and that 490/492 Piccadilly Street had seven units.

[14] Turning to the west side of Maitland Street, he noted and showed photos of the largely single detached units, and one dwelling with a chiropractor on the main level and residential above.

[15] For the abutting properties, Mr. Zelinka showed photos of the Subject Lands in context: the five plex to the south and the triplex to the north. Exhibit 2, Tab 9, photo B shows the Subject Lands in context with 760 Maitland Street, and both dwellings are comparable in design, mass, height, and have similar window placements, including windows in the lower levels.

[16] Mr. Zelinka advised the Board that the Subject Lands without any external physical change to the building, met all the zoning requirements of the R3-4 zone: i.e. lot frontage, lot area, parking requirements, etc. and was located between a triplex and a five plex.

[17] Mr. Zelinka then reviewed the Provincial Policy Statement (the "PPS"). He noted that this was a conversion of an existing duplex to a triplex which met the PPS definition of Intensification. He noted s. 1.1.3.2 concerning land use patterns within settlement areas that efficiently use land and resources, s. 1.1.3.3 the availability of existing infrastructure for intensification, s. 1.4.3 an appropriate range of housing types and densities by ... permitting and facilitating all forms of housing and all forms of intensification, s. 1.6.2 which notes that use of existing infrastructure and public service facilities should be optimized, s. 1.6.5.4 essentially promoting the use of public transit, and s. 1.7.1 supporting long term economic prosperity by optimizing the long term availability and use of land and infrastructure.

[18] With regard to the PPS, Mr. Zelinka opined that the Subject Lands required no expansion to accommodate the one proposed additional unit which certainly made efficient use of the property, that all municipal services were in place, and that the Subject Lands were close to a number of public transit routes. Thus he concluded that the application was consistent with the PPS.

[19] Turning to the Official Plan, Mr. Zelinka reviewed the Low Density Residential Objectives and general policies and highlighted s. 3.2.1 (iv) that provides subject to the

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residential intensification policies that residential intensification may be permitted. He noted the scale provisions of s. 3.2.2 and identified that these had been satisfied as the existing structure was not proposed to be externally altered or expanded. He identified s. 3.2.3 which provides as follows:

Residential Intensification is a means of providing opportunities for the efficient use of land and encouraging compact urban form.

Residential Intensification may be permitted in the Low Density Residential designation through an amendment to the Zoning By-law, subject to the following policies and the Planning Impact Analysis policies under Section 3.7.

...Residential Intensification projects shall use innovative and creative urban design techniques to ensure that (the) character and compatibility of the *surrounding neighbourhood* are maintained as outlined in policy 3.2.3.3 and 3.2.3.4.

(emphasis added)

[20] Section 3.2.3.1 was then reviewed and it specifically provides that "... (v) the conversion or expansion of existing residential building to create new residential units or accommodation is residential intensification."

[21] From s. 3.2.3.2 under the heading Density and Form, Mr. Zelinka noted provided direction with regard to overall density (not at issue) and form (also not at issue due to the existing duplex. Section 3.2.3.2 also states the following:

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. Site specific amendments to the Zoning By-law to allow dwelling conversions within primarily single detached residential neighbourhoods shall be discouraged.

[22] Based on his site inspection and neighbourhood "walkabout", Mr. Zelinka opined that this surrounding neighbourhood character was a mix of commercial uses along Oxford Street, medium density uses (townhouse development) a seven plex on Piccadilly Street, a five plex immediately south of the Subject Lands and a triplex immediately north of the Subject Lands, and not one that could be characterized as "primarily single detached."

[23] The Official Plan in s. 3.2.3.3 requires for every residential intensification application that a Neighbourhood Character Statement be completed, including the physical environment of the neighbourhood, composed of its lots, buildings,

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streetscapes, topography, street patterns, and natural environment, and s. 3.2.3.4 requires: "an adequately detailed statement of the compatibility, where it is clearly demonstrated that the proposed project is sensitive to, compatible with, and a good fit within, *the existing surrounding neighbourhood...*"(emphasis added).

[24] Based on his assessment and characterization of the surrounding neighbourhood, Mr. Zelinka opined that this one unit residential intensification application within an existing building and without any external modifications to the building was sensitive to, compatible with and a good fit with the existing surrounding neighbourhood.

[25] In brief, Mr. Zelinka recommended the development application to the Board, as being consistent with the PPS, conforming to the Official Plan, being appropriate development and good planning, and recommended the approval of the rezoning application.

[26] Under cross-examination by the City, Mr. Zelinka confirmed that at present the duplex was rented by students attending post-secondary educational facilities in London.

[27] The Board heard from a neighbouring property owner who owned two homes in the area. She herself did not currently reside at either of the two homes. She expressed concern with regard to the proposal due to a projected increase in the number of students who would be residing there and generating increased traffic on the lane, and increased noise. While she liked the external design of the building on the Subject Lands, she commented negatively on the windows in the lower level. She stated that if the application were approved by the Board, neighbourhood "incompatibilities" would arise from the proposal, including traffic on the laneway and noise. She disputed a few of the land use characterizations by Mr. Zelinka indicating that one triplex was actually a duplex and the seven-unit building apparently had only six units.

[28] The City called its land use planner, Mike Corby. Mr. Corby had prepared the staff report to Council recommending that the application be refused.

[29] For preparation of his report, Mr. Corby had driven through the area. He advised the Board that in his opinion the "neighbourhood" was the Piccadilly neighbourhood and



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it reached from Oxford Street in the north, south to the railway lands/Central Avenue, east to Adelaide Street, and west to Richmond Street. With regard to the "immediate" neighbourhood, he circled on the Board's copy of Exhibit 4, Tab 3, at page 30, a green circular outline of the area he considered the immediate neighbourhood, which was centered on the Maitland/Piccadilly intersection and essentially went up to Oxford Street, south a half block, east and west a half block.

[30] He also prepared Exhibit 6 depicting the land uses on the east and west sides of Maitland only, between Piccadilly and Oxford. He characterized both the neighbourhood and the immediate neighbourhood as being primarily single detached residential.

[31] In his report to Council, Mr. Corby advised that the Owner had, after originally acquiring the property, sought and obtained a severance to create two single detached dwellings, but those dwellings were not built. Instead, the Owner subsequently sought and obtained a building permit for the duplex, which is a permitted use in the Zoning By-law.

[32] Mr. Corby noted that the Subject Lands fall within an area included within the "Near Campus Neighbourhoods" (OPA 535) which has been adopted by Council but appealed to the Board. *Inter alia* OPA 535 if approved would limit the number of bedrooms in a unit to three, made requirements for amenity space, and discouraged excessive proportions of driveways and parking areas.

[33] In summary, the City staff report recommended refusal of the application for the following reasons:

- the current zoning was appropriate
- the Subject Lands had been previously intensified
- it was not consistent with the PPS
- it was not consistent with the Near Campus Neighbourhoods policies
- it was not consistent with the Residential Intensification policies
- it would set a precedent and erode the residential character of the area
- it would constitute spot zoning, as it was not a unique site nor did it have any special attributes to warrant a site specific amendment

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[34] With regard to the Official Plan policies, it was Mr. Corby's opinion that the neighbourhood was the Piccadilly neighbourhood and it was primarily a single detached neighbourhood. No reference was made to the "surrounding" neighbourhood in s. 3.2.3, nor to s. 3.7.2 (a) which references the compatibility of proposed uses with "surrounding" land uses, or s. 3.2.3.3, which references the character of a neighbourhood and its streetscape.

[35] With regard to the Official Plan, Mr. Corby was of the view that the approval of the application would lead to increased traffic, increased noise and garbage. No comments from the city staff were put into evidence to support a concern with regard to traffic or garbage.

[36] Mr. Corby advised the Board that Mr. Zelinka had spoken to the Committee of Council in support of the application, Council had considered the matter but Council had agreed with the staff position as outlined in his report and denied the application.

[37] Mr. Corby confirmed his opinion that the subject application should also be refused by the Board for the reasons adopted by Council.

[38] The *Planning Act* in s. 2.1 requires the Board to have regard for the decision of the municipality and also the supporting information and materials that Council considered in making its decision.

[39] The *Planning Act* also requires in s. 3.1 that a decision shall be consistent with the PPS.

[40] The Board has had regard to the decision of Council and reviewed the materials before Council, has reviewed the provisions of the PPS, and has considered the evidence of the planners and the neighbour.

[41] From the Board's perspective, this application deals with an existing duplex with a rear municipal laneway, which is proposed to be converted to a triplex by making more efficient use of the area within the lower level of the existing building and with no external change to the building. It is a residential intensification of one unit with no external change to the structure and fully complies with all the requirements of the R3-4 zone.

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[42] The Board finds that it is against the “surrounding neighbourhood” that the development proposal is to be assessed and not the Piccadilly neighbourhood. This is consistent with the requirement for a neighbourhood character study (i.e. the actual existing building stock and uses etc. and not merely a reference to the zoning of the surrounding neighbourhood).

[43] The Board finds that the “surrounding neighbourhood” is “mixed”, as provided in the evidence of Mr. Zelinka, which includes the properties immediately abutting the Subject Lands which are a triplex and a five plex, the properties within the same block as the Subject Lands include a six unit town house development, other duplexes and triplexes, and a 6/7 unit dwelling, all of which have access to or utilize the municipal laneway. The Board does not find that the “surrounding neighbourhood” is primarily single detached residential.

[44] From the Board’s perspective, the PPS provides clear direction to municipalities with regard to residential intensification in all forms, and on densities and a mix of land uses that efficiently use land and resources: see s. 1.1.3.2 and s. 1.4.3 (b).

[45] With regard to the Official Plan, the City argues that s. 3.2.3.2 provides the appropriate regulatory direction and that “...site specific amendments to the Zoning By-law to allow dwelling conversions within *primarily single detached residential neighbourhoods should be discouraged*” (emphasis added).

[46] The Board has found that the Official Plan policy with regard to residential intensification in s. 3.2.3 references the “...surrounding neighbourhood”, and the direction to prepare a Neighbourhood Character Statement. Section 3.2.3.3 specifically directs an application to do a physical inventory of what is in the neighbourhood to determine the neighbourhood’s character and streetscape. To the Board this policy requires an assessment of what is actually there in the surrounding neighbourhood.

[47] Thus the Board finds that the proposal for one additional residential unit within an existing building is consistent with the PPS and conforms to the Official Plan, and in that regard the evidence of Mr. Zelinka is preferred.

[48] As each case must be heard on its own merits, and taking into account the existing land uses, and the existence of the rear municipal lane, the Board does not find

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precedence to be at issue, nor any basis for concern due to the erosion of the residential character.

[49] The Near Campus Policies of OPA 535 are not in force or of effect. Moreover, the evidence heard did not persuade the Board that there was any issue with regards to amenity space, or intrusion of excess areas of driveway or parking.

[50] With regard to the R3-4 Zoning By-law requirements, no site specific amendments were sought by the Owner nor requested by the City.

[51] Pursuant to s. 34(26) of the *Planning Act*, the Board hereby allows the appeal and directs the council of the municipality to amend Zoning By-law Z-1 for the Subject Lands from R2-2 to R3-4 in substantial conformity with the draft by-law found in Exhibit 2, Tab 1.

"Blair S. Taylor"

BLAIR S. TAYLOR  
MEMBER