

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 08, 2021

CASE NO(S): PL200187

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Dymon Storage Corporation
Subject: Application to amend Zoning By-law No. 2008-250 - Refusal of Application by the City of Ottawa
Existing Zoning: Arterial Mainstreet, Subzone 10, Special Exception 2217 (AM10[2217])
Proposed Zoning: Site specific including adding the use "warehouse, limited to self-storage" as permitted use
Purpose: To permit a 6-storey self-storage building and a restaurant
Property Address/Description: 1375 Clyde Avenue
Municipality: City of Ottawa
Municipality File No.: D02-02-17-0068
LPAT Case No.: PL200187
LPAT File No.: PL200187
LPAT Case Name: Dymon Storage Corporation v. Ottawa (City)

Heard: September 29, October 1 and 7, 2021 by video hearing

APPEARANCES:

Parties

Counsel

Dymon Storage Corporation

A. Platt
A. Lusty

City of Ottawa

T. Marc

DECISION DELIVERED BY S. JACOBS AND INTERIM ORDER OF THE TRIBUNAL

[1] Dymon Storage Corporation (“Dymon”) would like to redevelop its property at 1375 Clyde Avenue in Ottawa (the “subject property”) with a six-storey self-storage building, including ground floor retail and office uses, and a separate restaurant with a drive-through. It applied to the City of Ottawa (the “City”) for a Zoning By-law Amendment (the “ZBA”) and received a favourable recommendation from both City planning staff and the City’s Planning Committee. City council then refused the application, noting that it considers the subject property a gateway to the Fisher Heights community and that Dymon’s proposed self-storage use is not consistent with the site’s gateway role. Dymon appealed City council’s refusal of the ZBA to the Tribunal.

[2] During this three-day hearing of Dymon’s appeal, the Tribunal heard from three witnesses. The Tribunal qualified two of them to provide opinion evidence in the area of land use planning: Miguel Tremblay, retained by Dymon, and Dennis Jacobs, retained by the City. The Tribunal also qualified Eldon Theodore, retained by Dymon, to provide opinion evidence in the area of urban design. There is one participant in this appeal, Marjorie Shaver-Jones, and the Tribunal had the benefit of her written participant statement filed in advance of the hearing.

[3] The issue at the heart of the dispute between the parties is whether the subject property is considered a gateway site, and if so, whether Dymon’s proposal is appropriate for the site. The Tribunal must consider this issue within the broader planning policy context established by the *Planning Act*, R.S.O. 1990, c. P. 13 (the “Act”), which requires the Tribunal’s to consider whether the OPA is consistent with the *Provincial Policy Statement, 2020* (the “PPS”), conforms with the City’s Official Plan (the “OP”), and represents good land use planning. In accordance with the Act the Tribunal must also have regard to the decision of City council and the material and information it had before it when it made its decision to refuse the ZBA.

[4] Before turning to its analysis of the issues, the Tribunal will first describe the subject property and surrounding area, Dymon’s proposal and the ZBA, and the steps leading to City council’s refusal of the ZBA.

The Subject Property and Surrounding Area

[5] The subject property is an L-shaped, 1.13 hectare parcel that enjoys frontage on both Baseline Road and Clyde Avenue. Its frontage is interrupted because it wraps around a Petro-Canada gas station located at the intersection of Baseline and Clyde, as shown on Figure 1, below. There is a downward slope on the property from Baseline to the south.

[6] There is currently a one-storey building located along the subject property's southern lot line, originally developed as a Canadian Tire store in the 1970s and later became a Value Village store. It now houses a sport vehicle automotive retailer and service centre, which will remain on the site as part of Dymon's proposal. The rest of the site is currently used for surface parking.



Figure 1: Aerial View of the Subject Property and Surrounding Area (from Mr. Tremblay's Witness Statement, Exhibit 2A, p. 2)

[7] Prior to amalgamation, this property was located in the City of Nepean at its border with Ottawa. The property sits at the northern end of the Merivale Corridor, which

developed in the 1960s and 1970s as an automobile-oriented commercial area. This area is characterized by low-profile buildings, including commercial plazas, some of which have office uses on a second floor, some large format retail outlets, and gas stations. As was typical of auto-oriented commercial development, most of these uses have surface parking areas along the street.

[8] Both Clyde and Baseline are classified as arterial roads in the City's Official Plan ("OP"). They are each four lanes that widen and function as six lanes at the intersection. The OP also identifies a future Bus Rapid Transit corridor along Baseline Road, with a planned station within 600 metres ("m") of the subject property.

[9] As shown in Figure 1, the property is located in a triangular block, referred to as the Triangle. Mr. Jacobs notes that the shape of the block with its significant land area and multiplicity of owners has made it awkward to develop in an integrated manner. Much of the development within this block was on the periphery due to street access, though private roads have gradually been introduced for access within the interior. In Mr. Jacobs' opinion, the Triangle marks the gateway or entrance to the Merivale Corridor.

[10] Though the Merivale Corridor is largely auto-oriented commercial, planning approvals show that this area is evolving. There are two approved developments across from the subject property, at the north side of the intersection of Clyde and Baseline. Immediately across from the subject property, at 1405 Baseline, there is an approved retirement home project comprised of two 15-storey towers. At 1356 Clyde, City council recently approved an application for 28-storey and 18-storey apartment buildings. The City approved that application in September 2021 and it was still in the appeal period at the time of this hearing.

[11] Further south from the subject property, along Baseline, there are two more approved apartment buildings. The one closest to the subject property, at the southern corner of the Triangle, is planned at nine storeys, and there is a project further south planned at 12 stories.

[12] Beyond the commercial uses along Clyde and Baseline there are three residential communities: Copeland Park, Central Park, and Skyline.

Dymon's Proposal

[13] Dymon's proposed development consists of a six-storey self storage building fronting onto Clyde and in a separate one-storey building, a restaurant with a drive-through. The self-storage facility would include a retail store on its ground floor, which, as part of Dymon's business model, typically includes home organization items, kitchen and closet design services, and storage and moving supplies. Dymon's facilities also consist of meeting space, boardrooms, flex-office space, safety deposit boxes, parcel and mailbox services, and document and shredding services. These additional uses, Mr. Tremblay estimates, represent approximately 40% of the facility's operational space and are typically integrated into the ground floor space.

[14] The ground floor also includes a drive-in area for self-storage customers, proposed to be located between the retail area and the adjacent gas station. The retail area is showcased with windows along Clyde and an interior access between the self-storage building and the existing motor sports building. That interior access road would wrap around the building from Clyde, through to the restaurant building and out to Baseline. Parking is proposed to be provided flanking that access between the self-storage building and the motor sports building, as well as adjacent to the restaurant.

[15] From an urban design perspective, the ground floor retail area is designed to front Clyde, as Mr. Theodore explained, for an active frontage and animation of the streetscape. The drive-in service and loading areas are designed to be internal to the building and screened from the street. High quality materials are intended for the building's exterior. The base would consist of decorative pre-cast concrete with slat brick finish and curtain wall glazing. Above that, there would be a combination of insulated metal panels with a variety of colour and imprinted pattern finishes, limestone masonry units and patterns of interspersed glass to create visual interest. Complimentary materials are planned for the restaurant building.

The ZBA

[16] The property is designated Arterial Mainstreet in the OP and is zoned Arterial Mainstreet 10, with an exception. Because the current zoning does not permit Dymon's proposed self-storage use, it is seeking a new exception to allow that use, defined in the Zoning By-law as a 'warehouse'. There are also several performance standards for which Dymon seeks amendment, summarized as follows:

Performance Standard	Zoning By-law Requires	Dymon Proposes
<i>Baseline frontage to be occupied by buildings within 3 m of front lot line</i>	50%	10%
<i>Clyde frontage to be occupied by buildings within 3 m of front lot line</i>	50%	28%
<i>Minimum height for portion of building located within 10 m of Baseline</i>	<i>Ground floor: 4.5 m</i>	<i>Ground floor: no minimum where mezzanine located above; otherwise 4.5 m</i>
	<i>Building: 7.5 m and at least two storeys</i>	<i>Building: 6.4 m and at least two storeys</i>
<i>Transparent glazing on Clyde ground floor facade</i>	50%	41%
<i>Restaurant queuing spaces</i>	7 spaces before / at order board and minimum 11 in total	4 spaces before / at order board and 10 in total
<i>Loading space for warehouse use</i>	2	1
<i>Oversized loading space for warehouse use</i>	1	None
<i>Width of aisle accessing loading space</i>	9.0 m	6.7 m
<i>Minimum length of loading space</i>	7.0 m	6.9 m
<i>Minimum landscaped buffer for parking lot adjacent to property line not abutting the street</i>	1.5 m	None
<i>Screening for loading spaces</i>	2 m high opaque screen	None

<i>Screening for refuse areas that use a semi-underground bin system</i>	2 m high opaque screen	None
<i>Minimum distance between refuse areas and property line not abutting a street</i>	3 m	1 m
<i>Minimum number of parking spaces for warehouse limited to self-storage as well as ancillary retail use located within same building</i>	122	20

[17] Through Dymon's site plan application, which is not before the Tribunal, it will be required to convey two road widenings to the City. It will convey 6.4 m along its Baseline frontage, roughly corresponding with the gas station's property line. Along Clyde, it will convey 2.4 m that fans out to 4 m. The proposed performance standards in the ZBA anticipate those road widenings.

[18] Dymon submitted its ZBA application to the City on July 4, 2017 and the City deemed it complete on July 19, 2017. After a community and public meeting, as well as receiving technical comments from the City, Dymon submitted its site plan application to the City on October 10, 2017.

[19] The City's Urban Design Review Panel (the "UDRP") reviewed the application on December 7, 2017. In response to both the technical review comments and the UDRP comments, Dymon submitted revised plans to the City. It did so twice more in response to additional comments, with the third resubmission on October 10, 2019.

[20] City planning staff submitted a report to Planning Committee on November 26, 2019, recommending approval of Dymon's application. The report included these findings:

- The proposal represents renewal of an underutilized site;

- The addition of the self-storage use at this location is complimentary to other permitted uses on the property and is consistent with OP policies for development along Arterial Mainstreets as well as with the policies of the Merivale Road Secondary Plan; and
- The proposed site design is adequately meeting the City's design goals for development along "Arterial Mainstreets".

[21] At its meeting of December 12, 2019, the Planning Committee agreed with City planning staff and recommended that the application be approved. However, City council refused the application on January 29, 2020, outlining, in a motion, the following reasons for refusal:

- a. The site is a gateway to the Fisher Heights community and the proposed self-storage use is not consistent with this site's role as a gateway.
- b. The majority of the site is subject to the Merivale Road Secondary Plan and the proposed self-storage use is not in conformity with this Secondary Plan in that:
 - i. The rezoning does not promote a stronger movement to a mixed use that includes a residential use;
 - ii. The rezoning does not encourage the provision of additional housing opportunities;
 - iii. The rezoning for a warehouse limited to a self-storage use does not promote a use that is pedestrian oriented and fosters community and human interaction and is therefore contrary to the vision of the Merivale Secondary Official Plan.

[22] The motion carried with 14 in favour and 8 opposed.

ISSUES AND ANALYSIS

[23] This appeal comes down to whether the subject property can be considered a gateway, and if so, whether the proposed development is appropriate for a gateway site. The City's position is that this is a gateway site and that residential development would be more appropriate there. Dymon disagrees that the site is part of a gateway,

and submits that even if it was, there is no requirement for residential development and the ZBA is entirely appropriate from a land use planning perspective. The parties also disagree as to whether the development can be considered transit-supportive and represents good urban design.

[24] The Tribunal will consider these issues collectively within the planning policy framework required by Act, beginning with the PPS, then the City's OP, the Merivale Road Secondary Plan (the "Secondary Plan"), and finally the City's Urban Design Guidelines for Development along Arterial Mainstreets (the "Guidelines").

[25] Before turning to the applicable policies, the Tribunal notes that there was some debate during the hearing as to the applicable OP policies. Mr. Jacobs offered his opinions based on many OP policies that came into effect only after Dymon submitted its application. In doing so, he notes that there are not significant differences between the old and new policies. During closing submissions, Mr. Marc clarified the City's position that regardless of which policies the Tribunal applies, the effect is the same. There was no attempt to argue that the Tribunal should exercise its discretion to depart from its longstanding practice to apply the policies in effect at the time of the application, absent a compelling public interest reason to apply the newer policies. The Tribunal's analysis accordingly focusses on the policies in effect at the time of Dymon's application.

Consistency with the PPS

[26] Both Mr. Tremblay, and Mr. Theodore from an urban design perspective, are of the opinion that the ZBA is consistent with the PPS. Though the City submits, and Mr. Jacobs opines, that the ZBA is inconsistent with the PPS, this was not a focus during the hearing. There are two prongs to Mr. Jacobs' evidence in support of his opinion that the ZBA is not consistent with the PPS. First, by not including any residential development, he believes that the ZBA is not consistent with policy 1.1.1, which promotes a mix and range of housing for healthy, liveable, and safe communities. Second, the proposed warehouse use of the property does not, in Mr. Jacobs' view,

represent transit-supportive development nor does it support active transportation and an animated pedestrian realm.

[27] There are two criteria at issue in policy 1.1.1, which speaks to sustaining healthy, liveable, and safe communities:

1.1.1 Healthy, liveable and safe communities are sustained by:

...

b) accommodating an appropriate affordable and market-based range and mix of residential types (including single-detached, additional residential units, multi-unit housing, affordable housing and housing for older persons), employment (including industrial and commercial), institutional (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 the integration of land use planning, growth management, *transit-supportive* development, *intensification* and *infrastructure* planning to achieve cost-effective development patterns, optimization of transit investments, and standards to minimize land consumption and servicing costs; [Italics in original to indicate defined terms].

[28] Regarding policy 1.1.1(b), there was no evidence before the Tribunal that the ZBA, by not providing housing on the subject property, would undermine the health, safety, or livability of the broader community. In referring to the community as a whole, and not the development of a specific property, Policy 1.1.1 provides clear encouragement for a mix of uses that includes, among others, both residential and commercial.

[29] In Mr. Tremblay's opinion, the proposed development supports and facilitates the intensification contemplated by policy 1.1.1. He notes that self-storage users include offices, institutions, and residents who require additional storage space.

[30] Mr. Jacobs relies on policy 1.1.1(e) in support of his opinion that the ZBA is not transit-supportive. In his view, the proposal is auto and truck-oriented and does not optimize the significant investment the City is making in this area for bus rapid transit. Mr. Tremblay disagrees, noting that there will be employees for both the restaurant and self-storage business who may make use of transit. While he agrees with Mr. Jacobs that a self-storage user is not likely to take transit to the facility, he points out that restaurant customers, or those who are using Dymon's other non-storage facilities, could be transit users. Mr. Tremblay also explains, as City planning staff did in its report, that the development would intensify a currently underutilized property and would be built in an efficient, cost-effective manner that takes advantage of existing infrastructure.

[31] From an urban design perspective, Mr. Theodore believes the ZBA achieves consistency with policy 1.1.1(e) by introducing a built form that improves the relationship with the public realm through well-articulated buildings, enhanced landscaping, and parking that is screened from the street. In his opinion, the proposal will set a positive example for the evolving character of this community, which will encourage a sense of place in the Merivale Road Corridor.

[32] Mr. Jacobs, in contrast, believes that the proposed development does not support active transportation or support the pedestrian realm, as required by policies 1.1.3.2 and 1.7.1(d), respectively. Both are broadly framed policies. Policy 1.1.3.2 calls for land use patterns within settlement areas to be based on densities and a mix of uses that, among other items, are transit-supportive and support active transportation. Policy 1.7.1 speaks to economic prosperity and, in (d), directs that it should be supported by "maintaining and, where possible, enhancing the vitality and viability of downtowns and mainstreets".

[33] In addition to the self-storage use, Mr. Jacobs cites the drive-through and its associated queuing as in no way supporting active transportation. Mr. Tremblay again disagrees, and Mr. Theodore provided detailed evidence regarding the proposed development's many urban design elements to animate and engage the pedestrian

realm. His detailed urban design evidence stood in contrast to Mr. Jacobs' generalizations about the proposal's design. It is clear, from both Mr. Theodore's evidence and the renderings to which he referred, that the retail use along Clyde is designed to attract pedestrians, with a clear view to the retail store and its offerings from the sidewalk.

[34] Having reviewed the PPS policies relevant to the ZBA and the evidence of Messrs. Jacobs, Tremblay, and Theodore in this regard, the Tribunal finds that the ZBA is consistent with the PPS. The Tribunal agrees with Mr. Tremblay that the proposed development represents an efficient, cost-effective pattern of development that intensifies an underutilized site. While not residential intensification itself, the Tribunal finds compelling Mr. Tremblay's opinion that the self-storage use, which also includes opportunities for use of temporary office space and other uses supporting small businesses, is supportive residential intensification.

Conformity with the City OP

[35] Broadly framed, there are two areas of the OP in dispute in this appeal. First, the parties disagree as to whether the ZBA conforms with the policies that apply to Arterial Mainstreets. Second, they disagree as to whether the proposed development satisfies the OP requirements regarding urban design and compatibility. Though Mr. Theodore was the only witness qualified to provide opinion evidence in the area of urban design, and accordingly addressed all urban design related policies, Messrs. Jacobs and Tremblay addressed these policies as part of their land use planning opinion regarding conformity with the OP. The Tribunal will begin by addressing the mainstreet policies found in s. 3.6.3 of the OP, and will then move to the urban design and compatibility policies.

Mainstreet Policies

[36] The OP contemplates significant opportunities for intensification in mainstreet areas. Importantly, s. 3.6.3 makes a distinction between mainstreets developed before

1945 (“Traditional Mainstreets”) and those developed after 1945 (“Arterial Mainstreets”). The subject property is part of an Arterial Mainstreet, which the OP defines to recognize its automobile-oriented origins and explains that these areas

typically present an urban fabric of larger lots, larger buildings, varied setbacks, lower densities and a more automobile- oriented environment, often within a divided cross section of four or more lanes. They generally do not provide on-street parking. Parking lots are often located between the buildings and the street, and the predominant existing land use is single-purpose commercial.

[37] Recognizing the typical development pattern in an Arterial Mainstreet, the OP contemplates a gradual transition to more intensive types of development, explaining that

[t]his could mean that, over time, higher density employment and residential uses could be introduced, where appropriate. **Uses may be mixed within buildings and/or on the same lot, parking lots between the building and the street could be redeveloped and built upon, and the pedestrian environment will be improved. [Emphasis added].**

The direction that uses may be mixed within buildings or in separate buildings is repeated in policy 3.6.3.3. While Mr. Tremblay’s opinion is that the ZBA facilitates a mix of uses both within the self-storage building and across the entire site, Mr. Jacobs believes that there is not an adequate mix of uses proposed.

[38] Through policy 3.6.3.8, the OP encourages redevelopment and infill on both Traditional and Arterial Mainstreets:

Redevelopment and infill are encouraged on Traditional and Arterial Mainstreets in order to optimize the use of land through intensification, in a building format that encloses and defines the street edge and provides direct pedestrian access to the sidewalk. Any proposal for infill or redevelopment will be evaluated in light of the objectives of this Plan.

[39] There are key distinctions between Traditional and Arterial Mainstreets throughout the s. 3.6.3 policies. One distinction lies in policy 3.6.3.6, which generally does not permit gas bars, service stations, automobile sales and drive-through facilities on Traditional Mainstreets. These uses are permitted on Arterial Mainstreets and are to

be evaluated on the basis of design objectives and principles included in s. 2.5.1, the compatibility policies in s. 4.11, and council-approved design guidelines.

[40] Overall, Mr. Jacobs is of the opinion that the ZBA does not conform to the s. 3.6.3 policies. In his view, the proposed warehouse use, along with the existing motorized vehicle sales outlet, will not allow the property to evolve toward the planned function for lands in the Triangle, nor support alternative modes of travel. Mr. Jacobs believes that the proposed development does not support a broad mix of uses nor does it introduce the residential uses encouraged by the OP.

[41] Ms. Shaver-Jones raises similar concerns. She sees the proposed development as a sterile warehouse that undermines the community vision for this area. She describes that vision as making this area a people-oriented place, where residents will be drawn out to walk to shops, restaurants, and socialize.

[42] Mr. Tremblay points out that not only are there a mix of uses across the site, including the restaurant, the self-storage building, and the motor sports sales and service outlet, but there are a mix of uses within the self-storage building. In addition to self-storage, there is a ground-floor retail component, and office and boardroom space. This combination of uses, in his view, squarely conforms with policy 3.6.3.3. The Tribunal agrees and finds that Mr. Jacobs has taken a narrow view of the proposed uses, choosing only to focus on the storage component. He did concede, during cross-examination, that there is a mix of uses on the site.

[43] Another reason for the planners' difference of opinion is the policy direction to improve access to transit, walking, and cycling. Mr. Jacobs sees the ZBA as only facilitating another auto-oriented use. While the Tribunal agrees that self-storage customers are, by necessity, likely to drive to the facility, the other uses on the site may well be accessed by transit. The restaurant drive-through of course will not be, but that is a use the OP permits for Arterial Mainstreets, provided the plan's design objectives, principles, and compatibility policies are met.

[44] It is also important to note the direction of policy 3.6.3.1, which recognizes that Arterial Mainstreets “have the potential to evolve, over time, into more compact, pedestrian-oriented and transit friendly places.” This direction, in the Tribunal’s view, is furthered by the proposed development. There are aspects of the proposed development that are pedestrian-oriented and transit-friendly. The Tribunal also agrees with Messrs. Tremblay and Theodore that the proposal will positively contribute to the gradual evolution of this Arterial Mainstreet. The Tribunal cannot accept Mr. Jacobs’ and Ms. Shaver-Jones’ shared view of this proposal as a sterile warehouse. That view disregards the innovative mix of uses proposed within the self-storage building itself, all of which are available to the community, as well as the mix of uses across the site. All of these new uses will be housed in buildings that are designed to be pedestrian-oriented, which will be discussed in the next section.

Urban Design and Compatibility Policies

[45] Policy 2.5.1 is introduced as part of the OP’s strategic directions in s. 2, this one being s. 2.5 “Building Liveable Communities.” The themes in this section mirror those of the PPS. In addition to the big-picture items that make for a liveable community—housing, employment, greenspace, a sense of history and culture—the OP strives to focus on community design because it

draws attention to how buildings and the spaces around them look and function in their setting. Since the best urban design is informed by a solid appreciation of the place being built, the people in it, and the community around it, this approach opens the door to creativity and dialogue.

The City’s community design objectives are identified through s. 2.5.1. There are additional compatibility and design policies set out in s. 4.11 of the OP, which explains that development applications will be evaluated in the context of that section as well as s. 2.5.1.

[46] Mr. Theodore was the only witness to provide detailed opinion evidence on the application of the urban design policies in ss. 2.5.1 and 4.11, in support of his

conclusion that the ZBA conforms with these policies. Mr. Tremblay agrees with Mr. Theodore, and is of the opinion, from a land use planning perspective, that the ZBA conforms with these policies. Mr. Jacobs disagrees, however, he provided only general statements in support of his opinion.

[47] In Mr. Jacobs' view, the proposed development fails to clearly define and frame the street edge, as required by policy 4.11.4:

Buildings, structures and landscaping will be used to clearly define public spaces, such as streets and parks. ... New buildings must either be properly integrated into their existing building fabric, or help create a new building fabric.

[48] Because one-third of the self-storage building's frontage consists of the drive-in access for storage customers, it fails to create a new building fabric, in Mr. Jacobs' opinion. He also believes that there is nothing above the first floor of building, other than lighted windows, to animate the building or create visual interest. His opinion stands in contrast to Mr. Theodore's detailed description of the proposal's urban design features.

[49] Mr. Jacobs also relied on the new policy 4.11.7, which indicates that intersections of arterial roads can serve as gateways into communities and was not in the version of the OP in force at the time of Dymon's application. Even if the Tribunal were to apply the newer policy, it finds that it would not lead to a different result. The subject property is not located at the intersection; its neighbouring gas station is the corner property. Regardless, the Tribunal will address the gateway issue in more detail in its analysis of the Guidelines.

[50] Mr. Theodore provided detailed evidence of the application of the urban design and compatibility policies. His testimony in this regard was not disturbed, neither through Mr. Jacobs' more general testimony, nor through cross-examination. It is therefore not necessary for the Tribunal to recount Mr. Theodore's evidence, but to summarize his key points regarding policies 2.5.1 and 4.11.

[51] With respect to the design objectives contained in s. 2.5.1, Mr. Theodore's

opinion is summarized as follows:

- *Design objective 2.5.1(1)*: The proposal includes high quality architecture and landscape design to set a positive example for the evolving character of the community, encouraging a sense of place and unique identity to be achieved.
- *Design objective 2.5.1(2)*: The proposal will define public and private spaces by proposing new, high-quality plantings across the property, including new coniferous and deciduous trees, perennial and shrub plantings, river rock pea stone gravel and painted pedestrian walkways. Landscaping will be focused along the buildings' street-facing facades, providing a positive relationship with the public realm along Baseline and Clyde.
- *Design objective 2.5.1(3)*: The proposal creates a place that is safe, accessible, easy to get to and move through by orienting built form to frame the street with direct pedestrian connections from the street.
- *Design objective 2.5.1(5)*: The proposal considers adaptability and diversity, creating a place that can evolve easily over time. For example, the restaurant could be redeveloped if the gas station or the lands to the east are redeveloped; the proposed development of the subject property would not preclude future evolution or intensification of adjacent lands over time.

[52] Despite the new s. 4.11 policies not being in force at the time of Dymon's application, Mr. Theodore provided detailed evidence on each of the relevant policies in support of his opinion that the proposal conforms with even the new version of the OP. Overall, Tribunal prefers Mr. Theodore's detailed urban design opinion evidence over Mr. Jacobs' general statements that did not adequately address the proposal's specific design elements.

[53] The Tribunal finds that the ZBA conforms with the City OP. Though the Tribunal heard evidence regarding the new OP policies that were not in force at the time of

Dymon's application, it did not hear any basis to apply those policies. Even if it did, the Tribunal agrees with Mr. Theodore's opinion that the proposal conforms with the new urban design policies.

[54] The Tribunal will next consider whether the ZBA conforms with the Merivale Secondary Plan.

Conformity with the Secondary Plan

[55] Originally adopted by the former City of Nepean in 1982, the Merivale Secondary Plan is now in Volume 2 of the City's OP. The Secondary Plan primarily designates the subject property as Merivale Road Mixed Use and contains goals and objectives for the secondary planning area that are similar to those articulated by the OP. In its purpose section, the Secondary Plan recognizes, like the OP, the evolving nature of the area. To that end, s. 1.1 notes that the Secondary Plan is based on goals, objectives, principles, policies and designations that will:

- create a visual identity and character to the area;
- provide flexibility in use permissions to allow the area to adapt to the evolving commercial and retail environment and respond to changing market conditions;
- increase the mix of residential uses within the corridor;
- improve the relationship of the physical elements between the residential and commercial portions of the community; and
- balance the needs of transit riders, pedestrians, cyclists and motorized vehicle traffic.

The Secondary Plan continues with a market-driven emphasis in s. 1.3. It indicates, as Mr. Tremblay explains, that the purpose of the plan is not to introduce significant change into the Merivale Corridor. Rather, the Secondary Plan follows the approach of "primarily allowing the market to 'rule'", noting that it intends to improve the area as a

place to shop, work and live by providing opportunities to create a more pleasant environment. Here again, the City's planning policy framework contemplates a gradual evolution for this area.

[56] Significantly, in s. 1.4, the Secondary Plan recognizes that the primary focus for the area's land use concept "will be to support the ongoing retail function and to encourage a stronger movement to mixed uses including the introduction of residential uses." It goes on to encourage development and redevelopment of the area's commercial uses by broadening existing permissions beyond retail. While it recognizes that residential and mixed uses will be allowed, it emphasizes the primarily automobile-oriented nature of the area.

[57] In s. 2.0, the Secondary Plan's goals align with this direction, referencing the importance of strengthening the area's visual character (s. 2.1(i)), while maintaining and building on "the current economic vitality of the commercial sector in the area" (s. 2.1(iii)) and providing opportunities for residential development and intensification along the corridor (s. 2.1(iv)). Market trends are again referenced here, in s. 2.1(v), to "allow landowners and businesses to respond to evolving commercial market trends and conditions".

[58] The Secondary Plan's general policies, in s. 3.1.1.2, recognize the development constraints in the Triangle due to its existing development pattern and the complexity of land ownership. In light of this, it notes that development proposals in this area may be considered on a staged basis to achieve transition to a more coordinated and integrated built form. This, in Mr. Jacobs' opinion, makes the redevelopment of the subject property premature. He believes it should be considered as part of the larger development of the block. The Tribunal does not read the policy this way; rather, it gives the City the option to use a staged approach when considering development proposals within the Triangle. It does not render this proposal, which is coming forward without consideration of the unknown development plans of other Triangle lands, premature.

[59] The Secondary Plan, in s. 3.2.1.1, permits a broad range of uses, including retail,

commercial, offices, entertainment and recreational uses. Mr. Jacobs takes the position that the warehouse use is not permitted, while Mr. Tremblay suggests that the listed “service commercial” use covers the self-storage use. The Tribunal agrees, and notes that the list is preceded by “retail and other commercial uses including...”, and “service commercial” is just one item on the non-exhaustive list. Certainly, a self-storage building with retail and office uses is a permitted use under the Secondary Plan.

[60] Mr. Jacobs makes many of the points with respect to the Secondary Plan as he does with the OP. Additionally, he is of the opinion that the ZBA does not conform with the Secondary Plan because, by failing to provide residential uses, it does not achieve the plan’s contemplated mix of uses. The Tribunal agrees with Mr. Tremblay that nowhere does the Secondary Plan require residential use to be included in the redevelopment of this site. While the plan does encourage residential and mixed uses to be introduced in the corridor, it recognizes its primarily commercial nature and it emphasizes market trends in this regard. Here again, Mr. Jacobs places too much emphasis on the subject property in the overall development of this corridor over time.

[61] The Tribunal agrees with Messrs. Tremblay and Theodore that the proposed development introduces a mix of uses on subject property. The proposed development will certainly improve the primarily auto-oriented condition of this corridor, by bringing buildings closer to the street and introducing a variety of urban design elements to animate them. This is a vast improvement over the predominance of strip commercial plazas with parking at the street, where the pedestrian’s experience is defined by parking areas and the street itself. The proposed development, in introducing a six-storey, attractive building, along with a new one-storey restaurant, is certainly improving the subject property and will introduce positive urban design elements to the corridor.

[62] Similarly, the Tribunal sees nothing in the proposed ZBA that will preclude the development of other Triangle lands at a later date. On the contrary, the self-storage building with its location at the street, and ground floor, pedestrian-oriented retail, creates an opportunity for similarly well-thought out urban design in any proposal that

comes forward for the gas station property, or even future redevelopment of the motor sports building or restaurant.

[63] Accordingly, the Tribunal finds that the ZBA conforms with the Secondary Plan. Finally, the Tribunal will consider the Guidelines.

The Guidelines

[64] The Guidelines provide guidance for development along the City's Arterial Mainstreets. There is only one aspect of the Guidelines at issue in this case, and that is whether the site is considered a gateway, and if so, whether the proposed development meets the Guidelines relating to development of a gateway. While Mr. Jacobs considers the site as part of a gateway, Mr. Theodore disagrees based on his interpretation of the Guidelines.

[65] There are two definitions in the Guidelines that form the basis of the City's position in this case:

Gateway: a main point of entrance into a district or a neighbourhood and a good location for intensification.

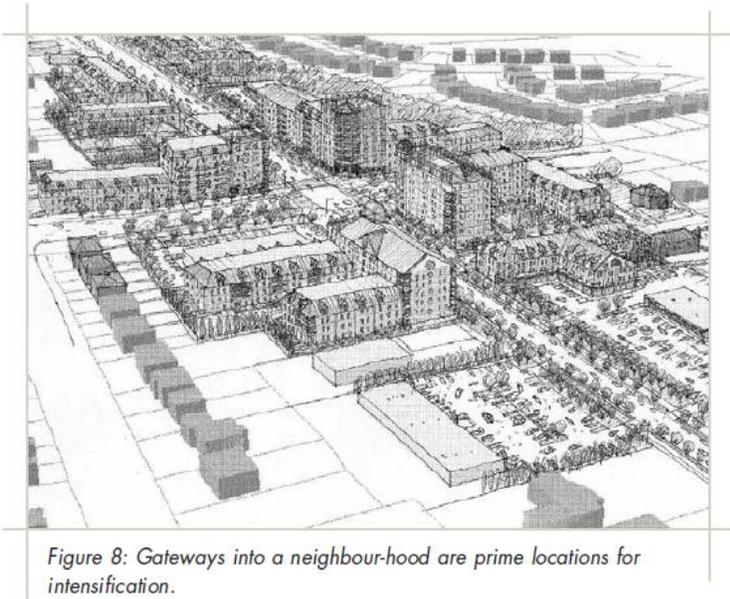
...

Nodes: occur at gateways, intersections, as key locations to highlight, feature or intensify.

[66] Guideline 11 speaks to developments at nodes and gateways, explaining that they should

[c]reate intensified, mixed-use development, incorporating public amenities such as bus stops and transit shelters, at nodes and gateways by concentrating height and mass at these locations.

[67] The guideline then refers to Figure 8 as an example of a gateway into a neighbourhood:



[68] Mr. Jacobs takes it as given that the subject property is an integral part of the gateway entrance into the Merivale Road Corridor, and the Triangle in particular. It is then his opinion that the ZBA does not have regard to the applicable guideline because it proposes an unrelated grouping of buildings that are lacking in landmark architectural qualities, and it does not provide a true mixed-use development or built form that can be adapted and integrated over time with the development of the adjacent lands.

[69] The basis for Mr. Jacobs' opinion appears to be the delineation of the Merivale Road Mixed Use Area found in the Secondary Plan. That delineation does not include the corner gas station, and instead starts from the subject property and moves south. This was the boundary between the City of Nepean and Ottawa prior to amalgamation. The Tribunal can accept that, prior to amalgamation, this could have been considered an entry point between the two cities. However, that distinction no longer exists given that Nepean amalgamated with Ottawa. That delineation is arbitrary and does not account for the physical context of this area.

[70] During cross-examination, Mr. Jacobs agreed that a person travelling down Clyde from the north would pass through the existing and planned context of residential towers and a Stantec office building before arriving Baseline. In agreeing to that

proposition, Mr. Jacobs explained that all of these buildings are part of creating a gateway to move from the residential neighbourhood to the north to the commercial corridor to the south. This, in the Tribunal's view, undermines his opinion that the subject property should be considered a gateway or a node.

[71] Mr. Jacobs' emphasis on the subject property disregards the existing and planned context immediately to the north of the property, on the north side of Baseline and travelling further north on Clyde. There is approved residential intensification in the form of 15-, 18- and 28-storey apartment buildings. There is an existing 8-storey office building. There is also an obvious gap, the gas station, between the subject property and the higher, more intense development to the north. That gas station, being located at the intersection of two arterial roads, could likely be redeveloped and intensified.

[72] Even if the Tribunal were to accept Mr. Jacobs' opinion that the subject property is part of a gateway to the Merivale Road Corridor, there is no evidence that the proposed development offends guideline 11. It is Mr. Theodore's opinion that this proposed development can be considered a mixed-use, more intense form of development on this under-utilized site. The Tribunal agrees. There is a mix of uses not only across the site, but also contemplated within the self-storage building. The six-storey building is introducing height in this area, which could easily transition to a higher, more intense development at the corner should the gas station property be redeveloped. The same is true of the lands to the east of the subject property.

[73] Though the remainder of the Guidelines are not at issue, the Tribunal accepts Mr. Theodore's uncontradicted evidence that in his opinion, the proposed development has regard for the applicable design direction provided by the Guidelines.

[74] Accordingly, the Tribunal finds that the proposed development has appropriate regard for the Guidelines.

CONCLUSION

[75] After a careful review of the evidence and submissions in this case, the Tribunal finds that the ZBA is consistent with the PPS, conforms with the OP, including the Secondary Plan, and has regard for Guidelines. As a redevelopment of an underutilized site in an automobile-oriented commercial corridor, the proposal's innovative mix of uses and the high-quality design associated with them will positively contribute to the planned evolution of the corridor. All three witnesses agreed that the proposed self-storage building is a far cry from the sprawling, 'garage-in-a-field' model of self-storage. This proposed six-storey self-storage building will be placed at the street with retail on its ground floor as an inviting feature for pedestrians. It represents an important step toward the evolution of this area to an improved sense of place and public realm and an improved streetscape.

[76] While the Tribunal has had regard for the City's refusal of the ZBA, as it is required to do by virtue of s. 2.1 of the Act, it could find no basis in land use planning to support that refusal. The Act also requires the Tribunal to consider the information and material that was before council when it made its decision. In this case, City planning staff recommended approval of the ZBA, for many of the same reasons Messrs. Tremblay and Theodore provided to the Tribunal.

[77] Mr. Platt requested that the Tribunal approve the ZBA in principle, with reference to the zoning details contained in the City planning staff report, to allow time for the final form of the ZBA to be prepared in a manner that ensures the proposal can proceed as planned. Mr. Marc suggested that, should the Tribunal take this approach, a period of thirty days would be appropriate to finalize the ZBA. The Tribunal will therefore withhold its final Order as requested.

INTERIM ORDER

[78] **THE TRIBUNAL ORDERS** that the appeal is allowed. The amendment to City of Ottawa Zoning By-law No. 2008-250, as detailed in Exhibit 5, pp. 219-221, is approved

in principle. The Tribunal will withhold its final Order for thirty (30) days from the date of issuance of this Decision, pending finalization of the form of the zoning by-law amendment that is satisfactory to the City of Ottawa's Zoning and Interpretations Unit, Policy Planning Branch and permits the proposed development.

[79] Should the parties have difficulty in finalizing this matter, the Tribunal may be spoken to through the Planner/Case-Coordinator having carriage of this file.

"S. Jacobs"

S. JACOBS
VICE-CHAIR

Ontario Land Tribunal

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