

THE CORPORATION OF THE CITY OF NORTH BAY

BY-LAW NO. 32-90

A BY-LAW TO AMEND BY-LAW NO. 28-80 TO REZONE CERTAIN LANDS ON VICTORIA STREET EAST FROM A "RESIDENTIAL THIRD DENSITY (R.3)" ZONE TO A "RESIDENTIAL MULTIPLE FOURTH DENSITY SPECIAL ZONE NO. 40(RM4SP.40)" (GAUTHIER - SUPREME HABITATS)

WHEREAS the owner of the subject property has requested a rezoning;

AND WHEREAS the Council of The Corporation of The City of North Bay has ensured that adequate information has been made available to the public and has held at least one public meeting after due notice for the purpose of informing the public of this By-law;

AND WHEREAS it is deemed desirable to amend the zone designation shown on Schedule "B-51" of By-law No.28-80 pursuant to Section 34 of The Planning Act;

NOW THEREFORE THE COUNCIL OF THE CORPORATION OF THE CITY OF NORTH BAY HEREBY ENACTS AS FOLLOWS:

1. Schedule "B-51" of By-law No. 28-80 is amended by changing the zoning designation of the property shown on Schedule "A" attached hereto (which property is more particularly described as Lots 662, 663 and 664 Plan 93; Lots 171 to 174 Plan 57 and Part 1 and 2 Plan 36R-7585 along Victoria Street East in the City of North Bay, shown as hatched on Schedule "B" attached hereto) from a "Residential Third Density (R.3)" Zone to a "Residential Multiple Fourth Density Special Zone No. 40(RM4Sp.40)".
2. Section 11 of By-law No. 28-80 is amended by inserting at the end thereof the following Section 11.2.40:

"11.2.40 "Residential Multiple Fourth Density Special Zone No. 40(RM4Sp.40)"

11.2.40.1 .The property description of this "Residential Multiple Fourth Density Special Zone No. 40 (RM4Sp.40)" is Lots 662, 663 and 664 Plan 93; Lots 171 to 174 Plan 57 and Part 2 Plan 36R-7585 along Victoria Street East in the City of North Bay as shown on the attached Schedule and Schedule "B-51".

11.2.40.2 (a) No person shall use land, or use, erect, or construct any building or structure in this "Residential Multiple Fourth Density Special Zone No. 40(RM4Sp.40)" except for the following uses:

A Sixty-five (65) unit Apartment Building where accomodation is intended to be restricted to persons 65 years of age and over through a scheme under The Housing Development Act;
Accessory uses to the above.

(b) The regulations for this "Residential Multiple Fourth Density Special Zone No. 40(RM4Sp.40)" are as follows:

- (i) The minimum lot frontage shall be twenty (20) metres;
- (ii) The minimum lot area shall be Six thousand two hundred (6200) square metres;
- (iii) The minimum front yard setback shall be twenty-two (22) metres;
- (iv) The minimum westerly side yard setback shall be eight (8) metres;
- (v) The minimum easterly side yard setback shall be seven and six tenths (7.6) metres;
- (vi) The minimum rear yard setback shall be fifteen (15) metres.

11.2.40.3 The use of land or buildings in this "Residential Multiple Fourth Density Special Zone No. 40(RM4Sp.40)" shall conform to all other regulations of this By-law, except as hereby expressly varied."

3. Section 11 of By-law No. 28-80 is further amended by inserting "Schedule to "Residential Multiple Fourth Density Special Zone No. 40 (RM4Sp.40)" as shown on Schedule "C" to this By-law.
- 4.a) Notice of this By-law shall be given by the Clerk in the manner and form and to the persons prescribed by Ontario Regulation 404/83.
 - (b) Where no notice of appeal is filed with the Clerk of The Corporation of The City of North Bay within twenty (20) after the day that the giving of written notice as required by the Act is completed, then this By-Law shall be deemed to have come into force on the day it was passed.
 - (c) Where one or more notices of appeal are filed with the Clerk of The Corporation of the City of North Bay within twenty (20) days after the day that the giving of written notice as required by the Act is completed, setting out the objection to the By-law and the reasons in support of the objection, then this By-law shall not come into force until all appeals have been finally disposed of, whereupon the By-law shall be deemed to have come into force on the day it was passed.

READ A FIRST TIME IN OPEN COUNCIL THE 5TH DAY OF MARCH 1990.
READ A SECOND TIME IN OPEN COUNCIL THE 17TH DAY OF APRIL 1990.
READ A THIRD TIME IN OPEN COUNCIL AND PASSED THIS 17TH DAY
OF APRIL 1990.


MAYOR


DEPUTY CITY CLERK

This is Schedule " A "

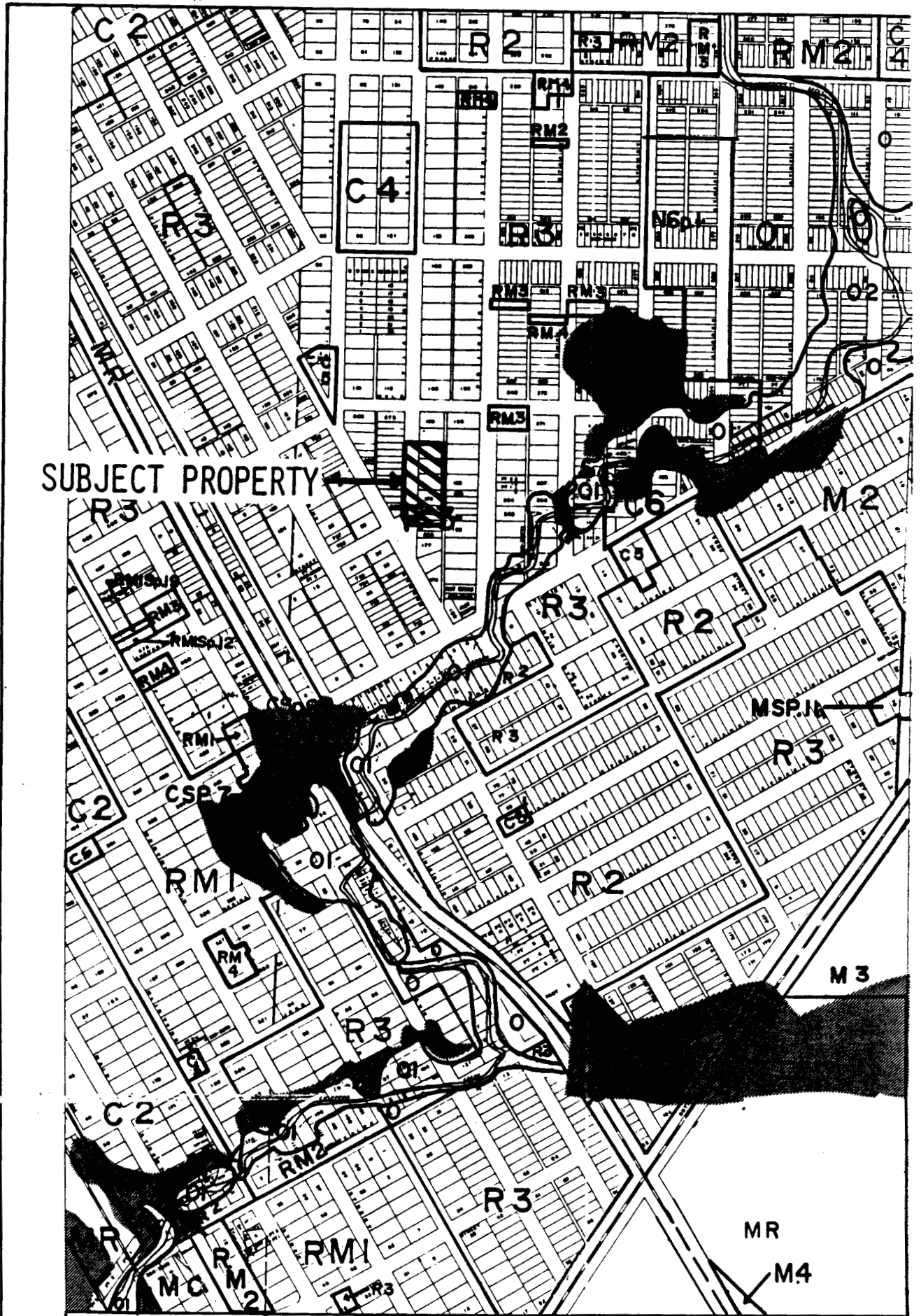
To By-law No. 32-90

Passed the 17TH day of APRIL,

19 90 .

Stan D Lawler
 MAYOR

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 DEPUTY CITY CLERK



SUBJECT PROPERTY

SCHEDULE
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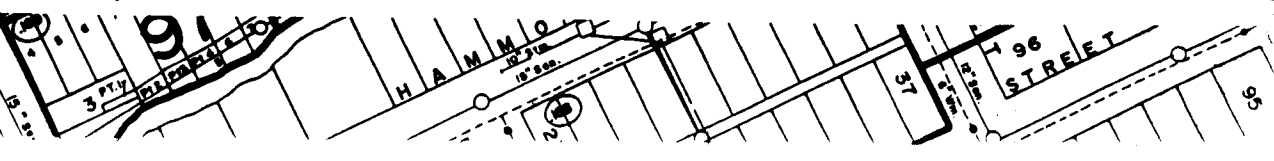
CITY OF NORTH BAY
 ZONING BY-LAW N^o 28-80
 SITE PLAN CONTROL - SEE SECTION 3.38(a) 11-79

This is Schedule " B
To By-law No. 32-90
Passed the 17TH day of APRIL
19 90 .

Stan D. Jewley
MAYOR
Dorinda [unclear]
DEPUTY CITY CLERK



FROM "RESIDENTIAL THIRD DENSITY (R.3)" TO "RESIDENTIAL
MULTIPLE FOURTH DENSITY SPECIAL ZONE NO. 40 (RM4SP.40)"



This is Schedule "C"

to By-law No. 32-90

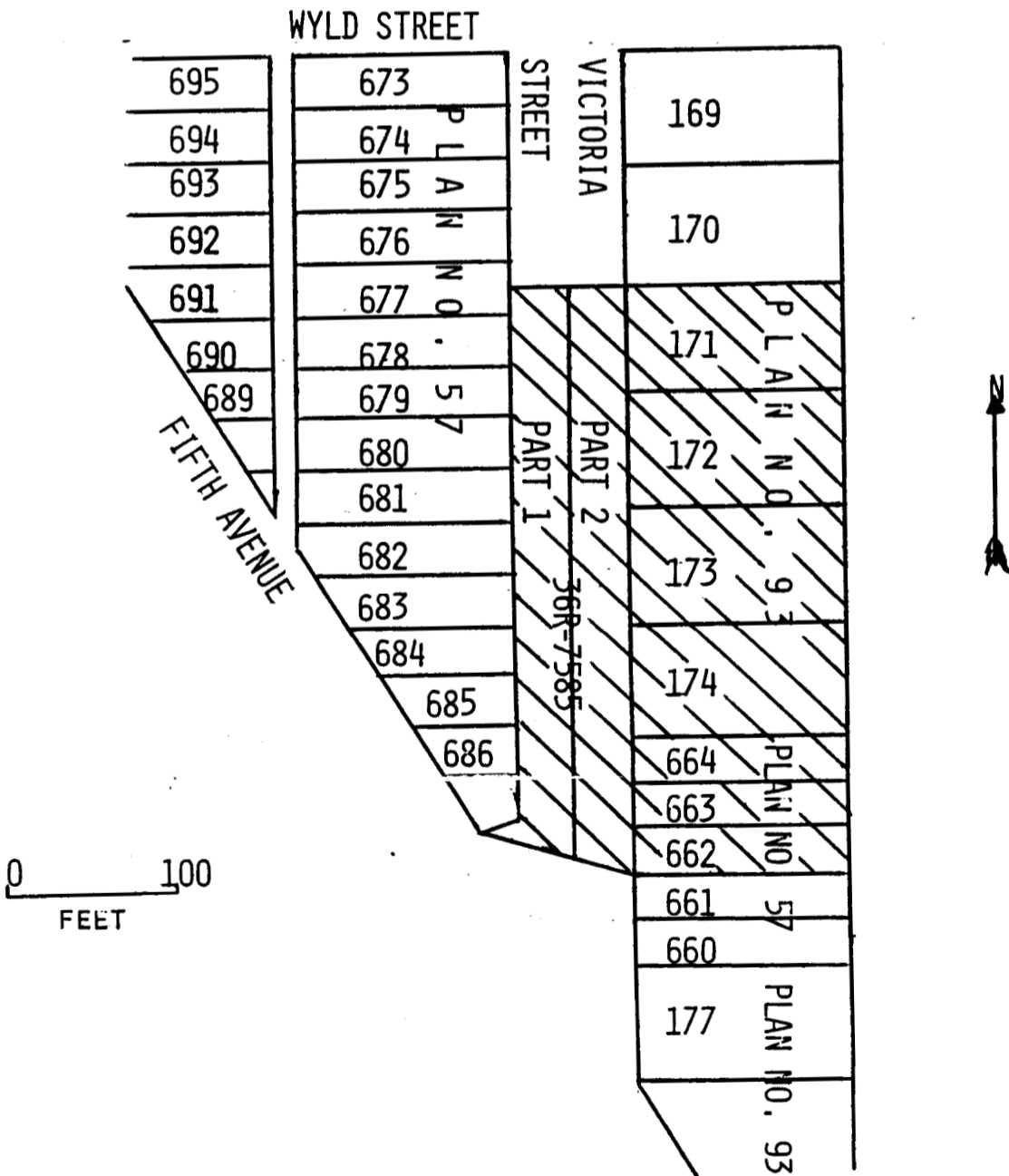
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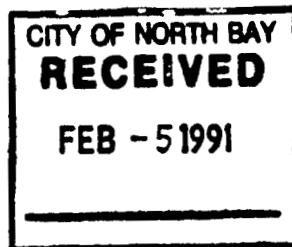
Stan D. Lawlor
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SCHEDULE TO "RESIDENTIAL MULTIPLE FOURTH DENSITY SPECIAL ZONE
NO. 40 (RM4SP.40)"



OB #	86	FOLIO #	164
ORDER ISSUE DATE			
FEB 1 1991			
OB #	R90-1	FOLIO #	246



R 900317

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF Section 34 of the
Planning Act, 1983

AND IN THE MATTER OF appeals by
Ernest Barry, Candace Barry and
Robert Trounsell against Zoning
By-law 32-90 of the Corporation of
the City of North Bay

C O U N S E L :

Michael B. Burke - for The City of North Bay

DECISION delivered by N.M. KATARY AND ORDER OF THE BOARD

Supreme Habitats for Seniors and Families in Nipissing, Inc. (a non-profit housing corporation), wants to build a sixty-five (65) unit senior citizen apartment building on the east side of Fifth Avenue between Fisher Street and Wyld Street in the City of North Bay. They went to the City and secured a rezoning in order to proceed with the project. Three residents of the area have appealed the decision of the Municipality.

The subject land consists of Lots 662 to 664, Plan 93, Lots 171 to 174, Plan 57 and part of the Victoria Street Road Allowance (Revised). It has access from Victoria Street East and has an area of approximately 1.22 acres. Currently the property is vacant. The property is designated "Residential" in the Official Plan. It is zoned "Residential Third Density (R.3)" which permits singles, semis and duplexes. The proposal requires a rezoning to "Residential Multiple Fourth Density Special (RM.4 Sp.)."

The proposal consists of a V-shaped building with a five storey east wing and a three storey west wing. In all, there are 65 dwelling units of which 45 have to be offered to households with

varying degrees of need. The main entrance faces the reconstructed Victoria Street. Sixteen parking spaces are created immediately north of the proposed building and sixty-one parking spaces are provided to the west of the proposed building fronting on the reconstructed Victoria Street. The parking lot adjacent to the existing St. Vincent de Paul Church is integrated with the proposed sixty-one parking spaces. Exhibit 11 shows that the proposed building is surrounded by landscape features.

Seven witnesses gave evidence in support of the proposal and two witnesses gave evidence in opposition to the proposal. In the following paragraphs, the central points are highlighted with a view to outlining a framework for analysis of the issues and the expressed concerns.

Mr. Michael Gauthier, representing the non-profit housing corporation Supreme Habitats, contends that there is a need for such senior citizen housing based upon a housing needs survey conducted by the Ministry of Housing. He further contends that the revised proposal before the Board takes account of the objections raised earlier before the Municipal Council with respect to drainage, loss of privacy, parking, and taxes.

Mr. Jeffrey J. Celentano, the planner for the City with the title Secretary-Treasurer of the Planning Advisory Committee, contends that the proposal and the proposed zoning by-law amendment comply with all the policies set forth under Subsection 2.2.3 of the Official Plan of the North Bay Planning Area. He further contends that the only issue involving a planning principle is the matter of the compatibility of the proposal with the existing built environment and that the proposal is compatible with the same. He is of the view that the "project is a reasonable use of the land that will meet a need for seniors' accommodation within the community."

Father Lionel Desgroseilliers, parish priest of the St. Vincent de Paul Church, contends that the residence for senior citizens of his parish is greatly needed and the proposal fills a demonstrated community need. He further contends that the developer, namely Supreme Habitats, will assist the Church in expanding its parking facilities and the Church will cooperate by removing the existing prefabricated recreational building south of the Church. It is his view that the construction materials to be used in the proposed building will create a facade that will be compatible with the Church and the Rectory.

Mr. John Simmonds, a civil engineer who is the Manager of Engineering Services with the City, contends that the additional traffic caused by the proposal would generate no more than 120 trips per day and would therefore not adversely impact upon the flow of existing traffic. He further contends that the preliminary drainage plan submitted by the developer is adequate to handle the expected surface drainage and that the certificate of approval will not be issued for the proposal until the final calculations are submitted and obtain the Ministry of the Environment's approval. He is of the view that a sidewalk on Fifth Avenue would help the people living in the proposed residence.

Mr. Stephen Sajatovic, Director of Planning and Development for the City, contends, on the basis of a housing update dated September 29, 1989, that the need for senior citizen housing is urgent and grave. He further contends that the required number of rental units is "not available at any price, let alone at an affordable price." In his view, the proposal provides the much needed rental accommodations for which there is no similar appropriate site in this part of the City. He is also of the view that the proposal is in conformity with existing development.

Mr. Jean-Philippe Larocque, a consultant architect retained by the developer, uses a scale model (not taken as an exhibit) of the proposed building to outline the potential impact on existing development. He contends that bulk and massing do not cause an unacceptable adverse impact on the built environment, and that the construction materials used, together with the landscaping, make the proposal compatible with the built environment. The shadow cast by the building, although significantly more than at present, barely touches the northwest corner of the property of one of the objectors (Mrs. Barry). He is also of the view that the building's facade is sensitive to the facade of the existing Church which is something of a landmark in the city.

Mr. Ernest Charland, a resident in the area who lives across from one of the objectors (Mr. Trounsell), contends that the project fills a serious need and would help the seniors. He is also of the view that the "area as it is, is garbage and the building could be beautiful".

Mr. Robert Trounsell, resident in the area and one of the two objectors who gave evidence at the hearing, contends that the proposed zoning by-law amendment does not comply with subsection 2.2.3.2 (d) of the Official Plan because the proposal is incompatible with the character of existing development. He is most concerned about the ease with which the Official Plan and the Zoning By-law are amended "to accommodate every new development that comes along". He says that the Zoning By-law should not be amended because "it takes away my rights that I thought I had". He also expresses concerns with respect to the proposal in aggravating the following problems:

- (1) surface drainage and pooling at the intersection of Wyld and Victoria; and
- (2) traffic on the streets surrounding the subject property.

Mrs. Candace Barry, whose property is adjacent to and east of the subject property and the only other objector who gave evidence, contends that the (parent) Zoning By-law assures certain legitimate expectations about the character of future development, and as such, should not be amended because amendments take away certain guaranteed rights. She further contends that the proposal is incompatible with the character of existing development. She also expresses concerns with respect to the proposal aggravating the following problems:

- (1) vehicular traffic and illegal parking on the streets surrounding the subject property; and
- (2) pedestrian traffic on the streets that presently lack sidewalks.

There are two principal issues that emerge from the body of the evidence. First, is the proposal compatible with the character of existing development (built environment)? Second, is the integrity of the Zoning By-law compromised by the proposed amendment?

1. Compatibility with the Built Environment (Existing Development)

Subsection 2.2.3.2 (d) of the Official Plan states:

"Apartment buildings shall be sited so that they relate compatibly with existing buildings and with the character of the immediate area, and do not constitute an intrusion into an established area of lesser density."

Compatibility therefore turns on the impact of the proposal on the character of the built environment with due regard for how that character is likely to evolve in the foreseeable future. Compatible means being mutually tolerant and capable of co-existing together in harmony in the same area. In the final analysis, the proposal should not cause an unacceptable adverse impact on existing

development (built environment). In order to determine the impact, it is helpful to explore the following questions.

First, does the proposal countenance (set a "precedent") other such actions in the immediate area? Both the objectors and the planner for the City agree that there is no substandard housing in the immediate area which could be redeveloped using the density of the proposal as a "precedent". In fact, both objectors insist that the quality of housing and the quality of the built environment in the immediate area are very good and ought to be reinforced and enhanced. The planner for the City and the Director of Planning and Development for the City state that there are no vacant parcels of land either in the immediate area or in this section of the city which could be used for similar developments. Mrs. Barry, one of the objectors, in her final arguments submits that, "There is a need for senior citizen housing. The City must develop -- progress cannot be stopped. I object to it being here." We have a situation where the need is conceded by the objectors and the City cannot find alternative locations for siting the need. Clearly therefore, this is the best available location at this time. Hence the Board finds that the proposal does not countenance other such actions in the immediate area where similar proposals can be brought forward which would change the character and contravene the intent and purpose of the Official Plan.

Second, how different is the proposal as compared with the existing development? The planner for the City defines the immediate area as the portion of the map that is shown in colour in Ex. 8, the Existing/Adjacent Land Use map. Both the objectors agree with this definition of immediate area but add that their real concern is with the properties adjacent to the subject land. In order to be certain that the area for impact analysis includes the property of one of the objectors, Mr. Trounsell, the Board finds the immediate area to be bounded by properties on both sides of the

street, on Ferguson Street in the North, Chippewa Street in the East, Fisher Street in the South and Fourth Avenue in the West.

The immediate area has the following characteristics identified by the planner for the City and revealed in Ex. 8, and uncontested by the objectors. The immediate area is part of an older section of the city which consists of a mixture of densities, uses, ages, and conditions of structures. Although the majority of houses are of the single unit detached dwelling type, they are interspersed with duplexes, triplexes, fourplexes, and small apartment buildings. There are several commercial establishments and significant institutional uses in the immediate area. The picture presented of the immediate area is one of diversity without a distinctive character. It does not evoke a sense of "being there" when one arrives.

In assessing the difference between the proposal and existing development, we need to compare the proposal with the fourteen semis or duplexes that would exist as a matter of right on the subject land. The residential use in both cases is the same and therefore the proposal is not qualitatively different. Obviously, the proposal is quantitatively different. The question is whether the structure in the proposal when viewed in the context of layout and design is quantitatively so different as to cause an unacceptable adverse impact. The evidence is that the building is V-shaped with two wings spanning away from the existing residences on Princess Street. Also the main entrance and the front of the building face the reconstructed Victoria Street, the parking lot, the rear of the Church, and Fifth Avenue (a major street) respectively. The two wings are of different heights in order to have five storeys on the east and three storeys on the west, creating a varied profile. This split height design enables half of the structure to be only slightly greater in height than a conventional two storey house with a sloping roof, either as a semi or a duplex. The construction

materials used attempt to match those of the existing Church. These features of the proposal therefore mitigate the effect of the quantitative difference between the proposal and development according to the standards set by current zoning. The proposal therefore does not cause an unacceptable adverse impact upon the subject land and the abutting properties.

The proposed development, albeit quantitatively different from existing development in the immediate area with the diverse characteristics outlined above, cannot be viewed as significantly different from what is already there. Therefore the Board finds that the proposal is neither qualitatively nor quantitatively so different from existing development that it may encourage residents in the immediate area to undertake similar new development or redevelopment.

Third, how anomalous is the proposal in the context of the existing development? As discussed above in the second question, the existing development in the immediate area, agreed to by both parties, consists of a diversity of character traits denying the area a distinct character other than it being an older part of the city. Although the proposal might appear to be an intrusion into an established area where the majority of dwelling units are low density (singles, semis and duplexes), the fact is that the immediate area already has a mixture of densities inclusive of triplexes, fourplexes, and small apartment buildings. Therefore, it is difficult to see how the proposal is intrusive enough to constitute an anomaly. Whatever little intrusion there may be is mitigated by the design of the building, the siting, landscaping, and buffering, as the planner for the City says. The Board accepts the opinion of the planner for the City. Therefore the Board finds that the proposal in and of itself, is not such an intrusion compared with the existing built environment in the immediate area

as to constitute an anomaly, especially since there is no potential for others to follow.

Fourth, does the proposal diminish property values in the immediate area? Mrs. Barry states that "the proposal will have a negative impact on property values in the area." Under cross examination, Mr. Trounsell says that "the increased traffic and the drainage problem may affect value of property." The objectors do not present documentary evidence in support of their assertions. All the witnesses in support of the proposal are silent on the impact of the proposal on property values. While the absence of evidence does not necessarily mean evidence of absence of any effect in either direction, the Board finds however, that there is no clear evidence on this matter.

Fifth, does the proposal reduce amenities for the people nearby? Subsection 2.2.3.2 (c) of the Official Plan states:

"Apartment buildings shall be sited so that they do not unduly overshadow or interfere with the visual amenities of lower density residential areas by reason of their bulk."

The planner for the City, using Ex. 14, and the architect retained by the developer using a three dimensional scale model, Exs. 12 and 14, gave a good deal of evidence on the shadow cast by the proposed building on nearby properties. Both contend that the shadow cast is minimal and does not unduly overshadow or interfere with the amenities enjoyed by the residents in the properties affected by the shadow. Mr. Trounsell contends that because the shadow study was done by the consultant retained by the developer, it is unreliable. He does not, however, proceed to supply any alternate professional evidence. Mrs. Barry is concerned about not only the shadow, but also the loss of view and privacy.

The evidence is that the shadow cast by the building on the west side is entirely upon the proposed parking lot and the street. The building will cast some shadow on properties to the east which would affect existing residents, three properties being affected most at the time of the Winter Solstice. There is a tiny area on the northwest corner of Mrs. Barry's property upon which the building casts a shadow. The residents of the three properties most affected by the shadow did not give evidence at the hearing. Mr. Trounsell's property is unaffected by the shadow. The architect and the planner consider the magnitude of the shadow cast to be insignificant. The Board accepts the professional opinion of these two witnesses.

Mrs. Barry contends that the proposed building being located at a higher elevation than her house will enable residents of the building to overlook into the rear of her house and thus diminish her privacy. She is also concerned that her views in the backyard are obstructed by the proposed building. A series of fourteen conventional two storey semis or duplexes would also result in some loss of privacy and views, which Mrs. Barry readily concedes, but she would prefer that degree of loss as opposed to what would occur with the proposed building. The question is whether this incremental loss of privacy, because of the height of the building, is mitigated in any manner. The architect and the planner, using Ex. 11, point out that the landscaping and the vegetative buffer would diminish significantly the loss of privacy to Mrs. Barry. Tall trees will increase privacy and diminish the view of the building itself. As regards the natural view afforded by the present vacant land, even the aesthetically pleasing planting of trees would have the effect of diminishing Mrs. Barry's views. Therefore, one has to choose between the loss of privacy and the loss of views in any development of the vacant land. One has also to look at the possibility of the fourteen semis and duplexes' planting tall trees and creating a vegetative buffer between them

and the properties to their rear which would have the same effect as the architect points out.

The Board accepts the evidence of the planner and the architect, and finds that the proposal does not have an adverse impact on the people in the immediate area by increased activity associated with the proposal, which marginally reduces the enjoyment of established amenities such as sunlight, views and privacy.

Sixth, does the proposal fill a gap in the existing built environment? The evidence is that the subject land is vacant at the present time. The two planners appearing on behalf of the City state that there are no other such parcels of land available at this time in this section of the City for the location of senior citizen dwelling units. The planner for the City also states that the subject land has remained vacant primarily because it is a rock outcropping which discourages the use of the lots for conventional singles, semis, and duplexes. Exhibits 26 through 31 show that the subject land does not appear to be a well-maintained parkland for active use by area residents as confirmed by the planner. Moreover, we have the statement by Mr. Charland, an area resident, that the "area as it is, is garbage and the building could be beautiful."

Subsections 2.2.3.2 (a) and (b) of the Official Plan states:

"Apartment buildings shall be sited so that they: (a) enhance the visual image of the City; and (b) create focal points that emphasize important locations in the City."

The planner says that the proposal complies with the above two policies by virtue of the fact that the building design is sensitive to the built and natural environments and is well integrated with the existing Church which is considered a landmark in the City.

Therefore, the Board finds that the proposal fills a gap in the built environment and completes the full expression of the prevailing character of the area.

Seventh, does the proposal mitigate any current problems? Both the objectors express serious concern about the present deficiency in parking adjacent to the Church at the time of certain weekday and Sunday services. Father Desgroseilliers states that on some special occasions, the parking situation is not ideal. The engineer for the City concedes that the parking situation could be better.

The evidence is that the proposal includes an expansion of parking stalls adjacent to and south of the Church on the land where there is now a prefab recreational building. The planner for the City states that because of the proposal, seventy-seven new parking stalls will be created which would be used by both the residents of the building and some parishioners visiting the Church, thereby mitigating the current deficiency in parking stalls. Father Desgroseilliers states that the recreational area provided in the proposed building will more than compensate for the existing recreational building that will be removed as part of the parking area expansion. The engineer, the architect, and the planner say that the reconstructed Victoria Street, linking Fifth Avenue with Wyld Street, will improve the flow of traffic in and out of the Church. Father Desgroseilliers also states that the future residents of the proposed building would be largely drawn from the parishioners of the Church, and therefore the Church and the senior citizen building would have a close relationship and support each other.

The Board therefore finds that the proposal remedies some existing deficiencies in the built environment in order to make the existing development complete and the existing development, namely, the Church, will act as a reinforcing institution to the senior

citizens in the new development. The proposal and existing built environment mutually complement each other.

For all of the above reasons, the Board finds that the proposal is compatible with the existing built environment.

2. Integrity of the Zoning By-law

Both the objectors express serious concerns about the proposed zoning by-law amendment because in their view such amendments seriously compromise the integrity of the (parent) By-law. Mrs. Barry, in her final submission, made a very strong appeal not to tamper with the existing By-law and concluded by saying: "You (the OMB) are our last hope. We depend upon you. Don't let us down."

On the other hand, Mr. Burke, the counsel for the City, in his final arguments, states that the proposed Amendment has gone through the due process in the most thorough fashion and cites the chronology of events Ex. 18 to show how all matters have been considered. Mr. Burke also submits that all professional witnesses support the proposed Amendment because it constitutes good planning. Therefore, he submits that the (parent) Zoning By-law needs to be amended. The matter, therefore, turns on the circumstances that give rise to the need for the Amendment to the (parent) Zoning By-law.

The objectors made something of the fact that they are only intelligent lay people without the benefit of counsel and/or expert witnesses and that they "always assumed that zoning by-laws are there to protect our property rights." Therefore, a very brief outline of the way in which this panel of the Board approached the matter of amendment to the Zoning By-law in this particular instance

is done in the hope that it will clarify matters. These points were stated throughout the hearing by the Board to assist the parties and are discussed below to provide the appropriate context.

A zoning by-law details some land use policies and programs in an official plan through a series of regulations including specific qualitative and quantitative standards. In doing so, a zoning by-law attempts to implement an official plan in a reactive regulatory fashion. The intent and purpose of a zoning by-law as a whole, among other things, is to bring about a coordinated and efficient pattern of physical development that can facilitate the adequate provision of infrastructure, community facilities and services such as transportation, communication, water, sewerage, electricity, gas, housing, arts, culture and recreation, open space, athletics and sports, public administration, libraries, fire fighting, waste treatment, education, health and other requirements.

At the heart of the zoning by-law is the idea of consistency in applying regulations and standards to any physical development proposal which attempts to either conserve, rehabilitate, redevelop, or newly develop a part of the community. A desire for consistency and predictability does not mean a rigid adherence to a zoning by-law, however well conceived and executed. Zoning by-laws, by definition, are based upon a set of circumstances at the time of their formulation. As circumstances change, established regulations and standards need to be reassessed in light of new conditions and be interpreted and implemented in an adaptive manner.

In dealing with zoning by-law amendments, we have to strike a balance between the need to maintain consistency and predictability and the need to be sensitive to emerging conditions. While there is no clear answer in principle, as to where the balance may lie, in practice, however, one can proceed on the basis of some explicitly stated criteria rigorously applied. Therefore, what follows is an

analysis of evidence against a set of criteria that this panel considers appropriate in these circumstances. In this case, the proposed Amendment (and the proposal) should, in fact, provide satisfactory answers to the following set of questions.

First, does the Amendment contravene the intent and purpose of the applicable policies of the Official Plan? Both parties agree that the applicable policies are set forth under Subsection 2.2.3.

The most contested policies are the ones with respect to compatibility, namely 2.2.3.2 (a) through (d). They have been dealt with above.

The planner for the City goes through each of the applicable policies under Subsections 2.2.3 through 2.2.3.9, and states that the proposal and the Amendment comply with the various policies.

In addition to disagreement on Subsection 2.2.3.2, the parties disagree on Subsection 2.2.3.5. Both the objectors contend that the proposal will cause an unacceptable negative impact on both vehicular and pedestrian traffic in the area. Mr. Trounsell presented a series of photographs to demonstrate the existing traffic and parking conditions and says that the proposal will aggravate the situation. The engineer for the City, on the other hand, after analyzing daily traffic flow on the streets nearby, states that the proposal will only cause marginally additional traffic and will not adversely impede the flow of traffic in any significant manner. The Board accepts the evidence of the engineer.

Mrs. Barry outlines in some detail the problem of lack of sidewalks in the area and contends that the seniors living in the proposed building would have a difficult time in negotiating the steep inclines on the sides of the streets without sidewalks. The

engineer for the City readily concedes that many streets in the city do not have sidewalks and the immediate area around the subject land is no exception. While Mrs. Barry's concern for senior citizens is commendable, it is difficult to see how their hardship would impact negatively on the enjoyment of her rights, especially in a situation where the senior citizens are in support of the proposal.

The Board finds that the Amendment does not contravene the intent and purpose of the Official Plan.

Second, is the Amendment necessitated by a change in conditions since the (parent) By-law was originally adopted? Both the objectors say that the conditions have not changed to warrant the Amendment. With the exception of the engineer and the architect, the other five witnesses appearing in support of the proposal say that the new situation warrants the Amendment. Mr. Sajatovic gave detailed evidence on housing demand in the City and stated that the City could not foresee the "tight market for assisted housing caused by lack of readily available land for such uses". The Board accepts the evidence of the Director of Planning and Development of the City and finds that the Amendment is necessitated by a change in conditions since the original By-law was adopted.

Third, is the proposal (and the Amendment) compatible with the built environment (existing development)? This question is one of the two principal issues in this case and has been dealt with in substantial detail above. Hence, the answer is that the proposal is compatible with the existing built environment.

Fourth, is the proposal (and the Amendment) in harmony with the natural environment? The only concern with respect to the natural environment is raised by the objector Mr. Trounsell, who contends that the proposal will aggravate the existing surface drainage pooling problem at the intersection of Wyld Street with Princess and

Victoria Streets. The evidence given by the engineer is that the preliminary surface water drainage plans (Exs. 20A and B) submitted by the developer, are adequate to handle the expected runoff caused by the proposal. The engineer is also of the view that the developer does not receive the certificate of approval from the Ministry of the Environment until the Ministry is satisfied with the final computations and the relief measures proposed.^e The Board accepts the evidence of the engineer and finds that the proposal is in harmony with the natural environment.

Fifth, does the Amendment unduly distort the direction of spatial development for the entire Municipality? The evidence by the two planners who appeared for the City is that the proposed location for the use is not only suitable, but also enables it to comply with the requirements set out in Subsection 2.2.3.9 of the Official Plan. The planners also contend that the scale of the proposal is not large enough to significantly alter the direction of development of the City. They are also of the view that the proposal does not alter the basic land use pattern in the immediate area by virtue of the fact that the proposal does not countenance similar developments in the area. Hence, the Board finds that the proposed Amendment does not unduly distort the direction of spatial development of the Municipality.

Sixth, is there a clearly demonstrated need for the proposed use in the proposed location? The need for senior citizen housing in the City is agreed upon by both parties. The issue is its proposed location at the subject site. Mrs. Barry says that it should go somewhere else and concedes under cross examination that she does not have a particular site in mind. On the other hand, Mr. Gauthier, the developer, and the planner for the City state that there is need for senior citizen housing in this section of the City and that the proposed location is the most appropriate one. Father Desgroseilliers says that the location is ideal because it will

serve the needs of the parishioners of the Church adjacent to the subject land. The Board accepts the evidence of the priest, the planner, and the developer and finds that there is a demonstrated need for the proposed use in the proposed location.

Seventh, does the Amendment rectify the present wording of the By-law which is demonstrably ineffective in administering and implementing the intent of the By-law? There is no evidence that the Amendment is meant to rectify the existing wording. Both the objectors say, "maybe there is something wrong with the By-law which encourages this type of development everywhere." The two planners appearing on behalf of the City state that this kind of amendment process has been used in the past legitimately under the provisions of Subsection 2.2.3.9 of the Official Plan. Hence, the Board finds that the Amendment does not rectify any wording, but merely implements the current Official Plan policy.

Eighth, is the Amendment required because of special circumstances that are unique to the proposal under consideration? The evidence is that the subject land has been vacant for a long time and, according to the planner for the City, this may be partly due to the fact that there is a rock outcropping which might contribute to the increased cost of development for semis and duplexes on the site. The evidence also shows that the proposal will mitigate some existing problems of traffic flow and parking associated with the Church, as discussed earlier in the seventh question under the issue of compatibility. The evidence is also that a pressing social need for senior citizen housing can be met on the site which can take advantage of the complementary services provided by the Church. Hence, the Board finds that the Amendment is required because of the special circumstances that are unique to the proposal under consideration.

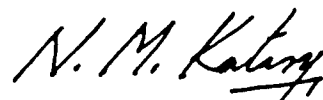
Ninth, is the Amendment designed to correct an improper situation or a mistake? Mrs. Barry in her final submission states "if the City made a mistake in designating the land R.3 (the period is added by the Board to clarify what she is saying), then it should not correct it at our expense." The counsel for the City, without directly responding to the matter, simply points out that a municipal council cannot foresee all eventualities in its planning efforts. Hence, the Board finds that the Amendment is not designed to correct an improper situation or a mistake, but is designed to deal with a new set of circumstances.

Tenth, does the Amendment contravene principles of good planning? The only substantive planning principle that is contested is the principle of compatibility with the existing built environment. The analysis of evidence under the first issue discussed earlier has shown that the proposal and the Amendment are compatible with the existing development. The other concerns which have a bearing on secondary planning principles have been discussed above under the second issue. Hence the Board finds that the Amendment does not contravene principles of good planning.

For all of the above reasons, the Board finds that the integrity of the Zoning By-law is unaffected by the proposed Amendment.

In light of the above reasoning, the appeals are dismissed. The Board so orders.

DATED at TORONTO this 1st day of February, 1991.


N.M. KATARY
MEMBER