



STRONG NEIGHBOURHOODS AND COMPLETE COMMUNITIES: A NEW APPROACH TO ZONING FOR APARTMENT NEIGHBOURHOODS

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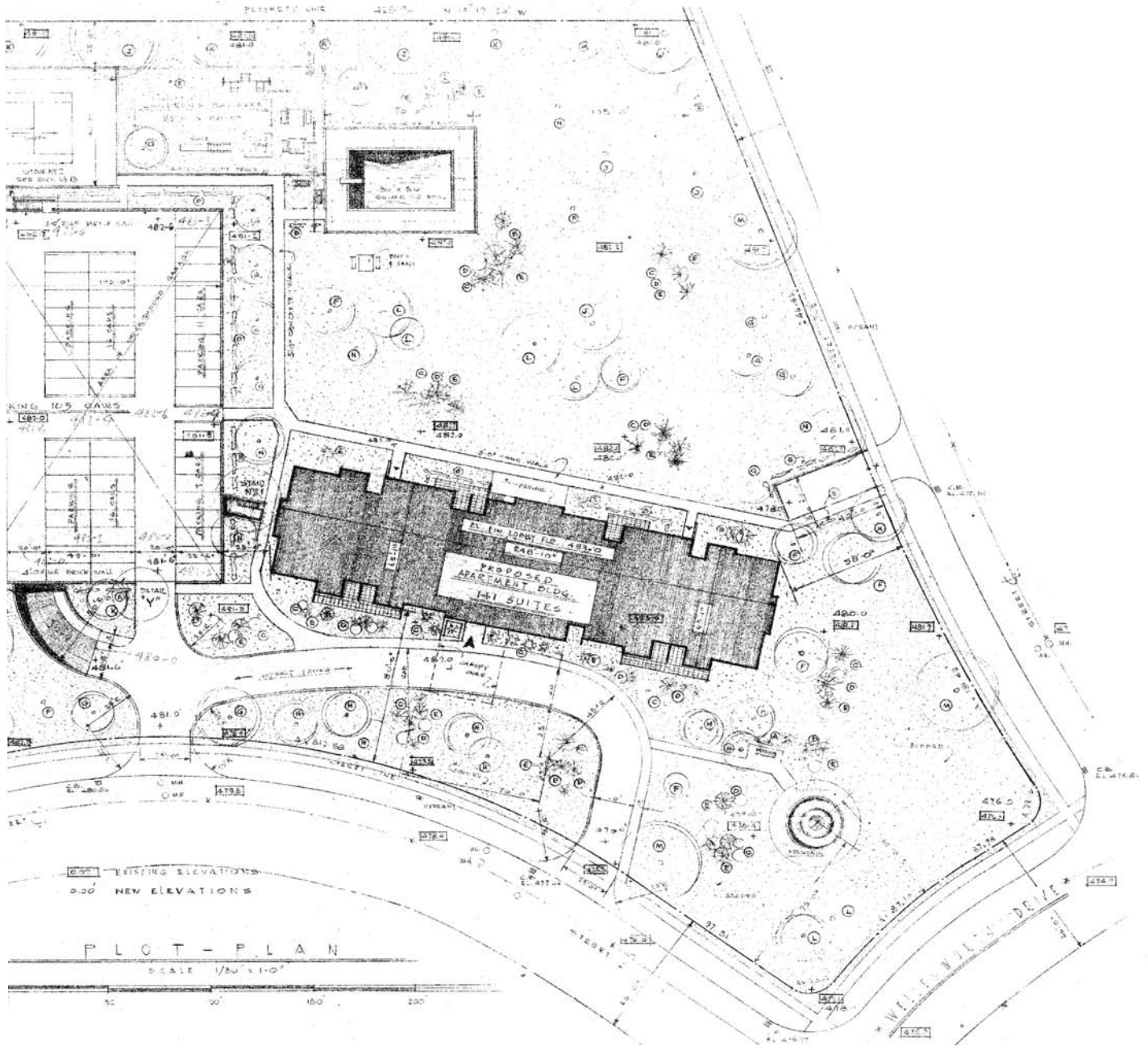


Image: Typical apartment site plan. The original configuration, and limited number of permitted uses on such a site, are often today enforced as the only legal use of the site. Changes to this arrangement require complex processes discussed in this section.

PART 4

UNDERSTANDING BARRIERS TO INVESTMENT: REGULATORY AND PROCESS BARRIERS IN APARTMENT NEIGHBOURHOODS

As discussed in Sections 2 and 3, zoning by-laws have been identified as a barrier to the changes in physical arrangements or uses within apartment neighbourhoods that would be needed to achieve the policy goals of stronger neighbourhoods and more complete communities.

Furthermore, the difficulty in making changes to zoning by-laws compounds the effects of zoning barriers, because the complexity of the process is beyond the capacity of a prospective tenant, be they a small business owner or community group.

This section examines how specific zoning by-laws affect communities and individuals wishing to engage in small business, social enterprise and community building within apartment neighbourhoods. Following this is a discussion on how the process for amending by-laws adds to the burden of fitting antiquated zoning rules to the needs and aspirations of apartment neighbourhood communities.

1. Zoning By-Law Barrier

Zoning by-laws have far-reaching effects in shaping neighbourhoods. They determine, among other matters:

- Land use: How land and buildings can be used, the activities that can occur in the neighbourhood.
- Density: The density to which a site can be developed; how the neighbourhood can accept more people or additional buildings.
- Setbacks: How buildings are arranged on a property; how the neighbourhood physically relates to its surroundings.

The zoning by-laws of a series of Toronto apartment neighbourhoods were examined in detail to understand the state of zoning in these areas. Typically, these by-laws were found to reinforce the existing conditions that, as explained earlier in this report, are often misaligned with the strong neighbourhoods and complete community goals of Toronto's Official Plan and the provincial Growth Plan.

In the bulk of cases, zoning by-laws limit the form and use of a site to the current configuration. Often, the by-law simply consists of a description of the existing neighbourhood in its current form, with little provision for future changes. They are, in effect, “frozen in time”. As a result, these neighbourhoods have remained, for the most part, physically unaltered for the last half-century.

The section below discusses how the three aspects of zoning regulation – land use, density, and setbacks – are currently limiting the potential of apartment neighbourhoods.

A) Land Use

The following samples illustrate some of the restrictions to land use found in either the current base zoning or site-specific zoning by-laws for apartment neighbourhoods, along with a discussion of how they could affect neighbourhood life. These specific examples are reflective of typical zoning frameworks found throughout Toronto’s apartment neighbourhoods:

- Zoning for apartment buildings at 4000 and 4010 Lawrence Avenue East prohibits commercial uses. This means residents must travel outside the neighbourhood for basic personal services, such as shopping for food, visiting a hairdresser, or other daily errands (Scarborough, By-law No. 10327, consolidated).
- At the Rideau Towers (43, 47 and 49 Thorncliffe Park Drive) zoning does not allow institutional uses, such as health clinics, education centres, and public services. Without local institutions, residents must travel a longer distance. The burden of travel could discourage residents from making full use of available community support resources and health services. (East York By-law, Leaside No. 1916 – Consolidated)
- Coffee shops and pubs are not allowed at 4010, 4020 and 4040 Lawrence Avenue East. As a result, the neighbourhood has fewer such places suited for meeting with friends and neighbours. (Scarborough, By-law No. 10327, consolidated);
- Restaurants can not be established at 2960 and 2980 Don Mills Road. Opportunities to build social and economic relationships with people beyond the neighbourhood are limited if neighbours have no venue near their home to host gatherings, celebrate with groups of friends, or bring extended family together over a meal. (North York By-law 7625)
- Commercial floor space is tightly restricted in the Kipling Towers at 2667-2677 Kipling Avenue. The small tuck shop business located at the Kipling Towers is limited in that it cannot expand, display exterior advertisements, or have an entrance directly from the exterior of the building. While a business owner may work hard to attract more consumers, the store itself is stunted, as it cannot expand to meet demand. (Etobicoke By-law No 0864-

Harmonized Zoning

Apartment neighbourhoods today are governed by a patchwork of zoning by-laws that are a pre-amalgamation legacy, when Toronto was made up of several municipalities each having their own zoning code. The City of Toronto is now harmonizing these legacy zones under a single city-wide zoning code. This process is generally meant to be consistent with and consolidate the codes it replaces and is scheduled to be enacted in 2013. Analysis of zoning codes in this report is based on the current base and site-specific zoning in use at the time of publication.

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- Outdoor display of goods in convenience stores located in apartment towers is not allowed at 2667-2677 Kipling Avenue. This means that business owners are unable to engage in outdoor commerce, such as setting up outdoor fruit and vegetable display stands. [Etobicoke By-law No 0864-320]

In the apartment neighbourhoods studied, zoning by-laws currently set out blanket restrictions on land uses. Phrases such as “no building, structure or land shall be used except for the following uses” are common. As a result, land uses that are not listed are prohibited in the neighbourhood. This approach, common in the 1960s and 1970s, is contrary to the more contemporary practice of only listing what is prohibited and allowing all other uses. The former approach presents challenges for introducing small-scale changes to apartment neighbourhoods that could benefit local communities, because everything is prohibited unless expressly permitted by the original authors of the by-law.

Following are some examples of the difficulties that this creates:

- Etobicoke By-law 0894-320 includes “R” or “R6” zoning designations, both of which allow apartment buildings. However, on apartment sites zoned as “R5”, the by-law specifies that land may be used for “lawn and gardening furnishings.” On apartment sites zoned “R6”, however, this was not included as a permitted use, leading to a lack of clarity about whether installing lawn furniture on “R6” apartment sites requires a minor variance or a zoning by-law amendment.
- In Scarborough, at 215 Markham Road, the zoning by-law requires an indoor recreation room for building residents. A plan by a community organization to offer after-school tutoring and mentoring programs for area youth was deemed not to be a recreational use. While there is no pro-active enforcement of the by-law, the property owner was concerned about the legality of offering on-site programming that contravened the zoning by-law. A minor variance was required to allow the program to operate legally within the building.
- The “R6 ” zoning for the Kipling Towers site, under Etobicoke By-law 0894-320, allows home daycare in private homes and nursery schools. However, similar uses, such as an after-school learning centre are not listed in the zoning regulation. It was therefore unclear as to whether such a program was permitted or not, requiring municipal review. This use was eventually permitted following a favourable interpretation of the by-law by City staff.

Specifying permitted uses rather than prohibited uses also acts to prohibit uses or functions that were not imagined at the time the by-laws were drafted several decades ago. For example, automatic bank tellers are generally absent from apartment neighbourhoods as they are

Activities allowed in Mixed Use and Apartment Residential zones, City of Toronto, Zoning Bylaw 438-86

| Activity: | Mixed | Apartment |
|--------------------|--------------|------------------|
| Dwelling | YES | YES |
| Clothing Store | YES | NO |
| Bank | YES | NO |
| Coffee Shop | YES | NO |
| Accountant | YES | NO |
| Drug Store | YES | NO |
| Patio | YES | NO |
| Art Gallery | YES | NO |
| A Place of Worship | YES | NO |

not explicitly listed as a permitted use.

This approach to zoning presents significant barriers to positive neighbourhood change in response to evolving community needs, as well as general day-to-day liveability.

B) Density

Zoning by-laws for apartment buildings commonly establish maximum densities to regulate how intensively a property is used. This typically includes the maximum allowable number of apartment dwellings; the size of a building in proportion to its site; and/or how much of a site can be occupied by the building footprint. In the sites studied, the density restrictions contained in the zoning by-laws limited opportunities to use the land more effectively.

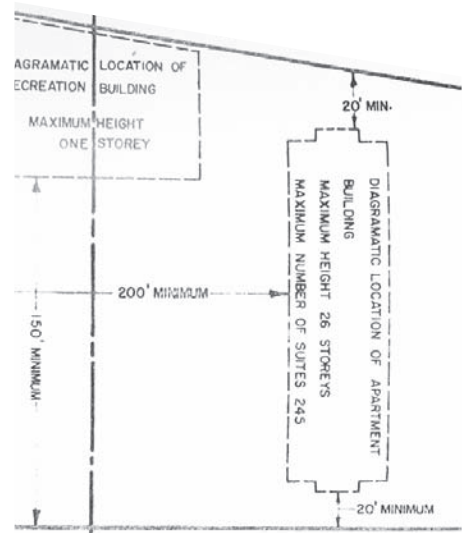
These density restrictions were intended primarily as a means to enforce the “Tower in the Park” approach to neighbourhood planning, which was fashionable in the mid-twentieth century. As discussed elsewhere in this report, this approach sought to maximize space, light, and air around high-rise apartments by placing towers in an open setting.

Zoning regulations written mid-century codified this approach by stipulating that large portions of neighbourhood land remain without buildings. They also set limits on the number of apartment units that could be located on specific properties.

As an example, regulations for the apartment block in Scarborough Village at 4010 Lawrence Avenue East illustrate how zoning can limit the site’s ability to accommodate new populations. Zoning for the site specifies that a ratio of one apartment unit per 67 square metres of lot area must be maintained. As a result, the number of apartments cannot change, either through the addition of new units, or by removing units, such as by consolidating smaller units to accommodate larger households. Similarly, the standard effectively prohibits part of the site from being repurposed under different ownership.

Zoning for apartment neighbourhoods also often explicitly prohibits the introduction of new types of housing, additions to existing buildings, or the addition of accessory buildings. The zoning by-law for 1765-1775 Weston Road bans any expansion of the buildings on the site. This means that a building addition to accommodate small-scale community services would be prohibited.

Collectively, the maximum density requirements, minimum open space requirements, and prohibitions on building additions or new construction create barriers to the types of mixed-use infill development that help other neighbourhoods throughout Toronto remain vibrant and viable. They limit opportunities to consider alternative and complementary uses for this open space that may better support these neighbourhoods as community needs and aspirations evolve.



These regulations are also a significant disincentive to capital reinvestment, which could otherwise enhance the quality of aging neighbourhoods.

As open space provides several community benefits, its role in apartment neighbourhoods and the ways that mixed-use infill may enhance open space through new programming and site upgrade requires thoughtful consideration.

C) Setbacks

Zoning by-laws for most apartment neighbourhoods also establish how buildings are arranged on a site, such as how far they are set back from the edge of the property and from each other. Such provisions are common in all neighbourhoods and are unquestionably important in creating good neighbourhood design. In the apartment neighbourhoods studied, however, zoning by-laws established strict setback requirements that essentially codify the current configuration of the existing property, precluding a building addition of any kind between the existing apartment and the street.

In most cases, the current configuration follow the “Tower in the Park” model, with the apartment block located deep within the property, often 30 – 50 metres. Such setback provisions can neglect the potential of different building forms, such as podiums or mixed-use storefronts, which can mediate between the lot line and tower and better frame public streets.

The North York Zoning By-law 7625, which governs the Peanut neighbourhood, provides a good illustration of setback standards. The by-law specifies that:

“Any minimum setback requirement shall remain open and unobstructed by any structure, from the ground to the sky ...” (North York Zoning By-law 7625 Section 6(9)).

A list of incidental building elements is listed as exceptions to this rule: exterior stairways, wheelchair ramps, decks less than 2.3 sq. m, among other components. Nevertheless, the setbacks from buildings are to remain largely open space.

The by-law further requires that setbacks remain reserved as open space despite changes to the site ownership or interest in establishing new ways to use the space around apartment blocks:

“Any part of the lot that is required by this by-law to be reserved as a yard setback or other open space shall continue to be so used and shall be deemed not to form part of any adjacent lot for any purpose regardless of any change in ownership of the lot or any part thereof.” ((North York Zoning By-law 7625 Section 6(10))

Images:

Opposite, Top: Typical setback requirement enforced in a site specific zoning-by-law. (North York By-Law No. 865) .

Opposite, Bottom: Typical apartment and property, North York, 2009.

This form of 'shrink wrap' zoning creates many challenges for thoughtful neighbourhood evolution.

Zoning Summary

The legacy zoning by-laws examined above limit changes in form and use and hinder the small and large-scale reinvestment that is needed to respond to evolving community needs and aspirations, such as small businesses and community services catering to local needs. This has created significant obstacles to improvements in general neighbourhood liveability within apartment neighbourhoods.

The following section examines the current process of changing these zoning barriers and explores how this process itself is a barrier to enabling neighbourhood investment.

2. Procedural Barriers – Amending Zoning By-Laws

The process for amending zoning by-laws presents a further barrier to apartment neighbourhood renewal.

There are two processes for making changes to zoning by-laws: (i) a zoning by-law amendment and (ii) a minor variance obtained from the Committee of Adjustment. Although the process of receiving a variance is less onerous than a full re-zoning, both present "process" barriers that can be an important disincentive to a small-scale entrepreneur or investor who is seeking to introduce a new use or other form of change to an apartment neighbourhood. A chart outlining this process can be found in Appendix B.

The Process

In order to change or amend a zoning by-law, the proponent must apply and fund a process which, if successful, leads to City Council passing a bill to amend the zoning by-law. Following Council's approval, the amendment must further avoid or withstand challenges at the Ontario Municipal Board.

Once the amendment is finalized, the applicant can proceed to subsequent approval steps, such as site plan approval, building permits, and business licensing, as may be required.

This situation presents a number of deterrents to applicants wishing to carry out a small-scale project.

First, small businesses and organizations wishing to operate in apartment neighbourhoods must fund the approval process and pay consultants to conduct the required urban planning studies. They must also seek the political support necessary to move their project forward to City Council. Even though the re-zoning may ultimately be successful,



Image:

Typical apartment along an arterial road, Scarborough, 2010.

the proponent is still responsible for initiating the by-law amendment, paying the necessary application fees, and providing accompanying urban planning studies to support their case.

A second concern is the financial and organizational resources required for the re-zoning amendment process. The cost of seeking approvals for the project could render it unviable. Furthermore, because there is no guarantee the by-law amendment will be approved, applicants are forced to place considerable resources at risk.

Third, the fixed-cost of the re-zoning process could drive out all but the most well-resourced and established proponents, whether commercial or non-commercial. As such, the re-zoning process acts to filter out small, locally-oriented services and lightly capitalized local businesses from engaging in the process of re-zoning, and subsequently reinvesting in their neighbourhoods. While some large development companies have successfully undertaken this process and amended the zoning by-law to allow for new housing development, such as in the case of Parkway Forrest in North York, the process presents a much more significant barrier to smaller scale entrepreneurs.

Some of the specific barriers for re-zoning may be grouped in three categories:

- Complexity and process
- Costs
- Timing

Complexity and Process

The approval of a zoning by-law amendment involves several steps, including a pre-submission phase, submission phase and a post-submission phase. It should be noted that projects requiring zoning amendments frequently include a parallel process of site plan approval.

To navigate the amendment process, applicants commonly require the services of a consultant, often a planner or lawyer, who understands procedures and can present the application effectively.

Phase 1 - "Pre-submission":

The applicant meets with planning staff to identify the studies and materials needed for the zoning amendment application to be accepted as complete.

This phase commonly involves at least one pre-submission meeting with City staff from City Planning and Technical Services, local stakeholders and the Ward Councillor in order to help build support and understanding for the proposal, discuss results of any Preliminary Project Review and determine the required studies necessary to assess the merits of the proposed zoning amendment. At minimum these often include: plans and drawings; Planning Rationale Report; Topographical Survey;

Arborist Tree Preservation Report; and, Parking Study. Larger projects, or those which require site plan approval, usually also require a Building Mass Model; Servicing and Stormwater Management Reports; and Transportation Impact Study.

Phase 2 – “Submission”:

This second phase consists of the compilation and submission to the City of the full development approvals package, inclusive of all drawings, supporting materials and technical studies.

Phase 3 – “Post-submission”:

In this final phase, the applicant’s consultants take lead responsibility for monitoring all subsequent stages of the development approvals process, including: conducting follow-up meetings with City staff to review the application materials; answering technical questions from commenting agencies; and negotiating the extent and scope of proposal revisions, as may be requested by City and agency staff. The applicant’s consultant may also have to undertake additional community stakeholder consultations, which are often a critical component to a successful and broadly endorsed approval process. The consultant may need to negotiate with City staff pre-and post-approval conditions related to the Zoning By-law Amendment and lead presentations at all formal public open house events and at the statutory public meeting.



Image:

Typical apartment and surface parking, Etobicoke, 2010

Costs

The City of Toronto charges development application fees for the Zoning By-law Amendment and Site Plan Control. For example, fees for a 4,500 square metre mixed-use building are estimated at just under \$30,000. For such a project, planning consulting fees to coordinate the development approvals process are estimated at more than \$25,000, excluding consultant fees or the design of the proposal. A more modest proposal, of 600 square metres would require a development application fee to the City of Toronto of roughly \$15,000 - \$20,000, excluding consultant fees.

In addition, the applicant would have to cover: architectural fees; fees for all technical supporting studies; the applicable development and education charge; utility hook-up charges; cash-in-lieu of parkland dedication; and other professional, and municipal fees and charges that may be required.

These fees and charges can add several tens of thousands of dollars to the cost of application. The costs associated with re-zoning present a significant barrier to many small-to-medium range entrepreneurs contemplating investment in these neighbourhoods.

Timing

The estimated timing for the amendment process is approximately one year from start to finish, barring any appeals to the Ontario Municipal Board. An appeal at the Ontario Municipal Board could extend the approval by several months.

After approval of the zoning amendment, the applicant must then apply for building permits and meet any conditions of approval before commencing with construction.

Other Procedural Considerations

Zoning amendments can also involve a number of related approvals, some of which are noted below.

Section 37 Agreements

Section 37 of the Planning Act authorizes the City, through re-zoning, to increase height and/or density beyond what is otherwise permitted in the Zoning By-law, in return for community benefits. Additionally, the City's Official Plan contains policies that: encourage new housing supply to be provided through infill and intensification; promote investment in new affordable rental housing; and seek to strengthen and diversify the retail sector by promoting a broad range of shopping opportunities in a variety of settings.

A re-zoning may require the applicant to negotiate an agreement on funding public benefits related to the proposal. Section 37 benefits are perceived as required to gain support of City staff and Council

Official Plan Amendments

The Official Plan provides the overall strategic policy direction for the City and assigns generalized land-use designations. Zoning by-laws set specific standards for each parcel of land. Apartment neighbourhoods have a unique "Apartment Neighbourhood" designation in the Official Plan but are also found in Mixed-Use and Neighbourhood designations.

The zoning in apartment neighbourhoods is generally more prohibitive than the Official Plan designations. Small-scale retail, service and other non-residential uses that serve the local area are supported by the Official Plan in most apartment neighbourhoods. While they usually require a re-zoning, they would not require an Official Plan Amendment. Otherwise, the applicant would need to ask City Council to amend the Official Plan in addition to amending the zoning by-law.

Site Plan Approval

Site Plan Approval is currently required for many proposed developments to ensure that: the proposed building design is appropriate; that transportation, engineering, and other technical standards have been met; and that landscaping elements are designed and executed according to applicable standards and guidelines.

Proposed new guidelines will require site plan control for 600 sq. m of new development or larger. Alteration for sites under this size will not be subject to many of the technical and planning reports mentioned above. However, they would still be subject to site re-zoning, licensing and other regulation.

Image:

Typical apartment neighbourhood,
Toronto, 2010



Conclusion

The process discussed above is for the assessment of large-scale projects that will have a major impact on the neighbourhood. It's the procedure used to assess major development projects, such as the condominium buildings that are in various stages of development throughout the city.

This process, however, was not necessarily designed to assess the merits and viability of small-scale neighbourhood initiatives, such as green grocers or daycares. The legacy zoning by-laws of apartment neighbourhoods, as well as the barriers to their amendment, are having unintended consequences on neighbourhood liveability. It is now an appropriate time to consider new solutions.

The next section will examine regulatory alternatives to better align the zoning of apartment neighbourhoods with the goals of Complete Communities and the aspirations of resident communities.

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