

June 26, 2020

**Corporation of the Municipality of Clarington
40 Temperance Street
Bowmanville, Ontario
L1C 3A6**

**Attention: Mr. Carlo Pellarin
Manager of Development Review**

**Re: Revised Draft of Proposed Community Character By-law
62 - 64 Prospect Street
Our File: PN 5204**

Dear Mr. Pellarin,

On behalf of our Clients, we sincerely appreciate the opportunity afforded us, by way of the virtual meeting on June 23, 2020, to provide for a more fulsome discussion concerning the draft of the proposed by-law amendment which is being advanced in an effort to preserve the established community character of the selected areas. While our Clients are generally supportive of this initiative, there remain issues of concern in terms of the proposed regulatory provisions relative to the existing and future use and development of 62 and 64 Prospect Street. As discussed, our Client's desire to protect the existing development rights associated with both properties.

To assist you in the review and consideration of our Client's request, we have prepared two drawings which are attached to and form part of this submission. Initially, we note that the lot configurations, area and frontages delineated on the drawings are based upon the MPAC data and readily available information provided by the Clients as legal surveys delineating the actual property boundaries are not available. The dimensions of the existing dwelling located at 62 Prospect Street are based upon field measurements of the structure, undertaken by the writer, at finished grade in accordance with the definition of lot coverage as set out in By-law No. 84-63. Figure One illustrates the existing built form of 62 Prospect Street, based upon exact measurements of the structure, and the future build out of 64 Prospect Street. Figure Two illustrates the future ultimate build-out of both 62 and 64 Prospect Street in accordance with the provisions of the approved zoning now in effect.

By way of this submission, we confirm our Client's request for an exception to the certain provisions of the draft by-law as modified, most notably in relation to lot coverage and height, given that there appears to be agreement with respect to the need to revise the wording concerning the width and number of garage doors permissible at the front of a structure. Accordingly, we offer the following comments for your review and consideration, namely:

64 Prospect Street

The lot at 64 Prospect Street will have an area of approximately 617 square metres. The rear lot line of the proposed lot will extend northerly from the north-westerly corner of 62 Prospect Street, the property owned by Andrew and Patty Rice, to intersect perpendicularly with the side lot line of 66 Prospect Street. The depth of the proposed lot will be approximately 30.67 metres (i.e. 100 feet) with a frontage of 20.11 metres (i.e. 66 feet) on Prospect Street.

The lot will conform with and be in excess of the minimum lot area and frontage requirements for a single detached dwelling in the Residential Type One (R1), namely 460 square metres and 15 metres respectively. It is further submitted that no amendment is required to By-law No. 84-63 to allow for the creation of the lot in question by means of a consent to a land severance.

Special Regulations re Garage Doors

We understand that consideration will be given to modifying the provisions of the draft by-law, specifically Section 12.2.1 (g), entitled Special Regulations, to clearly state that one garage door having a maximum width of six metres or a maximum of two garage doors having a combined width of 6 metres will be permitted on a lot having a frontage of 15 metres or greater. Such a revision will address our Client's concerns in relation to the opportunity to provide for two garage doors in association with a future dwelling on the lot to be created at 64 Prospect Street.

In the case of 62 and 64 Prospect Street, both of which have a reported frontage of 20.1 metres, the width of the garage doors will represent slightly less than 30 percent of the lot frontage, a factor which, we submit, is both reasonable and appropriate where lots have a larger frontage as in the case of other properties along Prospect Street, north of Second Street.

Height Restrictions

Under the current provisions of the Residential Type One (R1) Zone, the maximum permissible height of a dwelling is 10.5 metres measured from the lowest finished grade adjacent to any wall of the structure. In contrast, under the draft by-law as recently modified, it is now proposed that the maximum permissible height of a dwelling be reduced to 8.5 metres measured from the mid-point of the front lot line. A reduction of 20 percent in the permissible height of a dwelling is a significant reduction.

Given the different criteria upon which the height of a dwelling is to be measured under the proposed by-law amendment, two differing approaches were advanced during the course of the June 23, 2020, meeting in relation to the issue of the permissible height of a dwelling. The first approach was to prescribe the height of a dwelling relative to the roof type and building design as follows from the terminology and illustrations set out in By-law No. 84-63, namely:

- Flat Roof – maximum height of 8.0 metres;
- Mansard or Gambrel Roof – maximum height of 8.5 metres; and,
- Hip or Gable Roof – maximum height of 9 metres with a maximum roof pitch of 8:12.

Recent studies indicate that an 8:12 roof pitch allows for a significant increase ventilating air flow mass over a 4:12 pitch in vented attics. Consequently, steeper roof pitches are considered to be a design feature which promotes sustainable development by reason of reducing heat transfer and interior ceiling temperatures and thus the demand for air conditioning. In other words, providing for an 8:12 roof pitch is consistent with the need to reduce the effects of climate change. When implementing restrictions in relation to the height of a dwelling, it is incumbent upon both Municipal Staff and Council to have regard for the effect of the decision in terms of, not only the community character, but also the need to promote sustainable new housing designs, consistent with the intent of Section 1.8.1 (f) of the Provincial Policy Statement, effective May 1, 2020.

The alternative is, as previously requested, to provide for an exception to the proposed by-law in relation to our Client's properties, namely 62 - 64 Prospect Street. The requested exception would permit a dwelling having a maximum height of 9 metres on the two properties in question. The requested permissible height of 9 metres is of particular significance in the context of the comments of Andrew Rice concerning the high

water table in this area and the need to site the dwelling on 64 Prospect Street as high as possible above the ground water table. Such an approach is not only desirable in terms of avoiding the need to employ special construction practices but also from an environmental perspective, that being to minimize the potential impact upon the ground water resources which ultimately flow in a south westerly direction towards the Bowmanville Creek.

A further consideration is the relative change in existing grades between 62 and 66 Prospect Street. The finished grade at the south-east corner of 66 Prospect Street is in order of 1.2 to 1.5 metres higher than the finished grade at the north-easterly corner of 62 Prospect Street, a grade change which occurs over the frontage of 64 Prospect Street, some 20 metres. In order to provide for a transition in the grade differential between 62 and 66 Prospect Street and to provide for future lot grading and drainage, inclusive of the potential need for a retaining wall opposite the southerly side yard of 66 Prospect Street, a minimum height of 9 metres for a residential structure is considered necessary. By siting the garage adjacent the easterly limits of the property, as illustrated on the attached drawings, it will be possible to partially transition the grade differentials in that the elevation of the garage floor will be below the elevation of the finished first floor.

It is further noted that under the proposed by-law, the maximum permissible elevation of a front porch at 64 Prospect Street would be 1.0 metre above the finished grade measured from the mid point of the front lot line. Given the stated ground water issues in this area, it is necessary to achieve the one metre grade separation relative to the mid point of the front lot line of 64 Prospect Street.

As a result, the finished first floor elevation of a dwelling at 64 Prospect Street would be approximately 1.2 metres above the finished grade. Allowing for nine foot ceilings and an 8:12 pitch roof, as is customary on custom new builds, not only responds to current market demands but also allows for enhanced roof drainage and, as previously noted, responds effectively to climate change by reason of providing for an increase in air flow mass in vented attics. The resulting overall height of the dwelling proposed at 64 Prospect Street would be approximately 8.8 to 8.9 metres measured at the mid point of the roof relative to the midpoint of the front lot line. Given the grade differentials between 62 and 66 Prospect Street, allowing for a dwelling height of 9.0 metres will not adversely impact upon the community character but rather provide for a transition in built form adjacent the westerly limits of Prospect Street.

In summary, a nominal increase of 0.5 metres in the height provision applicable to the two properties in question is not considered to be detrimental to the character of the community and does not result in an incompatible building design by reason of massing and scale, particularly in view of the potential scale and massing of new homes on the larger lots to the north and south on Prospect Street.

Lot Coverage Restrictions

As discussed during the course of our meeting, the two lots, namely 62 and 64 Prospect Street are or will be the smallest properties fronting upon the westerly limits of Prospect Street, north of Second Street, with an area of 635 and 617 square metres respectively. The area of the lots to the north and south vary from a minimum of 801 square metres (i.e. 66 and 68 Prospect Street) to a maximum of slightly greater 1,050 square metres in the case of 72, 74 and 75 Prospect Street. All of the lots in question have a frontage in the order of 20 to 26 metres.

Based upon the proposed lot coverage standard of 30 percent, a lot having an area of 800 square metres may be redeveloped for a much larger home than would be permitted at 62 or 64 Prospect Street, a factor which is even more significant in terms of the larger lots adjacent the east and west limits of Prospect Street, north of Second Street. In this context it is noted that in the case of 33 Second Street and 60, 72, 74 and 75

Prospect Street, neighbouring properties, each has an area in excess of 900 square metres and predominantly in the order of 1,000 square metres. In other words, upon redevelopment of neighbouring properties with a similar lot frontage, the permissible footprint of a new dwelling would be 300 square metres as opposed to 190 and 185 square metres at 62 and 64 Prospect Street respectively.

As a consequence of the potential for a significant increase in the building footprint upon redevelopment of neighbouring properties in the future, the construction of a new 2 storey dwelling on adjacent properties could result in dwelling having a gross habitable floor area of approximately 540 square metres (i.e. 5,812 square feet) versus a the existing dwelling located at 62 Prospect Street which has a gross habitable floor area in the order of 170 square metres (i.e. 1,800 square feet). It follows that by simply reducing the lot coverage for a single detached dwelling from 40 percent to 30 percent the effect is not to provide for maintenance of the community character and that other factors need to be considered.

Since becoming aware of the proposed form and content of the proposed by-law amendment, our Client's have expressed their opposition to the implementation of the 30 percent lot coverage restriction upon the two properties in question, namely 62 and 64 Prospect Street. The reason for requesting the exception to the proposed by-law is in response to the need to protect existing development rights, specifically to allow for development of a dwelling at 64 Prospect Street in keeping with current market demands and the character of homes in the area, and, to protect the potential for construction of an addition to the existing dwelling situated at 62 Prospect Street.

In support of the request for the exception in relation to the height and lot coverage provisions, our Client has undertaken a neighbourhood character assessment, consistent with the criteria published by the Municipality. A copy of the analysis, initially prepared based upon aerial photographs and readily available data, was submitted to the Municipality for review in response to the request of Staff. Notwithstanding that the results of the initial analysis were similar to the results of the analysis undertaken by the Municipality's own Consultants, MHBC, our Client has been now been required to generate detailed drawings based upon exact measurements. This has proven to be a time consuming and expensive exercise, simply to protect existing property rights. It is respectfully submitted that others who have secured exceptions to the draft by-law have not been subject to such rigorous scrutiny.

As a result of actual field measurements of the existing structure located at 62 Prospect Street, it has been determined that the lot coverage of the existing structure and related patios and decks is in the order of 29 percent, a factor which is marginally below the proposed 30 percent factor. In other words, our Clients would not be able to provide for a modest addition such as a sunroom and associated deck, as illustrated on the attached drawing, at the rear of the dwelling. Such an addition, while permitted today in accordance with zoning by-law provisions now in effect, would not be permitted under the draft amendment being advanced by Municipal Staff. From a land use planning perspective, it is inconceivable that a modest addition to the rear of the dwelling at 62 Prospect Street would adversely impact upon the character of the community.

Accordingly, given the existing footprints on the adjacent properties, namely 235 and 190 square metres at 60 and 66 Prospect Street respectively, our Client is seeking an exception, not an exemption, to provide for a lot coverage factor of 35 percent in relation to 62 and 64 Prospect Street. The requested exception would recognize the footprint of the existing dwelling situated on 62 Prospect Street, which is at or near the proposed maximum lot coverage factor of 30 percent, and further provide for a modest addition to the existing structure. Similarly, a lot coverage of 35 percent would facilitate the construction of a dwelling of similar proportions on the proposed lot at 64 Prospect Street in a manner which is well suited and proportionate to the area and frontage of the proposed lot and the neighbouring properties to the north and south of 64 Prospect Street.

The alternative put forward by the writer in response to this issue during the course of the June 23, 2020, meeting was to differentiate lot coverage restrictions, namely 35 percent for lots of less than or equal to 650 square metres and 30 percent where the lot exceeds 650 square metres. While this would resolve our Client's concerns, it is submitted that it is not a preferred solution from a land use planning perspective given that it will result in issues where two adjoining properties are similar in area with the same frontage but modestly above or below the area limits as in the case of 62 and 64 Prospect Street relative to 60 and 66 Prospect Street. For this reason, it is recommended that the exception be granted for 62 and 64 Prospect Street as a strong, well reasoned rationale exists in support of our Client's request.

It is noted that a further advantage of facilitating the requested exception for 62 – 64 Prospect Street would be to afford the Planning Department an opportunity to review any other requests for a variance to the 30 percent lot coverage restriction now being proposed to facilitate the introduction of a new dwelling or the expansion and/or redevelopment of an existing property. In addition to the four tests set out under the Planning Act, an application for a variance would presumably be evaluated in the context of the community character assessment criteria now being advanced by Staff.

We have previously expressed our concerns in relation to the somewhat onerous nature of the assessment criteria and would urge Staff to carefully examine and refine the criteria and extent of the properties to be evaluated relative to the property affected by a variance application. The effect of the additional level of scrutiny will be to add significant cost to the filing of a variance application as a result of the need to retain professional planners and possibly architects and engineers, notwithstanding that the Committee of Adjustment must, in the end, evaluate the application relative to the four tests set out under the Planning Act.

Lot Coverage Restrictions - Accessory Structures

During the course of the meeting June 23, 2020, meeting, Ms. Webster referred to a provision in the modified draft by-law that would allow for the introduction of an accessory structure up to a maximum of 5 percent of the area of the lot. When questioned in relation to this provision, Ms. Webster indicated that the intent is to provide an *additional 5 percent* lot coverage for accessory structures. The effect of this clause is to result in a total lot coverage of all buildings and structures of 35 percent in the case of a two storey dwelling and 40 percent in the case of dwelling of 1.5 storeys or less. In other words, where a lot is occupied by a 1.5 storey structure or a bungalow, the overall lot coverage could be 40 percent or a factor comparable to the current provisions of the Residential Type One (R1) Zone.

Given the stated reasons for advancing this amendment, we question the rationale for such a provision. Based upon our experience, a more reasonable approach would be to incorporate a further clause within the amendment which states that, notwithstanding the provisions of Section 3.1(c) of By-law No. 84-63, the maximum permissible lot coverage of an accessory structure shall be 5 percent or 60 square metres, whichever is the lesser. This would allow for the introduction of an accessory structure somewhat better proportioned to a single detached dwelling.

For example, at 30 percent lot coverage on a lot having an area of 715 square metres, being the average reported by Municipal Staff, and assuming achievement of the maximum lot coverage (i.e. 214 square metres) of both the dwelling unit and an accessory structure, a two storey dwelling would have a footprint of 178 square metres and the accessory structure would have a footprint of approximately 36 square metres. Under such a scenario the accessory structure would represent 20 percent of the footprint of the principal structure and would be more consistent with the concept of being ancillary and incidental to the principal residential dwelling.

In order to achieve the maximum permissible area of 60 square metres for an accessory structure, as provided for under the provisions of Section 3.1(c) of By-law No.84-63, the area of the lot would have to be at least 1,200 square metres. Based upon the data compiled by MHBC, the opportunity to maximize the footprint of an accessory structure would be relatively rare within the Elgin Community, something in the order of six to seven percent or 18 to 20 properties if the data base provided by MHBC is representative of the current lot area distribution.

In contrast, at 30 percent lot coverage for the principal structure plus an additional 5 percent for the accessory structure, on a lot having an area of 715 square metres the by-law would permit a two storey dwelling with a footprint of 214 square metres with an accessory structure having an area of 36 square metres, the total footprint of all structures being in the order of 250 square metres. This represents a percentage increase in the footprint of all structures over the scenario advanced in the previous paragraph of upwards of 17 percent $[(250-214)/214]$. In other words the increase in the potential massing of structures is significant, most notably on smaller lots.

For the reasons outlined above, given the intent and purpose of the proposed by-law, it is submitted that the provisions concerning the introduction of accessory structures should not provide for an additional 5 percent lot coverage. Rather, in keeping with the overall intent of the amendment, the draft by-law should limit the area of all accessory buildings and structures to a maximum of 5 percent of the lot area based upon the lot coverage of all buildings and structures, inclusive of accessory structures, not exceeding 30 percent.

Concluding Remarks

From a land use planning perspective, given the intent of the by-law, being to reinforce and preserve the existing community character, it is respectfully submitted that the request for an exception in relation to lot coverage and height with respect to 62 and 64 Prospect Street is both reasonable and appropriate. The effect of granting the requested exceptions related to height and lot coverage will not be to undermine the character of the community. Rather, the effect will be to facilitate a modest addition to the rear of 62 Prospect Street, and, to allow for the development of 64 Prospect Street in a manner which reinforces and strengthens the community character. In this manner the effect of implementing the requested exceptions will be to promote a community structure which affords an improved measure of resilience to change in future years.

The alternative now being advanced, most notably in relation to smaller lots of less than 650 square metres, is to impose somewhat excessive restrictions which serve to create repetitive building forms not necessarily responsive to climate change. For the reasons outlined in this submission, the proposed regulatory provisions may ultimately prove to be effective to hinder urban renewal and regeneration of the community by minimizing the opportunity for advancement of alternative designs and exterior elevations.

Experience suggests that unnecessarily restrictive regulatory provisions do not provide a favourable framework for continued private sector investment in the community and may ultimately result in the decline of the housing stock over time. While the goal of preserving community character is desirable, a sufficient measure of flexibility is necessary and essential to promote on-going investment and community renewal. Otherwise, as is currently evident in this area, latent pressure will exist for amendments to the By-law to permit the introduction of higher density housing forms which, upon approval, may be effective to destabilize the area and undermine the community character contrary to the stated objectives.

Finally, as you are no doubt aware, the Courts have held that Zoning By-laws are restrictive, regulatory documents which must not result in uncertainty or ambiguity. This is a rudimentary principle of zoning by-laws. Contrary to the interpretation advanced by Ms. Webster in relation to the provisions concerning a

covered or uncovered porch and the calculation of lot coverage, it is not reasonable to suggest that, where the area of a porch is greater area than 12 metres, the area of a larger porch is discounted by 12 square metres to facilitate compliance with the maximum lot coverage. The implications of such an interpretation are profound in that one could possibly construct a much larger porch, of up to 24 square metres on an interior lot, and still comply with the maximum lot coverage provisions of the proposed by-law. Rather, in accordance with accepted practices and legal interpretations concerning zoning by-laws, if a porch is greater than 12 square metres it simply exceeds the maximum permitted and must therefore be included in the calculation of lot coverage.

In conclusion we trust, that in view of the foregoing comments and the matters discussed during the course of the meeting of June 23, 2020, the provisions concerning the permissible width of garage doors will be revised as outlined herein, and, that you will recommend the incorporation of a further exception concerning 62 and 64 Prospect Street with respect to lot coverage and height. It is understood, from your comments during the aforementioned meeting, that you will provide us with a copy of the recommendation report and proposed by-law on Thursday, July 2, 2020. Should you have any questions in relation to the requested relief as relates specifically to 62 or 64 Prospect Street, please do not hesitate to contact the undersigned.

Respectfully submitted,
McDermott & Associates Limited



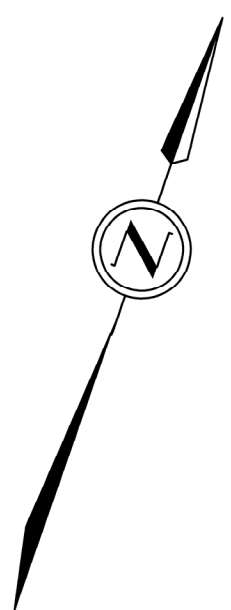
John McDermott, M.C.I.P., R.P.P.
Principal Planner

copy to: Mr. Andrew Rice

Mr. Don McGregor

EXISTING / PROPOSED BUILDING FOOTPRINTS

62 - 64 PROSPECT STREET
BOWMANVILLE



PROPOSED BUILDING FOOTPRINTS
 FUTURE BUILD-OUT
 62 - 64 PROSPECT STREET
 BOWMANVILLE

