

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: January 27, 2015

CASE NO(S).: PL140348

Viner Assets Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to the Official Plan for the City of Ottawa to redesignate land at 261, 265, 271, 275 & 281 Laurier Avenue East and 400 Friel Street from Low Profile Residential to Medium Profile Residential to permit the construction of a 9 storey mixed use building

(Approval Authority File No. D01-01-13-0012)
OMB File No. PL140348

Viner Assets Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to Zoning By-law 2008-250 of the City of Ottawa to rezone lands at 261, 265, 271, 275 & 281 Laurier Avenue East and 400 Friel Street from Residential Fourth Density, Subzone T, Exception 480 to General Mixed-use, Exception 2123 F.S.I. (3.9), Schedule 319 to permit the construction of a 9 storey mixed use building

OMB File No. PL140349

Referred by:	Viner Assets Inc.
Subject:	Site Plan
Legislative Authority:	Subsection 41(12) of the <i>Planning Act</i> , R.S.O. 1990, c. P.13, as amended
Property	261, 265, 271, 275 & 281 Laurier Avenue East
Address/Description:	and 400 Friel Street
Municipality:	City of Ottawa
OMB Case No.:	PL140348
OMB File No.:	PL140268

Heard: October 6, 7, 8 and 9, 2014 in Ottawa, Ontario

APPEARANCES:

Parties

City of Ottawa

Viner Assets Inc.

Counsel

T. Marc

A. K. Cohen and J. L. Cohen

Action Sandy Hill (ASH)

E. Blanchard

DECISION DELIVERED BY R. G. M. MAKUCH AND PARTIAL ORDER OF THE BOARD

[1] Viner Assets Inc. (the “Applicant/Appellant”), the owner of the subject property known municipally as 261, 265, 271, 275 and 281 Laurier Avenue East as well as 400 Friel Street, applied for an Official Plan Amendment, Zoning By-law amendment, and Site Plan Control to permit the construction of what has been described as a nine-storey architecturally designed purpose-built student residence.

[2] The subject property is located in what is known as the Sandy Hill community, one of the oldest residential communities in the City of Ottawa (the “City”), which dates back to the days of Confederation. It is bounded by the Rideau River to the east, the Rideau Canal to the west, Rideau Street to the north and Highway 417 to the south. It is within walking distance of Downtown Ottawa and Parliament Hill as well as other national historical sites. The site has frontage of approximately 80 m along Laurier Avenue East and 52 m along Friel Street for a total area of 4,266 square metres. It is currently occupied by four low-rise apartment dwellings with surface parking at the rear of the property. It is surrounded predominantly by low and mid-rise residential uses, with some commercial uses located at-grade to the west along Laurier Avenue East and at Friel and Wilbrod Streets.

[3] The University of Ottawa Campus is located two blocks to the west of the subject site and it forms the western part of the Sandy Hill community. The university has a student enrollment of approximately 45,000 students and according to some, faces a housing crisis to accommodate students. Student housing has been an issue in the Sandy Hill community for a number of years and has been perceived as more acute recently as the university has undergone an expansion.

[4] The subject property is designated “General Urban Area” in the City’s Official Plan, a designation which is intended to permit a full range of residential building types

to accommodate the needs of all ages, incomes and life circumstances, along with conveniently-located employment, retail, service, cultural, leisure, entertainment and institutional uses. The Sandy Hill Secondary Plan (“SHSP”) designation is “Low Profile Residential” pursuant to schedule J of this plan. It is zoned “Residential Fourth Density, Subzone T, Exception 480 (R4T [480])”. The intent of this zone is to provide for a mix of residential building types, ranging from single-detached dwellings to low-rise apartment dwellings up to four storeys in height.

[5] The proposed amendment to the SHSP would change the land use designation for the site from “Low Profile Residential” to “Medium Profile Residential”. The proposed zoning by-law amendment would change the zoning applicable to the site to a “General Mixed-Use Zone, Exception XXX, F(3.9) Schedule XXX (GM[xxxx] S(xxx))” with site specific exceptions permitting a reduction in the minimum required parking, allowing for a 32 m (nine-storey) height and reduced yard setbacks. These amendments would allow a development that accommodates a mix of residential, commercial and retail uses.

[6] The proposal consists of a mid-rise mixed-use building (nine storeys) with purpose-built student residence units, as well as, retail use (1,217 m²), a fitness centre (260 m²) and student amenity area (433 m²) on the ground level and second floor. The ground floor retail space is intended for street-oriented retail activity (coffee shop, restaurant, personal service uses and retail food store), which would serve the needs of the residents and the local community. It would have 180 suite-style units spread over eight floors, with each unit featuring studio and two-bedroom configurations and shared bathroom, kitchen and living space. It would have one level of underground parking with 62 parking spaces to accommodate vehicles for residents, visitor and retail parking needs, as well as three spaces at grade. The proposal also calls for secure storage for 100 bicycles on the ground floor.

[7] It is noted that the City's Planning Department recommended approval of this proposal to the Planning Committee, which then recommended approval of such to the full City Council.

[8] City Council ultimately refused the applications for the following reasons:

- 1) The proposed built form is not compatible with the prevailing building form of the area, both from a perspective of height and from a perspective of the heritage attributes of the area;
- 2) The proposed use is too intensive for the area; and
- 3) Based upon the proximity to the transit station, growth can be accommodated in other locations in the City.

[9] Action Sandy Hill ("ASH") is an incorporated association of residents purporting to represent the interests of the community of Sandy Hill in which the subject lands are situated. Representatives of ASH made representations to the Planning Committee and to Council against the proposed development and was granted party status at the outset of the hearing. It is opposed to the appeals on a number of grounds.

[10] The evidence before the Board in support of the appeals consists of the testimony of Ted Fobert, Barry Hobin, John Stewart, and Eric Luskin, the professional land use planning consultant, professional architect, professional landscape architect/heritage planner and student accommodation expert respectively for the Applicant/Appellant. John Smit, the Manager Development Review – Urban Services, for the City of Ottawa, testified under summons from the Applicant/Appellant.

[11] The evidence in opposition to the appeals consists of the testimony of Robert Martin, a conservation architect, and Dennis Jacobs, a professional land use planning consultant retained by the City. The Board also heard from residents Francois Bregha and David Den Dooven, both members of ASH.

[12] The Board has considered all of this evidence as well as the submissions of counsel for the parties and finds that these appeals should be allowed for the reasons that follow.

[13] Firstly, the Board prefers the evidence of Messrs. Fobert, Smit, Hobin, Luskin and Stewart over the evidence of Messrs. Jacobs, Martin, Bregha and Den Dooven for various reasons, set out below.

[14] The *Planning Act* requires that all planning decisions be consistent with the Provincial Policy Statement 2014 (“PPS”), which promotes a mix of housing, employment, parks and open spaces, and transportation choices that facilitate pedestrian mobility and other modes of travel. These policies also have as a goal to minimize the undesirable effects of development including impacts on air, water and other resources. These policies support intensification of developments to optimize the use of existing infrastructure and to minimize negative impacts on the natural environment. The PPS also contains policies respecting the protection of heritage resources.

[15] The City and ASH take the position that the proposal is not consistent with the PPS 2014 because the subject property is designated Categories 2 or 3 on the City’s Heritage Reference List and as such is protected by the policies respecting heritage conservation. This was the strongest argument advanced by the City and ASH in opposition to the appeals.

[16] Robert Martin, the conservation architect, who gave evidence in support of the City’s position argues that taller buildings are a threat to the heritage character of the area, which is 95% low-rise profile. He maintains that the development as proposed will diminish the heritage character of the area. He was also very critical of City staff whose approval he opines, showed a lack of commitment to heritage conservation. He did not accept the findings of the Cultural Heritage Impact Study (CHIS) report prepared on behalf of the Applicant/Appellant and accepted by City staff.

[17] It is noted however that none of the buildings on the subject property are designated under Part IV of the *Ontario Heritage Act* (the “Act”). Furthermore, the subject property is not located in a Heritage Conservation District under Part V of the Act.

[18] The above referred to heritage reference list is a document prepared by City staff that has not had the benefit of vetting under a rigid public consultation process with input from interested and affected individuals. Furthermore, it has never been adopted by City Council either by way of a by-law or by resolution. It is not a register within the definition of “built heritage resource”. Section 2.6.1 refers to properties that have some form of formalized designation under the Act.

[19] The only property in proximity of the subject site that carries status as a protected heritage property is Courtney House located at 245 Laurier Avenue. It is at the corner of Laurier and Nelson Street one property removed from the subject site and is not affected by this development.

[20] The CHIS prepared by John Stewart on behalf of the Applicant/Appellant provides the basis for concluding that the development will not have any impact on heritage conservation, was submitted to the City and accepted by Sally Coutts, the City’s conservation planner.

[21] The key area of concern in this study was whether the buildings could be retained and how to ensure that the project/development fits within key characteristics of the broader Sandy Hill community.

[22] The massing of the building at the rear with a step back at the third storey from Laurier Avenue will achieve this compatibility and fit according to Mr. Smit, the City planner who gave evidence under summons from the Applicant/Appellant.

[23] Cross-examination of both Denis Jacobs and Robert Martin by Mr. Cohen clearly exposed the severe weakness of their opinions respecting inconsistency with provincial

policy and non-conformity with the City Official Plan (“OP”) on the issue of heritage conservation as it applies to this application. Robert Martin’s evidence was particularly troublesome in that he projected more as an advocate than an independent non-partisan witness and as a consequence the Board finds it very difficult to attribute any weight to his opinions.

[24] If one were to accept Denis Jacobs’ opinion on this issue it is conceivable that the protection afforded to a property on the heritage reference list created by City staff and not approved by City Council would be greater than the protection afforded to a property that has been designated under the Act, which sets out the process for getting approval for the development of a designated property under the Act.

[25] The Applicant/Appellant met its obligation by retaining John Stewart, the professional landscape architect with expertise in heritage matters to prepare and submit a Heritage Impact Statement to evaluate the potential impact of the development on historic properties in the area and reviewed all aspects of the development as it relates to the heritage character of the area. The report set out a number of alternatives for the development, which could be addressed at the site plan control stage. Mr. Stewart relied on the Sandy Hill Heritage Study carried out in 2010 for the City.

[26] The Board therefore concludes that there are no issues with respect to consistency with the PPS 2014.

[27] Barry Hobin, the professional architect and urban designer, retained by the Applicant/Appellant described the process he used in designing the building to achieve a balance between the public realm and the private interests of the owner or in other words, how he could achieve the private goals of the owner while at same time providing benefits to the public. He was of the view that this one acre lot was in an excellent location in proximity to Downtown Ottawa and public transit. One of the buildings had to be condemned and the rear parking lot contributed to the under-utilization of the lot, which cried out for some form of urban renewal.

[28] While the site is situated in a low-rise neighbourhood, there are a number of higher buildings in the immediate neighbourhood with no homogeneous fabric but a variety of architectural designs, some of which were not particularly well done.

[29] Mr. Hobin maintained that with respect to the issue of scale of development and the pedestrian realm, the top of a building was not as important as what happens below the first three floors is what is most important because that is what people notice from the street. The stepping back of building from Laurier Avenue above the third floor and breaking up of the mass would achieve compatibility with the character of the neighbourhood. This evidence together with Mr. Smit's evidence is very convincing.

[30] Furthermore, the Board is satisfied from Mr. Hobin's evidence that there will be no impact from shadowing on the adjacent properties as a result of this development

[31] As noted above, there are several mid-rise buildings in the surrounding area. There is six-storey apartment building immediately abutting the site to the north (rear of the subject property) and another six-storey apartment building located to the south across Laurier Avenue East. There is a nine-story apartment tower to the west of the property across Nelson Street is, with another nine-storey apartment building also located to the southwest of the property (approximately 100 m south of Laurier Avenue East) on Nelson Street. Further east along Laurier Avenue there are additional apartment buildings in the 10 to 11 storey range. While this is mainly a low-rise neighbourhood, it is evident from the evidence that there are also a number of other mid to high-rise buildings located within the section of Sandy Hill bounded by King Edward Avenue to the west, Charlotte Street to the east, Osgoode Street to the south and Stewart Street to the north. These mid to high-rise buildings form part of the context of the area notwithstanding that their construction pre-dates the existing SHSP policies and must be taken into consideration by the Board in its evaluation of these appeals.

[32] The Board is satisfied that the proposed amendment to the SHSP represents appropriate land use planning and is in conformity with the City's OP. Section 2 of the

OP sets broad strategic directions to meet the challenge of managing growth, providing infrastructure, maintaining environmental integrity and creating liveable communities. The proposed development provides a mix of uses and housing types and densities that will support these strategic directions.

[33] Section 2.5.1 of the OP sets out the policies to be used in assessing whether a proposed development is compatible with the existing character of the neighbourhood in which it is proposed and provides that, although a proposal may not necessarily be the same as or similar to existing buildings in the vicinity, it may nonetheless be considered compatible if it enhances an established community and can co-exist with existing development without causing undue adverse impact on surrounding properties. It must "fit well" within its physical context and "work well" among those functions that surround it. A key objective of s. 2.5.1 is to enhance the sense of community by creating and maintaining places with their own distinct identity. The architecture proposed for this development ensures that the design creates a distinctive identity. Furthermore, the commercial uses proposed at grade along Laurier Avenue East will provide "eyes on the street".

[34] The site is also located in proximity to the rapid transit network and is suited for a more intense development. The overall intent of these policies is to support intensification in appropriate locations, where the stability of the interior portions of residential neighborhoods are not threatened. The Board agrees with Mr. Smit's assessment of Laurier Avenue East as a spine through Sandy Hill creating an edge condition.

[35] The site's location in proximity to transit and major roads and in an area characterized by an existing mix of residential types including mid-rise apartments makes it a suitable location for intensification. Moreover, the proposed development achieves several of the design principles outlined in s. 2.5.1 to provide for integration into the fabric of the area. The development will build on established patterns and built

form by introducing a building that creates visual interest and contributes the image of Ottawa through architectural innovation.

[36] The Board puts much weight and reliance on Mr. Smit's evidence, who demonstrated that he has an extensive knowledge of the City's planning framework. He is of the opinion that Official Plan Amendment No. 150 adopted by City Council in December 2013, which does not yet have final approval should be taken into consideration in the evaluation of current planning application. He opines that when evaluating the appropriateness of a development proposal, one of the main enhancements between the currently approved official plan and Official Plan Amendment No. 150 is the importance placed on high quality urban design and design excellence. One new policy is the consideration of whether the design of a proposal takes into consideration the compatibility with the existing context and planned function and, more specifically, compatibility with buildings clustered with other buildings of similar height. Mid-rise is defined as a building between five and nine storeys and the official plan policies recognize that additional height may be permitted when assessing whether it is appropriate, the design compatibility policies found in s. 4.11 must be considered.

[37] The varying heights, setbacks, exterior treatment, building finishes and architectural design set out in the proposal provide for incremental changes in building height and will allow the integration of the building located on a corner lot on a major collector road into the existing character of the area. The maximum heights permitted across the site range from 12.532 m to 32 m.

[38] The setback provisions provide for a reduced rear yard setback for a portion of the building and increased setback provision for the portions of the building above 12.5 m (or above three stories whichever is less for the front building setback) to have an additional front yard setback along the front corner lot line. The proposal is for a 3 m front yard setback at ground level. The reduced westerly side yard setback is proposed to create a continued stream facing residential built form with 251 Laurier Avenue East.

These are consistent with the established setbacks on both street frontages being Laurier Avenue East and Friel Street. This provides for a rear yard setback that does not compromise the rear yard and space for the abutting properties.

[39] With respect to the additional permitted uses, the proposal includes commercial units within the building that front on to Laurier Avenue East. These additional uses will contribute to the community as a whole by bringing the daily needs of residents closer to their homes, reducing the reliance on cars, while at the same time making for a more complete community.

[40] It is noted that the amendment to the SHSP initially recommended by the Planning Department to the Planning Committee and subsequently to City Council provides that commercial uses would be extended to the east along Laurier Avenue East. This was not requested by the Applicant/Appellant and ASH is opposed to any extension of commercial uses to the east of the site.

[41] Mr. Smit was of the opinion as was Mr. Fobert that the SHSP is quite dated and needs to be reviewed by City Council. He felt that although the area is designated "Low Profile Residential" under this plan, the area is not low profile but rather an area of mixed-profiles as there are many medium and high profile buildings in the area and that this is very much the character and context of the area. They both maintained that the SHSC includes some very broad policy statements with emphasis on family living, which would not be compromised by the proposed development.

[42] The interior portions of upper and lower (north and south of Laurier Avenue) Sandy Hill is largely family homes. Laurier Avenue East is designated as a Major Collector and acts as a spine, which can be distinguished from the other streets in the area and is more conducive to and appropriate for denser development.

[43] It is noted that there have been many single family dwellings converted to "bunk houses" in Sandy Hill over the years with the City enacting to what was referred to as the "conversion by-law", to curb this problem as it was felt by residents that such

conversions interfered with the family fabric of the neighbourhood. Messrs. Smit and Fobert believe that student housing is part of the fabric of the Sandy Hill area and that the proposed development will relieve some of that pressure.

[44] The Board finds that the proposed form of housing for students together with some limited commercial uses on this corner is appropriate and will serve the neighbourhood well and will contribute to the creation of a complete community.

[45] Context is very important here notwithstanding the low profile designation under the SHSP as the area is comprised of a variety of building types with high rises not being concentrated in any one area but rather scattered throughout Sandy Hill.

[46] The Board is satisfied that the proposed development is appropriate and would fit within the context of and form a good relationship with Laurier Avenue East. The Board did not hear any specific evidence of any adverse undue impacts on the immediate area or the larger community of Sandy Hill. It will accommodate 600 plus students in a purpose built facility that will be professionally managed.

[47] The Board is satisfied that the mix of uses proposed efficiently utilizes the land and will contribute to the development of a healthy community. It is pedestrian oriented and the reasons that travel distance for many necessary daily activities. It also promotes a mix of housing types within the immediate neighborhood, providing different housing options for individuals of all ages, incomes and life circumstances. The proposed residential density effectively utilizes existing urban lands, services, infrastructure and public transportation. The site is on a major collector road (Laurier Avenue), in close proximity to a transit station [campus station], a traditional main Street (Rideau Street), the central business district and the University of Ottawa. The accessibility of the site makes it a good location for a mixed use development.

[48] With respect to the issue of traffic, the site as noted above is on a major collector within the inner urban area of the City in proximity to the Downtown core and within 600 m of the Transitway and within 300 m of the University of Ottawa. There are community

services and amenities available in the immediate area as well as further north on Rideau Street. Vehicular access to the site will be from Friel Street and will not disrupt the traffic flow along Laurier Avenue East. The Board is satisfied that the development will provide adequate on-site parking for the intended users of the site. Oversupply of parking here does not make any sense.

[49] Outdoor amenity areas are being provided in the form of terraces and a landscaped courtyard on Laurier Avenue East and are oriented towards the front of the building in order to respect the privacy of the outdoor amenity areas on adjacent properties. Given the urban context in which the site is situated, the proposed setbacks are sufficient to reduce any undue adverse impacts on surrounding buildings.

[50] It is noted that the loading and service areas are to be located inside the building out of public view.

[51] The only issue related to the site plan is with respect to proposed Condition 10 by the City, which provides that the Applicant/Appellant would agree to not have any amplified noise on any outdoor terraces and patios and to close these by 11 p.m. The Applicant/Appellant argues that this condition should be modified to permit amplified noise on outdoor terraces and patios but to be governed by the provisions of the City's noise by-law. Mr. Smit did not have any issue with such a change to Condition 10 but maintained that the 11 p.m. closing time be maintained. It was suggested that the zoning by-law amendment should be subject to a "Holding" "H" provision, which would only be lifted once a site plan agreement was executed.

[52] The Board has considered the three reasons given by City Council for refusing these applications and finds that given the overwhelming evidence as set out above, these did not properly justify such refusal. While this growth could be accommodated in other areas of the City such as areas designated "corridors" and "nodes", that is simply not a valid reason for refusing these applications. This is an appropriate development close to the University of Ottawa in what is considered to be a downtown

neighbourhood with access to a wide range of amenities and services and proximity to employment.

[53] The Applicant/Appellant also retained the services of Mr. Luskin, who has particular expertise in student accommodation. He provided advisory services on whether to renovate the buildings on site or to do a complete re-build given the condition of the existing buildings. He ultimately recommended the development of a purpose built student housing building given its excellent location on the edge of the University of Ottawa Campus. He was of the opinion that there was a market for this type of housing and that it could be done in such a way as to make it safe and economically feasible with benefits accruing to both the student population and the Sandy Hill community at large. This evidence was not challenged in a meaningful way.

[54] Accordingly, the appeals are allowed and the Sandy Hill Secondary Plan and Zoning By-law 2008-250 are hereby amended as recommended to City Council by Planning Committee. Commercial uses will be limited to this site and will not be extended to the east along Laurier Avenue East. The zoning amendment will be in the form of an “R5 Zone” rather than a “General Mixed-Use Zone” but will allow all of the uses set out in the recommendation to City Council by the Planning Committee. The Board will withhold its order until such time as it receives these amendments in final form and is notified that a site plan agreement has been duly executed.

“R. G. M. Makuch”

R. G. M. MAKUCH
MEMBER

Ontario Municipal Board

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