Greater Ottawa Home Builders' Association
Association des constructeurs d'habitations **d'Ottawa**

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November 21, 2022

The Hon. Steve Clark
Ministry of Municipal Affairs and Housing
777 Bay Street, 17th floor
Toronto, Ontario M7A 2J3

Re: ERO #019-6163 Proposed Planning Act and City of Toronto Act Changes (Schedules 9 and 1 of Bill 23 - the proposed More Homes Built Faster Act, 2022)

Dear Minister Clark,

Please accept the below from the Greater Ottawa Home Builders' Association (GOHBA) and its members as a submission to the government's request for feedback on Proposed Planning Act and City of Toronto Act Changes (ERO #019-6163).

GOHBA is supportive of the government's efforts to address our housing affordability and supply crisis by streamlining approvals for housing and reducing barriers and costs to development.

We provide comments and additional suggestions on ERO #019-6163's specific proposals below, as well as highlight two separate concerns related to municipal Committees of Adjustment and the Clergy Principle for ongoing applications for Official Plan Amendments, that could be addressed through amendments to the Planning Act.

1. **Addressing the Missing Middle by Strengthening the Existing "Additional Residential Unit" Framework**

   - **Changes are proposed to strengthen the existing "additional residential unit" framework. The proposed changes would allow, "as-of-right" (without the need to apply for a rezoning) up to 3 units per lot in many existing residential areas.**

   - **The proposed changes would supersede local official plans and zoning to automatically apply province-wide to any parcel of land where residential uses are permitted in settlement areas with full municipal water and sewage services (except for legal non-conforming uses such as existing houses on hazard lands).**

   - **To remove barriers and incent these types of units, the proposed changes would also prohibit municipalities from imposing development charges, parkland dedication or cash-in-lieu requirements, applying minimum unit sizes or requiring more than one parking space per unit in respect of any second unit in a primary building and any unit in an ancillary structure.**

GOHBA and its members welcome the ability to increase density in existing neighbourhoods as-of-right.

We also support the standardization of the applicability, and more specifically the non-application, of DCs, parkland dedication and the CBC on additional dwelling units. This will help encourage the increase of "gentle density" in existing neighbourhoods.

However, we are concerned that there are potential loopholes in the proposals that municipalities will abuse to unreasonably restrict conversions, thereby severely limiting the ability to increase intensification in existing neighbourhoods and work against the government's efforts. These loopholes include:

- Not allowing reasonable additions as-of-right to the existing structure in order to facilitate transition to a duplex or triplex (like a second kitchen or separate entranceway);

- "Full" municipal water and sewage services needs to be clarified to not include stormwater, only drinking water and wastewater. The City of Ottawa, through its Infrastructure Master Plan, is proposing to require that all new infill development manage stormwater on-site, because it does not know if / does not believe it has the capacity to take on additional stormwater from intensification units.

- Allowing municipalities to require up to one parking space per unit. Demanding up to three units on a typical residential lot in Ottawa will make most conversions unviable, and works against most municipality's desire to utilize public transit. Municipalities should only be allowed to require up to one parking spot for the primary unit.

GOHBA will expand on this issue in its comments to ERO #019-6197 (Proposed Changes to Ontario Regulation 299/19: Additional Residential Units).

2. Higher Density Around Transit

- **Changes are proposed to require municipalities to implement "as-of-right" zoning for transit supportive densities in specified areas around transit stations, known as "major transit station areas" (MTSAs), and "protected major transit station areas" (PMTSAs) that have been approved by the Minister.**

- **If passed, the changes would require municipalities to update their zoning by-laws to permit transit-supportive densities as-of-right within 1 year of MTSA or PMTSA approval; if zoning updates were not undertaken within the 1-year period, the usual protection from appeals to the Ontario Land Tribunal for PMTSAs would not apply.**

GOHBA and its members welcome expediting zoning around MTSAs and PMTSAs.

Request #1: Ministerial approval to remove PMTSAs and MTSAs

GOHBA is extremely dismayed to find that municipalities are reacting to this proposal by considering not including the designations in their comprehensive zoning work.

Specifically, staff at the City of Ottawa have issued a memo to City Council contemplating that MTSAs and PMTSAs be delayed or even repealed as part of the Official Plan in order to circumvent the new requirements of the Act.

This should not be permitted without Ministerial approval.

Request #2: Automatically deem zoning for PMTSAs and MTSAs

Section 16(15) of the Planning Act states that municipalities may include policies in the official plan but does not require policies. In Ottawa this leads to discrepancies as to what may occur in proximity to some transit locations as opposed to others based on the local community opposition.

It would better fulfill the intent of the government to direct that all transit stations will permit more intensification in order to avoid the subjective nature of local evaluation.

As well, while we appreciate the intention of the government to permit expanded appeal rights to an implementing zoning by-law that is passed after one year, the amendment is contradicted by amendments to s.34(19) that prohibit appeals by anyone other than the Minister, a specified person (utility companies) or a public body. Moreover, an appeal would only serve to further delay the implementation of PMTSA policies.

Rather, to fulfil the intent of the government, a zoning by-law should be automatically amended at the expiry of the one-year period, in order to implement the minimum height and density provisions contemplated by the Official Plan.

Proposed wording:

Insert new section 16(20.2): *If the municipality has not completed the zoning update within one year then existing zoning by-laws are deemed to be amended to reflect the protected major transit policies.*

3. Third Party Appeals

- **Changes are proposed to limit third party appeals for all planning matters (official plans, official plan amendments, zoning by-laws, zoning by-law amendments, consents and minor variances). Third party appeals are generally appeals made by someone other than the person who made the planning application.**

- **Appeal rights would be maintained for key participants (e.g., applicants, the Province, public bodies including Indigenous communities, utility providers that participated in the process), except where appeals have already been restricted (e.g., the Minister's decision on new official plan).**

- **The proposed limit on third-party appeals would apply to any matter that has been appealed (other than by a party whose appeal rights are being maintained) but has not yet been scheduled for a hearing on the merits of the appeal by the Ontario Land Tribunal (OLT) on the day the bill is introduced.**

It is notable that eliminated third party appeals to applicant initiated processes, such as OPAs, ZBLAs, consents and minor variances are a very strong positive step to streamlining municipal approval processes, and reducing the volume of meritless appeals at the Ontario Land Tribunal.

GOHBA supports preventing abuse of the appeal process by limiting third-party appeals but as the legislation is currently worded, appeal rights have been too limited. Affected landowners will not be able to appeal a municipal initiated official plan or zoning amendment.

Eliminating the ability of individuals, landowners, and public bodies to avail themselves of Tribunal intervention to resolve land use planning disputes will likely result in individuals commencing applications to quash municipal by-laws or otherwise attack local decision making on procedural grounds via the *Judicial Review Procedure Act,* increased *Building Code Act, 1992* appeals, and other Superior Court proceedings. If land use planning matters are increasingly dealt with by the Courts, or other non-specialized bodies with limited capacity, rather than the Tribunal – a forum with the institutional knowledge and specialized expertise to effectively resolve complicated land use planning issues – the unintended consequence may be further delay of development of new homes in the Province.

<u>Request #3: Appeal Rights for Landowners</u>

Since developers and land owners are the ones governed by municipal plans, and are the ones who must implement and execute the rules and regulations within, they should not be considered a third-party and should have the right to appeal.

Proposed wording:

Section 17(24) New *5. For amendments that directly impact specific lands, an affected owner of land.*

Section 17(36) New *4. For amendments that directly impact specific lands, an affected owner of land.*

Section 17(40) New *4. For amendments that directly impact specific lands, an affected owner of land.*

Section 34(19) Revise *1. The applicant or owner of land that is now subject to the new zoning by-law or zoning by-law amendment.*

4. Remove the Public Meeting Requirement for Draft Plans of Subdivision

GOHBA and its members support the removal of a public meeting requirement for draft plans of subdivision.

5. Site Plan – Exemption for Development up to 10 units, Architectural Details and Landscape Design

- **Changes are proposed to exempt all aspects of site plan control for residential development up to 10 units (except for the development of land lease communities).**

GOHBA and its members are extremely pleased to see exemption for site plan control for developments up to 10 units, which fulfills Ontario Housing Affordability Task Force recommendation #12.

Site Plan Control has morphed from its intended use as a technical review to a zoning and design review where often concessions are demanded by the respective Ward Councillor in order to obtain approval.

In Ottawa, a site plan exemption was only available for 3 units or less – a 4th unit triggered a full site plan application. This meant an addition cost of approximately $150,000 for studies, application fees and legal approval, and an addition 12 months of processing time (during which there is additional land carrying costs including taxes, inflation and insurance).

The application of Site Plan Control therefore meant an additional cost of over $200,000 for a project, all of which is eventually borne by the people who will live there.

- **Changes are proposed to limit the scope of site plan control by removing the ability for municipalities to regulate architectural details and landscape design.**

GOHBA also welcomes limiting site plan control from regulating matters relating to exterior design, including without limitation the character, scale, appearance and design features of buildings, and their sustainable design.

In March 2022 the City of Ottawa adopted its High Performance Development Standard (HPDS), based on the Toronto Green Standard.

Although GOHBA was supportive of the aims of the Standard, we had (and continue to have) ongoing concerns related to affordability; achievability, energy efficiency requirements above code, and phasing.

There is a cost implication to each of the HPDS measures that has yet to be quantified. There are also direct costs to developers and builders, but ultimately the bearer of these increased costs is the home buyer.

While we appreciate that some (although definitely not all) of these measures have the potential to reduce operating costs for the homeowner, there is still the consideration of the impact on these measures on a home's sticker price.

We have urged the City of Ottawa to work with builders on their energy-efficiency goals, without avail. Therefore we support the provincial government's intervention in this regard to force municipalities to work with the industry on high performance measures, through a housing affordability lens.

We also caution that municipalities may attempt to push some former site plan requirements into the building permit approval process. Amendments should make clear that municipalities do not have the authority to demand items beyond the Building Code.

GOHBA will provide comments in regard to ERO 019-6172 Development Charges, seeking reduction to development charges when green buildings and/or infrastructure is provided.

Request #4: Prescribe Application Requirements in Regulation

The Minister currently has the authority to prescribe application requirements with respect to Site Plan.

Prescribing applicable high performance development standards by regulation would reduce any subjectivity in each municipality.

Proposed new wording, either:

> *Section 70.1 – prescribe the criteria that shall apply to determine the feasibility of the application of high performance development standards for a site*; or
>
> *s.70.3 – prescribing the standards and requirements, what may be included or constitutes applicable high performance development standards*.

6. Address Issues with Committees of Adjustment

Much like issues with Site Plan Control, dealing with a municipality's Committee of Adjustment has become more of a political exercise, when it should be a technical one.

Significant delays in approvals are being experience due to the scheduling of hearings with local Committees of Adjustment. In Ottawa it is typically 60 days after submitting an application that

a hearing is scheduled and up to 90 days before a hearing is held. Timelines are even worse in Mississauga (90-120 days) and Toronto (120-150 days).

The Planning Act is silent about the consequences of not scheduling a hearing within the thirty-day timeframe – as called for in the Planning Act section 45(4) - because there are none.

In the Planning Act there are specific reference to timelines for consideration of Official Plan Amendments, Zoning Amendments, Subdivision Applications and Consents. The major outlier is applications to the Committee of Adjustment.

Therefore, Committees of Adjustment across the province have no obligation or incentive to improve hearing timelines, and there is no opportunity for the applicants to seek decision/resolution through alternative means.

Homeowners, the residential construction and professional renovation industry are all dependent upon the Committee hearing applications in a timely manner.

Request #5: Prescribed Timelines for Committees of Adjustment

The extensive time it takes for a hearing to occur affects a municipality's own intensification housing targets, which are critical to meeting the needed housing supply for our growing population and fulfilling municipal growth strategies and Official Plans.

All indications are that the number of applications to Committees of Adjustment is not going to ease, and that the backlog in processing is going to persist, if not get worse.

As it appears that Committees of Adjustment across the province are not willing to change their ways in order to keep up with their workloads, reduce backlogs and meet their statutory requirements of the Planning Act, the provincial government needs to amend the Planning Act so that there are consequences to not scheduling a hearing within the thirty-day timeframe.

GOHBA requests that timelines be prescribed to Committees of Adjustment. This could be done by Regulation as indicated by section 44(11) and must be added to section 45 but timelines some timelines are already prescribed in the Planning Act.

(a) An application should be processed and a hearing date set within 14 days; and
(b) A hearing date should be set within 30 days after being processed (section 45(4)).
(c) Decisions shall be issued withing 10 days of the hearing (section 45(1)).

A possible remedy, or consequence of not acting in accordance with the prescribed timelines is an application could be deemed approved 150 days after submission.

Proposed new wording:

Section 45(8.3*) If a decision has not been made by the committee within 150 days after receipt of an application, the application shall be deemed approved.*

Specifically, an applicant should have the right to appeal for a non-decision to the OLT. This can be accomplished by adding language from Section 53 (consent) in the Planning Act to Section 45.

Proposed wording:

> *(xx) If an application is made for a variance or a permission and the council or the Minister fails to make a decision under subsections (1) or (2) on the application within 90 days after the day the application is received by the clerk of the municipality or the Minister, the applicant may appeal to the Tribunal with respect to the application by filing a notice with the clerk of the municipality or the Minister, accompanied by the fee charged by the Tribunal*.

7. Clergy Principle for ongoing applications and appeals for Official Plan Amendments

In light of Ottawa's New Official Plan, which is not subject to appeal, the City of Ottawa has taken the position that ongoing applications for Official Plan Amendments (including those that are currently under appeal to the OLT) are moot. It is GOHBA's opinion that the position of the City is not founded in law but rather is contrary to law; the effect of the City's position is established appeal rights would be extinguished and applications that have been in queue for the past number of years have to start over again in 2 years – after the 2 year moratorium expires. Many of the Official Plan Amendments are to permit housing at a higher density than what the previous, or even current, official plan permitted. The cumulative impact is that residential housing is not being approved.

<u>Request #6: Support Transition of OPAs between Official Plans</u>

Three revisions are requested to address this issue: (a) include the Clergy principle in the Planning Act, (b) state that the approval of a new official plan does not extinguish existing complete applications, and (c) state that the approval of a new official plan does not extinguish existing appeals.

(a) GOHBA urges the Province to include a new subsection in s.17 of the Act, codifying the longstanding Clergy Principle. We suggest that the Act be amended to state that any application filed under the Planning Act be reviewed and processed under the policies that apply at the time the application is filed.

A corresponding provision should be included in section 22 in order to permit site-specific OPA applications to be processed in the policy context that existed when they were filed, and to allow for the application to be continued, with necessary modifications, notwithstanding the two-year moratorium imposed by subsection 22(2.1).

Proposed new wording:

> Sections 17(65) and 22(4.1) *For greater certainty, the official plan policies in force at the time of an official plan amendment application shall be applied. New official plan policies that are approved after a complete application has been submitted may be considered and revised for future conformity but are not applicable.*

(b) As stated above, it is the City of Ottawa's position that active appeals for which an amended to the old, now repealed, official plan is being sought are now moot. The new Official Plan repealed the old Official Plan. The City is relying on the fact that the Minister's approval of the new Official Plan is not appealable hence any applications or appeals to the old official plan are moot. The City's position is contrary to stated provincial interests of doing what is necessary to approve new residential housing. GOHBA is therefore seeking revisions to quash the City's position.

In regard to active applications that were submitted prior to the approval of Ottawa's new official plan the following wording is requested:

> New section 22(2.4) *Applications that were submitted prior to the approval or coming into effect of a plan or secondary plan shall be permitted to continue to be processed and a decision made. The applications shall be considered in accordance with subsection (4.1).*

(c) Prior to the approval of the new Official Plan on November 4, 2022, several applications were appealed to the Tribunal. Some of the appeals were submitted in early 2022 long before the new Official Plan was approved. Several matters have had pre-hearing conferences and hearing dates have been set for 2023.

It is GOHBA's submission that the Minister's approval of an official plan does not extinguish existing appeal rights. Matters that were appealed prior to the new official plan should proceed to a hearing based on the applicable policies at the time of application and if a revision is required to the new Official Plan then the Tribunal shall be permitted to make the order to the new Official Plan.

Proposed new wording:

> Section 22(14*): For appeals submitted under subsection (7) prior to the approval of a new plan, the appeals shall be permitted to proceed according to the policies in force at the time of application. The decision to approve the new plan does not have the effect of extinguishing or invalidating the appeal.*

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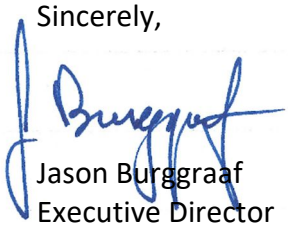
Thank you for the opportunity to provide comments on the government's proposals.

We are pleased to answer questions or provide further information as requested.

Sincerely,



Jason Burggraaf
Executive Director