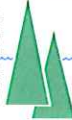


# Conservation Partners Partenaires de conservation



Mississippi Valley  
Conservation  
de la vallée Mississippi



SOUTH NATION  
CONSERVATION  
DE LA NATION SUD

June 2, 2011  
File: 11-OTT-SPC  
11-OTT-ZBA

City of Ottawa  
Planning and Growth Management Department  
110 Laurier Avenue West, 4<sup>th</sup> floor  
Ottawa, Ontario K1P 1J1

Attention: Erin O'Connell

Subject: **Claridge Residential Inc.**  
**Site Plan Control D07-12-11-0057 & ZBA D02-02-11-0023**  
**101 Wurtemberg Street in the City of Ottawa.**

Dear Ms. O'Connell:

The Conservation Partners Planning and Development Review Team has completed their review of the above noted application for a Site Plan Control and Zoning By-law Amendment to develop an 18-storey residential building with underground parking on the subject lands. We have undertaken our review within the context of Sections 2.1 Natural Heritage, 2.2 Water Quality and Quantity and 3.1 Natural Hazards of the Provincial Policy Statement under Section 3 of the Planning Act.

The site plan and zoning by-law amendment indicate a proposed reduction in water setback from the Rideau River to 10 metres from the normal highwater mark (NHWM) instead of the 30 metres required in the zoning by-law. As per the zoning by-law, the setbacks are established *to provide a margin of safety from hazards associated with flooding and unstable slopes and to help protect the environmental quality of watercourses and waterbodies*. The following comments are offered for your consideration.

The City of Ottawa Official Plan, Section 4.7.3 – Erosion Prevention and Protection of Surface Water provides the following direction of for the establishment of setbacks from water:

2. *Where a Council-approved watershed, subwatershed, or environmental management plan does not exist, the minimum setback will be the greater of the following:*
  - a) *Development limits as established by the regulatory flood line (see Section 4.8.1);*
  - b) *Development limits as established by the geotechnical limit of the hazard lands;*
  - c) *30 metres from the normal high water mark of rivers, lakes and streams, as determined in consultation with the Conservation Authority; or*
  - d) *15 metres from the existing top of bank, where there is a defined bank. [OMB decision #1754, May 10, 2006]*

3. *No site alteration or development is permitted within the minimum setback, except as otherwise provided for in this section. Site alteration is defined as activities, such as fill, grading and excavation that would change the landform and natural vegetative characteristics of a site. Development is defined as the creation of a new lot or the construction of buildings and structures requiring approval under the Planning Act or the issuance of a Building Permit under the Building Code Act. Exceptions to this policy are:*
  - b) *Alterations necessary for recreation, environmental restoration, or slope stability works that are approved by the City and the Conservation Authority. [OMB decision #1754, May 10, 2006]*
4. *Exceptions to the setbacks in policy 2 will be considered by the City in consultation with the Conservation Authority in situations where development is proposed:*
  - a) *On existing lots where, due to the historical development in the area, it is unreasonable to demand or impossible to achieve minimum setback distances because of the size or location of the lot, approved or existing use on the lot, or other physical constraint;*
5. *Where an exception to the setback is requested, an alternate setback will be considered by the City in consultation with the Conservation Authority on the basis of a study that addresses the following criteria:*
  - a) *Slope of the bank and geotechnical considerations related to unstable slopes, as addressed in Council's Slope Stability Guidelines for Development Applications in the City of Ottawa, 2004;*
  - b) *Natural vegetation and the ecological function of the setback area;*
  - c) *The nature of the abutting water body, including the presence of a flood plain;*
  - d) *The need to demonstrate that there will be no negative impacts on adjacent fish habitat. [OMB decision #1754, May 10, 2006]*
6. *Development applications near or adjacent to water bodies that provide fish habitat will be required to demonstrate that the proposed development will not have a negative impact on fish habitat. Fish habitat is defined as those areas on which fish depend directly or indirectly to carry out their life processes. Fish habitat includes spawning grounds, nursery and rearing areas, areas that supply food, and features that allow migration. In the event that a negative impact is unavoidable, the proposal must be reviewed and authorized by the federal Department of Fisheries and Oceans, or its designate, which may or may not, under the federal Fisheries Act, authorize the work depending on development circumstances and type of habitat. [Ministerial Modification 45, November 10, 2003]*

The Zoning By-law implements the Official Plan policies in Section 69 - Setback from Watercourses and Waterbodies as follows.

- (2) *Except for flood or erosion control works, or a public bridge or a marine facility, no building or structure, including any part of a sewage system, which does not require plan of subdivision, or site plan control approval, shall be located closer than:*
  - (a) *30 m to the normal highwater mark of any watercourse or waterbody, or*
  - (b) *15 m to the top of the bank of any watercourse or waterbody, whichever is the greater.*
- (3) *Development requiring a plan of subdivision or that is subject to site plan control must provide the watercourse or waterbody setbacks set forth in subsection (2) unless, as established through conditions of approval, a different setback is determined to be appropriate in accordance with the criteria set forth in the Official Plan. (By-law 2009-347)*

**Proposal re: Watercourse/Setbacks**

The proposal shows a 3 level underground garage; however a significant part is above grade at the rear of the property, due to topography. The rear wall of the garage, which is almost the entire width of the property, is proposed at 10 metres from the normal high watermark (NHWM) of the Rideau River. The 18-storey building above the garage is 4.6 metres further back, at 14.6 m from the NHWM. Further, due to proposed slope alterations for construction and slope stability, the application proposes site alterations the full width of the site and right up to the edge and possibly within the water of the Rideau River. The following provides a breakdown of the RVCA review of the proposed encroachment.

Water Quality & Natural Heritage

The Official Plan states “Protecting stream corridors and the surface water environment serves the dual purpose of *preserving and enhancing the environmental quality of stream and river corridors and their aquatic habitat...Ensuring that development is set back an appropriate distance from watercourses helps serve these purposes by ensuring a healthy, natural riparian zone ...*”

This setback area, otherwise referred to as the “Ribbon of Life” represents the transition between aquatic and terrestrial habitat. The buffer provides habitat to local plant and animal communities protects sensitive organisms from sunlight and heat and protects water quality by filtering out contaminants. This portion of the shoreline provides habitat for fish and wildlife for feeding, reproducing and resting. Shoreline vegetation provides natural resistance against erosion, reinforcing soils stability through complex root structures. Larger buffer zones have a greater ability to protect the shoreline from degradation and provide better water quality and natural heritage protection. Given the slope of the land and the density of the development, these objectives will not be met.

The Lower Rideau Watershed Strategy, as endorsed by the RVCA Board of directors (March 12, 2006) and Ottawa City Council (November 22, 2006) indicates in section 3.5.2 *Revitalizing River and Stream Corridors* that riparian corridors are threatened by encroaching land use practices in the upland areas resulting in a cumulative impacts on the quantity and quality of riparian zone functions. The report further recommends that shoreline landowners should be encouraged to protect and rehabilitate riparian and shoreline habitats and recognize the economic and community value inherent in making these features a centerpiece in urban neighbourhood. Under section 4.4.1, *Priorities and Key Steps*, point 4 promotes the protection of high quality fish habitats; enhancement of marginal habitat and prevention of further degradation of poor habitat.

Fisheries

A report titled “*Claridge Homes, Wurtemberg St. Condominium Development, Ottawa, ON*” dated April 19, 2011 prepared by G.A. Packman and Associates dated April 19, 2010 project #GP 10106 has been submitted to provide an opinion on fish habitat at the location, the effect of the proposed development and associated works. RVCA technical staff has reviewed this report and provided comments. Please see attached memo dated May 26, 2011. The RVCA is not able to accept the conclusions contained in this report at this time. Consequently, it does not support the position that the proposed encroachments will have no negative effect on adjacent fish habitat. Further, in consultation with the

Department of Fisheries and Oceans, the proposal may be deemed to result in a HADD (Harmful Alteration, Destruction or Disruption of Fish Habitat) under Section 35 of the *Fisheries Act*. Once additional information is provided, further review will be undertaken.

### Slope Stability

A report entitled “*Slope Stability Assessment, Proposed Development Site at 1010 Wurtemberg Street, Ottawa, ON*” dated July 2010 prepared by Golder Associates, # 10-1121-0003 has been submitted to provide an evaluation of *existing* slope conditions on the site. RVCA technical staff has reviewed this report and provided comments. Please see attached memo dated May 28, 2011. This report supports, *from a hazard management perspective only*, the proposal to undertake significant slope stabilization works within the 30 metre setback to provide a development envelope on an existing lot of record.

Written text within the report which discusses the proposed slope stabilization works provides insufficient detail to determine if the proposed works would be approvable under O.Reg 174/06 or where, if any, a revised slope stability line would be on the site. A report and drawings detailing the full extent (location, vegetation, materials and existing vs. proposed grades etc.) of the stabilization works on the slope are required.

### Storm Water Management

The plan which was submitted with this application indicates that stormwater runoff from this the developed areas/surfaces will be directed to the municipal sewer on Wurtemberg Street which outlets 200 metres downstream directly to the Rideau River. No additional infrastructure controls are recommended by the RVCA for this outlet as the majority of runoff is clean rooftop water. Water quality issues related to natural heritage, surface water and overland flow remain.

### Regulations under the Conservation Authorities Act of Ontario, O.Reg 174/06

The entire property falls within the regulatory boundaries of Ontario Regulation 174/06 “Development, Interference with Wetlands and Alterations to Shorelines and Watercourses” as administered by the Rideau Valley Conservation Authority. The proposal does not meet the local policies as approved by the RVCA Board of Directors (last revised and approved November 2010). A staff refusal of an application under these policies may be appealed to the Executive Committee of the RVCA, and subsequent decisions may be appealed to the Mining and Lands Commissioner of Ontario.

#### **1.1 General Principles**

- (d) New development must not, in the opinion of the Authority, have the result of polluting or contributing to the pollution of the abutting watercourse nor will new development be permitted which will adversely affect the Authority's interests in terms of the conservation of land.
- (e) Development is to be set back a minimum distance of 30 metres from the normal high water mark of a water course. Additionally, where there is a defined bank, development shall be no closer than 15 metres from the top of the bank.

Exceptions may also be considered in redevelopment situations where the use of the land remains the same and where lot sizes are restricted. Setbacks may, however, be no less than existing. Adverse effects on the Authority's interests in terms of the control of flooding, erosion, pollution or the conservation of land, including negative impacts on adjacent fish habitat, must be mitigated.

- (f) It is the intent of the Authority that these policies shall be in conformity with and complement the Ontario government's "Provincial Policy Statement" made under the authority of Section 3 of the Planning Act (as approved by the Lieutenant Governor in Council) as well as their attendant Implementation Guidelines.

### **1.2 Development within a One-Zone Regulatory Floodplain of a River or Stream Valley**

1) Development within the 1:100 year regulatory floodplain shall not be permitted except as allowed by specific policies elsewhere in this document. This includes:

- iv) development associated with flood hazard protection and bank stabilization works to allow for future / proposed development or an increase in development envelope or area within the 1:100 year regulatory floodplain;
- viii) underground parking.

### **1.6 Development within the allowance of the regulatory floodplain of river or stream valleys**

- (d) the natural features and/or ecological functions associated with the Conservation Authority's interests related to the conservation of land are protected, pollution is prevented and erosion hazards are adequately addressed.

### **2.7 General Provisions**

- c) Matters related to the conservation of land shall be addressed such that a net environmental gain shall be achieved associated with on-site natural heritage features (wooded areas, riparian zones, wildlife habitat, etc.).
- (d) No permission in this section may result in the harmful alteration, destruction or disturbance to fish habitat without the approval of the Department of Fisheries and Oceans having first been obtained.

### Analysis

The proposal is for redevelopment which would allow for the underground garage to be developed 10 metres from the NHWM of the Rideau River. It is our understanding from city staff that the required parking spaces to support the proposed number of units is 34 + 11 visitor = 45 spaces in total. 54 spaces are provided and the proponents are further proposing to remove the 11 visitor parking space requirement.

The 2005 Provincial Policy Statement gives the following direction with regards to intensification and redevelopment:

**1.1.3.3** *Intensification and redevelopment* shall be directed in accordance with the policies of Section 2: Wise Use and Management of Resources...

**2.1.1** Natural features and areas shall be protected for the long term.

**2.1.2** The diversity and connectivity of natural features in an area, and the long-term *ecological function* and biodiversity of *natural heritage systems*, should be maintained, restored or, where possible, improved, recognizing linkages between and among *natural heritage features and areas, surface water features and ground water features*.

**2.1.5** *Development and site alteration* shall not be permitted in *fish habitat* except in accordance with *provincial and federal requirements*.

**2.1.6** *Development and site alteration* shall not be permitted on *adjacent lands* to the *natural heritage features and areas* identified in policies 2.1.3, 2.1.4 and 2.1.5 unless the *ecological function* of the *adjacent lands* has been evaluated and it has been demonstrated that there will be no *negative impacts* on the natural features or on their *ecological functions*.

Natural Heritage Features and Areas includes fish habitat in their definition.

Conclusion

While the Conservation Partners agree that some setback relief can be provided for the redevelopment of this site, we **cannot support** the proposal in its current form for the following reasons:

- The proposal is significantly less than the minimum performance standard, and is directly adjacent to fish habitat.
- A larger setback would allow for the same unit intensification without same encroachment.
- The proposal is further encroaches than the adjacent buildings
- No justification has been provided for the additional parking requested
- Does not support the function of the natural corridor of Rideau River.
- The Planning Rational relies heavily on the submitted EIS and Fish Report which have not been deemed acceptable by RVCA technical staff.
- The proposal sets an unfavourable precedent for future development adjacent the Rideau River corridor in the downtown area of Ottawa.
- The proposal does not meet the intention of the policies contained in the 2005 Provincial Policy Statement, nor those in the Official Plan.

Please note that attempts have been made by the RVCA to discuss this matter with proponents, however no contact has been achieved. Please keep us informed regarding the status of these applications. Please contact me at ext. 1137 if you have any questions.

Yours truly,



Jocelyn Chandler, M.Pl., RPP, MCIP  
Planner, Planning Dept. (RVCA)

Attachments: RVCA technical memo (Fisheries), dated May 26, 2011.  
RVCA technical memo (Geotechnical), dated May 28, 2011.

Cc: Jim Burghout, agent Claridge Homes  
Mike Cunningham, Golder Associates  
Glen Packman, G.A. Packman and Associates  
Bernie Muncaster, Muncaster Environmental Planning  
Greg MacDonald, Novatech.