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| **Ontario Land Tribunal** |
| Tribunal ontarien de l’aménagement du territoire |

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| **ISSUE DATE:**  | August 18, 2023 | **CASE NO(S).:** | OLT-22-004516 |

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| **PROCEEDING COMMENCED UNDER** subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended |
| Applicant/Appellant: | 280 Laurier Holdings Inc |
| Subject: | Zoning By-law |
| Description: | To permit a low-rise, three-storey addition to an existing mid-rise apartment building |
| Reference Number: | ACS2022-PIE-PS-0093 |
| Property Address: | 280 Laurier Avenue East |
| Municipality: | City of Ottawa |
| OLT Case No.: | OLT-22-004516 |
| OLT Lead Case No.: | OLT-22-004516 |
| OLT Case Name: | 280 Laurier Holdings Inc. v. Ottawa (City) |

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| **Heard:** | April 20-21, 2023 via video hearing |

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| **APPEARANCES:** |  |
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| **Parties** | **Counsel** |
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| 280 Laurier Holdings Inc. (“Appellant/Applicant”) | Michael Polowin and Alice Mihailescu |
|  |  |
| City of Ottawa (“City”) | Timothy Marc |

**DECISION DELIVERED BY N. EISAZADEH AND ROBERT ACKERMAN AND ORDER OF THE TRIBUNAL**

[Link to Final Order](#Order)

**INTRODUCTION**

1. The Appellant, 280 Laurier Holdings Inc. (“Applicant”), is appealing the decision of the City of Ottawa (“City”), in respect of one of the conditions imposed on the approval of By-law No. 2022-291, which amends the City’s Zoning By-law No. 2008-250 (“ZBLA”). The Appellant had made an application for the ZBLA in which it sought site-specific variances to permit the construction of a three-storey residential addition along the east face of the existing mid-rise residential rental building on the property municipally known as 280 Laurier Avenue, in Ottawa, Ontario (“Subject Property”).
2. The sole condition that is the subject of this Appeal, which was recommended by the City’s Planning Committee (“Committee”) and subsequently passed by Council on motion, requires that the garbage/waste storage area (“Waste Storage”) must be located within the principal building (the “Condition”). Significantly, City Planning Staff (“Staff”) recommendedthe initial application for approval which included a fully enclosed accessory waste building in the side yard. Staff were not supportive of the Committee’s recommendation or Council’s approval with the Condition attached. Notwithstanding the view of Staff, the City’s position is that the Condition must be maintained, while the Applicant is seeking to have the Condition removed.
3. For the reasons that follow, the Tribunal determines that this Appeal should be allowed and the ZBLA approved, however with the removal of the subject Condition from the ZBLA.

**BACKGROUND AND SITE CONTEXT**

1. The Subject Property is a corner lot, located on the southeast corner of Laurier Avenue and Sweetland Avenue in the Sandy Hill neighbourhood of Ottawa. It is in a “15-minute” neighbourhood, is within walking distance to the downtown area and is near two major arterial roads being, Rideau Street and King Edward Avenue. The property is also near the University of Ottawa as well as transit stations providing access to other schools and amenities.
2. The Subject Property is in an area characterized by a broad mix of uses and built forms, including residential and mixed-use, as well as low-rise, mid-rise, and high-rise buildings. The abutting buildings south of the Subject Property, located along Sweetland Avenue, are within a Heritage Conservation District; however, the Subject Property itself, is not. Currently, the Subject Property is improved with a mid-rise six storey residential apartment building. The principal entrance is along Laurier Avenue, with steps leading up to the door. The Waste Storage is presently located outdoors, behind a fence, and is unenclosed.

**PROPOSED AMENDMENTS**

1. The Condition at issue in this Appeal is Condition (e) in the ZBLA, which relates to the approved site-specific ZBLA application proposing a three-storey residential addition to the existing residential rental building. The ZBLA was filed as Tab 21 in Exhibit 1, and provides that the City’s Zoning By-law is amended by rezoning the Subject property from R4UD(480) to R4UD(2807) and grants the relief, as set out below, from the performance standards under the existing R4-UD zoning. These are listed as Added Exceptions to the Urban Exception Provisions of By-law No. 2008-250. The Added Exception Provisions are:
	1. To provide no vehicular parking whereas 26 spaces are required;
	2. A minimum rear yard area of 180 square metres (“m2”), whereas 223.86 m2 is required;
	3. A minimum rear yard setback of 6.40 metres (“m”), whereas 8.0 m is required;
	4. A minimum setback of an accessory structure from a side lot line abutting a street along Sweetland Avenue of 0.6 m, whereas 1.2 m is required;
	5. Despite Section 143, the garbage storage area must be located within the principal building.
2. The Applicant submits that the proposed development would ideally include an enclosed accessory building for Waste Storage in the rear yard, with service access for collection to be provided from Sweetland Avenue. The relief relating to minimum setback of the accessory structure in the ZBLA was required to facilitate this. However, regardless of where the Waste Storage would ultimately be located, whether within the principal building or the enclosed accessory building, the same four site-specific variances are required and would not change. This is because the Parties agreed that the rear yard accessory structure would be converted for use as bicycle storage, in the event the Tribunal determined that Waste Storage is to be located within the principal building.
3. In other words, the outcome of this Decision, related to the specific Condition that is the subject of this Appeal, would have no effect on the ZBLA application as set out above, which was approved by the City.

**ISSUES AND LEGISLATIVE TEST**

1. The sole issue before the Tribunal is whether the subject Condition in the ZBLA should be removed, which in turn necessitates a determination of where the Waste Storage should be located: in the principle building or in the accessory building.
2. In essence, the Tribunal must be satisfied that the Condition respecting the location of the Waste Storage constitutes good planning and is in the public interest. In making its decision, regard must be had for matters of Provincial interest under s. 2 of the Act and for the decision of the City, as well as information considered by it, in accordance with s. 2.1(1). The Condition must be consistent with the Provincial Policy Statement (“PPS”) and must conform with applicable plans and policies, namely, the City’s current Official Plan (“OP”, approved by the Minister of Municipal Affairs and Housing on November 4, 2022), the Central and East Downtown Secondary Plan (“SP”, as adopted into the City’s current OP), and the Urban Design Guidelines for Low-Rise Infill Housing (“UDG”).

**THE HEARING, ANALYSIS, AND FINDINGS**

1. The following documentary evidence was filed, reviewed, and considered for the purposes of this Appeal:

Exhibit 1 - Joint Document Book of the Parties;

Exhibit 2 - Waste Management Plan for 280 Laurier East;

Exhibit 3 - Additional Document Book of Dennis Jacobs;

Exhibit 4 - Revised Site Plan dated October 20, 2022.

The Tribunal also had the Municipal Record available to it as forwarded by the City, containing all the information and documentation which was before the Planning Committee and Council when the applications were received, considered, and decided.

1. The Applicant called Lisa Dalla Rosa for her expert opinion in land use planning as well as City Staff Planner, Jessica Button, under summons. Both were qualified by the Tribunal on consent to provide opinion evidence on land use planning matters in general and respecting the issues in this Appeal in particular. The City called its own expert witness, Dennis Jacobs, also as an expert in land use planning. Mr. Jacobs was also qualified by the Tribunal on consent to provide opinion evidence on land use planning matters in general and respecting the issues in this Appeal in particular.
2. No other persons requested participant or party status for the purposes of this Appeal.
3. Significantly, the Parties are agreed that there is no legislative requirement for the Waste Storage be limited to the principal building in this case. While s. 143 of the City’s ZBL 2008-250 Consolidation stipulates that buildings which contain between two to five units (being developments without a site plan requirement) are to have Waste Storage within the principal building, that is not the case here as the proposed development exceeds 5 units (with a total of 58 units). Rather, it appears the catalyst for the Committee’s recommendation and Council’s motion stems from community concerns.
4. At the outset, Mr. Polowin, Counsel for the Appellant, and Mr. Marc, Counsel for the City, agreed that garbage collection and disposal at the Subject Property has historically been problematic with concerns having been raised by members of the community. However, the Applicant is of the view that fully enclosed Waste Storage is responsive to public concerns and conforms to the necessary legislative scheme, while the City disagrees. Indeed, as reflected in the Ward Councillor’s comments within the Staff Report to the Planning Committee and Council, it was the high volume of calls related to garbage complaints, the impact on City resources and the importance of implementing mitigation measures at the planning level which were cited in support of moving the Waste Storage into the principal building. At the Hearing before this Tribunal, however, no evidence was led on these factors by the City. Instead, over the course of the Hearing, fourkey themes emerged around which the balance of this Decision is organized; those four themes are: (i) access; (ii) loss of units and/or substitution of suboptimal units, (iii) greenspace/visual impact and (iv) noise.

**Overview of The Two Waste Storage Options:**

1. Ms. Dalla Rosa provided evidence on the location of the current Waste Storage area as well as the two possible options in issue. Currently, the Waste Storage is located outdoors behind a fence along the eastern periphery of the building and is unenclosed.
2. In describing the Applicant’s proposal, which for ease of reference shall be referred to as the “External Enclosed Option”, Ms. Dalla Rosa stated that the Waste Storage would be within a fully enclosed accessory building in the rear yard with service access for collection to be provided from Sweetland Avenue. Resident access from both the existing building and the new extension would occur outdoors, from the internal courtyard. Ms. Dalla Rosa testified that the External Enclosed Option would be equipped with self-closing roll-up doors facing towards Sweetland Avenue allowing efficient access to roll out the garbage bins to the street for garbage pick-up by the City. It would also be equipped with power, lights, ventilation, key fob access and a security camera system for monitoring. Additionally, as reflected in the Waste Management Plan (Exhibit 2) there would be fencing to ensure privacy as well as control and security respecting amenity space. This proposal would have 24 outdoor bicycle-parking spaces in the rear yard adjacent to the external Waste Storage structure, with additional indoor bicycle parking in the basement of the principal building.
3. The Condition imposed by Council and which is the subject of this Appeal, requires that the Waste Storage be moved and located within the proposed building extension. For ease of reference this Waste Storage option shall be referred to as the “Internal Option”. Ms. Dalla Rosa stated that, in the case of the Internal Option, theexternal enclosed accessory structure would remain, but would be converted to an indoor bicycle-parking area. The 24 additional outdoor bicycle-parking spaces would remain in both proposals. However, with the Internal Option, reconfiguration of various other aspects of the new proposed building would be required. These are described below.
4. First, due to the grading of the building, an internal Waste Storage area would not be at street level and would be on the second level. The second level location would require the introduction of a lift to facilitate the movement of garbage containers from the Waste Storage facility to ground level and then to the curb at Sweetland Avenue for garbage collection pick-up by the City.
5. Second, Ms. Dalla Rosa stated that a reconfiguration of the floor plans would be required to ensure a sufficient turning radius for the garbage containers in the vestibule leading to the Waste Storage room, which would in turn result in a reduction in the size of two of the barrier-free units in the addition proposed.
6. Third, the reconfiguration of the floor plans necessitated by the Internal Option would result in either the loss of one unit altogether, or the relocation of that unit to the basement, which would result in a “sub-optimal unit”. The Parties’ opposing arguments on the implications of these two proposed options follows under the four emerging themes aforementioned.

**Access:**

1. The City submits that there is a Provincial interest in the accessibility of persons with disabilities to all facilities to which the *Planning Act*, R.S.O. 1990, c. P.13, s. 2(h.1) (“*Act*”) applies, including Waste Storage, particularly given the Provincial Interest in the minimization of waste set out under s. 2(g) of the *Act*. In support of its position, the City relies on the evidence of Mr. Jacobs who opined that persons with disabilities will have little to no access to the External Enclosed Option in bad weather, for instance on days when it has snowed. On cross-examination, Ms. Dalla Rosa agreed that in bad weather it was possible that the External Enclosed Option might not be as easily accessible by wheelchair until fallen snow was cleared.
2. The Tribunal accepts that inclement weather poses uncomfortable and/or more difficult access issues for all residents when Waste Storage bins are located outdoors, perhaps even more so for persons with disabilities. The Internal Option presents less exposure to the elements overall for all residents of each of the two buildings and, in fact, may very well be more convenient for the purposes of garbage disposal. However, the Tribunal finds there was insufficient evidence to establish that weather alone would restrict access completely to the External Enclosed Option for the Waste Storage such as to raise legitimate concern under s. 2(h.1) of the *Act*.
3. Mr. Polowin argues that the City’s submission is based on assumptions not substantiated in evidence, that during snowy weather, the pathways leading to the External Enclosed Option for the Waste Storage would not be adequately maintained to ensure access by building residents. He points out that, as is the case with any pathway during snowfalls in Canada, it is to be expected that there may be some reasonable temporary delays in pathway clearing. However, this does not lead to the inference that the particular pathway (in this case to the External Enclosed Option) would be restricted entirely or for prolonged periods of time such that waste could not be appropriately disposed of by residents. Mr. Polowin submits that, to accept the proposition that an outdoor Waste Storage is contrary to s. 2(h.1) of the *Act* due to the possibility that inclement weather may limit access by persons with disabilities, would be to impugn every other residential building with an outdoor Waste Storage area. The Tribunal agrees.
4. Mr. Polowin submits that the Provincial interest in accessibility for persons with disabilities would favour the External Enclosed Option because, as Ms. Dalla Rosa testified, the Internal Option would require the introduction of a lift in order to facilitate the movement of the garbage bins outdoors for servicing by the City. To ensure a sufficient turning radius in the vestibule leading to the Waste Storage room in the Internal Option, a reduction in the size of two of the barrier-free units would be required. The Tribunal accepts Mr. Polowin’s submission that, in the balancing of interests under s. 2(h.1), the interest in having access to adequately sized barrier free units for persons with disabilities, outweighs the interest in ensuring immediate access to an External Waste Storage facility for persons with disabilities during periods of inclement or snowy weather.
5. A further basis for concern respecting the Condition, was raised by Ms. Dalla Rosa’s evidence that the introduction of the lift would necessitate an increase in construction, operation, and maintenance costs. These costs would in turn result in increased rental prices which would work against the overarching Provincial policies and plans centered around increasing affordable housing. Costs, which ultimately roll over to residents of a rental building, should be kept down where there are reasonable ways to do so, such as in this instance, by locating the Waste Storage in the External Enclosed Option.
6. An argument raised by counsel for the City, suggests that with less convenient access to an external enclosed Waste Storage building, residents are less likely to follow protocol and properly dispose of their waste. It was the opinion of Mr. Jacobsthat a circuitous route to the Waste Storage building may cause residents to dispose of garbage in other, non-conforming ways. However, the Tribunal agrees with Mr. Polowin’s submission that this is conjecture and speculation with no evidentiary basis. The Tribunal further agrees, as stated by Ms. Button in her evidence, that it’s reasonable to conclude that internalizing Waste Storage to the inside courtyard of the residential building incentivizes resident accountability to dispose of their waste appropriately so as not to litter their own amenity space.

**Loss of a Unit or Suboptimal Units:**

1. Ms. Dalla Rosa testified that the reconfiguration of floor plans to accommodate the Internal Option for Waste Storage would result in either the loss of one residential unit, or its relocation as a sub-optimal unit in the basement. The Applicant submits that this result is contrary to policies of the PPS and the City’s OP which are intended to promote intensification and development, while the Condition prioritizes internal Waste Storage over the number of viable residential units. In response, Mr. Marc argues that intensification goals are not compromised by the simple fact that regardless of where the Waste Storage is located, the same level of intensification is achieved. In support of this position, he relies on the evidence of Ms. Dalla Rosa who agreed on cross-examination that the relocation of one of the units to the basement to accommodate the Internal Option, would not change the total number of 58 units in the two buildings.
2. While it had been contemplated during the Applicant’s planning process that the loss of one unit may be necessary, the Tribunal accepts that the Applicant has successfully formulated a way in which the total number of units would not be compromised to accommodate the Internal Option for Waste Storage. However, the result of relocating one unit to the basement presents other challenges that must be weighed and considered in the balancing of interests and determination of what constitutes good land-use planning in this matter.
3. The Tribunal is mindful of the fact that it was the uncontested evidence of Ms. Dalla Rosa that the relocated unit in the basement would be less desirable to tenants. It would be a forced unit converted from the basement bicycle parking space, resulting in a lone unit on the basement level, smaller in size than the rest of the units, and with less access to natural light due to the significantly reduced basement window size that only just meets the minimum allowable standards. The Tribunal accepts that this is not a “like-for-like” comparable when weighing the impact of the Internal Option for Waste Storage on the number of units and that, ultimately, it impacts the development’s ability to contribute to the needs of the population and enhance accessibility by directly impacting the size and form of residential units.

**Greenspace/Visual Impact:**

1. The City relied on the evidence of Mr. Jacobs who stated that because the Subject Property is a corner lot, it is much more exposed from multiple street views. Mr. Jacobs stated that even though the External Enclosed Option is proposed to be in the rear yard of the property, it is effectively located near the street and much more visible than would be the case in the rear yard of a non-corner lot. While agreeing that the plans and accessory structure would be located in the same place and could look exactly the same in either of the two Waste Storage options, Mr. Jacobs stated that the door to the accessory structure would not need to be as large if it were being used for bicycle storage. On this basis, it is submitted by Mr. Marc that the visual impact on the streetscape would be more subtle with the Internal Option for the Waste Storage.
2. The Tribunal accepts, as did Mr. Jacobs on cross-examination, that any change in the design of the accessory structure to accommodate bike rather than waste storage, is speculative, and that the design aspects of the accessory structure, inclusive of garage door, were approved by Council. In any event and as discussed further below, the Tribunal finds that the design of the accessory structure is in line with the relevant policies and plans respecting visual impact and streetscapes. Accordingly, the issue as to whether the door should be larger or smaller, is moot.
3. A further concern surrounding visual impact concerns the amount of greenspace and hard surface, versus soft landscaping that would be possible with each of the two options. Ms. Dalla Rosa testified that in the case of the External Enclosed Option, as the garbage bins would be rolled directly out from the garage doors of the accessory structure fronting Sweetland Avenue, there is a requirement for increased hard surface in that area for the bins to roll on. Accordingly, some greenspace would be lost to accommodate the hard surface. The Tribunal finds the amount of lost greenspace to be minimal, especially when compared to the Internal Option, in which the garbage bins nevertheless must be rolled out to the same location fronting Sweetland Avenue on garbage pick-up day, but over a greater distance. In the opinion of Ms. Dalla Rosa, the amount of hard surface required, leading from the Internal Option within the principal building to the Street is greater than would be required from the External Enclosed Option. In the result, the area available for soft landscaping would be reduced. The Tribunal accepts Ms. Dalla Rosa’s evidence, and agrees with Mr. Polowin’s submission in this regard, while noting that with approval of the External Enclosed Option, soft landscaping will be addressed and finalized at the site plan stage.
4. The City also raised concerns regarding the Urban Design Guidelines (“UDG”) and the goal of minimizing the visibility of garbage from the street. Mr. Jacobs opined that s. 6.1 of the UDG requires the integration and screening of service elements, which he interpreted as requiring Waste Storage to be internalized by default. He opined that internalizing the Waste Storage also furthers policy 3 under s. 4.6.5 of the OP, which speaks to minimizing conflict between vehicles and pedestrians, and improving the attractiveness of the public realm by internalizing all servicing and loading areas, which in his view, includes Waste Storage. This concern was raised during cross-examination of Ms. Dalla Rosa, when Mr. Marc questioned whether waste would be visible from the street when the doors of the External Waste Facility were opened, contrary to the UDG.
5. In response, Ms. Dalla Rosa pointed out, and the Tribunal accepts, that the garage doors fronting Sweetland Avenue are not intended to be used by residents disposing of their garbage. Rather, residents would have key-fob access through an alternate door located internally to the courtyard and not visible from the street. The garage doors facing Sweetland Avenue would therefore only be opened on garbage collection day in order to move the collection bins out to the curb and subsequently return them to the External Waste Storage. Additionally, Mr. Jacobs agreed on cross-examination that the City garbage pickup would be from the same location at the curb of Sweetland Avenue regardless of where the Waste Storage is situated and that it was not possible at the Subject Property to internalize servicing and loading. The exposure of internal waste to street views would therefore be the same as with the Internal Option, since both options require garbage to be placed out at Sweetland Avenue for collection by the City.
6. The final concern raised respecting greenspace and visual impact regards the buffering between the External Enclosed Option for Waste Storage and the neighbouring heritage property on Sweetland Avenue. Currently, there is a hedge between the proposed External Enclosed Option for Waste Storage and the neighbouring property. Mr. Jacobs stated that in Ms. Button’s planning report she relied on the existing hedge as an additional landscaping buffer with the abutting residential property. However, Mr. Jacobs stated that the hedge is actually located on the neighbouring property and cannot be relied upon through site plan approval to continue in place. Mr. Jacobs is of the view that as the hedge is not a reliable buffer, the External Enclosed Option for Waste Storage does not comply with the policy direction under 4.7.6 (122) of the SP regarding the enhancement of the proposal including accessory structure.
7. The Tribunal agrees that the hedge, being located on and under the control of the owner of a neighbouring property, cannot be relied upon to be continued in place as a buffer. However, the Tribunal also notes that the accessory structure itself, has already been approved by Council and will be located in the same place regardless of whether it will house bicycles or waste. Additionally, whether Waste Storage is located in the Internal Option or the External Enclosed Option, the waste would still have to be rolled out onto the same spot on Sweetland Avenue on garbage collection days. If the concern over an unreliable buffer is to be taken as a legitimate concern to the visual impact of the structure and the presence of waste on the streetscape on garbage collection days, the same concern would exist as well with the Internal Option. Put differently, the accessory structure would remain situated in the same location with the same design as a structure for bicycles, and the waste itself would still be visible in the same location on Sweetland Avenue on garbage pick up days with the Internal Option. The City seems to accept that an unreliable hedge buffer would not pose an issue in the latter circumstance, and so the Tribunal accepts it is not sufficient reason to weigh against the accessory structure housing waste rather than bicycles.

**Noise:**

1. The Tribunal was referred to paragraph 120 under s. 4.7.6 of the City’s SP, which aims to minimize a development’s intrusion on the sunlight, air and other such aspects enjoyed by existing adjacent properties. When considering the two options for Waste Storage, Mr. Jacobs testified that the External Enclosed Option for the waste management facility would involve larger equipment that would require the crossing and use of the sidewalk which could result in more noise, particularly with such things as the rolling out and stacking of bins. Because of the activity associated with its use as Waste Storage, Mr. Jacobs opined that the Exterior Enclosed Option would have a greater negative impact on adjacent properties than would be posed by the same accessory structure used for bicycle storage.
2. In contrast, it was Ms. Dalla Rosa’s evidence that the Internal Option presented more intrusion on adjacent properties given that the garbage bins would have to be rolled out a longer distance from the internal Waste Storage location from the principal building to the sidewalk. Ms. Dalla Rosa stated she was not aware as to whether the operation of the lift when moving the bins to ground level, then returning the empty bins to the Internal Waste Storage Facility, would create additional noise issues, or have any further negative impact.
3. The Tribunal notes that on cross-examination, Mr. Jacobs conceded that there was no actual evidence that the level of noise would be greater with the External Enclosed Waste Option over the Internal Option. Mr. Jacobs further agreed that the only evidence regarding noise was the possibility raised by Ms. Dalla Rosa arising from the introduction of the lift itself. In either event, the Tribunal notes that none of the experts who provided evidence during the Hearing were qualified in the area of assessment of noise levels and that in either of the two Waste Storage Options, there will inevitably be some level of noise associated with the rolling out of bins on garbage day. The Tribunal is not satisfied that there is an issue regarding excessive noise levels in the case of either Waste Storage option sufficient to give preference to one of the options over the other.
4. In balancing all of the factors, and in particular the four themes developed during the Hearing of the evidence, the Tribunal concludes that the Internal Option creates more issues than it resolves and does not represent good land use planning. An interior garbage room, in this particular case, would result in the increased construction, operational and maintenance costs of the exterior lift, which costs would be passed on to the tenants in the form of increased rental rates; the potential lost opportunity for a greater amount of green landscaping in the area required to facilitate the movement of internal bins to the garbage pick-up area; and most significantly, the creation of smaller barrier-free units and a sub-optimal lone residential basement unit. Notwithstanding these findings, in the interests of completeness and in line with the public mandate of this Tribunal, this Tribunal will summarize the evidence that the ZBLA, with the removal of the Condition, will nevertheless have regard for matters of Provincial interest, will be consistent with the PPS and will conform with the City’s OP and SP.

**Provincial Interests and the PPS:**

1. The Tribunal accepts the evidence of Ms. Dalla Rosa, and Ms. Button who gave her evidence under summons, that the removal of the Condition has sufficient regard to matters of Provincial interest, and in particular, the orderly development of safe and healthy communities, accessibility for persons with disabilities, adequate provision of a full range of affordable housing and the promotion of built form that is well designed.
2. The Tribunal further accepts the evidence of Ms. Dalla Rosa and Ms. Button that the removal of the Condition to allow the External Enclosed Option for Waste Storage is consistent with the PPS. In particular, PPS policies: 1.1.1(e) by reducing the operation and maintenance costs of the building that would otherwise be required through the introduction of the lift with the Internal Option for Waste Storage, and avoiding the reduction in the size of the two barrier-free units that would otherwise have also been required; 1.1.1(f) by improving accessibility for persons with disabilities by focusing on the creation of larger barrier-free units; 1.1.3.4, 1.4.3(f), and 1.7.1(d) by having waste in a dedicated enclosed building with power, lights, self-closing doors, proper ventilation and access controls; and 1.1.3.2(a) regarding the effective use of land and resources by locating the waste in an external accessory building.

**The City’s Official Plan and Secondary Plan:**

1. While the Tribunal heard evidence regarding conformity with both the City’s former official plan, 2003, and the current OP, the analysis within this Decision will deal strictly with the City OP currently in effect and applicable.
2. The Parties have agreed that the proposed development, other than the subject Condition, meets the various intensification policies in the OP. The Tribunal accepts that there are no specific policies in the OP identified by any of the qualified expert witnesses relating to waste management specifically, that would be applicable in this particular case. The Tribunal further accepts the evidence of Ms. Button that the previously existing zoning on the Subject Property did not mandate Waste Storage to be located in a principal building.
3. As it relates to the removal of the subject Condition, the Tribunal accepts the evidence of Ms. Dalla Rosa that policy 1 under s. 4.2.1 furthers the objective of a diverse range of flexible and context-sensitive housing by avoiding the increased operational and maintenance costs of the introduction of a lift by locating the Waste Storage external to the building on street level. This in turn helps to keep rental costs lower for residents and contributes to affordable housing. The Tribunal also accepts, as set out by Ms. Button, that s. 4.11, intended to minimize impacts to surrounding properties, is advanced by enclosing and relocating Waste Storage away from Laurier Avenue and providing for new amenity space for residents. The reduced setbacks will also minimize opportunities for any storage outside of the structure while also maximizing opportunities for landscaping and amenity space within the site.
4. The Tribunal further accepts that allowing the Condition to remain would in fact be contrary to s. 2.2.1(i) of the OP. Locating the Waste Storage facility within the principal building would impact the development’s ability to contribute to the needs of the population and enhance accessibility by directly impacting the size and form of residential units.
5. The policies of the former secondary plan were entirely adopted as part of the City’s current OP, by way of the Central and East Downtown Secondary Plan (“SP”). The Tribunal accepts the uncontroverted evidence of Ms. Dalla Rosa, as supported by the evidence of Ms. Button, that the External Enclosed Option for the Waste Storage conforms to the SP. Specifically policy 120 under s. 4.7.6, speaking to ensuring the scale, form, proportion, and spatial arrangement of the new development causing minimal intrusion, is advanced. This is because the evidence reflects that the External Enclosed Option has less impact on the surrounding neighbourhood than the Internal Option, which requires an external lift and the garbage bins to be moved a greater distance to the curbs on Sweetland Avenue on pick-up day. Additionally, the reconfiguration of the design and floorplans of the proposal, in order to accommodate the internal Waste Storage, results in more negative impacts by way of smaller barrier-free units and the loss, or sub-optimal relocation, of one of the units.

**Urban Design Guidelines for Low-Rise Infill Housing:**

1. The Parties’ respective experts agreed that the applicable UDGs are not a checklist, but rather represent factors to be considered in achieving the objectives of the guidelines which include enhancing streetscapes and achieving a good fit of a new development into an existing neighbourhood.
2. The Tribunal accepts that the External Enclosed Option for Waste Storage adequately addresses guideline 6.1 which recommends concealing garbage and recycling storage as it is proposed to be a fully enclosed structure that would fully conceal the waste and recycling bins from the public and landscape, other than on City garbage pickup days. Additionally, the proposal is designed to ensure proper ventilation and restricted access *via* key-fob, limited to residents only, and to the exclusion of passers-by.
3. The Tribunal further accepts the Applicant’s submission that Guideline 6.2 is adequately addressed. The evidence in this case supports the position that an indoor Waste Storage facility would not be the preferable solution, given the requirement of a costly lift and the reconfiguration of floor plans which would negatively impact accessibility and affordable housing. The subject Condition would also reduce the opportunity for green landscaping by requiring an increased paved area to facilitate the movement of the garbage bins over a longer distance.

**Zoning and Good Land Use Planning**

1. The Tribunal accepts the evidence of Ms. Dalla Rosa and Ms. Button that the development proposal, inclusive of the External Enclosed Option for Waste Storage, constitutes appropriate land use planning. It achieves efficient development and effective land use which promotes accessibility and affordable housing in a way that is not achieved with the Internal Option for Waste Storage; all while mitigating the risk to public health and safety through a fully enclosed, ventilated and secured accessory structure.

**Regard for the Decision of the Municipal Council:**

1. The decision of City Council and the information considered by it has been given due regard by this Tribunal. Neither Staff, the Applicant, nor its legal Counsel, were afforded the opportunity to speak before Council when the motion imposing Condition (e) was passed requiring the Waste Storage to be located in the principal building. This Tribunal has had the benefit of receiving fulsome evidence and hearing the complete submissions from both Parties on the issue in dispute and in coming to its decision.

**CONCLUSION**

1. The Tribunal was not persuaded that the Condition is a necessary requirement which constitutes good planning. The Tribunal finds that removal of the Condition better satisfies the requisite legislative tests, is representative of good planning and is in the public interest.
2. Section 2 of the Act sets out matters of Provincial interest to which the Tribunal must have regard. The Tribunal has done so and finds that the ZBLA, with the removal of the subject Condition, has due regard for the relevant matters in s. 2 as set out in this Decision. The Tribunal is also satisfied that the ZBLA, with the removal of the subject Condition, is consistent with the PPS, conforms with the City’s OP and SP, and provides for suitable amendments within the framework of the UDG.

**ORDER**

1. **THE TRIBUNAL ORDERS** that the Appeal is allowed and the Tribunal directs the City of Ottawa to amend By-law No. 2022-291 by removal Condition (e) which states: *“[D]espite Section 143, the garbage storage area must be located within the principal building.*” The Tribunal authorizes the municipal clerk of the City of Ottawa to assign a number to this by-law for record keeping purposes.

*“N. Eisazadeh”*

N. Eisazadeh

MEMBER

*“Robert G. Ackerman”*

robert g. ackerman

MEMBER

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.