

ISSUE DATE:

Aug. 22, 2005

DECISION/ORDER NO:

2227



023-05

PL050443

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

05-391

Evelyn Myrie has appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, against Zoning By-law 05-082 of the City of Hamilton
OMB File No.R050087

APPEARANCES:

Parties

1621971 Ontario Inc.

City of Hamilton

Counsel

M. Rudolph

A. Zuidema

MEMORANDUM OF ORAL DECISION DELIVERED BY J.P. ATCHESON AND G.C. O'CONNOR ON AUGUST 16, 2005 AND ORDER OF THE BOARD

This is a hearing in the matter of an appeal of Evelyn Myrie from a decision of the City of Hamilton to enact a Zoning By-law Amendment (By-law 05-082) which would permit a 6 bay coin operated car wash on a property known as 902 Main Street East in the City of Hamilton.

At the commencement of the hearing the Board was advised that the appellant had agreed to a settlement of the issues on the understanding that the proposed By-law be amended to include increased setbacks for landscaping purposes along the Main Street East frontage and along the frontage of Prospect Avenue South on the west side of the property. These changes are included in a revised Zoning By-law found at Exhibit 3 and more particularly the addition of clauses (d) and (h).

The appellant did not attend the hearing. However, found at Exhibit 2 is an e-mail advising of her concurrence with the revised By-law.

The Board heard from a Mr. J. Zajac, a qualified land use planner that the proposed land use By-law conforms with all the Official Plan designations currently in

place in the municipality for this site and that the revised By-law represents good planning within the context of the City of Hamilton. He also advised the Board that the changes contained in the revised By-law were the ones agreed to by the appellant.

The City accepts the evidence of Mr. Zajac and endorses the adoption of the revised By-law found at Exhibit 3.

The Board, after reviewing the evidence and the submissions made, is satisfied that the revised By-law represents good planning.

The Board Orders that the appeal against By-law 05-082 of the City of Hamilton is allowed in part and By-law 05-082 is amended as set out in Attachment 1 to this Order. In all other respects the Board Orders that the appeal is dismissed.

The **BOARD** so **ORDERS**.

"J.P. Atcheson"

J.P. ATCHESON
MEMBER

"G.C. O'Connor"

G.C. O'Connor
MEMBER

Authority: Item 17, Planning and Economic
Development Committee
Report 05-008 (PD05068)
CM: April 13, 2005

Bill No.

CITY OF HAMILTON

BY-LAW NO. 05-082

**To Amend Zoning By-law No. 6593
Respecting Lands Located at 902 Main Street East**

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sch. C. did incorporate, as of January 1, 2001, the municipality "City of Hamilton";

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former municipality known as the "The Corporation of the City of Hamilton" and is the successor to the former regional municipality, namely, "The Regional Municipality of Hamilton-Wentworth";

AND WHEREAS the City of Hamilton Act, 1999, provides that the Zoning By-laws and Official Plans of the former area municipalities and the Official Plan of the former regional municipality continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS the Council of The Corporation of the City of Hamilton passed Zoning By-law No. 6593 (Hamilton) on the 25th day of July 1950, which by-law was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951, (File No. P.F.C. 3821);

AND WHEREAS the Council of the City of Hamilton, in adopting Section 17 of Report 05-008 of the Planning and Economic Development Committee at its meeting held on the 13th day of April, 2005, recommended that Zoning By-law No. 6593 (Hamilton), be amended as hereinafter provided;

AND WHEREAS this by-law is in conformity with the Official Plan of the Hamilton Planning Area, approved by the Minister under the Planning Act on June 1, 1982.

NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. The "H" (Community Shopping and Commercial, Etc.) District provisions, as contained in Section 14 of Zoning By-law No. 6593, the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A", are amended to the extent only of the special requirements that:

- (a) Notwithstanding Subsection 14.(1) of Zoning By-law No. 6593, the following use shall also be permitted:
 - 1) a coin-operated car wash having not more than 6 bays or stalls.
 - (b) Notwithstanding Subsection 18.(3)(iv)(a) of Zoning By-law No. 6593, a minimum setback of 4.5 metres shall be provided and maintained from the nearest boundary of a residential district;
 - (c) Notwithstanding Subsection 18.(3)(iv)(c) of Zoning By-law No. 6593, a minimum setback of 4.7 metres shall be provided and maintained from the westerly side lot line;
 - (d) Notwithstanding Subsection 18.(3)(iv)(b) of Zoning By-law No. 6593, a timber retaining wall is permitted to be located within the required 3.0 metre wide planting strip along the rear lot line adjoining a residential district;
 - (e) Subsection 18.(3)(iv)(c) of Zoning By-law No. 6593 shall not apply to a coin-operated carwash;
 - (f) A minimum 1.5 metre wide planting strip be provided and maintained along the easterly side lot line;
 - (g) Notwithstanding Subsection 14.(9)(ii) of Zoning By-law No. 6593, a minimum 5.0 metre wide planting strip be provided and maintained along the northerly front lot line adjacent to Main Street East, except for municipally approved areas used for access driveways; and,
 - (h) Notwithstanding Subsection 14.(9)(ii) of Zoning By-law No. 6593, A minimum 3.0 metre wide planting strip be provided and maintained along the westerly side lot line except for a single maximum 1.0m deep and 4.0m long vehicular turning area to facilitate access and egress from a carwash stall where a minimum 2.0 metre wide planting strip shall be provided and maintained.
2. No building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the "H" (Community Shopping and Commercial, Etc.) District provisions, subject to the special requirements referred to in section 1.
 3. By-law No. 6593 (Hamilton) is amended by adding this by-law to section 19B as Schedule S-1519.
 4. Sheet No. E-34 of the District Maps is amended by marking the lands referred in Section 1 of this by-law as S-1519.
 5. The City Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this by-law, in accordance with the Planning Act.