

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



20-111-LPAT
Exhibit 1

20-112-LPAT
Exhibit 2

ISSUE DATE: May 12, 2020

CASE NO(S): PL171264

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Fortino's Umbrella Inc.
Subject:	Application to amend Zoning By-law Nos. 87-57 and 05-200 - Neglect of the City of Hamilton to make a decision
Existing Zoning:	ZBL No. 87-57: Agricultural "A" Zone ZBL No. 05-200: Agricultural "A" Zone
Proposed Zoning:	ZBL 87-57: Residential "R3" Zone, Modified ZBL 05-200: Conservation/Hazard Lands (P5) Zone
Purpose:	To permit a future consent for four lots of single detached dwellings
Property Address/Description:	941 Old Mohawk Road
Municipality:	City of Hamilton
Municipality File No.:	ZAC-014
OMB Case No.:	PL171264
OMB File No.:	PL171264
OMB Case Name:	Fortino's Umbrella Inc. v. Hamilton (City)

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant:	Cory Giacinti
Applicant:	Fortino's Umbrella Inc.
Subject:	Consent
Property Address/Description:	941 Old Mohawk Road
Municipality:	City of Hamilton
Municipal File No.:	B42-18
OMB Case No.:	PL171264
OMB File No.:	PL190036

PROCEEDING COMMENCED UNDER subsection 53(19) of the *Planning Act*,
R.S.O. 1990, c. P.13, as amended

Appellant:	Cory Giacinti
Applicant:	Fortino's Umbrella Inc.
Subject:	Consent
Property Address/Description:	941 Old Mohawk Road
Municipality:	City of Hamilton
Municipal File No.:	B-126/18
OMB Case No.:	PL171264
OMB File No.:	PL190037

Heard: May 9 -10, 2019 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

Fortino's Umbrella Inc.

Joel Farber

City of Hamilton

Patrick MacDonald

Cory Giacinti

Self-represented

**DECISION DELIVERED BY JUSTIN DUNCAN AND ORDER OF THE
TRIBUNAL**

[1] This decision follows the hearing of appeals relating to applications filed by Fortino's Umbrella Inc. ("Applicant") with the City of Hamilton ("City") for amendments to City Zoning By-laws ("Zoning By-law Amendments") and Consent to Sever ("Consent") lands known as 941 Old Mohawk Road ("Subject Lands"). The Applicant appealed from the City's refusal to enact the requested Zoning By-law Amendments. The Applicant and the City settled their issues relating to the Zoning By-law Amendments prior to the hearing such that the Zoning By-law Amendments would facilitate the creation of three lots from the Subject Lands rather than four as originally proposed by the Applicant. Cory Giacinti appeals the approval of the Consent to sever the Subject Lands into three lots by the City's Committee of Adjustment ("COA").

[2] During a Pre-Hearing Conference held to organize the appeal relating to the Zoning By-law Amendments, the following individuals had been added as participants: Mr. Giacinti; Luanne Krywionek; Ed Krywionek; Jeff Steadman; Marilyn Steadman; Carol Piggot; Lance Piggot; Todd Jones; Estella Jones; Stew Stevenson; Kim Stala; Dave Stala; Beth Harvis; and Fred Leone. The parties agreed that these individuals should have similar status on the Consent appeals as well. As a result of Mr. Giacinti's status on the Consent appeal, and on consent of the parties, the Tribunal conferred party status on him for the purpose of all the appeals. On consent of the parties, the Tribunal also added May Wu and Peter Terrana as additional participants to the appeals.

[3] On consent of the parties, the Tribunal consolidated the appeals to be heard together as a matter of efficiency.

ISSUE

[4] The main dispute between the parties is whether it would be appropriate to sever the Subject Lands into two or three lots. The Applicant and the City take the position that three lots are appropriate while Mr. Giacinti and many of the participants take the position that no more than two lots would be appropriate at this location.

DISCUSSION, ANALYSIS AND FINDINGS

a. Preliminary Matters

[5] Two preliminary motions were raised at the outset of the hearing. Firstly, Mr. Giacinti filed a motion seeking disclosure of a report prepared by City employees for the purpose of Council's consideration of a settlement of the Zoning By-law Amendment appeal with the Applicant. Secondly, Mr. Giacinti had summonsed a City employee, Zivko Panovski, to testify at the hearing. The other parties moved to set aside the summons on the basis that it had not been served properly.

[6] With regard to the motion for disclosure, Mr. Giacinti submitted that any reports

or studies provided to Council in support of the settlement of the Zoning By-law Amendments appeal should be disclosed. He explained that he had sought such documents through a freedom of information request and that a 59-page "Confidential Report" had been identified by City staff but had not been released through that process. Mr. Giacinti submitted that this document should be disclosed on the basis that the document will provide the public, the Tribunal and the parties with a better understanding of the basis for approval of the development by Council and whether Council had failed to require certain outstanding information be provided by the Applicant.

[7] The City submitted that the report at issue constituted confidential advice to the City. It was further submitted that Mr. Giacinti does not require this document to respond to the revised applications of the Applicant at issue in the appeals. The City stressed that Mr. Giacinti has the right under s. 34(10) of the *Planning Act* ("Act") to review the original application materials and he had recently been able to do that. Furthermore, the City submitted that three types of privilege attach to the report Mr. Giacinti seeks disclosure of: settlement privilege, litigation privilege and solicitor-client privilege. The City explained that the report was prepared for the purpose of reaching a settlement of the Zoning By-law Amendment appeal. The City also explained that the report was prepared by the City's Legal Services Department and that solicitor-client privilege attaches to the document as a result. Finally, the City submitted that the dominant purpose of the document is preparation for litigation with litigation privilege attaching as a result. The City submitted that there are no overriding public interests that would apply to override any of these privileges that attach to the report.

[8] On the basis of the submissions of the parties, the Tribunal dismissed Mr. Giacinti's motion for disclosure. The Tribunal is in agreement with the City's position that various privileges attach to the report sought. There is no dispute that the report was prepared as confidential advice to Council in the course of litigation. It would not be in the public interest for this Tribunal to order that the City be required to disclose the contents of its settlement discussions and anything it may have considered in reaching a settlement. It has long been a standing principle that courts and tribunals will promote

settlement and, to do so, will not require parties to publicly disclose the content of discussions or individual reasons for their decision to settle litigation.

[9] Furthermore, the necessity of the report Mr. Giacinti seeks is questionable. Evidence will be tendered in support of the applications and any inadequacies contained in this evidence can be raised. Mr. Giacinti will have the ability to consider the evidence of the other parties, counter it and cross-examine on it in the course of the hearing.

[10] With regard to the summons, the City submitted that it was improper for Mr. Giacinti to serve Mr. Panovski at his residence and that service was done a day later than what is provided for in the Tribunal's *Rules of Practice and Procedure*. ("Rules"). The Applicant supported the City's position and further submitted that Mr. Giacinti had not advised the other parties what the nature of Mr. Panovski's evidence will be. Mr. Giacinti responded by explaining that he had made efforts to serve Mr. Panovski earlier but service had been refused resulting in a situation where the timeline for service set out in the Rules could not be met. He also explained that since Mr. Panovski was in attendance at the hearing, the purpose of the summons had been met. After hearing from the parties, the Tribunal determined that the summons should stand. The Tribunal indicated that any prejudice arising from the late introduction of any expert evidence through Mr. Panovski could be addressed through the hearing process, whether in the form of a break in the hearing or an adjournment to permit the other parties time to respond to his evidence. Furthermore, the Rules do not require that a City employee be served through the City's solicitor.

b. Appropriateness of Two or Three Lots

[11] Matt Johnston was called by the Applicant and was qualified by the Tribunal to provide expert land use planning evidence.

[12] Mr. Johnston explained that the two Zoning By-law Amendments are necessary as the City is transitioning from local zoning by-laws that pre-existed amalgamation of

the City to City-wide comprehensive Zoning By-law No. 05-200. He explained that the Zoning By-law Amendments proposed by the Applicant take into account the transitioning process and establish necessary zoning and standards to implement three lots in these circumstances.

[13] Mr. Johnston explained that the Subject Lands are located in close proximity to the Highway 403-Lincoln Alexander Parkway (known locally as “the LINC”) interchange and that the Meadowlands Commercial Area is located on the other side of the LINC to the south. He explained that a large portion of the properties fronting on Old Mohawk Road are part of a plan of subdivision registered in 1987. He explained that lots along this road vary in width from 22 to 33 metres (“m”) and that the lots vary greatly in area as some lots extend some distance back from the road. He also explained that to the rear of the Subject Lands is the Iroquois Heights Environmentally Sensitive Area that forms part of the Niagara Escarpment area.

[14] Mr. Johnston explained that the Subject Lands have a frontage of 185 feet (56.4 m) and a depth of 234 feet (71.3 m) and currently host a single detached home. Mr. Johnston explained that the Subject Lands also contain a watercourse towards the rear *within a wooded area*.

[15] Mr. Johnston opined that the Subject Lands are underutilized and can support intensification. It was his opinion that the Subject Lands could be subdivided into four lots but he explained that the compromise with the City was that three lots would be created.

[16] Mr. Johnston reviewed the various studies, reports and public agency comments prepared for the applications. He explained that an issue that had been outstanding between the City and the Applicant was the location and depth of a vegetative protection zone (“VPZ”) on the proposed lots as the Hamilton Conservation Authority had recommended a 15 m VPZ around the significant woodlot to the rear of the Subject Lands.

[17] Mr. Johnston explained that a study had been conducted by the Applicant assessing the potential for a reduced VPZ and discussions were held with the City that culminated in a 9 m VPZ being supported in the rezoning.

[18] Mr. Johnston opined that the applications are consistent with the Provincial Policy Statement, 2014 ("PPS"). In reviewing PPS policy, Mr. Johnston opined that the proposed development represents efficient development and land use that is appropriate and avoids environmental impact. He further opined that the development promotes intensification that finds support in the PPS, with the Zoning By-law Amendments setting development standards that promote intensification.

[19] Mr. Johnston also reviewed the proposal against the policies contained in the Growth Plan for the Greater Golden Horseshoe, 2017 ("Growth Plan"). He opined that the proposal conforms to the Growth Plan as the Subject Lands are located within a settlement area and within a delineated built-up area in which the majority of residential growth is to be located. He opined that by promoting intensification on an underutilized lot that is fully serviced, the proposed development conforms to the Growth Plan.

[20] Mr. Johnston also considered the applications against the policy of the Niagara Escarpment Plan ("NEP"). He explained that the Subject Lands are designated both Escarpment Natural and Urban Area in the NEP. Mr. Johnston explained that by maintaining the wooded area located at the rear portion of the Subject Land together in one of the three lots and zoning that area Conservation/Hazard Lands (P5), the intent of NEP policy to maintain natural areas is met.

[21] With regard to the Urban Hamilton Official Plan ("UHOP"), Mr. Johnston explained that the Subject Land is designated Neighbourhoods. Mr. Johnston explained that the UHOP responds to the previous version of the Growth Plan by directing 40% of residential growth in the form of intensification whereas the current version of the Growth Plan raises this requirement to 60%. Mr. Johnston explained that Policy B.2.4.1.4 of the UHOP establishes criteria for the consideration of residential intensification generally which are as follows:

2.4.1.4 Residential intensification developments shall be evaluated based on the following criteria:

- a) a balanced evaluation of the criteria in b) through g), as follows;
- b) the relationship of the proposal to existing neighbourhood character so that it maintains, and where possible, enhances and builds upon desirable established patterns and built form;
- c) the development's contribution to maintaining and achieving a range of dwelling types and tenures;
- d) the compatible integration of the development with the surrounding area in terms of use, scale, form and character. In this regard, the City encourages the use of innovative and creative urban design techniques;
- e) the development's contribution to achieving the planned urban structure as described in Section E.2.0 – Urban Structure;
- f) infrastructure and transportation capacity; and,
- g) the ability of the development to comply with all applicable policies.

[22] In considering criteria (d) above, Mr. Johnston explained that “compatible” is defined in the UHOP and can be summarized as development capable of existing in harmony. It was his opinion that the three lots proposed would be capable of existing in harmony with the surrounding area in the sense that three large homes will be developed eventually in proximity to 27 other large homes. Mr. Johnston opined that the criteria of Policy B.2.4.1.4 of the UHOP are met by the applications.

[23] Mr. Johnston also explained that Policy B.2.4.2.2 of the UHOP establishes criteria for assessing residential intensification in the Neighbourhoods designation specifically. That policy provides that:

2.4.2.2 When considering an application for a residential intensification development within the Neighbourhoods designation, the following matters shall be evaluated:

- a) the matters listed in Policy B.2.4.1.4;
- b) compatibility with adjacent land uses including matters such as shadowing, overlook, noise, lighting, traffic, and other nuisance effects;
- c) the relationship of the proposed building(s) with the height, massing, and scale of nearby residential buildings;
- d) the consideration of transitions in height and density to adjacent residential buildings;

- e) the relationship of the proposed lot(s) with the lot pattern and configuration within the neighbourhood;
- f) the provision of amenity space and the relationship to existing patterns of private and public amenity space;
- g) the ability to respect and maintain or enhance the streetscape patterns including block lengths, setbacks and building separations;
- h) the ability to complement the existing functions of the neighbourhood;
- i) the conservation of cultural heritage resources; and,
- j) infrastructure and transportation capacity and impacts.

[24] It was Mr. Johnston's opinion that these criteria are met by the applications. He explained that the main issue raised in the hearing is the pattern of lots in the area and it was his view that the proposed lots are consistent with the variation in frontage and lot area found elsewhere in the neighbourhood. He also opined that setbacks and building separation that will be established is consistent with the character of the area, that cultural heritage is not an issue as an archaeological assessment has been completed and that no transportation issues can be expected to arise.

[25] Mr. Johnston also opined that the proposed development will be compatible from a built form perspective and will meet the policies found in s. B.3.3.3 of the UHOP.

[26] Mr. Johnston then reviewed Chapter E of the UHOP which contains the Urban System and Designations policies and in particular s. E.3.0 which is specifically applicable to the Neighbourhoods designation. In reviewing these policies, and in particular policies relating to density, it was his opinion that the proposal to create three lots on a property that is almost an acre in area cannot be considered overintensification and the lots will fit well within this area. He explained that Mr. Giacinti's property, located directly to the west of the Subject Lands, is approximately one third of an acre in area. He explained that the irregular shape of lots in the area results in lots of varying sizes but that the lots proposed by the Applicant will be compatible within the range of lots that currently exist in the area. Mr. Johnston acknowledged that the proposed frontages of 20.39 m, 18 m and 18 m will result in the smallest lots in area with the next smallest lot being Mr. Giacinti's property with a frontage of 22.86 m.

[27] Mr. Johnston explained in cross-examination that it was his opinion that comparing lot coverage between lots would not be very helpful in this context as a result of the large variation in lot sizes in the area. It was his opinion that the superior method to assess compatibility of character would be to consider building separation and relationship to the street.

[28] Overall, Mr. Johnston was of the opinion that the applications will result in development that is compatible and meets the policy direction of the UHOP.

[29] Mr. Johnston reviewed the applications against matters of provincial interest set out in s. 2 of the Act and against the criteria for the subdivision of land found at s. 51(24) of the Act. For reasons set out in his previous evidence, Mr. Johnston opined that the applications meet these legislative requirements. He also opined that a plan of subdivision is not necessary for the orderly development of the Subject Lands.

[30] In cross-examination, Mr. Johnston further explained that the location of driveways on the lots and servicing matters will be dealt with during site planning.

[31] Mark Rogers was called by Mr. Giacinti and qualified by the Tribunal to provide expert land use planning evidence. Mr. Rogers explained that he was in agreement with Mr. Johnston's evidence regarding the applicable designations and policy. He opined that intensification is desirable and possible on the Subject Lands but not in the form proposed by the Applicant.

[32] Mr. Rogers disagreed with Mr. Johnston's opinion on the application of the residential intensification policy contained in the UHOP. He also referred to Policy E.2.6 which provides, in part:

Residential intensification within Neighbourhoods is part of the evolution of a neighbourhood and can happen at a range of scales and densities provided the intensification is compatible with and respects the built form and character of the surrounding neighbourhood.

[33] In reviewing other policy contained in the UHOP, Mr. Rogers stressed that the

common theme through policy is the need to ensure compatibility of intensification with the character of the existing neighbourhood.

[34] Mr. Rogers prepared a lot comparison similar to Mr. Johnston. Mr. Rogers agreed with Mr. Johnston that there are noticeable differences between lots located on the north and the south side of the street. He explained that the average lot frontage on the north side of the street where the Subject Lands are located is 31.85 m with the average lot frontage on the south side of the street being 31.19 m. He explained that the 18 m lot frontages proposed by the Applicant will be approximately 13 m less than the average in the neighbourhood and would be the narrowest on the street.

[35] With regard to lot area, Mr. Rogers explained that he assessed the lot areas located in the R3 zone as proposed and excluded the P5 zone from the lot that is proposed to include the entirety of the lands in this zone. He determined that the average residential lot areas proposed will be 733 square metres ("m²") which will be 1,000 m² smaller than the average lots on the north and 1,668 m² smaller than the average lots on the south side of the street. Mr. Rogers explained that in conducting this assessment he had excluded the larger lots from his assessment that could be considered anomalous.

[36] Mr. Rogers also explained that the lot coverage proposed would be similar to what exists on larger lots in the area, with the Applicant proposing to development similarly sized residences on much smaller lots.

[37] On the basis of this evidence of lot size and lot coverage, Mr. Rogers opined that the proposal is for a built form that is different than what exists in the surrounding neighbourhood. It was his opinion that the relationship of potential dwelling size to lot size proposed is not consistent or appropriate or compatible with the existing built form of the neighbourhood.

[38] Additionally, with the smaller lot frontages, Mr. Rogers explained that the residences to be built would necessarily have massing that would be oriented differently

than what exists in the area. He explained that most residences in the area are approximately 25 m wide and residences on the proposed lots would necessarily be approximately 15 m wide in order to provide for necessary setbacks. It was his opinion that the difference between these two built forms would be perceptible and the proposal does not meet the requirement of Policy B.3.3.3.3 of the UHOP to respect existing street proportions.

[39] As it was his opinion that the applications do not conform to the UHOP and do not reflect the dimensions and shapes of lots existing in the area, Mr. Rogers opined that the criteria contained in s. 51(24) of the Act for the subdivision of land have not been met by the applications.

[40] Mr. Rogers opined that two lots would be appropriate with equal frontages of 28.2 m. He opined that the resulting lot areas would be more appropriate and would maintain the pattern of development and lot fabric in the area.

[41] Mr. Rogers prepared alternative Zoning By-law Amendments for consideration by the Tribunal that reflect a two-lot scenario with increased front yard setbacks from 7.5 m to 9.0 m, decreased lot coverage, increased exterior side yard setbacks and a reduction in permitted height.

[42] In cross-examination, Mr. Rogers acknowledged that Mr. Giacinti's residence is similar in width to the width of the dwellings that will be constructed on the three lots proposed by the Applicant.

[43] Mr. Rogers explained that his proposal for a 9 m front yard setback is based on the existing conditions in the area but he acknowledged in cross-examination that a setback of 7.5 m is currently permitted in all residential zones.

[44] Mr. Panovski was qualified to provide expert engineering evidence in his capacity as Senior Project Manager with the City's Development Approvals Section. He explained that although he originally had concerns relating to when grading issues would be resolved, he was satisfied that an agreement to subject the entire Subject

Lands to site planning was sufficient to address his department's concerns.

[45] Colin Stevenson lives on Old Mohawk Road and provided an overview of his frustration with the City's processing of the applications. He also explained that most houses in the area are over 20 m wide and built to the permitted setbacks and expressed the view that the Applicant's proposal will not maintain the character of the area.

[46] Next the Tribunal heard from the participants. Mr. Jones explained that he lives across the street from the Subject Lands and his major concern relates to transportation impacts and views to the natural areas on the escarpment. He explained that as the Subject Lands are located at the end of Old Mohawk Road where school buses turn around after picking children up, any on-street parking will interfere with the operation of buses. Mr. Jones also expressed the view that the area is characterized by large treed areas visible from the street. He believed that three houses located close together would not preserve this particular characteristic.

[47] Mr. Krywionek, also a resident of the area, explained that he supports two lots and raised similar concerns about bus access and on-street parking. He additionally raised concerns about drainage and the lack of rear amenity space due to periodic standing water on the Subject Lands.

[48] Finally, the Tribunal heard from Mr. Terrana who succinctly stated that he supports two but not three lots being created from the Subject Lands.

[49] In submissions, the Applicant's counsel stressed that the evidence was undisputed that the applications are consistent with the PPS, conform to the Growth Plan and are consistent with matters of provincial interest found at s. 2 of the Act. The Tribunal is in agreement with these submissions. Additionally, the Tribunal notes that a revised version of the Growth Plan entitled A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2019 came into force shortly after the conclusion of the hearing on May 16, 2019. Additionally, a revised version of the PPS came into force on

May 1, 2020. The applications similarly meet the policy contained in these revised provincial policy documents.

[50] Additionally, the evidence was undisputed that a plan of subdivision is unnecessary for the orderly development of the Subject Land. The Tribunal agrees. Based on the evidence heard, the Tribunal also finds that the issues of NEP conformity, drainage issues, and protection of natural heritage features have been fully addressed in the evidence. *Drainage and other servicing matters in particular will be more fully addressed through site planning.*

[51] There was also broad agreement that two lots will fit into this neighbourhood. The only question is whether the proposal for three lots meets the policy contained in the UHOP.

[52] There was little disagreement amongst the planners as to the applicable UHOP policy: the most relevant policies are set out in the summary of their evidence above. On the one hand, UHOP policy promotes intensification in the Neighbourhoods designation. On the other hand, UHOP policy regulates that level of intensification by requiring that it be compatible with the surrounding area.

[53] The UHOP defines “compatible” as follows:

Compatibility/compatible: means land uses and building forms that are mutually tolerant and capable of existing together in harmony within an area. Compatibility or compatible should not be narrowly interpreted to mean “the same as” or even as “being similar to”.

[54] UHOP policy provides specific criteria for examining whether proposed intensification would be compatible.

[55] Section B.2.4 of the UHOP contains the Residential Intensification policies. Policy 2.4.1.4 establishes criteria for considering residential intensification:

2.4.1.4 *Residential intensification* developments shall be evaluated based on the following criteria:

- a) a balanced evaluation of the criteria in b) through g), as follows;
- b) the relationship of the proposal to existing neighbourhood character so that it maintains, and where possible, enhances and builds upon desirable established patterns and built form;
- c) the development's contribution to maintaining and achieving a range of dwelling types and tenures;
- d) the *compatible* integration of the development with the surrounding area in terms of use, scale, form and character. In this regard, the City encourages the use of innovative and creative urban design techniques;
- e) the development's contribution to achieving the planned urban structure as described in Section E.2.0 – Urban Structure;
- f) infrastructure and transportation capacity; and,
- g) the ability of the development to comply with all applicable policies.

[56] Adding to the general residential intensification criteria of Policy 2.4.1.4 is policy 2.4.2.2 of the UHOP which sets out intensification criteria for residential intensification in the Neighbourhoods designation specifically:

2.4.2.2 When considering an application for a residential intensification *development* within the Neighbourhoods designation, the following matters shall be evaluated:

- a) the matters listed in Policy B.2.4.1.4;
- b) *compatibility* with adjacent land uses including matters such as shadowing, overlook, noise, lighting, traffic, and other nuisance effects;
- c) the relationship of the proposed building(s) with the height, massing, and scale of nearby residential buildings;
- d) the consideration of transitions in height and density to adjacent residential buildings;
- e) the relationship of the proposed lot(s) with the lot pattern and configuration within the neighbourhood;
- f) the provision of amenity space and the relationship to existing patterns of private and public amenity space;
- g) the ability to respect and maintain or enhance the streetscape patterns including block lengths, setbacks and building separations;
- h) the ability to complement the existing functions of the neighbourhood;
- i) the conservation of *cultural heritage resources*; and,
- j) infrastructure and transportation capacity and impacts.

[57] The main area of dispute in this case is whether the applications adequately meet the criteria in Policy B.2.4.1.4 relating to integration of the development with the surrounding area in terms of scale, form and character and additionally, the criteria specific to the Neighbourhoods designation contained in B.2.4.2.2 relating particularly to the relationship of proposed buildings with the height, massing, and scale of nearby residential buildings, the relationship of proposed lots with the lot pattern and configuration within the neighbourhood; the ability to respect and maintain or enhance the streetscape patterns including block lengths, setbacks and building separations.

[58] Applying these criteria against the evidence the dispute between the parties relates to lot frontages, lot area, building separations, lot coverage and setbacks. The participants have raised similar issues in terms of the potential fit of three lots into this neighbourhood and have also raised transportation concerns.

[59] As a starting point, having reviewed the evidence, the Tribunal finds that this area cannot be characterized as uniform. Although the evidence of those opposed to the proposal for three lots focused on the average lot and building character, the question for the Tribunal is not what the average is but, rather, whether the proposal can fit harmoniously into the area given the applicable policy context that promotes compatible intensification.

[60] With regard to setbacks, the evidence was that the front yard setbacks of 7.5 m that are proposed are permitted by the parent Zoning By-law. Additionally, an examination of the lot fabric evidence provided shows that many buildings on other lots in the area have front yard setbacks of between 6.5 m and 8.5 m. The Tribunal finds that the front yard setback proposed is adequate and will not give rise to any incompatibility as a result. The Tribunal also finds that the sideyard setbacks proposed, being a minimum of 1.5 m between the proposed new lots, 4.0 m on the easterly side and 3.0 m on the westerly side will be similar to what exists in the area. Although no party was able to provide evidence of specific side-yard setbacks for lots in the area, there are a multitude of dwellings in the area that appear to have very small sideyard setbacks similar to what could be built on the proposed lots.

[61] As for lot coverage, the lot arrangement now proposed is for the retained lot to keep whole the entirety of the area to the rear of the Subject Lands to be zoned P5 (Conservation/Hazard Lands) in order to ensure that the environmentally sensitive areas will remain intact on the same lot. If three more or less equally sized lots were to be developed, as was originally proposed, lot coverage would be similar to other properties in the area at approximately 22.7%. Lot coverage on other lots in the area ranges from 7% to 33%. Increasing lot coverage to a maximum of 40% in order to maintain the environmentally sensitive areas on the retained lot intact appears to be preferable in this context and should not serve to preclude the proposal. Furthermore, from a streetscape perspective, the fact that the retained lot will be L-shaped with the rear portion located behind the severed lots will not be perceptible and will not alter or change the character of the area.

[62] The issue of lot frontages was a major focus of the hearing. The frontages of 20.39 m, 18.0 m and 18.0 m are opposed on the basis that these lots will be the smallest lots in the area and as such, will not permit dwellings to be oriented similarly to many of the dwellings that currently exist in the area. Although there are many larger homes in the area that are oriented from side yard to side yard, as acknowledged by Mr. Rogers, Mr. Giacinti's residence immediately to the west of the Subject Lands is similar in width to the dwellings that will be constructed on the three lots proposed by the Applicant. Additionally, Mr. Giacinti's lot is the smallest in the area at 22.86 m wide. The Tribunal cannot agree that the proposed lots with approximately 2.5 m and 4.9 m less frontage will appear out of place at this particular location or change the character of this neighbourhood that has a high degree of variability within it in terms of lot character. In considering the UHOP definition of "compatible" the Tribunal finds that the proposed lot frontages and the anticipated dwellings are capable of existing together in harmony in this area.

[63] The participants raised a concern that any on-street parking associated with this development located on the cul-de-sac could potentially interfere with the ability of school buses that turn around at this location. The Tribunal finds that this is not a matter that should operate to preclude the development. The Tribunal finds that the

proposal is for a development area that will adequately provide for parking and that any interference with the school bus, if that comes to pass, can and should be addressed through other venues such as the City erecting signage that precludes on-street parking at this location on the street. The Tribunal finds that development at this scale will not give rise to any other unacceptable transportation impacts.

[64] The participants variously mentioned and the photographic evidence of the planners made clear that this area is characterized by a mature tree canopy with corridors between houses that show mature vegetation. The Subject Lands similarly host a number of mature trees. The Tribunal finds that a condition of approval ought to be attached requiring that tree cover be maintained on the new lots to the extent possible in order to ensure that new dwellings on these lots maintain the character of this area. This is a matter that should be addressed as part of site planning.

[65] In summary therefore, the Tribunal finds that the proposal for three lots meets the criteria for intensification contained in the UHOP.

c. Conditions

[66] Mr. Johnston recommended that the conditions attached to the COA's approval of the consents be similarly imposed by the Tribunal. The City's legal counsel also requested that these conditions be imposed should the Tribunal decide to approve the consents to sever. Having reviewed those conditions, the Tribunal finds that they should be imposed but revised slightly to reflect the fact that the Tribunal has resolved the *Zoning By-law Amendment* appeal as part of this hearing. Furthermore, the Tribunal has added a condition relating to the maintenance of trees on the lots as discussed in the reasons above. The conditions are set out in the Order below.

d. Timing of Decision

[67] At the time the appeals were filed, Ontario Regulation ("O. Reg.") 102/18 (revoked on September 1, 2019) stipulated, at s. 1(1)4, that the time period for the disposition of the appeal of the Tribunal is not to exceed six months and, at s. 1(2)1.ii,

that the Tribunal may exclude such time periods from the calculation of the six month time period that are deemed necessary to secure a fair and just determination of the appeal.

[68] In this case the Tribunal found it necessary to exclude the time between the conclusion of the hearing and the date at which the Tribunal was able to begin considering the evidence and writing this decision from the calculation of time in order to secure a fair and just determination of this appeal.

ORDER

[69] The Tribunal orders as follows:

- a. Pursuant to s. 1(2) of the former O. Reg. 102/18 and Rule 3.02 of the Tribunal Rules the Tribunal issues a notice of postponement excluding the time period of between the conclusion of the hearing and April 15, 2020 from the calculation of the six-month time period contained in s. 1(1)4 of the former O. Reg. 102/18 in order to secure a fair and just determination of this appeal.
- b. The appeal filed by Fortino's Umbrella Inc. is allowed in part and the Zoning By-laws marked as Exhibits 1 and 2 during the hearing are approved.
- c. The City's Clerk is given the power to attach necessary numbers to the Zoning By-law Amendments for record keeping purposes.
- d. The appeals filed by Cory Giacinti are dismissed and provisional consents to sever are to be given, subject to the following conditions:
 - i) The owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar. The reference plan must be submitted in hard copy and also submitted in CAD format, drawn at true scale and location and tied to the

City corporate coordinate system.

- ii) The owner shall submit survey evidence that the lands to be retained and the lands to be conveyed, including the location of any structures, conform to the requirements of the Zoning By-law.
- iii) That the owner shall submit detailed documentation of the building on the Subject Property prior to any demolition to the satisfaction and approval of the Manager of Development Planning, Heritage and Design.
- iv) Any historic fabric to be removed, including windows and doors, be salvaged for re-use, where feasible. Documentation regarding the salvage of these features shall be submitted to the satisfaction and approval of the Manager of Development Planning, Heritage and Design.
- v) The owner shall demolish all or an appropriate portion of any buildings straddling the proposed property line, to the satisfaction of the Planning and Economic Development Department (Building Division – Zoning Section). May be subject to a demolition permit issued in the normal manner.
- vi) That the owner enters into with the City of Hamilton and registers a Consent Agreement(s) to deal with and address issues including, but not limited to, and as applicable to the ultimate design, grading and drainage; cash payment requirements for items such as inspections, street trees, urbanization of the adjacent roads, cost recoveries for existing above and/or underground services; and securities for items such as: estimated cost of services to be installed, lot grading, driveway approaches, relocation of existing infrastructure, including sidewalks, and any damages to the existing City Infrastructure etc. to the satisfaction of the City of Hamilton and the Ministry of Transportation Ontario.
- vii) The owner shall submit administrative fees, payable to the City of

Hamilton, to cover the cost of setting up new tax accounts for the newly created lot(s).

viii) The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.

ix) The owner shall, to the extent feasible, protect and maintain healthy trees on the lots.

"Justin Duncan"

JUSTIN DUNCAN
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario – Environment and Lands Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

**20-111-LPAT
Exhibit 1**

CITY OF HAMILTON

BY-LAW NO. 18-XXX

To Amend Zoning By-law No. 87-57, Respecting Lands Located at 941 Old Mohawk Road, in the former Town of Ancaster, now in the City of Hamilton

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

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

AND WHEREAS the City of Hamilton Act, 1999, provides that the Zoning By-law 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 Zoning By-law No. 87-57 (Ancaster) was enacted on the 22nd day of June 1987, and approved by the Ontario Municipal Board on the 23rd day of January, 1989;

AND WHEREAS the Council of the City of Hamilton, in adopting Item ____ of Report 18-____ of the Planning Committee at its meeting held on the ____ day of _____, 2018, recommended that Zoning By-law No.87-57 (Ancaster), be amended as hereinafter provided;

AND WHEREAS this By-law will be in conformity with the Urban Hamilton Official Plan, approved by the Minister under the Planning Act on March 16, 2011;

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

1. That Map No. 1033 to Schedule "B", appended to and forming part of By-law No. 87-57 (Ancaster), is amended by changing the zoning from the Agricultural "A" Zone to the Residential "R3-699" Zone, Modified, on the lands the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".
2. That Section 34: Exceptions of Zoning By-law No. 87-57 (Ancaster), as amended, is hereby further amended by adding the following sub-section:

R3-699

Notwithstanding Sub-Section 11.1.2 (c), (d), (f) and 11.3.2 (c) of Section 11: RESIDENTIAL "R1", "R2" AND "R3" ZONES of By-law No. 87-57 (Ancaster), the following special provisions shall apply to the lands zoned "R3-699":

REGULATIONS

- | | | |
|-----|-----------------------|------------|
| (a) | Minimum Front Yard: | 7.5 metres |
| (b) | Maximum Lot Coverage: | 40 percent |

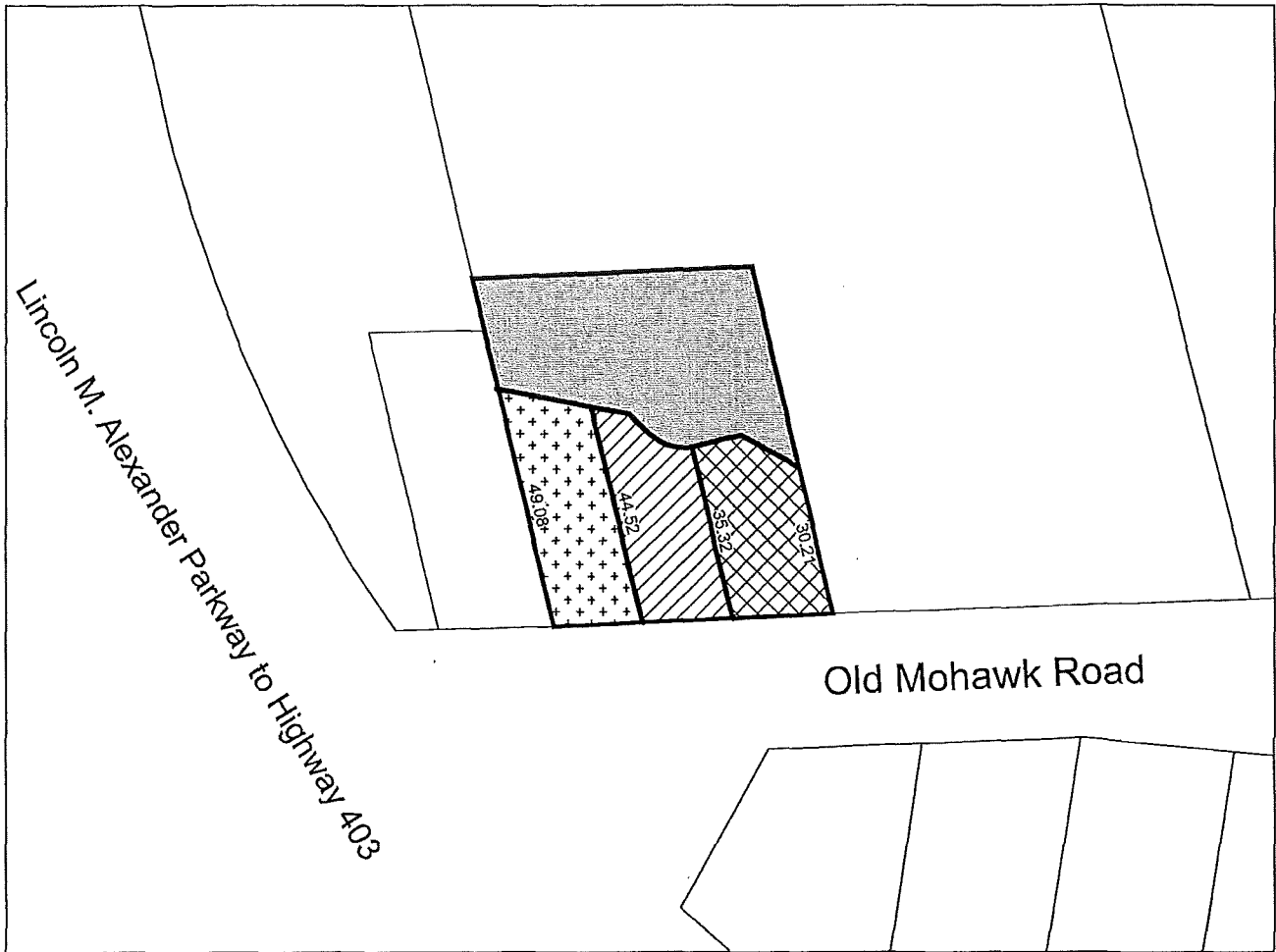
- (c) Minimum Side Yard: 1.5 metres, except:
- (i) On Block 1 of Schedule A of this By-law the minimum easterly side yard shall be 4.0 metres, and;
 - (ii) On Block 3 of Schedule A of this By-law the minimum westerly side yard shall be 3.0 metres
- (d) Minimum Rear Yard: 7.0 metres
3. That no building 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 Residential "R3" Zone provisions, subject to the special requirements referred to in Section 2 of this By-law.
4. That the 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*.

PASSED AND ENACTED this _____ day of _____, 2018.

Mayor

Clerk

ZAC-17-014







This is Schedule "A" to By-law No.
18-_____
Passed the _____ day of _____, 2018

Clerk

Mayor

DRAFT
Schedule "A"
Map Forming part of
By-law No. 18-_____
to Amend By-law No. 87-57

Subject Property
941 Old Mohawk Road

-  Block 1 - change in zoning from "A" to "R3-_____"
-  Block 2 - change in zoning from "A" to "R3-_____"
-  Block 3 - change in zoning from "A" to "R3-_____"
-  Block 4 - Refer to By-law No. 05-200

Scale: N.T.S	File Name/Number:
Date:	Planner/Technician:
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT	

**20-112-LPAT
Exhibit 2**

**CITY OF HAMILTON
BY-LAW NO. 18-XXX**

To Amend Zoning By-law No. 05-200, Respecting Lands Located at 941 Old Mohawk Road in the former Town of Ancaster, now in the City of Hamilton

WHEREAS the City of Hamilton has in force several Zoning By-laws which apply to the different areas incorporated into the City by virtue of the City of Hamilton Act, 1999, S. O. 1999 Chap. 14;

AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law No. 05-200;

AND WHEREAS Zoning By-law No. 05-200 was enacted on the 25th day of May, 2005;

AND WHEREAS the Council of the City of Hamilton, in adopting Item ___ of Report 18-___ of the Planning Committee at its meeting held on the ___ day of _____, 2018, which recommended that Zoning By-law No. 05-200, be amended as hereinafter provided;

AND WHEREAS this By-law will be in conformity with the Urban Hamilton Official Plan, approved by the Minister under the Planning Act on March 16, 2011;

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

1. That Map No. 1126 on Schedule A - Zoning Maps, to Zoning By-law No. 05-200 is amended by incorporating additional Conservation / Hazard Land (P5, 663) Zone, Modified for the applicable lands, shown as Block 2, the extent and boundaries of which are shown on a plan hereto annexed as Schedule A .
2. That Schedule C: Special Exemptions of Zoning By-law No. 05-200, as amended, is hereby further amended by adding the following site Conservation/Hazard Land (P5, 714) Zone:

"714. Within the lands zoned Conservation/Hazard Land (P5, 714) Zone, identified on Map No. 1126 of Schedule A and described as 941 Old Mohawk Road, the following special provisions shall apply:

4.23 SPECIAL SETBACKS

Notwithstanding any other provisions in this By-law, the following Special Setbacks shall apply:

- d) Setback from a Conservation/Hazard Land (P5) Zone, Conservation/Hazard Land Rural (P7) Zone and Conservation/Hazard Land Rural (P8) Zone

All buildings or structures located on a property shall be setback a minimum of 7.0 metres from a P5 Zone boundary.

2. That the 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*.

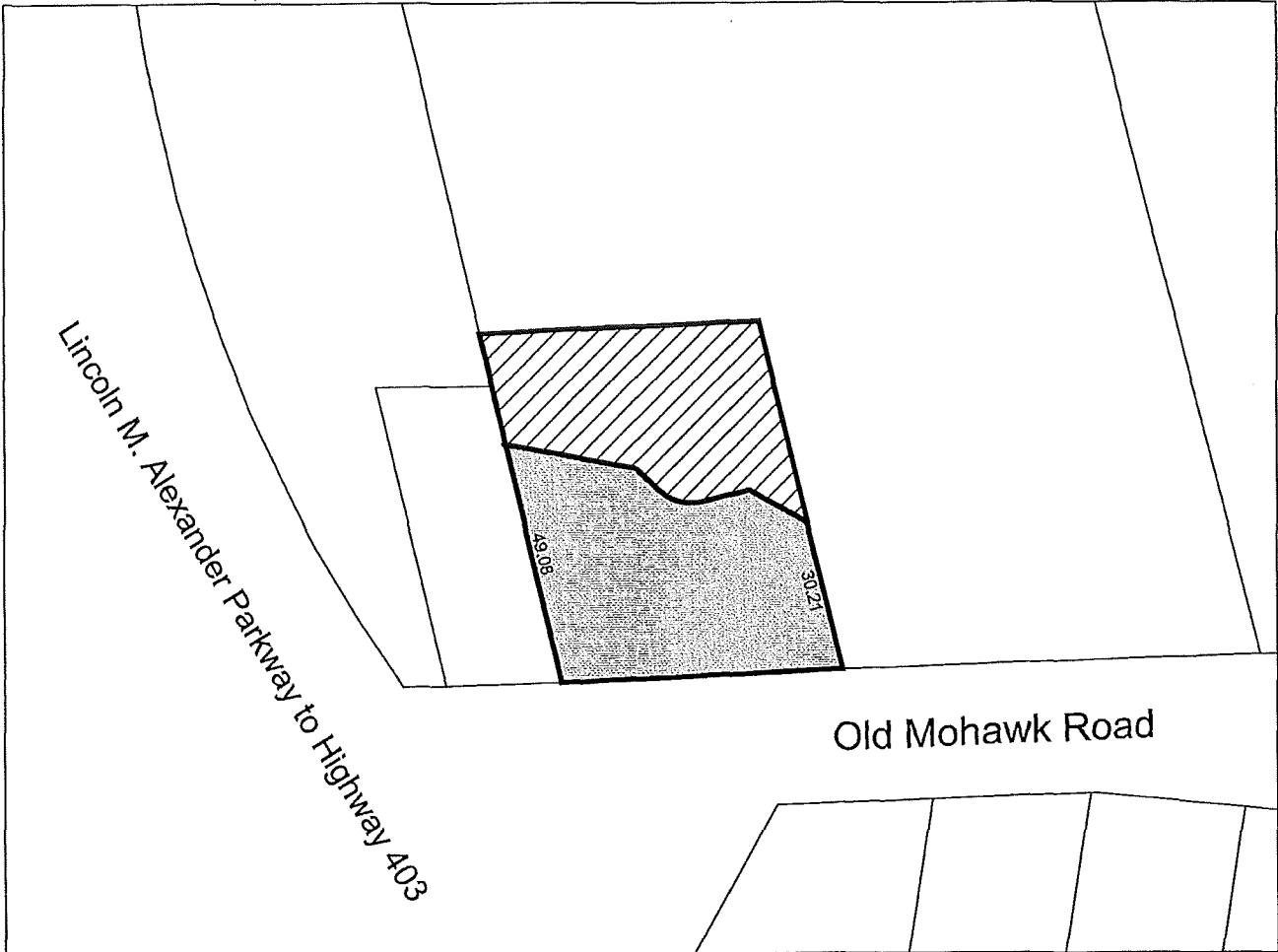
3. That no building or structure shall be erected, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the Conservation / Hazard Land (P5) Zone provisions, subject to the special requirements as referred to in Section 2 of this By-law.

PASSED this ___ day of _____, 2018.

Mayor

Clerk

ZAC-17-014




This is Schedule "A" to By-law No.
18-_____
Passed the _____ day of _____, 2018

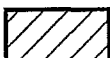
Clerk

Mayor

DRAFT
Schedule "A"
Map Forming part of
By-law No. 18-_____
to Amend By-law No. 05-200

Subject Property
941 Old Mohawk Road

 Block 1 - Refer to By-law No. 87-57

 Block 2 - Lands to be added to zoning By-law No. 05-200 and zoned as Conservation/Hazard Lands (P5) Zone

Scale: N.T.S	File Name/Number:
Date:	Planner/Technician:
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT	