

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

16-076
Attachment 1



ISSUE DATE: January 12, 2016

CASE NO(S): PL141433

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

| | |
|-------------------------------|--|
| Applicant and Appellant: | 1125814 Ontario Inc. |
| Subject: | Application to amend Zoning By-law No. 6593 - Refusal or neglect of the City of Hamilton to make a decision |
| Existing Zoning: | "AA" (Agricultural) District |
| Proposed Zoning: | "C" (Urban Protected Residential District and "C/S-1719" (Urban Protected Residential) District Modified |
| Purpose: | To rezone the property to permit the development of 5 single detached dwelling lots and to rezone a strip of land for facilitate future development |
| Property Address/Description: | 893, 897 & 903 5th Street |
| Municipality: | City of Hamilton |
| Municipality File No.: | ZAC-13-050 |
| OMB Case No.: | PL141433 |
| OMB File No.: | PL141433 |
| OMB Case Name: | 1125814 Ontario Inc. v. Hamilton (City) |

Heard: September and December 2015 in Hamilton,
Ontario

APPEARANCES:

Parties

Amir Shah, Paul Silvestri and
1125814 Ontario Inc.

City of Hamilton

Counsel*/Representative

N. Smith*

D. Perlin*

Edward Kikot

M. Kikot

Anna Palazzo

G. Palios (absent for December 2015)

DECISION DELIVERED BY J. ZUIDEMA AND ORDER OF THE BOARD

[1] 1125814 Ontario Ltd. ("Silvestri") made an application to rezone its property located at 893, 897 and 903 West 5th Street ("subject property") in the City of Hamilton ("City").

[2] The rezoning was required to facilitate the establishment of five single detached dwellings lots along Fortissimo Drive, and to rezone a strip of land located on the west side of Fortissimo Drive to the rear of 879 and 885 West 5th Street to facilitate future development.

[3] Following the rezoning, the proposal will require the submission of Applications for Consent to Sever the rear portions from the front portions of the existing lots and reconfigure the consolidated lands into five lots fronting onto Fortissimo Drive.

[4] At the outset of the hearing, besides the Silvestri and the City, party status was granted to Edward Kikot represented by his son Mark Kikot as Agent and Anna Palazzo represented by her son-in-law George Palios as Agent.

[5] Ms. Smith, counsel to Silvestri also indicated that she was representing Amir Shah and Paul Silvestri who were recognized as parties understanding that the application had been filed under the numbered company carrying on business as Silvestri Investments.

[6] I heard from Mr. James Webb who was qualified and accepted as an expert in land use planning. He explained that the proposed development would achieve intensification through infilling. In his opinion, the proposal would provide for orderly, planned development which will contribute to the completion of the Kernighan Neighbourhood Plan.

[7] In Mr. Webb's view, the proposed lots would be generally consistent with the "C" District (modified) requirements with respect to lot area and frontage; the dwellings would be sited in accordance with the application Regulations for setbacks and oriented to Fortissimo Drive.

[8] He described the immediate surrounding area as predominantly low density residential with newer development created through draft plans of subdivisions and larger remnant lots fronting onto West 5th Street. He opined that the proposed development would be compatible with the established character of the area.

[9] In a nutshell, Mr. Webb opined that the rezoning before the Board would result in a proposal which represented good planning and would be consistent with the 2014 Provincial Policy Statement and would conform to applicable Provincial Plans.

[10] Given the long history of the proposal, Mr. Webb reviewed in some detail the historical context and earlier operative policy regimes. In the end, he recommended the draft zoning by-law amendment indicating that it conformed to applicable Official Plan Policy, implemented the intent of the Kernighan Neighbourhood Plan and represented an important contribution to the redevelopment and intensification objectives of the City.

[11] The following day I heard from both Messrs. Kikot and Palios who testified as lay persons. Each were forthright and genuine with their concerns. The hearing did not conclude and continued a couple of months later when the City's case was to commence.

[12] On that occasion, the Board was informed that a settlement had been achieved between the parties in the interim period. The parties jointly requested that a ruling in accordance with the settlement be provided based on the evidence I had previously heard from Mr. Webb.

[13] That oral decision was provided and I relied on the only expert evidence I heard from Mr. Webb. Mr. Kikot was present and indicated he was speaking on behalf of

himself and Mr. Palios who was absent. Mr. Kikot indicated that he had been advised to seek independent legal advice in connection with the settlement as was the case for Mr. Palios.

[14] The Board required that both Mr. Kikot and Mr. Palios individually provide written confirmation by the following day. Mr. Kikot did provide an email but the Board did not receive such an email from Mr. Palios. The Board relies on Mr. Kikot's account to conclude that both gentlemen were under no disability and understood that they could seek independent legal advice in connection with the settlement.

[15] The Board provided an oral decision allowing the appeal in order to give effect to the settlement which had been achieved. Further, should appeals be launched further to the applications for consent being filed, I will hear those matters given that those severances follow this decision.

ORDER

[16] Therefore the Board orders that the appeal is allowed in part and the draft zoning by-law amendment as Attachment 1 is approved. In all other respects, the appeal is dismissed and there is no award for costs.

"J. Zuidema"

J. ZUIDEMA
VICE-CHAIR

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

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

Authority: Item [REDACTED]
Planning Committee
Report 14-[REDACTED] (PED14)
CM: [REDACTED]

Bill No. [REDACTED]

CITY OF HAMILTON

BY-LAW NO. [REDACTED]

**To Amend Zoning By-law No. 6593 (Hamilton)
Respecting Lands located at 893, 897, and 903 West 5th Street 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 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 Item [REDACTED] of Report [REDACTED] of the Planning Committee, at its meeting held on the [REDACTED] day of [REDACTED] 2014, recommended that Zoning By-law No. 6593 (Hamilton), be amended as hereinafter provided;

AND WHEREAS this By-law is 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 Sheet No. W-17C of the District maps, appended to and forming part of Zoning By-law No. 6593 (Hamilton), are amended:

- (a) by changing from the "AA" (Agricultural) District, to the "C/S-1719- H" (Urban Protected Residential, etc.) District Modified, Holding;

the extent and boundaries of which are shown on a plan hereto annexed as Schedule "A".

2. That the "C" (Urban Protected Residential, etc.) District provisions, as contained in Section 9 of Zoning By-law No. 6593, be modified to include the following special requirements:

C/S-1719 - H

- (a) Notwithstanding Section 9 (4) every lot or tract of land shall have a width of at least 11.0 metres and an area of at least 335 square metres within the District.

3. That the 'H' symbol shall only be removed conditional upon:

Block 1

- (i) That the owner/applicant pay any outstanding cost recoveries associated with the road and infrastructure work including private services connections.
- (ii) That the owner/applicant ensure that each lot has a watermain connection, sanitary sewer connection, and storm sewer connection.

Block 2

- (i) That the owner/applicant pay any outstanding cost recoveries associated with the road and infrastructure work including private services connections.
- (ii) That the owner/applicant ensure that each lot has a watermain connection, sanitary sewer connection, and storm sewer connection.
- (iii) Until such time as the lands have been merged in title with the abutting lands to the rear and Consent Applications have been conditionally approved to facilitate lot creation in keeping with the Regulations of the "C/S-1719 Zone provisions.

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 , 2015.



This is Schedule "A" to By-law No. 14-

Passed the day of, 2014

Mayor

Clerk

Schedule "A"

Map Forming Part of
By-law No. 14-_____

to Amend By-law No. 6593

Subject Property

893, 897 & 903 West 5th Street and a strip of land along
Fortissimo Drive



Block 1 - Change in Zoning from "AA" H
(Agricultural) District to the "C/S-1719" (Urban
Protected Residential) District Modified, *Holding*



Block 2 - Change in Zoning from "AA" H
(Agricultural) District to the "C/S-1719" (Urban
Protected Residential) District Modified, *Holding*

Scale:
N.T.S.

File Name/Number:
ZAC-13-050

Date:
October 16, 2014

Planner/Technician:
DB/AL



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT