

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



24-096-OLT Attachment 1
24-097-OLT Attachment 2

ISSUE DATE: May 21, 2024

CASE NO(S).:

OLT-23-000737

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant:	Shaver Road M.D. Holdings Inc.
Subject:	Request to amend the Official Plan – Failure to adopt the requested amendment
Description:	To permit the development of a 36-unit stacked townhouse development
Reference Number:	UHOPA-22-002
Property Address:	487 Shaver Road
Municipality/UT:	Hamilton/Hamilton
OLT Case No.:	OLT-23-000737
OLT Lead Case No.:	OLT-23-000737
OLT Case Name:	Shaver Road M.D. Holdings Inc. v. Hamilton (City)

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

Applicant/Appellant:	Shaver Road M.D. Holdings Inc.
Subject:	Application to amend the Zoning By-law – Refusal or neglect to make a decision
Description:	To permit the development of a 36-unit stacked townhouse development
Reference Number:	ZAC-22-005
Property Address:	487 Shaver Road
Municipality/UT:	Hamilton/Hamilton
OLT Case No.:	OLT-23-000738
OLT Lead Case No.:	OLT-23-000737

Heard: May 7, 2024 in writing

APPEARANCES:

Parties

Shaver Road M.D. Holdings Inc.
("Applicant")

City of Hamilton
("City")

Counsel

Abbey Sinclair
Denise Baker

Paula Boutis
Patrick MacDonald

DECISION DELIVERED BY K.R. ANDREWS AND ORDER OF THE TRIBUNAL

[Link to Order](#)

INTRODUCTION

[1] The appeal arises following a non-decision by the City concerning Official Plan Amendment ("OPA") and Zoning By-law Amendment ("ZBA") applications to permit a stacked townhouse development at 487 Shaver Road ("Subject Property").

[2] Disposition of the matter has come before the Tribunal as a settlement motion.

[3] The Applicant originally applied to the City to permit a 36-unit stacked townhouse development. The Subject Property is located at 487 Shaver Road in Ancaster. It is currently occupied by a variety of buildings that are proposed to be demolished. To the north, there is a two-storey townhouse complex. The City of Hamilton Works (Ancaster) Operations Yard is located to the east and south. To the west, there is a large commercial shopping area.

[4] The OPA application, as originally proposed, purported to amend the Urban Hamilton Official Plan by redesignating the Subject Property from "Medium Density Residential 2a" to "Medium Density Residential 2b", and to permit a Site Specific Policy

to permit a maximum density of 80 units per hectare and a maximum height of four storeys.

[5] The ZBA application, as originally proposed, purported to amend Zoning By-law No. 87-57 by changing the zoning from Rural Commercial "C5-243" Zone, Modified, to the Residential Multiple "RM5-716" Zone, Modified, to permit up to 36 stacked townhouse units and 45 surface parking spaces.

[6] Now, the proposed settlement involves plans to develop 22 units in three four-storey townhouse blocks, with 39 associated parking spaces.

[7] The OPA application, as it is now revised, purports to redesignate the lands from "Medium Density Residential 2a" to "Medium Density Residential 2c" and to establish a new Site Specific Policy within the Shaver Neighbourhood Secondary Plan to facilitate the development of a block townhouse development with a density of 50 units per hectare. The Site Specific Policy permits a maximum height of four storeys and requires that all buildings and outdoor amenity areas be located adjacent to the northerly lot line.

[8] The ZBA application, as it is now revised, purports to amend Zoning By-law No. 87-57 to rezone the lands from the Rural Commercial "C5-243" Zone, Modified, to the Residential Multiple "RM5-716" Zone, Modified, to permit block townhouse dwellings and uses, buildings and structures accessory thereto, as well as site specific modifications to address minimum lot area, lot frontage, front yard, side yard and rear yard setbacks, landscaping, privacy areas and building separation, as well as maximum density, lot coverage and height. The modified zoning would also permit a noise barrier to be located within a required planting strip. Finally, the proposed zoning includes a special schedule illustrating the permitted building envelop on the Subject Property.

[9] The Tribunal confirms that it has received, reviewed and considered the following materials and submissions:

- i. The uncontested opinion evidence of Brenda Khes, a Registered Professional Planner and full member of the Canadian Institute of Planners, contained in her comprehensive affidavit affirmed April 4, 2024 (marked as Exhibit 2);
- ii. The Minutes of Settlement between the Parties dated February 23, 2024 (marked as Exhibit 3); and
- iii. A draft Order jointly submitted to give effect to the relief sought, including draft instruments attached thereto.

DECISION

[10] The Tribunal understands that the aforementioned sworn affidavit evidence of Ms. Khes reflects revisions to the applications before the Tribunal that were reached through the cooperative efforts of the Parties.

[11] The Tribunal accepts the opinion evidence of Ms. Khes, as presented in her affidavit, and similarly finds that the subject applications, as revised, have regard to those applicable matters of provincial interest found in s. 2 of the *Planning Act*, are consistent with the Provincial Policy Statement, 2020, conform to the A Place to Grow: Growth Plan for the Greater Golden Horseshoe, Urban Hamilton Official Plan, and otherwise reflect principles of good land use planning.

ORDER

[12] **THE TRIBUNAL ORDERS** that:

1. The appeal pursuant to s. 22(7) of the *Planning Act* is allowed, in part, and the Official Plan for the City of Hamilton is amended, as set out in **Attachment 1** to this Order; and
2. The appeal pursuant to s. 34(11) of the *Planning Act* is allowed, in part, and Zoning By-law No. 87-57 of the City of Hamilton is hereby amended, as set out in **Attachment 2** to this Order. The Tribunal authorizes the Municipal Clerk of the City of Hamilton to assign a number to this By-law for record keeping purposes.

“K.R. Andrews”

K.R. ANDREWS
MEMBER

Ontario Land Tribunal

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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.

ATTACHMENT 1

BY-LAW NO. 24-096-OLT

Urban Hamilton Official Plan Amendment No. 184

The following text, together with Appendix "A" attached hereto, constitutes Official Plan Amendment No. 184 to the Urban Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose and effect of this Amendment is to redesignate the subject lands from "Medium Density Residential 2a" to "Medium Density Residential 2c" and to establish a new Site Specific Policy within the Shaver Neighbourhood Secondary Plan to facilitate the development of a block townhouse development with a density of 56 units per hectare.

2.0 Location:

The lands affected by this Amendment are known municipally as 487 Shaver Road, in the former Town of Ancaster.

3.0 Basis:

The basis for permitting this Amendment is:

- The proposed development supports the policies of the Urban Hamilton Official Plan and the Shaver Neighbourhood Secondary Plan, as it contributes to the range of housing forms and the efficient use of land;
- The proposed development supports the Residential Intensification policies of the Urban Hamilton Official Plan by providing residential units adjacent to existing commercial uses and in proximity to existing transit; and,
- The Amendment is consistent with the Provincial Policy Statement (2020) and conforms to A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2019, as amended).

4.0 Actual Changes:

4.1 Volume 2 – Secondary Plan

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Text**4.1.1 Chapter B.2.0 – Ancaster Secondary Plans – Section B.2.2 – Shaver Neighbourhood Secondary Plan**

- a. That Volume 2: Chapter B.2.0 –Ancaster Secondary Plans, Section B.2.2 – Shaver Neighbourhood Secondary Plan be amended by adding a new Site Specific Policy, as follows:

"Site Specific Policy – Area E

B.2.2.5.5 Notwithstanding Policy B.2.2.1.2 a) and in addition to Policy B.2.2.1.4 c) i), for the lands located at 487 Shaver Road, designated Medium Density Residential 2c and identified as Site Specific Policy – Area E on Map B.2.2-1 – Shaver Neighbourhood Secondary Plan – Land Use Plan, the following policies shall apply:

- a) The height of a residential building shall have no more than four storeys entirely above grade; and,
- b) The location of buildings and outdoor amenity area shall be located adjacent to the northerly lot line to minimize risk to public health and safety."

Maps and Appendices**4.2.2 Map**

- a. That Volume 2: Map B.2.2-1 – Shaver Neighbourhood Secondary Plan – Land Use Plan, be amended by:
- i) redesignating lands from "Medium Density Residential 2a" to "Medium Density Residential 2c"; and,
 - ii) identifying the subject lands as Site Specific Policy – Area "E"
- as shown on Appendix "A", attached to this Amendment.

5.0 Implementation:

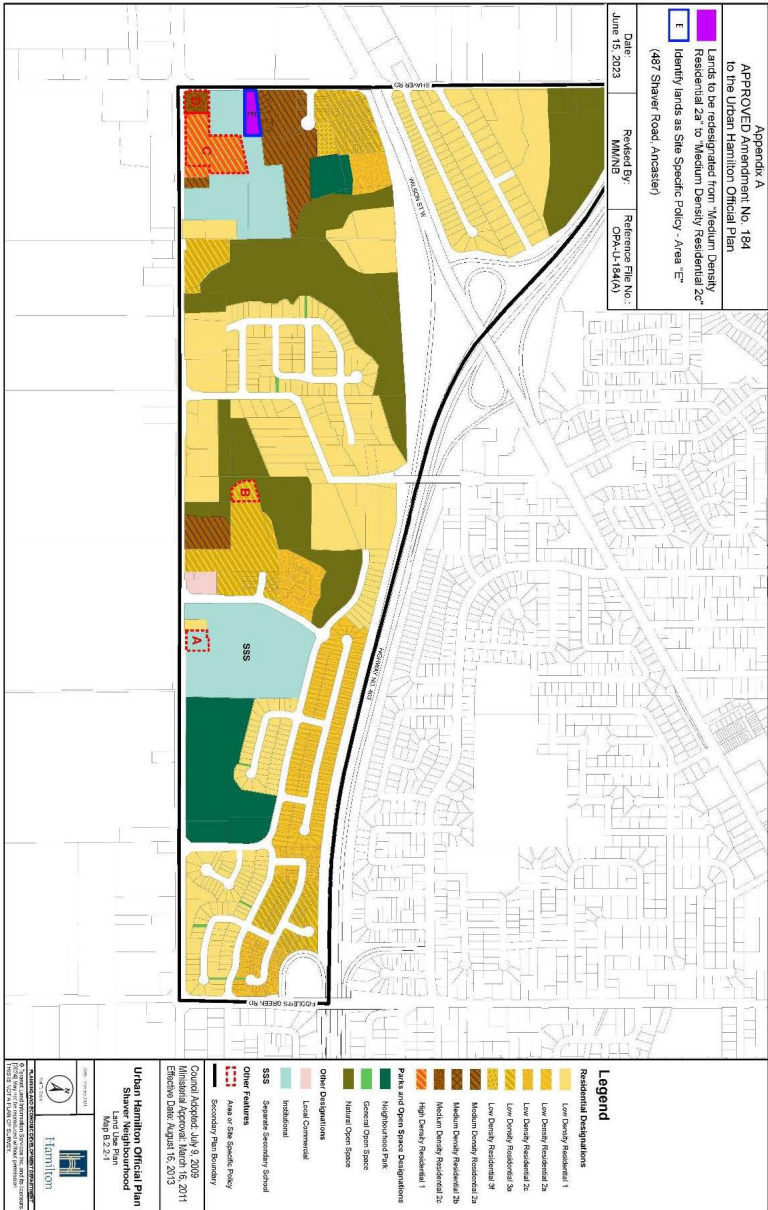
An implementing Zoning By-Law Amendment and Site Plan will give effect to the

Urban Hamilton Official Plan Amendment No. 184	Page 2 of 3	
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intended uses on the subject lands.

This Official Plan Amendment is Schedule "1" to By-law No. ^{24-096-OLT} passed on the 21st day of May, 2024.

OLT Case No. OLT-23-000737



ATTACHMENT 2

CITY OF HAMILTON

BY-LAW NO. 24-097-OLT

To amend Zoning By-law No. 87-57 Respecting lands located at 487 Shaver Road (Ancaster)

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 Town of Ancaster" 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 of the former area municipalities 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 this By-law will be in conformity with the Urban Hamilton Official Plan upon adoption of UHOPA No. 184;

NOW THEREFORE Zoning By-law No. 87-57 is amended as follows:

1. That Map No. 1-B to Schedule "B", appended to and forming part of By-law No. 87-57 (Ancaster) is amended by changing the zoning from the Rural Commercial "C5-243" Zone, Modified to the Residential Multiple "RM5-716" 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, to the Zoning By-law No. 87-57 (Ancaster), as amended, is hereby further amended by adding the following Sub-section:

"RM5-716

That notwithstanding the provisions of Sections 7.11 (a), 7.14 (b)(i)(B), 9.3 (a), 18.2 (a), (b), (c), (e), (f), (g), (h), (i), (j), (k), (m), (n), and (p) and in addition to Section 3.111 and 18.1 the following special provisions shall apply to the lands zoned "RM5-716":

- (a) A noise barrier shall be permitted to be located within a required Planting Strip.
- (b) The following use shall also be permitted:

- (i) Block townhouse dwellings and uses, buildings and structures accessory thereto.

(c) DEVELOPMENT REGULATIONS

(i)	Minimum Lot Area	0.44 hectares
(ii)	Maximum Density	60 units per hectare
(iii)	Minimum Lot Frontage	30 metres
(iv)	Minimum Front Yard	3.0 metres
(v)	Maximum Lot Coverage	34 percent
(vi)	Minimum Side Yard	i) 6.0 metres - Southerly ii) 5.5 metres - Northerly
(vii)	Minimum Rear Yard	5.5 metres
(viii)	Maximum Height	14.5 metres
(ix)	Minimum Landscaping	34 percent of the lot area, which includes required privacy Areas.
(x)	Planting Strip	Minimum 3.0 metres wide provided along each lot line, except along the southerly lot line where a 1.5 metre planting strip will be required.
(xi)	Parking	1 per dwelling unit which may be located within an attached garage, <u>plus</u> 0.66 visitor parking spaces per dwelling unit.
(xii)	Children's Play Area	Shall not be required.
(xiii)	Minimum Privacy Area	10.0 square metres per unit, located immediately adjacent to each unit.
(xiv)	Building Separation	A block townhouse building shall be not closer to another townhouse building on the same lot with a minimum end wall to end wall distance of 2.4 metres.
(xv)	Mechanical and Unitary Equipment	Within a required front yard, provided such equipment shall have a minimum setback of 1.5 metres from the street line, a minimum setback of 0.6 metres from a side lot

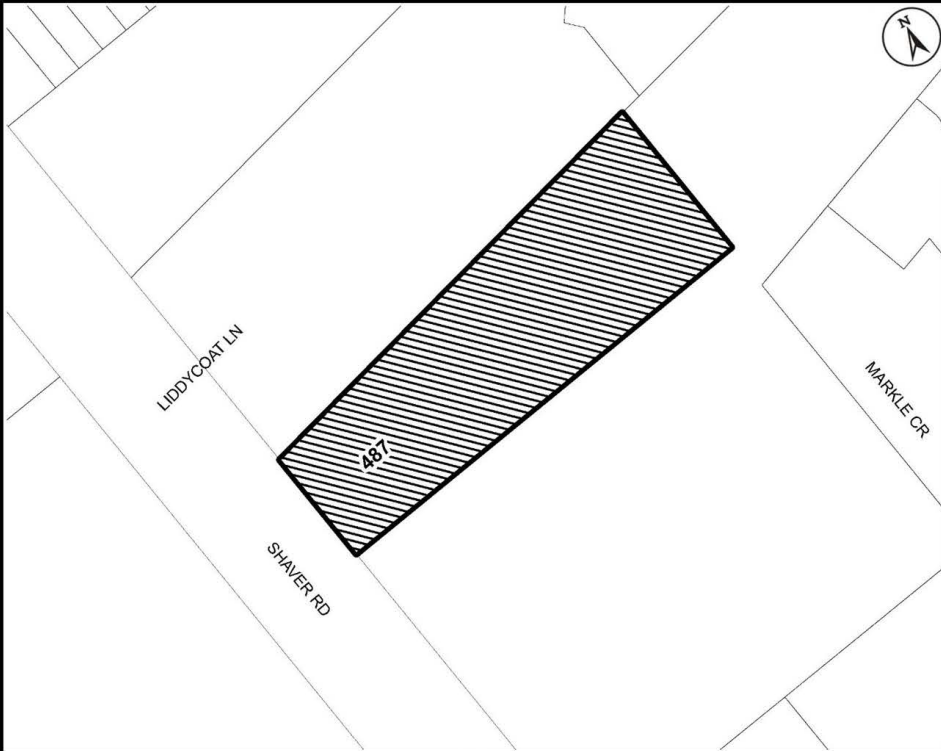

line, is screened from the street by an enclosure or landscaping and may be located within a required planting strip.

(xvi)

In addition to the RM5-716 Zone Provisions, no building or structure shall be erected, altered, nor extended, except on the area identified as Block 1 – Extent of building envelope on Figure 2 of Section 39: Special Figures.

3. That SECTION 39: SPECIAL FIGURES, be amended by adding Figure 2: 487 Shaver Road, Ancaster, appended to this By-law.
4. 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 Multiple "RM5" Zone provisions, subject to the special requirements referred to in Section 2 of this By-law.

Approved by Ontario Land Tribunal Decision dated May 21, 2024.

	
<p>This is Schedule "A" to By-law No. 24-097-OLT</p> <p>Passed the <u>21st</u> day of <u>May</u>, 2024</p>	
<p>----- Mayor -----</p> <p>----- Clerk -----</p>	
<p>Schedule "A"</p> <p>Map forming Part of</p> <p>By-law No. 24-097-OLT</p> <p>to Amend By-law No. 87-57</p>	
<p>Subject Property</p> <p>487 Shaver Road, Ancaster (Ward 12)</p> <p> Change in zoning from the Rural Commercial "C5-243" Zone, Modified to the Residential Multiple "RM5-716" Zone, Modified</p>	
<p>Scale: N.T.S</p>	<p>File Name/Number: ZAC-22-005/UHOPA-22-002</p>
<p>Date: February 5, 2024</p>	<p>Planner/Technician: MM/NB</p>
<p>PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p>	
