

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

17-181-OMB-01
Attachment 1



ISSUE DATE: March 26, 2018

CASE NO(S): PL171015

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellants:	Tom and Teresa St. Michael
Subject:	By-law No. ZAR-17-011
Municipality:	City of Hamilton
OMB Case No.:	PL171015
OMB File No.:	PL171015
OMB Case Name:	Tom and Teresa St. Michael v. Hamilton (City)

Heard: March 5, 2018 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

Tom and Teresa St. Michael	Self represented
Cricket-McGill Construction Ltd.	Joel Farber
City of Hamilton	Joel Farber

**MEMORANDUM OF ORAL DECISION DELIVERED BY RICHARD JONES ON
MARCH 5, 2018 AND ORDER OF THE BOARD**

THE APPLICATION AND THE APPEAL

[1] The Applicant, Cricket-McGill Construction Ltd. made application to the City of Hamilton ("City") to amend the Town of Ancaster Zoning By-law No. 87-57 ("ZB") for lands known municipally as 121 Fiddlers Green Road ("subject property").

[2] The zoning by-law amendment (“ZBA”) would permit the development of five single family dwellings on a private road. The development would be approved and function as a plan of condominium. Each new home would occupy a parcel of land of approximately 375 square metres and have a minimum frontage of 18 metres. Every home would have a garage and driveway with access to Fiddlers Green Road provided by a private, interior roadway.

[3] The ZBA will rezone the subject lands from the Existing Residential “ER-538” Zone, the Modified, Existing Residential “ER-539” Zone Modified, and the Existing Residential “ER-540” Zone Modified, to a Modified Residential “R5-688” Zone. The modifications specifically address standards relating to minimum front yards, minimum side yards, maximum rear yards and provisions limiting the maximum number of units to five. The ZBA is appended as Attachment 1 (from Tab 33, Exhibit 3).

[4] The City approved the ZBA, following a positive recommendation from the City’s Planning Department, but it was appealed by nearby neighbours, Tom and Teresa St. Michael (“St. Michaels or Appellants”).

MOTION

[5] The St. Michaels moved a motion for adjournment at the outset of the hearing. That oral motion followed an earlier, written (emailed) request to adjourn the hearing addressed to the Ontario Municipal Board several days prior to the hearing event. That request was denied.

[6] The St. Michaels requested the Board in their oral submission to consider an adjournment in consideration of a forthcoming planning report to Hamilton Council in April reviewing the issue of “monster” homes in the Ancaster community, a term the St. Michaels also applied to the five, proposed homes bordering their Douglas Road residence’s north boundary.

[7] This Motion before the Board was also dismissed.

[8] The Board explained that a planning report, anticipated in April 2018 did not affirm a new policy direction lacking as it would at that time, the final sanction of Council approval. And in the event, those planning recommendations did eventually advance to the stage of Council—approved official policy, it did not necessarily follow that such a policy would have relevance to the subject application.

[9] Furthermore, the Board advised the St. Michaels of the *Clergy Principle*, a much followed precedence arising from a prior Board decision which expressed reliance on a framework of existing policies and standards which have had the official sanction of an approval authority over recommended policies which are not approved. Proposed policies may suggest a potential direction of future policy and can be informative on that basis as the Board explained, but their elastic nature arising from their still evolving status, precludes the prospect that recommendations are given equal weight in Board proceedings with sanctioned policies and standards.

CONTEXT AND HISTORY

[10] The proposed new homes will be built at or below the ZB's maximum height allowance of 10.5 metres (m) and their size will range between 2000 square feet to 2170 square feet. The whole property is bounded by mature, treed, vegetation and the interior is comprised of open field. The entire property is approximately 0.30 hectares (ha) in size. An existing, derelict single-family home will be demolished when final approvals are achieved.

[11] Land uses to the north are comprised of single-family dwellings, a florist shop and a seniors housing complex. Land uses to the east, south and west are more uniform, consisting almost exclusively of single-family homes.

[12] An Ontario Municipal Board Decision, PL140938 issued March 24, 2016, found that the subject lands were suited to a modest amount of intensification concluding that up to six single-family units were appropriate for the subject property. That decision was rendered in response to an appeal to the Ancaster Wilson Street Secondary Plan

Amendment (OPA 24). I was also advised of two earlier Board decisions delivered prior to 2016 involving the subject lands, but the 2016 decision was singularly determinative in this matter.

[13] That 2016 decision laid the basis for the current development, which as noted is proposed to be developed for five homes under site plan control and Plan of Condominium. The Board was provided with numerous studies (available in Exhibit 3) that affirmed the suitability of the proposed development action including a functional servicing report, an archeology assessment, detailed architectural submissions, etc. It was clear to the Board that the Applicant had done his proverbial homework with respect to the thoroughness of his preparations relative to the site plan application.

THE APPELLANTS, THE APPEAL AND A PARTICIPANT

[14] The Appellants were self-represented.

[15] Their residence was located directly south of the subject property's approximate mid-section. Because of this proximity, they expressed concerns that the development would cause flooding, and remove the protective boundary vegetation which currently shields their back yard from visual intrusion.

[16] They held the joint apprehension that the new homes, despite the imposition of site plan control, would yield much larger, "monster homes" in the future which would ruin their neighbourhood. They suggested that the proposed, private roadway be relocated to the north boundary in order to forestall a flooding problem which the proposed southern alignment would encourage in their view, and that the City reconsider its approval for five units in favour of fewer units. The Appellants were familiar with the Board's decision in 2016 being long term residents, although they clearly disagreed with its findings.

[17] Nearby neighbour, Frank Van Hullenaar of 33 Douglas Road testified in opposition to the application as a participant. As a long term resident, Mr. Van Hullenaar

was also familiar with the policy regime affecting the subject lands and immediate neighbourhood. He also expressed concerns regarding the removal of mature vegetation; the construction of large homes incompatible with the character of the neighbourhood and the apparent absence of a storm water management strategy which would, in his opinion, ensure that lots south of the subject property will be flooded when the lands are developed.

PLANNING EVIDENCE AND FINDINGS

[18] Matt Johnston, a planning consultant, provided professional planning evidence on behalf of both the City and the Applicant.

[19] Mr. Johnston's testimony was uncontested and the Board relied and accepted his opinion that the ZBA was consistent with the principles of sound planning practice, and conformed to the policies of the Provincial Policy Statement 2014 (PPS), the Growth Plan for the Greater Golden Horseshoe 2017 (GP), the Urban Hamilton Official Plan (UHOP), and OPA 24.

[20] Mr. Johnston testified that a moderate form of intensification which characterized the proposed development was recognized and encouraged in all the policy documents and that the ZBA reflected those intentions in a conforming and consistent manner.

[21] In specific reference to the concerns expressed by the Appellants and Mr. Hullenaar, Mr. Johnson stated that the technical/engineering studies had confirmed that the natural topography of the subject property favoured the provision of the roadway along the southern boundary (at the point of lowest elevation) where storm drainage would be captured and discharged in a northerly direction within a new storm sewer which will be connected to the subject property from Fiddlers Green Road.

[22] Mr. Johnston's depiction of the proposed new homes, which were architecturally detailed in the site plan material of Exhibit 3 were not representative of monster homes,

but to the contrary, were moderately sized and, therefore, compatible with the neighbourhood with respect to mass and building height in his opinion.

[23] The planner opined that the ZBA represented a development form consistent with prevailing policy, one that was technically sound and compatible with existing neighbourhood conditions and character.

[24] The Board relied on the planner's uncontested planning testimony as noted, and an oral decision dismissing the appeal was rendered accordingly.

ORDER

[25] The Board orders that the appeal is dismissed and the subject lands, known municipally as 121 Fiddlers Green Road in the City of Hamilton are rezoned in accordance with the zoning by-law amendment appended as Attachment 1.

"Richard Jones"

RICHARD JONES
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.

Ontario Municipal Board

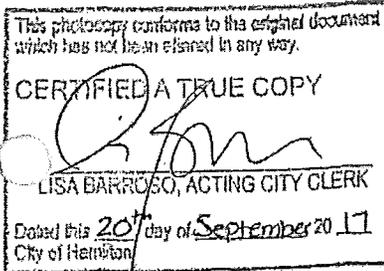
A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

Authority: Item 14, Planning Committee
 Report: 17-013
 CM: August 18, 2017
 Ward: 12
 Bill No. 181

ATTACHMENT 1

CITY OF HAMILTON

BY-LAW NO. 17-181



**To Amend Zoning By-law No. 87-57
 Respecting Lands Located at 121 Fiddler's Green 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";

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";

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;

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;

WHEREAS the Council of the City of Hamilton, in adopting Item 14 of Report 17-013 of the Planning Committee at its meeting held on the 18th day of August 2017, which recommended that Zoning By-law No. 87-57 (Ancaster), be amended as hereinafter provided; and,

WHEREAS this By-law is in conformity with the Urban Hamilton Official Plan;

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

1. That Map No. 1 to Schedule "B", appended to and forming part of By-law No. 87-57 (Ancaster) is amended as follows:
 - (a) by changing the zoning from the Existing Residential "ER-538" Zone, Modified to the Residential "R5-688" Zone, Modified (Block 1);
 - (b) by changing the zoning from the Existing Residential "ER-539" Zone, Modified to the Residential "R5-688" Zone, Modified (Block 2);
 - (c) by changing the zoning from the Existing Residential "ER-540" Zone, Modified to the Residential "R5-688" Zone, Modified (Block 3);

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

2. For the purposes of this by-law the boundaries of 121 Fiddler's Green Road (Ancaster) shall be deemed to be the lot lines, and regulations including but not limited to lot area, lot frontage, lot coverage, and building setbacks, landscaped areas, parking requirements, and accessory buildings, shall be from the exterior boundaries of 121 Fiddler's Green Road (Ancaster) and not from individual properties or boundaries created by registration of a condominium plan or created by a Planning Act application.
3. The Section 34: Exceptions, to Zoning By-law No. 87-57 (Ancaster), as amended, is hereby further amended by adding the following Sub-sections:

R5-688

That notwithstanding Sections (d), (e), and (f) of Section 13: Residential "R5" Zone, the following regulations shall apply:

REGULATIONS

- (d) Minimum Front Yard to Fiddler's Green Road:
 - i) 4.13 metres;
- (e) Minimum Side Yard:
 - i) Northerly Side Yard:
 - a) 1.27 metres for the unit which has frontage on Fiddler's Green Road.
 - b) 6.03 metres for all other units
 - ii) Southerly Side Yard: 11.07 metres
 - iii) Setbacks between buildings: 2.50 metres
- (f) Maximum Rear Yard: 1.26 metres
- (k) For the purposes of this by-law a maximum of five (5) single detached dwelling units shall be permitted on the subject lands.
- (l) For the purposes of this by-law Section 7.13 (a) shall not apply to those units that do not have frontage on Fiddler's Green Road.
- (m) For the purposes of this by-law Section 13.2 (c) shall not apply.
- (n) For the purposes of this by-law Section 13.2 (a) and (b) shall apply to each individual unit on the subject lands.

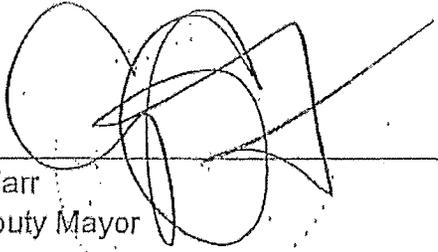
To Amend Zoning By-law No. 87-57
Respecting Lands Located at 121 Fiddler's Green Road (Ancaster)

(Page 3 of 4)

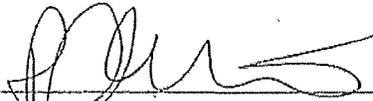
3. That no building or structure shall be erected, altered, extended, or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the Residential "R5" Zone provisions, subject to the special requirements referred to in Section 2 of this By-law.

7. 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 this 18th day of August, 2017.



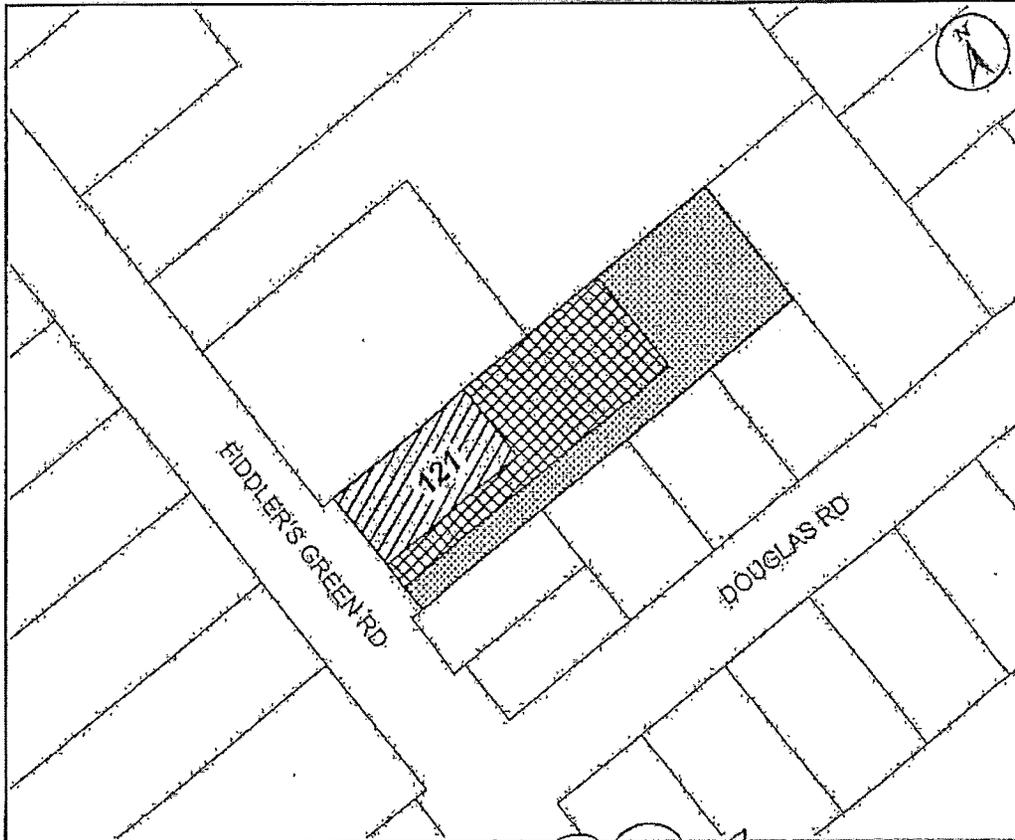
J. Farr
Deputy Mayor



R. Caterini
City Clerk

ZAR-17-011

To Amend Zoning By-law No. 87-57
 Respecting Lands Located at 121 Fiddler's Green Road (Ancaster)



This is Schedule "A" to By-law No. 17:181
 Passed the 18th day of August, 2017

[Signature]
 Mayor

[Signature]
 Clerk

Schedule "A"

Map Forming Part of
 By-law No. 17:181
 to Amend By-law No. 87-57

Subject Property
 121 Fiddler's Green Road

Block 1 - Change in zoning from Existing Residential "ER-538", Modified to the Residential "R5-688" Zone, Modified

Block 2 - Change in zoning from Existing Residential "ER-539", Modified to the Residential "R5-688" Zone, Modified

Block 3 - Change in zoning from Existing Residential "ER-540", Modified to the Residential "R5-688" Zone, Modified

Scarer N.T.S.	File Name/Number ZAR-17-011
Date July 13, 2017	Planner/Technician RCVS
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT	

