

ISSUE DATE:

**August 17, 2006**

DECISION/ORDER NO:

**2333**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

006-06

PL060065

06-352

98153 Ontario Inc. 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 05-360 of the City of Hamilton  
OMB File No. R060017

998153 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Hamilton to make a decision respecting a proposed plan of subdivision (condominium) on lands composed of 114 Pleasant Ave - Dundas, Block A, Registered Plan No. 1325 - in the City of Hamilton  
(Approval Authority File No. 25CDM200509)  
OMB File No. S060023

998153 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 51(43) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from condition(s) imposed [or the lapsing provision imposed] by the City of Hamilton with respect to a proposed plan of subdivision on lands composed of 114 Pleasant Ave - Dundas, Block A, Registered Plan No. 1325 - in the City of Hamilton  
(Approval Authority File No. 25T-200508)  
OMB File No. S060022

998153 Ontario Inc. has referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, determination and settlement of details of a site plan for lands composed of 114 Pleasant Ave - Dundas, Block A, Registered Plan No. 1325 - in the City of Hamilton  
OMB File No. M060051

**APPEARANCES:**

**Parties**

998153 Ontario Inc.

City of Hamilton

Hugh Tye, Julianne Burgess & Jim Campanella

**Counsel**

R. D. Cheeseman

A. Zuidema

OFFICE OF THE CITY CLERK	
AUG 21 2006	
REC'D BY .....	DATE .....
REF'D TO .....	DATE .....
REF'D TO .....	DATE .....
REF'D TO .....	DATE .....
ACTION: <u>A Zuidema</u>	
<u>T. McCabe</u>	
<u>L. Barniso</u>	

**MEMORANDUM OF ORAL DECISION DELIVERED BY G. O'CONNOR AND D. BARBIR ON JULY 11, 2006 AND ORDER OF THE BOARD**

*A Rawling S.*

The matters before the Board are applications by 998153 Ontario Inc. (the "Applicant") for a Zoning By-law Amendment (By-law), a draft plan of subdivision, a draft plan of condominium and a site plan respecting the property at 114 Pleasant Avenue in the City of Hamilton. The applications are to permit 9 lots for single detached dwellings, and one block for a condominium development of 19 single detached dwellings with a common element road and, a common element landscape/amenity area.

The subject property is located north of Turnbull Road, south of Pleasant Avenue and east of King's Gate, in the former Town of Dundas.

The property is designated as Urban Area in the Hamilton Wentworth Official Plan, and Major Institutional in the Town of Dundas Official Plan. The surrounding land uses are residential. The site was previously a school site declared surplus by the relevant Board of Education and purchased by the Applicant.

At the commencement of the hearing a motion to add a party to this appeal was put forward by Mr. Hugh Tye. The party would consist of three individuals/neighbours, Mr. Hugh Tye, Ms Julianne Burgess and Mr. Jim Campanella.

The motion for party status was allowed and Mr. Tye, Ms Burgess and Mr. Campanella were granted party status for the part of the hearing that deals with the applications for a draft plan of subdivision and a draft plan of condominium, but not for that part dealing with a site plan.

Also at the commencement of the hearing, all three parties informed the Board that they had reached a settlement. The Minutes of Settlement are filed as Exhibit 4, now Attachment 1 to this hearing.

Mr. R. D. Cheeseman, counsel for the Applicant, on consent of all parties explained the nature of the application and the conditions of settlement. Mr. Zuidema, counsel for the City of Hamilton, and Hugh Tye, Julianne Burgess & Jim Campanella were in support. Mr. J. Ariens, planner for the Applicant, provided planning evidence in support of the settlement. No one spoke against the proposal.

Mr. Ariens explained that the main issue for the neighbours was loss of an open space that was a part of the school site. The issue was successfully addressed by committing 9.5% of the total open space for public use which will be maintained by the Applicant.

In Mr. Ariens' opinion, the proposal represents good planning, it is consistent with the Provincial Policy Statement, and it implements the intent of the applicable official plans for intensification in this area. It also meets the tests under section 51(24) of the Planning Act.

The Board finds the proposal is consistent with the Provincial Policy Statement and implements the intent of the applicable official plans. The Board further finds that the proposal meets all the tests as set out in section 51(24) of the Planning Act, and represents appropriate intensification.

The decision of the Board is as follows:

The Board will allow the appeal against Zoning By-law 05-360 of the City of Hamilton in part, and Zoning By-law 05-360 is amended as set out in Schedule 1, Exhibit 4, now Attachment 1 to this decision.

The Board will allow the appeal under subsection 51(34) of the Planning Act and amend the conditions of the Draft Plan of Subdivision in accordance with the Draft Plan of Subdivision attached as Schedule 2, Exhibit 4, now Attachment 1, as more fully set out in Schedule 3, Exhibit 4, now Attachment 1 to this decision.

The Board will allow the appeal under subsection 51(43) and approve the Draft Plan of Condominium as set out in Schedule 4, Exhibit 4, now Attachment 1, subject to the Conditions as set out in Schedule 5, Exhibit 4, now Attachment 1 to this decision.

The Board will adjourn the Site Plan portion of the hearing to allow the parties to finalize the details and conditions of the site Plan as it relates to the Plan of Condominium as set out in Schedule 4, Exhibit 4, now Attachment 1 to this hearing.

A telephone conference hearing is scheduled for August 18, 2006 at 9:00 a.m. in this regard. The parties to the hearing are 998153 Ontario Inc and the City of Hamilton.

The members of the Board herein are seized of the site plan matters and may be spoken to if issues arise prior to August 18, 2006.

The Board so Orders.

"G. O'Connor"

G. O'CONNOR  
MEMBER

"D. Barbir"

D. BARBIR  
MEMBER

CITY OF HAMILTON

BY-LAW NO. 05-360

To Amend Zoning By-law No. 3581-86  
Respecting Lands Located at 114 Pleasant Avenue, Dundas,  
Block 'A, Registered Plan No. 1325

**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 Town of Dundas" 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 Town of Dundas passed Zoning By-law No. 3581-86 (Dundas) on the 22<sup>nd</sup> day of May 1986, which by-law was approved by the Ontario Municipal Board by Order dated the 10<sup>th</sup> day of May 1988;

**AND WHEREAS** this by-law is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former Town of Dundas), approved by the Minister under the Planning Act on June 21, 1999.

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

1. Schedule "K" of zoning By-law No. 3581-86 (Dundas) is hereby amended.
  - (a) by changing the zoning from Public and Private Service "PPS" Zone to Single Detached Residential "R2/S-106" Zone, the lands composed of Block 1; and,
  - (b) by changing the zoning from Public and private Service "PPS" Zone to Single Detached Residential R2/S-107 Zone, the lands composed of Block 2;

- (c) by changing the zoning from Public and Private Service "PPS" Zone to Park and Recreation "PR1" Zone, the lands composed of Block 3;

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

- 2. SECTION 32: EXCEPTIONS of Zoning By-law No. 3581-86 (Dundas), is hereby further amended by adding the following new subsections:

**SINGLE DETACHED RESIDENTIAL R2/S-106**

Notwithstanding the provisions of SUBSECTION 6.16 ONE DWELLING PER LOT of SECTION 6: GENERAL REGULATIONS and of SUBSECTION 9.1: PERMITTED USES, and SUBSECTION 9.2: REGULATIONS FOR SINGLE-DETACHED DWELLINGS, of SECTION 9: SINGLE-DETACHED RESIDENTIAL ZONE (R2), the following uses and regulations shall apply on the lands shown as "R2/S-106" on Schedule "K".

(a) PERMITTED USES

- (i) Single-Detached Dwelling Units
- (ii) Parks and Playgrounds
- (iii) ~~(iii)~~ Accessory Uses to the uses identified above.

(b) REGULATIONS FOR ALL SINGLE-DETACHED DWELLING UNITS

- (i) Minimum Lot Area - 1.2 hectares.
- (ii) Minimum Lot Frontage - 17.0 metres.
- (iii) Minimum Front Yard - 6.0 metres.
- (iv) Minimum Side Yard and Rear Yard - 7.5 metres except the minimum yard abutting lands zoned Park and Recreation "PR1" Zone shall be 2.0m and the minimum yard abutting the rear lot line of Municipal No. 7 Princess Court shall be 4.86 metres.
- (v) Maximum Building Height - 10.5 metres, maximum 2 storeys.

- (vi) Maximum Number of Dwelling Units - 19 Dwelling Units.
  - (vii) Minimum Landscaped Area - 50%.
  - (viii) Maximum Floor Area of a Second Floor - 60% of the Floor Area of the ground floor, including garage.
  - (ix) Off-Street Parking - minimum 4.0 parking spaces per dwelling unit which may be arranged in tandem and 2 spaces of which may be included in a garage plus a minimum of 6 visitor parking spaces.
  - (x) Notwithstanding the provisions of subsection 7.14.1 "Dimensions For The Design Of Parking Areas" the minimum width and length of any parking space within an attached garage shall be 2.7 metres and 5.8 metres and may include the encroachment of one step.
- (c) Subsection 9.5: REGULATIONS FOR ACCESSORY BUILDINGS AND STRUCTURES shall continue to apply.

**SINGLE-DETACHED RESIDENTIAL R2/S-107**

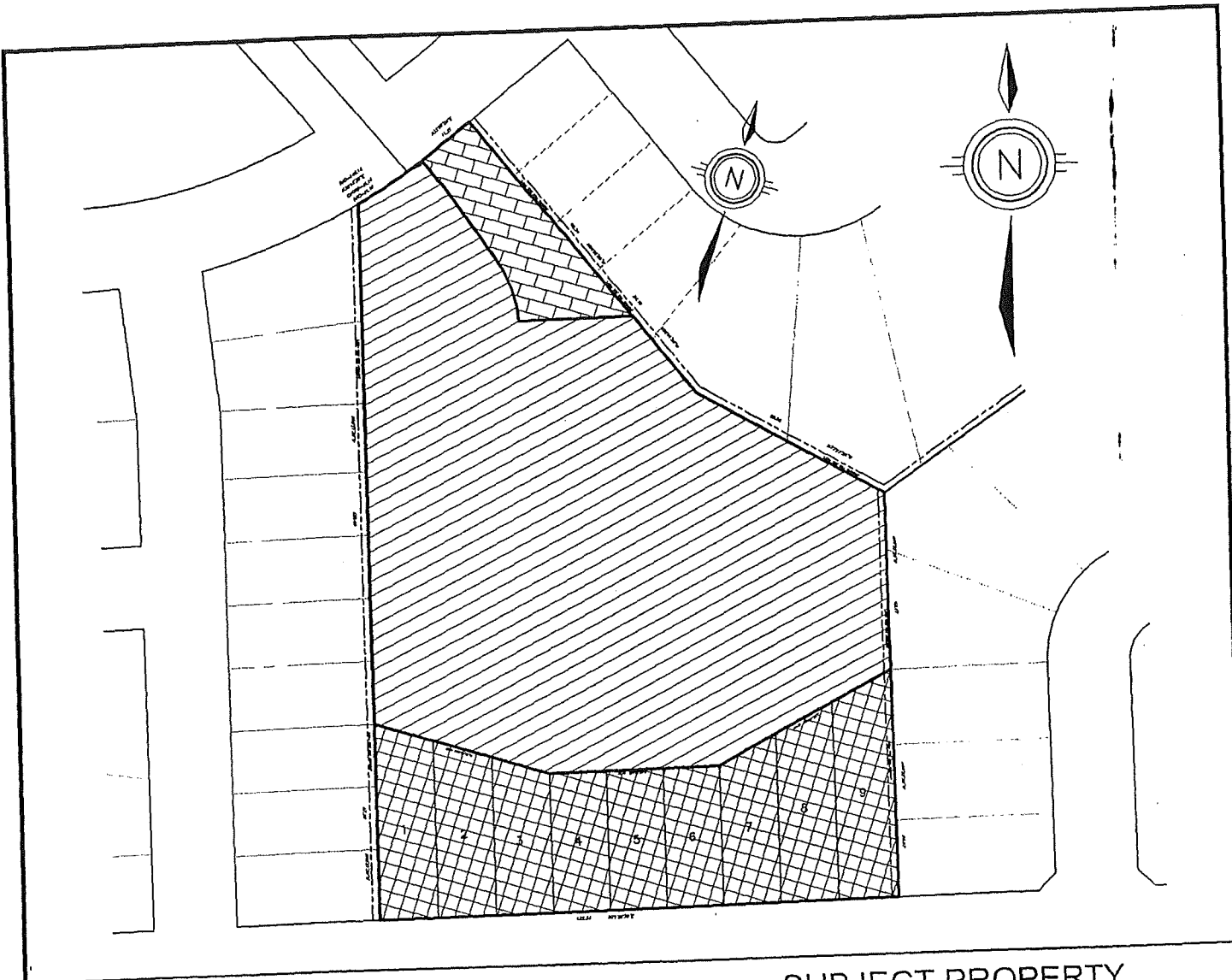
Notwithstanding the provisions of SUBSECTION 9.2.1.2 LOT FRONTAGE, a minimum lot frontage of 13.5 metres shall apply on the lands shown as "R2/S-107" on SCHEDULE 'K'.

- 3. All other provisions of Zoning By-law No. 3581-86 (Dundas) as applicable shall continue to apply.
- 4. 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 \_\_\_\_\_, 2006.

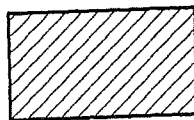
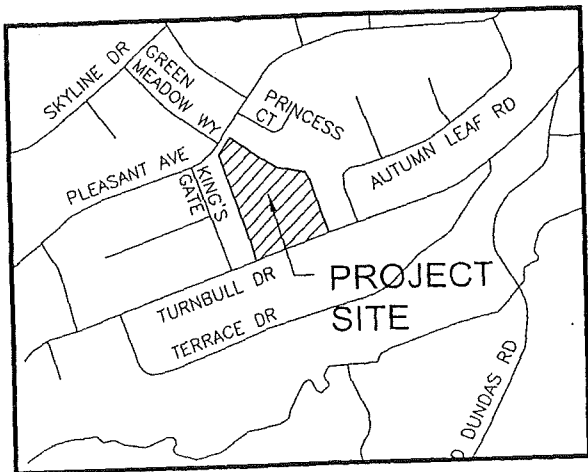
\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK



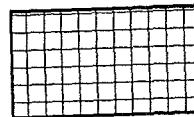
SCHEDULE 'A' TO ZONING BY-LAW  
NO. 05-360

SUBJECT PROPERTY  
114 PLEASANT AVENUE, DUNDAS



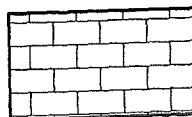
BLOCK 1

CHANGE FROM "PPS" (PUBLIC AND PRIVATE SERVICE) ZONE TO "R2/S-106" (SINGLE DETACHED RESIDENTIAL) ZONE, MODIFIED.



BLOCK 2

CHANGE FROM "PPS" (PUBLIC AND PRIVATE SERVICE) ZONE TO "R2/S-107" (SINGLE DETACHED RESIDENTIAL) ZONE, MODIFIED.



BLOCK 3

CHANGE FROM "PPS" (PUBLIC AND PRIVATE SERVICE) ZONE TO "PR1" (PARK AND RECREATION) ZONE.

SCALE	1:750
DATE	JULY 4.06
PROJECT No.	HP 1079