

017-05

ISSUE DATE:
Sept. 14, 2006
DECISION/ORDER NO:
2603



PL040081

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

06-353

Joanne and Bruce Menchions have appealed to the Ontario Municipal Board under subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from a decision of the Committee of Adjustment of the City of Hamilton which granted an application by David Disimoni and Ignazio Fortino numbered B184/03 for consent to convey part of the lands composed of Part Lot 43, Concession 2 (Ancaster) in the City of Hamilton
OMB File No. C040033

Mike Robitaille and Kathy Robitaille, Rita Powell and Irwin Walker have 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 05-055 of the City of Hamilton
OMB File No. R050065

David Disimoni & Ignazio Fortino have appealed to the Ontario Municipal Board under subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from a decision of the Committee of Adjustment of the City of Hamilton which denied an application by David Disimoni and Ignazio Fortino numbered B170/05 for consent to convey part of the lands composed of Part Lot 43, Concession 2 (Ancaster) in the City of Hamilton
OMB File No. C050302

APPEARANCES:

Parties

David Disimoni
Ignazio Fortino

Joanne & Bruce Menchions
Rita Powell, Irwin Walker

Mike & Kathy Robitaille

City of Hamilton

Counsel

R. D. Cheeseman

P. Pickfield

A. Zuidema

OFFICE OF THE CITY CLERK	
SEP 18 2006	
REC. BY	DATE
REF'D TO <i>T. McLean</i>	DATE
REF'D TO <i>N. Smith</i>	DATE
REF'D TO <i>A. Williams</i>	DATE
ACTION: <i>L. Banno</i>	

DECISION DELIVERED BY J. CHEE-HING AND ORDER OF THE BOARD

CONTEXT:

David Disimoni and Ignazio Fortino (the proponents) are proposing an infill residential development that involves a land assembly of two properties namely, 79 and

85 Lovers Lane in the former Town of Ancaster (Ancaster) now in the City of Hamilton (City). The proposal calls for three single detached dwellings to be built on three residential lots with a shared laneway that would allow vehicular access to all three lots (Exhibit 11).

In order to bring this proposal to fruition, the proponents applied to the Committee of Adjustment (Committee) of the City of Hamilton for two consents, the first involving 85 Lovers Lane (Application No. B184/03) and the second consent application involving 79 Lovers Lane (Application No. B170/05). In addition, a rezoning application was made by the proponent to the City to permit the proposed development.

The Committee granted the first consent involving 85 Lovers Lane on December 3, 2003 and neighbouring residents subsequently appealed its decision to the Board. The Committee denied the second consent application on September 7, 2005 and the proponents appealed its decision to the Board. Zoning By-law (ZBL) No. 05-055 was passed by the Council on March 9, 2005 and was subsequently appealed to the Board by neighbouring residents. These appeals have been consolidated and are now before the Board.

THE APPLICATIONS:

Consent Application No.1 (B184/03)

To permit the conveyance of an irregular shaped vacant parcel of land having a frontage of 0.91m, and an area of approximately 2,193 m² to be added to the lands municipally known as 79 Lovers Lane for residential purposes, and to retain a parcel of land measuring 24.37m by 85.66m containing an existing dwelling for residential purposes.

Consent Application No.2 (B170/05)

To permit the conveyance of an "L" shaped vacant parcel of land having a frontage of 5.16m, and an area of 0.236ha for residential purposes and to retain two parcels of land; one being vacant and having a frontage of 4.0m, and area of 0.315ha for residential purposes and the other having a frontage of 17.3m, and an area of 0.113ha containing an existing dwelling for residential purposes.

Zoning By-Law Amendment (ZBL 05-055)

To permit two new single-detached residential dwellings, each on freehold residential lots, with a reduced minimum lot frontage of 4.0m and site-specific yard requirements. To permit a new single-detached dwelling with a reduced minimum lot frontage of 17.0m and site specific yard requirements and lastly to recognize an existing single detached dwelling located at 85 Lovers Lane.

This hearing was initially scheduled for two days. Given the number of parties (4), expert witnesses (5) and lay witnesses (5) it became evident that the allocation of 2 days was not enough and a continuation of a further three days was required to hear all of the evidence and submissions. There were three appeals to be heard by the Board. Two appeals were launched by a group of neighbouring residents (the "residents") and they were represented by counsel and two expert witnesses (planner and arborist). Two appellants to the proposed zoning by-law – Mike and Cathy Robitaille – who are also residents of the neighbourhood chose to represent themselves and only wished to make a presentation. One appeal was launched by the proponents who were represented by counsel and two expert witnesses (planner and arborist). Finally, the City, which supported the proposals was represented by counsel and a staff planner. Five lay witnesses (I. Walker, Monaro, R. Powell, J. Menchions and G. Wang), all residents of the neighbourhood testified against the proposals.

THE PROPOSAL DETAILS:

The proposal is for an infill residential development – essentially a flag lot development that involves a complicated land assembly of two properties namely, 79 and 85 Lovers Lane in the former Town of Ancaster now in the City of Hamilton. The applicants are proposing to sever part of 85 Lovers Lane and add it to the abutting lands to the south – 79 Lovers Lane (Application No. AN/B-03:184). The existing house on the retained portion will remain. The lands to be severed will be merged on title with the lands at 79 Lovers lane. The applicants are also seeking a second severance, which will apply to the consolidated lands at 79 Lovers Lane. The applicant seeks to divide these lands into three parcels for the purposes of demolishing the existing house and building three new houses (Application No. AN/B-05:170). The severed lands are designated as

Part 1; and the retained lands are designated as Parts 2 and 3 (Ex 17a). All three lots will have mutual right-of-way easements for access purposes.

A ZBL amendment is also being sought in order to change the zoning for the subject properties from the current 'D' (deferred development zone) on the subject lands to permit three single detached dwellings at 79 Lovers Lane and to recognize the existing dwelling at 85 Lovers Lane. At the onset of the hearing, counsel for the proponents advised that the ZBL before the Board on appeal has been amended only for the purposes of clarification (Ex. 13). The Board is satisfied that the changes are minor and are for clarification only.

FINDINGS OF THE BOARD:

Based on all the evidence heard and submissions made at this hearing, the Board finds that the consent applications meet the requirements of subsection 51 (24) of the *Planning Act* and the proposed zoning by-law amendment conforms to the Ancaster Official Plan, it is not premature and represents good planning. It is the finding of the Board that this flag lot proposal when combined with the proposed tree conservation plan/landscape plan and the application of site plan control by the City will result in a development that will be compatible with the lotting fabric and the built forms in the general area. The proposal will not lead to the demise of the "park like and urban forest setting" of the neighbourhood as characterized by the appellants/residents. While there will no doubt be impacts as a result of this proposal in the Board's view these are not unacceptable adverse impacts. The reasons for my findings follow.

THE ISSUES:

The evidence given and submissions made at this hearing gave rise to the following issues, which the Board had to resolve:

1. Is the flag lot proposal compatible with the character and the lotting pattern of the area?

2. Would the proposal prejudice the future developmental potential of the abutting properties?
3. Is the ZBL in conformity with the Ancaster Official Plan and the Provincial Policy Statement?

THE PLANNING EVIDENCE:

On the issue of the proposal's compatibility with the character and lotting pattern of the neighbourhood, Mr. Ariens (planner for the applicants) testified that the neighbourhood as being very upscale though it is not homogenous as it consists of lots and built forms that vary in sizes. The proposal calls for the severance of 79 Lovers Lane to allow three houses to be built on three lots. There will be a shared laneway to allow vehicular access to all three homes (Ex. 11 and 17A). Mr. Ariens characterized the site as having tremendous redevelopment infill potential. Infill redevelopment is encouraged in areas of Ancaster designated as special policy areas in the Ancaster OP. The subject lands are within this special policy area has a zoning designation of "D". D zones are scheduled for infill development potential (Ex. 3).

Mr. Ariens further testified that this flag lot proposal will not have an impact on the streetscape as two of the proposed homes to be built on Lot 2 and 3 will not be visible from Lovers Lane. The proposed house to be built on Lot 1 which fronts on Lovers Lane will be sited on the same location as the existing home. The three proposed homes are large – 2357 sq. ft., 4553 sq.ft., and 6221 sq.ft. respectively – and they are in keeping with the size of the homes in the neighbourhood (Ex. 11). According to Mr. Ariens there are examples of flag lot developments within the general area at 189 Lovers Lane and 9 Jerseyville Road (Ex.7).

In terms of lot sizes, lot coverage, required setbacks and massing, the proposal complies with all the requirements for infill development as specified in the Ancaster OP. The subject lands are subject to site plan control and the proposal will have to meet the site plan conditions of the City. It was Mr. Ariens' planning opinion that this flag lot proposal will not have an adverse impact on the neighbourhood and it is compatible with the character and lotting fabric neighbourhood and the proposed severances comply with the statutory requirements of Section 51(24) of the *Planning Act*.

Mr. Deiacco, planner for the City of Hamilton agreed with the evidence proffered by Mr. Ariens. Mr. Deiacco was the author of the City's planning report, which recommended approval of the severance applications and the implementing ZBL. It was his evidence that the subject lands are in a development zone, which is scheduled for infill development. The City supports infill development within "D" zone. In his opinion, a flag lot development will be compatible with the lotting fabric and character of the neighbourhood. The subject lands as are all lands within the City are subject to site plan control. In his opinion the interests of the City will be protected through the site plan control requirements, which include an acceptable tree conservation plan and landscape plan for the subject lands. Mr. Deiacco further testified that he jointly prepared the ZBA with the applicant's planner that is now before the Board and that the City supports both the ZBA and the severance applications.

A tree conservation plan and a landscape plan were prepared by the applicants' landscape architect (Mr. O'Connor). Mr. O'Connor testified that 162 trees were identified on the site of which 86 are proposed to be removed. Of these 86 trees, 32 are dying or diseased and 46 are non-native to Ontario. 76 trees will be replanted including butternuts and other trees native to Ontario. The landscape plan calls for the retention of the existing perimeter trees and to retain as many trees as possible and replant what is removed. The proposed landscape plan and tree conservation plan will be submitted to the City for approval as part of the site plan approval process. The City may require changes as it sees fit. It was the evidence of Mr. O'Connor that there are no regulations in force within Ancaster that prohibit the removal of trees within private property.

The residents' objections to the proposal as expressed through the testimony of six residents were that the proposed flag lot development would not be compatible with the character and lotting fabric of the neighbourhood and that such a development would lead to considerable loss of mature vegetation and destroy the "park like setting and urban forest" that characterizes the neighbourhood and enjoyed by its residents. It was the testimony of the residents that this sense of public space would be lost as a result of the proposed development. There would be a loss of view of the "urban forest" from the backyards of some of the abutting neighbours due to the loss of trees on the subject lands. Furthermore the proposal would prejudice the development potential of the abutting properties. They retained a planner and an arborist to give expert evidence in support of their objections.

Mr. J. Webb, planner for the residents testified that the neighbourhood is characterized by extensive mature vegetation and a "park like" setting. The lotting pattern in the neighbourhood is such that the lots are mostly rectangular in shape and have frontages on municipal streets. Rear yards typically abut the rear yards of adjoining lots. All the lots in the area exceed the minimum lot frontage requirements. There are no flag lot developments in the neighbourhood and it was his opinion that the two flag lots referred to by Mr. Ariens are not within what he would consider the subject area. It was his opinion that introducing a flag lot development within this neighbourhood would be inconsistent with the existing lotting pattern. It would set a precedent and adversely impact on the privacy of the abutting neighbours as a result of the loss of mature vegetation.

The two proposed lots at the rear of the subject lands have no connection with the streetscape and their street frontages at about 4.50m each are in effect the width of the proposed shared laneway (Ex. 11). There is no connection with the public realm for the two houses that will be built in these lots and the proposal is in effect a low-density infill proposal that does not meet the PPS definition of residential intensification within a compact urban form. In his opinion the proposal does not reflect an efficient use of urban land within settlement areas and as such is not consistent with the 2005 PPS. Furthermore, the proposal would prejudice the orderly development of the adjoining properties. For the aforementioned reasons, the applications do not conform with the Ancaster OP.

Under cross-examination by Mr. Cheeseman and Mr. Zuidema it was established that the subject lands have been zoned "D" for redevelopment for almost twenty years and that a number of redevelopment proposals, which included the adjacent properties were considered and were met with extensive neighbourhood opposition. Mr. Webb testified that the City had always intended to extend Greenfield Drive further for the purposes of redeveloping the properties at 97, 85, 79 and 71 Lovers Lane. Mr. Zuidema submitted that although the special policies in the Ancaster OP may have contemplated comprehensive development of these properties, both the owners of 97 and 71 Lovers Lane gave evidence at the hearing that they are not interested in such a redevelopment scheme. Ms Powell at 97 Lovers Lane is opposed to extending Greenfield Drive through her property (Ex. 7).

It was Mr. Cheeseman's submission that despite the zoning permissions for this area, the affected neighbours are clearly not interested in a comprehensive redevelopment of their own properties and it is not fair to the applicants that the development of their lands should be held up. Mr. Webb under cross-examination opined that the proposal represents an inefficient use of the subject lands and higher densities could be achieved. It was his opinion that four smaller homes could be sited on the subject lands without the need for a shared access road and flag lots. This was challenged by Mr. Ariens in reply evidence who testified that such a higher density proposal was not feasible as a minimum municipal road allowance of 18m could not be accommodated in such a small site. Furthermore, if four homes were somehow sited this would lead to the removal of even more trees and a higher density development which the residents/appellants are categorically opposed to.

There was considerable debate over the proper application of the City's site plan guidelines. Mr. Webb stated that the site plan guidelines would not allow the proposed 4m shared driveway as there are fire exit regulations, which require the driveway/laneway to be a minimum of 6.0m. Mr. Deiacco in reply evidence testified that the proposed development would be subject to site plan control. The proponent has not yet submitted a site plan for review. It would be during the site planning process, when the appropriate laneway width would be determined. He did not anticipate the width of the proposed shared driveway as being a major planning issue.

Mr. Cheeseman submitted that the proposed houses cannot be seen from the street. This is the nature of flag lots. This flag lot proposal is fully supported by the Town. The Town carefully considered the flag lot proposal and felt that it was worthy of a ZBL amendment. Mr. Webb's interpretation of the relevant policies of the 2005 PPS on residential intensification was challenged under cross-examination. It was Mr. Cheeseman's submission that the subject lands are not in a settlement area as stated by Mr. Webb. Further that the proposal represents a more efficient use of the subject lands than having only one as-of-right replacement house.

Mr. Zuidema submitted that a loss of some trees is a reasonable expectation for the proposal. The proposal before the Board will not prejudice the rights of the adjoining property owners to develop their properties. The planning evidence of Mr. Ariens was clear on that. However it was the evidence of the adjoining property owners that they have no desire to redevelop their lands. There will be an opportunity to increase the

diversity of trees on the site through a replanting strategy. The City has approved a development that may not appeal to some. The circumstances in this case do not allow for a more intense development, which would in any event be more opposed by the residents. It is reasonable to expect certain limiting factors. The City cannot wait for other proposals to come before it nor is it practical to take a "wait and see approach" for the development of these lands within the "D" zoning designation. It has been 20 years since part of this area has been developed and given the extent of the community opposition in the past it is unlikely that a comprehensive redevelopment would take place.

Mr. Pickfield submitted that this case is about balance between intensification and compatibility. The proposed flag lot development does not achieve the type of residential intensification envisaged in the PPS for compact urban forms. It is an inefficient use of land. Flag lots are not compatible with the character and lotting pattern of the neighbourhood. It was Mr. Pickfield's submission that the introduction of flag lots is not complementing the lotting fabric but creating a new development pattern. The loss of trees as a result of the proposal will destroy the "park like setting" of the neighbourhood.

The Board finds that the proposal will not prevent the adjoining property owners from developing their own properties should they so choose. The evidence given by the affected residents is that they have no wish to redevelop their properties. The Board finds that as part of the site plan control process, the Town will be able to determine the appropriate tree conservation plan and landscaping plan for the subject lands. The Board prefers the evidence of the applicant's landscape architect that there will not be a significant loss of trees and that the trees slated to be removed are mostly diseased or non-native species. The proposed tree conservation plan would introduce better species of trees on the subject lands. This strategy was not challenged by the residents' arborist. Furthermore, it is the view of the Board that this development will not lead to the demise of the "park like setting" of the neighbourhood. The Board accepts the evidence of the applicant's arborist that the trees at the perimeter of the subject lands will be maintained. The views enjoyed by the residents would not be adversely affected by this flag lot development as neither these lots nor the houses sited on them will be visible from Lovers Lane.

On the issue of whether flag lots are compatible with the lotting fabric and character of the neighbourhood, the Board accepts the evidence of Mr. Ariens and Mr. Deiacco that the proposed lots will be compatible with the lotting fabric of the general area. The lots will be as large or larger than other lots in the area. Granted the frontages of the rear lots are much smaller but the lot areas exceed the current ZBL standards. This is a characteristic of flag lots. The City deemed it to be appropriate. This area has been designated as 'D' for over twenty years. It is unrealistic for the applicant to wait for a comprehensive redevelopment of his and the adjoining properties.

The adjoining property owners in their evidence indicated no desire to have their properties developed as part of a larger proposal. The City realized that this was not going to happen and properly considered the proposal before it and supported it. The homes to be built on the proposed lots are of significant size and in the Board's view will enhance the upscale character of this area. The residents who objected to this proposal testified that it would destroy the serenity and park like setting of the neighbourhood. However, their planner gave evidence that a higher density proposal would be better – 4 homes sited in a traditional pattern. Yet a higher density proposal would result in the removal of more trees and a more intense development pattern, which are what the residents are opposed to. The Board prefers the evidence of the planners for the applicants and the City that the amending ZBL conforms with the Town and Region Official Plans and that the proposal is consistent with the 2005 PPS.

There was no convincing evidence proffered by the planner for the residents that the proposed severance would create lots that are incompatible with the lotting fabric of the neighbourhood. The Board finds that his planning evidence while strong on the principles of "new urbanism" did not show that the severance applications failed to meet the statutory requirements of Subsection 51(24) of the *Planning Act*. For these reasons, the Board finds that the two severance applications meet the statutory requirements of Subsections 53(1) and 51(24) of the *Planning Act* and that the implementing ZBL 05-055 conforms with the Town's OP that it is not premature and represents good planning.

The **BOARD ORDERS** the following:

1. The appeal is allowed in part and the provisional consent for the two consent applications are to be given subject to the conditions identified in Exhibit 2,

pages 23 and 173 and Exhibit 17A, which are provided as Attachments 1, 2 and 3.

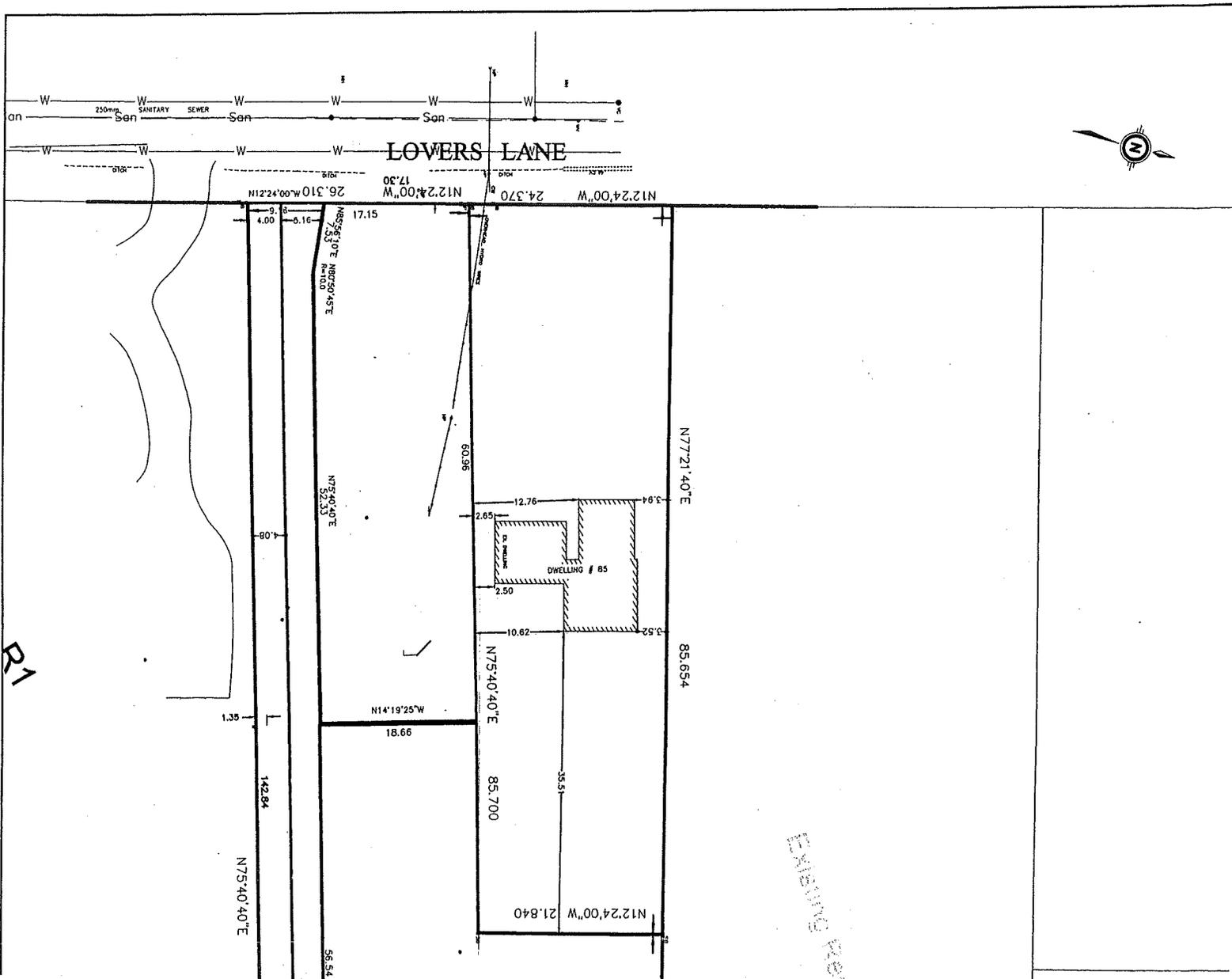
2. The appeal against By-law 05-055 of the City of Hamilton is allowed in part, and By-law 05-055 is amended as set out in Attachment 4 to this order. In all other respects, the Board orders that the appeal is dismissed.

These are the Orders of the Board.

"J. Chee-Hing"

J. CHEE-HING
MEMBER

ATTACHMENT 3



CITY OF HAMILTON**BY-LAW NO. 05-055****To Amend Zoning By-law No. 87-57,
Respecting Lands Located at 79 and 85 Lovers Lane (Ancaster)**

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 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 is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former Town of Ancaster) in accordance with the provisions of the Planning Act;

AND WHEREAS the Council of the City of Hamilton, in adopting Section of Report of the Planning and Economic Development Committee at its meeting held on the day of , 2005, recommended that Zoning By-law No. 87-57 (Ancaster), be amended as hereinafter provided;

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

1. Schedule "B", Map 1 of Zoning By-law No. 87-57 (Ancaster), as amended, is hereby further amended by changing from the D "Deferred Development" Zone to the following:

- (a) to Residential "R1-531" Zone, for lands comprised in **Block "1"**;
- (b) to Residential "R1-532" Zone, for lands comprised in **Block "2"**; and,
- (c) to Residential "R1" Zone, for lands comprised in **Block "3"**,

the extent and boundaries of which are more particularly shown on Schedule "A" annexed hereto and forming part of this by-law.

2. Section 34: Exceptions of Zoning By-law No. 87-57 (Ancaster), as amended, is hereby further amended by adding the following subsections:

R1-531 Notwithstanding any provisions to the contrary of Subsection 11.1 – Residential "R1" Zone of Zoning By-law No. 87-57 (Ancaster), the following special provisions shall apply to the lands zoned "R1-531":

Regulations:

- (a) Minimum Lot Frontage 4.0 metres
- (b) Building Setbacks (As per Schedule B)
 - (i) Line A – 2.5 metres
 - (ii) Line B – 6.0 metres
 - (iii) Line C – 28.0 metres
 - (iv) Line D – 2.5 metres
 - (v) Line E – 9.65 metres
 - (vi) Line F – 15.0 metres
 - (vii) Line G – 6.325 metres

(c) Maximum Floor Area for a single-detached dwelling (and all accessory buildings) 650 square metres

(d) That all other provisions of Subsection 11.1.2- Regulations of Section 11: Residential "R1" Zone shall apply.

R1-532 Notwithstanding any provisions to the contrary of Subsection 11.1 – Residential "R1" Zone of Zoning By-law No. 87-57 (Ancaster), the following special provisions shall apply to the lands zoned "R1-532":

Regulations:

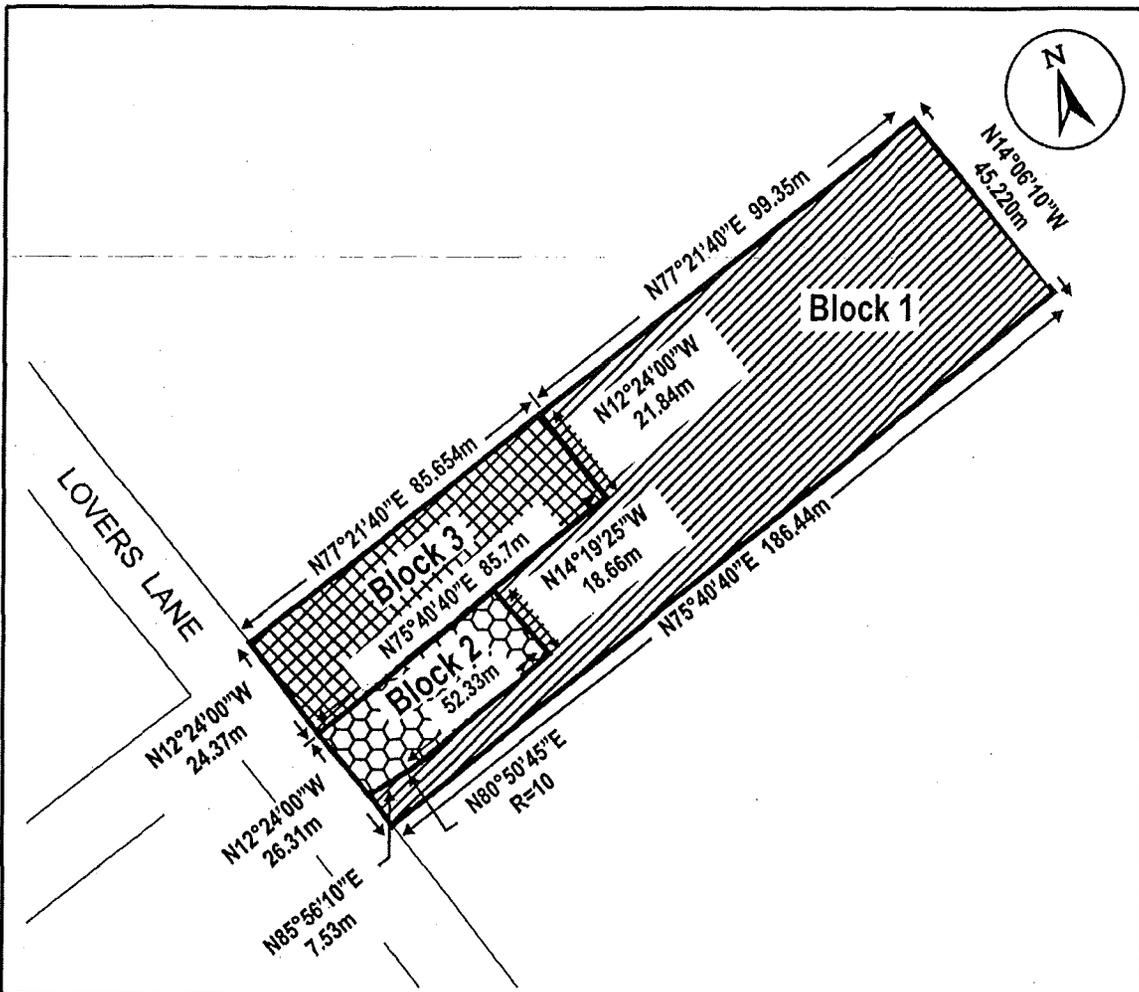
- (a) Minimum Lot Frontage 17.0 metres
- (b) Dwelling Setbacks
 - (i) minimum 30.0 metres from the front lot line
 - (ii) minimum 0.5 metres from the southerly side lot line, except for an attached garage where it shall be 6.0 metres
- (c) That all other provisions of Subsection 11.1.2- Regulations of Section 11: Residential "R1" Zone shall apply.

- 3. That the amending By-law be added to Map 1 to Schedule "B" of Ancaster Zoning By-law No. 87-57.
- 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 , 2005.

MAYOR

CLERK



This is Schedule "A" to By-Law No. 05—

Clerk

Passed the..... day of.....,2005

Mayor

Schedule "A"

Map Forming Part of
By-Law No. 05-____
to Amend By-Law No. 87-57

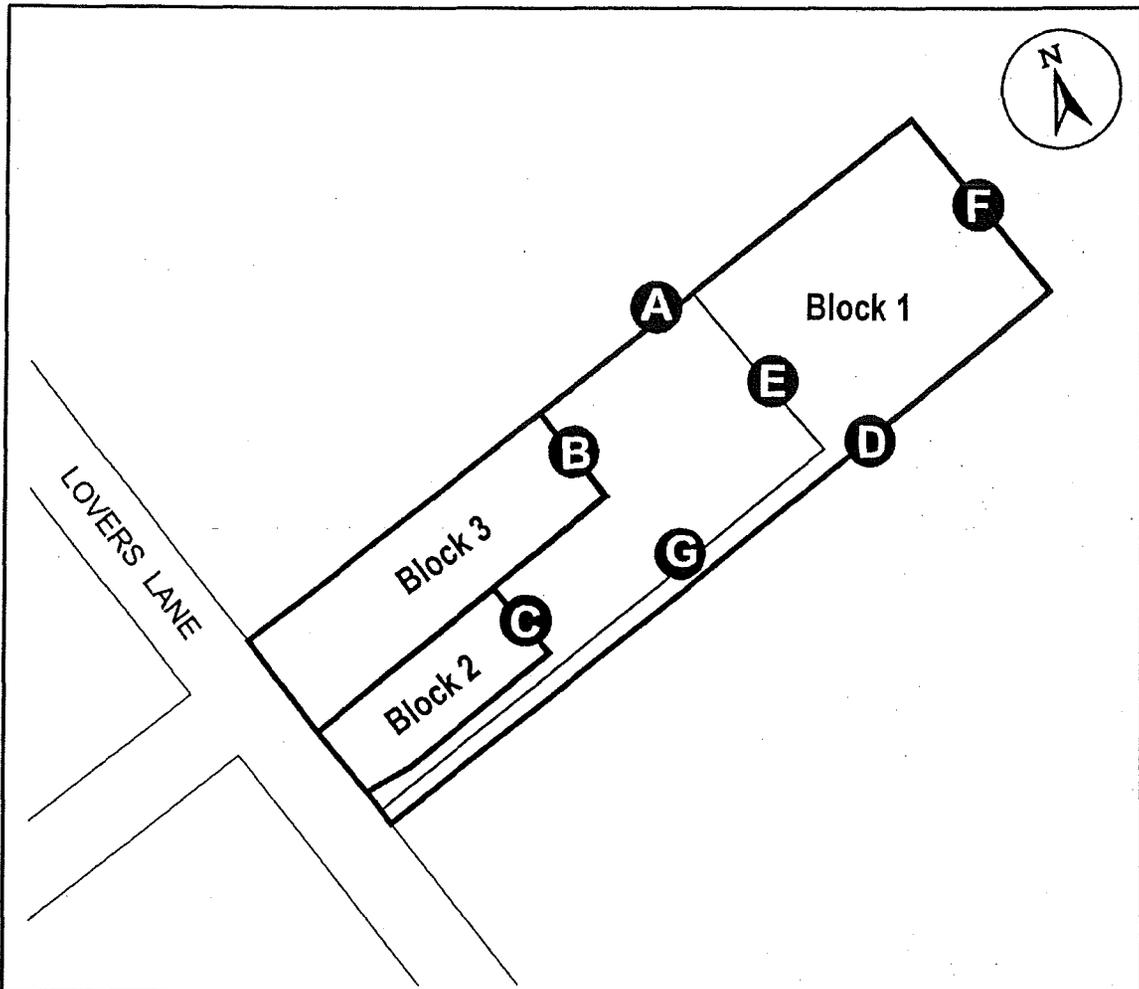


Subject Property 79 & 85 Lovers Lane

-  Block 1 - Change from "D" (Deferred Development) to "R1-531" (Residential) Zone
-  Block 2 - Change from "D" (Deferred Development) to "R1-532" (Residential) Zone
-  Block 3 - Change from "D" (Deferred Development) to "R1" (Residential) Zone

North 	Scale: Not to Scale	File Name/Number: ZAC-04-84
	Date: January 2005	Planner/Technician: SD/LMM

T&C File Name:



This is Schedule "B" to By-Law No. 05— _____ Clerk

Passed the day of, 2005 _____ Mayor

Schedule "B"

Map Forming Part of
By-Law No. 05-____
to Amend By-Law No. 87-57



Hamilton

Subject Property
79 & 85 Lovers Lane

	Scale: Not to Scale	File Name/Number: ZAC-04-84
	Date: February 13, 2006	Planner/Technician: SD/LMM

T&C File Name: _____