

009
06-06

ISSUE DATE:
March 12, 2007
DECISION/ORDER NO:
0631



PL060333

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

07-135

Parkside Hills Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 90-145-Z of the City of Hamilton to rezone lands respecting 619 Centre Road – Part of Lot 8, Concession 4 - to permit the development of a subdivision containing 199 street townhouses, one apartment building block, two blocks for townhouse units, one block for institutional purposes or medium density residential uses, one block for a stormwater management facility, and one block for future commercial purposes.
OMB File No. Z060053

Parkside Hills 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 on lands composed of 619 Centre Road – Part of Lot 8, Concession 4 - in the City of Hamilton.
(Approval Authority File No. 25T200511)
OMB File No. S060037

APPEARANCES :

Parties

Counsel*/Agent

Parkside Hills Inc. (Parkside)

Michael J. McQuaid*
and Paul Chronis

City of Hamilton

Art Zuidema*

City of Burlington

R.G.Doumani*

Waterdown Bay Inc.

Scott A. Snider*

MEMORANDUM OF ORAL DECISION DELIVERED BY J.P. ATCHESON ON MARCH 05, 2007 AND ORDER OF THE BOARD

This is a hearing of the Board in the matter of appeals by Parkside from the failure of the Council of the City of Hamilton to make a decision respecting a proposed plan of subdivision (File 25T200511) for land known as 619 Centre Road, Part Lot 8 Concession 4, (Former Township of East Flamborough). Consolidated with this appeal is an appeal by Parkside pursuant to subsection 34(11) of the *Planning Act* from the

refusal or neglect of the Council of the City of Hamilton to amend By-law 90-145-Z respecting lands known as 619 Centre Road in a manner to permit the uses proposed in the draft plan of subdivision.

At the commencement of the hearing, Counsel for the City of Hamilton advised the Board that the parties had reached a settlement of the appeals, in the manner set out in Minutes of Settlement Exhibit #2. It is noted that Waterdown Bay Inc. is not a signatory to the settlement. However, Counsel for Waterdown Bay Inc. advised the Board that his client is taking no position with respect to the settlement reached by Parkside and the Municipalities of Hamilton and Burlington.

The Board then heard from Mr Paul Moore a qualified land use planner. Mr Moore is a senior Project Manager in the City of Hamilton Planning Department and has been involved with the settlement now before the Board. He pointed out that the proposed development consists of some 12 hectares of land in the urban area of Waterdown, will be fully serviced and has access from both Parkside Drive and Centre Street. His evidence to the Board is that the proposed development as reflected in the Minutes of Settlement Exhibit 2 is consistent with the 2005 Provincial Policy Statement and in particular sections 1.13 and 1.4. He notes that the proposed development is subject to the Places to Grow Legislation and that the subject property is located within the Greenfields area. It was his evidence that the proposed development exceed the minimum density requirement of the Places to Grow Legislation. It was his evidence that the proposed development meets the objectives of the Places to Grow Legislation. He notes that within the Region of Hamilton Wentworth Official Plan, the subject lands are designated Urban Area and that the proposal conforms the policy direction of this Official Plan. He then referred to Official Plan Amendment 28 of the former Township of Flamborough and notes that the area is designated as Urban and that the OPA 28 required that a Secondary Plan be prepared prior to development taking place. His evidence to the Board is that the Draft Waterdown Secondary Plan is to be considered by City Council on March 20, 2007 and that the proposed development would be in conformity with this document. He also pointed out to the Board that OPA 28 in section A1.11 allows limited development to proceed in advance of the completion of the Secondary Plan when there is a demonstrated need for housing units. His evidence to the Board is that there is a demonstrated need for 900 dwelling units in the Waterdown area to meet the three-year availability requirement for units in draft or registered plans

implementing any of the conditions of draft approval, or if any changes are required to be made to the draft plan, the Board may be spoken to.

The Board so Orders.

"J.P. Atcheson"

J.P. ATCHESON
MEMBER

of subdivision. Currently there are only 453 units in the inventory creating a shortfall of some 447 units. The proposed development will provide a total of 207 units in a full range of housing types. It was his opinion that the proposed development would be in conformity with OPA 28 and will be in conformity with the new Secondary Plan as drafted for the Waterdown area. He reviewed the provisions of the proposed zoning By-law found at Exhibit 2 Attachment B. His evidence is that the proposed zoning by-law will implement the land uses set out in the draft plan of subdivision as amended and represents good planning for the area. He also provided an overview of the conditions associated with the draft plan approval and found at Exhibit 2 Attachment C. He is satisfied that the revised draft plan dated February 28, 2007 meet the tests set out in section 51 (24) of the *Planning Act* and that the draft plan as amended together with the proposed conditions found at Exhibit 2, Attachment C represents good planning for the this area of the City of Hamilton.

The Board after considering the uncontradicted evidence of Mr Moore, and the submission made is satisfied the Minutes of Settlement reached by the parties and the associated planning instruments presented to the Board represents good planning for this area of the City of Hamilton and is consistent with Provincial Policy directions regarding development in this area. Accordingly:

THE BOARD ORDERS that the appeal against By-law 90-145-Z of the City of Hamilton, is allowed in part and By-law 90-145-Z is amended, as set out in Attachment 1 to this order. In all other respect the Board orders that the appeal is dismissed.

THE BOARD ORDERS that the appeal with respect to Draft Plan of Subdivision (25T-200511) is allowed and the revised draft plan prepared by B.A. Jacobs O.L.S. dated February 28, 2007, comprising Part of Lot 8 Concession 4 (Geographic Township of East Flamborough), City of Hamilton is approved subject to the fulfillment of the conditions set out in Attachment 2 to this Order:

AND THE BOARD ORDERS that pursuant to subsection 51 (56.1) of the *Planning Act*, the City of Hamilton shall have the authority to clear the conditions of draft approval and to administer the final approval of the plan of subdivision for the purposes of subsection 51(58) of the *Planning Act*. In the event that there are any difficulties

- (b) by changing from the Urban Residential "R1-5" Zone to the Institutional "I" Zone, for lands comprised in **Block "2"**;
- (c) by changing from the Agriculture "A" Zone to the Public Use "P" Zone, for lands comprised **Block "3"**;
- (d) by changing from the Urban Residential "R1-5" Zone, to the Public Use "P" Zone, for lands comprised **Block "4"**;
- (e) by changing from the Urban Residential "R1-6" Zone to the Public Use "P" Zone, for lands comprised **Block "5"**;
- (f) by changing from the Agriculture "A" Zone to the Park Open Space "O2-8" Zone, for lands comprised in **Block "6"**;
- (g) by changing from the Agricultural "A" Zone to the Medium Density Residential "R6-15" Zone, for lands comprised in **Block "7"**;
- (h) by changing from the Urban Residential "R1-6" Zone to the Medium Density Residential "R6-15" Zone, for lands comprised in **Block "8"**;
- (i) by changing from the Agriculture "A" Zone to the Urban Residential "R1-34" Zone, for lands comprised in **Block "9"**;
- (j) by changing from the Agricultural "A" Zone to the Medium Density Residential "R6-16" Zone, for lands comprised in **Block "10"**; **and,**
- (k) by changing from the Agricultural "A" Zone to Park Open Space "O2" Zone, for lands comprised in **Block "11"**

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

2. Section 25 – Park Open Space Zone of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended by adding the following subsection:

25.3 EXCEPTION NUMBERS

25.3.8 "O2-8" (See Schedule Number A-6)

Authority:

Bill No.

CITY OF HAMILTON

BY-LAW NO.

**To Amend Zoning By-law No. 90-145-Z (Flamborough),
Respecting Lands Located at 619 Centre Road,
Part of Lot 8, Concession 4, (Flamborough)**

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 Flamborough" 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. 90-145-Z (Flamborough) was enacted on the 5th day of November 1990, and approved by the Ontario Municipal Board on the 21st day of December, 1992;

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 Flamborough) in accordance with the provisions of the Planning Act;

AND WHEREAS the Council of the City of Hamilton, at its meeting held on the 24th day of January, 2007, recommended that Zoning By-law No. 90-145-Z (Flamborough), be amended as hereinafter provided;

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

1. Schedule "A-6" of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended;
 - (a) by changing from the Agriculture "A" Zone to the Institutional "I" Zone, for lands comprised in **Block "1"**;

- (f) Interior Side Yard (minimum) 1.2 metres, except for the side yard related to the common wall of the street townhouse, in which case a minimum side yard of 0.0 metres shall be provided
- (g) Exterior Side Yard (minimum) 2.4 metres, except that an attached garage or attached carport which fronts on the flankage lot line shall not be located within a minimum of 5.8 metres of the flankage lot line
- (h) Landscaped Open Space N/A
- (i) Maximum Density 46 units per net residential hectare
- (j) Yard Encroachments in accordance with the following:

Structure or Item	Yard Into Which Encroachment is Permitted	Maximum Encroachment Permitted into Required Yard
Sills, beltcourses, cornices, chimney breasts, pilasters, eaves or gutters	All	0.65 metres
Bay windows with or without a foundation	Required front and required exterior side yard	1.00 metres
Steps and unenclosed porches	Required front, required rear and required exterior side yard	Porches – 2.0 metres Steps – 0.60 metres from the streetline
Setback of all	Required front and	0.30 metre minimum

Permitted Uses

- (a) A Water Storage Tower shall also be permitted.

Zone Provisions

- (a) Subsection 23.2 shall apply to paragraph (a) above.

3. Section 11 – Medium Density Residential Zone of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended by adding the following subsection:

11.3 EXCEPTION NUMBERS

11.3.15 "R6-15" (See Schedule Number A-6)

Permitted Uses

- (a) Street Townhouse
(b) Semi-Detached Dwelling

Zone Provisions

- (a) Lot Area (minimum)
- | | |
|-----------------------------|-----------------------------|
| (i) Street Townhouse | 156.0 square metres |
| (ii) Semi Detached Dwelling | minimum 162.0 square metres |
- (b) Lot Frontage (minimum)
- | | |
|-----------------------------|--------------------|
| (i) Street Townhouse | 5.5 metres |
| (ii) Semi Detached Dwelling | minimum 6.1 metres |
- (c) Lot Coverage (maximum) N/A
- (d) Front Yard (minimum) 4.5 metres, except 5.8 metres for an attached garage or attached carport
- (e) Rear Yard (minimum) 7.0 metres

- (f) Interior Side Yard (minimum) 1.2 metres one side, and 0.60 metres other side, except for the side yard related to the common wall of a semi detached dwelling, in which case a minimum side yard of 0.0 metres shall be provided
- (g) Exterior Side Yard (minimum) 2.4 metres, except that an attached garage or attached carport which fronts on the flankage lot line shall not be located within 6.0 metres of the flankage lot line
- (h) Landscaped open Space N/A
- (i) Yard Encroachments in accordance with the following:

Structure or Item	Yard Into Which Encroachment is Permitted	Maximum Encroachment Permitted into Required Yard
Sills, beltcourses, cornices, chimney breasts, pilasters, eaves or gutters	All	0.65 metres,
Bay windows with or without a foundation	Required front and required exterior side yard	1.00 metres
Steps and unenclosed porches	Required front, required rear and required exterior side yard	Porches – 2.0 metres Steps – 0.60 metres from the streetline
Setback of all structures from site triangles	Required front and required exterior side yard	0.30 metre minimum setback from a site triangle

- (j) General Provisions – Other than contained herein, the

structures from site triangles	required exterior side yard	setback from a site triangle
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(k) General Provisions – Other than contained herein, the provisions of Section 5 shall apply.

(l) All other zone provisions of Subsection 11.2 shall apply.

4. Section 6 – Urban Residential Zone of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended by adding the following subsection:

6.3 EXCEPTION NUMBERS

6.3.34 "R1-34" (See Schedule Number A-6)

Permitted Uses

- (a) Single Detached Dwelling
- (b) Semi-Detached Dwelling

Zone Provisions

- (a) Lot Area (minimum)
 - (i) Single Detached Dwelling 270 square metres
 - (ii) Semi Detached Dwelling minimum 162.0 square metres

- (b) Lot Frontage (minimum)
 - (i) Single Detached Dwelling 10 metres
 - (ii) Semi Detached Dwelling minimum 6.1 metres

- (c) Lot Coverage (maximum) N/A

- (d) Front Yard (minimum) 4.5 metres, except 6.0 metres to an attached garage or attached carport

- (e) Rear Yard (minimum) 7.0 metres

provisions of Section 5 shall apply.

(k) All other zone provisions of Subsection 6.2 shall apply.

6. Section 11 – Medium Density Residential Zone of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended by adding the following subsection:

11.3 EXCEPTION NUMBERS

11.3.16 "R6-16" (See Schedule Number A-6)

Permitted Uses

- (a) Retail Establishment
- (b) Personal Service Establishment
- (c) Service Shop
- (d) Dry Cleaning Distribution Station
- (e) Office
- (f) Street Townhouse Dwelling
- (g) Duplex
- (h) Stacked Townhouse Dwelling

Zone Provisions

- (a) The uses permitted in paragraphs (a) to (d) inclusive, above, shall only be permitted on the ground floor.
- (b) Lot Area (minimum) 156.0 square metres
- (c) Lot Frontage (minimum) 7.0 metres
- (d) Lot Coverage (maximum) N/A
- (e) Front Yard (minimum) 0.5 metres (For the purposes of this by-law, the front yard of a through lot shall be measured from the lot line located adjacent to

the street with the greater right of way width.)

- (f) Rear Yard (minimum) 7.0 metres
- (g) Interior Side Yard (minimum) 1.2 metres, except for the side yard related to the common wall of the street townhouse, in which case a minimum side yard of 0.0 metres shall be provided
- (h) Exterior Side Yard (minimum) 2.4 metres, except that an attached garage or attached carport which fronts on the flankage lot line shall not be located within a minimum of 6.0 metres of the flankage lot line
- (i) Landscaped Open Space N/A
- (j) Maximum Building Height 4 storeys
- (k) Loading Spaces N/A
- (l) Parking Spaces (minimum) 4 spaces per lot. Stacked parking is permitted.
- (m) Yard Encroachments in accordance with the following:

Structure or Item	Yard Into Which Encroachment is Permitted	Maximum Encroachment Permitted into Required Yard
Sills, beltcourses, cornices, chimney breasts, pilasters, eaves or gutters	All	0.65 metres into Side and Rear Yard and 0.5 metres into Front Yard

Bay windows with or without a foundation	Required front and required exterior side yard	1.00 metres
Steps and unenclosed porches	Required front, required rear and required exterior side yard	0.0 metres from streetline
Setback of all structures from site triangles	Required front and required exterior side yard	0.30 metre minimum setback from a site triangle

- (n) General Provisions – Other than contained herein, the provisions of Section 5 shall apply.
- (o) All other zone provisions of Subsection 11.2 shall apply.

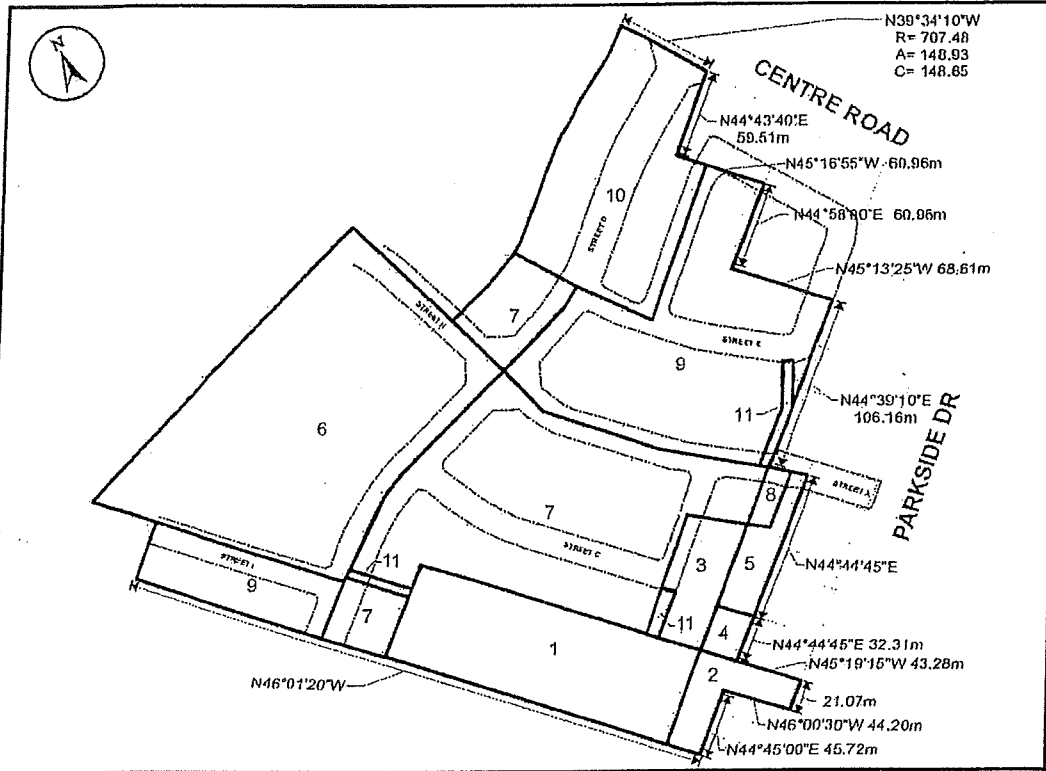
7. That the amending By-law be added to Schedule "A-6" of Flamborough Zoning By-law No. 90-145-Z.
8. The Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this _____ day of _____, 2007.

 MAYOR

 CLERK

OMB File #'s Z060053 & S060037
 City File #'s ZAC-05-62 & 25T-200511



This is Schedule "A" to By-Law No. 07-
 Passed the day of, 2007

 Clerk

 Mayor

Schedule "A"
 Map Forming Part of
 By-Law No. 07-____
 to Amend By-law No. 90-145-Z

Scale: N.T.S.	File Name/Number: ZAC-05-62	
Date: Jan 22, 2007	Planner/Technician: PM/KA	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		

Subject Property

- Schedule "A-6" of Zoning By-law No. 90-145-Z (Flamborough), as amended, is hereby further amended;
- Block 1 - Change from the Agriculture "A" Zone to the Institutional "I" Zone;
 - Block 2 - Change from the Urban Residential "R1-5" Zone to the Institutional "I" Zone;
 - Block 3 - Change from the Agriculture "A" Zone to the Public Use "P" Zone;
 - Block 4 - Change from the Urban Residential "R1-5" Zone to the Public Use "P" Zone;
 - Block 5 - Change from the Urban Residential "R1-6" Zone to the Public Use "P" Zone;
 - Block 6 - Change from the Agriculture "A" Zone to the Park Open Space "O2-0" Zone;
 - Block 7 - Change from the Agriculture "A" Zone to the Medium Density Residential "R6-16" Zone;
 - Block 8 - Change from the Urban Residential "R1-6" Zone Medium Density Residential "R6-16" Zone;
 - Block 9 - Change from the Agriculture "A" Zone to the Urban Residential "R1-34" Zone;
 - Block 10 - Change from the Agriculture "A" Zone to the Medium Density Residential "R6-16" Zone;
 - Block 11 - Change from the Agriculture "A" Zone to the Park Open Space "O2" Zone.