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LAW DEPT. & COMMUNITY

*Board only*

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

07-201

Patricia Stephenson-Cino, William D. Dobson, and Renate Ruland 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 05-288 of the City of Hamilton.  
OMB File No. R050257

Patricia Stephenson-Cino and Renate Ruland have appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, from a decision of the City of Hamilton to approve Proposed Amendment No. 105 to the Official Plan for the City of Hamilton.  
OMB File No. O050172

**APPEARANCES:**

**Parties**

**Counsel\*Agent**

Patricia Stephenson-Cino  
Renate Ruland  
William D. Dobson

Wilf Ruland

Gates of Ancaster II

Scott Snider\*

City of Hamilton

A. Zuidema\*

**MEMORANDUM OF ORAL DECISION DELIVERED BY M.C. DENHEZ ON MARCH 27<sup>th</sup>, 2006 AND ORDER OF THE BOARD**

This matter concerned a development in the City of Hamilton (City), which involved an Official Plan Amendment (OPA 105) and a rezoning. Neighbours appealed both OPA 105 and the rezoning to the Board, but the disputes have now been settled.

Gates of Ancaster II is the successor to 1622141 Ontario Limited, represented by Helmuth Strobel (applicant). At a property known municipally as 125-139 Wilson Street West in the former Town of Ancaster (now amalgamated with the City), the applicant proposes to replace an existing church and manse with a four-storey residential building with 59 units. This would involve:

- an amendment to the Ancaster Official Plan (OP) to redesignate the subject lands from "Institutional" to "Residential"; a special policy would

also permit four occupied storeys entirely above the grade level.; and

- A change to the applicable zoning, pertaining to parking, density, and children's play area.

These matters were considered by the City, which adopted the OP Amendment (No. 105) and amendments to the applicable Zoning By-law (No. 05-288, amending By-law 87-57) in September, 2005. Patricia Stephenson-Cino, William D. Dobson, and Renate Ruland (appellants) appealed the rezoning to the Board; Patricia Stephenson-Cino and Renate Ruland also appealed OPA 105.

The replacement of the church and manse was not in dispute. What was in dispute was the height of the proposed new building, and the question of its compatibility with the surrounding neighbourhood; the appellants also raised other points including parking, play area, traffic, setback, drainage, shade etc.

The Board was invited to mediate. At the time of the scheduled hearing on March 26<sup>th</sup>, 2006, the parties advised the Board that they had reached a settlement pertaining to both the appeal on OPA 105, and the appeal on the rezoning.

On OPA 105, both appellants Patricia Stephenson-Cino and Renate Ruland formally advised that their appeals were withdrawn. The Board notes that withdrawal, effective March 26<sup>th</sup>, 2006, and by this Decision, it is so **advising the City of the withdrawal of the appeals pursuant to Section 17(43) of the *Planning Act***.

On the rezoning, the context is as follows: East of the property, within approximately two blocks, are complexes marking the western edge of Ancaster's commercial core. Diagonally across the street to the southwest, at 150 Wilson Street West, is another four-storey residential complex called Ancaster Mews. City planning staff had prepared detailed reports (Exhibit 3, pp. 178 et seq.) focusing on intensification (which is supported by the Provincial Policy Statement, the regional and local Official Plans), and arguing:

"Although the proposed apartment building would be a 4 storey building, it would be comparable in height to a conventional 3 storey

apartment building, 10.5 metres high'.... 'Although buildings in this area are typically 1.5 - 2 storeys high, the proposed 4 storey building height is consistent with a maximum height of 10.5 metres permitted for any residential use under the Ancaster Zoning By-law'... 'The proposed building height would also complement the building at 150 Wilson Street West, opposite the subject property, which appears to have been constructed to the maximum height limit.

However, those plans also make it clear that intensification must be "compatible" with the neighbourhood. In particular, the relevant Ancaster Zoning By-law contains wording which raised concerns among the neighbours over the actual limitation on height, particularly in relation to berms in front of a building.

The parties have now agreed on a more precise height formula. On review, the Board finds it admirably specific.

The Board also heard the testimony of the applicant's planner, Edward Fothergill. He described how setback had ceased to be an issue, leaving the questions of parking, density and play area. He described how the density and parking did not depart significantly from established norms; this was undisputed. As for play area, he said that since the project would be marketed to "seniors and empty nesters", the appropriateness of those arrangements was also undisputed.

The planner concluded that in his opinion, the outcome constituted good planning. The Board finds that conclusion to be undisputed. For good measure, the property is subject to site plan approval, and there is an expectation that this will help in assuring that various proper planning principles will be observed.

However, there is a further dimension. The City advised that a new comprehensive Zoning By-law for the amalgamated City is "in the works". It is therefore no surprise that the neighbours are sensitive to the question of precedent, and to the issue of the ongoing protection of neighbourhood character in the future, e.g. under the eventual new By-law. With the consent of the other parties, the appellants have requested that the Board specifically acknowledge the appellants' position, i.e. that the settlement agreement should not and cannot be taken as a precedent:

- 1) As to how building height is to be *measured* under the Ancaster Zoning By-law; and
- 2) Regarding the *acceptable height* of residential buildings in the Town of Ancaster.

That position is so noted.

The Board orders that the appeal against By-law 05-288 of the City of Hamilton is allowed in part, and By-law 05-288 is amended as set out in Attachment 1 to this Order.

In all other respects, the Board Orders that the appeal is dismissed.

The Board so Orders.

"M. C. Denhez"

M. C. DENHEZ  
MEMBER

**Attachment 1**

By-law 05-288 is hereby amended:

- by deleting all the contents of the said By-law, from the words "NOW THEREFORE THE Council of the City of Hamilton enacts as follows" to the end,
- and replacing them with the following:

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

1. Map 1 to Schedule "B" of Zoning By-law No. 87-57 (Ancaster), as amended, is hereby further amended by changing from the Institutional "I" Zone to the Residential Multiple "RM6-530" Zone, the lands the extent and boundaries of which are shown on Schedule "A" annexed hereto and forming part of this by-law.
2. Section 34: Excerptions of Zoning By-law No. 87-57 (Ancaster), as amended, is hereby further amended by adding the following subsections:

"RM6-530" Notwithstanding any provisions to the contrary of Section 19, Regulations of Section 19.2: Residential Multiple "RM6" zone of By-law No. 87-57 (Ancaster), the following special provisions shall apply to the lands zoned "RM6-530":

Development Regulations

- |     |                      |  |
|-----|----------------------|--|
| (a) | Maximum Density      | 77.5 units per hectare   |
| (b) | Minimum Parking      | 2 spaces per unit which shall include a minimum of 20 visitor parking spaces   |
| (c) | Children's Play Area | Not Required   |
| (d) | Maximum Height       | Notwithstanding Subsection 3.2, "Building Height" shall mean the vertical distance measured from the existing established grade of |

249.57m, which is taken at a point measured 14.517m south of the Southeast corner of the lot lines, to the lowest point of the concrete roof slab and shall not exceed 10.53m.

- (e) **Maximum Building Height** In addition to Subsection 7.11, the maximum building height to the top of a parapet shall not exceed 11.103m from the existing established grade as provided in (d).