

ISSUE DATE:

NOV. 26, 2009



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL090369

09-266

Frisina Developments Inc. has appealed to the Ontario Municipal Board under subsection 36(3) 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 6593 of the City of Hamilton to rezone lands composed of 545 Eaglewood Drive from "C" - 'H' (Urban Protected Residential, etc - Holding) District to "C" (Urban Protected Residential, etc.) District to permit the proposed one single detached residential dwelling without assembling/merging the adjacent property which was a requirement of the current "H" Holding Provision

OMB Case No. PL090369

OMB File No. PL090369

APPEARANCES:

Parties

Frisina Developments Inc.

City of Hamilton

Counsel

David C.K. Tang

Michael Kovacevic

MEMORANDUM OF AN ORAL DECISION DELIVERED BY J. P. ATCHESON ON NOVEMBER 18, 2009 AND ORDER OF THE BOARD

Background

This was a hearing in the matter of an appeal by Frisina Developments Inc. from the refusal or neglect of the Council of the City of Hamilton to enact a proposed Amendment to Zoning By-law 6593 of the City of Hamilton to rezone lands known municipally as 545 Eaglewood Drive from "C"- 'H' (Urban Protected Residential etc. - Holding) District to "C" (Urban Protected Residential) District to permit the proposed development of one single detached residential dwelling without assembling/merging the adjacent property which was a requirement of the current "H" Holding Provision. The applicant in seeking the removal of the "H" Holding designation applied as requested by City staff for rezoning of the property in question pursuant to Section 34 and not Section 36 of the *Planning Act*.

The Settlement

The Board, at the commencement of the hearing, was advised by Counsel for the parties that they had reached a settlement as set out in the Minutes of Settlement found at Exhibit 3 and were requesting that the Board approve the Zoning By-law Amendment attached to the Minutes of Settlement.

The Board heard uncontradicted planning evidence from Mr. Edward Fothergill a qualified land use planner retained by the appellant to assist them in their appeal. He provided the Board with an overview of the application and his opinion regarding the settlement reached with the City of Hamilton.

The subject property is located in the Upper Hamilton east area in the vicinity of Rymal Road and Upper Gage Street. The property was originally a large lot fronting on Rymal Road as shown on a location map found at Exhibit 2 Tab 2. When the lands to the north were developed, the subject property became a thru lot with frontage on both Rymal Road and the subdivision road known as Eaglewood Drive. In 2005, a portion of the subject lands along Eaglewood Drive was rezoned by Zoning By-law 06-269. This Zoning By-law withheld a portion of the lands known as Block 2 from development by use of an "H" Holding provision in order for this parcel to be consolidated with a small remnant parcel of land to the immediate east. At the time of Council refusal of the subject application, the lands to the east had not been acquired by the applicant. The Board was advised by Mr. Fothergill that his client now had the lands under their possession and were prepared to undertake that the entire parcel would be developed as a single unit as set out in clause 3 of the proposed Zoning By-law Amendment now before the Board.

Mr. Fothergill proffered to the Board that the development proposed and the By-law now before the Board was in conformity with both the Hamilton Wentworth Official Plan and the Official Plan for the City of Hamilton. He also proffered that the Zoning By-law Amendment was consistent with the applicable Provincial policies governing the area, noting that the development was an intensification of development within the urban area of the City of Hamilton and in his opinion, represented good planning for the area.

Counsel for the City of Hamilton confirmed that the Municipality was in support of the Zoning By-law Amendment as set out in the Minutes of Settlement.

Findings and Conclusions

The Board, after carefully reviewing the evidence, the exhibits filed, and the submissions made by the Parties, makes the following findings.

The Board finds that there are no consistency issues with any Provincial Planning policies resulting from the proposed Zoning By-law Amendment as set out in the Minutes of Settlement and that the Zoning By-law will allow for the orderly development of this remaining area in a manner consistent with the development that has already occurred. The Board accepts the evidence of Mr. Fothergill that the Zoning By-law being proposed represents good planning and should be approved.

Accordingly and for the reasons contained in this decision:

THE BOARD ORDERS that the appeal against Zoning By-law 6593 of the City of Hamilton is allowed in part, and Zoning By-law 6593 is amended as set out in Attachment "1" to this Order. In all other respects, the Board Orders that the appeal is dismissed.

This is the Order of the Board.

"J. P. Atcheson"

J. P. ATCHESON
MEMBER

Schedule "A"**CITY OF HAMILTON****BY-LAW NO. 09-266****To Amend Zoning By-law No. 6593 (Hamilton), respecting lands located at 545 Eaglewood Drive (Hamilton)**

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario 1999 Chap. 14, Schedule 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 City of Hamilton" and is the successor of 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 or the City of Hamilton;

AND WHEREAS Zoning By-law No. 6593 (Hamilton) was enacted on the 25th day of July 1950, which was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951 (File No. P.F.C. 3821);

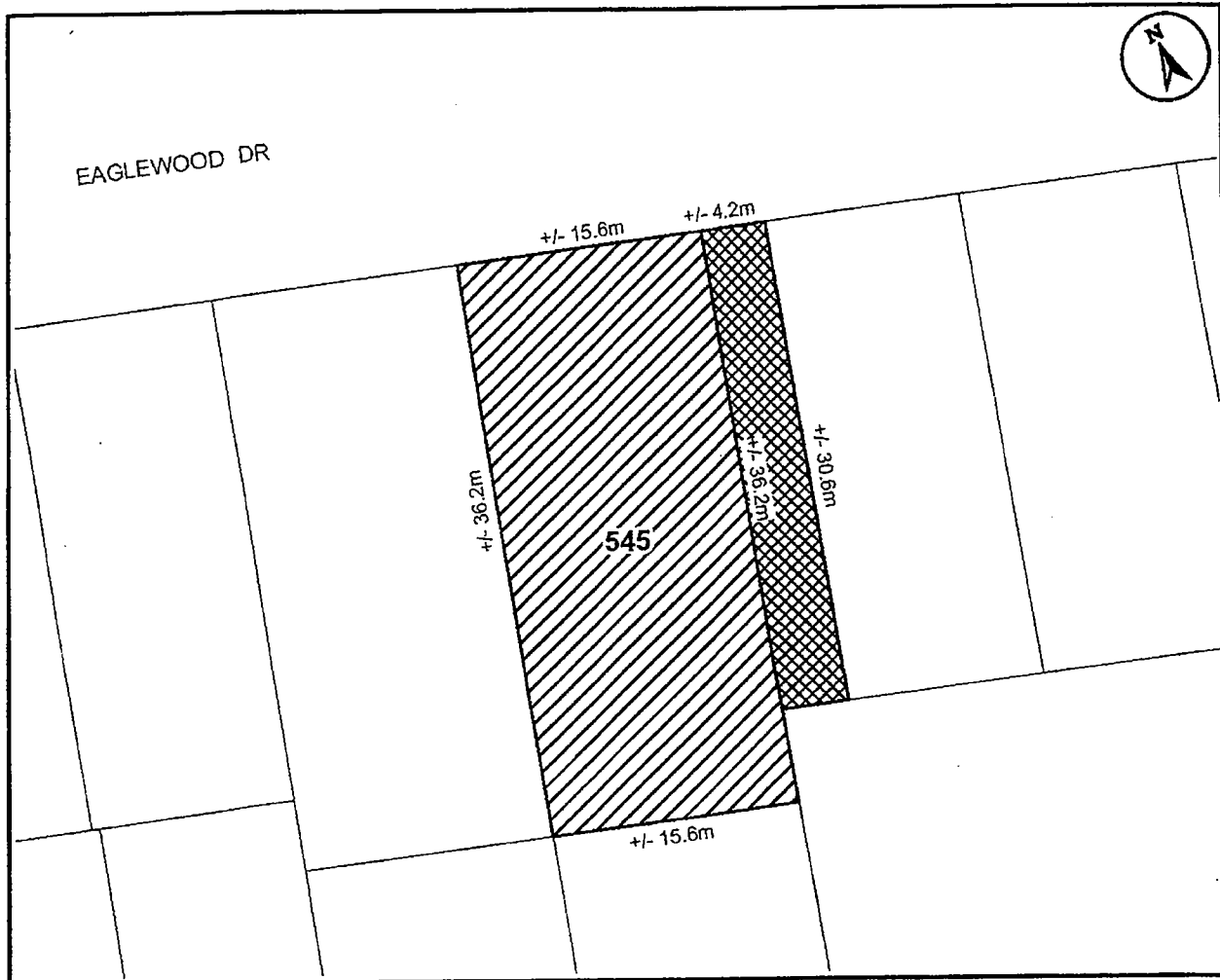
AND WHEREAS this By-law is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former City of Hamilton) in accordance with the provisions of the Planning Act.

NOW THEREFORE the Ontario Municipal Board Orders as follows:

1. That Sheet No. E-38D of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), as amended, is further amended by changing from the "C"-H' (Urban Protected Residential, etc. - Holding) District to the "C/S-1626" (Urban Protected Residential, etc. - Modified) District for the lands comprised of Block "1" and "2", the extent and boundaries of which are shown on the plan hereto annexed as Schedule "A".
2. Notwithstanding Section 2(2)J.(xi), "Lot" shall mean the lands having a combined frontage of 19.8 m along Eaglewood Drive, known as Part 2, 62R-17685 and Block 23, 62M-622, City of Hamilton.

3. The Lot as shown in the attached Schedule "A" as Block "1" shall only be developed with Block 23, Registered Plan 62M-622, City of Hamilton.
4. That Zoning By-law No. 6593 is amended by adding this By-law to Section 19B as Schedule S-1626.
5. That Sheet E-38D of the District Maps is amended by marking the lands referred to in Section 1 of this By-law as S-1626.

ZAR-08-053



This is Schedule "A" to By-Law No. 09- 266
 Passed the 26..... day ofNovember....., 2009

 Clerk


 Mayor


Schedule "A"

 Map Forming Part of
 By-Law No. 09- 266

 to Amend By-law No. 6593

Subject Property
 545 Eaglewood Drive

 Block 1 - Change in Zoning from the "C"- 'H' (Urban Protected Residential, etc. Holding) District to the "C/S-1626" (Urban Protected Residential, etc. Modified) District.

 Block 2 - Block 23, Registered Plan 62M-622, City of Hamilton

Scale: N.T.S.	File Name/Number: ZAR-08-053
Date: October 22, 2009	Planner/Technician: TL / MB
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT	

