

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



18-105-LPAT-02

ISSUE DATE: July 11, 2019

CASE NO(S): PL180522

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Michael Robitaille
Subject: By-law No. 18-105
Municipality: City of Hamilton
OMB Case No.: PL180522
OMB File No.: PL180522
OMB Case Name: Robitaille v. Hamilton (City)

Heard: April 30, 2019 in Hamilton, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
Michael Robitaille	Self-represented
City of Hamilton	J. Wice*

DECISION DELIVERED BY HUGH S. WILKINS AND ORDER OF THE TRIBUNAL

[1] On April 25, 2018, the City of Hamilton ("City") Council passed Zoning By-law No. 18-105 ("Zoning By-law Amendments") amending setback and other aspects of the residential zoning in Town of Ancaster ("Ancaster") Zoning By-law No. 87-57. On May 23, 2018, Mike Robitaille ("Appellant") appealed the passing of the Zoning By-law Amendments. The basis of his appeal is that the Zoning By-law Amendments fail to

conform with the Urban Hamilton Official Plan (“UHOP”).

[2] At a Case Management Conference held on December 19, 2018, the Tribunal granted Participant status to James and Kimberley Thomson and Tom and Teresa St. Michael. On April 30, 2019, the Tribunal held an oral hearing in Hamilton at which the Parties made oral submissions.

[3] For the reasons that follow, the Tribunal dismisses the appeal.

EVIDENCE AND SUBMISSIONS

The Appellant’s Submissions

[4] The Appellant submits that the side yard setback, front yard setback, height and garage provisions in the Zoning By-law Amendments for the Existing Residential (“ER”) zoned areas of Ancaster do not comply with UHOP.

[5] Regarding side yard setbacks, the Appellant submits that the Zoning By-law Amendments require a 6 metre (“m”) flankage side yard setback on corner lots, which does not take into account the setbacks of neighbouring, abutting or adjacent homes. He submits that new home setbacks should match those of existing homes. He submits that the Zoning By-law Amendments do not comply with UHOP policy B.3.4.3.6, which states that the City shall protect established historical neighbourhoods by ensuring that new development is sympathetic and complementary to existing cultural heritage attributes of the neighbourhood, including lotting and street patterns, building setbacks and mass, height and materials. He submits that the Zoning By-law Amendments will result in developments that are not sympathetic and complementary to existing dwellings or the area. He submits that the Zoning By-law Amendments should be altered so that corner lot setbacks match the setbacks of existing neighbouring adjacent dwellings around both sides of the street corner.

[6] Regarding front yard setbacks, the Appellant states that the Zoning By-law Amendments provide for front yard setbacks for new developments calculated from the

average of the setbacks of the two nearest existing dwellings on either side of the lot plus or minus 20 percent. He submits that most dwellings in the area have 15 m front yard setbacks and that a new dwelling built 20 percent closer to the street (3 m closer in the case of neighbouring 15 m setbacks) would block views and alter streetscapes. He submits that the Zoning By-law Amendments would ruin the character of neighbourhoods and adversely impact existing residents. He submits that they will result in developments that are not compatible and do not respect the built form and character of the surrounding neighbourhood as required under UHOP policy E.2.6, which permits changes that are compatible with the existing character or function of the neighbourhood and policy F.1.14.3.1(d) requiring that as a condition for the giving of Consents that lots reflect the general scale and character of the established development pattern of the area. He submits that the Zoning By-law Amendments should be altered so that the plus/minus 20 percent front yard setback provisions are eliminated.

[7] Regarding interior side yard setbacks, the Appellant submits that the Zoning By-law Amendments permit a 2 m interior side yard setback whereas homes in his area of Ancaster generally have 3 m setbacks. He submits that a 2 m setback is not wide enough to allow for proper drainage, underground services, equipment, access or passageways. He submits that the Amendments will lead to stormwater management and flooding issues as larger dwellings are built on properties in the area. He submits that a 2 m setback would not allow for large enough swales to control water flows. Also, he states that the City does not have a grading policy to adequately address these issues. He submits that the Zoning By-law Amendments do not comply with UHOP policy B.3.3.1.1 on enhancing a sense of community identification, policy B.3.3.1.5 on ensuring new development that is compatible and enhances the character of the area, policy B.3.3.1.8 on compatible intensification, and policy E.3.2.4 on maintaining the existing character of established neighbourhoods. He submits that the Zoning By-law Amendments should be altered so that a 3 m side yard setback is required in neighbourhoods that have existing side yard setbacks of that size.

[8] Regarding height provisions, the Appellant submits that the Zoning By-law

Amendments provide for a 7.5 m height allowance for one-storey dwellings and a 9.5 m height allowance for two-storey dwellings. To control the height of new dwellings, he submits that the height provisions must address situations where the base of a dwelling is raised above grade. He submits that otherwise, new dwellings may dwarf neighbouring existing dwellings and create stormwater management issues. He submits that the Zoning By-law Amendments do not comply with UHOP policy E.2.6, which as noted above, permits changes that are compatible with the existing character or function of the neighbourhood and policy F.1.14.3.1(d) requiring that Consents result in lots that reflect the general scale and character of the established development pattern of the area. He submits that for redevelopments, the Zoning By-law Amendments should be altered to include restrictions on the degree to which the finished main floor of a new dwelling may be raised above the elevation of the finished main floor of the dwelling being replaced.

[9] Regarding garage provisions, the Appellant submits that the Zoning By-law Amendments allow garages to project a maximum of 2 m beyond the front façade of a dwelling. The Appellant submits that this provision contradicts the Zoning By-law Amendments' front yard setback requirements and does not take into account the setbacks of existing adjacent dwellings. He submits that the Zoning By-law Amendments contradict UHOP policy B.2.4.2.2(g) on the evaluation of a development's ability to respect and maintain or enhance streetscape patterns and policy B.3.3.3.4 requiring new developments to define the street through consistent setbacks and building elevations. He submits that the Zoning By-law Amendments should be altered to eliminate the 2 m garage projection allowance unless it matches the existing setbacks of adjacent, neighbouring dwellings.

Participants' Submissions

[10] Mr. and Ms. Thomson submit that the Zoning By-law Amendments do not conform with various UHOP policies. They submit that a 1948 indenture sets frontage and lot depth requirements in their neighbourhood and that the Zoning By-law Amendments will result in the reduction in neighbourhood property values. Regarding

the maximum height provisions in the Zoning By-law Amendments, they submit that differences in grade levels must be taken into consideration and maximum height regulations should address grade levels to ensure compatibility with adjacent dwellings. Regarding front yard setbacks, Mr. and Ms. Thomson submit that the Zoning By-law Amendments allow these setbacks to potentially decrease house by house by 20 percent and destroy the streetscape and neighbourhood character by replacing front yards with smaller green spaces and protruding dwellings. Regarding side yard setbacks, they submit that the Zoning By-law Amendments could result in a row of houses that have 15 m setbacks followed by a home sticking out into view, creating a negative impact on the streetscape and the character of the neighbourhood.

[11] Mr. and Ms. St. Michael submit that mature neighbourhoods must be protected in terms of lot size, house size and style. They submit that UHOP policy E.2.6.7 states that neighbourhoods shall be generally regarded as physically stable areas and that changes compatible with the existing character of the neighbourhood will be permitted. They submit that the size and character of new homes often are not compatible with existing homes. They submit that there needs to be a gradual transition between old and new homes to preserve the character of neighbourhoods. They call for a cap on the square footage allowed for new homes in mature neighbourhoods.

The City's Evidence and Submissions

[12] The City submits that the Zoning By-law Amendments address the concerns raised by the Appellant and the Participants. It submits that the basis of these concerns is that the Zoning By-law Amendments do not go far enough in restricting residential redevelopment. The City submits that the Appellant generally argues that redevelopment on the lands subject to the Zoning By-law Amendments should be the same as existing developments in the area, which the City argues is an onerous restriction that is not required under UHOP.

[13] The City filed an affidavit affirmed by Alana Fulford, dated September 7, 2018. Ms. Fulford is a planner who has worked at the City for several years. The Tribunal

qualifies her to provide opinion evidence in the area of land-use planning.

[14] Ms. Fulford opined that the Zoning By-law Amendments conform with UHOP and do not conflict with the UHOP policies cited by the Appellant and the Participants. She reviewed UHOP policy A.2.1 which sets out the Official Plan's directions to guide development, including directions to concentrate development within existing built-up areas and maintain and respect the unique character of existing buildings and neighbourhoods. She opined that these are followed in the Zoning By-law Amendments.

[15] Regarding flankage yard setbacks, it is the City's position that there are no UHOP policies that require setbacks to match those of neighbouring dwellings as alleged by the Appellant and, in any event, the flankage yard setbacks in the Zoning By-law Amendments were not changed from those in the previous zoning by-law. It is the City's position that UHOP's policies are flexible for corner lots to ensure compatibility and maintain the existing character of neighbourhoods. In this regard, Ms. Fulford opined that the Zoning By-law Amendments conform with UHOP policy B.3.4.3.6 directing that new development is sympathetic and complementary to existing cultural heritage attributes of the neighbourhood. She opined that the Zoning By-law Amendments provide regulations that promote new development that is sympathetic and complementary.

[16] Regarding front yard setbacks, it is the City's position that the Zoning By-law Amendments provide flexibility with an allowance of a 20 percent increase or decrease for front yard setbacks with a minimum of 5 m which permits it to apply to a range of lot sizes and configurations. In this regard, it is the City's position that there are no UHOP policies that require redevelopments to match the standards of neighbouring dwellings. Ms. Fulford stated that given the variety of lot sizes and configurations in the ER Zone, flexibility is needed given the range of possible lot conditions and scenarios. She opined that the Zoning By-law Amendments conform with UHOP policy E.2.6 and E.2.6.7 permitting changes that are compatible with the existing character or function of neighbourhoods. She stated that UHOP policy E.2.6 states that neighbourhoods are to

be stable but not static and that residential intensification is part of the evolution of neighbourhoods. She opined that the Zoning By-law Amendments aim to complement and respect the built form and character of these areas and promote the appropriate integration of new development in established neighbourhoods by respecting existing built form characteristics. She said the Zoning By-law Amendments address local context in regard to lot fabric, streetscapes, built form characteristics and overall character.

[17] Regarding the 2 m interior side yards requirement, the City states that the existing side yard setbacks for ER zoned areas is 1.5 m and, therefore, the new regulations are stricter than the existing ones. It is the City's position that the Appellant has provided no evidence to support his assertion that still larger setbacks are required under UHOP. Ms. Fulford states that the greater spacing afforded by the Zoning By-law Amendments will assist with overlook and privacy concerns and will maintain a larger area between buildings for drainage, access and property maintenance purposes. She stated that the Zoning By-law Amendments require a minimum 1 m area that is kept free and clear for drainage, access and maintenance purposes. Ms. Fulford opined that the Zoning By-law Amendments conform with UHOP policy B.3.3.1.1 on enhancing a sense of community identification in that they respond to the sense of neighbourhood and community that has evolved in the applicable areas. Regarding conformity with policy B.3.3.1.5 on ensuring that new development is compatible and enhances the character of an area, she stated that the Zoning By-law Amendments place limits on new development so that it is more sympathetic to existing built form, established streetscapes and the neighbourhood character. She opined that the Zoning By-law Amendments conform with UHOP policy E.3.2.4 on maintaining the existing character of established neighbourhoods as they respect the scale and character of existing neighbourhoods and promote new development that is sympathetic to the scale and character of neighbourhoods.

[18] Regarding the height provisions, it is the City's position that the Zoning By-law Amendments' height regulations work with the Amendments' requirements on massing and scale. Ms. Fulford opined that the Zoning By-law Amendments' height provisions

are appropriate to implement flexible policies and maintain the existing character of neighbourhoods. She said grading issues are addressed through the site plan control process. As noted above, she opined that the Zoning By-law Amendments comply with UHOP policy 2.6 in that they address the local context in regard to lot fabric, streetscapes, built form characteristics and overall character.

[19] Regarding the garage projection issues, it is the City's position that the Appellant's concerns are unfounded as the Zoning By-law Amendments require that a garage projection must not be located within a front yard or a flankage yard. Regarding the application of UHOP policy B.2.4.2.2(g) on the evaluation of a development's ability to respect and maintain or enhance streetscape patterns, Ms. Fulford stated that this policy does not apply to the Zoning By-law Amendments as the redevelopment of properties in the ER zone does not represent "intensification" or "residential intensification" as defined in UHOP. Ms. Fulford opined that the Zoning By-law Amendments conform with policy B.3.3.3.4 requiring new developments to define the street through consistent setbacks and building elevations. She opined that they provide for consistent front yard setbacks and minimum side yards which contribute to the consistent rhythm of building frontages, a consistent pattern along streetscapes, greater height consistency among new developments and in relation to existing dwellings, and a de-emphasis on the presence of garages in relation to the front sides of dwellings. She stated that the Appellant has misinterpreted the Zoning By-law Amendments when he submits that these provisions contradict the Amendments' front yard setback requirements.

[20] Ms. Fulford also opined that the Zoning By-law Amendments conform with UHOP policy B.3.3.2.3 encouraging urban design to foster a sense of community identity and policy B.3.3.3.3 requiring that new developments be massed to respect existing and planned street proportions. She opined that UHOP policy F.1.7.1 on site plan control, policy F.1.2.1(b)(ii) on the preparation of secondary plans, and policy F.1.14.3.1(d) on Consents do not apply to the Zoning By-law Amendments.

ANALYSIS AND FINDINGS

[21] On an appeal under s. 34(19) of the *Planning Act*, an appellant must demonstrate that the zoning by-law amendments under appeal are inconsistent with a provincial policy statement, fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan. In the present case, the Appellant argues that the Zoning By-law Amendments fail to conform with UHOP.

[22] Under s. 34(25.2) of the *Planning Act*, the Tribunal must dismiss the appeal unless the appellant has demonstrated inconsistency or non-conformity as described above. In the present case, the Tribunal finds that the Appellant has failed to do this. The Tribunal finds that the Zoning By-law Amendments conform with UHOP.

[23] The Tribunal finds that with respect to issues regarding flankage yard setbacks on corner lots, the Zoning By-law Amendments conform with UHOP policy B.3.4.3.6 and promote new development that is sympathetic and complementary. It finds that they provide flexibility to ensure compatibility and they will help maintain the existing character of neighbourhoods. The Tribunal notes that based on the evidence before it, the flankage yard setbacks in the Zoning By-law Amendments do not differ from those in the previous zoning by-law.

[24] The Tribunal finds that with respect to issues regarding front yard setbacks, the Zoning By-law Amendments conform with UHOP policy E.2.6 and E.2.6.7. Based on Ms. Fulford's opinion evidence, the Tribunal finds that the Zoning By-law Amendments provide flexibility to permit these regulations to apply to a range of lot sizes and configurations and there are no UHOP policies that require redevelopments to match the standards of neighbouring dwellings. The Tribunal accepts Ms. Fulford's opinion evidence that these provisions address the local context in regard to lot fabric, streetscapes, built form characteristics and overall character.

[25] The Tribunal finds that with respect to issues regarding the interior side yard regulations, the Zoning By-law Amendments conform with UHOP policies B.3.3.1.1, B.3.3.1.5, and E.3.2.4. It finds that they ensure that development is sympathetic to existing built form, established streetscapes and neighbourhood character and they

respect the scale and character of existing neighbourhoods, address overlook and privacy issues, and address drainage, access and property maintenance needs. The Tribunal notes that the existing side yard setbacks for ER zoned areas in Ancaster are less than the requirements in the Zoning By-law Amendments.

[26] The Tribunal finds that with respect to issues regarding maximum height provisions, the Zoning By-law Amendments comply with UHOP policy 2.6 in that they address lot fabric, streetscape, built form and character issues. Based on Ms. Fulford's *uncontradicted opinion evidence*, the Tribunal finds that the Zoning By-law Amendments' height provisions are appropriate to implement flexible policies and that they will assist in maintaining the existing character of neighbourhoods.

[27] The Tribunal finds that with respect to issues regarding the garage projection issues, the Zoning By-law Amendments conform with UHOP policy B.3.3.3.4 in that they will ensure consistent setbacks and a consistent pattern along streetscapes. The Tribunal notes the evidence before it that under the Zoning By-law Amendments, garage projections must not be located within front yards or flankage yards.

[28] The Tribunal finds that the *uncontradicted opinion evidence* provided by Ms. Fulford addresses the issues raised by the Appellant and the Participants and demonstrates that the Zoning By-law Amendments conform with UHOP. Based on her *opinion evidence*, the Tribunal finds that the UHOP policies raised by the Appellant and the Participants are satisfactorily addressed under the Zoning By-law Amendments.

ORDER

[29] The appeal is dismissed.

"Hugh S. Wilkins"

HUGH S. WILKINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248