

ISSUE DATE:

May 6, 2013

By-law 13-129



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL120721

1800615 Ontario Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from Council's neglect to enact a proposed amendment to the Official Plan for the City of Hamilton to redesignate lands at 339 and 347 Fifty Road and 1317 and 1329 Barton Street from "Special Policy F" to "Medium Density Residential" to permit the proposed draft plan of subdivision.

Approval Authority File No. OPA-11-005

OMB File No. PL120721

1800615 Ontario 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 3692-92 of the City of Hamilton to rezone lands respecting 339 and 347 Fifty Road and 1317 and 1329 Barton Street from Agricultural Specialty Zone to site specific R5 Zone, site specific RM2 Zone and block-specific Multiple Residential RM2 Zone to permit the development of the proposed draft plan of subdivision

Approval Authority File No. ZAC-11-042

OMB File No. PL120722

1800615 Ontario 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 at 339 and 347 Fifty Road and 1329 Barton Street, in the City of Hamilton

Approval Authority File No. 25T201107

OMB File No. PL120750

APPEARANCES:

Parties ("Parties")

Counsel

1800615 Ontario Inc. ("Applicant")

Steven Zakem

City of Hamilton ("City")

Michael Minkowski
Lia Magi

DECISION DELIVERED BY STEVEN STEFANKO AND ORDER OF THE BOARD

BACKGROUND

[1] The Applicant is seeking approval for a residential development (i.e. street townhouses, multiple residential units and single detached homes) on lands located at 339 and 347 Fifty Road and 1317 and 1329 Barton Street, in the former City of Stoney Creek, now in the City of Hamilton.

[2] In that regard the Parties have agreed on an official plan amendment ("OPA") which annexed hereto as Attachment 1, a zoning by-law amendment (except for one issue hereinafter referred to), a draft plan of subdivision ("Draft Plan") annexed hereto as Attachment 3 and conditions ("Draft Plan Conditions") related to the Draft Plan which are annexed hereto as Attachment 4.

ISSUE

[3] The only issue in dispute between the Parties is the lot frontage for Blocks 1, 2 and 3 ("Blocks 1, 2 and 3") as shown on Schedule A of the City zoning by-law amendment ("City ZBA") which was filed in this proceeding as Exhibit 4 and which is annexed hereto as Attachment 2. The proposed single detached lots will be backing onto existing single detached lots immediately to the west in the area known as Phase 1 of the Foothills of Winona ("Phase 1") which is part of the Winona Community ("Winona Community").

POSITIONS OF THE PARTIES

[4] The Applicant's position is that the lot frontage for the single detached lots to be created should be 10 metres ("m"). Glen Scheels, a planner with GSP Group, provided expert land use testimony to support this view. In his opinion, the 10 m frontage conforms with the Growth Plan for the Greater Golden Horseshoe ("Growth Plan"), is consistent with the Provincial Policy Statement, 2005 (PPS), conforms with the Hamilton Wentworth Official Plan ("HWOP") and conformed with the Stoney Creek Official Plan ("SCOP") including s. 1.1.3 thereof.

[5] City Council and City planning staff ("Staff") reject the 10 m proposed. The recommendation from Staff in this matter is that Blocks 1, 2 and 3 should have frontage of 12 m. City Council, at its meeting on April 10, 2013, approved frontage of 12 m for

Blocks 2 and 3 but increased the frontage for Block 1 to 15 m. The City ZBA reflects City Council's position in this matter.

[6] Heather Travis, a Senior Planner with the City gave evidence in support of the position of Staff and City Council in this matter. In her view, the 12 m or 12 m and 15 m frontage is more compatible with existing development, namely, Phase 1. Ms. Travis also opined that the City's position (both Staff and Council) was in conformity with the Growth Plan, the HWOP, the SCOP and was consistent with the PPS.

[7] Brad Scott, a property owner who resides at 60 Benziger Lane, gave evidence in this proceeding as a participant. He is opposed to the development and believes it is too intense and is not compatible with Phase 1.

ANALYSIS AND DISCUSSION

[8] The Applicant argues that it is not unusual to have different size lots backing onto each other particularly when those lots have the same depth or rear yard, that the 10 m frontage provides for efficient use of land and that the proposed frontages are indeed compatible with Phase 1 because the new development will not have a physical or functional adverse impact on the lands to the west. I do not agree for a number of reasons.

[9] First, s. 1.1.3 of the SCOP requires that new development be compatible with surrounding existing development. It is true that Ontario Municipal Board jurisprudence has established, as has the new Urban Hamilton Official Plan ("UHOP") in its definition of "compatibility", that compatible does not mean the same but rather existing together in harmony. However, it is equally true that the lots in Phase 1 adjacent to Block 1 have frontages of 15 m. In my view, it is appropriate to maintain, if possible, the same lot frontages for lots backing onto each other. In this case, I did not hear any compelling evidence to deviate from this approach.

[10] Second, although the UHOP is not currently in effect, it does, as acknowledged by the planners who testified in this proceeding, represent the current planning philosophy of the City. Section 3.4.6 (c) of the UHOP is, therefore, of particular relevance to the case at hand. It states that development in areas dominated by low density residential uses shall be designed in accordance with a number of criteria

including a “mix of lot widths and sizes compatible with streetscape character.” In my opinion, the City ZBA with its frontage requirements for Blocks 1, 2 and 3 better achieves compatibility with the existing streetscape character.

[11] Third, the frontages in Blocks 1, 2 and 3 of the City ZBA also achieve, in my estimation, the appropriate transition from Phase 1 and the proposed single detached lots in the westerly limit of the Draft Plan to the semi-detached dwellings and townhouses of differing forms, farther to the east. From a transition perspective, the Applicant’s position is simply not as compelling or persuasive.

[12] Fourth, the historical character of the Winona Community is, in general terms, one of larger lots. To the extent smaller lots exist within this community, they are located to the rear of the development or closer to the CN railway line and are therefore less visible from Barton Street. The City ZBA represents a logical, coherent transition from the Winona Community at large to the new residential development proposed.

[13] And lastly, s. 2.1 of the *Planning Act* (“Act”) requires that I have regard to City Council’s decision in this matter. Based on the evidence presented, I am satisfied that Council’s decision was correct when it created the frontages which it did and I see no reason to overturn or vary that decision.

[14] In summary, I believe the City ZBA better establishes the degree of compatibility and the level of transition required in the circumstances of this case.

DISPOSITION AND ORDER

[15] Based on all of the foregoing, it is ordered that:

- (a) The OPA is hereby approved;
- (b) By-law 3692-92 (Stoney Creek) is hereby amended in accordance with the City ZBA;
- (c) The Draft Plan is hereby approved and, pursuant to s. 51 (56.1) of the Act, final approval thereof for purposes of s.51 (58), is to be given by the approval authority in which the land is situate; and

- (d) The Draft Plan Conditions are hereby approved.
- [16] The Applicant's appeal in relation to the lot frontage issue is therefore dismissed.

"Steven Stefanko"

STEVEN STEFANKO
VICE-CHAIR

ATTACHMENT 1

Amendment No. [REDACTED]

to the

Official Plan for the Former City of Stoney Creek

The following text, together with Schedule "A", attached hereto, constitute Official Plan Amendment No. [REDACTED].

Purpose:

The purpose of this Amendment is to re-designate the subject lands from "Special Policy Area F" to Residential and Medium Density Residential in order to permit a range of residential uses, including single detached dwellings, semi-detached dwellings, street townhouses, and townhouses.

Location:

The lands affected by this Amendment are located on the north side of Barton Street, east of Fifty Road, and south of the CN Railway Line.

Basis:

The Amendment can be supported for the following reasons:

- It is consistent with the Provincial Policy Statement, and conforms to Places to Grow and the Hamilton-Wentworth Official Plan;
- It provides for efficient, compact, development and a range of housing types for the neighbourhood.
- The proposal is compatible with the existing adjacent development on surrounding lands.

Actual Changes:

Map Changes:

That Schedule "A", General Land Use Plan of the Stoney Creek Official Plan be Amended by re-designating the subject lands from "Special Policy Area F" to "Residential" and "Medium Density Residential", as shown on the attached Schedule "A" to this Amendment.

Implementation:

An implementing Zoning By-law Amendment and Plan of Subdivision will give effect to this Amendment.

This is Schedule "1" to By-law No. [REDACTED], passed on the [REDACTED] day of [REDACTED], 2013.

The City of Hamilton

R. Bratina
Mayor

Rose Caterini
Clerk

