

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario

By-law 13-225



ISSUE DATE: July 17, 2014

CASE NO(S): PL131184

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

Appellant:	Cameron Brown
Subject:	By-law No. ZAC-11-020
Municipality:	City of Hamilton
OMB Case No.:	PL131184
OMB File No.:	PL131184

Heard: April 17, 2014 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

Cameron Brown	self-represented
Farzad Karambakhsh	N. Smith
City of Hamilton	N. Smith

DECISION DELIVERED BY M. CARTER-WHITNEY AND ORDER OF THE BOARD

BACKGROUND

[1] Farzad Karambakhsh ("Applicant") applied for an amendment to former Township of Glanbrook ("Township") Zoning By-law No. 464 ("ZBL") in order to rezone the lands located at 3250 Homestead Drive, at the intersection of Longview Drive, ("subject property") in the City of Hamilton ("City"). The Applicant seeks to rezone from the Existing Residential ("ER") zone to the Neighbourhood Commercial ("C1-272") zone, with a Special Exception, to permit a three storey, mixed use development.

[2] On September 11, 2013, the City Council passed Zoning By-law No. 13-225 (“ZBLA”) to amend the ZBL. Cameron Brown (“Appellant”), a resident adjacent to the subject property on Longview Drive, appealed Council’s decision to the Ontario Municipal Board (“Board”).

[3] At the hearing, the Board granted participant status to Hugh Brown, who chose not to testify, and to Allan Freeman.

[4] At the commencement of the hearing, the Appellant sought to challenge the Board’s jurisdiction to hear the appeal, asserting concerns about the legality of the ZBLA due to typographical errors in it. Nancy Smith, who appeared as counsel for the City and the Applicant jointly, submitted that the Board’s jurisdiction to hear the appeal of Council’s decision to amend the ZBL was clear under the *Planning Act* (“Act”) and urged the Board to hear the evidence and make a ruling as to whether or not the by-law should be approved. She stated that the courts would be the proper forum in which to challenge the legality of the by-law. The Board determined that it has the jurisdiction to hear this appeal under the Act and proceeded to hear the evidence, including evidence with respect to the figures set out in the ZBLA.

[5] Alvin Chan, a planner with the City, was qualified to give expert land use planning evidence on behalf of the City and the Applicant. The Appellant and Mr. Freeman also appeared as witnesses.

EVIDENCE

[6] Mr. Chan provided background concerning the history of the proposed development, noting that the initial proposal was revised in response to submissions made at a public information meeting held by the Applicant in September 2011. The revised proposal is for a three storey, mixed use development with five ground floor commercial units and two residential floors of six units each, for a total of twelve

residential units, with 42 parking spaces. He said that much of the land along Homestead Drive in that area is designated General Commercial, and that a residential neighbourhood is located to the east.

[7] Mr. Chan testified as to how the public consultation had influenced the current proposal. He stated that a review, in light of urban design guidelines, resulted in the proposed development being brought up to the street on Longview Drive to encourage pedestrian access. He noted that it was not possible to bring the development up to the street on Homestead Drive because of the need to preserve a visibility triangle to ensure safe and adequate sight lines at the intersection. He said that amenities such as park benches and tables were included in front of the proposed development as elements of transit oriented design to promote walking and cycling.

[8] Mr. Chan also stated that, because area residents were concerned about traffic flow, commercial traffic has been restricted to a Homestead Drive entrance and the second entrance from Longview Drive is intended for residential traffic only. There will be a physical separation of residential and commercial vehicle parking to ensure no commercial access to the residential exit.

[9] Mr. Chan provided a detailed description of the site-specific modifications to the Neighbourhood commercial ("C1") zone that were required to facilitate the development, and provided his opinion as to why they were required and supported by City planning staff. With respect to the issue raised by the Appellant concerning typographical errors in the ZBLA, Mr. Chan testified that the drawing found at Schedule "A" to the ZBLA (filed as Exhibit 1, Tab 20, p. 267) accurately reflects the subject property, but that the position of the decimal points in the dimensions provided on Schedule "A" were incorrect as a result of minor typographical errors.

[10] Mr. Chan provided his opinion that the proposed development is consistent with the Provincial Policy Statement 2005 ("2005 PPS") and the Provincial Policy Statement

2014 (“2014 PPS”). In particular, he said that the proposal is consistent with policy 1.1.3.1, which provides that settlement areas shall be the focus of growth and their vitality and regeneration shall be promoted, noting that the proposal will provide a range of employment and housing options in the Urban Area where full municipal services are available. Policy 2.6.2 in the 2014 PPS provides that development and site alteration shall not be permitted on lands containing archaeological resources or areas of archaeological potential unless significant archaeological resources have been conserved. Mr. Chan testified that this policy had been addressed through an archaeological assessment and the provincial interest had been satisfied.

[11] Mr. Chan testified that policy 1.7.1(e) in the 2005 PPS states that major facilities such as airports should be planned to be appropriately designed, buffered and separated from sensitive land uses to mitigate adverse effects such as noise. In the 2014 PPS, this policy is set out at 1.2.6. He noted the proximity of the subject property to the John C. Munro Hamilton International Airport and referred the Board to the Noise Study conducted, which concluded that noise levels could be addressed through building design and warning clauses registered on title, to be dealt with at the Site Plan Control stage. He provided his opinion that noise issues had been addressed.

[12] Mr. Chan provided his opinion that the proposed development conforms to the policies of the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”). Specifically, he directed the Board to the guiding principles in s. 1.2.2, in relation to building compact, vibrant and complete communities. He also stated that the proposal conforms to the growth management policies in the Growth Plan and, in particular s. 2.2.2, which provides that population growth be accommodated by building compact, transit-supportive communities in designated greenfield areas. He confirmed that the subject property is in a designated greenfield area.

[13] Mr. Chan testified that the proposed development conforms to the local planning documents in relation to the subject property: the Hamilton-Wentworth Official Plan

("HWOP"); the Official Plan for the Township ("Glanbrook OP"); the Mount Hope Urban Settlement Area Secondary Plan ("MHSP"); and the new Urban Hamilton Official Plan ("UHOP"). He noted that the UHOP, which was approved by the Minister of Municipal Affairs and Housing on March 16, 2011, is under appeal, so that the Glanbrook OP was the policy document in full force and effect at the time of application.

[14] Mr. Chan referred the Board to the relevant provisions of the HWOP, in which the subject property is designated as Urban Area. He gave evidence concerning the pertinent policies of the HWOP and provided his opinion that the proposal, as a compact, mixed-use development within the Urban Area where full services are available, conforms to the HWOP. He further stated that the subject property is designated as General Commercial in the Glanbrook OP and the MHSP, noting that policies B.2.3.1 and B.2.3.11.2(a) and (c) of the Glanbrook OP permit residential and mixed-use developments in this designation, as proposed here. He testified as to how the proposed development is in conformity to the policies of the Glanbrook OP and the MHSP.

[15] As noted above, Mr. Chan said that the UHOP is under appeal and not in effect. He stated that the proposed development is designated as Neighbourhoods and District Commercial in the UHOP, and that the proposed development is consistent with the policies for the Neighbourhoods and District Commercial designations because the development provides for commercial uses complementary to the neighbourhood, additional housing forms, a transit-oriented streetscape and a complete community.

[16] Mr. Chan provided his opinion that the residential component of the proposed development would be prohibited due to its proximity to the airport under policy C.4.8.10 and Table C.4.8.1 of the UHOP. However, he noted that the residential component of the development was added to the original proposal for a commercial development to address the concerns of neighbourhood residents about safety and surveillance at the subject property. He stated that planning staff also supported the inclusion of

residential units in the proposal because this conformed to provincial intensification policy.

[17] Mr. Chan provided his opinion that the HWOP permits sensitive land use developments on lands currently designated as Urban Area and, given that the Noise Study was submitted and mitigation measures will be implemented through the future Site Plan Control application, the proposal maintains the general intent and purpose of the UHOP. He concluded that the proposed development represents good land use planning and provides for a complete community.

[18] The Appellant raised a number of concerns in his testimony, and suggested that the former Township Council did not envision this type of development for the area. He objected to the increase in the maximum lot coverage. He also objected to the requirement that 50% of the ground floor façade along Longview Drive be windows and doors, and questioned why the building was pushed to the property line on Longview Drive, as opposed to Homestead Drive, saying that this would result in “developing” Longview Drive. He said that the minimum front yard setback along Homestead Drive should be reduced to 0.0 m, similar to the side yard setback along Longview Drive.

[19] The Appellant said that Homestead Drive is not a major commercial thoroughfare because Upper James Street bypasses it. He stated that this proposal would put a commercial building in a residential area, which he says does not support commercial growth. He objected to the number of residential units proposed, saying this would result in heavy traffic that would cause congestion in the area. He said there was not sufficient buffering between the residential area and the proposed commercial area, and objected to the reduced landscaping adjacent to the residential zone from 3.0 m to 1.8 m. He expressed concern that the reduction to the size of parking spaces would make it difficult for full size vehicles and minivans to park. He also questioned the accuracy of a height comparison of the proposed building, relative to his own house, in a visual rendering provided as part of a September 2013 presentation about the development

(filed as Exhibit 2).

[20] The Appellant disputed Mr. Chan's claim that the proposal conforms to s. 2.2.2 of the Growth Plan, stating that the subject property is not a greenfield as there is an existing residential building on the site. He also disputed Mr. Chan's evidence that the proposal would be transit-oriented, saying that it was not known whether transit would ever go along Longview Drive.

[21] Mr. Freeman, a former Township Councillor, stated that he was involved in the development of this area and that it was designed to be low density urban residential at the request of the Township. He characterized the area of the subject property as "rural urban" rather than "downtown urban" and said the proposed development would not fit. He stated that "cramming" the development onto the subject property without adequate setbacks would not be good planning. He suggested that adjacent land on Homestead Drive should be acquired to provide sufficient land to meet the requirements of the proposed development without requiring amendments to the ZBL. He also suggested that the proposal would conflict with neighbouring properties and negatively affect their values.

[22] In addition to his evidence summarized above, Mr. Chan specifically addressed the concerns raised by the Appellant and Mr. Freeman.

[23] Mr. Chan testified that restrictions on lot coverage are intended to regulate development in accordance with parcel size and ensure adequate engineering and servicing. He provided his opinion that the increase in maximum lot coverage from 30% to 37% is appropriate because no servicing or capacity issues have been identified for the subject property. He also stated that the increased lot coverage would not increase impacts on adjacent land uses because there will be screening in place and the building will be located as far away as possible from the residential neighbourhood, in response to public concerns.

[24] Regarding the requirement that 50% of the ground floor façade along Longview Drive be composed of windows and doors, Mr. Chan said that this would be consistent with urban design guidelines, and would animate the streetscape for pedestrians along Longview Drive. He also noted that it is not possible for the front yard setback from Homestead Drive to be less than 6.7 m in order to maintain a visibility triangle. He testified that the 0.0 m setback from Longview Drive is appropriate, allowing for the building to be as close as possible to the intersection for improved pedestrian access consistent with urban and transit oriented design guidelines. He stated that transit oriented design principles are multimodal and address accessibility for pedestrians and cyclists, such as bicycle racks and areas for people to sit, in addition to public transit.

[25] With respect to the number of residential units, Mr. Chan noted that the minimum lot area is required to ensure adequate area remains for parking and amenity areas, as well as the proper functioning of the residential component of the building. He testified that the residential function will be supported because the proposed average residential unit size of 123.5 square metres would provide ample interior amenity space, amenity areas will be provided through private balconies, and there will be sufficient residential and visitor parking to meet the ZBL requirements. He noted that the reduced parking space dimensions are in accordance with new City standards, and that adequate parking would be provided.

[26] Regarding concerns about increased traffic due to the proposal, Mr. Chan stated that City traffic engineering staff did not identify any concerns with the expected traffic volumes, nor any need for traffic signals or an all-way stop sign. He addressed concerns about the proximity of the proposed development to the residential neighbourhood by noting that there would be appropriate plantings incorporated into the landscaping to provide a visual barrier, and issues such as privacy and overview had been addressed. He said that, although there were reductions in landscaped areas, the landscaping proposed would be sufficient for plantings to provide screening. With respect to building height, he noted that the proposed 10.7 m height meets the

requirements of the ZBL and is the commercial standard in the former Township. He stated that, to minimize impacts, the building would be located as far as possible from adjacent residential uses, and adequate buffering and screening would be required and implemented through the future Site Plan Control application.

[27] Mr. Chan noted that there was no empirical data linking property value to land use planning that would substantiate that concern. With respect to Mr. Freeman's concern that the zoning was being changed to fit the building onto the site, he described the zoning changes as minor modifications that would ensure an appropriately designed building.

FINDINGS

[28] The Board accepts Mr. Chan's evidence, which was not contested by any opposing land use planning opinion evidence, and is satisfied that he adequately addressed the concerns raised by the Appellant and Mr. Freeman. The Board finds, based on the evidence, that the ZBLA is consistent with the 2014 PPS, and conforms to the Growth Plan, the HWOP, the Glanbrook OP and the MHSP. The Board further finds that the ZBLA maintains the general intent and purpose of the UHOP, and accepts Mr. Chan's evidence that noise levels can be addressed at the Site Plan Control stage.

[29] As noted above, there are typographical errors in the ZBLA. Ms. Smith asked the Board to revise the ZBLA in order to correct the typographical errors in Schedule "A" by moving the decimal points to reflect the accurate dimensions. The Board finds that it is appropriate to make these revisions to Schedule "A" to the ZBLA. Ms. Smith provided a corrected version of the ZBLA, which is attached to this Order as Attachment A.

ORDER

[30] Pursuant to the Board's general powers, the Board amends Zoning By-law No. 464 (Glanbrook) as set out in Attachment A.

[31] The Board orders that the appeal is dismissed.

[32] The Board so orders.

"M. Carter-Whitney"

M. CARTER-WHITNEY
MEMBER

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

Website: www.elfto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT A

Authority: Item [REDACTED]
Planning Committee
Report 13-[REDACTED] (PED12128)
CM: [REDACTED]

Bill No. [REDACTED]

CITY OF HAMILTON

BY-LAW NO. [REDACTED]

**To Amend Zoning By-law No. 464 (Glanbrook)
Respecting Lands Located at 3250 Homestead Drive**

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap.14, Sch. C. did incorporate, as of January 1, 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 Township of Glanbrook" 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. 464 (Glanbrook) was enacted on the 16th day of March, 1992, and approved by the Ontario Municipal Board on the 31st day of May, 1993;

AND WHEREAS the Council of the City of Hamilton, in adopting Item [REDACTED] of Report 12-[REDACTED] of the Planning Committee, at its meeting held on the [REDACTED] day of [REDACTED], 2012, recommended that Zoning By-law No. 464 (Glanbrook), be amended as hereinafter provided;

AND WHEREAS this By-law is in conformity with the Township of Glanbrook Official Plan, approved by the Minister under the Planning Act on June 16, 1987.

AND WHEREAS this By-law is in conformity with the Urban Hamilton Official Plan, approved by the Minister under the Planning Act on March 16, 2011.

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

1. That Schedule “F”, appended to and forming part of By-law No. 464 (Glanbrook), is amended by changing the zoning from the Existing Residential “ER” Zone to the Neighbourhood Commercial “C1-272” Zone, on the lands the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A”.
2. That Section 44, “Exceptions to the Provisions of the By-law”, of Zoning By-law No. 464, be amended by adding a new special provision, “C1-272”, as follows:

“C1-272” 3250 Homestead Drive

Notwithstanding **SECTION 23: NEIGHBOURHOOD COMMERCIAL “C1” ZONE**, Sub-section 23.1 - **PERMITTED USES**, the following uses shall be prohibited on the lands zoned “C1-272”:

Banks and Financial Institutions.

Notwithstanding **SECTION 23: NEIGHBOURHOOD COMMERCIAL “C1” ZONE**, Sub-section 23.1 - **PERMITTED USES**, the following use shall also be permitted on the lands zoned “C1-272”:

Retail Stores.

Notwithstanding **SECTION 23: NEIGHBOURHOOD COMMERCIAL “C1” ZONE**, Sub-section 23.2 - **REGULTIONS FOR USES PERMITTED IN PARAGRAPH (a) OF SUB-SECTION 23.1**, Clauses (e), (h), (i), (l)(ii), (l)(iv), (m), and (n), the following provisions shall apply on the lands zoned “C1-272”:

- (e) Maximum Lot Coverage: 37 percent.
- (h) Minimum Front Yard: 6.7 metres.
- (i) Minimum Side Yard:
 - (ii) 0.0 metres on a corner lot for the side yard abutting the flankage street.
- (l) Minimum Parking Requirements:
 - (ii) That notwithstanding Paragraph 7.35(b), the minimum number of parking spaces shall be provided in accordance with the

provisions of Paragraph 7.35(b) of this By-law for those uses specified therein, at a minimum parking space dimension of 2.6m wide x 5.5m long.

- (iv) No parking space or part thereof shall be located and no land shall be used for the temporary parking or storage of any motor vehicle at a distance of less than 2.6 metres from any rear lot line, or 1.0 metres from any street line, or 2.0 metres from the boundary of any Residential or Institutional Zone or any Zone where the adjoining lands are used for residential or institutional purposes.

(m) Minimum Loading Requirements:

A minimum of one loading space shall be provided and maintained for the entire development with a minimum dimension of 2.6m wide x 5.5m long.

(n) Minimum Landscaping Requirements:

- (i) A landscape area, in the form of a planting strip having a minimum width of 1.8 metres and a fence having a minimum height of 1.8 metres, shall be provided and maintained adjacent to any lot line that abuts any Residential or Institutional Zone or any Zone where the adjoining land is used for residential or institutional purposes.

- (ii) That notwithstanding the provision above (n)(i), the required minimum 1.8m planting strip shall be comprised of Eastern White Cedars (*Thuja Occidentalis*) with a minimum size of 200 or 250 cm W.B, and a board on board fence with a minimum height of 1.8m, along the rear lot line abutting 3 Longview Drive.

- (ii) A landscaped area having a minimum width of 3 metres shall be provided and maintained along every portion of any lot line that abuts Homestead Drive, and 0.0m shall be provided along any portion abutting the building along Longview Drive, and a minimum of 1.0m for all other portions abutting Longview Drive.

- (p) That any garbage enclosure shall only be provided and maintained within the interior of the building.

- (q) That a minimum of 50% of the ground floor façade along Longview Drive shall be composed of windows and doors.

- (r) That residential and visitor's parking areas shall be physically and functionally separated from the commercial parking area.

- (s) That no balconies shall be permitted on the west façade of the proposed development.

Notwithstanding **SECTION 23: NEIGHBOURHOOD COMMERCIAL "C1" ZONE**, Sub-section 23.3 - **REGULTIONS FOR RESIDENTIAL USES PERMITTED IN PARAGRAPH (b) OF SUB-SECTION 23.1**, Clauses (a) and (b), the following provisions shall apply on the lands zoned "C1-272":

- (a) A maximum of 12 residential units shall be permitted within the principal building, provided they are located above the permitted ground floor commercial.
 - (b) Lot Area shall not apply.
 - (e) That no balconies shall be permitted on the west façade of the proposed development.
3. That no building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the Neighbourhood Commercial "C1" Zone, provisions, subject to the modifications referred to in Section 2.
 4. That 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 [REDACTED] day of [REDACTED], 2013.

R. Bratina
Mayor

Rose Caterini
Clerk

ZAC-11-020



This is Schedule "A" to By-Law No. 14-
 Passed the day of, 2014

 Mayor

 Clerk

Schedule "A"

Map Forming Part of
 By-Law No. 14- _____

to Amend By-law No. 464

Subject Property
 3250 Homestead Drive

 Change in Zoning from the Existing Residential "ER" Zone to the Neighbourhood Commercial "C1-272" Zone

Scale:
 N.T.S.

Date:
 June 30, 2014

File Name/Number:
 ZAC-11-020

Planner/Technician:
 AC/AL

