

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario

14-313  
Attachment 1



**ISSUE DATE:** October 02, 2014

**CASE NO(S):** PL131389

Michael Wortel 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 to enact a proposed amendment to Zoning By-law 90-145-Z of the City of Hamilton to rezone lands respecting 176 Parkside Drive from "R1-6" (Urban Residential (Single Detached)) Zone to a new site specific "R1-XX (Urban Residential (Single Detached)) Zone to permit 3 single detached residential dwellings  
OMB File No. PL131389

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

|                               |   |
|-------------------------------|---|
| Applicant and Appellant:      | Michael Wortel  |
| Subject:                      | Amendment to Zoning By-law No. 90-145-Z –<br>Refusal of application by the City of Hamilton<br>"R1-6" (Urban Residential (Single Detached))<br>Zone |
| Existing Zoning:              | Zone  |
| Proposed Zoning:              | Site specific zones - "R1-XX" (Urban<br>Residential (Single Detached)) Zone and "R1-<br>YY" (Urban Residential (Single Detached))<br>Zone           |
| Purpose:                      | To permit three single detached residential<br>dwellings  |
| Property Address/Description: | 176 Parkside Drive  |
| Municipality:                 | City of Hamilton  |
| Municipal File No.:           | ZAR-12-060  |
| OMB Case No.:                 | PL131389  |
| OMB File No.:                 | PL131389  |

**PROCEEDING COMMENCED UNDER** subsection 53(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

|                                |                    |
|--------------------------------|--------------------|
| Applicant and Appellant:       | Michael Wortel     |
| Subject:                       | Consent            |
| Property Address/ Description: | 176 Parkside Drive |
| Municipality:                  | City of Hamilton   |
| Municipal File No.:            | B-106/12           |
| OMB Case No.:                  | PL131389           |
| OMB File No.:                  | PL140485           |

Heard: July 17, 2014 in Hamilton, Ontario

**APPEARANCES:**

**Parties**

Michael Wortel

City of Hamilton

**Counsel**

B. Ketcheson

L. Magi

**DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD**

---

**INTRODUCTION**

[1] This is the decision for an appeal by Michael Wortel ("Appellant") against the refusal by the City of Hamilton ("City") of a proposed Zoning By-law Amendment ("ZBA") and against the refusal by the Hamilton Committee of Adjustment of a consent application for a property at 176 Parkside Drive, Hamilton. The purpose of the application was to create two additional residential lots and establish zoning standards to permit development of the lots.

[2] The subject property is located in a predominately residential area in the former Town of Flamborough. The property is at the corner of Parkside Drive and Braeheid Avenue. The property has an area of approximately 1393.5 square metres ("sq. m") with 30.48 metre ("m") frontage on Parkside Drive and 45.61 m frontage on Braeheid Avenue.

[3] At the beginning of the hearing the Board was informed that the parties had reached a settlement. As part of the settlement the Appellant provided a revised consent application that proposes only one additional residential lot and a revised ZBA to implement appropriate zoning standards.

[4] The hearing proceeded to consider evidence related to the settlement.

## EVIDENCE

[5] The Board heard evidence in support of the settlement from Robert Dragicevic, Senior Principal and President of Walker, Nott, Dragicevic Associates Limited. Mr. Dragicevic is a Registered Professional Planner with more than thirty years of experience. He was qualified by the Board as an expert in land use planning.

[6] The Board heard that at the time of the application, the former Town of Flamborough Official Plan was in force and the current Urban Hamilton Official Plan was not yet in affect for the subject property. Mr. Dragicevic testified that the subject property is within the urban area identified in the Urban Hamilton Official Plan. He stated that both the Urban Hamilton and former Town of Flamborough Official Plans designate the property as residential.

[7] Mr. Dragicevic noted that there is new development occurring to the north of the property. Not all properties in the area have full municipal services and many of the lots are oversized.

[8] Mr. Dragicevic described the proposed consent which is set out in Exhibit 4. He stated that the proposed additional lot will have an area of 603 sq. m and frontage of 19.81 m. The retained parcel will have an area of 712.5 sq. m and a frontage of 18.63 sq. m and will contain the existing house. Mr. Dragicevic also stated that a parcel will be severed at the corner of Parkside Drive and Braeheid Avenue to provide for a daylight triangle which is required by the City.

[9] Mr. Dragicevic indicated that the revised proposal represents a modest form of intensification. He stated that both official plans allow the residential use of the property and permit some intensification. In his opinion, the proposed consent complies with both the Town of Flamborough and Urban Hamilton Official Plans.

[10] Mr. Dragicevic indicated that the subject property is zoned R1-6 in the former Town of Flamborough Zoning By-law No. 90-145-Z (Exhibit 1, p. 152). He stated that

the R1 zoning permits the single detached residential use. He indicated that a number of exceptions have been granted for properties in the R1 zone.

[11] Mr. Dragicevic filed the proposed ZBA (Exhibit 3) and indicated that it will create a site specific exception for the property. He stated that the provision for minimum lot area includes easements that will be provided to the City for servicing, the lot coverage is increased to 32 % from 15 % which reflects a more contemporary standard, and the rear yard requirement of 7.5 m is the normal requirement, but the ZBA allows a rear yard of 2.1 m. for the existing house on the retained parcel.

[12] Mr. Dragicevic's opinion is that the ZBA is properly crafted and conforms with the Urban Hamilton and former Town of Flamborough Official Plans.

[13] Mr. Dragicevic addressed recommended conditions of approval of the consent (Exhibit 5). He indicated that many of the conditions are standard requirements of consents. He noted condition No. 5 which requires that independent water and sewer services be provided to the severed and retained parcels according to the servicing plan for the property (Exhibit 8). Condition No. 6 requires that the Appellant provide an easement for the sanitary sewer. Condition No. 7 provides for the dedication of the daylight sight triangle. Condition No. 8 ensures that the Appellant is responsible for the servicing costs.

[14] Mr. Dragicevic indicated that all conditions in Exhibit 5 are reasonable and appropriate.

[15] Mr. Dragicevic stated that the objectives of the Growth Plan for the Greater Golden Horseshoe ("Growth Plan") include intensification of development, encouraging development in built up areas and directing development where services are available. He maintained that the proposal contributes to the objectives of the Growth Plan.

[16] Mr. Dragicevic contended that the proposal is a modest form of intensification in a built up area that is consistent with the PPS.

[17] In his opinion the proposed consent satisfies all requirements of s. 53(12) and 51(24) of the *Planning Act* ("Act"). Based upon the above, Mr. Dragicevic recommended that the Board give the provisional consent subject to the conditions in Exhibit 5 and that the Board approve the ZBA as set out in Exhibit 3.

[18] In view of the requirements of s. 53(35.1) of the Act, the Board asked Mr. Dragicevic's opinion about whether further notice is required for the revised consent application. Mr. Dragicevic indicated that the revisions to the application are minor, that they represent an improvement of the proposal and therefore no further notice is required.

### **ANALYSIS AND FINDINGS**

[19] The Board has carefully considered the submissions of the parties. The evidence in support of the settlement is uncontested.

[20] The Board accepts and agrees with the expert opinion evidence provided by Mr. Dragicevic. The Board finds that the proposed ZBA (Exhibit 3) is consistent with the PPS and conforms with the Growth Plan. Furthermore the proposed use is appropriate and the ZBA complies with both the Town of Flamborough and Urban Hamilton Official Plans.

[21] Based upon the evidence, the Board finds that the consents identified in Exhibit 4 are appropriate, they comply with all requirements of s. 51(24) and 53(12) of the Act and the proposed conditions are reasonable pursuant to the requirements of s. 51(25) of the Act. The Board is satisfied that a plan of subdivision is not required for the proposal, pursuant to s. 53(1) of the Act and no further notice is required pursuant to s. 53(35.1) of the Act.

[22] Based upon these considerations, the Board will allow the appeal in part and approve the ZBA and give the provisional consents subject to the conditions in Exhibit 5. The appropriate order is provided below.

[23] It should be noted that pursuant to s. 53(41) of the Act, if the conditions of approval are not fulfilled within one year of the date of issuance of this decision, the consent shall be deemed to be refused.

**ORDER**

[24] The Board orders that the appeal is allowed in part and former Town of Flamborough Zoning By-law is amended as set out in Attachment 1;

[25] The provisional consents are to be given as indicated in the drawing, Topographic Survey by David B, Searles Surveying Ltd. as set out in Attachment 2, and they are subject to the conditions contained in Attachment 3.

*"C. Conti"*

C. CONTI  
MEMBER

**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario

Website: [www.elfto.gov.on.ca](http://www.elfto.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

## CITY OF HAMILTON

BY-LAW NO. \_\_\_\_\_ (OMB)

**To Amend Zoning By-law No. 90-145-Z (Flamborough), Respecting Lands Located at 176 Parkside Drive (Flamborough)**

WHEREAS authority is given to the Ontario Municipal Board by Section 34 of the Planning Act, R.S.O. 1990, c. P. 13, as amended, to pass this By-law; and

WHEREAS the Ontario Municipal Board, pursuant to its Decision/Order dated \_\_\_\_\_, 2014 (OMB File Nos. PL131389 and PL140485) has determined to amend By-law No. 90-145-Z (Flamborough) of the City of Hamilton;

THEREFORE, By-law No. 90-145-Z (Flamborough) of the City of Hamilton is further amended by the Ontario Municipal Board as follows:

1. That Schedule No. A-30, attached to and forming part of Zoning By-law 90-145-Z (Flamborough), as amended, is hereby further amended by changing the zoning from the Urban Residential (Single Detached) "R1-6" Zone, Modified, to the Urban Residential (Single Detached) "R1-68" Zone, Modified, on the lands the extent and boundaries of which are more particularly shown on Schedule "A", annexed hereto and forming part of this By-law.
2. That Section 6 - Urban Residential (Single Detached) Zone of Zoning By-law 90-145-Z (Flamborough), as amended, is hereby further amended by adding the following subsections:

6.3 Exception Numbers

6.3.68 "R1-68" (See Schedule A-30)

Permitted Uses:

(a) Single Detached Dwellings

Zoning Provisions

- |     |                              |                                       |
|-----|------------------------------|---------------------------------------|
| (a) | Lot Area (minimum)           | 600 square metres                     |
| (b) | Lot Coverage (maximum)       | 32%                                   |
| (c) | Interior Side Yard (minimum) | 1.5 metres                            |
| (d) | Rear Yard (minimum)          | 7.5 metres, except 2.1 metres for the |

176 Parkside Drive

dwelling existing on  
the date of this By-  
law passing, being  
the 16th day of July,  
2014.

- (e) A deck existing on the date of this By-law passing, being the 16th day of July, 2014, shall be permitted within the interior side yard.
  - (f) All other zone provisions of Subsection 6.2 shall apply.
3. That By-law No. 90-145-Z (Flamborough) is amended by adding this By-law to Section 6 as "R6-68".

Approved this \_\_\_\_\_ day of \_\_\_\_\_, 2014

---

Member, Ontario Municipal Board

|  |   |                                 |  |                       |                             |  |  |  |
|--|---|---------------------------------|--|-----------------------|-----------------------------|--|--|--|
|  |   |                                 |  |                       |                             |  |  |  |
| <p>This is Schedule "A" to By-Law No. 14- _____</p> <p>Approved this _____ day of _____, 2014</p>  | <p>Member, Ontario Municipal Board</p>  |                                 |  |                       |                             |  |  |  |
| <p align="center"><b>Schedule "A"</b></p> <p align="center">Map Forming Part of<br/>By-Law No. 14- _____</p> <p align="center">to Amend By-law No. 90-145-Z</p>  | <p><b>Subject Property</b><br/>176 Parkside Drive</p> <p> Change in Zoning from the Urban Residential (Single Detached) "R1-8" Zone to the Urban Residential (Single Detached) "R1-8B" Zone</p> |                                 |  |                       |                             |  |  |  |
| <table border="1"> <tr> <td>Scale:<br/>N.T.S.</td> <td>File Name/Number:<br/>ZAR-12-080</td> <td rowspan="3"> </td> </tr> <tr> <td>Date:<br/>July 8, 2014</td> <td>Planner/Technician:<br/>TLVS</td> </tr> <tr> <td colspan="2">PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</td> </tr> </table> | Scale:<br>N.T.S.  | File Name/Number:<br>ZAR-12-080 |  | Date:<br>July 8, 2014 | Planner/Technician:<br>TLVS | PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT |  |  |
| Scale:<br>N.T.S.   | File Name/Number:<br>ZAR-12-080   |                                 |  |                       |                             |  |  |  |
| Date:<br>July 8, 2014  | Planner/Technician:<br>TLVS   |                                 |  |                       |                             |  |  |  |
| PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT   |   |                                 |  |                       |                             |  |  |  |



EX. 5

ATTACHMENT 3

PL140485

**176 Parkside Drive, City of Hamilton (Flamborough)**

**- Conditions of Provisional Consent -**

The following conditions are imposed on the provisional consent given by the Ontario Municipal Board pursuant to subsection 53(39) of the *Planning Act*:

1. The Owner shall submit a deposited Ontario Land Surveyor's Reference Plan to the Committee of Adjustment Office, unless exempted by the Land Registrar. The reference plan must be submitted in hard copy and also submitted in CAD format, drawn at true scale and location and tied to the City corporate coordinate system.
2. The Owner agree to include the following warning clause in the Consent Agreement and in all purchase and sale and/or lease/rental agreements:

"Purchasers/tenants are advised that sound levels due to increasing road traffic may occasionally interfere with some activities of the dwelling occupants as the sound levels may exceed the Municipality's and the Ministry of the Environment's noise criteria."
3. The Owner shall ensure compliance with Ontario Building Code requirements regarding spatial separation distances of any structures, to the satisfaction of the Planning and Economic Development Department (Building Division).
4. The Owner shall receive final approval of any necessary variances from the requirements of the Zoning By-law as determined necessary by the Planning and Economic Development Department (Building Division).
5. The Owner shall provide separate independent water and sewer services to both the severed and retained lands or if separate services already exist, proof thereof, to the satisfaction of the Manager of Engineering Approvals.

For clarity, services will be provided in accordance with the Servicing Plan dated July 16, 2014, submitted as Exhibit 2, which generally requires the following:

- a. That a 200mm sanitary sewer be extended from the existing sanitary sewer on Parkside Drive to approximately 9.0m off the south property line of the retained parcel, and located within the municipal right-of-way along Braeheid Ave.

- b. That the engineering design provides for picking up the sanitary flows from the existing private drain that services the adjacent property at 105 Braeheid Ave.
  - c. That the location of the water service connection for the severed lands be in accordance with the City's Engineering Guidelines, and located 1-meter left of the centre-line of the property.
  - d. That a private Rear Lot Catch Basin be provided for an appropriate drainage outlet to direct the post-development runoff from the subject lands to the existing storm sewer on Parkside Drive, whose final location is subject to an approved grading plan.
6. The Owner shall grant an easement in favour of the City over such portion of the retained lands as is required to secure a minimum 4.5-meter access along the length of the sanitary sewer.
7. The Owner shall dedicate to the City of Hamilton, a 40 feet by 40 feet (12.19m x 12.19m) daylight triangle from the widened limits of the intersection at Parkside Drive and Braeheid Avenue.
8. The Owner shall enter into a Consent Agreement (External Works) with the City, and register the agreement on title to the lands, to address issues including, but not limited to:
  - a. municipal sewer installation, restorations, grading and drainage;
  - b. cash payment requirement for items such as trees, cost recoveries for existing above and/or underground services, inspection of grading and services to be installed; and
  - c. securities for items such as estimated cost of services to be installed, lot grading, driveway approaches, new or re-location of sidewalks adjacent to the subject lands and any damages to the existing City infrastructure or public property during construction, all at the Owner's cost and to the satisfaction of the Manager, Engineering Approvals.
9. The Owner shall provide a cash payment to the City for installation of the future sidewalk along Braeheid Ave. based on the current New Roads Servicing Rate.
10. The owner shall submit to the Committee of Adjustment Office an administration fee of \$16.30, payable to the City of Hamilton, to cover the cost of setting up a new tax account for the newly created lot.

11. The owner shall pay any outstanding realty taxes and/or all other charges owing to the City Treasurer.

Notes:

1. The lands to be conveyed will be assigned the municipal address of 109 Braeheid Avenue and the lands to be retained will remain as 176 Parkside Drive.
2. The Owner will require MOE approval for the proposed sanitary sewer prior to commencement of the proposed works, in accordance with the City's standard protocol.
3. The City shall not include a best efforts provision for the sanitary sewer.
4. If removal of the existing trees along Braeheid Ave. is required, appropriate approvals must be in place including any applicable fees for compensation.
5. In the event the existing dwelling on the retained parcel is demolished and redeveloped, the existing services and driveway approach will need to be determined suitable for re-use, otherwise they shall be abandoned and replaced to the City's satisfaction, at the owner's cost.