

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: December 29, 2017

CASE NO(S):

PL170537

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Sonoma Homes Inc.
Subject: Request to amend the Official Plan - Refusal of request by the City of Hamilton
Existing Designation: General Open Space and Low Density Residential 3
Proposed Designated: Medium Density Residential 2 and Medium Density Residential 2
Purpose: To permit the proposed development of a three storey multiple dwelling comprised of 19 units
Property Address/Description: 125 Wilson Street E & Part of 130 Dalley Drive
Municipality: City of Hamilton
Approval Authority File No.: UHOP-16-16
OMB Case No.: PL170537
OMB File No.: PL170537
OMB Case Name: Sonoma Homes Inc. v. Hamilton (City)

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

Applicant and Appellant: Sonoma Homes Inc.
Subject: Application to amend Zoning By-law Nos. 87-57 and 05-200 - Refusal of Application by the City of Hamilton
Existing Zoning: General Commercial "C3-655" and Public Open Space "O2"
Proposed Zoning: Residential Multiple "RM6" Zone, Modified and Conservation /Hazard Zone "P5"
Purpose: To permit the proposed development of a three storey multiple dwelling comprised of 19 units
Property Address/Description: 125 Wilson Street E & Part of 130 Dalley Drive
Municipality: City of Hamilton
Municipality File No.: ZAC-16-040

OMB Case No.: PL170537
 OMB File No.: PL170538

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Subject: Site Plan
 Referred by: Sonoma Homes Inc.
 Property Address/Description: 125 Wilson Street E & Part of 130 Dalley Drive
 Municipality: City of Hamilton
 OMB Case No.: PL170537
 OMB File No.: PL170952

Heard: November 8, 2017 in Dundas, Ontario

APPEARANCES:

Parties

Counsel

Sonoma Homes Inc.

Denise Baker

City of Hamilton

Patrick MacDonald

DECISION DELIVERED BY SHARYN VINCENT AND ORDER OF THE BOARD

INTRODUCTION

[1] Sonoma Homes Inc. (“Sonoma”) appealed Council’s refusal of applications to amend the Official Plan and Zoning By-law which would permit the construction of a three storey, 19-unit multiple dwelling on lands known municipally as 130 Dalley Drive and 125 Wilson Street East, in the Ancaster Village of the City of Hamilton. The appeal of the related application for Site Plan approval was also heard with the appeals.

[2] The City relied upon the evidence of Allan Ramsay, a qualified land use planner, who was retained following the refusal by Council. Sonoma proffered both a land use planner, Nancy Frieday, and an urban designer, David Premi in support of the proposed

development.

[3] Two individuals owning property in the area sought and were granted Participant status: James McKeon, 138 Wilson Street East; and Gordon Speirs, 106 Mansfield Drive.

[4] The subject site is a 0.44 hectare consolidated parcel comprised of the original holding known as 125 Wilson Street East together with 130 Dalley Drive, a parcel which was acquired from the City and which is subject to a 10 metre ("m") wide hydro easement for the entirety of its length.

[5] In 2014, 125 Wilson Street East was rezoned from residential to General Commercial to permit the construction of a medical office building. Those approvals were not pursued and the owner now seeks to rezone the consolidated site to permit a residential development, the footprint for which is largely contained on the original 125 Wilson Street portion of the site.

[6] At issue is the scale and massing of the current proposal to develop the lands with a three-storey residential building. The City, amongst other concerns, argued that the whole of the consolidated site should not be considered when calculating the proposed density. It was the view of the City's planning witness that given the irregular shape of the consolidated lot, the whole of the parcel would not be perceived as being part of the lands associated with the proposed development.

THE PROPOSAL

[7] The three-storey, 11 metre high, 19 unit residential building is designed and sited to define the street edge and contains a mix of units ranging from one bedroom to two bedrooms with den. The building materials have been chosen to match those prevalent in Ancaster and in particular to be complementary to historic limestone structures in the village core to the east. The proposed building was variously described by all

witnesses, including the participants as being the first multiple residential, urban street edge infill development along this portion of Wilson Avenue. Accordingly, the City's witness, argues that the relationship of the proposed building to the street edge and public domain is out of character with the area and contributes to the massing and over intensification of the site.

[8] The two participants shared Mr. Ramsay's concerns about massing at the street edge and the intensity of the development. Mr. Ramsay, did not however share Mr. Speirs's concerns about impact of the proposal as would be experienced for residents to the north. The preservation of the existing treed slope was acknowledged by the City's witness as representing an effective visual screen.

[9] Thirty-eight enclosed parking spaces are proposed for the units, together with seven surface visitor parking spaces located immediately to the east of the building footprint.

[10] Mr. McKeon expressed concern about the resulting change in the traffic dynamic on Wilson Avenue anticipated as a result of the proposal. Neither the City Transportation staff or Mr. Ramsay raised traffic or access as an issue.

THE CONTEXT

[11] The Wilson Avenue portion of the subject site is a relatively flat, vacant triangular parcel which is broadest at its westerly limits fronting Wilson Avenue. The balance of the site, or the linear portion acquired from the City is a treed swath of varying topography running parallel to Dalley Drive and encumbered by three hydro poles and associated overhead wires. The easement extends beyond the subject lands to both the east and west for some considerable distance, similarly encumbering the properties it crosses.

[12] To the north of the treed slope commencing at Dalley Drive is the Mansefield

Park neighbourhood comprised of large lot singles detached dwellings dating from 1955.

[13] The hydro easement continues to the east of the site on lands which remain in City ownership, and are zoned O2 for Public Open Space, leading to the limestone village gates which monument the gateway to the historic village core.

[14] Along the south side of Wilson Avenue immediately opposite the proposed building footprint, are detached house forms, the majority in residential use and some converted to professional office and service commercial space. Further to the west are several auto related sales and services uses and the associated surface parking and outdoor display of vehicles.

[15] Immediately to the west is a two-storey detached dwelling, and to the west at lands known municipally as 97-111 Wilson Avenue is a vacant parcel which has recently been approved for ten townhouses having a maximum height of 11 m.

[16] Other recent development approvals in the area have included the conversion of an existing detached dwelling to a medical office and the construction of a two-storey law office.

THE POLICY FRAMEWORK

[17] The subject lands are identified falling within a 'Community Node' and designated Neighbourhoods in the Urban Hamilton Official Plan ("UHOP").

[18] The lands are designated 'Low Density Residential 3 and General Open Space in the Ancaster Wilson Street Secondary Plan ("AWSSP") and are zoned General Commercial C3-655 and Public Open Space O2 in Ancaster Zoning By-law No. 87-57.

[19] The appeals for Official Plan and Zoning amendments are accompanied by the

appeal of the site plan application. The subject property is located within the Transition Design District of the Wilson Street Secondary Plan Area Urban Design Guidelines, and is subject to the Urban Design policies of UHOP.

ANALYSIS AND FINDINGS

[20] The City's witness argues that while the proposal generally conforms to the principles of the Growth Plan by proposing to accommodate intensification in an area that is designated for infill and intensification, it is the opinion of the this witness that the density, scale and massing of the proposal does not conform with the policy provisions that address need for an appropriate scale of development and transition of built form to adjacent areas.

[21] Similarly and on the same grounds, the City's witness is of the opinion that the proposal is not consistent with ss. 1.1.3.2 b), 1.1.3.3 and 1.1.3.5 of the Provincial Policy Statement which require municipalities to identify appropriate locations and promote opportunities for intensification and redevelopment where this can be accommodated, based on local conditions. The City contends that the proposed development 'includes an amount of intensification and redevelopment beyond what can be accommodated on the subject lands'.

[22] The City's position with respect to excessive density is in part based on the exclusion of the portion of the site which is encumbered by the hydro easement, it being the counter position of Sonoma that the exclusion technically exaggerates the units per hectare ("uph") calculation and results in the requirement to amend the Official Plan, but that fundamentally, the uph number is not the appropriate basis for determining fit and compatibility.

[23] Exclusion of the acquired lands from the definition of lot similarly negatively skews the calculations for coverage and landscaped open space in particular, which runs totally contrary to the very real and protected function the treed lands perform, and

will continue to perform in effectively screening the proposed building from the residential neighbourhood to the north. All expert witnesses concurred on this function.

[24] The City accordingly further contends that the proposal is not compatible with existing and future uses in the surrounding area, and thereby fails to conform with Official Plan (“OP”) s. E.3.3.2. In drawing this conclusion, the Witness finds his analysis on a very narrow assessment of compatibility as being the same as, in terms of height, setback, and floor space index, contrary to the OP definition and the broader *juris prudence* with respect to a finding of compatibility which clearly relies upon the established test of ‘being able to co-exist’.

[25] The Witness’s approach is particularly constraining given that the site is located within the Transition District as established in the Wilson Street Secondary Plan Area Urban Design Guidelines, which is so characterized by its mix of building typology and the evolving nature of the mix of uses arising through the adaptive reuse of house form structures for commercial uses.

[26] The Urban Design witness for Sonoma, by contrast takes direction from the UHOP Urban Design Built Form Policies in s. B.3.3.3 which adopts the overarching principle that ‘New development shall serve to maintain and support existing character, or create and promote the evolution of the character in areas where transformations are appropriate and planned.’[emphasis added]

[27] The Board is persuaded by this approach in this context and finds that the proposal conforms with OP policies B.3.3.3.3; B.3.3.3.3; B.3.3.3.4 and B.3.3.3.5.

[28] Where the City’s witness takes exception to the proposed siting of the front façade proximate and parallel to the street edge, it is the finding of the Board that the Wilson Street Transition District displays no consistency in building setback, and that this proposal can re-establish a traditional street edge and significantly enhanced pedestrian realm to implement the Design Guideline objectives, in conformity with s.

B.3.3.3 extracted above.

[29] The Board does not share the concern of the City's Witness with respect to the property abutting to the west and finds that there is no adverse impact claimed or found with respect to the relationship of the proposed to the existing.

[30] The Board further finds that siting of the building as proposed also conforms to the OP design policies for Community Nodes, where, in the words of the Urban Design witness, the proposal represents a 'contemporary interpretation of the historical built forms prevalent in the Town [thereby] add[ing] to the existing range of built forms, enriching the urban streetscape.

[31] The Board finds that the proposal conforms to and implements the OP intensification goals adopted in conformity with the Provincial Policy Statement, by adding to the range and mix of housing forms in an area designated for intensification.

INTERIM ORDER

[32] The Board orders that the appeals are allowed, and: (i) the Official Plan for the City of Hamilton is amended as set out in Attachment 1 to this Order; (2) that Zoning By-law No. 87-57 is amended, and Zoning By-law No. 05-200 is amended as set out in Attachment 2 to this order; and (4) that Site Plan approval is granted for the development to be substantially in conformity with the drawings comprising Tabs 7 and 8, Exhibit 2, and subject to the conditions in Tab 9, Exhibit 2, set out in Attachment 3 to this order.

[33] The Board will withhold its final order until advised by the parties that the instruments have been executed in final form.

“Sharyn Vincent

SHARYN VINCENT
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.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
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ATTACHMENT 1

Appendix "B" to Report PED17037
Page 1 of 4

Schedule "1"

Draft Urban Hamilton Official Plan Amendment No. XX

The following text, together with: Appendix "A" Volume 2, Ancaster Wilson Street Secondary Plan – Land Use Plan – Map B.2.8-1 attached hereto, constitutes Official Plan Amendment XX to the Urban Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose and effect of this Amendment is to re-designate a portion 130 Dalley Drive, approximately 0.0463 ha (463 square metres), from "General Open Space" to "Medium Density Residential 2" and to redesignate the lands known as 125 Wilson Street East from "Low Density Residential 3" to "Medium Density Residential 2" and to apply a Site-Specific Policy Area to lands known as 125 Wilson Street East and part of 130 Dalley Drive to permit a three (3) storey multiple dwelling containing 19 residential units (which equates to a maximum density of 91 units per hectare based on a net site area of 0.21 hectares within the proposed Medium Density Residential 2 designation.

2.0 Location:

The lands affected by this Amendment are known municipally as 125 Wilson Street East and a part of 130 Dalley Drive, located on the north side of Wilson Street East, east of Jerseyville Road East, south of Dalley Drive and west of Halson Street and Reding Road, in the former Town of Ancaster.

2.0 Basis:

The basis for permitting the re-designation and applying a Site-Specific Policy Area is as follows:

- The subject lands are located along a Major Arterial Road within the Transition Design District of the Ancaster Community Node wherein a mix of uses is encouraged, including low-rise multiple dwellings, and wherein residential intensification may be considered.
- The proposed three (3) storey multiple dwelling does not result in undue shadowing or other nuisance impacts on the surrounding lands.
- The Amendment is consistent with the Provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe.

Schedule "1"

4.0 Actual Text and Schedule/Map Changes:

4.1 Text Change

4.1.1 Chapter B.2.8 – Ancaster Wilson Street Secondary Plan

a) That Chapter B.2.8 Ancaster Wilson Street Secondary Plan of Volume 2 is amended by adding a new Area and Site Specific Policy – Area "X" into Section B.2.8.16 – Area and Site Specific Policies, as follows:

i) "2.8.16.9 Site and Area Specific Policy – Area "X"

For the lands identified as Site Specific Policy – Area X, on Map B.2.8.-1 Ancaster Wilson Street Secondary Plan: Land Use Plan, designated Medium Density Residential 2, and known as 125 Wilson Street East and 130 Dalley Drive, the following shall apply:

a) Notwithstanding Section B.2.8.7, Policy 2.8.7.4 b), only a multiple dwelling having a maximum of 19 dwelling units shall be permitted."

4.2 Mapping Change

4.2.1 Secondary Plan Maps

That Volume 2, Map B.2.8-1 – Ancaster Wilson Street Secondary Plan - Land Use Plan be amended:

- by redesignating that portion of Part 4 on Plan 62R-20151 (Part of 130 Dalley Drive) from "General Open Space" to "Medium Density Residential 2";
- by redesignating the lands known as 125 Wilson Street East from "Low Density Residential 3" to "Medium Density Residential 2"; and,
- by identifying the subject lands as Site Specific Policy Area X

as shown on Appendix "A" of this amendment.

5.0 Implementation:

The implementing Zoning By-law Amendments and Site Plan Control will give effect to this Amendment.

Schedule "1"

This is Schedule "1" to By-law No. 17-XXX passed on the XX day of March, 2017.

**The
City of Hamilton**

Fred Eisenberger
MAYOR

Rose Caterini
CITY CLERK

ATTACHMENT 2

Exhibit "B"

Authority: Item [REDACTED]
Planning Committee
Report: [REDACTED]
CM: [REDACTED]
Bill No. [REDACTED]

CITY OF HAMILTON

BY-LAW NO. [REDACTED]

To Amend Zoning By-law No. 87-57 (Ancaster),
Respecting Lands Located at 125 Wilson Street East and a Portion of 130 Dalley
Drive (Ancaster)

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 "The Corporation of the Town of Ancaster" 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. 87-57 (Ancaster) was enacted on the 22nd day of June 1987, and approved by the Ontario Municipal Board on the 23rd day of January, 1989;

AND WHEREAS the Council of the City of Hamilton, in adopting Item [REDACTED] of Report [REDACTED] of the Planning Committee, at its meeting held on the [REDACTED] day of [REDACTED], 2017, recommended that Zoning By-law No. 87-57 (Ancaster), be amended as hereinafter provided;

AND WHEREAS this By-law is in conformity with the Urban Hamilton Official Plan, upon finalization of Official Plan Amendment No. _____;

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

1. That Map No.1 to Schedule "B", appended to and forming part of By-law No. 87-57 (Ancaster), as amended, is hereby further amended by changing the zoning from the General Commercial "C3-655" Zone, Modified with a Special Exception and the Public Open Space "O2" Zone, to the Residential Multiple "RM6" Zone,

Exhibit "B"

Modified with a Special Exception 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 34: Exceptions of Zoning By-law No. 87-57 (Ancaster), as amended, is hereby further amended by adding the following sub-section:

"RM6-685"

- (i) That notwithstanding the provisions of Subsection 19.2 (a), (c), (e), (f), (g), (h), (i), (j), (l), (m), of the Residential Multiple "RM6" Zone, Section 7.11, and the provisions of Section 7.14: Parking and Loading of Zoning By-law No. 87-57 of the Town of Ancaster, the following regulations shall apply:

Regulations:

a) Minimum Lot Area	0.44 ha
c) Maximum Density	91 units per ha
e) Minimum Lot Depth	52 m
f) Maximum Lot Coverage	49.2 %
g) Minimum Front Yard	3.0 m
h) Minimum Side Yard	3.0
Minimum Rear Yard	13.8 m
i) Parking	Notwithstanding Sections 19.2(1) and 17.14(b) (i) (C), the required parking spaces shall be as follows: Dwelling Unit and Visitor Parking – 1.63 plus 0.33 visitor parking spaces per dwelling unit
j) Children's Outside Play Area	No Children's Outside Play Area required
k) Maximum Height	11.0 m
l) Minimum Landscaping	26.5%

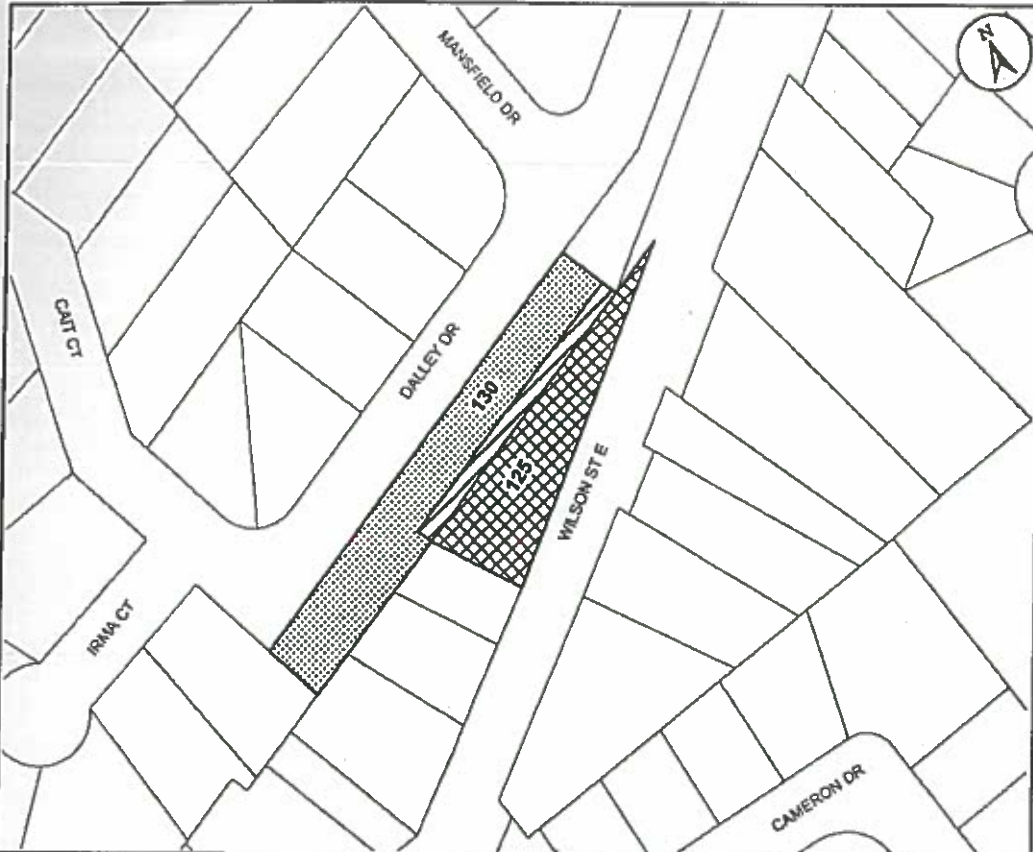
Exhibit "B"

PASSED and ENACTED this [] day of [], 2017.

F. Eisenberger
Mayor

Rose Caterini
Clerk

UHOPA-16-16
ZAC-16-040



<p style="text-align: center;">This is Schedule "A" to By-law No. 17-</p> <p style="text-align: center;">Passed the day of, 2017</p>		<p style="text-align: center;">----- Mayor</p> <p style="text-align: center;">----- Clerk</p>
<h2 style="margin: 0;">Schedule "A"</h2> <p style="margin: 10px 0 0 0;">Map Forming Part of By-law No. 17-_____</p> <p style="margin: 0 0 0 0;">to Amend By-law No. 87-57</p>		<p>Subject Property 125 Wilson Street East & 130 Dalley Drive</p> <ul style="list-style-type: none"> <li style="margin-bottom: 5px;"> Block 1 - Change from Public Open Space "O2" Zone to Multiple Residential "RM8-885" Zone, Modified <li style="margin-bottom: 5px;"> Block 2 - Change from General Commercial "C3-655" Zone, Modified, to Multiple Residential "RM8-885" Zone, Modified <li style="margin-bottom: 5px;"> Block 3 - Change from Public Open Space "O2" Zone and add to zoning By-law 05-200 and zoned as Conservation / Hazard "P5" Zone
<p>Scale: N.T.S.</p>	<p>File Name/Number: ZAC-16-040/HOPA-16-016</p>	<p>Hamilton</p>
<p>Date: February 10, 2017</p>	<p>Planner/Technician: VM/VS</p>	
<p>PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p>		

Authority: Item
Planning Committee
Report: 17- (PED17XXX)
CM:

Bill No.

CITY OF HAMILTON

BY-LAW NO.

To Amend Zoning By-law No. 05-200,
Respecting Lands Located at 130 Dalley Drive in the former Town of
Ancaster, now in the City of Hamilton

WHEREAS the City of Hamilton has in force several Zoning By-laws which apply to the different areas incorporated into the City by virtue of the *City of Hamilton Act, 1999*, S. O. 1999 Chap. 14;

AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law No. 05-200;

AND WHEREAS Zoning By-law No. 05-200 was enacted on the 25th day of May, 2005;

AND WHEREAS the Council of the City of Hamilton, in adopting Section _____ of Report 17- _____ of the Planning Committee at its meeting held on the _____ day of _____ 2017, recommended that Zoning By-law No. 05-200, be amended as hereinafter provided;

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

1. That Map No. 1280 of Schedule "A" – Zoning Maps, to Zoning By-law No. 05-200 is amended as follows:
 - a. by adding to the City of Hamilton Zoning By-law 05-200, the lands the extent and boundaries of which are shown as "Block 1" on a plan hereto annexed as Schedule "A",
 - b. by establishing a Conservation / Hazard (P5, 610) Zone, Modified to the lands, the extent and boundaries of which are shown as "Block 1" on a plan hereto annexed as Schedule "A";
1. That Schedule "C" of By-law No. 05-200 is amended by adding an additional exception as follows:

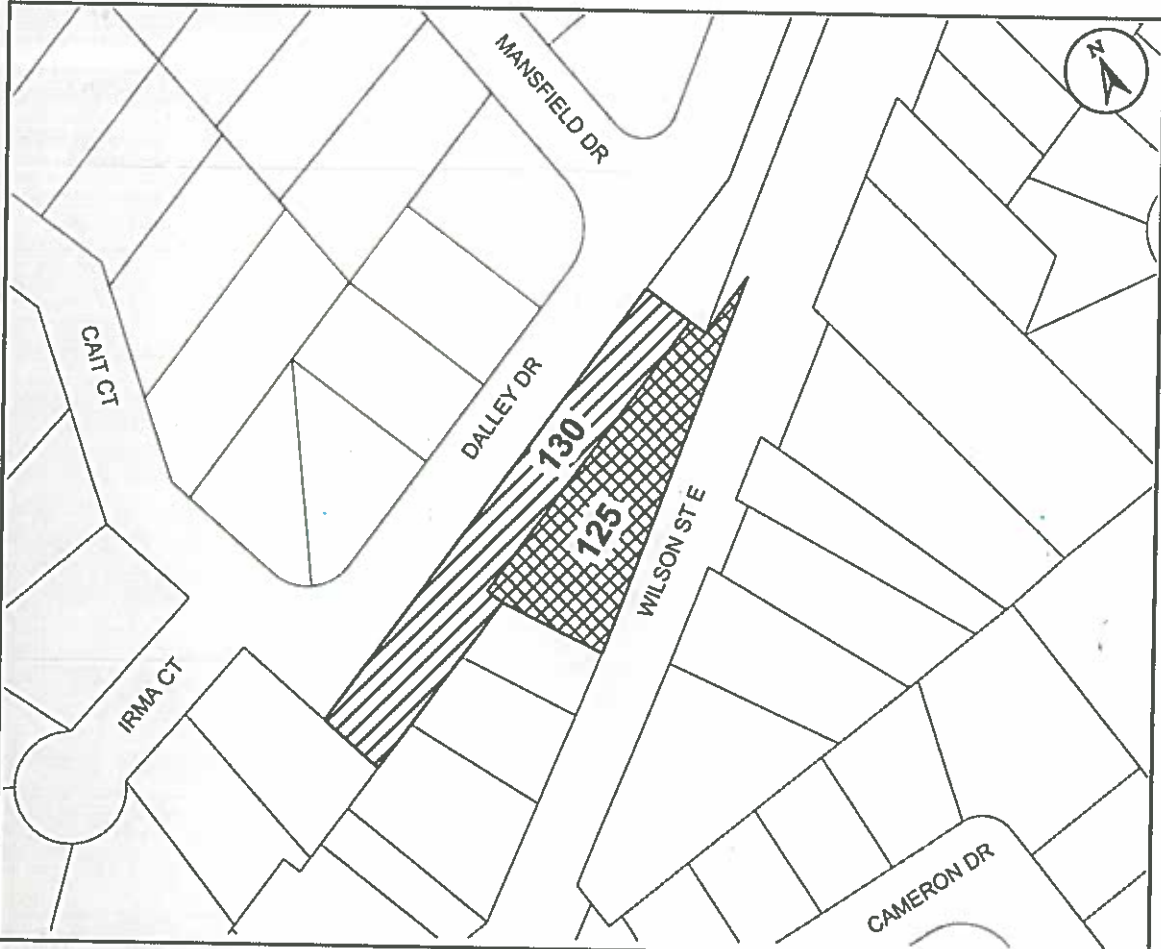
610. That for the lands zoned Conservation / Hazard (P5, 610) identified on Map 1280 of Schedule "A" to By-law 05-200 and described as 130 Dalley Drive, the following additional regulations apply:
- a. Notwithstanding Subsection 4.3 of Section 4 General Provisions, no direct access to Dalley Drive will be permitted. A maximum of 1 driveway will be permitted from Wilson Street East.
 - b. Notwithstanding Subsection 4.23 of Section 4 General Provisions, no setback from the P5 zone boundary shall be required from any buildings or structures located on the lands known as 125 Wilson Street West (Ancaster).
2. 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*.
3. That this By-law No. _____ shall come into force, and be deemed to have come into force, in accordance with Sub-section 34(21) of the *Planning Act*, either upon the date of passage of this By-law or as provided by the said Sub-section.

PASSED and ENACTED this ____ day of ____, 2017.

F. Eisenberger
Mayor

R. Caterini
Clerk

UHOPA-16-16
ZAC-16-040



This is Schedule "A" to By-law No. 17-
 Passed the day of, 2017

 Mayor


 Clerk


Schedule "A"


Map Forming Part of
 By-law No. 17-_____

to Amend By-law No. 05-200
 Map 1228

Subject Property
 125 Wilson Street East & 130 Dalley Drive

 Block 1 - Lands to be added to Zoning By-law 05-200 and Zoned as Conservation/Hazard (P5, 610) Zone

 Block 2 - Refer to By-law 87-57

Scale: N.T.S	File Name/Number: ZAC-16-040/UHOPA-16-016	
Date: February 10, 2017	Planner/Technician: VMVS	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		

ATTACHMENT 3

Original Sent to Legal Oct 17, 2017
Revised November 3, 2017

Conditions of Site Plan Approval – 125 Wilson Street East and 130 Dalley Drive,
Ancaster. File: DA-17-122

1. SITE PLAN

Site Plan and Underground Parking Plan

1. (b) To develop and maintain the site in compliance with the Site Plan and underground parking plan, attached hereto each of which is dated June 9, 2017, and hereinafter collectively referred to as the "Site Plan". Minor changes to the Site Plan or conditions shall be permitted only upon written approval from the City's Manager of Development Planning, Heritage and Design.

Approval Limitation

1. (c) That, in the event a building permit for the proposed development has not been issued within one (1) year from the date of site plan approval, the approval shall lapse. Prior to the approval lapsing, a request for an extension for a period up to, but not exceeding a one (1) year period, may be made directly to the Manager of Development Planning, Heritage and Design, with written justification and the required fee. The Manager of Development Planning, Heritage and Design will consider the request in light of current requirements and:
 - i) May deny the request;
 - ii) May grant the request; or
 - iii) May grant the request with revisions or additional conditions.

Ground Cover to Prevent Soil Erosion

1. (d) Where the construction or demolition of a building, or buildings, or site development works are, in the opinion of the City's Director of Building Services, substantially suspended or discontinued for more than 45 days the Owner shall forthwith provide suitable ground cover to prevent soil erosion by wind, rain and snow for the protection of adjoining lands to the satisfaction of the said Director.

Garbage Collection

1. (e) The Owner acknowledges that garbage collection for the proposed development shall be in accordance with the applicable Municipal By-Law.

2. PRIOR TO THE APPLICATION FOR ANY BUILDING PERMITS

Erosion and Siltation Control

2. (a) To show all erosion and siltation control features in detail on a Grading and Drainage Control Plan hereinafter described in Section 3(b); to the satisfaction of the City's Manager of Engineering Approvals and Hamilton Conservation Authority; and to implement all such erosion and siltation control measures.

Original Sent to Legal Oct 17, 2017
Revised November 3, 2017

The Owner further agrees to maintain all such measures to the satisfaction of the City's Manager of Development Engineering Approvals until the site has been fully developed as determined by the City's Manager of Development Planning, Heritage and Design.

Tree Management

2. (b) To prepare a Tree Preservation/Enhancement Plan as part of the required Landscape Plan hereinafter described in Section 3(e), showing the location of drip lines, edges and existing plantings, the location of all existing trees and the method to be employed in retaining trees required to be protected; to obtain approval thereof from the City's Manager of Development Planning, Heritage and Design; and to implement all approved tree savings measures.

Building Elevations

2. (d) To submit six (6) copies of final building elevations and one (1) reduced 11" x 17" copy to the satisfaction of the Manager of Development Planning, Heritage and Design. Minor changes to the Building Elevations or condition(s) shall be permitted only upon written approval from the City's Manager of Development Planning, Heritage and Design.

Foundation Support & Construction

2. (e) To prepare detailed engineering plans that demonstrate the location of existing underground services and the proposed method of foundation construction. The plans must be submitted to the satisfaction of the Director of Engineering Services, Public Works.

Interior Garbage Storage/Outdoor Garbage Containers

2. (f) To show the following on the required Landscape Plan:
 - i) The location of any vaults, central storage and collection areas, or other facilities for the storage of garbage and recyclable material, including those which may be internal to a proposed or existing building; or
 - ii) The location of any outdoor garbage and recycling containers and details for a supporting concrete pad and, if required by the City's Manager of Development Planning, Heritage and Design, a roofed enclosure having a height sufficient to conceal the containers.

Cost Estimate and Letter of Credit

2. (g) i) To provide cost estimates for 100% of the total cost of all exterior on-site works to be done by the Owner. Such cost estimates shall be in a form satisfactory to the City's Manager of Development Planning, Heritage and

Original Sent to Legal Oct 17, 2017
Revised November 3, 2017

Design; or be prepared in accordance with the Guides for estimating security requirements for landscaping and engineering.

- ii) Calculate the lump sum payment for exterior works using the City's Letter of Credit Policy to the satisfaction of the City's Manager of Development Planning, Heritage and Design.
- iii) To provide an irrevocable Letter of Credit to the City's Manager of Development Planning, Heritage and Design for 75% of the total cost of all on-site development works in a form satisfactory to Finance (Development Officer, Budget, Taxation and Policy) to be held by the City as security for the completion of the on-site development works required in this Agreement.

Alternatively, the owner may choose to provide a lump sum payment for on-site works in accordance with 2. (g) ii). above.

- iv) The Letter of Credit shall be kept in force until the completion of the required site development works in conformity with the approved design and requirements, securities may be reduced in accordance with the City's Letter of Credit Policy. If the Letter of Credit is about to expire without renewal thereof and the works have not been completed in conformity with their approved designs, the City may draw all of the funds so secured and hold them as security to guarantee completion unless the City Solicitor is provided with a renewal of the Letter of Credit forthwith.
- v) In the event that the Owner fails to complete, to the satisfaction of the City's Manager of Development Planning, Heritage and Design, the required site development works in conformity with its approved design within the time required, then it is agreed by the Owner that the City, its employees, agents or contractors may, at the City's sole option and in addition to any other remedies that the City may have, enter on the lands and so complete the required site development works to the extent of monies received under the Letter of Credit. The cost of completion of such works shall be deducted from the monies obtained from the Letter of Credit. In the event that there is a surplus, the City shall pay it forthwith to the Owner. In the event that there are required site development works remaining to be completed, the City may exercise its authority under (Section 446 of the Municipal Act) to have such works completed and to recover the expense incurred in doing so in like manner as municipal taxes.

3. PRIOR TO THE ISSUANCE OF ANY BUILDING PERMITS

- 3. (a) Satisfy all pre-grading conditions set out in Section 2 above.

Grading and Drainage Control

- 3. (b) i) To prepare a detailed Grading and Drainage Control Plan showing drainage details for the subject property, abutting properties and public rights-of-way so as to ensure compatible drainage, and to show thereon all existing and

proposed connections to the municipal storm sewer to provide for that drainage i.e. catch basins/leads etc. to the satisfaction of the City's Manager of Development Engineering Approvals and Hamilton Conservation Authority.

- ii) To pay a fee of \$295.00+HST for development sites less than 2 hectares (net) and \$1,305.00+HST for developments on sites greater than 2 hectares (net) for the final inspection all aboveground features, such as but not limited to, landscaping, drainage, roads, driveways, noise barriers/fencing, lighting, etc., to the satisfaction of the Manager of Development Approvals.

Storm Water Management Design

3. (c) To submit to the satisfaction of the City's Manager of Engineering Approvals and Hamilton Conservation Authority a detailed engineering design for storm water management or to receive from the said Manager an exemption from this requirement.

Landscape Plan

3. (e) To prepare a Landscape Plan showing planting and surfacing details for all areas not covered by buildings, structures, loading areas or parking areas; and to obtain approval thereof from the City's Manager of Development Planning, Heritage and Design.

Fencing/Visual Barriers

3. (f) To obtain approval of the details of all fencing and visual barriers as indicated on the Site Plan, from the City's Manager of Development Planning, Heritage and Design, as part of the approval of the Landscape Plan.

Boulevard Sodding

3. (g) To show on the required Landscape Plan, planting and surfacing details for the portion of all adjacent public property located between the sidewalks, curbs or streets and the Owner's property line so as to ensure a contiguous landscaped area between the public streets and the Owner's proposed development.

Treatment of Future Development Areas

3. (h) To make provision on the required Landscape Plan for the surface treatment of areas intended for future development so as to prevent the occurrence of noxious weeds and erosion.

Site Lighting-Design

3. (i) To prepare a Site Lighting Plan, including lighting for any underground parking facilities, and to submit said plan with a signed certification from an Electrical

Engineer stating that said plan complies with Section 3.9 "Lighting" of the City of Hamilton Site Plan Guidelines.

Site Servicing Plan

3. (k) i) To submit to the City's Manager of Development Engineering Approvals a satisfactory Site Servicing Plan and pay the applicable drawing review fee based on the approved User Fees Schedule for the year that the Servicing Plans are submitted for review.
- ii) To pay for and obtain the required Site Servicing Permits, the cost of which will be calculated based on the approved servicing design.

Cash-in-Lieu of Parkland

3. (n) To pay to the City of Hamilton Park Trust Fund Account the required cash-in-lieu of parkland contribution based on the value of the lands the day before the issuance of a Building Permit.

Development Charges

3. (o) To pay to the City of Hamilton all applicable Development Charges in accordance with the Development Charges By-law, as amended, to the satisfaction of the City's Director of Building Services.

Site Plan Drawing

3. (p) To submit six (6) copies of the final site plan drawing and one (1) reduced 11" x 17" copy to the satisfaction of the Manager of Development Planning, Heritage and Design.

Taxes

3. (q) To submit proof from the Taxation Division that the Municipal Taxes are current on the subject lands to the satisfaction of the Manager of Development Planning, Heritage and Design.

Tariff of Fees

3. (r) To pay to the City of Hamilton the applicable additional charges as per the Tariff of Fees By-law for the proposed development type as follows:
 - i) Residential - \$540.00/unit for the first 10 units and \$325.00/unit for units 11 to a maximum of 50 units to the satisfaction of the Manager of Development Planning, Heritage and Design.

Water Service Assessment

3. (t) To submit a water service assessment to the satisfaction of the City Public Works Department which tabularizes the expected occupancy and provides a water demand estimation, and needed fire flow calculation based on the "Water Supply for Public Protection, Fire Underwriters Survey, 1999".

4. PRIOR TO OCCUPANCY

Prior to occupancy of the proposed development the Owner agrees to fulfill each of the conditions which follow:

Driveway Closure

4. (a) To complete the closure of all redundant driveways to the City's or Ministry of Transportation's standards.

Driveway Installation

4. (b) To install, at the Owner's cost and to the City's or Ministry of Transportation's standards, new driveway ramps at grade with the (existing, proposed or future) sidewalk. That the Owner must apply for and receive an Access Permit from the Public Works Department or the Ministry of Transportation.

Relocation of Municipal and/or Public Utilities

4. (c) That the relocation of any Municipal and/or Public Utilities, such as but not limited to, street furniture, transit shelters, signs, hydrants, utility poles, transformers, communication pedestals, wires or lines, required due to the location of buildings, structures, walkways, boulevards, driveways, curbing or parking, be arranged and carried out at the Owner's cost, to the satisfaction of the appropriate City Department or Public Utilities.

Emergency/Fire Routes

4. (d) That any required "Emergency/Fire Routes" shall be established by the City's Director of Building Services and that such signage shall be installed at the Owner's cost and to the satisfaction of the City's Director of Building Services.

Traffic Control Signs

4. (e) To install, at the Owner's cost, all required traffic signs, including directional, visitor parking and barrier-free parking signs, to the satisfaction of the City's Senior Project Manager, Corridor Management, Public Works.

Fire Hydrant

4. (g) To install at the Owner's cost, any fire hydrant required by the Ontario Building Code as directed by the City's Director of Building Services.

Site Servicing

4. (h) To complete site servicing to the satisfaction of the City's Manager of Development Engineering Approvals.

5. WITHIN ONE YEAR OF OCCUPANCY (PRIOR TO RELEASE OF CREDIT)

Grading and Drainage Completion

5. (a) To complete the site grading and drainage scheme in accordance with the Grading and Drainage Control Plan approval.

Storm Water Management Implementation

5. (b) To complete any storm water management scheme and all related drainage control facilities in accordance with the approval Plan.

Tree Management

5. (c) To complete the tree management requirements for the lands in accordance with the approved Tree Preservation/Enhancement Plan.

Landscape Completion

5. (d) To complete the landscaping in accordance with the approved Landscape Plan.

Interior Garbage Storage/Outdoor Garbage Container Installation

5. (e) To install or demarcate on-site any vaults, central storage and collection areas, or other facilities for the storage of garbage and recyclable material, in accordance with the approved Landscape Plan.

Fencing/Visual Barriers Installation

5. (f) To install all fencing and visual barriers as indicated on the Site Plan in accordance with the approved Landscape Plan.

Boulevard Sodding

5. (g) To complete, at the Owner's cost, the landscaping on all adjacent public property in accordance with the approved Landscape Plan.

Curb Installation

5. (h) To install 0.15 metre raised curbing in the locations shown on the Site Plan.

Site Lighting Installation

5. (i) To implement the approved Site Lighting Plan.

Paving

5. (j) To pave all areas intended to facilitate on-site vehicular movement, parking and loading, as shown on the Site Plan with hot-mixed asphalt or equivalent and to demarcate the parking on said surface.

Certification of Site Development Works

5. (k) To submit to the City's Director of Building Services, Site Development Works Certification Forms prepared by the appropriate consultants, certifying that the site development works required under this approval have been completed in accordance with the respective plans prepared by such consultant and accepted by the City.

In addition to the foregoing conditions, the following special conditions are also part of this approval:

PRIOR TO THE APPLICATION FOR ANY BUILDING PERMITS

1. That the owner shall investigate the noise levels on the site and determine and implement the noise control measures that are satisfactory to the City of Hamilton in meeting the Ministry of Environment and Climate Change (MOECC) recommended sound level limits. An acoustical report prepared by a qualified Professional Engineer containing the recommended control measures shall be submitted to the satisfaction of the City of Hamilton, Director of Planning. Should a peer review of the acoustical report be warranted, all associated costs shall be borne by the owner / applicant and shall be submitted to the satisfaction of the City of Hamilton, Director of Planning and Chief Planner.
2. That prior to final site plan approval, the applicant shall submit a final site plan, landscape plan, and elevations to the satisfaction of the Manager of Development Planning, Heritage and Design and final site grading and servicing plans, to the satisfaction of the Senior Director, Growth Management, generally in accordance with any Board decision in this matter.

PRIOR TO THE ISSUANCE OF ANY BUILDING PERMITS

3. That the Owner / Applicant provide payment of \$601.80+HST per tree for road allowance street trees to be planted by the City of Hamilton, as approved through the review of a proposed street tree planting scheme, to the satisfaction of the City's Manager of Forestry and Horticulture.
4. That a Dust Mitigation Plan be submitted and approved, to the satisfaction of the Director of Health Protection Division, Public Health Services Department.
5. That a Pest Control Plan, prepared by a professional exterminator licensed by the MOECC, be submitted and approved to the satisfaction of the Director of the Health Protection Division, Public Health Services Department.

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6. That the Owner / Applicant submit a Transportation Demand Management Options Report, to the satisfaction of the Manager of Transportation Planning.
7. That the owner provide a 3.0 metre wide easement, in favour of the City of Hamilton, across the entire frontage of the lands along Wilson Street East for future installation and maintenance of municipal infrastructure, to the satisfaction of the Director of Planning and Chief Planner.
8. That the Owner / Applicant enter into, and the City register on title, an external works agreement which includes a cost estimate schedule and detailed engineering design provisions for the required lowering of the watermain and, if necessary, relocation of the fire hydrant in front of the property within the Wilson Street East right-of-way, to the satisfaction of the Manager of Engineering Approvals. The applicant shall secure the cost of the works, provide insurance, obtain all Provincial approvals and construct the relocation of the watermain and hydrant.