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PL081468

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

Patry Enterprises Inc. has appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from a decision of the City of Kingston to approve Proposed Amendment No. 40 to the Official Plan for the City of Kingston
OMB File No. PL081468

Patry Enterprises 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 8499 of the City of Kingston to rezone lands respecting 495 to 513 Frontenac St., the rear of 509 and 513 Frontenac St. and the rear of 376 and 390 Alfred St. from B3/C (High Density Residential, Commercial) to B3 (High Density Residential) to permit the development of 57 student apartment units
OMB File No. PL081469

APPEARANCES:

Parties

Patry Enterprises Inc.

City of Kingston

Counsel

B. Card

A. E. Fleming

**DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND
G. C. O'CONNOR AND ORDER OF THE BOARD**

Patry Enterprises Inc. [Patry] wishes to build student housing on lands fronting on the east side of Frontenac Street just north of Princess Street in the City of Kingston. The current Official Plan designation of the lands is for high density Residential to the north and Commercial with residential in the southern portion. The zoning by-law follows the Official Plan and also separates the lands into high density Residential to the north and Commercial with residential to the south.

Patry submitted applications for an Official Plan amendment [OPA] and an associated zoning by-law amendment [ZBLA] that would redesignate and rezone all the

subject lands for high density Residential uses. The proposed ZBLA is based on the existing High Density Residential zoning with certain proposed, site specific changes to the performance standards to accommodate Patry's proposed development. When considering these two applications, the City adopted the Official Plan amendment, known as OPA 40, but refused the associated ZBLA. Patry has appealed both OPA 40 and the refusal of the proposed ZBLA to this Board.

At an earlier pre-hearing conference before a different panel of this Board, the Parties asked the Board to phase the hearing of these matters such that the Board would hear the zoning by-law matter first and defer the appeal of OPA 40 until the decision of the Board is rendered on the proposed ZBLA. The Board understands that the reason given for this approach is that if Patry is satisfied with the Board's decision regarding the proposed rezoning to Residential use, then its appeal of OPA 40 would be withdrawn. If Patry is not satisfied with the Board's decision regarding the proposed rezoning to Residential use, then Patry wished to preserve its options, including the possibility of an alternate development proposal that included both Residential and Commercial uses, in keeping with the current Official Plan designation. Under these latter circumstances, the appeal of OPA 40 would not be withdrawn and that matter would proceed to the second phase of the hearing.

The Board, differently constituted at the pre-hearing, agreed to this approach and set these matters down for this phased hearing.

At the outset of this hearing, both Parties confirmed their earlier request that, in this first phase of the hearing, the Board test the proposed zoning by-law as if the proposed OPA 40 was in place. In other words, since the proposed zoning by-law was for Residential uses only, and since OPA 40 would redesignate the subject lands for Residential use, the Parties agreed to ask the Board to assume at the outset that, *in this respect only*, the ZBLA conforms to the Official Plan.

The Parties do not agree on the question of whether the proposed ZBLA conforms to the Official Plan when consideration is given to other matters in the Official Plan.

This panel of the Board has agreed to proceed in this fashion. For the purposes of this phased hearing only, the Board will test the proposed zoning by-law amendment

for conformity with the Official Plan as if OPA 40 were in full force and effect. In doing so, however, this panel of the Board makes no finding and will hear no evidence on the appropriateness or otherwise of OPA 40. That matter is remitted to a subsequent, separate hearing in the event such a hearing is required.

Site and Area Description

The subject lands are within the block that has Princess Street on the south, Frontenac Street on the west, Jenkins Street on the north, and Alfred Street on the east. Princess Street is a commercial street. The proposal abuts the rear of the Princess Street lots. The subject lands have frontage on Frontenac Street, but do not have frontage on any of the other three streets that form the block.

The subject lands are composed of four houses and a vacant commercial building from 495 to 513 Frontenac Street, and lands at the rear of 509 and 513 Frontenac Street (old carriage houses and barns, more recently used as garages). The barns, one of the houses, and the vacant commercial building are to be demolished. The remaining three houses, 495, 497 and 513 Frontenac, are to be retained and renovated, as necessary, as multiple occupancy structures to be part of the overall development.

Lands at the rear of certain Alfred Street properties are to be used as off site parking for the proposed development, with access from a laneway that runs south from Jenkins Street and driveway access from one of the Alfred Street properties.

Although included as subject lands for the zoning by-law amendment, and intended to be included in any site plan agreement, 513 Frontenac remains in separate ownership and the lot is not merged with those to the south. Lands to the rear of the house form structure at 513 Frontenac are intended for parking.

Houses similar to those on the subject lands, originally built for single family occupancy, are the dominant built form surrounding the subject lands on the east side of Frontenac Street, the south side of Jenkins Street, and the west side of Alfred Street. Several of these house forms have been converted for multiple occupancy. The dominant house form notwithstanding, the area has been designated and zoned Multiple Family High Density Residential.

The subject lands are on the east side of Frontenac Street. The west side of Frontenac Street is a mix of Residential, Commercial and the St. François d'Assise Parish church.

The Proposal

The proposal is to zone the entire site as B3.x, to establish the B3 Multiple Family Dwelling zone as the base for the entire site, thus removing the Commercial zoning. The proposed zoning by-law amendment is site specific and seeks certain exceptions to the performance standards in the base B3 zoning.

The existing residential zoning on the subject lands is already B3, a Multiple Family Dwelling zone, in the 1975 zoning by-law. This zone does not permit semi-detached or detached single family dwellings. A B3 multiple family dwelling zone, or site specific B3.x zone, would conform to OPA 40 (under appeal) that re-designated all the subject lands Residential and removed the old Commercial designation.

In this hearing, the Board is dealing with the proposed ZBLA and makes no finding on the appeal of OPA 40. No site plan application has been made and the Board had no site plan before it in these proceedings. The Board did have a conceptual site plan, referred to as Option 4, to assist the Board in understanding how Patry intends to deploy parking and building mass on the site, and the remainder of the parking off the site. This conceptual site plan also showed proposed unit counts, sizes and layouts. Patry also provided conceptual sketches of the west elevation to show the intended architectural style of the overall development.

The proposal is for an infill development of 4.5 storeys in height that has frontage on Frontenac Street where existing structures are to be demolished and then extends into the interior of the subject lands to sit behind two existing house form structures at 495 and 497 Frontenac Street. The house form structure at 513 Frontenac is included in the area covered by the proposed zoning by-law amendment and is also intended to be included in any later site plan. 513 Frontenac, however, is to remain as a separate lot.

There is no specific height limit in the B3 zone, but the Official Plan calls for compatibility with the adjacent area. Surrounding structures, on the subject lands and adjacent lands, are generally 2.5 storeys in height. These include the structures on

Princess Street, those adjacent on Frontenac Street, those to the north along Jenkins Street, and those to the east along Alfred Street. While existing structures on Princess Street are low, the zoning on Princess Street would accommodate structures of 5 to 6 storeys.

The existing houses at 495 and 513 Frontenac do not meet the by-law standard for interior side yard setback. The proposed ZBLA includes the necessary reduction of the side yard setbacks to recognize the existing built conditions. The infill building behind 495 Frontenac will come close to aligning with the existing side yard set back for 495. The proposal does not locate the new infill building on any part of the lot at 513 Frontenac. The proposed ZBLA also seeks a reduction in the rear yard setback.

While the zoning by-law has no height restriction, setbacks are calculated by reference to the building height: the greater the height, the greater the setback. For an infill building of the proposed height, the zoning by-law requirements for setbacks at this location would be 7 metres for the south side yard, abutting the rear lot lines of the properties on Princess Street. The existing house form structure at 495 Frontenac has a south side yard set back of 1.0 metres. The conceptual site plan locates the proposed infill building close to an alignment with 495 Frontenac with a setback from the Princess Street lots of approximately 1.2 metres. The side yard set back for the existing house form structure on the north is 0.4 metres. The rear yard set back requirement is 14 metres and the requested rear yard setback is 5.5 metres.

The existing structures at 495, 497 and 513 Frontenac are built closer to the street than the zoning by-law requirement for a front yard set back of 7.5 metres. The ZBLA reduces the front yard set back requirement to 3.4 metres to recognize the existing condition. The conceptual site plan aligns the new infill building with the front yard setback of the existing buildings that are to be retained.

The City acknowledges that required setbacks would be somewhat reduced if the massing of the infill building were to be examined against the setbacks required in the existing Commercial zone that is currently on part of the site. Since this proposal assumes an Official Plan designation that is all Residential, and since this proposed ZBLA is to rezone all the subject lands as Residential, the Board attaches no weight to

the setbacks that might otherwise apply if the Official Plan continues to designate part of the subject lands for commercial use and the zoning by-law reflected that designation.

The proposed height and massing on the site result in a lot occupancy of 204%. The zoning by-law limits the lot occupancy to 100%.

The development as proposed will have 58 units composed of 22 two bedroom units, 20 three bedroom units, 15 four bedroom units, and one 5 bedroom unit. A total of 169 bedrooms are to be provided. The proposal initially included 55 additional bedrooms, for a total of 224. These 55 rooms are now identified in the conceptual site plan as dens. While parking standards are based on the unit count, amenity and play space standards are based on the number of bedrooms in each unit. The greater the number of bedrooms in a unit, the greater the amount of amenity space that is required.

The subject site is under utilized. The B3 zone permits a maximum density of 123 units per hectare, which would result in 49 units on the site. The ZBLA would permit 148 units per hectare, which would result in the proposed 58 units.

The proposal also seeks relief from the parking requirements, proposing 43 parking spaces on site and 8 spaces off site. The parking standard is 1.4 spaces per unit, resulting in a requirement of about 82 spaces for this proposal. The proposal for reduced parking is the equivalent of about 0.9 spaces per unit. The zoning by-law permits off site parking, subject to certain criteria. The amount of parking, as well as the manner in which it is proposed to be deployed across various properties, are at issue in these proceedings.

The Merits

Kingston has a large student population as a result of the numerous post-secondary educational institutions in the City. Patry has made clear that post-secondary students are the target market for the proposed development. Patry has had considerable experience with post-secondary student housing in London, Ontario. Mr. Jason Patry testified that he has applied that knowledge and experience in the design of the proposed development. Mr. Patry, along with architect Mr. Robert Crothers, identified key elements of the proposed development that have been specifically designed to fit the post-secondary student tenant population. These elements include:

1. larger bedrooms, intended to accommodate a private study area as well as a sleeping area;
2. large common areas in each unit, including both a living room and a den;
3. limited outdoor amenity space; and
4. limited parking.

The Board heard from Ms Jane Ironside, a full member of the Canadian Institute of Planners and Registered Professional Planner in Ontario, Mr. Kenneth Linseman, a Professional Engineer with a specialty in traffic and parking, and Mr. Carl Bray, also a full member of the Canadian Institute of Planners and Registered Professional Planner in Ontario. Mr. Bray is also a member of the Canadian Association of Heritage Professionals and a Landscape Architect registered to practice in Ontario. Mr. Bray's evidence in these proceedings focused on heritage planning and urban design. Ms Ironside, Mr. Linseman and Mr. Bray all appeared on behalf of Patry.

The Board heard from Ms Geraldine Kozorys-Smith and Ms Karen Fraser, full members of the Canadian Institute of Planners and Registered Professional Planners in Ontario. Ms Kozorys-Smith is also a member of the Institute of Transportation Engineers and her evidence in these proceedings focused on transportation and parking planning. Ms Kozorys-Smith and Ms Fraser appeared on behalf of the City of Kingston.

The Board also heard from the following four participants, appearing in support of the City and in opposition to the Patry proposal: Ms Susan Bazely, Mr. John Grenville, Mr. Kenneth Davies, and Mr. Lory Kaufman.

Three issues were identified at the pre-hearing conference:

1. does the proposed Zoning By-law amendment conform to applicable policies of the Official Plan?
2. Are the site specific B3.x zone regulations proposed by the appellant appropriate to the subject lands?

3. Are the proposed site specific zone regulations consistent with the PPS?

Consistency with the Provincial Policy Statement:

Expert planning witnesses for both Patry and the City agree that the proposal is consistent with the Provincial Policy Statement [PPS]. The proposed development contributes to the range and mix of housing available in the City. It represents intensification and redevelopment of an under utilized site that is near transit and makes efficient use of existing infrastructure. The site is also squarely within a settlement area. In this regard, the Board finds that the proposed site specific zone regulations for this development are consistent with the PPS.

Conformity with the Official Plan:

Several sections of the Official Plan demand a clear understanding of how a proposed development is designed and deployed on a site for a finding that the planning instruments to implement the proposed development conform to the Official Plan. These sections include:

3.2 COMPATIBILITY AND ADVERSE IMPACTS

It is the intent of this Plan to recognize the importance of the concept of compatibility between land uses, building and architectural treatments as an essential consideration in the City's development, redevelopment and conversion processes.

- (a) For the purposes of this Plan the term compatibility shall be considered to mean the general capacity of a specific project or group of projects to co-exist and function together in a state of harmony in such terms as...
 - ii) such physical building features as the visual impact of height, mass, and bulk, the site coverage and building arrangement on the site;
 - iii) such architectural treatments as building lines and roof lines, exterior cladding, entryway focal points and landscaping...

3.4 LAND USE IMPACT

Where any development, redevelopment or conversion is proposed, the following land use principles will apply: ...

(e) any change in site design or building development shall ensure that the proposed site or building development is compatible and sympathetic with the established streetscape in terms of setbacks, yards, green space, lot coverage, tree planting and signage;

(f) any new development, redevelopment, or conversion shall ensure that the proposed building mass, bulk, height and location on the lot is [sic] compatible and sympathetic with the surrounding buildings and neighbourhood in terms of design and access, and shall minimize any effects on the maintenance of privacy
...

3.8 FUNCTIONAL LAND USE

It is the intent of this Plan to ensure that any proposed land uses or buildings within the City are ultimately functional in the long-term and will properly meet the needs of the people they are intended to serve. Therefore, in assessing any development, redevelopment or conversion proposal, Council shall be satisfied, **before any approvals are granted**, [emphasis added] that in the long-term, the land uses and buildings are of suitable scale, massing and density and are located, designed, sited, serviced and constructed in a manner which is suited to the particular operation or use which is proposed and intended.

A site plan would normally provide the detail necessary to inform the analysis of conformity with the Official Plan. As noted above, there is no site plan before the Board and no requirement in the *Planning Act* that a proposed ZBLA that is designed to permit a proposed development must be accompanied by a site plan application. Patry has presented a conceptual site plan. If the Board allows the appeal and finds that the proposed zoning by-law meets all the requisite planning tests, Patry asks the Board to withhold its Order until a final form of the ZBLA is filed and a site plan agreement has been finalized with a site plan substantially in accordance with the conceptual site plan, as filed in these proceedings.

The Official Plan requires an assessment of compatibility with, and adverse impacts on, adjacent land uses. Compatible does not mean identical, and mitigating adverse impacts does not mean a development will have no impacts. In order to assess conformity with the Official Plan, as well as the appropriateness of the site specific zone regulations proposed for the subject site, the Board has considered the following seven matters:

1. architectural design and style;
2. reduced side and rear yard setbacks;

3. privacy and overlook;
4. loading and service areas;
5. amenity and play space;
6. parking; and
7. density and lot occupancy.

Architectural Design and Style:

The conceptual site plan illustrates a style of architecture for the 4.5 storey infill building that echoes and complements the architectural style of the existing structures to be retained at 495, 497 and 513 Frontenac. Though taller than existing surrounding structures, the roof lines, proportions and materials suggested in the conceptual site plan fit well with the late 19th and early 20th century construction of existing structures both on the site and adjacent to it. The Board finds that the proposed architectural design and style are compatible with the surrounding house form structures.

If the infill building was to meet the zoning by-law requirement for a front yard set back from the street, the result would be a streetscape that has three houses positioned with a close relationship to the street and an infill building set back in a gap between the houses that would break the streetscape line. The Board finds that reducing the front yard setback to align the infill building with the existing structures on Frontenac Street maintains a consistent and desirable relationship between the building and the street.

Reduced Side and Rear Yard Setbacks:

The proposed reductions to the side yard setbacks recognize existing built conditions. To the extent that the conceptual site plan shows an infill building no higher than 4.5 storeys, draws that building south on the site closer to the Commercial designation for Princess Street, and places no part of that building on the lot at 513 Frontenac, the Board finds that the reductions to the side yard setbacks are reasonable and appropriate. Specifically, the Board is satisfied that the existing built condition at 513 Frontenac should be recognized with a reduction in the north side yard set back, but the reduction should be for the existing structure and not a general relaxing of the

north side yard setback such that a redesign of the proposed infill building would permit it to come closer to the north side yard than the standard side yard requirement.

Both Ms Ironside and Ms Fraser agree that the purpose of the zoning standard for rear yard setbacks is to provide some distance between the residential structure and the at-grade amenity space of back yard neighbours. In this case, the proposed infill building is separated by garages and a laneway from the at-grade amenity space of its rear yard neighbours. The reduction results in a separation of approximately 17 metres from the nearest at-grade amenity space east of the laneway. With a height that does not exceed 4.5 storeys, the Board finds that the proposed rear yard setback is reasonable and appropriate. The Board is not persuaded that a reduction in the rear yard setback is appropriate if the height of the proposed building exceeds the 4.5 storeys shown on the conceptual site plan.

Privacy and Overlook:

The proposal includes a common area roof top patio and private roof top patios associated with certain upper floor units. The roof top patios, again before the Board only in the context of the conceptual site plan, raise concerns for the Board about adverse impacts on surrounding uses. Coupled with sharply reduced setbacks and height that is almost twice that of surrounding residential structures, the roof top patios appear to create conditions of privacy intrusion and overlook on adjacent properties.

Patry acknowledged concerns about adverse impacts from the roof top patios and cited the intention to require a signed code of conduct and the closing of the common roof top patio at 9:00 p.m. No such management imposed requirement would apply to the private roof top patios.

Codes of conduct and management practices are not matters the municipality can enforce through the vehicle of a zoning by-law. The Board is not persuaded that privacy intrusion and overlook is properly mitigated through proposed discretionary management policies.

Loading and Service Areas:

The conceptual site plan does not include any provision for loading or service areas. No central garbage and recycling area was identified and the evidence before the Board is that garbage and recycling materials are intended to be placed at the curb for regular residential collection. The Board is not persuaded that a project of this size and intensification is functionally compatible with adjacent uses without provision for loading, service areas, and bulk garbage and recycling collection.

Amenity and Play Space:

Patry seeks relief from the amenity and play space requirements. These requirements are tied to the number of bedrooms in each unit. As noted above, the greater the number of bedrooms, the greater the amount of amenity and play space that is required.

In support of the reduction in amenity space, Ms Ironside pointed to the relatively easy access to college and university outdoor facilities and suggested that student tenants would be more likely to use these than the grade related outdoor space provided in the proposed development. Ms Ironside also noted relatively nearby local parks. Messrs. Patry and Crothers cited the large common areas within the units as places where the tenants would congregate, reducing the demand for at-grade outdoor amenity space.

The City opposes the proposed reduction in amenity space and also takes the position that the “dens” shown in the conceptual site plan may be converted later to “bedrooms”, which would increase even further the full extent of the relief from the amenity space requirement that is being sought. The City’s concern arises from the fact that the zoning by-law and proposed amendment speak to “units per hectare” and not “bedrooms”. Patry acknowledges its intention to rent the units with an occupancy equivalent to one student per bedroom.

The justification Patry offers for the reduction in amenity space is tied to the target market of post-secondary students and Patry’s understanding of their preferences and alternative amenity space opportunities. Similarly, the City’s standard for amenity space tied to the number of bedrooms appears to arise from concerns about post-

secondary students as a “tenant type” and the likely number of students to be accommodated in units with large bedroom counts and ready opportunities to convert space to additional bedrooms. The Board considered the question of whether a standard based on bedrooms, coupled with a concern about “tenant types”, resulted in *de facto* “people zoning”. In this case, the Board finds that both parties focused on the attributes of the target market tenants but that particular emphasis was given to the alleged preferences of the target market by Patry in seeking the reduction to the required amenity space.

Moreover, while the target market may be post-secondary students, the Board finds that the built form is simply high density residential and the zoning simply permits multiple family dwellings. Nothing in the zoning requires or limits the proposed development to post-secondary students with access to alternative university amenity space. Nothing in the zoning would prevent large families with several children from occupying the larger units, thus reasonably increasing the need for amenity space. The Board also notes that the amount of amenity and play space required by the zoning by-law is a direct result of the unit mix with the high number of multiple bedroom units. Altering the unit mix and reducing the bedroom count would result in a lesser required amount of amenity space. In addition, the proposed deployment of buildings and amenity space means the residents of 513 Frontenac will have no direct access to common outdoor amenity and play space. The outdoor amenity area is located generally behind 495 and 497 Frontenac, roughly surrounded by the proposed infill building. The infill building and the laneway that provides the principal access to the site, block direct access to this space by the residents of 513 Frontenac. Moreover, the entire back yard of 513 Frontenac is proposed to be taken up by surface parking, with little or no landscaping or buffering.

The Board is not persuaded that the public interest in the long term functionality of the proposed development is served by a reduction in the required amenity and play space.

Parking:

Mr. Linseman, a retired traffic and parking specialist with the City, and long time resident of Kingston, testified that post-secondary students tend to have lower rates of

car ownership that are consistent with the requested reductions in the parking standard. Mr. Linseman presented a parking survey he prepared in support of the requested reduction. Mr. Linseman utilized a combination of site visits, his personal knowledge as a resident of the area, landlord statistics on the rental of parking spaces, and information he had from other surveys done some years previously. Ms Ironside also supported the reduction in parking and testified that the subject site is within a 10 minute walk to Queen's University and has access to transit on Princess Street.

Ms Kozorys-Smith, retained as a peer reviewer of Mr. Linseman's work by the City, raised a number of questions regarding Mr. Linseman's methodology. Under cross-examination, Mr. Linseman acknowledged that he relied on data from Patry to identify the number of apartments in buildings and did not do any independent verification. He also acknowledged that he did not confirm the occupancy rate in the buildings at the time of his survey and did not know if any units were vacant. Similarly, he acknowledged that he did not verify the number of bedrooms that were either occupied or vacant when the survey was done. Some of the buildings included in the survey were examined on weekends; Mr. Linseman acknowledged that some students could have been away at the time. He further acknowledged that he did a blended survey of all cars on the survey sites and on the adjacent streets, and did not distinguish between residents' or visitors' vehicles.

Ms Kozorys-Smith acknowledged the site's location near public transit and suggested that a standard of 1.2 parking spaces per unit might be appropriate as a reduction from the zoning by-law standard of 1.4 spaces per unit. However, Ms Kozorys-Smith was peer reviewing Mr. Linseman's work and did not do a separate parking needs study.

Having considered the evidence of Mr. Linseman, the Board finds that a sufficiently rigorous parking needs study was not undertaken or presented to the Board to justify a reduction in the parking standard from 1.4 parking spaces per unit to 0.9 parking spaces per unit, or about 0.22 parking spaces per bedroom.

Density and Lot Occupancy:

Density, in terms of units per hectare, and lot occupancy are secondary matters that flow from the design of the project to meet the parking and amenity space

standards, functional design for loading and service areas, mitigation of privacy intrusion and overlook while maintaining the proposed architectural style, design and height. Since the conceptual site plan does not address the Board's concerns in these areas, and since the Board does not then know what density and lot occupancy would result from a proposal that meets the Board's concerns, the Board makes no finding on the appropriateness of the requested 148 units per hectare or the requested exception to permit 204% lot occupancy.

The Result

While the Board finds that the proposal is consistent with the PPS and conforms to the Official Plan in certain respects, the Board also finds that the proposal does not conform to the Official Plan in other respects, as set out above. In addition, the Board finds that certain of the B3.x zone regulations proposed by the Appellant are not appropriate to the subject lands, also as set out above.

Section 2.1 of the *Planning Act* requires that, in making its decision, the Board shall have regard to both the decision of the municipal council in this matter and any supporting information and material that the municipal council considered in making its decision.

The standard of "have regard to" does not mean "be consistent with". The Board is required to "be consistent with" the Provincial Policy Statement when making its decisions. The requirement that the Board "have regard to" does not mean that the Board simply notes or acknowledges the decision of the municipal council and any supporting materials before council when the decision was made.

To properly discharge the requirement to "have regard to" the decision of council means that the Board must consider seriously the decision of the municipal council and any supporting materials before council at the time the decision was taken. In doing so, the Board must consider the decision of the municipal council not only in light of the supporting materials before council at the time of its decision, but also in light of the evidence called and tested in the hearing before the Board. In the matter now before the Board, the Board has considered carefully the decision of the municipal council and the supporting materials before council, as well as the evidence called in these proceedings.

While the Board has found certain elements of the proposal desirable and appropriate, on balance the Board finds that the proposed zoning by-law amendment does not conform to the Official Plan and the proposed site specific zone regulations are not reasonable, not appropriate, and do not represent the principles of good community planning.

The appeal is dismissed.

Patry is to notify the Board within 90 days of this Decision whether it intends to maintain its appeal of OPA 40 or whether that appeal is being withdrawn. In the event that Patry advises the Board that it intends to maintain its appeal of OPA 40, the Board will take the necessary steps to schedule the hearing of that appeal.

Since the matter decided in this Decision of the Board is an appeal regarding a zoning by-law, and since the Board was asked by the Parties and agreed to make no findings on the appeal of Official Plan Amendment 40 in these proceedings, this panel of the Board is not seized of the possible further hearing to deal with the appeal of OPA 40.

So Orders the Board.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
MEMBER

“G. C. O’Connor”

G. C. O’CONNOR
MEMBER