

ISSUE DATE:

**Jan. 13, 2010**



PL090104

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

Amica (Oakville South) Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Town of Oakville to redesignate a 0.83 hectare parcel of land located at 140, 144, 150, 154 and 158 Bronte Road from "Residential Low Density" and "Residential Medium Density II" to "Residential High Density II" to permit the development of a residential building with a height of 8-storeys at the southern part of the property and 6-storeys towards the northerly property line to contain 119 assisted-living units and 20 rental units

Town of Oakville File No. Z.1730.34

O.M.B. Case No. PL090104

O.M.B. File No. PL090104

Amica (Oakville South) 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 No. 1984-63, as amended, of the Town of Oakville to rezone a 0.83 hectare parcel of land located at 140, 144, 150, 154 and 158 Bronte Road from "R03" and "C3R" to "H17-R9-SP812" and "O4" to permit the development of a residential building with a height of 8-storeys at the southern part of the property and 6-storeys towards the northerly property line to contain 119 assisted-living units and 20 rental units

Town of Oakville File No. Z.1730.34

O.M.B. Case No. PL090105

O.M.B. File No. PL090105

The Minister of Municipal Affairs and Housing has requested that the Ontario Municipal Board hear, under subsection 47(10) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, an application by Amica (Oakville South) Inc. for a revocation to the Minister's Zoning Order, Ontario Regulation 481/73, to permit the development of a residential building with a height of 8-storeys at the southern part of the property and 6-storeys towards the northerly property line to contain 119 assisted-living units and 20 rental units on lands located at 140, 144, 150, 154 and 158 Bronte Road

Ministry of Municipal Affairs and Housing File No. 24-ZO-00107-015

O.M.B. Case No. MM080043

O.M.B. File No. MM080043

**APPEARANCES:**

**Parties**

Amica (Oakville South) Inc.

**Counsel**

David Bronskill; R. Gold (student-at-law)

Karen Birkemeyer	Steven O'Melia
Town of Oakville	Denise C. Baker
Ministry of Municipal Affairs and Housing	R. Boxma; Stephen Lockwood
Andrew S. Bruce Design Incorporated	Marc Kemerer
Region of Halton	Dave Beck

**DECISION DELIVERED BY S.J. SUTHERLAND AND PARTIAL ORDER OF THE BOARD**

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Amica (Oakville South) Inc. (Amica) (Applicant/Appellant) has submitted private Official Plan (OP) and Zoning By-law (ZBL) amendment applications to permit the development of a residential building, as revised to contain 119 assisted-living units and 20 rental, or independent dwelling, units in a building with a height of eight storeys at the southern part of the property and six storeys towards the northern property line. The initial proposal contemplated 143 rental accommodation units, of which 123 units were assisted-living, with the balance being independent dwelling units. The Subject Property is 0.83 hectares and is located at 140, 144, 150, 154 and 158 Bronte Road in the Town of Oakville (Town). The Subject Property is located at the north end of Bronte Village, on the west side of Bronte Road, north of Lakeshore Road West. The proposed building is intended as a senior citizens' residence.

Amica is appealing the refusal or neglect of the Town to enact an OP amendment (OPA) to redesignate the Subject Property from "Residential Low Density" and "Residential Medium Density II" to "Residential High Density II" to permit the proposed building. Consolidated with this appeal were:

1. Amica appeal to the refusal or neglect of the Town to enact a proposed ZBL amendment (ZBLA) for the same property from "R03" and "C3R" to "H17-R9-SP812" and "04" to permit the proposed development and;
2. The Minister of Municipal Affairs and Housing (MMAH) request that the Board, pursuant to subsection 47(10) of the *Planning Act*, hear an

application by Amica for a revocation to part of the Minister's Zoning Order Ontario Regulation 481/73 to permit the proposed development.

At a second Pre-Hearing Conference, held on July 28, 2009, the Board was advised that Conservation Halton wished to withdraw as a Party at the hearing, subject to conditions set out in a letter from Counsel for Amica dated July 14, 2009 (Exhibit 5). The request of Conservation Halton to withdraw as a Party was granted.

At the hearing, Counsel for the Region informed the Board that the Region's issues (numbers 17, 18 and 19 on the Issues List attached to the Procedural Order) have been resolved by way of an agreement outlined in Exhibit 7, the Region wished to withdraw from the hearing. This request was granted.

Counsel for the Town told the Board that the Town had approved the project in principle on April 18, 2008, subject to a number of conditions outlined in Exhibit 8. These included:

1. The Applicant conveys to the Town the valley lands and the adjacent 15 metre setback from the stable top of the bank.
2. The Applicant obtains a lot, in a location satisfactory to the Town, for the purposes of relocating the designated heritage house currently located on the subject lands, municipally known as 144 Bronte Road.
3. The Applicant provides to the Town a refurbishment plan for the relocated heritage house at its new location and such a plan is approved by the Town.
4. The Applicant provides to the Town a pictorial record and any details or historical information pertaining to 140, 144, 150, 154 and 158 Bronte Road.

The Subject Property is bounded on the south by mid-rise buildings, seven and eight storeys in height. On the east, there is the Church of the Epiphany, Bronte Village Mall and low-rise residential. Low-rise residential is also found north of the site. On the west is Bronte Creek, with low-rise residential west of the Creek.

The proposed building incorporates one and two storey building massing along Bronte Road, with higher six and eight storey massing beyond. One storey massing occurs at the southwest and northwest of the building backing onto the Bronte Creek Valley. A driveway and courtyard are located in the middle of the property to provide a drop-off location for residents and visitors, as well as access to the underground parking area, with access to the loading/receiving area located at the northern end of the building.

The facility is geared toward senior citizens and will include the following amenities and services:

- Common dining area
- Religious services for various faiths
- Organized activities within the facility (dance and tai chi lessons, woodworking, movie nights, and throughout the local community using a dedicated shuttle service
- 24-hour concierge service
- Registered care staff on site providing 90 minutes of personal care per day, as well as 24 hour emergency response
- Wellness/fitness centre, beauty salon, barber shop, convenience store, in-house theatre, game rooms and library.

Among the issues before the Board was whether or not the applications have regard to the Provincial interest in heritage identified in section 2(d) of the *Planning Act*, “the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest.”

David Eckler, a qualified architect with experience in heritage matters, gave expert evidence and opinion on heritage issues on behalf of the Applicant. He testified that, within the land assembly for the development site, two buildings, 140 and 144 Bronte Road, were listed on the Town’s Register of Cultural Heritage Value or Interest (the Heritage Register). 140 Bronte Road was removed from the Register at the time of

review of the subject application by the Heritage Oakville Committee (HOC), the Town's Heritage Authority, leaving 144 Bronte Road, the former manse of Walton Memorial Church, the only listed building on the site. It has been submitted by HOC for designation under the *Ontario Heritage Act* (OHA).

It was Mr. Eckler's opinion that, under the OHA and associated provincial heritage policies, the adjacent buildings at 140 and 154 Bronte Road do not possess sufficient cultural heritage value or interest to be conserved, and that the house at 144 Bronte Road "may be relocated due to the ubiquitousness of its style which is not unique in Oakville." Mr. Eckler pointed out that his opinion is supported by the position, recommendations and resolutions of the Town's planning staff, the HOC and Town Council. After a Heritage Impact Review, the building at 140 Bronte Road was actually de-listed from the register.

There was much discussion at the hearing as to whether the subject site is part of a Cultural Heritage Landscape. It was Mr. Eckler's opinion that, under the Provincial Policy Statement (PPS), it is not. Again, this opinion is supported by the position, recommendations and resolutions of the Town's planning staff, the HOC and Town Council as demonstrated by their actions related to the site.

It was Mr. Eckler's opinion that the applications are consistent with Heritage Policies and conform to the governing policies of the OHA, and the heritage-related articles of the *Planning Act* and the PPS. He supported the proposed strategy of relocating, refurbishing and reusing the historically listed house as being in the public interest, and representative of good heritage planning.

D. R. Chalykoff, a member of the Canadian Association of Heritage Professionals, gave expert evidence on heritage property matters, on behalf of Andrew S. Bruce Design Incorporated. It was Mr. Chalykoff's opinion that the five properties, 140, 144, 150, 154 and 158 Bronte Road, should be designated under Part IV of the OHA as properties of cultural heritage value to Oakville and the Province of Ontario, and that the five properties and their viewsapes be designated as a Cultural Heritage Landscape, as defined by the PPS.

The Board found Mr. Chalykoff's testimony interesting, but unconvincing. He based a portion of his opinion on the fact that an early settler, ship and home-builder,

Dalton MacDonald, built some of the houses, and occupied at least one of them. Under cross-examination by Counsel for the Applicant, he admitted he could not say with certainty that MacDonald built any of the houses. He stated that none of the subject buildings constitutes outstanding architecture, but added that is not a requirement for inclusion as properties of cultural heritage value. The Board remained unconvinced, however, based on Mr. Chalykoff's evidence, that any of the subject properties, apart from the manse, which is to be preserved, represents a rare or unique style, type or expression of design, or demonstrates the high degree of craftsmanship or artistic merit such as to warrant it being designated a property of cultural heritage value.

In any event, it is not for this Board to declare the properties worthy of designation. Under the OHA provisions for a municipal heritage committee, the role of that committee is to establish a Heritage Register. Oakville has such a committee and such a register. It is clear to the Board that the Town takes its role in the preservation of its heritage seriously, having established three Heritage Conservation Districts, all located at its east waterfront. No such district has been established along that section of Bronte Road upon which the Subject Property is located. A Heritage Impact Review described this portion of Bronte Road as having already been severely compromised, stating "the existing streetscape has been significantly changed by the construction of non-sympathetic uses: commercial and high rise residential to the south and institutional and parking lot across the street" (Exhibit 9, Tab 3)."

The Board accepts the evidence of Mr. Eckler that the application does not offend governing policies of the OHA, or the heritage-related articles of the *Planning Act* or the PPS; nor does it offend international conventions or federal standards, issues concerning which are not rightly before this Board in any event.

There were a number of land use planning issues before the Board for consideration. The principle issues were the scale of the development, and its compatibility with and relationship to its surroundings.

Two experienced land use planners, David McKay for the Applicant and Allan Ramsay for Ms Birkemeyer, gave expert evidence and opinion at the hearing. As to consistency with the PPS, there was no disagreement. Both planners agreed that the applications are consistent with the PPS. There was disagreement as to whether the

applications conform to the Growth Plan for the Greater Golden Horseshoe (Growth Plan). In Mr. McKay's opinion, the proposal represents appropriate intensification within an intensification area recently defined by the Town in its "new" OP, "Liveable Oakville", which is not yet in effect, but which points to the direction the Town wishes to take in relation to growth and development within its urban boundary.

Mr. McKay testified that the proposal will efficiently utilize existing and planned infrastructure, while allowing for a transformation from higher density housing to the south to lower density housing to the north. It is his opinion that the density and built form proposed by the applications respect the character of the surrounding area, while addressing the intensification goals and objectives of the Growth Plan. He stated that the compact form of the development, which will provide housing for seniors, supports reduced dependency on the automobile by being located in close proximity to shopping and service uses and transit facilities.

Mr. Ramsay told the Board that the Subject Property has not been identified in the Growth Plan or the Town's in-effect OP as an urban growth centre, intensification corridor or major transit station area. He stated that the Growth Plan directs municipalities to support achievement of intensification targets and to facilitate and promote intensification. In implementing the Plan, municipalities are directed to "identify the appropriate type and scale of development in intensification areas and provide a diverse and compatible mix of land use." It was his opinion that the proposed development is not an appropriate scale of development for the area and does not create a compatible mix of land uses. It was his opinion that the proposal does not conform to the Growth Plan.

In Mr. Ramsay's opinion, the applications do not conform to either the Region of Halton Official Plan (ROP) or the Town's OP. In his opinion, the intensification sought by the Applicant will not maintain the physical character of the existing neighbourhood and, as a result, does not conform to the ROP.

Mr. Ramsay stated that an amendment to the Town's OP should only be approved when the proposal is considered to be in the public interest, and that it was his opinion that the proposed amendments to the OP to substantially increase the density of Subject Property and alter its character are neither required to meet the

policies of the OP nor appropriate. He opined the proposed development to be incompatible with the existing development and in nonconformity with site design considerations such as increased setback, sensitive building design, provision of landscape buffers and control of scale of development. He told the Board it is outside the intensification area of the Bronte Village core.

On the other hand, it was Mr. McKay's opinion that the applications are in conformity with both the ROP and the OP. He pointed out that the necessary supporting studies as identified in the ROP have been prepared in support of the applications, including an Environmental Impact Assessment, Archaeological Assessment, Functional Servicing Report and Traffic Impact Study, and that the developable portions of the Subject Property are designated as Urban Area, which is intended to accommodate existing and future urban development and amenities. It was his opinion that the proposed building incorporates a variety of setbacks, stepbacks, tiering and massing features which make it compatible with the surrounding area.

So far as the OP is concerned, Mr. McKay stated that the proposal utilizes existing and planned urban infrastructure in a compact urban form in close proximity to transit services as required by the OP. In addition, to meet the OP objectives by contributing to a full range of housing options, specifically for seniors, and is of a high standard of building design, siting, massing and landscaping in accordance with OP policies. It was his opinion that the proposal maintains the character of the Bronte community and is compatible with the high density residential uses to the south and low residential uses to the north through its use of various building and site design guidelines.

Mr. McKay also addressed OP policies related to the maintenance and enhancement of the natural environment. It was his opinion that the proposal addresses these issues through appropriate stormwater management, tree protection, remediation and restoration of the valley lands, and the transfer of these lands and buffer area to public ownership.

It was Mr. McKay's opinion that the applications represent good planning, that the lands are suitable and appropriate for the introduction of high density residential land uses at the scale proposed, that the proposed residential land use is compatible



with existing and approved adjacent residential uses, and that the proposed development provides an appropriate transiting between the low density residential areas to the north and east and the lands to the south.

In Mr. Ramsay's opinion, they do none of the above. He believes approval of the development will result in a significant overdevelopment of the site. While stating that the subject lands are appropriate for some form of high density and intensification, that proposed is not compatible with surrounding uses and would result in development that is too intensive, out of scale and incompatible.

The Board heard expert evidence and opinion from Michael Spaziani as an architect with urban design experience. Mr. Spaziani was retained by the Applicant in late 2006 to provide community engagement, urban design, community planning and architectural opinions on the proposed retirement home.

In describing the site context, Mr. Spaziani emphasised the fact that the site abuts a seven-storey apartment building at 128 Bronte Road to the south and an eight-storey condominium to the south-west, abutting Bronte Creek. He pointed out that several of the one to three-storey houses currently occupying the site contain commercial uses, including an automobile service operation, and that the Church of the Epiphany, with its parking lot, is directly across Bronte Road from the Subject Property. To the south-east is the full-service Bronte Village Mall, with a Sobey's and a PharmaPlus drug store. Based on this, it was Mr. Spaziani's opinion that the Subject Property is geographically isolated from the adjacent low rise residential area to the north and east, and forms a natural extension of the village node.

He told the Board that the design process followed in establishing the height and massing for the site was "consultative and collaborative", engaging a number of key community representatives. A member of this working group, Murray McDonald, Chair of the Business Improvement Area, addressing the Board as a Participant, confirmed that the process was indeed consultative and collaborative and resulted in the final design of a building with improved aesthetics from that originally conceived. He said the goal was to have the building fit in with the overall atmosphere and streetscape of the area, and that the Subject Property needs redevelopment. He said the process was one of compromise and discussion ranging over a series of working meetings. In his

opinion, the process resulted in an architecturally pleasing structure which reflected the consensus of the group.

Mr. Spaziani testified that the members of the working committee supported the project publicly at Council, and gained Council's support for the development.

It was Mr. Spaziani's opinion that the design and massing of the proposed development successfully establish an appropriate transition of scale between the northern and southern extremities of the Subject Property and there is nothing that would make the proposed land use incompatible with adjacent land uses. It would, in fact enhance the public availability of open space uses and amenities along Bronte Creek. He said the proposed development would allow seniors to age in their community near amenities within walking distance, rather than finding accommodation outside their familiar area. This view was supported by Participant, Judy Emmert, who lives in a near-by condominium complex catering to seniors, and is an enthusiastic supporter of the proposed development. She told the Board, "everyone in our little community is for it." Whether they are or not, it was clear Ms Emmert was.

In his design brief, Mr. Spaziani described the approach to building massing as "very detailed and sculptural" (Exhibit 9, Tab 4). He wrote, "the intention is to place two-storey building elements closest to Bronte Road in a non-continuous street wall that emulate the pre-existing pattern of individual discreet house forms."

Each of the two-storey elements is separated by landscaped areas, including a floral display by residents. In all cases, Mr. Spaziani said that the built form is held back three metres from the Bronte street line to allow for design encroachments such as cloth canopies, porches and a greenhouse bay, all of which "animate the street edge."

As to whether the developable portion of the Subject Property is large enough for the proposed building size, Mr. Spaziani testified that it is. He said the issue raises the question of what is the effective perceived density when the valley lands are considered part of the visual space of the development? He pointed out that the total original land area is owned by the Applicant. He referred to the "distortion of coverage and density figures" relating to the deeding to public uses of more than one acre of prime waterfront lands for new trails and public open space.

Mr. Spaziani testified in his witness statement (Exhibit 9, Tab 4), "The original site area is .83 hectares, or 2.0 acres. The net site area once lands are deeded to public agencies is .38 hectares or 93 acres, less than half the lot area. Given a land base that is twice the net area, the coverage and density factors would change from 65% and 3.29 respectively to 30% and 1.57."

It was Mr. Spaziani's opinion that, at the reduced numbers, the effective visual impact "is clearly minor", reflecting a medium density character that is sympathetic to the area. Likewise, he believed the setbacks from the northerly, westerly and early property lines to be acceptable. He further pointed out that the OP does not prescribe specific impacts and criteria related to shadow, but that, in shadow studies conducted to assess the impact of shadows on adjacent properties (Exhibit 10, Tab 6) indicated that there would be no inappropriate or prolonged shadows on private open space or significant public space as a result of the development because of the proposed massing and setback strategies.

It was Mr. Spaziani's opinion that there would be adequate amenity open space for residents on the site, both private and public, the public space formerly part of the subject site. He also felt the proposed location of the commercial vehicle and truck delivery access space to be appropriately located at the north end of the building, and pointed out that the design for this space allows entry and exiting in a forward motion, eliminating the beeping sound associated with backward movements.

Mr. Spaziani testified that, in his opinion, the proposed development supports the evolving character of the Bronte community, maintains the intent of the OP and establishes important density and character standard "that are appropriate and exemplary for infill development in such a context".

Mr. McKay's evidence and opinion was similar to Mr. Spaziani's relating to the height, building mass, setbacks, lot coverage, amenity space and location of the delivery access. Mr. McKay said that the eight-storey component of the building is setback a minimum of 35.951 metres from the north property line, with the remainder of the building being six storeys or lower. The two-storey element along Bronte Road, wrapping around the corner of the building, is set back 2.165 metres at its closest point, increasing to 4.197 metres at its farthest point, representing approximately 56% of the

total north building length. It was Mr. McKay's opinion that these setbacks are in keeping with a typical setback for a two-storey building, pointing out that the R03 Zone which applies to the site today only requires a 1.2 metre setback where there is an attached garage. He stated the elimination, or complete lack of windows on the first and second floor of the north side of the building minimizes privacy and overlook impacts in that direction.

Mr. McKay said the average setback for floors three to six on the northeast portion of the building is approximately 5.0 metres. Again, there are limited windows above the second floor of this section, minimizing overlook and privacy impacts. He also opined the side yard setback to be appropriate.

It was Mr. McKay's opinion that the proposed 3.40 floor space index (fsi) "is appropriate and reasonable, given the design of the building, the context in which the lands are situated and the overall policy objective to intensify urban areas." He said that the 35% lot coverage set out in the R9 Zone could be achieved only by radically altering the proposed built form by increasing the height and eliminating the articulation and terracing "which contribute to an attractive and pedestrian oriented streetscape." He further stated that a 30% lot coverage could be obtained based on the proposed built form if the buffer and valley lands were not conveyed to the Town. As it stands, all parking areas will be in an underground garage and amenity space provided through a roof top patio, balconies and outdoor seating areas, thereby meeting the purpose of lot coverage restrictions.

It was Mr. McKay's conclusion that the applications are consistent with the PPS, conform to the Growth Plan, ROP and OP, and that the proposed development is appropriate for the lands and represents a compact urban form which efficiently utilizes infrastructure and services while being compatible with its surrounding land uses. He found the applications to be in the public interest and representative of good planning. He recommended their approval by the Board.

Mr. Ramsay felt the building heights, reduced setbacks, high lot coverage and fsi, and limited building articulation at certain elevations to be inappropriate for the site, particularly given existing low residential uses to the north and east. He made reference to the fact that recently the Town has routinely applied an angular plane to

analyze the compatibility of taller, high density buildings on adjacent lower-density residential neighbourhood and parks. Appendix B to his witness statement (Exhibit 31) identifies the results of his evaluation of the proposed building mass using the angular plane analysis used elsewhere in Oakville. From this, Mr. Ramsay concluded that significant portions of the proposed building are found beyond the angular planes in some elevations and thereby demonstrate “the significant overdevelopment of the site” by the Applicant’s development. He proposed a redesign of the building to reduce the building mass, permit a maximum building height of four storeys and a maximum building coverage of 35%, and increased side, rear and front yard setbacks. Mr. Ramsay suggested that Mr. Spaziani’s measurement of the angular plane on the north side was done from the wrong location. The Board notes that, while the angular plane is used as a guideline by Town staff, there is no requirement for this be done. Nor is there any requirement as to from where the angular plane should be measured.

It was Mr. Ramsay’s opinion that the proposed development will result in adverse shadowing impacts on the outdoor amenity space of the property to the north, at 174 Bronte Road, particularly in the morning. He mentioned the redevelopment potential of this property in the form of an additional single detached dwelling adjacent to the proposed development.

He opined that a roof top garden and a patio on the west side of the building, while providing sufficient outdoor amenity space, would be less attractive and functional than outdoor amenity space at grade.

Mr. Ramsay was further concerned about the location of the commercial vehicle and truck load and unloading facility on the north side of the building, stating that the proposed driveway to the facility is located immediately adjacent to the outdoor amenity area at 174 Bronte Road and could result in noise and fumes, which would have an adverse impact on that property. He also testified that the length of the driveway in front of the entry doors is inadequate and could result in commercial vehicle and trucks entering the building overhanging the sidewalk and potentially blocking pedestrian and vehicular traffic.

It was Mr. Ramsay’s conclusion that the proposed development represents an overdevelopment of the site, is not in keeping with the character of the area and will be

incompatible with existing low density residential uses located immediately to the north. In his opinion, the proposed amendments to the Town's OP and ZBL do not represent good planning, and should not be approved. He was concerned that the proposed ZBL did not guarantee that what was proposed to be built would be built.

The Board also heard expert traffic planning evidence from traffic consultant, Christopher Middlebro'. Mr. Middlebro' concluded, after reviewing key transportation findings, that the project has an adequate parking supply, and that the location within Bronte Village supports reduced parking demands. He also supported the location and construction of the commercial vehicle and truck delivery access, pointing out that the truck receiving court is completely enclosed, with a solid wall along the building façade. A roll-up door facing Bronte Road is intended to remain closed except for vehicle entry and exit manoeuvres. He was satisfied that the transportation aspects related to the proposed development were appropriate and acceptable.

The Board also heard from a third Participant, J. L. Cleary. Mr. Cleary did not support the proposed development, fearing the high density and height of the building will set a precedent, saying the applications were "in direct contradiction" to the OP. He was also concerned about riparian rights related to Bronte Creek. The Board notes that the Conservation Authority has expressed no such concerns.

The Board has given careful consideration to the evidence and opinions presented to it during the course of this hearing. There was no argument as to the consistency of the applications with the PPS. The proposal is in a settlement area, and helps provide for an appropriate range of housing types and densities as directed by the PPS. The Board further concurs with the report of the Town's Planning Services Department, which recommended approval of the project, that the proposal satisfactorily addressed the natural heritage and natural hazard policies of the PPS (Exhibit 11C, Tab 8).

Regional planning staff has indicated that the proposed land use conforms to the ROP, and the Board heard no evidence which convinced it otherwise. Mr. Ramsay argued, in relation to both the ROP and the OP, that the proposed development will not maintain the physical character of the existing neighbourhood. The Board disagrees. The Subject Property is across the road from a church and its attendant parking lot. It is

a very short distance north of a commercial and retail area, including the full-service Bronte Village Mall. To the south are seven and eight-storey mid-rise residential buildings, with low-rise residential further south. There is low-rise residential to the north of the proposed development, although the nearest house is a comfortable distance from the north edge of the building. To the west is Bronte Creek, with low-rise residential to the west of that. The existing physical character of the area is varied, with many of those properties closest to the proposed development of an institutional, commercial or retail nature. There are mid-rise buildings nearby. The Subject Property is not in the middle of a low rise residential area.

In the OP, density refers to the total number of dwelling units within a site. The upper limit of the Residential High Density II designations is 185 units per hectare. In a March, 2008 report to Council (Exhibit 11C, Tab 8), planning staff pointed out that a dwelling unit is one that is self-sufficient, containing both sanitary and kitchen facilities, specifically a stove and refrigerator. The proposed development will have 20 such units, with the balance being “assisted living units”. These will not have full kitchens. The development will have a common kitchen and dining facilities as part of its residency program. As a result, there will be considerably less demand on community services and resources than would occur with a typical condominium development. It was the view of staff that the most appropriate OP designation for the site is High Density II “since it best recognizes the function of the facility, which is a mid-rise residential building with ancillary uses directly related to the primary use.” The Board agrees.

The proposed development implements the Land Use policies of the OP by its proximity to major open spaces, valleys and parks, community commercial and cultural facilities, as well as public transit (which runs with frequency along Bronte Road and Lakeshore Boulevard) and pedestrian pathways. In many ways, this could be considered the perfect location for a seniors’ residence.

So far as size is concerned, the mass of the building is broken vertically and horizontally by a terracing effect, with a two-storey at grade component stepping up to five and six storeys along Bronte Road. To the north, the building is three and six storeys, stepping up to eight storeys at the mid-point. The tower element with its widow’s walk, located in the middle of the building, is intended to reflect Bronte’s

nautical past. The main bulk of the building is towards the rear. The building is appropriately urban in character, and the Board accepts the expert opinions of Mr. McKay and Mr. Spaziani that careful design has made its mass appropriate to its site and compatible with the surrounding neighbourhood. The Board finds the applications in conformity with the OP.

The Board finds the ZBLA generally appropriate and acceptable. It will, however, withhold its Order in relation to both the OP and the ZBL at the request of the Town pending the completion of a number of outstanding matters, found in Attachment "3" to this Decision.

The Town gave conditional approval to the applications on April 14, 2008, and the Board found the summation of Counsel for the Town interesting. She told the Board that the Town was "in the unique position of supporting the developer" regarding these applications, because the Town saw the applications as conforming to the PPS and the Growth Plan, and found the project compatible with existing land uses and sensitive in its design to its surrounding environment. The Town wished to provide opportunities for its residents to age within the community, and saw the project as contributing to the provision of a full range of housing options within the community. She said the Town felt there was strong public input into the proposal through the use of the working group, and believed the proposal to represent good planning regardless of any bonusing provisions. She reinforced the argument that the Town had taken heritage issues seriously in relation to the applications, saying there were no fewer than seven meetings involving these issues and that heritage planners concluded that, with the exception of the manse, none of the properties was worthy of listing "unlike 354 other properties" in the Town.

The Subject Property is subject to a Minister's Zoning Order (MZO) under Ontario Regulation 481/73 (OMB File No. MM080043). The Applicant has applied to revoke the Subject Property from the MZO in order to permit the proposed development. The MZO was initially enacted in 1973 in order to limit development ahead of the introduction of the Province's Parkway Belt West Plan. Lands within the MZO are limited to agricultural uses and accessory uses associated with an agricultural operation. Under the proposal before the Board, the lands within the Parkway Belt West Plan will be dedicated as valley lands and for future recreational uses, permitted



within the Parkway Belt West Plan provided the uses are open to the general public, all the natural features are preserved to the maximum degree possible, buildings as structures have a very low lot coverage, are of limited height and low mass appearance and are located in a manner that will secure an open-space character of the area, and landscaping and berms are provided where necessary to secure the objectives of the Plan.

Alejandra Gonzalez gave uncontested expert land-use planning opinion on behalf of the MMAH. She stated that only the developable portion of the lands under the MZO would be removed until a comprehensive zoning analysis is undertaken, She stated that she was in agreement that the MZO should be revoked as it applies to that portion of the lands, and that local zoning be the only authority affecting those lands.

Counsel for the Ministry presented the Board with a Draft Minister's Zoning Order to amend O. Reg. 481/73 (Exhibit 13), appended to this decision as Attachment "1".

The Board Orders that the Minister's Zoning Order be amended as per Attachment "1".

For the reasons outlined in this Decision, the Board directs the following:

- That the appeal is allowed and Amendment No. 278 to the Official Plan of the Town of Oakville is approved.
- That the appeal is allowed and that By-law 1984-63 is hereby amended in the manner set in Attachment "2" to this decision.

The Orders related to the Official Plan and Zoning By-law are to be withheld pending the completion of a number of outstanding matters by July 30, 2010, as outlined in Attachment "3" to this Order, and the circulation of the Zoning By-law in its final form to the Town and Mr. Ramsay for comment.

So Orders the Board.

"S. J. Sutherland"

S. J. SUTHERLAND  
MEMBER

## **ATTACHMENT "1"**

### **ONTARIO REGULATION**

made under the

### **ONTARIO PLANNING AND DEVELOPMENT ACT, 1994**

Amending O. Reg. 481/73

(County of Halton (now part of the regional municipalities of Halton and Peel), Town of Oakville (now part of the towns of Halton Hills, Milton, Oakville and the City of Mississauga))

Note: Ontario Regulation 481/73 has previously been amended. Those amendments are listed in the Table of Unconsolidated and Unrevoked Regulations at [www.e-Laws.gov.on.ca](http://www.e-Laws.gov.on.ca).

**1. Subparagraph 1 viii of subsection 2 (2) of Ontario Regulation 481/73 is revoked and the following substituted:**

viii. The town plot of Bronte known as lots 29, 30 and 31 in Concession IV, south of Dundas Street, excepting:

1. Those lands being part of Lot 30, in Concession IV laid out as part of lots 56, 57, 58, 59 and 60 on Registered Plan M-10 registered in the Land Registry Office for the Land Titles Division of Halton (No. 20) and further described as Part 1 on Reference Plan 20R-18339, identified as part of Property Identified Number 24757-0364 (LT).

**2. This Regulation comes into force on [commencement date to be determined].**

Made by:



## ATTACHMENT "2"

Without Prejudice

EV 14  
PL090104

### THE CORPORATION OF THE TOWN OF OAKVILLE

#### BY-LAW NUMBER 2008-026

A by-law to amend the Town of Oakville's Comprehensive Zoning By-law 1984-63, as amended, to permit an assisted-living residence at 140, 144, 150, 154, 158 Bronte Road, Lots 56-60, M-10 (Amica (Oakville South Inc.) – Z.1730.34)

#### APPROVED BY THE ONTARIO MUNICIPAL BOARD:

1. Map 91(2) of By-law 1984-63, as amended, is further amended as shown on Schedule 'A' by rezoning the lands identified as:

Area "A" from R03 to H17-R9-SP812

Area "B" from C3R to H17-R9-SP812

2. By-law 1984-63, as amended, is further amended by adding to Section 89 a new Subsection (812) as follows:

“(812) **Amica (Oakville South Inc.)**

By-law 2008-026

140, 144, 150, 154, 158 Bronte Road, Lots 56, 57, 58, 59, 60, M-10

The lands subject to Special Provision 812 may be used for the uses permitted in the general provisions of By-law 1984-63, as amended, subject to the applicable regulations, except where in conflict with the following uses and regulations, in which case the following shall prevail:

1. Permitted Uses:

Shall only be used for an apartment house which includes special care and/or special need facilities and includes all of the following:

- a) dwelling units which include kitchen facilities,
- b) assisted-living units, each of which do not include kitchen facilities,

***Without Prejudice***

- c) amenity areas designed for the use of all occupants and which shall include a common central kitchen, common dining facilities, common indoor and outdoor amenity areas, support services, and facilities designed to accommodate individuals with specific needs, and may include accessory uses exclusive to occupant and staff use.

2. Regulations:

- i) Section 39 of Zoning By-law 1984-63, as amended, shall not apply to these lands.
- ii) Maximum total number of dwelling units and assisted-living units: 139
- iii) Maximum number of units by type: Dwelling units: 20  
Assisted-living units: 119
- iv) Building Setback:  
(minimum rear yard) 0 metres
- v) Building Setback:  
(minimum – north side yard) For that portion of the structure two storeys (9.2 m) or less: 2.1 metres  
  
For that portion of the structure with more than two storeys (9.2 m): 4.1 metres
- vi) Building Setback:  
(minimum – south side yard) 2.4 metres, exclusive of air ventilation shaft(s)
- vii) Building Setback:  
(minimum front yard) 2 metres
- viii) Below Grade Setback:  
(minimum all yards) 0 metres
- ix) Setback to a loading space / door:  
(minimum front yard) 3 metres
- x) Lot Coverage:  
(maximum) 65 %
- xi) Building Height:  
(maximum) (6 storeys) 23 metres, exclusive of parapets, mechanical penthouse, rooftop amenity space and stair tower.



***Without Prejudice***

- xii) Mechanical Penthouse: If more than 2 metres in height, must be a minimum setback of 4m from all edges of the roof.
- xiii) Floor Space Index: 3.40  
(maximum)
- xiv) Minimum number of parking spaces, inclusive of visitor parking spaces: 72, all of which must be located below grade
- xv) A minimum of 3.5 sq m per unit of “personal recreation space” shall be provided. Notwithstanding Part I, Section 2, “personal recreation space” does not have to have direct access from a dwelling unit and may be provided on a rooftop terrace or other common areas.
- xvi) A 1.8 metre high black vinyl chain link fence shall be installed along the rear property line.
- xvii) Notwithstanding 2.xi), a portion of the building may have a maximum building height of 31 metres (8 storeys), exclusive of parapets, mechanical penthouse, elevator tower, widow’s walk and stair tower provided that this portion of the building is not located within 30 metres of the north property line, and no habitable space is provided above 31 metres, subject to the owner of the said lands entering into one or more agreements with The Corporation of the Town of Oakville pursuant to Section 37 of the *Planning Act* to secure the transfer of part of the lands, known municipally as 140, 144, 150, 154, 158 Bronte Road, and which includes the 15 metre setback from the top of bank as well as the valleylands located below the stable top of bank, to the Town, free and clear of any encumbrances.

The agreement, or agreements, shall be registered against the title to the lands to which this By-law applies in the manner and to the extent specified in such agreements.

3. By-law 1984-63, as amended, is further amended by adding to Section 90B a new subsection H17 as follows:

**“H17 – Amica (Oakville South Inc. )**

<b>Zoning Designation(s)</b>	<b>Special Provision</b>	<b>Zoning Map</b>
H17-R9	812	91(2)

***Without Prejudice***

a) Permitted Uses (Prior to “H” removal)

For such time as the “H” symbol is in place, these lands shall only be used for existing uses, buildings and structures.

b) Regulations (Prior to “H” removal)

For such time as the “H” symbol is in place, these lands shall be subject to the regulations of the R03 zone.

c) Conditions for “H” Removal

The “H” symbol shall, upon application by the landowner, be removed by way of an amending zoning by-law, when the following conditions have been satisfied:

1. Halton Region’s Commissioner of Planning and Public Works, or his or her designate, is satisfied that:

- i) A Record of Site Condition (RSC), acknowledged by the Ministry of Environment (MOE), has been submitted to ensure that all environmental concerns have been satisfied;
- ii) an update to the Functional Servicing Report has been provided to the satisfaction of Halton Region's Development Project Manager; and
- iii) a Servicing Agreement has been entered into between the Owner and Halton Region which provides, *inter alia*, for the completion of the upgrades to the Marine Drive Sanitary Sewage Pumping station which are necessary to accommodate the station capacity requirements to service the development, and which provides for the sharing of costs for such upgrades on a basis which is satisfactory to the Region.

**APPROVED by the Ontario Municipal Board by Decision No. \_\_\_\_\_ issued \_\_\_\_\_, 20\_\_ in Case No. PL090104/PL090105.**

## ATTACHMENT "3"

PL090104  
PL090105  
MM080043

**Amica (Oakville South Inc.) appeal to the Ontario Municipal Board under subsection 22(7) and 34 (11) of the *Planning Act*, R.S.O. 1990, c. P.13**

**The Ministry of Municipal Affairs and Housing has request that the Ontario Municipal Board hear under subsection 47(10) of the *Planning Act*, R.S.O. 1990, c. P.13**

**Municipal Address:** 140, 144, 150, 154 and 158 Bronte Road Oakville, ON

**Town of Oakville Conditions:**

In the event the Board authorizes the requested Official Plan amendment and Zoning By-law amendment, the Town will request that the Board withhold its Order pending the completion of the following outstanding matters:

1. That the Applicant conveys to the Town the valleylands and the adjacent 15 metre setback from the stable top of bank as follows:
  - a. Free and clear of all encumbrances;
  - b. In a condition satisfactory to the Town to ensure that all environmental concerns have been satisfied, in the Town's sole discretion; and
  - c. Applicant to file a Record of Site Condition for the use of the conveyed lands for park purposes.
2. That the Applicant obtains a lot, in a location satisfactory to the Town, for the purposes of relocating the designated heritage house which is currently located on the subject lands and is municipally known as 144 Bronte Road.
3. That the Applicant provides to the Town a refurbishment plan for the relocated heritage house at its new location and such plan is approved by the Town.
4. That the Applicant provides to the Town a pictorial record and any details or historical information pertaining to 140, 144, 150, 154 and 158 Bronte Road.