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PL120037

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1340791 Ontario Ltd. 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 87-57 of the City of Hamilton to rezone lands respecting 121 Fiddlers Green Road from "ER-538", "ER-539", "ER-540" Residential Zones to a Modified Residential Multiple "RM5" Zone to permit two identical 3-story, multi-plex buildings
OMB File No.: PL120037

APPEARANCES:

Parties

Counsel

1340791 Ontario Ltd.

John Davies

City of Hamilton

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DECISION DELIVERED BY STEVEN STEFANKO AND ORDER OF THE BOARD

[1] 1340791 Ontario Ltd. ("Applicant") has appealed the decision of Hamilton City Council ("City Council") which denied its request to amend the Ancaster Zoning By-law to permit a 24 unit development at 121 Fiddlers Green Road in Ancaster ("Subject Property" or "Property").

The Proposal

[2] The Applicant wishes to construct, on lands being 29.88 metres ("m") wide by a depth of 101 m, two, two and one half storey multi-plex dwellings having 12 units each.

[3] Each of the proposed buildings would consist of four, one bedroom units on the ground level (first floor) and eight, two level one bedroom plus den units on the second floor and third level (half storey). The proposed buildings are oriented lengthwise on the Property and are separated from each other by a central courtyard area.

[4] The proposed front yard parking area for visitors has 15 parking spaces and there are 24 underground spaces proposed.

[5] The proposal requires the following changes to the existing by-law:

- (i) Height of 11.5 m whereas 10.5 m is the maximum;
- (ii) A minimum lot area of 0.3047 hectares ("ha") instead of 0.5 ha.
- (iii) A maximum density of 78.7 units per ha whereas the RM5 Zoning permits a maximum of 50 units per ha.
- (iv) A minimum lot frontage of 29.8 m rather than 45 m.
- (v) A minimum northerly side yard of 6.25 m from the building and 5.0 m from an enclosed stairwell or elevating device instead of 9 m, and to permit the southerly side yard to be 7.8 m and 6.6 m from an enclosed elevating device instead of 9 m.
- (vi) To permit balconies on the northerly side of the building to project 1.2 m into a side yard instead of 0.45 m and be 5.0 m from the side lot line and to permit balconies on the southerly side of the building to project 1.2 m instead on 0.45 m and be 6.6 m from the side lot line.
- (vii) To permit a minimum rear yard to be 7.0 m instead of 9.0 m.
- (viii) To permit the minimum planting strip to be 1.5 m along the front property line, 0.6 m along a portion of the northerly property line and 0.35 m along a portion of the southerly property line, instead of 3 m.
- (ix) To include a special zoning provision for 39 parking spaces when the parking requirements are 2.0 spaces per unit plus 0.6 spaces per unit for visitors.
- (x) To not require a children's play area, whereas a children's play area is required, based on 7 square m of play area per dwelling unit and to require a minimum outdoor amenity area of 60 square m as proposed.

- (xi) To permit the separation between the end walls of the two buildings to be 11.85 m instead of 15 m.

[6] The By-law which I am being asked to approve is set out in Tab 9 Exhibit 1 in this proceeding (“Designated ZBA”). The Applicant however, during the course of this proceeding advised that it was prepared to accept a modified version thereof (“Modified ZBA”) which was the result of discussions between the Applicant and Mr. Nick McDonald, a planner retained by the City of Hamilton (“City”) prior to the City retaining Allan Ramsay. In the Modified ZBA, total units were reduced from 24 to 22, there are 13 above grade parking spaces instead of 15, a planting strip is added, the height is 10.5 m and the side yard relief is 5.3 and 9.0 m respectively.

Positions of the Parties

[7] The Applicant argues that the proposal is in keeping with the character of the area, is consistent with the Provincial Policy Statement, 2005 (“PPS”), conforms with the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”), the Region of Hamilton-Wentworth Official Plan (“Regional OP”) and the Town of Ancaster (“Town”) Official Plan (“Town OP”) and therefore should be approved. Joe Lakatos of A.J. Lakatos Planning Consultant, Cam Thomas, a planner with the City and Nick McDonald of Meridian Planning Consultants provided expert testimony in support of the Applicant’s position.

[8] The City on the other hand, along with a number of nearby residents, argued that the proposed development is an over intensification of the site and incompatible with the area. In that regard, Mr. Ramsay provided expert land use planning evidence and Frank van Hullenaar, Theresa St. Michael and Pat Banyard testified as participants.

Issues

[9] In view of the language of s.1.1.3.2 and 1.1.3.3 of the PPS, 2.2.3.6 of the Growth Plan, 4.4.8 and 4.4.10 of the Town OP, B. 2.4, B.2.4.1.4, B. 2.4.2.2, E. 2.6.7, E. 3.2.4 and E. 3.3-3.5 of the Urban Hamilton Official Plan (“UHOP”) and 6.9.7.2 and 6.9.7.3 of the Ancaster-Wilson Street Secondary Plan (“AWSSP”), the fundamental issues to be decided in this matter are whether the intensification proposed for the Subject Property

is compatible with the character of the area and whether the contemplated development conforms with applicable official plan policies?

Analysis

[10] The starting point in my analysis is the six page document filed as Exhibit 19 (“Exhibit 19”) in this proceeding. Among other things it shows in detail, existing built form and building height, existing density, existing floor space index and angular plane considerations for the area and the site in question.

[11] Although, as evidenced by Exhibit 19, there is a two storey apartment development immediately to the north of the Property, a one to two storey townhouse development approximately one block south and two smaller commercial uses nearby, no fewer than 57 one to two storey homes surround the Subject Property. In my estimation, this Exhibit clearly and frankly, dramatically, reinforces the argument that the character of this area is single detached residential homes.

[12] Section 4.4.8 of the Ancaster OP requires that housing of the type proposed be part of the gradual transition from low to high density. Exhibit 19 shows that the density of 77.8 units per ha for the Property simply does not establish the gradual transition required by s. 4.4.8. Furthermore, I am of the view that the proposal does not conform with 4.4.8(i), 4.4.8(iii) and 4.4.10(i)(a) in that the development is in a central area of an existing single detached neighbourhood, it represents a concentration rather than dispersal of attached housing and it does not complement, because of the proposed building height, mass and setbacks, the established development pattern of the neighbourhood.

[13] Although the UHOP has been adopted by City Council, it has not yet become law because of outstanding appeals. However, the expert testimony in this case confirmed that I should give it considerable deference and weight because it represents the most recent iteration of planning policy for the City.

[14] Section B.2.4 of the UHOP directs that “...careful consideration must be given to design and compatibility with existing uses, neighbourhood character...” And s. B 2.4.1.4 establishes general criteria for evaluating intensification proposals such as “the relationship of the proposal to existing neighbourhood character”, “the compatible

integration of the development with the surrounding area in terms of use, scale, form and character” and the “ability of the development to comply with all applicable policies”. In my view, the number of relatively significant changes being made to the existing by-law, including an increase in density in excess of 40%, is further evidence that the proposal is in not keeping with the neighbourhood. Collectively, the changes sought contribute to an overbuilding on the site which is out of character with the prevailing built form in the area. In my estimation, the proposal falls far short of meeting the criteria prescribed in the UHOP.

[15] Another plan which was brought into evidence was the AWSSP which was adopted by City Council in June of this year. Although it too is under appeal, it does provide further policy direction for matters such as the one before me. Moreover, there was no evidence in this case that the Applicant has filed any appeal in relation to it.

[16] Under the AWSSP, the Subject Property is designated low density and development is permitted within a density range of 20-60 units per ha. The density of the proposal is much higher than even the most upper end of the density range permitted in the AWSSP.

[17] I also have concerns with reduced parking which is being sought. The rationale for the significant reduction to 39 spaces (37 in the Modified ZBA) is that the units proposed will be occupied, substantially or entirely, by elderly individuals. However, there is no guarantee that the elderly will occupy the units as suggested and furthermore, any attempt, to limit occupancy on the basis of age, is contrary to the provisions of the *Planning Act*.

[18] I would also add that my comments in this Analysis apply not only to the Designated By-law, but equally to the Modified By-law.

Disposition

[19] Based on all of the foregoing, the contemplated development is not, in my view, consistent with the PPS nor does it conform with the Growth Plan and applicable official plan policies. I agree with the decision Hamilton City Council has made in this matter. The proposal is not compatible with the character of the area and will result in over

intensification. Accordingly, it is ordered neither the Designated ZBA nor the Modified ZBA is approved. The appeal is therefore dismissed.

“Steven Stefanko”

STEVEN STEFANKO
Vice Chair