

ISSUE DATE:

November 22, 2013



PL121211

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Eco Building 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 to enact a proposed amendment to Zoning By-law 3581-86 of the City of Hamilton to rezone lands respecting 24 Brock Street North from "RM1-'H'" (Low to Medium Density Multiple Dwelling – Holding) Zone, modified, to the "RM3" (Medium to High Density Multiple Dwelling) Zone, modified, to permit the development of a 6 storey tiered residential building
OMB File No.: PL121211

APPEARANCES:

Parties

Counsel

Eco Building Inc. ("Applicant")

Stephen D'Agostino

Jane Lowry and William Hilson
("Objectors")

Michael Connell

City of Hamilton ("City")

Michael Kovacevic

**MEMORANDUM OF ORAL DECISION DELIVERED BY STEVEN STEFANKO
ON NOVEMBER 6, 2013 AND ORDER OF THE BOARD**

[1] At the commencement of this Prehearing, I was advised that an agreement had been reached as to the contents of the by-laws required to facilitate the construction of an apartment building at 24 Brock Street North.

[2] The agreement in question is reflected by Minutes of Settlement dated November 6, 2013 ("MOS") executed by the Applicant, the Objectors and certain other affected individuals who reside in the immediate area of the site. Although the City is not a signatory to the MOS, it does support the by-laws which have been agreed upon.

[3] One by-law ("Dundas By-law") amends Zoning By-law No. 3581-86 ("ZBL 3581") for the Town of Dundas ("Dundas"). The Dundas By-law is annexed hereto and marked as Attachment 1. Among other things, it sets out the performance standards for the

apartment building to be constructed. The other by-law ("City By-law") amends Zoning By-law No. 05-200 ("ZBL 05") for the City. It is annexed to this decision and marked as Attachment 2. Its purpose is to state that the permitted use for a portion of the subject property is Conservation.

[4] Stephen Fraser, a planner with A.J. Clarke & Associates Ltd., provided expert land use planning evidence in support of the agreement reached. He pointed out that the property was formerly used for industrial purposes but is currently vacant and is underutilized. In his opinion, the proposal represents the type of intensification contemplated by the Provincial Policy Statement, 2005 ("PPS") and the Growth Plan for the Greater Golden Horseshoe ("Growth Plan") and is within the policy provisions of the Dundas Official Plan ("OP"). According to Mr. Fraser, what is proposed is consistent with the PPS, conforms to the Growth Plan and the OP and represents good planning.

[5] Only one participant spoke in opposition to the agreement reached, that being John Parcher. Mr. Parcher resides a short distance away from the development at 238 Melville Street. In his view, there is not sufficient parking in the area to accommodate the proposal and he is concerned that additional traffic will be generated. Although I have no doubt that Mr. Parcher's views are sincerely held, they do not override the planning evidence of Mr. Fraser, the MOS and the position of the City in this matter.

[6] Based on all of the foregoing therefore, it is ordered that ZBL 3581 is amended in accordance with the Dundas By-law and that ZBL 05 is amended in accordance with the City By-law.

"Steven Stefanko"

STEVEN STEFANKO
VICE CHAIR

Attachment 1

Appendix "C"
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Authority: Item [redacted]
Planning Committee
Report: 13-[redacted]
CM: [redacted]

Bill No. [redacted]

CITY OF HAMILTON

BY-LAW NO. [redacted]

To Amend Zoning By-law No. 3581-86 (Dundas) as Amended
Respecting Lands Located at 24 Brock Street North

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap. 14, Sch. C. did incorporate, as of January 1, 2001, the municipality "City of Hamilton";

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as the "The Corporation of the Town of Dundas" and is the successor to the former Regional Municipality, namely, "The Regional Municipality of Hamilton-Wentworth";

AND WHEREAS the City of Hamilton Act, 1999 provides that the Zoning By-laws and Official Plans of the former area municipalities and the Official Plan of the former Regional Municipality continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS Zoning By-law No. 3581-86 (Dundas) was enacted on the 22nd day of May, 1986, and approved by the Ontario Municipal Board on the 10th day of May, 1988;

AND WHEREAS the Council of the City of Hamilton, in adopting Item [redacted] of Report 12-[redacted] of the Planning Committee, at its meeting held on the [redacted] day of [redacted], 2012, recommended that Zoning By-law No. 3581-86 (Dundas), be amended as hereinafter provided;

AND WHEREAS this By-law is in conformity with the Dundas Official Plan, in accordance with the provisions of the Planning Act.

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

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(Page 2 of 6)

1. That Schedule "B" (Colborne) of Zoning By-law No. 3581-86 (Dundas) is hereby further amended by deleting the lands, the extent and boundaries of which are shown as Block "1" on a plan hereto annexed as Schedule 'A'.
2. That Schedule "B" (Colborne) of Zoning By-law No. 3581-86 (Dundas) is hereby further amended by changing the zoning from the Low to Medium Density Multiple Dwelling (RM1-'H'/S-102)-Holding Zone to the Medium to High Density Multiple Dwelling (RM3-'H'/S-123) Holding Zone, Modified, on the lands the extent and boundaries of which are shown as Block "2" on a plan hereto annexed as Schedule 'A'.
3. That Section 32 - "EXCEPTIONS" of Zoning By-law No. 3581-86 (Dundas), as amended, is hereby further amended by adding the following Sub-section:

RM3-'H'/S-123 That Notwithstanding the provisions of Section 14: Medium to High Density Multiple Dwelling Zone (RM3), the following Special Provisions shall apply to lands known Municipally as No. 24 Brock Street North, shown as "RM3/'H'-S-123" on Schedule "A".

- (a) For the purpose, of this By-law, the following shall apply:
 - (i) The setbacks which apply to the apartment building shall also apply to the underground parking area.
 - (ii) Notwithstanding Sections 3.2.34 (Grade) and 3.2.38 (Height) within By-law No. 3581-86 (Dundas), for the purpose of this by-law the following shall apply: Building Height shall be determined by the mean elevation of all the existing ground adjoining the building or structure and within 4.5 metres of it."
- (b) Notwithstanding Section 14.2 Regulations for Apartment Buildings, the following special regulations shall apply:

14.2 REGULATIONS FOR APARTMENT BUILDINGS

14.2.2.1 FRONT YARD

Minimum: 1.6 metres

14.2.2.2 SIDE YARD (southerly)

Minimum: 5.1m

Notwithstanding Section 14.2.2.2, the setbacks from the northerly side yard shall not apply.

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14.2.2.3 REAR YARD (westerly, being 25.61 metres in length).

Minimum: 3.9 metres.

REAR YARD (westerly, being 32.34 metres in length).

Minimum: 5.3 metres.

14.2.3 HEIGHT

Maximum: 11.4 metres (excluding a mechanical penthouse, which shall be a maximum of 2.7m in height and maximum 30sq.m in area).

14.2.4 DENSITY

Maximum: 48 units.

14.2.7 LANDSCAPED AREA

Minimum: 30% of the site area which may include outdoor terraces used for amenity areas and green roof areas.

(b) Notwithstanding Section 6.6 Encroachment into Yards, the following shall apply:

6.6.1 BALCONIES

No projections shall be permitted into the northerly side yard located adjacent to the "P5" Zone.

(c) Notwithstanding Section 7.6, 7.13 Off-Street Parking and Loading, and Section 7.14 Dimensions for the Design of Parking Areas, the following shall apply:

7.6 LOADING SPACES

7.6.3 A loading space may be located a minimum distance of 5.5 metres from a public thoroughfare.

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7.12 OFF-STREET PARKING SPACE REQUIREMENTS

7.12.1.5	Apartment Buildings	1.5 spaces per dwelling unit, of which 0.25 spaces per dwelling unit shall be provided for Visitor Parking.
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7.13 OFF-STREET LOADING REQUIREMENTS

7.13.1 RESIDENTIAL USES

Minimum Width: 3.7m
Minimum Length: 9.0m
Minimum Height: 4.0m

7.14 DIMENSIONS FOR THE DESIGN OF PARKING AREAS

7.14.1 MINIMUM DIMENSIONS

Angle: 90 degrees
Width: 2.6m
Length: 5.5m

4. That an (H) Holding Symbol, pursuant to Section 36 of The Planning Act, R.S.O. 1990, c.P. 13 and Sub-section 4.9 of By-law No. 3581-86, is hereby applied to the RM3/S-123 Zone category as it applies to 24 Brock Street. Such Holding Symbol (H) shall continue to apply to the subject lands until removed by subsequent By-law Amendment. Council shall remove the (H) Holding Symbol by By-law Amendment upon the following requirement having been addressed:
 - (i) A Construction Management Plan has been approved, to the satisfaction of the Manager of Development Planning, in consultation with the Hamilton Conservation Authority.
 - (ii) The Senior Director of Growth Management confirms that he is satisfied there is sufficient and adequate water service and water pressure available, including sufficient and adequate water service and pressure for firefighting purposes, for any development at 24 Brock Street North, permitted by By-law 3581-86, as amended.
5. That By-law No. 3581-86 (Dundas) is amended by adding this By-law to Section 32 as Schedule S-123.
6. That Schedule "A" of the Zoning Schedule Key Map is amended by marking the lands referred to in Section 1 of this By-law as S-123.

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7. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

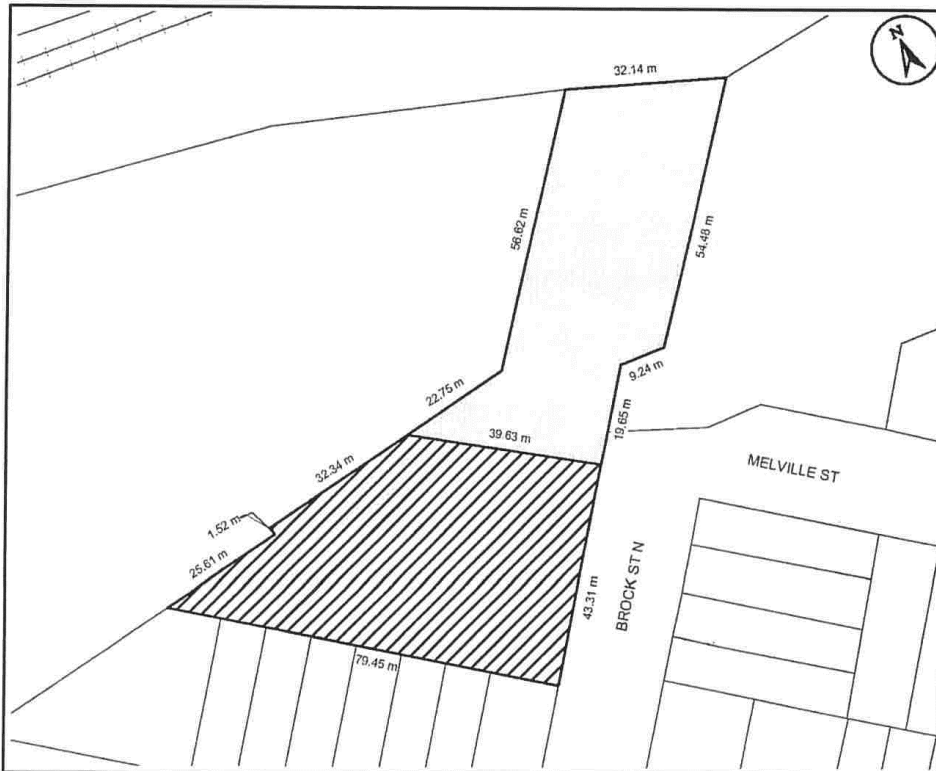
PASSED and ENACTED this [REDACTED] day of [REDACTED], 2013.




R. Bratina
Mayor

Rose Caterini
Clerk

ZAC-09-010

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This is Schedule "A" to By-law No. 13- Passed the day of, 2013		_____ Mayor _____ Clerk	
<p align="center">Schedule "A" Map 1 of 2 Map Forming Part of By-law No. 13-_____ to Amend By-law No. 3581-86</p>		<p>Subject Property 24 Brock Street North</p> <p> Block 1 - Lands to be Removed from By-law 3581-86</p> <p> Block 2 - Change in Zoning from the Low to Medium Density Multiple Dwelling "RM1-H/S-102" Zone to the Medium to High Density Multiple Dwelling "RM3-H/S-123" Holding Zone with a Special Exception.</p>	
Scale: N.T.S.	File Name/Number: ZAC-09-010		
Date: May 16, 2013	Planner/Technician: CT/NB		
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT			

Attachment 2

Appendix "F"
Draft Amended Zoning By-law 05-200
(Page 1 of 3)

Authority: Item [REDACTED]
Planning Committee
Report: 13-[REDACTED]
CM: [REDACTED]

Bill No. [REDACTED]

CITY OF HAMILTON

BY-LAW NO. [REDACTED]

To Amend Zoning By-law No. 05-200, as Amended,
Respecting Lands Located at 24 Brock Street North (Dundas)

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

AND WHEREAS the City of Hamilton is the lawful successor to the former Municipalities identified in Section 1.7 of By-law 05-200;

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

AND WHEREAS the Council of the City of Hamilton, in adopting Item [REDACTED] of Report 12-[REDACTED] of the Planning Committee, at its meeting held on the [REDACTED] day of [REDACTED], 2012, recommended that Zoning By-law 05-200 be amended as hereinafter provided;

AND WHEREAS the By-law is in conformity with the Official Plan of the City of Hamilton (Formerly the Official Plan of the Town of Dundas) in accordance with the provisions of the Planning Act.

Appendix "F"
Draft Amended Zoning By-law 05-200
(Page 2 of 3)

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

1. That Map No. 817 of Schedule "A" to Zoning By-law No. 05-200, is amended, by incorporating additional Conservation/Hazard Land (P5) Zone boundaries, in the form of a Site-Specific Conservation/Hazard Land (P5, 450) Zone for the lands, the extent and boundaries of which are shown on Schedule "A" annexed hereto and forming part of this By-law.
2. That Schedule "C" of By-law 05-200 is amended by adding an additional exception as follows:

"450. Notwithstanding Section 7.5.1 of this By-law, within the lands zoned Conservation/Hazard Land (P5) Zone, identified on Map No. 817 of Schedule "A" to By-law 05-200, and described as 24 Brock Street North, the following shall apply:
 - a) PERMITTED USES

Only the following use shall be permitted:
 - (i) Conservation
3. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.
4. That this By-law No. [REDACTED] shall come into force and be deemed to have come into force in accordance with Sub-section 34(21) of the Planning Act, either upon the date of passage of this By-law or as provided by the said Sub-section.

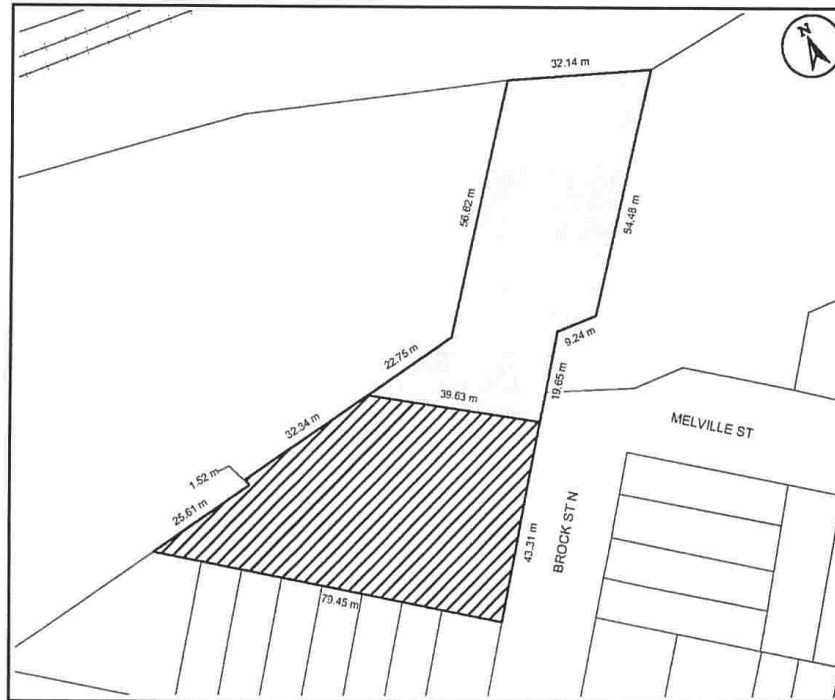
PASSED and ENACTED this [REDACTED] day of [REDACTED], 2013.




R. Bratina
Mayor

Rose Caterini
Clerk

ZAC-09-010

Appendix "F"
 Draft Amended Zoning By-law 05-200
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This is Schedule "A" to By-law No. 13- Passed the day of, 2013		_____ Mayor _____ Clerk
<p align="center">Schedule "A" Map 2 of 2 Map Forming Part of By-law No. 13-_____ to Amend By-law No. 05-200 Map 817</p>		<p>Subject Property 24 Brock Street North</p> <p>  Lands to be zoned Conservation/Hazard Land (P5,450) Zone  Refer to By-law 3581-86. </p>
Scale: N.T.S.	File Name/Number: ZAC-09-010	
Date: May 16, 2013	Planner/Technician: CT/NB	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		