

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 19, 2014

CASE NO(S): PL130456
PL140386

Monterey Heights Development Corporation 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 neglect to enact a proposed amendment to the Official Plan for the City of Hamilton to redesignate lands at 591-611 Garner Road West to facilitate the proposed development of residential apartment units and townhouse blocks within the High Density Residential land use designation
(Approval Authority File No. OPA-12-013)
OMB File No. PL130456

Monterey Heights Development Corporation 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 neglect to enact a proposed amendment to Zoning By-law 08-060 of the City of Hamilton to rezone lands respecting 591-611 Garner Road West from "H-RM6-570" and "C5-261" to "H-RM6-570" with further site specific modifications to facilitate the proposed development of residential apartment units and townhouse blocks
OMB File No. PL130457

Monterey Heights Development Corporation 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 neglect to enact a proposed amendment to the Urban Official Plan for the City of Hamilton to redesignate lands at 591-611 Garner Road West to facilitate the proposed development of residential apartment units and townhouse blocks within the High Density Residential land use designation
(Approval Authority File No. OPA-13-016)
OMB File No. PL140386

Heard: April 28 and June 17, 2014, in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

Monterey Heights Development
Corporation

S. Zakem

City of Hamilton

M. Minkowski
L. Magi

**MEMORANDUM OF ORAL DECISIONS DELIVERED BY SUSAN de AVELLAR
SCHILLER ON APRIL 28, 2014 AND JUNE 17, 2014 AND ORDER OF THE
BOARD**

INTRODUCTION

[1] Monterey Heights Development Corporation (“Monterey”) wishes to develop 591-611 Garner Road West (“subject lands”) in the City of Hamilton (“City”). The Monterey proposal is for low-rise apartments and block townhouse units.

[2] At the time of the application, the former Town of Ancaster Official Plan (“Ancaster OP”) was in full force and effect. Monterey applied for a site-specific Ancaster OP amendment (“Ancaster OPA”) and for an associated site-specific amendment to Zoning By-law No. 08-060 (“ZBLA”). Monterey has appealed both matters to this Board.

[3] In the interim between the time of the appeals reaching this Board and the first appearance in these matters, the Urban Hamilton Official Plan (“UHOP”) was brought into effect for these lands.

MOTION

[4] Monterey did not appeal the UHOP as it applied to the subject lands.

[5] At the first appearance, the parties advised the Board that they disagreed on whether Monterey would need to seek an amendment to the UHOP (“UHOPA”). The Board set a motion date to determine this question. The date was released when the Board was advised that, as a result of discussion between the parties, Monterey decided to apply for a UHOPA.

[6] The City made no decision on the UHOPA application and Monterey has appealed the UHOPA to this Board.

[7] At the time of the April, 2014 appearance, the only matter before the Board was the appeal regarding the proposed Ancaster OPA and the associated proposed ZBLA. The Monterey proposed UHOPA had been appealed but the appeal had not yet been forwarded by the City to the Board.

[8] The Board noted that although there had been very broad notice of the first appearance in the Ancaster OPA matter, no one appeared except Monterey and the City.

[9] Counsel for both parties agree, and advised the Board, that although the specific amendment to the UHOP may differ from the proposed Ancaster OPA since these are two separate official plans, both proposed planning instruments are to implement the same development proposal on the subject lands.

[10] The motion brought by Monterey at the April, 2014 appearance seeks a Board Order to consolidate these Ancaster OPA proceedings with the proposed UHOPA, and to waive notice of the UHOPA matter.

[11] The City does not oppose the motion provided that no hearing on the proposed UHOPA is conducted at this appearance since the appeal of the proposed UHOPA is not yet before the Board.

[12] Since the appeal of the proposed UHOPA was not yet before the Board, the Board deferred consideration of the requested consolidation until the time of the first appearance in the proposed UHOPA matter which was June 17, 2014.

[13] While the Board recognizes that no one appeared as a result of the very substantial notice given in this Ancaster OPA matter, the proposed UHOPA is a different matter that is coming to the Board almost a year later. The Board did not waive notice in the UHOPA matter.

[14] No additional interest appeared at the June 17, 2014 appearance.

[15] The Board consolidated the two cases.

ANALYSIS AND FINDINGS

[16] No one appeared in opposition to the proposed Ancaster OPA, the associated proposed ZBLA, or the proposed UHOPA.

[17] The Board was advised that the parties had reached agreement on all matters with the exception of one issue relating to access and safe turning movements into and out of the subject lands. Following a recess for further discussion between the parties and their respective experts, the Board was advised that the parties had also reached a resolution of this issue.

Access and Safe Turning Movements

[18] The Monterey proposal is for low-rise apartments and block townhouse units on the north side of Garner Road West. The intersection of Garner Road West and Shaver road is known locally as Duff's Corners. The subject lands are slightly east of the intersection.

[19] East of Shaver Road, Garner Road West is a somewhat more rural road that is in transition. Between Shaver Road and Fiddlers Green Road to the east, rural uses predominate on the south side of Garner Road West while the north side has extensive subdivision development.

[20] East of the proposed access points to the subject lands, Garner Road West has a vertical curve that may impair sight lines of westbound traffic as it approaches the access points and must deal with turning movements into and out of the subject lands.

[21] The Board heard from Philip Grubb, an engineer qualified to give the Board independent expert opinion evidence in traffic and transportation matters.

[22] Mr. Grubb reviewed applicable sight line and road speed safety standards and was clear in his evidence that the re-marking of centre road turning lanes and the addition and design of slip lanes at the access points would ensure appropriate and safe conditions for

through traffic and for turning movements.

[23] The detailed design of the centre road turning lanes and the slip lanes are left to the site plan stage.

Provincial Policy Statement

[24] The Board also heard from James Webb, a full Member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario whom the Board qualified to provide independent expert opinion evidence in land use planning matters.

[25] Mr. Webb reviewed the history of approvals for the site and the applicable planning instruments.

[26] An earlier Ancaster OPA and associated ZBLA were approved in 2008 for 591 Garner Road West. This associated ZBLA is Zoning By-law No. 08-060, which amended Zoning By-law No. 87-57 of the former Town of Ancaster now the City of Hamilton.

[27] The principal difference between that approval and the matters now before the Board is that 611 Garner Road West has been added to expand the development site and block townhouses have been included. The proposed development is for 85 units per hectare ("u/h") with height limits of 4.5 storeys for the low-rise apartments and 3.5 storeys for the block townhouse units.

[28] The subject lands are within a designated urban area and will be on full municipal services. The housing mix contributes to a range of housing alternatives.

[29] The Grand River Conservation Authority has confirmed that there are no natural heritage features on the subject lands.

[30] The previous use of the subject lands was a trucking business. A Record of Site Condition has been filed and accepted by the Ministry of Environment. There are no contaminated lands on the site.

[31] The Board finds that the proposed Ancaster OPA, the proposed UHOPA and the associated ZBLA are consistent with the Provincial Policy Statement.

Growth Plan for the Greater Golden Horseshoe

[32] The subject lands are outside the built boundary but within the settlement area. Specifically, they are within the designated urban area of the former Town of Ancaster.

[33] The proposed low-rise apartments and block townhouses are a compact form of urban development that are intended to be transit supportive and contribute to a complete community.

[34] The Board finds that the proposed Ancaster OPA, the proposed UHOPA and the associated ZBLA conform to the Growth Plan for the Greater Golden Horseshoe.

[35] The Board allows the appeal of the proposed Ancaster OPA and modifies the Ancaster OP in accordance with Exhibit 8 as filed in these proceedings.

[36] The proposed UHOPA places all the lands within a special policy area. The proposed ZBLA includes holding provisions to govern development.

[37] The Board notes that the City appears in support of these instruments.

[38] The appeal regarding the proposed UHOPA is allowed and the UHOP is modified by Exhibit 11 as filed in these proceedings and as shown on Attachment 1 to this decision.

[39] The appeal regarding the proposed ZBLA is allowed and Zoning By-law No. 87-57 (Ancaster) is amended as shown in Exhibit 9 as filed in these proceedings and as found at Attachment 2 to this decision.

ORDER

[40] The Board orders that:

1. The appeal by Monterey Heights Development Corporation regarding the

proposed Official Plan Amendment of the former Town of Ancaster Official Plan is allowed and the former Town of Ancaster Official Plan is modified in accordance with Exhibit 8 as filed in these proceedings.

2. The appeal by Monterey Heights Development Corporation regarding the proposed Official Plan Amendment to the City of Hamilton Urban Hamilton Official Plan is allowed and the City of Hamilton Urban Hamilton Official Plan is modified by Exhibit 11 as filed in these proceedings and as shown on Attachment 1 to this decision.
3. The appeal by Monterey Heights Development Corporation regarding the proposed Zoning By-law Amendment is allowed and Zoning By-law No. 87-57 (Ancaster) is amended as shown in Exhibit 9 as filed in these proceedings and as found at Attachment 2 to this decision.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE CHAIR

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

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Attachment 1
Urban Hamilton Official Plan
Amendment No. 22

The following text, constitutes Official Plan Amendment No. 22 to the Urban Hamilton Official Plan.

1.0 Purpose and Effect:

The purpose and effect of this Amendment is to amend Map B.2.2.1 of the Shaver Neighbourhood Secondary Plan of the Hamilton Urban Official Plan by redesignating the property located at 611 Garner Road West to High Density Residential 1; and, identifying the lands located at 591 and 611 Garner Road West as Site Specific Policy Area C; and, to establish the text of a Site Specific Policy to implement the proposed comprehensive redevelopment of the lands for an apartment building and block townhouses within an appropriate density range and building height.

2.0 Location:

The lands affected by this Amendment are 591 and 611 Garner Road West, fronting on the north side of Garner Road West, in the former Town of Ancaster.

3.0 Basis

- The basis for permitting this Amendment is as follows. The Amendment:
 - Is consistent with the Provincial Policy Statement, and conforms to the Growth Plan for the Greater Golden Horseshoe;
 - Conforms to the Policies for the "Neighbourhoods" designation of the UHOP;
 - The redesignation of the property at 611 Garner Road West to High Density Residential 1 will establish a similar designation as currently applies to the parcel at 591 Garner Road West. The assembled development parcel shall be redeveloped as a consolidated development with a mix of multiple dwelling types at a density range that is generally consistent with the Policies for the High Density Residential 1 designation.
 - The proposed form of development is compatible with the adjoining lands uses.

4.0 Changes:

4.1 Mapping Changes

Volume 2 – Rural Settlement Area Plans and Secondary Plans

4.1.1 Map B.2.2-1 – Shaver Neighbourhood Secondary Plan – Land Use Plan is amended by re-designating lands located at 611 Garner Road West from “Medium Density Residential 2a” to “High Density Residential 1” and identifying the lands located at 591 and 611 Garner Road West as Site Specific Policy Area C, as shown on Appendix “A”, attached.

4.2 TEXT CHANGES

4.2.1 Volume 2, Chapter B – Ancaster Secondary Plans, Section 2.2 - Shaver Neighbourhood Secondary Plan is amended by adding the new Site Specific Policy - Area C to read as follows:

“2.2.5.3 Notwithstanding Policy B.2.2.1.5, for the lands located at 591 and 611 Garner Road West and identified on Map B.2.2.1 - Shaver Neighbourhood Secondary Plan as Site Specific Policy Area C, the following policies shall apply:

- a) The residential density shall not exceed 85 dwelling units per gross/net residential hectare for development consisting of low rise apartments and block townhouses and 110 units per hectare for development consisting of apartments only;
- b) The permitted housing forms shall consist of low rise apartment buildings and block townhouses;
- c) The height of a low rise apartment building shall have no more than 4.5 storeys entirely above grade and the height of a block townhouse dwelling and shall have no more than 3.5 storeys entirely above grade.”

5.0 Implementation:

An implementing Zoning By-Law Amendment and Site Plan Control will give effect to this amendment.

ATTACHMENT 2

Draft Amending Zoning By-law for Monterey Heights
591 and 611 Garner Road West
(Page 1 of 6)

Authority:

Bill No. [REDACTED]

CITY OF HAMILTON

BY-LAW NO. [REDACTED]

**To Amend Zoning By-law No. 87-57 (Ancaster),
respecting lands located at 591 and 611 Garner
Road West, in the former Town of Ancaster, now
in the City of Hamilton**

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap.14, Sch. C. did incorporate, as of January 1st, 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 Corporation of the Township of Ancaster" and is the successor of 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 or the City of Hamilton;

AND WHEREAS Zoning By-law No. 87-57 (Ancaster) was enacted on the 22nd day of, June 1987, and approved by the Ontario Municipal Board on the 23rd day of January, 1989;

AND WHEREAS this By-law will be in conformity with the former Town of Ancaster Official Plan in accordance with the provisions of the Planning Act subject to the approval of Official Plan Amendment No. 145.

AND WHEREAS this By-law will be in conformity with the Urban Hamilton Official Plan in accordance with the provisions of the Planning Act subject to the approval of Official Plan Amendment No. ____ .

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

1. That Map 1 to Schedule "B", appended to and forming part of By-law No. 87-57 (Ancaster), as amended, is hereby amended:
 - (a) by changing the zoning on the lands shown as Block 1 from the Residential Multiple "H-RM6-570" Zone, Modified, Holding to the Residential Multiple "H-RM6-659" Zone, Modified, Holding with Special Exceptions; and,
 - (b) by changing the zoning on the lands shown as Block 2 from the Rural Commercial "C5-261, Zone, Modified, to the Residential Multiple "H-RM6-659" Zone, Modified, Holding with Special Exceptions;

on the lands the extent and boundaries of which are shown on Schedule "A", annexed hereto and forming part of this By-law.

2. That Section 34, Exceptions of Zoning By-law No. 87-57 (Ancaster), as amended, is hereby further amended by adding the following Sub-section:

"H-RM6-659"

The following special provisions shall apply to the lands zoned "H-RM6-659":

Permitted Uses

Apartment buildings and uses, buildings and structures accessory thereto

Block Townhouses

General Zone Provisions

For the purposes of this by-law, the rear lot line shall be deemed to be only northerly property line having a length of 103 m. All other lot lines with the exception of the lot lines which are along Garner Road West shall be deemed to be side lot lines.

The following provisions shall apply to the development of lands on property zoned H-RM6-659 Zone:

General Zoning Provisions:

- | | | |
|-----|---|--|
| (a) | Minimum Lot Area: | 1.8 ha. |
| (b) | Maximum Lot Area | 1.9 ha. |
| (c) | Maximum Density: | 85 units per hectare. |
| (d) | Minimum Landscaping | 32% (including an amenity area having a minimum area of 350 square metres) |
| (e) | Minimum Width of an internal (private road) | 6.0 m |
| (f) | Minimum Parking Space Dimensions | 2.6 m X 5.5 m. |
| (g) | Maximum Building Coverage | 35% |
| (h) | Minimum Planting Strip Abutting an At-Grade Parking Area: | A minimum 1.0 m planting strip and fencing shall be provided along the northerly property line for visitors parking. |
| (i) | Off-Street Parking | In accordance with the regulations contained below. |
| (j) | All other zone provisions of Section 7 shall apply. | |

Regulations for Apartment Buildings

The following special zoning provisions shall apply for the development of an apartment building on the property:

- | | | |
|-----|---|--|
| (a) | Minimum Side Yard: | 4.5 m from building and 0m from an underground parking ramp or retaining wall. |
| (b) | Yard Encroachments for Balconies into Side Yards: | Balconies or open stairways may project into the easterly rear yard not more than 2.0 m. |

- (c) Minimum Rear Yard: 11.0 m from the rear property line.
- (d) Maximum Building Height: 17 m and 4.5 storeys.
- (e) Minimum Parking: 1.45 spaces per dwelling unit including 0.25 spaces per unit for visitors.
- (f) Children's Play Area: Does not apply.
- (g) Building Separation: An apartment building shall not be closer than 9.0 m to a townhouse dwelling unit on the same lot.

Regulations for Block Townhouses

The following special zoning provisions shall apply for the development of block townhouses on the property:

- (a) Minimum Front Yard: 2.5 m from road, and Schedule "C" setback requirements shall not apply.
- (b) Minimum Rear Yard: 7.0 m.
- (c) Minimum Side Yard: 2.5 m where a side elevation abuts a side lot line and 7.0 m where a rear elevation abuts a side lot line.
- (d) Maximum Building Height: 14m and 3.5 storeys
- (e) Minimum Planting Strip: Where a block townhouse is situated along a property line, a minimum 1.0m planting strip and fencing shall be provided.
- (f) Minimum Privacy Area: Each unit shall have a private amenity area.
- (g) Unit Placement: No more than 9 dwelling units shall be attached in a continuous row.
- (h) Minimum Parking: 2 spaces per dwelling unit which shall include the driveway and within an

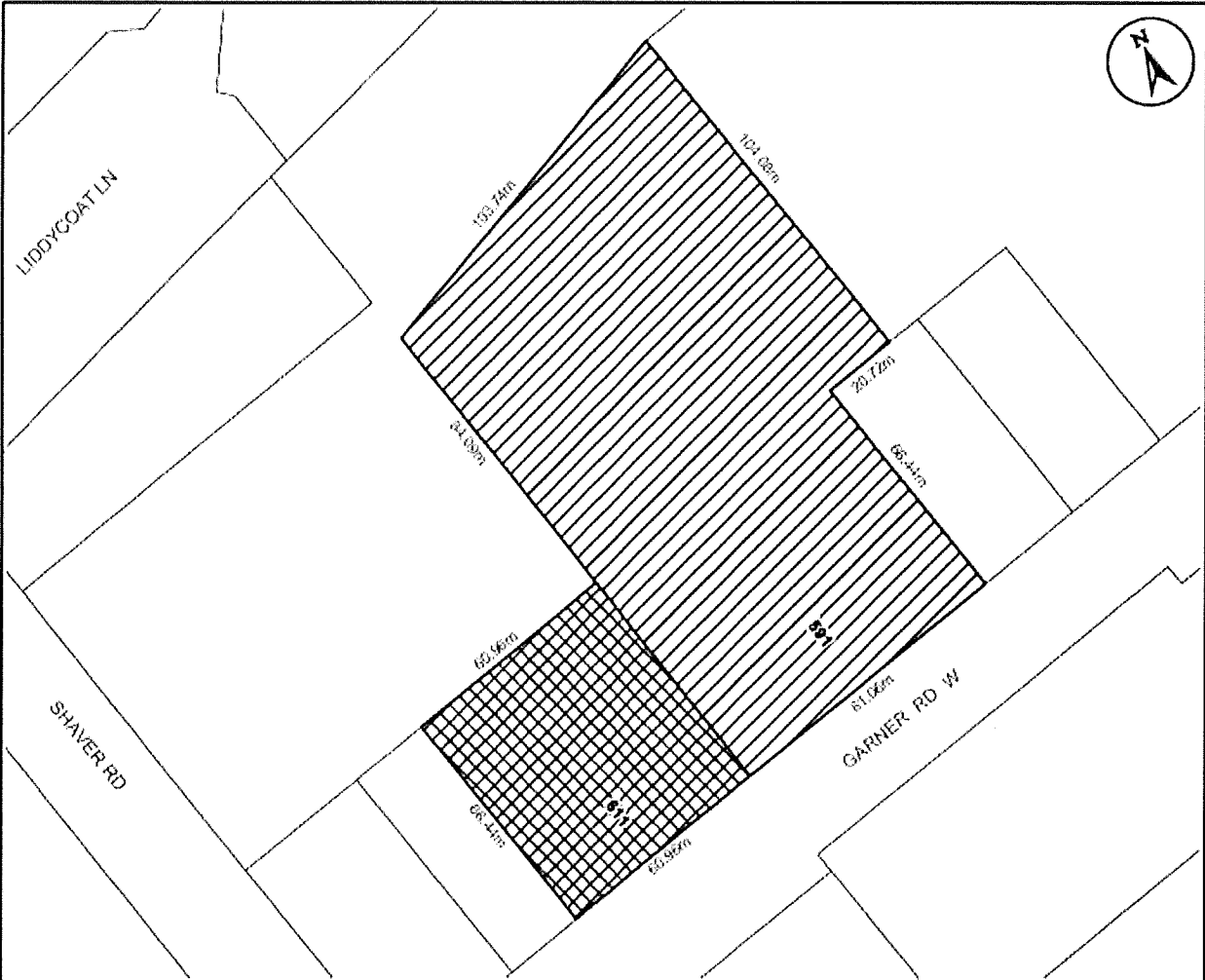
- attached garage, plus 0.25 spaces per unit for visitors.
- (i) Children's Play Area or Communal Open Space: Refer to Provision (d) of General Zoning Provisions.
- (j) Building Separation A townhouse building on the same lot in accordance with the following distance requirements:
- i) Façade to End Wall – 14m
 - ii) End Wall to End Wall – 2.4m
 - iii) Rear Wall to Rear Wall – 12m
- (k) Setback Below Grade Parking Structure 0m from a side yard and rear yard

Holding Provisions

The Holding provisions shall remain in effect until the completion of the following

:

- a) A stage 2 archaeological assessment shall be submitted and approved to the satisfaction of the Ministry of Culture and Director of Planning, City of Hamilton;
 - b) A Development Agreement shall be entered into with the City for the extension of the sanitary sewer at the intersection of Shaver Road and Garner Road West to the satisfaction of the Senior Director, Growth Management;;
 - c) The owner shall provide payment for the owner's fair share for the existing sanitary sewer constructed within the intersection of Garner Road West and Shaver Road based on as-constructed costs to the satisfaction of the Senior Director, Growth Management; and,
 - d) A Development Agreement shall be entered into with the City to allow for the temporary connection and provide for future re-routing of the sanitary sewer to the satisfaction of the Senior Director, Growth Management.
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.



This is Schedule "A" to By-Law No. 14- Passed the day of, 2014	_____ Mayor _____ Clerk
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<h2 style="margin: 0;">Schedule "A"</h2> <p style="margin: 10px 0 0 0;">Map Forming Part of By-Law No. 14-_____</p> <p style="margin: 10px 0 0 0;">to Amend By-law No. 87-57</p>		<p>Subject Property 591 & 611 Garner Road West</p> <p> Block 1 - Change in Zoning from the Residential Multiple "H-RM6-570" Zone, Modified Holding to the Residential Multiple "H-RM6-659" Zone, Modified Holding</p> <p> Block 2 - Change in Zoning from the Rural Commercial "C5-261" Zone, Modified to the Residential Multiple "H-RM6-659" Zone, Modified Holding</p>				
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PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT						