

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



**ISSUE DATE:** May 30, 2014

**CASE NO(S):** PL131073

Appellant: Harold Wallace  
Appellant: Penelope Wallace  
Legislative Authority: Subsection 34(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended  
Subject: By-law No. 2013-155  
Municipality: City of North Bay  
OMB Case No.: PL131073  
OMB File No.: PL131073

Appellant: Harold Wallace  
Appellant: Penelope Wallace  
Subject: Proposed Plan of Subdivision  
Legislative Authority: Subsection 51(39) of the Planning Act, R.S.O. 1990, c. P.13, as amended  
Property Address/Description: 750 Scollard Street  
Municipality: City of North Bay  
Municipal File No.: 48CDM-13102  
OMB Case No.: PL131073  
OMB File No.: PL131075

Appellant: Harold Wallace  
Appellant: Penelope Wallace  
Subject: Proposed Plan of Subdivision  
Legislative Authority: Subsection 51(39) of the Planning Act, R.S.O. 1990, c. P.13, as amended  
Property Address/Description: 750 Scollard Street  
Municipality: City of North Bay  
Municipal File No.: 48T-13101  
OMB Case No.: PL131073  
OMB File No.: PL131074

**APPEARANCES:**

**Parties**

**Counsel**

City of North Bay (the "City")

P. Leckie

1866409 Ontario Limited (the  
"Proponent")

M. Bull

Harold Wallace  
Penelope Wallace

### **HEARING EVENT INFORMATION:**

Hearing: Held in North Bay, Ontario on April 30, May 1,  
May 2, 2014

### **DECISION OF THE BOARD DELIVERED BY BLAIR. S. TAYLOR AND ORDER OF THE BOARD**

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### **INTRODUCTION**

[1] Harold Wallace and Penelope Wallace (the "Appellants") appealed the decisions of the Council of North Bay to approve a redevelopment application to rezone, approve a draft plan of subdivision and a draft plan of condominium for the property known municipally as 750 Scollard Street (the "Subject Lands") in the City of North Bay to the Ontario Municipal Board (the "Board"). The Board heard the appeals over the course of three days in North Bay.

### **DECISION**

[2] For the reasons set out below, the Board will allow all the appeals in part and approve the Zoning By-law with a direction for amendment, and approve the draft plan of subdivision and the draft plan of condominium with revised conditions of approval.

### **BACKGROUND AND CONTEXT**

[3] The Subject Lands are located at 750 Scollard Street and formerly housed the North Bay General Hospital. The North Bay General Hospital was closed on January 30, 2011. Before it closed it was five/six stories high, had a staff of about 550, had

about 124 hospital beds, and had a Gross Floor Area of 172,620 sq. ft. or 16,000 sq m. It has now been demolished. Thus the Subject Lands are currently vacant.

[4] The Subject Lands comprise almost one entire city block: the full length of Scollard Street to the south, the full length of Browning Street to the east, about one half of Vimy Street to the north, and about four fifths of Beattie Street to the west. (The ambulance station continues to occupy the northwest notch portion of the former hospital "block").

[5] The Subject Lands are about 2.1 ha in area, with 83.3 m of frontage onto Vimy Street.

[6] The Subject Lands are designated "Residential" in the City's Official Plan and zoned "Institutional". The as-of-right zoning would allow *inter alia* boarding lodging or rooming houses, elementary and secondary schools, nursing homes, places of worship, prisons, solar farms, and welfare institutions.

[7] The Subject Lands are located in an older portion of the City of North Bay. The Subject Lands comprise about 59 lots on Plan 78, a 1907 plan, having lots with 30 ft of frontage and a depth of 100 ft : (about 9.3 m by 30.48 m). The immediate area is laid out on a grid pattern. The existing development is predominantly single detached units that have lot frontages that range from 9.3 m to over 42 m at one corner lot.

[8] The Subject Lands are on full municipal services including storm water.

[9] Local streets in the City of North Bay are not required to have municipal sidewalks. Hence the streets abutting the Subject Lands have no sidewalks, and no curb and gutter.

[10] The Appellants have resided for over 40 years at 640 Lavery Street which is about mid-block, having a lot frontage of 18.39 m.

## **DEVELOPMENT PROPOSAL**

[11] The Proponent seeks the residential redevelopment of the Subject Lands. The development concept was to have eleven single detached lots fronting onto Scollard Street to the south, eight semi-detached lots fronting onto Vimy Street to the north, seventeen standard townhouse condominium units fronting onto the south side of the new extension of Lavery Street (south side), and twelve vacant land condominium units fronting onto the north side of Lavery Street.

[12] The single detached lots had frontages of 17.0 m at the corners, and 13.81 m for the interior lots, all with a depth of 35 m. The semi-detached lots have a minimum of 10.0 m of frontage and a depth of just over 35 m. The interior vacant land condominium units have a lot frontage of about 12.97 m. and the corner units have over 14 m of frontage, all with a depth of about 30 m. The standard townhouse units have frontage of 8.53 m.

[13] The zoning to implement the proposed residential development was R3 for the single detached and the vacant land condominium units, R5 for semi-detached lots, and RM2 for the townhouse units.

[14] During the course of the processing of the development application, no adverse comments or objections were received from any of the circulated agencies.

## **THE HEARING**

[15] During the course of the three day hearing, the Board heard from the two Appellants, and two neighbours in opposition to what was proposed. The Board also heard from the City's Manager of Planning Services, the City's Managing Director of Engineering, Environmental Services & Works, an Ontario Land Surveyor and a

professional land use planner on behalf of the Proponent.

## **THE ISSUES**

[16] The Appellants raised a number of issues and sub-issues, which the Board will deal with in the following order: the Provincial Policy Statement (“PPS”), the City Official Plan, the City Zoning By-law, prematurity due to the lack of availability of schools, of parks, and of municipal services, traffic generation, and good planning and the existing character of the area. In the Appellants’ view, the Board should amend the Zoning By-law to require an R-1 zoning to match the existing zoning in the area, and that any development is premature until all school, parking and storm water issues have been dealt with.

## **PROVINCIAL POLICY STATEMENT (the “PPS”)**

[17] The Board finds that the Subject Lands comprise an ideal location for intensification that is consistent with the PPS. The Subject Lands are located in the built up area of the City, have all hard and soft municipal services and infrastructure available to it including transit, parks, and schools, and comprise a brownfield based on the evidence of both land use planners. The Board finds that the PPS encourages intensification on brownfield sites (s. 1.1.3.3). The Board finds that the PPS promotes the accommodation of an appropriate range and mix of residential uses (s. 1.1.1(b) and cost effective development patterns and standards (s. 1.1.1 (e)). As residential development is proposed (i.e. a sensitive land use) the Board finds that a Record of Site Condition is an appropriate condition of approval for a brownfield prior to the development. Thus the Board amends the requested conditions of approval in Exhibit 22B to add as a condition that a Record of Site Condition be secured for the plans of subdivision and condominium.

[18] The Appellants stress that there are existing storm water issues (PPS s. 1.6.6.7) and presented photos showing street flooding due to inefficient storm water control.

The Appellants submit that a complete application by the Proponent would have included a storm water management plan as required by s. 5.2.3.5 of the Official Plan. The evidence of the City Engineer is that the City has already a storm water management plan and that a site specific report was not necessary. Additionally, he testified that with conditions of approval attached to both the draft plan of subdivision and the draft plan of condominium, the existing storm water management will be improved in the area through new larger storm water mains, and the construction of curb and gutter on Scollard Street.

[19] The Board finds that the development applications all are consistent with the PPS.

### **Official Plan**

[20] The Appellants submit that the proposed development constitutes intensification and that the City's Official Plan in Schedule 11 identifies official plan location for the residential intensification area, and that the Subject Lands do not fall within the lands so designated on that Schedule.

[21] The Board finds that the lands shown on Schedule 11 are designated pursuant to s. 5.1.14 of the Official Plan. That section deals with the conversion and renovation of older dwellings to enable multiple dwellings units for the rental market. Thus Schedule 11 does not apply to this development application.

[22] The Board finds that s. 2.1.1 encourages infill and intensification in the Central Business District ("CBD") and the surrounding neighbourhoods. The Subject Lands are found within a surrounding CBD neighbourhood. Moreover 2.1.1 continues and provides that infilling and intensification will also be promoted in other areas of the City where there is appropriate infrastructure and new development will be compatible with the surrounding land uses. As set out below the Board finds that the new development is compatible with the surrounding land uses.

## ZONING BY-LAW

[23] The Appellants submit that there were no exceptions sought with regard to the proposed zoning, that the standard zoning regulations apply, and that the Proponent cannot comply with those zoning standards. In support of that submission, the Appellants cite the Zoning By-law requirement for the provision of day light corners. The Appellants claim that the draft plans do not show any day light corners contrary to the Zoning By-law and that if one were to add the day light corners, it would significantly affect the lot sizes, the provision of on-site parking etc.

[24] The Appellants submit that the day light corners are to be 9 m and measured from the corner intersection (at the property lines) see Exhibit 7 page 61. However the zoning provision actually reads that such day light corners are to be measured...”along the edge of pavement” and thus not at the property lines.

[25] The Board also notes Exhibit 18 prepared by an Ontario Land Surveyor showing a portion of the proposed draft plan of subdivision with the day light corner provided, having no impact on the proposed lots.

[26] The Appellants argue that the proposed town houses units with 8.53 m of frontage do not meet the minimum lot frontage requirements of the Zoning By-law of 9.0 m, and the depicted town house units exceed the 40% lot coverage.

[27] The City’s Zoning By-law does not have any individual lot frontage requirement for a town house. The City planner explained that the Zoning By-law needs to be updated as at the present time, it only deals with groupings of townhouses having frontage of at least 30 m. Thus the 8.53 m of frontage for each townhouse unit was acceptable to the City. With regard to the issue of lot coverage, as no site specific exemption had been sought, the development proposal would have to comply with the

40% lot coverage, failing which a building permit would not be issued.

[28] With regard to the parking regulations found in the Zoning By-law, the Appellants submitted that each townhouse unit was required to provide one and one half parking spaces and 20% of the required parking spaces on site was to be designated exclusively for visitor parking.

[29] The Appellants testified that there was no proposed lot or location for visitor parking and that the development proposal purported to satisfy the Zoning By-law requirement by having two parking spaces per unit: one in the garage and one on the driveway.

[30] While they note that such a proposal would comply with s. 5.1.5.1 (which requires in any residential zone parking spaces shall be provided in an attached or detached garage and in the case of a front yard in an area that does not occupy more than 50% of the lot area of the front yard), such provision of two car parking spaces would not meet s. 3.26.1 which requires each parking space to have access to a street or public land unobstructed by any other parking space.

[31] The City's Manager of Planning and the planner for the Proponent testified that s. 3.26.1 is not intended to apply to a detached, semi-detached or town house. Rather that section is intended to apply to a multiple occupancy situation and to prevent tandem parking.

[32] The Board finds that the City's Zoning By-law is in need of updating. It would appear to the Board that the actual wording of s. 3.26.1 is in conflict with s. 5.1.5.1. However the Board is satisfied that the proposed parking is adequate for the development, but will in an abundance of caution direct the City to amend the proposed by-law to add an exemption on parking with regard to s. 3.26.1



**PREMATURITY**

[33] The Appellants submit that it was premature of the City to approve the Zoning By-law and grant draft plan and draft condominium approval to the proposed development in light of the purported lack of availability of schools, parks, and municipal services.

[34] The Board would observe that these are appeals to the Board and the onus is on the Appellants to satisfy the Board on the balance of probabilities that there are not sufficient schools, parks, or municipal services.

[35] The Board notes that there were no objections from any of the circulated agencies with regard to the development proposal, and that the Appellants called no professional witnesses.

[36] With regard to the availability of schools, the Appellants testified that there was no response from any of the school boards on this development application and it was and is premature for the development proposal to proceed.

[37] The City's Manager of Planning testified that the normal practice of the school boards is to comment on the development proposals that are of concern and not to respond to the ones that are not.

[38] The Board notes that this is a proposal for 48 units within the built up area of the City. The Board accepts the evidence of the City planner that the school boards were notified and did not raise any objection or concern to the proposed development

[39] The Board also observes that it was open to the Appellants to contact the school boards directly and obtain data in support of their case and perhaps request a subpoena for the attendance of an appropriate witness. None of that was done in this

case.

[40] With regard to the availability of parks, the agency circulation resulted in a comment from the Parks Department requesting cash in lieu of parkland. At the hearing the City's Manager of Planning testified as to the location and proximity of Bourke Playground to the Subject Lands. Bourke Playground is located just west of the Subject Lands and is classified as a Neighbourhood Park. It is 0.63 ha in size and has a large playground structure, an area for an outdoor hockey rink, and area for an outdoor skating rink, and visitor parking.

[41] The Appellants testified that their Neighbourhood is identified as being underserved with regard to park space, and that the City should have taken parkland and not cash in lieu of parkland.

[42] The Board has reviewed Appendix B3 to the City's Official Plan. That Appendix is entitled the Pinewood Park Plan and it identifies the Subject Lands as being located in the easterly portion of the neighbourhood within which there are a number of park, school facilities and open spaces in proximity to the Subject Lands. Appendix B3 also show the planning for a Future Neighbourhood Park of about 2 ha in the westerly portion of the neighbourhood. The Board is satisfied with the availability of parkland for the Subject Lands.

[43] With regard to the availability of municipal services, the Appellants have stressed that the Official Plan in s. 5.2.3.5 makes it mandatory that all proposed plans of subdivision and condominium shall provide a storm water management plan for review and approval by the City as a condition of development approval. Such a storm water management plan was not done for the development proposal and the Appellants, in light of the existing storm water issues on Lavery Street and Scollard Street, opine that it was such a significant omission that the Board should overturn Council's decisions on the zoning amendment and the draft plans.

[44] The Board is of a different view.

[45] The Board notes that an Official Plan is a policy guide for the long range planning of the City. The Official Plan for the City of North Bay in its interpretation section provides that the intent of the Plan shall in all cases be considered flexible.

[46] The City staff clearly considered the question of whether a storm water management plan was necessary. The circulation comments from Public Works dated March 23, 2013 provide the following:

11 single detached dwellings are being proposed on Scollard Street. Currently the only service on this roadway is a storm sewer and therefore sanitary sewer and water must be provided. The proponent will be required to redevelop Scollard Street from Browning to Beattie Street to an urban residential standard complete with curb and gutter. This will need to be further discussed with Public Works with respect to the construction works as it is on an existing City roadway. Further comments will be provided upon review of the engineering drawings.

[47] And later in the same circulation comment the following is provided:

No stormwater management report is required.

A complete set of engineering drawings is required which include a General Plan, Lot Grading Plan, plan and profile drawings for Scollard Street and both Common Elements, Erosion Control Plan, detail drawings etc.

[48] The Board heard evidence from Alan Korell a professional engineer and the Managing Director of Engineering, Environmental Services and Works. His evidence was that the City did not require a stormwater management plan for the development proposal as the City already had an overall stormwater management plan. He testified that representatives of the Proponent had done pre-filing consultation with the City, that the City was aware of the municipal infrastructure that had serviced the hospital, that the City was aware of the storm water challenges and that the plan was to address that through some of the work that the Proponent would be required to do and also through some oversizing of pipes and off site works for which the municipality would cost share with the Proponent.

[49] Mr. Korell testified that the City did not require a stormwater management plan as that requirement was generally mandated when all the stormwater was to be handled on site (i.e. with an onsite stormwater pond). In these circumstances there would be no onsite pond, and the stormwater would be taken off site through an improved/enlarged municipal storm sewer, and that in conjunction with the reduced flows from the Subject Lands and the curb and gutter on Scollard Street would improve the existing conditions.

[50] He also referenced Exhibit 20 being a letter opinion from a professional engineer which letter indicated that the proposed development would reduce the runoff coefficient from 0.79 to 0.53 and hence reduce the amount of storm water runoff entering the municipal storm water system.

[51] The Board is satisfied that the City has taken into account the appropriate stormwater management considerations, and finds in the circumstances that a stormwater management study was not required with the filing of the development application.

### **TRAFFIC GENERATION**

[52] Mr. Wallace in his evidence described the presence of the former hospital as a “calm and stately presence” in the neighbourhood and that it was compatible with the surrounding residential dwellings, but that he had significant concerns with increased traffic as a result of the proposed development.

[53] The Board was provided with an opinion letter from a professional engineering firm specializing in traffic, transit, parking, and transportation planning. Exhibit 21 provides a trip generation comparison between the former hospital and the proposed residential development. The result of the comparison is that there would be a reduction in the number of trips by about 88%.

[54] The Board finds that there are no traffic related concerns.

### **COMPATIBILITY**

[55] The Appellants submit that the development proposal is out of character with the existing neighbourhood does not constitute good planning. In support of that Mr. Wallace had examined some 141 lots in the immediate vicinity of the Subject Lands for lot frontage, lot depth, lot area, lot coverage, the dwelling area, and year each dwelling

was built.

[56] Starting with the year of construction, Exhibit 14 shows the earliest home was built in 1900, the majority of homes appear to have been built in the 1940 and 1950s, and the most recently constructed home was built in 2002. With regard to lot frontage, Exhibit 14 notes that a number of homes appear to have been built on the original lot size of 9.3 m by 30.48 m, and the majority of lots have a depth of 30.48 m. Lot areas vary depending on lot frontages with the smallest lots being from the original plan at 283.35 sq. m and the largest being 1,173.55 sq. m.

[57] Mr. Wallace examined the lots that were “facing” onto the Subject Lands and he found that those existing lots had an average of 22 m of frontage an average lot area of 666 sq m. For the entire 141 existing lots, he found that the average lot frontage was 18.8 m and the average lot area was 576 sq m.

[58] From this data he opined that the development proposal with its townhouses, semi-detached dwellings, and vacant land condominium singles was out of character with the prevailing form of development in the neighbourhood, and urged the Board not to approve the development application with its three proposed zones, but rather to match the zoning on the Subject Lands with the surrounding R-1 zone.

[59] The City and the Proponent submit that the development proposal is much more compatible with the existing neighbourhood than the former hospital. The proposed reduction in traffic generation of some 88% is they say but one indicator of such compatibility.

[60] Moreover the City planner and the Proponent’s planner note that the proposed lot frontages for the townhouses at 8.53 m are in the same range as the smaller lots in the existing neighbourhood at 9.3 m. They also submit that the townhouses are located at the interior of the Subject Lands and not at any of the edges of the Subject Lands. It is only the single detached units at Scollard and the semi-detached units on Vimy Street that directly face any existing residential dwellings.

[61] In terms of compatibility with the existing neighbourhood, the Board finds that the proposed development will be more compatible with the existing neighbourhood than the former hospital. Traffic generation alone speaks to this finding.

[62] The Board also finds that being compatible does not mean being identical.

Compatibility means that developments can co-exist in harmony without being the same. Thus the Board finds that with the placement of the townhouse units at the interior of the Subject Lands, that any impacts on the existing neighbourhood will be minimized, and the residential development proposal is compatible with the existing neighbourhood.

## **PLANNING ACT**

[63] The *Planning Act* requires in s. 3(5) that decisions of municipal councils and this Board be consistent with the PPS, and conform to any provincial plans.

[64] Section 2.1 of the *Planning Act* also requires this Board to have regard for the decisions of municipal councils on planning matters, and also to have regard for the supporting information and reports that the municipal council had considered in making its decision.

[65] The Board finds that the development applications are consistent with the PPS, that there were no issues of lack of conformity to the Northern Ontario Growth Plan, that the development conforms to the City of North Bay's Official Plan, and represents good planning.

[66] Thus the Board will allow the appeals in part, and in an abundance of caution direct Council to amend By-law No. 2013-155 to exempt the Subject Lands from s. 3.26.1 of the Zoning By-law, and to approve the draft plan of subdivision and the draft plan of condominium with the conditions of approval as per Exhibit 22 B as amended by the Board for the Record of Site Condition.

[67] Finally as obiter dicta only, the Board acknowledges the evidence of the City's Manager of Planning that the City's Zoning By-law needs to be updated, and the Board would encourage the City to move ahead with that process.

*“Blair S. Taylor”*

BLAIR S. TAYLOR  
MEMBER

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