

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: December 3, 2014

CASE NO(S): PL131311

1804487 Ontario 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 neglect to enact a proposed amendment to the Official Plan for the City of Hamilton to redesignate lands 1041 West 5th Street to permit the development of a Medical Centre, Residential Care Facility and a Place of Worship
Approval Authority File No. OPA-12-024
O.M.B. Case No.: PL131311
OMB File No.: PL131311

1804487 Ontario 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 neglect to enact a proposed amendment to Zoning By-law 6593 of the City of Hamilton to rezone lands respecting 1041 West 5th Street from "AA" Agricultural to "I3" Major Institutional to permit the development of a Medical Centre, Residential Care Facility and a Place of Worship
O.M.B. Case No.: PL131311
OMB File No.: PL131312

Heard: August 14 and 18, 2014 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

| | |
|--------------------------------------|--------------|
| 1804487 Ontario Inc. | N. Smith |
| A. De Santis Developments Ltd. | P. Tice |
| DiCenzo Construction Company Limited | S. Zakem |
| 1804482 Ontario Ltd. ("Sonoma") | D. Baker |
| City of Hamilton | M. Minkowski |

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR
SCHILLER ON AUGUST 18, 2014 AND ORDER OF THE BOARD**

[1] Five cases have been grouped to be heard together but are not consolidated. Those cases are PL130601, PL131089, PL130630, PL130909 and PL131311.

[2] Cases PL130601 and PL131089 were heard and disposed of in a teleconference appearance in July, 2014. Cases PL130630, PL130909 and PL131311 were heard by the Board on August 14 and August 18, 2014. Separate decisions will issue for each of these three remaining cases.

[3] This decision deals only with case PL131311. 1804487 Ontario Inc. ("1804487") is the applicant and appellant in case PL131311.

[4] There are five interests with land holdings that are clustered together between West 5th Street on the west and Upper James Street on the east. Stone Church Road West is to the north and Rymal Road West is to south, although none of the properties front on either Stone Church Road West or Rymal Road West.

[5] These interests are 1804487, 1804482 Ontario Ltd. ("Sonoma"), A. De Santis Developments Ltd. ("De Santis"), DiCenzo Construction Company Limited ("DCCL"), and Robert Morris, a participant in these proceedings.

[6] Sonoma, DCCL and 1804487 all wish to develop their lands and have applications before this Board in support of those intentions.

[7] Neither De Santis nor Mr. Morris has a development proposal before the Board.

[8] The Board was advised that the City of Hamilton, Sonoma, DCCL and 1804487 had reached a settlement, as set out in the Minutes of Settlement ("MOS") filed as Exhibit 3 in these proceedings.

[9] De Santis is not a signatory to the MOS.

[10] Counsel for De Santis advised the Board that De Santis does not accept the MOS but De Santis is not calling a case in any of the matters before the Board. De Santis then withdrew and took no further role in these proceedings.

[11] The Board heard from Edward Fothergill, 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.

[12] 1804487 wishes to develop its lands with two components. One component will be a place of worship and associated community centre. A second component is a four-storey, 48 unit retirement home with medical and service uses at grade.

[13] Storm water management is an issue in this neighbourhood. A portion of the property will accommodate a storm water management facility that will serve the subject property and lands in the surrounding neighbourhood.

[14] The proposed development represents intensification, provides a mix of uses that serve community needs and contributes to the provision of a range and mix of housing, including housing to serve the special needs of the elderly who will live in the retirement home. In so doing, this proposal contributes to the development of a complete community.

[15] The Board finds that the proposal is consistent with the Provincial Policy Statement, 2014 and conforms to the Growth Plan for the Greater Golden Horseshoe.

[16] Two by-laws apply to the subject lands as a result of the City of Hamilton being the successor to certain area municipalities including the former Corporation of the City of Hamilton. By-law No. 6593 is the by-law of the former Corporation of the City of Hamilton; By-law No. 05-200 is the by-law of the City of Hamilton. As a result, the Board has before it two zoning by-law amendments, one for each of these by-laws.

[17] The proposal now before the Board has scaled back on the commercial uses. As such, the proposed zoning by-law amendments conform to the former City of Hamilton

Official Plan. 1804487 now withdraws its appeal of its earlier proposed amendment to this plan.

[18] The proposed zoning by-law amendments also conform to the new Urban Hamilton Official Plan.

[19] The Board has also had regard to the decision of Council to enter into Minutes of Settlement and support the proposed zoning by-law amendments.

[20] 1804487 asks the Board to amend By-law No. 05-200 in accordance with Attachment 1 to this decision and to amend By-law No. 6593 in accordance with Attachment 2 to this decision.

[21] In accordance with clause 41 of the Minutes of Settlement, Counsel for Sonoma and Counsel for DCCL advised the Board that they support this request.

ORDER

[22] The Board orders that the appeal by 1804487 Ontario Inc. is allowed in part and that:

1. By-law No. 05-200 is amended in accordance with Attachment 1 to this decision.
2. By-law No. 6593 is amended in accordance with 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

Authority: Ontario Municipal Board
File No. PL131311

Bill No. [REDACTED]

CITY OF HAMILTON

BY-LAW NO. [REDACTED]

**To Amend Zoning By-law No. 05-200, as Amended,
Respecting Lands Located at 1041 West 5th Street, (Hamilton)**

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 By-law is in conformity with the Urban Hamilton Official Plan approved August 16, 2013 in accordance with the provisions of the Planning Act.

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

1. That Map No 1342 of Schedule "A" to Zoning By-law No. 05-200, is amended, by incorporating additional Neighbourhood Institutional (I1) Zone boundaries, in the form of a Site-Specific Neighbourhood Institutional (I1, 462) Zone (Block 1) and in the form of a Conservation/Hazard Land (P5) Zone (Block 2), for the applicable lands, the lands, the extent and boundaries of which are shown for Blocks 1 and 2 on Schedule "A" annexed hereto and forming part of this By-law.
2. That Section 8.1, Neighbourhood Institutional (I1), of Zoning By-law No. 05-200 (Hamilton), as amended, is hereby further amended by adding the following subsection:

(I1, 462)

In addition to any provisions to the contrary of Section 8.1.1 Permitted Uses, and Section 8.1.3, Regulations, of Section 8.1, Neighbourhood Institutional (I1) Zone, of By-law 05-200 (Hamilton), the following use and special provisions shall apply to the lands zoned (I1, 462):

Permitted Uses

A Retirement Home for a maximum of 48 residents which may include the following ancillary uses:

- Medical Offices
- Hair Salon
- Coffee Shop
- Convenience Store
- Pharmacy

A Place of Worship which may include a Community Centre

Community Centre shall mean a place for cultural activities and services including but not limited to parties, banquets, dinners, weddings, religious studies, recreation, cultural and language programs.

Provisions

In accordance with Section 8.1.3.1 with the following special provisions:

| | |
|---|--|
| Maximum Building Coverage | 30% |
| Minimum Rear Yard | 3m |
| Maximum Building Height | 4 storeys and 15.1metres |
| Maximum Capacity for Residential Care Facility and Retirement Home | 48 residents |
| Minimum Buffer | A minimum buffer of 3m shall be provided from a Conservation/Hazard Land (P5) Zone. |

Parking Facilities on Shared Site

Parking for the retirement home, the ancillary commercial uses and for the place of worship/community centre shall be shared, except for areas on site where staff only parking is required.

Parking for Places of Worship and Community Centre

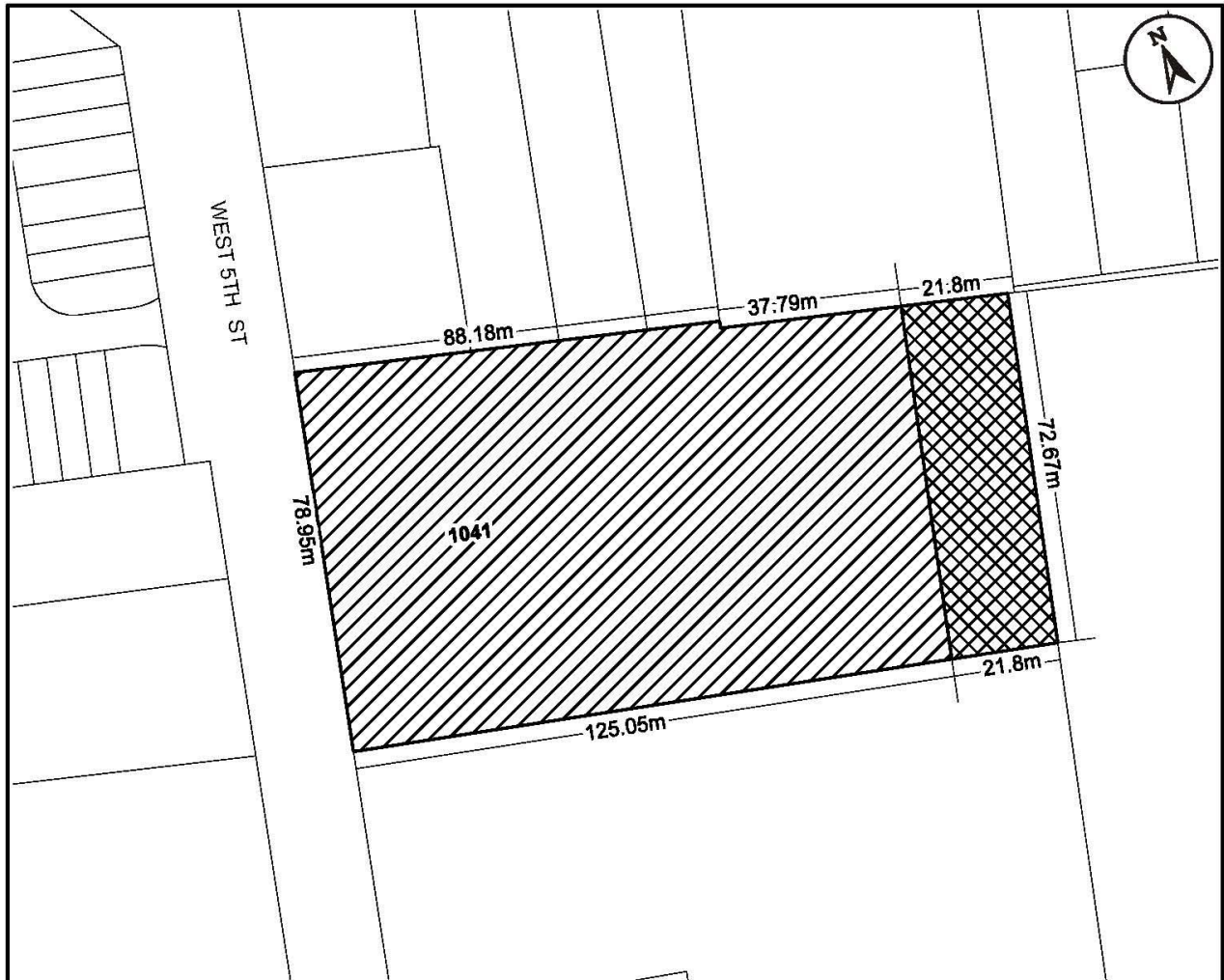
Parking for both uses shall be based on the requirement of 1 space per 20 square metres of gross floor area.

Parking for Commercial Uses

Parking shall be in accordance with Section 6, By-law 05-200.

4. 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.
5. That this By-law No. [REDACTED] shall come into force and be deemed to have come into force in accordance with Subsection 34(21) of the Planning Act, either upon the date of passage of this By-law or as provided by the said Subsection.

PASSED and ENACTED this [REDACTED] day of [REDACTED], 2014 by the Ontario Municipal Board.



This is Schedule "A" to By-Law No. 14-

Passed the day of, 2014

Mayor

Clerk

Schedule "A"

Map Forming Part of
By-Law No. 14-_____

to Amend By-law No. 05-200
Map 1342

Subject Property

1041 West 5th Street



Block 1 - Lands to be Zoned Neighbourhood
Institutional (I1, 462) Zone, Modified



Block 2 - Lands to be Zoned
Conservation/Hazard Land (P5) Zone

Scale:
N.T.S.

File Name/Number:
ZAC-12-070

Date:
August 15, 2014

Planner/Technician:
CT/AL



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

Authority: Ontario Municipal Board
File No. PL131311

ATTACHMENT 2

Bill No. [REDACTED]

CITY OF HAMILTON

BY-LAW NO. [REDACTED]

**To Amend Zoning By-law No. 6593
Respecting Lands Located
at 1041 West 5th Street, (Hamilton)**

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 municipality known as the “The Corporation of the City of Hamilton” 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 the Council of The Corporation of the City of Hamilton passed Zoning By-law No. 6593 (Hamilton) on the 25th day of July 1950, which By-law was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951 (File No. P.F.C. 3821);

AND WHEREAS the By-law is in conformity with the Urban Hamilton Official Plan approved August 16, 2013 in accordance with the provisions of the Planning Act.

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

1. That Map “W9d” of Zoning By-law No. 6593 (Hamilton) is amended by removing the lands from the Existing “AA” Agricultural District, the extent and boundaries of which are shown on a plan annexed as Schedule “A”.

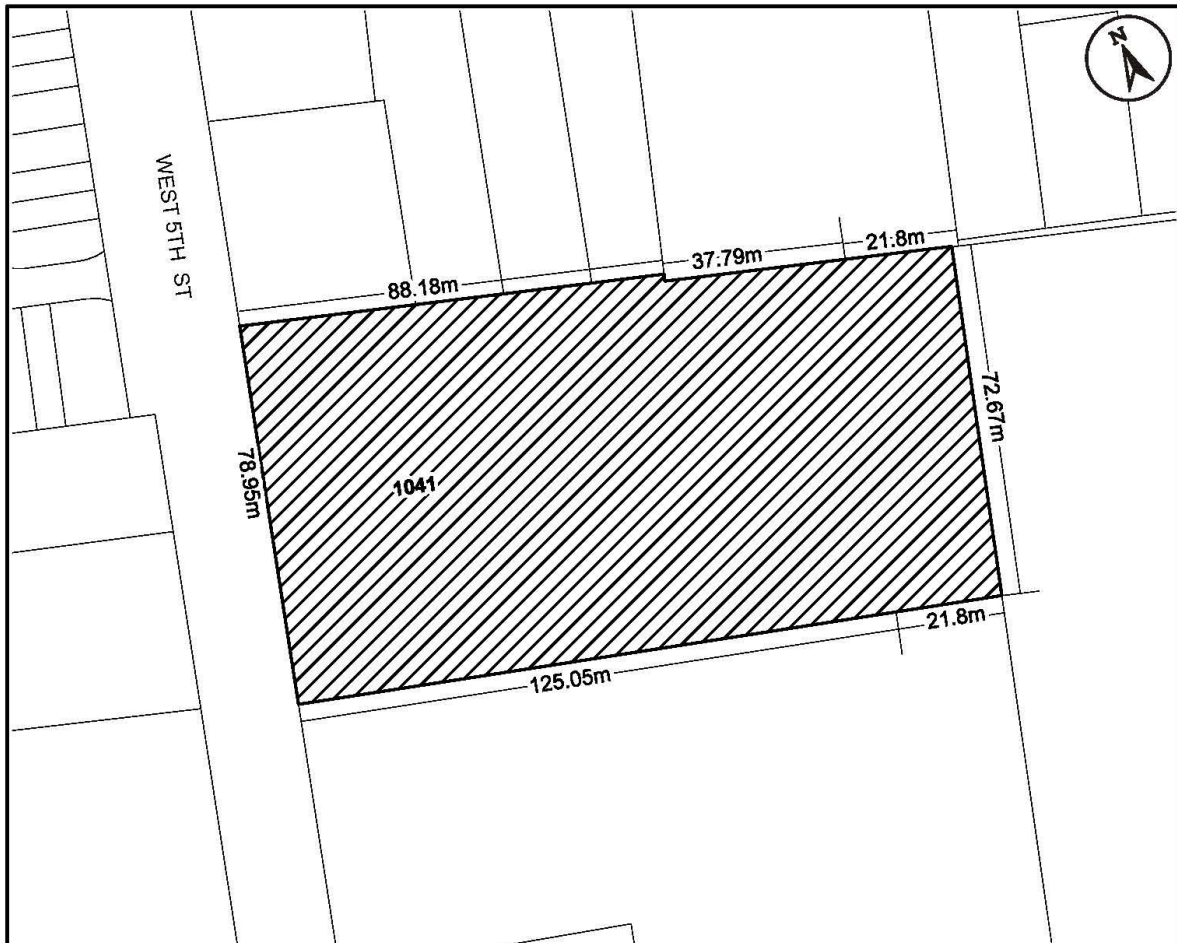
2. That the Clerk is hereby authorized and directed to proceed with the giving of notice of the passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this [] day of [], 2014.

R. Bratina
Mayor

R. Caterini
Clerk

ZAC-12-070



| | | | |
|---|--|--|--|
| <p>This is Schedule "A" to By-law No. 14-</p> <p>Passed the day of, 2014</p> | | <p>-----</p> <p style="text-align: center;">Mayor</p> <p>-----</p> <p style="text-align: center;">Clerk</p> | |
| <p style="text-align: center;">Schedule "A"</p> <p style="text-align: center;">Map Forming Part of By-law No. 14-_____</p> <p style="text-align: center;">to Amend By-law No. 6593</p> | | <p>Subject Property 1041 West 5th Street</p> <p> Lands to be removed from Zoning By-law No. 6593. Refer to Zoning By-law 05-200</p> | |
| <p>Scale: N.T.S.</p> | <p>File Name/Number: ZAC-12-070</p> | | |
| <p>Date: August 15, 2014</p> | <p>Planner/Technician: CT/AL</p> | | |
| <p>PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT</p> | | | |