

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 6, 2014

CASE NO(S): PL140037

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Revel Development Corp.
Subject: By-law No. 2013-146
Municipality: City of Kitchener
OMB Case No.: PL140037
OMB File No.: PL140037

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Revel Development Corp.
Subject: By-law No. 2013-147
Municipality: City of Kitchener
OMB Case No.: PL140037
OMB File No.: PL140038

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Revel Development Corp.
Subject: By-law No. 2013-148
Municipality: City of Kitchener
OMB Case No.: PL140037
OMB File No.: PL140039

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: Revel Development Corp.
Subject: By-law No. 2013-149
Municipality: City of Kitchener
OMB Case No.: PL140037
OMB File No.: PL140040

Heard: July 31, 2014 in Toronto, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
Revel Development Corporation	Stephen Litt
City of Kitchener	Lesley MacDonald*

DECISION DELIVERED BY R. ROSSI ON JULY 31, 2014 AND ORDER OF THE BOARD

INTRODUCTION

[1] Revel Development Corporation (“Applicant”) has appealed to the Ontario Municipal Board (“Board”) the following Zoning By-law Amendments to the in-force Zoning By-law No. 85-1 of the City of Kitchener (“City”): No. 2013-146, No. 2013-147, No. 2013-148 and No. 2013-149.

[2] The Parties have reached a settlement of these matters and the Board converted the hearing to a teleconference call to hear details of their settlement. The affidavit of City planner Garrett Stevenson and his oral evidence during this call provided the Board with relevant details of these matters. What is more, Mr. Stevenson noted that the amendments are in conformity with the relevant provincial, regional and municipal planning instruments and their concomitant policies and the instruments represent good planning. Based on the persuasive evidence of the City planner, the Board will append to its Order the “Summary of Settlement” document as Attachment 1.

ORDER

[3] The Board allows the appeals as follows: Zoning By-laws Nos. 2013-146 and 2013-149 are approved as amended in Attachment 1; Zoning By-laws Nos. 2013-147

and 2013-148 are approved in their original approved forms as per the same Attachment.

"R. Rossi"

R. ROSSI
MEMBER

Ontario Municipal Board

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ATTACHMENT 1

Ontario Municipal Board Hearing
Case PL140037, City of Kitchener
July 31, 2014

Summary of Settlement

- I. Allow the Appeal of By-law 2013-146 and approve the proposed By-law as amended regarding Transition Policies to:
 - a. Implement new transition policies for complete Site Plan applications that have been filed during the interim period while the By-laws were under appeal,
 - b. Implement new transition policies for the Appellant's site specific properties, as per the terms of settlement, and to
 - c. Implement new transition policies for Semi-Detached Duplex Dwelling Building Permit applications that have been filed during the interim period while the By-laws were under appeal.

- II. Dismiss the appeal of By-law 2013-147 regarding Building Height.

- III. Allow the Appeal of By-law 2013-148 regarding the Small Residential Dwelling Unit off-street parking rate to reflect a technical change.

- IV. Allow the Appeal of By-law 2013-149 and approve the proposed By-law as amended for Duplex Semi-Detached Dwelling to reflect a technical change to the applicability date, being July 31, 2014 rather than January 1, 2014, to recognize Semi-Detached Duplex Dwellings that were built during the interim period while the By-laws were under appeal.

PROPOSED BY-LAW
AMENDED July 31, 2014

BY-LAW NUMBER 2013 – 146
OF THE
CORPORATION OF THE CITY OF KITCHENER

(Being a by-law to amend By-law 85-1, as amended, known as the
Zoning By-law for the City of Kitchener – City of Kitchener Interim
Update Amendment)

WHEREAS it is deemed expedient to amend By-law 85-1, as amended;
NOW THEREFORE the Council of The Corporation of the City of Kitchener enacts as
follows:

1. Section 2.4 of By-law 85-1 is hereby amended by adding the following new subsection:
“d) DEEMED TO COMPLY: SITE PLAN AGREEMENTS AND SITE PLAN APPROVALS
Where a complete Site Plan application has been received by the City of Kitchener prior to July 31, 2014, and where a Site Plan Agreement has been entered into and signed by Owner and the City of Kitchener prior to December 31, 2014, and where a Building Permit is issued prior to July 31, 2016, the following shall apply:
 - a) **Notwithstanding Section 4.2 of this By-law, Building Height shall mean the vertical distance between the highest finished grade level at the perimeter of the building and the uppermost point of the building. Provided, however, where this by-law requires building height to be calculated to determine a minimum rear yard or a minimum side yard requirement, building height shall mean the vertical distance between the lowest finished grade elevation along the lot line related to such yard at that point closest to the building and the horizontal extension of the uppermost point of the building. Antennae, chimneys, spires, cupolas, elevator penthouses, or other similar features shall be disregarded in calculating building height. In the**

case of a building on a lot within more than one zone, building heights shall be measured to the uppermost point of that portion of the building within each zone.

- b) Notwithstanding Section 6.1.2.a of this By-law, the minimum required off-street parking for a Multiple Dwelling totaling 4 or more dwelling units containing dwelling units having a floor area of 51.0 square metres or less may be 0.165 spaces for each dwelling unit less than 51.0 square metres in size, provided that this does not apply to more than 60% of all dwelling units on a lot.

2. Section 2.4 of By-law 85-1 is hereby amended by adding the following new subsection:

“e) DEEMED TO COMPLY: PROPERTY SPECIFIC SITE PLAN AGREEMENTS AND SITE PLAN APPROVALS

Where a complete Site Plan application has been received by the City of Kitchener prior to June 30, 2016, and where a Site Plan Agreement has been entered into and signed by Owner and the City of Kitchener and a Building Permit is issued prior to December 31, 2016; the following shall apply:

- a) Notwithstanding Section 6.1.2.a of this By-law, the minimum required off-street parking for a Multiple Dwelling totaling 4 or more dwelling units containing dwelling units having a floor area of 51.0 square metres or less may be 0.165 spaces for each dwelling unit less than 51.0 square metres in size, provided that this does not apply to more than 60% of all dwelling units on a lot.
- b) Regulations outlined in subsection a) above shall apply only for properties municipally addressed as:

54 Bridge Street West (Pt. Lot 59 GCT, being Pts 2 & 3 on 58R-17146; Kitchener),

190 Century Hill Drive (Block 425, Plan 1375 Kitchener),

51-53 David Street (Lot 146 Subdivision of Lot 17 GCT, Kitchener),

58 Howe Drive (Part Lot 47 GCT, Being Part 1 on 58R-13007; Kitchener),

169 Lancaster Street West (Part Park Lot 551, Plan 378, Kitchener; Part Lot 119 Streets & Lanes Kitchener Part 1, 2, 58R3605; Kitchener),

361-371 Lancaster Street West (Part Lot 19-20 Plan 789, Kitchener as in 286987 & 833644; Kitchener),

65 Madison Avenue South (Part Lot 4 E/S Albert St. Plan 365, Kitchener as in 1385735; Kitchener),

71 Madison Avenue South (Part Lot 4 E/S Albert St. Plan 365 Kitchener as in 743228; Kitchener),

79 Madison Avenue South (Part Lot 4 E/S Albert St. Plan 365 Kitchener; Part Lot 5 Plan 390 Kitchener as in 480694; Kitchener);

and

24 Morrison Road (Part Lot 2, Plan 987 Kitchener; Part Lot 12 Beasley's Old Survey Kitchener; Part Lot 53 GCT Kitchener Part 2 to 9, 11 & 12, 58R-5522; Kitchener).

3. Section 2.4 of By-law 85-1 is hereby amended by adding the following new subsection:

“f) DEEMED TO COMPLY: PROPERTY SPECIFIC SEMI-DETACHED DUPLEX DWELLINGS UNDER CONSTRUCTION IN THE RESIDENTIAL FOUR (R-4) AND RESIDENTIAL FIVE (R-5) ZONES

Where a Building Permit has been received by the City of Kitchener prior to July 31, 2014, a Duplex Semi-Detached Dwelling is a permitted use and shall be considered to be existing prior to July 31, 2014, in accordance with Section 38.1 and 39.1, as amended, of this By-law, for the properties municipally addressed as:

**19, 21 Birch Avenue,
15, 17 Chicopee Park Court,
707, 709 Frederick Street,
711, 713 Frederick Street,
199 Huck Crescent,
130, 132 Jackson Avenue,
51, 53 Pine Street,
306 Pioneer Drive
136 Moorgate Crescent,
162, 164 Morgan Avenue,
3, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 17 Rauch Court, and
61 Vicmount Drive.**

This By-law shall come into force and take effect on the day it is passed subject to the appeal provisions set out in Section 34 of the Planning Act, R.S.O., 1990.

CERTIFIED TO BE A TRUE COPY

C. Tarling
CHRISTINE A. TARLING, CITY CLERK
CITY OF KITCHENER

BY-LAW NUMBER 2013-147

OF THE

CORPORATION OF THE CITY OF KITCHENER

(Being a by-law to amend By-law 85-1, as amended, known as the Zoning By-law for the City of Kitchener – City of Kitchener Interim Update Amendment)

WHEREAS it is deemed expedient to amend By-law 85-1, as amended;

NOW THEREFORE the Council of The Corporation of the City of Kitchener enacts as follows:

1. Section 4.2 of By-law 85-1, the definition of "Building Height" is hereby amended by adding the sentence "At no point shall the vertical distance between the lowest finished grade and the uppermost point of the building exceed 110% of the maximum building height in the applicable zone." after the first sentence.

PASSED at the Council Chambers in the City of Kitchener this 25th day of

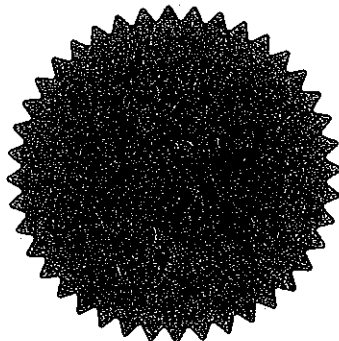
November, 2013.

Cal J. ...

Mayor

C. Tarling

Clerk



PROPOSED BY-LAW
AMENDED July 31, 2014

BY-LAW NUMBER 2013-148

OF THE

CORPORATION OF THE CITY OF KITCHENER

(Being a by-law to amend By-law 85-1, as amended, known as the Zoning By-law for the City of Kitchener – City of Kitchener Interim Update Amendment)

WHEREAS it is deemed expedient to amend By-law 85-1, as amended;

NOW THEREFORE the Council of The Corporation of the City of Kitchener enacts as follows:

1. Section 6.1.2.a) of By-law 85-1 is hereby amended by replacing the phrase “Multiple Dwelling Totalling 4 or More Dwelling Units and Containing Dwelling Units Having a Floor Area of 51.0 Square Metres or Less” with the phrase “Multiple Dwellings totalling 100 Dwelling Units or more within the area bounded by the Conestoga Parkway, Homer Watson Boulevard/ Shoemaker Greenway/Belmont Avenue, and the northerly boundary of the City of Kitchener, built after the passing of this By-law and containing dwelling units having a floor area of 51.0 square metres or less” **and the number “60%” is changed to “40%”** .

This By-law shall come into force and take effect on the day it is passed subject to the appeal provisions set out in Section 34 of the Planning Act, R.S.O., 1990.

PROPOSED BY-LAW
AMENDED July 31, 2014

BY-LAW NUMBER 2013-149

OF THE

CORPORATION OF THE CITY OF KITCHENER

(Being a by-law to amend By-law 85-1, as amended, known as the
Zoning By-law for the City of Kitchener – City of Kitchener Interim
Update Amendment)

WHEREAS it is deemed expedient to amend By-law 85-1, as amended;

NOW THEREFORE the Council of The Corporation of the City of Kitchener enacts as
follows:

1. Section 4.2 of By-law 85-1 is hereby amended by adding the following new definition in proper alphabetical order:
“Semi-Detached Duplex Dwelling” means a building divided vertically into one semi-detached house and one semi-detached duplex house, or into two semi-detached duplex houses, by a common wall which prevents internal access and extends from the base of the foundation to the roof line and for a horizontal distance of not less than 35 percent of the horizontal depth of the building. Each semi-detached duplex house shall be designed to be located on a separate lot having individual vehicular access to and frontage on a street or lane. Where a regulation applies to a “Semi-Detached Dwelling” in Section 5 or Section 6 of By-law 85-1, said regulation shall apply similarly to a “Semi-Detached Duplex Dwelling.”
2. Section 4.2 of By-law 85-1 is hereby amended by adding the following new definition in proper alphabetical order:
“Semi-Detached Duplex House” means a semi-detached house which contains two dwelling units.

3. Section 4.2 of By-law 85-1, the definition of “Semi-Detached Dwelling” is hereby amended by deleting the phrase “between semi-detached houses” after the word “access”.
4. Section 4.2 of By-law 85-1, the definition of “Semi-Detached House” is hereby amended by deleting the phrase “or two” after the word “one” and replacing the word “units” with “unit.”
5. Section 38.1 of By-law 85-1 is hereby amended by adding the following new permitted use in proper alphabetical order: “Semi-Detached Duplex Dwelling legally existing prior to **July 31, 2014**”.
6. Section 39.1 of By-law 85-1 is hereby amended by adding the following new permitted use in proper alphabetical order: “Semi-Detached Duplex Dwelling legally existing prior to **July 31, 2014**”.
7. Section 40.1 of By-law 85-1 is hereby amended by adding the following new permitted use in proper alphabetical order: “Semi-Detached Duplex Dwelling”.
8. Section 40.2.3 of By-law 85-1 is hereby amended by adding the phrase “and Semi-Detached Duplex Dwelling” after the word “Dwelling”.
9. Section 41.1 of By-law 85-1 is hereby amended by adding the following new permitted use in proper alphabetical order: “Semi-Detached Duplex Dwelling”.
10. Section 41.2.3 of By-law 85-1 is hereby amended by adding the phrase “and Semi-Detached Duplex Dwelling” after the word “Dwelling”.

This By-law shall come into force and take effect on the day it is passed subject to the appeal provisions set out in Section 34 of the Planning Act, R.S.O., 1990.