

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 27, 2014

CASE NO(S): PL140257

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

Appellant:	Stephen Hyrnick
Subject:	By-law No. 14-029
Municipality:	City of Hamilton
OMB Case No.:	PL140257
OMB File No.:	PL140257

Heard: August 21, 2014 by written hearing

APPEARANCES:

Parties

Counsel

Stephen Hyrnick

1169831 Ontario Ltd.

City of Hamilton

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DECISION DELIVERED BY J. de P. SEABORN AND ORDER OF THE BOARD

[1] Stephen Hyrnick (“Appellant”) appealed Zoning By-law No. 14-029 (“By-law”). A hearing was scheduled for September 2014. The Board was advised that the parties have resolved the appeal and approval is sought of the By-law, as revised.

[2] John Ariens, a land use planner qualified to provide opinion evidence, filed an affidavit (Exhibit 1) explaining the background and the rationale for the original application as well as the amendments. The City of Hamilton (“City”) advised that it has no objection to approval of the By-law, as amended. Included in the affidavit are Minutes of Settlement

(Exhibit 1, Exhibit D) executed on July 15, 2014 by the Appellant and a representative of 1169831 Ontario Ltd. (“Applicant”). The evidence explained that the City passed the By-law to permit the Applicant to develop land situated at 336 and 338 King Street West (Dundas) with a four-storey mixed use building. In order to address the issues raised by the Appellant, certain changes have been made to the By-law. I adopt and rely upon the planning opinion of Mr. Ariens that the By-law, as amended, constitutes good planning and should be approved. The By-law is consistent with the Provincial Policy Statement, 2014 and has regard for the provincial interest, all applicable provincial plans and conforms to the regional official plan.

[3] At the request of the parties and with their consent, the Board orders that the appeal is allowed in part and Zoning By-law No. 14-092 is amended in the manner set out in Attachment 1.

“J. de P. Seaborn”

J. de P. SEABORN
VICE CHAIR

Ontario Municipal Board

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ATTACHMENT 1

CITY OF HAMILTON

BY-LAW NO. 14-029 (REVISED)

To Amend Zoning By-law No. 3581-86 (Dundas)

Respecting Lands Located at 336 & 338 King Street West

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 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 5 of Report 14-002 of the Planning Committee, at its meeting held on the 12th day of February, 2014, recommended that Zoning By-law No. 3581-86 (Dundas), be amended as hereinafter provided;

AND WHEREAS in accordance with the Planning Act, R.S.O., 1990, Section 39, Council may pass By-laws authorizing the temporary use of land, buildings, or structures for any purposes that is otherwise prohibited by the Zoning By-law;

AND WHEREAS this By-law is in conformity with the Urban Hamilton Official Plan of the City of Hamilton in accordance with the provisions of the Planning Act.

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

1. That Schedule "L" (Spencer Creek) appended to and forming part of Zoning By-law No. 3581-86 (Dundas) is amended by changing the zoning from the Single Detached Residential "R2" Zone and the Single Detached Residential "R2/S-3" Zone, Modified, with a Special Exception to the Holding –Medium to High Density Multiple Dwelling "H-RM3/S-127" Zone, Modified on the lands the extent and boundaries of which are shown on Schedule "A" which forms part of this By-law.
2. That Section 32 – "**EXCEPTIONS**" of Zoning By-law No. 3581-86 (Dundas), is hereby further amended by adding the following Sub-section:
"H-RM3/S-127"

That Notwithstanding the provisions of Section 14: Medium to High Density Multiple Dwelling Zone, the following Special Provisions shall apply to lands known Municipally as 336 & 338 King Street West, shown as "RM3/S-127" on Schedule "A".

- (i) Notwithstanding Section 14.1 Permitted Uses, the following special regulation shall apply:

- 14.1.1 A MIXED USE 4 STOREY APARTMENT BUILDING with two commercial uses, located on the ground floor having a combined maximum floor area of 199 square metres along the King Street lot line. The commercial uses shall be limited to the uses listed under Retail Trade Industries excluding any automotive and motor vehicle uses, restaurant use.
- 14.1.2 Uses listed under Health and Social Service Industries shall be prohibited, including medical clinics and day nurseries.

- (ii) Notwithstanding Section 14.2 Regulations for Apartment Buildings, the following special requirements shall apply:

14.2 REGULATIONS FOR APARTMENT BUILDINGS

14.2.1

AREA REQUIREMENTS

14.2.1.1

LOT AREA

Minimum: 740.0 square metres

14.2.1.1

LOT FRONTAGE

Minimum: 20.0 metres

14.2.2 YARD REQUIREMENTS

- 14.2.2.1 FRONT YARD**
Minimum: 1.5 metres
- 14.2.2.2 SIDE YARD (Easterly)**
Minimum: 2.0 metres
- 14.2.2.2 SIDE YARD (Westerly)**
Minimum: 1.2 metres
- 14.2.2.3 REAR YARD**
Minimum: 3.5 metres (including
underground parking wall)

- 14.2.4 DENSITY**
Maximum: 175 dwelling units per hectare

14.2.7 LANDSCAPING REQUIREMENTS

- 14.2.7.1 LANDSCAPED AREA**
Minimum: 15 percent of the site area
shall be landscaped.
- 14.2.7.2 BUFFER STRIP (westerly)**
Minimum: 1.2 metres
- BUFFER STRIP (rear yard)**
Minimum 2.0 metres

- (iii) Notwithstanding Section 6.11 Landscape Requirements, the following special regulations shall apply:

6.11 LANDSCAPE REQUIREMENTS

- 6.11.1 LANDSCAPING ALONG STREET LINES**
Minimum 2.0 meters along Brock Street
1.5 meters along King Street West

- 6.11.3 LANDSCAPING IN RESIDENTIAL FRONT YARDS**
Minimum 20 Percent

- (iv) Notwithstanding Section 7.12 Off-Street Parking and Section 7.13 Off-Street Loading Space, the following shall apply:

7.12 OFF-STREET PARKING SPACE REQUIREMENTS

7.12.1 RESIDENTIAL/COMMERCIAL USES

A total of 18 spaces shall be provided for an apartment building with two commercial units and thirteen residential units.

7.13 OFF-STREET LOADING REQUIREMENTS

0 (zero) loading spaces shall be provided instead of the required 1.

7.14 DIMENSIONS FOR THE DESIGN OF PARKING AREAS

The minimum dimensions for the provisions of required parking spaces shall be 2.6 meters wide and 5.5 meters in length.

3. That the 'H' symbol may be removed at such time as the following has been satisfied:
 - a) The owner/applicant submits a signed Record of Site Condition (RSC) to the City of Hamilton and the Ministry of the Environment (MOE). This RSC must be to the satisfaction of the City of Hamilton, including an acknowledgment of receipt of the RSC by the MOE, and submission of the City of Hamilton's current RSC administration fee.
 - b) The owner/applicant shall investigate noise levels on the site and determine and implement the noise control measures that are satisfactory to the City of Hamilton in meeting the Ministry of Environment's recommended sound level limits. An acoustical report prepared by a qualified Professional Engineer containing the recommended control measures shall be submitted to the satisfaction of the City of Hamilton, Director of Planning. Should a peer review of the acoustical report be warranted, all associated costs shall be borne by the owner/applicant and shall be submitted to the satisfaction of the Director of Planning.
 - c) The owner/applicant shall investigate anticipated residential water usage and fire flow through the submission of a Watermain Hydraulic Analysis Report to the satisfaction of the Senior Director of Growth Management.
4. The By-law No. 3581-88 of the Town of Dundas Zoning By-law is amended by adding this By-law to Section 32 as Schedule "S-127".
5. That Schedule "L" (Spencer Creek) of the Zoning Schedule Key Map is amended by marking the lands referred to in Section 2 of this By-law as "RM3/S-127".
6. That the Clerk 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 this 9th day of April, 2014

**R. Bratina
Mayor**

**R. Caterini
City Clerk**