

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



**ISSUE DATE:** January 5, 2015

**CASE NO(S).:** PL 140448

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	Recchia Developments Inc.
Subject:	Application to amend Zoning By-law No. 3581-86 – Refusal of application by the City of Hamilton Council
Existing Zoning:	Single-detached residential "R2" Zone
Proposed Zoning:	Low density residential "R3/S-124" Zone, with a special exception
Purpose:	To permit 12 semi-detached dwelling units (within six buildings).
Property Address/Description:	231 York Road
Municipality:	City of Hamilton
Municipal File No.:	ZAC-13-040
OMB Case No.:	PL140448
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Heard: November 12 and 13, 2014 in Hamilton, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

Recchia Developments Inc.  
("Proponent")

Nancy Smith

City of Hamilton ("City")

Michael Minkowski

**DECISION DELIVERED BY STEVEN STEFANKO AND ORDER OF THE BOARD**

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## **INTRODUCTION**

[1] The Proponent is the owner of a 0.42 hectare (“ha”) parcel of land municipally known as 231 York Road. This property was formerly two separate lots but merged into one larger parcel of land following acquisition of both lots by a predecessor in title.

[2] The Proponent seeks to amend By-law No. 3581-86 from the current Single – Detached Residential “R2” Zone to a Low Density Residential “R3/S-124” Zone, with a Special Exception, to permit the development of 12 semi-detached dwelling units.

[3] The subject site is located within a large established residential neighbourhood with homes being approximately 25 years old. The site and the immediate neighbourhood are part of a residential area commonly referred to as the York Road area (“York Road Area”) which is so identified on Exhibit 5 filed in this proceeding. This area is also shown, but in more detail, in the ‘Visual Exhibits’ book marked as Exhibit 16.

## **PREVIOUS APPLICATION**

[4] The Zoning By-law Amendment (“ZBA”) which is before me is not the first attempt by the Proponent to develop the subject parcel for other than single detached residential purposes. In a previous application, originally submitted in December 2011, and amended in May 2012, the Proponent sought to permit the development of 14 townhouses and a single detached dwelling on the site (“Previous Proposal”).

[5] That application eventually found its way to the Ontario Municipal Board (“Board”) for a determination (“Earlier Board Hearing”). In a Board decision (“Earlier Board Decision”) rendered by Mr. Hefferon on March 6, 2013, the Previous Proposal was denied. In paragraph 36 of the Earlier Board Decision, Mr. Hefferon stated “...the Board finds that the issue to be resolved through negotiation between City planning officials and Recchia is the number of residential units that can be put on the subject

lands without compromising the planned function of these lands or offending the character of this stable residential neighbourhood.”

## **THE PROPOSAL**

[6] Following release of the Earlier Board Decision, the Proponent met with City planning officials in an attempt to establish a proposal acceptable to City planners. Those discussions resulted in the ZBA being submitted and recommended by City staff.

[7] The ZBA seeks to permit 12 semi-detached units on the subject site in six separate buildings. The density of the proposal is 28.5 units per ha.

[8] All six buildings front onto a proposed private road as part of a planned future Draft Plan of Standard Condominium. Six of the units (three buildings) would back onto existing dwellings on Fieldgate Street, with the remaining three buildings (six dwelling units) backing onto existing dwellings on Forestview Drive.

[9] Each dwelling unit is provided with a single car garage and additional space to allow a car to park in the front of each unit. Six additional parking spaces are also provided in a separate parking area on the site.

[10] The ZBA also contains modifications to allow for a reduced front yard setback from York Road and to allow for more than one semi-detached dwelling on a single property. Additional zoning modifications, more restrictive than the current Zoning By-law, are also proposed so as to mitigate impacts from overview/privacy and to require visitor parking. The contemplated development is also subject to site plan control.

[11] On April 9, 2014, City Council refused (“Council’s Decision”) the ZBA notwithstanding staff’s recommendation. The Notice of Refusal stated that “the proposal did not conform to the Urban Hamilton Official Plan.” Council’s Decision was then appealed (“Appeal”) by the Proponent to the Board.

## THE EVIDENCE

[12] Greg Macdonald, the City planner who authored the planning report (“Staff Report”) in relation to the ZBA, and his supervisor at the City, Edward John, both testified, under summons, at this hearing.

[13] Mr. Macdonald went through his planning report in some detail and confirmed, *inter alia*, that in his view, the proposal conformed to the Urban Hamilton official Plan (“UHOP”) and represented good planning. Mr. John testified that he agreed with Mr. Macdonald’s opinions.

[14] Ruth Victor, Principal of Ruth Victor & Associates and David Cumming, a consultant with Cultural Heritage Resource Planning and Conservation, provided expert land use planning evidence in support of the relief sought.

[15] Ms. Victor opined, among other things, that the proposal is consistent with the Provincial Policy Statement 2014 (“PPS”), conforms to the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”) and the UHOP, is in the public interest and represents good planning. Mr. Cumming testified with respect to urban design aspects of the contemplated development. In his view, the proposal did not create any urban design issues.

[16] Two nearby residents, Jennifer Lawrence and Tracy Rivers, and two planners, Andrea Sinclair and David McKay spoke in opposition to the ZBA, Both Ms. Sinclair and Mr. McKay are with the firm MacNaughton Hermson Britton Clarkson Planning Limited (“MHBC”).

[17] Ms. Lawrence is a planner by profession and resides at 8 Fieldgate Street. She spoke, not only for herself, but also on behalf of a number of area residents who had prepared written statements. These statements were marked as Exhibit 11 in this proceeding.

[18] Ms. Lawrence pointed out, among other things, that the proposal was in a single detached residential area and that it will create density of between two and three times greater than what currently exists. In her view, the ZBA is an overdevelopment of the site.

[19] Ms. Rivers echoed many of the comments of Ms. Lawrence and also stated that the property in question should be developed for single family detached homes.

[20] Ms. Sinclair provided expert testimony relating to the character and the boundary of the immediate area in which the site is located. She reviewed relevant provisions of the UHOP and concluded that the proposal did not conform to several UHOP policies.

[21] Mr. McKay also reviewed a number of the UHOP policies and testified, *inter alia*, as to the character of the area/ neighbourhood. He also made reference to an alternative development proposal for the site in question which had been prepared by MHBC. This alternate proposal contemplates six single detached lots. In the opinion of Mr. McKay, the ZBA fails to conform to the UHOP and therefore, is not consistent with the PPS and does not conform to the Growth Plan.

## **ISSUE**

[22] Since the current zoning for the subject site allows for two single detached homes to be built, anything more than that could logically be considered an intensification of the property. The question to be answered therefore, in the circumstances of this case, is what is the appropriate level of intensification for the site in question?

[23] Is it 12 semi-detached units contained in six separate buildings as suggested by the Proponent or is it, as suggested by the City and Ms. Lawrence, something other than that?

[24] I will focus my analysis on the appropriateness of the ZBA.

## **ANALYSIS**

### **(i) Neighbourhood Boundary**

[25] In assessing the merits of the ZBA, the starting point, in my estimation, is to determine the appropriate area of the neighbourhood in which the site is located. In this way, neighbourhood character, an essential UHOP policy, can be properly addressed.

[26] The proponent argues that the boundary of the neighbourhood area extends west of Watsons Lane to include the townhouses and retail development (collectively “Non Single Family Uses”) reflected in the photos taken by Ms. Victor and set out at Tab 19 of Exhibit 1 in this proceeding. I am not persuaded.

[27] The evidence in this case indicated, quite clearly, that there is a distinct visual and physical separation between the Non Single Family Uses and the large single detached community east of Watsons Lane. These Non Single Family Uses have a decidedly different character than the single family neighbourhood in which the Proponent’s land is situated.

[28] This separation was specifically alluded to by Mr. John in his witness statement which was filed in the Earlier Board Hearing and which was marked in this proceeding as Exhibit 8. At paragraph 12 of that witness statement he commented that “I am of the opinion that Watsons Lane and the utility corridors act as a practical and physical limit to the neighbourhood in which the subject land is located, consistent with the York Road Neighbourhood zoning schedule.”

[29] In my view, the subject property is located within a well-defined and established single detached residential neighbourhood (“Immediate Neighbourhood”), namely, east of Watsons Lane, south of the open space corridor which runs behind the homes on

Forestview Drive, west of Cammay Avenue court (and including Yorkview Place) and north of York Road. This assessment is also consistent with the neighbourhood boundary findings of Mr. Hefferon in the Earlier Board Decision.

### **(ii) PPS and Growth Plan**

[30] Needless to say, the PPS encourages intensification but, not in an unqualified manner. As my colleague, Mr. Atcheson, quite properly stated in *Losani Homes Ltd. v. Hamilton (City)*, 66 O.M.B.R. 179, at paragraph 37, “The Provincial mandate for intensification is not a license to abandon sound planning principles, or to diminish appropriate land use planning standard in search of more density.”

[31] In this regard, s. 1.1.3.3 of the PPS states that “Planning authorities shall identify appropriate locations and promote opportunities for *intensification* and *redevelopment* where this can be accommodated taking into account existing building stock or areas...” Moreover, s. 4.7 states that “the Official Plan is the most important vehicle for implementation of the provincial Policy Statement...”

[32] The Growth Plan also encourages intensification as well as stressing the importance of municipal involvement in the process.

[33] Section 2.2.3 (6.) of the Growth Plan states that “All municipalities will develop and implement through their official plans and other supporting documents, a strategy and policies to phase in and achieve *intensification*...”

[34] It is patently evident therefore, that with respect to the matter of intensification, the official plan for the municipality (in this case the UHOP) is of critical importance.

### **(iii) UHOP**

[35] Although s. 2.6 of the UHOP suggests that stable neighbourhoods are not static,

s. 2.4 states very clearly that for “*intensification* to make a positive contribution to the City, careful consideration must be given to design and compatibility with existing uses, neighbourhood character...” Furthermore, the UHOP provides, in my estimation, substantial specific policy direction concerning residential intensification. In that regard, s. B.2.4.1.4 contains general evaluation criteria and s. B. 2.4.2.2 sets out certain matters to be evaluated when dealing with residential intensification in the Neighbourhoods designation, i.e. the subject site.

[36] The Staff Report addressed the matter of compatibility referenced in s. B.2.4.1.4 (d) when it concluded that the proposal conformed to the UHOP, but that report did not speak to an equally critical policy, namely, the matter of neighbourhood character referred to in s. B. 2.4.1.4 (b). This provision states that residential intensification shall be based on “the relationship of the proposal to existing neighbourhood character so that it *maintains, and where possible, enhances and builds upon desirable established patterns and built form.*” (**Board emphasis added**)

[37] In my view, the evidence presented in this case establishes that the proposed development is simply not in-keeping with the neighbourhood character.

[38] A comparative analysis dealing with lot area, frontage, front and rear yards, lot depth and net density (collectively the “Comparative Categories”) was prepared by Ms. Sinclair and discussed by her during her testimony. That analysis compared the proposed development with the Immediate Neighbourhood and the York Road Area in relation to the Comparative Categories. In other words, the comparative analysis dealt squarely with the matter of neighbourhood character.

[39] The results were both revealing and compelling. Among other things, they disclosed that:

(a) The proposed development is twice the density found in the Immediate



Neighbourhood and almost three times greater than in the York Road Area;

(b) The average lot area of the proposal is only approximately 30% of the average lot in the York Road Area and 40% of the average lot in the Immediate Neighbourhood;

(c) The average rear yard of the proposal is less than one half of the average rear yards in the Immediate Neighbourhood and a mere one third, approximately, of the average rear yards in the York Road Area; and

(c) The average frontage of the proposal is only approximately 40% of the average frontage found in the York Road Area and the Immediate Neighbourhood.

[40] In the Immediate Neighbourhood, single detached homes, on generous lots, surrounded by mature vegetation, are the only found form of development. To impose a 12 semi-detached unit development in this area would not be, in my view, “maintaining or where possible enhancing or building upon desirable established patterns and built form” as stipulated by s. B.2.4.1.4 (b) of the UHOP.

[40] The matters identified in s. B.2.4.2.2 for evaluation of residential intensification not only include the criteria set out in B. 2.4.1.4, i.e. subparagraph (b) thereof, but also, add to them. The add-ons which are, in my opinion, particularly relevant, are subparagraphs (c) and (e) respectively. Subparagraph (c) deals with height and density and (e) deals with neighbourhood lot pattern and configuration.

[41] As I have already mentioned, the contemplated development, from a density perspective is significantly greater than the density in the York Road Area and in the Immediate Neighbourhood. As a result, the proposal, in my estimation, contributes to an overbuilding of the subject site which is out of character with not only the prevailing built form but also the surrounding single detached uses.

[42] As for lot pattern and configuration, all units in the proposed development front

onto a proposed private road. This is inconsistent with the development pattern along York Road where lots, for the most part, front onto York Road and equally inconsistent with the development pattern along other roads in the Immediate Neighbourhood where the clear visual impression is that the homes face the street.

[43] In my view, the proposal falls short of conforming to s. B.2.4.2.2 (a), (c) and (e) of the UHOP.

### **DISPOSITION**

[44] Based on all of the foregoing, I see no reason to disturb Council's Decision. Accordingly, it is ordered that the ZBA is not approved and the Appeal is therefore dismissed.

*"Steven Stefanko"*

STEVEN STEFANKO  
VICE-CHAIR

### **Ontario Municipal Board**

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