

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



**ISSUE DATE:** January 26, 2016

**CASE NO(S):**

PL150751

**PROCEEDING COMMENCED UNDER** subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 1165435 Ontario Limited  
Subject: Request to amend the Official Plan - Refusal of request by the City of Hamilton  
Existing Designation: Residential – Schedule “A” & Low Density Residential on Schedule 1  
Proposed Designated: Site specific  
Purpose: To recognize an illegal triplex  
Property Address/Description: 102 Ainslie Avenue  
Municipality: City of Hamilton  
Approval Authority File No.: UHOPA-15-013  
OMB Case No.: PL150751  
OMB File No.: PL150751  
OMB Case Name: 1165435 Ontario Limited v. Hamilton (City)

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

Applicant and Appellant: 1165435 Ontario Limited  
Subject: Application amend Zoning By-law No. 6593 - Refusal of Application by the City of Hamilton  
Existing Zoning: C/S-1335a (Urban Protected Residential)  
Proposed Zoning: C/S- \_ (Urban Protected Residential) District, Modified  
Purpose: To recognize an illegal triplex  
Property Address/Description: 102 Ainslie Avenue  
Municipality: City of Hamilton  
Municipality File No.: ZAR-12-023  
OMB Case No.: PL150751  
OMB File No.: PL150752

**Heard:** January 14 and 15, 2016 in Hamilton, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

City of Hamilton

J. Wice

1165435 Ontario Limited

D. Baker

**DECISION OF THE BOARD DELIVERED BY SUSAN de AVELLAR SCHILLER**

**INTRODUCTION**

[1] The subject site, 102 Ainslie Avenue, is about a kilometre from McMaster University. It is within the Urban Hamilton Office Plan (“UHOP”) area and, further, within the Ainslie Wood Westdale Secondary Plan (“AWWSP”) area.

[2] The subject site is a legal two-family home, or duplex, that has been renovated and operated as a three-family home, or triplex. The matters before the Board are a proposed site-specific UHOP amendment (“UHOPA”) and an associated site-specific zoning amendment (“ZBLA”) to By-law No. 6593. The intent of the UHOPA and the ZBLA is to establish the triplex as a permitted use at the subject site.

[3] The City of Hamilton (“City”) refused both applications. 1165435 Ontario Limited (“Proponent”) appealed those decisions to this Board.

[4] The Board heard from two full Members of the Canadian Institute of Planners who are also Registered Professional Planners in Ontario and whom the Board qualified to provide the Board with independent expert opinion evidence in land use planning matters. Michael Crough was called by the Proponent and Cameron Thomas was called by the City.

[5] The Board also heard from Tordis Coakley, a Director of the incorporated Ainslie Wood Community Association. Ms. Coakley appeared in opposition to the proposed

UHOPA and ZBLA.

## **ISSUES, ANALYSIS AND FINDINGS**

### **Is an Amendment to the Urban Hamilton Official Plan Necessary?**

[6] The Proponent's proposed official plan amendment was made initially to the old City official plan. The UHOP is the new official plan that applies, as the name suggests, to the urban area.

[7] At the request of the City, the Proponent revised its application for an official plan amendment to be an amendment to the UHOP.

[8] Although a proposed UHOPA is before the Board, the Proponent takes the position that the language in the UHOP means that no UHOPA is needed. The City disputes this interpretation of the UHOP and takes the position that a UHOPA is needed to permit a triplex at this location.

[9] Part I of the UHOP contains the general policies that apply throughout the UHOP area. Part II of the UHOP contains the various secondary plans, of which the AWWSP is one.

[10] Both sections of the UHOP contain complementary policies to govern conflicts or discrepancies between the general UHOP and the applicable secondary plan. These policies establish that where there is a conflict or discrepancy between the general policies and the specific policies of the secondary plan, the applicable secondary plan prevails. There is no dispute between the parties on this interpretation.

[11] The subject site is low density residential.

[12] The general policy of the UHOP for low density residential, at policy E.3.4.3, states that the permitted uses in low density residential areas include:

...single-detached, semi-detached, duplex, triplex and street townhouse dwellings...

[13] Chapter F of the UHOP includes policies to govern the interpretation of the UHOP. Policy F.1.4.5 states that:

...Appendices shall be considered as information only...

[14] The general policies governing all secondary plans, at policy B.1.5, applies policy E.3.4.3 to all new secondary plans. Appendix B sets out the residential categories for all existing and future secondary plans. Policy B.1.5 also states that the residential density ranges and permitted built forms in Appendix B shall apply to new and existing secondary plans.

[15] The Proponent asserts that policy F.1.4.5 in the general plan and policy B.1.5 governing secondary plans are in conflict in terms of the mandatory applicability of the residential density ranges and permitted built forms in Appendix B.

[16] Appendix B sets out several low density residential categories. One of the categories is Low Density 2 ("LD2"). The subject site is designated LD2. This LD2 category includes:

... singles, semis, duplex, triplex, and street town homes ...

[17] On this basis, the Proponent concludes that a triplex is a permitted use on the subject site and that no UHOPA is necessary.

[18] The Board finds that this analysis stops a bit short and the specific language of the AWWSP must be read to understand the application of the LD2 to the AWWSP.

[19] Policy B.6.2.5.4(a)(i) is the specific policy for the AWWSP and states:

#### **6.2.5.4 Low Density Residential Designation**

- (a) The following policies shall apply to the lands designated Low Density Residential 2 on Map B.6.2.1 – Ainslie Wood Westdale –

Land Use Plan:

- (i) Low Density Residential 2 areas permit single detached dwellings, semi-detached dwellings, duplexes, and street townhouses. These uses shall include dwellings with accessory apartments/second dwelling units. Single detached housing shall be the primary form of housing in most of these areas, especially in the interior of neighbourhoods. Existing, legal 3, 4, and 5-plexes shall be recognized as permitted uses.

[20] Triplexes are permitted in the Low Density Residential 2 designation in the AWWSP, but there are two important qualifications: they must be in existence and they must be legal.

[21] There is no dispute that the triplex at the subject site is an existing triplex. There is also no dispute that this existing triplex is illegal.

[22] The Board does not agree that a general category showing permitted uses can be read to override the specific category that permits the general range of uses but establishes key qualifications for the particular secondary plan.

[23] The Board finds that a UHOPA is necessary to allow a triplex as a permitted use on the subject site.

### **Should a Triplex be a Permitted Use at 102 Ainslie Avenue?**

[24] Although a triplex already exists on the subject site, its existence does not serve to add any weight either in favour of permitting the use or in opposition to permitting the use.

[25] Permitting a triplex at this site represents a modest intensification to the current permitted use of a two-family dwelling or duplex.

[26] While the UHOP indicates that primary intensification areas are the urban nodes and corridors, the UHOP also indicates that residential intensification shall be encouraged throughout the entire built up area.

[27] The AWWSP area is a mature neighbourhood within the built up area.

[28] The history of the property and the fact that the existing triplex is not a permitted use at this site does not change the criteria to be considered when residential intensification is being considered in a neighbourhood. The fact that the triplex currently exists simply provides the Board with actual impacts from this use rather than theoretical impacts.

[29] This is a mixed neighbourhood with a variety of house forms and tenure of its residents. Since it is within the broad ambit of McMaster University, the neighbourhood includes a large number of students with housing that caters to student needs.

[30] The neighbourhood is well-served by public transit with bus routes that weave through the neighbourhood. The City has introduced a bike share program with a bike share station a short distance from the subject site. The area also has a number of walking paths and trails, encouraging active transportation.

[31] The predominant house form in the nearby area is that of a single detached dwelling whether the actual use is single family, duplex or triplex. The subject site has a single detached house form that fits the predominant pattern in the nearby neighbourhood.

[32] The subject site is one of a small, unique enclave of three lots interior to the neighbourhood. These are lots of record and no relief is being sought with respect to the size or configuration of the lots, or with respect to any setbacks or landscaping for the structure on the subject site.

[33] The three lots in this enclave are flagpole lots on the north side of Ainslie Avenue. They were created by consent several years ago. Each has frontage on Ainslie Avenue that is extremely narrow and is really just an entrance to a long driveway. This is the pole part of the lot. The flag part flares out at the rear and has the effect of producing three lots, with three residential house forms, that sit largely behind

existing houses with more usual frontages, lot configurations and relationships to Ainslie Avenue.

[34] This small enclave is barely visible from any direction. With the exception of its long driveway to Ainslie Avenue, the subject site is bounded on the south by the rear yard of a house that fronts more regularly on Ainslie Avenue. To the east are the two other lots in this enclave. To the west and north are open space and a wide hydro corridor with walking trails.

[35] The City has suggested that lights, noise and traffic along the long driveway might disturb the residents of house that is in front of the subject site.

[36] The Board had no evidence of any such disturbance and no immediate neighbour appeared in opposition to the Proponent.

[37] The long driveway from Ainslie Avenue that travels alongside the existing house to its rear where the house on the subject site is located is an existing condition. This existing condition has nothing to do with whether a triplex is on the site or not. The condition exists, even if the Board dismisses the appeal and the subject site is used only as a duplex.

[38] The City suggested that a triplex, with a large number of rooms capable of being rented to students, would introduce more people and more cars than a duplex.

[39] The Board attaches no weight to these suggestions.

[40] The City does not define a duplex (or, for that matter, a triplex) by the number of rooms or the number of floors occupied by each unit. There is nothing to suggest that a duplex at this site could not have exactly the same number of rooms and occupy the same interior space, simply making one of the units a two-storey unit.

[41] In addition, the City establishes parking requirements by the unit and not by the number of rooms. To that end, the City's planner confirmed that a triplex would require a

total of four parking spaces. There is no requested relief for this parking standard in the proposed ZBLA and the Proponent's planner confirmed that there is sufficient space to accommodate four parking spaces on the subject site.

[42] The Board reviewed correspondence filed with the City Clerk regarding the matters before the Board.

[43] The correspondence was divided in opinion.

[44] Correspondence from the immediate neighbours was in support of the Proponent. Correspondence from residents further away from the subject site was in opposition.

[45] Those in opposition generally echoed the thought that the subject site is rented to students and there are too many students in the neighbourhood.

[46] The UHOP, like the matters of provincial interest in s. 2 of the *Planning Act*, R.S.O. 1990 c. P. 13 ("Act"), the Provincial Policy Statement ("PPS") and the Growth Plan for the Greater Golden Horseshoe ("GGH"), calls for versatile, flexible and diverse housing in a:

**B.3.2.1.1**

... range of types, forms and densities to meet the social, health and well-being requirements of all current and future residents...

[47] Permitting a triplex in a single detached dwelling form on the subject site provides just exactly that desired versatility.

[48] The tenure of those living in the triplex, their age, their income, their education, and their household characteristics are not matters of land use. The land use issue is whether the form of housing can accommodate, appropriately, a range of persons with a range of characteristics.



[49] The AWWSP, at policy B.6.2.1, recognizes the distinction between matters that are land use and other matters, and states:

... Other non-land matters are addressed in the Community Strategy...The Community Strategy is a guide plan for recommended actions by the City and other stakeholders on matters such as student housing, by-laws and their enforcement, parking and communications.

[50] Ms. Coakley's concerns are a bit different from some of the correspondence in opposition.

[51] Ms. Coakley, and the City's planner, suggested to the Board that a particular problem in the neighbourhood is what both referred to as a large number – estimated by the City's planner as perhaps as high as 50% - of the houses having been illegally converted to multiple occupancy. Ms. Coakley and the City's planner expressed the concern that permitting a triplex at the subject site would represent a precedent that would encourage and essentially reward illegal conversions.

[52] The Board attaches no weight to these suggestions.

[53] On the question of precedent, each application must be considered and evaluated on its own merits. Where a neighbourhood is mixed, that mixture forms part of the character of the neighbourhood and must be considered. But the particular impacts and characteristics of a specific site are not washed away by simply citing the fact that a neighbourhood may be a mixed one. In this case, for example, there is no dispute that the site is a unique one that is not duplicated elsewhere in the neighbourhood.

[54] Bringing illegal conversions into conformity is first and foremost a question of by-law enforcement. By-law enforcement, as the UHOP and the AWWSP both recognize in policy B.6.2.1 above, is not a land use matter but it is a matter that sits squarely within the jurisdiction of the City.

[55] Finally, the Board observes that if by-law enforcement identifies an illegal

conversion and that identification eventually results in a process that considers all of the necessary criteria and impacts that results in a form and use that is permitted and controlled, that result is surely to be welcomed.

[56] In this particular case, the Board also observes that amending the UHOP and By-law No. 6593 to permit a triplex at 102 Ainslie Avenue is not the end of the matter. This site is subject to site plan control, providing the City with an additional measure of regulation on the site.

[57] In the result, the Board finds that the proposed UHOPA and proposed ZBLA have had appropriate regard for matters of provincial interest as set out in s. 2 of the Act, are consistent with the PPS, conform to the GGH, and conform to the policy regime of the UHOP and the AWWSP.

[58] The Board's order is withheld until the parties file with the Board a final form of the proposed UHOPA and the proposed ZBLA, in the City's usual format for such planning instruments.

*"Susan de Avellar Schiller"*

SUSAN de AVELLAR SCHILLER  
VICE-CHAIR

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**Ontario Municipal Board**

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