

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



**ISSUE DATE:** December 20, 2017

**CASE NO(S):** PL170903  
PL170904

**PROCEEDING COMMENCED UNDER** subsection 45(12) of the *Planning Act*,  
R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 192 Hughson Street Inc.  
Subject: Minor Variance  
Variance from By-law No.: 6593  
Property Address/Description: 192 Hughson Street North  
Municipality: City of Hamilton  
Municipal File No.: A-110/16  
OMB Case No.: PL170903  
OMB File No.: PL170903  
OMB Case Name: 192 Hughson Street Inc. v. Hamilton (City)

**PROCEEDING COMMENCED UNDER** subsection 45(12) of the *Planning Act*, R.S.O.  
1990, c. P.13, as amended

Applicant and Appellant: 181 John Street Inc.  
Subject: Minor Variance  
Variance from By-law No.: 6593  
Property Address/Description: 181 John Street North  
Municipality: City of Hamilton  
Municipal File No.: HM/A-16:11  
OMB Case No.: PL170904  
OMB File No.: PL170904  
OMB Case Name: 181 John Street Inc. v. Hamilton (City)

**Heard:** November 29, 2017 in Hamilton, Ontario

**APPEARANCES:**

**Parties**

192 Hughson Street Inc. and  
181 John Street Inc.

City of Hamilton

**Counsel**

Max Laskin  
Mark Noskiewicz

Joanne Wice

**MEMORANDUM OF ORAL DECISION DELIVERED BY H. JACKSON ON  
NOVEMBER 29, 2017 AND ORDER OF THE BOARD**

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[1] The owner of 192 Hughson Street Inc. and 181 John Street Inc. (the “Applicant”) applied for minor variance relief to allow an increase in density in order to facilitate the repair and upgrade of two 19-storey apartment buildings at the above noted addresses, and for relief from the requirements of the By-law for parking. The properties also include two five-storey townhome buildings. These rental properties are operated by Greenwin.

[2] The City of Hamilton (the “City”) Committee of Adjustment (the “COA”) refused the request which lead to this appeal. The Applicant has worked closely with the City and the local neighbourhood association, being the Beasley Neighbourhood Association (“BNA”), and has now reached a settlement in this matter.

[3] The City attended in support of the settlement between the Applicant and the BNA.

[4] Ed Fothergill provided land use planning opinion evidence in support of the settlement. He explained that the application that went before the COA requested a density of 255 dwelling units per acre and a parking rate of 0.66 spaces per dwelling unit for 181 John Street North; and a density of 252 dwelling units per acre and a parking rate of 0.64 spaces per dwelling unit for 192 Hughson Street North.

[5] The revised application is for a slightly reduced density and slightly increased parking ratio for both properties, as well as the recognition of a number of undersized parking stalls at both locations.

[6] The variances requested for the revised proposal were entered into evidence as Exhibit 2, Tab 33, and are appended herein as Attachment 1.

[7] Out of an abundance of caution, the Applicant provided Notice of the revised minor variance request and this hearing to the entities entitled to Notice of the Hearing.

No persons attended in opposition to this matter, and no person requested status at this hearing.

## **PLANNING CONTEXT**

[8] The two properties are adjacent to each other and have frontage on John Street North, Robert Street, and Hughson Street North. Together they are about 0.85 hectares in size. The buildings were constructed in the 1970s and require upgrading and modernizing, as many of the current unit layouts are inefficient. Greenwin purchased the properties in 2012 and have been in the process of making upgrades and improvements since that time.

[9] The proposal is for interior alterations to the buildings to reconfigure the units and to remove a number of the three and four bedroom units in favour of units with fewer bedrooms. BNA were opposed principally due to the concern that family sized three-bedroom units should be retained.

[10] The property is located north of the downtown area within a predominantly mixed use residential neighbourhood. James Street North is one block to the west. It is a major north south arterial road connecting the downtown to the waterfront area and includes a wide range of commercial and mixed use residential buildings.

[11] The property is zoned E-3/S-332 (High Density Multiple Dwellings) in the City's Zoning By-law.

[12] Mr. Fothergill testified that the settlement agreed to between the Applicant and the BNA and endorsed by the City specifically provides that:

- A minimum of 25% of the total units on each of 181 John Street North and 192 Hughson Street North shall be two-bedroom units;
- 181 John Street North shall contain a minimum of 18 three-bedroom units;  
and

- 192 Hughson Street North shall contain a minimum of 17 three-bedroom units.

[13] As a result, both properties will have 260 units for a total of 520 units; whereas 383 units currently exist.

[14] These requirements were added as Conditions of Approval and were entered into evidence in Exhibit 2, Tab 34, and are appended herein as Attachment 2. There is also a Condition from the City that the Applicant confirm that there is sufficient water and sewage capacity for the redevelopment.

## **PLANNING OPINION**

[15] Mr. Fothergill testified that because of the proximity of the location to the downtown area, and due to the clientele of these buildings, a lower parking ration is appropriate. When fully occupied, these buildings operated with a parking ratio of 0.68 at 181 John Street North and 0.67 at 192 Hughson Street North. The proposed parking ratio of 0.68 and 0.66 respectively will provide for a more efficient use of the parking structure and will avoid any issues of security that may arise with under-utilized parking space.

[16] Mr. Fothergill indicated that the variance request to recognize the under-sized parking stalls is simply to recognize these anomalies, and that there is no impact to this request as these parking stalls are in use and function.

[17] Mr. Fothergill testified that the requested variances that will permit the interior reconfiguration of the units in these buildings is a part of the improvements on the properties and will have no external impact.

[18] He testified that this redevelopment is consistent with the Provincial Policy Statement 2017 as this proposal will help to maintain the existing housing stock and contributes to a variety of housing types. As well, the proposal conforms to the Growth

Plan for the Greater Golden Horseshoe as this redevelopment will provide for intensification within the urban area. Similarly, the proposal conforms to the intent of the Hamilton Wentworth Official Plan, as it promotes further intensification of the urban area.

[19] Mr. Fothergill stated that the proposal conforms to the City's Official Plan 2010. The lands are within the Central Policy Area which permits a variety of housing types including apartments. The policies of this plan encourage improvements to properties.

[20] He also explained that the Urban Hamilton Official Plan (effective 2013) does not apply to these lands due to an appeal of the Secondary Plan; however, the policies in this plan provide the most recent position of Council. Mr. Fothergill's evidence is that this redevelopment proposal for residential intensification helps to achieve those policies.

[21] The Secondary Plan that applies to this area is the West Harbour (Setting Sail) Secondary Plan. The site is designated Medium Density 1 which permits multiple dwellings. The buildings were constructed prior to the passage of this plan and are in excess of the height and density provisions of this Plan. Policy A.6.3.3.1.7 of the Secondary Plan recognizes existing non-complying uses. Mr. Fothergill explained that since there are no changes proposed to the exterior of the building or the intensity of the use, the proposal is not considered an expansion.

[22] With regards to the four tests of the *Planning Act*, it is Mr. Fothergill's uncontroverted opinion that the proposal maintains the general intent and purpose of the Official Plan. The proposed variances meet the general intent of the By-law which is to limit development on the site to an appropriate level and to recognize existing layout and configuration of parking stalls and the intensity of the use of the parking spaces within the underground parking lot.

[23] In addition, Mr. Fothergill testified that the proposed variances are minor in terms of any perceived implications of change. There is no change required to the exterior of

the buildings, or the parking facilities. The changes will improve the conditions in the buildings and are not perceptible to the public. The variances for the parking stall sizes reflect the current situation, and the reduced parking ratio reflects the expected usage rate and will eliminate problems associated with unused space.

[24] It is his opinion that the variances are desirable for the appropriate development of the buildings as they facilitate much needed improvements.

## **FINDINGS**

[25] The Board accepts the uncontroverted opinion evidence of Mr. Fothergill and finds that the revised proposal provides for development meets the intent and purpose of the Official Plan and the Zoning By-law. The Board is satisfied that the variances are minor and that there is no undue adverse impact from this development. The Board finds this to be a desirable and appropriate development of the lands, as it provides for required improvement to these rental buildings.

## **ORDER**

[26] The Board allows the appeal, in part, and authorizes the requested variances to the City of Hamilton Zoning By-law No. 6593, as amended, as appended in Attachment 1, subject to the Conditions of Approval appended as Attachment 2.

*"H. Jackson"*

H. JACKSON  
MEMBER

If there is an attachment referred to in this document,  
please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

### **Ontario Municipal Board**

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# ATTACHMENT 1

## Requested Variances

### 181 John Street North

1. There shall be 248 dwelling units per acre of lot area, instead of the maximum permitted density of 190 dwelling units per acre of lot area.
2. Parking at a rate of 0.68 spaces per dwelling unit shall be provided, instead of the minimum required parking ratio of 1.0 space per dwelling unit.
3. For 2 parking spaces, a minimum parking space width of 2.2 metres shall be provided instead of the minimum required parking space width of 2.7 metres; and for 10 parking spaces, a minimum parking space length of 5.49 metres, for 7 spaces, a minimum parking space length of 5.0 metres, and for 4 parking spaces, a minimum parking space length of 4.97 metres shall be provided instead of the minimum required parking space length of 6.0 metres.

### 192 Hughson Street North

1. There shall be 246 dwelling units per acre of lot area, instead of the maximum permitted density of 190 dwelling units per acre of lot area.
2. Parking at a rate of 0.66 spaces per dwelling unit shall be provided, instead of the minimum required parking ratio of 1.0 space per dwelling unit.
3. For 2 parking spaces, a minimum parking space width of 2.19 metres and for 2 parking spaces, a minimum parking space width of 2.38 metres shall be provided instead of the minimum required parking space width of 2.7 metres; and for 2 parking spaces, a minimum parking space length of 5.47 metres, and for 2 parking spaces, a minimum parking space length of 4.6 metres shall be provided instead of the minimum required parking space length of 6.0 metres.

## **ATTACHMENT 2**

### **181 John Street North and 192 Hughson Street North**

#### **Recommended Conditions of Approval**

1. The applicant shall confirm to the satisfaction of the Manager of Development Approvals that there is adequate sewer capacity and fire flows available to accommodate the additional units proposed.
2. A minimum of 25% of the total units on each of 181 John Street North and 192 Hughson Street North shall be two-bedroom units.
3. 181 John Street North shall contain a minimum of 18 three-bedroom units.
4. 192 Hughson Street North shall contain a minimum of 17 three-bedroom units.