

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: July 02, 2019

CASE NO(S): PL180725

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Appellant:	Rachel Raymond
Subject:	By-law No. 2020.395
Municipality:	City of Burlington
LPAT Case No.:	PL180725
LPAT File No.:	PL180725
LPAT Case Name:	Raymond v. Burlington (City)

Heard: In writing

APPEARANCES:

Parties

Rachel Raymond
City of Burlington

Counsel

A.J.M. Baroudi
B. Hurley

DECISION DELIVERED BY HUGH S. WILKINS AND ORDER OF THE TRIBUNAL

[1] On March 24, 2017, Bloomfield Developments Inc. (“Applicant”) applied to the City of Burlington (“City”) for zoning amendments (“proposed Zoning By-law Amendments”) to facilitate a residential development at 5219 Upper Middle Road, 2004 Georgina Court, 2005 Georgina Court and Block 262 and Block 263 in Plan 20M-824

(“subject lands”).

[2] On July 16, 2018, the City’s Council approved the Applicant’s Zoning By-law Amendment application. The approved development would consist of 20 residential dwellings, including two single detached units, four semi-detached units, and 14 condominium townhouse units.

[3] On August 8, 2018, Rachel Raymond (“Appellant”) filed an appeal of the proposed Zoning By-law Amendments to the Local Planning Appeal Tribunal (“Tribunal”) under s. 34(19) of the *Planning Act*. The Appellant’s grounds for appeal are that the proposed Zoning By-Law Amendments are inconsistent with the Provincial Policy Statement, 2014 (“PPS”) and fail to conform with the City’s Official Plan. The Appellant made subsequent written submissions after the appeal was filed regarding conformity with the Growth Plan for the Greater Golden Horseshoe, 2017 and conformity with the Regional Municipality of Halton (“Region”) Official Plan; however, the Appellant’s Notice of Appeal did not address these grounds. The Tribunal made an Order subsequent to its Case Management Conference (“CMC”) in this proceeding, held on February 12, 2019, that those submissions would not be considered when the Tribunal adjudicated the appeal.

[4] At the CMC, the Tribunal directed that the hearing would be held in writing.

[5] For the reasons that follow, the Tribunal dismisses the appeal and approves the proposed Zoning By-law Amendments.

EVIDENCE AND SUBMISSIONS

The Appellant’s Evidence and Submissions

[6] The Appellant submits that the proposed Zoning By-law Amendments would facilitate an overdevelopment of the subject lands that would not be compatible with the

surrounding medium density neighbourhood.

[7] The Appellant submits that the proposed Zoning By-law Amendments are not consistent with PPS policy 1.1.3.4, which promotes appropriate development standards. She argues that the proposed Zoning By-law Amendments facilitate a development that does not provide for adequate setbacks, built form, amenity space, or on-street parking. She submits that it would have excessive reductions in lot area and lot width from the existing zoning and would have a density that is not compatible with the surrounding neighbourhood.

[8] The Appellant submits that the proposed Zoning By-law Amendments do not conform with policies 6.20(c) and 6.5(a) in Part II, 2.5.4 in Part III, and 4.4(iv) in Part VI of the City's Official Plan which require development to be compatible with the surrounding neighbourhood. She submits that the proposed Zoning By-law Amendments would result in increased traffic and parking that would change the family oriented "play on the street" character of the neighbourhood. She submits that the proposed access to the development off local streets would create traffic impacts and traffic safety problems. She submits that the proposed development should instead be accessed from Upper Middle Road. She submits that the proposed density of the development would increase the number of residences in the neighbourhood by 50 percent, would create a unique pocket of townhouse development in a neighbourhood of single detached dwellings, and would have inappropriate setbacks. She submits that the proposed widths of the lots are not sufficient for outdoor amenity uses and are not compatible with the area.

[9] The Appellant submits that the proposed Zoning By-law Amendments contain significant changes to the existing zoning regulations for the subject lands in terms of lot width, lot area, setbacks, height, and parking and would cause privacy and shadowing impacts. She submits that the proposed Zoning By-law Amendments would facilitate a development that fails to address the requirements in policy 5.4.2 in Part III or satisfy the criteria in policy 2.5 in Part III of the City's Official Plan for evaluating intensification proposals. She submits that the proposed Zoning By-law Amendments do not provide

for:

- adequate on-street and visitor parking for the development;
- solutions to address the capacity of the municipal transportation system to accommodate any increased traffic flows;
- compatibility with the existing neighbourhood character in terms of scale, massing, height, siting, setbacks, coverage, parking and amenity area;
- adequate buffering or other measures to minimize impacts on neighbours; and
- intensification that is well integrated with the existing neighbourhood in terms of built form, scale and development profile to provide transition between existing and proposed buildings.

[10] The Appellant submits that the proposed Zoning By-law Amendments would result in 50 percent more vehicles in a presently quiet neighbourhood. She questions the adequacy, timing and validity of the Applicant's traffic impact study, stating that it was conducted during the week of the Family Day holiday. She stated that the proposed development does not provide for adequate parking and visitor parking. She raised concerns that the proposed development includes single driveways and that the garages for the proposed development may end up being used for storage. She submits that this would result in more cars being parked on the street.

[11] The Appellant submits that there is insufficient park space in the area and that several residents had hoped that the subject lands would be used as a new park. She submits that the park space requirements in policy 2.7 in Part VI of the City's Official Plan are not being met.

[12] The Appellant submits that the proposed Zoning By-law Amendments should have regard to the City's new Official Plan, which was adopted in April 2018, but has not yet been approved by the Region. She submits that policy 2.4.2(3) of the City's new Official Plan discourages intensification in areas designated as "Established

Neighbourhoods”, including the subject lands. She submits that policy 7.3.2(2) states that development must address: the local pattern of lots; the building typologies of nearby residential properties; the heights and scale of nearby residential properties; the setback of buildings from the street; and the pattern of rear and side yard setbacks. She submits that given the proposed changes to the existing zoning standards for the subject lands, the proposed Zoning By-law Amendments do not conform with this policy.

[13] The Appellant argues that in the present case, the combined effect of reduced standards in the proposed Zoning By-law Amendments in terms of setbacks, scale and massing, privacy and sun blockage, and parking make the proposed development incompatible with the surrounding neighbourhood.

[14] The Appellant filed an affidavit sworn by Kevin Rutherford, sworn on October 15, 2018. He is a civil engineering technologist. He resides in the vicinity of the subject lands. In his affidavit, Mr. Rutherford supports the Appellant’s grounds of appeal and attaches a revised appeal letter elaborating on the Appellant’s grounds.

Participants’ Submissions

[15] At the CMC in February 2019, the Tribunal granted Participant status to Ryan and Eunice Brez. In their written submissions, Mr. and Ms. Brez raised concerns regarding access to the proposed development, traffic safety, the adequacy of local park space, the adequacy of the proposed visitor parking, the adequacy of the proposed resident parking, and density.

[16] Mr. and Ms. Brez submit that the proposed Zoning By-law Amendments are not consistent with the PPS as they will create over-development, traffic, neighbourhood character, quality of life, and health and safety problems. They submit that the proposed Zoning By-law Amendments will require an excessive number of alterations to the existing development standards. They submit that the proposed Zoning By-law Amendments are not consistent with PPS policy 1.1.3.4 in that they: facilitate over-intensification; provide inadequate setbacks, built form, amenity space and on-street

parking; permit inadequate lot areas and widths; and increase density in a manner that is not compatible with the existing area.

[17] Mr. and Ms. Brez submit that the proposed Zoning By-law Amendments do not conform with policy 6.20(c) of Part II and 2.5.4 of Part III of the City's Official Plan requiring that infill development be compatible with surrounding developments. They submit that the proposed Zoning By-law Amendments will result in increased traffic and parking shortages and will threaten the neighbourhood character. They also submit that the proposed Zoning By-law Amendments will facilitate inappropriate built form in the area by creating a unique pocket of development that is not consistent with any other areas of the neighbourhood. In this respect, they submit that the proposed Zoning By-law Amendments fail to conform with policy 6.5(a) of Part II of the City's Official Plan, which states that the density, form, bulk, height, setbacks, spacing and materials of development are to be compatible with its surrounding area.

[18] Mr. and Ms. Brez also submit that the proposed Zoning By-law Amendments do not conform with policy 2.7.1(a) of Part VI of the City's Official Plan which addresses the creation of parks for the community and states that parkland shall be dedicated at the rate of 1 hectare per 300 units. They submit that these requirements have not been satisfied in the present case.

The City's Evidence and Submissions

[19] In response to the appeal, the City filed an affidavit sworn by Suzanne McInnes on November 1, 2018. Ms. McInnes is a land-use planner at the City with over 25 years of experience. She is a full member of the Canadian Institute of Planners and the Ontario Professional Planners Institute. The Tribunal qualifies her to provide opinion evidence in the area of land use planning for the purposes of this appeal.

[20] Ms. McInnes opined that the proposed Zoning By-law Amendments are consistent with the PPS. She stated that the proposed development would constitute intensification, which the PPS promotes, and that the subject lands, which she

described as vacant and underutilized lands, are within a developed area. She said the proposed development would have a density that is permitted under the City's Official Plan and opined that it is an appropriate site for intensification. Regarding the application of policy 1.1.3.4 of the PPS directing the promotion of appropriate development standards that facilitate intensification, redevelopment and compact form, Ms. McInnes stated that these standards are found in the intensification criteria in policy 2.5.2 of Part III of the City's Official Plan, which address the adequacy of municipal services, adequacy of off-street parking, the capacity of the municipal transportation system, proximity to public transit, compatibility, effects on vegetation, shadowing, accessibility to community services, buffering, among other issues. She opined that the proposed Zoning By-law Amendments facilitate a development that meets these criteria.

[21] Ms. McInnes opined that the proposed Zoning By-law Amendments would facilitate a development that is compatible with existing development in the area and conform with the City's Official Plan. Noting that the subject property is designated Residential – Medium Density, Ms. McInnes stated that detached dwelling units to a maximum of 15 percent of the total housing mix on the property are permitted. With respect to setbacks, she stated that the RM-138 zoning on Rome Crescent requires a 7 metre ("m") rear yard setback and that the proposed Zoning By-law Amendments would permit a 4.5 m setback with a 3 m vegetated buffer resulting in a 7.5 m structural setback. She also opined that the proposed Zoning By-law Amendments would facilitate a development that meets the housing intensification criteria set out in policy 2.5.2(a) of Part III of the City's Official Plan and satisfies the requirements in policy 2.2.2(d) of Part III.

[22] Ms. McInnes opined that the proposed development meets the City's Official Plan definition of compatible, which requires development that is capable of co-existing in harmony with existing or proposed development in the area. She opined that the definition permits different forms of residential development provided they satisfy the Official Plan's intensification criteria, which, as noted above, she opined the proposed development does.

[23] Regarding the application of policy 6.5(a) of Part II of the City's Official Plan on density, built form and setbacks, Ms. McInnes opined that the proposed development's density of 45.4 units per net hectare meets the City's Official Plan's Residential – Medium Density designation requirements. She stated that the Official Plan permits a density ranging from 26 to 50 units per net hectare. She also stated that townhouses are permitted on the subject property.

[24] Regarding the traffic and parking issues raised by the Appellant and the Participants, Ms. McInnes stated that the Applicant's Traffic Brief and Parking Study was reviewed by the City's transportation staff and they had no safety concerns. She stated that the Region does not support access to the proposed development from Upper Middle Road, which is a Regional Road. Regarding parking issues, Ms. McInnes stated that the Appellant's Traffic Brief and Parking Study found that four visitor parking spaces for the proposed development is appropriate, which she said is supported by the City's transportation staff. She said the City's criteria for adequate off-street parking also are satisfied.

[25] Ms. McInnes stated that the height of the proposed development is permitted under the Zoning By-law and the sun shadowing criterion in policy 2.5.2(a)(vii) of Part III of the City's Official Plan is met.

[26] Regarding park space, Ms. McInnes opined that the requirements in policies 2.9.2(b) and 6.3.2(e) of Part III of the City's Official Plan for determining the need for neighbourhood park sites are met and that the City's Parks and Open Space staff confirmed that there is adequate parkland available to accommodate the proposed development.

[27] Ms. McInnes also opined that the proposed Zoning By-law Amendments have regard for the City's new, but not yet approved by the Region, Official Plan – Grow Bold, which was passed by City Council in April 2018. She said the new Official Plan permits intensification in established neighbourhoods in accordance with the maximum density under the applicable land use designation. She said the proposed Zoning By-law

Amendments would facilitate a development that meets these requirements. She said the subject property would be designated Residential Medium Density under the City's new Official Plan which permits a density of 26 to 75 units per net hectare, which is greater than that permitted under the City's existing Official Plan. She said the proposed development would include a pedestrian walkway connecting Georgina Court to Upper Middle Road to provide access to transit on Upper Middle Road in line with the transit policies in the City's new Official Plan. She opined that the proposed Zoning By-law Amendments would facilitate a development that is compatible with existing development in the area.

ANALYSIS AND FINDINGS

[28] On an appeal under s. 34(19) of the *Planning Act*, an appellant must demonstrate that the zoning by-law amendments under appeal are inconsistent with a provincial policy statement, fail to conform with or conflict with a provincial plan or fail to conform with an applicable official plan. In the present case, the Appellant argues that the Zoning By-law Amendments are inconsistent with the PPS and fail to conform with the City's Official Plan.

[29] Under s. 34(25.2) of the *Planning Act*, the Tribunal must dismiss an appeal unless the appellant has demonstrated inconsistency or non-conformity as described above. In the present case, the Tribunal finds that the Appellant has failed to do this. The Tribunal finds that the Zoning By-law Amendments are consistent with the PPS and conform with the City's Official Plan.

[30] The Tribunal finds that the proposed Zoning By-law Amendments are consistent with the PPS. Based on the uncontradicted opinion evidence of Ms. McInnes, the Tribunal finds that the proposed Zoning By-law Amendments facilitate a development on underutilized lands within a developed area that has a density permitted under the City's Official Plan and represents compact form. The Tribunal finds that they are consistent with PPS policy 1.1.3.4 in that they facilitate appropriate intensification,

provide for adequate setbacks, built form, amenity space, on-street parking, and density.

[31] The Tribunal also finds that based on Ms. McInnes' opinion evidence, the proposed Zoning By-law Amendments conform with the City's Official Plan. It finds that they facilitate a development that is compatible with existing development in that it is capable of co-existing in harmony with local existing or proposed development in the area. It finds that Ms. McInnes addressed the compatibility requirements set out in the applicable policies referenced by the Appellant and Participants in the City's Official Plan, including policies 6.20(c) and 6.5(a) in Part II, 2.5 in Part III, and 4.4(iv) in Part VI of the City's Official Plan. It finds that they facilitate a development with a density that is permitted under the City's Official Plan and which will assist in providing an appropriate housing mix in the area. The Tribunal finds that the proposed Zoning By-law Amendments provide for adequate setbacks and conform with policy 6.5(a) of Part II of the City's Official Plan on density, built form and setbacks.

[32] Based on Ms. McInnes' opinion evidence, the Tribunal finds that the traffic and parking issues raised by the Appellant and the Participants have been addressed by the City and the Region and notes that neither the City nor the Region has traffic, safety or parking concerns arising from the proposed Zoning By-law Amendments.

[33] Also, based on Ms. McInnes' opinion evidence, the Tribunal finds that the Appellant's concerns regarding the height of the proposed development have been addressed by the City and that the proposed Zoning By-law Amendments satisfy the criterion on shadowing in policy 2.5.2(a)(vii) of Part III of the City's Official Plan.

[34] Regarding park space, the Tribunal finds that the requirements in policies 2.9.2(b) and 6.3.2(e) of Part III of the City's Official Plan for determining the need for neighbourhood park sites have been satisfied.

[35] Although the Tribunal does not make a finding on whether the City's new, but not yet in force, Official Plan is an "applicable" official plan to which the Tribunal must have regard, the Tribunal has considered its provisions and finds that it permits intensification

in established neighbourhoods and that the proposed Zoning By-law Amendments would facilitate a development that meets these requirements.

ORDER

[36] The Tribunal orders that the appeal is dismissed.

“Hugh S. Wilkins”

HUGH S. WILKINS
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248