

RECEIVED
DEC 23 2013



December 17, 2013

Ms. Heather Travis
City of Hamilton
Planning and Economic Development Department
71 Main Street West, 5th Floor
Hamilton, ON L8P 4Y5

Dear Ms. Travis

RE: 1125, 1143 AND 1185 WILSON ST. WEST, ANCASTER

We are the owners/managers of a retail plaza at 1172 Wilson Street West, Ancaster.

We have no objections to the above noted applications provided however, that our full access driveway is not restricted in any form from its existing approved status.

Should you have any questions, please do not hesitate to contact us.

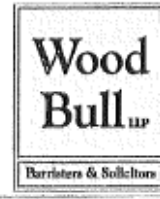
We would like to be kept updated on any reports, meetings etc.

Yours very truly

GAZBEN DEVELOPMENTS LIMITED


Ben Smuskowitz

BS:jm



MUNICIPAL, PLANNING & DEVELOPMENT LAW

3 January 2014

Sent via E-mail

City Council, City of Hamilton
Attention: Heather Travis
Planning and Economic Development Department
Planning Division - Development Planning - West Section
71 Main Street West, 5th Floor
Hamilton, Ontario, L8P 4Y5

Dear Councillors:

**Re: Urban Hamilton Official Plan Amendment Application (File No. OPA-13-012) &
Zoning By-law Amendment Application (File No. ZAC-13-044)
Re: 1125, 1143 and 1185 Wilson Street West, Ancaster
Preliminary Submissions & Request for Notification**

We are solicitors for Calloway Real Estate Investment Trust Inc. ("Calloway"), the owner of property located at 1051 Garner Road West, in the former Town of Ancaster. Calloway's property is located on the south side of Wilson Street, in close proximity to 1125, 1143 and 1185 Wilson Street West (the "Trinity Site"), the subject site of the above-noted applications (the "2013 Applications").

Our client obtained copies of the 2013 Applications and supporting reports (the "Reports") in mid-December 2013, just prior to the holiday season. On behalf of Calloway, we have reviewed Trinity's materials and offer the following preliminary submissions. Calloway has also circulated Trinity's materials to their consultants, and will forward any additional comments the consultants may have as soon as they are available.

Background

As you know, Trinity submitted planning applications for a portion of the Trinity Site in 2010 (the "2010 Applications"). The 2010 Applications were approved by City Council and ultimately appealed to the Ontario Municipal Board (the "Board") by our client.

In its decision on the appeal, the Board modified Trinity's 2010 planning instruments to be consistent with the Arterial Commercial Designation in the Urban Hamilton Official Plan (the "UHOP"). Specifically, the Board directed that Trinity's planning instruments only permit those uses permitted in Policy E.4.8.2 and prohibit those uses prohibited in Policy E.4.8.3 of the UHOP.

Johanna R. Shapira Direct: (416) 203-5631 jshapira@woodbull.ca

65 Queen Street West Suite 1400 Toronto Ontario M5H 2M5 T (416) 203-7160 F (416) 203-8324 www.woodbull.ca

3 January 2014



A Board Order dated November 2013 approved a zoning by-law implementing the Trinity planning instruments as modified by the Board.

Calloway Submissions

Calloway continues to have similar concerns with the 2013 Applications as it did with the 2010 Applications. It appears that through its 2013 Applications, Trinity is seeking to re-introduce permissions similar to those that were refused by the Board, without properly addressing the policy requirements of the UHOP that relate to new retail and service commercial uses within Commercial and Mixed Use Designations.

First, within the general policies for all Commercial and Mixed Use Designations, Policy E.4.2.11 provides that:

Official Plan amendment applications for retail and service commercial development exceeding 5,000 square metres of gross floor area shall be required to undertake a commercial needs and impact assessment, in accordance with Policy F.3.2.7 - Commercial Needs and Impact Assessment. The Commercial Needs and Impact Assessment shall assess the impact of the proposal on designated retail areas and the potential for negative impacts to the planned function of these areas. ... (underline added)

Policy F.3.2.7.2 provides the following:

A commercial needs assessment shall address the following matters to the satisfaction of the City:

...

(j) If the proposed development creates a commercial node or cluster of retail space greater than 25,000 square metres, it shall only be considered through a municipal comprehensive review of the City's urban structure. (underline added)

If approved as drafted, it appears that the proposed official plan and zoning by-law amendments attached to the planning justification report supporting the 2013 Applications (the "Planning Report") (the "Proposed Amendments") would permit at least 26,282 square metres of retail and service commercial uses on the Trinity Site. As such, the requirement for a municipal comprehensive review in Policy F.3.2.7.2 would be triggered by the 2013 Applications.



3 January 2014

With respect, neither the Planning Report nor the commercial needs and impact assessment prepared by urbanMetrics in support of the 2013 Applications (the "Market Report") properly respond to Policy F.3.2.7.2(j). In reference the policy, the Planning Report states that:

This UHOP amendment and zoning application is for retail and service commercial uses of a non-arterial commercial nature to a maximum of 13,551 square metres. Accordingly, no amendment to the urban structure is required. (page 20) (underline added)

This language makes reference to non-arterial commercial uses, however the policy specifically relates to "a commercial node or cluster of retail space", which in this case, appears to be greater than 25,000 square metres. The Market Report similarly references only non-arterial space in reference to Policy F.3.2.7.2 (j):

Project Size: The Trinity development proposal is to permit 176,500 square feet (16,397 square metres) of non-arterial commercial uses. The existing permitted commercial space in the vicinity of Duff's Corners, including the permitted space on the north side of Wilson Street, is already in excess on 25,000 square metres. Therefore, the subject proposal does not create a commercial node or cluster of retail space greater than 25,000 square metres. (page 83) (underline added)

The latter comment above respecting the existing permitted commercial space in the vicinity of Duff's Corners fails to take into consideration that the lands south of Wilson Street, bounded by Garner Road, Shaver Road and Wilson Street West, and a portion of the lands lying west of McClure Road, are subject to their own area specific policy (UA-4) in the UHOP, and that the UHOP clearly does not intend for the retail and service commercial uses on those lands to be expanded without an amendment to the Urban Structure.

Second, UHOP Policy E.4.2.8 states that:

Applications for retail and service commercial uses or areas greater than 25,000 square metres in gross floor area that are not of an arterial commercial nature shall require an amendment to the urban structure to create a new Urban Node or extension of an Urban Corridor. (underline added)

Policy E.2.2.4 provides that changes to the urban structure can only be considered during the five year review of the official plan.



3 January 2014

As drafted, it is not clear whether the Proposed Amendments limit the non-arterial commercial uses on the Trinity Site to less than 25,000 square metres, and therefore whether Policies E.4.2.8 and E.2.2.4 apply.

As a final matter, as illustrated in part by the quotations included above, there appear to be inconsistencies amongst the Planning Report, the Market Report, and the Proposed Amendments in regard to what permissions are being proposed. Clarification is required in order to properly assess Trinity's proposal in the context of the UHOP policies.

Our client would welcome an opportunity to meet with City staff to discuss these submissions and any other comments or issues that may arise.

Request for Notification

On behalf of Calloway, we request to be notified of any public meetings, staff reports, and Committee/Council decision(s) of the City of Hamilton with respect to the above noted proposed Official Plan Amendment and Zoning By-law Amendment applications.

Yours very truly,

Wood Bull LLP

A handwritten signature in black ink, appearing to read "Shapira", with a long horizontal stroke extending to the right.

Johanna R. Shapira

c. client