



**CITY OF HAMILTON
CORPORATE SERVICES
LEGAL SERVICES DIVISION**

TO:	Chair and Members Planning Committee
COMMITTEE DATE:	May 16, 2017
SUBJECT/REPORT NO:	Settlement of Ontario Municipal Board Appeal - 231 York Road (LS17017) (Ward 13)
WARD(S) AFFECTED:	Ward 13
PREPARED BY:	Patrick MacDonald (905) 546-2424 Ext. 4708
SUBMITTED BY:	Nicole Auty City Solicitor, Corporate Services
SIGNATURE:	

Discussion of this Confidential Report in closed session is subject to the following requirement(s) of the City of Hamilton's Procedural By-law and the Ontario Municipal Act, 2001:

- ◆ **Litigation or potential litigation, including matters before administrative tribunals, affecting the City;**
- ◆ **Advice that is subject to solicitor-client privilege, including communications necessary for that purpose.**

RECOMMENDATION

With regard to the appeal to the Ontario Municipal Board (the "Board" or "OMB") by Recchia Developments Inc. ("Recchia"), Owner/Applicant/Appellant, for minor variances declaring that the definition of "Public Thoroughfare" in the Former Town of Dundas Zoning By-law 3581-86 shall include a private condominium road and that a parking space shall be permitted in a driveway, notwithstanding that no parking space shall be located within a required front yard, for the lands located at 231 York Road (the "Subject Lands"), as shown on Appendix A" to this Report LS17017:

- (a) That staff be directed to settle the OMB appeal respecting the Subject Lands;
- (b) That staff be directed to present and/or provide evidence in support of the settlement to the Board, as may be necessary;

- (c) That the City Solicitor and the General Manger, Planning and Economic Development, or his/her designate, be authorized to execute Minutes of Settlement and/or a Draft Order substantially in accordance with the recommendations of this Report LS17017 and substantially in accordance with the form attached as Appendix "B" to this Report LS17017; and
- (c) That this Report LS17017 remain confidential until made public as the City's position before the Board.

EXECUTIVE SUMMARY

The purpose of this Report is to seek Council's direction on a proposed settlement of the appeal by the Applicant with respect to Minor Variance Application DN/A-16:266, to permit the variances sought by the Applicant, subject to conditions regarding the provision of a visual barrier with abutting properties and other conditions identified by staff. There is an OMB hearing scheduled for June 22-23, 2017.

The effect of the settlement is to permit the development of the Subject Lands as six (6) single detached homes fronting on a private condominium road.

Alternatives for Consideration – See Page 5

FINANCIAL – STAFFING – LEGAL IMPLICATIONS (for recommendation(s) only)

Financial: N/A

Staffing: N/A

Legal: Approval of the staff recommendations will result in the resolution of the appeal of the Owner with respect to the Subject Lands, without the need for an OMB hearing.

HISTORICAL BACKGROUND (Chronology of events)

The Subject Lands are located at 231 York Road, Hamilton (see Appendix "A"). The Owner/Applicant is Recchia Developments Inc.

The proposal was to allow for variances to the Former Town of Dundas Zoning By-law No. 3581-86 ("Dundas ZBL") that would permit the construction of six (6) single detached dwellings on the Subject Lands, fronting on a private condominium road.

**SUBJECT: Settlement of Ontario Municipal Board Appeal - 231 York Road
(LS17017) (Ward 13) - Page 3 of 6**

Committee of Adjustment application DN/A-16:266 sought relief for two variances: to amend the definition of “Public Thoroughfare” in the Dundas ZBL so as to include a private condominium road, and to permit a parking space to be located in a driveway, notwithstanding that no parking space shall be located in a required front yard.

Development Planning staff recommended conditional approval of the Minor Variance application, as the proposal was considered to be minor in nature, desirable for the use of the lands, in conformity with the Urban Hamilton Official Plan, and maintained the intent and purpose of the Dundas ZBL. Staff support was conditional upon the applicant receiving approval of the required Site Plan Control and Plan of Condominium applications and the submission of a Functional Servicing Report.

The Committee of Adjustment, at its meeting of September 1, 2016, denied the Minor Variance Application.

The Committee of Adjustment decision was subsequently appealed by the Applicant. At its meeting on November 23, 2016, Council directed Legal Services to attend at the hearing in support of the Committee of Adjustment’s decision to deny the application and to retain any outside professionals necessary to provide expert advice and evidence.

The Applicant has also filed a related Plan of Condominium Application, for which no decision has been yet made by Council. A Site Plan Application will be required as well, as the proposal fits the definition of “innovative housing” in the City’s Site Plan Control By-law.

The Subject Lands were twice previously before the OMB. The first, case PL120995, was in 2012-2013 and involved a proposal to develop the Subject Lands as eighteen (18) townhouse units, which was later revised to fourteen (14) townhouse units and one (1) single detached unit. In its decision, the Board dismissed the appeal as it deemed the development to be too dense for the area and not in keeping with the single detached character of the surrounding existing residential development.

A second appeal (case PL140448) was heard by the Board in 2014 and a decision rendered in 2015. In this instance, the proposal was for twelve (12) semi-detached dwelling units within six (6) buildings. The Board dismissed this appeal as it still considered the proposal to be too dense for the Subject Lands, an over-building of the site, and out of character with the existing surrounding single detached uses. At that hearing the City’s land use planning witness submitted an alternative for consideration that would place six (6) single detached dwellings on the Subject Lands. This alternative was not adopted by the Applicant.

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The proposed settlement is consistent with applicable provincial and municipal planning policies, as further described in the analysis provided below.

RELEVANT CONSULTATION

The following were consulted for the writing of this Report:

- Development Planning

ANALYSIS AND RATIONALE FOR RECOMMENDATION

Development Planning Analysis and Rationale:

Development Planning staff have had the opportunity to review the proposed settlement and have no issues.

Development Planning gave the following comments in support of the application before the Committee of Adjustment on September 1, 2016:

“The subject property is zoned “R2” (Single Detached Residential Zone) district in the Town of Dundas Zoning By-law, to which the use complies.

Variance 1-2

This variance is required in order to meet the requirements of the Town of Dundas Zoning By-law as identified through Formal Consultation application FC-16-050. The orderly development of this proposal requires a Plan of Condominium and Site Plan applications as well as several studies including but not limited to: Noise Impact Assessment, Landscape Plan, Tree Protection Plan and Storm water Management Report etc. The requested variances are supportable but are premature until the noted applications are submitted and approved.

The reason for this is that once the subject condominium road is deemed to be a “Public Thoroughfare”, the proposed lots will have legal frontage and can be created through the severance process. This would circumvent the intended Site Plan review process and the associated studies identified through the Formal Consultation process. The condominium road would still require the Plan of Condominium process in order to establish the road.

In order to ensure the proper order of development, staff are supportive of the variances conditional upon the applicant receiving approval of both the required Site Plan and Plan of Condominium applications.

Recommendation

It is the opinion of staff that the proposed variances are minor in nature, are desirable and appropriate for the use of the lands, and meet the intent and purpose of the Official Plan and Zoning By-law. Therefore, staff recommend that the proposed variances be **Approved.**”

Legal Analysis and Rationale:

Proposed Settlement

The purpose of this settlement is to grant the variances sought by the Applicant, subject to several conditions.

The first condition is that a visual barrier be provided where necessary along the perimeter of the Subject Lands. The purpose of the visual barrier is to provide privacy to the existing residents to the west, north, and east of the proposed development, as well as to mitigate the impact of any vehicular headlights traveling along the internal private condominium road. The location and materials of the visual barrier(s) shall be left to the site plan process.

The second and third conditions were identified by staff in their comments to the Committee of Adjustment. The first of those conditions is that the Applicant receive approval of the required associated Site Plan and Plan of Condominium Applications. The second is that the Applicant shall submit a revised Functional Servicing Report to the satisfaction of the Manager of Development Approvals.

Should Council approve this settlement, preparation for a full OMB appeal hearing would not be required and the Applicant can move forward with its related Site Plan and Plan of Condominium Applications.

ALTERNATIVES FOR CONSIDERATION

The alternative to accepting the recommendations contained in this Report LS17017 is to reject the proposed settlement and proceed to an OMB hearing of the appeal, with attendance by one representative from Legal Services along with any necessary outside professionals to provide expert evidence.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Strategic Priority #1

A Prosperous & Healthy Community

WE enhance our image, economy and well-being by demonstrating that Hamilton is a great place to live, work, play and learn.

Strategic Objective

- 1.5 Support the development and implementation of neighbourhood and City wide strategies that will improve the health and well-being of residents.
- 1.6 Enhance Overall Sustainability (financial, economic, social and environmental).

Strategic Priority #2

Valued & Sustainable Services

WE deliver high quality services that meet citizen needs and expectations, in a cost effective and responsible manner.

Strategic Objective

- 2.1 Implement processes to improve services, leverage technology and validate cost effectiveness and efficiencies across the Corporation.

APPENDICES AND SCHEDULES ATTACHED

- Appendix “A”: Zoning and Location Map
- Appendix “B”: Draft Minutes of Settlement

:PM