

O.M.B. Case No.: PL161098

ONTARIO MUNICIPAL BOARD
Commission des affaires municipales de l'Ontario

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

Subject: Minor Variance
Applicant and Appellant: Recchia Developments Inc.
Property Address: 231 York Road
Municipality: City of Hamilton
Variance from By-law No.: 3581-86
Municipal File No.: A-266/16
OMB Case No.: PL161098
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MINUTES OF SETTLEMENT

DATED AS OF MAY 5, 2017

BETWEEN:

RECCHIA DEVELOPMENTS INC.

("Recchia")

-and-

CITY OF HAMILTON

(the "City")

WHEREAS Recchia is the owner of the lands municipally known as 231 York Road, Dundas (the "Subject Lands") in the City of Hamilton, Province of Ontario;

AND WHEREAS on July 19, 2016 Recchia filed an application for a minor variance to vary the Former Town of Dundas Zoning By-law 3581-86 to permit a residential development comprising of six (6) single detached homes fronting on a private condominium road on the Subject Lands (the "Application");

AND WHEREAS by a decision dated September 1, 2016, the Application was denied by the City of Hamilton Committee of Adjustment;

AND WHEREAS Recchia appealed the decision of the Committee to the Ontario Municipal Board (the "Board"), who assigned Case No. PL161098 (the "Appeal"). The Board has scheduled a two-day hearing of the Appeal commencing June 22, 2017(the "Hearing");

AND WHEREAS the Parties wish to settle the Appeal;

NOW THEREFORE, in consideration of the mutual covenants herein and payment of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration (the receipt and sufficiency of which is hereby mutually acknowledged), the Parties hereby agree as follows:

ARTICLE 1: RECITALS

1.1 The above recitals are true.

ARTICLE 2: THE MINOR VARIANCE APPLICATION

At the Hearing the Parties shall jointly request that the Board allow the appeal in part, substantially in accordance with the form of the Draft Order attached hereto as Schedule "A".

ARTICLE 3:GENERAL

- 3.1 In respect of any building permit application for the Subject Lands, upon the submission of a complete (including all fees, zoning approval, site plan approval, etc.) Building Permit Application, the submission will be reviewed in accordance with the time lines as set out in the Ontario Building Code.
- 3.2 The Parties agree that they are contractually bound to the terms of these Minutes, and that the obligations and benefits thereof are immediately enforceable by civil action should a Party be in breach of them.
- 3.3 The Parties covenant and agree that at all times, and from time to time hereafter, upon every reasonable written request so to do, they shall make, execute, deliver or cause to be made, done, executed and delivered, all such further acts, deeds, assurances and things as may be required for more effectively implementing and carrying out the true intent and meaning of these Minutes.
- 3.4 The Parties agree to act reasonably and with good faith in respect of all dealings between themselves pursuant to these Minutes.
- 3.5 These Minutes constitute the entire agreement between the Parties with respect to the matters set out in these Minutes and supersede all prior agreements, negotiations and understandings with respect to the Minutes.

- 3.6 Any amendment to or waiver of any provision of these Minutes must be in writing and signed by the Parties.
- 3.7 The parties agree that they shall each bear their own costs related to the Appeal and the preparation and execution of these Minutes of Settlement. Accordingly, no party shall request an order from the Board for costs related to this Appeal.
- 3.8 These Minutes may be executed in one or more counterparts with such executed counterparts delivered by e-mail or facsimile transmission and together shall constitute a complete set of these Minutes.
- 3.9 The undersigned represent and warrant that they have all necessary power and authority to execute these Minutes of Settlement.

IN WITNESS WHEREOF, the Parties have executed these Minutes of Settlement as of the date(s) indicated below:

RECCHIA DEVELOPMENTS INC.

Per: _____

Name:

Title:

I have the authority to bind the Corporation.

CITY OF HAMILTON

Per: _____

Name: Nicole Auty

Title: City Solicitor

Per: _____

Name: Jason Thorne

Title: General Manager, Planning and
Economic Development Department

I/We have the authority to bind the Corporation.

SCHEDULE "A"

ONTARIO MUNICIPAL BOARD

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

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B E F O R E:

)
) _____, the
) _____ day of
) _____, 2017
)

THIS MATTER having come to the Ontario Municipal Board (the "Board") for public hearing on June 22, 2017;

AND THE BOARD, upon hearing the evidence of _____ and the submissions of counsel to the Applicant and the City of Hamilton and being advised of a settlement between the Applicant and the City, allows the appeals, in part;

AND THE BOARD ORDERS that:

1. The following variances to Former Town of Dundas Zoning By-law No. 3581-86 (the "Dundas ZBL") are hereby **GRANTED** by the Board for the lands known municipally as 231 York Road, Hamilton (the "Subject Lands"):
 - a. Notwithstanding the definition of "Public Thoroughfare" in Section 3 "Definitions" of the Dundas ZBL, a private road/condominium road (which may include visitors parking, landscaping, etc.) shall be considered a "Public Thoroughfare" for the purpose of the regulations contained in the By-law; and
 - b. To permit a parking space to be located in the driveway, notwithstanding that the By-law states that no such parking shall be located in a required front yard.
2. That the above variances are granted subject to the following conditions:

- a. That the Owner provide a visual barrier (as defined in the Dundas ZBL) at locations where none currently exists along the perimeter of the Subject Lands, to provide for privacy for abutting property owners and to mitigate any adverse impact of vehicular headlights from the Subject Lands. The location, design and materials of any visual barrier to be provided will be determined through the site plan process. The height of any visual barrier to be provided shall be:
 - i. at least 1.2 metres, measured from the finished grade of the Subject Lands, for a visual barrier provided for the purpose of mitigating vehicle headlights from any road or vehicular manoeuvring area on the Subject Lands; and
 - ii. for all other areas, the maximum height permitted under the City's "Fence By-law" 10-142, or such lower height as determined by City staff through the site plan process as necessary to provide for privacy for abutting property owners.

Where a visual barrier already exists along the perimeter of the Subject Lands that provides adequate privacy and mitigation of vehicular headlights from the Subject Lands, no additional visual barrier shall be required at that specific location.

Notwithstanding the above, for greater certainty, where any parking area containing five or more parking spaces is provided on the Subject Lands, the provisions of Section 7.4 of the Dundas ZBL shall prevail over the above.

- b. That the Applicant receive approval of the required associated Site Plan and Plan of Condominium applications.
- c. The Applicant shall submit a revised Functional Servicing Report to the satisfaction of the Manager of Development Approvals.
- d. In the event that the Dundas ZBL is repealed or replaced, the above variances and conditions herein shall survive.

This is the Order of the Board.

SECRETARY