

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: September 26, 2017

CASE NO(S): PL161098

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

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

Heard: June 22, 2017 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel*/Representative

Recchia Developments Inc.

D. Baker*

City of Hamilton

P. MacDonald*

Participants

J. Lawrence

Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY STEFAN KRZECZUNOWICZ
ON JUNE 22, 2017, AND ORDER OF THE BOARD**

INTRODUCTION

[1] This was a hearing into an appeal by Recchia Developments Inc. (the "Applicant") of the refusal by the Committee of Adjustment (the "Committee") of the City of Hamilton (the "City") to grant variances from Zoning By-law No. 3681-86 for property at 231 York Road, in the former Town of Dundas (the "site"). The variances would permit a redevelopment of six single detached dwellings fronting on a private condominium road. The site currently contains two lots fronting on York Road.

[2] Three variances are requested: one to allow the private road to be considered a street under the by-law; one to permit a parking space to be located in a driveway; and one to permit a 2 metre ("m") setback for Unit 3, where the side yard abuts a flanking street (see Attachment 1). The latter has been added to the original application since the Committee issued its decision.

Minutes of Settlement

[3] The City supports granting the variances and signed Minutes of Settlement with the Applicant to that effect on June 12, 2017 (Exhibit 1, Tab 2).

[4] The parties agree that granting the variances should be conditional on approval of site plan and plan of condominium applications for the site, submission of a Functional Servicing Report by the Applicant to the satisfaction of City staff, and construction of a visual barrier around the site according to prescribed specifications. The proposed conditions are set out in Attachment 1.

Previous Decisions

[5] The Board has in recent years dismissed appeals to amend the Urban Hamilton Official Plan ("UHOP") and zoning by-laws to permit 15 townhouses (in 2013) and 12 semi-detached houses (in 2015) on the site.

Witnesses

[6] Participant status was granted to Jennifer Lawrence, who lives near the site.

[7] The Board also heard evidence from Glen Wellings, a Professional Planner, whom the Board qualified to provide expert opinion evidence in matters of land use planning.

ANALYSIS AND FINDINGS

[8] The Board's authority to grant or deny variances is given under s. 45(1) of the *Planning Act* (the "Act"). This section has given rise to what are commonly referred to as the "four tests" for variance approval. The tests must be applied by the Committee when considering a variance application and by the Board when making its decision on a variance appeal. In order to meet the tests the variances must:

- a. maintain the general intent and purpose of the official plan;
- b. maintain the general intent and purpose of the zoning by-law;
- c. be desirable for the appropriate development or use of the land, building or structure; and
- d. be minor.

[9] The Board must also consider whether the variances have sufficient regard to the Provincial interests listed in s. 2 of the Act, whether they are consistent with the Provincial Policy Statement 2014 ("PPS"), and whether they conform to the Growth Plan for the Greater Golden Horseshoe 2017 (the "Growth Plan").

Opposition to the Variances

[10] Ms. Lawrence, a resident of the neighbourhood, noted that the previous Board decisions determined the most appropriate lot configuration on the site to be one where single detached homes front York Road. In her view, homes that front on a new private road would be incompatible with the neighbourhood development pattern. As such, the variance for the road is not minor.

[11] Ms. Lawrence was also concerned that the conditions of approval do not sufficiently limit development on the site, particularly with respect to rear and side yard setbacks, building height, and the number of permitted dwellings. She proposed that any approval of the variances be conditional on the site being developed substantially in accordance with the site plan entered into evidence as Exhibit 1, Tab 6.

[12] Ms. Lawrence also proposed that, should the variances be approved, the Board impose a more stringent condition for the visual barrier than that included in the Minutes of Settlement and a new condition that would increase the exterior side yard setback for Unit 4 beyond what is set out in the site plan.

Assessment of Variances

[13] The Board finds that approving the variances, as well as the proposed conditions of approval, satisfies the requisite tests for the reasons set out below.

[14] The Board finds that the variances, being as they facilitate modest intensification on the existing network of municipal services and infrastructure within a Settlement Area and the Built Boundary of the City, are consistent with the PPS and conform to the Growth Plan.¹

¹ The Growth Plan 2017 took effect after the Board issued its decision. The Board is satisfied that the variances also conform to the Growth Plan 2017.

[15] The Board is persuaded that, pursuant to a Sight Line Study of the proposal redevelopment undertaken in 2016 (Exhibit 1, Tab 18), having an internal road on the site rather than units fronting onto York Road is better for the protection of public safety per s. 2(h) of the Act.

[16] The Board accepts the opinion of Mr. Wellings that the variances maintain the general intent and purpose of UHOP policies that seek to preserve the stability of neighbourhoods through development that is compatible—not necessarily identical, or even similar to—the existing physical character of the neighbourhood. This proposal is for single detached units in a neighbourhood of single detached units that, though they are of a somewhat higher density than surrounding development, still conform to UHOP policies that regulate density and the number of storeys of dwellings.

[17] Mr. Wellings' visual evidence in Exhibit 1 shows that frontage onto a public roadway is a feature of this neighbourhood. However, the Board finds that key aspects of the proposed redevelopment, in particular the alignment of the proposed internal road over an existing driveway as it approaches York Road, as well as the design of Unit 1 to ensure that, from the streetscape perspective, a consistent look and feel of York Road frontage is maintained, means that the internal road and its relationship to the new units and the broader built environment respects the existing physical characteristics of the neighbourhood.

[18] The Board finds that the variances collectively meet the general intent and purpose of the zoning by-law by essentially updating a 30-year old by-law so that it properly implements more recent UHOP policies, particularly Policy 4.5.5 respecting the treatment of private condominium roads.

[19] The Board finds that the variances are desirable for the appropriate use of the land. They represent a balance between the new elements in the proposed redevelopment and the existing neighbourhood character. This is reflected in part by City Council and staff support for the proposal and the resulting Minutes of Settlement.

[20] The Board finds that previous Board decisions relating to this site do not limit the current redevelopment proposal for several reasons. First, the previous decisions engaged very different proposals, particularly with respect to built form. Second, these decisions applied different adjudicative tests than the minor variances tests set out in s.45(1) of the Act. Third, the built form issues that were central to the previous appeals have been largely resolved, to the point where the City, which opposed previous redevelopment proposals, is now *ad idem* with the Applicant. Finally, the Sight Line Study attesting to direct driveway access to York Road from the site being unsafe was not available to the Board in the previous hearings.

[21] Drawing on the above analysis, the Board finds the variances to be minor. They will facilitate homes that will be built under current zoning standards and any potential adverse impacts of a planning nature that may arise will be properly mitigated by the conditions that require, amongst other things, that the variances be contingent upon site plan approval, condominium application approval, and a substantive visual barrier around most of the site perimeter. The Board is satisfied that the proposed barrier addresses Ms. Lawrence's desire to see a consistent and aesthetically pleasing delineation of the site from neighbouring properties.

ORDER

[22] Pursuant to s. 45(18.1.) of the Act the Board finds the addition of the setback variance to be minor, for which no further notice is required.

[23] The Board will allow the appeal and will authorize the variances to By-law No. 3591-86 as follows:

- a. Notwithstanding the definition of "Public Thoroughfare" in Section 3 "Definitions" of the Dundas Zoning By-law, 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;

- 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; and
- c. To permit a minimum 2 m setback where the side yard abuts a flanking street shall be provided for Unit 3, instead of the minimum 3.5 m setback were the side yard abuts a flanking street.

[24] The variances are authorized according to the following conditions:

- a. That the Owner provide a visual barrier (as defined in the Dundas Zoning By-law) at locations where none currently exists along the perimeter of the site, to provide for privacy for abutting property owners and to mitigate any adverse impact of vehicular headlights from the site. 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 m, measured from the finished grade of the site, for a visual barrier provided for the purpose of mitigating vehicle headlights from any road or vehicular manoeuvring area on the site; and
 - ii. for all other areas, the maximum height permitted under the City's "Fence By-law" No. 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.
- b. Where a visual barrier already exists along the perimeter of the site that provides adequate privacy and mitigation of vehicular headlights from the site, no additional visual barrier shall be required at that specific location.

- c. Notwithstanding the above, for greater certainty, where any parking area containing five or more parking spaces is provided on the site, the provisions of s. 7.4 of the Dundas Zoning By-law shall prevail over the above.
- d. That the Applicant receives approval of the required associated Site Plan and Plan of Condominium applications.
- e. The Applicant shall submit a revised Functional Servicing Report to the satisfaction of the Manager of Development Approvals.
- f. In the event that the Dundas Zoning By-law is repealed or replaced, the above variances and conditions herein shall survive.
- g. That the proposed development be constructed substantially in accordance with the site plan found at Attachment 1 to this Order.

"Stefan Krzeczunowicz"

STEFAN KRZECZUNOWICZ
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.

Ontario Municipal Board

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

