

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: August 1, 2017

CASE NO(S): PL160678

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*,
R.S.O. 1990, c. P.13, as amended

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| Applicant and Appellant: | Coastal Land Developments Inc. |
| Subject: | Application to amend Zoning By-law Nos. 6593 and 05-200 - Refusal of Application by the City of Hamilton "C/S-1435" (Urban Protected Residential etc.) District, Modified Site-Specific "R-4" (Small Lot Single Family Dwelling) District |
| Existing Zoning: | |
| Proposed Zoning: | |
| Purpose: | To permit a single detached dwelling and two semi-detached dwellings (4 units) along a common element condominium road |
| Property Address/Description: | 271 Beach Boulevard |
| Municipality: | City of Hamilton |
| Municipality File No.: | ZAC-15-036 |
| OMB Case No.: | PL160678 |
| OMB File No.: | PL160678 |
| OMB Case Name: | Coastal Land Developments Inc. v. Hamilton (City) |

PROCEEDING COMMENCED UNDER subsection 51(39) of the *Planning Act*,
R.S.O. 1990, c. P.13, as amended

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| Applicant and Appellant: | Coastal Land Developments Inc. |
| Subject: | Proposed Plan of Subdivision |
| Property Address/Description: | 271 Beach Boulevard |
| Municipality: | City of Hamilton |
| Municipal File No.: | 25CDM-2015-10 |
| OMB Case No.: | PL160678 |
| OMB File No.: | PL160679 |

Heard: June 26-28, and July 14, 2017 in Hamilton, Ontario

APPEARANCES:

Parties

Counsel

City of Hamilton

Patrick MacDonald

Coastal Land Developments Inc.

Denise Baker

DECISION DELIVERED BY J. V. ZUIDEMA AND ORDER OF THE BOARD

[1] Coastal Land Developments Inc. (“Appellant”) filed an application pursuant to ss. 34(11) of the *Planning Act* (“Act”) to re-zone its lands located at 271 Beach Boulevard (“subject property”) in the City of Hamilton (“City”) as well as an application for plan of condominium pursuant to ss. 51(39) of the same Act.

[2] The rezoning would see the subject property go from "C/S-1435" Urban Protected Residential District Modified zone to a Site-Specific "R-4" Small Lot Single Family Dwelling District zone in order to permit the relocation of an existing dwelling and the construction of two semi-detached dwellings comprising of four units along a common element condominium road.

[3] The proposal therefore is to have five dwelling units on the subject property.

[4] Special zoning provisions were required to address minimum setbacks, lot width and lot area for the semi-detached dwellings as well as minimum lot area, lot width and parking space setback for the single detached dwelling which is planned to be relocated.

[5] The draft plan of condominium consists of a condominium road with two visitor parking spaces and a storm water management/open space block that is proposed to

be tied to the five residential dwelling lots.

[6] The City refused the applications and the Appellant appealed to this Board citing the following reasons:

- a. The proposal is consistent with the Hamilton Beach Neighbourhood Plan policies.
- b. The neighbourhood surrounding the subject lands is eclectic with a variety of lot frontages, areas and setbacks and is diverse in dwelling size, design and materials. As such, the proposed lots will be consistent with existing lot sizes and configurations in the immediate vicinity and the proposed development will be compatible with the character of the neighbourhood.

[7] At the hearing of this matter, a few neighbourhood residents appeared in opposition to the proposed development. Their concerns could be captured under the following categories:

- a. over intensification;
- b. poor aesthetics and not harmonious with the surrounding character;
- c. negative impact on parking and potential for flooding; and
- d. constraints to the open space with particular focus on the access to the beach.

[8] The City appeared to defend its earlier decision despite the fact that a Planner from its Planning Department had recommended approval.

[9] On behalf of the Appellant, I heard from:

- a. Mr. Cameron Thomas, who appeared under summons. Mr. Thomas was the in-house City Planner who had recommended approval. He was qualified and accepted as an expert witness in the area of land use planning; and
- b. Mr. David Falletta, who was retained by the Appellant following the City's decision and the filing of this appeal. Mr. Falletta was similarly qualified and accepted as an expert in land use planning.

[10] On behalf of the City, I heard from Mr. Alan Ramsay who was an outside Planner retained to support the City's position. Mr. Ramsay was qualified and accepted as an expert in land use planning.

[11] I also heard from Participant Carol Hughes. Ms. Hughes is the next door neighbour to the subject property. Her son, Mr. Joel Hughes, owns the house on the other side of the subject property. Ms. Hughes spoke for both herself and her son. She relayed their concerns of potential overlook and loss of privacy and the negative impacts the proposed development would create. In her view, the proposed development simply did not fit in this neighbourhood as it was an over-intensification of the lot.

[12] I also heard from Mr. Herb Huffman, a retired lawyer who also lives in the vicinity of the subject property but not as close as the Hughes. He similarly expressed concerns but he focussed on issues of public safety in that he explained the area was prone to flooding during significant rain events. The over-building of this property, in his view, would only exacerbate this situation.

[13] It should be noted that the subject property is located on a strip of land which joins the City of Hamilton with the City of Burlington. On one side of this strip is Burlington Bay and on the other side is Lake Ontario. Historically, the properties in this area were cottages but over the course of the last century, the cottages transformed to permanent dwellings.

[14] Following a thorough review of the evidence and submissions presented along with my own site visit of the area, I conclude that the appeal is dismissed and the proposal as presented should not proceed. My analysis and reasoning are set out below.

[15] While Mr. Falletta set out his opinion in a professional manner, I found that there were instances wherein his information was simply not as thorough as that of Mr. Ramsay. As such, I preferred the evidence of Mr. Ramsay.

[16] For example, Mr. Falletta had opined that the massing proposed by the contemplated dwellings was in keeping with that of the surrounding area. This is a key conclusion as the policies of the City's Official Plan speak to new development integrating harmoniously with the surrounding neighbourhood.

[17] During cross-examination, Mr. Falletta could not provide the gross floor area ("GFA") for either the properties surrounding the proposal or of the semi's which were part of his client's development proposal.

[18] During re-direct, he was able to point to the fact that the applicable zoning by-law does not regulate lot coverage or GFA, but that fact does not provide justification for a conclusion about scale and massing which are inputs to whether or not the proposal represents good planning.

[19] The Board does not accept Mr. Falletta's overall conclusion that five dwellings on a half-acre lot where one dwelling currently exists, will fit in harmoniously with surrounding properties which are predominantly single family dwellings, each on their own separate lot.

[20] In this instance, the Board agrees with Mr. Ramsay that the proposal is an over-building of an existing lot.

[21] In order to arrive at a conclusion that the proposal will generally fit in terms of

scale and massing with the surrounding properties, one has to have an idea of massing of the those surrounding properties. With respect to Ms. Hughes' home which is next door, she testified that her two-bedroom bungalow was approximately 800 square feet which translates to under 75 square metres ("sq m").

[22] Mr. Falletta's site plan drawings showed the proposed semi's to be somewhere in the range of 380 sq m or each unit to be approximately 190 sq m. Mr. Ramsay testified that he saw the semi's to be more in the range of 450 sq m given that the stairs and garage should be included in the calculation.

[23] In any event, even applying Mr. Falletta's lower figures, the result is a massing which is any where from twice to four-times as much as the building immediately adjacent. This comparison is the case for only one set of the semi's. The deployment on the subject property is for two sets of semi's along with the original dwelling.

[24] It has been a long established practice that the determination of whether or not a proposal will fit into the neighbourhood is not purely a mathematical exercise and should not be limited solely to only abutting properties. However, particular attention must be given to the properties most acutely affected by the proposal and as such, an appropriate transition in scale and massing is warranted. In this instance, such a transition is not provided and therefore, the proposed development is in stark contrast to the measure of the neighbouring property.

[25] Another example wherein I preferred Mr. Ramsay's evidence was in connection with Mr. Ramsay's review of the proposed draft zoning by-law amendment ("ZBA"). Through Mr. Ramsay's methodical critique of the proposed ZBA, a number of revisions were required. The result was a revised ZBA which was filed with the Board by Mr. Falletta during the Appellant's Reply case as Exhibit 18.

[26] The revisions included changes to section 2(e)(ii) to ensure there was no ambiguity with what was proposed on the site plan drawings. It should be noted that the subject property is subject to site plan control but no site plan application has been filed

with the City. As such, the drawings submitted to the Board at this hearing were for illustrative purposes.

[27] The original language of section 2(e)(ii) was as follows with revisions shown in underlined text:

2. That the "R-4" (Small Lot Single Family Dwelling) District regulations as contained in Section 9A of Zoning By-law No. 6593, applicable to the subject lands, be modified to include the following uses and requirements:
 - (e) Every single detached dwelling shall comply with Section 9A(2) of Zoning By-law No. 6593 with the following exceptions:
 - (ii) That notwithstanding Section 9A(2)(b)1(i) and 18(3)(d), a front yard of not less than 3.4 m to a roofed-over or screened but otherwise unenclosed one-storey porch at the first storey level and not less than 6.0 metres to the principal building shall be required.

[28] Similarly, revisions were required for subsection (f)(iii) which read as follows with deleted text shown as strike-out and added wording shown as underlined:

(f)(iii) That notwithstanding Section 9A(3)(b)1(b)(iii) and 18(3)(d), a rear yard shall have a depth of ~~0.0~~ 1.5 m ~~to from~~ the erosion hazard limit being the ~~northerly~~ northerly limit of the "R-4" District Zoning and ~~shall permit a rear deck encroachment of 1.5 m as identified on Schedule A, attached hereto~~ and forming part of this bylaw, to the principal building or structure, and not less than 0.0 to a roofed-over or screened but otherwise unenclosed one-storey porch at the first storey level.

[29] The same was true for subsection (f)(iv):

(f)(iv) That notwithstanding Section 9A(3)(c)1(i) and 2(2)J.(xxvb), every lot or tract of land upon which a pair of semi-detached dwellings are erected within the "R-4" District shall have a lot width of not less than ~~44.4~~ 15.0 metres and have an individual lot width of not less than ~~3.8 m~~ 7.3 metres and in this instance "width" shall mean the horizontal distance between the side lot lines, measured at a depth of 9.0 metres from and parallel to the front lot line or the extended front lot line to where it intersects the side lot line;

[30] And finally, the removal of term "street townhouses" and replaced with "semi-detached dwellings" in Section 3 of the proposed by-law given that the no street

townhouses are included in the development concept.

[31] These changes were to provide clarity according to Mr. Falletta. However, it does not go unnoticed that such revisions were only done following Mr. Ramsay's review.

[32] With respect to the original language of subsection 2(f)(iii), Mr. Ramsay pointed out that rear decks would be permitted within a dynamic beach erosion hazard area and as such, would be in contravention to Policy 3.1.2 (a) of the Provincial Policy Statement.

[33] The proposed revisions to the draft ZBL are not simply of form. The proposed revisions are substantive and result from Mr. Ramsay's critique. This, in my estimation, lends to my preference for Mr. Ramsay's evidence.

[34] For the foregoing reasons, the Board orders that the appeal is dismissed.

"J. V. Zuidema"

J. V. ZUIDEMA
VICE-CHAIR

If there is an attachment referred to in this document,
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Ontario Municipal Board

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