SUBJECT: Application for a Change in Zoning for Lands Located at 354 East 14th Street (Hamilton) (PED09266) (Ward 7)

RECOMMENDATION:

That approval be given to Amended Zoning By-law Application ZAR-09-013, by 384269 Ontario Ltd., Owner, for a change in zoning from the “A” (Conservation, Open Space, Park and Recreation) District to the “C/S-1617” (Urban Protected Residential, etc.) District, Modified, with a special exception to facilitate the construction of a single detached dwelling, located at 354 East 14th Street (Hamilton), as shown on Appendix “A” to Report PED09266 on the following basis:

(a) That the draft By-law, attached as Appendix “B” to Report PED09266, which has been prepared in a form satisfactory to the City Solicitor, be enacted by City Council.

(b) That the proposed change in zoning is in conformity with the Hamilton-Wentworth Official Plan and the City of Hamilton Official Plan.

Tim McCabe
General Manager
Planning and Economic Development Department
EXECUTIVE SUMMARY:

The purpose of the application is for a change in zoning to permit the construction of a single detached dwelling on the lands known as 354 East 14th Street (Hamilton). The subject lands were zoned “A” (Conservation, Open Space, Park and Recreation) District, as per Ontario Municipal Board Decision No. 1548 (see Appendix “C”), on September 24, 2001.

The proposal has merit and can be supported as it will allow for the intensification of the subject lands for residential purposes. It is consistent with the Provincial Policy Statement, Places to Grow Plan, and conforms to the Hamilton-Wentworth Official Plan and the City of Hamilton Official Plan.

BACKGROUND:

Proposal

The applicant is proposing a change in zoning at 354 East 14th Street (Hamilton), to permit the construction of one single detached dwelling on lands currently zoned ‘A’ (Conservation, Open Space, Park and Recreation) District. The subject lands are one of three lots created by severance from 334 East 14th Street (B98:48 and B98:49), and part of an application to amend the Zoning By-law (ZAC-98-026), that were denied by Council and later appealed by the Owner to the Ontario Municipal Board (OMB). In 2001, the OMB approved two lots for residential development, and the remaining lot was to be zoned for Open Space. Since the initial applications were submitted in 1998, new Provincial policies have been established for infill residential development and intensification. The applicant is proposing to rezone the subject lands to permit a single detached dwelling.

Details of Submitted Application

Location: 354 East 14th Street (Hamilton)
Owner: 384269 Ontario Ltd. (Owner)
Applicant: IBI Group (Applicant)
Property Description: Frontage: 16.3m±
Depth: 30.3m±
Area: 493.89 sq.m±
EXISTING LAND USE AND ZONING:

<table>
<thead>
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<th>Subject Lands</th>
<th>Existing Land Uses</th>
<th>Existing Zoning</th>
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<td>Vacant</td>
<td>“A” (Conservation, Open Space, Park and Recreation) District</td>
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Surrounding Lands

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<th>Existing Zoning</th>
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<td>“E/S-1452” (Multiple Dwellings, Lodges, Clubs, etc.) District</td>
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<td>South</td>
<td>Single Detached</td>
<td>“C” (Urban Protected Residential, etc.) District</td>
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<tr>
<td>West</td>
<td>Single Detached</td>
<td>“C” (Urban Protected Residential, etc.) District</td>
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<td></td>
<td>Residential</td>
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ANALYSIS/RATIONALE:

1. The proposal has merit and can be supported for the following reasons:
   
   (i) It is consistent with the policies of the Provincial Policy Statement and Places to Grow Plan;

   (ii) It conforms with the Hamilton-Wentworth Official Plan, and the City of Hamilton Official Plan; and,

   (iii) It is an infill development that would be compatible with the surrounding residential area by maintaining the existing character of the neighbourhood.

2. In 1998, an application to amend the City of Hamilton Zoning By-law at 334 East 14th Street (ZAC-98-026) was submitted concurrently with two consent applications (B98:48 and B98:49) to create three new residential building lots. The purpose of amending the Zoning By-law was to recognize the existing apartment building to fulfil the requirements of a 1959 agreement, and to facilitate the construction of three single detached dwellings on three new lots, created by way of consent, now known municipally as 354 East 14th Street, 3 Inchlee Drive, and 356 East 13th Street (see Appendix “A”). The applications were reviewed against the Provincial and municipal policies applicable at the time.
In review of the previous application in 1998, staff recommended support for the change in zoning to recognize the existing apartment building. However, staff did not support the creation of three residential building lots, in that the proposal was considered to be an over-intensification of the neighbourhood. In particular, the proposed lot at 356 East 13th Street was not consistent with the established development pattern in terms of dwelling and driveway location. The zoning and consent applications were denied by Council and, subsequently, appealed by the applicant to the Ontario Municipal Board.

During the hearing, the Board reviewed the merits of the proposal and determined that creating two lots for residential development (356 East 13th Street and 3 Inchlee Drive), and one lot for open space (354 East 14th Street), was more appropriate. In its decision, the Board acknowledged that the lands to be rezoned to “Open Space” would remain in private ownership since acquisition of these lands by the City of Hamilton for public use was not necessary or contemplated. Since the Board’s decision, the City of Hamilton has reconfirmed to the Owner that there was no municipal interest in purchasing the subject lands for public uses (see Appendix “D”). New dwellings have since been constructed on the two lots zoned “C” (Urban Protected Residential, etc.) District. The third parcel remains vacant, and as the parcel of land is privately owned, it is not used by the public.

3. Since 1998, the Provincial Policy Statement (PPS) has been revised, and the Province has introduced the Growth Plan for the Greater Golden Horseshoe. Combined, these new policies provide specific direction for growth strategies that support and foster development within the urban boundaries of municipalities. The implementation of these new policies is to be reflected in local Official Plans and Secondary Plans. With the adoption of the new Urban Area Official Plan policies and designations, the City of Hamilton can better implement the Growth Related Integrated Development Strategy (GRIDS), which identifies appropriate areas within the Urban Boundary for infill development.

The current proposal to rezone the subject lands from the “A” (Conservation, Open Space, Park and Recreation) District, to a site-specific “C” (Urban Protected Residential, etc.) District, has been reviewed against the new Provincial polices for infill development and intensification. In accordance with Section 1 of the current PPS, strong, liveable, and healthy communities are supported by lands which are used efficiently. The subject property is an under utilized vacant parcel having a size and shape consistent with the existing parcels in the neighbourhood and surrounding area. Construction of a single detached dwelling on the subject lands would represent the best use for the subject lands, and is not considered to be an over-intensification of the neighbourhood.
Additionally, the 1995 Provincial Policy Statement did not include any direction for Parks and Open Space uses, and how they should be managed. Section 1.5 in the current PPS addresses Public Spaces, Parks, and Open Space as necessities to promoting healthy, active communities. However, the policies of Section 1.5.1 are specific to areas available to the public. Since the subject lands are privately owned, they are not available for public use. It is important to note that the subject lands are located within 1 kilometre of 4 neighbourhood parks: Sackville Hill Memorial Park, Inch Park, Bruce Park, and Upper Wellington/Fennel Park. This provides ample recreational open space for the residents in this area.

4. As mentioned earlier in this analysis, the OMB decision to rezone the lands to the “A” (Conservation, Open Space, Park and Recreation) District acknowledged that the lands were under private ownership, and the decision also acknowledged that City of Hamilton had no interest in purchasing the lands for public use. The subject lands are designated as RESIDENTIAL in the Official Plan. In accordance with Policy A.2.1.1, the primary uses permitted in areas designated as RESIDENTIAL will be dwellings. Furthermore, Policy A.2.1.3(i) identifies that land uses compatible to dwellings and serving the needs of the local residents will include Public Parks less than 0.4 hectares in size. Although the subject lands are 0.049 hectares in area, they are privately owned and, therefore, not open to public usage. The “A” (Conservation, Open Space, Park and Recreation) District on the subject lands does not meet the general intent of the Official Plan under the RESIDENTIAL designation. In this regard, the proposed rezoning would be more in conformity with the City of Hamilton Official Plan.

The new City of Hamilton Urban Official Plan was adopted by Council on June 29, 2009, and is currently awaiting approval from the Ministry of Municipal Affairs and Housing. The subject lands are designated as “Neighbourhoods” in the new Urban Official Plan, which identifies Open Space and Parks as a supportive use to Residential uses. Policy E.3.2.6 explains that supportive uses should be clustered to create a focal point for the neighbourhood and to facilitate access by all forms of transportation. The subject lands are not located on a major roadway, nor clustered with any other supportive uses. The subject lands do not meet the intent of this policy and, therefore, maintaining the existing zoning as “A” (Conservation, Open Space, Park and Recreation) District would not be in keeping with Council direction.

5. The subject lands are zoned “A” (Conservation, Open Space, Park and Recreation) District. The uses currently permitted on the subject lands are consistent with those of a conservation and/or passive recreational nature. Additionally, By-law 00-211 was varied to allow for a lot area of 350 square metres, whereas a minimum 1,848 square metres of area is typically required under Section 7(4) of the City of Hamilton Zoning By-law 6593. Although no site-specific zone was created for the subject lands, the lot remains significantly undersized for public open space and recreational uses.
In 2005, the City of Hamilton began implementing the new Hamilton Zoning By-law 05-200. On June 14, 2006, By-law 05-200 was amended to create new Open Space and Parks Zones. During this review, all City-owned lands were rezoned to one of the five “P” Open Space and Park zones. Since the subject lands are privately owned, they were not placed in any of the “P” categories in the new By-law. A second review will occur when the new residential zones are implemented. Privately-owned Open Space lands will undergo a comprehensive review to convert the lands to the most appropriate zone. It is important to note that at the time of this review process, the Official Plan policies in effect will be considered when determining the appropriate zones for small, privately owned, open space lands.

6. The proposed change in zoning is appropriate to allow the construction of a new single detached dwelling consistent with the character of the surrounding area. The subject lands have a lot area that could accommodate one single detached dwelling with all the required yard setbacks and being of similar scale and size to those in the surrounding area. However, in order to ensure that the new dwelling enhances the character of the neighbourhood, modifications to the “C” (Urban Protected Residential, etc.) District provisions are required to reflect the existing built form. These modifications include a minimum front yard of 7.5m, instead of the minimum 6m; a minimum rear yard of 6m, instead of the minimum 7.5m; maximum height of 1 storey or 7.5m, instead of the maximum two-and-a-half storeys or 11m; no paving permitted in the front yard, and no access is to be provided from East 14th Street. Since the subject lands are a corner lot, the frontage will be along East 14th Street. The reduction in height, modified front and rear yards, and increased opportunity for front yard landscaping, will enhance the character of the neighbourhood by having regard for natural vegetation, setbacks, building height, and coverage. The change in zoning will represent a more appropriate use of the subject lands by permitting a single detached dwelling in keeping with the neighbourhood and, therefore, can be supported.

**ALTERNATIVES FOR CONSIDERATION:**

If the application is denied, the Owner can continue to utilize the subject lands for private recreational purposes, as prescribed by the “A” (Conservation, Open Space, Park and Recreation) District.

**FINANCIAL/STAFFING/LEGAL IMPLICATIONS:**

Financial: N/A.

Staffing: N/A.

Legal: As required by the Planning Act, Council shall hold at least one (1) Public Meeting to consider an application for a change in zoning.
POLICIES AFFECTING PROPOSAL:

Provincial Policy Statement

The application has been reviewed with respect to the Provincial Policy Statement (PPS). Staff recognizes that the application is consistent with the policies that focus growth in Settlement Areas 1.1.3.1. Additionally, the following policies also apply:

“1.1.3.2 Land use patterns within settlement areas shall be based on:

(a) densities and a mix of land uses which:

1. efficiently use land and resources;

2. are appropriate for, and efficiently use, the infrastructure and public service facilities which are planned or available, and avoid the need for their unjustified and/or uneconomical expansion; and,

3. minimize negative impacts to air quality and climate change, and promote energy efficiency in accordance with Policy 1.8; and,

(b) a range of uses and opportunities for intensification and redevelopment in accordance with the criteria in Policy 1.1.3.3.

1.1.3.3 Planning authorities shall identify and promote opportunities for intensification and redevelopment where this can be accommodated, taking into account existing building stock or areas, including brownfield sites, and the availability of suitable existing or planned infrastructure and public service facilities required to accommodate projected needs.

Intensification and redevelopment shall be directed in accordance with the policies of Section 2: Wise Use and Management of Resources, and Section 3: Protecting Public Health and Safety.

1.1.3.4 Appropriate development standards should be promoted which facilitate intensification, redevelopment, and compact form, while maintaining appropriate levels of public health and safety.

1.5 PUBLIC SPACES, PARKS AND OPEN SPACE

1.5.1 Healthy, active communities should be promoted by:

(a) Planning public streets, spaces, and facilities to be safe, meet the needs of pedestrians, and facilitate pedestrian and non-motorized movement, including but not limited to, walking and cycling;
(b) Providing for a full range and equitable distribution of publicly-accessible built and natural settings for recreation, including facilities, parklands, open space areas, trails and, where practical, water-based resources;”

The use of the privately owned subject lands for public open space does not meet the criteria prescribed in Section 1.5 of the PPS. Furthermore, since existing neighbourhood parks are in close proximity to the subject lands, the neighbourhood residents have sufficient public amenity space available. Therefore, the more appropriate use for the subject lands is residential, which is supported by the residential infill and intensification policies of the PPS.

**Places to Grow Plan:**

This application has also been reviewed against the policies of the Places to Grow Plan, as it provides further direction to the municipality for directing infill development and intensification. In accordance with Policy 2.2.3.1, “By the year 2015 and for each year thereafter, a minimum of 40 per cent of all residential development occurring annually within each upper- and single-tier municipality will be within the built-up area.” The efficient use of vacant or under-utilized parcels, such as the subject lands, should be included in the calculation of potential areas for residential development. As such, the proposed change in zoning to permit the construction of a single detached dwelling is consistent with the Places to Grow Plan.

**Hamilton-Wentworth Official Plan:**

The subject property is designated as “Urban Area” within the Hamilton-Wentworth Regional Official Plan. Policy C-3.1 outlines that a wide range of urban uses, defined through Area Municipal Official Plans and based on full municipal services, will be concentrated in the Urban Areas. These areas are intended to accommodate approximately 96% of new residential housing units in the Region to the year 2020. Therefore, the proposal conforms to the Plan.

**City of Hamilton Official Plan**

The lands are designated “Residential” in the Hamilton Official Plan. The following policies, among others, are applicable to this application:

“A.2.1 Residential Uses

2.1.1 The primary uses permitted in the areas designated on Schedule “A” as RESIDENTIAL will be for dwellings. Various types of dwellings are included within the designation, while preference will be given to the locating of similar densities.”
2.1.3 Within areas designated RESIDENTIAL, land uses compatible to dwellings and serving the needs of local residents will be permitted, including, but not limited to:

i) Public parks less than 0.4 hectares in size;

2.1.11 Subject to the policies of Subsection B.1, preference will be given to the complete development of RESIDENTIAL neighbourhoods.

C.7 Residential Environment and Housing Policy

7.3 Council will encourage a RESIDENTIAL ENVIRONMENT of an adequate physical condition that contains a variety of housing forms that will meet the needs of present and future residents. Accordingly, Council will:

iii) Support RESIDENTIAL development such as infilling, redevelopment, and the conversion of non-residential structures that makes more efficient use of the existing building stock and/or physical infrastructure that recognize and enhance the scale and character of the existing residential area by having regard to natural vegetation, lot frontages and areas, building height, coverage, mass, setbacks, privacy, and overview."

The rezoning of the subject lands from the “A” (Conservation, Open Space, Park and Recreation) District to a site-specific “C” (Urban Protected Residential, etc) District conforms to the “Residential” policies of the Hamilton Official Plan. As the proposal is to facilitate the development of one new single detached dwelling, the application conforms to the Official Plan.

New Urban Hamilton Official Plan

The New Urban Hamilton Official Plan was adopted by Council on June 29, 2009. The Plan has been forwarded to the Province for approval, but is not yet in effect. The subject lands are designated as “Neighbourhoods” on Schedule “E” Urban Structure. The new Hamilton Official Plan designations for the subject lands shadow the same designation in the City of Hamilton Official Plan noted above. Therefore, the proposal is consistent with the New Urban Hamilton Official Plan.

Growth Related Integrated Development Strategy (GRIDS)

The GRIDS concept was prepared to better guide development within the municipal urban boundary in conjunction with implementation of the Places to Grow Plan. In implementing the strategy, the Nine Directions to Guide Development are referenced. Three of the nine directions are applicable to the proposal:
1. Encourage a compatible mix of uses in neighbourhoods that provide opportunities to live, work, and play.

2. Concentrate new development within existing built-up areas and within a firm urban boundary.

7. Maximize the use of existing buildings, infrastructure, and vacant or abandoned land.

As there are neighbourhood parks in close proximity to the subject lands, and the subject lands are of a similar size and shape of those in the surrounding area, the proposed rezoning to permit the construction of a single detached dwelling is in keeping with the development directions provided by GRIDS and is, therefore, consistent with GRIDS.

**RELEVANT CONSULTATION:**

The following Departments and Agencies had no comments or objections:

- Capital Planning and Implementation Section, Public Works Department.
- Traffic Engineering and Operations Section, Public Works Department.
- Water and Wastewater Division, Public Works Department.
- Hamilton-Wentworth District School Board.
- Bell Canada.
- Union Gas.
- Hydro.

**Urban Forestry, Public Works Department** - The creation of a new residential building lot for a single detached dwelling shows that there are potential Urban Forestry conflicts. Four trees have been identified as being within or close to the municipal road allowance. The owner/applicant is advised to confirm the location of the trees prior to the issuance of any building permits. Removal of any trees will be subject to obtaining a Tree Removal Permit in the normal manner.

**PUBLIC CONSULTATION:**

In accordance with Council’s Public Participation Policy, the application was pre-circulated to 224 property owners within 120 metres of the subject property on May 11, 2009. To date, the department has received no comments from the public.

Notice of the Public Meeting will be given in accordance with the requirements of the Planning Act through circulation to property owners within 120 metres of the subject lands, and the posting of a sign on the property.
CITY STRATEGIC COMMITMENT:

By evaluating the “Triple Bottom Line”, (community, environment, economic implications) we can make choices that create value across all three bottom lines, moving us closer to our vision for a sustainable community, and Provincial interests.

Community Well-Being is enhanced. ☑ Yes ☐ No
Shelter, care, and satisfying employment are accessible to all Hamiltonians in that the proposed rezoning will be in keeping with City and Provincial infill policies, while maintaining the character of the neighbourhood.

Environmental Well-Being is enhanced. ☑ Yes ☐ No
Air quality, and water quality and quantity are protected in that the proposed rezoning will not have a negative impact on the environment.

Economic Well-Being is enhanced. ☑ Yes ☐ No
Investment in Hamilton is enhanced and supported in that it is expected that firms within the City of Hamilton will be employed to facilitate the construction of the new dwelling.

Does the option you are recommending create value across all three bottom lines? ☑ Yes ☐ No

Do the options you are recommending make Hamilton a City of choice for high performance public servants? ☐ Yes ☑ No

:KM
Attachs. (4)
Location Map

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT

File Name/Number: ZAR-09-013
Date: April 14, 2009

Appendix "A"

Subject Property
354 East 14th Street
Change in Zoning from the "A" (Conservation, Open Space, Park and Recreation) District to the "C/S-1817" (Urban Protected Residential, etc.) District, Modified

Ward 7 Key Map N.T.S.
CITY OF HAMILTON

BY-LAW NO. [Bill No.]

To Amend Zoning By-law No. 6593 (Hamilton), respecting lands located at 354 East 14th Street (Hamilton)

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario 1999 Chap. 14, Schedule C did incorporate, as of January 1st, 2001, the municipality "City of Hamilton";

AND WHEREAS the City of Hamilton is the successor to certain area municipalities, including the former area municipality known as "The Corporation of the City of Hamilton", and is the successor of the former Regional Municipality, namely, "the Regional Municipality of Hamilton-Wentworth";

AND WHEREAS the City of Hamilton Act, 1999, provides that the Zoning By-laws and Official Plans of the former area municipalities and the Official Plan of the former regional municipality continue in force in the City of Hamilton until subsequently amended or repealed by the Council or the City of Hamilton;

AND WHEREAS Zoning By-law No. 6593 (Hamilton) was enacted on the 25th day of July 1950, which was approved by the Ontario Municipal Board by Order dated the 7th day of December 1951 (File No. P.F.C. 3821);

AND WHEREAS the Council of the City of Hamilton, in adopting Item [Bill No.] of Report 09- [Bill No.] of the Economic Development and Planning Committee, at its meeting held on the [date] day of [date], 2009, recommended that Zoning By-law No. 6593 (Hamilton) be amended as hereinafter provided;

AND WHEREAS this By-law is in conformity with the Official Plan of the City of Hamilton (the Official Plan of the former City of Hamilton) in accordance with the provisions of the Planning Act.
NOW THEREFORE the Council of the City of Hamilton enacts as follows:

1. That Sheet No. E17 of the District Maps, appended to and forming part of By-law No. 6593 (Hamilton), is amended
   (a) by changing from the “A” (Conservation, Open Space, Park and Recreation) District to the “C/S-1617” (Urban Protected Residential, etc.) District, Modified;

   on the lands the extent and boundaries of which are shown on a plan hereto annexed as Schedule “A”.

2. That the “C” (Urban Protected Residential, etc.) District regulations, as contained in Section 9 of Zoning By-law No. 6593, be modified to include the following requirements:
   (a) For the purposes of this by-law, the Front Lot Line shall be along East 14th Street;
   (b) That notwithstanding Section 9(3)(i) of Zoning By-law No. 6593, a front yard of a depth of at least 7.5m shall be provided and maintained;
   (c) That notwithstanding Section 9(3)(iii) of Zoning By-law No. 6593, a rear yard of a depth of at least 6.0m shall be provided and maintained;
   (d) That notwithstanding Section 9(2) of Zoning By-law No. 6593, no building shall exceed 1 storey, and no structure shall exceed 7.5m in height;
   (e) That notwithstanding Sections 18(14), 18a(14a), and 18a(14h) of Zoning By-law No. 6593, not less than 100% of the front yard shall be landscaped excluding concrete, asphalt, gravel, pavers or other similar materials; and,
   (f) That no vehicular egress or ingress shall be permitted from East 14th Street.

3. That Zoning By-law No. 6593 is amended by adding this By-law to Section 19B as Schedule S-1617.

4. That Sheet E17 of the District Maps is amended by marking the lands referred to in Section 1 of this By-law as S-1617.
5. That the Clerk is hereby authorized and directed to proceed with the giving of notice of passing of this By-law, in accordance with the Planning Act.

PASSED and ENACTED this [day] day of [month], 2009.

_________________________  ______________________________
Fred Eisenberger            Kevin C. Christenson
Mayor                      Clerk

ZAR-09-013
This is Schedule "A" to By-Law No. 09-
Passed the ........... day of ...................., 2009

---
Clerk
---
Mayor

Subject Property

354 East 14th Street
Change in Zoning from the "A" (Conservation, Open Space, Park and Recreation) District to the "C/S-1617" (Urban Protected Residential, etc.) District, Modified

Schedule "A"

Map Forming Part of By-Law No. 09-______
to Amend By-law No.6593
Cornerstone Commercial Realty Corporation has appealed to the Ontario Municipal Board under subsection 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 6593 of the City of Hamilton to rezone lands respecting 334 East 14th Street from 'C' District to 'E' District on Block '1' so as to recognize an existing 105 unit apartment building and from 'C' District to a site specific designation for Blocks '2' and '3' in order to permit three single family dwellings
O.M.B. File No. Z990163

Cornerstone Commercial Realty Corporation has appealed to the Ontario Municipal Board under subsection 53(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from two decisions of the Committee of Adjustment of the City of Hamilton which dismissed two applications numbered B-48/98 and B-49/98 for consent to convey part of lands respecting 334 East 14th Street
O.M.B. File No. C000025 and C000026

BEFORE:

M. A. Rosenberg ) Tuesday, the 18th
) 
Member ) day of July 2000

THIS MATTER having come on for hearing and after the hearing of the application, the Board having held its order until the day it is advised, by the City of Hamilton, that the required conditions are fulfilled.

THE BOARD ORDERS that the appeals are allowed, in part. By-law No. 00-211 hereby amends Zoning By-law 6593, of the Corporation of the City of Hamilton, in the manner set out and attached hereto as Appendix "A". Provisional consent is hereby granted, as Lot 3, which is Block 5, is rezoned to "Green Open Space Parkland. In all other respects the, Board Orders the appeal is dismissed.

ACTING SECRETARY
Appendix "C" to Report PED09266 (Page 2 of 10)

Cornerstone Commercial Reality Corporation has appealed to the Ontario Municipal Board under subsection 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 6583 of the City of Hamilton to rezone lands respecting 334 East 14th Street from 'C' District to 'E' District on Block '1' so as to recognize an existing 105 unit apartment building and from 'C' District to a site specific designation for Blocks '2' and '3' in order to permit three single family dwellings.
O.M.B. File No. Z990163

Cornerstone Commercial Reality Corporation has appealed to the Ontario Municipal Board under subsection 53(19) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from two decisions of the Committee of Adjustment of the City of Hamilton which dismissed two applications numbered B-48/98 and B-49/98 for consent to convey part of lands respecting 334 East 14th Street.
O.M.B. File No. C000025 and C000026

APPEARANCES:

Parties

983177 Ontario Inc.

City of Hamilton

Participants

William Kelly

Bernice Price

MEMORANDUM OF ORAL DECISION DELIVERED BY M. A. ROSENBERG ON JUNE 16, 2000

983177 Ontario Inc. owns a 2.6 acre parcel of land located at 334 East 14th Street in the City of Hamilton. The property is located at the northwest corner of East 14th Street and Inchlee Drive in the Hill Park Neighbourhood just south of Fennell Avenue. On the site is a six storey 105 unit apartment building built in 1959.
The owner wishes to change the zoning on part of the property from "C District" to "E District" on the existing apartment building site to legalize the existing apartment building use. In addition, the owner wishes to sever off a one acre parcel of land which would have frontage on East 14th Street as well as Inchlee Drive and rezone the property from "C District" to a "Site Specific Zoning" to allow for three residential dwelling units. The owner is also asking for the consent of two parcels of land on the newly created one acre lot which would result in three new residential lots. Two severed lots on each end and one retained parcel of land in the middle of the surplus one acre site.

Peter Strus is one of the principals of the numbered company which owns the property. Mr. Strus gave evidence before the Board in support of the rezoning and consent applications. Mr. Strus said the following:

1. He bought the property in 1992;
2. He wants to create three new residential lots with frontages on Inchlee Drive. One corner lot, i.e., Lot 3 would also have frontage on East 14th Street. Lot 2, the middle lot and Lot 3 the lot bordering on East 14th Street would each have a one storey bungalow on them about 1,200 square feet in size. Lot 1 which is the furthest lot to the west would also have a one storey bungalow on it and be about 1,500 square feet in size;
3. The newly created parcel of land for the three separate lots would be about one acre in total size containing about 40,000 square feet;
4. Each dwelling would have double car garages and driveways leading onto Inchlee Drive; and
5. All existing trees on the one acre site would be preserved and he is agreeable to attaching the proposed site plan to any approval given by the Board.

Mr. John Ariens is an experienced and qualified planner. Mr. Ariens gave evidence before the Board in support of the rezoning and the three proposed consents. Mr. Ariens said the following:

1. The area is the Hill Park Neighbourhood located on the Mountain in the City of Hamilton. Mainly 40 to 50 year old 1 to 1 ½ storey small residences in the area;
2. To the north of the apartment site are commercial uses, i.e., a Bingo Hall and a Funeral Home but there are mostly single-family detached homes to the east, south
and west of the site;

3. None of the existing mature trees on the site are on public property. All existing trees on the site are being preserved;

4. Three houses can be built in the open space between the two rows of existing mature trees;

5. The three proposed driveways from the three houses would have safe access to Inchlee Drive;

6. The owner is creating three wide shallow lots utilizing side yards for amenity space, i.e., substituting side yards for rear yards;

7. The proposed Lot 1 at the western end of the site meets all of the by-law requirements but the City says the rear yard which is only four feet in depth should be 25 feet and this depends on the interpretation of the by-law with regard to rear and side yards;

8. Lot 2 has a deficiency in the front yard setback. Under the by-law, it needs a 20 foot front yard setback but it only has a 15 foot front yard setback. There is also a deficiency in the rear yard setback. The by-law requires a 25 foot setback and there is only a four foot setback for the rear yard;

9. Lot 3 complies with all the zoning by-law requirements;

10. He referred to the Provincial Policy Statement which:
   (a) Encourages cost efficient development of land;
   (b) No environmental or health issues in this application;
   (c) Infrastructure is available, i.e., sewers and water;
   (d) Supports public transit use in the area, i.e., it is close to Fennell Avenue;
   (e) Residential intensification;
   (f) Minor infilling; and
   (g) Modest affordable housing units are being proposed and it complies with the intent of the Provincial Policy Statement.

11. He said the intent of the Hamilton-Wentworth Regional Official Plan has also been complied with because:
   (a) It is a sustainable development;
   (b) Good energy conservation;
   (c) Promotes compact urban growth;
   (d) Firm urban boundary created; and
   (e) Efficient use of existing services. He said the Regional Planning Staff had no objections.
12. The City of Hamilton Official Plan talks about:
   (a) The land is designated "Residential" in the Official Plan;
   (b) Similar densities are grouped together, i.e., a clustering of units;
   (c) Section C.7 of the Official Plan says infilling proposed recognizes and enhances the scale and character of the existing residential area by having regard to natural vegetation, lot frontages and area, building heights, coverage, setbacks, privacy and open space. He said the existing trees help retain privacy;
   (d) Parking requirement is met;
   (e) The area is a very mature stable residential area. Three new one storey bungalows will fit in with the character of the area;
   (f) Lot frontages and lot areas are compatible with other lots in the area. In fact, the three lots have larger frontages and larger lot areas then most homes in the area;
   (g) Building heights, building coverage and building setbacks are also compatible with the neighbourhood; and
   (h) Three houses line up with other homes in the area, i.e., the streetscape is maintained. The side driveway on the corner lot is similar to other side driveways on other corner lots in the area. He said the homes can co-exist with other homes in the area. He said the intent of the Hamilton Official Plan has been met.

13. The proposed zoning by-law conforms with the intent of the Hamilton Official Plan;
14. Section 51(24) of the Planning Act relating to the two severances creating three lots has been complied with. The severances are not premature and are in the public interest. He said it represents good planning;
15. There is no adverse impact on any adjacent neighbours. Existing trees will provide screening;
16. At least eight mature trees will remain on the apartment site. The balance of the trees will be retained on the three new lots;
17. There will be a loss of some green open space but it is private green open space;
18. There is no problem with overlapping driveways on Lot 1 and the property located at 360 East 13th Street. No conflict arises when backing out of the two driveways;
19. Property should not be divided into only two lots. Three lots are appropriate. Lot 1 house has a large lot and the proposed house location is lined up with the streetscape of other lots on East 13th Street.
20. The owner agrees to the draft conditions on the severance and to a tree saving plan by the City of Hamilton which is found in Exhibit "9";
21. The owner agrees to a draft site plan which is Exhibit "17", being attached as part of the rezoning by-law or as part of the Board's Order separately.

Mr. Keith Birch is an experienced and qualified planner. Mr. Birch gave evidence before the Board on behalf of the City of Hamilton in opposition to the proposed rezoning and consent applications. Mr. Birch said the following:

1. He had no problem with the rezoning of the apartment building to bring it into conformity with the Official Plan;
2. The existing 40 year old L-shaped 105 unit apartment building's main feature, has green open space and mature trees around it. The apartment building would not be allowed to be built today, because it is not near or on a collector road;
3. With regard to the proposed zoning by-law, he said the proposed walkway between Lots 1 and 2, should be in the “E Zone”;
4. He had no comments with regard to the Provincial Policy Statement or the Hamilton-Wentworth Regional Official Plan;
5. He said Section C.7 of the Hamilton Official Plan has not been complied with because:
   (a) There is a loss of amenity space for the apartment building and surrounding homes;
   (b) A loss of privacy in the rear and side lot areas of the three new proposed homes and loss of open space. This relates to enhancement and overview;
   (c) Section C.7.3 of the Official Plan talks about privacy and overview. The proposed development would detract from existing conditions and not enhance the neighbourhood and is not in scale or character with the neighbourhood. “Buyer beware” for the three new homes is not quite right in relation to the apartment building. There will be a certain loss of privacy; and
   (d) An addition to the existing apartment building, or a second apartment building on the site may be more appropriate because of the low vacancy rate in the City of Hamilton for apartment units. This would create more affordable apartment units which could be built on the site.
6. Loss of setback for the apartment building and insertion of three new homes in the
existing green open space is not appropriate and represents bad planning;

7. The commercial Funeral Home operation abutting the north end of the site may be using parking on the apartment site illegally;

8. Removal of green open area would not enhance the neighbourhood and would detract from the neighbourhood and reduce the existing positive impact on the neighbourhood; and

9. It is not an appropriate infill or intensification application.

William Kelly, the counsellor for the area, also spoke in opposition to the proposed development. Mr. Kelly said that the green space will be eliminated and the people in the area rely on this open green space as a common area. The character of the area will change and it will set a bad precedent. He admitted that the City, over the last 40 years, has not attempted to buy the land and turn the one acre site into a parkette.

Ms Bernice Price who lives in the area, also spoke against the proposed three new lots. Ms Price said:

(a) She has a petition signed by 82 people who are in opposition to the proposed three new single-family dwelling units;

(b) Green space was promised in the area since 1957;

(c) Three new homes would alter the character of the neighbourhood;

(d) Bad precedent for the area;

(e) There is now enough traffic from the Bingo Hall in the area;

(f) Three extra driveways and more traffic and cars will not help the traffic situation in the area;

(g) Mr. and Mrs. Ryan who abut the property and live at 360 East 13th Street, also object to the three new lots;

(h) The Ryan's house is only 825 square feet in size. Two 1,200 and one 1,500 square foot monster homes are out of character with the neighbourhood;

(i) No other homes in the area have double driveways; and

(j) The trees may eventually be destroyed even though best efforts may be made to retain them.

The Board has carefully weighed all the evidence and prefers the testimony of Mr. Strus and Mr. Ariens except with regard to density. All the parties agree that there was no
dispute with regard to the rezoning of the six storey, 105 unit apartment building site from "C District" which is Urban Protected Residential to "E District" which is Multiple Dwelling. The Board finds that the rezoning of the apartment site is appropriate and desirable and complies with the intent of the Official Plan. It represents good planning and the Board will approve this.

The Board also finds that the rezoning of the one acre surplus land from "C District to a "Site Specific" rezoning to allow for two new detached residential dwellings is appropriate and desirable and also represents good planning. The Board is satisfied that the intent of the Provincial Policy Statement, the Hamilton-Wentworth Regional Official Plan and the Hamilton Official Plan have generally been maintained. The owner proposes to build three one storey bungalows on three lots. The Board finds in this case, that only two lots, i.e., Lots 1 and 2 are appropriate for redevelopment. Three lots are an over development for the site. The two homes would range in size from 1,200 square feet to 1,500 square feet. The two lots would be shallow lots utilizing the side yards for amenity space. The two proposed lots have lot areas and lot frontages larger than most lots in the neighbourhood.

The Board finds that two new single-family detached one storey homes are a reasonable and appropriate form of infill and intensification for the neighbourhood and they are not out of keeping with the character of the area. The third lot, i.e., the corner lot which is Lot 3, should be rezoned "Green Open Space Parkland" and used as a parkette area both for the apartment unit dwellers and the residents in the area. The apartment unit tenants will need the extra open green amenity space because part of the existing site will now be redeveloped for two new homes. There will be a loss of a setback area to the apartment building. All services are available to the site and there is good public transit to the area and all parking requirements are met. It is a sustainable development with no unacceptable adverse impacts on anyone.

The Board also finds that Section C.7.3 of the City of Hamilton's Official Plan has been complied with. The two new homes will enhance the scale and character of the existing residential neighbourhood. Although the proposed homes may be larger in size than the existing homes in the area, they are compatible with the existing homes in the area. There will be a minimal loss of privacy and overview. All the existing trees on the one acre property are being retained although the Board does admit that some green
private open space will be lost to the neighbourhood.

The City of Hamilton over the last 40 years has had an opportunity to purchase some of this private green open space area on the subject property in order to create a parkette for the residents in the neighbourhood, but the City has declined to take any action in this regard. Lot 3 will partially fill the green amenity space and create some breathing room for the neighbourhood and the tenants of the existing apartment building.

The Board is also satisfied that the proposed location of the two new bungalows on the two new lots maintains the streetscape on Inchlee Drive and East 13th Street and is in keeping with the general stable character of the neighbourhood. The Board acknowledges that there will be some overview problems from the six storey apartment building looking into the rear of the two homes and there will be some invasion of privacy but the Board considers these impacts as minimal. The Board also recognizes that Mr. and Mrs. Ryan who live at 360 East 13th Street and abut proposed Lot 1, may be impacted to some degree, but the Board is satisfied from the evidence that any impact is minor and acceptable.

The Board also finds that the consent for the one acre lot and the two consents for the two new residential lots and the one green open space corner lot, complies with Section 51(24) of the Planning Act and represents good planning. The two new lot severances are not premature. The Board notes that a condition was added that the owner must file with the City of Hamilton a tree saving plan. The Board finds that the two new proposed homes can co-exist with other homes in the area and that overall, the rezoning and consent applications are desirable and represents good planning.

In the result:

1. The appeals are allowed in part;
2. The Board will approve the rezoning of the apartment building site and the rezoning for the surplus one acre parcel of land in accordance with the draft zoning by-law which is Exhibit "13", which is attached as Attachment "1" to this decision, except with regard to Lot 3, which will be rezoned "Green Open Space Parkland". This is Block 5.
3. The Board will approve the consent application for the one acre site and the three
parcels of land subject to the conditions set out in Exhibit "9", which is attached as Attachment "2" to this decision and subject to Lot 3 the corner lot being rezoned to "Green Open Space Parkland", which is Block 5.

4. The Board will also order that development for the three lots occurs generally in accordance with the draft site plan which is Exhibit "7", which is attached as Attachment "3" to this decision, subject to Lot 3 being rezoned to "Green Open Space Parkland" which is Block 5.

The Board's Order will not issue until the rezoning by-law and the consents granted are amended to reflect the Board’s decision relating to Lot 3 being retained as “Green Open Space Parkland”. If there are any problems, the Board can always be spoken to.

"M. A. Rosenberg"

M. A. ROSENBERG
MEMBER
November 19, 2001

Yachetti, Lanza & Restivo
Barristers & Solicitors
154 Main Street East
Suite 100
Hamilton, Ontario
L8N 1G9

Att: Mr. Restivo

Dear Mr. Restivo:

Re: 983177 ONTARIO INC.
Lot 3, 334 East 14th Street

In your Letter of October 11, 2001 you inquired if the City of Hamilton had an interest in purchasing Lot 3, 334 East 14th Street from your client.

A review of the City of Hamilton's position with respect to your inquiry has been completed. At this time the City of Hamilton does not require Lot 3, 334 East 14th Street, therefore, we respectively decline the option of purchasing the subject property from your client.

If you have any questions with respect to this issue please contact the undersigned.

Scott G. Beveridge

o.c. Councillor Bill Kelly, Ward 7