

783751 Ontario Limited v. Ajax (Town)

IN THE MATTER OF Section 34(11) of the Planning Act,  
R.S.O.  
1990, c. P. 13

AND IN THE MATTER OF an appeal to this Board by 783751  
Ontario Limited for an order amending By-law 3036, of the  
Town of Ajax to rezone lands known municipally as 135  
Kingston Road, described as Part of Lot 10, Concession 1  
from A - Agricultural to RM (SPECIAL) to permit the subject  
lands to be used for one family, semi-detached and  
multiple-attached dwellings

Ontario Municipal Board Decisions: [1993] O.M.B.D. No. 1621  
File No. Z 930028

Ontario Municipal Board  
B.W. Krushelnicki  
September 14, 1993

COUNSEL:

Richard R. Arblaster, for 783751 Ontario Ltd.  
Ronald J. Hawkshaw, for Town of Ajax.

DECISION OF THE BOARD delivered by B.W.  
KRUSHELNICKI:--

The Board provided an oral decision approving in principle the proposed by-law amendment, and withheld its order pending the clearance of certain conditions and concerns within a specified period of time. As promised at the end of the day's hearing on the matter, the Board is now providing a more detailed review of the relevant facts and its reasons for the decision.

The proposal before the Board seeks to amend the Town of Ajax zoning by-law site specifically to permit a residential condominium project consisting of forty-seven townhouse units. The Town opposes the re-zoning as do several nearby neighbours.

The subject parcel of land occupies a prominent location in the Town of Ajax at the peak of a drumlin on the south side of Highway 2 about 1600 feet west of Harwood Road. Highway 2 is a four lane arterial at this location and it cuts through the landform leaving a steep grade from the subject lands to the ditch and shoulder of the roadway.

The site comprises 3.31 acres of land surrounded on three sides by single family homes of recent vintage; most of these are on 30 and 40 foot lots. There is a school and park located a short distance to the southeast. To the northwest across Highway 2 are lands zoned high density residential and agriculture, and to the northeast, the designation is Main Central Area -- an office and retail designation.

The existing use of the site bears some mention. This area -- now developed in housing -- was originally one of the main farmsteads of the area known as the Arnold Estate. The subject parcel is the remaining remnant of the estate and contains on it the original 3,500 square foot, two-storey farmhouse built in 1867. This is set back on the property. Nearer the road to the northeast is a small coach house. A garage and barn occupy the southern extreme of the property. The house is in reasonably good condition and warrants some consideration for its historic value. The local LACAC has expressed interest in the building, but in accordance with the Council's policy of designating historic buildings under the Ontario Heritage Conservation Act only with the owner's approval, the house has not been so designated.

Several nearby neighbours object to the re-zoning. Although some of their concern was with the configuration and servicing of the townhouse development, this was much less serious than their concern simply that townhouses would not be compatible with the single family homes that have been developed in the area and would generate traffic problems. They argue that the development as townhouses would be more intensive for the street system. The development would gain access by connecting the two "prongs" of Trawley Crescent thus forming a completed crescent. These prongs are now temporarily closed with makeshift cul-de-sacs. The residents fear that the completed crescent with forty-seven new homes will affect safety and manoeuvrability, especially in winter, of vehicular traffic on the slopes of the street system.

The residents' concerns were not, however, sustained by the evidence. The developer retained an experienced traffic analyst whose advice to the Board was unequivocally that the development would not generate traffic sufficient to cause concern.

On the issue of compatibility, the neighbours proposed that the only compatible land use would be residential lots exactly similar to the 30 and 40 foot lots in the vicinity. As the Board advised at the conclusion of the hearing, it has frequently been necessary to consider the meaning of 'compatibility' and has relied on the conclusion that a land use need not be the same in order to be compatible; it need only be capable of co-existing with the present uses in a harmonious manner. The substantial and effective differences between 30 foot lots and well designed townhouses are not so significant as to cause disharmony among uses. The Board finds that the proposal would be compatible.

For similar reasons, the Board does not accept Mr. Assinck's proposition that, in accordance with Section 3.5.1. of the District Plan, the differences in use and density warrant buffering or other land use separations. The use is the same and the proposed residential density is within a range that would be compatible with the overall character of the area.

The Region's Plan designates the property a Residential Area. This is a broad category permitting all types of residential uses and limited amounts of commercial and institutional uses. There is no dispute about the conformity of the proposal with the Regional designation.

The Town of Ajax District Plan designates the site Mixed Use Residential. Previous proposals for the land included office space in combination with residences. However, these proposals were premised on access directly to Highway 2. This has become problematical due to the grade changes between the property and the Highway. The Ministry of Transportation has also changed its attitude to direct access to this site and would prefer that 'all turn' access be established elsewhere on Highway 2.

Nevertheless the designation remains acceptable to the developers since it permits medium density residential uses. Their latest proposal abandons the commercial component and is solely for townhouses at a density of 13.64 units per acre and thus well within the 8-20 units per acre range permitted for medium density in the Plan. Again there is no apparent dispute about the conformity of the proposal with the designation in the Plan.

The development is also consistent with the housing policy statement for the Town as approved by Council and by the Ministry of Housing. It calls for a range of housing types and tenure. The proposal complements this aspect of the policy, contributes to the housing targets for medium density housing, constitutes an infill of a largely developed area, and is considered within the affordable range of prices as established by the Ministry.

The proposal for housing on the site met with the general approval of staff subject to certain conditions and concerns. These fell under three headings, they wanted:

- 1) the original farmhouse retained in some fashion;
- 2) minimum changes to the grades on the site; and
- 3) the retention of as much of the vegetation on site as possible.

Apart from these they were content to accept a residential use at the proposed density.

The developer has now incorporated the farmhouse in to the development and proposes to use it as part of the residential complex. Furthermore, they propose no changes to the grading of the site since access will be from Trawley Crescent rather than Highway 2. Little change to the topography will be necessary beyond what is normally required simply to improve the site with services and roads.

On the question of retaining the vegetation, the developer has engaged a landscape architect who has undertaken an exhaustive study of the existing vegetation and, using the information gathered has established a realistic programme for retaining what can and should be retained from among the existing plantation. The Board was very impressed by the very straightforward evidence of this witness before the Board and concludes that the very best effort is being advanced to protect valuable specimens and to incorporate them with new plantings.

It would appear that staff's concerns have been addressed. However, to be fair the most recent proposals as well as the studies of vegetation and grading were put to the Town in the form of a specific plan only three weeks before this hearing. It is the Town's practice to circulate such plans and withhold its approval of the zoning until the site plan is acceptable in detail.

Therefore, staff now take the position before this Board that the proposal to amend the zoning is premature pending a review of the most recent plans and the measures put forward to satisfy their concerns. The Board accepts this. However, it is clear that some considerable progress has been made by the developer in satisfying the concerns of the Town and its staff. In the absence of any substantive concerns on the merits of the zoning by-law amendment, the Board is now interested in ensuring that the proposal is efficiently advanced.

The Board therefore approves the proposed amendment of the zoning by-law in principle. We are grateful to the staff who have drafted an amendment that is more consistent with the form usually deployed by the Town than that provided by the developer's planner. The Board will adopt this by and large, subject to certain eventual revisions. These are: first, the setbacks should be established to ensure that the unit in the southwest corner of the site as indicated on the plan will comply with the proposed by-law.

Secondly, the Minimum gross floor area section [paragraph 3; 11.121 g)] should be amended so that 25 percent of the units shall comprise a minimum gross floor area of 120 square metres (rather than 130 square metres). The Board received no evidence beyond simply the preference of staff and therefore no strong reason for compelling the developer to construct the units at this size.

And finally, item h) which restricts decks to ground level is not warranted in this area and was not supported by any cogent reason.

The Board will withhold its order amending Zoning By-laws 35-77 and 3036 in accordance with Exhibit 17 subject to receiving an amended version with the changes listed above.

The order is also withheld pending receipt of an executed site plan agreement between the developer and the Town based on the circulation of the most recent plan proposal as presented in evidence before this Board.

In order to ensure that this file proceeds expeditiously, the order will be withheld for 90 days (from the date of the hearing) to afford staff an opportunity to review the latest plan proposal and the grading and landscaping information. If substantial resolution of the outstanding issues has not been reached within 90 days, this panel invites the applicant to refer the site plan, and the Board will join the various matters in one hearing in order to resolve the site plan and any outstanding zoning issues. In the event that this is necessary this panel is seized of the matter.

B.W. KRUSHELNICKI, Member