

ISSUE DATE:

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PL130140

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Queen Street East Acton Development Inc. has appealed to the Ontario Municipal Board under subsection 22(7) 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 the Official Plan for the Town of Halton Hills to redesignate land at 388 Queen Street East from Medium Density Residential to Corridor Commercial Area to permit the construction of a supermarket
Approval Authority File No. D09OPA12.001
OMB File No.: PL130140

Queen Street East Acton Development Inc. 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 2010-0050 of the Town of Halton Hills to rezone lands respecting 388 Queen Street East from D to CC-XX to permit the construction of a supermarket
OMB File No.: PL130141

APPEARANCES:

Parties

Counsel*/Agent

Queen Street East Acton
Development Inc.

I. Kagan*
A. DeGasperi (student at law)

Town of Halton Hills

J. Wilker*

Alan Scott

Self-represented

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR
SCHILLER ON JANUARY 8, 2014 AND ORDER OF THE BOARD**

REASONS FOR DECISION

[1] A full settlement has been reached between the remaining parties in these proceedings.

[2] The Board delivered an oral decision with written reasons to follow. These are those reasons.

Background

[3] Queen Street East Acton Development Inc. ("Proponent") wishes to develop a supermarket at 388 Queen Street East ("subject site") in the community of Acton in the Town of Halton Hills ("Town").

[4] The subject site is on the south side of Queen Street East. Adjacent to the west is the Acton Shopping Plaza ("Plaza").

[5] To the south and east is a stable residential neighbourhood with houses backing on to the subject site and to the adjacent Plaza.

[6] Houses to the south are on Beardmore Crescent. Houses to the east are on Tanners Road.

[7] The matters before the Board are a site-specific official plan amendment ("OPA") and an associated site-specific zoning by-law amendment ("ZBLA") to permit a supermarket on the subject site.

[8] The Board heard from Antonio Volpentesta, a full member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario whom the Board qualified to provide independent expert opinion evidence in land use planning matters. Mr. Volpentesta was called by the Proponent.

[9] The Board also heard from Charles Toman, a full member of the Canadian Institute of Planners and a Registered Professional Planner in Ontario whom the Board qualified to provide independent expert opinion evidence in land use planning matters. Mr. Toman was called by the Town.

[10] Anthony Mifsud, a participant and neighbour on Beardmore Crescent, also addressed the Board.

Participant's Concerns

[11] Mr. Mifsud's house backs on to the Plaza property, specifically to a Sobeys' supermarket that is in the Plaza. His house does not back on to the subject site.

[12] The Plaza buildings, which include the Sobeys', are located to the rear of the Plaza property with parking to the front.

[13] Mr. Mifsud testified that this supermarket keeps its garbage dumpster at the rear of its building, close to the rear yards of the adjacent residences. Mr. Mifsud testified that this dumpster is unrefrigerated and produces very pungent and disagreeable odours, particularly in the warmer weather when residents wish to enjoy their rear yard amenity space.

[14] Mr. Mifsud expressed concern that the Proponent's supermarket is also intended to be located to the rear of the subject site with parking to the front, roughly in line with the location of the Plaza buildings. Mr. Mifsud is concerned that this will mean a second unrefrigerated and unenclosed garbage area that will result in additional unpleasant odours wafting into residential rear yard amenity space.

Memorandum of Understanding

[15] A memorandum of understanding ("MOU") has been entered into by Mr. Scott and the Proponent, and signed as well by several adjacent residents. The MOU was filed as Exhibit 4 in these proceedings.

[16] The Town is not a signatory to the MOU.

[17] Included in the MOU are preferred sizes and species of trees to be planted along the rear and east edge of the subject site to provide a buffer to the adjacent residents.

[18] Counsel for the Town cautioned that the particular size and species may not be available and/or may not be appropriate at all locations noted. Counsel for the Town hastened to emphasize that the Town would do everything possible to secure plantings to provide a buffer while ensuring that the particular trees to be planted are appropriate to the specific site and available at the time of planting.

Site Plan Process

[19] There is no site plan before the Board.

[20] The concerns expressed by Mr. Mifsud regarding details of garbage location for the proposed supermarket on the subject site are matters to be addressed in the site plan.

[21] The tree plantings noted in the MOU are similarly matters to be addressed in the site plan.

[22] The MOU recognize this limitation and specifically acknowledge that the development proposal must go through the site plan approval process and that final landscaping will be considered and determined by the Town.

[23] Mr. Scott and Mr. Mifsud have indicated a wish to be kept apprised of the site plan process. The Town has offered to keep both Mr. Scott and Mr. Mifsud apprised of the site plan process and asks that they send a request to the Town to that effect.

Analysis and Findings

[24] The review of this proposal, with its OPA and ZBLA, has been the subject of a very full and open public process.

[25] The proposal and its supporting studies were the subject of a thorough analysis and peer review process. The results of this analysis, which included a very full and complete staff report, were made available to the public and reviewed by the expert witnesses who testified in these proceedings.

Provincial Policy Statement

[26] The Provincial Policy Statement ("PPS") emphasizes healthy, safe and livable communities that provide a range and mix of residential, employment and other appropriate land uses. The PPS also emphasizes the importance of focusing growth within settlement areas that optimizes the use of land and infrastructure.

[27] The proposal is within a settlement area and uses land and infrastructure efficiently.

[28] The Board finds that the OPA and ZBLA are consistent with the PPS.

Growth Plan for the Greater Golden Horseshoe

[29] The Growth Plan for the Greater Golden Horseshoe (“GGH”) emphasizes matters similar to those articulated in the PPS. The GGH directs growth to settlement areas and emphasizes the importance of balanced and complete communities.

[30] The subject site is currently designated for medium density residential use. The site was included for its residential yield in the background analysis undertaken by the Town as part of its GGH conformity exercise.

[31] Subsequent analysis, arising in part from the review of the matters before the Board, identified additional sites capable of producing appropriate residential yield that would more than offset the shift of the subject site from a residential use to an employment use.

[32] The Board finds that the OPA and ZBLA conform to the GGH.

Region of Halton Official Plan

[33] The Region of Halton Official Plan (“ROP”) designates the subject site within the urban area.

[34] The Board finds that the OPA and ZBLA conform to the ROP.

Town of Halton Hills Official Plan

[35] The proposed supermarket is intended to provide variety and choice in the price point for supermarkets for area residents. The OP requires a market analysis for such proposals.

[36] The Town’s peer review process considered demand and capacity in its market analysis to ensure that an additional supermarket of this kind would not negatively affect existing commercial uses. The peer review concluded that the proposed supermarket would not negatively affect existing commercial uses.

[37] The proposed change from residential to employment use can be achieved without a negative impact on the Town's projected housing and population intensification.

[38] The Board finds that the OPA conforms to the policy regime of the OP.

Town of Halton Hills Zoning By-law

[39] The ZBLA proposes to rezone the subject site to a corridor commercial zone. This zone only permits supermarkets that existed legally at the time of the zoning by-law passage. The Board understands that the intention of this section was, in part, to protect the existing commercial uses and ensure their continued viability.

[40] The market analysis, noted above, concluded that the existing commercial uses would not be impacted negatively by this proposed rezoning.

[41] The proposed ZBLA reduces the required amount of parking. A traffic analysis was undertaken that supported the proposed reduction in parking requirements consistent with emphasizing pedestrian access.

[42] A parcel of land connecting the subject site to Tanners Road to the east was conveyed previously to the Town. When the subject site was expected to be developed for residential use, this parcel was intended to provide vehicular access to the subject site.

[43] With the proposed change to employment use, and based on the traffic assessment, this vehicular access point will now be converted to pedestrian access only and supplemented with appropriate, pedestrian friendly landscaping.

[44] The ZBLA includes a holding (H) provision that sets out a number of matters that must be completed before the (H) is removed. Included in the list is the approval of a site plan application and execution of a site plan agreement.

[45] The Board finds that the proposed ZBLA conforms to the OP as modified by the proposed OPA.

Matters of Provincial Interest

[46] Section 2 of the *Planning Act*, R.S.O. 1990 c. P.13 (“Act”), sets out the matters of provincial interest the Board must have regard to when carrying out its responsibilities under the Act.

[47] Having considered the matters set out in s. 2, the Board finds that the applications before the Board appropriately implement matters of provincial interest particularly:

- 2(f) the efficient use of municipal services
- 2(h) the orderly development of communities
- 2(k) the adequate provision of employment opportunities and
- 2(p) the appropriate location of growth and development

Decisions of Council and Approval Authority

[48] Section 2.1 of the Act requires the Board to have regard to the decision of Council, the decision of the approval authority, and to any supporting material before Council or the approval authority when the decision was being made.

[49] Although the appeals in these matters were filed at a time when Council had not yet taken a decision on the applications, the OPA and ZBLA now before the Board are supported by the Town.

[50] The Board has had regard to the fact that the Town supports these planning instruments. The planning staff report which analyzed and recommended support of these instruments was before Council and before this Board, filed as Exhibit 3, Tab 15.

[51] The evidence before the Board has been thorough and complete in its review of the matters before the Board. Having considered the evidence from the parties and the participant, the Board finds that the OPA and ZBLA are reasonable, appropriate, represent the principles of good community planning and are in the public interest.

ORDER

[52] The Board orders that the appeals are allowed and:

1. The Town of Halton Hills Official Plan is modified in accordance with Attachment 1 to this decision and, as so modified, is approved.
2. The Town of Halton Hills By-law 2010-0050 is amended in accordance with Attachment 2 to this decision and the Town Clerk is authorized to assign a by-law number in due course to the by-law in Attachment 2 as a housekeeping matter.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE CHAIR