

The Board has ordered that the appeal against Zoning By-law 3692-92 of the City of Stoney Creek be amended in the manner set out in Attachment "3" to this order, in all other respects, the Board Orders that the appeal is dismissed.

Re: lands located at 1187, 1199 and 1211 Barton Street, Stoney Creek

OMB File No.: PL070212 – O0070056

Issue Date: January 28, 2011

By-law No.	OMB File No.	
11-094	PL070212	To Amend By-law No 3692-92 (Stoney Creek), respecting lands located at 1187, 1199 and 1211 Barton Street, Stoney Creek – Attachment 3

ISSUE DATE:

Jan. 28, 2011



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL070212

By-law No. 11-094

Losani Homes 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 to enact a proposed amendment to the Regional Official Plan (ROPA-05-06) for the City of Hamilton for a redesignation of employment lands to residential to permit a subdivision proposal, which includes 144 lots, 5 blocks for single-detached dwellings and 10 blocks for townhouses, at a location municipality know as 1187 Barton Street, et al.

OMB File No. PL070212-O070056

OMB Case No. PL070212-O070056

Losani Homes 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 to enact a proposed amendment to the Official Plan (OPA-5-25) for the City of Hamilton for a redesignation of employment lands to residential to permit a subdivision proposal, which includes 144 lots, 5 blocks for single-detached dwellings and 10 blocks for townhouses, at a location municipality know as 1187 Barton Street, et al.

OMB File No. PL070212-O070063

OMB Case No. PL070212-O070056

Losani Homes 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 to enact a proposed amendment to Zoning By-law ZAC-05-128 of the City of Hamilton to rezone lands respecting 1187 Barton Street, et al. to redesignate employment lands to residential to permit a subdivision proposal, which includes 144 lots, 5 blocks for single-detached dwellings and 10 blocks for townhouses.

OMB File No. PL070212-Z070002

OMB Case No. PL100547-O070056

IN THE MATTER OF subsection 51(34) of the Planning Act, R.S.O. 1990, c. P.13, as amended

Appellant:	Losani Homes
Subject:	Draft Plan of Subdivision No. 25T-2005-26
Property Address/Description	1187 Barton Street, et al.
Municipality:	City of Hamilton
OMB Case No.:	PL070212-S070034
OMB File No.:	PL070212-O070056

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
Losani Homes	C. Barnett
City of Hamilton	M. Kovacevic

**MEMORANDUM OF ORAL DECISION DELIVERED BY M. C. DENHEZ
ON NOVEMBER 22, 2010, AND ORDER OF THE BOARD**

This dispute has been settled. Losani Homes (the Applicant), proposed a 13.45-hectare residential subdivision in the Stoney Creek area of the City of Hamilton (the City). The area had previously been designated as Employment lands. The application would involve seven aspects:

1. An Official Plan Amendment (OPA) to the Official Plan (OP) of the former Region of Hamilton-Wentworth;
2. An OPA, to the OP of the former City of Stoney Creek;
3. A Zoning By-law Amendment (ZBA), to remove the subject property from the existing ambit of the City's Zoning By-law 05-200;
4. A ZBA to address zoning arrangements for an Open Space component;
5. A ZBA to address new zoning arrangements for lands to be developed;
6. A Draft Plan of Subdivision; and
7. Conditions for the Draft Plan of Subdivision.

However, when the Applicant applied to the City, Council formally refused. The Applicant appealed to the Board.

The City had concerns, notably pertaining to the conversion of Employment lands to residential use. However, discussions during the lead-up to the hearing ultimately led

to consensus. The City and the Applicant agreed on a new configuration, whereby about half the subject property would remain in the Employment lands designation – with additional tangible benefits for Employment uses. On analysis, the City was satisfied that the revised arrangement met its employment needs, particularly as the Applicant would upgrade the Employment lands (via servicing) to "shovel-ready" status.

In addition, the Applicant would build a new stormwater facility (with the potential of servicing a larger area), extend an important road, and purchase some surplus City lands (which had always been the intention, but that arrangement became "crystallised" during the course of discussions). Finally, the residential development would have a higher percentage of townhouses, and hence more density and "intensity" than foreseen in the original application.

At the hearing, the Applicant and the City jointly recommended Board approval of the seven aspects of the proposal. The Applicant's Planner, Mr. Armstrong, offered the expert opinion that there had been due regard for all the applicable statutory criteria, and logical consistency with the other provisions of the applicable Official Plans. The revised arrangements conformed to all applicable criteria for rezoning, and for subdivisions, notably under Subsection 51(24) of the *Planning Act*.

The Board finds no dispute.

The Board is also mindful that one of the components to this proposal is to withdraw the subject property from the existing ambit of Zoning By-law 05-200 – a By-law which has other components currently under appeal before this Board. It was common ground, however, that proceeding with the Parties' recommended course has no effect on those other appeals; and although there has been appropriate public notice of the proposed outcome of these present proceedings, there have been no other objections to that outcome. The Board is satisfied that there is no apparent obstacle to proceeding accordingly.

In conclusion, the Board has carefully considered all the evidence, as well as the submissions of Counsel. The Board concludes, as the expert Planner did, that the proposal – in its seven aspects – now meets the terms of the *Planning Act* for the Official Plan Amendments, the Zoning By-law Amendments, the Draft Plan of Subdivision, and the Conditions thereto.

THE BOARD THEREFORE ORDERS that the appeal is allowed, and:

1. The Official Plans of the former Region of Hamilton-Wentworth and the former City of Stoney Creek are hereby modified in the manner set out in Attachment "1" to this Order.
2. Zoning By-law 05-200 of the City of Hamilton is hereby amended in the manner set out in Attachment "2" to this Order.
3. Zoning By-law 3692-92 of the former City of Stoney Creek is hereby amended in the manner set out in Attachment "3" to this Order.
4. The Board authorizes the City Clerk to assign numbers to the above for record-keeping purposes.
5. The Board Approves the Draft Plan of Subdivision, as it appears at Attachment "4" to this Order.
6. The approval of the Draft Plan of Subdivision is subject to Conditions, as they appear at Attachment "5" hereto.
7. Pursuant to Subsection 51(56.1) of the *Planning Act*, the City shall have the authority to clear the Conditions of Draft Plan approval and to administer final approval of the Plan of Subdivision for the purposes of Subsection 51(58) of the *Act*. In the event that there are any difficulties implementing any of the Conditions of Draft Plan approval, or if any changes are required to be made to the Draft Plan, the Board may be spoken to.

It is so Ordered.

"M.C. Denhez"

M. C. DENHEZ
MEMBER

Attachment "3"

BY-LAW

To Amend Zoning By-law No. 3692-92 (Stoney Creek)

Respecting the Property Located at 1187, 1199, 1211, 1217, 1227 and 1239 Barton Street, Stoney Creek

WHEREAS the City of Hamilton Act, 1999, Statutes of Ontario, 1999 Chap.14, Sch. 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 Stoney Creek" and is the successor to 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 of the former area municipalities continue in force in the City of Hamilton until subsequently amended or repealed by the Council of the City of Hamilton;

AND WHEREAS Zoning By-law No. 3692-92 (Stoney Creek) was enacted on the 8th day of December, 1992, and approved by the Ontario Municipal Board on the 31st day of May, 1994;

AND WHEREAS the Council of the City of Hamilton, in adopting Item 12.2 of Report 10-014 of the Economic Development and Planning Committee, at its meeting held on the 15th day of June, 2010, recommended that Zoning By-law No. 3692-92 (Stoney Creek) be amended as hereinafter provided;

AND WHEREAS the Ontario Municipal Board has issued an Order that Zoning By-law No. 3692-92, be amended as hereafter provided;

AND WHEREAS this by-law will be in conformity with the Official Plan of the City of Hamilton (formerly the City of Stoney Creek Official Plan), approved by the Minister under the Planning Act on May 12, 1986, upon approval of Official Plan Amendment No. 162;

NOW THEREFORE the Ontario Municipal Board Orders as follows:

1. That Map No. 3 of Schedule "A", appended to and forming part of By-law No. 3692-92 (Stoney Creek), as amended, is hereby further amended by:

- (a) Zoning the lands comprised in "Block 1" to the Multiple Residential "RM2-24" Zone;
- (b) Zoning the lands comprised in "Block 2" to the Single Residential "R3-30" Zone;
- (c) Zoning the lands comprised in "Block 3" to the Multiple Residential "RM2-24" Zone;
- (d) Zoning the lands comprised in "Block 4" to the Single Residential "R3-30" Zone;
- (e) Zoning the lands comprised in "Block 5" to the Multiple Residential "RM2-21" Zone;
- (f) Zoning the lands comprised in "Block 6" to the Multiple Residential "RM2-21" Zone;
- (g) Zoning the lands comprised in "Block 7" to the Single Residential "R3-30" Zone;
- (h) Zoning the lands comprised in "Block 8" to the Single Residential "R2" Zone;
- (i) Zoning the lands comprised in "Block 9" to the Small Scale Industrial "MS" Zone;
- (j) Zoning the lands comprised in "Block 10" to the General Industrial "MG" Zone; and,
- (k) Zoning the lands comprised in "Block 11" to the General Industrial (Holding) "MG-13(H)" Zone;

the extent and boundaries of which are shown on plans hereto annexed as Schedules "A1" and "A2".

2. That Subsection 6.4.7, "Special Exemptions", of Section 6.4 Single Residential "R3" Zone, of Zoning By-law No. 3692-92, be amended by adding a new Special Exemption, "R3-30", as follows:

**"R3-30" 1211, 1217, 1227 and 1239 Barton Street, Schedule "A", Map
No. 3**

Notwithstanding the provisions of Paragraphs (a), (b), (c), (d), (e) and (g) of Subsection 6.4.3 of the Single Residential "R3" Zone, on those lands zoned "R3-30" by this By-law, the following shall apply:

- (a) Minimum Lot Area: 250 square metres, except 270 square metres for a corner lot
- (b) Minimum Lot Frontage: 10 metres
- (c) Minimum Front Yard: 4.5 metres to the dwelling, except
6.0 metres to the garage
- (d) Minimum Side Yard: 1.2 metres, except:
 - 1. 0.6 metres on the side of the dwelling with an attached garage;

2. On a corner lot, the minimum side yard abutting the flankage street shall be 2.4 metres, except that an attached garage which fronts on the flankage street shall not be located within 6.0 metres of the flankage street line.

(e) Minimum Rear Yard: 7.0 metres

(g) Maximum Lot Coverage: N/A

In addition to the regulations of Subsection 4.19 "Yard Encroachments", the following encroachments shall be permitted:

- (a) Covered porches may project into any required front yard a distance of not more than 3.0 metres and 1.8 metres for a flankage yard;
- (b) Bay windows either with or without foundations may project into any required front, rear, or flankage yards a distance of not more than 0.9 metres; and,
- (c) Stairs may project into any required front yard a distance of not more than 4.5 metres:

3. That Subsection 6.9.6, "Special Exemptions", of Section 6.9 Multiple Residential "RM2" Zone, of Zoning By-law No. 3692-92, be amended by adding a new Special Exemption, "RM2-21", as follows:

**"RM2-21" 1211, 1217, 1227 and 1239 Barton Street, Schedule "A", Map
No. 3**

Notwithstanding the provisions of Paragraphs (a), (b), (c), (d), (e), (f), (g) and (i) of Subsection 6.9.3 of the Multiple Residential "RM2" Zone, on those lands zoned "RM2-21" by this By-law, the following shall apply:

- (a) Minimum Lot Area:
 - Interior Unit 120 square metres
 - End Unit 145 square metres
 - Corner Unit 185 square metres
- (b) Minimum Lot Frontage: 4.45 metres per dwelling unit
- (c) Minimum Front Yard: 4.5 metres to the dwelling, except
6.0 metres to the garage
- (d) Minimum Side Yard:
 - End Unit 1.2 metres
 - Corner Unit 2.4 metres, except
6.0 metres of the flankage street line to
an attached garage, which fronts on a
flankage street

- (e) Minimum Rear Yard: 7.0 metres.
- (f) Minimum Privacy Area: 25 square metres
- (g) Maximum Landscaped Open Space: N/A
- (i) Maximum Lot Coverage: N/A

In addition to the regulations of Subsection 4.19 "Yard Encroachments", the following encroachments shall be permitted:

- (a) Covered porches may project into any required front yard a distance of not more than 3.0 metres and 1.8 metres for a flankage yard;
- (b) Bay windows, either with or without foundations, may project into any required front, rear, or flankage yards a distance of not more than 0.9 metres; and,
- (c) Stairs may project into any required front yard a distance of not more than 4.5 metres.

4. That Subsection 6.9.6, "Special Exemptions", of Section 6.9 Multiple Residential "RM2" Zone, of Zoning By-law No. 3692-92, be amended by adding a new Special Exemption, "RM2-24", as follows:

"RM2-24" 1211, 1217, 1227 and 1239 Barton Street, Schedule "A", Map No. 3

Notwithstanding the provisions of Paragraphs (a), (b), (c), (d), (e), (f), (g) and (i) of Subsection 6.9.3 of the Multiple Residential "RM2" Zone, on those lands zoned "RM2-24" by this By-law, the following shall apply:

(a) Minimum Lot Area:

Interior Unit 120 square metres

End Unit 145 square metres

Corner Unit 185 square metres

(b) Minimum Lot Frontage: 4.45 metres per dwelling unit

(c) Minimum Front Yard: 4.5 metres to the dwelling, except 6.0 metres to the garage

(d) Minimum Side Yard:

End Unit 1.2 metres, except

7.5 metres where a lot abuts an Industrial zone

Corner Unit 2.4 metres, except

6.0 metres of the flankage street line to an attached garage, which fronts on a flankage street

(e) Minimum Rear Yard: 7.5 metres

- (f) Minimum Privacy Area: 25 square metres
- (g) Maximum Landscaped Open Space: N/A
- (i) Maximum Lot Coverage: N/A

In addition to the regulations of Subsection 4.19 "Yard Encroachments", the following encroachments shall be permitted:

- (a) Covered porches may project into any required front yard a distance of not more than 3.0 metres and 1.8 metres for a flankage yard;
- (b) Bay windows, either with or without foundations, may project into any required front, rear, or flankage yards a distance of not more than 0.9 metres; and,
- (c) Stairs may project into any required front yard a distance of not more than 4.5 metres.

In addition to the regulations of Section 6.9.3 "Zone Regulations", a landscaped strip having a minimum width of 3.0 metres shall be provided and thereafter be maintained adjacent to every portion of any lot that abuts an Industrial zone.

Notwithstanding the provisions of Section 6.1.4 Paragraph (a) with respect to any yard that abuts an Industrial zone, accessory buildings or structures shall be permitted a minimum distance of 7.5 m from any lot line that abuts an Industrial zone.

5. That Subsection 9.5.7, "Special Exemptions", of Section 9.5 General Industrial "MG" Zone, of Zoning By-law No. 3692-92, be amended by adding a new Special Exemption, "MG-13(H)", as follows:

"MG-13(H)" 1187, 1199, and 1211 Barton Street, Lands located north of the proposed Arvin Avenue Extension, Schedule "A", Map No. 3

In addition to the provisions of Section 3.8 of this By-law, the (H) symbol may be removed from those lands zoned "MG- 13(H)" by this By-law at such time as the size, shape and configuration of the stormwater management pond has been determined to the satisfaction of the Director of Development Engineering.

6. That no building or structure shall be erected, altered, extended or enlarged, nor shall any building or structure or part thereof be used, nor shall any land be used, except in accordance with the Single Residential "R3" Zone, and the Multiple Residential "RM2" Zone provisions, subject to the special requirements referred to in Sections 2, 3 and 4.



This is Schedule "A" to By-Law No. 10-

Passed the day of, 2010

Clerk

Mayor







Schedule "A1"

Map Forming Part of
By-Law No. 10-_____

to Amend By-law No. 3692-92

Subject Property

1187, 1199, 1211, 1217, 1227 and 1239 Barton Street

-  Block 1 - Lands to be zoned Multiple Residential "RM2-24" Zone
-  Block 2 - Lands to be zoned Single Residential "R3-30" Zone
-  Block 3 - Lands to be zoned Multiple Residential "RM2-24" Zone
-  Block 4 - Lands to be zoned Single Residential "R3-30" Zone
-  Block 5 - Lands to be zoned Multiple Residential "RM2-21" Zone
-  Block 6 - Lands to be zoned Multiple Residential "RM2-21" Zone

Scale:

N.T.S.

File Name/Number:

ZAC-05-128

Date:

May 13, 2010

Planner/Technician:

DYIAL



Hamilton

PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT



This is Schedule "A" to By-Law No. 10-
 Passed the day of, 2010






 Clerk


 Mayor

Schedule "A2"

Map Forming Part of
 By-Law No. 10-_____

to Amend By-law No. 3692-92

- Subject Property**
 1187, 1199, 1211, 1217, 1227 and 1239 Barton Street
-  Block 7 - Lands to be zoned Single Residential "R3-30" Zone
 -  Block 8 - Lands to be zoned Single Residential "R2" Zone
 -  Block 9 - Lands to be zoned Small Scale Industrial "MS" Zone
 -  Block 10 - Lands to be zoned General Industrial "MG" Zone
 -  Block 11 - Lands to be zoned General Industrial (Holding) "MG-13(HY)" Zone
 -  Block 12 - Lands subject to By-law No. 05-200

Scale: N.T.S.	File Name/Number: ZAC-05-128	 Hamilton
Date: May 25, 2010	Planner/Technician: DY/AL	
PLANNING AND ECONOMIC DEVELOPMENT DEPARTMENT		