



Bill No.162

BY-LAW NUMBER 2014-158

A By-law of The Corporation of the City of Barrie to amend By-law 2009-141, a land use control by-law to regulate the use of land, and the erection, use, bulk, height, location and spacing of buildings and structures in the City of Barrie.

WHEREAS the Ontario Municipal Board issued an Order on August 5, 2014 that By-law 2009-141 be amended to rezone Part of Lot 1 and all of Lots 2, 3, 4, and 5, south side of Burton Street, Plan 433 Allandale, Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 north side of Holgate Street, Plan 433, Allandale, Part of the north part Lot 9, Concession 14, Innisfil, Part of Holgate Street, Plan 433, Allandale, Closed by RO57095, being Part 4 Plan 51R-18966, except Part 5, 51R-26223 and Parts 1, 2 & 3, 51R-35227, Barrie known municipally as 196 Burton Avenue.

NOW THEREFORE the following is enacted:

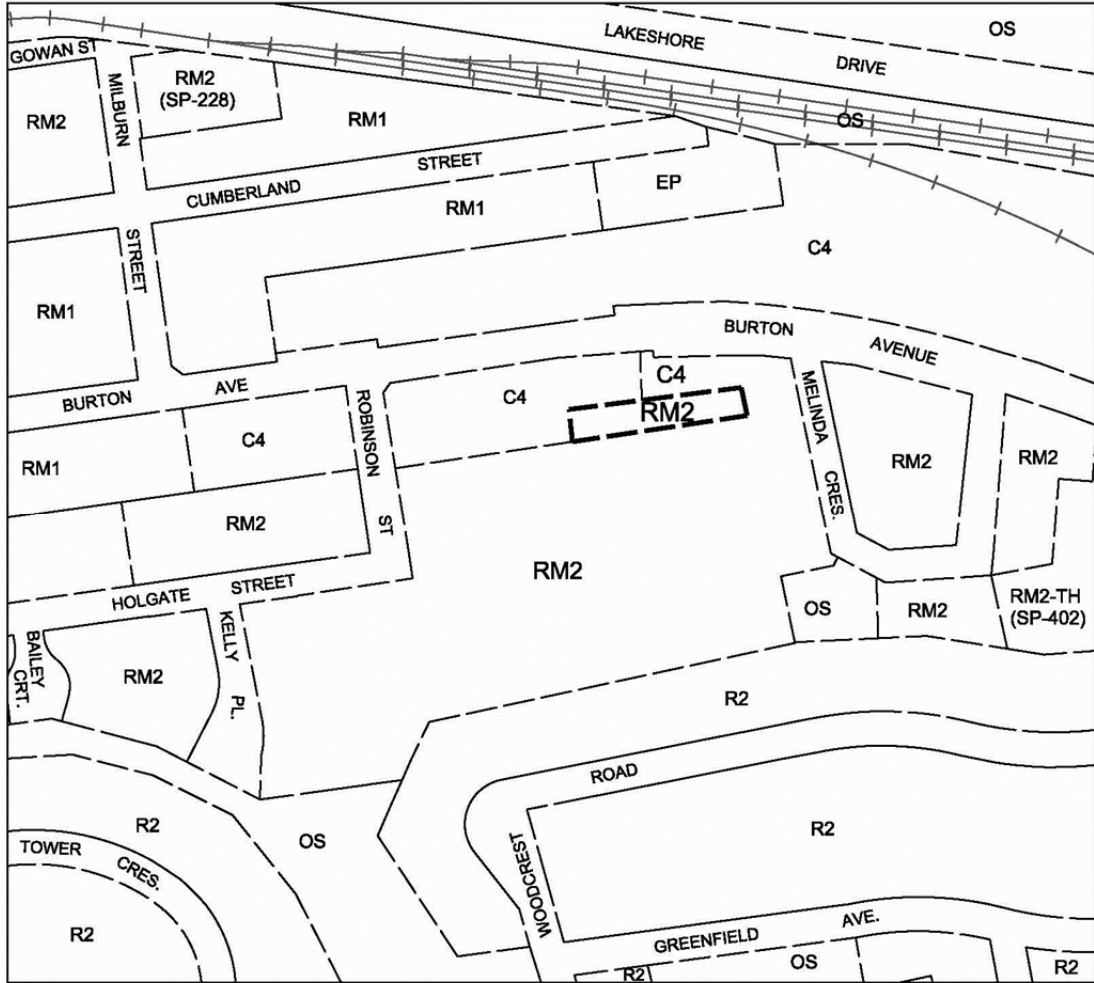
THAT the City of Barrie Comprehensive Zoning By-law 2009-141 be amended as follows:

1. **THAT** the zoning map is amended to change the zoning of Part of Lot 1 and all of Lots 2, 3, 4, and 5, south side of Burton Street, Plan 433 Allandale, Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 north side of Holgate Street, Plan 433, Allandale, Part of the north part Lot 9, Concession 14, Innisfil, Part of Holgate Street, Plan 433, Allandale, Closed by RO57095, being Part 4 Plan 51R-18966, except Part 5, 51R-26223 and Parts 1, 2 & 3, 51R-35227, Barrie known municipally as 196 Burton Avenue from General Commercial (C4) to Residential Multiple Second Density (RM2) in accordance with Schedule "A" attached to this By-law being a portion of the zoning map.
2. **THAT** this By-law shall come into force and effect September 11, 2014 as per Ontario Municipal Board Order issued by Sylvia Sutherland, Member, on September 11, 2014.

THE CORPORATION OF THE CITY OF BARRIE

MAYOR – J. R. LEHMAN

CITY CLERK – DAWN A. MCALPINE



D14-1557 D12-405
655423 Ontario Ltd.

May 7, 2014

Schedule "A" to attached By-law 2014-158

MAYOR – J. R. LEHMAN

CITY CLERK – DAWN A. MCALPINE

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



RECEIVED

SEP 17 2014

CLERK'S OFFICE

ISSUE DATE: September 11, 2014

CASE NO(S): PL131210

6554123 Ontario Ltd. 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 neglect to enact a proposed amendment to Zoning By-law 2009-141 of the City of Barrie to rezone lands respecting 196 Burton Avenue which are zoned General Commercial (C4) and Residential Second Density (RM2) and increase the area of the parcel that is zoned RM2 to permit the future development of 96 street townhouses and a Medium Density block through Plan of Subdivision
OMB File No. PL131210

6554123 Ontario Ltd. has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the Council of the City of Barrie to make a decision respecting a proposed plan of subdivision on lands respecting 196 Burton Avenue in the City of Barrie (Approval Authority File No. D14-1557)
OMB File No. PL131392

Heard: On August 5, 6 and 7, 2014 in Barrie, Ontario

APPEARANCES:

Parties

Counsel

6554123 Ontario Ltd.

Ian Rowe

Frank Fanuzzi

Peter Rosenthal

City of Barrie

Bruce Engell

DECISION DELIVERED BY SYLVIA SUTHERLAND AND ORDER OF THE BOARD

[1] 6554123 Ontario Ltd. ("Melchior") applied to the City of Barrie ("City") for a Zoning By-law amendment ("ZBLA") for lands at 196 Burton Avenue ("subject lands") to increase the area of a parcel zoned Residential Multiple Second Density (RM2) to

permit the future development of 96 street townhouses and 20 medium density units to be located in a three-storey walk-up apartment building. 95% of the lands are already zoned for the proposed use, leaving a small portion of approximately 2000 square metres zoned General Commercial C4.

[2] Melchior appealed to the Board pursuant to s. 34(11) of the *Planning Act* ("Act") after Council failed to make a decision on the application within 120 days.

[3] Melchior also appealed Council's failure to make a decision on an application for a Plan of Subdivision within 180 days.

[4] Subsequently, staff recommended approval of a ZBLA submitted by Celeste Philips on behalf of Melchior to rezone the subject lands currently zoned C4 as well as approval of the Plan of Subdivision prepared by Rudy Mark Surveying Ltd. and Ms. Philips, File No. 10892, dated revised September 27, 2013, with conditions (Exhibit 1, Tab 25).

[5] The City decided not to pass a by-law but instead allow public engagement through the appeal currently before the Board in what had become a highly contentious issue with some members of the public. Both the ZBLA and the Plan of Subdivision remained before the Board at this hearing.

SUBJECT LANDS

[6] The subject property has an approximate area of 4.11 hectares, and is located at the southeast corner of Burton Avenue and Robinson Street. It is currently used as a mobile trailer park, commonly known as the Burton Avenue Trailer Park. At the time of the application, there were approximately 100 mobile trailers situated on the property. At the time of the hearing, 23 remained.

[7] Surrounding the subject lands to the north are commercial uses, to the south, low density single detached residential, topographically separated from the subject lands, to

the east lands zoned for medium density uses and developed with linked singles, semi-detached and street townhouse dwellings, and to the west are medium density residential townhouses.

HEARING

[8] Edward Starr gave expert land use planning evidence and opinion, with expertise in affordable housing, on behalf of Frank Fanuzzi, a resident of the Burton Avenue Trailer Park ("Park"). Ms. Phillips gave expert land use planning evidence and opinion on behalf of Melchior. Jeff McCuaig gave expert evidence and opinion on civil engineering, particularly related to traffic, on behalf of Melchior.

[9] Mr. Fanuzzi spoke on his own behalf. Dino Melchior spoke on behalf of Melchior on a panel with Chantel Traversy, a para-legal of Melchior's legal services department, who acts as an agent with the tenants for Melchior Management 777 Corporation. Scot Smith and Kelly Manning residents of the Park gave evidence in opposition to the applications.

[10] Jack Harkness and Penny Kurtz, both of whom live in the area, were Participants in the hearing with particular concerns regarding the impact on neighbourhood traffic of a single access to the proposed townhouse development.

[11] Brian Green was also a Participant in the hearing. He spoke in opposition to the applications on the basis of the provision of affordable housing for the lowest income residents.

FINDINGS

[12] On the surface, the land use planning issues in this matter would appear to be quite clear and straightforward. The small portion of the subject lands for which rezoning is being sought is but 5% of the total area upon which Melchior wishes to proceed with its project. It appears that it is only an anomaly that led to it being zoned

C4. The issue is complicated, however, by the fact that the Park, which has been in existence on the subject lands for over 50 years, is considered to provide housing at a level of affordability not otherwise available to its residents; or, only available with great difficulty.

[13] There are 23 residents remaining in the Park of the 100 there at the time that the applications were filed. There is no certainty as to where the 77 residents who left have relocated. A quarter took their trailers with them. Others had them demolished on the site. It was Mr. Starr's opinion that providing housing at the affordability level of the Park, where ground rents are as low as \$300 per month, "is virtually impossible in today's housing market without some form of government capital and/or ongoing subsidy (Exhibit 2, Tab 1). It was his position that the housing needs of current and future residents met by the Park could not otherwise be met by the City without a significant expenditure of taxpayer dollars. He suggested that such expenditure is unlikely.

[14] Mr. Rosenthal, counsel for Mr. Franuzzi took the Board to s. 2(j) of the Act, which states that the Board, along with the council and other planning bodies, shall have regard to, among other matters, "the adequate provision of a full range of housing, including affordable housing."

[15] "This clearly includes housing for those of very low income," Mr. Rosenthal argued.

[16] The Act, however, is not that clear. It gives no definition of affordable housing. The Provincial Policy Statement, 2014 ("PPS") defines "affordable" as meaning:

1. "housing for which the purchase price results in annual accommodation costs which do not exceed 30 per cent of gross annual income for low and moderate income households; or
2. housing for which the purchase price is at least 10 percent below the average purchase price of a resale unit in the regional market area.

[17] "Low and moderate income households" are defined as:

- a) in the case of ownership housing, household with incomes in the lowest 60 percent of the income distribution for the regional market area; or
- b) in the case of rental housing, households with incomes in the lowest 60 percent of the income distribution for renter households for the regional market area.

[18] Section 3.3.2.2 of the City's Official Plan ("OP") states:

- a) It is a goal of this Plan to achieve a minimum target of 10% of all new housing units per annum to be affordable housing in accordance with the following criteria:
 - 1) In the case of home ownership, the least expensive of:
 - (1) housing for which the purchase price results in annual accommodation costs which do not exceed 30% of gross annual income for low and moderate households; or
 - (2) housing for which the purchase price is at least 10% below the average purchase price of a resale unit in the regional market area.
 - ii) In the case of rental housing, the least expensive of
 - (1) a unit for which the rent does not exceed 30% of gross annual household income for low and moderate income households; or
 - (2) a unit for which the rent is at or below the average market rent of a unit in the regional market area.

[19] According to the Canada Mortgage and Housing Corporation ("CMHC"), the average price for a new single-detached house in Barrie was \$425,776 in 2012, with the average price rising to 460,000 in September 2013 (Exhibit 1, Tab 13).

[20] Similarly, the average resale price of a single detached house in 2012 was \$298,027, with the average resale price rising to \$334,203 in September 2013.

[21] In accordance with the PPS definition of "affordable", the purchase price of a new or resale affordable house in Barrie is calculated to be \$292,000 based on the 60th percentile household income of \$82,600.

[22] Similarly, the purchase price of an affordable resale unit in Barrie is calculated at \$300,782 based on 10% below the average price of a resale unit as of September 2013.

[23] Affordability is most commonly found in rental housing. Vacancy rates of rental housing are an indicator of the availability of affordable housing when considered as a trend over several years. CMHC has indicated that there is a five year average vacancy rate of 2.9% from years 2009-2013 for Barrie. A "healthy" housing market is considered to have at least a 5% vacancy rate.

[24] The rental of an affordable unit in Barrie should be at or below the average market rent of \$1,037.00 for a two-bedroom unit. The reality is that there are a limited number of vacant units available in Barrie.

[25] At 30% of gross annual income using the 60th percentile household income level of \$82,600, rent should be \$24,780 annually, or \$2,065 monthly.

[26] Barrie's Affordable Housing Strategy (Exhibit 1, Tab 13) states that Social Housing, that is, housing provided below market value usually with rents-g geared to income, represents the greatest need on the affordability spectrum. There are currently 1,732 rent-g geared-to-income dwelling units in the City, 307 owned by the County of Simcoe ("County"), while the remaining 1,425 are owned by the Barrie Municipal Non-Profit Housing Corporation and other non-profit groups or non-profit co-operative housing associations.

[27] It is anticipated that the demand and wait times for rent-g geared-to-income housing will continue to increase as the population increases combined with a demographic shift to older residents.

[28] As the designated service manager, the County is responsible for the planning, funding and managing of social housing programs for the City. For its part, the City has undertaken a study of the role it can play in the provision, maintenance and retention of affordable housing. It has made amendments to its OP to include policies which:

- allow increased permission for second residential units to locate in the City;
- control the demolition or conversion of rental housing to condominium or

other use;

- provide for the acquisition and sale of land by the City for the development or promotion of affordable housing;
- amend the Community Improvement Planning policies of the OP to specifically reference affordable housing; and
- include the use of Temporary Use By-laws for garden suites including reference in s. 6.9.2(a) that garden suites are permitted for not more than 20 years.

[29] What the OP does not permit is trailer parks or mobile homes. These are not considered housing types or an acceptable form of housing within the City, as they are in some other municipalities. Section 6.1.4 of the OP states that any existing land use which does not conform to the OP should cease to exist in the long term. This would include the Park.

[30] The Board heard from Ms. Phillips, Mr. Melchior and Ms. Traversy that the prices of the proposed units will be within the affordability range of the 60th percentile. In other words, what Melchior is proposing to build is affordable housing at a higher density than that represented by the Park. Melchior is also looking to work together with Habitat for Humanity to provide affordable home ownership on the subject lands (Exhibit 5, Tab 5).

[31] Mr. Starr reported that a recent survey of Park residents showed annual household incomes ranging from \$12,000 including the Ontario Disability Support Program (ODSP) to one household at \$60,000. Based on Mr. Smith's evidence (Exhibit 2, Tab 1), the basic unit rent at the Park is \$599.20 a month, which includes limited Hydro and one parking space. All other services, such as heating and cable, are paid by the tenant. The reality is that the Park cannot be considered affordable by CMHC standards for the majority of its tenants. While Mr. Starr did not investigate the average rents of bachelor apartments, due, he said, to their general lack of availability, it is entirely possible that they could at least be had within the rental range of the Park.

[32] The issue of affordable housing was clearly the thorniest one at the hearing,

resulting, on occasion, in what can most kindly be described as inflammatory statements. There can be little question that affordable housing, particularly in the area of social housing, presents a challenge for the City, as it does for most municipalities across the Province, and undoubtedly across the County. Barrie and the County have in place active strategies to attempt to address it. Indeed, given the fact that the proposed development will provide affordable housing, if not social housing, it will be part of the answer to the challenge.

[33] The community which the Park represented for many years is, in fact, no more. Less than a quarter of its residents remain. All residents were served with an N13 form stating that they were required to move out of their rental units by July 31, 2014 (Exhibit 7). Mr. Smith was duly informed of Melchior's intention to commence the conversion/development of the subject lands when he signed his lease (Exhibit 8). They do not, in the Board's view, have any argument that they were not fairly advised of Melchior's intentions regarding the subject lands. Nor was there any evidence that Melchior has behaved in an unreasonable manner since.

[34] Affordability is but one, if the most contentious, consideration in determining whether not this applications should be approved. The Board was convinced both by the evidence of Ms. Phillips and the staff report (Exhibit 1, Tab 24) that the application is consistent with the PPS and conforms to the Growth Plan for the Greater Golden Horseshoe, the OP and the ZBL.

[35] The proposed development will make efficient use of land and existing infrastructure and the subject property is located within an existing settlement area as required by the PPS. It will satisfy the policies of the OP by contributing to the City's intensification and density targets, enhancing compatibility with surrounding land uses, being located adjacent to an arterial road, being within close proximity to the Allendale GO station, and being within the City's Urban Growth Centre and the built boundary. The proposed development also responds to the City's interest in seeing redevelopment in the Allendale Centre Area.

[36] It meets the standards of the RM2 zone. It takes advantage of land within the City that is predominately zoned for medium residential use.

[37] In addressing the concerns of Mr. Harkness and Ms. Kurtz regarding the impact on traffic on the area generated as a result of the proposal, the Board is persuaded by Mr. McCuaig's evidence and opinion (Exhibit 14, Tab 5) that the levels of service at the intersections of Burton Avenue and Robinson Street and Robinson Street and Holgate Street now and following the construction of the proposed townhouses and apartments are and will remain good into the 10 year horizon.

ORDER

[38] The Board orders that the appeal is allowed, and By-law No. 2009-141 is hereby amended in the manner set out in Attachment 1 to this order. The Board authorizes the municipal clerk to assign a number to this by-law for record purposes.

[39] The Board further orders that the appeal is allowed and the draft plan of subdivision prepared by Rudy Mak Surveying Ltd., dated revised September 27, 2013 comprising Blocks 1-16 for Street Townhouses, Block 17 for Commercial, a road and a Future Medium Density Residential Block is approved subject to the conditions found in Exhibit 1, Tab 26.

"Sylvia Sutherland"

SYLVIA SUTHERLAND
MEMBER

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elt.o.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248



Bill No. 0

BY-LAW NUMBER 2014-

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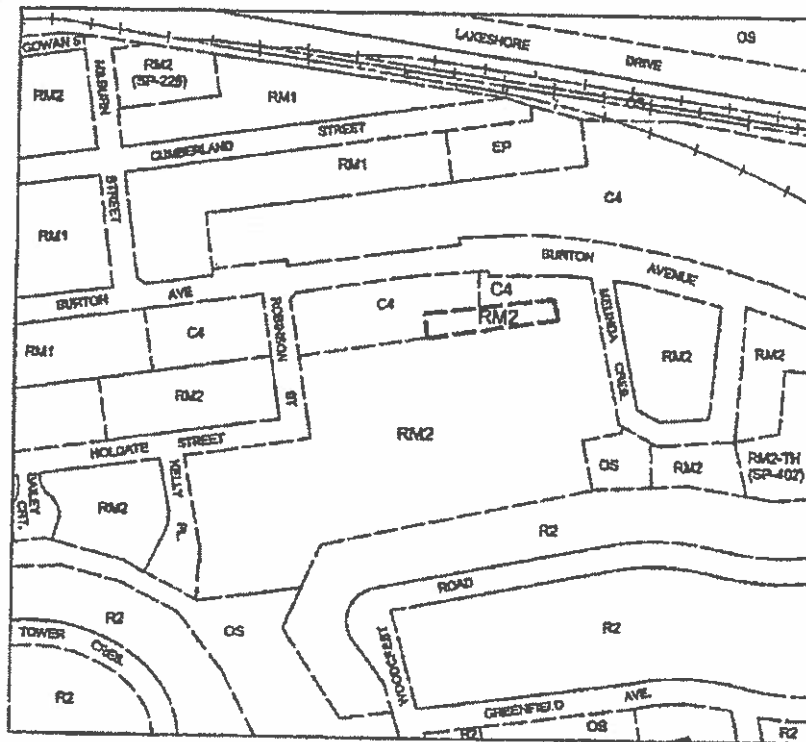
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1. THAT the zoning map is amended to change the zoning of Part of Lot 1 and all of Lots 2, 3, 4, and 5, south side of Burton Street, Plan 433 Allandale, Lots 1, 2, 3, 4, 5, 6, 7, 8 and 9 north side of Holgate Street, Plan 433, Allandale, Part of the north part Lot 9, Concession 14, Innisfil, Part of Holgate Street, Plan 433, Allandale, Closed by RO57095, being Part 4 Plan 51R-18966, except Part 5, 51R-26223 and Parts 1, 2 & 3, 51R-35227, Barrie known municipally as 196 Burton Avenue from General Commercial (C4) to Residential Multiple Second Density (RM2) in accordance with Schedule "A" attached to this By-law being a portion of the zoning map.
2. THAT this By-law shall come into force and effect August 5, 2014 as per Ontario Municipal Board Order issued byXXXXXXXX, Member, on August 5, 2014.

THE CORPORATION OF THE CITY OF BARRIE

MAYOR - J. R. LEHMAN

CITY CLERK - DAWN A. MCALPINE



D14-1557 D12-405
655423 Ontario Ltd.

May 7, 2014

