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File: Z-8143
Planner: M. Corby

TO:	CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE
FROM:	JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER
SUBJECT:	APPLICATION BY: SOUTHSIDE GROUP 193 CLARKE ROAD MEETING ON NOVEMBER 4, 2014

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning and City Planner, with respect to the application of Southside Group relating to 193 Clark Road, the following report on the decision of the Ontario Municipal Board based on the appeal by Debbie Newman and Lynn Johnston of By-law No. Z.-1-142259, approved by Municipal Council on January 28, 2014, **BE RECEIVED** for information.

BACKGROUND

On January 14, 2013, Southside Group submitted an application for a Zoning By-law amendment requesting approvals which would facilitate the development of a one-storey, 14-unit, single bedroom affordable housing development for adults with Autism Spectrum Disorder. The Zoning By-law amendment requested that the subject site be rezoned from a Residential R1 (R1-7) Zone to a Residential R7 Zone.

On April 9, 2013 a report to the Planning and Environment Committee recommended approval of the above-noted Zoning By-law amendment. City Council referred the application back to Staff for *“further consultation with the public regarding site plan concerns, and for consideration of the staff recommendation in conjunction with a public site plan process and review through the Urban Design Review Panel”*. The proposal had previously not been reviewed by the Panel because it did not meet the standard criteria for a Panel review.

After Council referred the original recommendation back to staff, a second report to the Planning and Environment Committee was presented on January 21, 2014 recommending approval of the Zoning By-law amendment to permit a modified form of development designed to mitigate concerns raised by abutting neighbours and added site specific items for the Site Plan Approval Authority to consider as well as a holding provision to ensure the proposal would go through a public site plan review process.

Council supported the Planning Staff recommendation and the requested Zoning By-law amendment was approved on January 28, 2014. On February 27, 2014, an appeal was submitted by Debbie Newman and Lynn Johnston, in opposition to Municipal Council’s decision to approve the requested amendments. The reasons for appeal were based on the proposal not meeting the residential intensification policies and the proposed building not meeting the character nor being compatible with the surrounding area.

The OMB hearing was held on July 22, 2014. The OMB supported Council’s decision and ordered *that the appeal of Ms. Johnston and Ms. Newman against Zoning By-law Amendment No. Z-1 142259, of the City of London, for a property known municipally as 193 Clarke Road, is dismissed*.

A copy of the OMB decision resulting from the hearing is attached as Appendix “1” to this report.

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PREPARED BY:	REVIEWED BY:
MIKE CORBY CURRENT PLANNING	MICHAEL TOMAZINCIC, MCIP, RPP MANAGER, CURRENT PLANNING
SUBMITTED BY:	RECOMMENDED BY:
JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER	

October 9, 2014

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Appendix "1"

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



2014-LO1

ISSUE DATE: July 29, 2014

CASE NO(S): PL140211

PROCEEDING COMMENCED UNDER subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant (jointly):	Lynn Johnston, Debbie Newman
Subject:	By-law No. Z-1-142259/Z-8143
Municipality:	City of London
OMB Case No.:	PL140211
OMB File No.:	PL140211

Heard: July 22, 2014 in London, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel</u>
Southside Group of Companies	A. Patton
Lynn Johnston and Debbie Newman	
City of London	N. Hall

City Clerk No. 2538
Subject Appeal decision -
Johnston/Newman -
Z-8143-PL140211
 AUG 01 2014
Ref. J. Jethoratt ✓
C.C. _____
 Ref to: JN ✓ **SCANNED** (M)

DECISION DELIVERED BY J. P ATCHESON AND ORDER OF THE BOARD

[1] This was a hearing in the matter of an appeal by Lynn Johnston and Debbie Newman ("Appellants") from the Council for the City of London ("City") passing of Zoning By-law Amendment No. Z-1-142259 for a property known municipally as 193 Clarke Road. The By-law Amendment changes the zoning on the subject property from Residential R1 (R1-7) Zone to a Holding Residential R7 Special Provision (h-5* R7(19)*D45 Zone.

[2] The Zoning By-law Amendment provides for a minimum lot frontage of 13.0 metres (42.65 feet) and restricts all structures on the property to one storey in height.

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The amendment will permit the development of the site for a 14 unit, one-storey, one bedroom, not-for-profit apartment house to provide housing for adults with special needs who are living independently and without on-going support services.

BACKGROUND AND EVIDENCE

[3] The subject property located on the west side of Clarke Road north of Trafalgar Street. The property is key hole in shape and is surrounded by single-family homes as set out on a land use plan (Exhibit 4, Tab 1). This area of the municipality, by all accounts, was developed in the mid 1950's and is undergoing some reinvestment with new homes. The subject property is a remnant parcel resulting from the earlier development of the area and is some 0.33 hectare in size. The City planner testified that the property has been vacant since 2003. The area is designated Low Density Residential and Clarke Road is designated as an Arterial Road by the City's Official Plan ("OP"). The uncontradicted evidence of the City's planner is that the project would be in conformity with this land use designation and the other applicable polices of the OP dealing with intensification and urban design.

[4] The Board, during the course of the hearing, heard from two qualified Land Use Planners. Mr Benjamin Billing was retained in April of 2014 by the Appellants to assist them in their appeal before the Board. He freely admitted both during his testimony in chief and under cross-examination that his only concern with the project was with its building design which he opined was not compatible with the surrounding single-family homes. He takes no issue with the proposed use at this location. He admitted, under cross-examination, that the project would, in his opinion, have no adverse impacts and any of the surrounding single-family homes, but that in his opinion, the design was not compatible in its built form with the homes in the immediate area.

[5] The Board permitted Ms. Newman to testify on her own behalf. Her witness statement is found at Exhibit 5, Tab 1. She freely admitted that she takes no issue with the proposed use at this location. Her sole concern relates to the design of the proposed building as set out in the application and building plans found at Exhibit 4, Tab 3. She does not believe the project, as proposed, conforms with s. 11.1.1(v) of the City's

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OP which says in part:

v) The massing and conceptual design of a new development should provide for continuity and harmony in architectural style with adjacent uses which have a distinctive and attractive visual identity.

[6] She summarized her concerns and requested the Board:

To modify the zoning bylaw in order to require that two buildings are constructed on the site for the proposed residential building in order to address the issue of building mass. We are also asking that a provision be put in the Zoning By-law to require that the building contain either dormers and/or gables to provide a more traditional architectural appearance to the building including an all brick exterior. Lastly we would also like to request that the Board add a provision that requires a 6 foot board privacy fence with a 1 foot of lattice and mature trees around the boundary of the property to ensure adequate visual and noise screening for both the residents of the new building and the adjacent residents.

[7] She freely admitted, under cross-examination, that she would not be able to see the project from her backyard.

[8] The Board also heard from Mr. Mike Corby, a qualified planner, employed by the City of London. He is the author of several of the planning reports on the application.

[9] His uncontradicted evidence was that the application would be consistent with the policy directions found in the 2014 Provincial Policy Statement as it represented a form of intensification contemplated by that document as it finds effect in the City's OP.

[10] He provided a review of the City's OP policies, which provide for intensification as set out at s. 3.2.3 (Exhibit 4, Tab 4, page 82 and 83). He also reviewed the proposal against the City's urban design policies as set out in s. 11(1) of the OP. He testified that both the City's staff urban design group and a Citizen appointed urban design panel had reviewed the project and provided their comments to City Council. Both urban design review groups support of the project, with some minor site-plan adjustments as documented in his planning report to Council dated January 21, 2014 (Exhibit 4, Tab 6), which city council subsequently adopted at its meeting of May 6, 2014.

[11] Mr. Corby opined that many of the urban design comments coming from these

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two groups would find effect during the site-plan approval process. He advised the Board that one holding provisions in the By-law Amendment requires that the site-plan process be open to the public. He sees many of the the concerns raised by Ms. Newman as site plan matters which are not before the Board.

[12] It was his opinion that the By-law represented good planning for this part of the City in conformity with a full and fair reading of the OP.

[13] Mr. Patton called no witnesses, but in summation, adopts the positions of the City.

FINDING AND CONCLUSIONS

[14] The Board, after carefully reviewing the evidence and the submission of the parties and the expert witnesses, makes the following findings

[15] Both planners in their evidence made references to the meaning of term compatibility and while their terminology was slightly different, their intent in the Board's judgement reflect the long held meaning of the term as articulated by Board Member A. J. L. Chapman in *Motisi v. Bernardi* [1987], 20 O.M.B.R. 129, at page 136:

In other words, the new development must be compatible with the existing development.

...Being compatible with is not the same thing as being the same as. Being compatible with is not even the same thing as being similar to. Being similar to implies having a resemblance to another thing; they are like one another, but not completely identical. Being compatible with implies nothing more than being capable of existing together in harmony.

[16] The City's OP in s. 11.1.1(v) expresses a similar urban design concept of existing together in harmony. The Board, after reviewing the evidence, finds little difference in the planners evidence of the meaning of term compatibility in the context of the City of London's planning policies. However, the Board preferred the evidence of Mr. Corby that the proposed development is in keeping with the general character of the area and will have no detrimental or adverse impacts on the surrounding neighbourhood and will not cause a visual impact to either Ms. Newman's or Ms. Johnston's property. The

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Board also finds that the visual impact alleged by Ms. Newman is not borne out by the evidence as shown in the photographs of the areas (Exhibit 2).

[17] Ms. Newman, in her submissions, testified that the changes she seeks would be in the interest of the residents of the project and that she is protecting their interests.

[18] The balancing of public and private interests is a fundamental requirement of the *Planning Act*. The determination of and the balancing of public and private interests originally vests with and is the obligation of the Municipal Council and the other approval authorities and upon appeal, vests with this Board. It does not reside with private individuals, corporations, or local interest groups. The determination of the public interest with respect to planning matters is not a popularity contest but must instead be based upon sound planning principles and approved planning policies at both the Provincial and local levels.

[19] There is no compelling evidence before the Board that City Council in its deliberation did not have the public interest in mind when it approved this project. It made sure by the use of the (H) holding provisions in the by-law that public input would be sought during the site plan approval process.

[20] The Board can understand the sincere concerns presented by Ms. Newman and understands that change to the *status quo* can sometimes be difficult. The test for the Board is whether the proposal represents good planning in conformity with the approved planning policies of the municipality. The Board is satisfied that Zoning By-law Amendment No. Z-1-142259 meets this test.

[21] Urban design even with sound urban design policy guidelines as are found in the City's Official Plan is a very subjective matter, or as the saying goes "beauty is in the eyes of the beholder." The simple fact in this case is that the proposal sanctioned by the By-law Amendment is one storey in height which is lower than the regulations governing the height of the surrounding single family homes. The structure in the rear yard of Ms. Johnston's home which is in close proximity to the property line is higher than the proposed apartment building.

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[22] The Board heard no evidence that the project as proposed would have any adverse impacts or visual impacts on any of the surrounding properties in the area. Many the design issued raised by Ms. Newman and set out in her request to the Board are s. 41 site plan matters that can be addressed by the City's site plan process.

[23] The site-plans are not properly before the Board.

ORDER

[24] The Board, for the reasons set out in this decision, orders that the appeal of Ms. Johnston and Ms. Newman against Zoning By-law Amendment No. Z-1-142259, of the City of London, for a property known municipally as 193 Clarke Road, is dismissed.

"J. P. Atcheson"

J. P. ATCHESON
MEMBER