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File: Z-8075
Planner: C. Smith

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| TO: | CHAIR AND MEMBERS PLANNING & ENVIRONMENT COMMITTEE |
| FROM: | JOHN M. FLEMING MANAGING DIRECTOR, PLANNING AND CITY PLANNER |
| SUBJECT: | APPLICATION BY: AYMAN SHANA'A HOLDINGS INC. 260 SARNIA ROAD MEETING ON AUGUST 20, 2013 |

RECOMMENDATION

That, on the recommendation of the Managing Director, Planning and City Planner, the following report on the decision by the Ontario Municipal Board relating to the appeal by Ayman Shana’a Holdings Inc. relating to an application for an amendment to the Zoning By-law No. Z.-1 which was refused by Municipal Council concerning 260 Sarnia Road **BE RECEIVED** for information.

PREVIOUS REPORTS PERTINENT TO THIS MATTER

September 24, 2012 – Z-8075 (Shana’a Holdings Inc). This report recommended that the request to change the zoning of the subject property at 260 Sarnia Road from a Residential R1 (R1-9) Zone which permits single detached dwellings to a Residential R3 (R3-3) Zone to permit single detached dwellings, semi-detached dwellings, duplex dwellings, triplex dwellings, converted dwellings and fourplex dwellings be refused.

January 22, 201 – Z-8075 (Shana’a Holdings Inc) This report advised the Ontario Municipal Board that the Municipal Council has reviewed its decision made at its session held on October 9, 2012 relating to this matter and sees no reason to alter it.

BACKGROUND

The attached Ontario Municipal Board decision relates to the application made by Ayman Shana’a Holdings Inc. which was accepted June 22, 2012. The application was a request for a Zoning By-law amendment to facilitate the demolition of the existing dwelling and permit the redevelopment of a fourplex on the subject lands.

Council supported the Planning Staff recommendation and the requested Zoning By-law amendment was refused on October 9, 2012. On November 2, 2012, an appeal was submitted by Alan Patton, on behalf of Ayman Shana’a Holdings Inc., owner of 260 Sarnia Road, from the decision of Municipal Council to refuse the requested Zoning By-law amendment.

The OMB hearing was held on April 24, 2013. The board stated in its decision:

“The existing surrounding neighbourhood is clearly low density single detached homes. In my view, that is its character. To impose a large fourplex (the proposed concept plan showed a building area of 362.5 square m) on that neighbourhood is not orderly or pleasing and therefore cannot be considered compatible.”

“what is sought is an ad hoc approach to residential intensification and does not satisfy the requirements of s. 3.5.19.5 (x). In my estimation, this ad hoc approach does indeed have the potential of being precedent setting for the area. Since there are a number of properties to the northwest and west which are similar in size, it is entirely possible that applications will come

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forward in the future seeking relief which is the same or similar to the relief now being sought by the Applicant. That type of potential intensification is not something countenanced by the City OP.”

The OMB dismissed the appeal. A copy of the OMB decision is attached as Appendix 1 to this report.

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| PREPARED BY: | REVIEWED BY: |
| | |
| C. SMITH PLANNER, DEVELOPMENT SERVICES | MICHAEL TOMAZINCIC, MCIP, RPP MANAGER, PLANNING REVIEW COMMUNITY PLANNING AND DESIGN |
| SUBMITTED BY: | RECOMMENDED BY: |
| | |
| JIM YANCHULA, MCIP, RPP MANAGER, COMMUNITY PLANNING AND DESIGN | JOHN M. FLEMING, MCIP, RPP MANAGING DIRECTOR, PLANNING AND CITY PLANNER |

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Appendix 1

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| ISSUE DATE: May 13, 2013 |
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Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

RECEIVED
PL121328
MAY 15 2013
City Solicitor's Office

Shana'a Holdings Inc. have 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 Z.-1 of the City of London to rezone land known municipally as 260 Sarnia Road from Residential R1 (R1-9), which permits single-detached dwellings, to Residential R-3 (R3-3) Zone, which permits single-detached dwellings, triplex dwellings and fourplex dwellings. This will permit a fourplex dwelling in place of an existing duplex dwelling.

OMB Case No.: PL121328
OMB File No.: PL121328

APPEARANCES:

Parties

Counsel

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|-------------------------------------|-------------|
| Shana'a Holdings Inc. ("Applicant") | Alan Patton |
| City of London ("City") | Janice Page |

DECISION DELIVERED BY STEVEN STEFANKO AND ORDER OF THE BOARD

INTRODUCTION

[1] The Applicant is the owner of 260 Sarnia Road in London, Ontario. The property is zoned R1-9 which permits single detached dwellings. The single detached dwelling on the property has two residential rental units which, as acknowledged by the City, are legal non-conforming uses.

[2] On June 28, 2012, the Applicant submitted an application for a Zoning By-law amendment ("ZBA") to a Residential R3 Zone (R3-3) to permit the construction of a fourplex dwelling. The existing dwelling and detached garage would be demolished.

[3] On October 9, 2012, City Council ("City Council" or "Council") refused approval ("Council's Decision") of the ZBA on the basis, *inter alia*, that it did not conform with the City Official Plan ("City OP" or "OP") and that it represented 'spot zoning'.

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[4] Council's Decision was then appealed by the Applicant ("Applicant's Appeal") to the Ontario Municipal Board ("Board").

THE SITE AND SURROUNDING AREA

[5] The property itself has frontage of 34 metres ("m"), depth of 43.5 m and an overall area of 0.15 hectares. It fronts on Sarnia Road which is classified in the City OP as an arterial road.

[6] To the northwest (i.e. across Sarnia Road), the south and west are low rise, low density single detached dwellings. The subject site is consistent with the lot fabric of the adjacent low density residential lots.

[7] Immediately east is a five-storey, 1,000-bedroom, University of Western Ontario ("UWO") student residence under construction and north of the site, again across Sarnia Road, are vacant lands associated with Brescia College.

[8] The site is therefore very close to the UWO institutional use but at the same time is clearly within the low density residential neighbourhood to the south, west and northwest.

NEAR CAMPUS NEIGHBOURHOOD STRATEGY ("NCNS")

[9] During the course of this proceeding, it was pointed out in evidence that there exists an Official Plan amendment ("NCNS OPA") and related Zoning By-law amendment ("NCNS ZBA") which deal with policies known as the NCNS. Essentially, the policies created by these documents focus on land use planning goals for neighbourhoods near UWO and Fanshawe College ("Fanshawe").

[10] Although the NCNS OPA and NCNS ZBA are under appeal, they nonetheless represent the current iteration of planning philosophy of the City insofar as student accommodation is concerned in neighbourhoods near UWO and Fanshawe.

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POSITIONS OF THE PARTIES

[11] The Applicant argues that the subject property is underutilized and that the ZBA offers an alternate and efficient form of housing. Harry Froussios, a planner with Zelinka Priamo Ltd., provided expert land use testimony in support of the relief sought. In his view, the proposal was consistent with the Provincial Policy Statement, 2005 ("PPS"), conformed with the City OP, conformed with the criteria set out in s. 3.5.19.5 of the NCNS and, because of the site's special attributes, the ZBA should not be considered spot zoning.

[12] Craig Smith, a planner with the City, provided expert land use evidence in opposition to the ZBA. In his opinion, among other things, the proposal did not conform with the City OP, did not meet the criteria of s. 3.5.19.10 of the NCNS and did, in fact, constitute spot zoning.

[13] Mary Hryb lives immediately south of the subject property at 249 Neville Drive and spoke as a participant in this proceeding along with Sandy Levin, a representative of the Sherwood Forest Ratepayers' Association.

[14] According to Ms. Hryb, she believes the proposal will create a loss of privacy for herself and will be precedent setting for the single detached neighbourhood. Mr. Levin also felt the proposal would be precedent setting and was concerned that a more comprehensive planning review for the area had not been undertaken.

ANALYSIS AND DISCUSSION

[15] In order for the ZBA to be approved it must conform with the City OP. According to the Applicant, such conformity does exist. However, when I review the relevant provisions of the City OP, I am not persuaded.

[16] One of the common threads of the City OP which applies to the relief sought is the character of and compatibility with the area. Under the Low Density Residential provisions of the City OP there are a number of statements which exhibit this common thread.

[17] In s. 3.2.3 of the OP, it states that "Residential Intensification projects shall use innovative and creative urban design techniques to ensure that character and

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compatibility with the surrounding neighbourhood are maintained as outlined in policy 3.2.3.3 and 3.2.3.4.”

[18] And in s. 3.2.3.2 it reads that “Zoning By-law provisions will ensure that infill housing projects recognize the scale of adjacent land uses and reflect the character of the area.”

[19] And finally, in s. 3.2.3.4, it states that when dealing with an application for residential intensification, the applicant is to demonstrate that the proposal is “sensitive to, compatible with, and a good fit within, the existing surrounding neighbourhood....”

[20] As was stated by Member Sutherland in the Board decision of *Sansanwal v. Markham (Town)* [2011] O.M.B.D. No. 405 dated May 31, 2011, being compatible means “living in harmony” and harmony is defined as “a consistent, orderly or pleasing arrangement of parts”.

[21] The existing surrounding neighbourhood is clearly low density single detached homes. In my view, that is its character. To impose a large fourplex (the proposed concept plan showed a building area of 362.5 square m) on that neighbourhood is not orderly or pleasing and therefore cannot be considered compatible. I would also add that the City’s Urban Design Peer Review Panel had a number of comments in relation to the design proposed.

[22] The subject property is the same depth as lots to the west, and in area, not unlike a number of lots in the immediate vicinity. It is therefore representative of the surrounding lot fabric. Simply put, what is proposed is, as described by counsel for the City , “within a sea of single detached homes”.

[23] There is further justification for the City’s position in this matter when I assess the provisions of s. 3.5.19.5 of the NCNS OPA. Subparagraph (x) thereof requires a “proactive, coordinated and planned approach toward residential Intensification”.

[24] In my opinion, what is sought is an *ad hoc* approach to residential intensification and does not satisfy the requirements of s. 3.5.19.5 (x). In my estimation, this *ad hoc* approach does indeed have the potential of being precedent setting for the area . Since there are a number of properties to the northwest and west which are similar in size, it is

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entirely possible that applications will come forward in the future seeking relief which is the same or similar to the relief now being sought by the Applicant. That type of potential intensification is not something countenanced by the City OP, in my view.

[25] Needless to say therefore, I am not satisfied that the ZBA is in conformity with the City OP.

[26] Before concluding my remarks, one final observation is worth noting. Section 2.1 of the *Planning Act* requires that I have regard to Council's Decision. Based on the evidence which I heard in this matter, I am satisfied that Council's decision was correct and I see no reason to vary or overturn it.

ORDER

[27] Based on all of the foregoing, it is ordered that the ZBA is not approved. The Applicant's Appeal is therefore dismissed.

"Steven Stefanko"

STEVEN STEFANKO
VICE-CHAIR