

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: June 17, 2022

CASE NO(S).:

OLT-21-001242

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant/Appellant: Jeffrey Staples
Subject: Application to amend the Zoning By-law –
Refusal of application
Description: To rezone the subject property to permit a 4-
unit residential building
Reference Number: C-2021-03
Property Address: Village Road and Edmond Road
Municipality: East Ferris
OLT Case No.: OLT-21-001242
OLT Lead Case No.: OLT-21-001242
OLT Case Name: Staples v. East Ferris (Mun.)

PROCEEDING COMMENCED UNDER subsection 51(39) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Subject: Proposed Plan of Subdivision - Refusal by
Approval Authority
Description: To permit a 4-unit residential building which
would be created by way of a draft plan of
condominium
Reference Number: SB-2021-01
Property Address: Village Road and Edmond Road
Municipality/UT: East Ferris/Nipissing
OLT Case No.: OLT-21-001243
OLT Lead Case No.: OLT-21-001242

Heard: May 5, 2022 by video hearing

APPEARANCES:**Parties**

Jeffrey Staples("Applicant")

Municipality of East Ferris
("Municipality")**Counsel**

Harold Elston

David Germain

DECISION DELIVERED BY K.R. ANDREWS AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This case involves applications for a Draft Plan of Condominium and Zoning By-Law Amendment ("ZBA") to permit a four-unit, two-story townhouse condominium at Con 3 Pt Lot 21 PCL 15241 WF RP 36R5309 Part 1, locally known as 1278 Village Road (the "Property").

[2] The Property is currently zoned General Commercial Special 1379 (C2S 1379), which permits a wide variety of commercial uses, and the Applicant is seeking to rezone it to a Hamlet Residential Special Zone (RHS).

[3] The Municipal Planning Advisory Committee held public meetings and ultimately put forward a recommendation to Council to approve the proposed development. However, the Council motion to approve it was defeated.

[4] Since then, the Applicant and the Municipality entered into settlement discussions, through which the Municipality asked the Applicant to prepare a lot grading and storm water management plan to the satisfaction of the municipal engineer, as well as to redesign the parking area to the east side of the building and add storage sheds for each unit. The Applicant complied with these requests, resulting in the settlement which is now before the Tribunal.

EVIDENCE AND ANALYSIS

[5] Planning evidence was provided by Greg Kirton, Manager of Planning and Economic Development for the Municipality, who was duly qualified as an expert in land use planning.

[6] Mr. Kirton drafted the original planning justification report respecting this matter, and he confirmed to the Tribunal that, in his opinion, changes to the parking lot configuration and adding storage sheds did not fundamentally change the application from a land use planning standpoint. He therefore reiterated his original planning report, summarized as follows.

Planning Act

[7] Mr. Kirton testified that the approval authority shall have regard to the matters under s. 51(24) of the *Planning Act* (the "Act"). This includes, among other matters, health, safety, convenience, accessibility for persons with disabilities, the welfare of the present and future inhabitants of the municipality, and the effect of development on matters of provincial interest as referred to in s. 2 of the Act.

[8] Summarily, Mr. Kirton opined that the applications have regard for these matters, noting that the proposal is in conformity with the Municipality Official Plan ("OP") policies and the Property is suitable for the proposed use. The Tribunal accepts this opinion and finds the same.

Provincial Policy Statement

[9] The Provincial Policy Statement ("PPS") encourages the establishment of healthy, liveable and safe communities and requires that sufficient land be made available to accommodate an appropriate range and mix of land uses.

[10] Mr. Kirton testified that s. 1.1 of the PPS speaks to the development of residential areas within both urban and rural settings and gives high level guiding policies on how municipalities should treat development applications in these areas. Specifically, s. 1.1.3 focuses on settlement areas, which can be urban communities or focus areas within rural communities, such as village or hamlet areas.

[11] The subject property is located within the Astorville Village area, as defined by the OP, and is considered a settlement area. Mr. Kirton noted that s. 1.1.3.1 of the PPS states that:

1.1.3.1 Settlement areas shall be the focus of growth and development.

[12] He further noted that s. 1.1.3.4 goes on to state that:

1.1.3.4 Appropriate development standards should be promoted which facilitate intensification, redevelopment and compact form, while avoiding or mitigating risks to public health and safety...

[13] Mr. Kirton testified that these two sections are among many within the PPS that promote increased density and redevelopment within settlement areas, and he opined that this is consistent with the context of this application.

[14] Mr. Kirton concluded that the proposal is in conformity with the PPS. The Tribunal accepts this opinion and finds the same.

Growth Plan for Northern Ontario

[15] The Growth Plan for Northern Ontario (“GPNO”) is designed to ensure a long-term vision for strong communities while implementing policies directed at economic prosperity.

[16] Mr. Kirton testified that the GPNO does not include specific policies regarding the present type of proposed development. However, he nevertheless opined that the

proposal does not conflict with the GPNO. The Tribunal accepts this opinion and finds the same.

Municipality of East Ferris Official Plan

[17] Mr. Kirton testified that the Municipality OP outlines the long-term vision for the community while establishing goals and targets that guide development over time. The OP designates land within the Municipality into broad categories with corresponding development guidelines.

[18] He further testified that the subject property is located within the area that is designated "Village" by the OP. The policies related to development with the Village designation can be found within s. 5.4 of the OP. Section 5.4.4 outlines permitted residential uses within the Village designation:

The permitted uses shall include various types of low density residential uses (single detached and second units), medium density residential uses (townhouses and small block apartments) in developments of not more than three storeys in height and not more than 30 dwelling units in a building or group of buildings, home based businesses, and public service and institutional uses.

[19] Mr. Kirton opined that the Applicant's proposal for a four-unit residential building in the form of a townhouse block would be permitted by the OP permitted uses for the Village designation. He further opined that the Village areas in the Municipality represent the areas where the development of multi-residential buildings is expected to take place and represents a natural planning process of intensification within the core areas of the Municipality.

[20] In summary, he opined that, based on the review of the OP policies related to the subject property, the proposed location is suitable for a multi-residential development and that the OP policies for the Village designation are supportive of the proposal.

Zoning By-Law Amendment

[21] The proposed ZBA seeks to rezone the existing General Commercial Special 1379 (C2S 1379) Zone to a Hamlet Residential Special Zone (RHS).

[22] Mr. Kirton testified that the purpose of the ZBA is to permit the proposed four-unit condominium building and remove existing commercial use permissions. He notes that all setback requirements and provisions of the Hamlet Residential (RH) zone would be adhered to pursuant to the proposed ZBA; however, the special zone is required because the RH zone does not specifically address new multi-residential construction.

[23] In summary, Mr. Kirton opined that the proposed ZBA is appropriate, given the lot layout and location adjacent to existing residential uses and a residential building is better suited to this location than any of the existing commercial provisions. Further, he opined that the layout of the proposed units is proposed in a way that maintains the maximum amount of privacy for the existing residential lots to the south, while the amenity areas in the rear yard will face away from the existing residential lots along Edmond Road and the building itself will be positioned towards the northerly lot line to maximize the separation distance.

[24] In conclusion, Mr. Kirton opined that the proposed ZBA is appropriate and is consistent with the implementation of the OP policies related to residential uses within the Village designation in the OP. The Tribunal accepts this opinion and finds the same.

SUMMARY AND CONCLUSION

[25] The Tribunal finds that the Applicant's proposal for a Draft Plan of Condominium and ZBA represents a mild increase in density for residential uses in the Village designation, which is in line with municipal development policies and the proposed location is appropriate for such a use. Furthermore, the Applicant's proposal is appropriate in the context of the provincial and municipal planning policies contained

within the Act, the PPS, the GPNO and the Municipality OP for the reasons detailed above.

ORDER

[26] **THE TRIBUNAL ORDERS** that the appeal is allowed, in part, and the instruments, as agreed to by the parties, are approved as follows:

- a) The Draft Plan of Condominium prepared by R.D. Miller for Miller & Urso Surveying Inc. dated March 31, 2022, attached to this Order as Attachment 1, is approved subject to fulfillment of the conditions attached to this Order as Attachment 2. Pursuant to subsection 51(56.1) of the *Planning Act*, the Municipality of East Ferris shall have the authority to clear the conditions of draft plan approval and to administer final approval of the plan of condominium for the purposes of subsection 51(58) of the *Planning Act*,
- b) By-law No. 1284 of the Municipality of East Ferris is hereby amended as set out in Attachment 3 to this Order. The Tribunal authorizes the Municipal Clerk of the Municipality of East Ferris to assign a number to this by-law for record keeping purposes.

“K.R. Andrews”

K.R. ANDREWS
MEMBER

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

OLT-21-001242 – Attachment 2

Draft approval shall be granted to the Plan of Condominium, conditional upon the following:

- 1) That confirmation is provided that all taxes are paid up to date;
- 2) That this approval expires 3 years from the date of approval shown on the face of the draft plan. If there is an appeal to the Local Planning Appeal Tribunal, the 3-year expiration period does not begin until the date of the order of the Local Planning Appeal Tribunal issued in respect of the appeal or from the date of notice issued by the tribunal.
- 3) This draft approval applies to the plan of condominium prepared by Miller & Urso Surveying as shown on Appendix C to these Minutes, dated April 1, 2022.
- 4) That prior to signing the final plan by the municipality, the proposed condominium conforms to the Zoning By-law or with respect to any zoning conditions or changes related to this application.
- 5) That the owner agrees in writing, by way of entering into an agreement, to satisfy all requirements, financial and otherwise of the Municipality of East Ferris concerning provision of road, installation of services, drainage, and any other aspect of the development proposal.
- 6) That such easements as may be required for utility or drainage purposes shall be granted to the appropriate authority.
- 7) That the owner agrees to convey up to 5% of the land included in the plan or cash-in-lieu to the Municipality for park or other public recreational purposes.
- 8) That the Condominium Agreement between the owner and the Municipality be registered by the Municipality against the lands to which it applies once the plan of condominium has been registered prior to any encumbrances.
- 9) That before Municipal Council's final approval is given, the Council shall be advised in writing by the Manager of Planning and Economic Development how condition no. 7 has been satisfied.

Notes

- 1) That the owner is responsible to obtain any required permits from the North Bay-Mattawa Conservation Authority prior to the issuance of building permits;
- 2) That the owner is responsible to obtain any required permits from the Ministry of Natural Resources and Forestry (MNRF) and follow the legal requirements of the Endangered Species Act, 2007;

THE CORPORATION OF THE MUNICIPALITY OF EAST FERRIS
SCHEDULE "A"
BY-LAW NO. 2021-XX

Con 3 Pt Lot 21 PCL 15241 WF RP 36R5309 Part 1



This is Schedule "A" To By-law No. 2021-XX passed by Council on the ____ day of ____

Mayor
Pauline Rochefort

Clerk
Monica L. Hawkins