

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: October 30, 2017

CASE NO(S): PL170489

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

Applicant and Appellant:	2459825 Ontario Inc.
Subject:	Application to amend Zoning By-law No. (2017-031) - Refusal of Application by Municipality of Kincardine
Existing Zoning:	Residential One (R1)
Proposed Zoning:	Residential Three (R3)
Purpose:	To permit a residential development
Property Address/Description:	Part of Park Lots 1&2 (Being Part 1 On Rp 3R-9817)
Municipality:	Municipality of Kincardine
Municipal File No.:	Z-86-16.22
OMB Case No.:	PL170489
OMB File No.:	PL170489
OMB Case Name:	2459825 Ontario Inc. v. Kincardine (Municipality)

Heard: September 27 and 28, 2017 in Kincardine, Ontario

APPEARANCES:

Parties

2459825 Ontario Inc.
("Applicant" / "Appellant")

Municipality of Kincardine ("Town")

Counsel

Erroll Treslan

Tammy Grove-McClement

DECISION DELIVERED BY S. TOUSAW AND ORDER OF THE BOARD

INTRODUCTION

[1] This Zoning By-law Amendment (“ZBA”) involves a remnant parcel of land within the built-up area of the Municipality of Kincardine (the “Town”). The Applicant is a numbered company owned by Thomas Kerr, who proposes to construct one building containing five townhouse units on the north portion of the property, and a semi-detached dwelling on the south portion of the property.

[2] In response to neighbourhood concerns, the Town did not approve the ZBA, and Mr. Kerr appealed the matter to the Board.

[3] For the reasons discussed under Issues and Analysis below, the Board will approve the ZBA with minor modifications. A one-storey, five unit townhouse is found to be compatible with surrounding uses and to meet the required legislative tests. There was no dispute over the reduced frontages permitted by the ZBA for the semi-detached dwelling.

The Applications and Neighbourhood

[4] The ZBA affects Part of Park Lots 1 and 2 (the “lands”) comprising approximately 0.37 hectares (“ha”) near the intersection of Kincardine Avenue and Fraser Drive. Consent approval was granted by Bruce County to sever the south part of the lands fronting on Kincardine Avenue for a semi-detached dwelling (the “severed parcel”) and to retain the north part of the lands fronting on Fraser Drive for further residential development (the “retained parcel”). No appeal was lodged against the Consent and the lands will be separated into the two parcels upon fulfillment of the conditions to provisional Consent approval.

[5] The ZBA applies to both the severed and retained parcels for two primary purposes. First, the ZBA would rezone the retained parcel from R1 to R3 with special provisions to permit a five unit townhouse, a frontage of 15.24 metres ("m"), a 1.5 m encroachment into the front yard for a detached garage, a privacy fence along the north property line, and an enhanced landscaping plan under site plan approval.

[6] Second, the ZBA would allow the severed parcel to have two separate frontages of 9.9 m to enable the proposed semi-detached dwelling to be severed into two lots (along the common wall), as compared to 12 m frontage currently required for each unit. The ZBA would also limit each half of the semi-detached dwelling to one dwelling unit (i.e., secondary suites would not be permitted).

[7] Abutting the lands are four other lots previously separated and under construction by Mr. Kerr. To the west of the severed parcel is a residential lot fronting Kincardine Avenue containing the original farmhouse of the lands. To the east of the severed parcel are two lots fronting Fraser Drive with one semi-detached dwelling under construction and another proposed. To the east of the retained parcel, and also fronting Fraser Drive is a semi-detached dwelling with secondary suites (total of four units).

[8] To the north of the lands is a low density subdivision known as Willow West consisting of 78 detached dwellings. The only access to Willow West is Fraser Drive, at least until such time as land further to the east is developed and may provide an alternate access. Fraser Drive at the entrance to Willow West is flanked by semi-detached dwellings with three on the west side noted above, and two on the east side.

[9] The townhouse building would be oriented east-west such that the rear yards of the units (technically the side yard of the lot) would back onto the rear yards of two lots to the north within Willow West. The remainder of the townhouse's north lot line would abut a natural area owned by the Town.

[10] In addition to the semi-detached dwellings noted, separating Kincardine Avenue and Willow West is a townhouse development of 29 units fronting on Kincardine Avenue. The most southerly bank of lots in Willow West along Stewart Drive back onto these existing townhouses.

[11] The general neighbourhood has a commonly found layout with multi-unit buildings along the collector road and entrance to the subdivision, and lower density detached housing behind, in the interior of the development. The entire area is bounded by natural areas to the west, north and east (other than the undeveloped land to the east along Kincardine Avenue) and by Kincardine Avenue itself to the south.

Legislative Tests

[12] In making a decision under the Act with respect to this appeal, the Board must have regard to matters of provincial interest as set out in s. 2 of the *Planning Act* (the “Act”), and must have regard to the decision of the approval authority and the information considered by the approval authority under s. 2.1(1) of the Act. The decision must be consistent with the Provincial Policy Statement (the “PPS”) under s. 3(5) of the Act.

[13] The ZBA must conform with the Bruce County Official Plan (the “BCOP”) and with the Kincardine Official Plan (the “KOP”) under s. 24(1) of the Act.

ISSUES AND ANALYSIS

[14] The Town intended initially to call evidence in opposition to the proposed ZBA provision for reduced frontages for the semi-detached dwelling based on concerns over access to Kincardine Avenue. However, this position was withdrawn after counsel for the Town received additional information from Town staff and their consulting planner. The hearing then focussed on whether the ZBA provisions for the proposed townhouses should be approved, and the main issues were density, tenure, compatibility, and traffic.

[15] Planning evidence was provided by three Registered Professional Planners (“RPP”). Mollie Kuchma, RPP, testified in favour of the ZBA under subpoena. Ms. Kuchma had carriage of this file when she was a Planner with Bruce County but has since taken a position with another municipality. Ronald Davidson, RPP, was retained by the Applicant and testified in favour of the ZBA. George Balango, RPP, was retained by the Town and testified in opposition to the ZBA. The Board declared all three Planners as qualified to provide opinion evidence in the area of land use planning.

Density

[16] Section 6.5.3(f) of the BCOP requires all new multi-unit developments “to have a density target of no less than 15 dwelling units per gross developable hectare” (“15/ha”). As a “target,” the density policy goes on to allow a lower density when “justified and appropriate.” In the KOP, townhouses are considered a medium density use. Section D1.5.2 of the KOP establishes a maximum density for townhouses of 40 units per ha (“40/ha”).

[17] Based on the above, Ms. Kuchma testified that the BCOP sets the permitted minimum density, and the KOP sets the permitted maximum density. She determined the five townhouses to meet the required minimum density and found no reason why the development should not be required to meet the minimum density, given that the lands are in a serviced settlement area.

[18] Mr. Davidson performed several density calculations (density numbers are rounded herein to the nearest 1). He calculated the density of the proposed five unit townhouse to be 17/ha, less dense than the existing 29 unit townhouses at 28/ha. The small lots in Willow West on the south side of Stewart Avenue have a density of 18/ha, similar to the proposed townhouses. For the entire neighbourhood of 120 dwelling units, Mr. Davidson calculated the overall density at 10/ha, not counting the five townhouses and two semi-detached units of this ZBA. When the subject seven units

are included, Mr. Davidson found a negligible rise in density from the existing 10.15/ha to 10.39/ha. Based on the above, Mr. Davidson testified that the BCOP and KOP requirements for density were met, the townhouses were in keeping with the densities of surrounding lands, and the marginal increase in overall density to the neighbourhood was of no effect.

[19] Mr. Balango testified that the KOP encourages the density of residential areas to increase from the current average of 8.8/ha to a target of 11/ha. He calculated the existing neighbourhood density to be 12/ha, already above the KOP target. When including the proposed seven units covered by the ZBA, Mr. Balango calculated the overall density to be 13/ha. He also calculated the density of the existing townhouses to be 33/ha and the density of the houses on Duncan Place abutting the lands to be only 9/ha. Mr. Balango testified that it was not appropriate to add density to this area because it was already above the KOP average target of 11/ha, would rise further as a result of this development, and the townhouses would be almost double the density of the abutting houses on Duncan Place.

[20] Mr. Davidson and Mr. Balango explained that their density calculations did not match exactly because of the total area included in the calculations. Regardless of the nuances of whether parts of adjacent road allowances or parts of adjacent parkland should be included in the density calculations, the Board finds that the possible increase in density of the neighbourhood arising from the ZBA amounts to between 3% (Mr. Davidson) and 8% (Mr. Balango). Given that the proposed semi-detached is already permitted by the current zoning, then looking at only the addition of the five townhouses, the actual increases are marginally smaller.

[21] The Board prefers the conclusions of Ms. Kuchma and Mr. Davidson. The BCOP is clear that in serviced urban areas, a density target of 15/ha should be achieved. In addition, the KOP sets out to increase average densities across residential areas. Mr. Balango suggests that increase should either come from new subdivisions or from existing neighbourhoods with lower densities than the target. The Board disagrees.

Policies at all levels seek to increase density to better utilize land and services, and to protect other resources such as natural areas and agricultural land. The Town aims for intensification and infilling to provide 10% of all new housing (KOP, s. D1.4.8(c)). Opportunities for multi-unit forms of housing need to be considered in all areas, subject to compatibility and other considerations. The increase in neighbourhood density resulting from this ZBA is minor, if not negligible, and does not introduce a density not already found within the area.

Tenure

[22] Section D1.4.8(d) of the KOP establishes targets for housing tenure at 70% ownership and 30% rental, stated to be “the existing mix of housing tenure.” The townhouses are proposed to be rented. Ms. Kuchma and Mr. Davidson both testified that rental housing is in short supply in the area, especially in relation to the growing workforce at Bruce Power. Ms. Kuchma referenced a Bruce County Housing Study which projected a continued shortfall in rental housing.

[23] Mr. Balango testified that the neighbourhood already met the targets established by the KOP, and the additional units would raise the rental proportion to 34% in this neighbourhood. Mr. Balango also suggested that rental units may not be compatible with adjoining owned units related to occupancy turnover and noise. During questioning, Mr. Balango said that he was unaware of any issues between the 29 existing rental townhouses and the abutting owned dwellings to the west and north.

[24] The Board finds that tenure is not a viable argument against this ZBA. At the individual site level, land use planning deals with the use and not the user. There is an apparent demand in the area for rental accommodation, and the Town’s policy is “to support a wide range of housing types” (s. D1.4.8(a)). Rental accommodation already exists in the neighbourhood in the form of townhouses and secondary suites.

Compatibility

[25] The Board was directed to the KOP s. D1.5.1 which sets out factors to consider for medium density housing such as townhouses. Development is to be compatible with existing land uses, be a low building profile when adjacent to detached houses, and provide adequate parking, buffering, landscaping and open space. The policy also refers to the proximity of schools, shopping and recreation.

[26] The evidence of Ms. Kuchma and Mr. Davidson was aligned regarding conformity with the KOP. With the existing neighbourhood containing detached, semi-detached and townhouse dwellings, they consider townhouses to be compatible with the built form of the area. They testified that in planning terms, “compatible” does not mean “the same.” At one storey in height, the townhouses will have the same or fewer storeys than abutting dwellings, and the required fence along the north lot line will be a common and suitable buffer to the neighbours. The Planners consider the back of the townhouses to create a common rear yard-to-rear yard relationship with the two dwellings to the north. The grade-level decks, although within a two m shallower setback than normally required if a rear yard, will provide suitable outdoor amenity areas that are screened from neighbours by the fence. The enhanced landscape plan to be approved by the Town will provide additional screening. Plenty of parking is provided and additional parking in a four-bay detached garage is proposed along the south lot line. Ms. Kuchma explained the enhanced safety of the site because vehicles will drive in and drive out onto Fraser Drive, as opposed to backing out as is done from surrounding properties. The Town did not require a traffic study for these five units based on input from its public works staff. Both Planners concluded that it would not be good planning to use this large property for only one or two dwellings. They also advised that the Applicant had scaled back previous proposals for this site in number of units and number of storeys in response to concerns from the neighbourhood.

[27] Mr. Balango referred the Board to the BCOP s. 4.4.1(v) requiring intensification to enhance the positive characteristics of existing areas, and to the KOP s. D1.4.1

requiring the quality of existing residential areas to be maintained or improved. His opinion was that this proposal squeezed too many units on an awkwardly shaped lot, was not appropriate behind the low density homes to the north, and resulted in a building form out of character with the area. Mr. Balango argued that the driveway leading to Fraser Drive was intrusive and not in-keeping with the neighbourhood, and that the property dimensions do not allow for adequate setbacks and buffering. He further testified that such townhouse development should develop in other parts of the Town closer to commercial areas.

[28] The Board agrees with Ms. Kuchma and Mr. Davidson that the ZBA conforms with the BCOP and the KOP. The Board finds that townhouses are a compatible form of housing with detached houses. In this case, adjacent uses include semi-detached units, secondary suites, and detached houses. Like these building forms, townhouses are low-rise and provide desirable housing that constitutes the same residential land use as surrounding dwellings. Mr. Davidson testified that if the proposed dwellings were two-storeys in height, he would still consider them compatible. Mr. Balango referred the Board to what he considered appropriate street-front townhouses being constructed in a subdivision to the south of these lands, but agreed these were mixed with detached dwellings and were located an equal distance from shopping as the lands in question.

[29] The townhouses will not be very visible from Fraser Drive due to their location behind the semi-detached dwelling on Fraser Drive, and the driveway position and length into this interior lot. The roof will be visible from the detached lots to the north, a condition that is similar with the existing townhouses to the east. Through site plan control, the Town can require the installation of an attractive fence and suitable landscaping that in time, will further screen the roofline.

[30] The Board finds the orientation of the building, the layout of parking and the driveway to be highly similar to the townhouses along Kincardine Avenue, to similarly

about other dwelling types, and can be expected to exist harmoniously as was the evidence from all Planners for the existing townhouses.

Traffic and Safety

[31] Two residents of Willow West addressed the Board with their primary concern being traffic and safety. Debbie Peloquin and Jennifer Hunsburger reside in detached dwellings in the north part of Willow West and feel they will be affected by the development as they enter and exit the neighbourhood. They advised that Fraser Drive and Kincardine Avenue is a busy intersection, and with resident traffic and daily school buses, brief backups can occur. They have found the entrance to the subdivision more congested and a potential safety issue to pedestrians since the semi-detached dwellings were constructed on Fraser Drive.

[32] Mr. Balango agreed that traffic could be an issue but acknowledged that the Town did not require a traffic study for the proposal. Ms. Kuchma and Mr. Davidson, while admitting they were not traffic experts, could not imagine a change in traffic conditions from five units using Fraser Drive along with some 90 existing dwellings. They felt the drive-in, drive-out condition of the proposed driveway was beneficial for pedestrian safety, and noted that a sidewalk had been built recently on the east side of Fraser Drive.

[33] The Board received no expert evidence to suggest that traffic and safety would be compromised from the townhouses. The Board is confident in the Town's assessment of when and where traffic studies are required, and none was required in this case. Based on the small number of units proposed, the effect on traffic will be minimal. The frontage of the townhouse property is sufficient to accommodate a driveway and adjacent green space.

PPS and Conclusions

[34] Ms. Kuchma and Mr. Davidson testified that the ZBA is consistent with the PPS and represented good planning. They found the ZBA consistent with the PPS directives for the efficient use of land and services, for compact form and intensification, and for meeting a range of housing needs. Mr. Balango testified that the ZBA was not consistent with the PPS because the location was not appropriate within a low density area.

[35] The Board accepts the evidence of Ms. Kuchma and Mr. Davidson. The Board considers that the scale and density allowed by the ZBA are suitable for the area, and further the policy objectives of the PPS.

[36] In summary, the Board finds the ZBA to be consistent with the PPS and to conform with the BCOP and the KOP. The Board has had regard to the decision of the Town and the concerns of the residents and finds that the issues are addressed adequately in the special provisions in the ZBA. Further provisions are added to the ZBA as recommended by the Planners during the hearing to address the townhouse height and garage location, and one access for the semi-detached dwelling onto Kincardine Avenue.

ORDER

[37] The Board ORDERS that the appeal is allowed in part, and the Zoning By-law is amended and approved in the form of Exhibit 2, p. 83 - 85 and attached hereto as Attachment 1, subject to the following amendments:

- A new subsection (iii) is added to Item 2, s. 12.3.X as follows: (iii) Access to Kincardine Avenue shall be limited to one access point.
- Subsection (i) in Item 3, s. 14.3.X is replaced as follows: (i) A maximum of 5 Row Dwelling Units shall be permitted, limited to one storey with a

maximum height of 8.3 metres at the peak of the roof, and decks to be erected at ground level.

- Subsection (iv) in Item 3, s. 14.3.X is replaced as follows: (iv) A detached accessory structure may encroach no more than 1.5 metres into the front yard of the subject lands.
- A new subsection is added to Item 3, s. 14.3.X as follows: (vi) The north side yard shall be no less than 5.49 metres.

“S. Tousaw”

S. TOUSAW
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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Appendix 'B'
Draft Site-Specific By-law

PL170489 - Attachment 1

Proposed Zoning By-law

The Corporation Of The Municipality Of Kincardine

No. 2017

Being A By-Law To Amend Zoning By-Law No. 2003-25, Being The Comprehensive Zoning By-Law For The Municipality Of Kincardine

2459825 Ontario Inc. c/o Tom Kerr

Part of Park Lots 1 & 2 (being Part 1 on RP 3R-9817),
Geographic Town of Kincardine, Municipality of Kincardine

Whereas Section 34 of the Planning Act, R.S.O 1990, Chapter 13 authorizes the Councils of Municipalities to enact and amend zoning by-laws which comply with an approved official plan;

And Whereas the Council of the Corporation of the Municipality of Kincardine has enacted By-law 2003- 25, a zoning by-law enacted under Section 34 of the said Planning Act;

And Whereas the Council of the Corporation of the Municipality of Kincardine desires to amend By-law 2003-25;

Now Therefore the Council of the Corporation of the Municipality of Kincardine ENACTS as follows:

1. Schedule 'A' to By-law No. 2003-25 as amended, is hereby further amended by changing thereon from 'Residential One (R1)' Zone to 'Residential One Special (R1-bl)' and 'Residential Three Special (R3-w)' Zones on those lands described as Part of Park Lots 1 & 2 (being Part 1 on RP 3R-9817), Municipality of Kincardine (geographic Town of Kincardine), as outlined on the attached Schedule 'A'.
2. By-law No. 2003-25, as amended, being the Comprehensive Zoning By-law for the Municipality of Kincardine, is further amended by amending the following paragraph, as follows:

12.3.X Notwithstanding their 'R1' zoning designation, those lands delineated as 'R1-bl' on Schedule 'A' to this By-law may be used in accordance with 'Residential One' purposes in compliance with the 'R1' zone provisions contained in this By-law, excepting however, that:

 - i. The minimum lot frontage shall be no less than 9.9 m.
 - ii. A maximum of one dwelling unit per each half of the semi-detached dwelling shall be permitted.
3. By-law No. 2003-25, as amended, being the Comprehensive Zoning By-law for the Municipality of Kincardine, is further amended by amending the following paragraph, as follows:

14.3.X Notwithstanding their 'R3' zoning designation, those lands delineated as 'R3-w' on Schedule 'A' to this By-law may be used in accordance with 'Residential Three' purposes in compliance with the 'R3' zone provisions contained in this By-law, excepting however, that:

- i. A maximum of 5 Row Dwelling Units shall be permitted.
 - ii. A privacy fence is required to be constructed along the North property adjacent to properties fronting onto Duncan Place.
 - iii. Prior to Site Plan approval, an enhanced landscaping plan shall be submitted and approved to the satisfaction of the Municipality of Kincardine.
 - iv. A detached accessory structure may encroach +/- 1.5 m into the front yard of the subject lands.
 - v. The minimum lot frontage shall be no less than 15.24 m.
4. This By-law takes effect from the date of passage by Council and comes into force and effect pursuant to the provisions of the Planning Act, R.S.O. 1990.
5. This By-law may be cited as the "Amendment to Comprehensive Zoning By-law 2003-25, (Part of Park Lots 1 & 2 (being Part 1 on RP 3R-9817, Town of Kincardine, Municipality of Kincardine), By-law".

Read a First and Second time this _____ day of _____, 2017

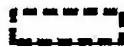
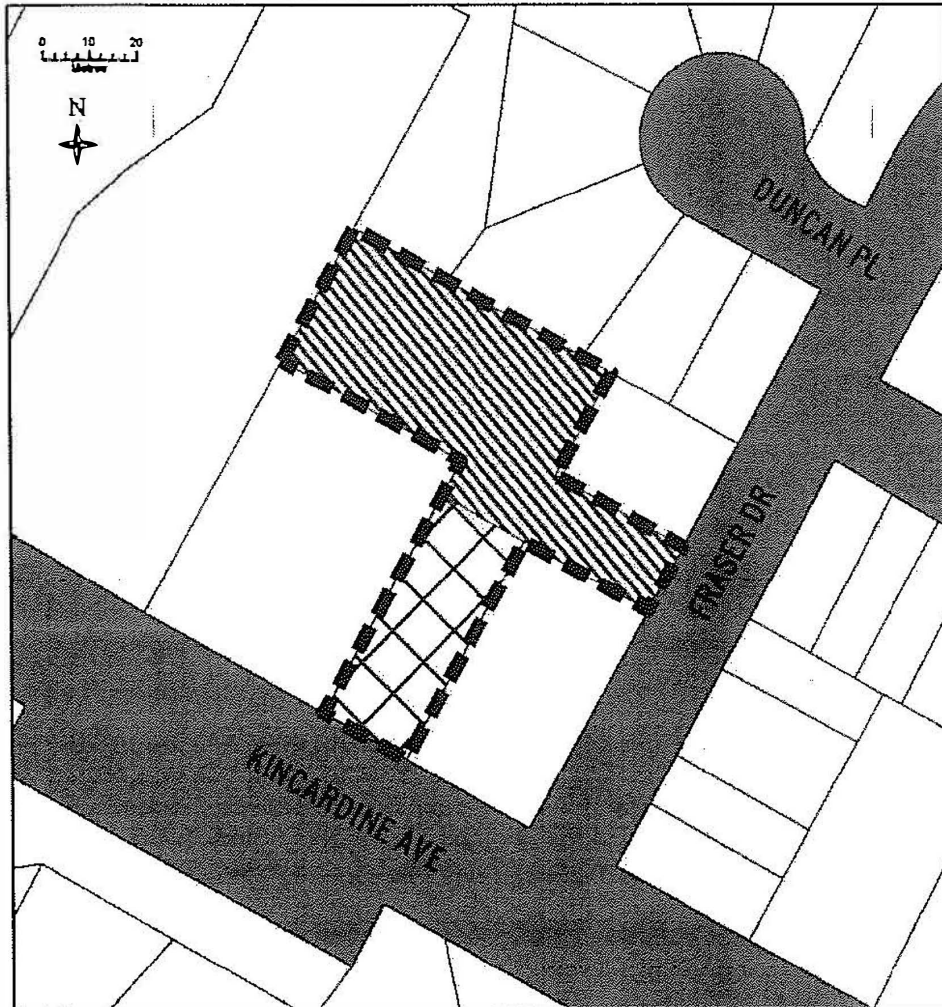
Read a Third time and Finally Passed this _____ day of _____, 2017

Mayor

Clerk

Schedule 'A'

Part of Park Lots 1 & 2 (being Part 1 on RP 9817)
Municipality of Kincardine (geographic Town of Kincardine)



Subject Property



Lands to be zoned 'R3-w - Residential Three Special'



Lands zoned 'R1-bl - Residential One Special'

This is Schedule 'A' to Zoning By-law
Amendment No. _____ passed this
_____ day of _____.

Mayor _____

Clerk _____