

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: October 17, 2016

CASE NO(S): PL140985

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

Applicant and Appellant: 2373521 Ontario Corporation
Subject: Application to amend Zoning By-law No. 81-19–
Refusal or neglect of Township of Uxbridge to
make a decision
Existing Zoning: Residential First Density (R1) and Residential
Second Density (R2)
Proposed Zoning: Residential Multiple
Purpose: To permit the development of 39 condominium
townhouses
Property Address: 62 Mill Street
Municipality: Township of Uxbridge
Municipal File No.: ZBA 2014-02
OMB Case No.: PL140985
OMB File No.: PL140985
OMB Case Name: 2373521 Ontario Corporation v. Uxbridge
(Township)

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Referred by: 2373521 Ontario Corporation
Subject: Site Plan
Property Address: 62 Mill Street
Municipality: Township of Uxbridge
OMB Case No.: PL140985
OMB File No.: PL140986

Board Rule 107 states:

107. Effective Date of Board Decision A Board decision is effective on the date that the decision or order is issued in hard copy, unless it states otherwise.

Pursuant to Board Rule 107, this decision takes effect on the date that it is e-mailed by Board administrative staff to the clerk of the municipality where the property is located.

Heard: November 3, 6, 9, 10, 12, 16, 17, 2015 in
Uxbridge, Ontario

APPEARANCES:

Parties

Counsel

2373521 Ontario Corporation

S. D. Rogers

Township of Uxbridge

Q. Annibale, B. Ruddick (Student-at Law)

Uxbridge-Gouldville Citizens
Association Inc.

A. Sabourin, K. Matveev (Student-at-Law)

DECISION DELIVERED BY C. CONTI AND ORDER OF THE BOARD

INTRODUCTION

[1] This is the decision for an appeal by 2373521 Ontario Corporation (“Applicant”) against the failure of the Township of Uxbridge (“Township”) to approve applications for an amendment to Zoning By-law No. 81-19 and for site plan approval regarding a property at 62 Mill Street (“subject property”) in Uxbridge .

[2] The current proposal that is before the Board is to construct 22 new semi-detached residential units, four new detached residential units and to retain an existing one and a half storey heritage dwelling resulting in a total of 27 residential units on the property. An internal road is proposed to run south from Mill Street to provide access to the residences. The application has been revised from a 40-unit residential development which had been previously proposed for the property.

[3] The subject property consists of a relatively large parcel, 1.5 hectares (“ha”) in size, on the south side of Mill Street, known as the Gould Estate, within a residential

area of the Township. The heritage dwelling, a driveshed and another shed are currently located on the property. The remainder of the lands is vacant. The subject property has been designated through s. 29 of the *Ontario Heritage Act* and the Township has passed By-law No. 2010-171 (Exhibit 1, Tab 13) which sets out the subject property's heritage attributes.

[4] At the beginning of the hearing, the Board was informed that the Applicant and the Township had reached a settlement based upon the revisions to the proposal and they filed Minutes of Settlement that included a revised By-law Amendment (Exhibit 7). Ms. Rogers requested that the hearing on the By-law Amendment should proceed to consider the proposal and the site plan concept. She indicated that she was seeking approval of the revised By-law Amendment. She also indicated that she would be requesting approval of the site plan in principle and that the remainder of the hearing on the site plan be adjourned *sine die* to provide time for some details to be finalized.

[5] The Board heard that the Uxbridge-Gouldville Citizens Association Inc. ("UGCA") remained in opposition to the application. The hearing proceeded to consider evidence regarding the revised proposal and By-law Amendment.

[6] Prior to the hearing, a motion had been filed by the Applicant according to the Board's *Rules of Practice and Procedure* ("Rules") requesting that the will-say statements for three witnesses intended to be called by the UGCA should be struck and that the witnesses should not be allowed to testify (Exhibit 4, Tab 83). The Board heard that two of the witnesses would not be providing evidence and that the motion was now being brought only with respect to the evidence of Andrew Jeanes.

[7] Ms. Rogers argued that Mr. Jeanes' witness statement (Exhibit 6, Tab 107) did not set out his opinion and provided little disclosure about the positions that he would take in presenting his evidence. She maintained that this would make it impossible for her witnesses to address any concerns he may raise in his testimony. She also contended that this is contrary to the requirements for the content of expert witness

statements set out in the Procedural Order for the hearing (Exhibit 2, Tab 35) and in the Board's Rules. She maintained that it is also contrary to the intent of the Procedural Order that requires the filing of witness statements and reply statements so that opposing parties can prepare for issues to be raised at the hearing.

[8] Ms. Rogers indicated that because Mr. Jeanes' opinion has not been disclosed, it may be necessary to adjourn the proceeding after hearing his evidence so that she could consult with her expert witnesses in order to prepare for cross-examination.

[9] Ms. Sabourin provided a response to the motion (Exhibit 4, Tab 85) indicating that Mr. Jeanes would be testifying under summons and that a will-say statement had been submitted to provide an indication of the content of his evidence. She maintained that the level of detail is appropriate for a summonsed witness. Ms. Sabourin noted that paragraph 11 of the Procedural Order sets out the requirements for summonsed expert witnesses which indicates that parties must file a brief outline of the evidence that will be provided. She maintained that there is greater onus on expert witnesses retained by a party to provide detailed opinions, rather than an expert witness under summons.

[10] Ms. Sabourin maintained that the will-say statement contains some positions that will be further explored through Mr. Jeanes' testimony. She contended that any potential prejudice did not result from any actions of the UGCA and that there is time to address concerns about the content of the will-say statement.

[11] The Board carefully considered the motion and the response as well as the will-say statement provided for Mr. Jeanes. In reviewing the will-say statement, the Board determined that some paragraphs provided opinions but lacked detail, some paragraphs were general in nature and did not provide opinions and others provided opinions in sufficient detail. The Board delivered the following oral ruling about the motion:

The Board agrees with the submissions of Ms. Rogers that the intent of requiring statements to be filed is to provide disclosure of the opinions of witnesses so that parties can prepare their cases. In reviewing the will-say statement of Mr. Jeanes and the affidavit provided in response to the

motion, many of the items that apparently will be addressed do not include Mr. Jeanes' opinions. Also, in the affidavit supporting the response to the motion, Mr. Jeanes indicated reluctance to comment on a specific proposal.

The Board believes that there may be value in hearing Mr. Jeanes' testimony, but in the interest of procedural fairness, if evidence will be provided by Mr. Jeanes with respect to an opinion on the suitability of this proposal and with respect to paragraphs 6, 10, 13, and 14 of the will-say statement, details of the position he will take must be communicated to the moving party by the end of the day on November 4th.

The Board anticipates that evidence related to paragraphs 5, 7, 8 and 11 to be more general in nature. Regarding paragraphs 9 and 12, the Board considers that an opinion is already provided in the will-say statement.

If detailed opinions are not provided regarding paragraphs 6, 10, 13 and 14 by November 4th the Board will not hear evidence from Mr. Jeanes' related to those paragraphs.

[12] Pursuant to the Board's ruling, Mr. Jeanes provided his opinions related to the above-noted paragraphs in his witness statement and was permitted to address those matters in his testimony.

[13] The hearing proceeded to consider evidence related to the appeal.

ISSUE

[14] The main issue in this appeal is whether or not the proposed By-law Amendment complies with the Township's Official Plan as required through s. 24(1) of the *Planning Act* and with the other relevant planning documents that apply to the proposal. More specifically the form and density of the proposed development and the manner in which the proposal incorporates the heritage dwelling and other heritage aspects of the subject property are critical issues in making the decision on the appeal.

EVIDENCE

[15] The Board heard evidence on behalf of the Applicant from Ryan Mino-Leahan, an Associate with KLM Planning Partners Inc. Mr. Mino-Leahan is a Registered

Professional Planner who has approximately 10 years of experience. He was qualified by the Board as an expert capable of giving opinion evidence in land use planning.

[16] The Board heard evidence on behalf of the Applicant from Robert Martindale, Principal of Martindale Planning Services. Mr. Martindale is a Registered Professional Planner and a Member of the Canadian Association of Heritage Professionals and the Ontario Association of Heritage Professionals. He was qualified by the Board as an expert capable of giving opinion evidence on heritage conservation matters.

[17] The Board heard evidence on behalf of the Applicant from David Waverman, who had been Senior Landscape Architect and Professional Heritage Consultant with Golder Associates Ltd. Mr. Waverman is a cultural heritage landscape specialist. He was qualified by the Board as an expert capable of giving opinion evidence in the area of cultural heritage landscapes.

[18] The Board heard evidence on behalf of the Township from Elizabeth Howson, Principal with Macaulay, Shiomi, Howson Ltd. Ms. Howson is a Registered Professional Planner. She was qualified by the Board as an expert in land use planning.

[19] The Board heard evidence on behalf of the UGCA from Douglas Moffat, Sandra Reiner, Jennifer Welch, and Robert Miller who live in proximity to the subject property.

[20] The Board heard evidence from Mr. Jeanes, Cultural Consultant with the Ministry of Tourism, Culture and Sport who was called by the UGCA under summons. He was qualified by the Board as an expert in the field of cultural heritage and land use planning policy.

[21] The Board heard evidence on behalf of the UGCA from Wayne Morgan, Principal of Wayne Morgan Heritage Planner. Mr. Morgan is a Registered Professional Planner and Member of the Canadian Association of Heritage Professionals. He was qualified by the Board as an expert in the fields of land use planning and heritage planning.

RELEVANT FACTS

[22] Based upon the evidence and submissions of the parties, the Board has determined that the following facts are relevant to this appeal.

[23] The subject property is designated as Residential Area in the Township's Official Plan which allows residential use of the lands. A small area in the southwest corner of the property is within the Oak Ridges Moraine Conservation Plan ("ORMCP") area (Exhibit 9).

[24] The subject property is within the urban boundary and the built boundary of the Township and has been identified as part of the Community Improvement area.

[25] The Cultural Heritage Resource Conservation Policies in s. 1.4 of the Township Official Plan are particularly relevant to the proposal. In s. 1.4.2, the Official Plan sets out policies for considering new development. This section states in part:

- (a) All new development permitted by the land use policies and designations of this Plan shall maintain cultural heritage resources and integrate such resources into the development. The Township shall encourage the preservation and continued use, including adaptive re-use where appropriate, of cultural heritage resources identified in the Township's Register of Cultural Heritage Resources and their integration into new development proposals through the approval process and other mechanisms.
- (b) All new development in older established areas of historic, architectural or landscape value shall be encouraged to develop in keeping with the overall character of these areas. The Township may impose, as a condition of any development approvals, the implementation of appropriate conservation, restoration or mitigation measures to ensure the preservation of any affected cultural heritage resources. In addition, the Township may establish Heritage Sign Districts through its sign by-law to ensure that signage reflects the character of heritage areas.
- (c) All options for on-site retention of buildings and structures which are determined to be cultural heritage resources shall be exhausted before resorting to relocation. Relocation of built heritage resources shall only be considered through a Cultural Heritage Impact assessment, in accordance with Section 2.7.4 vii) of the Plan, that addresses retention and relocation...

- (g) Township Council shall encourage measures which enhance public appreciation and visibility of cultural resources, including interesting buildings, structures, or landscapes of historic, archeological or scenic value. (Exhibit 1, Tab 17, p. 94-95)

[26] The policies in s. 1.4.3 of the Official Plan also apply. Section 1.4.3 (a) states the following:

- (a) It shall be the policy of Township Council to use all relevant legislation including the *Ontario Heritage Act*, *Planning Act*, *Environmental Assessment Act* and the *Municipal Act* to ensure preservation and enhancement of cultural heritage resources, including their adaptive re-use where appropriate, and integration into new development. (Exhibit 1, Tab 17, p. 95)

[27] The proposal must comply with the policies in s. 2.4, the Community Design Strategy, of the Official Plan. This section sets out requirements for a number of factors including the design of streets, streetscapes, views, and landscape design.

[28] Through the Official Plan policies for Residential Areas, low density and medium density development is permitted.

[29] The proposal must comply with provisions of s. 2.5.5.3.1 for development in Established Residential Areas. This section states the following:

Established residential areas are neighbourhoods where potential for new development or redevelopment is limited. Applications for new development in such areas shall be evaluated based on an assessment of whether the proposal can generally maintain or enhance the following elements of the structure and character of the surrounding residential area:

- i) the scale of development with respect to the height, massing and density of adjacent buildings and structures;
- ii) the nature of the streetscape as defined by such elements as landscaped areas, and the relationship between the public street, front yards and primary entrances to dwelling units;
- iii) the relationship between the rear wall of buildings and rear yard open spaces;

- iv) siting of buildings in relation to abutting properties ensures that there will be no significant adverse impacts with respect to loss of privacy and shadowing, and that appropriate buffering can be provided;
- v) generally respects the residential lotting pattern in the immediate surrounding area;
- vi) proposed grading and stormwater management is satisfactory to the Township, and in particular, there is no impact related to these factors on adjacent properties;
- vii) development is on a public or condominium road;
- viii) any proposed roads are adequate to accommodate all relevant public services including emergency services and garbage collection;
- ix) protection of the trees and other natural features identified as significant by the Township, in consultation with the Conservation Authority;
- x) does not restrict or prevent the orderly development of adjacent properties: and,
- xi) design of the development conforms with the policies of Section 2.4, Community Design and enhances the immediate surrounding area. (Exhibit 1, Tab 17, p. 143-144)

[30] The proposal must comply with density and height requirements in s. 2.5.5.3.3 and 2.5.5.3.4. The density requirements for designated Residential Areas are set out in s. 2.5.5.3.3 which states:

The minimum permitted density shall be 15 units per net hectare (6 units per net acre), with a maximum density of 25 units per net hectare (10 units per net acre). However, limited areas of medium development shall be permitted in accordance with the provisions of Section 2.5.5.3.2 with a minimum density of 25 units per net hectare (10 units per net acre) to a maximum density of 35 units per net hectare (14 units per net acre). Net density shall be defined as the area of the site and one half the area of any abutting local road. (Exhibit 1, Tab 17, p. 145)

[31] In s. 2.5.5.4.1 the Official Plan includes a specific policy for the subject property which states the following:

Notwithstanding any other policies of this section, any redevelopment of the property at 62 Mill Street, shall conserve the existing dwelling. In addition, such a redevelopment will be designed to complement the character of existing dwelling and uses on adjacent lots. As a basis for evaluation of such a proposal, the Township shall require the submission of elevations and computer models, as well as plans required by Section 2.7.4 ii), and any other relevant information in accordance with the provisions of Section 2.7 which demonstrates that the proposed development satisfies the relevant policies of this Plan, particularly Section 2.4. (Exhibit 1, Tab 17, p. 145)

[32] With regard to intensification, in s. 2.5.2.2 i) the Official Plan states:

i) **Built Boundary**

Schedule "D" identifies the "Built Boundary" as determined by the Province. Lands within the boundary are considered to be those parts of the Township that are already developed as of June 2006. Any development within the Built Boundary is considered intensification and contributes to the intensification target in Section 2.5.2.3 of this Plan. (Exhibit 1, Tab 17, p. 140)

[33] In s. 2.5.2.2 iv), the Official Plan identifies Established Residential Areas as having modest or incremental potential for intensification in accordance with the policies in s. 2.5.5.3.1 (Exhibit 1, Tab 17, p. 141).

[34] The proposal must be consistent with the Provincial Policy Statement ("PPS"). The policies of the PPS through s. 1.1.3.2, 1.1.3.3, 1.1.3.5 and s. 1.4.3 promote the efficient use of land and resources, the identification of opportunities for intensification and redevelopment, the provision of a mix of land uses, and they encourage all forms of intensification.

[35] The policies in s. 2.6 of the PPS are relevant because of the designation of heritage components of the property. In s. 2.6.1 of the PPS it states, "*Significant built heritage resources and significant cultural heritage landscapes shall be conserved.* Furthermore, in s. 2.6.3 the PPS states, "Planning authorities shall not permit *development and site alteration on adjacent lands to protected heritage property except where the proposed development and site alteration has been evaluated and it has*

been demonstrated that the *heritage attributes* of the *protected heritage property* will be *conserved*.” (Exhibit 1, Tab 2, p. 19)

[36] The proposal is subject to the requirements of the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”) including s. 2.2.3.6 b) which encourages intensification generally throughout the built up area. (Exhibit 1, Tab 3, p. 28)

[37] The application is also subject to some requirements of the Greenbelt Plan, the ORMCP and the Lake Simcoe Protection Plan.

[38] The subject property is zoned Residential First Density, R1, Residential Second Density, R2, and Residential Holding Zone, RH, in Township Zoning By-law No. 81-19. The proposed By-law Amendment provides for an R2—exception 30 zoning for the subject property which is a site specific zoning that will permit the development.

ISSUES, ANALYSIS AND FINDINGS

[39] The Board has carefully considered all of the evidence and submissions of the parties including the authorities and all issues on the issues list attached to the Procedural Order (Exhibit 2, Tab 35) although they might not be specifically mentioned in the remainder of this decision. While all issues have been thoroughly considered, based upon the evidence the Board has determined that the issues that are critical for making a decision about this appeal are those discussed below. The Board’s findings are provided where appropriate.

[40] To briefly summarize the positions of the parties, the Applicant and the Township contended that the revised proposal is appropriate and that it addresses all applicable planning requirements. The Applicant maintained that the proposal is an appropriate form of development for the subject property given its location within the urban boundary of the Township and it represents a suitable level of intensification of the site which is encouraged by the policies of the PPS and Growth Plan and is permitted through the polices of the Official Plan. Furthermore, the Applicant maintained that the

proposal conserves the heritage features of the subject property in an appropriate manner.

[41] The Township supported the revised proposal and agreed with the Applicant that it is appropriate and addresses the relevant planning provisions. The Township maintained that the proposal has been revised sufficiently to address its concerns. Through the evidence of Ms. Howson, the Board heard that the revised proposal is similar to a Conceptual Plan for the site that had been developed by the Township. Based upon the changes to the proposal and studies that have undertaken to deal with the heritage conservation issue and other matters, the Township maintained that the proposal is acceptable.

[42] The UGCA maintained that the development is not appropriate for the subject property. They contended that the proposal is too dense for the site and that it will not be compatible with the surrounding development. According to their evidence, the proposal will result in loss of privacy for the existing residents and may create traffic issues.

[43] The UGCA maintained that the proposed treatment of the heritage features of the site is not appropriate and the heritage dwelling should remain in its current location. There was also concern expressed about the heritage value of the hedgerow and trees located on the subject property.

[44] The UGCA also expressed concern about a number of other issues including stormwater management and potential impacts of the proposal on the adjacent Elgin Pond area.

[45] The UGCA agreed that some development of the subject property may be acceptable. Through the evidence of Mr. Morgan, they provided an alternative proposal (Exhibit 19, p. 10) that involved the construction of eight new single detached dwellings and leaving the heritage dwelling in its current location.

[46] The parties have raised a number of issues through the evidence. However, the Board considers two matters to be critical for making the decision in this appeal. The first is whether the form, extent and density of development are appropriate for the area and are permitted through the provisions of the Township's Official Plan and the other relevant planning documents. The second is whether the development conserves the heritage features of the subject property in a way that complies with all applicable requirements and By-law No. 2010-171.

[47] While By-law No. 2010-171 was passed under s. 29 of the *Ontario Heritage Act*, concerns about development of the property and the protection of its heritage attributes are required to be considered mainly under the provisions of the *Planning Act*, the PPS, the Growth Plan, the ORMCP, the Lake Simcoe Protection Plan and the other applicable Official Plans and planning documents. These matters and other issues are discussed further in the following sections.

Extent, Density and Form of Development

[48] With regard to the first matter, it is clear from the evidence that the subject property is a suitable location for residential development and some level of intensification. There were no policies or provisions of legislation provided in the evidence that would prevent the development or some level of intensification of the property.

[49] The direction in the PPS and Growth Plan is to encourage intensification and the more efficient use of land and resources. Larger properties within the urban boundary and the built boundary of municipalities are often prime candidates for intensification. The subject property is a large parcel within the urban boundary and built boundary of the Township. Furthermore, the policies of the Official Plan noted earlier allow redevelopment of the subject property.

[50] However, the degree of intensification and development was a matter of dispute among the parties.

[51] In Established Residential Areas, the Official Plan indicates that the potential for new development and redevelopment is limited. Furthermore, s. 2.5.2.2 identifies potential intensification areas within the Township and in part iii) it includes, "Other vacant or underutilized sites, in particular larger, undeveloped properties in areas designated "Residential Area" not located in Established Residential Areas or in Employment Areas."(Exhibit 1, Tab 17, p. 141)

[52] However, the Applicant submitted a Background and Future Directions Report from the Township's Official Plan Review Study which had been considered by the Township in preparing its growth management strategy (Exhibit 14). The report identifies the subject property as a candidate for intensification and the degree of intensification contemplated is similar to the degree of intensification proposed in the application. While the Township did not incorporate this degree of intensification for the property in its growth management strategy, the report is an indication that this level of intensification was considered.

[53] The Board concludes from the evidence, that some intensification should be permitted in Established Residential Areas, but it should be to a lesser degree than for new residential areas.

[54] The evidence of Ms. Howson and Mr. Mino-Leahan was that the proposal would result in a density of approximately 18 units/ha which they maintained is appropriate for the area. The concept provided in Mr. Morgan's evidence would result in a much lower density of approximately 6 units/ha. The proposal by Mr. Morgan represents substantially less density than the requirement of 15 units/ net ha to 25 units/ net ha for residential areas in s. 2.5.5.3.3 of the Official Plan. The Board interprets the intent of this provision as that the density requirements should apply to all residential areas. The Applicant's proposal would result in a density that is at the lower end of the range of the densities identified in s. 2.5.5.3.3 for all residential areas. Established Residential Areas are not a separate designation, but are distinguished in the Official Plan through policies. No specific density requirements were provided in the Official Plan for

Established Residential Areas. However, through s. 2.5.5.3.1 and s. 2.5.2.2 iv) it is clear that some intensification in Established Residential Areas is acceptable but it should be at a more modest level than for New Residential Areas. Since some intensification is appropriate for Established Residential Areas and the proposed density falls at the lower end of the range identified in s. 2.5.5.3.3 for all residential areas, the Board concludes that the density proposed by the Applicant is an appropriate response to the Official Plan's policy requirements.

[55] In addition to consideration of density through s. 2.5.5.3.1 of the Official Plan, the way that the density is deployed in Established Residential Areas and the potential impacts on surrounding residential areas must be considered. Through this provision, development proposals in Established Residential Areas must be evaluated based on whether or not a number of elements of the structure and character of the surrounding residential area can generally be maintained and enhanced. It was Ms. Howson's and Mr. Mino-Leahan's evidence that all requirements of this section are met by the proposal.

[56] Mr. Morgan contended that the proposal would not maintain or enhance the character of adjacent properties in a number of respects and that the proposal does not comply with the requirements of s. 2.5.5.3.1 of the Official Plan. He noted that the area surrounding the subject property is characterized by larger single-family residential lots with substantial frontages and large front and rear yard setbacks. He provided photographic evidence of other properties in the immediate area (Exhibit 19, p. 2-5). He maintained that the proposed density is much greater than that of the surrounding area contrary to the intent of s. 2.5.5.3.1 i). With regard to s. 2.5.5.3.1 ii) he contended that the amount of landscaped areas on adjacent streets are between 65% and 75% and that the proposed front yards would be substantially less than front yards on Joseph Street. He maintained that the rear yards of adjacent properties are also much larger than the proposed rear yards contrary to the intent of s. 2.5.5.3.1 iii). In addition Mr. Morgan maintained that the lotting pattern of the proposal is not comparable to that of

the surrounding area, as shown on the last page of Exhibit 19, which does not meet the requirements of s. 2.5.5.3.1 v).

[57] In reviewing the provisions of s. 2.5.5.3.1 of the Official Plan, the Board concludes that they require compatibility of new development with the surrounding area and that the character of the area should not be significantly changed by the proposal. The wording of this section is that “applications for new development in such areas shall be evaluated based on an assessment whether the proposal can generally maintain or enhance the following elements of the structure and character of the surrounding residential area...” The terms “generally maintain or enhance” and “structure and character” are open to interpretation and little guidance is provided through the sections of the Official Plan submitted in evidence about the way they should be interpreted. However, s. 2.5.5.3.1 does not require that new development must have the same form and structure as that of the surrounding area. The alternative development concept provided by Mr. Morgan essentially proposes the same type of development, i.e. single family homes on large lots, as that which exists in the surrounding area.

[58] Furthermore, no special policies in the Official Plan or other applicable planning documents were provided to the Board that would require no change to the neighbourhood. Most of the properties surrounding the subject lands were developed much later than the subject property many in the 1950s and 1960s, and they are not considered to have heritage value. The Board was provided with no evidence that any of these properties have been designated under the *Ontario Heritage Act*. In addition, there has been no Conservation District designated for the area.

[59] After reviewing the evidence, the Board considers the wording of s. 2.5.5.3.1 to allow for some change in the area, but new development must be determined to “generally maintain or enhance” the elements of the structure and character of surrounding area identified in the section. The Board considers this policy to require that new development must be compatible and not result in fundamental change to the surrounding residential area.

[60] Ms. Sabourin in her submissions contended that the term “maintain” means “to exist or continue without changing” which she maintained is different from “compatibility”. She contended that past Board decisions have determined to “compatibility” to mean “capable of existing in harmony” which could permit greater change. (Exhibit 24, p. 10-11)

[61] However, the Board notes that, in the current case, the wording of s. 2.5.5.3.1 requires an assessment of whether the proposal can “generally maintain and enhance the following elements of the structure and character of the surrounding area”. In the Board’s opinion, the use of the word “generally” provides for some flexibility whereby new development proposals do not need to be the same as the surrounding area. The terms “structure” and “character” are also undefined in the Official Plan and may allow for flexibility. The Board finds that a more reasonable interpretation is that the provisions of s. 2.5.5.3.1 require compatibility and that the proposal should fit with the surrounding area and not cause fundamental change.

[62] The opinion provided by Ms. Howson and Mr. Mino-Leahan was that with regard to s. 2.5.5.3.1 i) the proposed development is composed of single and semi-detached dwellings similar in size to the surrounding houses. The proposed density is permitted for areas designated as Residential Area in the Official Plan and is at the lower end of the density permitted for these areas which is in keeping with the Official Plan direction that intensification should be more modest in Established Residential Areas. The scale of the proposed housing is in keeping with the heritage house and surrounding development. The provisions of the proposed By-law require that the height of the proposed dwellings cannot exceed the height of the heritage house (Exhibit 7, p. 11).

[63] With regard to s. 2.5.5.3.1 ii) and iii), Ms. Howson and Mr. Mino-Leahan indicated that the revised proposal has an appropriate amount of landscaped open space and the proposed dwellings have appropriate setbacks from the proposed street, from other houses and from the rear property lines.

[64] With regard to s. 2.5.5.3.1 iv), Ms. Howson and Mr. Mino-Leahan maintained that significant adverse impacts are not anticipated on abutting properties. The evidence of some residents who live adjacent to the subject property contended that there would be significant impacts. However, through cross-examination, the Board heard that there would still be substantial separation between the proposed dwellings and the existing dwellings on abutting properties, and most existing properties would have one or two back yards of the new subdivision abutting their rear yards. The Board also heard that no shadow impact is expected because of proposed and existing setbacks.

[65] With regard to s. 2.5.5.3.1 v), the Board heard that the lotting pattern of the revised proposal is more in keeping with the lotting pattern of the surrounding area. The Board recognizes that it is not the same, but the provision requires the existing lotting pattern to be generally respected.

[66] Based upon the evidence, the Board finds that the proposal is a reasonable response to the requirements of s. 2.5.5.3.1 and provides a form, extent and density of development that will generally maintain and enhance the character of the surrounding area. While the UGCA may prefer a development that is the same as the surrounding area, this is not required by s. 2.5.5.3.1 or by the other provisions of the Official Plan that were provided in the evidence.

[67] The Board agrees with the opinions of Ms. Howson and Mr. Mino-Leahan that the form, scale, density and height of the development are appropriate, that the proposed landscaped open space areas and setbacks are suitable, that no significant adverse impact is expected, that the lotting pattern generally respects the surrounding area and that all relevant provisions of s. 2.5.5.3.1 are satisfied.

[68] In view of the above, the Board concludes that the proposed form and density are appropriate for the subject property and that all requirements of s. 2.5.5.3.1 will be met.

[69] The evidence of Ms. Howson and Mr. Mino-Leahan was also that the proposal complies with the Community Design polices in s. 2.4 of the Official Plan. Pursuant to the requirements of this section, the proposed dwellings will be located on a new condominium street which runs south from Mill Street. Public access and linkages will be provided through an easement. The new dwellings will be oriented toward the new street and the heritage dwelling will face Mill Street. Views into Elgin Park to the south will be maintained. The proposal will provide for approximately 50% landscaped area and a planting plan will be provided through the site plan process. The Board heard that other requirements of s. 2.4 will also be dealt with through the site plan process.

[70] From the evidence, the Board concludes that the requirements of s. 2.4 of the Official Plan are satisfied by the proposal.

[71] In her written submissions (Exhibit 24), Ms. Sabourin raised the authority, *Urquhart v. Cobourg (Town) Committee of Adjustment* [1999] O.M.B.D. No. 612 in which the Board refused an application for a consent and minor variances which had been approved by the Committee of Adjustment in part because the proposed lots would not maintain the character of the area. While there are some similarities with regard to the above-noted decision and the circumstances in the current appeal, the Board finds that there also significant differences. The above decision was issued prior the 2005 PPS and the 2014 PPS, and also before implementation of the Growth Plan. Due to the direction in these documents, there is now greater emphasis on intensification of development and more efficient use of land and infrastructure than there was in 1999.

[72] Furthermore, the current proposal is an application for a Zoning By-law Amendment, whereas the consent and variance application considered through the above noted decision was not subject to a rezoning process. The degree of analysis and study is generally more in depth in a rezoning process than in a variance and consent process and in the current case the Board has been satisfied that the relevant concerns have been addressed, including the provisions related to maintaining the

character of the area. Based upon these factors, the Board considers the current appeal to be significantly different from that which was the subject of the above-noted decision.

[73] Based upon the above, the Board finds that the form, extent and density of the proposed development are appropriate. Intensification of the property is encouraged through the PPS and Growth Plan and permitted through the provisions of the Township Official Plan. Furthermore, the Board finds that the degree of intensification is appropriate for the property.

Conservation of Heritage Features

[74] As noted above, the Board has determined that the second key matter in making this decision is whether or not the proposed means of protecting the heritage features of the property are appropriate and comply with the requirements of the PPS, the Official Plan, By-law No. 2010-171 and any other applicable provisions.

[75] The key provisions of the PPS related to the protection of cultural heritage are in s. 2.6 which is noted earlier in this decision. This section requires the conservation of built heritage resources and cultural heritage landscapes and also requires an evaluation of proposed development on adjacent lands to ensure that heritage attributes of protected heritage properties will be conserved. "Heritage attributes" is a defined term in the PPS which means the principal features or elements that contribute to a protected heritage property's cultural heritage value or interest. The term "conserved" is also a defined term which means, "...the identification, protection, management and use of *built heritage resources, cultural heritage landscapes and archeological resources* in a manner that ensures their cultural heritage value or interest is retained under the *Ontario Heritage Act*." The PPS provisions for the conservation of built heritage resources can be satisfied through the implementation of the recommendations of a Heritage Impact Assessment and consideration of mitigative measures or alternative development approaches (Exhibit 1, Tab 2, p. 23).

[76] The key provisions of the Township's Official Plan related to cultural heritage are the Cultural Heritage Resource Conservation Policies in s. 1.4, and policy 2.5.5.4.1 which deals specifically with the subject property.

[77] The policies in s. 1.4 are intended to ensure that the Township's Cultural Heritage resources will be conserved and that development will occur in such a way that cultural heritage resources are protected and conserved. Section 1.4.2 (a) requires new development to maintain cultural heritage resources and integrate them into the development. Furthermore, the continued use and adaptive re-use where appropriate is encouraged. Through s. 1.4.2 (b), new development in older areas of historic value is encouraged to develop in keeping with the character of the area. Section 1.4.2 (c) requires all options for "on-site retention" of heritage structures to be exhausted before resorting to relocation and requires a Cultural Heritage Impact Assessment where relocation is considered. Through s. 1.4.2 (g), the Township will encourage measures to enhance public appreciation and visibility of cultural heritage resources.

[78] Section 1.4.3 of the Official Plan sets out some of the tools that the Township will use to protect cultural heritage resources.

[79] The requirement of the specific policy for the subject property in s. 2.5.5.4.1 is that redevelopment of the subject property shall conserve the existing dwelling and shall complement the character of the dwelling and uses on adjacent lots. The section also requires the submission of plans, elevations and computer models related to the development.

[80] It is clear from the above provisions of the PPS and Official Plan that cultural heritage resources must be conserved. However, the policies allow for consideration of redevelopment of the subject lands as long as the cultural heritage resources are conserved. The specific policy for the subject property in s. 2.5.5.4.1 of the Official Plan permits redevelopment of the site but requires that the existing dwelling be conserved.

The policies require the submission of appropriate studies and plans to support the development and determine potential impacts on the cultural heritage resource.

[81] According to By-law No. 2010-171, the heritage value of the subject property lies in its association with the Gould family who were prominent in the affairs of the Township in the 19th century. The house was constructed by Isaac Gould who owned a woolen and grist mill, and became the Town Reeve, the Warden of Ontario County and eventually was elected as a Member of Parliament. The house was constructed in 1866 and it is thought to be the first brick house constructed in the Town (Exhibit 1, Tab 13, p. 64).

[82] The key heritage attributes are listed in the By-law and include the T-shaped plan, randomly course granite fieldstone foundation, one and a half storey moderately pitched form, original wooden soffits, kingpost and frieze board trim, solid masonry walls made of local clay brick including decorative arches and quoining, three bay front façade with central dormer and original wooden gothic arched door that opens onto the front porch, early 19th century classical front porch with simple wooden Doric columns, original front entrance with solid wooden paneled door, semi-elliptical transom and sidelights, and rear one-storey board and batten woodshed.

[83] A Heritage Impact Assessment was prepared for the Applicant by Mr. Martindale (Exhibit 3, Tab 52) which was revised and resubmitted for an updated proposal in August 2015 (Exhibit 4, Tab 70). The revised assessment considered a proposal for 33 dwelling units.

[84] A peer review of the Heritage Impact Assessment (Exhibit 3, Tab 64) and a separate Heritage Assessment (Exhibit 4, Tab 65) were completed for the Township by Jane Burgess of Stevens Burgess Architects. These studies considered the original proposal for the property which involved the construction of 39 linked townhouses and identified a number of issues. That proposal would have relocated the heritage dwelling, but rotated it to face east fronting on the condominium road. It would also have been

tucked behind existing houses on Mill Street (Exhibit 3, Tab 64, p. 845). The peer review and Heritage Assessment found that the proposal would negatively impact the heritage value of the subject property and recommended a number of mitigation measures (Exhibit 3, Tab 64, p. 848-853).

[85] According to the evidence, the proposal that is before the Board has been revised to respond to concerns raised in these studies, and according to Ms. Howson's evidence, it is close to the Conceptual Plan for the property developed by the Township (Exhibit 16, p. 3). The Township's Conceptual Plan was included in Ms. Burgess' witness statement at Exhibit 5, Tab 101C, p. 1496. Ms. Burgess was not called to testify, so her evidence could not be tested.

[86] According to the evidence, the current proposal involves relocating the heritage house approximately 45 metres ("m") to the north and 28 m to the east so that it will be situated on the east side of the proposed road, but will keep its northward orientation, facing Mill Street. It will also have a substantial set back from Mill Street. Part of the intent is to improve views of the building from Mill Street.

[87] The drive-shed on the subject property will not be retained, but material from the drive-shed will be used to clad a proposed utility building to be located at the rear of the house. The utility building will also function as a garage for the heritage dwelling and will have a substantial setback from the house. Also, while the foundation of the house will be removed, stone from the foundation will be used for facing the new foundation of the house.

[88] The evidence of Mr. Martindale was that the proposal will protect the heritage attributes of the site in a manner that complies with all requirements for the conservation of the cultural resources of the subject property and it is consistent with the PPS, and conforms to all planning requirements. Ms. Howson maintained that the current proposal as implemented through the proposed By-law is appropriate and meets the planning requirements with regard to protecting heritage resources.

[89] Her planning opinion was that the proposal is consistent with the PPS, it conforms to the Growth Plan, the Region of Durham Official Plan, the Township Official Plan, the ORMCP, the Lake Simcoe Protection Plan and represents good planning.

[90] The evidence of Mr. Jeanes questioned whether the heritage attributes of the subject property would be maintained through development. He noted that a new provision has been added to the PPS in s. 1.7.1 (d) of the current version which indicates that long term economic prosperity should be supported by encouraging a sense of place and conserving features that help define character including built heritage resources and cultural heritage resources.

[91] Mr. Jeanes referred to a number of documents that should be used to assess cultural heritage resources including, the Ontario Heritage Toolkit, the International Council on Monuments and Sites (“ICOMOS”) Venice Charter (Exhibit 18 B) and the ICOMOS Appleton Charter (Exhibit 18A). He maintained that these documents discourage relocating cultural resources. He also referred to the Eight Guiding Principles which had been produced by the Ministry of Tourism, Culture and Sports as providing critical guidance in the assessment of cultural heritage resources (Exhibit 1, Tab 10, p. 55).

[92] Mr. Jeanes contended that the Heritage Impact Assessment completed by Mr. Martindale did not reference the Eight Guiding Principles. He maintained that the assessment does not adequately address all potential concerns for development of the subject property. He also questioned the need to relocate the heritage dwelling on the subject property.

[93] Mr. Morgan contended that the relocation of the heritage house is not justified. He noted that the heritage experts agreed that the period of historic significance for the property was from 1837 to 1912 and for most of that time the heritage house was located behind the house built in 1839 by Joseph Gould. He maintained that in the reply witness statement of Ms. Burgess that restoring views from Mill Street through

relocation of the house was accepted only as a mitigation measure and not as a rationale for moving the house (Exhibit 5, Tab 102, p. 1503). He also stated that s. 1.4.2 (g) of the Township's Official Plan does not provide a rationale for moving the house. On this basis he maintained that there is no need to improve views of the house from Mill Street. He also contended that the foundation is an attribute listed in the By-law and it should not be removed. Mr. Morgan provided some examples of historic buildings that have been moved, but he indicated that this was only as a last resort.

[94] Mr. Morgan contended that additional features of the property should be conserved even though they have not been identified in By-law No. 2010-171. He indicated that the Heritage Impact Assessment can identify additional attributes. Mr. Morgan maintained that the spruce hedgerow should be identified as a heritage attribute and should be protected. He also contended that the location of the house on a rise of land above Mill Street and Elgin Pond is a heritage attribute and character defining element. Mr. Morgan noted that under the current *Ontario Heritage Act*, the Township Council could refuse an application to demolish the driveshed, even though it is not listed as a heritage attribute.

[95] Mr. Morgan's opinion was that the proposed relocation of the heritage dwelling does not comply with s. 1.4.2 (c) of the Township's Official Plan. He maintained that the reference in this section to "on site" means "in situ" and that moving the house to a different location on the property does not comply with this section.

[96] Mr. Morgan maintained that the proposal does not comply with s. 2.5.5.4.1 of the Official Plan because the development will not maintain or enhance the character of adjacent properties and the proposal does not comply with good conservation practice.

[97] Mr. Morgan contended that the proposal is contrary to s. 2 (d) of the *Planning Act* because the proposed development does not have appropriate regard for features of significant conservation and historical interest.

[98] After considering all of the evidence and the requirements that apply to the protection of the heritage features of the subject property, the Board agrees with the opinions provided on behalf of the Applicant and Township that the proposal conserves the heritage features of the subject property in an appropriate manner.

[99] With regard to the issue of relocating the heritage house, there is no doubt that a number of applicable policies and guidelines discourage it. However, the Board was not provided with evidence of any applicable provision or guideline that would prohibit it.

[100] Mr. Martindale and Ms. Howson maintained that s. 1.4.3 (c) of the Official Plan refers to the house being maintained “on-site” and that since the proposal will not be moving the house off the property, that this provision is not offended. Mr. Morgan disputed this interpretation and contended that moving the house on the subject property constituted relocation and that the house should be maintained “in situ”.

[101] After considering the wording of this section of the Official Plan, the Board concludes that the proposal sufficiently meets its intent. The section requires looking at “all options for on-site retention of buildings and structures” before resorting to relocation. While it is clear from the evidence that some options have been considered, it appears that not all options have been exhausted. However, it is clear that the heritage dwelling will be retained on site. The use of the phrase “on site retention” does not close off the possibility of moving the building. The clause could have used wording that would prohibit moving the building from its current location unless all other options were exhausted.

[102] One of the prime rationales for moving the house is to improve views from Mill Street. Ms. Burgess’ report identifies this as a benefit, but as noted earlier she maintained that it should not be used as a rational for relocation. Mr. Morgan contended that moving the heritage house to the proposed location would eliminate the house behind the house arrangement which he maintained was part of its historic context. He

noted that the Isaac Gould house was constructed behind a smaller frame house built by Joseph Gould. According to the evidence, this house was removed in 1917.

[103] According to Mr. Morgan's evidence, houses were constructed at 66 Mill Street and 70 Mill Street in the 1880s or 1890s. This would have partially obstructed views of the heritage house from Mill Street. However, according to the evidence, the house at 60 Mill Street which is immediately west of the driveway into the heritage house was constructed much later.

[104] The Applicant's evidence includes a photograph from approximately 1875 apparently taken from the vicinity of Mill Street which shows fairly unobstructed views into the property (Exhibit 3, Tab 57, p. 737). Mr. Morgan contended that not much can be concluded from this photograph and that it appears to be taken from a narrow cone of view.

[105] After reviewing the evidence, the Board concludes that views of the heritage House from Mill Street would have been available for a number of years. While they would have been obstructed by the Joseph Gould house until 1917 and partially obstructed by the houses at 66 and 70 Mill Street, greater views would have been available through the property at 60 Mill Street and possibly through the properties to the east.

[106] Furthermore, the Board cannot conclude that maintaining the Isaac Gould house behind the houses on Mill Street would have similar historic value as maintaining the house behind the house relationship of the Isaac Gold house and the Joseph Gould house.

[107] The Board acknowledges that the house behind the house condition existed for a number of years, but the Board does not agree that it is a part of the context that needs to be maintained. Undoubtedly, if the Joseph Gould house had not been torn down it would be important to conserve both houses and maintain the Isaac Gould house behind the Joseph Gould house. However, this is not the case.

[108] Furthermore, according to the evidence, no cultural heritage landscape has been designated for any part of the subject property that would require maintaining the house behind a house arrangement. While the designating By-law notes that the heritage house was built behind the house built by Joseph Gould, the house behind a house configuration was not identified as a significant feature or included in the heritage attributes in By-law No. 2010-171.

[109] Furthermore, by relocating the house as proposed and improving views from Mill Street, the proposal will enhance public appreciation and visibility of the heritage dwelling. This conforms to the direction in s. 1.4.2 (d) of the Township's Official Plan which states that the Township should encourage measures which enhance public appreciation and visibility of cultural resources, including interesting buildings. In addition, the Board understands that while the heritage dwelling will remain in private ownership, an easement will provide public access along the proposed condominium road.

[110] The Board recognizes that moving the house on the site will result in the removal of the "randomly coursed fieldstone foundation" which is identified in By-law 2010-171 as a heritage attribute. However, in view of overall approach of the proposal in conserving the heritage resource while permitting some intensification of the residential use, the Board considers the intent of the Applicant to use the fieldstone from the existing foundation as facing on the new foundation to be an appropriate manner to retain part of the value of this attribute. This can be considered to be a mitigative measure which the PPS permits to be used to conserve cultural heritage resources through recommendations of a Heritage Impact Assessment.

[111] With regard to the need to maintain the spruce hedgerow, the Board heard evidence from Mr. Waverman who indicated that he had prepared a cultural heritage tree assessment for the property (Exhibit 4, Tab 74). He concluded that the site had evolved over the decades and that some areas had naturalized and invasive species

were present on the site. He concluded that the site is not representative of a historic landscape.

[112] Mr. Waverman stated that the designating By-law does not refer to the landscape and does not mention the trees as contributing to the landscape attributes of the site. He noted that the hedgerow is comprised mainly of Norway Spruce, many of which are in poor condition. Mr. Waverman's expert opinion was that this does not represent a cultural heritage landscape.

[113] Based upon the evidence, the Board cannot conclude that the spruce hedgerow should be considered to be a heritage attribute as was suggested by Mr. Morgan. Furthermore, the Board cannot conclude from the evidence that there are heritage landscape features of the subject property that should be protected. The Board heard from Mr. Waverman that a landscaping plan is proposed for the new location of the heritage house that will provide a more appropriate setting for the house.

[114] The Board finds that the evidence has not established the existence of any additional heritage attributes or features of cultural significance on the property that necessitate refusal or changes to the proposal.

[115] In her submissions, Ms. Sabourin referred to the Board decision *Birchgrove Estates Inc. v. Oakville (City)* [2007] O.M.B.D. No. 108. Ms. Sabourin indicated that the decision noted the challenges in meeting both provincial goals of heritage conservation and intensification. Ms. Sabourin contended that two heritage attributes will be lost in the relocation and that the relocation is not consistent with the PPS.

[116] The Board recognizes that one heritage attribute, the foundation, will be changed in the current proposal, but as noted above, the Board has determined that it will be dealt with in an appropriate way. The other attribute that Ms. Sabourin has referred to is the location of the house, but the Board cannot determine from the evidence that the current location of the house is a heritage attribute. Ms. Sabourin contended that the relocation would not be consistent with the PPS, but as noted earlier, the PPS requires

that heritage resourced be conserved. The definition of “conserved” in the PPS with regard to heritage resources means protection, management and use and it may be achieved by implementing the recommendations of a Heritage Impact Assessment and mitigative measures. That is exactly the case here where the Heritage Impact Assessment has recommended relocation on the site and mitigative measures will be employed.

[117] Furthermore, in the Birchgrove decision noted above, the Board permitted the relocation of a number of heritage buildings to other properties in close proximity. The decision notes on page 8 that all provisions of the PPS must be considered and while the Board cannot dismiss the direction to conserve significant heritage resources, “...the Board also cannot dismiss or disregard the considerable emphasis and priority the Province has placed on intensification within built-up areas”.

[118] Based upon full consideration of the evidence, the Board finds that the revised proposal conserves the heritage attributes of the site in an appropriate manner and complies with all of the applicable policies of the Official Plan. While the foundation is a heritage attribute that will be removed, the Board heard that the foundation is in a poor state of repair. The proposal will provide a stable foundation for the house in the new location while retaining some components by using the stone as facing material.

[119] The proposal represents a method of permitting a reasonable level of intensification on a property that is a candidate for additional development and protects the cultural heritage resource in a way that balances concerns and meets the requirements of the Official Plan, PPS and other relevant provisions.

Other Issues

[120] In his evidence, Mr. Mino-Leahan addressed other planning issues that had been raised in the evidence and through the issue list.

[121] The Board heard that a Natural Heritage Evaluation (Exhibit 2, Tab 36) and a revised Natural Heritage Evaluation (Exhibit 3, Tab 54) were prepared for the subject property in response to requirements of s. 2.1 of the PPS and the natural heritage requirements of the ORMCP, the Lake Simcoe Protection Plan and other applicable plans. Mr. Mino-Leahan's testimony was that the studies found no significant natural heritage features on the property and they determined that the proposal would cause no negative impacts.

[122] Mr. Mino-Leahan referred to the requirements of the Greenbelt Plan and stated that s. 3.4.2.1 indicates that Towns and Villages are to be governed by municipal official plans and related programs (Exhibit 1, Tab 5, p. 38). Mr. Mino-Leahan stated the agreed statement of facts of the planning experts indicates that s. 4.4.2 which deals with protecting cultural heritage resources does not apply. It was Mr. Mino-Leahan's expert opinion that Towns and Villages are not subject to the Greenbelt Plan and therefore it would not apply to the subject property.

[123] Mr. Mino-Leahan also addressed the requirements of the Lake Simcoe Protection Plan (Exhibit 1, Tab 6). He indicated that there are two types of policies under the plan, the Designated Policies and the Have Regard Policies. He indicated that s. 4.8 which is a Designated Policy applies and therefore a stormwater management plan must be prepared for the proposal and it must consider phosphorus loading. He also indicated that s. 6.33 applies which requires incorporating measures to minimize the impact of the proposal on fish and wildlife habitat and on water quality and quantity. Mr. Mino-Leahan testified that a number of measures would be incorporated into the proposal to control stormwater, to maintain water quality and to control phosphorus loading.

[124] Mr. Mino-Leahan indicated that a hydrological water balance analysis had been completed for the proposal which concluded that the proposal will not have a significant impact. He indicated that s. 4.9 is not applicable and s. 4.10, s. 4.11 and s. 4.20 will be

fulfilled. Mr. Mino-Leahan stated that the proposal will meet the requirements of the Lake Simcoe Protection Plan.

[125] Mr. Mino-Leahan testified that the proposal will contribute to the vision in the Growth Plan (Exhibit 1, Tab 3) to provide for complete communities and a variety of housing types. He stated that the proposal will assist the Township in achieving the intensification target in the Growth Plan for residential areas. Mr. Mino-Leahan noted that the subject property is located in the built boundary of the Township. He stated that the proposal will assist in meeting the Growth Plan objectives. He indicated that s. 4.2.4.1 (e) requires municipalities to develop official plan policies in support of cultural heritage conservation (Exhibit 1, Tab 3, p. 30). He indicated that the proposal conforms to this policy.

[126] Mr. Mino-Leahan testified that the proposal conforms to the requirements of the Growth Plan.

[127] Mr. Mino-Leahan addressed the requirements of the ORMCP (Exhibit 1, Tab 4). He noted that only a small portion of the south western part of the property is within the ORMCP area. He indicated that the area is designated as part of a settlement area in the ORMCP which are intended to contain urban growth. He maintained that the proposal meets the requirements of s. 18(1) because it is a compact form of development in a transit supported area that protects natural heritage features. With regard to s. 18(3), the Township's Official Plan permits residential uses on the subject property and the studies for the proposal have determined that no natural heritage features or hydrological features will be impacted.

[128] With regard to s. 27(3), Mr. Mino-Leahan maintained that the studies carried out for the proposal have found that impacts on the natural heritage features are not a concern and that the development is appropriate. He indicated that the latest development concept intends to provide maximum permeability of surfaces.

[129] Mr. Mino-Leahan testified that the site is not within a wellhead protection area and therefore, s. 28 of the ORMCP does not apply.

[130] With regard to s. 30(13), Mr. Mino-Leahan stated that the servicing plan for the proposal seeks to retain the landform character and minimize impact on neighbours. He indicated that there are no landform features that will be altered by the proposal. Furthermore, measures will be used in the development to promote infiltration on the site.

[131] In Mr. Mino-Leahan's opinion, the proposal complies with the requirements of the ORMCP.

[132] Mr. Mino-Leahan also addressed requirements of the Region of Durham Official Plan (Exhibit 1, Tab 15). He indicated that the subject property is designated as Living Area which would permit residential use of the property. He noted that through s. 8B.1.1, the Region of Durham Official Plan promotes the development of a wide range of housing types and through s. 8B.1.4, it encourages higher densities on vacant lands within the urban boundaries of area municipalities. He indicated that the proposal complies with these provisions and has regard for the matters in s. 8B.2.3.

[133] Mr. Mino-Leahan stated that the policies of the Region of Durham Official Plan encourage a more compact form of development. He indicated that the proposal has been designed in this way and that it will use existing infrastructure. In his opinion, the proposal represents intensification on an underutilized property and it complies with the Region of Durham Official Plan.

[134] The UGCA expressed concern about the stormwater management measures, traffic generated by the proposal, fire protection issues and natural heritage impacts. The Applicant submitted studies to address all of these concerns. The Board heard that more detailed submissions related to some of these matters will be required through the site plan process.

[135] The UGCA did not call expert evidence to address the above matters and Mr. Morgan did not address the requirements of the various planning documents related to these issues in his testimony.

[136] Through Ms. Howson's testimony, the Board heard that the Township's traffic consultant is satisfied that traffic and parking issues have been addressed and two outstanding matters can be addressed through detailed design. She also indicated that the Township's engineering department is satisfied and that issues related to trees on the subject property have been subject to detailed review. The Board understands that tree protection measures may be required in various locations on the subject property. Ms. Howson indicated that the Township arborist is satisfied and more detail will be submitted through the site planning process.

[137] Ms. Howson indicated that a Holding Zoning will be placed on the subject property through the proposed By-law Amendment and that it will not be lifted until all outstanding matters have been resolved and the site plan has been finalized.

[138] The Board has reviewed the Minutes of Settlement and proposed Zoning By-law Amendment (Exhibit 7). Based upon the evidence, the Board is satisfied that the proposal complies with the requirements of the Greenbelt Plan, the Lake Simcoe Protection Plan, ORMCP, the Township Official Plan and the Region of Durham Official Plan. Furthermore, the Board is satisfied that the issues that have been raised regarding stormwater management, traffic, fire protection, natural heritage and the protection of trees will be dealt with in keeping with the planning provisions of the applicable to the proposal through the studies and documents that have been submitted and through additional submissions to be provided during the site planning process. Appropriate provisions have been incorporated into the proposed Zoning By-law Amendment to ensure that any outstanding issues are resolved through the site planning process before the Holding Zone is removed to permit development of the subject property.

[139] One other matter raised by the UGCA involved the woodshed attached to the back of the house which had been removed apparently without obtaining a permit from the Township. This was listed as a heritage attribute in By-law No. 2101-171. Mr. Martindale indicated that he was not involved in the removal, but that he understood it was removed because it was in a poor state of repair. The Board will make no findings about this matter, but notes that the matter came before Township Council who decided not to take any action (Exhibit 20).

CONCLUSION

[140] Based upon a careful review of the evidence and submissions, the Board finds that the proposed By-law Amendment is appropriate and it is consistent with the PPS, it conforms to the requirements of the *Planning Act*, the Growth Plan, the Region of Durham Official Plan, the Township Official Plan, the Greenbelt Plan, the Lake Simcoe Protection Plan and the ORMCP. The Board finds that all issues raised through the evidence and included on the issues list have been addressed in a satisfactory manner.

[141] The Board considers the proposal to be a reasonable response to the direction in the planning documents for intensification of development and the efficient use of land and resources while conserving a significant cultural heritage resource.

[142] Based upon the evidence, the Board finds that the site plan (Exhibit 7, p. 16) is acceptable in principle. The remainder of the site plan appeal will be adjourned *sine die* to permit time for any outstanding site plan matters to be resolved.

[143] The Board will allow the appeal in part based upon the terms of the Minutes of Settlement and approve the By-law Amendment (Exhibit 7, p. 7-14) attached to the Minutes of Settlement.

[144] The appropriate order is provided below.

ORDER

[145] The Board orders that the appeal is allowed in part and the Township of Uxbridge Zoning By-law No. 81-19 is amended as set out in Attachment 1;

[146] And furthermore, the site plan is approved in principle as set out in Attachment 2;

[147] The Board orders that the remainder of the site plan appeal is adjourned *sine die*.

"C. Conti"

C. CONTI
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

A constituent tribunal of Environment and Land Tribunals Ontario

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BY-LAW NUMBER 2015-_____

OF

THE CORPORATION OF THE TOWNSHIP OF UXBRIDGE

BEING A BY-LAW PASSED PURSUANT TO THE PROVISIONS OF SECTIONS 34 AND 36 OF THE PLANNING ACT, R.S.O. 1990, AS AMENDED, TO AMEND ZONING BY-LAW NO. 81-19, AS AMENDED, OF THE CORPORATION OF THE TOWNSHIP OF UXBRIDGE, WITH RESPECT TO CERTAIN LANDS LOCATED SOUTH OF MILL STREET, BETWEEN JOSEPH STREET AND WATER STREET KNOWN MUNICIPALLY AS 62 MILL STREET AND LEGALLY DESCRIBED AS PART OF LOT 29, CONCESSION 6, TOWNSHIP OF UXBRIDGE, IN THE REGIONAL MUNICIPALITY OF DURHAM.

WHEREAS the Planning and Economic Development Committee of the Council of the Corporation of the Township of Uxbridge conducted statutory public meetings, pursuant to the provisions of Section 34 of the Planning Act, R.S.O. 1990, as amended, on the 23rd day of June 2014 regarding an application to amend Zoning By-law No. 81-19, with respect to permitting a residential infill development on certain lands known municipally as 62 Mill Street located in Part of Lot 29, Concession 6, in the Township of Uxbridge;

AND WHEREAS the By-law hereinafter set out includes the use of the Holding (H) Symbol which restricts the use of the lands to those uses permitted in the Holding (H)zone until the Holding (H) Zone is removed;

AND WHEREAS the By-law hereinafter set out conforms with the general intent and purpose of the Greenbelt Plan, Oak Ridges Moraine Conservation Plan, the Lake Simcoe Conservation Plan, and the Official Plans for the Regional Municipality of Durham and the Township of Uxbridge;

AND WHEREAS it is appropriate to amend Zoning By-law No. 81-19 to permit a residential infill development;

NOW THEREFORE, BY ORDER THE ONTARIO MUNICIPAL BOARD AMENDS ZONING BY-LAW NO. 81-19 AS FOLLOWS:

1. THAT Schedule 'A1' and 'A2' of Zoning By-law No. 81-19, as otherwise amended, is hereby amended by changing the Zone classification with respect to certain lands known municipally as 62 Mill Street located in Part of Lot 29, Concession 6 in the Township of Uxbridge, from the Residential First Density (R1) Zone, Residential Second Density (R2) Zone, and Residential Holding (RH) Zone to the Holding Residential Second Density Exception No. 30 ((H)R2-30) Zone, which (H)R2-30 Zone and classification is hereinafter defined, in accordance with Schedule "A" attached hereto and by reference forming part of this By-law.

2. THAT Section 4.10.4 entitled “SPECIAL ZONE CATEGORIES –RESIDENTIAL SECOND DENSITY (R2) ZONE” of Zoning By-law No. 81-19, as amended, is hereby amended by adding the following new subsection:

“4.10.4.30 HOLDING RESIDENTIAL SECOND DENSITY EXCEPTION NO. 30 ((H) R2-30) ZONE

- a. No person shall within the Holding Residential Second Density Exception No. 30 ((H)R2-30) Zone located in Part of Lot 29, Concession 6 in the Township of Uxbridge, and shown on Schedule ‘A1’ and ‘A2’ of Zoning By-law 81-19, as amended, use any building or structure or make any other use of the land until the Holding (H) Symbol is removed by amendment to this By-law, except for a single family detached dwelling house and accessory buildings and structures existing as of March 27, 2014.
- b. Upon removal of the Holding (H) Symbol within the Holding Residential Second Density Exception No. 30 ((H)R2-30) Zone located in Part of Lot 29, Concession 6 in the Township of Uxbridge, and shown on Schedule ‘A1’ and ‘A2’ of Zoning By-law 81-19, as amended, notwithstanding the provisions of Sections 4.10.1, 4.10.2 and 4.10.3 of Zoning By-law 81-19, as otherwise amended, to the contrary, the following provisions shall apply and be complied with respect to the lands in within the Residential Second Density Exception No. 30 (R2-30) Zone located in Part of Lot 29, Concession 6 in the Township of Uxbridge:

PERMITTED USES

The following uses are permitted, in addition to the uses in Sections 4.10.1 b. and 4.10.1 c.:

- i. single-family detached dwelling house; and,
- ii. semi-detached dwelling house.

REGULATIONS FOR PERMITTED USES

The lands within the Residential Second Density Exception No. 30 (R2-30) Zone located in Part of Lot 29, Concession 6 in the Township of Uxbridge, and shown on Schedule 'A1' and 'A2' of Zoning By-law 81-19, as amended, shall be treated as one lot for the purpose of these regulations:

- | | | |
|-------|---|--------------|
| i. | Minimum Lot Area | 1.5 hectares |
| ii. | Minimum Lot Frontage | 20 metres |
| iii. | Minimum Front Yard Depth | 50 metres |
| iv. | Minimum Interior Side Yard Width | |
| | - North | 2.9 metres |
| | - East | 7.5 metres |
| | - West | 7.5 metres |
| v. | Minimum Rear Yard Depth | 1.5 metres |
| vi. | Maximum Lot Coverage of All Buildings | 35% |
| vii. | Minimum Total Landscaped Open Space | 44% |
| viii. | Minimum Setback from a Private Right of Way | |
| | - 6 m to the main front wall of a dwelling house provided that an unenclosed front porch, covered or uncovered, may project into the minimum setback a maximum distance of 1.5 metres; and, | |
| | - The front door of a garage shall, at a minimum, be setback the same distance from the private right of way as the main front wall of the dwelling house. | |

For the purposes of this Zone, setback shall be defined as the horizontal distance measured at right angles between the edge of the private right of way and the nearest part of a building or structure.

ix. **Landscaped Open Space Between
A Dwelling House and a Private
Right of Way**

No person shall erect or use a single family detached dwelling house or semi-detached dwelling house, or addition to a single family detached dwelling house or semi-detached dwelling house where the front yard landscaped open space is less than 50%, when measuring the front yard from the edge of the private right of way to a line extending from side lot line to side lot line equivalent to the front of the main wall or the front of any porch, whichever is closer to the edge of the private right of way.

For the purposes of this Zone, landscaped open space shall include only open unobstructed space from ground to sky at finished grade which is suitable for the growth and maintenance of grass, flowers, bushes and other landscaping and does not include a walkway, driveway or ramp, whether surfaced or not, any curb, retaining wall, parking area or any open space beneath or within any building or structure.

x. **Minimum Separation between the Side Walls of
Dwelling Houses**

- 2.4 metres between Detached Dwelling Houses;
- 3.2 metres between a Detached Dwelling House and a Semi-Detached Dwelling House; and,
- 4.0 metres between Semi-Detached Dwelling Houses on one side and 0 m on the other side, with the exception that the Semi-Detached Houses facing the cul-de-sac bulb will have 3.5 metres between Semi-Detached Houses on one side and 0 on the other side.

xi. **Heritage House Regulations**

Notwithstanding any other regulations of this section the existing heritage house may be relocated on the Lot and if relocated:

- The north wall of the building shall be located a minimum of 73 metres from Mill Street;

- The west wall of the building shall be located a minimum of 10.00 metres from a private right of way; and,
- The east wall of the heritage building shall be located a minimum of 7.50 metres from the east property line.

xii. Maximum number of dwelling houses per Lot 27

xiii. Maximum Height of Buildings and Structures

The lands in the R2-30 Zone shall be graded and all buildings constructed such that there is no building having a roof ridge extending higher into the air than the roof ridge of the heritage house.

xiv. Minimum Number of Visitor Parking Spaces, which may be provided in a dedicated, separate Parking area 8

xv. Minimum Number of Parking Spaces per dwelling house 2

The regulations of Section 5, General Zone Provisions, shall also apply to the lands in the R2-30 Zone, with the exception that no accessory buildings shall be permitted in the minimum setbacks required by subsections viii to ix inclusive; the total lot coverage of accessory buildings will be subject to subsection vi; and the parking requirements shall be as set out in subsections xiv. and xv.

c. THAT the Council of the Corporation of the Township of Uxbridge shall not remove the Holding (H) Symbol from the Holding Residential Second Density Exception No. 30 ((H)R2-30) Zone on the lands which are the subject of this by-law until the following conditions have been complied with:

- i. The Township has approved servicing allocation for the development in accordance with the Uxbridge Urban Area Servicing Allocation Policy;
- ii. An updated functional servicing study has been carried out in accordance with the requirements of the Township of Uxbridge and Region of Durham, in consultation with the

Lake Simcoe Region Conservation Authority, which addresses matters such as the municipal requirement that drainage be contained and managed within the site; the implementation of Low Impact Development(LID) measures to address water balance objectives and phosphorous reduction objectives; updates to pipe sizes, slopes and elevations to reflect water level elevations in Elgin Pond; and the recommendations have been incorporated into a site plan agreement and financially secured. As part of the preparation of the updated functional servicing study, a detailed grading plan, and cross sections of the complete site and its relationship to adjacent development shall be prepared which demonstrate to the satisfaction of the Township that the development is compatible with the adjacent development with respect to grading and elevation and the recommendations have been incorporated into the site plan and related agreement and financially secured;

- iii. The Township has approved a Site Plan and the Owner has entered into any required Site Plan Agreement with the Township, to be registered on the title of the lands. As part of the Site Plan approval, the following issues shall be addressed to the satisfaction of the Township and, shall be incorporated into the Site Plan and, where appropriate, the Site Plan Agreement and financially secured:
- The protection of cultural heritage features through requirements for a Heritage Conservation Plan, Protection Plan, Heritage Easement Agreement, Heritage commemoration and related financial securities;
 - Provide for public access from Mill Street southerly to Elgin Park, through the plan of condominium on an easement dedicated to the Township which permits public use of the private right of way;
 - Finalize landscaping and tree planting and preservation plan utilizing native species and maximizing landscaping, as well as ensuring that landscaping is in keeping with the heritage of the site particularly on the lands associated with the heritage house;
 - external design elements for proposed new dwelling houses are in keeping with the heritage of the site;

- cash-in-lieu of parkland requirements;
 - provision for any external roadway improvements including consideration of the potential for controls at the Pond Street/Mill Street/Private Right of Way intersection as a measure to improve the safety of interactions between vehicular/pedestrian/cyclist movements; and,
 - consideration of features which contribute to more sustainable development.
- iv. All necessary approvals have been received from Lake Simcoe Region Conservation Authority, and any conditions of the Authority have been appropriately incorporated into the Site Plan Agreement and financially secured, all to the satisfaction of the Authority and confirmed in writing to the Township; and,
- v. The Owner has entered any required Development Agreement with the Region of Durham, to be registered on the title of the lands, including satisfaction of the Region's requirements with respect to a Reliance Letter and Proof of Insurance form regarding the Phase I ESA."
4. **THAT** Zoning By-law No. 81-19, as amended, is hereby amended to give effect to the foregoing, but Zoning By-law No. 81-19, as amended, shall in other respects remain in full force and effect save as may be otherwise amended or hereinafter dealt with.
5. **THAT** this By-law shall come into force on the date it is passed pursuant to an Order of the Ontario Municipal Board.

Note: Decision of the Ontario Municipal Board delivered by _____ on _____/

SCHEDULE "A"
TO ZONING BY-LAW No. 2015-____
TOWNSHIP OF UXBRIDGE



 AREA AFFECTED BY THIS BY-LAW

THIS SCHEDULE "A" TO BY-LAW No. 2015-____ PASSED ON THE __th DAY OF ____, 2015

MAYOR _____

CLERK _____

ATTACHMENT 2

CONCEPTUAL PLAN

62 Mill Street
Uxbridge, Ontario

