May 6, 2014

Planning Committee
Hamilton City Hall
71 Main Street West,
Hamilton, Ontario
L8P 4Y5

Dear Mesdames & Sirs,

Re: New Horizon Development Corporation - Request to Amend Zoning
By-Law at 85 Robinson Street, 220 Park Street South and 90 Charlton Avenue West – File No ZAC-13-004

1. History of the site

The Durand Neighbourhood Association (the “DNA”) has been a stakeholder in development plans at the former Thistle Club since 1987, when the club was sold to a private developer. In early 1996, the DNA signed minutes of settlement with Latco (1986) Developments Ltd, a predecessor in title of the current owner and the city of Hamilton, represented by the then acting mayor, Don Drury. These minutes of settlement allowed the developer to build three buildings, with the following restrictions:

1. heights of 8, 7, and 4 stories respectively (4 stories fronting Park street);
2. a sum total of 200 units in the 7 and 8 storey buildings
3. the developer agreed to bind subsequent owners to the minutes of settlement by entering assumption agreements.

The city of Hamilton agreed as part of the minutes of settlement to include the site restrictions in a new by-law. On June 26, 1996, the City passed by-law 96-110, complying with the minutes of settlement by imposing height restrictions of 8, 7, and 4 stories, and a maximum of 200 units in the 7 and 8 story buildings.

Various zoning applications were approved in the decade after 1996, but all involved minor amendments or townhouse plans. In December, 2008, the City passed another amendment allowing nine stories in each of the buildings fronting Robinson and Charlton Streets, but continuing to limit the Park Street building to three stories. The maximum number of units in all three buildings was restricted to 156.

In May, 2012, Jeff Paikin, President of New Horizon Homes attended a monthly DNA meeting to seek board approval for a minor variance to increase the height in tower two of his proposed development from
9 to 11 stories and the number of units from 79 to 99. Despite the two extra storeys and 25% increase in the number of units, Paikin’s presentation stressed that the overall density of the site would remain the same, and that there would be no change to the proposed four storey development facing Park Street. The Board with some reservations agreed to not object to the variance, since the amendments were relatively minor. Overall, the density remained well within the parameters of the 1996 settlement.

On April 17, 2013, with no notice to the DNA and by way of a zoning amendment sign posted on the property – a markedly more subdued form of communication than the developer had used for his minor variance – New Horizon Homes announced a radical departure from their previous plans: a 17 storey tower at Robinson and Park streets containing 159 units. This would make the proposed tower almost equal in density to the entire site as agreed in the minutes of settlement. Either New Horizon Homes never signed the assumption agreement provided in the minutes of settlement, or they disregarded them, but in any case this was a repudiation of a promise made by Jeff Paikin not a year earlier.

Finally, on November 21, 2013, New Horizon Homes amended their application to request instead an amendment creating heights in both the Robinson and Park facing buildings of 11 stories, with 105 units in each. Accompanying the notice of amendment was a statement that the original application was for 17 stories for site three.

2. The Issues

The DNA does not oppose density. Indeed, the 1996 minutes of settlement supported by the DNA already achieves high densities: 200 units on a site of about 0.78 ha (equivalent to a density of about 500 residents per ha over 2.5 times the City’s goal for downtown).

The DNA also values dialogue and negotiation with all stakeholders to allow new owners and resident to find a fair compromise. In the Thistle Club case, the DNA has consistently and at great effort sought to dialogue with our membership and the various developers of the site in order to achieve compromise. This has been premised on a foundation of trust and an expectation that the parties are negotiating in good faith.

The surprise amendment of April 17, 2013 was a repudiation of a promise made by New Horizon Homes that they would not seek further height and density variances for phase three.

The City of Hamilton has supported the zoning amendment applications without reference to the good faith negotiations that have taken place between the DNA, the City and developers of the site over many years. The response of the city’s legal department, as represented by Edward John, was “the settlement was nearly 20 years ago and since that time the policy environment has changed, and further, that there was no formal language restricting consideration of alternative proposals in the future.”

The DNA has three responses:

1. The settlement was signed 20 years ago, but it has been confirmed repeatedly by the City itself in successive zoning applications and variances up until 2012. Until the application for 17 stories, the overall density of the site had never been proposed to be significantly greater than in the original settlement.

2. The policy environment presumably relates to the Places to Grow Act or Provincial Policy Statement. The Durand is already one of the densest neighbourhoods in the city of Hamilton, and the density prescribed in the minutes of settlement would place the Thistle Club site over 2.5 times the density targets
of 200 residents and jobs per hectare in the Places to Grow Act. Furthermore, the Places to Grow Act recommends a diverse and compatible mix of land uses.

3. It is impossible to restrict a council from modifying an earlier by-law. The fact that this did not happen is a cynical justification for the city to cite as a reason to ignore a 25 year history of productive community involvement and negotiation, ratified in a long-standing by-law. The City itself referenced the minutes of settlement as the basis for assessing variance requests until 2012. There is no reason for the City to suddenly reject the validity of this document.

3. Conclusion

The DNA is conflicted on this issue. At the DNA annual general meeting in 2013, residents expressed mixed opinions on the proposed 11-storey tower 3, which was confusingly presented as a reduction from 17 storeys (renderings of the 4 storey building allowed by current zoning were not even shown). We understand that 11 stories will not overwhelm our neighbourhood, even if New Horizon has also reneged on planned car share depots and green space elements.

However, the DNA is not conflicted about the countless hours of community service members have put into ensuring the Thistle Club site is developed in a way that is compatible with the neighbourhood and is economically feasible for the developers.

The fact that the first two phases have been a huge success is testament to our role in helping develop an economically feasible plan. Not allowing an 11 storey phase 3 building will not jeopardize the development and it could actually enhance liveability by adding back green space that has been lost due to increased density in phases 1 and 2.

The zoning amendment application, and the city’s support, have been made at worst with deceit, and at best with a callous disregard for the neighbourhood. We are particularly disappointed by the fact that the November 21, 2013 amended application misleadingly advertised the variance as from 17 to 11 storeys (a decrease!), when the request is to increase the height from 4 to 11 stories. This must be corrected immediately.

The City’s goal is to become the “best place to engage citizens”. The “citizens” of Durand have been actively engaged with the City and the development community for over 20 years to find a solution that is fair for all stakeholders. The DNA has extensive institutional expert knowledge about this site and its history, and it is shocking to see this expertise entirely disregarded. The City must respect this engagement now, and in the future, when decisions are made about how this site is actually developed.

We insist that the City continue to use the 1996 minutes of settlement as a basis to evaluate the zoning change from four to 11 stories, and that the high resident densities provided by the current plan (well in excess of City goals) be taken in account when assessing the benefits of even higher densities.

Respectfully,

Janice Brown,
President, Durand Neighbourhood Association