

ISSUE DATE:

August 14, 2007

DECISION/ORDER NO:

2268



Ontario Municipal Board

Commission des affaires municipales de l'Ontario

Copy - Megan H
Ron Blake
Catherine Conr

PL050818

1547155 Ontario Ltd. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Town of Markham, for the purpose of adding a site-specific policy to both the 'Commercial and Heritage Main Street' designation of the Markham Official Plan and the 'Heritage Main Street Area' designation of the Thornhill Secondary Plan, to permit the development of a 7-storey residential building containing 92 units, with street-oriented retail on the ground floor, on property located on 7751 Yonge Street
Approval Authority File No. OP 05 005462
O.M.B. File No. O050137

1547155 Ontario Ltd. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 2237, as amended, of the Town of Markham, by adding a special provision to the Community Commercial (CC) designation, to permit the development of a 7-storey residential building containing 92 units, with street-oriented retail on the ground floor, on property located on 7751 Yonge Street
O.M.B. File No. Z050114

1547155 Ontario Ltd. has referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, determination and settlement of details of a site plan for lands composed of Part of Lots 1 and 2, Registered Plan 71, municipally known as 7751 Yonge Street, in the Town of Markham
O.M.B. File No. M070010

APPEARANCES:

Parties

1547155 Ontario Ltd.

Town of Markham

Joseph Ricciuti

Region of York

Counsel

G. Swinkin

C. Conrad

A. Heisey

R. Miller and G. Szobel

**MEMORANDUM OF ORAL DECISION DELIVERED BY SUSAN de AVELLAR
SCHILLER ON JULY 25, 2007 AND PROCEDURAL ORDER OF THE BOARD**

RECEIVED

AUG 15 2007

**TOWN OF MARKHAM
CLERKS DEPT.**

1547155 Ontario Ltd. initially proposed a 7 storey, mixed commercial and residential development on Yonge Street in Markham. The official plan and zoning by-law amendments to implement the proposal, along with a site plan, have been appealed to this Board. At the second prehearing conference, the Board was advised that the proposal has been reduced to 5 storeys. The Board was advised that there is some uncertainty between the Town and the proponent as to whether or not the proposed official plan amendment is still required. At present, the Issue List is framed to account for that possibility.

At that same second prehearing conference, the Board directed the parties to prepare a consolidated Issue List and file it with the Board. The parties were unable to agree and certain issues that Mr. Ricciuti sought to place on the list were being challenged. The Board scheduled this third prehearing as a teleconference to deal with the disputed Issue List and any related matters.

Limited Retainer

The Board was advised by Mr. Heisey that he had been retained to appear for Mr. Ricciuti this day only and was not, at this time, retained for the hearing of the merits or any other appearances in these proceedings.

Change of Counsel

Ms Conrad advised the Board that Mr. Quinto Annibale had been retained by the Town to carry this matter. The Board has added Mr. Annibale to the contact list and notes his role.

Region of York Party Status and Issues

At the second prehearing, the Board had been advised that the Region might have an interest in the site plan matter. Although the Region was not in attendance at that appearance, all parties to the site plan matter had consented to the addition of the Region as a party to the site plan. The Region advised the Board subsequently that it did wish party status; the Board added the Region as a party and directed that the Region's issue list be filed. Subsequent to this teleconference, the Region and the proponent reviewed the Region's conditions of site plan approval. The Board was

subsequently advised that the Region and the proponent are now in agreement and that there are now no issues between the Region and the proponent regarding the site plan.

Issue List

At this teleconference, the Board reviewed the Issue List, eliminated duplication, simplified each Issue to clarify what the Board would be asked to decide, and directed that a further filing of the final Issue List be made not later than 4:30 PM on Friday, August 3, 2007.

The Issue List for these proceedings is appended as Attachment 2 to the Procedural Order of this Decision.

Mr. Ricciuti sought to have the following issue placed on the Issue List:

If the physical impacts of the development as proposed on existing uses are found acceptable by the Board, are there negative impacts for future consolidation and/or redevelopment of adjoining properties, including 8 Eliza Street, that would inhibit the potential redevelopment and intensification of other properties arising out of the design of the development?

The Board was advised that Mr. Ricciuti's property at 8 Eliza Street is designated low-density residential. Mr. Ricciuti has no plans to redevelop his property at this time, has made no application for an official plan amendment, zoning by-law amendment or site plan. Mr. Ricciuti has taken no steps to acquire or consolidate his property with other adjacent lands for the purpose of redevelopment or intensification. The Town has not initiated any process to alter the designation of 8 Eliza Street, nor was any party represented on this teleconference call able to identify any other interest that has done so.

In order for the Board to test the planning appropriateness of the proposals before it, particularly as they may impact adjacent properties like 8 Eliza Street, the Board looks to the designations, performance standards and permissions contained in the existing regime of planning instruments, to the existing land uses on adjacent properties, and to the detail of what is proposed by the instruments under appeal. Where there is an active and specific proposal for redevelopment on adjacent lands, the Board on a case by case basis, will often consider the interaction and cross impacts of two proposals. That is not the case here. No plans or proposals for development of 8

Eliza Street have been tendered. Counsel for Mr. Ricciuti suggested to the Board that Mr. Ricciuti would retain an architect to develop some concept plans for the redevelopment of 8 Eliza Street, perhaps consolidated with other properties. Instead of being able to point to a specific proposal, and then weigh the needs of that proposal and site against the needs of an adjacent proposal and site, the framing of Mr. Ricciuti's issue has the effect of asking the Board to consider some vague and remotely possible development in the future, the land area, size, shape, form and timing of which is unknown. The proposed issue, as framed, does not set a reasonable basis upon which the Board could make a decision on the matters now before it. Under these circumstances, the Board strikes this proposed issue from the Issue List.

If Mr. Ricciuti wishes to pursue the inclusion of this issue, the Board directs that he proceed by way of formal Motion.

The Procedural Order governing these proceedings is found at Attachment 1 to this Decision.

If difficulties arise, the Board may be spoken to.

This member is seized for case management purposes but is not necessarily seized of the hearing.

The Board so Orders.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
MEMBER

ATTACHMENT 1
PROCEDURAL ORDER

1. The Board may vary or add to these rules at any time either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on Tuesday, November 20, 2007 at 10:00 a.m. at Heintzman House, 135 Bay Thorn Drive, Thornhill, in the Town of Markham.
3. The length of the hearing will be about 9 days, with sittings on Tuesday, November 20 through Thursday, November 22, Monday, November 26 through Thursday, November 29 and Monday, December 3 and Tuesday, December 4, 2007, as required.
4. The parties and participants are listed in Attachment 1 to this Order.
5. The Issues are set out in the Issues List appended as Attachment 2. There will be no changes to this list unless the Board permits.
6. Any person intending to participate in the hearing should provide a telephone number to the Board as soon as possible. Any such person who will be retaining a representative should advise the other parties and the Board of the representative's name, address and phone number as soon as possible.

Requirements Before the Hearing

7. A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered by Friday, October 19, 2007.
8. An expert witness shall prepare an expert witness statement which shall list any reports prepared by the expert or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in Section 11. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.
9. A participant must provide to the Board and the parties a participant statement at least 21 calendar days before the hearing, (which is by October 31, 2007) or the participant may not give oral evidence at the hearing.

10. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence, by the date as in section 11.
11. On or before Friday, October 26, 2007, the parties shall provide copies of their witness and expert witness statements to the other parties.
12. On or before Monday, November 12, 2007, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
13. Parties may provide to all other parties and file with the Clerk a written response to any written evidence within 7 days after the evidence is received.
14. A person wishing to change written evidence including witness statements, must make a written motion to the Board, in accordance with the Board's Rules regarding motions.
15. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Board at least 7 days before the hearing that the written evidence is not part of their record.
16. Documents may be delivered by personal delivery, facsimile or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax or mail shall be governed by the Board's Rules. Documents of a reasonable size may be delivered by e-mail, with the requirement that electronic delivery confirmation will be required if there is any dispute about such documents being received. Documents containing graphics or visual evidence may not be delivered by e-mail unless prior agreement is secured from the intended recipient, but may be delivered electronically on a CD or other suitable data storage device.
17. No adjournments or delays will be granted before or during hearing except for serious hardship or illness. The Board's Rules apply to such requests.

This Member is not seized.

So orders the Board.

Attachment 1 to Procedural Order

PARTIES AND PARTICIPANTS

PARTIES TO THE SITE PLAN APPEAL:

1547155 Ontario Ltd.

Gerald S. Swinkin
Barrister and Solicitor
Blake, Cassels & Graydon LLP
199 Bay St., Ste. 2800, P. O. Box 25
Commerce Court West
TORONTO ON M5L 1A9

Town of Markham

Quinto M. Annibale
Barrister and Solicitor
Loopstra Nixon LLP
600-135 Queen's Plate Dr.
TORONTO ON M9W 6V7

Region of York

Robert G. Miller and
Gabriel P. Szobel
Barristers and Solicitors
York Region Legal Services Branch
4-17250 Yonge St.
NEWMARKET ON L3Y 6Z1

PARTIES TO THE OFFICIAL PLAN AND ZONING BY-LAW APPEALS:

1547155 Ontario Ltd.

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Town of Markham

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600-135 Queen's Plate Dr.
TORONTO ON M9W 6V7

Joseph Ricciuti

8 Eliza Street, Thornhill, ON L3T 2E4

PARTICIPANTS TO THE OFFICIAL PLAN AND ZONING BY-LAW APPEALS:

Christopher Sexton	15 Eliza Street, Thornhill, ON L3T 2E3
Rosemary Pucholt and Dr. V. Pucholt	3 Eliza Street, Thornhill, ON L3T 2E3
Kelly Kivioja and Rob Armstrong	9 Eliza Street, Thornhill, ON L3T 2E3
Keith Irish	7 Eliza Street, Thornhill, ON L3T 2E3
David Burke	26 Colborne Street, Thornhill, ON L3T 1Z7
Marion Matthias	33 Colborne Street, Thornhill, ON L3T 1Z4
Joy Whitehead	7811 Yonge Street, Thornhill, ON
Judith Dawson	32 Dunkeld Way, Thornhill, ON
Barry Nelson	38 Colborne Street, Thornhill, ON L3T 1Z7
Evelin Ellison	48 Julia Street, Thornhill, ON L3T 4R9
Bill Mardimae	7610 Yonge Street, Thornhill, ON, L5J 1V9
Society for the Preservation of Historic Thornhill Inc.	c/o Nigel Connell, President 25 Colborne Street, Thornhill, ON
Ward One Residents South Thornhill Inc.	c/o William Wylie, Treasurer 148 John Street, Thornhill, ON L3T 1Y7

Attachment 2 to Procedural Order

ISSUE LIST

As identified by 1547155 Ontario Ltd. and the Town of Markham

1. Will the proposed official plan amendment, if now required, and zoning amendment be consistent with the policies of the Provincial Policy Statement, with specific reference to the intensification, housing and efficient use of infrastructure provisions found in sections 1.1, 1.4 and 1.6 of Part V of the Provincial Policy Statement?
2. Does the proposed Official Plan Amendment and Zoning Amendment conform with the Region of York Official Plan, with specific reference to the proposed density?
3. Is the development proposal consistent with the Town of Markham OPA 154 (amendments to the Thornhill Secondary Plan) and with the Thornhill Yonge Street Study (2005) referred to therein?
4. Are the proposed height and massing of the building appropriate?
5. Does the development proposal provide an acceptable transition to the residential properties to the east and south-east?
6. Can the development proposal be accommodated within the Thornhill-Markham Heritage Conservation District Plan?
7. To the extent that the agreement dated April 18, 1978 between Kinly Investments Ltd. and the Corporation of the Town of Markham registered as Instrument No. MA102380 is a subsisting and enforceable agreement, does it prevent the development as currently proposed and, if not, what impact do its terms have upon the development proposal?
8. Is the development proposal consistent with the transportation planning of the Region and Town, and with the service and public works improvements authorized and planned for the Yonge Street corridor?

As identified by Joseph Ricciuti

9. Are the impacts, with particular reference to shadow, loss of sky view, overlook, loss of privacy on the single family home at 8 Eliza Street, that result from the development of the proposed use appropriate?

10. Has adequate visual and noise buffering been provided by the applicant relating to the property at 8 Eliza Street.
11. Have appropriate building setbacks been provided with reference to 8 Eliza Street?
12. Are the scale and massing of the proposed development appropriate, with particular reference to the historic buildings and streetscape on Eliza and Colbourne Streets?
13. Should the size, location and height of any proposed mechanical penthouse(s), location of garbage storage, loading docks, air conditioning units, garage ventilation and fans, underground garage doors, ramp and driveway be controlled by the zoning bylaw and are these facilities location(s) in the proposed site plan appropriate having regard to the heritage area and adjoining development?
14. Has there been due regard for the preservation of existing mature trees?
15. Are the materials, design, and scale of the project appropriate to this location specifically and as an addition to an heritage district, and is the development in keeping with the Heritage Conservation District guidelines?