

**Local Planning Appeal Tribunal**  
Tribunal d'appel de l'aménagement  
local



**ISSUE DATE:** July 12, 2018

**CASE NO(S):**

PL160105

The Ontario Municipal Board (the "OMB") is continued under the name Local Planning Appeal Tribunal (the "Tribunal"), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

**Applicant and Appellant:**

**Subject:**

Laurier Homes (Richmond Hill) Inc.

Application to amend Zoning By-law No. 66-71, as amended – Refusal or neglect of Town of Richmond Hill to make a decision

**Existing Zoning:**

"Residential First Density (R1) Zone"

**Proposed Zoning:**

"Residential Second Density (R2) Zone" and "Residential Multiple Second Density (RM2) Zone"

**Purpose:**

To permit the development of 4 single-detached dwellings and 37 condominium block townhouse units

**Property Address/Description:**

44, 48, 54 and 60 Arnold Crescent/ Lot 4 of Registered Plan 3267 and Part of Lot 46, Concession 1

**Municipality:**

Town of Richmond Hill

**Municipal File No.:**

D02-15019

**OMB Case No.:**

PL160105

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**OMB Case Name:**

Laurier Homes (Richmond Hill) Inc. v. Richmond Hill (Town)

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Proposed Plan of Subdivision - Failure of the Town of Richmond Hill to make a decision

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Municipal File No.: D03-15006  
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**Heard:** March 27-31, 2017 in Richmond Hill, Ontario

## **APPEARANCES:**

### **Parties**

Laurier Homes (Richmond Hill) Inc.

Town of Richmond Hill

Don Thomson

### **Counsel\*/Representative**

Stephen Waque\*; Isaac Tang\*

Sylvan Roleau\*; Alexis Alyea\*; A. Adani\*

M. Virginia MacLean\*

### **Participants**

Elyse Pomeranz

Self-represented

David Fleiner

Self-represented

Harry Harakh	Self-represented
Ingrid Wharton	Self-represented
David Mock	Walter Haluza
Mostafa Showracki	Pierre Amplemann

## DECISION OF THE TRIBUNAL DELIVERED BY STEFAN KRZECZUNOWICZ

### INTRODUCTION

[1] This was a hearing into an appeal by Laurier Homes (Richmond Hill) Inc. (the "Applicant") of the failure of the Town of Richmond Hill (the "Town") to make decisions on applications for a zoning by-law amendment and draft plans of subdivision and condominium for a proposed redevelopment at 44, 48, 54, and 60 Arnold Crescent (the "site").

[2] The Applicant's original proposal was for 37 townhouses and four single detached houses fronting an interior driveway. Following extensive consultation with the other parties, the application was revised so that the rezoning and draft plans would permit three single detached houses fronting Arnold Crescent and 88 townhouses fronting a new public road on the site (see Exhibit 3, Tab 3). Town Council expressed its support for the revised applications on February 13, 2017 (Exhibit 4). Don Thomson did likewise through Minutes of Settlement signed with the Applicant on March 24, 2017 (Exhibit 1). The revised applications before the Tribunal therefore represent a settlement between all three parties.

### Physical Context

[3] The site is an amalgam of four properties: 1.1 hectares in area with about 70 metres of frontage along Arnold Crescent. It is located near the intersection of Yonge and Major Mackenzie Drive, an area that is both the historical commercial centre of the Town and the focus of much redevelopment activity in recent years.

[4] The site is bounded by Arnold Crescent to the north, the Richmond Hill Cemetery to the west, and private residential lands to the south and west. Mature trees abound, both on and near the site.

### Witnesses

[4] The Tribunal heard evidence from Murray Evans, Stephen Hunt, and Anil Seegobin, whom the Board qualified to provide expert opinion evidence in matters of land use planning, architecture and urban design, and transportation planning and transportation engineering respectively.

[5] The revised applications were opposed by six Participants.

### LEGISLATIVE TESTS

[6] In this appeal the Tribunal must consider the merits of the redevelopment with reference to the “provincial interests” set out in s. 2 of the *Planning Act* (the “Act”). The adjudicative tests to be applied include whether the proposal conforms to applicable provincial and official plans and whether it is consistent with the Provincial Policy Statement, 2014 (“PPS”).

[7] In considering the draft plan of subdivision, the Tribunal must also have regard to the list of relevant subdivision evaluation criteria in s.51(24) of the Act and, with respect to any conditions of approval, the requirements of s.51(25) of the Act.

[8] The Tribunal must also have regard to the decisions of Town Council on the amendment and the information Council had when making its decisions. Among the many documents entered into evidence in this respect were:

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[9] As well, minutes of the meeting of the Town's Committee of the Whole in which the revised proposal was presented and discussed were entered into evidence as Exhibit 3.

### **PARTICIPANTS' CONCERNS**

[10] The Participants had direct and legitimate interests in the Applicant's proposal and unanimously opposed the development, though not always for the same reasons. Two, Elyse Pomeranz and Ingrid Wharton, are residents of Arnold Crescent, Ms. Wharton having lived on the street for more than 50 years. Two more, Harry Harakh and David Mock, held the perspective of abutting neighbours. Both David Fleiner and Dr. Mostafa Showracki live further afield, though still within the neighbourhood context.

[11] The overlapping concerns were that the proposed development:

- a. would require the removal of 104 trees—many of them mature—on the site;
- b. would lead to unacceptable vehicular traffic along Arnold Crescent;
- c. would not adequately respect important cultural heritage features, including Ms. Wharton's designated heritage home on Arnold Crescent; and
- d. represents overdevelopment and excessive intensification for the site.

[12] In this last respect, Mr. Fleiner, who exhibited detailed knowledge of the land use planning policy context, viewed the proposed townhouses as too tall and too dense and the public roadway as poorly planned.

[13] Walter Haluza spoke on behalf of Mr. Mock. Both represent the interests of the Richmond Hill Cemetery Board, which owns and operates a cemetery to the immediate east of the site. Their concerns centred on the public roadway, specifically:

- a. the utility of a sidewalk, which they felt it to be unnecessary;
- b. the setback of the road from the cemetery lot line, which they felt to be too narrow; and
- c. root and tree damage arising from road construction.

[14] Finally, Ms. Wharton, Dr. Showracki (through his agent Pierre Amplemann), and Mr. Fleiner felt that introducing the 88 townhouse proposal—up from 37 townhouses in the original application—in February 2017 gave them insufficient time to respond to what were substantial revisions and effectively excluded them from the public process in which they had, up until then, been active participants. In their view, the applications should have been formally resubmitted and a new public process started. Mr. Fleiner testified that, had he known the Town would agree to the revised proposal, he might have sought party status in the appeal.

## **DISPOSITION**

[15] The Tribunal will allow the appeals. General reasons for this decision are provided below, including analysis that more directly addresses the Participants' concerns.

[16] The Tribunal accepts Mr. Evans's testimony that the proposal represents appropriate transit-supportive intensification that would make efficient use of existing

municipal infrastructure and services within a Settlement Area. The proposed design is for a compact built form that would make more efficient use of the site and would contribute to a "complete community" as defined by the Provincial Growth Plan for the Greater Golden Horseshoe 2017 ("Growth Plan"). For these reasons the Tribunal finds the proposal to be consistent with the PPS and to conform to the Growth Plan.

[17] The proposal conforms to the Region of York Official Plan as it exemplifies modest intensification within a designated Local Corridor in the Region's Urban Area. The Tribunal notes that the site itself is within easy walking distance of two designated Regional Rapid Transit Corridors, where significant transit investment and intensification are planned for.

[18] The proposal also conforms to the Town's Official Plan ("OP") and— notwithstanding its approval in 2017 (i.e. after the application was filed but prior to the revised application)—the Downtown Local Centre Secondary Plan. Under this local policy framework, the site falls almost entirely within a designated Village District in the Downtown Local Centre, an area where intensification and redevelopment is encouraged subject to a range of land use and urban design criteria. According to Messrs. Evans and Hunt these criteria are met: the proposed buildings are low and medium density residential units and are within three to five storeys in height; the density of the site contributes to prescribed density targets (see below); the townhouses and roadway design, which includes road and sidewalk access from Arnold Street, establishes a development that is pedestrian friendly and human scale; the underground parking is unobtrusive; the development contributes to a greater range and mix of housing within the Downtown Local Centre; and, importantly, appropriate transition from the Downtown Local Centre to adjoining low density Neighbourhoods is achieved through the use of, among other things, substantial rear yard setbacks and a stepped back townhouse design.

[19] The Tribunal accepts Mr. Hunt's opinion that the proposed design meets the Town's Village Core and Town-Wide Urban Design Guidelines in respect of ensuring

that the development is compatible with the existing built environment and provides appropriate transition to surrounding properties.

[20] It is noted that the north-west corner of the site falls outside the Downtown Local Centre. However, the single detached lot that covers this corner represents an extension of the built environment along Arnold Crescent and Highland Lane. What is proposed is therefore in keeping with the intensification and transition policies of the OP and the Downtown Local Centre Secondary Plan and should be treated, for planning purposes, as the Downtown Local Centre.

[21] The Tribunal finds that the Draft Plan has sufficient regard to the subdivision criteria set out in s.51(24) of the Act.

- a. Mr. Evans highlighted the size and configuration of the three lots proposed to accommodate single detached homes fronting Arnold Crescent (Exhibit 3, Tab 3). The Tribunal finds that the form and design of the homes would reinforce the existing streetscape and provide a suitable transition to the denser townhouse forms to the south.
- b. The 88 townhouses present as a four-storey stacked design organized in three blocks, though the uninhabitable space on the fourth storey means that they qualify as three-and-a-half-storey homes under the Building Code. The units would range in size from 800 metres squared ("m<sup>2</sup>") to 1,300 m<sup>2</sup>. On-site parking would be provided underground and the 117 spaces (including for visitors and the disabled) falls within the prescribed range for the site under the Downtown Parking Strategy. The rear yard setbacks to the single detached homes along Highland Lane are generous, ranging anywhere from 11 metres to 30 metres. This ensures that, in the neighbourhood context, the townhouse blocks are substantially separated from the low density residential areas to the west. Indeed, even at its narrowest, the rear yard setbacks fall well below the 45 degree angular plane recommended by the Town's Urban Design Guidelines



(Exhibit 6, Tab 8).

- c. The roadway, 15.5 metres wide with a turnaround area at the southern (enclosed) end, is to be conveyed to the Town. The configuration and dimensions of the roadway in respect of public health, safety, and waste management requirements have been vetted by the Town's engineers and Fire Department. The Tribunal is persuaded that the need for a southerly extension of Elizabeth Street was identified as early as 2009. In the short term, the roadway provides appropriate access to the townhouses for vehicles and pedestrians alike. In the long term, the roadway will play an important role in tying together the road network within the Downtown Local Centre. In short, the Tribunal does not agree with Mr. Fleiner that the roadway is poorly planned or with Mr. Haluza that the roadway is too narrow.
- d. There are no issues in respect of easement restrictions, natural resources, flood control, and the adequacy of utilities, municipal services, and schools. Mr. Evans noted that local school boards, who were notified in accordance with the provisions of the Act, raised no issues with the proposal.

[22] The site is currently zoned "R1" under By-law No. 66-71. This zoning only permits large lot single detached dwellings. The site specific zoning by-law amendment would rezone the property "R2" (for single detached dwellings) and "RM2" (for multiple density dwellings) and regulate the proposed land division and uses through very prescriptive density, coverage, angular plane, height, building, parking structure, exterior staircase, and sight triangle setbacks, lot configuration (frontage, area, and coverage), and parking (private, visitor, and bicycle) standards. The standards would vary depending on the zone.

## Density and Overdevelopment

[23] Based on the testimony of the expert witnesses, the Tribunal finds Mr. Fleiner's objections about excessive density on the site to be unwarranted. The overall density target for the Village District is 2 ("FSI") (Floor Space Index, or the ratio of floor space to land area) and the density target for the site is 1.25 FSI. There is no reason to doubt Mr. Evans' calculation of the proposed density of 0.96 FSI for the site, which includes the entire "developable area" including the roadway. Such an FSI is consistent with a development that serves as a transition between the lower density residential areas to the west and the higher density forms planned for along Yonge Street within the Village District.

[24] Mr. Fleiner infers that the density targets were "fixed" by the Town in 2017 to accommodate the Applicant's revised proposal. Not so. The Village District targets are integrated with other Downtown Local Centre targets to direct density to specific areas, to ensure appropriate transition to areas outside the Local Centre, and to allow for viable development proposals. The Tribunal concludes that the Town, through its policies, and the Applicant are simply of the same mind about what is appropriate for this site.

[25] In any case, appropriate density is as much in the eye of the beholder as it is an abstract FSI ratio. The proposed development must fit its physical surroundings as much as it meets prescribed density targets. In this case it does both. The single detached dwellings match the existing built form along Arnold Crescent and serve as a transition away from Yonge Street and the proposed townhouses. The townhouses themselves rise to a height that is in keeping with the OP vision for the area and is still below what is permissible. Above all, the townhouses are suitably scaled in relation to nearby properties. They also reinforce the existing physical character of Elizabeth Street, due north of the site, where medium and high density built forms—including three- and four-storey apartments—already provide a transition to the low density residential areas to the west.

## **Cultural Heritage**

[26] The Tribunal finds that the proposal is consistent with Provincial and OP policies that seek to protect the Town's cultural heritage. It is noted that, while several homes and institutions in the neighbourhood are designated heritage buildings, the site has no such buildings and does not fall within a Heritage Conservation District. Moreover, a Cultural Heritage Impact Assessment conducted for the Applicant concluded that the substantial building setbacks incorporated into the site plan are sufficient to mitigate any adverse impacts of a planning nature on the heritage buildings nearby, including Ms. Wharton's home on Arnold Crescent (Exhibit 12).

## **Trees**

[27] There are 174 trees on the site, of which 104 would be removed under the proposal. The Tribunal supports the Participants' desire to protect existing trees, both as a matter of principle and to preserve the neighbourhood character. However, it must be recognized that some tree loss should be expected whenever redevelopment takes place within a highly urbanized area such as this. Moreover, the Tribunal finds that the Applicant has not been insensitive to existing trees. A professional arborist was retained to mitigate the impact of the development on the trees; this has resulted in, among other things, a landscape plan that preserves mature trees where feasible (for example, to the rear of Townhouse Block B). Additional efforts to preserve trees at the north-west corner of the site have been successful through the settlement with Don Thomson. And, while recognizing the Participants' strong views on the inadequacy of the Town's tree replacement policies, it is noted that these policies provide for the replacement of all the 104 trees proposed to be removed either on site or off site using payments from the Applicant. In this way, although individual trees are lost, the overall tree canopy of the Town is maintained over the long term.

## **Traffic**

[28] The Participants' concerns about increased traffic were, in the Tribunal's view,

adequately addressed by Mr. Seegobin. According to Mr. Seegobin, the increase in vehicle volume to capacity ratios at the Arnold/Yonge and Arnold/Major Mackenzie intersections arising from the proposed development would be modest, would not trigger any road improvements, and would not materially affect the road level of service at these locations. Moreover, traffic infiltration from Yonge Street to Major Mackenzie via Arnold Crescent would be marginal. Mr. Seegobin's views were not substantively challenged.

### Mr. Harakh's Property

[29] Mr. Harakh's property, due south of the site, contains a single detached dwelling and vehicular access to Major Mackenzie Drive. Although similar in land use and built form to the low density Neighbourhoods to the west, the property falls within the Downtown Local Centre. As such, the transition policies that apply along the west lot line of the site—including the 45 degree angular plane restriction—do not apply to the proposed development in relation to Mr. Harakh's property.

[30] Mr. Evans argued that, because of its designation, Mr. Harakh's property should be treated as if it will intensify in the future. As such, deep setbacks similar to those on the west lot line, are inappropriate because they would create space between future medium density forms that is both unnecessary and an inefficient use of land. Mr. Harakh, who has no plans to sell or otherwise improve his property, believes he entitled to greater protection from noise, light, and potential trespassers, than what is afforded by the proposed design.

[31] The Tribunal accepts that Mr. Harakh's property has, essentially, become a legal non-conforming use that is now planned to accommodate a similar development to what is being proposed on the Applicant's site. There is no plan, however, for when his property is to redevelop. As such, the Tribunal finds that in the interim Mr. Harakh is entitled to a measure of privacy above and beyond what is required by the OP policy framework.

[32] A condition of approval that addresses Mr. Harakh's privacy is included below in the Tribunal's order.

### **Planning Process**

[33] The Participants, while not entitled to be included in settlement discussions, are entitled to have their views heard on the application, including the revision. In this case, the public process was long and, clearly, resulted in a development proposal that the Participants did not like. However, the Tribunal finds that the process, while convoluted, was not unfair. The revised application went through the normal review by Town staff. Staff's professional planning opinions were set out in detail in a report that was made publically available on February 1 2017. The proposal was considered by Committee of the Whole on February 6, 2017 and the Committee at that time heard the concerns of Messrs. Fleiner, Harakh, Mock, and Dr. Showracki. Having reviewed the information that the Council had in approving a settlement, the Tribunal is in no doubt that the planning process in respect of the original and revised applications was thorough, suitably consultative, and well-coordinated.

### **Conditions**

[34] Mr. Evans testified that the proposed draft plan of subdivision conditions are standard clearing conditions for the division of land and represent good planning.

[35] The Tribunal is satisfied that conditions 36-39 appropriately safeguard trees and tree roots along the Richmond Hill Cemetery lot line.

### **DISPOSITION AND ORDER**

[36] The Tribunal finds the revised applications to conform to applicable provincial and official plans and to be consistent with the PPS. The proposal represents "good planning" in that appropriate regard has been had to "provincial interests" set out in s. 2 of the Act. With respect to the draft plan of subdivision, the relevant evaluation criteria in

s.51(24) of the Act have been met. Finally, the Tribunal finds the planning concerns of the Participants to have been allayed by the evidence adduced in this appeal.

[37] As such, the Tribunal allows the appeal of the zoning by-law amendment in part. The Tribunal approves, in principle, the zoning by-law amendment set out in Exhibit 1, Schedule "B". The Tribunal withholds its Order approving the zoning by-law amendment pending approval of final site plan drawings by the Town's Commissioner of Planning and Regulatory Services and payment of all applicable fees by the Applicant.

[38] The Tribunal allows the appeal of the draft plan of subdivision and draft plan of condominium and approves the draft plan of subdivision set out in Exhibit 2, Schedule "C", subject to the conditions set out in Exhibit 5c, Tab 22, pp.956-67, and payment of all applicable fees by the Applicant. The conditions may be amended to reflect the approval by this Tribunal as required.

[39] The conditions are to be amended to provide for a 2 metre high solid wooden fence to be constructed along the lot line dividing Mr. Harakh's property from the site.

[40] The Tribunal withholds its Order approving the draft plan of condominium indefinitely.

[41] Finally, the Tribunal orders that the Town shall have the authority to clear the conditions of draft plan approval and to administer final approval of the draft plan of subdivision for the purposes of subsection 51(58) of the Act.

[42] Should difficulties arise leading up to issuance of the Order, the Tribunal may be spoken to.

*"Stefan Krzeczunowicz"*

STEFAN KRZECZUNOWICZ  
MEMBER

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please visit [www.elto.gov.on.ca](http://www.elto.gov.on.ca) to view the attachment in PDF format.

**Local Planning Appeal Tribunal**

A constituent tribunal of Environment and Land Tribunals Ontario

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[15] The Tribunal will allow the appeals. General reasons for this decision are provided below, including analysis that more directly addresses the Participants' concerns.

[16] The Tribunal accepts Mr. Evans's testimony that the proposal represents appropriate transit-supportive intensification that would make efficient use of existing

municipal infrastructure and services within a Settlement Area. The proposed design is for a compact built form that would make more efficient use of the site and would contribute to a “complete community” as defined by the Provincial Growth Plan for the Greater Golden Horseshoe 2017 (“Growth Plan”). For these reasons the Tribunal finds the proposal to be consistent with the PPS and to conform to the Growth Plan.

[17] The proposal conforms to the Region of York Official Plan as it exemplifies modest intensification within a designated Local Corridor in the Region’s Urban Area. The Tribunal notes that the site itself is within easy walking distance of two designated Regional Rapid Transit Corridors, where significant transit investment and intensification are planned for.

[18] The proposal also conforms to the Town’s Official Plan (“OP”) and— notwithstanding its approval in 2017 (i.e. after the application was filed but prior to the revised application)—the Downtown Local Centre Secondary Plan. Under this local policy framework, the site falls almost entirely within a designated Village District in the Downtown Local Centre, an area where intensification and redevelopment is encouraged subject to a range of land use and urban design criteria. According to Messrs. Evans and Hunt these criteria are met: the proposed buildings are low and medium density residential units and are within three to five storeys in height; the density of the site contributes to prescribed density targets (see below); the townhouses and roadway design, which includes road and sidewalk access from Arnold Street, establishes a development that is pedestrian friendly and human scale; the underground parking is unobtrusive; the development contributes to a greater range and mix of housing within the Downtown Local Centre; and, importantly, appropriate transition from the Downtown Local Centre to adjoining low density Neighbourhoods is achieved through the use of, among other things, substantial rear yard setbacks and a stepped back townhouse design.

[19] The Tribunal accepts Mr. Hunt’s opinion that the proposed design meets the Town’s Village Core and Town-Wide Urban Design Guidelines in respect of ensuring

that the development is compatible with the existing built environment and provides appropriate transition to surrounding properties.

[20] It is noted that the north-west corner of the site falls outside the Downtown Local Centre. However, the single detached lot that covers this corner represents an extension of the built environment along Arnold Crescent and Highland Lane. What is proposed is therefore in keeping with the intensification and transition policies of the OP and the Downtown Local Centre Secondary Plan and should be treated, for planning purposes, as the Downtown Local Centre.

[21] The Tribunal finds that the Draft Plan has sufficient regard to the subdivision criteria set out in s.51(24) of the Act.

- a. Mr. Evans highlighted the size and configuration of the three lots proposed to accommodate single detached homes fronting Arnold Crescent (Exhibit 3, Tab 3). The Tribunal finds that the form and design of the homes would reinforce the existing streetscape and provide a suitable transition to the denser townhouse forms to the south.
- b. The 88 townhouses present as a four-storey stacked design organized in three blocks, though the uninhabitable space on the fourth storey means that they qualify as three-and-a-half-storey homes under the Building Code. The units would range in size from 800 metres squared ("m<sup>2</sup>") to 1,300 m<sup>2</sup>. On-site parking would be provided underground and the 117 spaces (including for visitors and the disabled) falls within the prescribed range for the site under the Downtown Parking Strategy. The rear yard setbacks to the single detached homes along Highland Lane are generous, ranging anywhere from 11 metres to 30 metres. This ensures that, in the neighbourhood context, the townhouse blocks are substantially separated from the low density residential areas to the west. Indeed, even at its narrowest, the rear yard setbacks fall well below the 45 degree angular plane recommended by the Town's Urban Design Guidelines

(Exhibit 6, Tab 8).

- c. The roadway, 15.5 metres wide with a turnaround area at the southern (enclosed) end, is to be conveyed to the Town. The configuration and dimensions of the roadway in respect of public health, safety, and waste management requirements have been vetted by the Town's engineers and Fire Department. The Tribunal is persuaded that the need for a southerly extension of Elizabeth Street was identified as early as 2009. In the short term, the roadway provides appropriate access to the townhouses for vehicles and pedestrians alike. In the long term, the roadway will play an important role in tying together the road network within the Downtown Local Centre. In short, the Tribunal does not agree with Mr. Fleiner that the roadway is poorly planned or with Mr. Haluza that the roadway is too narrow.
- d. There are no issues in respect of easement restrictions, natural resources, flood control, and the adequacy of utilities, municipal services, and schools. Mr. Evans noted that local school boards, who were notified in accordance with the provisions of the Act, raised no issues with the proposal.

[22] The site is currently zoned "R1" under By-law No. 66-71. This zoning only permits large lot single detached dwellings. The site specific zoning by-law amendment would rezone the property "R2" (for single detached dwellings) and "RM2" (for multiple density dwellings) and regulate the proposed land division and uses through very prescriptive density, coverage, angular plane, height, building, parking structure, exterior staircase, and sight triangle setbacks, lot configuration (frontage, area, and coverage), and parking (private, visitor, and bicycle) standards. The standards would vary depending on the zone.



## Density and Overdevelopment

[23] Based on the testimony of the expert witnesses, the Tribunal finds Mr. Fleiner's objections about excessive density on the site to be unwarranted. The overall density target for the Village District is 2 ("FSI") (Floor Space Index, or the ratio of floor space to land area) and the density target for the site is 1.25 FSI. There is no reason to doubt Mr. Evans' calculation of the proposed density of 0.96 FSI for the site, which includes the entire "developable area" including the roadway. Such an FSI is consistent with a development that serves as a transition between the lower density residential areas to the west and the higher density forms planned for along Yonge Street within the Village District.

[24] Mr. Fleiner infers that the density targets were "fixed" by the Town in 2017 to accommodate the Applicant's revised proposal. Not so. The Village District targets are integrated with other Downtown Local Centre targets to direct density to specific areas, to ensure appropriate transition to areas outside the Local Centre, and to allow for viable development proposals. The Tribunal concludes that the Town, through its policies, and the Applicant are simply of the same mind about what is appropriate for this site.

[25] In any case, appropriate density is as much in the eye of the beholder as it is an abstract FSI ratio. The proposed development must fit its physical surroundings as much as it meets prescribed density targets. In this case it does both. The single detached dwellings match the existing built form along Arnold Crescent and serve as a transition away from Yonge Street and the proposed townhouses. The townhouses themselves rise to a height that is in keeping with the OP vision for the area and is still below what is permissible. Above all, the townhouses are suitably scaled in relation to nearby properties. They also reinforce the existing physical character of Elizabeth Street, due north of the site, where medium and high density built forms—including three- and four-storey apartments—already provide a transition to the low density residential areas to the west.

## **Cultural Heritage**

[26] The Tribunal finds that the proposal is consistent with Provincial and OP policies that seek to protect the Town's cultural heritage. It is noted that, while several homes and institutions in the neighbourhood are designated heritage buildings, the site has no such buildings and does not fall within a Heritage Conservation District. Moreover, a Cultural Heritage Impact Assessment conducted for the Applicant concluded that the substantial building setbacks incorporated into the site plan are sufficient to mitigate any adverse impacts of a planning nature on the heritage buildings nearby, including Ms. Wharton's home on Arnold Crescent (Exhibit 12).

## **Trees**

[27] There are 174 trees on the site, of which 104 would be removed under the proposal. The Tribunal supports the Participants' desire to protect existing trees, both as a matter of principle and to preserve the neighbourhood character. However, it must be recognized that some tree loss should be expected whenever redevelopment takes place within a highly urbanized area such as this. Moreover, the Tribunal finds that the Applicant has not been insensitive to existing trees. A professional arborist was retained to mitigate the impact of the development on the trees; this has resulted in, among other things, a landscape plan that preserves mature trees where feasible (for example, to the rear of Townhouse Block B). Additional efforts to preserve trees at the north-west corner of the site have been successful through the settlement with Don Thomson. And, while recognizing the Participants' strong views on the inadequacy of the Town's tree replacement policies, it is noted that these policies provide for the replacement of all the 104 trees proposed to be removed either on site or off site using payments from the Applicant. In this way, although individual trees are lost, the overall tree canopy of the Town is maintained over the long term.

## **Traffic**

[28] The Participants' concerns about increased traffic were, in the Tribunal's view,

adequately addressed by Mr. Seegobin. According to Mr. Seegobin, the increase in vehicle volume to capacity ratios at the Arnold/Yonge and Arnold/Major Mackenzie intersections arising from the proposed development would be modest, would not trigger any road improvements, and would not materially affect the road level of service at these locations. Moreover, traffic infiltration from Yonge Street to Major Mackenzie via Arnold Crescent would be marginal. Mr. Seegobin's views were not substantively challenged.

### **Mr. Harakh's Property**

[29] Mr. Harakh's property, due south of the site, contains a single detached dwelling and vehicular access to Major Mackenzie Drive. Although similar in land use and built form to the low density Neighbourhoods to the west, the property falls within the Downtown Local Centre. As such, the transition policies that apply along the west lot line of the site—including the 45 degree angular plane restriction—do not apply to the proposed development in relation to Mr. Harakh's property.

[30] Mr. Evans argued that, because of its designation, Mr. Harakh's property should be treated as if it will intensify in the future. As such, deep setbacks similar to those on the west lot line, are inappropriate because they would create space between future medium density forms that is both unnecessary and an inefficient use of land. Mr. Harakh, who has no plans to sell or otherwise improve his property, believes he entitled to greater protection from noise, light, and potential trespassers, than what is afforded by the proposed design.

[31] The Tribunal accepts that Mr. Harakh's property has, essentially, become a legal non-conforming use that is now planned to accommodate a similar development to what is being proposed on the Applicant's site. There is no plan, however, for *when* his property is to redevelop. As such, the Tribunal finds that in the interim Mr. Harakh is entitled to a measure of privacy above and beyond what is required by the OP policy framework.

[32] A condition of approval that addresses Mr. Harakh's privacy is included below in the Tribunal's order.

### **Planning Process**

[33] The Participants, while not entitled to be included in settlement discussions, are entitled to have their views heard on the application, including the revision. In this case, the public process was long and, clearly, resulted in a development proposal that the Participants did not like. However, the Tribunal finds that the process, while convoluted, was not unfair. The revised application went through the normal review by Town staff. Staff's professional planning opinions were set out in detail in a report that was made publically available on February 1 2017. The proposal was considered by Committee of the Whole on February 6, 2017 and the Committee at that time heard the concerns of Messrs. Fleiner, Harakh, Mock, and Dr. Showracki. Having reviewed the information that the Council had in approving a settlement, the Tribunal is in no doubt that the planning process in respect of the original and revised applications was thorough, suitably consultative, and well-coordinated.

### **Conditions**

[34] Mr. Evans testified that the proposed draft plan of subdivision conditions are standard clearing conditions for the division of land and represent good planning.

[35] The Tribunal is satisfied that conditions 36-39 appropriately safeguard trees and tree roots along the Richmond Hill Cemetery lot line.

### **DISPOSITION AND ORDER**

[36] The Tribunal finds the revised applications to conform to applicable provincial and official plans and to be consistent with the PPS. The proposal represents "good planning" in that appropriate regard has been had to "provincial interests" set out in s. 2 of the Act. With respect to the draft plan of subdivision, the relevant evaluation criteria in

s.51(24) of the Act have been met. Finally, the Tribunal finds the planning concerns of the Participants to have been allayed by the evidence adduced in this appeal.

[37] As such, the Tribunal allows the appeal of the zoning by-law amendment in part. The Tribunal approves, in principle, the zoning by-law amendment set out in Exhibit 1, Schedule "B". The Tribunal withholds its Order approving the zoning by-law amendment pending approval of final site plan drawings by the Town's Commissioner of Planning and Regulatory Services and payment of all applicable fees by the Applicant.

[38] The Tribunal allows the appeal of the draft plan of subdivision and draft plan of condominium and approves the draft plan of subdivision set out in Exhibit 2, Schedule "C", subject to the conditions set out in Exhibit 5c, Tab 22, pp.956-67, and payment of all applicable fees by the Applicant. The conditions may be amended to reflect the approval by this Tribunal as required.

[39] The conditions are to be amended to provide for a 2 metre high solid wooden fence to be constructed along the lot line dividing Mr. Harakh's property from the site.

[40] The Tribunal withholds its Order approving the draft plan of condominium indefinitely.

[41] Finally, the Tribunal orders that the Town shall have the authority to clear the conditions of draft plan approval and to administer final approval of the draft plan of subdivision for the purposes of subsection 51(58) of the Act.

[42] Should difficulties arise leading up to issuance of the Order, the Tribunal may be spoken to.

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