

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: July 07, 2022

CASE NO(S):

OLT-22-001947
(Formerly PL210162)

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:

2706379 Ontario Ltd.

Subject:

Request to amend the Official Plan - Failure of the City of Richmond Hill to adopt the requested amendment

Existing Designation:

"Neighbourhood"

Proposed Designated:

An amendment to the Official Plan to remove the subject lands from the listing of the "Existing Neighbourhood Commercial Site" (in accordance with Appendix 7 of the Official Plan) in order to facilitate the development of the proposed residential development in accordance with the provisions of the "Neighbourhood" designation

Purpose:

To permit the construction of a medium density residential development comprised of 19 townhouse dwelling units

Property Address/Description:

12600 Bayview Avenue/ Block 226, Plan 65M-3802

Municipality:

City of Richmond Hill

Approval Authority File No.:

D01-19004

OLT Case No.:

OLT-22-001947

Legacy Case No.:

PL210162

OLT Lead Case No.:

OLT-22-001947

Legacy Lead Case No.:

PL210162

OLT Case Name:

2706379 Ontario Ltd. v. Richmond Hill (City)

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

Applicant and Appellant:	2706379 Ontario Ltd.
Subject:	Application to amend Zoning By-law No. 85-02, as amended - Neglect of the City of Richmond Hill to make a decision
Existing Zoning:	“Neighbourhood Commercial (NC) Zone”
Proposed Zoning:	“Multiple Residential One (RM1) Zone”
Purpose:	To permit the construction of a medium density residential development comprised of 19 townhouse dwelling units
Property Address/Description:	12600 Bayview Avenue/ Block 226, Plan 65M-3802
Municipality:	City of Richmond Hill
Municipality File No.:	D02-19021
OLT Case No.:	OLT-22-001955
Legacy Case No.:	PL210163
OLT Lead Case No.:	OLT-22-001947
Legacy Lead Case No.:	PL210162

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

Referred by:	2706379 Ontario Ltd.
Subject:	Site Plan
Property Address/Description:	12600 Bayview Avenue
Municipality:	City of Richmond Hill
OLT Case No.:	OLT-22-001956
Legacy Case No.:	PL210164
OLT Lead Case No.:	OLT-22-001947
Legacy Lead Case No.:	PL210162

Heard: January 31 to February 3, 2022 via Video Hearing

APPEARANCES:

Parties

2706379 Ontario Ltd.

City of Richmond Hill

Counsel

Jason Park, Olivia Rasekhi

Carleton Thorne

DECISION DELIVERED BY SHARYN VINCENT AND INTERIM ORDER OF THE TRIBUNAL

[1] 2706379 Ontario Ltd. (“Applicant/Appellant”) appealed against the refusal of Council to amend the current Neighbourhood Commercial (“NC”) zoning of the corner site, located at the southeast quadrant of the intersection of Bayview Avenue and Old Colony Road, in the Oak Ridges Community, and known municipally as 12600 Bayview Ave. (the “site”).

[2] The Appellant proposes to develop 19 townhouses on the site, which would be permitted under the current Neighbourhood Official Plan designation but for the NC zoning, which makes no provision for strictly residential uses. Council, in refusing the application, disregarded the recommendation by staff who supported, and recommended the proposal.

THE KEY ISSUES

[3] The NC zoning was enacted in 2002, when the surrounding residential plans of subdivision and zoning were approved. The mixture of detached, semi-detached and townhouses approved in 2002, have been built out, in the majority between 2005 to 2010.

[4] The site has, however, remained undeveloped and has attracted only one formal proposal seeking municipal approvals of the Committee of Adjustment for variances in connection with a related site plan application for a convenience store and related gas bar. The Tribunal was advised, through the course of the evidence, that the 2012 application met with neighbourhood resistance, and was not pursued by the Applicant.

[5] It was however, the decision of Council, that because the NC zoning on the site represented the only zoned opportunity in the northeast portion of the community, the opportunity should be preserved. The City retained independent planning advice and the City of Richmond Hill’s (“City”) case was expanded to include evidence against the compatibility of the residential development as proposed and raised issues of conformity with provincial policy and the Official Plan.

[6] The Tribunal heard from two land use planners, an architect, and two land economists, who were respectively tendered to assist the Tribunal with opinion evidence in areas of land use planning, urban design, and commercial market analysis.

[7] Having considered all of the written evidence, including the two participant statements, visuals, and the *viva voce* evidence, the Tribunal will allow the appeal, and direct the Council of the City to amend Zoning By-law No. to permit a 19 unit townhouse development substantially in accordance with Exhibit 3, Page 7.

[8] The Tribunal's determination is based on the following analysis of the evidence.

THE CONTEXT AND FINDINGS

[9] It is the undisputed evidence of both planning witnesses, in fact all of the witnesses, and is perhaps most clearly illustrated by the Urban Structure Schedule A1 to the City's Official Plan ("OP"), when viewed in tandem with aerial photographs of the Oak Ridges Community, that the subject lands are situated at the very easterly limits of the Neighbourhoods area. But for three subdivisions, all lands to the east of Bayview Avenue, are a designated Greenway System, which through layers of policy designations (pp. 25-29 of Visual Evidence, Exhibit 3), are protected from development. The balance of undeveloped lands with intensification /infilling potential, lie to the west of Yonge Street. The site, therefore, has been characterized as an outlier site with very finite unrealized development potential in the lands to the northeast and southeast. With the exception of exposure to the travelling public and the related potential capture of pass by traffic, the surrounding neighbourhood achieved the planned function approximately 10-12 years ago, and yet the site remains unimproved for commercial uses, which would be permitted as-of-right, subject, of course, to site plan approval.

[10] A Commercial Needs Analysis was undertaken by UrbanMetrics, on behalf of the Appellants, in support of the 2019 applications to amendments in the OP and Zoning By-law for the City. The author of the report and witness before the Tribunal was qualified to

give opinion evidence in areas of both land economics and commercial land use planning, which are both particularly germane to this deliberation when balancing the complex and compound objective of the Provincial Planning Statement 2020 (“PPS”), which aspires to create and maintain “strong liveable and healthy communities [which] promote and enhance human health and social well-being, are economically and environmentally sound, and are resilient to climate change.

[11] The Tribunal came to its determination after weighing the prospect that at some uncertain point, neighbourhood commercial uses could be attracted to the site against the real opportunity of completing the neighbourhood by adding to the housing opportunities in what was proven, through the evidence, to be a highly desirable, and well serviced neighbourhood.

[12] The summary conclusions of the Commercial Needs Analysis, which was peer reviewed, are as follows:

- (i) low population densities and relatively low traffic volumes on Bayview Avenue in the vicinity of the site would make a commercial development on this site very challenging to lease;
- (ii) the area in the vicinity of the site is already fully developed with no additional growth potential;
- (iii) the Oak Ridges Community is already very well served by the retail and service uses within the Oak Ridges Local Centre and recently added developments along Yonge Street a short distance to the south;
- (iv) future growth within Oak Ridges is almost entirely focused on the western portion of the community and nowhere near the subject site;
- (v) policy direction at both the local and provincial levels encourages that new commercial development be focused in strategic areas such as the Oak Ridges Local Centre rather than on single use and more isolated commercial sites; and
- (vi) from both a market and planning policy perspective, it would be preferable to direct new commercial development in Oak Ridges to the Oak Ridges Local Centre rather than to dilute the market by attempting to develop a marginal site on the far eastern edge of the community that is far from any future growth.

[13] The peer review raises no questions with respect to the overall methodology of the study, and comes to a similar conclusion that a commercial development may never be realized on the site, albeit for different reasons as the peer review conducted a more traditional Trade Area study. Moreover, the peer review came to the following conclusions and prognostications:

- (a) despite the location, exposure and topography of the site, all attributes which would normally support neighbourhood commercial development, the site remains vacant. "It is a fact that retail commercial developments of all types have become increasingly more difficult in the recent past. The reason for this is the increasing prominence of e-commerce, rising development costs and a shortage of suitable tenants[...].
- (b) Due to the fact that the residential areas in the site vicinity are fully developed, the residing population is currently satisfying any retail and related service needs in other areas. This would not change if the site were developed for residential purposes. Thus any existing shopping inconvenience, due to the potential rezoning, would not change...[...]
- (c) From a theoretical retail planning point of view, 12600 Bayview Avenue is an ideal location for a neighbourhood convenience centre. From a more practical point of view, it may never be developed as such due to cost factors and tenant shortages. Thus, we conclude that the rezoning request is more of a planning than a market demand issue.

[14] The Tribunal concurs, and therefore, turns its mind to the evidence which clearly demonstrates that the broader neighbourhood is more than adequately serviced with retail and service commercial opportunities. The appeal, therefore, turns on the compatibility of the proposed infill townhouse development which, although not specifically referenced in Council's refusal, formed part of the City's case strategy and the issues to be adjudicated.

[15] Allan Ramsay, retained by the City to give planning opinion evidence, critiqued the proposal as in essence, not being compatible with the existing fabric as it does not follow what the witness referred to as the established pattern of development, and in some instances, the building face, to building face relationships found in the existing housing stock, developed as described earlier in the large part, 10-12 years earlier.

[16] This critique was at sharp contrast to what both the planner, and in particular, the urban design witness for the Appellant characterized as a more appropriately current

approach to the organization of this corner property by creating three blocks of townhomes, two of which directly address Bayview Avenue and Old Colony Road with front doors, as opposed to garage doors. All vehicular circulation and accommodation, be it either in garages or private driveways, is contained within the interior of the site, thereby allowing for the creation of an optimal landscaped gateway to the new and established neighbourhood around the street edge perimeter of the site.

[17] The Tribunal prefers and accepts the evidence of the witnesses for the Appellant that this approach to infill development respectfully addresses the character of the established neighbourhood, which is comprised of a range of single detached and semi-detached residences, and improves upon the now dated urban design solution of having low density residences front onto window streets running parallel to arterial roads. This duplication of infrastructure is not consistent with the overarching principle of the PPS to optimize existing infrastructure with a view to intensifying opportunities to, in this instance, create new housing opportunities, which additionally, further the mix of options in the immediate vicinity.

[18] The Tribunal was taken to examples of similar forms of townhouse infill developments approved elsewhere in the broader neighbourhood, where the building forms clearly co-exist with the older fabric of traditional singles and semis.

[19] The contentions that the site layout would result in incompatible side yard to rear yard and rear yard to rear yard relationships with the existing homes to the south was convincingly countered through the examination of existing, typical urban relationships within the immediately abutting established fabric of detached and semi-detached dwellings on Old Colony Road and Barnwood Drive through cross-examination.

CONCLUSION

[20] The Tribunal is satisfied, having read and heard all of the evidence, that the infill residential development, as proposed, meets the broadly accepted test of compatibility which is that the development needs not be the same as, but must be able to co-exist within the context. It has been demonstrated to the Tribunal that the proposed configuration and massing will in fact be compatible, and will also contribute to the range and mix of housing options available within the broader neighbourhood, thereby being consistent with the PPS and conforming to the Growth Plan for the Greater Golden Horseshoe (“Growth Plan”) Policies to optimize infrastructure, through the creation of compact urban form.

ISSUES REGARDING IMPLEMENTATION

[21] The Parties disagree as to how the approvals for the appeal should unfold.

[22] The witness for the City recommends that the Official Plan Amendment (“OPA”), which would simply eliminate the listing of the subject lands on Appendix 7 as a NC site, should be with held together with the Zoning By-law Amendment (“ZBA”) until such time as:

- (i) the ZBA has been finalized to the satisfaction of the City’s Commissioner of Planning and Infrastructure;
- (ii) the Site Plan has been finalized to the satisfaction of the Commissioner of Planning and Infrastructure; and,
- (iii) the Owner has registered restrictions over the subject lands under s. 118 of the *Land Titles Act* to the satisfaction of the City.

[23] The witness for the Owner recommended differently to the Tribunal that there was no apparent merit in holding the order on the OPA before the Tribunal as Exhibit 5; took no issue with withholding the ZBA to allow for the perfection of the site plan application; but very strongly opposed the recommended condition precedent regarding the imposition of s. 118 restrictions pursuant to the *Land Titles Act* prior to the issuance of the Order on the ZBA.

[24] The Tribunal is persuaded that the amendment to the OP may, and shall proceed in advance of the final order on the ZBA. The Tribunal, however, is not persuaded that the invocation of s. 118 restrictions is necessary to address the somewhat vague concerns the City has with the very standard process of proceeding with the approvals, build out and registration of attached condominium units. The Tribunal will therefore not impose the recommendation of the City with respect to s. 118 restrictions, and will expect to see a revised, final form of the zoning by-law that addresses the technical issues raised by Mr. Ramsay, the witness for the City, in his evidence regarding Exhibit 6, the draft ZBA.

[25] At the outset of the hearing, the Tribunal was advised that the Parties had agreed to defer the consideration of the appeal of the site plan application, with a view to resolution between the Parties, subject of course to the outcome of this proceeding. The following order, therefore does not specifically address the s. 41(12) appeal.

ORDER

[26] **THE TRIBUNAL ORDERS** that the appeal of the application to amend the Official Plan of the City of Richmond Hill is granted and the City of Richmond Hill is herein directed to amend Appendix 7 (Existing Neighbourhood Commercial Sites) by deleting the lands identified in Schedule 1 to Attachment 1 hereto forming part of this Order.

[27] **THE TRIBUNAL FURTHER ORDERS** that the appeal of the application to amend the zoning by-law is allowed in principle; the Tribunal shall withhold its final order until it is in receipt of an amending by-law in final form to the satisfaction of the Parties.

“Sharyn Vincent”

SHARYN VINCENT
VICE-CHAIR

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1

Ex 5

**AMENDMENT NO. _____
TO THE RICHMOND HILL
OFFICIAL PLAN**

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(i)

Richmond Hill Official Plan

Official Plan Amendment No. ____

The attached schedule and explanatory text constitute Amendment No. ____ to the Richmond Hill Official Plan.

This amendment was prepared and approved by the Ontario Land Tribunal in accordance with Sections 17 and 21 of the Planning Act on the ____ day of _____, 2022.

(ii)

The Corporation of The City of Richmond Hill

By-Law No. _____

A By-law to Adopt Amendment No. ___ to the Richmond Hill Official Plan.

The Ontario Land Tribunal in accordance with provisions of the *Planning Act*, R.S.O 1990, hereby approves as follows:

1. That Amendment No. ___ to the Richmond Hill Official Plan, consisting of the attached Part Two and Schedule 1 is hereby approved.

-1-

Part One – The Preamble is not a part of the Amendment.

Part Two – The Amendment, consisting of text and maps, constitutes Amendment No. __ to the Richmond Hill Official Plan.

-2-

PART ONE – THE PREAMBLE

1.1 Purpose

The purpose of this Amendment to the Richmond Hill Official Plan is to delete the subject lands from Appendix 7, Existing Neighbourhood Commercial Site, in the Plan. The Amendment will facilitate the development of a nineteen unit common element townhouse development on the subject lands.

1.2 Location

The lands affected by this Amendment are located at the south west corner of Bayview Avenue and Old Colony Road, and are described as Block 226, Registered Plan 65M-3802, municipally known as 12600 Bayview Avenue. The subject lands have a total site area of approximately 0.39 hectares (0.96 acres) and are shown on Schedule 1 attached to Amendment No.____ to the Richmond Hill Official Plan.

1.3 Basis

The proposed amendment is considered to be appropriate for the following reasons:

- the development proposal is consistent with the *Provincial Policy Statement, 2020*;
- the development proposal conforms to the *Growth Plan for the Greater Golden Horseshoe 2020*;
- the development proposal conforms to the York Region Official Plan (2010), which designates the subject lands Urban Area, and encourages intensification and redevelopment within the Urban Area boundary;
- the use of the lands for commercial purposes was determined not to be required to serve the existing and future commercial needs of the neighbourhood and therefore residential use of the lands is appropriate; and
- the proposed medium density residential development is consistent with the Neighbourhood designation of the City of Richmond Hill Official Plan.

-3-

Part Two – The Amendment

2.1 Introduction

All of this part of the document entitled **Part Two –The Amendment**, consisting of the following text and the attached schedule designated as Schedule “1”, constitute Amendment No. ____ to the Richmond Hill Official Plan.

2.2 Details of Amendment

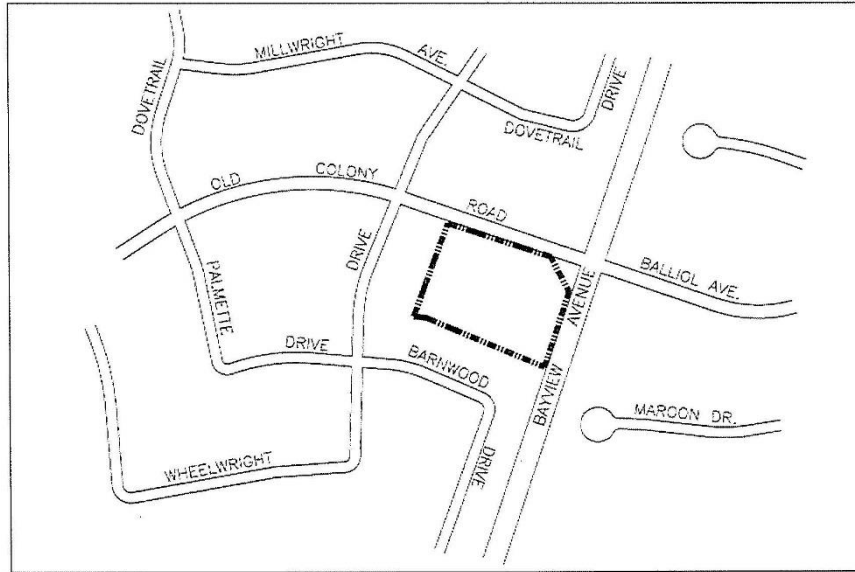
The Richmond Hill Official Plan is amended as follows:

That Appendix 7 (Existing Neighbourhood Commercial Sites) to the Richmond Hill Official Plan be amended to delete the lands identified on Schedule 1, of Amendment No. ____ to the Richmond Hill Official Plan.

2.3 Implementation and Interpretation

The implementation of this Amendment shall be in accordance with the provisions of the *Planning Act*, R.S.O. 1990, and the respective policies of the City of Richmond Hill Official Plan.

The provisions of the Official Plan as amended from time to time, regarding the interpretation of the Official Plan of the City of Richmond Hill, apply in regard to this Official Plan Amendment. In the event of conflict with the Official Plan or any amendment thereto, the provisions of Amendment No. ____ shall prevail unless otherwise specified.



AMENDMENT No. ___ TO THE
OFFICIAL PLAN OF THE RICHMOND HILL PLANNING AREA
SCHEDULE 1
LAND USE PLAN

NOTE: THIS SCHEDULE FORMS PART OF AMENDMENT No. ___ TO THE
OFFICIAL PLAN OF THE RICHMOND HILL PLANNING AREA
AND MUST BE READ IN CONJUNCTION WITH THE WRITTEN TEXT



Area affected by this amendment



Neighbourhood