

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: May 14, 2025

CASE NO(S): OLT-24-000170

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

Applicant/Appellant: 28556973 Ontario Inc.
Subject: Application to amend the Zoning By-law –
Refusal or neglect to make a decision.
Description: To permit the development of eighteen (18)
townhouse units.
Reference Number: 22 162536 WET 02 OZ
Property Address: 417 and 419 Burnhamthorpe Road
Municipality/UT: Toronto/Toronto
OLT Case No: OLT-24-000170
OLT Lead Case No: OLT-23-000170
OLT Case Name: 2856973 Ontario Inc. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 114(15) of the *City of Toronto Act*, 2006, S. O. 2006, c. 11 Sched A

Applicant/Appellant: 28556973 Ontario Inc.
Subject: Application to approve plans or drawings –
Refusal or neglect to make a decision.
Description: To permit the development of eighteen (18)
townhouse units.
Reference Number: 22 162536 WET 02 OZ
Property Address: 417 and 419 Burnhamthorpe Road
Municipality/UT: Toronto/Toronto
OLT Case No: OLT-24-000171
OLT Lead Case No: OLT-23-000170
OLT Case Name: 2856973 Ontario Inc. v. Toronto (City)

Heard: May 6, 2025 by Video Hearing

APPEARANCES:**Parties**

2856973 Ontario Inc. (“Appellant”)

City of Toronto (“City”)

CounselAndrew Jeanrie
Stephanie BrazzellAdam Ward
Derin Abimbola (*in absentia*)**DECISION DELIVERED BY W. DANIEL BEST ON MAY 6, 2025 AND ORDER OF THE TRIBUNAL**

[Link to the Order](#)**INTRODUCTION**

[1] The Tribunal convened a hearing to consider a settlement regarding an appeal brought forward for the above-noted matter. The Appellant has an Appeal against the City for failing to make a decision within statutory timeframes for a Zoning By-law Amendment (“ZBA”) under s. 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended (“Act”).

[2] The appeal against the City for the failure to approve plans or drawings for a site plan control area under s. 114(15) of the *City of Toronto Act, 2006*, S. O. 2006, c. 11 Sched A (“COTA”) will be addressed at a future hearing as outlined in paragraph [5].

[3] The Subject Lands are comprised of two properties municipally addressed as 417 and 419 Burnhamthorpe Road in the City. The Subject Lands has an area of approximately 0.1962 hectares (“ha”), with a frontage of approximately 32.29 metres (“m”) along Burnhamthorpe Road. The Subject Lands are currently occupied by two one-storey single detached residential dwellings.

[4] The proposed ZBA seeks to permit the redevelopment of the Subject Lands with 18 back-to-back townhouses having a maximum block height of 13.5 m, a total Gross Floor Area of 2,978 square metres ("m²"), and a density of 1.5 times the lot area, with a total of 20 vehicular parking spaces.

[5] The Parties advised that a Settlement had been reached on the ZBA. The Parties continue to work collaboratively to address the appeal under s. 114(15) of COTA. To that end, the Parties agreed to the following process regarding the site plan control Appeal:

- By the end of the day, **Thursday, May 29, 2025**, The Parties will submit a draft Procedural Order ("PO") and scoped Issues List ("IL") to be considered by the Tribunal. The Parties will be advised through the Case Coordinator if the PO is approved in principle (subject to being updated with proper dates once a date for a Hearing on the Merits has been set) or if the Parties require further work.
- By the end of the day, **Thursday, May 29, 2025**, the Parties will determine the anticipated number of days for a Hearing on the Merits and submit options through the Case Coordinator for proposed date blocks to be considered by the Tribunal.
- If approved in principle, the Tribunal will return the draft PO to the Parties to be populated with the proper dates by **Thursday, June 5, 2025**.
- By the end of day, **Thursday, June 12, 2025**, the Parties will submit through the Case Coordinator the updated PO and IL reflecting the appropriate dates as determined by the date of the Hearing on the Merits.

[6] The Tribunal will set a Hearing on the Merits based on the available date blocks

provided by the Parties. The Tribunal will confirm that the revised PO is approved and will govern the proceedings of the Hearing on the Merits. Both actions will be communicated through the Case Coordinator.

ISSUES AND EVIDENCE

[7] Under Rule 12.1 of the *Tribunal's Rules of Practice and Procedure*, the issues to be addressed by the Tribunal when considering a proposed settlement are whether all statutory requirements and the public interest are satisfied. Based on these considerations, the Tribunal will determine whether the sought ZBA should be approved, amended, or denied and whether the proceedings should be continued or dismissed.

[8] When considering an application to amend a ZBA, filed pursuant to s. 34 of the Act, the Tribunal must have regard to matters of provincial interest as set out in s. 2 and regard to the decision of the City and the information considered by it pursuant to s. 2.1(1) of the Act.

[9] Section 3(5) of the Act requires that decisions of the Tribunal affecting planning matters be consistent with the Provincial Planning Statement ("PPS"). The Tribunal must also be satisfied that the ZBA conforms with the applicable OPs in effect and represents good planning.

SUBMISSIONS AND EVIDENCE

[10] In support of the proposed settlement, the Appellant filed the following Exhibits:

- **Exhibit 1:** Affidavit of Jim Levac dated April 30, 2025.

[11] Mr. Levac is a Partner at a land-use planning consulting firm. Based on his experience and expertise, the Tribunal qualified him to provide opinion evidence as an

expert in land-use planning.

[12] Mr. Levac stated that the Settlement Proposal represents an opportunity to provide intensification and infill redevelopment of an underutilized site and will introduce 18 new back-to-back townhouse residential units to provide a new housing alternative which allows for greater housing choice for future residents.

[13] Mr. Levac opined that the proposed development is located by a major street, serviced by transit and is suited to a more intense form of redevelopment within a neighbourhood given its peripheral location.

[14] Mr. Levac submitted that the proposed development provides for a higher density, varying from the local pattern in terms of lot size, configuration and orientation and is located in the established Neighbourhoods Area. This is accomplished through a medium density built form that is at a scale and massing at a peripheral location that respects the character of the neighbourhood it backs on to.

[15] Mr. Levac stated the proposed development represents contextually appropriate intensification of underutilized lands. The revised proposal contemplates a compact, pedestrian-oriented built form that is situated to provide sufficient separation from the adjacent Neighbourhood area to the north and to provide direct connections to the public realm.

[16] Mr. Levac advised that the Subject Lands are situated in close proximity to transit services, commercial destinations, parks and public service facilities – all of which support a complete community.

[17] Mr. Levac opined that the Settlement Proposal represents good planning, and the proposed development addresses the relevant matters of provincial interest

identified in s. 2 of the Act, is consistent with the PPS and conforms with the City Official Plan.

[18] Under Rule 12.1, if all statutory requirements and the public interest are satisfied, the Tribunal may issue an order approving a proposed settlement with any necessary amendments. In considering the statutory provisions and the public interest, the Tribunal must determine whether the outcome of the proposed settlement conforms with the provisions of the applicable legislation. This informs the Tribunal on whether the appeals should be allowed or dismissed.

[19] The Tribunal accepts the uncontradicted planning opinion evidence of Mr. Levac in its entirety. The Tribunal had regard for the decision and considered the information available to City Council pursuant to s. 2.1(1) of the Act and finds that the Settlement Proposal addresses the relevant matters of provincial interest identified in s. 2 of the Act, is appropriate and desirable from a land use planning perspective, is consistent with the policy framework expressed in the PPS and conforms with the City Official Plan.

[20] Mr. Levac recommends that the ZBA should be approved by the Tribunal as set out in **Attachment 1** as all conditions have been satisfied.

[21] The Tribunal thanked the Parties for their assistance and collaborative efforts on this matter.

ORDER

[22] **THE TRIBUNAL ORDERS** the directions contained in this Decision.

[23] **THE TRIBUNAL FURTHER ORDERS THAT** the appeal is allowed, in part, and the Tribunal directs the City of Toronto to amend By-law 569-13 as follows, and as set out in **Attachment 1** to this Order with respect to the lands municipally known as 417 and 419 Burnhamthorpe Road. The Tribunal authorizes the municipal clerk of the City of Toronto to assign a number to this by-law for record-keeping purposes.

“W. Daniel Best”

W. DANIEL BEST
MEMBER

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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

Authority: Ontario Land Tribunal Decision issued on [date] and Ontario Land Tribunal Order issued on [date] in Tribunal File OLT-24-000170

CITY OF TORONTO

BY-LAW 2025 (OLT)

To amend Zoning By-law 569-2013, as amended, with respect to the lands municipally known in the year 2024 as 417 and 419 Burnhamthorpe Road.

Whereas the Ontario Land Tribunal, by its Decision issued on [date] and its Order issued on [date], in respect of Tribunal File OLT-24-000170, upon hearing an appeal under Section 34(11) of the Planning Act, R.S.O. 1990, c. P13, as amended, determined to amend Zoning By-law 569-2013, as amended, with respect to the lands municipally known in the year 2024 as 417 and 419 Burnhamthorpe Road; and

Whereas the Ontario Land Tribunal has the authority pursuant to Section 34 of the Planning Act, as amended, to pass this By-law; and

Whereas pursuant to Section 39 of the Planning Act, as amended, the council of a municipality may, in a by-law passed under Section 34 of the Planning Act, authorize the temporary use of land, buildings or structures for any purpose set out therein that is otherwise prohibited in the by-law;

The Ontario Land Tribunal Orders:

1. The lands subject to this By-law are outlined by heavy black lines on Diagram 1 attached to this By-law.
2. The words highlighted in bold type in this By-law have the meaning provided in Zoning By-law 569-2013, as amended, Chapter 800 Definitions.
3. Zoning By-law 569-2013, as amended, is further amended by amending the zone label on the Zoning By-law Map in Section 990.10 respecting the lands outlined by heavy black lines from a zone label of RT (x325) to a zone label of RT (x380) as shown on Diagram 2 attached to this By-law.
4. Zoning By-law 569-2013, as amended, is further amended by adding Article 900.5.10 Exception Number 380 so that it reads:

(380) Exception RT (380)

The lands, or a portion thereof as noted below, are subject to the following Site Specific Provisions, Prevailing By-laws and Prevailing Sections:

Site Specific Provisions:

-
- (A) On lands municipally known as 417 and 419 Burnhamthorpe Road, if the requirements of By-law [Clerks to insert By-law number] are complied with, a **building or structure** may be constructed, used or enlarged in compliance with Regulations (B) to (O) below;
- (B) Despite regulation 10.5.40.10(1), the height of a **building or structure** is the distance between the Canadian Geodetic Datum of 141.55 metres and the elevation of the highest point of the **building or structure**;
- (C) Despite clause 10.60.30.10, the required minimum **lot area** is 1,962.55 square metres;
- (D) Despite clause 10.60.30.20, the required minimum **lot frontage** is 33.61 metres;
- (E) Despite regulation 10.60.30.40(1), the permitted maximum **lot coverage**, as a percentage of the **lot area**, is 49 percent;
- (F) Despite regulations 10.5.40.10(2) to (4), the following equipment and **structures** may project beyond the permitted maximum height required in regulation 10.60.40.10(1):
- (i) on a roof of a **building**, equipment used for the functional operation of the **building**, including electrical, utility, mechanical and ventilation equipment, as well as enclosed stairwells, roof access, maintenance equipment storage, chimneys, and vents, by a maximum of 2.9 metres;
 - (ii) on a roof of a **building, structures** that enclose, screen, or cover the equipment, **structures** and parts of a **building** listed in (i) above, including a mechanical penthouse, by a maximum of 2.9 metres;
 - (iii) the total area of equipment, **structures**, or parts of a **building** referenced in (i) and (ii) above, may cover no more than 30 percent of the area of the roof of each dwelling unit, measured horizontally;
 - (iv) architectural features, parapets, planters, **landscaping** features, guard rails, by a maximum of 1.1 metres;
 - (v) antennae, flagpoles and satellite dishes, by a maximum of 1.5 metres; and
 - (vi) trellises, pergolas, divider screens and unenclosed **structures** providing safety or wind protection to rooftop **amenity space**, by a maximum of 3.0 metres;

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- (G) Despite regulation 10.60.40.40(1), the permitted maximum **gross floor area** of all **buildings** and **structures** is 3587 square metres;
- (H) The permitted maximum number of **dwelling units** on the **lot** is 18;
- (I) Despite regulation 10.60.40.1(3), the required minimum width of a **dwelling unit** in a **townhouse** is 4.9 metres;
- (J) Despite Clauses 10.5.40.70(1), 10.60.40.70 and 10.60.40.80, the required minimum **building setbacks** and **main wall** separation distances, are as shown in metres on Diagram 3 of By-law [Clerks to insert By-law number];
- (K) Despite Clause 10.5.40.60 and (K) above, the following elements may encroach into the required minimum **building setbacks** and **main wall** separation distances as follows:
- (i) decks, porches, and balconies, by a maximum of 1.5 metres;
 - (ii) canopies and awnings, by a maximum of 1.2 metres;
 - (iii) retaining walls, exterior stairs and access ramps by a maximum of 3.0 metres;
 - (iv) architectural features, such as a pilaster, decorative column, cornice, sill, belt course, or chimney breast, by a maximum of 0.8 metres;
 - (v) window projections, including bay windows and box windows, by a maximum of 0.8 metres;
 - (vi) eaves, by a maximum of 0.8 metres;
 - (vii) a dormer, by a maximum of 0.5 metres; and
 - (viii) air conditioners, satellite dishes, antennae, vents, and pipes, by a maximum of 1.5 metres;
- (L) Despite clause 10.5.50.10, **landscaping** must be provided as follows:
- (i) a minimum of 58 percent of the **front yard** must be **soft landscaping**; and
 - (ii) a minimum of 38 percent of the **rear yard** must be **soft landscaping**;
- (M) Despite regulation 200.5.10.1(1) and Table 200.5.10.1, **parking spaces** must be provided in accordance with the following:
- (i) a minimum of one **parking space** for each **dwelling unit**, and;

(ii) a minimum of two visitor **parking spaces** for the **lot**;

- (N) Despite regulation 10.5.100.1(8), a hammerhead turnaround is permitted to extend no more than 6.0 metres from one edge of the **driveway**;
- (O) Despite regulation 200.5.1.10(2)(A)(iv), a **parking space** located within the **townhouse** may have a minimum width of 2.86 metres.

Prevailing By-laws and Prevailing Sections: (None Apply)

5. Despite any severance, partition or division of the lands, the provisions of this By-law shall apply as if no severance, partition or division occurred.

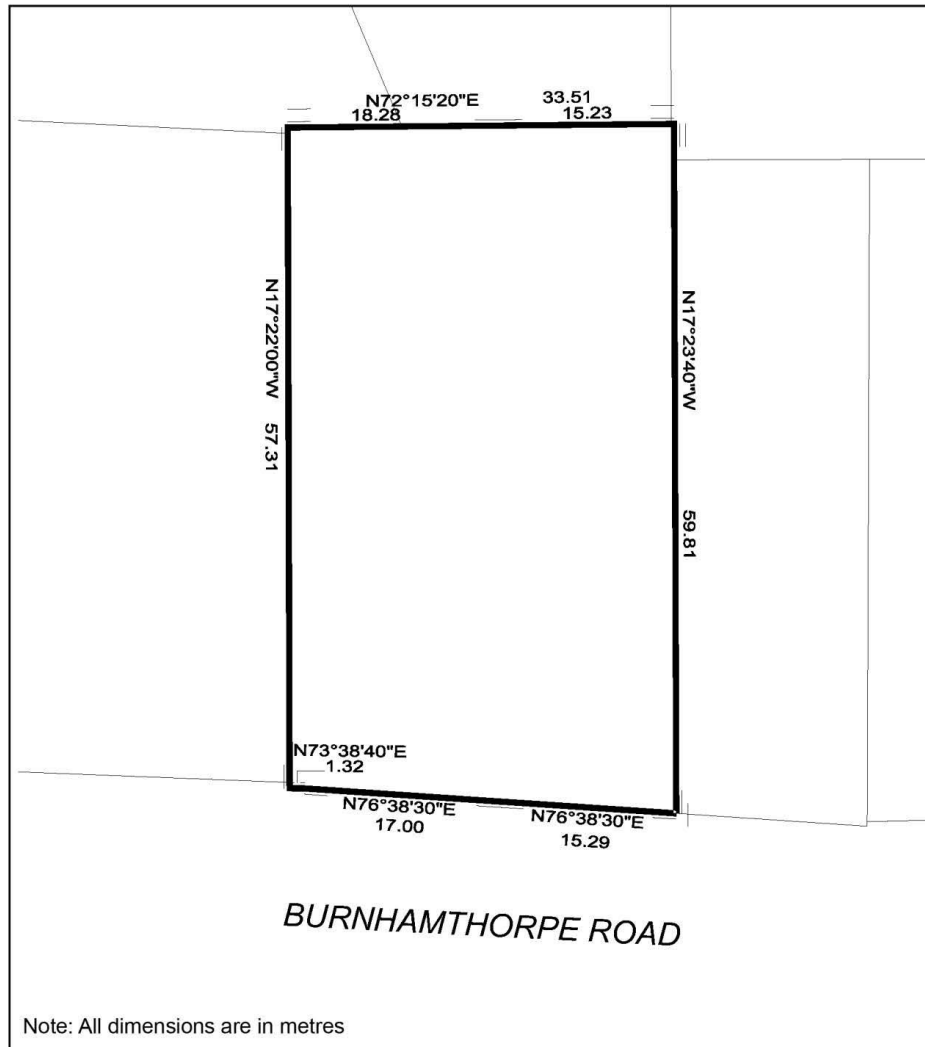
6. Temporary Use(s):

- (A) None of the provisions of Zoning By-law 569-2013, as amended, or this By-law apply to prevent the erection and use of a temporary sales office on the **lot**, used exclusively for the initial sale of **dwelling units** proposed on the lands to which this By-law applies for a period of 3 years from the date this By-law comes into full force and effect, after which this temporary use permission expires.

Pursuant to Ontario Land Tribunal Decision issued on [date] and Ontario Land Tribunal Order issued on [date] in Tribunal File OLT-24-000170.

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City of Toronto By-law -2025 (OLT)

Diagram 1

TORONTO
Diagram 1

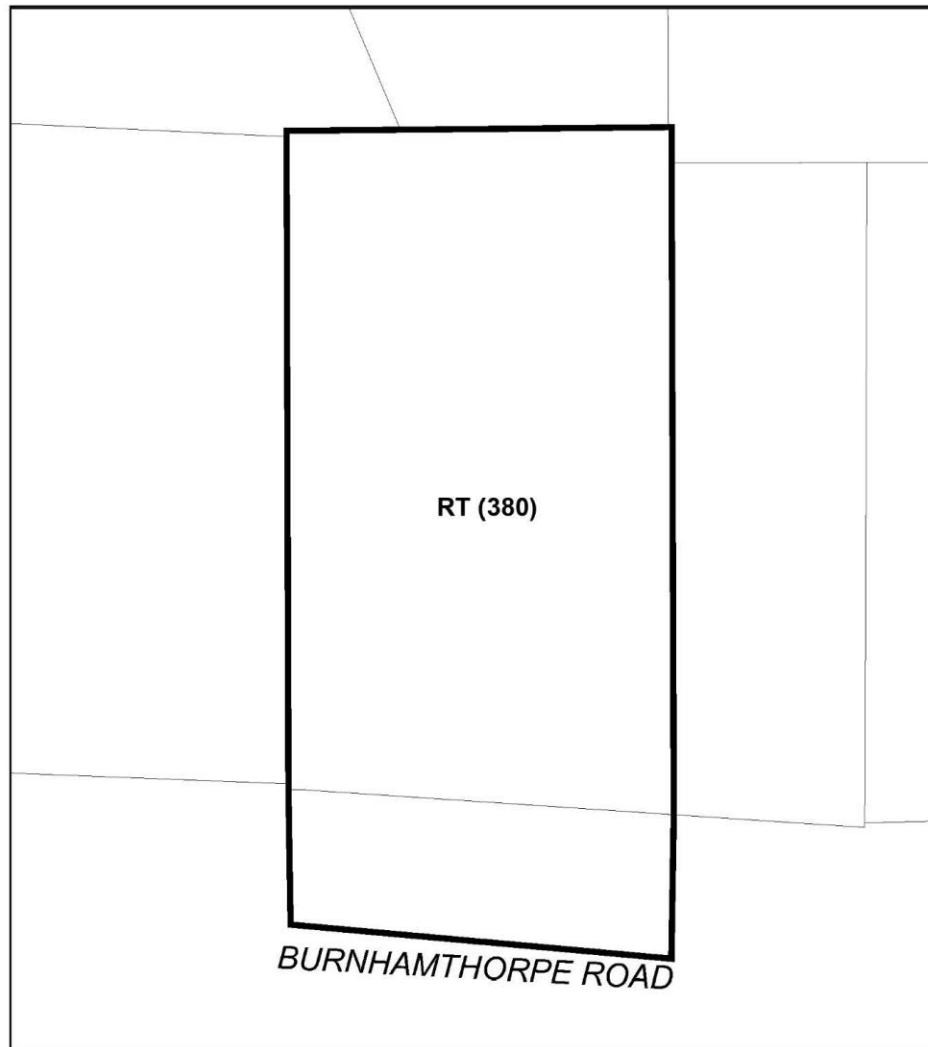
417 & 419 BURNHAMTHORPE ROAD

File #: 22 162536 WET 02 02

City of Toronto By-law 569-2013
Not to Scale
04/16/2025

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City of Toronto By-law -2025 (OLT)

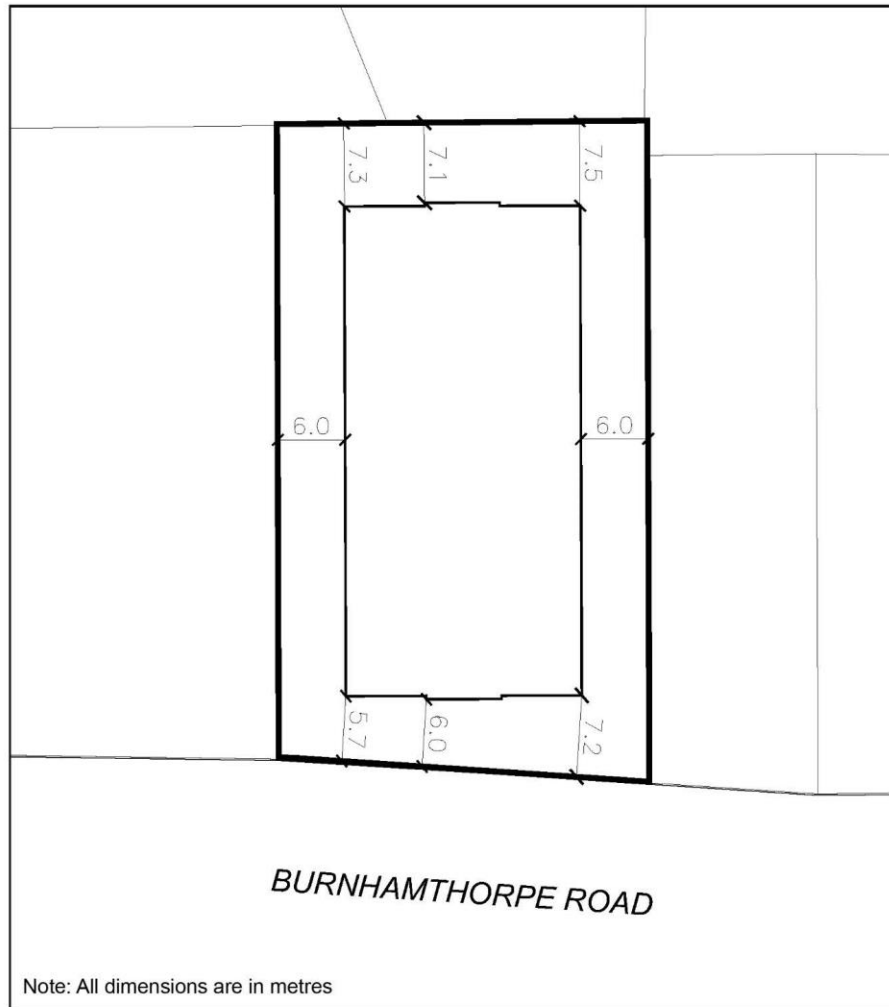
Diagram 2 **TORONTO**
Diagram 2**417 & 419 BURNHAMTHORPE ROAD**

File #: 22 162536 WET 02 0Z


City of Toronto By-law 569-2013
Not to Scale
04/16/2025

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City of Toronto By-law -2025 (OLT)

Diagram 3



Toronto
Diagram 3

417 & 419 BURNHAMTHORPE ROAD

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City of Toronto By-law 569-2013
Not to Scale
04/16/2025