

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: August 17, 2021

CASE NO(S):

PL170462

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

Applicant and Appellant: 1463291 Ontario Inc. (Dunpar Development Inc.)
Subject: Request to amend the Official Plan - Refusal of request by Town of Oakville
Existing Designation: Low Density Residential with Special Policy Area, Natural Area
Proposed Designated: Medium Density Residential, Private Open Space.
Purpose: To permit the development of 81 townhouse units
Property Address/Description: 1020, 1024, 1028, 1032 and 1042 Sixth Line
Municipality: Town of Oakville
Approval Authority File No.: Z.1516.02
OMB Case No.: PL170462
OMB File No.: PL170462
OMB Case Name: 1463291 Ontario Inc. (Dunpar Development Inc.) v. Oakville (Town)

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

Applicant and Appellant: 1463291 Ontario Inc. (Dunpar Development Inc.)
Subject: Application amend Zoning By-law No. 2014-014 - Refusal of Application by Town of Oakville
Existing Zoning: RL1-0, N
Proposed Zoning: RM1, RM2, O2
Purpose: To permit the development of 81 townhouse units
Property Address/Description: 1020, 1024, 1028, 1032 and 1042 Sixth Line
Municipality: Town of Oakville
Municipality File No.: Z.1516.02
OMB Case No.: PL170462
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Heard: March 15, 2021, via video hearing

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
1463291 Ontario Inc (Dunpar Development Inc)	Russell Cheeseman
Town of Oakville	Jennifer Huctwith

DECISION DELIVERED BY SHARYN VINCENT AND ORDER OF THE TRIBUNAL

BACKGROUND

[1] Pursuant to a decision of this Panel in August 2019, the Tribunal considered the appeals for amendments to the Official Plan and Zoning by-law brought by the Appellant, Dunpar Development Inc, and made a number of determinations with respect to the failures of the concept plan which provided the basis of the draft Official Plan and draft zoning by-law amendments that were put before the Tribunal for consideration. The decision did however acknowledge the merit in allowing intensification of the site and rather than dismissing the appeal, allowed the Applicant the opportunity to work with the Town “to revise the development concept to provide for a better fit with the principles derived from the study” conducted by City staff at the direction of Council after their initial refusal, which had been brought into evidence during the first hearing.

[2] The Tribunal, in paragraph 16 of the August 2019 decision made the following finding:

[16]...The Tribunal is satisfied that the site can be redeveloped to accommodate a medium density redevelopment concept on the basis of the conclusions of the Town [study] set out in paragraph 15 of this decision.

[3] Paragraphs 12, 13, 14, and 15 contain extracts from the study, and the following conclusions:

[12] In response to Council's direction, and subsequent to the appeal of Council's refusal, a total of three meetings were held which ultimately identified opportunities and constraints as translated into a bubble diagram which established principles for any redevelopment concept to respect.

[13] Specifically, the opportunities and constraints include:

1. Protection of the top of bank and associated buffer area and the Sixteen Mile Creek Valley;
2. Incorporation of a buffer strip along Sixth Line to buffer or transition between the development on the east side of Sixth Line;
3. Protection of the treed allee leading to 1042 Sixth Line with increased building setbacks;
4. Appropriate interface with Sunnycrest Lane, no access being supported;
5. Protection of the existing Ginko tree in proximity to the listed heritage house.

[14] The report made the following observations and determinations:

6. The site is described as being 'on the edge of the community and is more isolated and within a smaller Special Policy Area overlay than others in Oakville.
7. The proximity to the QEW, Midtown GO Station and Oakville Place, make the site a candidate worthy of consideration for an appropriate level of redevelopment.'

[15] The report goes on to say that 'there are no other comparably large lots with the ability to redevelop in the immediate neighbourhood.'

- ii. "Appropriate redevelopment of this site is not expected to undermine the stable character of this neighbourhood."
- iii. "...opportunities exist to redevelop the site at densities greater than presently exist within the Livable Oakville Plan. Medium density development would be appropriate for the area subject to design in a manner that would both address the physical constraints of the property and maintain the character of the area. Under the Livable Oakville Plan, this would permit a density in the range of 30-50 units per site hectare. Respecting constraints identified in the bubble plan, in particular, the buffer along Sixth Line, the retention of the allee, the protection of the Sixteen Mile Creek Valley, and the appropriate interface with Sunnycrest Lane, would allow for development at this level."

[4] The Tribunal went further and found that the development concept was “an overly ambitious infill development which could be modified to better respond to the principles and fit for the site, Policy 1.1.3.5 of the Provincial Policy Statement, (“PPS”) and the intensification policies of the Official Plan”. The Tribunal identified a number of additional areas to be addressed, specifically, the minimal setbacks, building face relationships, limited private amenity and landscaped open space proposed and directed that each of these aspects of the proposed intensity of development needed to be addressed.

[5] Despite the attempts over the intervening 19 months, the Parties were not able to resolve their apparently very different interpretations of the Tribunal’s earlier findings and direction with respect to matters to be revisited.

[6] The Town has characterised the resubmission by the Appellant as being consistent in its approach to maximize the yield of the site as opposed to demonstrating meaningful consideration of the concerns and shortcomings identified in the previous decision. Illustrative of the Town’s position is the fact that the revised concept plan results in an overall density of 50.6 units per site hectare (including the retained unit at 1042), reduced from 56, but still proposing in excess of the medium density range of 30-50 units per site hectare set out in the Official Plan. The revisions resulted in a net reduction of 4 units.

ANALYSIS AND FINDINGS

[7] Having considered all of the evidence over the course of the five day hearing, the Tribunal agrees that the concept plan as revised and filed as the basis of the requested Official Plan and zoning by-law amendments, does little to address the shortcomings previously identified to be of concern .The requests to amend the Official Plan and Zoning By-law therefore remain unacceptable to the Tribunal, failing to demonstrate consistency to the Provincial Policy Statement or conformity to the Official Plan policies guiding infill and intensification.

[8] The Tribunal therefore dismisses the appeals for the reasons outlined in this decision.

Proposed Intensity of Development

[9] Despite the evidence of the planning witness for the Appellant, the Tribunal finds that the scheme for the site, and the intensity of development which would be permitted by the draft instruments proffered in support of the proposal, continue to attempt to maximize the yield of narrow four storey townhouse units and in doing so fail to respond to the previous findings and direction of the Tribunal. There was no written, oral or visual evidence brought back to the Tribunal which addressed any aspect of the liveability of the development which could be erected pursuant to the draft zoning amendment. The only planning evidence put to the Tribunal in support of the revised development concept addresses, in the most minor of ways, the perimeter conditions and attempts to stand on an overarching merit that townhouses and semi-detached units are compatible with detached dwellings and therefore the proposal is appropriate.

[10] While the Appellant may argue that there is no site plan formally before the Tribunal for consideration and that the livability of the development can be massaged and secured through that process, it is in fact the zoning by-law, which must conform to the Official Plan and be consistent with Provincial Policy Statement, that establishes the development potential, which in turn, must be demonstrated to result in good planning to meet the public interest mandate of the Tribunal.

[11] As with its predecessor, the revised proposal, other than responding to an opportunity to intensify and to provide an addition to the range of housing types available in the community, fails to satisfy that fundamental requirement of whether it constitutes good planning at the intensity proposed.

[12] The site is an assembly of five properties and is subject to two significant organizing elements which equally represent opportunity and constraints for any proposal to intensify the subject lands.

[13] Firstly, the westerly limits of the lands is the Sixteen Mile Creek, with the limits of development, or the “site” determined to be the delineation of the top of bank.

[14] And secondly, the remnant holding of the original underlying parcel, now known municipally as 1042 Sixth Line, has been designated pursuant to sec. 29 Part IV of the *Ontario Heritage Act* as a cultural heritage landscape.

[15] The Statement of Significance describes the cultural heritage value as follows:

- a. The property at 1042 sixth Line has cultural heritage value or interest due to its design value and physical value, historic/associative value, and contextual value. Furthermore, the property is a significant cultural heritage landscape and its cultural heritage value is expressed through the individual components that comprise the landscape and their inter-relationships.
- b. The property has physical/design value as a representative example of a designed landscape composed from both formal and informal planting schemes within a picturesque landscape plan reflective of the Arts and Craft movement. The location, orientation, and relationship of the residence with other key features of the landscape (i.e., the long, spruce-lined lane-way, formal circle, the Sixteen Mile Creek Valley, mature specimen plantings, and stone gate posts and walls) are characteristic of the movement, which embodied a respect for traditional building forms and design meant to be harmonious with the natural setting. Fenestration location, size, and orientation provides clear views to natural features, deliberate plantings and man-made landscape features.

[16] Specific Heritage Attributes which play a significant role as organizing elements, aside from the siting of the house itself, are the:

- The formal entrance drive lined on both sides with mature spruce planted at short intervals forming a Y-shape as it opens to the formal circle at the main entrance;

[17] The landscape design of the house grounds, including: [...]

The placement of specimen deciduous and coniferous trees adjacent to the house (ginkgo bilboa and magnolia, in the formal drive circle (beech) and in an 'arboretum' east of the open lawn (oak, birch, maple)."

[18] The Tribunal heard evidence from two arborists who presented very different opinions with respect to the approach which should be taken to respect and conserve the existing mature species aligning the drive lane, forming an 'allée' as it was referenced throughout the hearing.

[19] The development concept plan and draft implementing instruments, 'the proposal' for the purpose of this decision, which was relied upon by the witnesses, aligns a row of 14 four storey townhouses parallel to the 'allée'. The design of the units incorporates at-grade tandem parking spaces at the ground floor (or with the second space occupying the driveway area), thereby elevating the main floor living space to the second floor. The principal, and only private amenity space for each of the units is proposed as a projecting deck into the setback area from the 'allée', all of which are detailed in the draft zoning by-law and other supporting visual exhibits.

[20] The arborists are both in agreement that to achieve the proposal as allowed by the draft by-law, would require the asymmetrical pruning of the branches of the spruce to whatever height as yet not specifically determined, to allow the amenity area, the projecting deck, to be utilized as the only private amenity space of the respective unit. The proximity and height of the projecting deck, and in fact, the proposed footprint of the units and the associated construction process, in the opinion of the City's arborist, put these significant species, and part of the designated cultural heritage landscape, at considerable risk. The Appellants arborist paints a very different picture which would see the recovery of the spruce from the initial injury, while also being able to sustain, presumably, a lifetime of maintenance pruning necessary to keep the amenity areas useable.

[21] Absent from the Appellant's case was any compelling planning rationale on the merit of having to locate any building footprints such that a significant element of the heritage attributes would be put potentially at risk.

[22] The required projecting deck, required as it represents the principal private amenity space for the townhouse units, is featured throughout the proposal and in other blocks, projects, either in whole or part, over the proposed drive aisles or the valley edge Natural Area. Either form of projection, whether requiring pruning of tree canopy or encumbering drive aisles and protected areas, are considered by the Tribunal to be illustrative of the drive to maximize the yield of the site without adequate regard to the quality of living environment being created, or the seemingly unnecessary impact on the cultural heritage value of the site. The proposal is premised upon the site being otherwise vacant with the exception of the designated house at 1042 which will remain in its original location at the top of bank, thereby leaving the balance of the site as a blank canvas. There is therefore no apparent reason of merit for the proposed crowding.

[23] The proposal and resulting density of 50.6 units per site hectare is a function of the majority of the units being less than 4.3 metres in width which are grouped in five blocks ranging from 8-14 units. As indicated in the interim decision of the Tribunal, while there is merit in allowing the site to be intensified to accommodate a medium density of development, the unacceptable intensity of the current proposal is most simply demonstrated by the example of the undesirable impacts of the decks described above.

[24] While there is no site plan appeal before the Tribunal for consideration at this time, the Livable Oakville Plan does have urban design guidelines and infill criteria to be considered when dealing with redevelopment in stable residential neighbourhoods.

[25] There are significant differences in the opinion evidence of the two land use planners with respect to the fit and compatibility of the proposal. In the opinion of Mr.

Thun on behalf of the Town, the four storey narrow units, with continuous façades ranging from 57-73 metres on the two key interfaces of the site, (being the easterly and northerly limits), are starkly juxtaposed against the surrounding low density, large lot neighbourhood. This contrast is of particular note given the Special Policy Area designation of the neighbourhood into which the proposal is tasked with fitting. The Special Policy Area designation is intended to protect the unique character of this area within the Town, and while the Heritage Designation goes considerable distance towards this goal, having considered all of the evidence, the Tribunal finds that the proposal is largely unresponsive to this asset or the character of the immediately surrounding neighbourhood, and does not represent appropriate and compatible intensification encouraged, as qualified by the Provincial Policy Statement, and as implemented through the Guiding Principles of the Livable Oakville Plan.

[26] Within the Guiding Principles of the Livable Oakville Plan, policy 2.2.1 directs that growth and development decisions...

2.2.1 Preserv[e] and create[e] a livable community in order to:

- a) preserve, enhance, and protect the distinct character, cultural heritage, living environment, and sense of community of neighbourhoods:

[27] It is the finding of the Tribunal that the intensity and proposed siting of development as would be allowed by the draft zoning by-law proffered to implement the proposal, is contrary to this fundamental guiding principle. The deficiencies with respect to fit and intensity were identified in the interim decision of the Tribunal and the revised proposal fails to address the failings in any meaningful way.

[28] The Tribunal similarly is not persuaded that the proposal is consistent with s. 2.6.1 or 2.6.3 of the PPS which, respectively direct that “Significant built heritage and significant cultural heritage and landscapes shall be conserved”, directing that approval authorities “shall not permit development or site alterations on adjacent lands to protected heritage property except where the proposed development and site alteration

has been evaluated and it has been demonstrated that the heritage attribute of the protected heritage property will be conserved.” The Tribunal prefers the evidence of the Town’s arborist, as adopted by Mr. Thun, that the proximity and encroachment of the proposed structures represent legitimate threats to the long term health and survivability of various trees to be protected by the heritage designation, threats which the Tribunal considers unnecessary.

[29] The Tribunal also heard from the Town’s Heritage Planner, Susan Schappert who has had input into the file since submission in 2016, including having authored both the heritage related comments in the original staff report to Council recommending refusal of the application, and ultimately the Peer Review supported and adopted recommendation to give Notice of Intention to Designate issued in October of 2018.

[30] Aside from reiterating the concerns of the arborist, the witness informed the Tribunal with respect to the Cultural Heritage Strategy (“CHL”) adopted as Official Plan policy by the town in 2014. Pursuant to the CHL, the Town adopted By-law No. 2018-19 which requires a conservation plan for all protected cultural heritage landscapes in the Town of Oakville.

[31] Pursuant to s. 33 of the *Ontario Heritage Act*, a conservation plan is intended to provide staff, council and the property owner with guidance as to how to evaluate the impact of proposed alterations to the property to ensure the conservation and maintenance of the cultural heritage value and heritage attributes.

[32] The Tribunal was advised that although Dunpar had informed the Town in May of 2020 that the property owner had intended to complete the conservation plan in accordance with the terms of reference prepared by the Town, the work ceased in October, and in January of 2021, Dunpar formally advised that it would not be proceeding with the completion of the plan.

[33] The action by Dunpar of abandoning the CHL, while steadfastly pursuing a concept plan which was not in a sufficiently significant way distinguishable from the predecessor which the Tribunal had characterized as being too intense two years ago, is further demonstrative of how the proposal fails to be consistent with provincial and Official Plan policies that cultural heritage landscapes shall be conserved.

[34] The complementary policy in the Growth Plan also directs that Cultural Heritage Resources will be conserved, and it is the finding of the Tribunal that the proposed overdevelopment and unnecessary, resultant crowding of the site which challenge the conservation of designated attributes runs contrary to provincial policy. It is therefore the finding of the Tribunal that the proposal is neither consistent with nor in conformity to the applicable provincial and Official Plan policies.

[35] Counsel for the Town in closing argument made preliminary submissions with respect to the Town bringing a Motion for costs. While the Tribunal does not recall the any behaviour during the course of the hearing that would support an award of costs, should the Town elect to pursue this course of action, the Motion must to be brought in accordance with the Tribunal's rules.

ORDER

[36] The appeals are therefore dismissed.

“Sharyn Vincent”

SHARYN VINCENT
VICE CHAIR

Ontario Land Tribunal

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