

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



ISSUE DATE: December 27, 2018

CASE NO(S): PL171203

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

Applicant and Appellant: Erindale Village Living Inc.
Subject: Request to amend the Official Plan - Failure of the City of Mississauga to adopt the requested amendment
Existing Designation: Mixed Uses
Proposed Designated: Mixed Uses – Special Site
Purpose: To permit an apartment dwelling with 131 residential units with commercial uses on the ground floor
Property Address/Description: 1646 Dundas Street West
Municipality: City of Mississauga
Approval Authority File No.: OPA-OZ 16/009
OMB Case No.: PL171203
OMB File No.: PL171203
OMB Case Name: Erindale Village Living Inc. v. Mississauga (City)

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

Applicant and Appellant: Erindale Village Living Inc.
Subject: Application to amend Zoning By-law No. 0225-2007 - Neglect of the City of Mississauga to make a decision
Existing Zoning: Commercial 4
Proposed Zoning: Exemption Commercial 4
Purpose: To permit an apartment building with a maximum of 131 dwellings units and 563.7 sq m of commercial spaces and a maximum height of 7 storeys
Property Address/Description: 1646 Dundas Street West

Municipality: City of Mississauga
 Municipality File No.: OZ 16/0097 W7
 OMB Case No.: PL171203
 OMB File No.: PL171204

Heard: August 24, 2018 by telephone conference call

APPEARANCES:

Parties

Counsel

Erindale Village Living Inc.	Aaron Platt
City of Mississauga	Quinto Annibale and Mark Joblin
Regional Municipality of Peel	Rachel Godley

MEMORANDUM OF ORAL DECISION DELIVERED BY MARCIA VALIANTE ON AUGUST 24, 2018 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] Erindale Village Living Inc. (“Applicant”) applied to the City of Mississauga (“City”) for approval of an official plan amendment and zoning by-law amendment to permit the development of an eight-storey mixed use building, comprised of 96 residential units and ground floor commercial uses, at 1646 Dundas Street West. The Applicant appealed the City’s failure to make a decision on its application within the statutory period to the Ontario Municipal Board, now the Local Planning Appeal Tribunal (“Tribunal”), in November 2017.

[2] At the first pre-hearing conference (“PHC”) in June 2018, the Tribunal granted Party status to the Regional Municipality of Peel and Participant status to the Erindale Village Association. The Tribunal also adjourned the PHC and scheduled a second PHC, to be heard by telephone conference call (“TCC”), to allow time for the City to retain outside counsel and for counsel to become familiar with the issues.

[3] At the TCC held on August 24, 2018, the Parties agreed that the hearing should commence on September 16, 2019 and run for approximately 10 days. The Tribunal scheduled the hearing as set out below.

[4] The Parties also discussed a draft Procedural Order and Issues List. Save one issue, there was agreement among them regarding the content of these documents. The Applicant objected to one issue that had been included in the Issues List by the City. The Tribunal directed the Parties to discuss the matter and provide an agreed final Issues List or, if they were unable to agree on the final wording of the issues, to seek the direction of the Tribunal. On November 21, 2018, the Parties provided a final Issues List on consent of all.

ORDER

[5] The Tribunal orders:

- a. The hearing shall commence at **10 a.m. on Monday, September 16, 2019** at:

**Mississauga City Hall
Municipal Hearing Room
300 City Centre Drive
Mississauga, ON L5B 3C1**

- b. The hearing shall be conducted in accordance with the Procedural Order, Attachment 1 to this Order.

[6] This Member is not seized.

"Marcia Valiante"

MARCIA VALIANTE
MEMBER

If there is an attachment referred to in this document,
please visit 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

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

ATTACHMENT 1

LOCAL PLANNING APPEAL TRIBUNAL

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

Applicant and Appellant:	Erindale Village Living Inc.
Subject:	Request to amend the Official Plan - Failure of the City of Mississauga to adopt the requested amendment
Existing Designation:	Mixed Uses
Proposed Designation:	Mixed Uses – Special Site
Purpose:	To permit an apartment dwelling with 131 residential units with commercial uses on the ground floor
Property Address/Description:	1646 Dundas Street West
Municipality:	City of Mississauga
Approval Authority File No.:	OP-OZ 16/009
LPAT Case No.:	PL171203
LPAT File No.:	PL171203
LPAT Case Name:	Erindale Living Inc. v. Mississauga (City)

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

Applicant and Appellant:	Erindale Village Living Inc.
Subject:	Application to amend Zoning By-law No. 0225-2007 – Neglect of the City of Mississauga to make a decision
Existing Zoning:	Commercial 4
Proposed Zoning:	Exception Commercial 4
Purpose:	To permit an apartment building with a maximum of 131 dwelling units and 563.7 sq m of commercial spaces and a maximum height of 7 storeys
Property Address/Description:	1646 Dundas Street West
Municipality:	City of Mississauga
Municipal File No.:	OZ 16/0097 W7
LPAT Case No.:	PL171203
LPAT File No.:	PL171204

PROCEDURAL ORDER

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

Organization of the Hearing

1. The hearing will begin on **September 16, 2019** at 10:00 a.m. at **Mississauga City Hall, Municipal Hearing Room, 300 City Centre Drive, Mississauga**. No further notice shall be required.
2. The length of the hearing will be approximately **ten (10)** days.
3. The Parties and Participants (see **Attachment 1** for the meaning of these terms) identified at the pre-hearing conference are listed in **Attachment 2** to this Order. The order of evidence for the hearing is listed in **Attachment 3** to this Order.
4. The Issues for the hearing are set out in the Issues List attached as **Attachment 4** to this Order. With the exception of the elimination or reduction of issues, there will be no changes to this list unless the Tribunal permits, and a Party who asks for changes may have costs awarded against it.
5. Any person intending to participate in the hearing should provide a telephone number, address and email address to the Tribunal as soon as possible. Any such person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, telephone number, address and email address as soon as possible.

Requirements Before the Hearing

6. A Party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they are intended to be called. For expert witnesses, the Party shall identify the discipline in which they will be seeking to qualify the witness. This list must be delivered on or before **June 18, 2019**.
7. Expert witnesses in the same discipline shall have at least one meeting prior to the exchange of witness statements identified in paragraph 11 to try to resolve or reduce the issues for the hearing. The experts shall prepare a list of any agreed facts and provide this list to all of the Parties and the Tribunal.
8. An expert witness shall prepare an expert witness statement which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 11. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony. For greater certainty, each expert witness statement must

comply with the minimum content requirements specified in Rule 7.04 of the Tribunal's *Rules of Practice and Procedure*.

9. A Participant shall provide to the Tribunal and the Parties a Participant statement on or before **August 2, 2019**. For greater certainty, Participant statements are to include the information identified in **Attachment 1** to this Order.
10. Witnesses who are under summons but not paid to produce a report do not have to file a witness statement; but the Party calling them must file an outline of the witness' anticipated evidence, as in section 11.
11. On or before **August 2, 2019**, the Parties shall provide copies of their witness and expert witness statements to the other Parties. The Parties shall also provide copies of their witness and expert witness statements to the Tribunal at the same time.
12. On or before **August 19, 2019**, the Parties may provide to all other Parties a reply to any written evidence. The Parties shall also provide copies of any reply witness statements to the Tribunal at the same time.
13. On or before **September 2, 2019**, the Parties shall provide copies of their visual evidence to all other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.
14. The Parties shall cooperate in preparing a Joint Document Book for the hearing and will share the copying costs.
15. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal (*see Rule 10 of the Tribunal's Rules, which requires that the moving Party provide copies of the motion to all other parties at least fifteen (15) days before the Tribunal hears the motion*).
16. A Party who provides a witness' written evidence to the other Parties must have the witness attend the hearing to give oral evidence, unless the Party notifies the other Parties and the Tribunal at least seven (7) days before the hearing that the written evidence is not part of their record.
17. Documents may be delivered by personal delivery, e-mail, facsimile, courier, registered or certified mail, or otherwise as the Tribunal may direct. For documents delivered by e-mail, a hard copy shall also be delivered in the event that the recipient Party requests a hard copy. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

This Member is not seized.

So orders the Tribunal.

Attachment 1

Purpose of the Procedural Order and Meaning of Terms

The Tribunal recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Tribunal to order following the conference. The Tribunal will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Local Planning Appeal Tribunal, and the Tribunal's Rules, from the Tribunal Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-327-6800, or from the Tribunal website at www.elto.gov.on.ca/tribunals/lpat.

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Tribunal to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Tribunal to permit this.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Tribunal on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Tribunal will set the time for hearing this statement. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Tribunal will not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file material and do not attend.

Written and Visual Evidence: **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (4) the witness'

opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing. A **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

direct examination by the party presenting the witness;

direct examination by any party of similar interest, in the manner determined by the Tribunal;

cross-examination by parties of opposite interest;

re-examination by the party presenting the witness; or

another order of examination mutually agreed among the parties or directed by the Tribunal.

Attachment 2

LIST OF PARTIES/PARTICIPANTS

PARTIES

1. Erindale Village Living Inc.

Aaron Platt
Davies Howe LLP
425 Adelaide Street West, 10th Floor
Toronto, Ontario
M5V 3C1

Email: *aaronp@davieshowe.com*
Tel: 416-977-7088
Fax: 416-977-8931

2. City of Mississauga

Quinto Annibale and Mark Joblin
Loopstra Nixon LLP
135 Queens Plate Drive, Suite 600
Toronto, Ontario
M9W 6V7

Email: *qannibale@loonix.com / mjoblin@loonix.com*
Tel: 416-746-4710
Fax: 416-746-8319

3. Regional Municipality of Peel

Rachel Godley
Municipal Law Group
10 Peel Centre Drive, Suite A, 6th Floor
Brampton, Ontario
L6T 4B9

Email: *Rachel.godley@peelregion.ca*
Tel: 905-791-7800 ext. 7189

Participant

1. **Erindale Village Association**

Representative: David Lawton
dlawt@ymail.com

Attachment 3

ORDER OF EVIDENCE

1. Erindale Village Living Inc.
2. Regional Municipality of Peel
3. City of Mississauga
4. Reply by Erindale Village Living Inc.

Note: At the commencement of the Hearing, the Hearing Panel will determine the day and time for evidence of Participants.

Attachment 4

ISSUES LIST

Note: *The identification of an issue on this list does not mean that all parties agree that such an issue, or the manner in which it is expressed, is appropriate or relevant for the proper determination of the appeals. The extent of the appropriateness and/or relevance of the issue may be a matter of evidence and/or argument at the hearing. Any Party may call or not call evidence on any issue.*

1. Does the official plan amendment, zoning by-law amendment and proposed development have appropriate regard for matters of provincial interest contained at s. 2 of the *Planning Act*, including subsections 2 (h), 2(n), 2(p) and 2(r)?
2. Is the Tribunal required to have regard for the decision of Mississauga council in this matter? If so, would a decision to approve the official plan amendment, zoning by-law amendment and the proposed development have regard for Mississauga council's decision, that, amongst other matters:
 - (i) the proposal is not in keeping with the historic Erindale Village character;
 - (ii) the proposal represents overdevelopment of the site;
 - (iii) there will be unacceptable traffic conflicts and safety issues added to the area;
 - (iv) the proposal would set an inappropriate precedent for a mid-rise building overlooking the Credit River; and
 - (v) the Dundas Connects study does not propose a higher order transit stop in the village?
3. Are the official plan amendment, zoning by-law amendment and proposed development consistent with the Provincial Policy Statement, 2014? In particular, but not limited to the following policy sections:

Policy Sections 1.1.3.3, 1.1.3.4 and 1.1.3.5 - Settlement Areas;
Policy Section 2.6 - Cultural heritage and Archaeology; and
Policy Sections 4.7 - Implementation and Interpretation.
4. Are the official plan amendment, zoning by-law amendment and proposed development in conformity with the Growth Plan for the Greater Golden Horseshoe, 2017? In particular, but not limited to the following policy sections:

Policy Section 1.2.1 - Guiding Principles;
Policy Section 2.2.2 - Delineated Built-up Areas; and
Policy Section 4.2.7 - Cultural Heritage Resources.
5. Is the official plan amendment required to conform with the City of Mississauga Official Plan? If so, does the proposed official plan amendment conform to the City of Mississauga Official Plan? If not, what is the standard to be met with

respect to the Official Plan and does it meet that standard? Does the zoning by-law amendment conform with the City of Mississauga Official Plan? In particular, but not limited to the following policy sections:

Section 4.4 - Guiding Principles, 4.5 – Achieving the Guiding Principles;
Section 5.3 - City Structure, 5.4 – Corridors, 5.5 - Intensification Areas;
Section 7.4.1 - Cultural Heritage Resources, 7.4.2 - Cultural heritage Properties;
Section 9.2.1- Intensification Areas, 9.2.4 – Cultural Heritage Resources, 9.5 - Site Development and Buildings;
Section 16.1.1 - Neighbourhood Character Area, Section 16.9.2.1 - Special Site Policies, Site 1 (Erindale Neighbourhood Character Area); and
Section 19.5 - Criteria for Site Specific Official Plan Amendments.

6. Do the proposed official plan amendment and zoning by-law amendment authorize an appropriate level of intensification for the subject lands?
7. Do the proposed official plan amendment and zoning by-law amendment authorize an appropriate building height for the subject lands?
8. Does the proposed development provide for an appropriate streetscape?
9. Will the development permitted by the proposed official plan amendment and proposed zoning by-law amendment result in adverse privacy and overlook issues?
10. Does the proposed zoning by-law amendment sufficiently regulate matters of built form including height, density, massing, scale, setbacks, spacing and transition having regard for the site and the character of the surrounding lands?
11. Will the development permitted by the proposed zoning by-law amendment result in unacceptable traffic impacts? If so, what if any traffic and/or road improvements are required to mitigate these impacts?
12. Do the proposed official plan amendment and proposed zoning by-law amendment properly address the matter of the two cultural heritage landscapes identified by the City in its 2005 inventory, namely Erindale Village and the Credit River Valley and any potential adverse effects on the objective to conserve and protect such features?
13. Do the proposed official plan amendment and proposed zoning by-law amendment properly address the matter of the adjacent Part IV designated property and adverse effects on the cultural heritage resource?
14. Does the proposed development represent good land use planning and is it in the public interest?
15. In the event that the Tribunal allows the appeal in whole or in part, does the

proposed increase in height and/or density require a contribution pursuant to Section 37 of the Planning Act? If so, what are the nature and extent of appropriate facilities, services and matters to be secured through Section 37 of the Planning Act?

16. In the event that the Tribunal allows the appeal in whole or in part, should a “H” symbol or holding provision be incorporated into the zoning for the subject lands and if so, what conditions should be included in such a holding provision?
17. In the event that the Tribunal allows the appeal in whole or in part, should the Tribunal’s Order be withheld until the final form of the Official Plan Amendment and Zoning By-law Amendment is to the satisfaction of the City’s Planning Department and the City Solicitor?