

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



**ISSUE DATE:** August 23, 2019

**CASE NO(S):** PL170462

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:	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:** November 5, 2018 in Oakville, Ontario

### **APPEARANCES:**

#### **Parties**

#### **Counsel**

1463291 Ontario Inc.  
(Dunpar Development Inc.)

Russell Cheeseman and Elliott Cheeseman

Town of Oakville

Jennifer Huctwith

Halton Region Conservation Authority

Harold Watson

Regional Municipality of Halton

David Germain

### **INTERIM DECISION OF THE TRIBUNAL DELIVERED BY SHARYN VINCENT**

#### **INTRODUCTION**

[1] 1463291 Ontario Inc. ("Dunpar Developments Inc.") have appealed against the refusal by the Town of Oakville ("Town") of applications to amend the Official Plan and Zoning By-law in order to permit the lands known as 1020-1042 Sixth Line to be redeveloped for approximately 67 townhouses. The proposal, which would incorporate two of the existing five detached dwellings on the lands, would result in a density falling within the low end of the High Density designation in the Town's Official Plan, at 56 units per site hectare ("ha").

[2] The lands are currently subject to a Special Policy Area designation which limits density to a maximum of ten units per ha. The related application to amend the zoning

would implement the development concept. The lands are also adjacent to the Sixteen Mile Creek and accordingly a portion of the westerly limits of the currently low density residential lots are considered Natural Area and subject to Conservation Halton ("CH") review.

[3] At the outset of the hearing the Tribunal was advised that a number of the issues from the Procedural Order had been resolved or significantly scoped, and Minutes of Settlement ("MOS") were submitted to demonstrate the agreements as between the ("Region"), the CH and Dunpar Development Inc. with respect to the stake out of the constraint lines determining the westerly extent of the development parcel, and the related terms of development flowing therefrom.

[4] On the basis of the MOS, the Region withdrew from the hearing, and CH scoped its issues save for the contentious condition precedent requiring the demolition of 1024 Sixth Line, one of the two houses proposed to be retained, prior to the construction of any redevelopment on the subject lands.

[5] Shortly before the commencement of the hearing, Town Council served Notice of Intent to Designate the other original home and portions of the related grounds on the property at 1042 Sixth Line as being of historic interest. While the layout of the proposed infill units allows the retention of the historic house form, there is disagreement between the Town and Dunpar Development Inc. over the extent to which aspects of the landscape of the property constitute the basis for designation and are therefore worthy of protection and preservation. The determination of the designation is not before the Tribunal and will be subject of a separate appeal process.

[6] The Tribunal heard evidence from three land use planners, all qualified to assist the Tribunal with expert opinion evidence: David Capper on behalf of Dunpar Development Inc., Robert Thun the author of the Council directed report on the Evaluation of Redevelopment Potential of the subject lands; and Allan Ramsay in support of the refusal by Council.

## CONTEXT

[7] The assembly of five properties is located to the north of the QEW and is bounded on the west by Sixteen Mile Creek, with frontage on Sixth Line. Immediately to the south of the assembly is a small parkette, really little more than a pedestrian or bicycle connection under the QEW to the south.

[8] The property is currently developed with five detached residences, two of which appear to be sited on parcels severed from the original holdings of 1042 Sixth Line, the property of historical interest, and one severed from the other residence to be retained at 1024 Sixth Line.

[9] The surrounding area is generally developed with a mix of one and two storey post war detached residences. There are some minor apartment forms and commercial units with residences developed above along the North Service Road in proximity to Churchill Avenue where the surrounding neighbourhood incorporates a broader range of housing types on smaller lots which is reflected through the zoning.

[10] A portion of the assembly fronts onto Sunnycrest Lane to the north which is a rural cross section right of way providing access to Sixth Line for 9 other properties, four of which appear to never have been developed.

[11] The lands are zoned and designated for low density residential uses and are subject to a Special Policy Area Overlay (Policy 26.2.1) which limits density to ten units per ha , intended to 'limit intensification to that which maintains the integrity of the large lots.

[12] Although the application was refused, Council directed staff to:

'undertake a review of the subject land and their context to determine what appropriate redevelopment opportunities exist, having regard to the issues identified in the Planning Services report dated March 7, 2017, in consultation with the local residents and the applicant.'

[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 and translated into a bubble diagram which established principles for any redevelopment concept to respect.

[13] Specifically the opportunities and constraints include:

Protection of the top of bank and associated buffer area and the Sixteen Mile Creek valley area;

Incorporation of a buffer strip along sixth line to buffer or transition between the development on the east side of Sixth Line;

Protection of the treed allee leading to 1042 sixth Line with increased building setbacks

Appropriate interface with Sunnycrest Lane, no access being supported

Protection of the existing Ginko tree in proximity to the listed heritage house

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

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. 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.'

"Appropriate redevelopment of this site is not expected to undermine the stable character of this neighbourhood.'

'...opportunities exist to redevelop the site at densities greater than presently exists 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 range of 30-50 units per site hectare. Respecting the 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.'



## ANALYSIS AND FINDINGS

### Intensity of Proposal

[16] The Tribunal, having heard and considered the evidence of both Mr. Capper and Mr. Ramsay finds that the above analysis and determinations derived through the consultative process represent the appropriate level of intensification for the subject site. The Tribunal will therefore not dismiss the appeal but directs Dunpar Development Inc. to work with the Town to revise the development concept to provide for a better fit with the principles derived from the study. 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 set out in paragraph 15 of this decision.

[17] The development concept supported by Mr. Capper proposes 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.

[18] The site layout supported by Mr. Capper is inconsistent in its reasoning which was modified to incorporate a buffer strip across most, but not all of the frontage as a transition from the landscaped front yards opposite. The open landscaped setback should extend the full width of the frontage to be consistent, despite the argument that the units are only visible when viewed by northbound travellers. The Tribunal is not persuaded by this reasoning.

[19] Similarly, Dunpar Development Inc. propose to introduce built forms on the portion of the site which interfaces with Sunnycrest Lane either fronting or proximate to the lane which are at variance with the almost rural setting that they are addressing and should be removed or significantly rethought to provide for better transition. While the overall site plan attempts to maximize the underutilized site, the proposal does not optimize the assets of the site, namely the valley land setting and the existing mature

trees which are worthy of protection.

### **Protection of the Valley**

[20] The sloped and wooded westerly portion of the site represent more than half of the holdings and are subject to policies intended to both protect the natural amenity and safeguard development from slope instability. Dunpar Development Inc. and CH agreed to constraints lines through a stake out which established top of bank and the associated buffer. Portions of the existing house known as 1024 Sixth Line however are situated beyond the long-term stable slope, the balance falling within the required 15 metre buffer. Portions of the new proposed access driveway also fall within the buffer. The parties are not in agreement as to the interpretation of the applicable policies and it is the position of CH that 1024 should be demolished prior to any other redevelopment of the site. The City adopts this position.

[21] The Tribunal heard evidence from both planners and the Planner for CH, Jessica Bester and finds that unlike the listed structure known as 1042 Sixth Line, the existing house at 1024 does little other than represent an additional dwelling unit. The Tribunal is not persuaded that its retention, as distinguished from 1042, has merit sufficient to offset the intrusion into the hazard land buffer required to address the concerns of CH and s 3.1.1. of the PPS.

[22] The development concept would significantly intensify the assembly of lots, and in doing so precludes the relocation of the existing structure to a location outside of the designated hazard lands, which would be an acceptable solution to CH. The existing siting also precludes access by machinery necessary to remedy any natural occurrence below top of bank. The balance of the development, which appears will be reliant on common element access, could be significantly burdened should remedial work be required in the future. The Tribunal is not persuaded that the retention of this structure has merit when evaluated as part of the intensification proposal.

[23] The Tribunal therefore finds that the retention of this unremarkable dwelling unit as part of the redevelopment scheme is not consistent with the PPS and should be either relocated outside of any required buffer, or deleted from the redevelopment concept. The removal will create additional latitude in the redesign of the development concept in response to the direction of this decision.

## **CONCLUSIONS**

[24] The Tribunal concludes that the proposed development does not satisfy the PPS and Official Plan policies directing that intensification be sensitive to the surrounding neighbourhood character and could be revised to provide better transition along the two street frontages and the valley edge.

[25] Dunpar Development Inc. has requested the Tribunal to approve a draft zoning by-law to permit an overall intensity of development with minimal setbacks, building face relationships, private amenity, and landscaped open space. Each of these aspects needs to be addressed.

[26] The Tribunal takes no issue with redesignating the site to permit a medium density infill townhouse development provided the issues identified in this decision with respect to fit and intensity are addressed.

[27] Accordingly, the Tribunal will not approve the proposed development, but will not dismiss the appeal. Dunpar Development Inc. will be allowed to amend the proposal in accordance with the directions outlined in this decision through continued discussions with the Town.

*"Sharyn Vincent"*

SHARYN VINCENT  
MEMBER