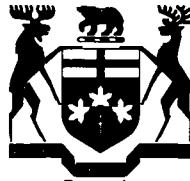


ISSUE DATE:

**Feb. 6, 2008**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

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PL070056

Dunpar Developments Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Etobicoke Zoning Code and By-law 717-2006, of the former City of Toronto to rezone lands respecting 4187 Dundas Street West and 567, 569 and 571 Prince Edward Drive from CG-AV-H and R2 to CG-AV zone with site-specific exception in order to allow for a 10-storey apartment building with 118 units residential development  
O.M.B. File No. Z070008

Dunpar Developments Inc. has referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, determination and settlement of details of a site plan for lands respecting 4187 Dundas Street West and 567, 569 and 571 Prince Edward Drive  
O.M.B. File No. M070027

#### **APPEARANCES:**

##### **Parties**

##### **Counsel**

Dunpar Developments Inc.

A. Brown

City of Toronto

S. Bradley

Kingsway Residents Against Poor Planning

L. Longo

#### **DECISION OF THE BOARD DELIVERED BY SUSAN B. CAMPBELL**

##### **Background**

In this matter, the Board originally had before it the appeals of Dunpar Developments Inc. ("Dunpar") with respect to an Official Plan Amendment and a Zoning By-law Amendment and a referral of a site plan in respect of a property at 4187 Dundas St. W. and 567, 569 and 571 Prince Edward Dr., in the City of Toronto (the "City"). The applications were filed on February 1, 2006.

A party to this hearing, the Kingsway Residents Against Poor Planning (the "Kingsway Group") brought a Motion seeking an Order of the Board determining that the Board was without jurisdiction to hear the appeal with respect to the Official Plan

Amendment. Another panel of this Board heard the Motion and determined that the Board did not have jurisdiction to hear the Official Plan Amendment appeal with respect to either the Etobicoke Official Plan (the "Etobicoke OP") or the Toronto Official Plan (the "Toronto OP"). Therefore, only the Zoning By-law Amendment and the site plan are now before the Board.

### **Proposal**

The subject property is comprised of four lots at the intersection of Dundas St. W. and Prince Edward Dr. The property at 4187 Dundas St. W. is located at the corner of the intersection and has an 11.65m wide "tail" extending behind the three lots on Prince Edward Dr. The properties at 567, 569 and 571 Prince Edward Dr. were previously occupied by single-family houses, which Dunpar has demolished. The frontage of the property is 51.9m on Dundas St. W., the depth is 72.8m on Prince Edward Dr.

Dunpar proposes to develop the property with a residential building of seven storeys, containing 83 units. A mechanical penthouse and some indoor amenity space are located on the roof of the building and the City and the Kingsway Group take the position that this constitutes an eighth floor. The proposed building is L-shaped with the seven or eight-storey portion fronting on Dundas St. W. The building is to step down to two storeys on the lot at 567 Prince Edward Dr.

### **The Neighbourhood**

There is a mix of land uses surrounding the subject property. The north and south sides of Dundas St. W. in the vicinity of the subject property is currently predominately occupied by commercial buildings. However, as Robert Glover who was qualified by the Board to provide expert urban design evidence on behalf of Dunpar said in his witness statement, Exhibit # 11, "the urban design character of Dundas St. W. between the Humber River and Royal York Road is currently in transition between two different personalities". It is apparent from Mr. Glover's evidence and the evidence of other witnesses, that the area was developed as an automobile oriented, commercial and industrial strip on a busy, wide, arterial road. However, Mr. Glover described its "emerging building pattern and character" as "that of development containing street-related mixed-use, residential and Main Street character". In the Toronto OP this portion of Dundas St. W. is designated as an "Avenue" which Mr. Glover indicated,

“anticipates a greater scale and intensity of development than currently characterizes a majority of the street”.

Immediately to the east of the subject property is an example of the evolving character of Dundas St. W., a development of recently constructed three-storey condominium townhouses. Further east at the next intersection, is a recently completed six-storey, 130 unit residential condominium building. To the west of the site, across Prince Edward Dr., is a three storey commercial building, abutting houses on Prince Edward Dr. To the north, on the other side of Dundas St. W., are two to three-storey commercial buildings and a recently constructed six-storey residential building.

Immediately to the south of the site is the well-established Kingsway neighbourhood. The members of the Kingsway Group, who object to this proposal, live in this neighbourhood. The Board heard evidence that another Kingsway neighbourhood association does not object to the proposal. As Warren Sorenson, who was qualified by the Board to provide expert land use planning evidence on behalf of the Kingsway Group, noted in his witness statement, Exhibit # 47: “the homes are detached dwellings of varying size, some single-storey but most being two or two-and-a-half storeys. By my observation, this neighbourhood is a highly desirable area for low-density housing, and shows evidence of significant re-investment occurring through expansions, upgrades and replacement home construction”.

### **Evidence of Dunpar**

Peter Smith was qualified by the Board to provide expert land use planning evidence on behalf of Dunpar. As noted above, Robert Glover provided expert urban design evidence on behalf of Dunpar.

Filed as Exhibit # 10 was the Witness Statement of Mr. Smith, including an extensive Planning Rationale Report (the “Report”). At the time that the Witness Statement and the Report were prepared, the official plan amendment was before the Board. However, the Board notes section 2.2 of the Report, Required Approvals. Mr. Smith states:

Pursuant to the Etobicoke Official Plan in force at the time of the application, an Official Plan Amendment was required in order to increase

the permitted height from six storeys to seven storeys. However, in our opinion, there was sufficient flexibility provided by the Plan's policies to allow for the adjustment to the boundary between the Low Density residential and Commercial-Residential Strip designations without the need for an official plan amendment.

Pursuant to the new Toronto Official Plan, an official plan amendment is being sought out of an abundance of caution to redesignate the southerly portion of the site from Neighbourhoods to Mixed Use Areas and to adjust the boundaries of Area-Specific Policy 277. However, it is our opinion that the requested adjustment to the boundaries of the Mixed Use Areas and Area-Specific Policy 277 would fall within the ambit of the Plan's interpretation policies.

Mr. Smith reviewed the relevant policy framework with the Board. The Provincial Policy Statement (2005) (the "PPS") is applicable to this application. Mr. Smith noted that one of the three key policy directions of the PPS "is to build strong communities by promoting efficient land use and development patterns". Of particular relevance, in Mr. Smith's opinion, is section 1.1.3, Settlement Areas. Policy 1.1.3.2 mandates land use patterns in areas like the City, based on densities and a mix of land uses which "efficiently use land and resources" and which "efficiently use the infrastructure and public service facilities which are planned or available..." Policy 1.1.3.3 provides "planning authorities shall identify and promote opportunities for intensification and redevelopment where this can be accommodated taking into account existing building stock or areas...and the availability of suitable existing or planned infrastructure..." Further, Policies 1.1.3.5 and 1.1.3.6 require planning authorities to establish and implement minimum targets for intensification and redevelopment in built-up urban areas.

Policy 1.4.3 provides that planning authorities shall provide for the appropriate range of housing types and densities to meet current and projected needs, by, *inter alia*, "permitting and facilitating...all forms of residential intensification and redevelopment in accordance with Policy 1.1.3.3".

Finally, Policy 1.6.5.4, in dealing with transportation systems, promotes a land use pattern, density and mix of uses "that minimize the length and number of vehicle trips and supports the development of viable choices and plans for public transit..."

It was Mr. Smith's opinion that the proposed development is consistent with the policy direction found in the PPS. The proposed building represents appropriate residential intensification on a site well-served by transit and other municipal infrastructure. In Part 3.3 of his Report, Mr. Smith described the site as "well-located in relation to the City's road network". Dundas St. W. is classified as a "Major Arterial", while Prince Edward Dr. is classified as a "Collector". In close proximity to the site is Royal York Road, classified as a "Minor Arterial".

In Mr. Smith's opinion, the site is "well-served by public transit. The 30 Lambton bus runs along Dundas Street West, serving the High Park subway station to the east and the Kipling subway station to the west. It provides seven day/week service, with 20 minute headways during rush hours and 30 minute service at off-peak times...The site is also located close to the Bloor and Kipling GO Stations".

In Mr. Smith's opinion, residential intensification on the site is "consistent with the housing policies of the Provincial Policy Statement which encourage a variety of housing types and densities, in order to offer current and future residents a range of housing choices".

Mr. Smith briefly reviewed the Growth Plan for the Greater Golden Horseshoe, 2006 (the "Growth Plan"), acknowledging that it came into effect after the applications were filed. Therefore, in his opinion, the applications are to be evaluated as if the Growth Plan were not in place. The Board finds that this document is in no way determinative of these appeals. Its only relevance is the fact that its language reinforces the language of the in effect PPS when it speaks to intensification. The Growth Plan notes that, "better use of land and infrastructure can be made by directing growth to existing urban areas. This Plan envisions increasing intensification of the existing built-up areas, with a focus on urban growth centres and intensification corridors..."

Mr. Smith reviewed the provisions of the Etobicoke OP which was in effect at the time the applications were made, and the Toronto OP which is now in effect. In considering which official plan is determinative of these applications, the Board must have regard to a number of cases cited by Counsel. Of particular relevance is *Clergy Properties Ltd. v. Mississauga (City)* (1996), 34 O.M.B.R. 277 in which the "Clergy

Principle” was enunciated. The Board in that case said “the Board in determining the policy framework under which an application should be examined has consistently stated that an application must be tested against the policy documents in place at the date of the application. It has done so in order to lend some certainty to the land use planning process”.

As recently as November 2007, this panel of the Board thoroughly reviewed the “Clergy Principle” and Board decisions which seem to stand for the proposition that the choice of the policy regime to be applied to an application is merely a matter of Board procedure, in *SunLife Assurance Company of Canada v. City of Burlington*, OMB Case PL060707, November 29, 2007. This panel of the Board said in that case, and reiterates here: “both private parties and representatives of the public interest are entitled to understand the ‘rules of the game’ from the outset”. Neither an applicant nor a planning authority has the ability independently to “choose” the policy regime against which an application will be tested. An applicant or a planning authority may choose to “hedge its bets” and address both policy documents in effect at the time of the application, and policy documents which have subsequently come into effect. Dunpar did so in this case; its witnesses and Counsel dealt with both policy regimes. The City focused almost exclusively on a policy regime, which came into effect after the date of the filing of the applications.

Neither “choice” by either the applicant or the municipality is determinative for the Board. If all parties agree that a policy regime which came into effect after the date of an application should be applied in considering the application, the Board will give considerable deference to that agreement. However, generally following the principles of natural justice, the Board will evaluate an application against the policy regime in effect at the time the application was made.

Therefore, the Board finds that only one official plan may be determinative of an application. It is the official plan, which was in effect at the date of the application. In this case the application for a zoning by-law amendment and the site plan referral will be considered in light of the policies found in the Etobicoke OP.

Mr. Smith reviewed the relevant portions of the Etobicoke OP with the Board. Map 4, Land Use, designates the portion of the site fronting on Dundas St. W. as Commercial-Residential Strip. The lands to the rear are designated Low Density Residential. Section 4.4 of the OP deals with the Commercial-Residential Strip designation. Such a designation is “intended to recognize the traditional commercial and mixed use areas that have developed in linear form along arterial roads”. The designation permits a full range of commercial uses. The policy also provides “these areas also contain a wide mix of non-commercial uses such as residential, institutional and community facilities reflecting their original role as the main concentration of activities for the residential development around them. These characteristics are encouraged to continue and intensify in the future”. (emphasis added)

Section 4.4.4 provides that a maximum height of six storeys is permitted, which shall be stepped down to a lower height or separated by distance or buffers where necessary to respect the proximity of nearby low-density residences.

Section 4.2 deals with the Residential designations. The Low Density Residential designation is “intended to be areas of ground oriented housing together with local institutions, amenities and minor commercial uses which serve the local population”.

Mr. Smith drew the Board’s attention to a number of sections of the Etobicoke OP, which allow for the minor adjustment of boundaries among land use designations without the need for an official plan amendment. Section 12.1.6 provides “the boundaries between Land Use designations on Map 4 are approximate except where they coincide with roads, railway lines or other clearly defined physical features. Where the general intent of this Plan is maintained, minor adjustments to boundaries will not require an amendment”. (emphasis added)

Section 4.4.7 specifically allows for the incorporation of adjacent residential properties into the Commercial-Residential Strip by way of rezoning without an amendment to the OP:

In Commercial-Residential Strip designations, where existing commercial development directly abuts residential uses to the rear without the benefit of a service lane, consolidation may be required in order to achieve satisfactory development standards. In such cases amendments to the Zoning Code may be

considered, on a comprehensive basis, without amendment to this Plan in order to:

incorporate the residential properties into an integrated redevelopment to achieve better access, site design and a larger redevelopment parcel.

Such zoning amendments may be made subject to the criteria in section 4.4.6 provided that:

adequate landscaping and screening is provided to buffer the parking, loading and other such areas from the residential uses on the opposite side of the street; and

the height and form of any new development does not create undue adverse impacts in terms of over shadowing or loss of amenity.

Section 4.4.6 refers to criteria set out in section 4.3.16, the criteria for permitting residential intensification. The criteria are as follows:

- a) the proximity of the site to Medium or High Density Residential Designations;
- b) the adequacy of local social and educational services;
- c) the level of accessibility and the proximity of the site to collector roads, arterial roads, transit and expressways, and the capacity of those facilities;
- d) the suitability of the site in terms of size and shape to accommodate the proposed additional uses and density including on-site parking, access and traffic circulation for all uses, and landscaping and recreational facilities for the residents;
- e) the desire to provide a range of dwelling types and building heights on sites of sufficient size as indicated in section 2.2.6;
- f) the effect of increased traffic, so that no undue adverse impacts are created for local residential uses;
- g) the effect of the height and form of development so that no undue adverse impacts in terms of overshadowing or loss of amenity are created for existing residential buildings or neighbouring residential uses;
- h) the relationship of the site to nearby lower density residential uses, if any, in view of the desire to provide a gradual transition in height and density wherever possible, or other buffering measures;

- i) the degree to which the site is proximate or exposed to significant open space amenities such as valleylands or the waterfront;
- j) the ability to meet the housing targets in section 2.2;
- k) the desire to stay within the population ranges outlined in sections 2.2.1 and 2.2.2;
- l) the availability of alternative undeveloped or underdeveloped retail lands to accommodate the proposed use; and
- m) the potential for adverse impact on the planned function of other Retail or Commercial-Retail designations.

Finally, Mr. Smith considered the intensification policies of the Etobicoke OP. Section 2.2.3 provides “the City shall encourage the integration of an initial level of intensification of at least 14,000 additional units during the planning process ending in 2006”. Section 2.2.8 provides “housing targets will be met primarily through housing intensification in residential, retail and institutional designations, but also may be met through redesignation and redevelopment of other land use designations”.

It was Mr. Smith’s opinion that it would be appropriate to utilize sections 12.1.6. and 4.4.7 of the Etobicoke OP to incorporate the Low Density Residential area of the subject property into the Commercial-Residential Strip. Mr. Smith had regard to the criteria set out in section 4.4.6 and 4.3.16 of the OP in coming to this conclusion. In section 5.2 and Appendix 1 of his Planning Report, Mr. Smith considers what he terms “the rounding out of the intensification area boundary along Dundas Street West to include the two additional residential properties at 567 and 569 Prince Edward Drive”. The property at 571 Prince Edward Dr. was made part of the “Avenue” for the purposes of the Toronto OP by the Avenues By-law to be discussed below. In Mr. Smith’s opinion “the proposed rounding out of the boundaries would result in a more regular and logical southern boundary for the intensification area, would allow for better site development, and would be consistent with the policies and interpretation provisions of both the Etobicoke Official Plan and the New Official Plan”. Mr. Smith notes that the current boundary is “irregular...it ‘jogs’ north along the east side of Prince Edward Drive to include 564 Prince Edward Drive. With the inclusion of 567 and 569 Prince Edward Drive, the south boundary of the intensification area on the subject property would be

