

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: December 24, 2014

CASE NO(S): PL140755

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

Applicant and Appellant: Murchmount Homes
Subject: Request to amend the Official Plan - Failure of the City of Toronto to adopt the requested amendment Neighbourhoods
Existing Designation: Neighbourhoods
Proposed Designation: Neighbourhoods special provision (to be determined)
Purpose: To permit 8 freehold townhouses
Property Address/Description: 191, 193 Empress Avenue
Municipality: City of Toronto
Approval Authority File No.: 13 273991 NNY23 OZ
OMB Case No.: PL140755
OMB File No.: PL140755

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

Applicant and Appellant: Murchmount Homes
Subject: Application to amend Zoning By-law No. 7625 and 569-2013 – Refusal or neglect of the City of Toronto to make a decision
Existing Zoning: One Family Detached Dwelling Sixth Density Zone (R6) and Residential Detached Zone (RDf12.0; a370)
Proposed Zoning: Residential Detached Zone / One Family Detached Dwelling Sixth Density Zone (R6) Site Specific (To be determined)
Purpose: To permit 8 freehold townhouses
Property Address/Description: 191, 193 Empress Avenue
Municipality: City of Toronto
Municipal File No.: 13 273991 NNY23 OZ
OMB Case No.: PL140755
OMB File No.: PL140756

Heard: December 4 and 5, 2014 in Toronto, Ontario

APPEARANCES:

Parties

Murchmount Homes

City of Toronto

Counsel

John Alati

Matthew Longo

Participants

Joanna Gorka

David Creates

Gloria Baxter

William Nalepka

Andrew Tong

Angela Fernandes

DECISION DELIVERED BY J. P. ATCHESON AND ORDER OF THE BOARD

[1] This was a hearing in the matter of appeal by Murchmount Homes (“Appellant”) pursuant to s. 22(7) of the *Planning Act* (“Act”) from the failure of the Council of the City of Toronto to make a decision with respect to a private Official Plan Amendment (“OPA”) application for a property known municipally as 191 and 193 Empress Avenue (“subject property”) in the former City of North York now in the City of Toronto.

[2] The Appellant has also appealed the failure of the Council of the City of Toronto to make a decision with respect to a Zoning By-law Amendment application for the same property.

[3] The Official Plan and Zoning By-law Amendments are intended to permit a residential development consisting of eight, three storey townhouse dwellings with eight garage parking spaces to the rear. The property is currently designated

"Neighbourhoods" in the City of Toronto's Official Plan Land Use Map 16 and is zoned "One Family Detached Dwelling Sixth Density Zone (R6)" in Zoning By-law No. 7625 of the former City of North York and is zoned "Residential Detached Zone (RD fl 2.0; a370)" zone in the new City of Toronto Harmonized Zoning By-law No. 569-2013 ("HZBL").

[4] The subject property is approx. 1107 square metres in area, having approximately 26.21 metres of frontage on Willowdale Avenue and 42.62 metres of frontage on Empress Avenue. The eight townhouse units would front on to Empress Avenue. An existing unopened municipal lane abuts the subject property on the west followed by single family detached dwellings. The eastern unit of the townhouse development flanks Willowdale Avenue while single family homes abut the subject property to the south.

[5] Access to the development's parking is from a 6 metre wide private driveway exiting off of Willowdale Avenue approximately 20 metres south of the stop line for the signalized intersection of Willowdale and Empress Avenues.

[6] Each residential lot is currently occupied with a single detached dwelling built in the 1950s which would be demolished in order to facilitate the proposed development.

[7] The Board on consent, at the commencement of the hearing, granted participant status to those individuals noted above. They all live in the immediate neighbourhood and oppose the applications. Their salient concerns may be summarized as follows:

1. The development is not in keeping with the single family character of this neighbourhood.
2. The project is an over development of the site.
3. The driveway entrance to Willowdale Avenue will cause traffic backups with cars at the signalized intersection of Willowdale Avenue and Empress Avenue.

4. Townhouses as a built form at this location that will have a destabilizing effect on this single family neighbourhood.

BACKGROUND AND EVIDENCE

[8] The Board, during the course of the hearing, heard evidence from two qualified land use planners and a qualified transportation engineer. Mr. Michael Goldberg was retained by the Appellant to assist in their applications to the City and the matters now before this Board. He supports the applications and provided the Board with a draft Official Plan Amendment (Exhibit 14) and a proposed Zoning By-law Amendment for By-law No.7625 (Exhibit 12) and a proposed Zoning By-law Amendment for By-law No. 569-2013 that is still under appeal. He confirmed that if the Board were to allow the appeal and approve the OPA and Zoning By-law Amendments the Appellant would still have to file a site plan application with the municipality.

[9] Counsel for both parties requested that if the Board were to determine to allow the appeals that it withhold its final order to allow the City to review the Amendments as to form.

[10] Ms. Margaret Briegmann, a qualified transportation engineer, was retained by the Appellant to undertake a traffic and parking space analysis of the immediate area to assess the impacts the proposed development might have on the immediate road network and the availability of on street parking for visitors. This was done in spite of the City not requiring any traffic impact analysis for the proposed development. The substance of her testimony and conclusions was that the proposed eight unit townhouse development would have no impact on traffic movement on either Empress or Willowdale Avenues, and that the provision of eight parking spaces was consistent with the new parking standards found in By-law No.569-2013. She also concluded from her investigations of available on street parking that there was excess capacity in the immediate area to meet the needs of anyone visiting the subject property.

[11] The Board also heard from Mr. Robert Gibson, a qualified land use planner,

employed by the City as a Senior Planner for the North District. He opposes the applications.

[12] The Board heard no compelling evidence from either planner that there were any planning consistency or conformity issues with respect to the 2014 Provincial Policy Statement or with the Provincial Growth Plan for the Greater Golden Horseshoe Area. Clearly in the Board's judgement the City's Official Plan ("OP") is consistent with the 2014 Provincial Policy Statement, and is conformity with the Growth Plan for the Greater Golden Horseshoe Area.

[13] The Board concludes that the matters before the Board in this case are local in nature, and do not affect any provincial interest and should be considered within the context of the City's OP, the zoning currently in place for the area, the character of the neighbourhood, and whether the proposed development at this location represents good planning for this part of the City of Toronto.

[14] Both planners provided a fulsome review of the applicable OP policies but arrive at a very different interpretation of how they should be applied.

[15] Mr. Goldberg is of the opinion that an OPA is not necessary but out of an abundance of caution and on the direction of City staff he filled an OPA based upon non-compliance with s 4.1.5 d) of the OP. The proposed OPA (Exhibit 14) is site specific in nature permitting the eight townhouse units on the subject property

[16] The uncontradicted evidence of both planners is that these applications are governed by the City's OP and that the OP must be considered in its entirety. They both noted that the OP in Chapter Two recognized that:

some physical change will occur over time as enhancements, additions and in fill housing occurs on individual sites. A cornerstone policy is to ensure that new development in our neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood.

[17] There was also agreement that in this case, that the OP designates the site and immediate area as “Neighbourhoods” and states that “Neighbourhoods” are considered physically stable areas made up of residential uses in lower scale buildings such as detached houses, semi-detached houses, duplexes, triplexes and townhouses and that a key objective of this Plan is that new development respect and reinforce the general physical patterns in the neighbourhood, and further that the development criteria set out at s. 4.1.5 of the OP would apply which states that:

5. Development in established Neighbourhoods will respect and reinforce the existing physical character of the neighbourhood, including in particular:
 - a) patterns of streets, blocks and lanes, parks and public building sites;
 - b) size and configuration of lots;
 - c) heights, massing, scale and dwelling type of nearby residential properties;
 - d) prevailing building type(s);
 - e) setbacks of buildings from the street or streets;
 - f) prevailing patterns of rear and side yard setbacks and landscape open space;
 - g) continuation of special landscape or built-form features that contribute to the unique physical character of a neighbourhood; and
 - h) conservation of heritage buildings, structures and landscapes.

[18] Mr. Goldberg opined that the proposal would meet all of the tests of the City’s OP, and that “Neighbourhoods” while considered stable are not viewed by the OP as static and that in his opinion this modest intensification would be appropriate bearing in mind the character of development along Willowdale Avenue which he considers to be similar to development that is occurring along Bayview Avenue and at both ends of Willowdale near Finch Avenue on the north and Sheppard Avenue on the south.

[19] Mr. Goldberg submits that the subject property should be viewed as an edge location along a minor arterial road. He opined that edge locations are exposed to higher levels of activity than internal areas of neighbourhoods and as a result in his opinion edge locations are commonly the focus of intensification of different types of

land uses and built forms.

[20] It was his opinion that this modest form of intensification was consistent with placing slightly more intense development on streets that form edges to a neighbourhood and as such the proposed development represent a form of development that is in keeping with the character of this neighbourhood and consistent with development permitted at other edge locations with this “Neighbourhood” designation and on this basis his client’s applications represent good planning and should be approved.

[21] He confirmed in his testimony that the proposal in its design meets all of the applicable policies found in the OP’s built form policies in s. 3.1.2.1, was consistent with the design parameter for townhouse found in the City’s Urban Design Guidelines- Infill Townhouse (Exhibit 2, Tab 7) and would have no adverse impacts on any abutting properties. He opined that the reduced front yard setbacks were consistent when one took into consideration the road widening being requested by the City along Empress Avenue.

[22] Mr. Gibson, on the other hand, opined that the proposed development was out of character with the predominately single family built form found in the neighbourhood, that this was not an area where this form of intensification should occur, particularly when the OP directs intensification to “Centre” “Avenues” and “Mixed Use Areas”. He opined that the eight unit townhouse proposal would not meet the development objectives set out s. 4.1.5, (a) to (f) of the OP or the key objective of the OP “to respect and reinforce the existing physical character of the neighbourhood”, and as such the proposal would not conform to the spirit and intent of the City’s OP and should not be approved.

[23] The planners in arriving at their respective planning opinions identified different study areas to be used to define the character of the neighbourhoods and to which the development criteria found in s. 4.1.5 of the OP should be applied.

[24] Mr. Goldberg provided the Board with an overview of a larger area and more particularly, his study area as set out at Exhibit 3. He also provided a photo study of his study area found at Exhibit 5. It is clear from his evidence that this area of North York is a stable, single-family neighbourhood consisting of a wide variety of single-family house types that vary in size, design and character resulting in the very attractive and eclectic character of this mature neighbourhood.

[25] The substance of Mr. Goldberg's testimony regarding the character of the neighbourhood centres on Willowdale Avenue and to a lesser degree Empress Avenue. He opined that Willowdale Avenue functions as a minor arterial road running in a north south direction. It was his opinion that Willowdale Avenue functions as an edge street even though it is located in the centre of the larger Neighbourhood designation shown on the City's Land use Map 16. The designation is generally bound by Yonge Street on the West Finch Avenue on the north, Bayview Avenue on the east and Sheppard Avenue on the south. In his study area assessment he excluded the areas governed by secondary plans around the edge of this Neighbourhood being the North York Centre Secondary Plan along Yonge Street, Sheppard Avenue East Subway Corridor Secondary Plan and the Sheppard Avenue Commercial Area Secondary Plan. However, he included the Mixed Use Areas designation that extends northward to Hollywood Avenue along Willowdale Avenue from Sheppard Avenue.

[26] Mr. Goldberg testified that at both the north end of Willowdale Avenue near Finch Avenue townhouse and apartment developments currently exists, and that at the south end of Willowdale Avenue at the south west corner of Hollywood and Willowdale there exists currently a five unit townhouse project similar to his client's proposal. He reviewed in some detail through his evidence and photographic exhibits the land uses along Willowdale Avenue noting that this street is a bus route with several signalized intersections and crosswalks. In his opinion, Willowdale Avenue acts as a spine road or edge street for his neighbourhood study area. He suggests that his clients proposal is similar to other townhouse projects found to the north and south on Willowdale Avenue within his defined study are (neighbourhood) as set out at Exhibit 3. He also reviewed

the townhouse projects on the west side of Bayview Avenue and reviewed the guidelines for townhouse development produced by the City for a portion of Bayview Avenue area and on this basis he formulated his opinion that the development being proposed at this specific location would be consistent in character with other townhouse development found in his study area. He testified that, in his opinion, there would be no adverse planning impacts resulting from his client's project, that the project represented a modest intensification contemplated by the City's OP that would not destabilize the neighbourhood and should be approved.

[27] Mr. Gibson in his assessment of the neighbourhood used a much smaller area as set out at Exhibit 19C. His study area is bound by Parkview Avenue on the north, Hollywood Avenue on the south, Kenneth Avenue on the west and Wilfred Avenue on the east. He opined that within his study significant reinvestment was occurring in the form of new single family homes, the creation in some cases of new smaller single family lots, and renovation to the existing single family housing stock. He suggested that this was the type of modest intensification contemplated by the OP, and that based upon the amount of single family type reinvestment currently occurring in his study area one should conclude that the policies of the OP are being followed and working well to revitalize this area of the municipality. He noted within his study that single family dwellings were the only new built form that was being undertaken.

[28] It was Mr. Gibson's opinion that the townhouse development found to the south on Hollywood Avenue was within a "Mixed Use Area" designation and should not be compared with the subject property and that the City through its OP and secondary planning studies for the Yonge Street, Sheppard Avenue and Finch Avenue areas had determined that these areas are where major intensification should occur, and not within the centre of this "neighbourhood" as is being proposed by the Appellant.

[29] He sees the Bayview area townhouse developments as an example of edge development on a major arterial road as shown on Map 3 of the City's OP being the "Right of Way Widths Associated with Existing Major Streets" map and that the

townhouse guidelines (Exhibit 17) developed by the City for a portion of Bayview Avenue were put in place to assist development along a certain stretch of Bayview Avenue and were not applicable to this project. It was his testimony that while Willowdale Avenue functions as a minor arterial it was not recognized as a major street on Map 3 to the City's OP and as such should not be considered an area for intensification in the manner being proposed by the Appellant's Planner.

[30] Both parties and the participants pointed out in their evidence that significant reinvestment is occurring to properties in the area through renovations, and the construction of new, larger, single-family homes.

[31] Both parties agreed that the first issue to be address by the Board is whether an OPA is required in this case and if so should the OP amendment as set out at Exhibit 14 be approved. If the application fails at this level, the issue of the rezoning and the applicable standards to govern the proposed eight unit townhouse development become moot.

FINDINGS AND CONCLUSIONS

[32] The Board, after carefully reviewing the evidence, the submissions from the parties and the opinions proffered by the planners, the transportation engineer and the participants makes the following findings.

[33] It is the finding of the Board that the policy directions of the City's OP are clear upon a full and fair, reading of the document. The OP is clearly designed to protect existing stable residential area but is broad enough to consider and allow changes within such neighbourhoods when that change is such that it reinforces the existing physical character of the neighbourhood.

[34] The City in this particular area has designated areas around the periphery of this Neighbourhood through its secondary and corridor planning studies for major intensification. It has even recognized a Mixed Use Area along Willowdale Avenue

northward to Hollywood Avenue.

[35] A full and fair reading of the OP contemplates that within neighbourhood that some minor intensification may occur and that the criteria for assessing that change is found initially at s. 4.1.5 and the built form criteria found at s. 3.1.3 and the housing policies found at 3.2.1.1.

[36] The Board has considered the two study area proffered by the planners to assist in determining what neighbourhood (small n) area should be considered when applying the tests set out in the OP.

[37] The Board upon reflection and after reviewing the evidence prefers the study area proffered by Mr. Gibson. The Board does not see the development along Bayview Avenue or those in proximity to Finch and Sheppard Avenues as characteristic of the neighbourhood in proximity to the proposed site. The sites and areas on the edge of the larger "Neighbourhood" land use designation (Big N) are different, and are recognized by existing City planning policy as locations where intensification is encouraged.

[38] It is the Board's finding that in this case the proposed form of development (Townhouses) is a built form that it does not meet the provisions of the zoning by-laws in force and effect or proposed. The By-laws restrict the uses at this site and in the immediate area to single family homes which clearly from the record is the prevailing building type within Mr. Gibson's study area and which the Board finds implements the policy directions of the OP.

[39] It is the Board's determination in this case that s. 4.1.5 .d) of the OP would require an OPA as the proposed development does not meet the criteria of the prevailing building type(s) found in this area. The Board does not accept the construction proffered by Mr. Goldberg that Willowdale Avenue and to a lesser degree Empress Avenue should be construed as edge streets where intensification should be encouraged. Nor does the Board accept the opinion that townhouse development found at either ends of Mr. Goldberg's study area should be used to define the character of

the central part of this neighbourhood.

[40] It is the Board's judgement after reviewing all of the exhibits and submissions that Mr. Gibson's study area is to be preferred in assessing the character of the neighbourhood.

[41] The next question for the Board is whether the site specific OPA proposed by the Appellant should be approved, which would allow an eight unit townhouse project on the subject property as set out in the plans and drawings found at Exhibit 6.

[42] Clearly a full reading of the OP contemplated that some minor intensification can occur within neighbourhoods and that the test is not sameness but whether the new development is compatible with its surroundings and the prevailing built form.

[43] It is the Board's conclusion after reviewing the planning documents that the policy directions in place are designed to ensure that new development will be compatible with the physical character of the established residential neighbourhoods as required by s. 4.1.5 and s 4.1.8 of the OP.

[44] The Board ascribes to the proposition that once one enters a process for an increase in density, all of the regulations of the By-law, together with the imposition of site specific conditions, may come to bear and the tests in this case are the requirements of the City's OP, and the zoning in place, and that these become the benchmarks against which a project must be judged.

[45] The Board in this case must view the requested OPA and Zoning By-law Amendments based upon the site plan, and building plans prepared by the Rubinoff Design Group dated October 17, 2014 found at Exhibit 6. Clearly townhouses of the size and density being proposed can be built on the proposed lot. Nor did the Board hear any serious objections that the townhouse would not be compatible with the other forms of housing found in the area. They meet the design guidelines for infill townhouse developed by the City (Exhibit 2, Tab 7).

[46] However, in the Board's determination the more fundamental question is whether the OP should be amended to allow this form of development in the centre of a stable single family neighbourhood where single family detached homes are the predominate built form.

[47] The Board in this regard prefers the evidence of Mr. Gibson. The Board does not find Willowdale Avenue, as currently designated by the official plan as acting as street, would demarcate an edge in this Neighbourhood. If the Board were to accept the proposition put forward by Mr. Goldberg the result would be to bisect the Neighborhood (large N) into two smaller neighbourhoods which would encourage the townhouse built form of development along Willowdale Avenue and Empress Avenues in the central part of the stable single family area. This is a construction of OP policy not contemplated by the OP and in the Board's determination would not reinforce the physical character of the neighbourhood.

[48] The Board, in considering the relief sought, as reflected in the site plan and building drawings found at Exhibit 6 prefers the evidence of Mr. Gibson that the proposed development will not reinforce the existing character of the neighbourhood which consists exclusively of a single family built form with a few commercial use exceptions identified and agreed to by the planners as set out at Exhibit 3. The Board would note that along Empress Avenue the dominate built form is single family homes. The proposal would introduce a new built form and density on Empress Avenue that is not in keeping with the character of this single family neighbourhood.

[49] The Board would note that the City's own OP, in Chapter Three, provides assistance and context with respect to matters of height and density when it states:

Where there are no height or density limits in the Plan, height and density limits of area zoning that implements the Plan will be benchmarks for assessment of those aspects of the planned context...

and further, s. 3.1.2.3 states:

New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context...

[50] It is the Board's finding in this specific case, that the existing zoning establishes benchmark elements that define the low density character of this neighbourhood and should not be changed lightly or to the degree being proposed by these applications. It is the Board's finding that the proposed would not respect the intent of the OP to "respects the existing physical character of the area, reinforcing the stability of the neighbourhood". The townhouse built form at this location in the Board's judgement would have a destabilizing effect on the single family character of the neighbourhood.

[51] It is the Board's finding that to introduce this built form at the density proposed at this location would not be consistent with the intent of a full and fair reading of the City's OP and would give a status to both Willowdale and Empress Avenues not afforded to them by the City's OP policies.

[52] The Board finds it instructive when considering what might constitute minor intensification in this area to look at the property to the south at the northwest corner of Willowdale Avenue and Princess Avenue (Exhibit 19(I)). In this case the same lot area was divided into three single family lots where one or two may have existed in the past. This in the Board's judgement is an excellent example of the built form and intensification contemplated by the OP which reinforces the physical character of this stable single family neighbourhood.

[53] The Board, after considering the submission of the parties and the participants, prefers the evidence of Mr. Gibson that the proposed OPA would change significantly the character of this neighbourhood, is not in conformity with the intent of the City's OP policies found at s. 4.1.5 and 4.18 and that to allow the proposed townhouses would set a new standard for development that could have a destabilizing effect on the character of this residential neighbourhood. In the Board's judgement, a change of the magnitude being proposed is not good planning and not in conformity with a full and fair reading of the City's OP and as such the site specific OPA should not be approved.

[54] Since the proposed OPA fails there is no need to evaluate the details of the

Zoning By-law Amendments being proposed by the Appellant.

[55] The Board for the reasons outlined in this decision makes the following Orders.

ORDER

[56] The Board Orders that the appeal by Murchmount Homes from the failure of the Council of the City of Toronto to make a decision with respect to a private Official Plan Amendment application for a property known as 191 and 193 Empress Avenue in the former City of North York now in the City of Toronto is dismissed.

[57] The Board Orders that the appeal by Murchmount Homes from the failure of the Council of the City of Toronto to make a decision with respect to a Zoning By-law Amendment application for a property known as 191 and 193 Empress Avenue in the former City of North York now in the City of Toronto is dismissed.

“ J. P. Atcheson ”

J. P. ATCHESON
MEMBER

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elfto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248