

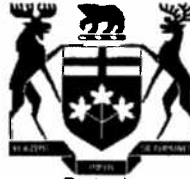
2012-22

(P)

Copy: Lucy

Sabrina
Legal

ISSUE DATE: February 01, 2013



Ontario

RECEIVED FEB - 4 2013 CITY OF MARKHAM CLERKS DEPT.

PL111256

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Tribute (Unionville) Limited 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 neglect to enact a proposed amendment to Zoning By-law 122-72, as amended, of the Town of Markham, to rezone lands respecting 20 Fred Varley Drive from "General Commercial (C1)" to "Community Amenity One (CA1)" to permit the development of a 4-storey, 113-unit apartment residential building with ground floor commercial uses along Fred Varley Drive
Town of Markham File No. ZA 11 113101
O.M.B. File No. PL111256

APPEARANCES:

Parties

Counsel*/Agent

City of Markham

B. Ketcheson*

Tribute (Unionville) Limited

M. Melling* and M. McDermid*

Toronto and Region Conservation
Authority

J. Wigley*

Unionville Villagers Association,
Unionville Ratepayers Association, and
Unionville B.I.A.

R. McAlpine

**DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER AND ORDER
OF THE BOARD**

OVERVIEW

Matters Before the Ontario Municipal Board ("Board")

[1] Tribute (Unionville) Limited ("Tribute") wishes to develop a four storey, 113 residential unit building with ground floor commercial uses at 20 Fred Varley Drive in the community of Unionville within the City of Markham ("City"). The current zoning of the

site is General Commercial. A site specific zoning by-law amendment to permit a mixed use development is before the Board in these proceedings.

[2] The proposed zoning by-law amendment is found at Attachment 1 to this decision. In addition to setting out permitted uses, the proposed by-law amendment sets out requirements including a maximum floor space index of 1.92, a maximum of 113 dwelling units, a maximum height, minimum setback requirements and minimum step back requirements for the top floor.

[3] The minimum setbacks are:

1. 2.0 m from Fred Varley Drive;
2. 5.0 m on the east side, adjacent to Fonthill Creek and Millennium Park;
3. 9.0 m on the south side, adjacent to the properties fronting on Station Lane and within the Unionville Heritage Conservation District ("UHCD"); and
4. 15 m on the west side, adjacent to the pedestrian connection that links Station Lane and Fred Varley Drive along Eureka Street and then the west side of the subject site.

[4] Minimum step backs in the building envelope are also specified to ensure that the proposed fourth storey is set back from the vertical wall of the third storey. The step back is 5.0 m on the north, south and west sides, and 3.5 m on the east side.

[5] There is no official plan amendment and no site plan before the Board.

[6] The City appeared in support of redevelopment that substantially increases the density on the subject site but opposed the intensity of development that would be permitted by the proposed zoning by-law amendment.

[7] Although there is no site plan before the Board, Tribute has included plans and elevations in its visual evidence, filed as Exhibit 8 in these proceedings. The Tribute plans contemplate a building with its mass sited to the edges of the setbacks and an open space courtyard at the centre.

[8] The City has included less detailed plans and elevations in its visual evidence, filed as Exhibit 16 in these proceedings. The City's plans are known as the Alternate Development Concept ("ADC"). The ADC is also a four storey, mixed commercial residential proposal. Rather than a courtyard, the ADC proposes an L shape with three storeys along the Fred Varley frontage and four storeys along the eastern edge of the site. The floor space index for the ADC is 1.14 with 67 residential units.

[9] The ADC arose from a working committee that did not include Tribute. City Council endorsed the ADC and it was presented in detail in the course of the City's case.

[10] The Board considers both the Tribute plans and the ADC plans to be illustrative of the possible deployment of zoning permissions on the subject site with particular reference to height, setbacks, massing, and access to Fred Varley Drive. Tribute has also included plans to illustrate how it suggests the design of the building façade would be able to respond to heritage design concerns raised by the City. The ADC was not refined to address heritage design concerns.

[11] The subject site is adjacent to, but not within, the Unionville Heritage Conservation District ("UHCD"). Issues of compatibility with the heritage attributes of the UHCD are engaged.

[12] The site is susceptible to flooding. It is within the floodplain of Fonthill Creek and has been designated as a Special Policy Area as a result. Issues of flood proofing and the appropriateness of developing within a Special Policy Area are engaged.

[13] Three parties appeared in opposition to the proposed zoning by-law amendment and made final submissions but did not otherwise call any evidence. These parties are: Unionville Villagers Association, Unionville Ratepayers Association and Unionville B.I.A.

[14] The procedural order, set in a pre-hearing conference, identified 34 issues to be decided.

[15] Minutes of Settlement between Tribute and Toronto and Region Conservation Authority ("TRCA"), filed as Exhibit 18 in these proceedings, resulted in issues 26 through 34 being deleted. The Board strikes issues 26 through 34 from the issue list.

[16] The Minutes of Settlement did not deal with all of the TRCA concerns. TRCA appeared in opposition to the proposed zoning by-law amendment, focusing its case on the question of whether the proposed development is appropriate within a Special Policy Area and, if so, whether an official plan amendment is required. TRCA also appears in opposition to the City's ADC on the same basis.

[17] The City and Tribute agreed that issues 14, 15 and 24 do not require determination by the Board in these proceedings and no evidence was called on these issues. The Board strikes issues 14, 15, and 24 from the issue list in these proceedings.

[18] The Board heard from six qualified land use planners (one of whom specializes in heritage planning and one of whom is a member of the Royal Architectural Institute of Canada), an architect, a landscape architect with a specialty in arboriculture, an urban designer, a professional engineer who specializes in water resources, and two traffic and transportation experts. All of these witnesses acknowledged the expert's duty to the Board.

[19] The Board heard from one member of the public, a participant identified at a pre-hearing conference. This participant is a long term resident of the City, living in one of the subdivisions a few blocks from the subject site. She appeared in opposition to any intensification of the site. She expressed particular concern about the impact additional population would have on parks and green space. She also observed that the retail uses on the site at present would have to relocate during redevelopment and that would remove neighbourhood commercial from the area, at least temporarily. She was also concerned that the current commercial uses on the site serve a moderate income market and replacement commercial uses with redevelopment might target a higher income market. Although her concerns were directed primarily to the Tribute proposal, her points apply to the City's ADC as well.

[20] The Board understands and appreciates her concerns but the Board also notes that the site has been identified for redevelopment by the City. Any redevelopment involves some temporary dislocation and adjustment. Additionally, the Board had no evidence from the City that intensification of the site would negatively impact parks and open space in the area.

Site and Surrounding Area

[21] Fred Varley Drive runs east-west. 20 Fred Varley Drive is on the south side of the road at the foot of a T intersection with Fonthill Boulevard. The site is one of the largest in the community of Unionville.

[22] The site is currently occupied by a two storey, 3000 sq. m, 1960's style strip plaza with residential units above the stores. The plaza itself sits approximately in the middle of the site, set back from the street and from the lots to the rear.

[23] There are two points of access and egress to Fred Varley Drive, one at the east end of the site and one at the west end of the site. There is no vehicular access or egress that is aligned with Fonthill Boulevard where it ends at Fred Varley Drive.

[24] The site is almost entirely paved, with parking between the plaza and the street. A rear fire escape balcony runs along the length of the plaza at the second storey for residential access. Parking and vehicular movements also occur at the rear of the building. Waste storage is free standing at the southwest corner of the plaza and at the rear.

[25] The site is bordered by the UHCD on the south and the east. Residential units abutting the site to the south front on Station Lane and are within the UHCD. The evidence before the Board is that these units are a mix of age and style. Some are single family homes while others are townhouse blocks. Some have heritage attributes, some are modern interpretations of heritage elements, and one has no heritage attributes at all.

[26] At the west end of this group of dwellings on Station Lane is Eureka Street. Eureka Street runs north from Station Lane, along the west side of 16 Station Lane, and is a vehicular dead end at the southwest part of the subject site. Pedestrian access continues north to Fred Varley Drive.

[27] Abutting the subject site to the east, within the UHCD, is Fonthill Creek and Millennium Park. Main Street and the downtown of the UHCD are considerably further to the east.

[28] North and west of the subject site are suburban, 1960's styled subdivisions. Like the subject site, these subdivisions are not within the UHCD.

ANALYSIS

Is An Official Plan Amendment Needed?

Is An Official Plan Amendment Needed for Conformity with the Region of York Official Plan?

[29] The site is designated Urban Area within both the in-force Region of York Official Plan and the partially approved new Region of York Official Plan. The proposed zoning by-law amendment to permit redevelopment of the site with commercial and residential uses conforms to the Urban Area designation in the Region of York Official Plan and no issue was raised in this regard. The Board finds that an amendment to the Region of York Official Plan is not required.

Is an Official Plan Amendment Needed for Conformity with the Special Policy Area Requirements of the City of Markham Official Plan ("OP")?

[30] As a result of updated floodplain mapping by the TRCA, the OP includes the subject site within a Special Policy Area ("SPA").

[31] Section 3.10.2 of the OP sets out the policies applicable to an SPA. This section acknowledges that an SPA is composed of land:

...located within a floodplain on which there is existing development that forms an integral part of an existing flood prone community... [P]arts of certain urban areas have historically developed within floodplains. The continued viability of these areas depends on a reasoned application of the Provincial standards for floodplain management.

[32] The section goes on to permit "...some new development, redevelopment or extensions to and rehabilitation of buildings and structures..." subject to flood protection and to the satisfaction of the TRCA and the City.

[33] The parties agree that no amendments are proposed, and no amendments are required, to the SPA policies of the OP.

Is an Official Plan Amendment Needed for Consistency with the Special Policy Area Requirements of the Provincial Policy Statement ("PPS")?

[34] The PPS contains policies dealing specifically with Special Policy Area designations. At s. 3.0 the PPS states:

Ontario's long-term prosperity, environmental health and social well-being depend on reducing the potential for public cost or risk to Ontario's residents from natural or human-made hazards. Development shall be directed away from areas of natural or human-made hazards where there is an unacceptable risk to public health or safety or of property damage.

[35] The TRCA asks the Board to consider the definition of Special Policy Area in the PPS, particularly the last part of the definition:

A Special Policy Area is not intended to allow for new or intensified development and site alteration, if a community has feasible opportunities for development outside of the flood plain.

[36] While a Special Policy Area is not intended for new or intensified development, new or intensified development is not prohibited in a Special Policy Area. Even the definition speaks to feasible opportunities elsewhere in the community.

[37] The reference to "community" in this context is important. The TRCA suggests that "community" means the entire City of Markham. This interpretation is not supported by the language of the PPS. Sprinkled throughout the PPS are references to "municipality" when the PPS is clearly referring to the entire municipal jurisdiction. By saying "community" the Board interprets the PPS to mean something other than, and smaller than, the entire municipality. In this case, that would mean something smaller than the entire City of Markham and would, instead, refer to the community of Unionville.

[38] The evidence before the Board is that there is no other feasible opportunity for the development contemplated by the proposed zoning by-law amendment elsewhere in the community of Unionville.

[39] In addition, by referencing "unacceptable risk" in s. 3.0, the PPS contemplates some risk. This is clear by reference to s. 3.1.6 of the PPS:

...development and site alteration may be permitted in those portions of hazardous lands and hazardous sites where the effects and risk to public safety are minor so as to be

managed or mitigated in accordance with provincial standards, as determined by the demonstration and achievement of all of the following:

- a) *development and site alternation* is carried out in accordance with *floodproofing standards, protection works standards, and access standards*;
- b) vehicles and people have a way of safely entering and exiting the area during times of flooding, erosion and other emergencies;
- c) new hazards are not created and existing hazards are not aggravated; and
- d) no adverse environmental impacts will result.

[40] The Minutes of Settlement between Tribute and the TRCA assume a site plan application will be made that will finalize the details of the flood proofing and mitigation of risk to the satisfaction of the TRCA. A holding provision has been included in the proposed zoning by-law amendment at s. 3. The conditions for removing the holding provision specifically cite the requirement that the terms and conditions of the Minutes of Settlement "...are undertaken in a manner satisfactory to the TRCA..."

[41] The TRCA also asks the Board to consider the requirement in s. 3.1.3(a) of the PPS which sets out a requirement for prior provincial approval in certain circumstances where OP policies are being amended or modified. The section states:

...*development and site alteration* may be permitted ... in those exceptional situations where a *Special Policy Area* has been approved. The designation of a *Special Policy Area*, and any change or modification to the site-specific policies or boundaries applying to a *Special Policy Area*, must be approved by the Ministers of Municipal Affairs and Housing and Natural Resources prior to the approval authority approving such changes or modifications...

[42] While the TRCA acknowledges that no changes or modifications are proposed to the SPA designation, policies or boundaries in the OP, the TRCA takes the position that an amendment is required to another section of the OP. The TRCA asks the Board to read this section of the PPS as meaning that a change or modification to another section of the OP that impacts the subject site that is within an SPA is sufficient to trigger the requirement for prior provincial approval.

[43] The Board now turns to consideration of that other section of the OP which the TRCA submits requires amendment if the Board is inclined to support the proposed zoning by-law amendment.

[44] The OP designates the subject site Neighbourhood Commercial Centre. At s. 3.4.6.3 (a) the OP set the planned function of the Neighbourhood Commercial Centre designation as:

To provide locations for convenience commercial uses that primarily serve the surrounding residential area.

[45] There is no dispute between the parties that the proposed zoning by-law amendment maintains convenience commercial uses. This is demonstrated in the list of non-residential uses to be permitted on the site as well as the limitation on size found at s.2.5(d). Individual non-residential premises are limited to a maximum of 300 sq. m or less of gross floor area.

[46] At s. 3.4.6.3(c)(ii) the OP, within the Neighbourhood Commercial Centre designation, permits residential uses with no limit on the number of units.

[47] The existing two storey plaza, with the residential units above the store units, has no predominant use. The convenience commercial uses represent 50% of the plaza and the second storey residential uses represent the other 50% of the plaza.

[48] Both the City's ADC and the Tribute proposal contemplate much more residential on the site than what is there at present. In doing so, these proposals alter the balance between commercial and residential uses such that the predominant use of the site becomes residential. There is no decrease in the commercial use of the site. As such, the planned function of a Neighbourhood Commercial Centre with "convenience commercial uses that primarily serve the surrounding residential area" is maintained.

[49] The Board find that the proposed zoning by-law conforms to the OP.

[50] Although the Board finds that no OP amendment to the Neighbourhood Commercial Centre designation is required, the Board also finds that an OP amendment to the Neighbourhood Commercial Centre designation does not, in itself, trigger the prior approval set out in the PPS.

[51] The Neighbourhood Commercial Centre designation addresses primarily the planned function of the site. Meeting the Special Policy Area requirements in the OP and the PPS does not engage the question of planned function. Rather, meeting these

requirements engages the question of whether the risk to public safety and property is appropriately mitigated.

[52] The evidence before the Board is that risk to public safety and property can be appropriately mitigated and the requirements for doing so will be finalized through the site plan process and be to the satisfaction of the City and the TRCA.

[53] The Board has found that no OP amendment to the Neighbourhood Commercial Centre is required for the proposed zoning by-law amendment to conform to the OP. The Board further finds that even if an amendment were necessary to the Neighbourhood Commercial Centre designation, as long as the Special Policy Area requirements in the OP are both unchanged and are met, and as long as the requirements of s. 3.1.6 of the PPS are met, the requirement for prior approval of an OP amendment is not triggered.

Is the Redevelopment Permitted by the Proposed Zoning By-law Amendment More Compatible with the Unionville Heritage Conservation District than the Existing Development?

[54] The Unionville Core Secondary Plan ("UCSP") recognizes the Special Policy Area and, at s. 5.2, directs that future development or redevelopment shall comply with both the Special Policy Area policies of the OP in s. 3.10.2 as well as the applicable policies within the UCSP. The UCSP designates the subject site Neighbourhood Commercial Centre. At s. 5.7.2(a) the UCSP deals specifically with the site and calls for redevelopment:

... Council shall encourage initiatives for improvements to or redevelopment of the existing shopping plaza on Fred Varley Drive... In particular, Council shall encourage redevelopment that is more compatible with the historic image of old Unionville and that provides for appropriate pedestrian linkages with Station Lane to the south...

[55] Tribute's conceptual site plan has been the subject of extensive discussion. The City has expressed concern about the proposed external design, scale and massing and questions whether they are appropriate for a site that is adjacent to the UHCD.

[56] Section 2.6.3 of the PPS permits development adjacent to a protected heritage property:

...where the proposed *development* and *site alteration* has been evaluated and it has been demonstrated that the *heritage attributes* of the *protected heritage property* will be *conserved*...

[57] The OP has a similar requirement at s. 2.5.1(g)(ii). In this case, the requirement is that development not be designed or sited in a manner that conflicts with or destroys the heritage features of a heritage building. The parties agree that the issue in these proceedings is not the impact on an individual heritage building but is the impact on the context of the UHCD.

[58] The stylistic influences identified by the City as being within the UHCD are contained in a staff memorandum in Exhibit 5(a), Tab 20, as filed in these proceedings, and are:

...latter half of 19th c – gothic revival, Italianate, Queen Anne, Second Empire. Some early Georgian and Regency...

[59] In addition to this rather extensive, and varied, list of stylistic influences, the City acknowledges that there are various newly constructed buildings within the UHCD that are modern interpretations of some of these influences. The City also acknowledges that the style of a large and imposing new construction gallery that is within the UHCD is post-modern. The Board finds that the heritage district is quite mixed in the stylistic influences it contains.

[60] Tribute's conceptual elevations reflect attempts to respond to heritage design concerns. Since most of these are site plan matters, the Board will not review them in detail. Suffice it to say that Tribute responded to each expressed heritage concern regarding design treatment. Tribute chose an Italianate style. When concern was expressed about the façade treatment, Tribute showed a combination of brick and cream coloured materials. The elevations showed smaller double hung windows, centre doors on the commercial units, recessed balconies with opaque balcony railing treatments for the first three storeys, a stepped back fourth storey with larger glazing treatments to lessen further its visibility, among other details.

[61] The City's heritage expert testified that the City's concerns are the visual impact of height and massing. In this regard, this witness then testified that the existing two storey strip plaza, surrounded by asphalt and set significantly back from Fred Varley Drive with surface parking between the plaza and the street and with no discernible

heritage design features, was more compatible with the UHCD than the proposed three storey development with the fourth storey stepped back that was to be sited close to the street with parking largely underground.

[62] The expert expressed this opinion notwithstanding his support for the ADC, which is three storeys along Fred Varley Drive and four storeys on the east side adjacent to Fonthill Creek and Millennium Park.

[63] The Board attaches no weight to this opinion.

[64] The City's heritage expert then suggested that the issue was a matter of views into and from the UHCD. The City's ADC and the Tribute conceptual site plan have similar siting and height along the Fred Varley frontage and along the eastern frontage that is adjacent to Fonthill Creek and Millennium Park. No heritage concerns were raised regarding the visual impact of the ADC.

[65] The ADC showed vehicular access aligned with Fonthill Boulevard; Tribute showed vehicular access aligned to the west of the site. The transportation and traffic experts agreed that there is no unacceptable transportation, traffic or safety concern with vehicular access on the west side of the site.

[66] The proposed zoning by-law amendment does not specify access points but the significantly larger setback on the west side is designed to accommodate a west side access point. The Board is not persuaded that heritage compatibility requires a vehicular access from Fred Varley Drive in the centre of the building frontage. With the step back of the fourth storey, the Board finds that the visual impact of the ADC and the Tribute proposal is virtually the same along the Fred Varley Drive frontage in terms of siting and height.

[67] The western frontage of the subject site is adjacent to a 1960's style subdivision that is not within the UHCD. It is also separated from the nearest adjacent house by a pedestrian connection from the dead end point of Eureka Street to the south that goes along the western edge of the subject site to Fred Varley Drive. This pedestrian connection is not within the UHCD. Given the substantial setback of the building on the west side, the views of the western façade from the UHCD to the south are, at best,

distant and oblique. The Board finds that there is no negative impact on views to and from the UHCD with regard to the western frontage.

[68] The last area of visual compatibility is the southern frontage that is adjacent to that portion of the UHCD that includes the properties on Station Lane to the south. The City suggests that the fact that there would be some ability to see any redevelopment of the subject site from Station Lane by looking down driveways and other view corridors between houses is a negative impact on the UHCD. The Board attaches no weight to this evidence.

[69] The question of the view from the public realm of Station Lane to the subject site is one of compatibility. The subject site is not within the UHCD. The reasonable expectation is that development on the site will have some differences from development within the UHCD.

[70] The zoning by-law establishes setbacks and height restrictions along with a step back requirement for the top floor. The result is a potential view of a three storey base that is sited the entire depth of the lots on Station Lane with an additional 9.0 m from the lot line, with a fourth storey that is stepped back a further 5.0 m . The proposed height is not identical to that of the houses and townhouses along Station Lane, but it is compatible with those heights. Seen at a distance from the public realm of Station Lane, the Board finds that the height and siting contemplated by the proposed zoning by-law amendment is compatible with the UHCD.

[71] The City then suggested that the visual impact needed to be considered from the back yards of the houses and townhouses on Station Lane. The Board is not persuaded that there is a heritage attribute that is impaired by virtue of being able to see development on an adjacent property that is not within the UHCD from the rear yard of private properties that are within the UHCD.

[72] The Board agrees that questions of privacy and overlook are questions to be addressed when a site is redeveloped, but these are standard land use compatibility questions and do not engage the issue of heritage compatibility. The Board notes that there is extensive planting that screens the Station Lane properties from the subject site. There are also garages and other rear yard buildings on the Station Lane properties that add to a visual separation. Finally, the Board finds that a three storey

structure with a stepped back fourth storey on adjacent lands would not result in inappropriate privacy intrusion or overlook.

[73] The Board finds that the proposed zoning by-law amendment is consistent with s. 2.6.3 of the PPS and conforms to the UCSP.

Is the Proposed Zoning By-law Amendment Consistent with the PPS and Does it Conform to the Growth Plan for the Greater Golden Horseshoe ("GGH")?

[74] Both the PPS and the GGH encourage intensification within settlement areas and on full municipal services. The subject site is within a settlement area and is on full municipal services. Together with the Board's earlier analysis of the PPS requirements for Special Policy Areas and heritage impacts, the Board finds that the proposed zoning by-law amendment is consistent with the PPS.

[75] In April, 2010, the City adopted a Growth Management Strategy ("GMS") intended to form part of its GGH conformity exercise. Through the GMS the City has set a target of 60% intensification. This target is higher than the minimum established by the GGH.

[76] The City also identified categories of locations where it wanted the bulk of the intensification to go. The subject site is not within any of these locations.

[77] In identifying appropriate categories of locations for intensification, the City acknowledged that these locations would account for about 88% of its intensification target. The remainder would occur, as appropriate, in other sites throughout the City. The parties agree that this remainder represents about 6000 dwelling units.

[78] The City takes the position that there is no need for the Tribute proposal for the City to be able to meet its intensification target. The Board agrees. The applicable test, however, is not need. The applicable test is whether the proposed degree of intensification is appropriate for the site.

[79] The City position is that the degree of intensification represented by the ADC is appropriate for the site. The difference in intensification between the ADC and development permitted by the proposed zoning by-law amendment is 0.78 floor space

index and an additional 46 dwelling units. Distilled to its simplest, the question before the Board is whether this further intensification is also appropriate for the site.

[80] In addition to the requirements for consistency with the PPS and conformity with the GGH, Region of York Official Plan and City OP, the question becomes one of compatibility. Based on the analysis set out above, the Board finds that the intensification contemplated by the proposed zoning by-law amendment is compatible with the surrounding land uses and appropriate for the site.

Matters of Provincial Interest

[81] Section 2 of the *Planning Act*, R.S.O. 1990 c. P.13 ("Act"), requires the Board to have regard to matters of provincial interest such as those set out in that section of the Act. In analyzing the proposed zoning by-law amendment the Board has had regard to these matters and finds that the proposed zoning by-law amendment appropriately implements matters of provincial interest. In particular, the Board notes the following items in s. 2:

1. 2(a), protection of ecological systems, including natural areas, features and functions;
2. 2(d), conservation of significant features of cultural interest;
3. 2(f), efficient use of infrastructure;
4. 2(o), protection of public health and safety; and
5. 2(p), appropriate location of growth and development.

[82] Section 2.1 of the Act requires the Board to have regard to the decision of Council in this matter and to any supporting material that Council considered in making its decision. Through the analysis of the ADC and its comparison to the Tribute proposal, the Board has had regard to the decision of Council and to the material Council considered in reaching its decision.

ORDER

[83] The Board orders that the appeal is allowed and City of Markham By-law 122-72 is amended in accordance with the by-law filed as Exhibit 35 in these proceedings and found at Attachment 1 to this decision.

“Susan de Avellar Schiller”

SUSAN de AVELLAR SCHILLER
VICE CHAIR

By-law 2013-22

PL111256

EXPLANATORY NOTE

A By-law to amend By-law 122-72, as amended

**20 Fred Varley Drive
Tribute (Unionville) Limited**

LANDS AFFECTED

This By-law applies to a 0.76 ha property situated along the south side of Fred Varley Drive west of Main Street Unionville, municipally known as 20 Fred Varley Drive.

EXISTING ZONING

The lands are zoned General Commercial [C1] by By-law 122-72, as amended.

PURPOSE AND EFFECT

The purpose and effect of this By-law amendment is to rezone the lands from General Commercial [C1] to Community Amenity (Hold) [CA(H)] to permit a mixed use development with commercial and residential uses along with site specific standards and provisions.

MARKHAM

BY-LAW 2013-22

*A By-law to amend By-law 122-72, as amended
To rezone the lands at 20 Fred Varley Drive to permit a commercial and residential
development*

THE COUNCIL OF THE CORPORATION OF THE CITY OF MARKHAM HEREBY
ENACTS AS FOLLOWS:

1. That By-law 122-72, as amended is hereby further amended as it applies to the lands outlined on Schedule 'A' attached hereto as follows:

- 1.1 By rezoning the lands from the General Commercial [C1] to Community Amenity (Hold) [CA(H)].

2. Notwithstanding any other provision of By-law 122-72, as amended, the following provisions shall apply in the COMMUNITY AMENITY (HOLD) [CA(H)] ZONE in the area outlined on Schedule 'A' attached hereto.

2.1 For the purposes of this By-law, the following definitions shall apply:

OUTDOOR PATIO means an outdoor eating area *used* only on a seasonal basis in conjunction with any type of *restaurant*.

PREMISES means an area of a *building* occupied or *used* by a business or enterprise. In a multiple tenancy building occupied by more than one business, each business shall be considered a separate *premises*.

2.2 Permitted Uses:

(i) NON-RESIDENTIAL

- a) *business offices;*
- b) *commercial fitness centres;*
- c) *convenience retail stores;*
- d) *financial institutions;*
- e) *medical offices;*
- f) *personal service shops;*
- g) *repair shops;*
- h) *restaurants and restaurants, take-out;*
- i) *retail stores.*

(ii) RESIDENTIAL:

- a) *apartment dwellings.*

2.3 Zone Standards:

No person shall hereafter use any *building, structure* or land, and no person shall hereafter erect or alter any *building or structure* in the COMMUNITY AMENITY (HOLD) [CA(H)] ZONE, shown on Schedule 'A' hereto, except in accordance with the following provisions:

a) Floor Space Index

The maximum *Floor Space Index (FSI)* for all of the *buildings* on the lands delineated on Schedule 'A' to this By-law shall not exceed 1.92 *FSI*.

For the purposes of this By-law, only the following *floor areas* are exempted from the *FSI* calculation:

- *motor vehicle* or bicycle parking areas above or below *grade*;
- rooftop mechanical penthouses;
- lobbies located below *grade*;
- loading areas located above or below *grade*;
- storage lockers located below *grade*;
- mechanical shafts and pipe spaces above or below *grade*;
- garbage/recycling, utility, mechanical and electrical rooms located above or below *grade*.

b) Height

The maximum *height* of any *building* or *structure* shall be as shown on Schedule 'B' to this By-law.

Notwithstanding the above, any ornamental roof construction features including towers, stair enclosures, steeples or cupolas, shall not be included in the calculation of *height*. Mechanical features, including their screening, and *structures* containing the equipment necessary to control an elevator, are permitted to project to a maximum geodetic *height* of 194.5 metres.

c) Minimum yard setbacks:

The minimum required *yard setbacks* for any *building* or *structure* shall be as shown on Schedule 'B' to this By-law. This schedule does not apply to below *grade structures* with the exception of the *side yard setback* (east).

d) Maximum number of dwelling units:

The maximum number of *dwelling units* permitted is 113.

e) Landscaping requirements:

Adjoining the west *lot line*, a strip of land having a minimum depth of 1.5 metres shall be *used* only for *landscaped open space*.

Adjoining the south *lot line*, a strip of land having a minimum depth of 6.0 metres shall be *used* only for *landscaped open space*.

Adjoining the east *lot line*, a strip of land having a minimum depth of 5.0 metres shall be *used* only for *landscaped open space*, except that patios or similar areas are not permitted. A 1.5 metre wide walkway constructed with permeable pavement is permitted.

Landscaped open space strips are not required along the north *lot line*.

f) Loading:

The minimum number of *loading spaces* is 1.

2.4 Special Parking Provisions

A minimum number of *parking spaces* are required for all of the *uses* permitted as set out below:

Use	Minimum Parking Spaces required
<i>Apartment dwelling</i>	1.25 <i>parking spaces</i> per <i>dwelling unit</i> plus 0.25 <i>parking spaces</i> per <i>dwelling unit</i> for visitors
<i>Restaurants and restaurants, take out</i>	1 <i>parking space</i> for every 9.0 square metres of <i>net floor area</i>
All other permitted <i>uses</i>	1 <i>parking space</i> for every 30.0 square metres of <i>net floor area</i>

2.4.1 Shared Parking

Parking spaces for *apartment dwelling* visitors and all other non-residential permitted *uses* shall be operated as a combined facility and the total parking requirement for those two *uses* shall be reduced by 4 *parking spaces*.

2.5 Special Site Provisions

The following additional provisions shall apply:

- a) The establishment of a drive-through service facility associated with any *use* is not permitted.
- b) Nothing in this By-law shall be interpreted to prevent the construction of a *parking garage* located below *grade* for the purpose of *motor vehicle* or bicycle parking and/or storage lockers on any portion of the lands identified on Schedule 'A' to this By-law, except for the area indicated for the minimum *side yard setback* (east).
- c) Porches, patios, terraces, canopies and awnings are permitted to encroach into the minimum *yard setbacks* a maximum of 3.0 metres, except for the area indicated for the minimum *side yard setback* (east). Balconies are permitted to project in the interior courtyard, however are not permitted to encroach into the minimum *yard setbacks*.
- d) Non-residential *premises* shall be limited to individual *premises* of 300 square metres, or less, of *gross floor area*.
- e) The minimum area for an interior courtyard shall be 820 square metres as shown on Schedule 'B'.
- f) *Outdoor patios* are permitted in the *front yard* except for within the 5.0 metre minimum *side yard setback* (east).

3. HOLDING PROVISIONS

The Hold Provision (H) is shown on Schedule 'A' attached to this By-law.

3.1 Uses Permitted Prior to the Lifting of a Holding Provision

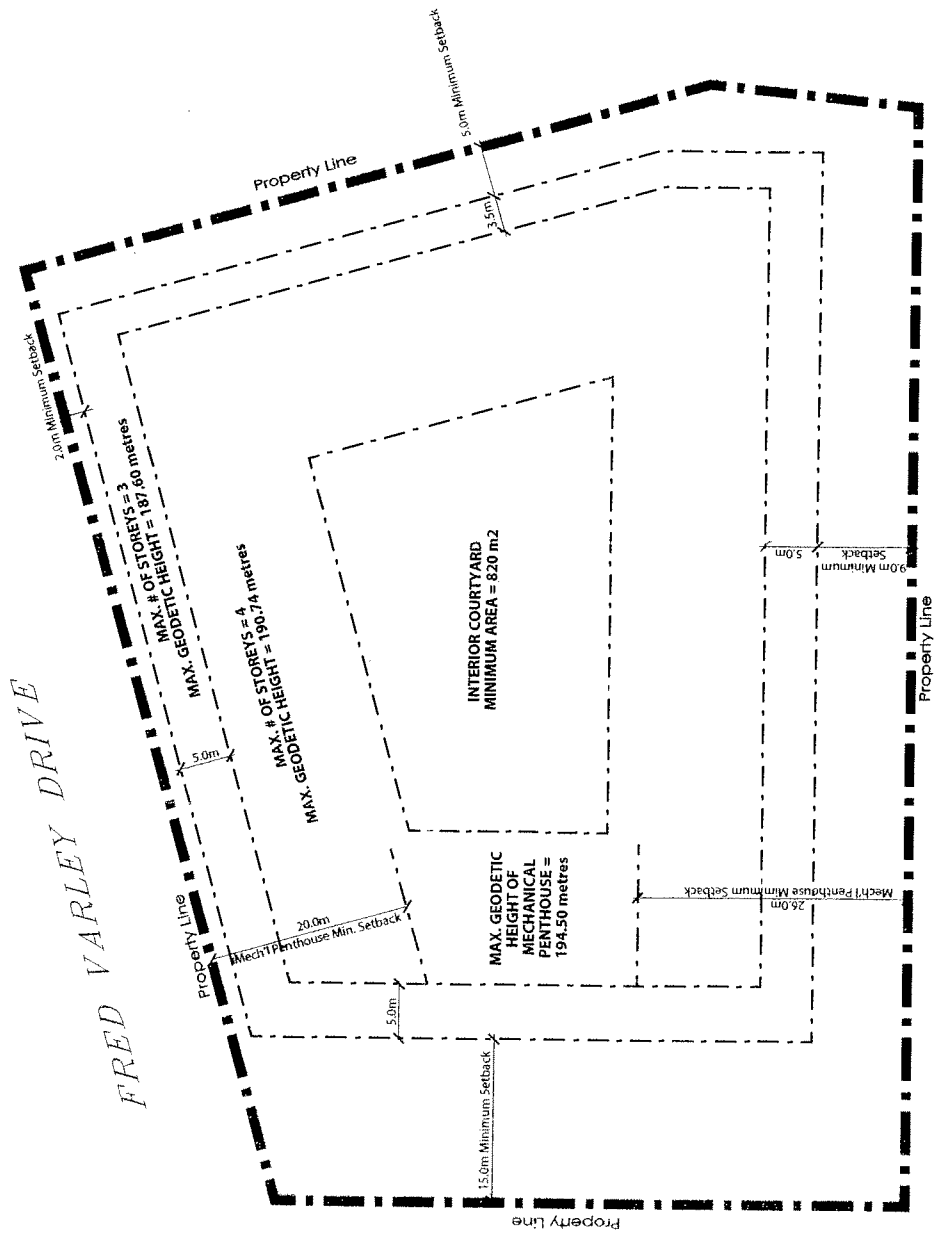
Only non-residential *uses* permitted in the C1 *zone* and the *existing* amount of residential *uses* (17 *dwelling units*) are permitted prior to the removal of the Hold Provision (H).

3.2 Conditions for Removing the Holding Provision

The Hold Provision (H) shall not be lifted until the following conditions have been met to the satisfaction of the City of Markham:

- i) Execution of a Section 37 Agreement between the City and the Owner regarding a contribution by the Owner pursuant to Section 37 of the Planning Act and in accordance with the City's Official Plan policies regarding Section 37 contributions, to the satisfaction of the City;
 - ii) The City is satisfied that sufficient servicing allocation is available and has adopted a resolution granting additional servicing allocation to provide for the number of additional *dwelling units* permitted;
 - iii) The terms and conditions of the Minutes of Settlement dated October 5, 2012 between Tribute (Unionville) Limited (and all successors and assigns) and the TRCA are undertaken in a manner satisfactory to the TRCA; and,
 - iv) Execution of a Site Plan Agreement between the City and the Owner. The TRCA shall be a party to the Site Plan Agreement.
4. All other provisions of By-law 122-72, as amended, not inconsistent with the provisions of this By-law, shall continue to apply.

APPROVED BY ONTARIO MUNICIPAL BOARD ON FEBRUARY 1, 2013



A BY-LAW TO AMEND BY-LAW 122-72

--- BOUNDARY OF AREA COVERED BY THIS BY-LAW

THIS IS SCHEDULE 'B' TO BY-LAW 2013-22
 Approved by OMB on Feb 1, 2013

NOTE: 1) DIMENSIONS ARE IN METRES
 2) REFERENCE SHOULD BE MADE TO THE ORIGINAL BY-LAW LODGED IN THE OFFICE OF THE CLERK

