

**ATTACHMENT 1**

**OFFICIAL PLAN**

**of the**

**TOWN OF MARKHAM PLANNING AREA**

**AMENDMENT NO. 159**

To amend the Official Plan (Revised 1987), as amended, and to incorporate Amendment No. 2 to the Unionville Core Area Secondary Plan (PD 1-12) for the Markham and Unionville Planning District (Planning District No. 1).

Unionville Village Investments Inc.  
(139 Main Street, Unionville)

This Official Plan Amendment was adopted by the Corporation of the Town of Markham, By-law No. 2007-24 in accordance with the Planning Act, R.S.O., 1990 c.P.13, as amended, on the 13th day of February, 2007

Frank Scarpitti  
Mayor

Shirley Brill  
Town Clerk

THE CORPORATION OF THE TOWN OF MARKHAM

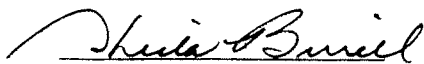
BY-LAW NO. 2007-24

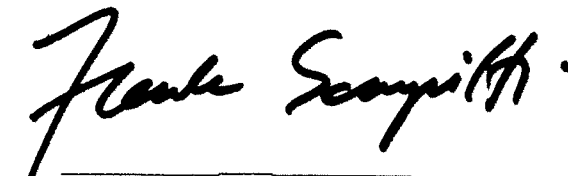
Being a by-law to adopt Amendment No. 159 to the Town of Markham Official Plan (Revised 1987) as amended.

THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM, IN ACCORDANCE WITH THE PROVISIONS OF THE PLANNING ACT, R.S.O., 1990 HEREBY ENACTS AS FOLLOWS:

1. THAT Amendment No. 159 to the Town of Markham Official Plan (Revised 1987), as amended, attached hereto, is hereby adopted.
2. THAT this by-law shall come into force and take effect on the date of the final passing thereof.

READ A FIRST, SECOND AND THIRD TIME AND PASSED THIS 13TH DAY OF, FEBRUARY, 2007

  
TOWN CLERK

  
MAYOR

## CONTENTS

### PART I - INTRODUCTION

|    |               |   |
|----|---------------|---|
| 1. | GENERAL.....  | 6 |
| 2. | LOCATION..... | 6 |
| 3. | PURPOSE.....  | 6 |
| 4. | BASIS .....   | 6 |

### PART II - THE OFFICIAL PLAN AMENDMENT

|    |                                         |   |
|----|-----------------------------------------|---|
| 1. | THE OFFICIAL PLAN AMENDMENT.....        | 8 |
| 2. | IMPLEMENTATION AND INTERPRETATION ..... | 8 |

### PART III - THE SECONDARY PLAN AMENDMENT

|    |                                         |    |
|----|-----------------------------------------|----|
| 1. | THE SECONDARY PLAN AMENDMENT.....       | 10 |
| 2. | IMPLEMENTATION AND INTERPRETATION ..... | 10 |

**PART I - INTRODUCTION**

(This is not an operative part of Official Plan Amendment No. 159 )

## **PART I - INTRODUCTION**

### **1.0 GENERAL**

- 1.1 PART I - INTRODUCTION, is included for information purposes and is not an operative part of this Official Plan Amendment.
- 1.2 PART II - THE OFFICIAL PLAN AMENDMENT constitutes Amendment No.159 to the Official Plan (Revised 1987), as amended, and is required to enact Amendment No.2 to the Unionville Core Area Secondary Plan PD 1-12 for the Markham and Unionville Planning District (Planning District No.1). Part II is an operative part of this Official Plan Amendment.
- 1.3 PART III - THE SECONDARY PLAN AMENDMENT, attached thereto, constitutes Amendment No.2 to the Unionville Core Area Secondary Plan PD 1-12 for the Markham and Unionville Planning District (Planning District No. 1). Part III is an operative part of this Official Plan Amendment.

### **2.0 LOCATION**

This Amendment applies to the property located at 139 Main Street, Unionville. This property is located within the boundaries of the Unionville Heritage Conservation District.

### **3.0 PURPOSE**

The purpose of this Amendment is to permit restaurant uses of 326.5 square metres on the first floor of the existing structure.

### **4.0 BASIS OF THIS OFFICIAL PLAN AMENDMENT**

The existing two-storey building of 1,235.48 square metres is located within the Unionville Core Area. The existing uses are restaurant, retail and offices.

There are 54 existing parking spaces. The size of the parking spaces and driveways conform to the Parking Standards By-law 28-97 of the Town of Markham.

Permitting additional use of this site for at-grade Restaurant uses, up to 326.5 square metres, maintains the planned function of the Traditional Shopping Area.

**PART II - THE OFFICIAL PLAN AMENDMENT**

(This is an operative part of Official Plan Amendment No. 159 )

## **PART II – THE OFFICIAL PLAN AMENDMENT**

### **1.0 THE OFFICIAL PLAN AMENDMENT**

- 1.1** Section 1.1.2 of Part II of the Official Plan (Revised 1987) as amended, is hereby amended by the addition of the number 159 to the list of amendments, to be placed in numerical order including any required grammatical and punctuation changes.
- 1.2** Section 1.1.3(c) of Part II of the Official Plan (Revised 1987) as amended, is hereby amended by the addition of “No. 159 ” to be placed in numerical order including any grammatical and punctuation changes before the words “this Plan” in the bullet item dealing with the Unionville Core Area Secondary Plan (PD1-12).
- 1.3** Section 9.2.10 of Part II of the Official Plan (Revised 1987) as amended, is hereby amended by the addition of “No 159 ” to be placed in numerical order including any grammatical and punctuation changes before the words “this Plan”.

### **2.0 IMPLEMENTATION AND INTERPRETATION**

The provisions of the Official Plan, as amended, regarding the implementation and interpretation of the Plan, shall apply in regard to this Amendment, except as specifically provided for in this Amendment.

This Amendment shall be implemented by an amendment to the Zoning By-law in conformity with the provisions of this Amendment.



**PART III - THE SECONDARY PLAN AMENDMENT**  
(This is an operative part of Official Plan Amendment No. 159 )

## **1.0 THE SECONDARY PLAN AMENDMENT**

**1.1** Secondary Plan PD1-12 for the part of the Markham and Unionville Planning District is hereby amended as follows for the designated lands of this amendment:

**1.1.1** By adding to the end of Section 5.1.2:

“Notwithstanding the above policy, zoning approval may be granted to permit restaurant uses of up to 326.5 square metres on the first floor of the property at 139 Main Street, Unionville.”

## **2.0 IMPLEMENTATION AND INTERPRETATION**

The provisions of the Official Plan, as amended, regarding the implementation and interpretation of the Plan, shall apply in regard to this Amendment, except as specifically provided for in this Amendment.

This Amendment shall be implemented by an amendment to the Zoning By-law in conformity with the provisions of this Amendment.

ISSUE DATE:

**JAN. 22, 2007**

DECISION/ORDER NO:

**0166**



PL060504

**Ontario Municipal Board**  
**Commission des affaires municipales de l'Ontario**

Unionville Village Investments Inc. has appealed to the Ontario Municipal Board under subsection 22(7) 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 the Official Plan for the Town of Markham, as specifically pertaining to the Main Street Unionville Traditional Shopping Area of Official Plan No. 107, which is the Secondary Plan for the Unionville Core Area, for the purpose of permitting restaurant uses, initially for 409 square metres and now revised for 326.5 square metres, on lands located within the Unionville Planning Mill Shopping Complex at 139 Main Street, Unionville

Approval Authority File No. OP 05 16826  
OMB File No. O060009

Unionville Village Investments 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 Zoning By-law 122-72, as amended by By-law 2003-167 of the Town of Markham, to permit a site-specific exception to the Heritage Main Street (HMS) Zone for the purpose of increasing the maximum gross floor area for one restaurant from the currently allowed site-specific maximum gross floor area of 296 square metres to 326.5 square metres, on lands located within the Unionville Planning Mill Shopping Complex at 139 Main Street, Unionville  
OMB File No. Z060074

**APPEARANCES:**

**Parties**

**Counsel**

Unionville Village Investments Inc.

John Alati

Town of Markham

Robert Boxma

**AMENDING DECISION DELIVERED BY R. ROSSI**  
**AND ORDER OF THE BOARD**

Upon consent of the parties, the Board amends Decision/Order No. 3125 as issued on November 7, 2006 (the "Decision") to replace Attachments 1 and 2 of the decision with the revised Attachments 1 and 2 to this amending decision. Attachment 3 to this amending decision describes the revisions that have been made to Attachments 1 and 2 of the decision.

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COUNCIL SECRET

In all other respects, the Board orders that Decision/Order No. 3125 issued on November 7, 2006 remains the same.

The Board so Orders.

"R. Rossi"

R. ROSSI  
MEMBER

## ATTACHMENT 3

OMB Decision      PL060504  
139 Main Street, Unionville

The following changes have been made to Attachment 1 and Attachment 2.

### Changes to Attachment 1

- a) Add the words 'Unionville Core Area' when referencing the Secondary Plan (PD 1-12)
  - Page 1 (title page), page 2, page 6 in sections 1.2 and 1.3
- b) This is Amendment No. 2 to Secondary Plan PD 1-12 for the Markham and Unionville Planning District (Planning District No. 1)
  - Changes on pages 1,2,6, and 8
- c) put proper page numbers in table of contents
  - Page 4
- d) replace sections 1.2 and 1.3 with new wording as this is not the first amendment to the Secondary Plan
  - Page 8

#### New wording:

- 1.2 Section 1.1.3(c) of Part II of the Official Plan (Revised 1987) as amended, is hereby amended by the addition of "No.XXX" to be placed in numerical order including any grammatical and punctuation changes before the words "this Plan" in the bullet item dealing with the Unionville Core Area Secondary Plan (PD1-12).
  - 1.3 Section 9.2.10 of Part II of the Official Plan (Revised 1987) as amended, is hereby amended by the addition of "No.XXX" to be placed in numerical order including any grammatical and punctuation changes before the words "this Plan".
- e) remove 3<sup>rd</sup> paragraph of Section 2.0 of Part II-The Amendment as it is not needed
    - Page 8
  - f) remove words "(if applicable)" as the section is applicable
    - Page 9
  - g) modify 1.1.1 of the Secondary Plan Amendment to reference the correct section of the document. The reference should be to Section 5.1.2. Also put quotes around the additional policy.
    - Page 10

Changes to Attachment 2

- a) capitalize defined terms: RESTAURANT and RETAIL
  - Page 1

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## Changes to Attachment 2

- a) capitalize defined terms: RESTAURANT and RETAIL
  - Page 1

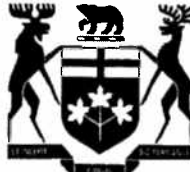
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ISSUE DATE:

**Nov. 7, 2006**

DECISION/ORDER NO:

**3125**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL060504

Unionville Village Investments Inc. has appealed to the Ontario Municipal Board under subsection 22(7) 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 the Official Plan for the Town of Markham, as specifically pertaining to the Main Street Unionville Traditional shopping Area of Official Plan No. 107, which is the Secondary Plan for the Unionville Core Area, for the purpose of permitting restaurant uses, initially for 409 square metres and now revised for 326.5 square metres, on lands located within the Unionville Planing Mill Shopping Complex at 139 Main Street, Unionville Approval Authority File No. OP 05 16826  
OMB File No. O060009

Unionville Village Investments 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 Zoning By-law 122-72, as amended by By-law 2003-167 of the Town of Markham, to permit a site-specific exception to the Heritage Main Street (HMS) Zone for the purpose of increasing the maximum gross floor area for one restaurant from the currently allowed site-specific maximum gross floor area of 296 square metres to 326.5 square metres, on lands located within the Unionville Planing Mill Shopping Complex at 139 Main Street, Unionville  
OMB File No. Z060074

## APPEARANCES:

### Parties

Unionville Village Investments Inc.

Town of Markham

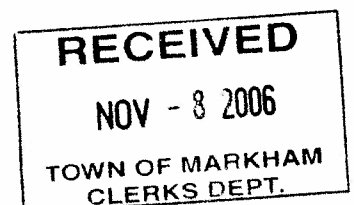
### Counsel

John Alati

Robert Boxma

## DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD

The Board allows the appeals and authorizes the Official Plan Amendment and the Zoning By-law Amendment.





Unionville Village Investments Inc. (the Applicant/Appellant) submitted Official Plan and Zoning By-law Amendment applications to enable it to add additional restaurant space in its Unionville Planing Mill Shopping Complex at 139 Main Street in the Town of Markham. The property is located within the Unionville Heritage Conservation District and is subject to Secondary Plan policies and amended zoning by-law provisions adopted by Council in 2003 to address the issue of additional restaurant use in this area.

Restaurants are not permitted as of right in the Heritage Main Street (HMS) Zone, but a site specific exception in the zoning by-law allows one restaurant on the Applicant's site to have a maximum gross floor area of 296 square metres (the existing restaurant occupies 203 square metres).

Three criteria must be considered for any additional restaurant use as identified in the Secondary Plan:

- 1) whether the total at-grade gross floor area of retail uses within this Traditional Shopping Area of historic Unionville is greater than 50%;
- 2) whether the new use negatively affects the predominance of the at-grade retail uses along Main Street; and
- 3) whether sufficient parking is available.

The Secondary Plan states that Council will only approve additional restaurant floor space in this area when retail uses represent greater than 50% of the total at-grade gross floor area.

The Applicant is seeking approval of additional restaurant space to a maximum of 326.5 square metres with an offer to maintain 50% of the at-grade floor space at the Planing Mill in retail use. Fifty-four square metres or 16% of the existing at-grade gross floor space is being used as a hair salon and is not, by definition, retail space.

The Town of Markham conducted a retail inventory of the Main Street area and advised that currently, the at-grade gross floor space for retail represents 50%. Retail space would decrease from 50% to 48.4% if the additional restaurant space were

approved. It is important to note, however, that if the existing restaurant use on the Applicant's site were to expand to the as of right 296 square metres, the retail percentage would still have dropped to 48.8%. This is a difference of .4%, or less than one-half of one percent.

Secondary Plan 107 was adopted for the Unionville Core Area in 2003 and contains new restaurant policies. The Zoning By-law was also amended in 2003 to reflect the Core Area recommendations that resulted in the subject property being zoned as Heritage Main Street, which permits specialty retail, personal service shops, arts and crafts workshops, photo studios, bed and breakfast and professional office (not located on the ground floor). The previously mentioned site-specific exception allows one restaurant having a maximum gross floor area of 296 square metres on the property, although the Applicant is seeking 326.5 square metres that could cover more than one restaurant use on the site (representing an addition of 30.5 square metres of restaurant uses in the Planing Mill).

Planner Michael Goldberg was qualified to give expert land use planning evidence in support of the application. It was his expert opinion that the vitality of the Traditional Shopping Area would not be compromised by these applications.

Mr. Goldberg provided a great deal of helpful contextual information. He noted that the core area is 17 hectares (44 acres) in size, with the Planing Mill property situated south of the main strip of commercial activity in the southeast corner of this area (see Exhibit 2, the Location and Context Plan). This is a designated heritage district, described as an old village fabric of largely house form buildings that were used as, or converted to, commercial uses. It contains a mixture of retail uses, personal service shops and restaurants and includes a park and a church. He labelled the area as a continuous commercial fabric.

The Main Street Unionville Traditional Shopping Area is the Core Area, with a tributary of the Rouge River flowing to the east of the area. A smaller tributary traverses the subject property. West of the subject site is Station Lane and Mary's Yarn Shop at 136 Main Street is backing onto this small tributary, creating a break in the commercial fabric. The subject property is bound by Victoria to the north and Station Lane to the west (with a rail line running to the south). At Victoria, Main Street veers off to the left,

where most of the commercial activity is centred. A north-running concession off of Main Street contains 141, 143 and 145 which are office uses. 136 and 141, 143 and 145 Main Street are identified in the planning instruments as being suitable for future retail uses.

The Board notes that 54 parking spaces exist on the subject site. Four of these are parking spaces leased from CN by virtue of the site's proximity to CN lands to the south. The Board has determined that parking is not an issue with its approval of the increased restaurant uses as there is sufficient on-site parking to accommodate the uses (see the increased parking standard approved in Exhibit 1, Tab 4, increased from 1 to 9, to 1 to 15). The Board determined that OPA 107's Permitted Uses (Exhibit 1, Tab 5, p.16) at 5.4.2 are met in respect of the requirement for sufficient parking to be available and does not affect the predominance of at-grade retail uses along Main Street.

The subject property is, in the context of this Traditional Shopping Area, the largest building and is the largest multi-tenant building along the Main Street strip. Mr. Goldberg advised the Board that this is a shopping centre in a technical by-law sense. He added that the restaurant uses inside the Planing Mill will never exceed 50% of at-grade gross floor area for this property and retail would not be less than 50% at grade.

Mr. Goldberg advised the Board that Council passed an interim control by-law in 2002 as it related to the Main Street area by purposely freezing additions to, or the creation of, new restaurant space within the Traditional Shopping Area, and to allow for a land use and parking study to take place (Main Street Unionville – Land Use and Parking Study prepared by Marshall Macklin Monaghan, November 2002, at Exhibit 1 Tab 13 and Exhibit 9 Tab 8). This study recommends a level of flexibility to the Committee of Adjustment to permit minor variances for restaurants under strict guidelines (“...that in no case shall the reduction be greater than 10 percent of the parking requirement.”).

Despite the study's recommendation that the subject property not be included in the boundaries of the Traditional Shopping Area, it and 136, 141, 143 and 145 were added to the area. A site specific exception (Exhibit 1, Tab 14, page 220) in the Heritage Main Street zone allows business and professional offices on the ground floor

at 141,143 and 145 Main Street and reiterates the current provisions that permits *[sic]* offices on the ground floor at 136 Main Street and 2 and 4 Station Lane. Mr. Goldberg opined that this exception acknowledges that these properties are situated off of the main commercial hub of Main Street located south of Carlton Road to the road fork with the concession and the subject property. He noted that future retail conversions can take place at these sites.

The policies of the Secondary Plan include a 50% provision (Exhibit 1, Tab 14, page 236). Section 5.1.2 states that "...the Main Street Unionville Traditional Shopping Area...in excess of 50 percent of the total at-grade building facades facing Main Street shall be in retail use" (confirmed in Figure 2a on page 284 and subsequently expanded to include the subject property in Figure 2b in 2003).

Exhibit 1, Tab 24, page 441 contains the April 2006 Existing Situation Building Footprint Inventory of the Unionville Core Area. Total retail inventory for Area A, which is the Traditional Shopping Area is 55.5%.

Tab 18 of the same exhibit is Zoning By-law 2003-167 amends Zoning By-law 122-72 and offers obvious flexibility in the permitted uses in the Heritage Main Street Zone. On page 377, the Applicant's restaurant is permitted an as of right expansion to 296 square metres. The restaurant at 187 Main Street, along the clustered grouping of commercial uses on the 'main strip' of activity, is permitted to add an additional 65 square metres of ground floor restaurant space.

Mr. Goldberg opined that a cumulative consideration of all of the factors presented during the hearing should allow the Board to determine that the small increase of 30.5 square metres on the subject property is within the realm of acceptability at this location and in the manner proposed. Further, 139, 141, 143 and 145 are available to the Town for further retail expansion and this is supported in the planning documents. Mr. Goldberg noted that the Planing Mill complex has in excess of 50% retail space at grade. To maintain the intent of the land use and parking study and implementation, the Applicant proposes that 50% of its space will be devoted to retail uses at grade. This drops the total by .4 of a percent, but it does nothing to the 55% previously mentioned, which remains unaffected in area A.

Planner Regan Hutcheson is the Manager of the Heritage Planning Section of the Town's Planning and Urban Design Department. He was qualified to give expert planning evidence and he spoke in opposition to the application. He possesses an intimate familiarity with the Main Street Unionville area. He noted that no new restaurant space has been approved by Town Council since 2003. He opined that while there is a small percentage reduction in retail space created by the expansion of restaurant uses on the subject site, it is moving in the wrong direction. While the Board was appreciative of Mr. Hutcheson's presentation on the area, he did not provide the Board with any substantive or quantifiable adverse impacts created by the proposed amendments. Moving in the wrong direction is not, in the Board's determination, a sufficient and persuasive explanation for why the amendments should not be approved.

Rather, Mr. Goldberg provided an incredibly thorough and comprehensive explanation for the genesis of area growth and desire for limiting restaurant uses and maintaining retail uses, while demonstration quantitatively and clearly how the proposed addition does not negatively detract from the Town's objectives and goals for this area. Had Mr. Hutcheson been able to show supporting documentary evidence to counter Mr. Goldberg's position, the Board may have had more substantive information on which to consider any negative impacts created by the amendments. However, after comparing and contrasting the planning evidence of both of these experienced planners, the Board must, in the case at hand, attribute significant weight to Mr. Goldberg's evidence and opinions and prefer his evidence to that of Mr. Hutcheson.

The Board determines that there is no discernible, whether visual or otherwise, to the balance between retail and restaurant that Council wishes to maintain. The character of this heritage area is not changed or altered by allowing an expanse of restaurant uses contained in the subject property. The Board agreed with Mr. Alati's submission that there may be margins of error in the actual numbers of businesses reporting their retail percentages in the April 2006 inventory. While Mr. Hutcheson and his staff met with many of these reporting businesses to review their information, Mr. Goldberg's evidence was not contradicted that such margins exist, thereby making the reduction of retail space from 50% to 48.4%, in the Board's determination, less of an impact on the existing retail space for this area.

Both planners agreed that as the Planing Mill is a self-sufficient commercial entity and approval of the 326.5 square metres of restaurant space located inside would not result in a shortfall of retail space. The Board accepts the uncontradicted evidence of Mr. Goldberg that the Planing Mill is akin to a small shopping centre and as such, is a unique and distinct commercial entity on Main Street. Its upper floor is occupied by office uses. What is important to note is that most of the Planing Mill's retail tenants do not front onto Main Street. Photographs (Exhibits 3A and 3B and Tab 3 of Exhibit 9) as well as the First Floor Plan (Exhibit 5) and Counsel Alati's submissions reveal that the store fronts of these retail tenants actually wrap around the building and that only a small portion of these (four in number) front onto Main Street. The existing Living Water Rest itself does not onto Main Street, as it faces the north-situated pond and is set well back from Main Street.

In the Board's view, a flexible approach to these applications is warranted and by virtue of the unique nature of its built form and internal mix of uses, the Applicant should not be held to a strict interpretation of the aforementioned policies as statutes and regulations. As already noted earlier in this decision, the policies provide flexibility for a number of other sites, such as 187 Main Street, where the right to add 65 square metres of restaurant space would clearly tip the scale of retail space when compared to the rest of the Traditional Shopping Area. Even removing the retail uses at Mary's Yarn Shop (136 Main Street) would affect the balance and reduce the amount of retail space to below 50%. These factors indicate to the Board that the Town does not treat the 50% number as something fixed and rigid, and the Board agrees with Mr. Alati's submission that this reflects a fluid situation.

The Board also finds that the planning function of OPA 107 is not compromised should the restaurant space on the subject site be expanded to 326.5 square metres. The Board appreciated receipt of two previous cases to consider but preferred to confine itself to an analysis of the evidence and the particular circumstances of the case at hand.

After careful consideration of all of the evidence, the Applicant's counsel and planning witness presented a more detailed, comprehensive and persuasive case. The Town was unable to provide substantive evidence to show how the proposed

amendments would undermine the retail space available in the Traditional Shopping Area.

The Board allows the appeals and approves the Official Plan Amendment (Attachment 1) and By-law 122-72, as amended by By-law 2003-167, of the Town of Markham is amended in the manner set out in Attachment 2.

So orders the Board.

"R. Rossi"

R. ROSSI  
MEMBER