

ISSUE DATE:

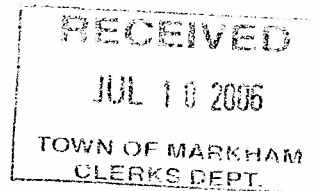
**Jul. 7, 2006**

DECISION/ORDER NO:

**1938**



Ontario



PL050811

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

Boyington Heights Ratepayers Association has appealed to the Ontario Municipal Board under subsection 17(24) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from a decision of the Town of Markham to approve Proposed Amendment No. 141 to the Official Plan for the Town of Markham for the purpose of amending certain provisions to permit the southern lands, currently designated as "Urban Residential", to be permanently used as a parking lot for the Lynde Centre for Dermatology located at 3 Ovida Boulevard

Approval Authority File No. OP 04 027404

O.M.B. File No. O050155

Boyington Heights Ratepayers Association has appealed to the Ontario Municipal Board under subsection 34(19) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, against Zoning By-law 2005-221 of the Town of Markham

O.M.B. File No. R050198

**APPEARANCES:**

**Parties**

**Counsel\*/Agent**

Boyington Heights Ratepayers Association  
(appellant)

D.A.M. Wilson

Beverly Lynde (applicant)

D. Hindson\*

Town of Markham

B. Boxma\*

**DECISION DELIVERED BY J. CHEE-HING AND ORDER OF THE BOARD**

**CONTEXT:**

Beverly Lynde is the owner of the subject lands located at 3 Ovida Boulevard just south of Highway 7 in the Town of Markham. The subject lands are comprised of two properties abutting each other along a north-south axis with a total area of 0.41 acres (Exhibit 10). The Lynde Centre for Dermatology is located on the subject lands. Ms Lynde and her husband own the Lynde Centre. The applicant made applications for

amendments to the Official Plan (OPA) and Zoning By-law (ZBA) to permit an existing temporary parking area serving the Lynde Centre on the subject lands to become permanent. Markham Council considered the applications and passed the OPA and ZBA. The Boyington Heights Ratepayers Association (BHRA), an incorporated body, appealed both decisions and the matters are now before the Board.

The northern part of the subject lands (Part 1) in which the Lynde Centre is located is designated Commercial in the OP and zoned Commercial (C3) in the applicable ZBL. The southern part of the subject lands (Part 2) in which the temporary parking area is located is designated urban residential and zoned residential R1. The purpose and effect of the OPA and ZBA are to:

1. Permit Part 2 to be permanently used as a parking area for the Lynde Centre; to prohibit any commercial buildings on the Part 2 lands;
2. Limit the maximum gross floor area (GFA) of the Lynde Centre; and
3. Establish minimum landscaping requirements for the screening and buffering of the parking area.

The Board heard opinion evidence from two qualified planners – Mr. G. Day for the Town and Mr. J. Kirk for the applicant. Mr. A. Ricci, president of the BHRA testified on behalf of the BHRA. Finally, one participant, Ms S. Bourne who resides in the neighbourhood testified in opposition to the applications.

#### **FINDINGS OF THE BOARD:**

The primary objections of the BHRA against the proposed OP and ZBL amendments were the following:

1. That Town Council was not fully aware of the community concerns regarding the parking lot ;
2. That the Town did not follow a proper planning process with respect to giving notice of the public meeting;

3. That the amendments are not consistent with the Town's previous position on the parking proposal for the Lynde Centre; and
4. That the proposed amendments to the planning instruments result in the commercialization of another residential property and is harmful to the residential character of the neighbourhood.

Having heard all of the evidence presented at this hearing, the Board is satisfied that the OP and ZBL amendments represent good planning and is in the broader public interest. The amendments were the culmination of a planning and public notice process, which was properly followed by the Town. The Board prefers the opinion evidence of the two qualified planners for the applicant and the Town whose evidence was uncontroverted and unshaken under cross-examination. Much of the evidence proffered by the appellant's lay witnesses had more to do with their frustrations with the actions of Council and what in their minds were promises made by council members with respect to the parking situation on the subject lands. This in the Board's view is not planning evidence but reflected a level of frustration with the actions of some council members on these matters before the Board. The reasons for my findings follow.

#### **THE EVIDENCE:**

It was the evidence of the Town's planner (Mr. G. Day), that in terms of chronology, the Lynde Centre had first made a request for the expansion of its on-site parking facilities in 1996. Being the only dermatological facility in the Town, their need for parking was in excess of the on-site space available at that time. Temporary parking solutions were found and in 2000, Council passed a temporary use by-law that applied to the southern lands of the subject site, which expanded the on-site parking area. The owner was required to landscape the perimeter of the parking area to provide a screen and buffer from Ovida Blvd and the adjoining residential properties. This temporary use by-law was extended for a further 3 years in 2003. In 2005, the applicant filed OPA and ZBA applications to make the same parking area permanent.

It was Mr. Day's evidence that a notice of a public meeting for the proposed OPA and ZBA was properly circulated and the notice sign was properly posted on May 31,

2005. The public meeting was held on June 21, 2005 at which time Mr. J. Ricci representing the BHRA appeared in opposition to the application. The intent of the temporary use by-law was to provide a period of time to assess whether the parking solution was working. During that period of time it was Mr. Day's testimony that the expanded on-site parking worked well for both the Lynde Centre and the immediate neighbourhood. There were no complaints received from the residents about the Lynde Centre's clients parking on the residential streets. It was his opinion that the parking solution was working and the Town supported the applicant's request to make it permanent. It was never the Town's intent to keep the parking solution temporary for an extended period of time. The ZBA regularizes an existing parking solution.

The amending ZBA and OPA before the Board impose additional restrictions on the use of the subject lands and were done to reflect the concerns of the community. The OPA and ZBA restrict the type of uses allowed on Part 1 of the subject lands to business and professional offices and restricts the use of the Part 2 lands for parking purposes only for the Lynde Centre or a single detached dwelling which was the original permitted use under the parent by-law. Restrictions have been placed on the gross floor area (GFA) for the Lynde Centre to prevent any future expansion. Furthermore, Part 2 of the lands is subject to site plan control (Exhibit 2).

It was the BHRA's evidence as articulated through its president, Mr. A. Ricci and a resident of the neighbourhood, Ms Shelly Bourne that they were led to believe through the area councillor, that the ratepayers had an "agreement" with the Town. The parking solution for the Part 2 lands was to be implemented through the temporary use by-law and no indications were given by the Town that this by-law was to be made permanent in the future. It was both witnesses evidence that the BHRA was misled by certain council members who assured them that the temporary use by-law was not to be made permanent.

Furthermore, it was their contention that the notice of public meeting was not properly circulated or posted as required and that the public consultation process followed by the Town was flawed. The BHRA is concerned about the commercialization of the neighbourhood. The amending by-law and OPA would set a precedent which would allow future applications for expanded on-site parking permissions that would threaten the residential character of the neighbourhood. Finally, notwithstanding, the

restricted uses on the subject lands as a result of the proposed OPA and ZBA, the BHRA is concerned about the future expansion of the Lynde Centre should the owners seek to acquire the Petro Canada lands which abut the subject property to the north (Ex.10).

It was the opinion evidence of Mr. J. Kirk, planner for the applicant, that council properly considered the BHRA concerns both at the public meeting as well as at the council meeting. The downzoning of the subject lands was largely due to the concerns expressed by the BHRA. It was the evidence of Mr. Kirk that Council directed staff to restrict the permitted uses contained in the amending ZBL after hearing the concerns from some residents in the community at the public meeting of June 21, 2005. Proper public consultation on the parking solutions was held and the requirements under the *Planning Act* with respect to notice requirements and a public meeting were properly followed. Both professional planners proffered the opinion that the intent of a temporary use by-law is not to continue the permission for a use for a prolonged period of time. If the use is appropriate for the site and it has been demonstrated that there are no adverse impacts then the logical progression is to make that use permanent. Council properly considered the situation being mindful of some residents concerns and passed the ZBA and OPA to reflect the existing parking solution for the Part 2 lands.

The Board prefers the planning evidence of the two professional planners, which in its view was both uncontroverted and unshaken during cross-examination. The Board is satisfied that the requirements with respect to public notice and a public meeting to consider the amending by-law and the OPA were followed. Mr. Ricci attended the public meeting and made the BHRA concerns known at that time. It was not as the appellant alleges that Council did not have all of the information before it when considering the applicant's request for permanent parking on Part 2 of the subject lands.

Furthermore in the Board's view, the OPA and the ZBA restrict the applicant's use of the lands and in effect is a downzoning of the lands. This was done to reflect the community's concerns about future expansion of the Lynde Centre and the permitted uses for the subject lands. The appellant provided no planning evidence that contradicted or challenged that proffered by the planners for the Town and the applicant. Much of their testimony dealt with what they believed to be promises made by

council members over the “temporary” nature of the temporary use by-law and it was never the intent of the Town to make it permanent. This is not planning evidence.

Finally, on the matter of the appellant’s concerns that the applicant may acquire the Petro Canada lands to the north for future expansion, that is conjecture. If the owners do acquire these lands in the future, the intended use of those lands will be subject to the municipal planning process and it will be up to the planning authorities and council to decide on the merits of that application at that time. The Board does not agree with the appellant’s contention that the proposed amendments will lead to the commercialization of the neighbourhood. The subject lands are located just south of Highway 7, which is a major commercial corridor for the Town, concomitant with all the commercial/retail uses that are permitted within such a commercial corridor. The subject lands by its juxtaposition relate more to this corridor than it does with the residential neighbourhood.

In conclusion, the Board is satisfied that the amending by-law under appeal (ZBL 2005-221) conforms with the Town’s OP, it is not premature and represents good planning and that the proposed OPA No. 141 represents good planning and is in the public interest.

**THE BOARD ORDERS that:**

1. The appeal is dismissed and Amendment No. 141 to the Official Plan for the Town of Markham is approved; and
2. The appeal against By-law 2005-221 of the Town of Markham is dismissed.

These are the Orders of the Board.

“J. Chee-Hing”

J. CHEE-HING  
MEMBER