

1221 Markham Road - Minor Variance and Site Plan Control Appeals - Request for Further Direction

Date: May 2, 2022

To: City Council

From: City Solicitor

Wards: Ward 24 - Scarborough-Guildwood

REASON FOR CONFIDENTIAL INFORMATION

This report contains advice or communications that are subject to solicitor-client privilege. This report contains information regarding potential litigation.

SUMMARY

On April 21, 2011 the former Ontario Municipal Board issued a decision approving the Zoning By-law Amendment for the property municipally known as 1221 Markham (the "Site"). Pursuant to the approved Zoning By-law Amendment, the Apartment (A) zoning on the Site continues to be regulated under the former City of Scarborough Woburn Community Zoning By-law No. 9510, as amended. The Zoning By-law Amendment established new development permissions for 733 dwelling units in three apartment towers and 62,165 square metres of overall gross floor area density in return for the owner providing, prior to the first building permit for any phase of the development, \$440,000 toward community benefits under Section 37 of the Planning Act. Of this amount \$240,000 was allocated toward improvements to Woburn Park, and \$200,000.00 allocated toward improvements to the Scarborough Animal Shelter and/or streetscape improvements to public roads in the vicinity of the site.

As there was no draft plan of subdivision application involved, the requirement for the owner to construct and convey a new public street along the south and east portions of the Site, as identified through the 2009 Markham-Ellesmere Revitalization Study, was also secured through the Section 37 Agreement as a legal convenience.

The original owner did not proceed with the redevelopment on the Site. In July 2020 the new owner submitted a significantly more comprehensive Site Plan Control application (20 171710 ESC 24 SA) (the "Site Plan Control Application") for a similar three tower development. Through the review process it became apparent that zoning relief would be required to accommodate the more detailed site plan and building designs now proposed. The proposed Site Plan includes additional 146 dwelling units (totalling 879

units) and 13,595 square metres of additional density (totalling 75,760 square metres), along with a number of height variances. Additionally the new owner is seeking a revision to the registered Section 37 Agreement to adjust the timing obligations for the construction of the new public street and its conveyance to the City.

In October 2021 the owner submitted a minor variance application (Application 21 228990 ESC 24 MV (A0347/21SC)) (the "Minor Variance Application") to secure a total of 28 variances, some by necessity replicating similar variances to development standards specific to each of the three buildings. Planning staff concluded that the matter should be presented to City Council for consideration, having regard for the number of variances, the increase in the unit count and density, as well as the proposed amendments to the registered Section 37 Agreement in order to secure design, construction and conveyance of the new public road. Accordingly, Planning staff recommended that the Committee of Adjustment refuse the Minor Variance Application. At its hearing on December 8, 2021, the Committee of Adjustment refused the Minor Variance Application.

On December 13, 2021 the owner appealed the Site Plan Control Application to the Ontario Land Tribunal (the "OLT"), citing the City's failure to approve the Site Plan within 30 days of its submission, as provided in section 114 of the City of Toronto Act, 2006. On December 14, 2021, the owner also appealed the Committee of Adjustment's decision on the Minor Variance Application to the OLT, requesting that the two appeals be consolidated for a joint hearing.

On April 28, 2022 the OLT held the first Case Management Conference in these appeals. The second Case Management Conference is currently scheduled to take place on June 21, 2022.

The purpose of this report is to request further instructions in advance of the second Case Management Conference. City Planning has been involved in the preparation of this report.

RECOMMENDATIONS

The City Solicitor recommends that:

1. City Council adopt the recommendations contained in the Confidential Attachment 1 to the report (May 2, 2022) from the City Solicitor.
2. City Council authorize the public release of the confidential recommendations contained in the Confidential Attachment 1 to the report (May 2, 2022) from the City Solicitor if the confidential recommendations in Confidential Attachment 1 are adopted by City Council.
3. City Council direct that all other information contained in Confidential Attachment 1 to the report (May 2, 2022) from the City Solicitor is to remain confidential at the discretion of the City Solicitor, as it contains advice which is subject to solicitor-client privilege.

FINANCIAL IMPACT

Adopting this report will have no financial impact beyond what has already been approved in the current year's budget.

DECISION HISTORY

During its meeting of February 2, 2022, City Council adopted, without amendment, the recommendations of the Motion by Councillor Paul Ainslie, seconded by Councillor Jennifer McKelvie, authorizing the City Solicitor and appropriate City Staff to attend at the Ontario Land Tribunal hearing to uphold the Committee of Adjustment's refusal of the variances requested through Application A0347/21SC respecting 1221 Markham Road and to report back to City Council on the outcome of discussions or to obtain additional instructions, if necessary:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2022.MM39.10>

COMMENTS

The City Solicitor requires additional instructions. This report is about litigation before the Tribunal and contains advice or communications that are subject to solicitor-client privilege. Confidential Attachment 1 to this report contains confidential advice and it should be considered by Council *in camera*.

CONTACT

Roman Ivanov, Solicitor, Planning & Administrative Tribunal Law; Tel: (416) 392-4807; Fax: (416) 397-5624; Email: Roman.Ivanov@toronto.ca

SIGNATURE

Wendy Walberg
City Solicitor

ATTACHMENTS

1. Confidential Attachment 1 - Confidential Information