Ontario Land Tribunal
Tribunal ontarien de l'aménagement du territoire

ISSUE DATE: July 04, 2022 **CASE NO(S).:** OLT-22-002657

PROCEEDING COMMENCED UNDER section 17(24) of the *Planning Act, R.S.O. 1990, c. P. 13, as amended*.

Appellant	Bedford Wanless Ratepayers Association
Appellant	Cliffcrest Scarborough Village SW Residents Association
Appellant	Confederation of Resident & Ratepayer Associations in Toronto
Appellant	Don Mills Residents Inc.
Subject:	Proposed Official Plan Amendment
Description:	to permit the development of Garden Suites in the City of Toronto
Reference Number:	OPA 554
Property Address:	City Wide
Municipality/UT:	Toronto/Toronto
OLT Case No:	OLT-22-002657
OLT Lead Case No:	OLT-22-002657
OLT Case Name:	CORRA v. Toronto (City.)

PROCEEDING COMMENCED UNDER section 34(19) of the *Planning Act, R.S.O. 1990, c. P. 13, as amended*.

Subject:	Zoning By-law
Description:	to permit the development of Garden Suites in the City of Toronto
Reference Number:	BL 101-2022
Property Address:	City Wide
Municipality/UT:	Toronto/Toronto
OLT Case No:	OLT-22-002658
OLT Lead Case No:	OLT-22-002657

Heard: June 2, 2022 by video hearing

APPEARANCES:

Parties	**Counsel**
City of Toronto	L. Bisset M. LaFortune (student at law)
Bedford Wanless Ratepayers Association Cliffcrest Scarborough Village SW Residents Association Confederation of Resident and Ratepayer Associations in Toronto Don Mills Residents Inc. Long Branch Neighbourhood Association South Armour Heights Residents' Association Inc. Swansea Area Ratepayers' Group	W. Roberts

MEMORANDUM OF ORAL DECISION DELIVERED BY G. BURTON AND D.S. COLBOURNE ON JUNE 2, 2022 AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This was a Motion brought by the City of Toronto, following Appeals by the Parties above of Official Plan Amendment 554 and Zoning By-law Amendment No. 101-2022 ("OPA 554" and "ZBLA 101-2022"). The Appeals were identical in content. The City's Motion would have the Tribunal dismiss these Appeals without holding a Hearing, on the authority granted in several statutes and the Tribunal *Rules of Practice and Procedure.*

[2] The clear wording of the *Planning Act,* s. 16(3)(b) ("the Act"), they say, allows an appeal to the Tribunal here **only by the Minister.** The proceedings on the City's Motion then revolved around which statutory interpretation is correct. Effectively, a complete hearing on the merits then resulted (although the Appellants may not agree with this finding.)

[3] The City argued, with well-know decisions to back it up, that today there is only

one principle of approach to statutory interpretation. The words of an Act are to be read in their entire context, and in the grammatical and ordinary sense, harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament or Legislature.

[4] The City's submission is that the OPA and the ZBLA fall squarely within the City's authority pursuant to s.16(3) and s. 35.1(1) of the Act, properly interpreted. Thus, the Appeals are statute-barred by the clear wording of s. 17(24.1) and 34(19.1) of the Act. They should be dismissed without a hearing, pursuant to s. 17(45) and 34(25) of the Act. On the view that the Tribunal reached after hearing the submissions, it is of the view that it need not cite authority for its interpretation of the clear statutory language in these subsections. It relies on the statement above concerning the one principle of statutory interpretation.

Materials before the Tribunal on Motion

[5] The materials before the Tribunal on this Motion were:

1. The City's Motion Record in two Volumes, A and B, dated May 18, 2022, including the Affidavits of David Driedger and Alison Reid, both affirmed May 17, 2022;

2. The Motion Record of the Appellants, dated May 26, 2022, including Affidavits of Veronica Wynne and Christine Mercado, sworn and affirmed May 25, 2022.

The Amendments

[6] The City stated that the disputed amendments were enacted pursuant to legislative requirements, principally those in subsection 16(3) of the *Act.* This states:

> *16(3)* Additional residential unit policies - *An official plan shall contain policies that authorize the use of additional residential units by authorizing,*
>
> a) the use of two residential units in a detached house, semi-detached house or rowhouse; and

> b) the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse.

[7] To address the obligation set out in s.ubsection 16(3)(b), OPA 554 added a Site and Area Specific Policy 670 ("SASP 670") affecting all lands designated *Neighbourhoods* within the City. This would permit "Garden Suites" (as defined) to be located in **all** *Neighbourhoods* designations.

[8] The City emphasized that the OPA does not make any distinction between residential building **types**. The language in clause (b) is not limited to the structures specified. Rather, it contains a set of policies to guide the development of Garden Suites on all lands designated *Neighbourhoods* in the OP.

> Garden Suite" is defined as:
>
> 670 (a) For the purposes of this Site and Area Specific Policy, a "Garden Suite" is defined as a self-contained residential unit, subordinate to the primary dwelling, in which both kitchen and bathroom facilities are provided, and which is located on a lot within an ancillary building that is not adjacent to a public laneway.

[9] The policies in the SASP address the development of Garden Suites, the interpretation of this policy in relation to the rest of the OP; subjects such as vehicle parking, and additions to OP maps and sidebars.

[10] The Act also requires that the applicable **zoning** meet the statutory obligation in s. 35.1(1) of the Act, which provides:

> 35.1(1) **By-laws to give effect to additional residential unit policies -** The council of each local municipality shall ensure that the by-laws passed under section 34 give effect to the policies described in subsection 16 (3).

[11] Since July 2019, the City's Comprehensive Zoning By-law 569-2013 (as amended) has permitted detached dwellings in every Residential Zone in the City. Ancillary buildings are permitted as-of-right on every residential lot on which a principal dwelling is located. The ZBLA applies across the Residential Zone Category, and does

not distinguish between individual zones (R, RD, RS, RT and RM).

[12] To meet the obligation in subsection 35.1 (1), the City adopted the challenged ZBLA No. 101-2022. This created many development standards for these so-called "missing middle" housing structures, in order to accommodate and regulate Garden Suites (Exhibit 3B, Tab T). These were clearly distinguished [800.50 (303)] from existing permitted "Laneway" Suites. The basic difference is that Laneway Suites are located in an ancillary building that **abuts a lane**, such as an existing garage, whereas Garden Suites are located in an ancillary building that does not abut a lane.

[13] ZBLA No. 101-2022 further states that only one ancillary building containing either a laneway suite or a garden suite is permitted on a lot. Thus, a lot cannot contain both types. A garden suite may however be built *in addition to* a shed or garage, subject to regulations for lot coverage. **This is permitted regardless of the number of secondary suites or other residential building types with multiple dwelling units (e.g. triplexes, duplexes and fourplexes) that exist on a lot.**

The Appellants' Response

[14] The Appellants go directly to the content of the challenged enactments. In paragraph 11 they say that it is not clear in the amendments that a Garden Suite will be ancillary to the primary use. Such structures are acceptable even in RM zones, they say, but they object to limiting the permitted "uses" to "a detached house, semi-detached house or rowhouse." (para. 12). They go on to say that s. 35.1(1) of the Act expressly references s. 16(3) of the Act. The City is therefore limited to the specific wording of the latter subsection, should the City shelter within it to deny any right of appeal (para. 13). To repeat, the subsection specifies "*the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse".* The Appellants say that the fact that Garden Suites are NOT next to a public lane gives rise to materially different considerations for issues like privacy and the tree canopy (para. 14). They also question whether these structures can be "ancillary", given the method of size measurement.

[15] They clarify that they do not seek to prohibit Garden Suites in R or RM zones; but merely object to any ”extension beyond detached, semi-detached and row housing” (para. 22). They state that their concern is with the impact of such suites on the amenities for tenants of larger buildings.

DECISION AND ORDER

[16] The scope of the wording appears to be the source of the Appellants' many objections to the OPA and the ZBLA. These are based principally on issues such as setbacks, coverage, amenity space and the effect on trees. They ground their objections on lack of authority in the Act. In their Response to the Motion (Exhibit 5, p. 7) they state:

> 9. The Appellants position is that by including duplexes, triplexes, fourplexes and apartment buildings in the OPA and the ZBA the City has included uses beyond those set out in Sub-section 16 (3) of the Act; (*sic*)

[17] They argue that the language of clause 16(3)(b) [“*the use of a residential unit in a building or structure ancillary to a detached house, semi-detached house or rowhouse”]* would not permit Garden Suites where there are larger residential structures than those referenced.

[18] In its Motion the City recommends a strict interpretation of the statutory language, citing cases that confirm this approach. It relies on a contextual reading of s. 16 that is harmonious with the Act's scheme and objects. The Appellants however referred to the content of specific regulations in the zoning amendments, once again objecting to some of them. They did not concentrate on the rules of statutory interpretation cited by the City, but merely stated that the appeal provisions in s. 16(3) do permit Appeals by persons other than the Minister. They argued that the City got the drafting wrong when enacting the Zoning By-law, again challenging the content rather than the statutory language.

[19] In the City's view, and the Tribunal agrees, s. 16 contains both mandatory and

permissive contents for an official plan. It is obliged to authorize the use of additional residential units (which are undefined in the statute) in a building or structure ancillary to a detached house, semi-detached house or rowhouse.

[20] Subsection 16(8) of the Act goes on to clarify that the statutory requirements of an official plan are minimum requirements. This provides, under the heading "**No limitation**, that "each subsection of this section shall be read as not limiting what an official plan is required to or may contain under any of the other subsections." In order to give effect to the language underlined for emphasis, s. 16(8) of the Act must be read to apply to not only the permissive subsections of s. 16, but to the mandatory subsections as well, including s. 16(3). Clause 16(3(b), being mandatory, must be given the strictest interpretation. **Only the Minister can appeal,** is the necessary finding.

[21] Section 34 of the Act leaves it to municipalities to determine and zone appropriate locations and standards for additional residential units. Subsection 34(1) of the Act provides that Zoning By-laws may be passed by the councils of local municipalities:

> …4. For regulating the type of construction and the height, bulk, location, size, floor area, spacing, character and use of buildings or structures to be erected or located within the municipality or within any defined area or areas… and the minimum frontage and depth of the parcel of land and the proportion of the area thereof that any building or structure may occupy.

[22] The Appellants here object to the contents of the authorised By-laws. This appears to the Tribunal to be a question to be dealt with by discussions and negotiations with Council. However, once enacted, by s. 16(3) only the Minister has a right to appeal. Thus, the Appellants' statement in paragraph 31 of their response ["The Tribunal should find that planning grounds have been cited in the Appeals and the onus is on the City to show the same are not met"] is not accurate. This was not the argument in this Motion. The City has not requested dismissal of the Appeals on lack of planning grounds, which is one of the reasons in the applicable legislation and Rules for such dismissal. Dismissal is requested here because the Act does not allow any

persons other than the Minister to appeal these specific permissions.

[23] Similar to the structure of s. 16 of the Act, s. 34(1) which authorizes Zoning By-laws is permissive. It is followed, however, by s. 35.1, which is mandatory. It requires that zoning be enacted to give effect to the required OP policies for Garden Suites, such that building permits for additional residential units can be issued.

[24] The Appellants concentrated on the hearing of the Motion with the **substance** of the zoning requirements in the By-law. The City's Motion argues that in accordance with s. 17(24.1) and 34(19.1) of the Act, there is "…**no appeal** in respect of the parts of policies or by-laws that give effect to policies described in s. 16(3) of the Act, including, for greater certainty, no appeal in respect of any requirement or standard relating to such policies, **except an appeal made by the Minister of Municipal Affairs and Housing."** (emphasis added).

[25] The Minister did not appeal the OPA or the ZBA. Thus, the Tribunal agrees with the City that there is no valid appeal of either of them.

[26] As mentioned, a great deal of hearing time was devoted to addressing the content of the Amendments. Although the Appellants accepted that the City had properly adopted these amendments, they proceeded to outline their objections to their contents on several grounds. The first was the permission for a Garden Suite to be located as of right on all lots designated Residential (R) or Residential Multiple (RM). Their concerns related principally to sizing, setbacks and tree destruction. Details were set out in depth and detail, especially in the Affidavit of Christine Mercado in Exhibit 5, Tab 3.

[27] The Tribunal finds that, because it agrees with the City that only the Minister is given a right of appeal here, such substantive objections to the requirements in the amendments were not useful, and served only as another sounding board for objectors (and this without any authority).

[28] The Appellants seemed to ignore the primary argument of the City on this Motion. If it is indeed statute-barred, it is useless to argue the merits of the amendments before the Tribunal. The Tribunal has no jurisdiction to hear or to rule on their concerns.

ORDER

[29] The Tribunal Orders that :

1. The Appeals by the Bedford Wanless Ratepayers Association, the Cliffcrest Scarborough Village SW Residents Association, the Confederation of Resident and Ratepayer Associations in Toronto, the Don Mills Residents Inc., the Long Branch Neighbourhood Association, the South Armour Heights Residents' Association Inc. and the Swansea Area Ratepayers' Group of By-law Numbers 100-2002 and 101-2002 are dismissed pursuant to subsections 17(45) and 34(25) of the *Planning Act* and section 19 of the *Ontario Land Tribunal Act, 2021*,S.O. 2021, c. 4, Sched 6;

2. Official Plan Amendment No. 554 was in force and effect as of March 8, 2022;

3. Zoning By-law No. 101-2022 was in force and effect as of February 3, 2022.

"G. Burton"

G. BURTON
VICE-CHAIR

"D.S. Colbourne"

D.S. COLBOURNE
VICE-CHAIR