

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: February 03, 2017

CASE NO(S): PL150857

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 2206581 Ontario Ltd.
Subject: Request to amend the Official Plan – Failure of City of Barrie to adopt the requested amendment
Existing Designation: Residential
Proposed Designated: General Commercial
Purpose: To permit commercial/retail uses proposed in two free standing, single storey commercial buildings
Property Address/Description: 681-685 Yonge Street
Municipality: City of Barrie
Approval Authority File No.: D09-OPA050
OMB Case No.: PL150857
OMB File No.: PL150857
OMB Case Name: 2206581 Ontario Inc. v. Barrie (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 2206581 Ontario Ltd.
Subject: Application to amend Zoning By-law No. 2009-141 - Refusal or neglect of City of Barrie to make a decision
Existing Zoning: Single Detached First Density R1
Proposed Zoning: General Commercial C4
Purpose: To permit commercial/retail uses proposed in two free standing, single storey commercial buildings
Property Address/Description: 681-685 Yonge Street
Municipality: City of Barrie
Municipality File No.: D14-1579

OMB Case No.: PL150857
OMB File No.: PL150858

Heard: January 18, 2017 in Barrie, Ontario

APPEARANCES:

Parties

Counsel

2206581 Ontario Ltd. and
Ashford Kingston Developments Ltd.

Brendan Ruddick

City of Barrie

Peter Krysiak

**MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN ON
JANUARY 18, 2017 AND ORDER OF THE BOARD**

[1] At the previous attendance before the Municipal Board (“the Board”), 2206581 Ontario Ltd. and Ashford Kingston Developments Ltd. (“the Appellants”) and the City of Barrie (“the City”) advised the Board that they wished to conduct settlement negotiations. On the last day set for that hearing event, October 17, 2016, the Parties advised the Board that they had arrived at a settlement in principle and that it was their intention that the proposed settlement be taken to a City Council meeting in November for endorsement. At that previous hearing event, Member Chee-Hing fixed January 18, 2017 as the date for the settlement hearing to dispose of the appeals. This was set out in the Board’s decision issued November 8, 2016.

[2] At this session, counsel for the Parties confirmed that the settlement in principle was endorsed by City Council and that they were prepared to proceed on consent this day to call evidence in support of the requested amendment.

[3] As there had been note of a Participant at the October, 2016 hearing event, the Board inquired as to whether there had been any communication with that Participant,

Kathy Crompton, as she was not here this day. Mr. Ruddick advised the Board that he had provided Ms. Crompton with the final form of zoning amendment but had not had any response from her. As she was present at the prior hearing event and should have received a copy of the disposition from that event, which expressly noted the January 18, 2017 settlement hearing date, the Board presumed that she had no further intention to address the Board on this matter.

[4] The evidence to support the zoning amendment was called through the Appellants' land use planning consultant, T. J. Cieciora. A Document Book on behalf of the Appellants was produced and entered as Exhibit 2. The curriculum vitae of T.J. Cieciora was included at the outset of the materials along with an executed copy of the prescribed form of Acknowledgment of Expert's Duty completed by Mr. Cieciora. Mr. Cieciora was qualified to provide expert evidence on land use planning matters.

[5] The Board was advised that although there was both an appeal from Council's refusal to adopt a proposed amendment to the City Official Plan and with respect to Council's failure to enact an amendment to the City Zoning By-law regarding the properties at 681-685 Yonge Street ("the Property"), the appeal with respect to the City Official Plan was being withdrawn on the basis of an understanding with the City that there was no need for such an amendment to support the proposed zoning amendment. As such, the Board acknowledged the withdrawal of the official plan amendment appeal and need not further dispose of it as it is no longer before the Board.

[6] Mr. Cieciora advised that the Property was to be placed within the recently created Mixed Use zone category ("MU2"). Mr. Cieciora explained that the by-law which introduced this zone category to the parent zoning by-law was presently under appeal with respect to matters that are not germane to the Property and that the MU zone provisions are therefore not yet in effect. In order to address this circumstance, the draft by-law amendment before the Board on this appeal was created to duplicate all of the relevant permitted uses and performance standards so that it will function as a free-standing zoning regime for the Property. It was explained to the Board that the

provisions were meant to track the enacted MU2 standards save that the requirement which stipulated a maximum sideyard setback has been deleted in order to allow for some flexibility in the matter of building siting.

[7] In terms of permitted uses, the draft amendment includes a table of permitted uses within the categories of residential uses, accessory uses, commercial uses and institutional uses. Mr. Cieciora took the Board to the Residential designation provisions of the Official Plan (which apply to the Property), as well as the Interpretation provisions, to explain the basis for the uses which will be permitted by the by-law amendment and the conformity of those permissions with the policy of the Official Plan.

[8] The zoning amendment will allow development within a range of density, up to high density. This aspect of the by-law is in conformity with the provisions of the City Official Plan which, on the Intensification Areas Schedule "I" indicate this section of Yonge Street to be identified as a Primary Corridor, permitting density at 50 units per hectare.

[9] The by-law amendment will be site specific to the Property and will be reflected by text and mapping which assigns a Special Provision to this zoning.

[10] Mr. Cieciora opined that the proposed zoning amendment would be consistent with the policies of the Provincial Policy Statement, conform with the Growth Plan for the Greater Golden Horseshoe and with the City Official Plan. He further opined that approval of the proposed amendment would reflect the application of good planning principles.

[11] On the strength of Mr. Cieciora's uncontroverted testimony, the Board will allow the appeal with respect to the zoning amendment relating to the Property and approve that amendment in the form found as Attachment 1 to this Decision. Having canvassed the procedural options with counsel for the City, at the request of the City, the Board will exercise its jurisdiction in this instance by directing City Council to enact a by-law to amend City Comprehensive Zoning By-law No. 2009-141, as amended, in the form of

the amendment attached to this Decision as Attachment 1, inserting such Special Provision number into the text and mapping as accords with the City administration of this by-law.

[12] So Orders the Board.

“Gerald S. Swinkin”

GERALD S. SWINKIN
MEMBER

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Ontario Municipal Board

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13.1.200 MU2 (SP___)

681-685 Yonge Street

13.1.200.1 MIXED USE**13.1.200.2 MIXED USE GENERAL PROVISIONS**

13.1.200.2.1 No person shall hereafter use any lands, nor erect, alter, enlarge or use any buildings or structures in the MU2 (SP___) zone except in accordance with the provisions of Section 13.1.200 and Section 4.0 of this By-law.

13.1.200.3 MIXED USE PERMITTED USES

13.1.200.3.1 The permitted uses in the MU2 (SP___) zone are listed in Table 13.1.200.1.

| Table 13.1.200.1 | |
|---|---|
| Uses | Zones |
| | Mixed Use Corridor (MU2 (SP___)) |
| Residential Uses | |
| <i>Walk-up Apartment</i> | X |
| <i>Apartment Dwelling</i> | X |
| <i>Dwelling Unit(s) in conjunction with permitted commercial uses</i> | X |
| <i>Block/Cluster/Stacked Townhouse</i> | X |
| <i>Group Home</i> | X |
| Accessory Uses | |
| <i>Home Occupation ⁽¹⁾</i> | X |
| Commercial Uses | |
| <i>Bake Shop</i> | X |
| <i>Bank</i> | X |
| <i>Building Supply Centre</i> | X |
| <i>Bus Terminal</i> | X |
| <i>Bus Transfer Station</i> | X |
| <i>Conference Centre</i> | X |
| <i>Custom Workshop</i> | X |
| <i>Entertainment Establishment</i> | X |
| <i>Fitness or Health Club</i> | X |
| <i>Fitness or Health Club, Local</i> | X |
| <i>Florist</i> | X |
| <i>Funeral Establishment</i> | X |
| <i>Hotel, Motel</i> | X |
| <i>Laundry or Dry Cleaning Depot</i> | X |
| <i>Local Convenience Retail</i> | X |
| <i>Nursery or Garden Supply Centre</i> | X |
| <i>Office, Business or Professional</i> | X |
| <i>Office, Medical</i> | X |
| <i>Outdoor Display and Sales Area</i> | X |
| <i>Parking Lot</i> | X |
| <i>Personal Service Store</i> | X |
| <i>Photography Studio</i> | X |
| <i>Private Club</i> | X |
| <i>Recreational Establishment</i> | X |
| <i>Rental Store</i> | X |
| <i>Restaurant</i> | X |
| <i>Retail Store</i> | X |
| <i>Service Store</i> | X |
| <i>Shopping Centre</i> | X |
| <i>Theatre</i> | X |
| <i>Trade Centre</i> | X |
| <i>Veterinary Clinic</i> | X |
| Institutional | |
| <i>Arena</i> | X |
| <i>Art Gallery</i> | X |
| <i>Assembly Hall</i> | X |
| <i>City Hall</i> | X |
| <i>Commercial School</i> | X |
| <i>Community Centre</i> | X |
| <i>Court House</i> | X |

| | |
|--|---|
| <i>Crisis Care Facility</i> ⁽²⁾ | X |
| <i>Day Nursery</i> | X |
| <i>Library</i> | X |
| <i>Museum</i> | X |
| <i>Nursing Home</i> | X |
| <i>Place of Worship</i> | X |
| <i>Religious Institution</i> | X |
| <i>Rest Home</i> | X |
| <i>Retirement Home</i> | X |
| <i>Senior Citizens Home</i> | X |
| <i>Training and Rehabilitation Centre</i> | X |

(1) – See 13.1.200.6

(2) – See 13.1.200.7

13.1.200.4 Automobile Oriented Uses

Automobile oriented uses such as automobile sales/leasing/repair establishment, car washes, and drive-through facilities shall not be permitted on the Subject Properties.

13.1.200.5 Residential Uses

13.1.200.5.1 The minimum dwelling unit floor area for any such dwelling unit shall comply with the standards set out in Section 5.3 of this By-law for the Apartment Dwelling Second Density (RA2) Zone.

13.1.200.5.2 Where a lot contains more than 4 residential dwelling units, an outdoor amenity area based on a minimum of 12m² per unit shall be provided. Outdoor amenity area may be inclusive of landscape open space, rooftop amenities (greenroofs, solariums, gardens, and patios), private balconies, or other outdoor amenity feature. Outdoor amenity area shall or shall not be in a consolidated form.

13.1.200.5.3 The parking spaces used for residential uses shall be designated for the exclusive use of the occupants of the residential dwelling units. Parking spaces designated for residential uses shall be identified with a vertical sign indicating for residential use only.

13.1.200.6 Block/Cluster/Townhouses

No more than 8 block/cluster/townhouse units shall be constructed in a row.

13.1.200.7 Home Occupation

13.1.200.7.1 *Home Occupations* shall be permitted in all residential *uses* located in a Mixed Use *zone*, in accordance with the provisions of Section 5.2.10 of this Zoning By-law.

13.1.200.7.2 Notwithstanding the provisions of Section 5.2.10.1, the floor area devoted to a *Home Occupation* located within a *Block/Cluster/Stacked Townhouse* in a Mixed Use *zone* shall not exceed 50% of the total floor area of the dwelling.

13.1.200.8 Crisis Care Facility

Any crisis care facility shall be located a minimum distance of 300m from any other crisis care facility.

13.1.200.9 MIXED USE STANDARDS

13.1.200.9.1 The *uses* permitted in the MU2 (SP___) zone are subject to the development standards referenced in Table 13.1.200.2.

| Table 13.1.200.2 | |
|---------------------|----------------------------------|
| | Zones |
| | Mixed Use Corridor (MU2 (SP___)) |
| Lot Area (min.) | - |
| Lot Frontage (min.) | - |

| | | |
|---|---|---|
| Front Yard Setback (1), (6) | Min. | 1m for 75% of frontage |
| | Max. | 5m for 25% of frontage |
| Side Yard Setback | Min. | - |
| | Min. Abutting Street or Laneway | 3m |
| | Max. | - |
| Rear Yard Setback (min) | Abutting Street or Laneway⁽²⁾ | 1.5m |
| | Abutting Residential, OS, or EP Zone⁽³⁾ | 7m setback |
| Front Façade Step-back (min.) | | 45 degree angular plane at height above 80% equivalent of right- of-way using 3m minimum step-backs |
| Side Façade Step-back (min.) | | If adjacent to an OS zone, 5.5m at height above 80% equivalent of right- of-way |
| Rear Façade Step-back (min.) | | 45 degree angular plane above 7.5m using minimum 3m step-backs |
| Lot Coverage (max. % of lot area) | | - |
| Gross Floor Area (max. % of lot area) | | - |
| Street Level Floor Height (min.) | | 4.5m |
| Building Height | Min. | 7.5m |
| | Max. | 16.5m ⁽⁴⁾ |
| Minimum Coverage for Commercial uses (% of first storey GFA) | | - ⁽⁵⁾ |

- (1) – See 13.1.200.10
(2) – See 13.1.200.11 (a)
(3) – See 13.1.200.11 (b)

- (4) – See 13.1.200.12
(5) – See 13.1.200.13
(6) – See 13.1.200.20

13.1.200.10 Front Yard Setback

- a) Front yard setback areas shall be fully paved to the front lot line.
- b) If ground floor usage abutting lot frontage is residential, a minimum 3m front yard setback will apply.

13.1.200.11 Rear Yard Setback

- (a) Where a rear setback abuts a street or laneway, the setback may be used for soft or hard landscaping, or for a walkway.
- (b) Where a rear yard setback abuts a Residential, Open Space, or Environmental Protection zone, the setback may be used for hard or soft landscaping, or for a two way laneway/driveway with sidewalks.

13.1.200.12 Building Height

If ground floor area use is a commercial or institutional use, the maximum building height permitted is 25.5m.

13.1.200.13 Street Level Commercial Uses

If street level use is a commercial or institutional use, the minimum coverage for the commercial or institutional use must be 50% of gross floor area for the street level floor area.

13.1.200.14 Yard Variations

Minimum front, side and rear yards shall be provided in accordance with the requirements of Table 13.1.200.2, subject to the provisions below.

Any part of any required yard, required by this By-law shall be open and unobstructed by any structure from grade level to the sky, with the following exceptions:

- a) accessory buildings subject to Section 13.1.200.15;
- b) sills, belt courses, cornices, eaves and gutters, chimney breasts or pilasters, which may project a distance of not more than 0.6m into a required yard;
- c) in the case of attached units, in which case no side yard shall be required on the interior side;
- d) fire escapes, which may project a distance of not more than 1.2m into a required side or rear yard, but in no case shall the side or rear yard, except where none is required, be reduced to less than 0.6m;
- e) balconies on apartment dwellings, where located at a greater height than the bottom of the first floor ceiling joists, may project a distance of not more than 1.5m into a required yard, but in no case shall the side yard, except where none is required, be reduced to less than 1.8m to any side lot line.

13.1.200.15 Accessory Buildings and Structures

Accessory Buildings and Structures shall only be permitted in conjunction with *Residential Uses* or *Commercial Uses* identified in Table 13.1.200.1. No other *building* or *structure*, except a *parking structure underground* which is accessory to any residential use in any *zone* shall:

- a) exceed a height of 4m;
- b) occupy any part of a *front yard* or *side yard*;
- c) be *erected* closer than 0.6m from the *rear lot line*;
- d) be *erected* closer than 0.6m from the *side lot line*, except in the case of attached units, in which case no *side yard* shall be required on the interior side where the *accessory building* or *structure* is attached to the *main building*;
- e) the width of a *boat house* and *boat port* shall not exceed 30% of the width of the lot measured at the shoreline;

- f) collectively exceed 10% lot coverage for detached accessory structures or a maximum of 50m² whichever is lesser.

13.1.200.16 Rooftop Mechanical/Electrical Structures

Maximum building height standards are not inclusive of rooftop mechanical/electrical structures, but will be subject to any 45 degree angular plane requirement. Mechanical/electrical structures will be screened within rooftop penthouses or through the use of parapets.

13.1.200.17 Landscape Buffer Areas

Notwithstanding the provisions of Section 4.8.2.1, where any *lot* in an MU2 (SP___) zone abuts a *lot* in a Residential Zone, with the exception of the RA1 and RA2 Apartment Dwelling zones, a continuous *landscaped buffer area* of a minimum width of 3m shall be provided along the abutting *lot* line of the *lot*, and a continuous tight board fence with a minimum height of 2m is to be constructed along the *lot line*.

13.1.200.18 Parking for Apartment Dwellings

Parking spaces including aisles required for an *apartment dwelling unit* in the Mixed Use zone shall have a maximum *lot coverage* of 35%.

13.1.200.19 One Lot

If required to permit the development of all or part of 681-685 Yonge Street, the following lots shall be deemed to be one lot for the purposes of this By-law:

Lots 9, 10, 11, and 12 as shown on Plan 1213, City of Barrie, County of Simcoe.

13.1.200.20 Front Lot Line

For the purposes of Section 13.1.200 Front Lot Line shall mean the lot line that divides a lot from Yonge Street.

13.1.200.21 Parking Standards

In addition to the provisions of Section 4.6 Parking Standards the following parking standard shall apply to lands zoned MU2 (SP509):

| | |
|---|----------------------------------|
| <i>Residential uses located within the MU2 (SP___) zone</i> | 1 space per <i>dwelling unit</i> |
|---|----------------------------------|

13.1.200.22 Residential Zone Accessory Buildings and Structures

Section 5.3.5 Accessory Buildings and Structures of the zoning by-law shall not apply to the MU2 (SP___) zone.

13.1.200.23 Parking in Front Yards

No parking shall be permitted in the front yard.

13.1.200.24 Parking for Apartment Dwellings

The maximum lot coverage requirements for parking spaces and aisles set out in 5.3.6.2 shall not apply to the MU2 (SP___) zone.

13.1.200.25 Apartment Dwellings – Landscaped Buffer Area

The requirements of Section 5.3.7.2 shall not apply within the MU2 (SP___) zone.

