

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: January 29, 2024

CASE NO(S).:

OLT-23-000586

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

Applicant and Appellant:
Subject:

Unlimited Wealth Enterprises Ltd.
Application to amend the Zoning By-law –
Refusal or neglect to make a decision

Description:

To permit conversion of existing
residential building to multiple dwelling
containing four residential units

Reference Number:

751-6/22-020

Property Address:

500 Tedman Avenue

Municipality:

City of Greater Sudbury

OLT Case No.:

OLT-23-000586

OLT Lead Case No.:

OLT-23-000586

OLT Case Name:

Unlimited Wealth Enterprises Ltd. v.
Sudbury (City)

Heard:

January 18, 2024 by Video Hearing

APPEARANCES:

Parties

Counsel/*Representative

Unlimited Wealth Enterprises Ltd.

*J.M. Nagarajah

City of Greater Sudbury

Steve Watt

**MEMORANDUM OF ORAL DECISION DELIVERED BY G.A. CROSER ON JANUARY
18, 2024 AND ORDER OF THE TRIBUNAL**

[Link to Final Order](#)

INTRODUCTION

[1] A two-day Merit Hearing was scheduled to consider the refusal of the City of Greater Sudbury (“City”) to pass a zoning by-law amendment (“ZBLA”) for the property known municipally as 500 Tedman Avenue (Subject Property). The proposed ZBLA was requested by the property owner, Unlimited Wealth Enterprises Ltd. (“Applicant”), who sought to change the zoning classification of the Subject lands from R2-2, Low Density Residential Two to R2-2(S) Low Density Special. The ZBLA was necessary to facilitate the conversion of the existing residential building on the Subject Property from a duplex to a fourplex, and to grant site specific relief with respect to the required number of parking spaces.

APPLICATION HISTORY

[2] The Applicant’s rezoning application to the City was deemed complete on November 16, 2022. The application included the submission of a Concept Plan and Floor Plans in support of the request to rezone the Subject Property. City Staff noted that the Applicant had originally proposed off-site parking on another lot that it owned and that the Applicant was directed to submit an Off-Site Parking Summary Report. The Applicant later advised City Staff by email that it would be abandoning the provision of off-site parking.

[3] The Planning Services Division of the City reviewed the development proposal and circulated it to all appropriate agencies and departments. The conclusion of a Planning Report authored by Glen Ferguson, Senior Planner with the City, was that the application would not conform to the applicable policies contained within the Official Plan for the City nor the Growth Plan for Northern Ontario and was not consistent with the land use planning policy directions identified in the Provincial Policy Statement, 2020. The City’s Planning Committee denied the application. City Council then ratified this denial on March 21, 2023.

SUBJECT PROPERTY

[4] The Subject Property has a total lot area of approximately 306 metres squared (m²), which is a legal existing undersized lot of record. It has 10 metres of lot frontage on Tedman Avenue, and is currently zoned R2-2, Low Density Two, which permits duplex buildings. There is a gravel-surface parking area in the Subject Property's front yard which is the parking area for the building. Site specific relief from the City's Comprehensive Zoning By-law No. 2010-100Z was required, as only two parking spaces could be accommodated in the front yard whereas six parking spaces are required. On-street parking along Tedman Avenue is permitted but is limited to a maximum of four hours.

[5] The Subject Property is in a neighbourhood described as a low density, small building footprint area, with surrounding land uses being primarily residential, consisting of single storey and two storey buildings. The site is located within an area designated as Living Area 1 in the Official Plan for the City of Greater Sudbury ("OP"); such areas are directed by the OP to be the primary focus of residential development.

[6] At present, the Subject Property is under renovation and there is an existing building fire restoration permit. There is no intent to increase the building size; rather the Applicant proposed to reconfigure the building layout to increase the number of units housed in the building from two to four. The City's Staff Report notes that Building Services has advised that there is an open and outstanding building permit applicable to the lands that has not been completed, and outstanding Orders to Comply related to the installation of additional dwelling units within the building.

MERIT HEARING

[7] The following were marked as Exhibits at the onset of the Hearing:

- a. Exhibit 1 – Affidavit of Service, dated August 15, 2023

- b. Exhibit 2 – Affidavit of Service, dated September 29, 2023
- c. Exhibit 3 –City of Greater Sudbury – Document Book

[8] At the hearing, Mr. Matt Nagarajah, the owner of Unlimited Wealth Enterprises Ltd., represented the Applicant. Despite repeated inquiries by the Case Coordinator in advance of the Hearing, Mr. Nagarajah filed no materials in support of the appeal. An Acknowledgement of Expert's Duty ("AED") was filed by the Applicant in his own name and a second AED was filed for a James Kirkland on January 17, 2024. No CV nor Affidavit was filed for James Kirkland. At the hearing, Mr. Nagarajah explained that he had thought it the role of the City to prepare such documents. The Tribunal explained that, as the Applicant, it was his obligation to participate fully in the hearing process and that the onus was on him to identify valid land use planning issues and to produce evidence in support of same. Mr. Watt, Counsel for the City, stated that he had had only one discussion with Mr. Nagarajah in advance of the Hearing, and that he was unclear on how the Hearing would unfold given the fact that nothing had been filed by the Applicant to support the appeal.

[9] Mr. Nagarajah stated that his reason for filing the appeal was because he had received "bad advice" from the City with respect to the requirement for a zoning by-law amendment, and that he had several concerns with respect to the outstanding building permit and other Building Services matters. The Tribunal explained to the Applicant that the Tribunal has no jurisdiction over matters relating to the Ontario Building Code and that this was not the appropriate forum in which to raise such issues, nor did the Tribunal have the jurisdiction to make rulings with respect to any comments that may or may not have been made to Mr. Nagarajah during the pre-application process.

[10] It was agreed by both Parties that the City's Planner, Ms. Bailey Chabot, who was qualified by the Tribunal to provide expert opinion evidence in the area of land use planning, would provide the Tribunal with the factual background of the appeal. Ms. Chabot was not the Planner with the City at the time of the ZBLA application nor Council decision; however, she confirmed at the Hearing that she agreed with and adopted the

contents of the Planning Report as her own. Ms. Chabot also indicated that she had reviewed the video record of the public meeting held on this matter, which had not been attended by the Applicant.

[11] Mr. Nagarajah was asked how he would like to proceed with his evidence after Ms. Chabot's narration of the application's background. Mr. Nagarajah stated that he had no planning evidence and that he would withdraw his appeal, and that he intends to reach out to Mr. Watt with respect to submitting a new ZBLA for a triplex, which he believes would be a legal non-conforming use. Mr. Watt requested that the Tribunal dismiss the appeal to provide certainty with respect to the status of the matter.

ANALYSIS AND FINDINGS

[12] The Planning Report acknowledges that the OP generally directs intensification through the development of vacant and underutilized lots. However, this is balanced by the need to ensure that intensification occurs in a context sensitive manner. New residential development must be compatible with the existing physical character of established neighborhoods, with consideration given to the size and configuration of lots.

[13] Section 2.3.3 of the OP provides criteria with which to evaluate an application for intensification, including the suitability in terms of the size and configuration of the lot, compatibility with the existing character of the area, and provision of off-street parking. The Planning Report is clear, and there is no evidence to the contrary, that in this instance, the conversion of the duplex on an existing undersized lot to a fourplex would result in the overdevelopment of a low density residential lot.

[14] The Tribunal accepts the position taken in the Planning Report that the development standards being sought in this application, in combination with the small lot size, would collectively amount to an overdevelopment of a lot intended for lower-density residential land use (for example, single detached or duplex dwelling). The Tribunal commended Mr. Nagarajah on his efforts to increase the number of affordable

housing units in the City. However, with no planning evidence to contradict the City's Planning Report and decision of Council, there was no basis to the appeal.

ORDER

[15] The Tribunal orders that the appeal is dismissed and the requested amendments to By-law No. 2010-100Z of the City of Greater Sudbury are refused.

"G.A. Croser"

G.A. CROSER
MEMBER

Ontario Land Tribunal

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The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.