

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** October 06, 2023

**CASE NO(S).:**

OLT-22-004352

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

Appellant	2625547 Ontario Inc., 2757460 Ontario Inc., Allen Zimmerman, and 306 Adelaide Street West Ltd.
Applicant	RIOCAN (Festival Hall) Trust
Subject:	Zoning By-law
Description:	To permit a mixed-use development at 126, 132 and 142 John Street, 259, 261, 263 and 267 Richmond Street West and 41-59 Widmer Street consisting of two towers of 37 and 42 storeys towers
Reference Number:	19 144266 STE 10 OZ
Property Address:	126, 132 and 142 John Street, 259, 261, 263 and 267 Richmond Street West and 41 to 59 Widmer Street
Municipality/UT:	Toronto/Toronto
OLT Case No:	OLT-22-004352
OLT Lead Case No:	OLT-22-004352
OLT Case Name:	2625547 Ontario Inc., 2757460 Ontario Inc., Allen Zimmerman, and 306 Adelaide Street West Ltd. v. Toronto (City)

**Heard:** July 17-21, 2023 by video hearing

**APPEARANCES:**

**Parties**

RioCan (Festival Hall) Trust

City of Toronto

**Counsel**

Calvin Lantz  
Donya Yarahmadi

Jessica Amey  
Daniel Elmadany

2625547 Ontario Inc.,  
2757460 Ontario Inc.,  
Allen Zimmerman and  
306 Adelaide Street West Ltd.

Meaghan McDermid

## **DECISION DELIVERED ON BY S. DEBOER AND ORDER OF THE TRIBUNAL**

---

[Link to Final Order](#)

### **INTRODUCTION AND BACKGROUND**

[1] This matter involves the appeal by 2625547 Ontario Inc., 2757460 Ontario Inc., Allen Zimmerman and 306 Adelaide Street West Ltd., (collectively referred to as the “Appellant”) against the City of Toronto’s (“City”) approval of the Zoning By-law Amendment (“ZBA”) to permit a mixed-use development at 126, 132 and 142 John Street, 259, 261, 263 and 267 Richmond Street West and 41 to 59 Widmer Street (collectively referred to as the “site”).

[2] The ZBA considered and approved by the City permitted the construction of a mixed-use development with retail, office, open space and institutional uses in a three to eight storey base building. There would be two residential use towers, consisting of 37 and 42 storeys – approximately 131 metres (“m”) and 145 m in height. The proposal includes the demolition of the existing Rio-Can Hall commercial complex.

[3] The proposal before the Tribunal would permit a total gross floor area of approximately 79,711 square metres (“sq m”), including 639 dwelling units. The types of dwellings would include 403 studio and one-bedroom units. There would also be 220 two-bedroom units and 70 three-bedroom units. The proposal would include approximately 23,700 sq m of non-residential space and a two-level underground garage with 231 vehicle parking spaces. There would be space to store approximately 829 bicycles.

[4] The proposal would incorporate two designated heritage building facades, a child-care centre for approximately 62 children and approximately 700 sq m of Privately-Owned Publicly Accessible Space (“POPS”) at the corner of John Street and Richmond Street.

### **Site and Surrounding Area**

[5] The site is located at the southwest corner of Richmond Street West and John Street. The site is considered to be a part of the City’s Downtown Secondary Plan and is within the King-Spadina Secondary Plan (“KSSP”) area.

[6] The site has a frontage of approximately 75.98 m on John Street, 92.05 m on Richmond Street West and 93.57 m on Widmer Street. The site has an approximate area of 7,488 sq m. Currently, the site contains an existing six-storey mixed-use entertainment and retail complex, which includes a movie theatre, restaurants, and other retail uses. The current gross floor area of the site is approximately 23,670 sq m and has 425 below grade parking spaces. The site currently incorporates two heritage building facades on its John Street frontage.

[7] On the north side of Richmond Street, across from the site, is a ten-storey commercial office building with at-grade retail. To the west are a six and a half-storey and a three-storey commercial building, a 39-storey mixed-use building and a 27-storey mixed use building.

[8] To the east, across John Street, are two-storey buildings with outdoor patio areas for restaurant uses and a group of three-storey rowhouses containing restaurants, retail and office uses.

[9] To the south, abutting the site along John Street, is a three-storey building containing a restaurant with a single-storey building located behind it. Further south at the northwest corner of John Street and Adelaide Street West there is a single storey

building containing a restaurant. A 42-storey mixed-use condominium building is located between John Street and Widmer Street and abuts the site (“Bond Condos”). Bond Condos includes a 7-storey base portion and tower with a zero setback from the shared lot line. At the northeast corner of Widmer Street and Adelaide Street West (302 to 310 Adelaide Street West) is a group of three and a half-storey rowhouses that contain retail and office uses along with some apartment units. There is surface parking behind the rowhouses which directly abuts the site. It is noted that this is the location of the Appellant’s buildings.

[10] To the west, at the corner of Widmer Street and Richmond Street, is a group of two-storey rowhouses that have both commercial and office uses. To the south of the rowhouses on Widmer Street is a new currently under construction 41-storey residential building containing a two to seven-storey base building. South of this, and on the corner of Adelaide Street West and Widmer Street, is an eight-storey warehouse building with office uses.

### **Application History**

[11] The original application was submitted in 2019 to amend the Zoning By-law 569-2013 (“ZBL”) to permit a mixed-use development containing retail, office and institutional uses and a theatre in a three to eight-storey base building. There would be two residential towers above the base building with overall heights of 39 and 40 storeys. The total gross floor area was 76,264 sq m and included 613 dwelling units. Also included in the application was a three-storey 781 sq m child-care facility to accommodate up to 62 children. The daycare was proposed to be located in the south-west portion of the site, set back 3.5 m from the shared lot line with the Appellant’s lot line and 0.0 m from the Bond Condos shared lot line (“original proposal”).

[12] The original proposal also contained a central loading facility, a two-level parking garage with 304 vehicle and 796 bicycle parking spaces with access on Widmer Street. A 700 sq m POPS was proposed at the corner of John Street and Richmond Street.

[13] In this original proposal, Widmer Street was proposed to be a two-way street along the west side of the site, from Richmond Street to the parking garage entrance. From south of the parking entrance to Adelaide Street West, Widmer Street was proposed to remain one-way, northbound.

[14] Since there was not any space for a municipal sidewalk, the Applicant was proposing a 5.0 m pedestrian clearway easement along the site. Above the ground floor, the proposal included the commercial and residential portions of the building to have been cantilevered, to extend over the pedestrian easement.

[15] On April 24, 2019, the application for the original proposal was submitted with all the appropriate technical and supporting reports. The application was deemed complete by the City on June 25, 2019.

[16] In May 2020, the Applicant submitted a revised proposal which included the following changes:

- a. An increase in the height of Tower "A" from 40 storeys to 42 storeys, a reduction in Tower "B" from 39 to 37 storeys.
- b. An increase in the total gross floor area from approximately 76, 264 sq m to 79,711 sq m.
- c. An increase in the total dwelling units from 613 to 693, with a corresponding increase in the residential floor area from 27,188 sq m to 49,273 sq m.
- d. An increase in the total retail floor area to 8,462 sq m on the ground, second and fourth floors.
- e. An increase in the total office area to 17,912 sq m on the third to eighth floors.
- f. 3,283 sq m of theatre space on the ground to third floors.

- g. A reduction in the total number of vehicle parking spaces from 304 to 231 and an increase in the total number of bicycle parking spaces from 796 to 829.

[17] On February 24, 2021, a statutory public meeting was held by the Toronto and East York Community Council concerning the revised application. City Staff presented their report providing a summary of the revised proposal along with their recommendation to approve the application. The Staff report was adopted and the recommendations were approved by the Community Council.

[18] On November 9, 2021, City Council approved the Community Council resolution with amendments.

[19] On July 22, 2022, City Council passed ZBA 949-2022. The key provisions of ZBA 949-2022 allow:

(1) The Site is to be rezoned from a site-specific Commercial Residential Employment Zone ("CRE") (Exception CRE 74) to a CRE (Exception CRE 43) zone. The details of Exception CRE 43 are listed below:

(43) Exception CRE 43  
The lands, or portion thereof as noted below, are subject to the following Site Specific Provisions, Prevailing By-laws and Prevailing Sections.

Site Specific Provisions:

- (A) On the lands municipally known in the year 2021 as 259-267 Richmond Street West, 126-142 John Street, and 41-59 Widmer Street, if the requirements of Section 6 and Schedule A of By-law 949-2022 are complied with, buildings, structures, additions, enlargements or public parking may be erected or used if it complies with (B) to (CC) below;
- (B) Despite Regulation 50.10.20.10(1)(A), public parking is a permitted use, provided it is located below-ground in a parking garage;
- (C) The total gross floor area of all buildings and structures must not exceed 86,000 square metres, of which a minimum non-residential gross floor area of 23,700 square metres must be provided;

- (D) In addition to the exclusions listed in Regulation 50.5.40.40(3), the gross floor area of a mixed use building is also reduced by:
- (i) all indoor amenity space in excess of that required by this exception; and
  - (ii) lobbies, vestibules, exit stairwells, and related ancillary uses located below ground level;
- (E) The provision of dwelling units is subject to the following:
- (i) A minimum of 30 percent of the total number of dwelling units must have two or more bedrooms;
  - (ii) A minimum of 10 percent of the total number of dwelling units must have three or more bedrooms; and
  - (iii) Any dwelling units with three or more bedrooms provided to satisfy (E)(ii) above are not included in the provision required by (E)(i) above;
- (F) Despite Regulations 50.5.40.10(1) and (2), the height of a building or structure is the distance between the Canadian Geodetic Datum elevation of 88.7 metres, and the elevation of the highest point of the building or structure;
- (G) Despite Regulations 50.10.40.10(1) and (2), the permitted maximum height of a building or structure is the numerical value, in metres, following the letters "HT" on Diagram 3 of By-law 949-2022;
- (H) Despite (F) and (G) above and Regulations 50.5.40.10(3), (4), (5), (6), (7) and (8) and 50.10.40.10(2) and (3), the following building elements and structures are not subject to area restrictions and may exceed the permitted maximum height limit shown on Diagram 3 of By-law 949-2022:
- (i) equipment used for the functional operation of the building such as electrical, utility, mechanical and ventilation equipment by a maximum of 6.5 metres, provided any such equipment on a tower is located within the dashed boundary labelled "mechanical penthouse";
  - (ii) structures or parts of the building that are used for the functional operation of the building, such as enclosed stairwells, roof access, maintenance equipment storage, elevator shafts and overruns, chimneys, vents and water supply facilities by a maximum of 6.5 metres, provided any such

structures on a tower are located within the dashed boundary labelled "mechanical penthouse";

- (iii) structures that enclose, screen or cover the equipment, structures and parts of a building listed in (i) and (ii) above, parapet walls or green roofs on top of such enclosures, by a maximum of 6.5 metres, without limit on their total area measured horizontally, provided any such structures on a tower are located within the dashed boundary labelled "mechanical penthouse";
  - (iv) chimneys, pipes, and vents may further exceed the permitted maximum height in (i), (ii), and (iii) by 3.0 metres;
  - (v) window washing equipment, building maintenance units and crane structures;
  - (vi) antennae and satellite dishes, by a maximum of 6.5 metres;
  - (vii) canopies and awnings, by a maximum of 5.0 metres;
  - (viii) architectural features, architectural flutes, ornamental elements, parapets, art and landscaping features, guardrails, balustrades, railings, screens, trellises, pergolas, columns, pillars, pool equipment and associated decks and platforms, terraces, balconies, cornices, light standards and fixtures, green roofs, planters, seating areas, wheelchair ramps, retaining walls, public art, and decorative screens, by a maximum of 4.0 metres;
  - (ix) structures associated with the privately owned publicly accessible space, such as gazebos or trellises;
  - (x) structures providing washroom facilities to rooftop amenity space or open-air recreation areas by a maximum of 3.0 metres;
  - (xi) an enclosed structure or part of the building providing access to outdoor space for a day nursery, by a maximum of 4.5 metres, if its area covers no more than 50 square metres, measured horizontally;
- (l) Despite Clauses 50.5.40.70, 50.10.40.30, 50.10.40.70 and 50.10.40.80, and Section 600.10, the required minimum building and tower setbacks, the permitted building depth and minimum above-ground distance between main walls and towers, and the facing distance between windows are as shown in metres on Diagram 3 of By-law 949-2022;



- (J) For the purposes of this exception, a "tower" is the portions of a building which collectively enclose the entirety of a storey above the Canadian Geodetic Datum elevation of 132.7 metres and without restriction on the gross floor area of any storey located above the Canadian Geodetic Datum elevation of 132.7 metres;
- (K) Despite (I) above and Regulations 50.5.40.60(1), 50.10.40.60(1), (2), (3) (5), (6), (7) and (8) and 50.10.40.70(1), the following building elements may encroach into the required minimum building setbacks shown on Diagram 3 of By-law 949-2022;
- (i) balconies, cornices, window sills, parapets, trellises, pillars, patios, decks, guardrails, balustrades and railings, architectural, art and landscape features, pilasters, eaves, light fixtures, ornamental elements and railings may encroach to a maximum of 3.0 metres;
  - (ii) stairs, stair enclosures, retaining walls, doors, wheelchair ramps, decks, fences, screens, site servicing features, structures used for wind protection purposes, exterior signage, awnings and canopies, air vents and air intakes, building maintenance units, and underground garage ramps and associated structures;
  - (iii) window washing equipment and crane structures;
  - (iv) structures associated with the privately owned publicly accessible space, such as pergolas, gazebos or trellises; and
  - (v) terraces, inclusive of platforms, guards, and parapets, may exceed the minimum required building setback to the extent of the main walls of the storey located below it;
- (L) Despite Regulation 50.5.40.60(1), canopies and awnings are not subject to the height limitation of having to be located within 5.0 metres of the elevation of the ground directly below it;
- (M) Despite Regulation 50.10.40.50(1), amenity space for the use of residents of the building must be provided at a minimum rate of 3.55 square metres for each dwelling unit, in accordance with the following:
- (i) at least 2.0 square metres for each dwelling unit is indoor amenity space;
  - (ii) at least 1.55 square metres for each dwelling unit is outdoor amenity space; and

- (iii) at least 40.0 square metres is outdoor amenity space in a location adjoining or directly accessible to indoor amenity space;
- (N) Despite Regulations 50.5.80.1(1), 200.5.10.1(1), 200.5.10.1(6), 200.10.1(2) and 200.5.200.50(1), and Table 200.5.10.1, parking spaces must be provided in accordance with the following:
  - (i) a minimum of 0.17 parking spaces for each dwelling unit for the use of the residents of the building;
  - (ii) a minimum of 113 parking spaces for the shared use of residential visitors and non-residential uses, and may be provided as non-exclusive parking spaces in a public parking facility; and
  - (iii) a minimum of 4 parking spaces required in (ii) above must be provided for the exclusive use of the day nursery for pick-up and drop-off operations in the manner described in Schedule A to this By-law 949-2022;
- (O) For each "car-share parking space" provided, the minimum number of required parking spaces for residents required pursuant to (N)(i) above may be reduced by four (4) parking spaces, up to a maximum of 1 "car-share parking space" per 60 dwelling units. For the purposes of this exception:
  - (i) "car-share" means the practice whereby a number of people share the use of one or more vehicles that are owned and operated by a profit or non-profit car-sharing organization, and such "car-share" vehicles are made available to at least the occupants of the building for short term rental, including hourly rental; and
  - (ii) "car-share parking space" means a parking space exclusively reserved and signed for a car used only for "car-share" purposes;
- (P) Despite Regulation 200.5.1.10(2), a maximum of 10 percent of the total number of parking spaces provided may have a minimum width of 2.6 metres, despite being obstructed pursuant to Regulation 200.5.1.10(2)(D);
- (Q) For the purposes of Regulation 200.5.1.10(2)(A) and (D), Electric Vehicle Infrastructure, including electrical vehicle supply equipment, does not constitute an obstruction to a parking space;
- (R) Despite Regulations 200.15.1(1) and (3), an accessible parking space must have the following minimum dimensions:

- (i) length of 5.6 metres;
  - (ii) width of 3.4 metres;
  - (iii) vertical clearance of 2.1 metres; and
  - (iv) the entire length of an accessible parking space must be adjacent to a 1.5 metre wide accessible barrier free aisle or path on one side of the accessible parking space;
- (S) Despite Regulations 200.15.1(4) and 200.15.1.5(1), an accessible parking space is not required to be the closest parking space to a barrier free entrance to a building or to a passenger elevator or be the shortest route from such entrance or elevator;
- (T) Despite Regulations 230.5.1.10(4) and (5) a stacked bicycle parking space must have the following minimum dimensions:
- (i) length of 1.8 metres;
  - (ii) width of 0.45 metres; and
  - (iii) vertical clearance of 1.2 metres;
- (U) Despite Regulations 230.5.1.10(1) and 230.50.1.20(1), "short-term" bicycle parking spaces may:
- (i) be located outdoors on the lot;
  - (ii) be located indoors or outdoors in an enclosed or secured room or enclosure on levels of the building below-ground, above-ground or on the first storey, provided that the "short-term" bicycle parking spaces will be publicly accessible; and
  - (iii) be located more than 30 metres from a pedestrian entrance to the building above or below ground level;
- (V) Despite Regulations 230.5.1.10(9) and 230.5.1.10(10), both "long-term" and "short-term" bicycle parking spaces may be provided in a stacked bicycle parking space arrangement and in any combination of vertical, horizontal or stacked positions;
- (W) Despite Clause 220.5.10.1, loading spaces must be provided on the lands in accordance with the following minimum requirements:
- (i) three (3) Type "B" loading spaces;

- (ii) two (2) Type "C" loading spaces;
  - (iii) one (1) Type "G" loading space; and
  - (iv) a grocery store or supermarket with a gross floor area of 5,000 square metres or more within the building must provide an additional one (1) Type "B" loading space.
- (X) Despite Regulation 220.5.20.1(1), a two-way driveway to a loading space may have sections that are divided by a median, provided that each direction has a minimum width of 3.5 metres in such sections;
- (Y) Regulation 50.10.20.100(21) with respect to specific conditions for an outdoor patio does not apply;
- (Z) Regulation 50.10.20.100(1) with respect to specific conditions for amusement arcades does not apply;
- (AA) Regulation 50.10.20.100(32) and Regulation 150.100.20.1(1) with respect to specific use conditions for eating establishments do not apply;
- (BB) Regulation 50.10.20.100(39) with respect to specific conditions for entertainment place of assembly and amusement devices do not apply;
- (CC) Despite Regulation 600.20.10(1)(A) and (B), in the first storey of a mixed-use building or non-residential building, no minimum or maximum percentage of lot frontage abutting the priority retail street for any permitted use is required.

Prevailing By-laws and Prevailing Sections: (None Apply)  
 [By-law: 949-2022 Enacted]

[20] It must be noted that the approval of the ZBA is pursuant to the provisions of Section 37 of the *Planning Act* concerning Community Benefits. The agreed upon Community Benefits to be provided by the owner of the site are as follows:

1. A cash contribution of six million, two hundred thousand (\$6,200,000.00) dollars to be allocated towards the provision of new affordable housing and/or the Toronto Community Housing Corporation revolving capital fund for repairs to Toronto Community Housing Corporation housing in the local Ward, at the discretion of the Chief Planner and Executive Director, City Planning in consultation with the Ward Councillor, whereby:

(A) Two million and one-hundred thousand (\$2,100,000.00) dollars shall be paid to the City by the owner within thirty (30) days after

the last day the Zoning by-law Amendments are in full force and effect and the statutory appeal period has lapsed; and

(B) Four million and one-hundred thousand (\$4,100,000.00) dollars shall be paid to the City by the owner prior to the issuance of the first above-grade building permit for any building on any part of the lands;

(C) The cash contributions referred to in 1. (A) and (B) above shall be indexed upwardly in accordance with the Statistics Canada Residential or Non-Residential, as the case may be, Building Construction Price Index for the Toronto Census Metropolitan Area, reported quarterly by Statistics Canada in Building Construction Price Indexes Table 18-10-0135-01, or its successor, calculated from the date of this By-law to the date of payment;

(D) In the event the cash contributions referred to in 1. (A) and (B) above have not been used for the determined purpose within three years of the amending Zoning By-law coming into full force and effect, the cash contribution may be redirected for another purpose, at the discretion of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor, provided the purpose is identified in the Official Plan and will benefit the community in the vicinity of the lands.

2. The Owner, at its sole cost and expense, shall design, construct, finish, furnish, fully equip, Commission, Hand-over and convey to the City a non-profit licensable Child Care Centre, in a manner that is more particularly set out in the Section 37 Agreement, comprising a minimum of 780 square metres of interior space and approximately 390 square metres of exterior space in reasonable proximity to the interior space, including the associated outdoor play area, all appliances (major and minor), play-based toys (interior and exterior) and administrative furnishing and equipment, all situate within the base building of the Development along Widmer Street, including a minimum of two (2) parking spaces reserved for the exclusive use of the child care facility between the hours of 6:30 a.m. and 7:00 p.m. from Monday to Friday, and an additional two (2) parking spaces reserved for the exclusive use of the child care facility for pick-up/drop-off operations between the hours of 6:30 a.m. and 10:00 a.m. and the hours of 3:00 p.m. to 6:30 p.m. from Monday to Friday, said parking spaces to be assigned accordingly, be barrier free and be located in close proximity to the elevators providing the shortest route between the underground parking garage and the Child Care Centre, all in accordance with the terms and conditions set out in the Section 37 Agreement;

(A) prior to the issuance of any above grade building permit for any portion of the lands, the owner shall provide to the City a letter of credit in the amount sufficient to guarantee 120% of the estimated cost of the design, construction and handover of the Child Care Centre complying with the specifications and requirements of the Section 37 Agreement to the satisfaction of the General Manager, Children's Services and the Chief Financial Officer and Treasurer;

(B) prior to the earlier of residential occupancy of the building in which the Child Care Centre is located and/or registration of any condominium for the building in which the Child Care Centre is located, the Child Care Centre shall be conveyed to the City, at no cost to the City, in fee simple, in an acceptable environmental condition to the satisfaction of the Executive Director, Corporate and Real Estate Management and City Solicitor;

(C) the details of the other matters as described in these provisions, such as timing, location, obligations and any such matters to implement the Child Care Centre, will be finalized between the owner and the City and will be substantially in accordance with the City of Toronto's Child Care Development Guidelines (2016) and to the satisfaction of the Executive Director, Corporate and Real Estate Management, the General Manager, Children's Services, and the Chief Planner and Executive Director, City Planning, in consultation with the City Solicitor; and;

(D) on, or prior to, the conveyance of the Child Care Centre, the City and the owner enter into, and register on title to, the appropriate lands an Easement and Cost Sharing Agreement for nominal consideration and at no cost to the City, that is in a form satisfactory to the City Solicitor; the Easement and Cost Sharing Agreement shall address and/or provide for the integrated support, use, operation, maintenance, repair, replacement and reconstruction of certain shared facilities, and the sharing of costs, in respect thereof, of portions of the subject lands to be owned by the City and the owner as they pertain to the Child Care Centre, and the development to be constructed within the base building of the development.

3. Prior to the conveyance of the Child Care Centre, the owner shall pay to the City the sum of \$500,000.00 to provide one-time cash contributions in support of the Child Care Centre, allocated generally as follows:

(A) a one-time cash contribution in the amount of \$250,000.00 to the City's Child Care Capital Reserve Fund to be used towards Start-Up Operating Costs, to replace appliances and large equipment due to wear and tear, and to support ongoing financial viability, to be paid prior to the child-care facility being made available to the City;

(B) a one-time cash contribution in the amount of \$250,000.00 towards toys, furnishing and equipment in accordance with provincial and municipal standards based on a mutually agreeable inventory list provided by the Child Care Centre Operator and/or the General Manager of Children's Services, which will be finalized and approved by the General Manager of Children's Services;

(C) the cash contributions referred to in 3. (A) and (B) above shall be indexed upwardly in accordance with the Statistics Canada Residential or Non-Residential, as the case may be, Building Construction Price Index for the Toronto Census Metropolitan Area, reported quarterly by Statistics Canada in Building

Construction Price Indexes Table 18-10-0135-01, or its successor, calculated from the date of this By-law to the date of payment; and;

(D) the owner and the City acknowledge and agree that the owner shall have no obligation to replace or repair the supplies, equipment and furnishings that are required to equip the Child Care Centre.

[21] The Appellant filed an appeal of the approval of the ZBA to the Ontario Land Tribunal on August 23, 2022. The Appellant claimed that the ZBA is not consistent with the Provincial Policy Statement, 2020 (“PPS”), does not conform with A Place to Grow: Growth Plan for the Greater Horseshoe, 2020, (“Growth Plan”), does not conform with the City of Toronto Official Plan (“OP”), and does not conform to the KSSP.

## **THE HEARING**

[22] The Tribunal commenced a hearing of the merits of the appeal on July 17, 2023. The Parties provided four witnesses to provide expert opinion evidence in their respective fields of expertise. All four witnesses were affirmed and approved to provide testimony in their respective fields of expertise.

[23] The Tribunal approved the following exhibits as evidence to the hearing:

Exhibit #	Description
1.	Joint Document Book
2.	Agreed Statement of Facts filed on May 12, 2023
3.	Expert Witness Statement, Tyler Grinyer (June 1, 2023)
4.	Expert Reply Witness Statement, Tyler Grinyer (June 16, 2023)
5.	Expert Witness Statement, Steven Krossey (June 1, 2023)
6.	Expert Reply Witness Statement, Steven Krossey (June 16, 2023)
7.	Applicant, RioCan Exhibit Book (June 23, 2023)
8.	Applicant, RioCan Shadow Study (June 23, 2023)
9.	Appellant (Zimmerman) Compendium of Witness Statements and Reply Witness Statements of Allan Ramsay and Michael Tedesco

10. Appellant (Zimmerman) Visual Evidence Photobook (June 23, 2023)
11. Appellant (Zimmerman) Visual Evidence (June 23, 2023)
12. Appellant's Six Loading Videos
13. TG Document filed by Appellant
14. Appellant's Inbound Traffic Assignment
15. Traffic Count (20 Hours of Video Footage)
16. Priority Retail Street By-law 1681
17. Real Estate Listing for 302-304 Adelaide Street West.
18. Written Submission Allen Zimmerman 2021

### *Issues*

[24] The issues that were to be determined by the Tribunal were the following:

#### **Vehicular Access, Traffic, Loading and Parking**

1. Is the proposed singular vehicular access adequate to serve the residential and non-residential uses proposed on the subject lands?
2. Will the proposed access, traffic flow controls and on-street parking cause unacceptable negative impacts to the surrounding road network and create unsafe conditions for passenger pick-up and drop off, deliveries and day care access on and around the subject lands resulting in unacceptable conflicts between vehicles, pedestrians and cyclists?
3. Are the changes to the surrounding road network, in particular the widening of only a portion of Widmer St., which are required to implement the proposal appropriate and sufficient to accommodate the proposed development without unacceptable negative impacts on traffic operations and access to adjacent properties considering their existing and planned context?
4. Are the number, type and location of parking spaces provided by the ZBLA adequate to serve the proposed development, including the daycare and commercial uses?
5. Is the reduction in the required number of loading docks/spaces appropriate and adequate to service the proposed development?
6. With regards to the transportation related matters addressed in Issues 1 to 5, is/does the ZBA:



- a. Consistent with the Provincial Policy Statement, 2020 (“PPS”), including policies 1.1.1(c), (g), 1.1.3.2(b), 1.1.3.4, 1.5.1(a), 1.6.7.1, 1.6.7.2?
- b. Conform with the Places to Grow: Growth Plan for the Greater Horseshoe, (2020) (“Growth Plan”), including policies 2.2.1.4(a),(d), 3.2.1.1, 3.2.2.1, 3.2.2.2, 3.2.2.3?
- c. Conform with the City’s Official Plan, including policies 2.2.1, 2.2.2(a),(d),(f), 2.2.4(a),(b),(c), 2.2.5(d)(h), 2.2.1.11, 2.4.2, 2.4.7, 2.4.11, 2.4.15(a), (b),(c),(e), 2.4.22, 3.1.1.6, 3.1.1.11, 3.1.13, 3.1.14, 3.1.1.15(c),(e), 3.1.3.4, 3.1.3.10(f), 4.7.1(b),(d), 4.7.2(d),(h)?
- d. Conform with the Downtown Secondary Plan, including policies 3.8, 7.2, 8.3 to 8.5, 8.27, 8.29?

### **Daycare, Built Form and Impacts on Adjacent Lands**

- 7. Is the proposed location of the daycare facility and the location of the required outdoor/rooftop play area appropriate?
- 8. Does the ZBA permit development on the subject lands which will unduly limit the re-development potential of the adjacent Appellants’ properties located at 302-308 Adelaide Street West?
- 9. Do the reduced building setbacks to the south property line and proposed built form provide an appropriate separation distance and suitable transition to the adjacent Appellants’ properties located at 302-308 Adelaide Street West?
- 10. Do the reduced setbacks to Widmer Street, pedestrian clearway and proposed built form provide for a suitable and desirable public realm on Widmer Street?
- 11. With regards to the daycare and built form matters addressed in Issues 8-11, is/does the ZBA:
  - a. Consistent with the PPS, including policies 1.1.1(a), 1.1.3.2(a), 1.1.3.4?
  - b. Conform with the Growth Plan, including policies 1.2.1 and 2.2.1.4(e)?
  - c. Conform with the City’s Official Plan, including policies 2.2.1.4(d),(e),(f), 3.1.1.2, 3.1.1.3, 3.1.1.15, 3.1.3.1, 3.1.3.3, 3.1.3.5, 3.1.3.6, 3.1.3.7, 3.1.3.9, 3.1.3.10(a),(b), 3.1.3.11, 3.1.3.12, 3.1.3.13, 3.1.4.9 to 3.1.4.11, 4.7.1(d), 4.7.2(a)?
  - d. Conform with the Downtown Secondary Plan, including policies 3.3, 6.19, 6.26, 9.1, 9.3, 9.8, 9.9, 9.14, 9.17, 9.22, 9.24.1, 9.25, 9.26?
  - e. Conform with Official Plan SASP 517 policies B(ii), (vi)?

f. Have regard for the City's Tall Building Design Guidelines?

g. Have appropriate regard for the updated King-Spadina Secondary Plan (OPA 486) which is currently under appeal, including policies 6.1, 6.2, 6.8?

*Planning Witness Tyler Grinyer*

[25] Mr. Grinyer is a professional planner who was a part of the planning process for the Applicant and this application. Mr. Grinyer gave the Tribunal a thorough history of the application and the process that the Applicant went through with the City in order to come to an agreement on the ZBA.

*Summary Opinion*

[26] Mr. Grinyer gave an overall opinion that the City Council adopted ZBA represents good planning and an urban design that will improve the current underutilization of the site. The proposal as presented to the Tribunal today is the same as the revised proposal that was approved by Council. The proposal will revitalize the site with new residential uses which are currently unavailable to the site. The proposal will create open spaces and a child daycare, all while increasing office and retail opportunities at the site.

[27] Mr. Grinyer opined that the proposal is in keeping with the PPS, conforms to the Growth Plan, the OP, the KSSP and the Downtown Secondary Plan. The proposal is in keeping with the applicable urban guidelines such as the Tall Building Design Guidelines and the Growing up Guidelines.

[28] In Mr. Grinyer's opinion, the proposal, as presented, creates a significant mixed-use opportunity within the downtown corridor by supporting intensification of an underutilized site within a built-up area. The site has access to existing municipal services and public transit such as streetcars and two subway stations.

[29] Mr. Grinyer gave the opinion that the proposed residential and mixed-use intensification of the site utilizes existing land and infrastructure by providing new housing and employment opportunities in a compact built form in a transit-supportive area within the boundaries of three major transit stations, which supports the policies of the PPS, Growth Plan and the OP.

[30] The site has a designation of being in a *Regeneration Area*. It was Mr. Grinyer's opinion that this designation is used in the OP to accommodate what is projected to be the largest amount of population and employment growth. This designation allows for a mixture of flexible land uses to help attract investment and efficient intensification to meet the goals of the OP.

[31] In Mr. Grinyer's opinion, the proposal is in keeping with the OP and ZBL, as both of these instruments permit a broad range of residential and commercial uses for the site. The proposal provides for a wide range of housing options which will serve the needs of the downtown core and projected population growth. The proposal will be in keeping with the mixed-use of the area.

[32] Concerning the built form of the proposal, Mr. Grinyer's opinion was that the site is an appropriate location for a tall building development, given its location within the downtown core, its frontage on a major arterial street (this being Richmond Street West) and its proximity to public transit and three major transportation hubs (three subway stations). The two towers will have appropriate setbacks as required and will not preclude any future redevelopment of surrounding lands. The design of the two towers will limit the amount of shadow impact on Queen Street West in accordance with the Queen Street West Heritage Conservation District Plan.

[33] It was Mr. Grinyer's opinion that the podium building heights reflect the existing character in relation to adjacent rooflines and setbacks. The base building design supports the widening of the sidewalks (specifically on Widmer Street) and will provide for a desirable public realm.

[34] For these reasons, it was Mr. Grinyer's opinion that the proposal, as presented to the Tribunal, is an appropriate and desired development for the site. The proposal represents an efficient urban design and represents good land use planning. The land use planning instrument that was approved by City Council is consistent with the PPS, the Growth Plan, the OP and the KSSP. The ZBA should be approved by the Tribunal in its current form.

*Land Planning Issues Raised by Appellant*

[35] Mr. Grinyer reviewed the land use planning issues raised by the Appellant and addressed each issue as listed below.

*Issue #7 Is the proposed location of the daycare facility and the proposed outdoor play area appropriate?*

[36] In Mr. Grinyer's opinion, the location of the daycare and rooftop outdoor area are appropriate as they make use of a lesser used street (Widmer Street) for child drop-off and pick-up. The location of the childcare facility is next to the parking garage area which is appropriate to allow for efficient drop-off and pick-ups, as needed with vehicular traffic. The remaining site frontages are left to be used for non-residential retail uses and the outdoor play area's location allows for the most efficient use of the childcare facility itself and is an appropriate use of the space for maximum outdoor use.

*Issue #8 Does the ZBA permit development on the subject lands which will unduly limit the re-development potential of the adjacent Appellants' properties located at 302-308 Adelaide Street West?*

[37] It was Mr. Grinyer's opinion that the proposal does not unduly limit any future development of the Appellant's properties. The location of the daycare, in particular, does not limit any redevelopment in accordance with the Appellant's "as-of-right" zoning

allowances at this time. Mr. Grinyer is not aware of a redevelopment proposal that has been brought forth by the Appellant, let alone a proposal which proves any undue limitations for the Appellant. Without a proposal by the Appellant which demonstrates how the ZBA limits their ability to redevelop their lands, there is no way to prove hardship to the Appellant in relation to the Applicant's site-specific ZBA.

*Issue #9 Do the reduced building setbacks to the south property line and proposed built form provide an appropriate separation distance and suitable transition to the adjacent Appellants' properties located at 302-308 Adelaide Street West?*

[38] In Mr. Grinyer's opinion, the reduced building setbacks require a minimum 3.5 m setback with a south façade of the building being a blank wall without any windows. These requirements have been met and provide for an appropriate separation distance and transition to the Appellant's properties.

*Issue #10 Do the reduced setbacks to Widmer Street, pedestrian clearway and proposed built form provide for a suitable and desirable public realm on Widmer Street?*

[39] Mr. Grinyer gave opinion that the setback shown in the ZBA are appropriate and provide for a suitable public realm and pedestrian experience. The Downtown Secondary Plan allows for the City to request an easement within 6 m of the closest public street curb. The setbacks demonstrated in the proposal vary between 5.0 and 9.7 m, as agreed upon by the City, and are deemed appropriate to provide for a proper public realm, specifically along Widmer Street.

*Issue #11 With regards to the daycare and built form matters addressed in Issues 8-11, is/does the ZBA:*

- a. *Consistent with the PPS, including policies 1.1.1(a), 1.1.3.2(a), 1.1.3.4?*
- b. *Conform with the Growth Plan, including policy 2.2.1.4(e)?*

- c. *Conform with the City's Official Plan, including policies 2.2.1.4(d),(e),(f), 3.1.1.2, 3.1.1.3, 3.1.1.15, 3.1.3.3, 3.1.3.5, 3.1.3.6, 3.1.3.7, 3.1.3.9, 3.1.3.10(a),(b), 3.1.3.11, 3.1.3.12, 3.1.3.13, 3.1.4.9, 4.7.1(d), 4.7.2(a)?*
- d. *Conform with the Downtown Secondary Plan, including policies 3.3, 6.19, 6.26, 9.1, 9.8.1, 9.8.2, 9.8.4, 9.8.6, 9.9, 9.14, 9.17, 9.22, 9.24.1, 9.26?*
- e. *Have appropriate regard for the updated King-Spadina Secondary Plan (OPA 486) which is currently under appeal, including policies 6.1, 6.2, 6.8?*

[40] With regard to each of these sub-issues, it was Mr. Grinyer's opinion that the proposal is consistent with the PPS, conforms with the Growth Plan, conforms to the OP, conforms to the Downtown Secondary Plan and has appropriate regard for the updated, but currently under appeal to the OLT, KSSP.

[41] It was Mr. Grinyer's opinion that, for the reasons mentioned above, the ZBA, as presented, is an appropriate development of the site and is good land use planning of an area that is in need of redevelopment and intensification.

*Planning Witness Allan Ramsay*

[42] Mr. Ramsay was retained by the Appellant and gave expert opinion evidence as to why the proposal is not consistent with the PPS, does not conform to the Growth Plan, the City's OP or the KSSP. Mr. Ramsay also gave expert opinion evidence on the specific issues raised by the Appellant on this proposal.

[43] The experts agreed upon the timeline and the process of which the ZBA was approved by City Council. It was also agreed upon by the experts that the Appellant did have and use the opportunities provided to them through the municipal review process to express their views and concerns about the proposal. These opportunities included the following:

- (i) The Appellant provided comments to City staff and Councillor by email dated June 25, 2019;
- (ii) The Appellant submitted written comments enclosing a Peer Review prepared by Tedesco Engineering on traffic matters to City Council in a letter dated March 9, 2021;
- (iii) The Appellant submitted additional written comments with an updated Peer Review on Traffic matters to City Council in a letter dated April 4, 2021;
- (iv) The Appellant submitted additional written comments to City Council in a letter dated May 4, 2021.

### *PPS*

[44] In Mr. Ramsay's opinion, the proposal is not consistent with the PPS as the proposal does not have appropriate regard to the following area of Section 2 of the *Planning Act*, specifically:

- (h) the orderly development of safe and healthy communities;
- (n) the resolution of planning conflicts involving public and private interests;
- (p) the appropriate location of growth and development; and
- (r) the promotion of built form that,
  - (i) is well-designed,
  - (ii) encourages a sense of place, and
  - (iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant.

[45] Concerning item (h) of Section 2 of the *Planning Act*, it was Mr. Ramsay's opinion that the proposal does not represent orderly development and the proposal is an actual "underdevelopment" of the site and will have adverse impacts to the surrounding properties and road network.

[46] Concerning item (n) of Section 2 of the *Planning Act*, Mr. Ramsay's opinion was that the proposal will result in many planning conflicts involving both public and private interests. Mr. Ramsay's opinion focused on the location of the daycare, which he said will create parking and daycare drop-off and pick-up issues. The proposal will create shadowing and sunlight issues that will unduly affect and limit the redevelopment of the properties owned by the Appellant. In Mr. Ramsay's opinion, the proposal's specific location of the daycare will create streetscape impacts along the only access point on Widmer Street.

[47] Concerning item (p) of Section 2 of the *Planning Act*, Mr. Ramsay's opinion was that the low-rise section of the development that is being located closest to the Appellant's lands can be considered an 'underdevelopment' and will unduly limit the development potential of the Appellant's lands.

[48] Concerning item (r) of Section 2 of the *Planning Act*, Mr. Ramsay's opinion was that the proposal will not create a built form that is well designed and encourages a sense of place or provides for adequate public spaces. The smaller low-rise section will not be able to be integrated into the streetscape harmoniously or contribute to a sense of place within the context of the neighbourhood itself.

#### *Land Use Planning Issues Raised by the Appellant*

[49] Concerning the specific issues raised for this appeal, Mr. Ramsay gave opinion on each of those items:

*Issue #7 Is the proposed location of the daycare facility and the proposed outdoor play area appropriate?*

[50] In Mr. Ramsay's opinion, the proposed location of the daycare facility adjacent to the Appellant's lands is not appropriate, as the location of the outdoor play space area will not provide appropriate privacy as well as being subject to negative overlook and



shadow impacts from the property located on the west side of Widmer (40-58 Widmer Street). Several floors of windows and balconies from the 40-58 Widmer property will directly overlook the play area. The location of the drop-off/pick-up area for the daycare is not located close enough to the daycare itself to provide for the most efficient drop-off/pick-up process. This may cause traffic issues and/or concerns. These traffic issues were explained in further detail by the traffic experts. The ZBA should include specific regulations for these pick-up/drop-off areas and these areas should be located adjacent to the POPS for compatibility concerns.

*Issue #8 Does the ZBA permit development on the subject lands which will unduly limit the re-development potential of the adjacent Appellants' properties located at 302-308 Adelaide Street West?*

[51] It was Mr. Ramsay's opinion that the proposal will limit the Appellant's ability to redevelop their lands. The Appellant's as-of-right nine to ten-storey potential redevelopment would not be allowed as this could cause issues regarding privacy, overlook and shadow impacts for the Applicant's proposed two-storey building with the third-storey outdoor play area.

[52] Mr. Ramsay gave opinion in the context of a potential larger development of the Appellant's lands under the City's redevelopment plan in this "Regeneration Area". In this context, the Appellant would require their own site-specific ZBA. However, due to the Applicant's proposed development, the Appellant would require mitigation concerning setbacks and step-backs. These potential mitigation measures would likely limit the redevelopment potential of the Appellant's lands, making future redevelopment unfeasible for the Appellant.

*Issue #9 Do the reduced building setbacks to the south property line and proposed built form provide an appropriate separation distance and suitable transition to the adjacent Appellants' properties located at 302-308 Adelaide Street West?*

[53] In Mr. Ramsay's opinion the reduced setback could limit the redevelopment potential of the Appellant's lands. The proposal does not permit any windows or balconies in the south facing façade for the three-storey daycare area. However, the proposal does allow for balconies, patios and/or windows into the building setbacks of up to 3.0 m. This, once again, could hinder any potential redevelopment of the Appellant's lands.

[54] Mr. Ramsay opined that the south side setback area could hinder the current surface parking area for the Appellant and their tenants or clients. If a larger setback was permitted, this potential situation could be avoided.

[55] Mr. Ramsay gave opinion that the reduced setback is neither appropriate nor desirable. The reduced setback will limit the potential redevelopment of the Appellant's lands. The same potential hinderances will occur as stated in issue 8.

*Issue #10 Do the reduced setbacks to Widmer Street, pedestrian clearway and proposed built form provide for a suitable and desirable public realm on Widmer Street?*

[56] In Mr. Ramsay's opinion, the reasons for these proposed setbacks is to allow for the creation of a pedestrian walkway and a widening of Widmer Street, while allowing the second to eight floors to have a 0.0 m setback. This would create a "cantilevered" effect overhanging the pedestrian sidewalk. This means that the public sidewalk is located on private property, will not allow any direct sunlight to the walkway and be dark and uninviting for users. This cantilever would create an overpowering and dominant feature along Widmer Street and would be highly undesirable for this neighbourhood. Mr. Ramsay opined that the site is large enough to accommodate a sidewalk without the cantilevering of the higher floors.

*Issue #11 With regards to the daycare and built form matters addressed in Issues 8-11, is/does the ZBA:*

- a. *Consistent with the PPS, including policies 1.1.1(a), 1.1.3.2(a), 1.1.3.4?*

- b. *Conform with the Growth Plan, including policy 2.2.1.4(e)?*
- c. *Conform with the City's Official Plan, including policies 2.2.1.4(d),(e),(f), 3.1.1.2, 3.1.1.3, 3.1.1.15, 3.1.3.3, 3.1.3.5, 3.1.3.6, 3.1.3.7, 3.1.3.9, 3.1.3.10(a),(b), 3.1.3.11, 3.1.3.12, 3.1.3.13, 3.1.4.9, 4.7.1(d), 4.7.2(a)?*
- d. *Conform with the Downtown Secondary Plan, including policies 3.3, 6.19, 6.26, 9.1, 9.8.1, 9.8.2, 9.8.4, 9.8.6, 9.9, 9.14, 9.17, 9.22, 9.24.1, 9.26?*
- e. *Have appropriate regard for the updated King-Spadina Secondary Plan (OPA 486) which is currently under appeal, including policies 6.1, 6.2, 6.8?*

[57] Concerning Issue 11(a), Mr. Ramsay's opinion was that the proposal is not consistent with these policies. The proposal's location of the daycare does not represent an efficient use of the site or an efficient land use pattern. If the daycare were to be relocated on the site, this would allow for a more efficient redevelopment of the southern portion of the site. This would fit in more with the other adjacent developments that are currently under construction or near completion. Mr. Ramsay opined that this would allow the Appellant to further redevelop their lands in a more appropriate manner in the future.

[58] Concerning Issue 11(b), it was Mr. Ramsay's opinion that the proposal does not conform to the Growth Plan as the proposal is not a compact built form due to the inclusion of the two-storey daycare with the outdoor rooftop play area. If the daycare were to be moved to a different area of the site and further intensification of the southern façade area were to take place, then this proposal could conform to this policy from the Growth Plan. It was also Mr. Ramsay's opinion that the proposed pedestrian walkway and cantilevered floors above do not conform with this policy as this will reduce the public vibrancy to the area.

[59] As for issue 11(c), Mr. Ramsay gave opinion that the daycare is a community service and appropriate for the neighbourhood. However, the proposed location in the two-storey south end of the site represents an underdevelopment of the site and will unduly hinder the Appellant from redeveloping their lands. The daycare should be

relocated near the POPS and a higher intensification of the southern portion of the site should be included in the proposal.

[60] Continuing with issue 11(c), Mr. Ramsay gave opinion that the proposed public realm along Widmer Street does not conform to the OP as this public realm does not provide a comfortable, attractive, and vibrant setting due to the cantilevered section of the pedestrian clearway. It was Mr. Ramsay's opinion that the pedestrian clearway does not receive good exposure to sunlight due to the cantilevering of the base building. Mr. Ramsay continued to opine that the proposal does not conform to the City's OP due to the inadequacy of the proposed public realm, the location of the daycare and the limited vehicle parking opportunities underground for the daycare.

[61] As for issue 11(d), Mr. Ramsay opined that the proposal does not conform to these policies as the low-rise section does not fit into the surrounding planned or developed area and may potentially hinder the opportunity of the Appellant to redevelop their lands due to the low-rise area at the south end of the site. The setbacks proposed do not enhance the public realm and do not allow for proper massing and intensification for the site. The proposal does not limit the impacts of shadowing, specifically in the outdoor play area assigned to the daycare. The built-form transition, from the 42-storey tower to the eight-storey base to the two-storey daycare, is not an appropriate means of transition for the site and it impedes the Appellant's ability to redevelop their lands appropriately.

[62] With regards to issue 11(e), Mr. Ramsay's opinion was that the proposal will not conform to the KSSP due to the location of the two-storey daycare. This will, amongst other issues, inhibit the ability of the Appellant to redevelop their lands in an appropriate form and could impede the Appellant's greatest future redevelopment potential of their lands.

### *Overall Opinion*

[63] It was Mr. Ramsay's overall opinion that the proposal before the Tribunal is not consistent with the PPS, does not conform to the Growth Plan, does not conform to the OP, and does not conform to the current secondary plan or to the KSSP that is currently under appeal to the OLT.

[64] Mr. Ramsay opined that the proposal, as presented to the Tribunal, does not meet the objectives of as set out in a *Regeneration Area* and will not meet the guidelines related to the unique character of a *Regeneration Area*. The proposal will not fit into the neighbourhood and is not compatible with the context of the area. Mr. Ramsay opined that the low-rise built form at the south end of the property is not an appropriate use for the daycare centre. He opined that the daycare should be moved to what he considers to be the more appropriate area next to the POPS. This would allow for a better drop-off and pick-up location to be redesigned for the daycare and allow for a taller intensification to occur at the south end of the development. The proposal will unduly affect the Appellant's ability to redevelop their lands, even to the as-of-right standard that is currently permitted, due to the location of the daycare and the two-storey façade at the south end of the site. The proposed setbacks do not allow for an appropriate development to occur which would be compatible with the neighbourhood.

[65] It was Mr. Ramsay's opinion that the proposal should not be approved by the Tribunal without appropriate changes that focus on the daycare location, setbacks and possible transportation issues, which will be the focus of the transportation experts. The proposal does not represent good land use planning.

### *Transportation Witness Steven Krossey*

[66] Mr. Krossey had been retained by the Applicant during the proposal process. His retainer dealt with vehicular access points and a master site plan concept. Mr. Krossey

was a part of the initial and supplemental studies that were submitted for the proposal process.

[67] Mr. Krossey stated that, prior to the study, discussions occurred between the City and the Applicant where it was agreed upon that only one vehicular access point would be appropriate, in place of the three access points that are currently available. It was determined that the access point would be the garage access on Widmer Street. This Widmer Street access would include an entryway for loading docks.

[68] As a result of the change to one access point, two different scenarios were developed to examine the traffic volumes and impacts:

- Scenario 1 included the widening of Widmer Street and conversion of Widmer to two-way traffic north of the site and one-way traffic south of the site as northbound only.
- Scenario 2 included the widening of Widmer Street and conversion of Widmer to two-way traffic north of the site. The only difference from Scenario 1 would be that Widmer Street would be southbound traffic only south of the site. It must be noted that Widmer Street currently operates as one-way northbound only.

[69] The City preferred Scenario 2 with some modifications. Those modifications were a part of the supplemental study that was completed in November 2019. These modifications included adding traffic lights (“signalization”) at the intersections of Widmer Street with both Richmond Street West and Adelaide Street West. Previously, Scenario 1 only had new signals installed at the intersection of Richmond Street West and Widmer Street. Another modification to be included with signalization was a widening of Widmer Street to 7.5 m to allow for two-way traffic from Richmond Street West south on Widmer Street to the vehicular entrance to the site. The Applicant now

proposes that an 8.0 m widening of Widmer Street can be completed to enhance the two-way traffic flow to and from the site entrance.

[70] The traffic studies and updated trip counts confirmed that Scenario 2 would be the appropriate option to meet the parking and vehicular needs from an urban transportation standpoint.

*Traffic Issues Raised by Appellant*

[71] Mr. Krossey took the Tribunal through the Appellant's traffic issues concerning the proposal. Mr. Krossey addressed issues 1 and 3 as he felt they were interrelated.

*Issue #1 Is the proposed singular vehicular access adequate to serve the residential and non-residential uses proposed on the subject lands?*

*Issue #3 Are the changes to the surrounding road network, in particular the widening of only a portion of Widmer St., which are required to implement the proposal appropriate and sufficient to accommodate the proposed development without unacceptable negative impacts on traffic operations and access to adjacent properties considering their existing and planned context?*

[72] In Mr. Krossey's opinion, the collaborative process that was used with the City led to their approval of Scenario 2. The City encouraged new developments to consolidate vehicular access points where possible. As such, the City's preference was for one access point and their preference was for this one access point to be on Widmer Street since it was not an arterial network road. The proposed Widmer Street access is appropriate as the studies have shown that this access point is adequate to accommodate the traffic volumes projected.

[73] With regards to Issue 3, Mr. Krossey gave opinion that the studies and proposal considered the adjacent properties and any proposed development of these properties,

particularly the development directly west across Widmer Street. It was his opinion that the proposed changes are sufficient to meet the needs of the site and adjacent properties. The studies have proven that the vehicular traffic model is well designed from an urban design standpoint and that the road improvements on Widmer Street were developed in a collaborative manner with City Staff. The proposal can accommodate the projected traffic without any undue impact to adjacent properties.

*Issue #2 Will the proposed access, traffic flow controls and on-street parking cause unacceptable negative impacts to the surrounding road network and create unsafe conditions for passenger pick-up and drop off, deliveries and day care access on and around the subject lands resulting in unacceptable conflicts between vehicles, pedestrians, and cyclists?*

[74] It was Mr. Krossey's opinion that the proposed widening of Widmer Street will allow sufficient space for the daycare drop-off and pick-up. There is proposed on-site areas for deliveries to limit curbside drop-offs. There are dedicated dock delivery spaces for retail deliveries and dedicated short-term parking spaces underground for daycare drop-offs and pick-ups. It was Mr. Krossey's opinion that the project will not create any unacceptable or unsafe conditions for drop-offs, pick-ups or deliveries to the site.

*Issue #4 Are the number, type and location of parking spaces provided by the ZBLA adequate to serve the proposed development, including the daycare and commercial uses?*

[75] Mr. Kossey opined that the reports received by the City concerning the amount of vehicle parking spots demonstrates that the City is satisfied by the proposed number and location of the parking spots and their adequacy to serve the site including the daycare. The proposed number of parking spots fall within the required range of the parking rate standard according to Zoning By-law 89-2022.



*Issue #5 Is the reduction in the required number of loading docks/spaces appropriate and adequate to service the proposed development?*

[76] Mr. Krossey opined that the ZBA requires the following to be included for loading docks:

- 3 Type “B” loading spaces;
- 2 Type “C” loading spaces;
- 1 Type “G” loading space.

[77] The ZBA contemplates two scenarios, one with a grocer in the site and one without a grocer in the site. At the time of this hearing, it has not been determined if a grocer will occupy some of the retail space. If a grocer were to occupy some of the retail space, it was Mr. Krossey’s opinion that the grocer would be able to use one of the existing “B” loading spaces. This would be a grocer that is within an urban location. It was Mr. Krossey’s opinion that urban settings for grocers do not require an “A” level loading dock. It is typical of a downtown environment for a grocer to use a type “B” loading dock. It was Mr. Krossey’s opinion that the proposed loading dock supply is adequate, whether a grocer is located on the site or not.

*Issue #6 With regards to the transportation related matters addressed in Issues 1 to 5, is/does the ZBA:*

- a. *Consistent with the Provincial Policy Statement, 2020 (“PPS”), including policies 1.1.1(c), (g), 1.1.3.2(b), 1.1.3.4, 1.5.1(a), 1.6.7.1, 1.6.7.2?*
- b. *Conform with the Places to Grow: Growth Plan for the Greater Horseshoe, (2020) (“Growth Plan”), including policies 2.2.1.4(a),(d),3.2.1.1, 3.2.2.1, 3.2.2.2, 3.2.2.3?*
- c. *Conform with the City’s Official Plan, including policies 2.2.1, 2.2.2(a),(d),(f), 2.2.4(a),(b),(c), 2.2.5(d)(h), 2.2.1.11, 2.4.2, 2.4.7, 2.4.11, 2.4.15(a),*

(b),(c),(e), 2.4.22, 3.1.1.6, 3.1.1.11, 3.1.13, 3.1.14, 3.1.1.15(c),(e), 3.1.3.4, 3.1.3.10(f), 4.7.1(b),(d), 4.7.2(d),(h)?

- d. *Conform with the Downtown Secondary Plan, including policies 3.8, 7.2, 8.3 to 8.5, 8.27, 8.29?*

[78] It was Mr. Krossey's opinion that issues 1 through 5 demonstrate that the proposal is consistent with the PPS, conforms to the Growth Plan, conforms with the OP and conforms with the Downtown Secondary Plan thereby forming his opinions on issue 6.

*Issue #8 Does the ZBA permit development on the subject lands which will unduly limit the re-development potential of the adjacent Appellants' properties located at 302-308 Adelaide Street West?*

[79] It was Mr. Krossey's opinion that since there have not been any plans or proposals made concerning the Appellant's properties, he cannot give an opinion concerning any possibility of undue limitations. The proposal does not limit any access to the Appellant's lands.

#### *Overall Opinion*

[80] It was Mr. Krossey's opinion that from an urban transportation standpoint, the proposal before the Tribunal is located in a highly accessible location with multiple means of public and private transportation. The proposed one vehicle access point on Widmer Street meets the requirements of City Staff. The access configuration and street improvements – including Widmer Street – will not cause any undue impact on the neighbourhood and the traffic that is proposed to be generated can be accommodated by the street network. The proposed parking for the site is appropriate and the location and amount of loading docks are appropriate for the site as proposed.

*Transportation Witness – Michael Tedesco*

[81] Mr. Tedesco is the professional traffic engineer that was retained by the Appellant to provide a peer review to the reports and studies given by Mr. Krossey to the City concerning the proposal.

[82] Mr. Tedesco's key findings and conclusions are that, if the traffic direction on Widmer Street is changed as proposed from the existing one-way only to the Scenario 2 two-way traffic for a part of Widmer Street, then signalization would be required at both the Richmond-Widmer intersection and the Adelaide-Widmer intersection. This need for signalization is an absolute requirement as the delays that would be encountered at these intersections could be over 18 minutes for traffic using the Widmer-Adelaide intersection alone. In his professional opinion, if signalization is not introduced at this intersection, then the resulting delay could be considered an urban traffic engineering failure.

[83] It was Mr. Tedesco's opinion that the need for signals could be eliminated if vehicular access to the site retained either of the existing Richmond Street or John Street access points, along with the proposed Widmer Street access.

[84] Mr. Tedesco gave opinion that the proposed southbound direction of Widmer from the site to the intersection of Widmer Street and Adelaide Street West will cause undue impact on the Appellant's lands. This direction change will cause traffic that is destined to the Appellant's lands to have to circle the block, via John Street and then Richmond Street, before finally using Widmer Street to enter these properties. This will cause much delay to these persons wanting to visit the Appellant's lands, when compared to the current northbound one-way use of Widmer Street, which allows quick access from Adelaide Street West. The proposed change to southbound traffic flow on Widmer Street to Adelaide Street West will encourage non-local trips from Richmond Street to the eastbound Adelaide Street West.

[85] It was Mr. Tedesco's opinion that Widmer Street should be widened to allow for full two-way traffic to occur from Richmond Street to Adelaide Street West. This would allow the current traffic situation to continue onto the Appellant's lands from Adelaide Street West.

[86] Mr. Tedesco opined that the proposed intensification of the single access point to the site will cause unsafe conditions for pedestrians crossing the access point on the pedestrian walkway. The proposed daycare pick-up/drop-off area will cause more traffic congestion and safety issues that may result in accidents occurring with vehicles and pedestrians. The single vehicular access point is also located directly across Widmer Street from the vehicular access of the 40-58 Widmer Street Condominium development.

#### *Appellant's Traffic-Specific Issues*

*Issue #1 Is the proposed singular vehicular access adequate to serve the residential and non-residential uses proposed on the subject lands?*

[87] It was Mr. Tedesco's opinion that the single access point for vehicular traffic will significantly impact the surrounding traffic and traffic pattern. One of the other two existing access points would need to be retained on the site in order to mitigate the traffic concerns on Widmer Street.

*Issue #2 Will the proposed access, traffic flow controls and on-street parking cause unacceptable negative impacts to the surrounding road network and create unsafe conditions for passenger pick-up and drop off, deliveries and day care access on and around the subject lands resulting in unacceptable conflicts between vehicles, pedestrians, and cyclists?*

[88] As previously stated, it was Mr. Tedesco's opinion that there will be unacceptable negative impacts and unsafe conditions will occur if the proposal is allowed as presented to the Tribunal.

*Issue #3 Are the changes to the surrounding road network, in particular the widening of only a portion of Widmer St., which are required to implement the proposal appropriate and sufficient to accommodate the proposed development without unacceptable negative impacts on traffic operations and access to adjacent properties considering their existing and planned context?*

[89] It was Mr. Tedesco's opinion that, as demonstrated in his testimony above, the widening of Widmer Street only to the proposed entrance to the site will create unnecessary negative impacts while limiting the existing and future access to the Appellant's properties.

*Issue 4 Are the number, type and location of parking spaces provided by the ZBLA adequate to serve the proposed development, including the daycare and commercial uses?*

[90] Mr. Tedesco opined that the proportion of parking spaces allotted is too low for a proposal wherein 40 percent of the residential units are to be two-bedroom and three-bedroom units. It must be noted that the ZBA has a provision of "car-share" spaces, however none are included in the proposal before the Tribunal. For these reasons, the proposal does not have an appropriate amount of necessary parking for the residents and workers that will be living and working at the site.

*Issue 5 Is the reduction in the required number of loading docks/spaces appropriate and adequate to service the proposed development?*

[91] It was Mr. Tedesco's opinion that the proposed loading spaces – including the removal of the existing type "A" load space is not appropriate and ignores s. 220.5.10

subsection (4) of the OP concerning loading space rates. The removal of this loading space cannot be justified since it is the intent of the Applicant to have a grocer as a part of their retail space at the site.

### *Overall Opinion*

[92] It was Mr. Tedesco's overall opinion that the proposal, as presented to the Tribunal, does not provide adequate vehicular access points, as there should be a minimum of two vehicular access points for a proposal of this intensification. Since there are three vehicular access points being used harmoniously at this time, concentrating those three access points into one access point demonstrates a lack of regard for safety, not only for vehicular traffic, but also for normal pedestrian traffic and child safety for the daycare drop-off/pick-up point.

[93] It was Mr. Tedesco's opinion that the current width of Widmer Street is currently substandard. If widening Widmer Street is to occur, then it should be widened south of the site to Adelaide Street West in order for a contiguous two-way traffic flow to occur.

[94] Mr. Tedesco opined that the underground parking rate is too little for the amount of residential units that are proposed by the Applicant. The loading dock area does not include a type "A" dock, which is necessary according to the OP for a grocery store to exist at the site.

[95] The on-street pick-up/drop-off location for the daycare, being close to tractor trailer traffic, will cause possible safety issues for pedestrian and vehicular traffic at the site.

[96] Overall, the proposal does not provide adequate safety and vehicular flow from a traffic engineering standpoint. The proposal should not be approved as presented to the Tribunal.

## **ANALYSIS AND FINDINGS**

[97] In consideration of rendering a decision on the ZBA, the Tribunal must have regard for information presented before it. The Tribunal must also take into consideration the information before the municipality (in this case, City Council), when it rendered its decision.

[98] In arriving at its decision, the Tribunal has reviewed the material evidence provided and considered the expert evidence and opinion of the witnesses. The Tribunal has given regard to the materials presented to City Council and the decision thereof.

[99] The Tribunal notes that a ZBA (in this case a site-specific ZBA) allows an applicant or landowner permissions or limitations on “what” can be built on said lands. These permissions include but are not limited to property setbacks, building height, gross floor area, amenity spaces, types of dwelling units, parking spaces, bicycle spaces, loading dock spaces and mixed-use spaces. The ZBA may also include other community benefit provisions agreed upon by the Applicant and the Municipality – in this case, a Section 37 agreement.

[100] Even though the Applicant has provided the Tribunal with potential site plans to demonstrate how the ZBA will be used, these plans, in fact, need to be approved by the City through the site plan Agreement process. The City must still approve the site plan, which considers “how” the Applicant would build their site within the parameters of the ZBA. Through the site plan process, the City may request changes to the site plan that it feels will allow for a better overall fit to the neighbourhood but would still be within the permissions of the ZBA. These changes could include, but are not limited to, vehicular access points and location of a daycare facility. It is noted that the appeal before the Tribunal does not include an appeal of a site plan Agreement.

[101] In reviewing the evidence presented before it, the Tribunal prefers the evidence of Mr. Grinyer and Mr. Krossey. The Tribunal finds that the Applicant and City Staff have given the application a thorough review and considered comments from the public – including the Appellant – to find a proposal that would satisfy the specific land planning and traffic issues raised through the ZBA process.

[102] The Appellant did take part in the ZBA process on at least four different occasions and did submit their concerns about the proposed ZBA. These concerns were considered by the City through the approval process. In fact, the Applicant and the City did take their concerns seriously as the final proposal included a directional change in Widmer Street adjacent to the Appellant's lands as proposed by the Appellant's land use planning professional.

[103] Concerning the Appellant's issues with the proposal, these concerns are not with the proposal itself. The concerns or issues focus on the **potential** traffic issues (including loading and daycare parking), location of the daycare itself with regards to the Appellant's lands, and the public realm and streetscape.

[104] The Tribunal does not and cannot rely on what are considered to be **potential issues** without acceptable corroborating data to prove the validity of these issues. The Tribunal did not receive any data from the Appellant that could be considered to prove these potential issues. As such, the Tribunal cannot consider these issues to be relevant land planning issues to deny the City approved ZBA.

[105] The Tribunal has not received from the Appellant any evidence that would demonstrate how the ZBA would unduly limit the potential redevelopment of their lands. In fact, the Appellant has not presented to the Tribunal or the City a plan for any redevelopment of their lands. The Tribunal finds that the Appellant has not demonstrated how the ZBA directly affects the Appellant's as-of-right uses.



[106] The Applicant demonstrated to the Tribunal its intention of reducing the current three vehicular access location to one vehicular access location only on Widmer Street. The Appellant has been given opportunities throughout the ZBA process and before this Tribunal to demonstrate how their traffic concerns warrant a Tribunal Order refusing or modifying the ZBA. The Tribunal finds that these concerns did not have enough supporting evidence to grant a refusal or a modification of the ZBA.

[107] The Tribunal finds that the proposal is an appropriate mixed-use development with a suitable amount of intensification that can be supported for the projected population growth for the area. The Tribunal finds that the proposal before it is of sound land use planning.

[108] The Tribunal finds that the proposed ZBA is consistent with the PPS and conforms to the Growth Plan. The Tribunal finds the proposal conforms to the OP, conforms to the Downtown Secondary Plan and conforms to the KSSP.

**ORDER**

[109] **THE TRIBUNAL ORDERS** that the appeal against Zoning By-law 949-2022 of the City of Toronto is dismissed.

*“S. deBoer”*

S. deBOER  
MEMBER

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

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.