

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: June 07, 2024

CASE NO(S).:

OLT-22-004580

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

Applicant and Appellant:
Subject:

Mizrahi Development Group (The One) Inc.
Application to amend the Zoning By-law –
Refusal or neglect to make a decision

Description:

To permit a 94-storey mixed-use building
20 230612 STE 11 OZ

Reference Number:

Property Address:

768 Yonge Street & 1-11 Bloor Street West
Toronto/Toronto

Municipality/UT:

OLT Case No.:

OLT-22-004580

OLT Lead Case No.:

OLT-22-004580

OLT Case Name:

Mizrahi Development Group (The One) Inc.
v. Toronto (City)

Heard:

July 12, 2023, by Video Hearing

APPEARANCES:

Parties

Mizrahi Development Group (The One)
Inc.

City of Toronto

R.W. Bloor Street Development
Corporation

EMM Financial Corp.

Counsel

Katarzyna Sliwa
Jessica Jakubowski

Amanda Hill
Lauren Pinder

Rodney Gill
David Bronskill (*in absentia*)
Caroline Jordan (*in absentia*)

Andrew Jeanie (*in absentia*)

	Stephanie Brazzell
Toronto Standard Condominium Corporation No. 2208	Jasmine Fraser Maggie Bassani (<i>in absentia</i>)
Greater Yorkville Residents Association	Christina Kapelos Andrew Biggart (<i>in absentia</i>)
ABC Residents Association	Christina Kapelos Andrew Biggart (<i>in absentia</i>)

MEMORANDUM OF ORAL DECISION DELIVERED BY M.A. SILLS ON JULY 17, 2023 AND ORDER OF THE TRIBUNAL

[Link to Order](#)

INTRODUCTION

[1] This matter involves an appeal brought by Mizrahi Development Group (The One) Inc. (“Applicant”) arising from the failure of the City of Toronto (the “City”) to make a decision on an application for a Zoning By-law Amendment for the properties Municipally known as 1–11 Bloor Street West and 768-784 Yonge Street, in the City of Toronto (“Subject Property”). The Subject Property is located at the southwest corner of Yonge Street and Bloor Street and has a total area of 0.28 hectares.

[2] The application proposes to increase the allowable height provision on the Subject Property from 85 to 94 storeys (306.9 to 338.3 metres (“m”) in height) to facilitate an increase in the number of dwelling units from 416 to 505. The statutory Parties have reached a Settlement in principle and are seeking the Tribunal’s approval of a modified development proposal.

BACKGROUND

[3] In March 2015, the Applicant submitted a Zoning By-law Amendment Application (the “2015 ZBA Application”) to permit the development of an 80-storey (318.6 m in

height) mixed-use building with a total of 544 residential units on the Subject Property. That application was subsequently appealed to the then Ontario Municipal Board as a result of the failure of City Council to make a decision in the requisite timeframe. On March 16, 2015, an application for Site Plan Approval was submitted, which was also subsequently appealed.

[4] The Applicant and the City ultimately reached a Settlement, and on April 18, 2017, the Tribunal approved the 2015 ZBA Application, and pursuant to an Interim Decision on May 3, 2017, allowing the redevelopment of the Subject Property with an 82-storey mixed-use building (306.3 m in height) with a total of 430 residential units.

[5] On February 18, 2020, the Tribunal issued an Order to finalize the proposed amendments to Zoning By-laws Nos. 438-86 and 569-2013, as amended. Further zoning refinements were authorized by the Tribunal on February 26, 2020 and August 4, 2020 (Zoning By-law Nos. 684-2020 and 685-2020).

[6] Notice of the Site Plan Approval Conditions was issued on May 7, 2020 and construction has commenced.

[7] In December 2020, a new application was filed seeking to permit a nine-storey increase in the height of the building (from 85 to 94 storeys). That application was subsequently appealed to the Tribunal for a non-decision on September 22, 2022.

[8] On February 7, 2023, City Council adopted a staff report recommending that the new application be refused and further directing the City Solicitor and applicable staff to attend the Ontario Land Tribunal ("OLT") hearing in opposition, and to continue to engage in discussions with the Applicant in an attempt to resolve the outstanding issues.

[9] The OLT held a first Case Management Conference (“CMC”) in regard to the appeal of the new application on May 12, 2023, during which five requests for Party status were granted and a second CMC was scheduled for July 17, 2023.

[10] The Applicant subsequently submitted a Settlement Proposal to the City offering to reduce the proposed increase in building height from nine storeys to six storeys, allowing for a total of 91 storeys (from 94 storeys) with a building height of 328.4 m (inclusive of the mechanical penthouse) for a total Gross Floor Area (“GFA”) of 82,946 square metres. The intent of the reduction in the number of storeys was to address concerns raised by the City staff related to shadow impacts.

[11] On May 30, 2023, City Council accepted the without-prejudice Settlement offer and directed the City Solicitor to attend the OLT hearing in support of the Settlement Proposal and to request that the Final Order be withheld pending notification by the City that certain conditions had been satisfied.

[12] None of the added Parties are opposing the Settlement Proposal.

PLANNING EVIDENCE

[13] Planning evidence was provided by David Huynh, a Registered Professional Planner and Member of the Canadian Institute of Planners. Mr. Huynh submitted a detailed policy analysis and planning rationale to support the revisions to the development proposal that are the subject of the Settlement Proposal.

[14] For greater clarity; the building as currently approved allows for 85 storeys and an overall height of 306.9 m. The Settlement Proposal results in an increase in the building height to 91 storeys, for an overall height of 338.3 m.

[15] The building currently approved maintains a five-storey podium and an 80-storey tower element, with retail space on the ground floor, mezzanine and concourse levels, a

restaurant on Level 5, a 176-room hotel on Levels 7 to 16, and 416 residential condominium units making up the balance of the tower. The remainder of the building at the top of the tower element remains unchanged from the site-plan approved building currently under construction.

[16] The Settlement Proposal results in the requirement for revisions to the maximum permitted heights for the various elements of the tower, as well as increases to the GFA and the amount of residential GFA, parking requirements, the location of mechanical levels, and other minor and stylistic changes.

[17] Mr. Huynh submits that from an architectural perspective, the increase in the height to 91 storeys allows for a more balanced design of the tower element. The additional height also provides an appropriate incorporation of the top residential levels with the architectural “crown” feature at the top of the tower and a more balanced and unified look of the tower, resulting in an elegant and more slender profile.

[18] From a land use planning policy perspective, it is Mr. Huynh’s opinion that the revised development proposal is consistent with the policies and intent of the Provincial Policy Statement, 2020, including but not limited to:

- Policies related to addressing a changing climate and supporting green infrastructure;
- Enhancing land use compatibility for sensitive land uses;
- Increasing minimum requirements for housing land supply;
- Providing for an appropriate range and mix of housing options and densities;
- Clarifying policies related to market-based housing by adding a reference to affordable housing;
- Providing healthy, liveable and safe communities;
- Encouraging transit-supportive development; and

- Identifying density targets for lands adjacent to major transit corridors and stations.

[19] The Growth Plan for the Greater Golden Horseshoe, 2019 (“GP, 2019”) directs growth to strategic growth areas, including urban growth centres and major transit areas. The Subject Property is within a 500 to 800 m radius of a transit station, in this case, the Yonge-Bloor interchange subway station. In his opinion, the development facilitated by the Settlement Proposal conforms to the relevant policies of the GP, 2019.

[20] A substantive portion of Mr. Huynh’s witness statement involved a detailed conformity analysis with respect to, among others, the policies of the City Official Plan (OPA 2006) and the Downtown Secondary Plan.

[21] Currently, at 85 storeys, the approved building is not only the tallest in the Bloor/North Midtown area, but it also is one of the tallest buildings in the City and will continue to be the tallest building in the Bloor-Yorkville/North Midtown Area. In Mr. Huynh’s professional opinion, the increased height will further define the tower as a landmark feature at one of the City’s key intersections, which will demarcate it within the City’s Guidelines.

[22] In accordance with policy (b) of Site and Area Special Policy 211, the proposed height is appropriately located at the epicentre of the ‘Height Peak’ in the vicinity of the Bloor-Yonge intersection, in a node where the tallest buildings are intended to be located at the intersection and maintain stepping down heights to the identified Height Ridges and Low-rise Areas.

[23] Mr. Huynh submits that the proposed height will continue to be compatible with existing, approved, and proposed heights within the vicinity and will maintain the stepping down of heights from the Bloor-Yonge intersection to the surrounding areas. Moreover, the revised development proposal will not result in the creation of any additional adverse impacts on the surrounding area. The additional height being

proposed for the tower element maintains the tower footprint, thereby maintaining the same tower setbacks and separation distances to adjacent buildings and towers. As such, there will be no additional light, view, or privacy impacts.

[24] In Mr. Huynh's opinion the building with the additional height being proposed continues to fit into the existing or planned context and contributes positively to the skyline.

[25] The building is designed with a base, a tower and a top, all of which are carefully integrated into a unified design. The tower element is designed to reduce the physical and visual impacts of the tower on the public realm, limit shadow impacts on the surrounding properties, maximize access to sunlight and open views of the sky from the public realm, limit and mitigate pedestrian-level wind impacts, provide access to daylight, and protect privacy in interior spaces within the tower.

[26] Mr. Huynh confirmed that the increased height of the building remains aligned with the findings of his Planning and Urban Design Rationale Report dated March 2015.

[27] The proposed design appropriately conforms to the new Provincial and Municipal planning framework and the surrounding area, and in his opinion, the proposed development continues to be appropriate and desirable. Based on his analysis, he is recommending that the ZBAs to implement the increase in building height be approved.

DISPOSITION

[28] In arriving at this Disposition, the Tribunal has reviewed the documentary materials and considered the unchallenged planning evidence and opinions of Mr. Huynh, which it accepts and relies upon.

[29] The Tribunal finds that the additional height being requested is appropriate and the overall proposal meets the planning policy guidelines, objectives and framework of

the Province and the City, and aligns with the principles of good land use planning. In particular, the added height will allow for additional housing units to be developed on the Subject Property, consistent with the Provincial and City's creation of housing initiatives.

[30] The design elements of the building serve to enhance a signature property within the City's prominent downtown core, where tall buildings are intended and expected to be located.

[31] The additional building height being proposed is compatible with other tall buildings in the vicinity of the Subject Property and, otherwise, will not detract from existing and/or future development within the immediate or local vicinity, nor will it result in the creation of unacceptable adverse impacts to other buildings, the streetscape, or the public realm.

[32] The Tribunal is further satisfied that the additional height will not unduly stress the capacity of the local water and sewer infrastructure or the local roads network. The Tribunal finds that the additional height being requested is appropriate, and the overall proposal meets the planning policy guidelines and framework of the Province and the City.

ORDER

[33] **THE TRIBUNAL ORDERS THAT** the appeal is allowed in part, and the Zoning By-law Amendments to implement the revisions to the development proposal are approved in principle, subject to the following conditions:

1. The implementing Zoning By-laws are in a form satisfactory to the City Solicitor;
2. That the amending Section 37 Agreement has been registered on title to the satisfaction of the City Solicitor; and

3. That as part of what is to be secured in the amending Section 37 Agreement, the Owner will amend its partnership with Artscape Atelier to turn one of the units on or above the 79th floor or an alternative location if satisfactory to the Chief Planner and Executive Director, City Planning, into a gallery space where Artscape Atelier will invite the public to exhibitions showcasing the work of the resident artists, and to allow the public to enjoy the extraordinary views available from this exceptionally tall building, with details to be secured in the amending Section 37 Agreement to the satisfaction of the Owner and the Chief Planner and Executive Director, City Planning. City Council further authorized the City Solicitor to take all necessary actions to implement City Council's decision.

"M.A. Sills"

M.A. SILLS
VICE-CHAIR

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.