

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: November 15, 2017

CASE NO(S): MM170016

PROCEEDING COMMENCED UNDER subsection 114(15) of the *City of Toronto Act*, 2006, S.O. 2006, c. 11, Sched. A

Subject:	Site Plan
Referred by:	179 Sheppard Avenue Ltd. and 181 Sheppard Avenue East Ltd.
Property Address/Description:	179-181 Sheppard Avenue East
Municipality:	City of Toronto
OMB Case No.:	MM170016
OMB File No.:	MM170016
OMB Case Name:	179 Sheppard Avenue Ltd. and 181 Sheppard Avenue East Ltd. v. Toronto (City)

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

Applicant and Appellant:	179 Sheppard Avenue Ltd. and 181 Sheppard Avenue East Ltd.
Subject:	Application to amend Zoning By-law No. 7625 - Refusal of Application by City of Toronto
Existing Zoning:	C2 (Local Shopping Centre)
Proposed Zoning:	Site Specific
Purpose:	To permit a 10 storey building with 230 units and 1,750 square metres of ground floor retail space
Property Address/Description:	179-181 Sheppard Avenue East
Municipality:	City of Toronto
Municipality File No.:	16 225685 NNY 23 OZ
OMB Case No.:	MM170016
OMB File No.:	PL170204

Heard: November 8, 2017 in Toronto, Ontario

APPEARANCES:**Parties****Counsel**

179 Sheppard Avenue Ltd. and 181
Sheppard Avenue East Ltd.

Jason Park
Michael Cook

Tilzen Holdings Limited

Daniel Artenosi

City of Toronto

Amanda Hill

**MEMORANDUM OF ORAL DECISION DELIVERED BY MICHEL BELLEMARE ON
NOVEMBER 8, 2017 AND ORDER OF THE BOARD**

[1] This proceeding was the second pre-hearing conference on appeals pursuant to s. 114(15) of the *City of Toronto Act* and s. 34(11) of the *Planning Act* on applications for rezoning and site plan approval for a property at 179 and 181 Sheppard Avenue East.

[2] Developed through consensus among the parties, Mr. Park presented the Board with a final draft Procedural Order, including an Issues List.

[3] Mr. Park advised that, although the City of Toronto (“City”) would not consent to mediation in this case, the parties were working together to reduce the list of issues for adjudication. He confirmed that the parties continue to require five days for the hearing.

[4] Appearing on behalf of the City Ms. Hill concurred with Mr. Park’s submissions and confirmed that Mark Crawford remained counsel of record for the City. On behalf of his client, Mr. Artenosi also concurred with Mr. Park’s submissions.

[5] Mr. Shojaddin Tabizadeh, who has participant status, expressed concern about the draft Procedural Order not allowing participants to give oral evidence at the hearing. Mr. Park clarified that paragraph 12 of the draft Procedural Order requires participants to provide the Board and the parties a written statement summarizing the evidence they intend to give at the hearing by February 16, 2018. Mr. Tabizadeh confirmed that he would be able to do so.

[6] The five-day hearing continues to be scheduled to start at **10 a.m. on Monday, March 19, 2018 at:**

**Ontario Municipal Board
655 Bay Street, 16th Floor
Toronto, Ontario**

[7] The Procedural Order (Attachment 1) will govern the proceedings.

[8] No further notice is required.

[9] This panel is not seized.

“Michel Bellemare”

MICHEL BELLEMARE
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board
A constituent tribunal of Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

ONTARIO MUNICIPAL BOARD

Commission des affaires municipales de l'Ontario

PROCEEDING COMMENCED UNDER subsection 114(15) of the *City of Toronto Act*, 2006, S.O. 2006, c. 11, Sched. A

Subject:	Site Plan
Referred by:	179 Sheppard Avenue Ltd & 181 Sheppard Avenue East Ltd
Property Address/Description:	179-181 Sheppard Ave E
Municipality:	City of Toronto
OMB Case No.:	MM170016
OMB File No.:	MM170016
OMB Case Name:	179 Sheppard Avenue Ltd & 181 Sheppard Avenue East Ltd v. Toronto (City)

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

Applicant and Appellant:	179 Sheppard Avenue Ltd & 181 Sheppard Avenue East Ltd
Subject:	Application to amend Zoning By-law No. 7625 - Refusal of Application by City of Toronto
Existing Zoning:	C2 (Local Shopping Centre)
Proposed Zoning:	Site Specific
Purpose:	To permit a 10-storey building with 230 units and 1,750 square metres of ground floor retail space
Property Address/Description:	179-181 Sheppard Ave E
Municipality:	City of Toronto
Municipality File No.:	16 225685 NNY 23 OZ
OMB Case No.:	MM170016
OMB File No.:	PL170204

PROCEDURAL ORDER

The Board orders that:

1. The Board may vary or add to this Order at any time, either on request or as it sees fit. It may amend this Order by an oral ruling or by another written Order.

Organization of the Hearing

2. A prehearing conference was held on **July 24, 2017** at **10:00 a.m.**, at the **Ontario Municipal Board, 655 Bay Street, 16th Floor, Toronto, ON M5G 1E5** in the **City of Toronto**.
3. A second prehearing conference was held on **November 8, 2017** at **10:00 a.m.**, at the **Ontario Municipal Board, 655 Bay Street, 16th Floor, Toronto, ON M5G 1E5** in the **City of Toronto**.

4. The contested hearing, if required, will commence on **March 19, 2018 at 10:00 a.m.**, at the **Ontario Municipal Board, 655 Bay Street, 16th Floor, Toronto, ON M5G 1E5** in the **City of Toronto**
5. The length of time scheduled for the hearing will be **5 days**. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
6. The parties and participants identified at the prehearing conference are listed in **Attachment "A"** to this Order.
7. The Issues are set out in the Issues List referred to below and included as **Attachment "B"** to this Order. There will be no changes to this list unless the Board permits it. A party who asks for changes to this list may have costs awarded against it.
8. The order of evidence at the hearing shall be as set out in **Attachment "C"** hereto. The Board may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Board.

Requirements Before the Hearing

9. All parties and participants (or their representatives) shall provide a mailing address, email address, and a telephone number to the Board as soon as possible. Any such person who retains a representative (legal counsel or agent) subsequent to the first prehearing conference must advise the other parties and the Board of the representative's name, mailing address, email address and phone number as soon as possible.
10. A party who intends to call witnesses, whether by summons or not, shall provide to the Board, the other parties and to the municipal Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before **January 18, 2018**. For expert witnesses, a party is to include a copy of the curriculum vitae and the area of expertise in which the witness is proposed to be qualified.
11. An expert witness shall prepare an expert witness statement that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 14. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.
12. A participant must provide to the Board and the parties a participant statement on or before **February 16, 2018**, or the participant may not give oral evidence at the hearing.
13. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence and his or her area of expertise, as in section 14.
14. On or before **February 16, 2018**, the parties shall provide copies of their expert reports and expert witness statements to the other parties. The parties shall prepare a Joint Document Book to be filed with the Board on the first day of the hearing. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the hearing unless ordered otherwise by the presiding Member.

15. Any party may reply to an expert report, witness statement, outline of expert's evidence or participant statement, provided that such reply is provided to all other parties on or before **March 5, 2018**.
16. A person wishing to change written evidence, including witness statements, must make a written motion to the Board in accordance with the Board's Rules 34 to 38.
17. On or before **March 12, 2018**, the parties shall provide copies of their visual evidence to all of the other parties. If a model is proposed to be used, the Board must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.
18. A party who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Board and the parties are notified on or before **March 12, 2018**, that the written evidence is not part of their record.
19. Documents may be delivered by personal delivery, email, facsimile, courier, or registered or certified mail, or otherwise as the Board may direct. The delivery of documents by fax and email shall be governed by the Board's Rules 26 to 31 on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
20. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.

This Member is [not] seized.

So orders the Board.

SUMMARY OF KEY DATES

<u>Date</u>	<u>Event</u>
July 24, 2017	Prehearing Conference
November 8, 2017	Second Prehearing Conference
January 18, 2018	List of witnesses and the order in which they will be called
February 16, 2018	Exchange of expert reports/witness statements, evidence outlines for witnesses under summons, and participants statements
March 5, 2018	Exchange of reply evidence/statements
March 12, 2018	Exchange visual evidence
March 12, 2018	Notification to Board and Parties if witness not to provide oral evidence
March 19, 2018	Contested hearing

ATTACHMENT "A"

PARTIES AND PARTICIPANTS

PARTIES

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ATTACHMENT “B”

ISSUES LIST

Issues of 179 Sheppard Avenue Ltd. & 181 Sheppard Avenue East Ltd.

None

Issues of the City of Toronto

PROVINCIAL STATUTORY & POLICY REQUIREMENTS

1. Does the proposed development and Zoning By-law Amendment (the “Proposed Development”) have regard for the matters of provincial interest set out in Section 2 of the *Planning Act*, including subsections (h), (p) and (r)?
2. Would the approval of the proposed development have appropriate regard for the decisions of City Council as required by Section 2.1 of the *Planning Act*?
3. Is the proposed development consistent with the purposes of the *Planning Act* as set out in Section 1.1 of the Act, including subsections (b), (c) and (f)?
4. Is the proposed development consistent with the Provincial Policy Statement 2014 policies relating to the official plan being the most important vehicle for implementation of the Provincial Policy Statement? (Comprehensive, integrated and long-term planning is best achieved through official plans.)
5. Does the proposed development conform with and have no conflict with the Growth Plan for the Greater Golden Horseshoe, 2017? More specifically with Policy 5.2.4 (5)(a),(b) and (c).

CITY OF TORONTO OFFICIAL PLAN

6. Does the proposed development conform with the following policies of the City of Toronto Official Plan:
 - a. Avenues: Reurbanizing Arterial Corridors (2.2.3)
 - b. Healthy Neighbourhoods (2.3.1)
 - c. Built Form (3.1.2)
 - d. Parks and Open Spaces (3.2.3)
 - e. Mixed Use Areas (4.5)
 - f. Height and/or Density Incentives (Section 37) (5.1.1)

CITY OF TORONTO GUIDELINES

7. Does the proposal appropriately and adequately implement the City of Toronto Mid-Rise Building Performance Standards?

ZONING

8. Compliance with City of Toronto Zoning By-law No. 569-2013, specifically that a building on this site must be located under a 45-degree angular plane projected along the entire required rear yard setback, starting at a height of 10.5 metres above the average elevation of the ground along the rear lot line.

DEVELOPMENT SPECIFIC ISSUES

Planning – Land Use and Urban Design

9. Is the built form of the proposed development, including building siting, setbacks, building height, length, massing, density, scale, separation and stepbacks appropriate?
10. Does the building provide an appropriate transition and acceptable relationship to the adjacent *Neighbourhoods* designation to help mitigate shadow, overlook, skyview and privacy?
11. Does the development provide appropriate grade relationship to Sheppard Avenue East?
12. Is the proposed building height appropriate given the existing and planned context?
13. Does the proposal provide for a suitable scale and streetwall to Sheppard Avenue East in addition to stepping down appropriately to the existing *Neighbourhoods* designation?
14. Does the proposal provide appropriate stepbacks above the streetwall to maintain good street proportion?
15. Does the proposed building represent overdevelopment of the site, with particular regard to the surrounding existing and planned context and would the approval of the development create an undesirable precedent?

Landscaping

16. Has an appropriate amount of landscaping been provided along Sheppard Avenue East and to the rear of the proposed development to enhance the public realm?

Parks

17. Is an appropriate amount of parkland provided free and clear of encumbrances, including size, configuration and location of the parkland dedication?

Transportation Services - Traffic, Access, Parking and Servicing

18. Parking and loading is proposed to be accessed via the east-west portion of the public laneway at the rear (south) side of the site. However, on May 24, 2017, City Council adopted item NY22.1 to authorize the permanent closure to vehicular traffic of the east-west portion of the public lane at the rear of the site. Is the driveway location or reconfigured site access appropriate to access parking and loading and possible traffic impact if proposed driveway is re-located?

Development Engineering and Toronto Water- Servicing

19. Does the development pose an unacceptable burden on existing municipal servicing infrastructure?

20. Does the functional servicing submission for the proposed development adequately address what municipal servicing infrastructure improvements are required for the proposed development and area, if any?
21. What is the potential impact of a required 3.0-metre-wide easement along the north limit of the subject site to maintain an existing adjacent municipal sanitary sewer on the development proposal? The easement lands are required to be free and clear, above and below grade, of all physical and title encumbrances, and subject to a right-of-way for access in favour of the City.

Good Planning and Public Interest

22. Does the proposed development represent good planning and is it in the public interest?

Draft Zoning By-law Amendment

23. Is the form and content, including regulatory standards, of the proposed draft Zoning By-law Amendments to both the former City of North York Zoning By-law No. 7625, as amended, and the City of Toronto By-law No. 569-2013, appropriate?

Section 37 Contributions

24. In the event that the Board allows the appeal in whole or in part, is the provision of facilities, matters and services in return for the increase in height and density pursuant to Section 37 of the *Planning Act* appropriate and, if so, what should they be?
25. In the event the City and the Applicant do not reach agreement in advance of the hearing on appropriate Section 37 Planning Act benefits, should such matters be left to be determined at a second phase of the hearing following a decision of the Board on the remainder of the issues?

Site Plan

26. In the event the Board grants the proposed Zoning By-law Amendment, what are the appropriate conditions of site plan and should further refinement and clearance of those conditions be delegated back to the City of Toronto?

Issues of Tilzen Holdings Limited

1. Is the proposed building appropriately sited?
2. Is the proposed massing appropriately deployed?
3. Has the proposed vehicular access and on-site circulation been appropriately designed?
4. Will the proposal negatively impact existing and future traffic operations at 145 Sheppard Avenue East?

ATTACHMENT “C”

ORDER OF EVIDENCE

1. 179 Sheppard Avenue Ltd. & 181 Sheppard Avenue East Ltd.
2. City of Toronto
3. Tilzen Holdings Limited
4. Participants
5. Reply by 179 Sheppard Avenue Ltd. & 181 Sheppard Avenue East Ltd.