

ISSUE DATE:

Dec. 07, 2006

DECISION/ORDER NO:

3420



PL050662

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Royal St. George's College has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the former City of Toronto for the purpose of adding a site-specific exemption with respect to permitting the use and expansion on the subject lands of buildings for a school and containing accessory uses provided that the gross floor area of all buildings on the lot does not exceed 10,933 square metres pertaining to the subject lands located at 100 to 128 Howland Avenue

Approval Authority File No. 04-104605 STE 20 OZ and 04-104611 STE 20 SA
O.M.B. File No. O050101

Royal St. George's College has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 438-86, as amended, of the former City of Toronto for the purpose of amending the existing zoning provisions to maintain the existing private academic school, including ancillary uses on the subject lands, and to permit its expansion subject to certain floor area, height, setback, landscape open space and parking requirements respecting the subject lands located at 100 to 128 Howland Avenue

O.M.B. File No. Z050094

Royal St. George's College has referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, determination and settlement of details of a site plan for lands municipally known as 100, 110, 112 and 128 Howland Avenue, in the City of Toronto

O.M.B. File No. M050109

APPEARANCES:

Parties

Royal St. George's College

City of Toronto

Neighbours of St. Alban's Park

Counsel*

N.J. Pepino* and
M. Morden, summer student

A. Hill*

M. Kemerer* and
Isaiah Banach, summer student

DECISION DELIVERED BY SUSAN de AVELLAR SCHILLER

At the close of the hearing of the merits, and at the request of the parties, the Board delivered an oral decision with written reasons to follow.

In its oral decision, the Board:

1. allowed the appeal on the Official Plan Amendment and approved the Official Plan Amendment in the form set out at Exhibit 10(3), Tab 192, as filed in these proceedings;
2. allowed the appeal, in part, on the Zoning By-law Amendment and approved the By-law in the form set out at Exhibit 10(3), Tab 192, as filed in these proceedings, subject to the By-law being amended to delete section 1, paragraph 13, as being redundant and unnecessary, and further amended to provide as follows:
 - a. the school grounds and buildings shall be used only for school purposes and accessory uses to the school use and the rental of facilities for cultural, arts and sport events will be limited to events which are local in nature or for the purposes of resident and ratepayer groups;
 - b. the Parking Maximization Plan for Special Events (using portions of the grounds where parking would otherwise not be permitted) not be limited to school events;
3. approved in principle the Site Plan as set out in Exhibit 10(3), Tab 162, as filed in these proceedings;
4. withheld its Order until the Board receives written confirmation from the City Solicitor and Counsel for Royal St. George's College that:
 - a. the City and RSGC have entered into one or more agreements under Section 37 of the *Planning Act*, that are satisfactory to the Chief Planner and Executive Director City Planning and to the City Solicitor, and are to secure the following:
 - i. Construction Management Guidelines, satisfactory to the General Manager, Transportation Services and Chief Planner and Executive Director, City Planning;

- ii. Transportation Demand Management Plan, satisfactory to the Executive Director of Technical Services, Works and Emergency Services, and which includes, among other matters, policies:
 - 1. encouraging parents to use nearby Toronto Parking Authority lots when attending school events;
 - 2. encouraging parents and students to use public transportation to attend on-site events and for daily attendance at school; and
 - 3. implementing a Metropass program offering free or significantly subsidized Metropasses to members of the faculty which shall be in effect as soon as is practicable;
 - iii. The use of building materials indicated on the west elevations of the Albany Avenue façade in the plans on file with Urban Development Services, date stamped as received September 8, 2005;
 - iv. Streetscape and landscape improvements as shown on the Landscape Plans, date stamped as received September 8, 2005;
 - v. Excavation and construction of the underground parking garage in accordance with the findings and recommendations of the Geotechnical Report, date stamped as received September 15, 2005, and satisfactory to the Chief Building Official;
 - vi. Student enrolment cap maximum of 426 students, +/- 5%; and
 - vii. Heritage Easement Agreement that grants authority for the execution of a Heritage Easement Agreement under Section 37 of the *Ontario Heritage Act* for the permanent protection of the three heritage buildings at 100, 112, and 120 Howland Avenue;
- b. The City and RSGC have entered into a Site Plan Agreement under Section 41 of the *Planning Act* satisfactory to the Chief Planner and Executive Director, City Planning and to the City Solicitor.

Here are the Board's reasons.

Background

Royal St. George's College [RSGC] is located in the western part of the Annex neighbourhood in the City of Toronto. It sits on an irregularly shaped site that is bounded on the east by Howland Avenue, on the west by Albany Avenue, and on the south by St. Alban's Park. The site is approximately 9195m². Royal St. George's College is a private Anglican choir school for boys of all ages in junior and senior school.

The Annex is an old and well-established neighbourhood. Houses along Howland and Albany have a mix of residents, several of whom have lived in the community as neighbours of the College for decades. Heritage is an important neighbourhood element and area residents have been active in the Community History Project that has focused on the Annex. There are three important historic buildings on the RSGC site. At the time of their construction, these buildings were intended to be part of an Anglican cathedral complex. The project was abandoned before the cathedral could be completed. The unfinished cathedral, See House and the Parish Hall (now called Ketchum Hall) are what remain of those plans. The unfinished cathedral and façade of See House are designated heritage structures; Ketchum Hall has been listed for designation.

Although the school was originally founded in 1897, financial constraints closed the school in 1908. Since the re-establishment of the school in 1963, the site has been the subject of a series of expansions and renovations and the enrolment has increased considerably. Applications occurred intermittently and the school grew incrementally, with little in the way of a comprehensive approach to planning or urban design on the site. Students were drawn from across the City to attend RSGC.

By the time of the current application the College had a mixed relationship with its neighbours. On the one hand, College grounds and facilities were being made available to area residents for various events. On the other hand, the ad hoc changes and substantial growth in student population had coincided with considerable growth in traffic on local streets. Area residents were particularly concerned with cars and buses blocking the street and sidewalk as students were dropped off or picked up at school, leading some residents to picket students and pamphlet their parents. For many of

these residents, relations with school appear to have deteriorated over time and become quite sharp-edged.

The Current Application

The current application is an attempt to move from ad hoc changes to a coordinated building plan within the context of an overall master plan for the College. The College has agreed to a cap on enrolment and has indicated that it has no plans to expand its campus further. The proposal includes an underground garage, to maximize open space at grade, and a lay-by on Howland Avenue to remove cars and buses from the street. The Transportation Demand Management Plan will encourage the use of transit and, where parents are still dropping off or picking up students, will direct the vehicles off the street and through the site. The underground garage has been designed with a ramp to echo residential garage entries, and with a garage door that is set farthest from the street to minimize neighbourhood impact. A new gymnasium will be built on the Albany Avenue side, designed to connect to the existing gymnasium and increase year-round recreation space for students. A proposed three-storey addition to See House is designed to provide new and reconfigured classrooms, art rooms, and administrative space.

Landscaping will soften the eastern edge on Howland where the lay-by will be created; overall, the landscaped open space will increase by about 10%. Heritage buildings on the site are preserved and the College will enter into a heritage easement with the City. The western edge of the site on Albany Avenue currently contains a fairly open view of a surface parking lot and a blank concrete wall of the existing gymnasium. The new gymnasium and the existing one will be linked with a new façade designed with materials to complement the houses on Albany Avenue, setbacks that are compatible with those on Albany Avenue, and an articulated front of solids and voids to create visual interest and echo the patterns of houses on the street.

Consultation and the Process of Review

The proposal was the subject of extensive consultation, a formal working group process and thorough staff review resulting in a series of iterations designed by RSGC expert consultants to respond to and balance residents' concerns with City requirements and College needs.

The Board heard from two area residents, who appeared in support of the College proposal: Mr. Kent Beattie, a resident of Albany Avenue for 14 years who lives directly across the street from the College, and Mr. Robert Brown, a resident of Albany Avenue for more than 25 years who lives just down the street from the College. Mr. Brown has been an active member of the Annex Residents' Association, serving in a number of capacities on the board of directors, including Chair. Mr. Brown and Mr. Beattie also served as Annex Residents' Association [ARA] representatives on the Working Group established by the City. The Working Group included Mr. Barry Brooks, an experienced professional planner with the City who testified in this proceeding. It also included representatives of the College, led by Ms Jennifer Keesmaat, a seasoned professional planner with urban design expertise. In addition to Messrs Beattie and Brown, the Working Group included representatives of an ad hoc group of residents styling themselves as Neighbours of St. Alban's Park [NoSAP].

In June, 2004, Council directed the formation of the Working Group "...to establish design guidelines for the project..." The Working Group met eight times. While Messrs Beattie and Brown were consistent ARA representatives in attendance, NoSAP representatives shifted and changed over the eight meetings. Messrs Beattie and Brown and Ms Keesmaat testified that the resulting Working Group process involved extensive repetition of ground already covered and the raising of new issues and proposals of uncertain viability rather than focusing on and discussing the materials prepared in response to the previous meeting's requests. No design guidelines were established by the Working Group, which was even unable to agree upon a single set of minutes. The evidence before the Board is that this process became largely dysfunctional.

With the apparent inability of the Working Group to function as Council intended, the College then began to meet separately with the ARA representatives, who were also area residents and neighbours of the College, and the City. The result was the revised proposal, which comes to the Board with the support of the City and with the support of the two ARA representatives who sat on the Working Committee: Messrs Beattie and Brown.

Evidence Before the Board

In addition to Messrs Beattie and Brown, who appeared as participants, the Board heard from the following five experts in support of the proposal:

- Jennifer Keesmaat, a qualified land use planner with expertise in urban design;
- Les Andrew, a fully qualified architect registered to practice in Ontario who has extensive experience with independent schools;
- Philip Goldsmith, a fully qualified architect registered to practice in Ontario who is also a specialist in heritage issues;
- Chris Middlebro', a traffic and transportation specialist with substantial experience with educational institutions; and
- Barry Brooks, a qualified land use planner with extensive experience in the Annex and surrounding areas.

Ms Patricia Balint, a traffic and transportation specialist with the City, prepared and filed a full witness statement, attended at this proceeding, and was ready to provide evidence in support of the proposal. Immediately prior to Ms Balint being called to the stand, and one week after the hearing began, counsel for NoSAP advised the Board that NoSAP was no longer pursuing the traffic and transportation issues it had placed on the Issue List and would not be calling any evidence in support of those issues and in opposition to the proposal. Since Ms Balint's evidence dealt directly with these issues, and since the Board had already heard from Mr. Middlebro', Ms Balint did not testify.

Three days after the advice from NoSAP that it would not be pursuing the traffic and transportation issues it had placed on the Issue List, the College made a With Prejudice offer to NoSAP to settle. Three more days later the offer was filed with the Board as Exhibit 43 in this proceeding. NoSAP did not accept the offer and the hearing continued.

As part of the requirements of the procedural order, NoSAP filed a witness list that included two experts and 14 lay witnesses. On the Friday before the start of the hearing, counsel for NoSAP advised the Board that NoSAP would not be calling one of the lay witnesses. In the second week of the hearing, counsel for NoSAP advised the Board that NoSAP would not be calling one of its expert witnesses and that two more of

its lay witnesses would not be called. In the third week of the hearing, counsel for NoSAP advised the Board that three more lay witnesses would not be called. Two days later, in the middle of cross-examination of Dr. Ian MacBurnie – NoSAP's one witness -- counsel for NoSAP advised the Board that NoSAP now wished to withdraw from the hearing, discontinuing the cross-examination of Dr. MacBurnie and calling no further witnesses.

Counsel for the College objected to the request to withdraw and asked that the Board impose several conditions on NoSAP, should the Board grant the request to withdraw. Counsel for the City advised that the City had no objection to the withdrawal on the understanding that NoSAP was not asking the Board to attach any weight to the evidence of Dr. MacBurnie. Counsel for NoSAP, however, advised the Board that NoSAP was asking the Board to attach weight to Dr. MacBurnie's evidence. That being the case, neither the College nor the City waived their right to cross-examination. The hearing continued through the completion of cross-examination, with the understanding that NoSAP would officially withdraw from the hearing after re-examination of Dr. MacBurnie. The Board allowed NoSAP's request and declined to impose any conditions on the withdrawal. NoSAP withdrew from the hearing at this point.

The only witness called by NoSAP was Dr. Ian MacBurnie. He was qualified solely to provide evidence on urban design. Although Dr. MacBurnie teaches architecture, he is not a fully qualified architect registered to practice in Ontario. Although in his witness statement, signed and submitted one month prior to the commencement of the hearing, he opined on matters related to planning, heritage and traffic, Dr. MacBurnie is not a qualified land use planner, heritage expert or traffic expert. Dr. MacBurnie testified that he included these matters on the advice of counsel for NoSAP, who had prepared the first draft of Dr. MacBurnie's expert witness statement.

It became clear through cross-examination that Dr. MacBurnie did not read or request all of the relevant information prior to reaching his conclusion on the application and was inadequately prepared to provide credible evidence in opposition to the proposal before this Board. Dr. MacBurnie relied on NoSAP for the information upon which he based his conclusions and took no steps to verify its accuracy, balance or probity. Dr. MacBurnie testified that at no time did he contact any individual at the City for additional information with respect to the application either prior to accepting his

retainer with NoSAP or prior to testifying before this Board. He admitted in cross-examination that many of the facts he relied on were false. He clearly misunderstood elements of the proposal. The Board finds that, on balance, Dr. MacBurnie did not provide credible expert opinion evidence; the Board attaches no weight to Dr. MacBurnie's testimony.

The Board heard from Ms Jane Beecroft, a participant appearing for the Community History Project in opposition to the proposal. Ms Beecroft is a dedicated volunteer who has devoted years to exploring the heritage and history of the Annex. Ms Beecroft reviewed much of the history of the site and the evolution of diocesan decisions to eventually transfer the site to the school. The history is an interesting one and part of the school's heritage. Although Ms Beecroft concludes that the school should be located elsewhere, the Board finds that the school is an established use in its present location. The Board invites RSGC to explore with Ms Beecroft and the Community History Project ways in which the rich heritage of the site and the school can be captured and made more broadly known, and appreciated, in the community.

On the extensive and unshaken evidence of Ms Keesmaat, supported by the thorough and unshaken evidence of Messrs Andrew, Goldsmith, Middlebro' and Brooks, the Board finds as follows:

1. the Provincial Policy Statement which is determinative in this matter is the 1997 Provincial Policy Statement;
2. the proposal is consistent with the 1997 Provincial Policy Statement and, though not determinative, is consistent with the 2005 Provincial Policy Statement;
3. the Official Plan for the former City of Toronto is determinative in this matter, although the new City of Toronto Official Plan is relevant and has been considered;
4. the proposal conforms to the policy regime established by Part I of the Official Plan for the former City of Toronto, with particular reference to:
 - a. the structure and quality of the City;
 - b. the environment

- c. physical form and amenity;
 - d. parks and open space;
 - e. heritage policies;
 - f. community services and facilities;
 - g. transportation; and
 - h. residence areas;
5. the proposal conforms to the policy regime established by the Annex Part II Plan of the former City of Toronto Official Plan, particularly with regard to those sections dealing with the structure and quality of the Annex;
6. the proposal conforms to the policy regime established by the new City of Toronto Official Plan, particularly with regard to those sections dealing with:
- a. shaping the City;
 - b. building a successful City; and
 - c. land use designations;
7. the proposal meets the intent of the zoning by-law and the proposed zoning by-law amendment conforms to the Official Plan, as amended by this proposed Official Plan amendment.

On the issues placed before this Board on the Issue List by NoSAP, and having regard to the foregoing, the Board finds as follows:

1. Is it appropriate to locate Royal St. George's College on the subject site having regard for the history and impact of the RSGC expansion, the size of the RSGC school population and the size of the site? Yes. The Board notes that NoSAP called no witness to provide evidence on this issue.
2. Do the RSGC applications have appropriate regard for the Provincial Policy Statement (1997) and the Provincial Policy Statement (2005)? Yes.

The Board notes that NoSAP called no witness to provide evidence on this issue.

3. Do the RSGC applications represent good land use planning and further the public interest in light of the policies of the City of Toronto Official Plan and the new City of Toronto Official Plan? Yes. The Board notes that NoSAP called no witness to provide evidence on this issue.
4. Do the RSGC applications represent good land use planning, having regard for, amongst other matters:
 - a. The stability of the surrounding neighbourhood? Yes. The Board notes that NoSAP called no witness to provide evidence on this issue.
 - b. The built form context of the surrounding neighbourhood? Yes. NoSAP called Dr. MacBurnie on this issue, but, for the reasons delineated above, the Board attaches no weight to his evidence and prefers that of Ms Keesmaat and Mr. Andrew.
 - c. The historic significance of RSGC's existing buildings and the surrounding neighbourhood? Yes. The Board notes that NoSAP called no witness to provide evidence on this issue. The Board is persuaded by the expert opinion evidence of Mr. Goldsmith.
5. Are the proposed setbacks, height, density, massing, bulk, scale and architectural design of the proposed development appropriate? Yes. NoSAP called Dr. MacBurnie on this issue, but, for the reasons delineated above, the Board attaches no weight to his evidence and prefers that of Ms Keesmaat, Mr. Brooks, Mr. Goldsmith and Mr. Andrew.
6. Are the RSGC applications appropriate from an urban design perspective, having regard for the prominence and visibility of the site? Yes. NoSAP called Dr. MacBurnie on this issue, but, for the reasons delineated above, the Board attaches no weight to his evidence and prefers that of Ms Keesmaat, Mr. Brooks, Mr. Goldsmith and Mr. Andrew.

7. Do the RSGC applications provide adequate and suitable outdoor space for outdoor student activities? Yes. NoSAP called Dr. MacBurnie on this issue, but, for the reasons delineated above, the Board attaches no weight to his evidence and prefers that of Ms Keesmaat, Mr. Brooks, and Mr. Andrew.
8. Is the impact of the RSGC applications on St. Alban's Park, including the neighbours' use and enjoyment of the Park, appropriate? St. Alban's Park is a public park. NoSAP called no evidence to demonstrate inappropriate use of the Park by RSGC or adverse impact on neighbours' use. RSGC called evidence that there are no organized RSGC activities on the Park, although students walking to or from school may cross the park and/or enjoy this public park as any member of the public may do. The Board therefore answers this question in the affirmative.
9. Is the traffic impact from the RSGC application appropriate? NoSAP withdrew this issue immediately prior to Ms Balint's testimony and called no evidence in support of this issue. On the evidence of Mr. Middlebro', the Board answers in the affirmative.
10. Do the RSGC applications result in adequate parking? NoSAP withdrew this issue immediately prior to Ms Balint's testimony and called no evidence in support of this issue. On the evidence of Ms Keesmaat, Mr. Brooks and Mr. Middlebro', the Board answers in the affirmative.
11. Is it appropriate to approve the RSGC applications in the absence of an effective on-site and off-site traffic demand management plan? NoSAP withdrew this issue immediately prior to Ms Balint's testimony and called no evidence in support of this issue. On the evidence of Ms Keesmaat, Mr. Brooks and Mr. Middlebro', the Board finds that an appropriate transportation demand management plan has been presented and will be put in place.
12. Are the impacts from the RSGC applications with respect to trees and landscaping appropriate and acceptable? Yes. NoSAP called Dr. MacBurnie on this issue, but, for the reasons delineated above, the Board attaches no weight to his evidence and prefers that of Ms Keesmaat, Mr.

Brooks, and Mr. Andrew. In addition, the evidence before the Board is that City Forestry staff were consulted and are in general agreement with the proposal.

13. Are the proposed access points, including the proposed lay-by and the underground parking garage, appropriate with reference to design, safety and impacts on the surrounding neighbourhood? NoSAP withdrew this issue immediately prior to Ms Balint's testimony and called no evidence in support of this issue. On the evidence of Ms Keesmaat, Mr. Brooks, Mr. Andrew and Mr. Middlebro', the Board answers in the affirmative.
14. Issue 14 was withdrawn by NoSAP prior to the commencement of the hearing.
15. Is the proposed plan to cap student enrolment appropriate and enforceable? NoSAP called no evidence in support of this issue. The proposed cap is included in the proposed zoning by-law amendment. On the evidence of Ms Keesmaat, the Board answers this in the affirmative.

On the matter of costs, the College has indicated that it may wish to seek costs in this matter. Pursuant to Rule 100 and 100.1(iii), the Board directs that the matter of costs be dealt with at a later date by requesting from the Board, within six months of the date of this Decision with Reasons, a date for a Motion for Costs in accordance with the Board's rules of Practice and Procedure.

In summary, the Board allows the appeals, subject to the conditions set out in the opening section of this Decision, and withholds its Order pending the requisite filings noted at the opening section of the Decision.

If difficulties arise, the Board may be spoken to.

"Susan de Avellar Schiller"

SUSAN de AVELLAR SCHILLER
MEMBER