

ISSUE DATE:

Feb. 16, 2011



PL101140

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

IN THE MATTER OF subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Subject	Site Plan
Referred by	621 King Developments Ltd.
Property Address/Description	621 King Street West
Municipality	City of Toronto
OMB Case No.	PL101140
OMB File No.	PL101141

IN THE MATTER OF subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Subject	Minor Variance
Referred by	621 King Developments Ltd.
Variance from By-law No:	438-86
Property Address/Description	621 King Street West
Municipality	City of Toronto
Municipal File No:	A-0677/10TEY
OMB Case No.	PL101140
OMB File No.	PL101140

APPEARANCES:

Parties

621 King Developments Ltd.

City of Toronto

Counsel

Adam Brown

Marc Crawford

DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD

621 King Developments Ltd. ("Applicant") proposes to develop a vacant site (previously occupied by a now-demolished motor hotel) bounded by King Street West to the north and Stewart Street to the south in the City of Toronto. The Applicant proposes to construct a mixed use development consisting of a 12-storey tower on King Street

West and an 11-storey tower on Stewart Street that will contain retail uses on the main and second floors with a total of 310 residential units.

The following variances to Zoning By-law 438-86 are being proposed:

1. A minimum of 19 visitor parking spaces is required, whereas no visitor parking spaces will be provided.

2. A commercial parking garage and private commercial parking garage are prohibited in this area. The parking garage will provide commercial parking (which does not comply).

3. No person shall, on any lot in an RA district, erect or use a building where any part of such building is located further back than 50 metres from a lot line abutting a street, other than a public lane. The building will extend 10.7 metres beyond the maximum permitted depth of 50 metres.

4. The maximum permitted building height is 20 metres. The building will have a height of 39.5 metres measured at the King Street West street line and 35.8 metres measured along the Stewart Street, street line.

5. The building shall not project into the 44-degree angular plan projected over the lot from an elevation of 20 metres over the street line, whereas the building will penetrate the angular plane.

6. The maximum permitted building height is 23 metres, whereas the north tower will have a height of 44.2 metres and the south tower will have a height of 39.8 metres.

7. A minimum of 642 square metres of indoor residential amenity space in a multi-purpose room or contiguous multi purpose rooms, at least one of which contains a kitchen and washroom, and 642 square metres of outdoor residential amenity space, of which at least 40 square metres is to be provided in a location adjoining or directly accessible from the indoor amenity space is required. In this case, 466 square metres of indoor amenity space (including the rooftop indoor amenity space and washroom) will be provided but will not contain a kitchen. Further, a minimum of 40 square metres of the proposed outdoor amenity space

located on the roof top will not adjoin or be directly accessible from the indoor amenity space.

8. "Residential Amenity Space" means a common area of areas within a lot which is provided for the exclusive use of residents or a building. In the case, the indoor and outdoor residential amenity space located on the roof top is to be provided for the exclusive use of the residents and guests of the building combined.

9. The portion of the building located beyond 25 metres of a street or a public park is to be set back a minimum distance of 7.5 metres from the side and rear lot lines. The portion of the building beyond 25 metres from the King Street West frontage will be set back 0 metres from the west side lot line and 0 metres from the rear lot line beyond 25 metres of the street.

The City advised the Board that it does not take issue with the first three minor variances.

The site is approximately .313 hectares (.78 acres) in size. The lot is situated just west of Bathurst Street and as noted, bounded by King Street West to the north and Stewart Street to the south. The site abuts the west end of an under-sized public lane that services several restaurants and condominium building parking entrances. This lane will be widened to service the subject site.

The Applicant's planner, Craig Hunter, provided information on the King-Spadina development context. He referenced the many older and historic low to mid-rise buildings (2 to 6 storeys) in this area with general boundaries of Bathurst Street to the west, Front Street to the south, Richmond Street to the north and Simcoe/John Streets to the East. This area was home to many warehouses and manufacturing buildings in earlier years and later, the under-utilized lots were used for surface parking lots, auto repair shops and this site was home to an old motel.

Revitalization of King Street West has been occurring over the past 10-15 years and a dense, mixed use urban community has developed in converted and new buildings. Many mid-rise and taller buildings have been approved both by the City's Committee of Adjustment and this Board for the surrounding area. One finds taller

buildings along Bathurst Street and Spadina Avenue with very tall buildings located on King Street east of Spadina. King and Bathurst Streets and Spadina Avenue are major arterial streets, with a number of local public streets, public and private lanes occurring between blocks in the subject area.

There are no unit count and type restrictions in the in-force Official Plan for this area or in the Zoning By-law. There are no density or use restrictions for the area, with emphasis instead placed on the built form in order to preserve the character of the area. Indeed, the Applicant agreed with the City's opening statement that this hearing is "all about built form and compatibility with the historic character of the area".

The subject property is a regeneration site. The King-Spadina Secondary Plan sets out how development should be built. It speaks not only to height but also where height is to be located; that is, stepped back from the street to ensure there is compatibility with the historic built form. Counsel for the City, Mr. Crawford, expressed concern with the proposed design because in his submission, it would create a wall adjacent to King Street that violates the required 44-degree angular plane and at almost 72 metres in width, the height and presence would exaggerate the impacts on King Street West.

Mr. Hunter referenced the importance of the principle of connectivity in the King-Spadina Secondary Plan and he noted that the Applicant has proposed to create a "highly animated, vibrant and pedestrian-friendly" walkway that will run through the site, linking King Street with Stewart Street, and also linking the proposed buildings with their larger sister site to the immediate south, home to the Thompson Hotel and Residences, which also has a pedestrian walkway that leads to Victoria Square.

The King-Spadina area has been the subject of many Board hearings before, during and subsequent to the King-Spadina Secondary Plan. Like the City's Committee of Adjustment, the Board has considerable experience with the planning context of the area and in assessing the merits of numerous development applications for this area in the context of the relevant planning documents. Over the years, the Board has allowed and dismissed appeals for new residential and mixed use development in the King West and King East neighbourhoods based on the evidence before it. Indeed, the Applicant provided a compendium (Exhibit 2) containing a selection of nearly 30 examples of

approvals for similar developments where minor variances have been granted by the Committee of Adjustment and the Board to facilitate development very much like that proposed by the Applicant. Given the Board's historical familiarity with the area and its expertise interpreting the planning documents in accordance with the requirements of the *Planning Act*, the Board reviewed the planning evidence of both Parties and determines that there is nothing in the details of the proposed development or in the variances sought that depart in any meaningful way from the planning context of the existing built form, the neighbourhood or its character.

Mr. Hunter referenced Exhibit 5 that provides the site and development context in this case. The Applicant, Freed Developments, is a prominent and experienced builder in the King-Spadina area with a number of approved, built and/or under-construction developments adjacent to or near the site since 2004. Among these are the recent Thompson Hotel and Residences directly south of the subject site at 550 Wellington Street; 500 Wellington Street; 75 and 66 Portland Streets; 20 Stewart Street; 650 King Street West; 560-572 King Street West; Fashion House at 457 Adelaide Street West; and 455 Adelaide Street West.

Mr. Hunter's compendium provides examples of minor variance approvals for the King-Spadina area since 2002. Some 29 sites have received minor variance approvals including the various Freed projects. Variances to the built form (height, angular plane, step back, setback, balcony and depth) have been approved. Variances to parking and loading requirements (commercial parking, visitor parking, resident deficient and loading) have been approved. Variances to amenity space (indoor, outdoor, other/kitchen and washroom) have also been approved. Indeed, virtually every one of the Applicant's previous developments in this area has gone forward without the necessity of an appeal to the Board.

It is uncontested evidence that Freed Developments has been a significant player in the revitalization of the King-Spadina area's under-utilized sites. Its buildings share many of the mid-rise characteristics of this area of the City in a manner that Mr. Hunter opined enhances the nature and scale of the area. The Freed projects coexist without causing undue impacts on surrounding properties and streets.

The Board finds persuasive Mr. Hunter's opinion that through its work in the King-Spadina area, the Applicant's developments have "enhanced the existing nature and character of the area as an urban, highly desirable, intense, pedestrian-oriented mixed use place." He noted that where the term "compatibility" does not necessarily mean "the same as" or even "similar to" existing buildings in the vicinity, the Applicant's developments enhance the nature, scale and character of the neighbourhood without causing undue adverse impacts on the surrounding property. The Board has seen nothing in the proposed development that departs from the Applicant's historic capacity to develop sensitively-designed and character-conforming projects to the benefit of the King-Spadina area.

In this regard, the development proposal, with all of its associated detailed plans, descriptions and drawings, are exhibited and before the Board. The appropriateness of the design and relation to the existing built form context are well established by the supporting expert witnesses' evidence. Broadly speaking, depending whether one is for or against a particular proposal, any plain reading of official plan and secondary plan policies in any application enable a witness to either support or refute the merits of any development proposal. The City vigorously opposes this development by virtue of, among other things, its height, incompatibility of built form and intrusion into the 44-degree angular plane whereas the Applicant's witnesses opine that this proposal demonstrates how this proposal responds favourably to the planning regime and actually can fit well into the neighbourhood context.

As stated, it is particularly noteworthy that historically speaking, most if not all of this Applicant's previous developments in the immediate and surrounding area have found favour with the City and have been approved to proceed at the municipal level. Clearly, the City has expressed its faith in the Applicant's ability to construct projects that consistently fit well within the existing neighbourhood context along with the Applicant's capacity to create harmonious development with the in-force policies and that sustain various guidelines for development in the area. The City has deemed the Applicant's previous developments to comply with the objectives of the City's Official Plan and the King-Spadina Secondary Plan and to grant variances for those previous developments that maintain the general intent and purpose of the Zoning By-law. In this context – that other projects easily meet all four tests for a minor variance as set out in the *Planning Act* - the Board had to consider whether the Applicant has departed so

significantly from its prior successes to propose something so singularly unique, different and/or offensive to the City in terms of the variances sought and the design as expressed through the iterations offered. The Board does not suggest that the developer's previous successes in revitalizing the King-Spadina neighbourhood should serve as a precedent for some automatic approval of this development. Far from it, and the Board has evaluated this proposal in the context of the specific urban design details and planning evidence before it. Having said that, the Board was struck by the similar designs that the City has already approved for this area whose surrounding context of new, tall and taller buildings cannot be discounted or dismissed when considering this proposal. And, the Board's in-depth reading of the planning documents, consideration of the expert witnesses' testimony and its assessment of the tests for these minor variances lead the Board to determine that there has been a consistent pattern of approvals for revitalizing and regenerating this quadrant of the City in the very manner and built form that the Applicant proposes through this design.

Further, one need only review the site photographs and area development context renderings contained in Exhibit 5 to see that what is proposed differs very little from the context of what the City has already approved and what has been constructed in the King West neighbourhood. The City has approved buildings with articulated facades with variances that derogate from the standards of the Zoning By-law like the one at issue.

In the context of Mr. Hunter's forceful presentation and the persuasive urban design evidence of Anne McIlroy, the Board determines that despite the different feel attributed to King Street west of Spadina, the proposed development cannot be considered only by virtue of its impact on the immediate streetscape. It must be considered in the surrounding context as well. In this regard, the proposed design is highly reflective of the character and feel of the area as a revitalized contemporary development exercise situated within and among older mid-rise development. This, in the Board's determination, is the practical neighbourhood character that pedestrians experience as they walk the streets and lanes of the immediate and broader area.

The Board finds persuasive Mr. Hunter's opinion that the proposed development "is an attractive, creative and compatible design, which on balance,

positively contributes to the area with a high-quality and improved public realm with no unacceptable adverse impacts.”

The Board also determines that the proposed mid-rise buildings are of a height and scale that fit the varied low to mid-rise scale of existing, approved and recently built developments in the area. The proposed buildings provide an appropriate height transition from the taller buildings on the edges of the King-Spadina West area along and west of Bathurst Street at heights of 16 storeys and greater. Thus, in the context of this area and the Board’s findings above, it has preferred Mr. Hunter’s reading of the planning documents to that of Mr. Nicholson.

In considering the four tests for a minor variance as set out in Section 45(1) of the *Planning Act*, the Board considered the planners’ and urban designer’s opinions in the context of the Official Plan policies and Zoning By-law standards. The Board finds persuasive Mr. Hunter’s review of the Official Plan policies and his opinion that the proposal maintains the general intent and purpose of the Official Plan. He referenced the various broad provisions and policies of Chapter 2 related to the site’s location in Downtown Toronto, an urban growth centre where such growth is targeted and directed and where this part of King Street is a “Transit Priority Segment” with easy access to surface and higher-order forms of transportation. He reviewed the key planning considerations of Chapter 3 and explained how the development responds favourably to these. He reviewed the requirements of development in this “Regeneration Area” (Chapter 4) and he demonstrated persuasively through his witness statement how the proposed development also maintains the general intent and purpose of the King-Spadina Secondary Plan’s objectives, how it responds to urban structure and built form, the pedestrian environment, transportation and parking requirements.

Mr. Hunter referenced the Urban Design Guidelines for the King-Spadina area and noted the proposal’s consistency with these guidelines when read in conjunction with the urban design policies of the Secondary Plan. He also opined that the general intent and purpose of the Zoning By-law is maintained through the application’s zoning as a “Reinvestment Area (RA)”. The Board notes that as the applications pre-date the new City of Toronto Zoning By-law 1156-2010, the subject property is exempt from his new By-law, which remains under appeal to the Board.

He emphasized how the intent here is to take a “flexible” approach to land use to encourage and stimulate “reinvestment”, which the Board determines this project does. Indeed, the Board has reviewed the other examples of development applications in evidence and notes that the City has also exercised this same degree of flexibility to promote intensification and rejuvenation of older buildings and under-utilized sites in the King-Spadina area. In this regard, this planner’s opinion that the built form is compatible and appropriate, contributing to a “high quality public realm and an acceptable living and working environment for new and existing residents and businesses” is highly persuasive evidence that the variances maintain the general intent and purpose of the Zoning By-law. Indeed, other standards related to residential amenity space and parking are similar to other zones in the Downtown area, enabling the City and developers to stimulate reinvestment by means of a more flexible approach to commercial parking requirements. In point of fact, the aforementioned City-approved minor variance applications for the King-Spadina area for height and built form, amenity space and parking are the same types of variances that the Applicant seeks. As Mr. Hunter noted, “These...approvals have facilitated and stimulated reinvestment in King-Spadina, satisfying the general intent and purpose of the RA zoning.”

Like the planning instruments, the Board considered the appropriateness and ‘minor’ nature of the variances in the planning context and finds that evidence to support the application. However, an assessment of the urban design evidence was helpful to the Board in assessing the appropriateness of what has been proposed. The Applicant’s urban design witness, Anne McIlroy, evaluated the proposal in the context of the Official Plan and Secondary Plan policies. Her evidence was extensive and may be summarized as follows. The proposed building incorporates many positive urban design principles including well-considered building form and architecture and retains a human scale. The building fits well within the context of the block and neighbourhood; the site is large and allows for appropriate transitions between taller building elements; there is “exceptional architectural design” of a landmark quality; the mid-block pedestrian connection and exterior courtyard knits the block together from the north-south direction; and green building features will contribute to a sustainable building, creating amenity for residents and visibly attractive buildings from adjacent properties.

One of the most relevant aspects of the development to the Board’s consideration is the ground level condition and how it relates to the feel along the street.

Ms McIlroy opined that retail uses, restaurants, access to exterior courtyards and a residential vestibule and entirely glass wall looking into the lobby are proposed. The podium maintains the two to three storey nature of adjacent retail establishments and is well articulated through a continuous rhythm of storefronts and building entrances. Large expanses of transparent glazing span the length of the podium, creating visual interest for pedestrians. The King Street West building's 70-metre frontage varies the front setback between the zero lot line and one metre. This contributes to the staggered character and varied nature of existing buildings along this portion of the street, adding to the area's visual complexity.

Ms McIlroy opined that the Stewart Street building has a well articulated façade with large expanses of transparent glazing spanning the length of that building, strengthening the relationship of the building to the street and mediating indoor and outdoor spaces, creating an inviting quality and further establishing opportunities for casual surveillance that are consistent with the principles of Crime Prevention Through Environmental Design (CPTED). The building is set back one metre, providing a break in the continuity of the existing street wall and widening the public boulevard, providing additional space for street furnishings and landscaping, including bicycle parking.

Ms McIlroy addressed the issues of massing and shadows. She offered that there will be minimum impact from the incremental ground shadow created, given the absence of adjacent low density areas. The proposed building has heights and setbacks that minimize its shadow impact and the incremental shadow is compensated by the incorporation of other positive urban design attributes like the articulation of the building facades, the exterior courtyard and the appropriate height transitioning between building elements. At best, in the customary study period of September 21st, the proposed King Street building will create shadows on the north side of King Street between the hours of 11:00 a.m. and 3:00 p.m., diminishing by 4:00 p.m. The Board heard no persuasive opposing opinion that this level of shadowing should serve to compromise the development as proposed.

Ms McIlroy opined that the attribution of angular planes on mid-rise buildings is an important consideration on Avenues but not for mid-rise buildings and certainly not for the proposed King Street building in this Downtown context. What is especially persuasive to the Board is that Ms McIlroy's opinion is informed by her intimate

familiarity with this concept, given her firm's work on the Mid-Rise Study for the City of Toronto that was ultimately approved by Toronto Council in 2010. While Mr. Crawford had challenged that the angular plan provision is part of the By-law and is a factor in the character of the original historic neighbourhood, Ms McIlroy disputed his argument and said it is not part of the character. She noted further that the impact of shadows on the adjacent lands is nominal when compared to the as-of-right zoning. And most notable is the fact that the City has previously approved applications for condominium buildings not so far from this site that intrude into the angular plane. In this regard, the Board determines that the angular plane cannot be applied so strictly when considering the intent of the zoning and official plan policies for the area; when considering the historic flexibility that the City has brought to previous approvals for the neighbouring area of King-Spadina and where the building's design has a podium and architecture at the building's base that creates rhythm and texture; provide a counterpoint to the historic context that does not mimic or seek to match what has existed in the older context. The design as proposed does not create adverse shadow impacts in the Board's determination. In fact, Ms McIlroy has demonstrated through the evidence how additional height can exist in a compatible fashion without creating undue impacts on light and privacy.

In contrast, Janet Lee, the City's urban design witness, provided her opinion that the proposed development should not be approved. Her evidence was extensive – she cited numerous policies and provided reasons why every one of these was not met by the proposed development and its requested variances. It was a highly critical assessment of the design in every respect, further supported by a 125-page visual exhibit that included street photos, shadow studies, overlays of zoning envelopes and computer-generated renderings of what Ms Lee purported to be visual articulations of what the site would look like both as-of-right and as proposed.

The Board found the content of Ms Lee's evidence and her opinions to be unpersuasive components of the City's overall case against the development. While arguably the most exhaustive and comprehensive urban design package ever presented to the Board, and clearly, Ms Lee had prepared well for her presentation to the Board, the value of that package and the witness's opinions was considerably lessened in light of the reality of the City's prior approvals for other developments that

present many of the same variances that this developer seeks and when compared to the more persuasive urban design reading that Ms McIlroy offered to the Board.

With reference to Ms Lee's computer renderings, this Board Member has noticed the proliferation in recent years of computerized renderings that attempt to translate variances 'on paper' for a built form into an image to show how something will appear in a given area or neighbourhood. This latest package of drawings was unhelpful to the Board as most of the examples depicted the building abutting existing built forms absent the other buildings in the immediate vicinity such as the larger 550 Wellington development to the immediate south. Without these depictions of the reality that tall and taller buildings exist in very close proximity to this site, the Board was not persuaded by the witness's stark computer renderings as they did not demonstrate how the proposed development truly relates to its immediate and surrounding context.

In contrast, the Applicant's large three-dimensional model of the entire area was presented for the Board's consideration (unnumbered for practical purposes) throughout the hearing. It's 3-D depictions were uncontested by the City and it served as a far more persuasive and more accurate rendering of how the proposed development will actually fit within its immediate and surrounding context. This was highly persuasive evidence in the Board's determination. The Board examined the model's depiction of the relationship of the proposed development to the larger buildings on Bathurst Street and to those situated south at 550 Wellington Street as persuasive evidence that the proposed buildings will serve to transition downward from these taller edifices to the mid-rise context of this area of King Street West. Numerous new condominium developments have been built or are in the process of being built at heights not so dissimilar from what is proposed here. No better visual evidence was offered than the 3-D model for the reasons given and it was preferred to the static two-dimensional renderings for the reasons given.

This harkens back to the urban design evidence of Ms McIlroy where people naturally feel the rhythm of the street at the street level – not by unseen storeys far above the streetscape. Given her supportive evidence of the animated street front of the proposed King Street building and its length along the street (which does not exaggerate the impacts but rather, in the Board's determination, will contribute to the animated feel of the vibrancy of the street in this area), the proposal will fit well into the

neighbourhood, complements the character and creates no undue or adverse impacts. Lastly, while Ms Lee and Mr. Nicholson expressed concern with the close relationship of the balconies between the two buildings, the Board is well aware that similar close relationships exist elsewhere between buildings and which have been previously approved by the City. No persuasive urban design or planning evidence was proffered to show how the proposed design would be unacceptable or detrimental to principles of good design.

For all these reasons, Ms Lee's evidence stood in stark contrast from the urban design evidence of Ms McIlroy and neither she nor her evidence persuaded the Board that the proposed development cannot achieve the City's objectives for a harmonious and compatible built form on the subject site.

As for the King Street driveway, which will be limited to right-in/right-out turns during peak hours and provides limited access, this design is consistent with the turning restrictions approved for the Applicant's development directly across the street at 650 King Street West as well as for its Fashion House development. Transportation Engineer James Gough was qualified to give his uncontested and unchallenged evidence that the proposed right/in right/out access point for the garage will function without interruption to street movements. Site servicing also functions well.

The Board also considered Planner Dan Nicholson's evidence that focused on the heritage character of the area, referencing a fair number of designated and listed buildings as well as older two-four storey buildings on the street and the fact that the City is currently devising a Heritage Conservation District Area for King-Spadina that will provide protection and enhance the unique heritage character of the King-Spadina neighbourhood.

The Board assigns little weight to the opinion that if approved, this development would create a precedent that would offend the "unique heritage character" of this area or that it would create a precedent for future development in the area. The area is not simply home to examples of old-style buildings and heritage buildings. It is also replete with examples of City-approved condominium developments that exceed the zoning standards of the area and these two cannot be simply set aside for in the Board's view, they form an integral part of the character of this area. The Board assigns little weight

to the opinion that the proposal is an anomaly that represents a “clear, significant and potentially dangerous departure for King-Spadina that could destabilize a carefully considered and highly successful planning vision for this area of the City.” There is simply no foundation for this statement and especially not in the context of the City’s previous approvals for similar development throughout the King West and East neighbourhoods or by virtue of this mix of old and new that creates the current character of King-Spadina.

If, as Mr. Nicholson opined, there exists a “consistently-applied framework for this area” that could be destabilized by this development, then he has not considered the many other Council-approved residential and mixed use developments that coexist harmoniously with the low and mid-rise context of the King neighbourhoods despite exceeding many of the zoning standards in place. Mr. Nicholson was reminded of these many previous approvals by Mr. Brown, the Applicant’s Counsel, who referenced many of these – examples of large lot consolidation exercises; buildings of heights in the immediately surrounding context that exceed the height of what is proposed here; walls of zero-metre distances; and reduced side and rear yards. Further, in the context of shadows, the City has approved buildings that shadow its parks in direct violation of its guidelines and policies. The City has also approved tall buildings along Blue Jays Way further east that shadow King Street in a manner that far exceeds what the proposed building will do. In the Board’s view, while a case may be made for the City’s desire to consider King Street east of Spadina in a different context, King Street is still shadowed where there exist low and mid-rise buildings. Even considering the shadows cast by the proposed King Street building, shadows on the north side of the King Street West sidewalk will be incremental at best and limited to several hours in the shoulder seasons.

Lastly, heritage staff does not object to the site as the site sits vacant and is neither listed nor designated and there is no abutting property so listed or designated. The City has also previously approved greater heights than what is permitted in cases where the proposed development abuts designated heritage inventory.

A number of interested participants spoke in opposition to the proposed development. Joe Fleming objected to the proximity of the proposed new building with its reduced setbacks, purportedly eliminating future development of his and abutting old

town home properties. The proposed pop-outs design and cantilevered sections would face his rear yard and affect his privacy.

Dieter Riedel opined that regardless of its architectural merits, the King Street building's sheer size and massing will have a permanent impact on the public realm of King Street, changing permanently the 'nature' of the area and setting a precedent for building heights. The proposed walkway is mere metres from Bathurst Street and will actually serve as a convenient walkway to paid parking at 550 Wellington Street. He opined that the walkway will serve the buildings and not the neighbourhood. He said that without consultation with the public, the walkway is not in the public interest and as it traverses a condominium corporation, this might create access issues. He worried that the upper level amenity space is problematic because some of these have turned into *de facto* nightclubs, encouraging public drunkenness, noise and vandalism.

Kirby Andersen opined that the Stewart Street building will contribute to the canyon-like feel that exists along Stewart Street. He also expressed concern with the proliferation of nightclubs that are 'shifting' toward King Street. Martin Gravel opined that the building is not unique and its accumulation of encroachments is too wide and too high and the loss of three to four hours of sunlight on King Street is not a minor condition. Mr. Gravel told the Board that he is soon moving to a nearby, 12-storey building at 400 Wellington Street that received Board approval at a previous hearing.

The Board considered these concerns in the context of the professional and planning and urban design evidence that demonstrates persuasively that the proposal can work well within the Downtown context and should be permitted. Any wall effect that might be created by this development differ little from the as-of-right development permitted along Stewart Street today. Any activities that might be associated with condominium development in this area legitimate concerns and the Board is mindful of the reality of dense condominium living in a highly urbanized mixed use environment and the associate problems that arise, particularly in respect of nightclubs, bars and restaurants. However, these are matters that can be addressed through by-law enforcement measures and in other cases, through law enforcement measures. But the proposed development, considered in the planning regime, does not raise such concerns in the Board's determination and can be approved as a result of the documentary evidence and expert testimony that support it.

The Board also received no professional evidence to counter the traffic witness's opinion that the driveway as proposed, will function well. The Board also heard no professional evidence to contradict the amount of amenity space the Applicant proposes to provide, with assurances given that there will be no public access to the proposed roof top amenity; access is for building residents and their guests only.

Where the building on Stewart Street is set back 4.9 metres for the upper area and only one floor at 0 metres, the previously existing motel was a full three storeys at 0 metres. To apply a building-to-building set back requirement of 7.5 metres for the rear yard in this context would make the development different from any other condition that currently exists on Stewart Street.

In the context of Mr. Hunter's planning evidence and Ms McIlroy's urban design evidence, the Board accepts as persuasive that the proposed variances meet all four tests for a minor variance and should be approved. The general intent and purpose of the City's Official Plan and Zoning By-law are maintained, the proposal is desirable for the appropriate development of the subject site by balancing a diverse range of planning considerations and issues in a dense, intensifying and revitalizing urban context and represents good planning. Finally, the variances are minor and do not create unacceptable impacts on the surrounding properties or on King Street. There are no significant or unacceptable shadow impacts beyond as-of-right zoning on nearby public sidewalks and buildings; there are appropriate amenities on site that place no negative pressures or impacts on public parks, open spaces and facilities; and there are no significant transportation impacts on King Street

Lastly, Mr. Crawford submitted a series of conditions for the variances were the Board to find favour with the proposal. While the Applicant will of course undertake to submit a construction management plan to guide construction of the development, the most troubling condition for the Board was the first one, which would require the Applicant to make a \$989,000 financial contribution "to the satisfaction of the City Solicitor" to pay for a heritage study for King Street West and for streetscape improvements in the area. In the context of the hearing, setting a monetary condition on the Applicant as a condition was deemed inappropriate by the Board and it will not set such a condition on the Applicant.

The Board determines that the proposed development should proceed in the manner set out in Exhibit 4. Accordingly, the Board allows the appeal and authorizes the minor variances. As requested, the Board provides the City with sixty (60) days to respond to the Site-Specific Conditions for Site Plan Approval as contained in "Schedule C" of the Site Plan Agreement contained in Exhibit 4, which implement the requested variances and respond to the conformity requirement with the Official Plan.

"R. Rossi"

R. ROSSI
MEMBER