

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: October 12, 2017

CASE NO(S):

PL151222

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 2226396 Ontario Inc., et al.
Subject: Request to amend the Official Plan - Failure of City of Toronto to adopt the requested amendment
Existing Designation: Mixed Use Areas and Neighbourhoods
Proposed Designated: Mixed Use Areas Special Provision to be determined
Purpose: To permit mid-rise building that will include retail and commercial units
Property Address/Description: 53-63 Sheppard Avenue West & 62-68 Bogert Avenue
Municipality: City of Toronto
Approval Authority File No.: 15 170269 NNY 23 OZ
OMB Case No.: PL151222
OMB File No.: PL151222
OMB Case Name: 2226396 Ontario Inc. 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: 2226396 Ontario Inc., et al.
Subject: Application to amend site specific Zoning By-law No. 609-2001 and Zoning By-law 7625 - Refusal or neglect of City of Toronto to make a decision
Existing Zoning: Site-Specific Zoning By-law No. 609-2001
Proposed Zoning: Site Specific (To be determined)
Purpose: To permit mid-rise building that will include retail and commercial units
Property Address/Description: 53-63 Sheppard Avenue West & 62-68 Bogert Avenue
Municipality: City of Toronto
Municipality File No.: 15 170269 NNY 23 OZ
OMB Case No.: PL151222
OMB File No.: PL151223

Heard: July 4-12, 2017, Toronto, ON

APPEARANCES:

Parties

Grmada Holdings Inc.
1822732 Ontario Inc.
2226396 Ontario Inc.

Counsel

Barnett Kussner

City of Toronto

Ray Kallio

DECISION OF THE BOARD DELIVERED BY SHARYN VINCENT

INTRODUCTION

[1] Grmada Holdings Inc. (“Grmada”) has appealed the non-decisions of Toronto City Council on applications for Official Plan and Zoning amendments necessary to permit the redevelopment of lands fronting onto the south side of Sheppard Avenue West and Bogert Avenue, and known municipally as 53-63 Sheppard Avenue West and 62-68 Bogert Avenue (“Bogert”).

[2] The lands fronting Sheppard Avenue West are designated Mixed Use Area, have an Avenues designation and are subject to a Secondary plan dating from 1997 which predates both the Provincial Policy Statement 2014 and the Growth Plan 2017. The southerly portion of the consolidated site fronts onto Bogert Avenue in the Neighbourhoods designation.

[3] Amendments to the Part 1 Plan for the Bogert lands are requested to permit the construction of seven townhouse units, which the City of Toronto (“City”) contends, require an amendment because townhouses, although specifically contemplated by the Official Plan as being a permitted built form in neighbourhoods, are not the prevailing building type in this particular neighbourhood.

[4] The second aspect of the requested amendment to the Part 1 Plan would facilitate the construction of the common servicing area and that portion of the proposed underground parking garage to service both the townhouses and the mixed use building which would be constructed in the Neighbourhood designation.

[5] The Sheppard Avenue frontage of the site currently has a site specific zoning which permits a density of 2.4 and a height of 20.4 metres. These permissions are site specific exceptions to the height and density restrictions applicable in the balance of the adjoining Mixed Use Areas on Sheppard Avenue West, and implement a site specific provision in the Secondary Plan which in 2001, was approved by way of settlement, to permit a six-storey commercial building. The Secondary Plan along Sheppard Avenue West otherwise restricts density to 1.0 and height to 8 metres. Grmada seeks to amend these site specific permissions.

[6] Site specific Zoning amendments are required for both the Mixed Use Areas portion of the site and the Neighbourhoods portion in order to permit the development as proposed.

[7] The fundamental issues before the Board are as follows:

1. What level of intensification is appropriate at the site which is located within a Mixed Use Area overlaid with an Avenues designation and is within walking distance of the Yonge Sheppard subway node;
2. Whether the proposed townhouses are an appropriate built form within this Neighbourhood designation; and
3. Whether the required parkland dedication to expand the existing park abutting to the east should be taken from the most easterly 9 metres of the site, including a portion of the Mixed Use frontage, or whether lands along the Bogert frontage can better complement Albert Standing Park which has frontage on Sheppard, Beecroft and Bogert Avenues.

[8] The Board heard from a total of eight witnesses and one participant over eight days and having considered all of the evidence thoroughly, is persuaded by the evidence submitted on behalf of the Appellants that this site, as was the case in 2001 is an appropriate site for the proposed level of intensification, and can be distinguished from lands elsewhere in the Sheppard Avenue Secondary Plan area to support greater height and density in proximity to the Sheppard subway node and abutting a park.

EVIDENCE AND ANALYSIS

[9] The City argues that the proposed height of 15 storeys including a mechanical penthouse wrapped with amenity area, does not represent an appropriate height for Sheppard Avenue or provide appropriate transition to the neighbourhood located to the south west; that the four-storey townhouses proposed along the Bogert frontage are not compatible with the surrounding neighbourhood; and the proposed location and configuration of the proposed parks dedication do not result in an acceptable, programmable park.

[10] The City also expressed concern that the consolidation of the split Mixed Use Areas and Neighbourhood designations into one development parcel would create a destabilizing pattern for development elsewhere in the neighbourhood adjacent to the Avenue.

Destabilizing the neighbourhood

[11] The Board heard evidence that the proposal to construct seven townhouse units along the Bogert frontage, with all vehicular access to be provided off Sheppard Avenue creates the opportunity for modest infill in the stable residential neighbourhood. Other forms of reinvestment and rejuvenation in this portion of the former City of North York have taken the form of replacement housing or lot severances built out with typically three-storey detached residences with integral garages. None of the witnesses gave evidence that the replacement residences, although different from the original

bungalows and two-storey residences, detracted, or failed to contribute positively to the neighbourhood.

[12] While there is no dispute that detached dwellings are the prevalent built form within this neighbourhood, the Official Plan policies specifically contemplate the compatible co-existence of townhouses within neighbourhoods. The Board heard no compelling evidence to distinguish this site from other City neighbourhoods in this particular regard, and concurs with the on point decisions of Vice-Chair Susan Schiller (PL150687) and Member Blair Taylor (PL160390) which were cited in argument.

[13] The proposed continuous front yard landscape along the length of the row of townhouses creates a pedestrian approach to the south westerly corner of Albert Standing Park, which is uninterrupted by private driveways thereby providing a high quality pedestrian link to and through the park and beyond to the subway and the Yonge Sheppard Centre. The continuous townhouse block effectively encloses the common enclosed servicing area which is screened from both the existing neighbourhood and the park.

[14] The Board finds this form of infill conforms with the Official Plan and finds that the required amendment to the Official Plan to permit both the above and below grade components of the development within the Neighbourhoods designation to be technical in nature and in keeping with examples cited to the Board of where this approach has been approved elsewhere by the City upon the recommendation of planning staff.

Height

[15] The site is located within 150 metres of access points to the Yonge Sheppard subway station. The site abuts Albert Stanley Park which forms the westerly edge of the Yonge Sheppard Centre, a designated growth centre and an area characterized by 20-30 storey residential and commercial towers located as one would expect in proximity to the subway node. Newer development approvals range from 30-45 storeys.

[16] Witnesses for the Appellants characterized the site as being a unique edge condition given the synergy of the proximity of the site to the subway while directly abutting an existing park. The Board finds that the elements when taken together represent an important opportunity for intensification pursuant to the Provincial Policy Statement 2014, the Growth Plan 2017, and the Avenues policies in the Official Plan. The combination of locational attributes similarly distinguishes the site from the balance of the Sheppard frontages in the Avenue designation.

[17] The Board is not persuaded that the City's apprehensions that the approval of specific higher heights and density will create a precedent for the balance of the Avenue. The as of right zoning and site specific designation of the Mixed Use Areas portion of the site has been in place at 2.5 times that permitted in the balance of the Secondary Plan area for sixteen years and has not been a harbinger for other applications seeking similar heights or densities. The Board is satisfied that there is sufficient contextual grounds for distinguishing the site subject of this decision.

[18] The proposed mid-rise building exceeds the height suggested by a general urban design guideline of a one to one relationship when applied to the planned right of way width of Sheppard Avenue by approximately four storeys, including the mechanical. One of the witnesses for the Appellants, Anne McIlroy, an author of the Avenues and Mid Rise Building Study ("MRG") prepared for the City, demonstrated to the Board how the study had contemplated that sites in proximity to subway stations could be considered as candidates for greater height.(MRG s. 4.5.7 a). The Board finds that that merit extends to the subject site given its specific context on the edge of the Yonge Sheppard Centre, and the incorporation of the townhouses which function both as compatible rejuvenation in the neighbourhood, and a built form transition to the mid-rise building along Sheppard Avenue.

[19] In dealing with the issue and impact of height, there was dispute amongst the witnesses about the guideline with respect to the actual hours of continuous sunshine falling upon the sidewalk opposite the proposal on the equinoxes. The Board is

satisfied that the Official Plan Policy in s. 3.1.2(3) and the guideline is met with the increased height for a five hour continuous period coinciding with the late afternoon and evening hours when subway users would be returning home at the end of the day. Assessing the quality of the pedestrian environment when it reasonably will be in high demand use is a logical basis for testing the guideline.

[20] The Board having considered the evidence of all of the planning and urban design witnesses finds the proposed development at this location conforms to the Avenues policies and in particular s. 2.2.3.3.c)i), ii), iii), iv),vi).

[21] With respect to the development criteria in s. 4.5.2, the Mixed Use Area policies of the Official Plan, the Board finds that the proposed massing, setbacks, heights and site organization conforms to the objectives of the Official Plan, and in particular:

- The mid-rise building provides a built form transition from the heights and intensity of uses existing and encouraged in the Yonge Sheppard Centre;
- The incorporation of the townhouses along the Bogert frontage of the site provides an appropriate, compatible transition within the neighbourhood;
- There are no adverse shadow impacts on adjacent Neighbourhood;
- Both aspects of the built form frame the edges of the Sheppard Avenue, Bogert Avenue and Albert Standing Park and are supported by shadow studies which demonstrate that the incremental change will not unduly affect the comfort of pedestrians using the public domain;
- The site plan submitted in support of the appeals demonstrates the opportunities to create an attractive, comfortable and safe pedestrian environment on and adjacent to the perimeter of the site;
- The site has excellent access to a park and to transit and the full range of

services found in the Yong Sheppard Centre; and

- Site access is limited to the arterial thereby eliminating any circulation related nuisances from the neighbourhood

Parkland dedication

[22] The parties are in agreement with respect to the land area required to meet the parkland requirement for the proposed development. The issue before the Board is the location of the lands to be dedicated.

[23] The City prefers to take a rectilinear parcel abutting the existing Albert Standing park having a width of approximately 9 metres along Sheppard Avenue, narrowing to a 3 metre wide parcel within the neighbourhood designation. The taking would be added to an existing 6.1 metre redundant closed road allowance abutting the westerly boundary of the park. The taking would result in a 9.0 metre wide parcel extending from Sheppard to Bogert. The City argues that the resulting configuration would allow for a desirable line of sight through the park. The Appellants argue that the lands preferred by the City would lie to the west of an existing stand of mature trees which generally run the length of the northerly portion of the existing westerly limit of the park, thereby isolating the northerly portion of the preferred lands.

[24] The Appellants instead propose to dedicate a rectangular parcel having the same area located immediately to the west of the 6.1 metre remnant road allowance, entirely within the neighbourhood designation and having a frontage of 17.74 metres along Bogert Avenue. This parcel would be contiguous to the southerly portion of the existing park, adjacent to the proposed townhouses.

[25] The Board notes that the City presented no evidence as to what the parkland requirement would be if based on their preferred development scenario for the site which included only a five-storey building, the density for which would be derived through the application of a 45 degree angular plane commencing at the rear lot line of

the properties fronting onto Bogert Avenue. This scenario would obviously generate a significantly lesser parkland dedication.

[26] Aside from the preferences for a dedication which would result in a rectilinear extension of the park, the Board heard evidence that the configuration and location proposed by the Appellants could present programming and safety challenges.

[27] The Board is not persuaded that the area proposed by the Appellants could not be appropriately programmed to complement the other passive functions of the existing park and prefers the evidence of the Appellants' Urban Design witness that the park as expanded can be designed and programmed so as to be surveillable and safe for and by users to and through the park.

[28] The existing park has extensive street frontage on three of its four sides. The southward views created by the introduction of a mid-rise building adds another level of eyes on the public domain to complement the sight lines from the neighbourhood looking in from Bogert Avenue.

[29] On balance, the Board finds that foreshortening the built form of a mixed use building along a major arterial, a designated Avenue, does not constitute effective and efficient use of existing infrastructure and runs contrary to Official Plan policies which encourage intensification along Avenues.

[30] Expanding the park frontage along Sheppard with the result of diminishing the development potential of the site, particularly when a viable and arguably preferable alternative exists, is not consistent with provincial policies directing municipalities to optimize intensification opportunities in proximity to major transit infrastructure.

[31] The parcel proposed by the Appellants is further removed from the activity of Sheppard Avenue and presents an opportunity to create a quieter, more protected respite as part of the overall programming of the park without diminishing the creation of an urban edge appropriate to a Mixed Use Area and Avenue. Further, the weather

protection and shade afforded by the recess of the ground floor offers pedestrians refuge along a busy urban thoroughfare.

DECISION

[32] The Board finds pursuant to s. 4.7 of the Provincial Policy Statement 2014 and the Avenues policies of the Toronto Official Plan, in favour of the Appellants, and grants the appeal for a site specific amendment to the in-force Secondary Plan to permit the proposed reurbanization of the consolidated parcel.

[33] The Board finds in favour of the merit of allowing the common below grade and servicing area to be permitted through technical amendment to the Neighbourhood designation in the City's Part 1 Plan.

[34] The Board agrees with the findings of Ms. Schiller (PL150687) and Mr. Taylor (PL160390), finds that no amendment is necessary to permit the proposed townhouse built form within the portion of the site designated Neighbourhoods and dismisses the appeal for an amendment to the Part 1 Plan to permit the seven townhouses along Bogert Avenue.

[35] The Board allows the appeal of the Zoning By-laws to allow the site specific appeal of By-law Nos. 7625 and 569-2013.

[36] At the outset of the hearing the Parties had advised that matters pertaining to Section 37 contributions, site plan approval and an appeal with respect to payment under protest, were all matters to yet be dealt with by the Parties.

[37] The Board therefore withholds its order pending the finalization of the planning instruments and consideration of the Section 37 matters.

[38] Should the need arise, the Member may be spoken to.

"Sharyn Vincent"

SHARYN VINCENT
BOARD 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