

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: August 14, 2020

CASE NO(S): PL161152

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

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

Applicant and Appellant:	Fortress Carlyle Peter Street Inc.
Subject:	Application to amend Zoning By-law No. 438-86 and 569-2013 - Refusal or neglect of City of Toronto to make a decision
Existing Zoning:	RA
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the development of a 46-storey mixed-use building consisting of 435 dwelling units
Property Address/Description:	122-128 Peter Street and 357 Richmond Street West
Municipality:	City of Toronto
Municipality File No.:	15 255425 STE 200Z
OMB Case No.:	PL161152
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OMB Case Name:	Fortress Carlyle Peter St Inc. v. Toronto (City)

Heard: August 6, 2020 by telephone conference call

APPEARANCES:

Parties

Counsel

Fortress Carlyle Peter Street Inc.

Daniel Artenosi and Michael Cara

City of Toronto

Matthew Longo

**MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN ON
AUGUST 6, 2020**

[1] This hearing session of the Local Planning Appeal Tribunal (the “Tribunal”), which was conducted by Telephone Conference Call (“TCC”), was a continuation of the appeal hearing conducted by the Tribunal, with this panel presiding, on January 7, 2020.

[2] The subject matter of the appeal concerns an application for zoning amendment on the lands of Fortress Carlyle Peter Street Inc. (the “Appellant”) municipally known as 122-128 Peter Street and 357 Richmond Street West (the “Property”) in the City of Toronto (the “City”).

[3] There was a disposition from the January hearing event, which was by way of a Memorandum of Oral Decision issued on January 22, 2020. That hearing event proceeded as a settlement hearing.

[4] The decision detailed the context of the Property and the form of development which was settled between the Appellant and the City and consented to by the neighbouring property owner at 401 Richmond Street West. The development then presented for approval was a 42-storey proposed new building constructed on a six storey ‘tree trunk’ podium with residential floor plates above on Levels 7 to 42. Three existing house form buildings on the Property were to be retained and restored, and used for commercial purposes.

[5] The Tribunal gave approval in principle to the proposal subject to satisfaction of a number of conditions prior to issuance of the final Order. General endorsement was given to draft zoning amendment by-laws. The conditions included matters related to heritage conservation, finalization of a s. 37 agreement, engineering requirements with respect to servicing and transportation, the withdrawal of certain associated planning appeals, and arrangements with respect to a future potential mid-block connection.

[6] Since the time of that disposition, events have occurred which have brought about a revisitation of the development proposal. One new factor is the elimination of provision for an underground connection to the property at 401 Richmond Street West. As well, the Appellant now wishes to make provision for the introduction of a hotel as a permitted use in the zoning by-law. Although the operative official plan policies for the Property clearly allow hotel use within the applicable land use designation, the draft zoning amendment by-laws did not implement that particular use. The hotel use proposal has also necessitated some modest adjustments to the built form as presented earlier in the year.

[7] These matters have been fully discussed among the City, the Appellant and the neighbour, 401 Richmond Limited, who participated in the original hearing and endorsed the settlement at that time. The Tribunal is advised that counsel for the neighbour was advised of this continuation and registered no objection. That Party was not present at this hearing session. The Appellant and the City come before the Tribunal in this session in full accord on the requested changes to the proposal and the necessary by-law adjustments to achieve it. The City's position on this was formalized at the City Council meeting on May 28, 2020.

[8] As in the previous session, Craig Hunter, the Professional Land Use Planning Consultant for the Appellant, provided the background and opinion evidence on the modified proposal and its consistency and conformity with prevailing Provincial and City planning policy. His evidence took the form of a pre-filed affidavit and oral testimony given during the TCC.

[9] Mr. Hunter confirmed that the principal elements of the proposal originally before the Tribunal in the prior session will remain intact, including: conservation of the existing low profile buildings; maximum permitted heights, floor plates and setbacks of the tower will remain unchanged; the tower will continue to be designed to avoid throwing shadow on the north side of Queen Street West beyond noon; the mid-block connection will continue to be provided; residential parking will continue to be supplied at the rate of

0.17 spaces per unit; and a required road widening will be provided.

[10] For the benefit of the Tribunal, Mr. Hunter identified the key changes as follows:

- (a) the redevelopment will now allow approximately the same total gross floor area (23,100 square meters), including a maximum of 6,300 square meters of non-residential gross floor area (to accommodate a hotel with approximately 106 rooms up to the 13th storey).
- (b) the built-form will include a modified base building of 5 storeys (20 meters) at the northeast corner of the building (Richmond/Peter), stepping down to 2 storeys (8 meters) at the west property line, 3 storeys (12 meters) at the south property line, and 3 storeys (12 meters) for a limited area between the heritage buildings at 120 and 122-124 Peter Street;
- (c) the ground floor setback along the west property line will reduce to 2.0 meters for a limited area at the southwest corner of the building, for a length of 4.6 metres;
- (d) the slender tower, still 631 square metres in size, will now rise to 39 storeys (with approximately 270 residential suites from 14th to 39th), excluding a two-level mechanical penthouse which continues to include indoor and outdoor amenity space, but no longer contains two-level residential suites.
- (e) provided that the building contains a hotel use, 3.43 square metres per dwelling unit of indoor amenity space will be provided, of which 1.4 square metres per dwelling unit is for the exclusive use of residents. Outdoor amenity space will be provided at a rate of 1.59 square metres per dwelling unit, of which 0.83 square metres is for the exclusive use of residents. The redevelopment will allow for building residents to access all of the building amenities at no charge.

- (f) In the event that no hotel use is provided, residential amenity space will continue to be provided in the amount of 2.1 square metres of indoor amenity space per dwelling unit and 1.9 square metres of outdoor amenity space per dwelling unit exclusively for residents of the proposed development.
- (g) The below-grade service connection to 401 Richmond Street has been removed.
- (h) One additional level has been added to the underground parking garage (P1 to P4) to accommodate required resident (46 spaces) and hotel (12 spaces) parking while also accommodating required functional (back-of-house) areas for the hotel, storage and mechanical space on P1). Overall, the total parking provided has been slightly reduced from 60 to 58 parking spaces in the underground.
- (i) Parking for a hotel use will be provided at a rate of 0.2 parking spaces per 100 square metres of hotel use, up to a maximum of 14 spaces. In the event that no hotel is provided, the resident parking will remain at 0.17 spaces per dwelling unit, with no visitor parking.
- (j) The ground floor internal layout has been reconfigured to accommodate the hotel and residential uses, with the hotel lobby now occupying the prominent corner of Richmond and Peter Streets, hotel food and beverage operations in the conserved heritage buildings, three short-term hotel parking spaces (e.g. taxis and ride-sharing) and two loading spaces (one Type G and one Type C). Two car elevators to access the underground garage continue to be provided.

[11] In keeping with the reduced residential floor area, as a non-residential hotel use has been introduced, the s. 37 community benefit contribution has been reduced from \$1,700,000 to \$1,600,000.

[12] Mr. Hunter re-affirmed that the revised proposal will have regard to matters of provincial interest as set out in s. 2 of the *Planning Act*.

[13] In the interval between the hearing in January of this year and this hearing session, the Provincial Policy Statement was revised, effective May 1, 2020, and all decisions of the Tribunal must be consistent with its terms. Mr. Hunter addressed that and opined that the revised proposal will be consistent with the 2020 Provincial Policy Statement.

[14] He re-affirmed the conformity of the proposal with the policies of the Growth Plan for the Greater Golden Horseshoe, 2019.

[15] He also re-affirmed the conformity of the proposal with the policies of the City Official Plan, including the King Spadina Secondary Plan and the Downtown Secondary Plan

[16] As in the prior instance, City Council lent its endorsement to the revised proposal on the basis of the Tribunal granting approval in principle subject to the satisfaction of various conditions. Those conditions were presented to the Tribunal through Mr. Hunter on the joint request of counsel for the Appellant and the City. The conditions are essentially those originally imposed by this panel with slight modifications to reflect the updated architectural drawings and the adjustment to the s. 37 contribution. The recast conditions are as follows:

- a. The Tribunal has been provided with the final form of the zoning by-law amendments.
- b. The Owner has submitted a detailed Conservation Plan prepared by a qualified heritage consultant that is substantially in accordance with the conservation strategy set out in the Heritage Impact Assessment for 120 Peter Street, 122-124 Peter Street and 357-359 Richmond Street West prepared by GBCA Architects dated June 27, 2018, or otherwise a conservation strategy

revised in accordance with a settlement offer or Local Planning Appeal Tribunal Order, all to the satisfaction of the Senior Manager, Heritage Preservation Services.

- c. The Owner and the City have entered into a Heritage Easement Agreement for the properties at 120 Peter Street, 122-124 Peter Street and 357-359 Richmond Street West substantially in accordance with plans and drawings prepared by architectsAlliance dated May 19, 2020, or otherwise revised in accordance with a settlement offer or Local Planning Appeal Tribunal Order, subject to and in accordance with the approved Conservation Plan required under (b) above, all to the satisfaction of the Senior Manager, Heritage Preservation Services, including execution of such agreement to the satisfaction of the City Solicitor.
- d. The Owner and the City have entered into a Section 37 Agreement that is registered on title to secure the community benefits set out in the draft zoning by-law amendments and enumerated in No. 20 of the May 2020 Settlement Proposal as set out in the Offer to Settle (May 2020) dated May 19, 2020 and entered as Exhibit 12. In addition to those matters, the Section 37 Agreement shall include the following:
 - i. provisions requiring that the Owner agree, as a condition of site plan approval, to provide a detailed construction management plan, in consultation with 401 Richmond Ltd., to the satisfaction of the Chief Planner; and,
 - ii. provisions requiring that the Owner prepare and thereafter implement a Heritage Lighting Plan, a Signage Plan, and an Interpretation Plan and requiring that the Owner provide a letter of credit to secure all work included in the approved Conservation Plan and approved Interpretation Plan,

including a provision for upwards indexing, all of the satisfaction of the Senior Manager, Heritage Preservation Services.

- e. The Owner has addressed the outstanding items, having regard to the settlement plans accepted by City Council and entered as Exhibit 12, in relation to servicing and transportation requirements as outlined in the Memorandum from Engineering and Construction Services dated May 15, 2018, or as updated to respond to the settlement plans, to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Transportation Services.
- f. The Owner has provided for the withdrawal of its appeal to the Conservation Review Board of the Notices of Intention to Designate for 120 Peter Street, 122-124 Peter Street and 357-359 Richmond Street West, which shall be subject to the parties agreeing on appropriate measures to confirm or otherwise ensure that the Notices of Intention to Designate will not prevent a building permit from being issued for the proposed development.
- g. The Owner has provided for the withdrawal of its appeal of By-law No. 1111-2017 (the “HCD By-law”), which proposes to designate the King-Spadina Heritage Conservation District and adopt the proposed King-Spadina Heritage Conservation District Plan, which shall be subject to the parties agreeing on appropriate measures to confirm or otherwise ensure that the HCD By-law will not prevent a building permit from being issued for the proposed development.
- h. The Owner has made arrangements that are acceptable to the City Solicitor for the withdrawal or resolution of its site-specific appeals to Official Plan Amendment 352 and the associated Zoning By-laws (1106-2016 and 1107-2016) in order to recognize the development standards permitted under the proposed development.

- i. The Owner has made arrangements that are acceptable to the City Solicitor to provide the required mid-block connection along the west side lot line of the entire length of the property, which shall be conveyed at the discretion of the General Manager, Parks, Forestry and Recreation as either:
 - i. A 0.6 metre strata-parkland conveyance (as measured from grade) under Section 42 of the *Planning Act*, the lower limit of which shall not, for greater certainty, interfere with the below grade parking garage for the development below; or,
 - ii. An at-grade easement for pedestrian access,

(the “Mid-Block Connection”). The arrangements referred to above shall provide that in the event that the General Manager Parks Forestry & Recreation elects to require the conveyance of the Mid-Block Connection as a parkland conveyance under Section 42 of the Planning Act, the conveyance shall be made prior to the earlier of occupancy of the development for residential purpose or condominium registration.

[17] Based upon the uncontroverted testimony of Mr. Hunter, the submissions of counsel and the determination of the Tribunal that the revised proposal will be consistent and conforming with Provincial and City policy as described above, the Tribunal will modify its prior approval of the proposed zoning amendments as requested by the Parties, which amendments will be in general keeping with the drafts submitted at Tabs G and H of Mr. Hunter’s affidavit filed in this continued hearing session of the Tribunal.

[18] The final Order of the Tribunal will be held pending receipt of written confirmation from the City Solicitor that the matters set forth as the conditions to issuance of the final Order referenced above at paragraph [16] have been satisfied.

[19] In the event that there are any matters which must be spoken to with respect to satisfaction and clearance of the referenced conditions, this Member may be contacted through the Case Coordinator at the Tribunal and appropriate direction will be given in terms of how such matters will be addressed and disposed of.

“Gerald S. Swinkin”

GERALD S. SWINKIN
MEMBER

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Local Planning Appeal Tribunal

A constituent tribunal of Ontario Land Tribunals

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