

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



ISSUE DATE: January 22, 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
OMB File No.:	PL161152
OMB Case Name:	Fortress Carlyle Peter St Inc. v. Toronto (City)

Heard: January 7, 2020 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Fortress Carlyle Peter Street
Inc.

Daniel Artenosi

City of Toronto

Matthew Longo

401 Richmond Limited

Meaghan Barrett

**MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN ON
JANUARY 7, 2020**

[1] This session of the Local Planning Appeal Tribunal (the “Tribunal”) proceeded as a settlement hearing.

[2] Fortress Carlyle Peter Street Inc. (the “Appellant”) is the owner of lands municipally known as 120-128 Peter Street and 357-359 Richmond Street West (the “Property”). The Property is an assembly of lands at the southwest corner of Peter Street and Richmond Street West. At the outset of the application process, the Appellant was not the registered owner of 120 Peter Street or 359 Richmond Street West but as of the date of this hearing session, counsel for the Appellant advises that they are the current owner of the assembly. The By-law appeal before the Tribunal deals with the entirety of the Property.

[3] Evidence in the proceeding was called on a consent basis through the consulting land use planner retained by the Appellant, Craig Hunter. Mr. Hunter is a Registered Professional Planner of long standing who appears regularly before the Tribunal. He was qualified to offer opinion evidence on land use planning matters in this appeal hearing.

[4] At the outset of the hearing, during counsel’s opening submissions, Meaghan Barrett, counsel to 401 Richmond Limited, whose property lies immediately to the west of the Property and is improved with an older industrial type building, which now accommodates artist/artisan workshops, advised the Tribunal that her client was supportive of the zoning amendment which was being advanced by the Appellant in this session.

[5] Ms. Barrett directed the Tribunal to an item in a list of conditions which were to be proffered to the Tribunal as conditions to be fulfilled prior to issuance of the

Tribunal's final Order. This item concerned the participation of her client in the development of a construction management plan to be provided by the Appellant to the City. As both counsel for the Appellant and the City acknowledged this matter and that it would be requested of the Tribunal, Ms. Barrett was content and requested leave to withdraw from the hearing, which leave was granted.

[6] Mr. Hunter provided site and contextual evidence to the Tribunal.

[7] The Property has an area of 1,644 square metres ("sq m"). It has frontage on Peter Street of approximately 36 metres ("m") and frontage on Richmond Street West of approximately 45 m.

[8] The Property is currently improved with low profile buildings, in both house form and industrial character and surface vehicle parking areas.

[9] Mr. Hunter produced a diagram which depicted the extent to which this area has become a tall building neighbourhood. Immediately adjacent to the south of the Property, that parcel has been approved for a 47-storey building. In the two blocks to the east between Richmond Street West and King Street West, there are ten sites which are either now built or are approved for buildings ranging from 36 to 49 storeys.

[10] After a productive mediation amongst multiple parties, the proposal for the Property is for a 42-storey tower, with a height of 128.95 m.

[11] The genius and virtue of the proposal is in the design of the podium. The podium was likened by Mr. Hunter to the trunk of a tree. It steps back to allow retention of the house form structures (120, 122 and 124 Peter Street, and 357-359 Richmond Street West). Those structures are to be restored in accordance with a heritage preservation plan. In fact, the structures at 122 and 124 Peter Street suffered considerable damage

in a recent fire but there is to be salvage of brick and other material to effectively recreate them. The restored structures are intended to be occupied for commercial purposes.

[12] The building at the corner will be removed and replaced with a contemporary element, which will serve as the lobby for the apartment building.

[13] The six-storey trunk podium, along with additional columnar supports along the northeast portion of the Property, supports a tower commencing at the 7th floor up to the 42nd floor. The floor plates from Levels 7 to 40 are 648 sq m in area, which comes in at less than the maximum 750 sq m under the Tall Building Design Guidelines, and are laid out with five units on the north side and five units on the south side, organized around a core of three elevators, a stairwell and service functions.

[14] Floor 41 accommodates five, two-storey dwelling units and an indoor and outdoor amenity area.

[15] Another design feature which developed through the mediation exercise was a shaping of the top of the tower by angling it in order to avoid the throwing of any shadow from the building onto the sidewalk on the north side of Queen Street West at the noon hour during the spring and fall equinoxes.

[16] The tower will be at a 23.5 m separation from the approved tower to the south. This is understood to be acceptable in the context despite the general goal of a 25-m separation under the Tall Building Design Guidelines.

[17] There are three underground levels to accommodate vehicle parking at a reduced rate consistent with other Downtown approvals. Bicycle parking will also be provided underground at a rate in keeping with the Toronto Green Standard. Vehicles will be conveyed to the parking spaces by elevator.

[18] A road widening of Richmond Street West will be given in keeping with the designated right-of-way width of that street, save that the City will forbear from requiring that full extent of widening in the area of 357-359 Richmond Street West in order to preserve those structures in their relation to the street (although the Tribunal understands that those structures may be marginally relocated).

[19] The Appellant has agreed to convey to the City a strata property interest at the west limit of the Property in order to accommodate a possible future mid-block connector. This feature is shown on Map 16-1, Urban Structure Plan, of the King Spadina Secondary Plan (“KSSP”). Its implementation is dependent on various other future development initiatives in this block which at this stage are not fixed. However, the conveyance to the City of the interest at this time will maintain the prospect for future implementation.

[20] Mr. Hunter, after describing the proposal and its context, moved into a review of relevant policy considerations.

[21] Mr. Hunter offered the view that the proposal has regard for matters of provincial interest as expressed in s. 2 of the *Planning Act* (“Act”).

[22] He advised the Tribunal that, in his opinion, the proposal is consistent with the vision and policies of the Provincial Policy Statement 2014 (“PPS”) and conforms with the Growth Plan for the Greater Golden Horseshoe, 2019 (“Growth Plan 2019”) with particular reference to building strong, healthy communities, conserving significant built heritage resources, achieving intensification, especially as the Downtown is a designated urban growth centre, and making efficient and optimal use of infrastructure, including public transit.

[23] Mr. Hunter advised that, in his opinion, the proposal supports and conforms with the objectives and policies of the City Official Plan (“OP”). In this regard, he makes

specific reference to the policies relating to urban structure, public realm and built form, heritage conservation, housing, community services and parks, and retail.

[24] As noted above, the Property is located within the KSSP. Mr. Hunter advised that, in his view, the proposal conforms not only with the in-force KSSP but also with the emerging update to that Secondary Plan. In fact, the matter of consideration for shadow impact on Queen Street West comes out of that draft document.

[25] Mr. Hunter also provided a brief discussion on the City's Urban Design Guidelines and the Tall Building Design Guidelines and his view that the proposal supports the general objectives of those documents.

[26] In his opening submissions, counsel for the City, Matthew Longo, confirmed that the City was supportive of the zoning amendments which have been put before the Tribunal in this appeal, as revised after the mediation and further discussion between the Appellant and the City. He thought fit to underscore what he believed to be four particular factors of note that led to this settlement.

[27] His first item of note related to the retention of the heritage resources on the Property. The second item of note was the attention to built form and its impacts, with particular reference to the avoidance of shadow on the north sidewalk on Queen Street West, and to considerations of materiality concerning the building finishes.

[28] The third item of note was the s. 37 of the Act contribution by the Appellant. The negotiation between the Appellant and the City led to an agreement that the Appellant will make a \$1,700,000 cash contribution to the City to be allocated at the discretion of the City.

[29] And fourthly, the conveyance of land to the City for the mid-block connection fulfills an important objective of the KSSP.

[30] Council's endorsement of the settlement was subject to a request being made of the Tribunal that its final Order authorizing the zoning amendments be made subject to various conditions which were set out in the Council resolution.

[31] Daniel Artenosi, as counsel for the Appellant, has expressly acknowledged his client's assent to the imposition of these conditions relating to the issuance of the final Order on any approval given by the Tribunal.

[32] Those conditions are set forth on Attachment 1 to this Decision.

[33] Consequently, based upon the uncontroverted evidence of Mr. Hunter heard in this proceeding and the submissions of counsel, the Tribunal finds the proposal to be consistent with the PPS, will conform with the Growth Plan 2019, and conforms with the City OP. The Tribunal will thus allow the appeal, in part, and will approve the amendment of Zoning By-law Nos. 438-86, as amended, and 569-2013, as amended, in general keeping with the drafts of those amendments submitted as Exhibits 6 and 7 in the proceeding, subject to further edits as settled by the Appellant and the City.

[34] As requested by all of the Parties, the final Order of the Tribunal approving the zoning amendments will be held until the Tribunal is in receipt of written confirmation from the City Solicitor that the conditions set forth on Attachment 1 have been satisfied.

[35] In the event that any issue arises with regard to the satisfaction and clearance of any of those conditions or otherwise arising from the Tribunal's disposition herein, a Party may contact the Tribunal through the Case Coordinator to seek further direction from this Member. The Member will determine whether a further hearing event will be required and will give direction accordingly.

“Gerald S. Swinkin”

GERALD S. SWINKIN
MEMBER

If there is an attachment referred to in this document,
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Local Planning Appeal Tribunal

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

ATTACHMENT 1

Conditions to LPAT Order Issuing

1. The final Order of the Local Planning Appeal Tribunal allowing the appeal, in part, and approving the amendments to City of Toronto Zoning By-law Nos. 438-86, as amended, and 569-2013, as amended, is withheld until the following matters have been satisfied, as confirmed by written communication to the Tribunal from the City Solicitor:
 - 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 submitted with the Heritage Impact Assessment prepared by GBCA Architects, dated June 27, 2018, 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 1(a) 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 filed as Exhibits 6 and 7. In addition to those matters enumerated in the draft zoning by-law amendments, 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 2 in relation to servicing and transportation requirements as outlined in the Memorandum from Engineering and Construction Services dated May 15, 2018, 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 and 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 a 3 metre 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 the Service Connection for 401 Richmond Street West; 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.