

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



ISSUE DATE: October 09, 2018

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: September 28, 2018 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Fortress Carlyle Peter Street Inc.

D. Artenosi

City of Toronto

M. Longo

401 Richmond Ltd.

N. J. Pepino and M. Barrett (not present)

Ricki's Construction and Painting Inc. J. Alati

**MEMORANDUM OF ORAL DECISION DELIVERED BY HELEN JACKSON ON
SEPTEMBER 28, 2018 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] This was a Pre-hearing Conference ("PHC") in the matter of an appeal to the Ontario Municipal Board, now continued as the Local Planning Appeal Tribunal (the "Tribunal") by Fortress Carlyle Peter Street Inc. (the "Applicant"), under s. 34(11) of the *Planning Act* of the failure of the City of Toronto (the "City") to make a decision on an application for a zoning by-law amendment to permit the development of a 46 storey mixed use building with 435 dwelling units on the lands described above.

[2] The Tribunal was advised that a settlement was achieved in this matter following Tribunal-assisted mediation. A settlement offer was presented to the City which was accepted by City Council at its meeting of July 23 to 27, 2018. The settlement included proposed development of the lands at 120 Peter Street, owned by Ricki's Construction and Painting Inc. ("Ricki's"). The Applicant and Ricki's had an agreement whereby the Applicant would purchase the lands at 120 Peter Street. The sale was to close on August 13, 2018. The Tribunal was advised that the sale did not close and that the arising dispute is now before the Court and is to be heard on February 6, 2019.

[3] Notwithstanding the dispute that remains before the Court, the parties to this appeal wish to proceed to prepare for a hearing on the planning merits of the zoning by-law application that is before the Tribunal. Daniel Arsenosi submits that it is not necessary for an applicant for a zoning by-law amendment to 'own' the lands to be rezoned. This proposition was not disputed by any of the parties. He cited the *Planning Act*, s. 22(1) and 34(10.1) excerpted below and two cases of the Board to support this position.

Section 22(1) If a person or public body requests a council to amend its official plan, the council shall,

Section 34 (10.1) A person or public body that applies for an amendment to a by-law passed under this section or a predecessor of this section shall provide the prescribed information and material to the council.

[4] Mr. Artenosi provided two previous cases of the Board that explore this issue; being, *Oakwood Retirement Communities Inc. v. Toronto (City)*, [2001] O.M.B.D. No. 1322; and, *Yolanda Flanders Developments Inc. v. Toronto (City)*, [2013] O.M.B.D. No. 221. In both of these cases, the Board found that it was not necessary to be an owner of the land to apply for a zoning by-law amendment.

[5] On that basis, the parties jointly request that the Tribunal set a further PHC and a three day hearing to deal with the outstanding issues of John Alati's client, and the planning merits of the proposal. The parties have committed to providing the Tribunal with a list of issues for the hearing by November 2, 2018 and a finalized Procedural Order by November 9, 2018. The only party with issues remaining is Ricki's.

[6] As requested, the Tribunal has scheduled a further PHC to be held by telephone conference call. It is scheduled for **Friday, May 10, 2019 at 10 a.m.** The call in numbers are as follows: **(416) 212-8012** or Toll Free **1(866) 633-0848** at the correct time. When prompted, enter the **code 4779874#** to be connected to the call.

[7] The Tribunal has scheduled a three day hearing in this matter to commence **Wednesday, August 7, 2019 at 10 a.m.** The hearing will be held at:

**Local Planning Appeal Tribunal
655 Bay Street,
16th Floor
Toronto, Ontario**

[8] No further notice will be given.

[9] This Member is seized of the next PHC but not of the hearing.

Helen Jackson”

HELEN JACKSON
MEMBER

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please visit www.elto.gov.on.ca to view the attachment in PDF format.

Local Planning Appeal Tribunal

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