

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: February 13, 2018

CASE NO(S):

PL170299

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

Applicant and Appellant: Oben Flats Sherbourne GP Inc.
Subject: Application to amend Zoning By-law No. 438-86
- Refusal or neglect of the City of Toronto to
make a decision
Existing Zoning: MC T1.5 C1.0 R1.0
Proposed Zoning: Site Specific (To be determined)
Purpose: To permit a 13-storey residential building
Property Address/Description: 307 Sherbourne Street
Municipality: City of Toronto
Municipality File No.: 15 147462 STE 28 OZ
OMB Case No.: PL170299
OMB File No.: PL170299
OMB Case Name: Oben Flats Sherbourne GP Inc. v. Toronto (City)

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

Applicant and Appellant: Oben Flats Sherbourne GP Inc.
Subject: Request to amend the Official Plan - Refusal of
request by the City of Toronto
Existing Designation: Mixed Use Areas
Proposed Designated: Mixed Use Areas
Purpose: To amend the shadowing and tower setback
provisions of Official Plan amendment 82
Property Address/Description: 307 Sherbourne St
Municipality: City of Toronto
Approval Authority File No.: 17 144959 STE 28 OZ
OMB Case No.: PL170299
OMB File No.: PL171105

Heard: January 23, 2018 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Oban Flats Sherbourne GP Inc.

D. Neligan

City of Toronto

S. Haniford

2074051 Ontario Ltd.

M. Bull

**MEMORANDUM OF ORAL DELIVERED BY L. M. BRUCE ON JANUARY 23, 2018
AND ORDER OF THE BOARD**

[1] Oben Flats Sherbourne GP Inc. (the “Applicant”) has applied for a Zoning By-law Amendment (“ZBA”) to permit the construction of a 14-storey apartment building at 307 Sherbourne Avenue (the “subject property”). This was the second Pre-hearing Conference (“PHC”) held to organize a hearing on the merits of this appeal.

[2] Since the first PHC, the Applicant applied for an Official Plan Amendment (“OPA”) to OPA 82 to permit new net shadow on Allen Gardens arising from the proposed development. This is the first PHC with respect to the OPA appeal.

[3] Requests for Participant status were made by George Rust-D’Eye and Wallace Immen. Both Participants are on the Cabbagetown Heritage Conservation District Advisory Committee and indicated that they live in the nearby neighbourhood. Participant status was granted by consent of the parties.

[4] The Board was advised that the parties will be seeking Board directed mediation. The Board’s Case Co-ordinator will be contacted by the parties to arrange a meditation assessment.

[5] The Board was presented with a draft Procedural Order (“PO”) and draft Issues List. A number of edits to this draft Issues List were identified to the Board. In addition, Mary Bull, Counsel for 2074051 Ontario Ltd. indicated that her client’s issue has been addressed and as a result they will be withdrawing as a party. A revised PO and Issues List is included herewith as Attachment 1.

[6] The parties asked the Board to schedule a five-day hearing, which could potentially be reduced in length if issues can be scoped through mediation. A hearing has been scheduled for **Tuesday, November 13, 2018 at 10 a.m. for four days** with a fifth day on **Tuesday, November 20, 2018**. The hearing will be held at:

**Ontario Municipal Board
655 Bay Street,
16th Floor
Toronto, Ontario**

[7] There will be no further notice of this hearing. This Member is not seized but may be spoken to in advance of the hearing if required

[8] This is the Order of the Board.

“L. M. Bruce”

L. M. BRUCE
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

ONTARIO MUNICIPAL BOARD

Procedural Order

IN THE MATTER of subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: Oben Flats Sherbourne GP Inc.
Subject: Application to amend Zoning By-law Nos. 438-86 – Refusal or neglect of the City of Toronto to make a decision
Existing Zoning: MC T1.5 C1.0 R.10
Municipality: City of Toronto
OMB Case No.: PL170229
OMB File No.: PL170229

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

Appellant: Oben Flats Sherbourne GP Inc.
Subject: Request to amend the Official Plan - Refusal of request by the City of Toronto
Existing Designation: Mixed Use Areas
Municipality: City of Toronto
OMB Case No.: PL170229
OMB File No.: PL171105

The Board orders that:

1. The Board may vary or add to this Order at any time either on request or as it sees fit. It may amend this Order by an oral ruling or by another written Order. The attachments to this Procedural Order form part of the Board's Order.

Organization of the Hearing

2. The hearing will begin on **November 13, 2018** at 10:00 a.m. at:

Ontario Municipal Board
655 Bay Street, 16th Floor
Toronto, ON M5G 1E5

3. The length of the hearing will be **five (5) hearing days**, to be heard on **November 13-16, 2018** and **November 20, 2018**. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
4. The parties and participants identified at the prehearing conference are listed in **Attachment 2** to this Order.

5. The parties' Issues List is attached as **Attachment 3** to this Order. There will be no changes to this list unless the Board permits it. A party who asks for changes may have costs awarded against it.
6. The order of evidence is listed in **Attachment 4** to this Order.

Requirements Before the Hearing

7. All parties and participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Board. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other parties and the Board of the representative's name, mailing address, email address and phone number.
8. A party who intends to call witnesses, whether by summons or not, shall provide to the Board and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered on or before **Wednesday, August 15, 2018** (90 days prior to the hearing). For expert witnesses, a party is to include a copy of the curriculum vitae and the area of expertise in which the witness is proposed to be qualified.
9. An expert witness shall prepare an expert witness statement, that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of this must be provided as in **Section 12**. Instead of a Witness Statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.
10. A witness or participant must provide to the parties a witness or participant statement on or before **Friday, September 14, 2018** (60 days prior to the hearing) or the witness or participant may not give oral evidence at the hearing.
11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence and his or her area of expertise, as in **Section 12**.
12. On or before **Friday, September 14, 2018** (60 days prior to the hearing), the parties shall provide copies of their expert witness statements to the other parties. A paper copy of any document proposed to be entered into evidence or relied upon shall be provided at the hearing unless ordered otherwise by the presiding Member.
13. On or before **Monday, October 29, 2018** (15 days prior to the hearing), the parties shall provide copies of their visual evidence to all of the other parties. If a model is proposed to be used the Board must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.
14. Parties may provide to all other parties a written response to any written evidence on or before **Wednesday, October 12, 2018** (30 days prior to the hearing).
15. A person wishing to change written evidence, including witness statements, must make a written motion to the Board in accordance with the Board's Rules [34 to 38]
16. A party who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Board and the parties are notified at least **7 days** before the hearing that the written evidence is not part of their record.
17. Documents may be delivered in person, by courier, by facsimile, by registered or certified mail, by email or otherwise as the Board may direct. The delivery of documents by fax and email shall be governed by the Board's Rules [26 to 31] on this subject.

Material delivered by mail shall be deemed to have been received one business day after the date of registration or certification.

18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Board's Rules 61 to 65 apply to such requests.
19. The Board may be spoken to in the event some matter should arise in connection with the implementation of this Procedural Order.

This Member is not seized.

So orders the Board.

Attachment 1

Purpose of the Procedural Order and Meaning of Terms

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not familiar with the hearing process you should prepare by obtaining the Guide to the Ontario Municipal Board, and the Board's Rules, from the Board Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-212-6349, or from the Board website at www.omb.gov.on.ca.

The parties should discuss the draft Procedural Order before the prehearing conference and identify the issues and the process they propose the Board order following the prehearing. The Board will hear submissions about the content of the Procedural Order at the prehearing.

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Board to participate fully in the hearing by receiving copies of written evidence, presenting witnesses, cross-examining the witnesses of the other parties, and making submissions on all of the evidence. If an **unincorporated group** wishes to become a party, it must appoint one person to speak for it, and that person will become the party and assume the responsibilities of a party as set out in the Procedural Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorisation from the party.

Participant is an individual, group or corporation, whether represented by a lawyer or not, who may attend only part of the proceeding but who makes a statement to the Board on all or some of the issues in the hearing. At the hearing, a participant may be asked questions by the parties about their statements. Participants do not normally receive notice of a mediation or conference calls on procedural issues and cannot ask for costs, or review of a decision as parties can.

Written and Visual Evidence: **Written evidence** includes all written material, reports, studies, documents, letters and witness statements which a party or participant intends to present as evidence at the hearing. These must have pages numbered consecutively throughout the entire document, even if there are tabs or dividers in the material. **Visual evidence** includes photographs, maps, videos, models, and overlays which a party or participant intends to present as evidence at the hearing. If a model forms part of the evidence, photographs of the model shall also be filed.

Witness Statements:

A **witness statement** or a **participant statement** is a short written outline of the person's or group's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' or participant's position on those issues; and a list of reports that the witness or participant will rely on at the hearing.

An **expert witness statement** should include his or her (1) name and address, (2) qualifications, acknowledgement of the expert's duty, and specific area(s) of expertise, (3) a list of the issues to be addressed, (4) the witness' opinions on those issues and the complete reasons for the opinions and (5) a list of reports that the witness will rely on at the hearing.

The Procedural Order will set out when and how witness statements are to be exchanged.

Additional Information

Summons: A party may ask the Board to issue a summons. This request must be made before the time that the list of witnesses is provided to the Board and the parties. (See Rules 45 and 46 on the summons procedure.) An affidavit may be requested indicating how the witness' evidence is relevant to the hearing. If the Board is not satisfied from the affidavit, it will require that a motion be heard to decide whether the witness should be summoned.

The order of examination of witnesses: is usually direct examination, cross-examination and re-examination in the following way:

direct examination by the party presenting the witness;

direct examination by any party of similar interest, in the manner determined by the Board;

cross-examination by parties of opposite interest;

re-examination by the party presenting the witness; or

another order of examination mutually agreed among the parties or directed by the Board.

Role of Participants: Participants are identified at the start of a prehearing or at the start of a hearing. Participant statements should be filed with the Board and the parties in accordance with the direction set out in the Board's Procedural Order. If a participant does not attend the hearing and only files a written statement, the Board may not give it the same attention or weight as submissions made orally. The reason is that parties cannot ask further questions of a person if they merely file the material and do not attend.

Attachment 2

LIST OF PARTIES AND PARTICIPANTS

PARTIES:

1. Oben Flats Sherbourne GP Inc.

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2. City of Toronto

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3. 2074051 Ontario Ltd.

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PARTICIPANTS

1. Karen Marren
2. Perla Meszen
3. Wallace Imman
4. George Rust-D'Eye

Attachment 3

ISSUES LIST

City of Toronto

1. Should section 3.3 of Official Plan Amendment 82 as amended and as is coming into force as set out in the Draft Order provided to the Board Dec. 20, 2017 ("OPA 82") also come into force and apply to the site? Including:
 - (a) would such comprise good planning and be in the public interest?;
 - (b) would such have regard to the decision of the City Council as set forth in Section 2.1 of the Planning Act?
 - (c) would the application of section 3.3 of OPA 82 to the site be consistent with the Provincial Policy Statement (2014), including Policy 2.6 of the PPS?
 - (d) would the application of section 3.3 of OPA 82 to the site conform with and not conflict with the Growth Plan for the Greater Golden Horseshoe (2017), including but not limited to sections 1.2.1 and 4.2.7.1?
 - (e) would the application of section 3.3 of OPA 82 to the site have regard to the matters of provincial interest set out in Section 2(d) of the Planning Act?
 - (f) would the application of section 3.3 of OPA 82 to the site conform to the Toronto Official Plan?

City of Toronto Official Plan

2. Do the proposed development, Official Plan Amendment and Zoning By-law Amendments conform to or maintain the intent and purpose of the City of Toronto Official Plan, including but not limited to sections 2.2.2.3.c), 2.2.1.6, 2.3.1.2, 3.1.1.1.d), 3.1.2.3 a), c) & f), 3.2.3.1, 3.2.3.3 and 4.5.2?

City of Toronto Official Plan Amendment 82

3. Do the proposed development, Official Plan Amendment and Zoning By-law Amendments conform to or maintain the intent and purpose of the City of Toronto Official Plan Amendment 82 (under appeal for this site respecting section 3.3), including but not limited to sections 2.5 and 3.3?
4. What is the appropriate weight to be given section 3.3 of OPA 82 which is enacted by City Council, and is under appeal respecting this site and certain other sites, and is not in force on the site?

City-wide Tall Building Guidelines

5. Do the proposed development, Official Plan Amendment and Zoning By-law Amendments maintain the intent and respond appropriately to the May, 2013 city-wide Tall Building Guidelines, including but not limited to Section 1.4 sunlight and sky view?

Downtown Tall Buildings Supplementary Guidelines

6. Do the proposed development, Official Plan Amendment and Zoning By-law Amendments maintain the intent and respond appropriately to the May, 2013 Downtown Tall Buildings Supplementary Guidelines, including but not limited to Sections 1.3 Factors Mitigating Height and 3.2 Sunlight and Sky View?

Site Specific Issues

7. Is the proposed building height of 46.8 metres (including the mechanical penthouse) consisting of 14 storeys appropriate?
8. Do the proposed development, Official Plan Amendment and Zoning By-law Amendments provide an appropriate height transition to the adjacent Neighbourhoods and Heritage designated lands to the south?
9. Do the proposed development, Official Plan Amendment and Zoning By-law Amendment have unacceptable shadow impacts on Allan Gardens? Should the proposed development be permitted to shadow Allan Gardens between the hours of 10:00am and 11:30am as measured on March 21st and September 21st?
10. Does the massing of the proposed development and Zoning By-law Amendments minimize shadow on parks and open space as required by the in force Official Plan policies?
11. Do the provisions of the proposed Official Plan Amendment minimize shadow on parks and open space as required by the in force Official Plan policies?
12. Have the issues identified in the letters dated September 19, 2016 from Development Engineering been resolved?

Other Matters

13. Would approval of the Official Plan Amendment or Zoning By-law Amendments have regard to the decision of the City Council as set forth in section 2.1 of the Planning Act?
14. Do the proposed development, Official Plan Amendment and Zoning By-law Amendments represent good planning and are they in the public interest?
15. Are the form and content of the proposed Official Plan Amendment and Zoning By-law Amendments appropriate?
16. Would the approval of the proposed Official Plan Amendment and/or Zoning By-law Amendments set an inappropriate precedent?
17. In the event that the Board allows the appeals in whole or in part, should the Board Order be withheld until the following conditions are satisfied:
 - (a) The final form of the by-laws is to the satisfaction of the parties, including the City's Chief Planner and the City Solicitor;
 - (b) The owner has submitted a Functional Servicing Report to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services. The report will determine whether the existing municipal water, sanitary and

storm sewer systems can support the proposed development or upgrades are required;

- (c) The owner has entered into and registered on title to the site a financially secured agreement for the construction of any improvements to the municipal infrastructure, should it be determined that upgrades are required to support the development, according to the Functional Servicing Report accepted by the Chief Engineer and Executive Director, Engineering and Construction Services, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and the City Solicitor; and
- (d) The owner has submitted a Hydrogeological Report to the satisfaction of the General Manager, Toronto Water.

2074051 Ontario Ltd.

- 18. Does the building proposed by Oben Flats Sherbourne GP Inc. ("Oben Development") have an appropriate interface with the adjacent buildings at 201 and 203 Gerrard Street West, particularly when you take into account that the existing and historical main entrance to 201 Gerrard Street is located on the east side of the building facing the Oben Development and that the building is on the City's Heritage Register?

NOTE: The identification of an issue does not mean that all parties agree that such issue, or the manner in which the issue is expressed, is appropriate or relevant to the determination of the Board at the hearing. The extent to which these issues are appropriate or relevant to the determination of the Board at the hearing will be a matter of evidence and argument at the hearing.

Attachment 4

ORDER OF EVIDENCE

1. Oben Flats Sherbourne GP Inc.
2. City of Toronto
3. 2074051 Ontario Ltd.
4. Reply Evidence of Oben Flats Sherbourne GP Inc. (if any)