

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



ISSUE DATE: December 06, 2018

CASE NO(S): PL170604

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: | 1127792 Ontario Ltd. |
| Subject: | Application to amend Former City of Etobicoke Zoning Code - Refusal or neglect of City of Toronto to make a decision |
| Existing Zoning: | "Class 1 Industrial (I.C1)" Zone |
| Proposed Zoning: | Site-specific "Sixth Density Residential (R6) Zone |
| Purpose: | To permit a proposed 35-storey residential tower, accessory uses and structures in conjunction with the proposed residential tower, and public park uses |
| Property Address/Description: | 30 & 44 Zorra Street |
| Municipality: | City of Toronto |
| Municipality File No.: | 15 244093 WET 05 OZ |
| OMB Case No.: | PL170604 |
| OMB File No.: | PL170604 |
| OMB Case Name: | 1127792 Ontario Ltd. v. Toronto (City) |

Heard: November 9, 2018 at Toronto, Ontario

APPEARANCES:

Parties

Zorra Developments Limited

City of Toronto

Counsel

Eileen Costello and Monica Ciriello

Alexander Suriano

**MEMORANDUM OF ORAL DECISION DELIVERED BY GERALD S. SWINKIN
ON NOVEMBER 9, 2018**

[1] The matter before the Local Planning Appeal Tribunal (the “Tribunal”) in this case is an appeal from the failure of the Council of the City of Toronto (the “City”) to act on an application by the owner of 30 and 44 Zorra Street (the “Property”) originally seeking an amendment to the Etobicoke Zoning Code to permit the construction and use of a 36-storey, 379 unit, residential building on the Property and to reflect a proposed road dedication and parkland dedication out of the owner’s lands.

[2] At the time of application for the zoning amendment in October, 2015, 1127792 Ontario Limited was the registered owner of the Property. The appeal was filed by that party on May 26, 2017. Since that date, that owner entered into an agreement of purchase and sale to sell the Property to Marlin Springs Investments Ltd. Marlin Springs assumed carriage of the appeal and directed title to Zorra Developments Limited. For the purpose of this Decision, reference will be made to the current registered owner as the “Appellant”.

[3] The Appellant undertook discussions with staff at the City, which culminated in a settlement offer by the Appellant dated March 2, 2018, which was accepted by City Council resolution arising out of its meeting on July 23, 2018 and results in a development proposal which has the support of both.

[4] This hearing of the Tribunal was a settlement hearing. By agreement between the Parties, the consent evidence was tendered by the Appellant through its consulting land use planner, Louis Tinker, who was qualified to offer opinion evidence on land use planning matters in the proceeding.

THE AREA CONTEXT

[5] The Property is located immediately south of The Queensway Corridor, east of Kipling Avenue, west of Islington Avenue and north of the F.G. Gardiner Expressway.

[6] The Queensway, in this segment between Kipling Avenue and Islington Avenue, has contrasting forms of development reflective of the varying lot fabric and historic use of the abutting area to the north and south.

[7] In general, the lands on the south side of The Queensway are characterized by larger parcels extending to the Gardiner Expressway, which contain Industrial, commercial, and residential uses. In contrast, the lands to the north are primarily two-storey, mixed-use buildings located on shallower lots and abutting low-density residential areas.

THE DEVELOPMENT PROPOSAL

[8] Mr. Tinker provided a detailed explanation of the development proposal as it is now before the Tribunal, after modification through negotiations with the City and endorsement of the modified proposal by the City Council.

[9] His explanation in detailed point form is set forth as follows:

- Demolition of the two existing one and one-and-a-half-storey office and warehouse buildings;
- Development of a 35-storey residential building, with a six-storey podium building;
- Conveyance of approximately 733 square metres (“sq m”) of land for the future Caven Street (public street) extension, comprised of a 20-metre wide right-of-way immediately north of the proposed building;
- On-site parkland dedication of approximately 1,118 sq m immediately north of the future Caven Street extension.

[10] This parkland dedication represents an over-dedication of the amount of parkland required under Section 42 of the *Planning Act* and the City Municipal Code. The excess amount conveyed will be recognized as a credit, as documented in the Section 37 Agreement, to be applied by the developer in satisfaction of parkland dedication in connection with other area developments of the Appellant or its associated companies, which are presently intended to apply to 1197 The Queensway and 1045-1049 The Queensway.

[11] The on-site parkland provides a visual linkage to the approved 998 sq m future public park located immediately east of the Property, across Zorra Street (1193 The Queensway and 7-45 Zorra Street).

[12] The size, location and configuration of the on-site parkland dedication and road has received support from City Planning staff.

[13] By agreement between the Appellant and the City, a Section 37 cash contribution will be made by the Appellant to be allocated by the City for community improvements in the vicinity of the Property.

[14] Proposed podium building setbacks:

- 4.0 metres (“m”) from the future Caven Street extension;
- 1.40 m from east property line abutting Zorra Street, with the exception of the building entrance which is setback 3.7 m;
- 0.90 m from west property line;
- 0.50 m from south property line abutting rear driveway access.

Proposed tower setbacks:

- 49.60 m from future Caven Street extension (rear) property line to the north;
- 12.50 m from western (side) property line

Density: 6.18 Floor Space Index ("FSI")

Height: 108.30 m excluding mechanical penthouse (5.5 m)

Residential Gross Floor Area ("GFA"): 32,265 sq m

Tower Floorplate: 715.5 sq m

Unit Breakdown:

- 181 one-bedroom units (43%); 199 two-bedroom units (47%); and 43 three-bedroom units (10%) Total units = 423

Vehicular Parking spaces:

- Residents: 372
- Visitors: 63
- Total: 435 spaces
- Bike Parking Spaces: 317.25
- Amenity Space:
 - Indoor: 846 sq m (2 sq m per unit)
 - Outdoor: 846 sq m (2 sq m per unit)

THE PLANNING FRAMEWORK AND RATIONALE

[15] From a land use policy perspective, it was the opinion of Mr. Tinker that the proposed development is supportive of the policy framework expressed in the Provincial Policy Statement (2014) (the “PPS”), the Growth Plan for the Greater Golden Horseshoe (2017) (the “Growth Plan”) and the City of Toronto Official Plan, all of which promote intensification and a range of housing choices within built-up urban areas, particularly on underutilized sites that are well served by municipal infrastructure and community services and facilities.

[16] The settlement proposal involves the redevelopment of an underutilized site with a high quality residential development, located within walking distance of various transit routes and represents an appropriate and desirable form of transit-supportive intensification.

[17] The proposal will implement the planning objectives of the Mixed Use Areas designation of the City Official Plan, which is the land use designation currently applicable to the Property, and conforms to the development criteria for such areas.

[18] The proposed high-rise building conforms to the built form and urban design policies of the City Official Plan and responds appropriately to the applicable Tall Building Guidelines.

[19] The redevelopment of the site will result in a tall building that is compatible with the existing and planned built form context and will appropriately intensify an underutilized site.

[20] The proposal will contribute to the creation of a range of housing options, as well as an attractive, safe and comfortable public park space and public realm that encourages walking, and provides amenity for current and future residents of the site and surrounding area.

[21] The development proposal will be compatible with the evolving character of lands south of The Queensway between Kipling and Islington Avenue, which is being implemented through development applications (proposed and approved) that involve the redevelopment of large parcels containing low-rise industrial and commercial uses into a mid to high-rise Mixed Use residential oriented neighbourhood.

[22] The height and density provisions outlined in the existing zoning predate the PPS, Growth Plan and City Official Plan, and as such, it is his opinion that it is appropriate to support a higher level of intensification in a form that is compatible with the existing and emerging built form and land use context.

[23] There are no unacceptable built form impacts in terms of shadowing or wind effects.

[24] In his opinion, the proposed development and proposed zoning amendment is appropriate and desirable from the perspective of both land use and urban design.

[25] He was of the opinion that the proposed zoning amendment will be consistent with the PPS, conform with the Growth Plan and the policies of the City Official Plan and will appropriately implement the development proposed.

CONDITIONS PRIOR TO ISSUANCE OF THE TRIBUNAL'S FINAL ORDER

[26] The settlement was endorsed by City Council on the premise that the Appellant would accept certain conditions imposed by Council with respect to implementation matters that were not finalized as of the time of Council consideration of the proposal.

[27] The Appellant has accepted those conditions and requests that the Tribunal abide by them in its disposition so that the necessary concluding matters can be satisfied.

[28] The reasons behind the conditions were fully explained to the Tribunal by counsel for the Parties and the Tribunal recognizes these conditions to be consistent with current practice.

[29] The Appellant had sought to impose time limits within the conditions for the various matters to be addressed and cleared by the City. The Tribunal did not treat that request as appropriate and will decline to do so. However, given the understanding that the required material to be filed by the Appellant has either already been filed with the City or is imminently to be so filed, it is the expectation of the Tribunal that the City will deal with those matters as expeditiously as possible and advise the Appellant if there are any issues with that material, and once any such issues have been resolved, if any, will forward the required clearance letter to the Tribunal forthwith.

[30] Should there be any issue regarding the attention being given to the clearance of the conditions, the Appellant shall be at liberty to request a review of this circumstance by contacting the case coordinator at the Tribunal to schedule a hearing event in the form of a teleconference call or an in person hearing event with this Member as is warranted.

THE DISPOSITION

[31] In light of the evidence heard by the Tribunal, and the submissions of counsel for both Parties, the Tribunal will allow the appeal, in part, and authorize the zoning amendment to the Etobicoke Zoning Code in principle as set forth in the draft amending by-law tendered in evidence as Exhibit 8. It is understood that this draft is to be vetted by various departments within the City to ensure its compliance with City drafting norms and that it will be effective to authorize construction of the development proposal which was explained to the Tribunal.

[32] Consequently, and in accordance with the request of the Parties, the final Order of the Tribunal will be withheld until a clearance letter has been received by the Tribunal from the City Solicitor addressing the following matters:

- a) the City Solicitor has advised the Tribunal that the proposed Zoning By-law Amendment is in a form satisfactory to the Chief Planner and Executive Director, City Planning, and the City Solicitor and shall submit the final form of the zoning amendment by-law to the Tribunal;

- b) the City Solicitor has advised the Tribunal that the City has received an executed Section 37 Agreement that has been registered on title to the Property securing the following, all to the satisfaction of the City Solicitor:
 - a. The following shall be secured as community benefits in the Section 37 Agreement:
 - i. a cash contribution of \$1,370,000.00 to be paid by the owner prior to the issuance of the first above-grade building permit for the proposed development and to be allocated for uses that will benefit the community in the vicinity of the Subject Site at the discretion of the Chief Planner and Executive Director, City Planning in consultation with the Ward Councillor; and,
 - ii. the \$1,370,000.00 cash contribution is to be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for the Toronto Census Metropolitan Area, reported quarterly by Statistics Canada in Building Construction Price Indexes Publication 3270058, or its successor, calculated from the date of the Local Planning Appeal Tribunal decision to the date of payment; all cash contributions will be payable prior to issuance of the first above-grade building permit.

 - b. The following shall be secured as a legal convenience to support the development in the Section 37 Agreement:

- i. the on-site parkland dedication, including above base improvements for same, and the development charge credit;
 - ii. an acknowledgement by the City that any parkland dedication overage resulting from subsection i. above may be used for parkland dedication credit for the development applications related to 1197 The Queensway and 1045-1049 The Queensway; for greater clarity, the City's agreement to such a parkland credit described above shall not be construed to fetter City Council's discretion with respect to its decision regarding any development application related to those other sites; and,
 - iii. the future conveyance for public road purposes of approximately 733.4 sq m of land to the City for the future extension of Caven Street.
- c) the Chief Planner and Executive Director, City Planning has confirmed that the Noise Assessment dated February 28, 2018, prepared by Novus Environmental and submitted by the Applicant has been Peer Reviewed by a third-party Noise Consultant retained by the City at the Applicant's sole cost and expense, and that the Applicant has implemented the noise control measures and recommendations identified through the Peer review; and,
- d) the Chief Engineer and Executive Director, Engineering and Construction Services has confirmed that all engineering matters have been addressed to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services.

[33] If there are any matters relating to the implementation of this Decision or issuance of the final Order that must be addressed by the Tribunal, this Member can be spoken to by communication with the Case Coordinator at the Tribunal, who will make appropriate arrangements for that purpose.

“Gerald S. Swinkin”

GERALD S. SWINKIN
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.

Local Planning Appeal Tribunal

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