

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



ISSUE DATE: August 10, 2018

CASE NO(S): PL170622

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:	28 River Street Holdings Limited
Subject:	Application to amend Zoning By-law No. 438-86 – Refusal of Application by the City of Toronto
Existing Zoning:	Industrial (IC D3 N2)
Proposed Zoning:	Site Specific
Purpose:	To permit a 15-storey mixed-use building with 162 dwelling units and ground floor retail space
Property Address/Description:	28 River Street
Municipality:	City of Toronto
Municipality File No.:	16 268409STE 28 OZ
OMB Case No.:	PL170622
OMB File No.:	PL170622
OMB Case Name:	28 River Street Holdings Limited v. Toronto (City)

Heard: July 20, 2018 in Toronto, Ontario

APPEARANCES:

Parties

2594481 Ontario Limited and
1979351 Ontario Inc.

City of Toronto

Counsel

C. Lantz

C. Iltan

Toronto Standard Condominium Corporation No. 1990 R. Palmer

Toronto Standard Condominium Corporation No. 1778 C. Biggin

**MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON
JULY 20, 2018**

INTRODUCTION

[1] This was the third Pre-hearing Conference (“PHC”) for an appeal brought by 28 River Street Holdings Limited regarding the City of Toronto’s refusal of its application for zoning by-law amendments for a proposed development at 28 River Street (“subject property”).

[2] At the first PHC in November 2017, the Ontario Municipal Board recognized that 28 River Street Holdings Limited had recently sold the subject property and it granted party status to the new owner, 2594481 Ontario Limited. It dismissed 28 River Street Holdings Limited as a party to the hearing.

[3] At the present PHC, the Local Planning Appeal Tribunal (“Tribunal”) was informed that the subject property has again been sold. The new owner is 1979351 Ontario Inc. The Tribunal recognises 1979351 Ontario Inc. as the new owner of the subject property and grants it party status.

[4] Prior to the present PHC, the Tribunal received correspondence from Queen East Centre Inc. withdrawing its party status in this proceeding.

[5] At the PHC, Todd Karges, who is involved with the nearby Tommy Douglas Co-Op, requested, and was granted, participant status.

[6] On consent, 1979351 Ontario Inc. presented a draft Procedural Order with Issues Lists from each of the Parties. The Parties requested the setting of hearing dates and expressed an interest in mediation. They indicated that a request for a mediation assessment will be made to the Tribunal shortly. Counsel for 1979351 Ontario Inc. stated that several Participants have requested to participate in any mediation. He did not object to these requests.

[7] The Parties have filed on consent the draft Procedural Order, which the Tribunal approves and attaches to this Decision as Attachment 1.

[8] The Tribunal set dates for the hearing of the appeal. The hearing will commence on **Monday, July 23, 2019 at 10 a.m. Seven days have been set aside.** It will be held at:

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

[9] I am not seized.

“Hugh S. Wilkins”

HUGH S. WILKINS
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

ATTACHMENT 1



Local Planning Appeal Tribunal

Procedural Order

ISSUE DATE:

CASE NO(S). PL170622

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

Applicant/Appellant: 28 River Street Holdings Limited

Subject: Application to amend Zoning By-law No. 438-86 – Refusal of Application by the City of Toronto

Property Address/Description: 28 River Street

Municipality: City of Toronto

Municipal File No.: 16 268409STE 28 OZ

LPAT Case No.: PL170622

LPAT File No.: PL170622

LPAT Case Name: 28 River Street Holdings Limited v. Toronto (City)

The Tribunal orders that:

1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on July 23, 2019 at 10:00 a.m. at 655 Bay Street, 16th Floor, Toronto, Ontario, M5G 1E5.
3. The length of the hearing will be 7 days. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
4. The parties and participants (see **Attachment 1** for the meaning of these terms) identified at the prehearing conference are listed in **Attachment 2** to this Order.
5. The order of evidence shall be listed in **Attachment 3** to this Order. The Tribunal may limit the

amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument. The length of written argument, if any, may be limited either on consent or by Order of the Tribunal.

6. The Issues are set out in the Issues List included as **Attachment 4**. There will be no changes to the Issues List unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.
7. Any person intending to participate in the hearing should provide a telephone number to the Tribunal as soon as possible (preferably before the prehearing conference.) Any such person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address and phone number as soon as possible.

Requirements Before the Hearing

8. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal and the other parties a list of the witnesses and the order in which they will be called. This list must be delivered by **Friday, May 24, 2019**. 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 Tribunal may refuse to hear the expert's testimony.
10. A participant must provide to the Tribunal and the parties a participant statement by **Friday, June 21, 2019**, or the 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, as in section 12.
12. On or before **Friday, June 21, 2019**, the parties shall provide copies of their witness and expert witness statements to the Tribunal and the other parties, or the witness may not give oral evidence at the hearing.
13. On or before **Tuesday, July 9, 2019**, the parties shall provide copies of their visual evidence to all of the other parties. If a model is proposed to be used the Tribunal 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 and file with the Tribunal a written response to any written evidence on or before **Tuesday, July 9, 2019**.
15. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal in accordance with the Tribunal's Rules 10.01 to 10.05.
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 Tribunal and parties are notified on or before **Tuesday, July 16, 2019** that the written evidence is not part of their record.

17. If the Applicant intends to seek approval of minor revisions to the proposal at the hearing, the Applicant shall provide copies of the revised proposal, including all revised plans and drawings, to the other parties on or before **Monday, April 22, 2019**. After that date, no revisions to the proposal shall be permitted except with the consent of the parties, or with leave of the Tribunal.
18. Documents may be delivered by personal delivery, facsimile or registered or certified mail, or email or otherwise as the Tribunal may direct. The delivery of documents by fax and email shall be governed by the Tribunal's Rules 7.10 to 7.13 on this subject. Material delivered by mail shall be deemed to have been received **5 business days** after the date of registration or certification.
19. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rules 17.01 to 17.05 apply to such requests.

This Member is not seized.

So orders the Tribunal.

BEFORE:

Name of Member)	Date:
)	
)	

TRIBUNAL REGISTRAR

Attachment 1

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Tribunal 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 must accept the other responsibilities of a party as set out in the Order. Parties do not have to be represented by a lawyer, and may have an agent speak for them. The agent must have written authorization from the party.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Tribunal to permit this.

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 Tribunal on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Tribunal will set the time for hearing this statement.

NOTE that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Tribunal will 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 material and do not attend.

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.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (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. 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 the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal 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 Tribunal;

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 Tribunal.

Attachment 2

LIST OF PARTIES/PARTICIPANTS

PARTIES:

1. 1979351 Ontario Inc.

Calvin Lantz / Jonathan Cheng
Stikeman Elliott LLP
Barristers & Solicitors
5300 Commerce Court West
199 Bay Street
Toronto, Ontario M5L 1B9

E-mail: clantz@stikeman.com / jcheng@stikeman.com
Tel.: (416) 869-5669 / (416) 869-6807
Fax: (416) 947-0866

2. City of Toronto

Cigdem Iltan
Solicitor, Planning & Administrative Tribunal Law
Metro Hall, 26th Floor
55 John Street
Toronto, Ontario M5V 3C6

E-mail: cigdem.iltan@toronto.ca
Tel.: (416) 392-1652
Fax: (416) 397-5624

3. Toronto Standard Condominium Corporation No. 1990

Ron Palmer
19 River Street
Toronto, Ontario M5A 3P1

E-mail: rpalmer@planpart.ca

4. Toronto Standard Condominium Corporation No. 1778

Joe Harmatiuk / Colin Biggin
27 Old Brewery Lane
Toronto, Ontario M5A 3P2

E-mail: joe@newmediaguy.com / cbiggin@mac.com

Participants:

1. Corktown Residents & Business Association

Larry Webb
480 King Street East
Toronto, Ontario M5A 1L8

E-mail: development@corktown.ca

2. Judith Coghill

35 Wascana Avenue
Toronto, Ontario M5A 1V6

E-mail: judithcoghill@gmail.com
Tel.: (416) 368-1617

3. Todd Karges

33 Wascana Avenue
Toronto, Ontario M5A 1V6

E-mail: tkarges@gmail.com
Tel.: (416) 823-5844

4. Metropolitan Toronto Condominium Corporation No. 1185

Robert Ven
21 River Street, Unit 5
Toronto, Ontario M5A 3P1

E-mail: exit.soundlabs@me.com

Attachment 3

ORDER OF EVIDENCE

At the commencement of the hearing, the presiding Tribunal Member will schedule when the Participants may present their evidence

1. 1979351 Ontario Inc.
2. City of Toronto
3. Toronto Standard Condominium Corporation No. 1990
4. Toronto Standard Condominium Corporation No. 1778
5. Participants

Attachment 4

ISSUES LIST

Note: The identification of an issue on this Issues List is intended to provide notice to all parties that a party will lead evidence and/or argument on the matter. This identification does not serve as an acknowledgement of relevancy to the determination of the Tribunal at the hearing. The extent to which these issues are appropriate or relevant to the determination of the Tribunal at the hearing will be a matter of evidence and argument at the hearing.

City of Toronto

1. Does the proposed Zoning By-law Amendment and development have appropriate regard for the matters of provincial interest set forth in Section 2 of the Planning Act, including subsections 2(h), 2(j), and 2(r)?
2. Is the proposed development and Zoning By-law Amendment consistent with the Provincial Policy Statement (2014) pursuant to Section 3 of the Planning Act, including sections 1.1.3.3, 1.1.3.4, 1.7.1(d) and 4.7?
3. Does the proposed development and Zoning By-law Amendment conform with, and not conflict with, the Growth Plan for the Greater Golden Horseshoe (2017), including policy 2.2.2.4?
4. Does the proposed development and Zoning By-law Amendment conform to the City of Toronto Official Plan, including but not limited to sections and policies 3.1.2(3), 3.1.3(2), 3.2.1(1), 4.5(2), 5.1.1, 5.3.2(1) and 5.6?
5. Does the proposed development and Zoning By-law Amendment meet the intent of Official Plan Amendment 352, which was adopted by City Council on October 5, 2016 and is currently under appeal?
6. Does the proposed development and Zoning By-law Amendment adequately implement the Tall Building Design Guidelines with respect to Guidelines 1.3, 1.4, 2.5, 3.1.1, 3.2.1, 3.2.2, 3.2.3, and 4.2?
7. Does the proposed development and Zoning By-law Amendment adequately implement the Downtown Tall Buildings: Vision and Supplementary Design Guidelines with respect to: 3.1 – Supplementary Design Guideline #1, Map 1 – High Streets Map, Map 2 – Downtown Vision Height Map, and Map 3 – High Streets Typologies Map?
8. Does the Avenues and Mid-Rise Building Study apply to the proposed development and Zoning By-law Amendment, and if so, does the proposed development and Zoning By-law Amendment adequately implement Performance Standards 1, 4A, 4B, 5A, 5B, 8C, and 13?
9. Does the proposed development and Zoning By-law Amendment adequately implement the Planning for Children in New Vertical Communities draft urban design guidelines 2017, with respect to guidelines 2.1(c), 2.3(a), 2.5(a), 2.6(b), 2.6(c), 3.0(a), 3.0(b), 3.1(a), 3.1(b), 3.1(c), 3.1(e), 3.1(f), 3.1(i), 3.5(a), 3.5(b), and 3.5(c)?

10. Does the proposed development and Zoning By-law Amendment meet the intent of the policy direction outlined in the TOcore Proposed Downtown Plan (Attachment 1 to the report from the Chief Planner and Executive Director, City Planning, dated August 18, 2017) and the TOCore Downtown Plan Official Plan Amendment (Attachment 1 to the report from the Chief Planner and Executive Director, City Planning, dated April 17, 2018, as modified and recommended by Planning and Growth Management Committee on May 2, 2018)?
11. Does the proposed development and Zoning By-law Amendment represent good planning and urban design and is it in the public interest, having regard for:
 - a. an appropriate transition in scale to the adjacent Neighbourhood to the north;
 - b. the character of the surrounding area;
 - c. the existing and planned context;
 - d. the impact that the proposed height and massing would have on the adjacent properties within the Neighbourhood with regard to shadow, sky view and privacy; and an appropriate mix, size and design of dwelling units and amenity spaces and other common spaces that will meet the existing and future needs of residential growth in the City.
12. Does the height, mass and built form of the proposed development and Zoning By-law Amendment represent overdevelopment of the site?
13. In the event the Tribunal allows the appeal in whole or in part, what community benefits are appropriate pursuant to Section 37 of the Planning Act?
14. Is the form and content, including the regulatory standards, of the proposed draft Zoning By-law Amendment appropriate?
15. If the proposed development and Zoning By-law Amendment is approved by the Tribunal in whole or in part, should the Tribunal's final Order be withheld until the Tribunal has been advised by the City Solicitor:
 - a. that the proposed Zoning By-law Amendment is in a form satisfactory to the City;
 - b. a Section 37 Agreement has been executed to the satisfaction of the City Solicitor; and
 - c. that the applicant has provided a Functional Servicing Report, Stormwater Management Report, and Hydrogeological Report, and designed and provided financial securities for any upgrades or required improvements to the existing municipal infrastructure identified in those reports, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services in consultation with the General Manager, Transportation Services?

Toronto Standard Condominium Corporation No. 1990

1. Conformity with the Growth Plan generally, and specifically the need for this development in light of the residential growth projections for the City of Toronto compared against recent and anticipated development approvals.
2. Conformity with the current City of Toronto Official Plan, and the new Downtown Plan (TOCore).
3. Consistency with the City of Toronto Mid-Rise Building Guidelines and the City of Toronto Tall Building Guidelines.
4. The impacts of the proposed development on the character of the existing community and on adjacent properties.
5. The incremental and cumulative traffic impacts of this development and all recently built and approved, but unbuilt developments in the vicinity on the surrounding road network.
6. The incremental and cumulative impacts of this development and all recently built and approved, but unbuilt developments in the vicinity on existing transit facilities.

Toronto Standard Condominium Corporation No. 1778

1. TSCC 1778 is concerned about the height of the proposed development at 28 River Street
2. TSCC 1778 is concerned about the effect of the proposed development on:
 - a) increased car traffic in the neighbourhood and the impact on the Old Brewery Lane off of Bayview Avenue.
 - b) increased transit usage on existing streetcar lines
3. The precedent that this development might set regarding the Secondary Plan that is proposed for the area. More specifically, the precedent for the height of the development.