

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 14, 2018

CASE NO(S): PL170696

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

| | |
|-------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Applicant and Appellant: | Riverking Development Inc. |
| Subject: | Application to amend Zoning By-law No. 7625 – Refusal or neglect of the City of Toronto to make a decision |
| Existing Zoning: | C1 (Commercial 1) Zone (for the portion of the subject property fronting Bathurst Street) and R4 (Residential Density 4) Zone (on the eastern portion of the subject property) |
| Proposed Zoning: | Site Specific (To be determined) |
| Purpose: | To permit a 10 storey mixed-use residential building fronting Bathurst St with two wings of 4 storey grade related townhouses on the eastern portion of the site |
| Property Address/Description: | 2795-2799 and 2801 Bathurst Street |
| Municipality: | City of Toronto |
| Municipality File No.: | 15 152614 NNY 16 OZ |
| OMB Case No.: | PL170696 |
| OMB File No.: | PL170696 |
| OMB Case Name: | Riverking Development Inc. v. Toronto (City) |

Heard: February 12, 2018 in Toronto, Ontario

APPEARANCES:

Parties

Riverking Development Inc.

City of Toronto

Counsel

D. Neligan and E. Costello (not present)

E. Penner and S. Singh (student-at-law)

Shaarei Shoymayim Congregation N. Smiley
2028643 Ontario Limited A. Platt

**MEMORANDUM OF ORAL DECISION DELIVERED BY STEFAN KRZECZUNOWICZ
ON FEBRUARY 12, 2018 AND ORDER OF THE BOARD**

[1] This was the second pre-hearing conference (“PHC”) in an appeal by Riverking Development Incorporated (“Riverking”) of the failure of the City of Toronto to make a decision on a rezoning application for a proposed redevelopment at 2795-2799 and 2801 Bathurst Street (the “site”). The first PHC in this appeal was held on December 13, 2017.

HEARING

[2] The parties agree on their points of difference and together have prepared a draft Procedural Order that sets out the parameters of a hearing, including a list of issues to be addressed. The issues engage planning, urban design, and transportation matters and it is anticipated that up to nine expert witnesses would be needed to adduce evidence. On this basis, the parties requested a ten-day hearing.

[3] After discussing several minor amendments to the draft Procedural Order and Issues List, the Board will accede to the request and orders that a hearing be scheduled to commence on **Monday, January 7, 2019 at 10 a.m.** and continue for ten days. The hearing will be held at:

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

[4] The Board further orders that the Procedural Order, appended hereto as Attachment A, shall be in force and effect for the purpose of governing the required procedures leading up to and including the hearing.

ADDITIONAL PHC

- [5] The parties suggested that a further PHC be scheduled to:
- a. Update the Board on the progress of any mediation. In this respect, a mediation assessment has been requested of the Board.
 - b. Consider options for consolidating this appeal with other appeals. In this regard, Riverking has recently applied for an official plan amendment (“OPA”) for the proposed redevelopment of the site.

[6] The Board accordingly orders that a further PHC be scheduled for **Friday, September 21, 2018 at 10 a.m.** As with the hearing, the PHC will be held at:

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

[7] The parties should be prepared to review the form and content of the issues at this PHC with a view to securing the most expeditious and cost-effective hearing.

[8] Should the OPA be appealed, Riverking is to inform the Board of its connection to this appeal in advance of notice of a PHC for the OPA being issued.

[9] No further notice of the above hearing events will be given.

[10] The Member is not seized.

“Stefan Krzeczunowicz”

STEFAN KRZECZUNOWICZ
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

ATTACHMENT A

ONTARIO MUNICIPAL BOARD

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

Applicant and Appellant: Riverking Development Inc.
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Municipality File No.: 15 152614 NNY 16 OZ
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OMB File No.: PL170696
OMB Case Name: Riverking Development Inc. v. Toronto (City)

PROCEDURAL ORDER

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.

Organization of the Hearing

2. The hearing will begin on **January 7, 2019** at 10:00 a.m. at: 655 Bay Street, Toronto Ontario.
3. The length of the hearing will be **ten (10) day(s)**. 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 Issues are set out in the Issues Lists attached as **Attachment 3**. There will be no changes to these lists unless the Board permits it. Any request to change to the issues list is to be made by way of formal motion pursuant to the Board's Rules of Practice and Procedure.

6. The order of evidence shall be 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. On or before **September 10, 2018** (120 days before the hearing), the Applicant shall advise the parties of any changes to the submitted plans that it intends to present to the Board and will provide the revised plans, if any, to the parties electronically. No further changes to the plans shall be made after this date without the consent of the parties.
9. 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 **October 9, 2018** (90 days before 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.
10. 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.
11. A participant must provide to the Board and the parties a participant statement by **November 23, 2018** (45 days before the hearing) or the witness or participant may not give oral evidence at the hearing.
12. 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.
13. On or before **December 10, 2018** (30 days before the hearing) the parties shall provide copies of their expert witness statements to the other parties. The parties shall prepare a Joint Document Book to be filed with the Board on the first day of the hearing. 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.
14. On or before **December 17, 2018** (21 days before 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.
15. Parties may provide to all other parties a written response to any written evidence on or before **December 31, 2018** (7 days before the hearing).
16. 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.
17. 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** (December 31, 2018) before the hearing that the written evidence is not part of their record.

18. Documents may be delivered in person, by courier, by facsimile or 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 **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 Board's Rules 61 to 65 apply to such requests.

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. Riverking Development Inc.

Eileen P.K. Costello
David Neligan
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Barristers and Solicitors
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2. City of Toronto

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3. Shaarei Shomayim Synagogue

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4. 2028643 Ontario Limited

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PARTICIPANTS:

- Glencairn and Bathurst Community Coalition – Nadia Vakharia
- Toronto Standard Condominium Corporation 1547 – Dr. Paul Herbert
- Katie Aquilla

Attachment 3

ISSUES LISTS

City of Toronto Issues:

Provincial Policy Statement

1. Is the proposed scale of intensification necessary for consistency with the Provincial Policy Statement (2014) policies relating to intensification, in particular Sections 1.1.3.3 and 4.7?

Growth Plan for the Greater Golden Horseshoe

2. Is the proposed scale of intensification necessary for the proposed development to conform with and have no conflict with the Growth Plan for the Greater Golden Horseshoe (2017), in particular Sections 2.2.2.4 (a)(b)(c)(f), 5.2.4.5(b), 5.2.5.3, 6.3.2(b) and Appendix 2?

City of Toronto Official Plan

3. Does the proposed development conform to the City of Toronto Official Plan, including the following policies:
 - a. Avenues (2.2.3)
 - b. Healthy Neighbourhoods (2.3.1)
 - c. The Public Realm (3.1.1)
 - d. Built Form (3.1.2)
 - e. Housing (3.2.1)
 - f. Neighbourhoods (4.1)
 - g. Mixed Use Areas (4.5)
 - h. Height and/or Density Incentives (Section 37) (5.1.1)
 - i. The Official Plan Guides City Actions (5.3.1)

City of Toronto Guidelines

4. Does the proposal appropriately and adequately implement the City of Toronto Mid-Rise Building Performance Standards?

Planning - Land Use and Urban Design

5. Is the site organization and built form of the proposed development, including building siting and setbacks, building height, floor-to-ceiling heights, building length, mass, scale and setbacks appropriate in the *Mixed Use Areas* and *Neighbourhoods* designations?
6. Does the building provide an appropriate setback to Glencairn Avenue?
7. Is the proposed building height appropriate given and the existing and planned context in the *Mixed Use Areas* and *Neighbourhoods* designations?
8. Does the proposed streetwall properly define Bathurst Street and does the proposal provide appropriate setbacks above the streetwall to maintain good street proportion?

9. Does the proposal provide for adequate sunlight on the *Avenue*?
10. Does the building provide an appropriate transition to the adjacent lands designated *Neighbourhoods* to appropriately mitigate shadow, overlook and privacy?
11. Does the development provide proper transition and amenity to the *Neighbourhoods* designation at the rear of the site on the ground level including a landscape buffer and pedestrian walkway between the development driveway and laneway condition?
12. Does the proposal provide private landscaped open space that enhances the public realm?
13. Is the location and amount of indoor and outdoor amenity space appropriate and adequate?
14. Does the proposed building represent overdevelopment of the site, with particular regard to the surrounding existing and planned context and would the approval of the development create an undesirable precedent?

Transportation Services - Traffic, Access, Parking and Servicing

15. Is the driveway location, width, and design along Glencairn Avenue appropriate?
16. Does the development meet the Toronto Green Standards (AQ 1.1) for low emitting vehicle parking spaces?
17. Does the development meet zoning by-law requirements for supply and design of accessible parking spaces?

Process

18. 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 nature of any required section 37 *Planning Act* benefits is identified, and those benefits are secured, provided that in the event the parties are unable to reach agreement on this matter, the parties shall have an opportunity to present evidence and submissions on section 37 *Planning Act* matters to the Board.
 - b. The owner enters into and registers one or more Agreements with the City of Toronto pursuant to section 37 of the *Planning Act* to secure the above facilities, services and matters.
 - c. The final form of the by-laws is to the satisfaction of the City's Chief Planner and the City Solicitor, including the requirement for replacement rental housing, rents and tenant assistance.

Shaarei Shomayim Congregation Issues:

Adoption by Reference:

Shaarei Shomayim Congregation (the "Congregation") adopts by reference the following issues identified by the City of Toronto in its Issues List:

- Issues 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 14, 15, and 18.

Additional Issues:

The Congregation wishes to add and/or supplement the foregoing City issues with the following:

19. Is the location of the proposed driveway appropriate given its proximity and interface with the Congregation's adjacent private driveway/laneway access and/or the level of traffic in the area?
20. Are any turning and/or other usage restrictions appropriate for the proposed Glencairn access?
21. Is it appropriate to provide access to a mixed-use development with its driveway access located within a *Neighbourhoods* designation?
22. Does the proposed development provide an adequate rear yard (east yard and north yard) setback adjacent to the Congregation's private driveway/laneway?
23. Does the proposed development provide an appropriate stepping back and/or transition to the Congregation's adjacent lands to the east and north?
24. Is the location of the above-grade proposed outdoor amenity space and ground level drop-off area appropriate as it relates to the Congregation's adjacent property?
25. Does the proposal incorporate appropriate noise attenuation measures and/or requirements to mitigate the impact of noise both from the proposed development onto the Congregation's property and vice-versa?
26. Does the built form and massing of the proposed development adequately address light penetration, overlook, privacy, safety and security of and to the adjacent Congregation's property.

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. Riverking Development Inc.
2. City of Toronto
3. Shaarei Shomayim Congregation
4. 2028643 Ontario Limited (if any)
5. Participants (if any)
6. Riverking Development Inc. (Reply – If any)