

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



ISSUE DATE: October 25, 2018

CASE NO(S): PL170696

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:	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 St) 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 & 2801 Bathurst St
Municipality:	City of Toronto
Municipality File No.:	15 152614 NNY 16 OZ
OMB Case No.:	PL170696
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OMB Case Name:	Riverking Development Inc. v. Toronto (City)

Heard: September 21, 2018 in Toronto, Ontario

APPEARANCES:**Parties****Counsel**

Riverking Development Inc.

D. Neligan

City of Toronto

M. Schuman and B. Baena

Shaarei Shomayim Congregation

N. Smiley

2028643 Ontario Limited

A. Lusty

DECISION DELIVERED BY THOMAS HODGINS AND ORDER OF THE TRIBUNAL

INTRODUCTION

[1] This Decision and Order results from the third Pre-hearing Conference (“PHC”) on an appeal by Riverking Development Inc. (“Riverking”) of the City of Toronto’s (“City”) failure to make a decision on an application to amend Zoning By-law (“ZBL”) No. 7625 to permit a mixed-use building at 2795-2799 and 2801 Bathurst Street. The ZBL appeal was filed in June, 2017.

[2] The Orders from the previous PHCs, which were held in December 2017 and February 2018, serve to: identify the Parties, identify the Participants, schedule a ten-day hearing and put a Procedural Order (“PO”) in place.

[3] This ZBL appeal was the subject of Tribunal led mediation in early September, 2018.

[4] Notice of this PHC was provided by circulation of the Memorandum of Oral Decision and Order from the second PHC.

THE THIRD PHC

[5] The four Parties were represented by Counsel as noted above.

[6] Nadia Vakharia was in attendance on behalf of the Glencairn and Bathurst Community Coalition – which is a Participant. Nether of the other two Participants (Toronto Standard Condominium Corporation 1547 and Katie Aquilla) were in attendance.

[7] There were no requests for Participant or Party status.

[8] David Neligan advised that Riverking has settled its differences with the Shaarei Shomayim Congregation (“Congregation”) and filed Minutes of Settlement in this regard.

[9] Neil Smiley, on behalf of the Congregation, advised that the Tribunal led mediation had been successful and contributed to the settlement. Mr. Smiley said the Congregation will be withdrawing its appeal but wants to maintain status at the hearing in order to support Riverking’s current proposal. He said Participant status was appropriate for the Congregation and this is provided for in the Order.

[10] Mr. Neligan advised that a revised proposal and settlement offer will be presented to the City by October 1, 2018 and that they are intended to be considered by City Council on December 18, 2018.

[11] Mr. Neligan advised that the scheduled ZBL hearing is expected to be a settlement hearing as opposed to a contested hearing amongst the Parties. Accordingly, he suggested that the Tribunal release the first week of the scheduled ZBL hearing.

[12] Matt Schuman confirmed that the revised proposal/settlement offer is intended to be considered by Council as indicated and expects that City staff will be recommending a settlement. Accordingly, he was agreeable to reducing the scheduled ZBL hearing as

recommended by Mr. Neligan.

[13] The Tribunal, based on its experience with settlement hearings and to accommodate competing demands for time in its calendar, will schedule and retain two days for the settlement hearing on the ZBL as set out in the Order. The other previously scheduled dates are to be released.

[14] In response to a query from Ms. Vakharia, Mr. Neligan agreed to provide her with a copy of the revised proposal being submitted to the City as part of the settlement offer. The Order requires that Mr. Neligan provide copies of the latest plans to all of the Participants given that the Participants have an obligation, pursuant to the PO, to provide Participant Statements to the Tribunal by November 23, 2018.

[15] Messrs. Neligan and Schuman advised that after Riverking had submitted to the City its application to amend the ZBL it agreed to submit a companion application for an Amendment to the Official Plan ("OPA"). Accordingly, Riverking applied in 2017 for a site specific OPA and appealed the City's failure to make a decision on the OPA to the Tribunal in August 2018. The OPA appeal is Tribunal Case PL180719. Riverking and City staff now agree on the form and content of the OPA, which was described as technical in nature, and it is intended to form part of Riverking's settlement offer to the City.

[16] Messrs. Neligan and Schuman noted that the ZBL appeal is a "legacy" appeal whereas the OPA appeal is subject to the new procedures set out largely in Bill 139. They requested that the Tribunal make its best efforts to hear together the legacy ZBL appeal and the newer OPA appeal. They advised that hearing the two appeals together would save significant time and effort given that the two planning instruments are integrally related as are the issues, evidence and individuals involved.

[17] Mr. Smiley supported the request that the ZBL and OPA appeals be heard together and noted the key relationship between the two planning instruments.

[18] Alex Lusty had no comment or submissions on behalf of 2028643 Ontario Limited when offered an opportunity by the Tribunal.

[19] The Tribunal has considered the request that the ZBL appeal (Tribunal Case PL170696) and the OPA appeal (Tribunal Case PL180719) be heard together. While it is not practical to hear these two matters together, this Member understands that the Tribunal will schedule the CMC for the OPA in a coordinated fashion in advance of the ZBL settlement hearing and notes that the Tribunal's *Rules of Practice and Procedure* (Effective Date: April 3, 2018) permit CMCs, under the right circumstances and with the approval of the presiding Tribunal Member(s), to be converted to settlement conferences/hearings and that the approval of a ZBL amendment can be made subject to the approval of a companion OPA.

ORDER

[20] The Tribunal orders as follows:

- A) The status of the Congregation is changed from Party to Participant;

- B) Mr. Neligan is to provide each of the Participants and the Tribunal with a copy of Riverking's current plans no later than Tuesday, October 30, 2018 along with a transmittal confirming that these are the plans Riverking is advancing for approval and advising that these are the plans on which Participants should base their Participant Statements which are to be submitted to the Tribunal by Friday, November 23, 2018 pursuant to the PO;

- C) The hearing on the ZBL appeal is now scheduled for **two days beginning at 10 a.m. on Thursday, January 17, 2019 and continuing on Friday, January 18, 2019** at the:

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

- D) The dates of **January 7, 8, 9, 10 11, 14, 15 and 16, 2019** are no longer required for the ZBL appeal and are to be released from the Tribunal's calendar ;
- E) The Parties and Participants are to receive a copy of this Decision and Order and no additional notice of the hearing on the ZBL appeal is required; and
- F) This Member is not seized.

"Thomas Hodgins"

THOMAS HODGINS
MEMBER

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Local Planning Appeal Tribunal

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