

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



ISSUE DATE: July 15, 2019

CASE NO(S): PL170832

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:	457 Richmond Street West Limited
Subject:	Application to amend Zoning By-law No. 438-86 – Refusal or neglect of the City of Toronto to make a decision
Existing Zoning:	Reinvestment Area (RA) zone
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the construction of a 19 storey (including mezzanine), 57 metre mixed-use building, with 97m ² of retail at grade and 139 residential units above
Property Address/Description:	451-457 Richmond St W
Municipality:	City of Toronto
Municipality File No.:	16 268947 STE 20 OZ
OMB Case No.:	PL170832
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OMB Case Name:	457 Richmond Street West Limited v. Toronto (City)

Heard: June 10, 2019 to June 17, 2019 in Toronto, Ontario

APPEARANCES:

Parties

Counsel*/Representative

457 Richmond Street West Limited

Eileen Costello*

Garment District Neighbourhood
Association

Valerie Eggertson

City of Toronto

Ray Kallio* and Daniel Elmadany*

DECISION OF THE TRIBUNAL DELIVERED BY R. ROSSI

BACKGROUND

[1] 457 Richmond Street West Limited (“Applicant/Appellant”, hereafter the “Applicant”) has made an application to the City of Toronto (“City”) for a site-specific zoning by-law amendment to permit the construction of a 19-storey condominium residence at 451-457 Richmond Street West (“subject property”). The Applicant has filed this appeal because of the City’s failure to decide within the prescribed statutory period.

[2] Two pre-hearing conferences were held in February and March 2018 for the purposes of finalizing the Parties’ issues as well as a procedural order for this hearing. Another Party to these proceedings was the Garment District Neighbourhood Association (“GDNA”), represented by GDNA member Valerie Eggertson. Participants in attendance included:

- (a) Toronto Standard Condominium Corporation No. 2313 (TSCC 2313) (32 Camden Street) represented by Eris Ritchey;
- (b) Toronto Standard Condominium Corporation No. 1477 (TSCC 1477) (438 Richmond Street West “The Morgan”) represented by Kelly Nixon;
- (c) Doug van Fraassen, resident of the Fabrik building; and
- (d) Grange Community Association represented by Max Allen.

[3] Participants provided written statements and spoke in opposition to the development. Mr. Allen spoke in support of the development.

[4] The Applicant called four witnesses: land use planner Paul Stagl; transportation engineer Kenneth Chan; heritage planner Phil Goldsmith; and urban design planner Mark Sterling.

[5] The City called four witnesses: heritage planners Kathryn Anderson and Georgia Kuich; urban design planner Joseph Luk; and land use planner Joanna Kimont.

[6] The requisite consultation meetings were held with the City and the community and a staff report was prepared. The matter was appealed to the Ontario Municipal Board in late-July 2017.

CONTEXT

[7] The subject property is located mid-block on Richmond Street West between Spadina Avenue and Bathurst Street in a Regeneration Area within the designated Downtown Area; an area where intensification is encouraged. The subject property is part of the King-Spadina "Regeneration Area" and in an area known as the King-Spadina West Precinct ("West Precinct"). In this area, residential building heights range from approximately 7 to 17 storeys (roughly 30 to 63 metres) with street wall heights ranging from 24.8 metres up to 38 metres.

[8] The subject property area is 853 square metres. A diminutive, 1950s-era 2.5- to 3-storey manufacturing building is currently located there as is a surface commercial parking lot.

[9] The various witnesses referenced the following nearby condominium buildings for comparative purposes: the 16-storey Morgan atop an 11-storey podium at 438 Richmond Street West, located at the northwest corner of Spadina Avenue and Richmond Street; the 17-storey Fabrik atop an 11-storey podium at 431-445 Richmond

Street West, built in 2017, which shares the eastern property line with the subject property; the 17-storey James (now Woodsworth) building atop a similar podium at 452 Richmond Street West, across the street from the subject property; and the Waterworks/YMCA, a much larger 13-storey building at 497-511 Richmond Street West.

PROPOSED BUILDING

[10] The Applicant proposed to demolish the existing building to build a new residential condominium building with some 139 units. The new building will be 57 metres in height (including mechanical) and will provide some mixed-use retail uses as well. The building will comprise a 12-storey podium with a 7-storey residential tower portion above that.

[11] There are various step backs provided: a 1.5-metre step back at the ninth floor with another 1.5 metre step back at the twelfth storey level in order to reflect the various street walls along the street. The base and tower portions of the building will maintain a 5.5-metre setback from the southerly property line, which abuts the residential building at 32 Camden Street. The tower portion will maintain a 5.5-metre setback from the west property line in anticipation of future development of that property. The tower proposes a 0-metre setback from the east property line, which it shares with the Fabrik condominium building. Further details are contained in the Applicant's witness statements.

THRESHOLD ISSUE(S) FOR THE TRIBUNAL

[12] The Parties identified various issues in the Procedural Order. Just before the hearing, the Parties informed the Tribunal that they had removed three issues (12, 13 and 16). At the hearing, the panel noted that matters of wind and sun/shadow were also not issues at the hearing. A request by GDNA to address perceived traffic issues necessitated an appearance by the Applicant's transportation engineer, Kenneth Chan, who referenced his comprehensive traffic impact study and who demonstrated persuasively to the Tribunal that the proposed structure does not create traffic impacts

and that all of its transportation servicing matters would take place on site. Further, as the GDNA presented no expert evidence and as it called no opposing witness, and as there was no objection from either the Applicant or the City, the Tribunal stated its finding that there were no transportation issues raised by the construction of a condominium residence. For emphasis, the GDNA did not call any witnesses, and all that was before the Tribunal was the uncontradicted *viva voce* testimony and documentary evidence of Mr. Chan, who explained how all vehicle loading and servicing movements are accommodated entirely on the site; there is sufficient parking to be provided; and there is no obstruction of or impeding of traffic or the public realm along Richmond Street West.

[13] Notwithstanding the Parties' remaining issues as set out in the Procedural Order, the Tribunal determined over the course of the hearing that its threshold issue was heritage, and whether the existing commercial building should be conserved. The Tribunal also considered various urban design matters to determine whether the proposal constitutes good planning and should be approved.

HERITAGE

[14] For completeness of the Tribunal's consideration of all of the heritage-related evidence and opinions, the various opinions and evidence are referenced herein. In the context of the existing "Listed" building on the subject property, the Applicant proposes to demolish this 2.5-storey manufacturing building so that it can proceed to construct its residential building. At the time the Applicant filed its application, the subject property was not included on the City's list of listed or designated heritage properties.

[15] For context, City Council adopted a King-Spadina Heritage Conservation District ("HCD") in October 2017 and amended in November 2017, which recommended Listing all properties identified as contributing in the HCD Plan. Listing of the subject property on the Heritage Register was done at a December 2017 Council meeting. And, as an interim measure, the City adopted a mass listing of all properties considered to be "contributing" in the HCD Plan. The Plan (Exhibit 2, Tab 32) defines a contributing

property as “a property, structure, landscape element or other feature of an HCD that supports the identified significant culture heritage values, character and integrity of the district.” Further, the report of the Applicant’s heritage architect, Philip Goldsmith, indicated that the subject property is part of the St. Andrew’s Character Sub-Area of the HCD.

[16] Further, the process of Listing derives from the *Ontario Heritage Act, 2005* (the “Act”), which permits a municipality to make a quick assessment of properties that might have heritage significance, and to delay demolition until a full heritage assessment can take place. In this regard, property owners and the municipality are aware that, should an application be received related to a Listed property that might be of heritage value, further consideration should be given to whether the property should become a Protected Heritage Property under Part IV of the Act.

[17] It is also important to note that the King-Spadina HCD remains under appeal, and the Applicant is a Party to that appeal. That matter is a separate process from these matters and although the heritage witnesses made various references to the HCD and the Act, the Tribunal has appropriately confined its assessment and evaluation of the evidence and opinions on both sides to the relevant in-force planning instruments alone.

The Applicant’s Heritage Expert’s Evidence

[18] As referenced above, to speak to the matter of heritage and whether there is merit in conserving the existing small manufacturing building, the Applicant’s witness was Mr. Goldsmith, a renowned and award-winning heritage expert whose professional credentials are extensive as is his place in contributing to hundreds of architectural and conservation projects across the City and the province, which include, among other things, heritage assessments and heritage project planning.

[19] The basis of Mr. Goldsmith’s opinions (Exhibit 15C) were founded in part upon the Act and specifically, Ontario Regulation 9/06 (“O. Reg 9/06”): “Criteria for Determining Cultural Heritage Value or Interest”, and in part upon his firm’s December

2016 Heritage Impact Assessment (“HIA”), which was released prior to the release of the draft HCD Plan.

[20] Mr. Goldsmith provided the following opinions related to the subject property and the existing building:

1. The subject property is not worthy of, and does not warrant, individual designation under Part IV of the Act and the existing building is not a significant built heritage resource, adding that other attributes of the property are not individually significant “as those terms are used and understood in the Act” (pages 2-3).
2. The subject property should not be Listed on the City’s Heritage Register as it is not a contributing property and thus it should not have been batch listed on the Listing of Contributing Properties.
3. At such time as the HCD comes into effect, the subject property should be assessed as a non-contributing property within the HCD and only those guidelines applicable to non-contributing properties should apply. As the HCD Plan is under appeal, its policies and guidelines do not apply to the subject property.
4. Demolition of the existing building should be permitted as the building is not a “significant” cultural heritage resource; and
5. Any required conservation of the property may take the form of a photographic recording of the buildings for deposition at the City Archives and that an Interpretive Plan be made as a contribution to the story of the King-Spadina Area.

[21] Mr. Goldsmith noted that the initial study area that the City considered for its HCD did not include this portion of Richmond Street West; nor was the subject property

identified as a heritage property. However, while this portion of the street was added to the City's study area in 2014, a 2015 letter from the Manager of Heritage Preservation Services (Exhibit 17) confirms that at that time, the subject property had still not been included on the City's Heritage Register or designated under the Act. A draft of the HCD was provided in October 2016, however, which included this portion of Richmond Street West and which identified 457 Richmond Street West as a mid-century building and a "contributing property". Curiously, the City did not include the north side of the street in the draft HCD Plan, which included a row of late-nineteenth century houses west of the subject property as well as a 7-storey, 1920s-era brick warehouse across the street. Mr. Goldsmith noted, however, that the final version of the HCD Plan changed the boundary again to include the north side of Richmond Street West.

[22] Mr. Goldsmith referenced the "Period of Significance" in the King Spadina Area (identified in the HCD Plan, page 36), defined as a period of built form development between the 1800s-1940s (page 6 of his witness statement). The existing building is not part of this period given that it was constructed well after this timeframe (1950).

[23] Mr. Goldsmith reviewed section 2(d) of the *Planning Act* regarding heritage and notes the provincial interest in "the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest." In this context, he opined that the subject property is not significant as per the word's definition as found in the Provincial Policy Statement, 2014 ("PPS").

[24] Specifically, he discussed the definition of "significant" in this provincial document, noting e): in regard to cultural heritage and archaeology, resources that have been determined to have cultural heritage value or interest for the important contribution they make to our understanding of the history of a place, an event or a people. In the context of this definition from the PPS then, Mr. Goldsmith opined that the building is not "significant" as it related to the *Planning Act* and to the PPS. His rationale for this opinion is covered comprehensively in paragraphs 9.4 to 9.14 of his witness statement.

[25] The panel reviewed the HCD's Statement of Contribution (Appendix D) and noted that there is an absence of any description of individual properties' heritage or cultural attributes for the subject property (or for other "contributing" properties). For example, on page 187 of this document (Exhibit 19), the contribution for this structure is listed as "design, contextual and historical"; built 1950; and it is identified as having a Commercial Detached typology and built in the Mid-Century Modern style. Even the term "Mid-Century Modern", which is used in the HCD, provides no formal definition as to what constitutes this style other than to represent a period of construction; in this case, a building constructed in 1950. Mr. Goldsmith was accepting of the term in the context of the building's date of construction and even in terms of "simplistic" design, but he opined that the use of the term does not render the building as "significant."

[26] Mr. Goldsmith's findings in paragraphs 9.5 to 9.14 deal comprehensively with the existing building's design and features and he sets the context for its development in 1950. As he wrote in paragraph 9.13: "457 Richmond is a late addition to the district and in design and scale has a modest relationship development history of the area." And noting it follows the Period of Significance, "...it is a simple building that took advantage of a small site for a clothing manufacturing facility..."

[27] Mr. Goldsmith also reviewed the heritage policies of the PPS, noting Section 2.6 Cultural Heritage and Archaeology and the direction that "Significant built heritage resources and significant cultural heritage landscapes shall be conserved." The sense of the Tribunal from Mr. Goldsmith's review of the upper-tier documents is that he was acutely mindful of the need to conserve buildings of significance. His own comprehensive history in conserving numerous properties supports the Tribunal's finding in this regard. Moreover, he carefully referenced the definitions "conserved", "cultural landscape" and as discussed above, "significant."

[28] In the context of the PPS, Mr. Goldsmith opined that the building/property does not meet the criteria of O. Reg 9/06 and is not significant. He also assessed the building

against the requirements of O. Reg 9/06 for individual designation under Part IV of the Act and opined that the building was not significant.

[29] The Tribunal was also persuaded, in this expert's review of the subject property within the context of the PPS, that his opinion regarding "people" (paragraph 10.6 of his witness statement), should be assigned significant weight. He noted that the building is "a small undistinguished utilitarian building...which by its design and a lack of identification (building name etc.) does not reflect its former (or present) use, owner or workers" and "...the building does not make an important contribution to our understanding of the people in the King Spadina Area or Toronto."

[30] The Tribunal is not persuaded that there existed sufficient evidence for the City to rate the subject building as a significant or contributing building as it does not appear from the evidence to make an important contribution to our understanding of the history of a place, an event, or a people. The Tribunal finds persuasive Mr. Goldsmith's opinion that the subject building should not have been Listed on the City's Heritage Register as part of the City's batch Listing exercise given the above-cited references.

[31] In the context of the Growth Plan for the Greater Golden Horseshoe, 2017 ("Growth Plan"), Mr. Goldsmith referenced policies 2.2.2.4, 2.2.3.2, 4.2.7.1 (dealing with respect to Cultural Heritage Resources) and 5.2.5.6. Policy 4.2.7.1 directs: "Cultural heritage resources will be conserved in order to foster a sense of place and benefit communities, particularly in strategic growth areas." He also noted how the Growth Plan defines Cultural Heritage Resources and notes that "...the significance of others can only be determined after evaluation. (Greenbelt Plan)". He noted that this definition uses the same terminology as the PPS in terms of "significance" and he returned to his opinion that the subject building is not significant.

[32] Mr. Goldsmith completed his analysis by referencing the "limited heritage resources that contribute to the character of the proposed King Spadina HCD" along this stretch of Richmond Street West. In the context of the criteria for Part IV designation in O. Reg 9/06 (discussed below), Mr. Goldsmith opined that, not only is the

existing building not a Cultural Heritage Resource as contemplated in the Growth Plan, but its demolition would not detract from the HCD as adopted and appealed.

[33] As noted, Mr. Goldsmith assessed the contextual value of the existing building in the context of the requirements of O. Reg 9/06 of the Act, which sets out the criteria under which a property may be designated If it meets one or more of the following criteria for determining whether it is of cultural heritage value or interest:

1. The property has design value or physical value because it,
 - i. is a rare, unique, representative or early example of a style, type, expression, material or construction method,
 - ii. displays a high degree of craftsmanship or artistic merit, or
 - iii. demonstrates a high degree of technical or scientific achievement.
2. The property has historical value or associative value because it,
 - i. has direct associations with a theme, event, belief, person, activity, organization or institution that is significant to a community,
 - ii. yields, or has the potential to yield, information that contributes to an understanding of a community or culture, or
 - iii. demonstrates or reflects the work or ideas of an architect, artist, builder, designer or theorist who is significant to a community.
3. The property has contextual value because it,
 - i. is important in defining, maintaining or supporting the character of an area,
 - ii. is physically, functionally, visually or historically linked to its surroundings, or
 - iii. is a landmark. O. Reg. 9/06, s. 1 (2).

[34] Mr. Goldsmith opined that the property does not have “significant Contextual Value” given that the HCD is not in force and the immediate surrounding area is the preferred area of reference, especially since the King Spadina Area contains many character sub-areas.

[35] Section 12 of Mr. Goldsmith’s witness statement provides his overview and opinion of the subject property in the context of the City’s Official Plan policies and in

particular Section 3.1.5 regarding Heritage Conservation. Within this section of the Official Plan, Policy 2 provides the direction that:

Properties and Heritage Conservation Districts of potential cultural heritage value or interest will be identified and evaluated to determine their cultural heritage value or interest consistent with provincial regulations, where applicable and will include the consideration of cultural heritage values including design or physical value, historical or associative value and contextual value. The evaluation of cultural heritage value of a Heritage Conservation District may also consider social or community value and natural or scientific value. The contributions of Toronto's diverse cultures will be considered in determining the cultural heritage value of properties on the Heritage Register.

[36] Mr. Goldsmith disagreed with the City's Listing of the subject property. Having considered its potential heritage value in the context of O. Reg 9/06, he further disagreed with the City's position that the property meets the test of provincial criteria, having "overstated its value both individually and as a contributor to the HCD" (paragraph 12.8 of his witness statement), and given that "there is no HCD Plan in effect at this time."

[37] Mr. Goldsmith went further in his evidence to the panel, covering the subject of "design" and reminding the Tribunal that this is the first of the three main categories of consideration under O. Reg 9/06. In this context, the property will have design value or physical value because it:

- i. is a rare, unique, representative or early example of a style, type, expression, material or construction method
- ii. displays a high degree of craftsmanship or artistic merit, or
- iii. demonstrates a high degree of technical or scientific achievement.

[38] To buoy his opinion that the subject building is at best "representative" of an approach to mid-century period design, he furnished 18 photographic/archival images of such styles. He added that the building "is not rare or unique, nor does it display a high degree of craftsmanship, or represent technical or scientific achievement" (paragraph 15.4 of his witness statement). In a fuller review of the style context than either of the opposing experts shared with the Tribunal, Mr. Goldsmith made specific comparisons of

the subject building to the examples he furnished. He opined that the subject building “is at the most basic level of period design and it is only the window surrounds, a popular treatment of windows from c. 1920-1960, that slightly elevate it about a basic functional structure.” He added that the building “is not “modern” in the sense of glass and metal evolved from the “International Style” ...in the 1940-1960 period” noting that “...simple forms and framing windows in concrete or stone had been popular since the early 1920s...”

[39] Mr. Goldsmith then provided a descriptor of Modernism in Architecture from the Royal Institute of British Architects, referencing this important information to opine that the existing building “exhibits at its most basic a design that was common over a long period; is not rare or unique or early; and...is barely representative [*sic*] a style, type, expression, material or construction method any more than any building built at any time is.”

[40] Mr. Goldsmith opined that the existing building has no “significant” contextual value. As for a property’s contextual value in O. Reg 9/06, it must show that it:

- i. is important in defining, maintaining or supporting the character of an area,
- ii. is physically, functionally, visually or historically linked to its surroundings, or
- iii. is a landmark.

[41] In the context of the neighbourhood character, Mr. Goldsmith looked to the immediate surrounding area, noting that the HCD Plan is not in force and encompasses a “very large” area with many character sub-areas. And, Ms. Anderson acknowledged during her presentation that “the setting is the immediate setting.” Flowing from this position, Mr. Goldsmith opined that the existing building does not meet the context criteria found in O. Reg 9/06 for Part IV designation in supporting the character of the area or being linked to its surroundings. Mr. Goldsmith provided nine photographs to inform the panel of the visual context of the immediate area and to support his opinion.

[42] Mr. Goldsmith closed his presentation with the recommendation that appropriate conservation of the existing building would take the form of a comprehensive photographic record of the structure both inside and outside satisfactory to the City's standards for inclusion in the Archive and "on site interpretation". This form of conservation is not unusual and is, in his experience, an appropriate means of conserving a building of this type which, he opined, is of no significant cultural value.

The City's Heritage Experts' Evidence

[43] The City's heritage planner, Kathryn Anderson, is responsible for researching and evaluating properties for inclusion on the Heritage Register, and she is highly-experienced in her vocation. She was responsible for the "TE28.12 Inclusion on the City of Toronto's Heritage Register – King-Spadina Properties" report that went to City Council in December 2017. She applied the relevant O. Reg 9/06 criteria to the subject property when including it on the Heritage Register, and City Council included the subject property on the Heritage Register that same month. It is Ms. Anderson's information that establishes how the City considers all properties that have been batch listed to be "contributing properties" and are determined to have "contextual value". Her witness statement explained, however, that, as is the practice for considering multiple listings, detailed historical research is not usually undertaken to identify associative values, including architects and persons of community interest.

[44] The Heritage experts on both sides considered the Ontario Heritage Toolkit (Exhibit 5), which specifies that "at least one criterion" must be met to determine whether a property has cultural heritage value. Ms. Anderson opined that the subject property meets the criteria under contextual and design value as follows (paragraph 19) of her witness statement:

...a detached commercial building from the second wave of development in the King-Spadina neighbourhood in the 20th century where it represents a key commercial building typology with a Mid-Century Modern design in the historical context of the neighbourhood and its setting on Richmond Street, west of Spadina Avenue.

[45] She suggested that the building is part of a “key” typology that dates “to the early to mid-1900s”, and she referenced the building’s “rusticated stonework on the north entrance” and the building’s large windows have remained largely unchanged.

[46] Ms. Anderson then opined that contextually, the subject property is valued as follows:

...for the role of the detached commercial building in defining, supporting and maintaining the historical character of the King-Spadina neighbourhood, reflecting its evolution from a 19th-century residential and institutional enclave and Toronto’s manufacturing centre in the 20th century, to its current status as a mixed-use community.

[47] Ms. Anderson further opined that the building is linked to the neighbourhood “historically, visually and physically” – and on this part of Richmond Street west of Spadina Avenue, is part of a “distinctive streetscape”. She then lists eight heritage attributes of the subject building (pages 8-9 of her witness statement).

[48] Following from Ms. Anderson’s statement to the Tribunal, Georgia Kuich, the City’s other Heritage planner, explained how properties on the Heritage Register are conserved in accordance with Section 3.1.5 of the Official Plan. Ms. Kuich was charged with reviewing, analyzing and making recommendations on the subject development application in the context of the relevant heritage policies and legislation and policies. Accordingly, Ms. Kuich’s analysis, in the context of the upper-tier and municipal documents, followed that of Mr. Goldsmith’s methodology in arriving at her opinions.

[49] Of importance to Ms. Kuich was her opinion that the proposal to demolish this building would offend the policies of the *Planning Act*, and in particular, its direction in Section 2 to have regard to matters of provincial interest such as 2(d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest and 2(r) the promotion of built form that, (i) is well-designed and (ii) encourages a sense of place.

[50] She called the possibility of demolition of the subject building a “complete and irrevocable loss of its cultural heritage value thereby not conserving it” (paragraph 8.4 of her witness statement), thereby failing to satisfy 2(d). Nor does the Applicant’s proposal encourage a sense of place, thereby failing to satisfy 2(r) as referenced above.

[51] Ms. Kuich opined that the development application offends Policy 2.6.1 of the PPS by not conserving “significant’ built heritage resources and “significant cultural heritage landscapes.”

[52] In the context of the Growth Plan, she opined that the subject property is a cultural heritage resource. Without any measure of conservation of the property (excluding Mr. Goldsmith’s suggestion for photographic conservancy), Ms. Kiuch told the panel that the development proposal will not foster a sense of place and will, therefore, harm the community.

[53] In the context of the Official Plan, Ms. Kuich opined that the proposal offends the 3.1.5 policies. Her full review of these policies is found in Section 8 of her witness statement. Summarily, as the Applicant proposes to demolish the existing building, this fails to conform to the Official Plan as well as fails to maintain the intent and purpose of the 3.1.5 policies as referenced. She noted further that the failure to conserve the subject property and building would offend the direction of the King-Spadina Secondary Plan policies as well as those of the King-Spadina HCD Study and Plan.

The Tribunal’s Findings on Heritage

[54] The panel considered the totality of the evidence presented to it. It was evident that the Applicant’s expert’s work was far more comprehensive and rigorous than that undertaken by the City’s experts. This finding in no way diminishes the experience of those who opposed Mr. Goldsmith’s findings; the constraints upon the City’s Heritage Preservation Services are known to the Tribunal. Simply stated, Mr. Goldsmith’s methodology, his comprehensive reference to the various instruments at play in the heritage context; his own in-depth HIA work; his provision of visual evidence to support

his findings; and his in-depth treatment of the subject property from architectural, historical and policy perspectives, all combined to demonstrate to the Tribunal a highly-specialized and arguably more persuasive analysis and evaluation of the existing property. His evidence withstood scrutiny by the City's counsel in cross-examination and his opinions were unshaken despite vigorous testing by both the City and the Tribunal.

[55] The Tribunal was not persuaded by Ms. Anderson's suggestion that the existing building is part of a "key" typology that dates "to the early to mid-1900s", when in fact, the building was constructed in 1950 – at best, the mid-1900s and even then, a full decade after the Period of Significance and as will be evidenced, Mr. Goldsmith provided more relevant examples in his visual evidence. The Tribunal was also not persuaded that the entrance of the building displayed some unique typology. Despite referencing its "rusticated stonework on the north entrance", the Tribunal heard that its entranceway had been the subject of at least one prior modification (supported by the photographic evidence before it circa 1973). Considered in the context of Mr. Goldsmith's analysis, the panel preferred his findings regarding the typology as discussed in the context of his review of photographic evidence (referenced above).

[56] Indeed, Ms. Anderson acknowledged that associative values are not part of the City's steps in batching Listings (which required archival research). As she told the panel: "We have to be pragmatic", and only for a Part IV designation would the City undertake the research and the associative values at that time, something she explained the City was doing through its King-Spadina Secondary Plan process. The Tribunal is not persuaded that the City's evidence has demonstrated the required in-depth research to support its findings of 'significance' in respect of 457 Richmond Street West.

[57] The Tribunal finds that only Mr. Goldsmith proffered the most compelling and persuasive reasons for not conserving the existing building. He provided actual evidence to back up and support his findings, whereas the City experts furnished no

such evidence to support their opinions. In the course of more than a week of evidence, the panel's own observation is that the existing, small manufacturing building is entirely unremarkable, looking more like a dated anomaly in the context of the mix of modern residential buildings and few examples of period buildings. To the panel, it is devoid of any character and provides no sense of place. On this latter observation, based on the evidence presented to it, the Tribunal finds that the City failed to show the panel how a new stylish residential building cannot satisfactorily provide a sense of place along Richmond Street West in the years ahead. As the Applicant's counsel submitted in essence: there can be no time period cut-off to say that removing one building means another cannot create its own sense of place.

[58] Notwithstanding the panel's observations, it set these aside and instead relied solely on the expertise, evidence and opinions of the heritage experts to persuade it whether this building was meritorious of conservation. Having considered all of the evidence before it and preferring the evidence of Mr. Goldsmith as being more comprehensive and sufficiently rationalized in the current in-force policy regime of the province and of the City, the Tribunal finds that the subject property, with its existing small manufacturing building deserves no special consideration. It was constructed outside of the Period of Significance; it bears no unique or special features or characteristics either architecturally or culturally as a building of mid-century typology (being an insignificant example in that vein); and the City presented no supporting or let alone persuasive rationale to justify its conservancy.

[59] The Tribunal has acknowledged the City's practice of batch listing properties to preserve potentially significant properties once examined. The potential significance of a particular property, however, can only derive from the City's more in-depth and individualized assessment of a property's relative heritage worth when a development application is brought forward; something the City recognizes it must do given the intense and unrelenting pressures it faces for new development in the Downtown area among others. Undertaking individual designatory analyses of potentially-significant buildings in a study area is simply not an option for the City. Accordingly, while the

Tribunal accepts the validity of batch Listing properties, the Tribunal also determines that it is simply insupportable for the City's experts to opine – or its counsels to submit – that because a property has been Listed, it has cultural/heritage value. The City's own limitations in "batching" dispel the notion that an automatic "value" is ascribed to the properties so batch Listed, or that there is some sort of right to protect these *ab initio*.

[60] The assumption that a building is a significant built heritage resource, or that it is a contributing property, or that it represents a "significant" cultural heritage resource, must be tested per each development application, which was done both expertly and professionally by the Applicant's heritage expert.

[61] The Tribunal's general observation of the City's processes insofar as its actions leading to the development of its HCD Plan are concerned, is that these were consistent with the requirements of the Act. The Tribunal wholeheartedly supports the City's efforts to batch List properties to establish at a future time whether one or more might have significance. Indeed, the letter in Exhibit 17 from the Manager, Preservation Services, supports this approach. However, there was clearly insufficient heritage evidence and rationale furnished to the Tribunal by the City to make a case for saving this unremarkable building.

[62] As referenced in Mr. Goldsmith's evidence, Exhibit 19 (Statement of Contribution) furnished no special evidence to substantiate the building's designations let alone its value. Ms. Costello questioned Ms. Anderson at length on this exhibit in the context of the City's lack of evidence of any background research to support either the City's position or the various categories in Exhibit 19. Ms. Anderson was unable to speak to what background research had gone into the designations applied to all of the Listed properties. Attempts by the Applicant to obtain that research were fruitless, however, and accordingly, the Tribunal is unable to assign any persuasive weight to the City's heritage experts' opinions *vis-à-vis* the heritage significance or value of the existing manufacturing building.

[63] Moreover, neither of the City heritage experts' evidence or statements disclosed to the Tribunal the requisite methodology either expert used to assess the cultural, historical or architectural value or, most importantly, to situate its alleged overall value to the heritage of the King-Spadina Area. If the opinions are insufficiently justified, then Ms. Kuich's subsequent references to various policies and her opinions cannot carry the weight of Mr. Goldsmith's, whose evidence in contrast covered every angle and aspect of the background, assessment and findings to inform his view, and all of this material was shared with the Tribunal. Stated succinctly, the trail Mr. Goldsmith followed in his heritage assessment of the lack of significant value of this building can be traced at every step. The same cannot be said for Ms. Kuich's approach, particularly where the entirety of her work was to accept the findings of Ms. Anderson, which held that the property must be preserved. As Ms. Kuich told the panel, Ms. Anderson does the "front-end work. Once the property has been identified and valued, I look at applications that affect those properties."

[64] In this context, Ms. Kuich's starting point is that the property is Listed, and this means it is a contributing property after which, she acknowledged to Ms. Costello, she begins her analysis, and to which she applies the policies. In the case at hand, however, the starting methodology is not readily apparent, so neither Ms. Anderson's work nor Ms. Kuich's opinions can be seen to be grounded in any apparent or discernible methodology. As the Tribunal cannot find her work as persuasive, neither can it find persuasive the corresponding opinions from Ms. Kuich even if she bases those opinions on a reading of the provincial and municipal legislation and policies. In her work, she has assumed the value because it has been Listed. In this very important context, the Tribunal determines that these two witnesses did not satisfy the Tribunal's need for evidence-based information to support their starting position that the subject building is worthy of conservation.

[65] In contrast, Mr. Goldsmith's opinions were evidence-based. He referenced the requisite provincial legislation and policies with reasons and he employed a methodology (such as the development of his HIA for example) that could be referenced

and tested by the Tribunal. In turn, his findings were supported by his expert opinion on each point, both contextually and specifically, which persuaded the panel that only he presented the most persuasive evidence to justify his position for not conserving this property. Coupled with the aforementioned HIA that he devised to analyze, test and inform his findings and opinions, and to counter successfully the City's experts' opinions, the Tribunal finds that the approach, opinions and conclusions of Mr. Goldsmith are preferred for the reasons stated. Accordingly, the Tribunal is persuaded that there is no cultural heritage loss in permitting the Applicant to proceed without conserving the existing building at 457 Richmond Street West, which it finds not to be a contributing property and not to be a significant heritage resource.

[66] Finally, Ms. Kuich was critical of Mr. Goldsmith's suggestion that a photographic or interpretation plan was a satisfactory way to conserve the subject building. She opined that this suggestion might serve as a commemoration or for archival purposes, but it does not represent a conservation strategy. The panel heard that in fact, Mr. Goldsmith's suggested approach is a generally accepted one, and an approach that has found favour with the City in other such applications. In this regard, recognizing that the building is not a contributing property and it is not a significant cultural heritage resource, the panel is not persuaded that Mr. Goldsmith's suggestion is an unreasonable one. In the manner contemplated, the Applicant will be able to satisfactorily recognize the existence of this diminutive manufacturing building that the Applicant's witness has opined has no significant heritage value for all of the persuasive reasons and evidence he provided to the Tribunal.

[67] For all these reasons, the Tribunal prefers the heritage evidence of Mr. Goldsmith to the City's witnesses. The existing building is not a "significant" cultural heritage resource that should be retained in the particular circumstances of this application.

PLANNING CONTEXT

[68] The Applicant proposes to construct a 57-metre-tall, 19-storey residential building in the Downtown area. Condominium residences abound in the immediate and larger area as they do across the City. Many development approvals have been made in the area either by the City or by the Tribunal. The Applicant's planner, Paul Stagl, informed the Tribunal that "a little more than 80%" of these were approved by the City. The Applicant is an established developer of properties in the City and his proposal for a new residential building to meet the needs of a growing population within a defined municipal border is both unsurprising and anticipated.

[69] City staff have recommended that a 45-metre height limit be placed on buildings within the West Precinct. To support his planning opinion that a 57-metre-tall building is appropriate for the subject property, Mr. Stagl told the panel that he considers the subject property to serve as part of a "gateway" of buildings at Spadina Avenue and Richmond Street West, which reflects these heights. Described as an edge or nodal condition, he opined that the Spadina Precinct is not a precinct of height and whether one looks to the edge of the West Precinct or to the edge of the Spadina corridor, there has always been "a concentration of heights at the edges." Certainly, in the panel's observation, the Fabrik and Morgan buildings are reflective of this concentration of heights at the corner of Spadina Avenue and Richmond Street West, and the City witnesses opined that the heights of these buildings are appropriate given their relationship to Spadina Avenue and these buildings should be treated differently.

[70] However, the City's planner, Joanna Kimont, criticized Mr. Stagl's characterization of the subject property as part of the western edge of Spadina Avenue, especially as she considers the site to be a mid-block property. She explained to the panel that this building would be too tall, particularly as the subject property is situated some 260 metres west of Spadina Avenue and is actually closer to Brant Avenue. Accordingly, the site is not an "edge" site, so to develop the subject property at 19

storeys would serve to create a “creep of an edge” and she cautioned that a line must be drawn at some point.

[71] Echoing these views was the City’s urban design witness, Joseph Luk, who also criticized Mr. Stagl’s notion of clustering within a “gateway” as a justification for the 57-metre height. Mr. Luk explained that the King-Spadina Urban Design Guidelines make no reference to gateways, and gateways are not determined by building heights, which are also not limited to buildings. He advised the panel that gateways can also take many forms including open spaces and public art.

[72] While the panel accepted Mr. Luk’s evidence that the Fabrik building sits within both the Spadina Precinct and the West Precinct, the panel was not persuaded that the subject property’s site within the West Precinct requires it to offer a lower height to transition downward from Spadina Avenue. A pattern of downward transition as suggested by Mr. Luk has not been established to the Tribunal’s satisfaction. First, the Fabrik building responds to the particular built form regimes of the Spadina Precinct and the West Precinct, with the western portion lower along Richmond Street and the taller portion on the east side at Spadina Avenue. In the panel’s view, the notion of taller building heights at the edge is established, and although the subject property is a mid-block property, it nevertheless abuts the Fabrik building and it offers a height equal to that of the Fabrik building.

[73] Similarly, there are other examples of tall buildings along Richmond Street West and the concept of “transition” is not affected let alone undermined by the presence of a 57-storey building beside a new 57-metre building that will have a 20-metre separation distance between the tower portions of these two buildings (Fabrik and the subject property). And, the panel notes that both the Fabrik and Morgan buildings also have a presence on Richmond Street West. Invariably, and as already stated, the average person walking along either Spadina Avenue or Richmond Street West does not readily know which precinct he or she is in either by observing the public realm at the street level or looking up to the buildings that frame the streets.

[74] Second, there was no persuasive opposing evidence to diminish the value of Mr. Stagl's opinion in considering the heights of the Fabrik and Morgan buildings as context for development on the subject property. First, there is no disagreement among the witnesses that the subject property abuts the Fabrik building, which enjoys a height of 57 metres – a height that the Applicant wishes to achieve through its application. Given the subject property's location beside the Fabrik building and given the approved heights in the immediate context even along Richmond Street West, the panel finds that the proposed 19-storey-tall building will fit within the existing immediate context on the south side of Richmond Street West as well as in the larger context along the north side with the Morgan building and the recent approval for the James (Woodsworth) building across the street. Accordingly, the panel finds persuasive Mr. Stagl's characterization of the area and his planning justification for the 57-metre height.

[75] Third, while the panel was told that a 45-metre height is the appropriate maximum height for buildings along Richmond Street West, the panel is not persuaded that a limit of 45 metres is required for the appropriate development of this West Precinct site. Despite the City staff recommendation for such a limit, there are buildings in the 16- to 19-storey range and there is more justification for this development when looking at the overall built form and urban design context. Nor are there any height limitations in either the Official Plan or the King-Spadina Secondary Plan to limit the proposed development.

[76] Fourth, the Tribunal is not persuaded that the City's witnesses have made a case against the proposed height. While City staff has recommended a 45-metre height limit, the panel has not identified any evidence before it to support this figure; nor does it reflect a specific built form, which equates roughly to a 15-storey-tall building. While there are approved buildings at this height and taller along Richmond Street West, the panel is not persuaded that a limit to reflect a particular built form typology on the subject property is grounded in any planning direction.

[77] Fifth, the Tribunal is aware that height permissions that exceed this and lower limits have been approved by both the City and the Tribunal for other residential applications, and the immediate context includes such buildings: the Morgan at 63 metres (16 storeys); the Fabrik at 57 metres (17 storeys); the James (Woodsworth) across the street at 58.15 metres (17 storeys) and farther east, the Waterworks building at 53.5 metres (13 storeys). Given this context of varied heights along Richmond Street West, there is no good reason to limit the height of the building to 45 metres let alone refuse the application for a building of this height and massing in proximity to buildings already as tall or taller than it. Additionally, the proposed density and massing are entirely in keeping with what already exists around it in these adjacent condominium buildings along Richmond Street West. The City's witnesses have not made a persuasive case for limiting the height to 45 metres given the building's immediate and larger area context and the panel finds that the proposal does not represent overdevelopment of the site.

[78] Finally, the panel heard that the City has stepped away from the primacy of height and density considerations and focused more emphasis on built form policies. Further, Mr. Stagl advised the panel that there are no wind or sun shadow impacts created by the proposed building. Accordingly, there is nothing jarring about the height of 57 metres as proposed; nor is the difference of 12 metres (57 metres versus 45 metres) experienced in any discernible let alone adverse way from the street and there is no compelling evidence before the panel to support such a limit. The Tribunal determines that the 57-metre height represents good planning and should be approved.

[79] Setting aside the matter of the alleged heritage value, for which the Tribunal determines that there is no significant heritage value and thus conservation is not required, there are no unique or special issues in the land use planning context that the new development creates. The building is, in the land use planning sense, a customary and usual residential built form that one finds immediately adjacent to, as well as around the subject property. The proposed design at 57 metres in height, with a minor modification to some of the south-facing balconies as referenced later in these reasons,

will serve as yet another example of a modern residential typology that finds expression through those same immediately adjacent built form examples such as those referenced along Richmond Street by the various experts.

[80] In the planning context then, having weighed the evidence of both land use planners and that of the urban design witnesses, the Tribunal is not persuaded that any land use planning issues arise through its approval of a 57-metre-tall condominium residence on the subject property.

URBAN DESIGN

[81] In the urban design context, Mr. Luk was concerned that at 57 metres in height, the proposed building will not respect the lower heights along Richmond Street West. He opined that the subject property will not offer sufficient transition along the street and in particular in the context of its proposed street wall.

[82] In contrast, Mr. Stagl told the panel that he had not observed any discernible transition occurring “down to” or “away from” along Richmond Street West. He did not observe any pattern of heights transitioning down to lower heights in the middle, but he did observe these concentrations of heights along the edge as well as tall heights within the West Precinct. He opined that the higher heights are evenly distributed throughout the Precinct.

[83] As referenced earlier, Mr. Stagl noted that the subject site was located in a “gateway” or “on the edge” and in “a node in the West Precinct” – a condition that could justify the proposed height, further supported by the Fabrik on its eastern flank. He raised an important consideration in the panel’s view: that while the notion of transition is important in the planning context, it is also a supportable factor in the urban design context as it is not just assessed as a “regimented stepping down of total building height”. It has evolved and it is evident that one sees varying building heights along this section of Richmond Street West. Indeed, as already referenced, Ms. Costello emphasized during her questioning of several City witnesses, that the person on the

street does not know in which precinct she is walking while experiencing the built forms in this area of Spadina Avenue and Richmond Street West. The Tribunal is not persuaded that the proposed height must respect a transition downward in heights given its view of the area photographs. There is nothing jarring or adverse in seeing a 57-metre-tall building juxtaposed against similarly taller buildings like the Fabrik next door, to the Morgan to the east or to the other multi-unit condominium residences in the immediate and surrounding area. The urban design context is not offended by having a 57-metre-tall residence on the subject property.

Street Wall and Transition

[84] Exhibit 9 depicts a largely uniform street wall condition along Richmond Street West that has been created by buildings that are generally respectful of an established flow of consistent street wall heights.

[85] The panel is persuaded that the proposed street wall created by the new building is neither too tall nor affects the transition as it appropriately serves to continue the street wall down Richmond Street West. Pages 38 and 39 in Exhibit 9 depict a largely uniform street wall condition on both sides of the street that has been created and that buildings portray a relatively consistent street wall height. Exhibit 12 is another persuasive example of this finding whereby the proposed development reflects generally the street wall step backs in the context of the other six examples in this exhibit. There are various street wall setbacks at varying heights and treatments along the street; and the proposed step backs of the proposed development are supportive of, and consistent with, the existing street wall. No opposing evidence has been raised to cast doubt in the panel's mind.

[86] The Tribunal determines that the City's criticism levied against the new building's proposed street wall is without merit. The Applicant has responded to the City preferences by offering no less than three iterations of their proposal in response to those preferences and suggestions. As noted above, Exhibit 9 is a highly persuasive exhibit to which the Tribunal assigns significant weight in supporting the existing street

wall. For example, page 32 shows how the overall floor space index has been reduced; reductions on the three affected lot line step backs; and an increase in the outdoor amenity space.

[87] To reiterate, the relatively consistent street wall condition on both sides of Richmond Street West is exemplified on pages 38 and 39 of Exhibit 9. Situated within the southside context, the proposed building is entirely supportable with its proposed street wall of 36.75 metres. It employs two step backs on the north wall and is a height that is entirely consistent with the buildings along the street. Further, there is no Official Plan policy that directs a transition of street wall heights. Therefore, the Tribunal finds that the City has not made a case for refusing the application on the basis of the proposed street wall, which the Tribunal determines respects the area context. The Tribunal finds that the proposed street wall height fits within the existing and planned context of the street and is reinforced through the proposed design as well as reflects the character and scale of the area.

Outdoor Amenity Space

[88] The Tribunal is satisfied that the outdoor amenity space, although deficient without taking into account the proposed exclusive-use balconies/terraces, is an acceptable component of the design. The panel noted that the development at 520 Richmond Street West was approved with a deficient amount of space (per square metre per unit with a ratio of 0.32) whereas the subject property offers only a slightly larger amount of outdoor space with a ratio of 0.33. The City advised the panel that it was able to approve the reduced figure for the 520 Richmond Street West property given that the City had examined the various built form objectives that building was achieving so the reduction was permitted. Correspondingly, in the Tribunal's consideration of the totality of the evidence, the provision of reduced outdoor amenity space in the particular circumstances of this site and this design represents a supportable amount of outdoor amenity space.

Direction to Modify the Plans

[89] It was during the presentation of participant Eris Ritchey, who lives in the 11-storey 32 Camden Street building and whose north-facing unit will look directly across at the proposed building, that the Tribunal became aware of the adverse impact that will result from the construction of balconies as planned on the south side of the proposed new building in relation to the north-facing balconies of the 32 Camden Street building. While the participant lamented the loss of sky views, such a loss invariably accompanies the construction of tower residences in the City's downtown area in closely developed abutting properties. It is a recognized condition that a loss of sky views cannot be fatal to a development application *per se* and such views, while desirable, are neither sacred nor protected as a right. What was clear from this participant's evidence, however, is the manner in which noise travels all around her seventh-floor suite at 32 Camden Street, noting that she is able to discern conversations as far away as the ground below her. As she can hear conversations some seven floors below, the panel was required to consider what the canyonlike condition of new protruding balconies facing directly across from her north-facing balcony might create in terms of a) noise and conversations and b) loss of privacy with these new exterior balconies.

[90] Ms. Costello noted that the Applicant's experts had visited Ms. Ritchey's building to ascertain the extent of impacts if any and in response the Applicant had made a change to the third-floor terraces and provided a security screen. Also, the proposed outdoor space that was on the second floor was moved "in its entirety." And, in response to Ms. Ritchey's concern with the Applicant's proposed balconies, for which Mr. Luk informed the Tribunal that recessed balconies would be preferred, Ms. Costello explained that the balconies at 32 Camden Street are set back 5.5 metres from the property line, noting that it is deficient and does not conform to the zoning by-laws and that minor variance approval was necessary. The Tribunal heard that the balconies at 32 Camden Street protrude another 1.5 metres into that set back.

[91] Additionally, Mr. Sterling had testified that there is no requirement in the zoning standards for side-yard setbacks in relation to the 32 Camden Street building, and the

Applicant could have a 23-metre to 26-metre high building or seven to eight storeys sited at the 7.5-metre set back with balconies projecting back into that (similar to how balconies project from the 32 Camden Street building).

[92] Ms. Ritchey was unaware that she and her fellow north-facing residents of 32 Camden Street live in a building that is deficient in its rear-lot relationship once informed of this fact by Ms. Costello. This is an irrelevant consideration in the Tribunal's assessment. So too is the fact that, because one building is deficient, it is acceptable to proceed with a design that creates what will be, based on the participant's viewpoint, a worse condition for her and her fellow residents.

[93] The Tribunal considered this information carefully, and it noted the as-of-right built form that could result as of right, but the panel was mindful that just because something is permitted under the zoning, this does not mean that the Tribunal should set aside a resident's concern with potential impacts created by the proposed development. Indeed, the panel would be remiss if it did carefully consider all components of the design and review this in the urban design context and the policy framework.

[94] In this regard, the Tribunal is not persuaded that, because the 32 Camden Street building is deficient in its setback, or that the proposed building could build as of right a taller building than what currently exists, these realities should render moot the participant's concern with new balconies that will face onto her balcony, or that the Applicant should be permitted to also build as proposed. These cannot serve to justify the Tribunal in approving a form of development that it determines will create a worse or adverse impact on the north-facing residents of 32 Camden Street. The Tribunal is not comfortable with approving a building envelope that contributes to a permanent and undesirable condition where a less-impactful solution was discussed at the hearing and that was based on the references of both urban design witnesses albeit with differing points of view. Further, there is no hardship created on the Applicant by revising his design to respond better to a condition that it has proposed to create.

[95] The Applicant proposes to construct a third-floor outdoor amenity space with privacy screening. The Applicant proposes to provide exterior balconies on levels 4-11 and on levels 13-19 with a rooftop terrace. The Tribunal is persuaded by the statement of the participant that the proposed building's exterior balconies are not desirable for the tight condition of the physical relationship between 32 Camden Street and 457 Richmond Street West. However, the Tribunal is not persuaded that the removal of all south-facing balconies is required to address the participant's concerns with a loss of privacy for units in the 11-storey 32 Camden Street building. Above the 32 Camden Street building's eleventh floor, there is no appreciable loss of privacy created with the Tribunal permitting the Applicant to retain its plans for a screened, third-floor terrace as designed as well as permitting the Applicant to retain its external balconies on levels 13 to 19 and the roof terrace, which will be constructed above the top of the 32 Camden Street building.

[96] The Tribunal emphasizes that it heard no persuasive urban design evidence or justification from Mr. Sterling to retain these exterior balconies on levels 4-11. The real impact is best assessed from the people who will experience the new and permanent condition like the participant. Despite the loss of sky view that will result, since the Tribunal is otherwise persuaded that the new building as configured is supportable in the urban design context, it prefers the statement of Ms. Ritchey to the functionality of these exterior balconies as proposed. The Applicant has presented no good evidence to show why its plans should not be re-designed (and correspondingly, to revise his proposed zoning by-law amendments) to reflect fully-recessed balconies for levels 4-11 on the south wall. The Tribunal is satisfied, as was Ms. Ritchey, that a more harmonious and less invasive living condition can be achieved for residents of 32 Camden and for future residents of the new building through the provision of recessed balconies on levels 4-11 versus exterior balconies as contemplated in the Applicant's plans. Indeed, recessed balconies were discussed at the hearing and were a valid component of the Tribunal's assessment at arriving at this decision to require the Applicant to redesign its south-facing balconies. The panel received no opposing evidence to the notion of

recessed balconies and the Applicant's counsel made no reference to it in her submissions.

[97] Thus, for the purposes of minimizing a future adverse impact (noise and loss of privacy) on the residents of 32 Camden Street and for the future residents of the new building, the Tribunal finds these impacts will be ameliorated through this minor re-design of the plans for the south-facing balconies on levels 4-11. The panel determines that in order for the Applicant's proposal to receive the Tribunal's imprimatur, the Applicant's Zoning By-law Amendments should be revised in their final form to reflect fully-recessed balconies on levels 4-11. Otherwise, the third-floor outdoor terrace with its privacy screen and the exterior balconies on levels 13-19 and the rooftop plan are supportable in the urban design context.

Built Form Relationship with the Fabrik

[98] One of the most contentious urban design elements is the Applicant's intention to build at the 0-metre lot line with the Fabrik residential building on its eastern flank. There are two elements to this adjacency relationship. The first is that it will result in a significant loss of sky and western distance views for the west-facing residents of Fabrik, one of whom spoke at the hearing in opposition to this minimal set back.

[99] Just as the Tribunal determines that the loss of sky views is an unfortunate albeit customary result of tall building construction, there is no right to unobstructed and unimpeded views to the skies above. And, as there are no wind or sun/shadow impacts before the Tribunal, the panel is unprepared to find that building to the 0-metre lot line in this case creates an unacceptable condition on the residents of the Fabrik building.

[100] The second element that causes greater concern is the Applicant's proposal to have several suite windows, which of course include bedroom windows, face directly onto the outdoor amenity space of the Fabrik building on the thirteenth floor. The noise and privacy impacts of having activities at all hours from an outdoor amenity space in

very close proximity to abutting suites are not lost on the panel, and one can reasonably expect conflict to result by virtue of these impacts, created by the built form condition.

[101] The Tribunal had to determine whether these issues of noise and loss of privacy could be resolved so that the proposed building might be permitted. Experts on both sides proffered a variety of suggestions, including opaque windows, solid walls, relocating suites etc. – and the Applicant’s counsel asked the Tribunal for some direction in this regard in her closing submissions.

[102] The Tribunal is able to require of the Applicant a revised treatment of the south-wall balcony design to ameliorate impacts on 32 Camden Street because this will have virtually no effect on the integrity of the overall building structure. However, the Tribunal cannot reasonably justify in any planning sense a direction to the Applicant to re-design its structure to set back the upper portion of the building to respond to these potential noise and loss of privacy impacts on residents of its building and on those of the Fabrik building. An uneasy relationship is bound to ensue at full build out were the Applicant to proceed with windows facing directly onto an outdoor amenity space.

[103] In this regard, the panel carefully considered the City’s revised design at page 37 of Exhibit 9, an excellent visual exhibit developed by the City using advanced technology that is worthy of mention in these reasons. The panel reviewed the proposed re-design carefully, but it was not persuaded that increasing the distance from the Fabrik building’s outdoor space to the proposed windows by an additional 5.62 metres (the difference between the City’s proposed 18-metre separation and the Applicant’s 12.38-metre separation) results in any demonstrable improvement for people who will live in relatively close proximity to that outdoor amenity space. Even if the Tribunal were to approve that condition, it would still result in some form of exclusive-use terrace or balcony abutting this space. Also, the City suggested a greater set back of the tower portion some 5 metres (and lowered it) to achieve the traditional tall-building separation distance of 25 metres (as much as this is not a tall building site). The panel examined this re-design but determined that the resulting structure looked architecturally odd and

it did not address this loss of privacy issue. The Tribunal was not concerned about the resulting separation distance (tower-to-tower relationship) between the Fabrik building and the new building that the Applicant presented.

[104] Given the evidence available to it, and mindful of its determination that this abutting condition is not fatal to the application, the Tribunal will instead refer this design element to the site plan approval stage whereby the City and the Applicant are expected to work out a final design; one that will mitigate noise and loss of privacy impacts on residents who occupy some of these west-facing suites (which are relatively few in number). The exercise is not an onerous one and the Tribunal's focus here is to determine whether the proposed planning instruments can be supported. Thus, the issue of overlook from a 0-metre condition is contentious, but it is not a new one given the many existing and approved building-to-building relationships in the City. The Tribunal determines that the Parties can find a workable solution. In this context, and in the scope of the totality of the planning and urban design evidence before it, the Tribunal finds that this condition can be addressed at that time and is not a determinative issue that warrants the Tribunal's refusal of the development application

CONCLUSION

[105] Having considered all of the evidence, the Tribunal determines that the application can be supported for the following reasons. The Applicant has demonstrated persuasively through its witnesses, whose evidence the Tribunal preferred for the reasons stated, that the proposed development represents good planning and should be approved, particularly in the context of the relevant policies before it.

[106] The Tribunal finds that the Applicant's witnesses have demonstrated satisfactorily that the proposed development can be supported in the planning context and in the framework of provincial and municipal policies.

[107] The Tribunal finds that the City has failed to demonstrate that the existing manufacturing building should be retained in the context of the planning evidence presented.

DECISION

[108] Having considered all of the evidence before it, the Tribunal finds that the proposed Zoning By-law Amendments represent good planning and should be approved. The appeals are allowed. The City's Zoning By-laws are amended as follows:

1. Zoning By-law No. 438-86, as amended of the former City of Toronto, is amended in the form set out in Exhibit 18 once this Amendment is revised to reflect the Tribunal's direction for recessed balconies on levels 4-11; and
2. Zoning By-law No. 569-2013, as amended, is amended in the form set out in Exhibit 18 once this Amendment is revised to reflect the Tribunal's direction for recessed balconies on levels 4-11.

[109] The Tribunal will withhold its Order subject to fulfilment of these revisions and the Conditions that are to be satisfied as set out in Exhibit 18.

"R. Rossi"

R. ROSSI
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

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