

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 16, 2018

CASE NO.(S): PL170832

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 Street West
Municipality:	City of Toronto
Municipality File No.:	16 268947 STE 20 OZ
OMB Case No.:	PL170832
OMB File No.:	PL170832
OMB Case Name:	457 Richmond Street West Limited v. Toronto (City)

Heard: February 1, 2018 in Toronto, Ontario
March 1, 2018 by telephone conference call

APPEARANCES:

Parties

Counsel*/Representative

457 Richmond Street West Limited
("Applicant")

Laura Dean*

City of Toronto ("City")

Ray Kallio*

Garment District Neighbourhood
Association ("GDNA")

Valerie Eggertson

**MEMORANDUM OF ORAL DECISIONS DELIVERED BY DAVID L. LANTHIER ON
FEBRUARY 1, AND MARCH 1, 2018 AND ORDER OF THE BOARD**

[1] In this appeal, the Applicant made application to the City for a site-specific zoning by-law amendment to permit the construction of a 19-storey development at 451-457 Richmond Street West and filed this appeal as a result of the failure of City council to make a decision within the prescribed statutory period. There has been no public consultation process in regards to the project.

[2] The Board conducted the first Pre-Hearing Conference (“PHC”) in this appeal on February 1, 2018. The Affidavit of Service relating to Notice of the PHC was filed as Exhibit 2.

[3] At the first PHC the Board was advised by the Applicant and the City, that although a draft Procedural Order and preliminary List of Issues had been circulated, the parties were not yet in a position to request approval of an order. The City advised that they were completing a review and analysis of various reports and inquiries and reporting to the Community Council and then to City Council and that it was expected that Council will be in a position to provide instructions with respect to the proposed list of issues, and the form of a draft Procedural Order, and in turn, to the Applicant and GDNA, in the month of February. The Parties accordingly requested that the Board provide a date for a second PHC to address the form of a draft Procedural Order and the list of issues. Due to the limited number of parties, the Parties suggested that a telephone conference call (“TCC”) would be appropriate.

[4] The PHC was then continued by the presiding Panel at a TCC PHC on March 1, 2018, without further notice. All parties were in attendance.

[5] This decision addresses all matters arising from the two PHC’s.

ADDED PARTY

[6] The Garment District Neighbourhood Association, through its representative Valerie Eggerston, requested party status, without objection from the City or the Applicant, which was accordingly granted.

PARTICIPANTS

[7] There were a number of residents in attendance at the PHC, including those attending on behalf of condominium corporations and one additional community association, who requested status as Participants. The Parties did not object to any requests by those condominium corporations/associations seeking Participant Status and the Board accordingly recognizes the following as Participants:

- (a) Toronto Standard Condominium Corporation No. 2313 (32 Camden Street) by its appointed representative, Eris Ritcey;
- (b) Toronto Standard Condominium Corporation No. 1477 (438 Richmond Street West “The Morgan”) by its appointed representative, Kelly Nixon;
- (c) Toronto Standard Condominium Corporation No. 1762 (42 Camden Street) by its appointed representative, Ken Goldberg; and
- (d) Grange Community Association by its appointed representative, Max Allen.

[8] The Board has provided some general comments to the recognized Participants as to the scheduling of the hearing, the expected requirement for all Participants to provide a written summary of their evidence in advance of the hearing. The Board received the appropriate resolution passed by the Board of Directors of Toronto Standard Condominium Corporation No. 2313 appointing its authorized representative which was filed as Exhibit 1. The other Participants were directed to ensure that similar resolutions of their respective board of directors are filed with the Board in advance of the hearing.

PROCEDURAL ORDER

[9] The parties have advised that the hearing of the appeal can be completed within ten hearing days. Accordingly the weeks of **June 10th to the 14th** and **June 17th to the 21st, 2019** have been set aside on the Board calendar for the hearing of these two appeals at:

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

as directed in paragraphs 2 and 3 of the Procedural Order. I am not seized.

[10] The parties presented a draft Procedural Order which was acceptable, in form and content, to all of the parties and which has been reviewed by the Board. The Procedural Order has been amended to reflect the Board's direction as to the wording of paragraph 19, and the parties have resolved the matter of the form/wording of the Issues List.

[11] That Procedural Order shall accordingly issue in the form attached to this Decision as **Attachment 1**.

"David L. Lanthier"

DAVID L. LANTHIER
MEMBER

If there is an attachment referred to in this document,
please visit www.elfto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board
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Website: www.elfto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

ONTARIO MUNICIPAL BOARD

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

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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 **June 10, 2019** at 10:00 a.m. at: 655 Bay Street, Toronto Ontario.
3. The length of the hearing will be **ten (10) days**. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
4. The parties and participants (see **Attachment 1** for the meaning of these terms) identified at the prehearing conference are listed in **Attachment 2** to this Order.
5. The 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. A party who asks for changes may have costs awarded against it.
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. 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 **April 12, 2019**. For expert witnesses, a party is to include a copy of the curriculum vitae and the area of expertise in which the witness is proposed to be qualified.
9. An expert witness shall prepare an expert witness statement, that shall include: an acknowledgement of expert's duty form, the area(s) of expertise, any reports prepared by the expert, and any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section 12. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Board may refuse to hear the expert's testimony.
10. A participant must provide to the Board and the parties a participant statement by **May 10, 2019**, prior to the commencement of the hearing or the witness or participant may not give oral evidence at the hearing.
11. Expert witnesses who are under summons but not paid to produce a report do not have to file an expert witness statement; but the party calling them must file a brief outline of the expert's evidence and his or her area of expertise, as in section 12.
12. On or before **April 26, 2019**, 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.
13. On or before **May 27, 2019**, the parties shall provide copies of their visual evidence to all of the other parties. If a model is proposed to be used the Board must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.
14. Parties may provide to all other parties a written response to any written evidence on or before **May 22, 2019**.
15. 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.
16. A party who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Board and the parties are notified on or before **May 22, 2019**, that the written evidence is not part of their record.
17. 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 **1 business day** after the date of registration or certification.

18. 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.
19. Issues contained in the Issues Lists may be scoped and/or modified on consent prior to **March 28, 2019**. In the event an Issues List is scoped/modified on consent of the Parties, the Parties will immediately notify the Board and will provide the scoped/modified Issues List to the Board.

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. 457 Richmond Street West Limited

Eileen P.K. Costello and Laura Dean
Aird & Berlis LLP
Barristers and Solicitors
Brookfield Place, 181 Bay Street
Suite 1800, Box 754
Toronto, Ontario M5J 2T9

E-mail: ecostello@airdberlis.com and ldean@airdberlis.com
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Fax: 416-863-1515

2. City of Toronto

Ray Kallio
City of Toronto
Legal Services
Planning & Administrative Tribunal Law
Metro Hall
55 John Street, 26th Floor
Toronto, Ontario M5V 3C6

E-mail: ray.kallio@toronto.ca
Tel.: 416-397-4063
Fax: 416-397-5624

3. Garment District Neighbourhood Association

Valerie Eggertson
Secretary
50 Camden Street, Suite 404
Toronto, Ontario M5V 3N1

E-mail: gdntoronto@gmail.com

PARTICIPANTS:

- 1. Grange Community Association**
Max Allen
Vice President, Planning and Development
78 St. Patrick Street, #116
Toronto, Ontario M5T 3K8

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Tel.: 416-593-1238

- 2. TSCC No. 2313**
32 Camden Street
Toronto, Ontario M5V 1V1

Ariel Solivar, President
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Michael Murphy, Treasurer
Email: m.murphyto@gmail.com

- 3. TSCC No. 1477**
Kelly Nixon
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Toronto, ON M5V 3S6

c/o Sherwood Park Management Inc.
1200 Sheppard Avenue East
Suite 200
Toronto, Ontario M2K 2S5

Email: kdnixon18@gmail.com

- 4. TSCC No. 1762**
Ken Goldberg
42 Camden Street
Toronto, Ontario M5V 1V1

Email: kgoldberg@rogers.com

Attachment 3

ISSUES LISTS

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.

City of Toronto

1. Would approval of the proposed zoning by-law amendment have appropriate regard to the decision of City Council as required by Section 2.1 of the *Planning Act*?
2. Is the Proposal consistent with Section 2 of the Planning Act, in particular, Section 2(d) and Section 2(r)?
3. Is the Proposal consistent with the Provincial Policy Statement 2014 and in particular the following policies: 1.0, 1.1.1, 2.6.1, 2.6.3 and 4.7?
4. Does the Proposal conform to, or not conflict with, the Places to Grow and the Growth Plan for the Greater Golden Horseshoe (the Growth Plan) 2017 and in particular the following policies: 2.2.2.4, 2.2.3.2, 4.2.7.1 and 5.2.5.6?
5. Does the Proposal conform to the policies of the City of Toronto Official Plan and in particular the following policies: 3.1.2, 3.1.5, 4.7.2, 5.6 and 6.16?
6. Does the Proposal conserve the heritage resource located at 457 Richmond Street W.?
7. Does the Proposal conform with the existing Urban Structure and Built Form policies of the King-Spadina Secondary Plan?
8. Does the Proposal represent good planning and good urban design in the context of the west precinct neighborhood of the King-Spadina Secondary Plan Area?
9. Do the height and mass of the Proposal result in a development of the site in a manner that is appropriate for the existing and planned context of the area?
10. Do the height and mass of the Proposal make an appropriate built form transition in relation to the existing and planned scale and character of the surrounding area?
11. Do the height, massing, stepping, separation distances and articulation of the Proposal cause undue adverse impacts with respect to matters such as overlook and privacy, shadowing and loss of skyview?
12. Is the Proposal appropriate in light of the recent policy direction of the *Creating a Strong and Diverse Civic Economy* policies of the Toronto Official Plan (OPA 231), which is adopted by Council and currently under appeal?
13. Should the Proposal be revised to include an appropriate amount of office space?

14. Does the Proposal provide an appropriate amount of outdoor amenity space?
15. If the Proposal is approved, should the Board withhold its order until such time as the following are completed by the Owner:
 - a) Prepare a revised Functional Servicing Report demonstrating sufficient capacity to accommodate the servicing demand for the development and demonstrate compliance with all applicable design standards, specifications, by-laws and guidelines, all to the satisfaction of the Chief Engineer & Executive Director, Engineering and Construction Services;
 - b) Pay for and construct any improvements to the municipal infrastructure in connection with the Functional Servicing Report, as accepted by the Executive Director, Engineering & Construction Services, should it be determined that upgrades to such infrastructure is required to support this development ;
 - c) Prepare a revised hydrogeological assessment and enter into an agreement and/or permit to discharge groundwater in accordance with Toronto Municipal Code 681-6, By-law 868-2010, if required, to the satisfaction of the General Manager, Toronto Water; and
 - d) Submit full documentation of the existing heritage property located at 457 Richmond Street W. to the satisfaction of the Senior Manager, Heritage Preservation Services.
16. If the Proposal is approved, what is the appropriate amount and type of facilities services and/or matters that the owner should be required to provide pursuant to section 37 of the *Planning Act*?
17. If the Proposal is approved, should the Board's Order be withheld until such time as a Section 37 agreement has been signed and the proposed zoning by-law has been reviewed and revised from a technical perspective?

Garment District Neighbourhood Association

Transportation

1. Does the proposal provide appropriate parking and loading that might otherwise impinge on the public realm?
2. Does the proposal take into consideration the picking up and dropping off of goods and passengers given traffic flow constraints on Richmond Street West at that location?
3. Does the proposal take into consideration the impact of vehicular queuing and truck maneuvering on traffic and pedestrian flows and safety?

Community Services and Facilities

4. Has the applicant demonstrated that adequate community services and facilities are in place or planned to support the proposal?

Urban Design

5. Taking into consideration existing and planned buildings in its block, will the proposed building impact wind patterns on Richmond Street west of Spadina in a way that adversely affects pedestrians and residents?
6. Does the proposed building adequately limit shadow impacts on adjacent properties including the outdoor amenity areas at 438 Richmond and 450 Richmond?
7. Does the proposal create safety, security, privacy and noise issues in nearby local residences by virtue of its design at the southern face?

Heritage

8. Should the proposal retain the existing building at 457 Richmond Street W. which was listed on the City's Heritage Register by Council resolution on December 5,6,7 and 8, 2017?

Attachment 4

ORDER OF EVIDENCE

1. 457 Richmond Street West Limited
2. City of Toronto
3. Garment District Neighbourhood Association
4. Participants
5. Reply Evidence of 457 Richmond Street West Limited (if any)