

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



ISSUE DATE: April 18, 2019

CASE NO(S): PL180067

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:	ADI Development (Portland) Inc.
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)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit
Property Address/Description:	135-143 Portland St
Municipality:	City of Toronto
Municipality File No.:	17 213544 STE 20 OZ
OMB Case No.:	PL180067
OMB File No.:	PL180067
OMB Case Name:	ADI Development (Portland) Inc. v. Toronto (City)

Heard: August 7, 2018 in Toronto, Ontario

APPEARANCES:

Parties

ADI Development (Portland) Inc.

City of Toronto

Counsel

Denise Baker

Laura Bisset

DECISION DELIVERED BY K.J. HUSSEY AND ORDER OF THE TRIBUNAL

[1] This is a Pre-hearing Conference for the appeal brought by ADI Development (Portland) Inc. (“ADI”), pursuant to s. 34 (11) of the *Planning Act*. The City of Toronto failed to enact the proposed zoning by-law amendment within 120 days after a complete application was filed with respect to ADI’s property located at 135 - 143 Portland Street (the “site”).

[2] The Tribunal is satisfied that adequate notice of this PHC was given. The Affidavit of Service is marked as Exhibit 1.

The Proposal

[3] ADI’s property is located on the east side of Portland Street, midway between Richmond Street West to the north, and Adelaide Street West to the south. It has an area of approximately 783 m² square metres (“m²”) with approximately 27 m frontage on Portland Street.

[4] ADI proposes a development of a 16 storey mixed-use building with retail uses at ground level and residential uses above, with a total building height of 52.7 metres (“m”) and overall density of 12.1 times the area lot. The site currently contains 2-storey house form structures which were constructed in the late 19th century and are identified as contributing heritage properties within the King-Spadina Heritage Conservation District Plan. All buildings on the site, except the front façade of the 143 Portland Street, would be demolished.

[5] To realise the development, amendments are required to Zoning By-law No. 438–86 and Zoning By-law No. 569–2013, for increases in permitted height, densities, setbacks and step backs, and revised development standards as necessary.

Participant Status

[6] Without objection, the Tribunal granted the request for Participant Status by Emerson Denney, who represents Portland Area Residents Association.

Future Events

[7] The hearing of the appeal has been fixed on the Tribunal's Calendar for ten days, starting on **Tuesday, October 8, 2019 at 10 a.m.**, to be held **at:**

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

[8] Appended hereto as Attachment 1, is the Procedural Order with the Issues List that will govern the proceedings.

[9] This Panel is not seized.

"K.J. Hussey"

K.J. HUSSEY
VICE-CHAIR

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

Local Planning Appeal Tribunal
A constituent tribunal of Tribunals Ontario - Environment and Land Division
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1

Case No. PL180067

LOCAL PLANNING APPEAL TRIBUNAL

IN THE MATTER OF subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

Applicant and Appellant:	ADI Development (Portland) Inc.
Subject:	Application to amend Zoning By-law 438-86 – refusal or neglect of the City of Toronto to make a decision
Existing Designation:	Reinvestment Area (RA)
Proposed Designation:	Site Specific (To be determined)
Purpose:	To permit the development of a 16-storey building with 243 square metres of retail use on the ground floor and 117 residential units above.
Property Address/Description	135-143 Portland St
Municipality:	City of Toronto
Approval Authority File No.:	17 213544 STE 20 OZ
Case Case No.:	PL180067
Case File No.:	PL180067
Case Name:	ADI Development (Portland) Inc. v. Toronto (City)

PROCEDURAL ORDER

The Tribunal orders that:

1. The Tribunal 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 **October 8, 2019** at 655 Bay Street, Toronto. All parties and participants shall attend the first day of the hearing.
3. The length of the hearing will be **10 days**. The Tribunal will not sit on October 14, 2019. The length of the hearing may be shortened as issues are resolved or settlement is achieved.
4. The parties and participants are listed in **Attachment 1** to this Order.
5. The Issues are set out in the Issues List attached as **Attachment 2** to this Order. There will be no changes to this list unless the Tribunal permits. A party who asks for changes once the issues list is finalized may have costs awarded against it.
6. The order of evidence at the hearing is listed in **Attachment 3** to this Order. The Tribunal may limit the amount of time allocated for opening statements, evidence in chief (including the qualification of witnesses), cross-examination, evidence in reply and final argument, provided any such limitations are applied equally to all parties.

The length of written argument, if any, may be limited either on consent or by Order of the Tribunal.

Requirements Before the Hearing

7. All parties and participants (or their representatives) shall provide a mailing address, email address, and telephone number to the Tribunal. Any such person who retains a representative (legal counsel or agent) subsequent to the prehearing conference must advise the other parties and the Tribunal 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 Tribunal, the other parties and to the City Clerk a list of the witnesses and the order in which they will be called. This list must be delivered on or before **December 31, 2018**. 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. If the applicant intends to seek approval of a revised proposal at the hearing, the applicant shall provide copies of the revised proposal, including all revised plans and drawings, to the other parties on or before **June 7, 2019**. After that date, no revisions to the proposal shall be permitted except with consent of all the parties.
10. Expert witnesses in the same field shall have at least one (1) meeting on or before **May 1, 2019** to try to resolve or reduce the issues for the hearing. The experts must prepare a list of agreed facts and the remaining issues to be addressed at the hearing, and provide this list to all of the parties and the City Clerk on or before **May 6, 2019**.
11. 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, and a list of the issues which he or she will discuss and the witness' position on the issues. Copies of this must be provided as in Section 12. Instead of a witness statement, the expert may file his or her entire report if it contains the required information. If this is not done, the Tribunal may refuse to hear the expert's testimony.
12. Expert witnesses who are under summons but not paid to produce a report do not have to file a 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 13.
13. On or before **August 8, 2019**, the parties shall provide copies of their witness and expert witness statements to the other parties and to the City Clerk.
14. A participant must provide to the Tribunal and the parties a participant statement on or before **August 8, 2019**, or the participant may not give oral evidence at the hearing.
15. Parties may provide to all other parties and to the City Clerk a written response to any written evidence on or before **September 3, 2019**.

16. On or before **September 23, 2019**, the parties shall provide copies of their visual evidence to all of the other parties. If a model is proposed to be used the Tribunal must be notified before the hearing. All parties must have a reasonable opportunity to view it before the hearing.
17. The Parties will be required to produce Joint Document Books to the extent possible for common documentation. All Parties shall provide their index of documents to be included in the Joint Documents Books on or before September 23, 2019, and the Joint Document Books shall be provided to all Parties and filed with the Tribunal on or before **September 30, 2019**. All Parties must be served with the Joint Document Books in paper and/or an accessible electronic format according to their preference, and in such quantities of paper copies as they may request. One (1) paper set must be filed with the Tribunal.
18. A person wishing to change written evidence, including witness statements, must make a written motion to the Tribunal. *(see Rule 10 of the Tribunal's Rules with respect to Motions, which requires that the moving party provide copies of the motion to all other parties 10 days before the Tribunal hears the motion.)*
19. A Party who provides the written evidence of a witness to the other parties must have that witness attend the hearing to give oral evidence, unless the Tribunal and the parties are notified by no later than **October 1, 2019** that the written evidence is not part of the record.
20. Documents may be delivered in person, by courier, by facsimile or registered or certified mail, or by email, or otherwise as the Tribunal may direct. The delivery of documents by fax and email shall be governed by the Tribunal Rules (rule 7) on this subject. Material delivered by mail shall be deemed to have been received five business days after the date of registration or certification.
21. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 apply to such requests.
22. The Parties acknowledge that the Applicant has outstanding site specific appeals in respect of the subject property in LPAT File No. PL161316 (the "**OPA 352 Proceedings**"). The City and the applicant agree that in the event the proposal is approved in whole or in part, neither party will attempt to relitigate issues related to the Adi property during the OPA 352 Proceedings.

This Member is [not] seized.

Attachment 1: Parties and Participants

Appellant/Party	Counsel/Agent	Contact
ADI Development (Portland) Inc. ("ADI")	Denise Baker	WeirFoulds LLP 10-1525 Cornwall Road Oakville, ON L6J 0B2 416-947-5090 dbaker@weirfoulds.com
City of Toronto	Laura K. Bisset	City of Toronto Legal Services 55 John St., 26 th Floor Toronto, ON M5V 3C6 416-392-8782 Laura.Bisset@toronto.ca

Participant	Contact
Emerson Denney	unite@portlandarea.org 416-504-9666

Attachment 2: Issues List

Note: The identification of an issue on this list does not mean that all Parties agree that the issue, or the manner in which it is expressed, is appropriate for or relevant to the proper determination of the appeals. The extent of the appropriateness and/or relevance of the issue may be a matter of evidence and/or argument at the Hearing. Any Party may call or not call evidence on any issue.

1. Does the proposed development have regard for the matters of provincial interest set out in section 2 of the Planning Act, in particular the matters listed in subsections 2(d) and 2(r)?
2. Would approval of the proposed development have regard to the decision of City Council to oppose the appeal and the information and material that City Council considered in making its decision, in accordance with s. 2.1 of the Planning Act?
3. Is the proposed development consistent with the Provincial Policy Statement, 2014, and in particular with policies 1.1.3.3, 1.7.1(d), 2.6, and 4.7?
4. Does the proposed development conform with the Growth Plan for the Greater Golden Horseshoe, 2017, and in particular with policies 2.2.2.4, 4.2.7 and 5.2.5.6?
5. Does the proposed development conform with the policies of the City of Toronto Official Plan, including the policies related to:
 - a. Downtown (Section 2.2.1)
 - b. The Public Realm (Section 3.1.1)
 - c. Built Form (Section 3.1.2)
 - d. Built Form – Tall Buildings (Section 3.1.3)
 - e. Heritage Conservation (Section 3.1.5)
 - f. Housing (Section 3.2.1)
 - g. Regeneration Areas (Section 4.7)
 - h. Height and/or Density Incentives (Section 5.1.1)
 - i. King-Spadina Secondary Plan (Chapter 6, Section 16)
6. Does the proposed development conserve the listed heritage properties both on the subject property (135, 139, 141 and 143 Portland Street) and adjacent to the subject property (145 Portland Street, 127 Portland Street, 20 Maud Street and 124-130 Portland Street)?
7. Is the proposed development consistent with the King Spadina Heritage Conservation District Plan?
8. Are the height, density massing and built form (including such matters as the conservation of on-site and adjacent heritage resources, location, massing and height of the building, location, massing and height of the podium, separation distances, setbacks, stepbacks and location) of the proposed development appropriate, given:

- a. the policies of the Official Plan;
 - b. principles of good planning and urban design;
 - c. the relationship of the proposal to the surrounding context;
 - d. the context of the proposal within the City;
 - e. OPA 352;
 - f. OPA 406;
 - g. the King-Spadina Secondary Plan Review;
 - h. the King-Spadina Urban Design Guidelines (2006);
 - i. the Tall Building Design Guidelines; and
 - j. City of Toronto Zoning By-laws 438-86 and 569-2013?
9. Does the proposed development represent an overdevelopment of the site?
 10. Does the proposed development provide adequate interior and exterior amenity space?
 11. Is the proposed residential unit mix appropriate? Does the proposed development have regard for the Growing Up: Planning for Children in New Vertical Communities Urban Design Guidelines?
 12. Is rental housing replacement required? If so, have adequate rental replacement units been proposed to replace rental housing units being demolished, including such considerations as the number of units, type, size and rents?
 13. Have appropriate rental housing protection measures been proposed, including considerations such as protections for returning tenants?
 14. Has an appropriate tenant relocation and assistance plan been proposed?
 15. Should a 0.56 m strip of land along the eastern property line be conveyed to the City for lane widening purposes?
 16. Is the proposed reduction in visitor and retail parking supply justifiable?
 17. Does the proposed development represent good planning and is it in the public interest?
 18. Are the form and content of the proposed Zoning By-law Amendment appropriate?
 19. In the event the Tribunal allows the appeal in whole or in part, are appropriate benefits under Section 37 of the Planning Act secured as part of the Zoning By-law Amendment?
 20. If the proposed development is approved, should the Tribunal's Order be withheld until such time as:
 - a. A section 37 agreement in a form satisfactory to both the Chief Planner and Executive Director, City Planning Division, and the City Solicitor, has been executed and registered on title to the subject site?

- b. The proposed Zoning By-law Amendment is in a form satisfactory to the City?
- c. City Council has dealt with a Rental Housing Demolition application if six or more rental dwelling units are confirmed on the site; or the Chief Planner and Executive Director, City Planning Division, under delegated authority, has dealt with a Rental Housing Demolition application should fewer than six rental dwelling units be confirmed on the site, under Chapter 667 of the Municipal Code pursuant to Section 111 of the City of Toronto Act to demolish the existing rental dwelling units at 135-143 Portland Street?
- d. A section 111 agreement in a form satisfactory to both the Chief Planner and Executive Director, City Planning Division, and the City Solicitor, has been executed and registered on title to the subject site?
- e. The Applicant has submitted a revised Functional Servicing and Stormwater Management Report and Hydrogeological Study, to the satisfaction of Engineering and Construction Services staff?
- f. The Owner has entered into a Heritage Easement Agreement with the City pursuant to the Ontario Heritage Act in connection with the properties municipally known as 135, 139, 141 and 143 Portland Street to the satisfaction of the Senior Manager, Heritage Preservation Services, including registration of such agreement to the satisfaction of the City Solicitor?
- g. The owner has provided a Conservation Plan prepared by a qualified heritage consultant for the properties at 135, 139, 141 and 143 Portland Street to the satisfaction of the Senior Manager, Heritage Preservation Services?
- h. The City Solicitor has advised the Tribunal that Applicant has withdrawn its appeal of OPA 352?

Attachment 3: Order of Evidence

1. ADI
2. City of Toronto
3. Participants
4. ADI in reply

Note: The hearing panel will determine the timing for the evidence of participants.