

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



ISSUE DATE: June 11, 2020

CASE NO(S): PL180243

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:	CAPREIT Limited Partnership
Subject:	Application to amend Zoning By-law No. 438-86 – Refusal or neglect of the City of Toronto to make a decision
Existing Zoning:	R3 Z2.5 Zone
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the redevelopment of the subject property by constructing a new ten-storey mixed-use building connecting with the existing 28-storey rental apartment building
Property Address/Description:	100 Wellesley St E
Municipality:	City of Toronto
Municipality File No.:	17 198670 STE 27 OZ
LPAT Case No.:	PL180243
LPAT File No.:	PL180243
LPAT Case Name:	CAPREIT Limited Partnership v. Toronto (City)

Heard: May 22, 2020 via telephone conference call

APPEARANCES:

Parties

CAPREIT Limited Partnership

City of Toronto

Counsel

Johanna Shapira

Daniel Elmadany

**MEMORANDUM OF ORAL DECISION DELIVERED BY STEVEN COOKE ON
MAY 22, 2020 AND INTERIM ORDER OF THE TRIBUNAL**

[1] This is a settlement hearing on an appeal filed by CAPREIT Limited Partnership (“Applicant”) from the lack of a decision by the City of Toronto (“City”) on an application for Zoning By-law Amendments to permit the redevelopment of 100 Wellesley Street East (“Subject Property”), by constructing a new 10-storey mixed-use building connecting with an existing 28-storey rental apartment building.

PARTICIPANT STATEMENT

[2] The Tribunal received a Participant statement from Dean Thomas representing residents of the existing 28-storey apartment. Mr. Thomas raised various concerns about the Subject Property, condition and access to amenity space, shadowing and loss of sunlight on the existing apartment building, and additional parking for commercial use.

[3] Other concerns raised in the statement by Mr. Thomas are issues of a private matter between the Applicant and the residents outside of the jurisdiction of the Tribunal.

PLANNING EVIDENCE

[4] Louis Tinker was qualified by the Tribunal to give expert land use planning evidence and opinion.

[5] In Mr. Tinker’s opinion, the proposal is consistent with the policies of the Provincial Policy Statement (the “PPS”), and conforms with the Growth Plan for the Greater Golden Horseshoe, 2017 and 2019, (the “GP”) and the policies of the OP.

[6] The proposed development meets the goals of the City in areas defined in the OP as an “Apartment Neighbourhood” and located within the “Downtown” by:

- 1) Contributing to the range of housing options, and in particular, with the increase in family size three-bedroom units;
- 2) Supports the use of public transit as it is located within 353 metres of the Wellesley TTC station with access to the north-south transit lines, well-served by surface public transit and promotes active transportation;
- 3) An infill proposal with the appropriate amount of space to accommodate both the existing building and new build while continuing to provide adequate green space;
- 4) Provides a Privately Owned Public Space that will be abutting the Barbara Hall Park;
- 5) Conforms to OP policies that include the building setbacks provided in the Mid-rise Building Design Guidelines; and
- 6) Conforms with the Downtown Secondary Plan.

[7] Mr. Tinker testified that the revised proposal responds appropriately to matters of provincial interest as enumerated in s. 2 of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, specifically subsections:

- (h) orderly development of safe and healthy communities
- (j) the adequate provision of a full range of housing, including affordable housing
- (p) the appropriate location of growth and development
- (q) the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians
- (r) the promotion of built form that,
 - (i) is well designed,
 - (ii) encourages a sense of place, and
 - (iii) provides for public spaces that are of high quality, safe, accessible, attractive and vibrant

[8] Overall, it is Mr. Tinker's professional opinion that the proposal represents good land use planning and should be approved. No other witness provided testimony at the hearing.

ANALYSIS AND FINDINGS

[9] In determining this matter, the Tribunal accepts and adopts the uncontested land use planning evidence and expert opinions provided by Mr. Tinker. The Tribunal is persuaded by the evidence that the proposal promotes efficient development of land, accommodates a range of appropriate mixed uses, intensifies uses within the settlement area, and contributes to the range of housing options, and in particular, with the increase in family sized dwelling units as desired by the City.

[10] The Tribunal has considered the concerns raised by the Participant but was not persuaded that the concerns they have raised are sustainable given the evidence offered in support of the planned development, or otherwise bears relevance to the land use planning merits of the proposal.

[11] The Tribunal finds that the proposal is consistent with the policy direction established by the PPS, and conforms to the relevant directives established by the GP, and as maintained by the OP. The Tribunal is further satisfied that the proposal has due regard for matters of Provincial interest, is consistent with the principles of good land use planning and is in the greater public interest. More significantly, the proposal furthers the goals and objectives of the Provincial planning regime to increase housing opportunities.

ORDER

[12] That the appeal has been approved in principle.

[13] The Tribunal orders that the appeal is allowed in part and the City of Toronto Official Plan and Zoning By-law No. 438-86 and No. 569-2013 are hereby amended in principle. The Final Order of the Tribunal is being withheld pending confirmation that the conditions outlined in Exhibit 2 have been met to the satisfaction from the City Solicitor.

[14] The Tribunal may be spoken to if issues arise.

[15] So Orders the Tribunal

“Steven Cooke”

STEVEN COOKE
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

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

Tracking Status

- [City Council](#) adopted this item on December 17, 2019 without amendments.

City Council consideration on December 17, 2019

CC13.9	ACTION	Adopted		Ward: 13
--------	--------	---------	--	----------

100 Wellesley Street East - Zoning By-law Amendment Application - Request for Directions

City Council Decision

City Council on December 17 and 18, 2019, adopted the following:

1. City Council adopt the confidential instructions to staff in Confidential Attachment 1 to the report (December 10, 2019) from the City Solicitor.
2. City Council authorize the public release of the confidential instructions to staff in Confidential Attachment 1 to the report (December 10, 2019) from the City Solicitor.
3. City Council direct that the balance of Confidential Attachment 1 to the report (December 10, 2019) from the City Solicitor remain confidential at the discretion of the City Solicitor, as it contains advice and information that is subject to solicitor-client privilege.

The confidential instructions to staff in Confidential Attachment 1 to the report (December 10, 2019) from the City Solicitor were adopted by City Council and are now public, as follows:

1. City Council accept the “with prejudice” Settlement Offer as described in Public Attachment 1 and Public Attachment 2 (the “Settlement Offer”) to the report (December 10, 2019) from the City Solicitor and subject to Parts 2 to 5 below.
2. City Council authorize the City Solicitor and appropriate City Staff to attend the Local Planning Appeal Tribunal hearing on this matter in support of the Settlement Offer for the lands municipally known as 100 Wellesley Street East (the “Site”).
3. City Council direct that the following matters be secured in the Section 37 Agreement and/or Section 111 Agreement, where deemed appropriate by the City Solicitor, agreed to and/or required in support of the development of the Site including:
 - a. a privately owned publicly accessible open space, not less than 820 square metres on the Site, as generally shown on Page A2.1 in Public Attachment 2 to the report (December 10, 2019) from the City Solicitor to the satisfaction of the Chief Planner and Executive Director, City Planning and that prior to the issuance of Site Plan

Approval, the owner shall convey to the City, for nominal consideration and at no cost to the City, easement(s) along the surface of the privately owned publicly accessible open space lands, to the satisfaction of the City Solicitor; the Owner shall own, operate, maintain and repair the privately owned publicly accessible open space and install and maintain a sign, at its own expense, stating that members of the public shall be entitled to use the privately owned publicly accessible open space at all times of the day and night, 365 days of the year; and the specific location, configuration and design of the privately owned publicly accessible open space shall be determined in the context of a site plan approval pursuant to Section 114 of the City of Toronto Act, 2006, and secured in a Site Plan Agreement with the City, and such privately owned publicly accessible open spaces shall be designed to be seamlessly integrated with design and function of Barbara Hall Park;

b. the improvements to the landscaped open space area along Wellesley Street East and Jarvis Street, south of the existing rental apartment building, the location of the existing landscaped open space is generally shown on Page A2.1 of Public Attachment 2 to the report (December 10, 2019) from the City Solicitor (the "Landscaped Open Space"), in an acceptable landscape plan satisfactory to the Chief Planner and Executive Director, City Planning and such improvements to the Landscaped Open Space on the Site be maintained as landscaped open space in perpetuity and such development and/or redevelopment be restricted on that portion of the Site as permitted by Part 4.a. below, such restriction on development on the Landscaped Open Space is also secured in the appropriate agreement(s);

c. all existing rental units to be retained on Site, tenant relocation and assistance, and any other rental housing related matters in conformity with Chapter 667 of the Toronto Municipal Code and Policy 3.2.1.5 of the Official Plan, and the Owner has entered into and registered a Section 37 Agreement with the City incorporating language securing the above all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor;

d. any and all required replacement rental units on the Site are secured in conformity with Policy 3.2.1.6 of the Official Plan, if applicable;

e. all existing rental units, together with the new and retained associated facilities and amenities of the existing rental apartment building, are secured for a period of at least 20 years commencing from the date of the Zoning By-laws coming into full force and effect and with no applications for demolition or conversion from residential rental use during such 20 year period, all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor;

f. the Owner providing improvements to the existing rental apartment building, all to the satisfaction of the Chief Planner and Executive Director, City Planning or designate, including but not limited to the following:

i. the CPTED Security Measures identified in a preliminary report to be in a satisfactory form and content to the Chief Planner and Executive Director, City Planning, and such identified measures be implemented by the owner at the site plan approval stage to the satisfaction of the Chief Planner and Executive Director, City Planning;

- ii. the improvements to the existing rooftop amenity space to be provided prior to any residential use of, and occupancy of, the proposed addition, satisfactory to Chief Planner and Executive Director, City Planning;
- iii. prior to any residential use and occupancy of the proposed addition, undertake an accessibility audit of the existing building and implement needed improvements to enhance accessibility within the existing building and throughout the Site satisfactory to Chief Planner and Executive Director, City Planning and the Owner;
- iv. prior to any residential use of, and occupancy of, the proposed addition, provide long-term bike parking located inside the existing building at Parking Level 1 and bike racks for short-term bike parking near the front entrances of the existing building satisfactory to the Chief Planner and Executive Director, City Planning, in consultation with the General Manager, Transportation Services; and
- v. the costs associated with any improvements to the existing apartment building and associated spaces within and outside the existing apartment building, and improvements for the purpose of the proposed building addition, shall not be passed on to the tenants of the existing apartment building in any form, including by way of an application to the Landlord Tenant Board, or to any successor tribunal with jurisdiction to hear applications made under the Residential Tenancies Act, for the purpose of obtaining an increase in residential rent above the applicable guideline, or in the form of any additional costs and charges;
- g. the Owner shall provide residents of the existing rental building with access to all indoor and outdoor amenities within and adjacent to the proposed addition, at no extra charge to the tenants and with no pass-through cost to tenants of the existing building; access and the use of these amenities shall be on the same terms and conditions as any other resident of proposed addition, all to the satisfaction of the Chief Planner and Executive Director, City Planning;
- h. the Owner shall provide tenants currently residing in one of the existing rental dwelling units proposed to be renovated and reconfigured with tenant relocation and assistance to address hardship, all to the satisfaction of the Chief Planner and Executive Director, City Planning;
- i. the Owner agrees to undertake the proposed renovations to the existing rental dwelling units to be reconfigured at their own expense and shall not pass on the cost associated with such renovations to returning tenants; the improvements to these rental dwelling units shall include, but not be limited to, additional living space, ensuite laundry and an additional bathroom, all to the satisfaction of the Chief Planner and Executive Director, City Planning;
- j. prior to the issuance of the first above grade building permit for the Development, the Owner shall provide, at its own expense, a Tenant Communication and Construction Mitigation Strategy to the satisfaction of, and acceptable to, the Chief Planner and Executive Director, City Planning, and such Tenant Communication and Construction Mitigation Strategy may be amended from time to time at the request of the Owner or the Chief Planner and Executive Director, City Planning to the satisfaction of the City;

k. that the Owner construct and maintain the development of the Site in accordance with Tier 1 performance measures of the Toronto Green Standard, and the owner will be encouraged to achieve Toronto Green Standard, Tier 2 or higher, where appropriate;

l. the Owner obligation to implement the required mitigation measures from the accepted Noise and Vibration Study, Wind Study, Parking and Traffic Impact Study, Landscape Plan, through the Site Plan approval process for the Site to the satisfaction of the Chief Planner and Executive Director, City Planning;

m. the Owner will secure matters such as materiality, articulation and design of the proposed addition, as well as site design (including the driveway access off of Wellesley Street East), landscape and streetscape treatment through the Site Plan approval process; and

n. such matters identified in the Parts above, are to be implemented through the Site Plan Approval process for the Site.

4. City Council instruct the City Solicitor to request the Local Planning Appeal Tribunal to withhold its Order on the Zoning By-law Amendment until such time as the Local Planning Appeal Tribunal has been advised by the City Solicitor that:

a. the proposed Zoning By-law Amendment is in a final form satisfactory to the Chief Planner and Executive Director, City Planning and the City Solicitor, including provisions which shall stipulate the following:

i. no development is permitted on the Landscaped Open Space, save and except for accessory structures meant to enhance the Landscaped Open Space, such as Gazebos or shade structures are permitted, and such space shall be maintained as landscaped open space;

ii. securing vehicular parking requirements for the existing and new development, consistent with the existing parking on-site and bicycling parking rates consistent with the Toronto Green Standards;

iii. a minimum of 10 percent of the units in the new addition will be 3 bedroom units, and a minimum of 30 percent of the units in the new addition will be 2 bedroom units;

iv. the minimum separation distance between the existing building and the relevant portions of the proposed additions of 15.0 metres and 11.0 metres as shown on Public Attachment 2 to the report (December 10, 2019) from the City Solicitor;

v. the maximum residential gross floor area will be 9,910 square metres;

vi. the maximum number of residential dwelling units within the building additional will be 128 units and a maximum of 553 units shall be located on the Site;

vii. there will be a minimum of 1.3 square metres of indoor amenity space per dwelling unit and a minimum of 2.45 square metres of outdoor amenity space per dwelling unit, as measured across the entirety of the Site; and

viii. where feasible and viable, exploring the conversion of some existing parking spaces on Site to commercial parking spaces and, if feasible and viable, such are secured in the By-law;

b. the Owner has submitted a revised Functional Servicing Report, including confirmation of water and fire flow, sanitary and storm water capacity, Storm Water Management Report and Hydro-geological Report (the “Engineering Reports”) to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, in consultation with the General Manager, Toronto Water;

c. the implementation of the Engineering Reports that are accepted by the Chief Engineer and Executive Director, Engineering and Construction Services either does not require changes to the proposed amending By-law or any such required changes have been made to the proposed amending By-law to the satisfaction of the Chief Planner and Executive Director, City Planning, the City Solicitor and the Chief Engineer and Executive Director, Engineering and Construction Services;

d. secured the design and the provision of financial securities for any upgrades or required improvements to the existing municipal infrastructure and/or new municipal infrastructure identified in the accepted Engineering Reports to support the development, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, should it be determined that improvements or upgrades and/or new infrastructure are required to support the development;

e. the Owner has submitted a revised Transportation Impact Study acceptable to, and to the satisfaction of, the General Manager, Transportation Services;

f. the Owner has submitted a Noise and Vibration Study, a Landscape Plan, preliminary CPTED Report, as well as a revised Wind Study and Rental Housing Demolition and Conversion application, acceptable to, and to the satisfaction of, the Chief Planner and Executive Director, City Planning;

g. City Council, or as delegated under Chapter 667 of the Municipal Code, the Chief Planner and Executive Director, City Planning, has authorized the Rental Housing Demolition application under Chapter 667 of the Municipal Code pursuant to Section 111 of the City of Toronto Act, as applicable, to demolish the existing rental dwelling units at 100 Wellesley Street East and, should Council and/or the Chief Planner and Executive Director, City Planning, authorize the application, that the Owner has entered into a Section 111 Agreement pursuant to Section 111 of the City of Toronto Act and registered such agreement on title to the satisfaction of the City Solicitor and Chief Planner and Executive Director, City Planning;

h. the Owner has entered into a Section 37 agreement with the City that has been executed, and registered on title to the property all to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor securing the matters described in Part 3 above as matters agreed to and/or required in support of the development of the Site;

- i. the Owner has withdrawn its appeal of Official Plan Amendment 352 and By-laws 1106-2016 and 1107-2016 as they related to the Site; and
- j. the Owner has withdrawn its appeal of Official Plan Amendment 320 as it relates to the Site, if applicable.

5. City Council authorize the City Solicitor and appropriate City staff to take such necessary steps, as required, to implement City Council's decision.

The balance of Confidential Attachment 1 to the report (December 10, 2019) from the City Solicitor remains confidential at this time in accordance with the provisions of the City of Toronto Act, 2006, as it contains advice and information that is subject to solicitor-client privilege. The balance of Confidential Attachment 1 to the report (December 10, 2019) from the City Solicitor will be made public at the discretion of the City Solicitor.

Confidential Attachment - Advice or communications that are subject to solicitor-client privilege and information regarding potential litigation

Background Information (City Council)

(December 10, 2019) Report from the City Solicitor on 100 Wellesley Street East - Zoning By-law Amendment Application - Request for Directions (CC13.9)

<http://www.toronto.ca/legdocs/mmis/2019/cc/bgrd/backgroundfile-141110.pdf>

Public Attachment 1 - Settlement Offer

<http://www.toronto.ca/legdocs/mmis/2019/cc/bgrd/backgroundfile-141111.pdf>

Public Attachment 2 - Revised Plans and Drawings

<http://www.toronto.ca/legdocs/mmis/2019/cc/bgrd/backgroundfile-141112.pdf>

Confidential Attachment 1