

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



ISSUE DATE: February 02, 2021

CASE NO(S): PL190124

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:	C Squared Properties
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 the redevelopment of a 15-storey office building with commercial uses
Property Address/Description:	578-580 King Street West
Municipality:	City of Toronto
Municipality File No.:	18 225642 STE 20 OZ
LPAT Case No.:	PL190124
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LPAT Case Name.:	C Squared Properties v. Toronto (City)

Heard: December 2, 2020 by video hearing

APPEARANCES:

Parties

Counsel

C Squared Properties (“Applicant”)

David Bronskill

City of Toronto (“City”)

Mark Crawford

TSCC 2376 Fashion House
 (“Fashion House”)

David Donnelly
Alex Whyte
Morgan Fletcher

738489 Ontario Limited (“738489”) John Pappas

MEMORANDUM OF ORAL DECISION DELIVERED BY DAVID L. LANTHIER AND INTERIM ORDER OF THE TRIBUNAL

[1] The Applicant applied to the City to redevelop lands located at 578-580 King Street West (“Site”) and for a Zoning By-law Amendment to both Zoning By-law Nos. 438-86 and 569-2013 (collectively the “ZBLA”) to permit a proposed 15-storey office building with ground level retail space, incorporating adaptive re-use of the existing heritage-listed structure (“Development”). City Council refused the Application on March 4, 2019 and the Applicant appealed to the Tribunal.

[2] The Appeal has been the subject of case management at two Case Management Conferences (“CMC”). The proceeding was initially commenced under, and governed by, the *Planning Act* (“Act”) as it was amended by Bill 139, but subsequently transitioned to an Appeal determined under the *Act* as amended by Bill 108. Fashion House and 738489 were granted Party status.

[3] The Appeal was subject to the terms of a Procedural Order with an Issues List and the nine-day hearing was scheduled to commence on November 24, 2020, but the Parties continued settlement discussions and eventually advised the Tribunal that a resolution had been achieved. The hearing was accordingly converted to a Settlement Hearing to be heard on this date.

HEARING

[4] The Parties have agreed to a revised form of Development in a form satisfactory to all Parties. The altered form of the Development now proposes a nine-storey commercial development with commercial retail located on both the ground and second storeys which has been adapted to allow for the continued use of the heritage structure.

[5] The Tribunal received a Witness Statement of David Huynh, which was marked

as Exhibit 4 to the Hearing. Ms. Katie Hickey, an Associate of Mr. Huynh with Bousfields Inc., however was the Planner who was produced for the purposes of providing planning evidence to the Tribunal in support of the proposed settlement of the Appeal. The Tribunal received Ms. Hickey's *curriculum vitae* (**Exhibit 2**) and her executed Acknowledgement of Expert's Duty dated November 30, 2020 (**Exhibit 3**). Ms. Hickey was qualified by the Tribunal to provide expert evidence in the area of land use planning. Ms. Hickey adopted the content of Mr. Huynh's Witness Statement, which she had assisted in preparing for the purposes of the Appeal.

[6] The Tribunal was provided with a Document Book which was marked as **Exhibit 1** to the Hearing, and in the video hearing, was presented with a Book of Visual Evidence (to be identified as **Exhibit 5**) the contents of which were identified and introduced by Ms. Hickey. A draft ZBLA was not provided to the Tribunal for review and Approval, and as explained herein, the Parties have requested that a final Order be withheld pending satisfaction of a number of pre-requisites, one of which is the drafting and approval of the final draft of a Zoning Amending By-law to permit the Development as proposed in this hearing.

[7] Upon hearing the evidence, and for the reasons set out herein, the Tribunal issued an oral decision allowing the ZBLA Appeal, in part, and in principle, subject to the satisfaction of the conditions provided for in this Decision and Order.

ISSUES

[8] In considering the ZBLA Application and Appeal, the Tribunal must have regard to those matters of Provincial Interest set out in s. 2 of the *Act*, and must be satisfied, pursuant to s. 3(5) that the proposed instrument, as it will permit the proposed Development, is consistent with the Provincial Policy Statement 2020 ("PPS") and will conform with, or not conflict with, the Growth Plan for the Greater Golden Horseshoe 2019 as amended by Amendment 1("Growth Plan"). The ZBLA must also conform to the City's Official Plan ("City OP"), must provide for proper performance standards as they may be provided for in the ZBLA as it will amend the City's Zoning By-laws, and

represent good planning in the public interest.

[9] In considering these issues, and determining this Appeal the Tribunal must also have regard to any decision of City Council as it related to the ZBLA, including its recent decision to approve the proposed settlement and amendment to the ZBLA, and also to the supporting information and material that was before Council in making such decisions in relation to the Appeal now before the Tribunal.

ANALYSIS OF THE EVIDENCE AND FINDINGS

[10] After considering the uncontroverted planning evidence relating to the neighbourhood context, the proposal, inclusive of the drawings and renderings at Tab 14, the in-force planning policies in place, as well as those other considered policies not-in force for reasons relating to the timing of the completed application or those matters that are under appeal, and reviewed by Ms. Hickey, the Tribunal is satisfied that the Development should be approved.

The Proposed Development and Context

[11] Ms. Hickey provided a thorough overview of the area context for the Development and the Site on the north side of King Street West just south of Portland Street, within the Downtown area. The Site is within the Downtown designation of the City OP, which is an Urban Growth Centre in the Growth Plan, and part of the West Precinct of the King-Spadina area. The proposed Development has the benefit of proximity to transit including both the Osgoode and St. Andrew subway stations on the University line and nearby stops on five major streetcar transit routes. The design of the Development, as indicated, has required that the Applicant address the listing on the of the Davis & Henderson Warehouse Building on the Site, on the City's Heritage Register,

[12] As to the Development itself, Ms. Hickey guided the Panel through the specifics of the revised Development, using the drawings and renderings located at Tab 14, and the updated Heritage Impact Assessment at Tab 15. There is no residential component to the nine-storey building, which will have an overall height of approximately 41.1

metres (“m”) including the mechanical penthouse, a gross floor area of 4,931.5 m², and an overall density of 5.57 in floor space index.

[13] Ms. Hickey identified the various dimensions, setbacks, step-backs, terraces, massing, architectural detail features, and the way in which adaptive reuse will be made of the south façade on King Street West and results in the final design of the nine-storey plus mechanical structure. The eventual design, of significance, takes into account the proposed development at 590 King Street West immediately to the west of the Site, the Toronto Silver Plate Building and Fashion House Condo building to the east, and the positioning and design of the King Street facades of the proposed Development in the middle of a continuous row of early twentieth century factory buildings that have also been repurposed through redevelopment. An imposed condition will necessitate the Applicant entering into a Heritage Easement Agreement in accordance with the plans and drawings and Heritage Impact Assessment (Tabs 14 and 15) and the provision of an approved Conservation Plan based upon that Assessment.

[14] In reviewing the proposed Development Ms. Hickey took the Tribunal through an itemized comparison of the original proposal of September 2018 and the current revised proposal, highlighting the reductions in gross floor area, density, height. The Tribunal has also noted the manner in which the front façade of the building has been re-articulated and designed to maintain the consistent street-wall of the building and its heritage features, the nature of the stepped-back levels above the heritage building, the projected bay elements and additional step-backs in the upper floors to interrupt the massing, and the creation of the terracing and the additional step-backs of the east façade and additional upper terraces on the east side as part of the mitigation measures referred to above, in regards to the buildings to the east.

[15] The evidence is that Fashion House, the City and the Applicant have agreed that the concerns raised by Fashion House, as to the interrelationship between the proposed Development and the west-facing aspects of the building to the east, will be further addressed as the Parties work together in the final site plan process. The Applicant will commit to continuing to address and mitigate any privacy, overlook or light issues, in

addition to those features already in the final drawings and plans, which includes, for example, the window light well opposite the Fashion House windows, and the step-backs and terracing along the east side in proximity to the east wall of the Development.

The Provincial Policy Statement 2020 and the Growth Plan

[16] With respect to the PPS and the Growth Plan there are few significant higher-level planning policies issues that are substantial with respect to the proposed Development. Ms. Hickey was of the view that as the underutilized Site will be developed it will contribute to growth and intensification, have regard for the cultural heritage policies, adhere to the transit-supportive policies and objectives, and in all respects will be consistent with the policies of the PPS and conform to the Growth Plan.

[17] Upon the evidence, the Tribunal finds that the proposed Development is consistent with the PPS and conforms to the policies of the Growth Plan.

The City Official Plan and Other Secondary Plans and Guidelines

[18] The Tribunal is satisfied that the Development and the proposed ZBLA also conform to the various policies of the City Official Plan (“OP”) as reviewed by Ms. Hickey in her evidence including the King-Spadina Secondary Plan as they relate to design, the Downtown, and in particular the heritage policies. The Tribunal finds that the proposal conforms with the directions to conserve heritage buildings and achieve compatibility in relation to other existing and planned buildings through height, massing, scale, setbacks, step backs and architectural character and expression.

[19] The Tribunal has noted Ms. Hickey’s planning opinion that, although not applicable to the proposed Development, the Downtown plan, as it is an expression of the planned context, has nevertheless been considered, and the proposed development is generally in keeping with the policy directions therein, and the policies relating to *Mixed Use Areas 2* in which the site is located, which she has reviewed. Ms. Hickey has also considered the King-Spadina Secondary Plan Update, dated August 21, 2017.

[20] The Tribunal finds that the proposed Development complies with the 2004 King-Spadina Urban Design Guidelines and accepts Ms. Hickey's additional opinion that the proposed Development also adheres to the provisions of the 2006 updated King-Spadina Urban Design Guidelines, which are not in force.

[21] With respect to the conformity of the overall design with the applicable urban design policies and guidelines, the Tribunal finds that the height, density, mass and built-form of the proposed Development are appropriate, particularly, in regards to height, in its immediate context and its relationship with the building to the west, which is taller, and to the east – to which it is of similar height. The Tribunal finds that the density of 5.57 and the built-form are contextually appropriate, without adverse impacts as to privacy, overlook or loss of sky view, and the proposed built-form of the Development maintains an appropriate relationship to the public realm. On the evidence presented the proposed Development will fit harmoniously within the existing and planned built-form context and be compatible with the height, massing and scale of existing and approved developments in both the West Precinct and the immediate surrounding context of the Site.

[22] The Tribunal accepts the evidence of Ms. Hickey, as it was based upon the Heritage Impact Assessment completed and updated on the revised proposal, in regard to the policies and objectives relating to heritage as they are balanced with intensification and built-form policies and objectives.

[23] Although the King-Spadina Heritage Conservation District Plan (June 2017) ("King-Spadina HCD") was not in force and applicable, Ms. Hickey has noted that the proposal nevertheless conforms to the heritage policies of the OP and the King-Spadina HCD Plan, as well as the other applicable heritage policies noted, because the Development will: have minimal impact on the heritage value of the property; conserve the cultural heritage value of the area, including the historic form and scale of the building typologies of the area; retain the King Street façade in place as it now stands in place; be compatible with, and maintain the streetscape of the heritage elements in the buildings to both the west and the east; respect the three-dimensionality of the heritage

building under the proposed design; and overall - achieve the appropriate balance of these heritage considerations with the policies relating to intensification and land use objectives of the City's OP.

[24] In summary, Ms. Hickey in her oral evidence, and in adopting the Witness Statement setting out the planning analysis and opinions, has provided a full and complete overview of the various planning policies of the City's OP relating to built-form, heritage conservation and planning, growth, the Downtown policies, community services and facilities, and the secondary plan policies and urban design guidelines evidence. In doing so Ms. Hickey has persuaded the Tribunal that in all respects, as such policies, goals and objectives are applicable, the proposed Development conforms with the City's OP, and the related in-force, and not-in-force, secondary plan and other policies arising from amendments to the City's OP, and their related Guidelines. The Tribunal finds that the Development conforms to the City's OP and these other variously identified policies and guidelines.

Summary of Findings and Review of Evidence.

[25] Upon the above-mentioned findings of consistency and conformity, the Tribunal accordingly finds that the proposed Development, as it will be permitted by the proposed ZBL amendments, is consistent with the PPS, conforms to the Growth Plan and the City's OP, represents good planning in the public interest and should accordingly be approved.

[26] In making these findings, and reaching its conclusions, the Tribunal has had regard to those matters of Provincial Interest set out in s. 2 of the *Act* as well as for the decision of Council as it related to the original refusal of the ZBLA under that proposed Development and Council's recent decision to approve the revised form of Development as well as the supporting information and material that was before Council in making such decisions.

[27] A final revised draft of the ZBLA required for the Development under the City's

applicable Zoning By-laws is not yet before the Tribunal in final form, and the Tribunal is advised that the parties have a number of provisional matters that must be addressed by the Parties, under their settlement agreement, before a Final Order may issue. Accordingly at the request of the parties, the Appeal will be allowed in part and the Development proposal, as presented to the Tribunal, will be provisionally approved in principle, but the Tribunal's Final Order will be withheld pending written confirmation from the Parties that all of the pre-requisite conditions/requirements agreed upon by the parties, under the settlement arrangements between themselves, have been satisfied.

INTERIM ORDER

[28] The Tribunal orders, on an interim basis, that the Appeal of C Squared Properties 580 King Inc. (the "Applicant") is allowed in part, and the proposed Development presented at the hearing of this Appeal, and Zoning By-law Amendments required to permit the proposed Development, are provisionally approved, in principle. The Tribunal will, as requested, withhold issuance of its Final Order pending confirmation or receipt of the following from the Parties:

1. The Tribunal has received and approved the Zoning By-law Amendments submitted in a form satisfactory to the Chief Planner and Executive Director, City Planning and the City Solicitor;
2. The Tribunal is advised that all site servicing and site access matters have been addressed to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Transportation Services;
3. The Tribunal is advised that the Applicant has entered into an Agreement with the City that it agrees to pay for and construct any improvements to the municipal infrastructure in connection with the site servicing report, as accepted by the Chief Engineer and Executive Director, Engineering and Construction Services, should it be determined that upgrades to such

infrastructure are required to support this development;

4. The Tribunal is advised that the Applicant has entered into a Heritage Easement Agreement with the City for the property at 578-580 King Street West substantially in accordance with plans and drawings prepared by prepared by Audax Architecture Inc. dated August 4, 2020, submitted with the Heritage Impact Assessment prepared by Goldsmith Borgal and Co. Ltd. Architects, dated August 4, 2020, or otherwise revised in accordance with a settlement offer or Local Planning Appeal Tribunal Order, subject to, and in accordance with, the approved Conservation Plan required in subparagraph 5 below, all to the satisfaction of the Senior Manager, Heritage Planning, including execution of such agreement to the satisfaction of the City Solicitor;
5. The Tribunal is advised that the Applicant/Owner has provided a detailed Conservation Plan prepared by a qualified heritage consultant that is substantially in accordance with the conservation strategy set out in the Heritage Impact Assessment for 578-580 King Street West, dated August 4, 2020, prepared by Goldsmith Borgal & Co. Ltd. Architects, or otherwise a conservation strategy revised in accordance with a settlement offer or Local Planning Appeal Tribunal Order, all to the satisfaction of the Senior Manager, Heritage Planning;
6. The Tribunal is advised that in accordance with the agreement between the Parties, the Applicant has withdrawn its appeal of the King-Spadina Secondary Plan (2020);
7. The Tribunal is advised that in accordance with the agreement between the Parties, the Applicant has withdrawn its appeal of the King-Spadina Heritage Conservation District Plan; and
8. The Tribunal is advised that the Applicant and TSCC No. 2376 Fashion

House ("Fashion House") have entered into an agreement, in a form satisfactory to them, to work with the City during the Site Plan Approval process to find a suitable solution to mitigate any privacy and/or light issues that may be caused by the proximity of certain windows on the proposed building to existing windows in the Fashion House building. This may include participation by City staff in an Applicant-led Site Plan working group. Without limiting the foregoing, the Applicant will in that agreement commit to involving Fashion House in any site plan approval process to implement the rezoning application for the lands, including but not limited to:

- (a) provision of the site plan application materials in digital format;
- (b) provision of any site plan application resubmission materials in digital format;
- (c) at least one consultation meeting with Fashion House, which would include the Applicant's architect, to review the architectural plans and receive feedback from Fashion House; and
- (d) the support the City's inclusion of Fashion House in the City's site plan review and commenting process.

[29] The Panel Member will remain seized for the purposes of reviewing and approving the final drafts of the Zoning By-Law Amendments and the issuance of the Final Order and with respect to such outstanding matters relating to this Interim Order. In the event matters arise which are related to the implementation of this Interim Order, the Tribunal may be spoken to.

[30] If the Parties do not submit the final drafts of the Zoning By-law Amendments, and provide confirmation that all other pre-requisite conditions set out in paragraph 28 above have been satisfied, and request the issuance of the Final Order, by **Friday, July 30, 2021**, the Applicant and the City shall provide a written status report to the Tribunal by that date, as to the timing of the expected confirmation and submission of the final

form of the draft Zoning By-law Amendments and issuance of the Final Order by the Tribunal. The Tribunal may, as necessary arrange the further attendance of the Parties by Telephone Conference Call to determine the time lines for the submission of the final form of the instruments and the issuance of the Final Order and such further follow-up as may be required to have the Final Order issued by the Tribunal.

“David L. Lanthier”

DAVID L. LANTHIER
VICE-CHAIR

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Local Planning Appeal Tribunal

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