

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: October 15, 2021

CASE NO(S).:

PL200215

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:	Collecdev Inc.
Subject:	Application to amend Zoning By-law No. 438-86 and No. 569-2013 - Refusal or neglect of City of Toronto to make a decision
Existing Zoning:	Residential
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit construction of a 44 storey, 398-unit residential building
Property Address/Description:	40-44 Broadway Avenue
Municipality:	City of Toronto
Municipality File No.:	19 194902 NNY 15 OZ
LPAT Case No.:	PL200215
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LPAT Case Name:	Collecdev Inc. v. Toronto (City.)

Heard: June 10, 2021 via video conference call

APPEARANCES:

Parties

Counsel

Collecdev Inc.

Joe Hoffman

City of Toronto

M. Piel

Shall-May Holdings Limited and
Frastell Developments Inc.
("Frastell & Shall-May")

I. Kagan (Julie Kagan – Absent)

Roman Catholic Episcopal Corp. for
the Diocese of Toronto

David Tang (Calvin Weekes – Absent)

**DECISION DELIVERED BY JATINDER BHULLAR ON JUNE 10, 2021 AND
ORDER OF THE TRIBUNAL**

[1] The Tribunal held a settlement hearing with consent and notification by the parties. In a letter to the Tribunal on May 18, 2021 the Toronto District School informed the Tribunal that all their issues have been addressed and they no longer will participate in the proceedings except to monitor that agreed aspects are maintained.

[2] The subject site, municipally known as 40-44 Broadway Avenue, is located on the north side of Broadway Avenue, approximately mid-block between Yonge Street to the west and Redpath Avenue to the east, in the northeast quadrant of Yonge Street and Eglinton Avenue. The subject site is a rectangular shaped parcel that occupies approximately 4,266 square meters (1.05 acres) (0.42 hectares) of land and has a frontage of 45.74 metres (150 feet) on Broadway Avenue.

[3] The Applicant proposes to redevelop the subject site by demolishing the existing church building and constructing a new church at the front of the subject site, along with a 39-storey residential tower in the rear. The church and the new residential tower will be attached and will share a two-level underground parking garage. The new church will be located behind a new public park along the Broadway Avenue frontage while the residential tower will be further north and in the rear of the new church. The proposal includes a new driveway along the west side yard. The driveway will provide access to church pick-up/drop-off area, to the residential lobby, to the loading/servicing area, and to the shared underground parking garage.

[4] In order to develop the property, the Applicant sought a Zoning By-law Amendment ("ZBA") to both the former City of Toronto By-law No. 438-86 and the City-wide Zoning By-law No. 569-2013 to implement the redevelopment proposal. Zoning standards related to permitted residential building type, setbacks, maximum density

(GFA), parking rates, building projections, and building height will be needed to permit the proposed development.

EVIDENCE AND ANALYSIS

[5] The Applicant called Michael S. Goldberg, a registered professional planner to provide expert opinion evidence in the area of land use planning. The sworn affidavit of Mr. Goldberg is on file. Mr. Goldberg presented common expert opinion evidence in support of the settlement between all the parties with the consent of all the parties.

[6] In order for the Tribunal to accept the settlement and approve the ZBA, the proposal must meet the following statutory tests:

- a. has regard for the Provincial interest;
- b. is consistent with the Provincial Policy Statement, 2020 (“PPS 2020”);
- c. Conforms with the Growth Plan the Greater Golden Horseshoe 2020 (the “Growth Plan”); and
- d. conforms to the City Official Plan and applicable secondary plan.

[7] Mr. Goldberg opined that the proposal has regard for the provincial interest as it has considered the direction for appropriate consistency and conformity tests set in the Act as well as provincial policies and plans.

[8] Mr. Goldberg reviewed the PPS 2020 in detail. He identified the applicable sections of the policies which include sections 4.6, 1.3.4, 1.4, and 1.7.1. Mr. Goldberg opined that these require the prime consideration of the City’s Official Plan for consideration and conformity. Mr. Goldberg added that the proposal advances the PPS 2020 policy direction to optimize the use of the land, resources, and the existing and planned infrastructure. It mixes and consolidates a church and residential use on the same site. Mr. Goldberg concluded that as such, the revised proposal is consistent with the policy direction of intensification, optimization of long-term use of land, resources and infrastructure as stipulated in PPS 2020.

[9] Mr. Goldberg reviewed the appropriate direction in the Growth Plan. He cited sections 1.2.1; 2; and 5.2.5.1. Mr. Goldberg described that these sections direct “Where and How to Grow” leading to greater detailed policies that achieve intensification with

identified intensification targets, transit supportive developments and growth directed to settlement areas. Mr. Goldberg based on his analysis and presentation to the Tribunal concluded that the proposal conforms with the Growth Plan.

[10] Mr. Goldberg reviewed the City of Toronto Official Plan (the “City OP”). He showed that the subject site is in *Apartment Neighbourhoods* designation. In this City OP review he focussed on policies in sections 2.2(2); 4.2; 3.1.2; 3.1.3 and 3.2.1. He opined that the proposal provides for appropriate development type and built forms, provides for greater housing choices for a variety of household types.

[11] Mr. Goldberg also reviewed the Yonge-Eglinton Secondary Plan (“YESP”); OPA 289; and OPA 405. He stated the revised proposal satisfies the policies of the City OP and the policies from OPA 289 and OPA 405. When taken together, the use and design of the proposal advances the use and design policies and principles of the City OP, including OPA 289 and OPA 405. He opined that that the proposed redevelopment is in conformity with the City OP, including OPA 405 and OPA 289.

[12] Mr. Goldberg also reviewed the City’s tall building guidelines and opined that the proposed building has been designed to generally satisfy this City guideline document.

[13] Mr. Goldberg opined that except for the requested specific amendments, the ZBA maintains the intent purpose of the ZBL. Mr. Goldberg concluded that in overall consideration, the ZBA represents good land use planning and is appropriate and desirable for the redevelopment of the lands.

[14] The Tribunal, having considered all the evidence before it, including the sworn affidavit of Mr. Goldberg and his uncontroverted expert opinion evidence, finds that the requested ZBA meets all the statutory tests including regard for provincial interest, consistency with PPS 2020, conformity with the Growth Plan, conformity with City OP and appropriate secondary plan and is thus appropriate.

[15] The Tribunal was requested on consent by the parties to withhold the final order pending the fulfillment of conditions as agreed to between the City and the parties.

INTERIM ORDER

[16] The appeal is allowed, in part, and the zoning by-law amendments to permit the redevelopment of 40 - 44 Broadway Avenue, in the City of Toronto, are approved in principle,

with the Tribunal's final Order withheld for six months pending confirmation by the City of Toronto that the conditions in Attachment 1 to this order have been met.

[17] The Tribunal may be spoken to should any issues arise in satisfying these conditions or implementing this order.

"Jatinder Bhullar"

JATINDER BHULLAR
MEMBER

Ontario Land Tribunal

Website: olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal ("Tribunal"). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1

40 - 44 Broadway Avenue, City of Toronto

- a) the final form of the Zoning By-law Amendment(s) are to the satisfaction of the Chief Planner and Executive Director, City Planning, the City Solicitor and all other parties to the proceeding, and include the requirement for appropriate matters, services and facilities to be provided by the Applicant at its sole expense pursuant to Section 37 of the *Planning Act* and any other matters necessary to support the redevelopment as a legal convenience;

- b) the Applicant has provided a revised Functional Servicing and Stormwater Management Report, Hydrogeological Report and supporting documents, to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services in consultation with the General Manager, Toronto Water;

- c) the Applicant has designed and provided financial securities for any upgrades and/or required improvements to municipal infrastructure in connection with the accepted Functional Servicing Report, to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, should it be determined that improvements or upgrades to such infrastructure are required to support this development; and

- d) the Applicant has signed a Section 37 Agreement securing such matters, services and facilities to be provided by the Applicant at its own expense pursuant to Section 37 of the *Planning Act* and any other matters necessary to support the redevelopment all satisfactory to the Chief Planner and Executive Director, City Planning and registered the Section 37 Agreement on title to the lands, satisfactory to the City Solicitor.

CITY OF TORONTO
BY-LAW No. ~2021

To amend the former City of Toronto Zoning By-law No. 438-86, as amended, with respect to the lands known municipally as 40-44 Broadway Avenue in the year 2021

WHEREAS authority is given to Council by Section 34 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, to pass this By-law; and

WHEREAS Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*;

The Council of the City of Toronto HEREBY ENACTS as follows:

- [1] None of the provisions of Section 2(1) with respect to the definitions of *bicycle parking space – occupant*, *bicycle parking space – visitor*, *grade*, *height*, and *lot*, and Sections 4(2)(a), 4(4)(b), 4(6)(c), 4(12), 4(13), 4(16), 4(17), 6(3) Part 1 (1), 6(3) Part II, and 6(3) Part III, 12(2)118, and 12(2)119 of By-law No. 438-86, as amended, being "A By-law to regulate the use of land and the erection, use, bulk, height, spacing of and other matters relating to buildings and structures and to prohibit certain uses of lands and the erection and use of certain buildings and structures in various areas of the City of Toronto", apply to prevent the erection and use of a *mixed-use building* containing *dwelling units*, a *place of worship*, *place of assembly*, *dwelling rooms*, a *commercial parking garage* located below grade, and the premises of a *charitable institution* or *non-profit institution* and *accessory* uses on the *lot*, including a *temporary sales/leasing office* provided that all of the provisions of this by-law are complied with:
- [2] Except as otherwise provided herein, the provisions of By-law 438-86, as amended, continue to apply to the *lot*.
- [3] The *lot* consists of the lands delineated by heavy lines on Map 1, attached hereto.
- [4] The total combined *residential gross floor area* and *non-residential gross floor area* on the *lot* shall not exceed 32,200 square metres, of which *institutional uses*, including a *place of worship*, shall have a minimum combined *non-residential gross floor area* of 2,400 square metres which shall be accessible at grade.
- [5] *Residential amenity space* shall be provided in accordance with the following:
 - (a) a minimum of 2 square metres of indoor residential amenity space per
 - (b) dwelling unit shall be provided and maintained on the lot;
 - (c) a minimum of 2 square metres of outdoor *residential amenity space* per *dwelling unit* shall be provided and maintained on the *lot*; and
 - (d) no more than 25% of the total outdoor *residential amenity space* can be provided as a green roof.
6. No part of any building or structure on the *lot* is located beyond the *building envelope* and above the maximum *height* in metres as indicated by the following letter "H" as shown on Map 2, attached to and forming part of this Bylaw.
7. Notwithstanding Section 6 of this By-law, the following building elements, structures and projections are permitted to extend beyond the *building envelope* and above the *heights* referred to therein:

- (a) Architectural features, air intake and air handling units, awnings, balconies, bicycle racks, bollards, canopies, chimneys, communication equipment, cooling tower, cornices, eaves, elevator enclosures and overruns, fences, flues, green roof, guardrails, insulation and roof surface materials, landscape and public art features, lighting fixtures, minaret, ornamental elements, parapets, pipes, planters, platforms, railings, retaining walls, screens, stacks, stairs, stair enclosures, steeple, terraces, trellises, underground garage ramps and their associated structures, vents, walkways, wheel chair ramps, wind protection, window sills, and window washing equipment;
 - (b) A mechanical penthouse with associated screen devices to a maximum height projection of 6.6 m; and
 - (c) Elements or structures on any portion of a roof used for outside or open air recreation, including required *residential amenity space*.
8. *Parking spaces* must be provided and maintained on the *lot* in accordance with the following minimum requirements:
- (a) A minimum of 0.20 *parking spaces* for each *dwelling unit*;
 - (b) A minimum of 5 *parking spaces* for a *place of worship*; and
 - (c) A minimum of 55 *parking spaces* for residential visitors to be shared with a *place of worship*
 - (d) A minimum of 3 *parking spaces* for residential visitors
9. For clarity, any *non-residential parking spaces* located in the *commercial parking garage*, in excess of the *parking spaces* required by this By-law, may be used commercially for profit.
10. At least one *loading space-type G* shall be provided and maintained on the *lot* and may be shared between the *residential* and *non-residential uses*.
11. A minimum number of *bicycle parking spaces* must be provided and maintained on the *lot* in accordance with the following:
- (a) For residential uses - a minimum of 0.9 *bicycle parking space – occupant per dwelling unit*; and
 - (b) For residential visitors - a minimum of 0.1 *bicycle parking space – visitor per dwelling unit*, which may be provided in a secured room.
 - (c) For non-residential uses – a minimum of 10 *bicycle parking space – visitor*, which may or may not be provided in a secured room.
12. Despite any existing or future severance, partition or division of the *lot*, the provisions of this By-law shall apply to the whole of the *lot* as if no severance, partition or division occurred.
13. None of the provisions of this By-law apply to prevent a *temporary sales/leasing office* on the *lot*.
14. For the purposes of this By-law, every other word or expression which is italicized herein shall have the same meaning as each word or expression as defined in the aforesaid By-law No. 438-86, as amended, with the exception of the following:

- (a) "*building envelope*" means a building envelope as delineated by heavy lines on Map 2 attached to this By-law;
- (b) "*bicycle parking space – occupant*" means an area that is equipped with a bicycle rack, stacker or locker for the purpose of parking and securing bicycles and:
 - (i) where the bicycles are to be parked on a horizontal surface, has a horizontal dimension of at least 0.4 metres by 1.8 metres and a vertical dimension of at least 1.9 metres;
 - (ii) where the bicycles are to be parked in a vertical position, has a horizontal dimension of at least 0.4 metres by 1.2 metres and a vertical dimension of at least 1.9 metres;
 - (iii) notwithstanding (i) and (ii) above, where bicycles are to be parked in a stacker, being a device that allows parking spaces to be positioned above or below another with the aid of an elevating mechanism, the parking space within the stacker must have a horizontal dimension of at least 0.4 metres by 1.8 metres, and the stacker must be located in an area with a vertical dimension of at least 2.4 metres;
 - (iv) in the case of a bicycle parking rack, is located in a secure room or area; and
 - (v) in the case of a bicycle locker, may contain ancillary storage;
- (c) "*bicycle parking space – visitor*" means an area that is equipped with a bicycle rack, stacker or locker for the purpose of parking and securing bicycles and:

- (i) where the bicycles are to be parked on a horizontal surface, has a horizontal dimension of at least 0.4 metres by 1.8 metres and a vertical dimension of at least 1.9 metres;
 - (ii) where the bicycles are to be parked in a vertical position, has a horizontal dimension of at least 0.4 metres by 1.2 metres and a vertical dimension of at least 1.9 metres;
 - (iii) notwithstanding (i) and (ii) above, where bicycles are to be parked in a stacker, being a device that allows parking spaces to be positioned above or below another with the aid of an elevating mechanism, the parking space within the stacker must have a horizontal dimension of at least 0.4 metres by 1.8 metres, and the stacker must be located in an area with a vertical dimension of at least 2.4 metres; and
 - (iv) may be located indoors or outdoors including within a secure room or enclosure;
- (d) "*grade*" means 165.25 metres Canadian Geodetic Datum;
 - (e) "*height*" means the vertical distance between *grade* and the highest point of a building or structure, subject to permitted projections;
 - (f) "*institutional uses*" also includes *dwelling units* and *dwelling rooms* used as *accessory* uses to a *place of worship*, *place of assembly*, *charitable institution* or *non-profit institution*, offices, meeting rooms, and library;
 - (g) "*lot*" means the lands delineated by heavy lines on Map 1 attached to this By- law;
 - (h) "*temporary sales/leasing office*" means a building, part of a building, structure, facility or trailer on the *lot* used for the purpose of the sale of *dwelling units* to be erected on the *lot* and/or the leasing of any portion of a *mixed-use building* on the *lot*.

ENACTED AND PASSED this __day of _____, A.D. 2021.

JOHN TORY
Mayor
(Corporate Seal)

ULLI S. WATKISS,
City Clerk