

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



ISSUE DATE: January 10, 2019

CASE NO(S): PL171261

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:	450 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:	Vacant
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the construction of a 19-storey mixed-use building
Property Address/Description:	444-450 Richmond Street West
Municipality:	City of Toronto
Municipality File No.:	17 192881 STE 20 OZ
OMB Case No.:	PL171261
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OMB Case Name:	450 Richmond Street West Limited v Toronto (City)

Heard: November 30, 2018 in Toronto, Ontario

APPEARANCES:

Parties

450 Richmond Street West
Limited

City of Toronto

Counsel/Representative*

Eileen Costello

Michael Mahoney

Garment District Neighbourhood Association Valerie Eggertson*

Grange Community Association Inc. Max Allen*

Participant

Morgan Condominium Corp. Kelly Nixon*

MEMORANDUM OF ORAL DECISION DELIVERED BY JUSTIN DUNCAN ON NOVEMBER 30, 2018 AND ORDER OF THE TRIBUNAL

[1] This was a Pre-hearing Conference (“PHC”) on an appeal filed by 450 Richmond Street West Limited (“Appellant”) from the lack of a decision by the City of Toronto on an application for a Zoning By-law Amendment (“ZBA”) to permit the development of a 19-storey, mixed-use building at 444-450 Richmond Street West (“Subject Property”).

[2] During the PHC, the Tribunal added the Garment District Neighbourhood Association and the Grange Community Association Inc. as parties to the appeal. The Tribunal also added the Morgan Condominium Corp., owner of the property directly east of the Subject Property as a participant.

[3] Generally, the parties and participant explained that the issues for hearing will relate to planning and urban design including setbacks, height, shadowing; heritage which is to focus predominately on impacts to graffiti alley to the rear of the Subject Property; municipal service capacity including storm water management; and transportation, including whether on-site parking should be provided as part of the proposed development.

[4] Having heard from the parties that they were in a position to finalize a Procedural Order and an Issue List by December 14, 2018, the Tribunal scheduled a ten-day hearing to take place commencing on **Monday, April 20, 2020 at 10 a.m.** at:

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

[5] Following the PHC, the Tribunal received a revised draft Procedural Order and an Issue List from the parties. The Tribunal has reviewed the draft and it is attached to this Decision (Attachment 1). The attached Procedural Order will govern the remaining steps on this appeal.

[6] There will be no further notice of the hearing and I am not seized.

[7] So orders the Tribunal.

“Justin Duncan”

JUSTIN DUNCAN
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 Environment and Land Tribunals Ontario
Website: www.elto.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

ATTACHMENT 1



Local Planning Appeal Tribunal **Procedural Order**

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1. The Tribunal may vary or add to these rules at any time, either on request or as it sees fit. It may alter this Order by an oral ruling, or by another written Order.

Organization of the Hearing

2. The hearing will begin on **Monday, April 20, 2020 at 10:00 a.m.** at the **Local Planning Appeal Tribunal, 655 Bay Street, 16th Floor, Toronto, Ontario.**

3. The length of the hearing will be **10** days.

4. The parties and participants identified at the prehearing conference are:

PARTIES:

1. 450 Richmond Street West Limited

Eileen Costello

Aird & Berlis LLP
Brookfield Place, 181 Bay Street
Suite 1800, Box 754
Toronto, ON M5J 2T9

E-mail: ecostello@airdberlis.com

Tel.: 416-865-4740

2. City of Toronto

Alexander Suriano

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

E-mail: alexander.suriano@toronto.ca

Tel.: 416-392-4857

3. Garment District Neighbourhood Association

Valerie Eggerston
Secretary
50 Camden Street, Suite 404
Toronto, ON M5V 3N1

Email: gdntoronto@gmail.com

4. Grange Community Association

Max Allen
Vice President, Planning and Development
78 St. Patrick Street, #116
Toronto, ON M5T 3K8

Email: mallen6@sympatico.ca

Tel: 416-593-1238

PARTICIPANTS:

The Morgan (Condominium No. 1477)

Kelly Nixon
Andrew Cassils

Email: knixon.mbod@gmail.com

Email: acassils@rogers.com

5. The Issues are:

Issues of the City of Toronto

Provincial Policy

Planning Act

1. Does proposal have regard to matters of provincial interest set forth in Section 2 of the *Planning Act*, including in particular subsections (h), (j), and (r)?

Provincial Policy Statement, 2014

2. Is the proposal consistent with the policies of the Provincial Policy Statement, 2014 including, but not limited to:

- Building Strong Healthy Communities (s.1.0), in particular, policy 1.1.1(b);
- Housing (s.1.4), in particular, policy 1.4.3(a);
- Cultural Heritage and Archaeology (s.2.6), in particular, policies 2.6.2 and 2.6.4; and
- Implementation and Interpretation (s.4.0), in particular, policies 4.7 and 4.9?

Growth Plan for the Greater Golden Horsehoe, 2017

3. Does the proposal conform to the policies of the Growth Plan including, but not limited to:

- Guiding Principles (s.1.2.1); and
- Managing Growth (s.2.2.1), in particular, policies 2.2.1.4, 2.2.2.4, 2.2.6.1?

Municipal Policy

Toronto Official Plan

4. Does the proposal conform to the policies of the City of Toronto Official Plan including, but not limited to:

- Downtown: The Heart of Toronto (s.2.2.1);
- The Public Realm (s.3.1.1);
- Built Form (s.3.1.2);
- Built Form – Tall Buildings (s.3.1.3);
- Housing (s.3.2.1);

- Regeneration Areas (s.4.7);
- Height and Density Incentives (s.5.1.1); and
- Secondary Plans: Policies for Local Growth Opportunities (5.2.1)?

5. Does the proposal conform to the policies of the King-Spadina Secondary Plan (Chapter 6.16 of the Toronto Official Plan), including but not limited to the following policies:

- Major Objectives (s.2.3 and 2.5);
- Urban Structure and Built Form (s.3.6); and
- Pedestrian Environment, Transportation, and Parking (s.6.1)?

Design Guidelines

King Spadina Urban Design Guidelines, 2006

6. Does the proposal meet the intent of the King–Spadina Urban Design Guidelines, 2006 including, but not limited to:

- Guidelines (s.2.5);
- West Precinct (s.4.3);
- Street Hierarchy (s.4.4);
- Streetwall Scale Design Considerations (s.5.2);
- Design and Architectural Quality (s.5.3); and
- Urban Scale Characteristics (s.5.4)?

Tall Buildings Guidelines

7. Does the proposal meet the intent of the Tall Buildings Design Guidelines (2013), including, but not limited to:

- Fit and transition in scale (s.1.3);
- Sunlight and skyview (s.1.4);
- Base building (s.3.1.1); and
- Middle (s.3.2.1)?

Policy Direction and Updates

King-Spadina Secondary Plan Update

8. Does the Proposal respond to the King-Spadina Official Plan Amendment 2 (implemented by By-law 921-2006), currently under appeal, including, but not limited to, the following sections:

- Major Objectives (2.2);
- Urban Structure (3.1); and
- Urban Structure Plan (Map 16-1)?

9. Does the Proposal respond to the policy direction in the City Planning staff report entitled, "King-Spadina Secondary Plan Update – Draft Policy Direction Report", dated August 21, 2017 and adopted by Toronto and East York Community Council on October 4, 2017, outlining emerging policies to be included in the updated King Spadina Secondary Plan, including the following emerging policies:

- limiting the scale of development in the West Precinct in comparison to the East Precinct;
- requiring a maximum height limit in the West Precinct of 45 metres inclusive of mechanical elements; and
- requiring compliance with OPA 352 regarding minimum setback requirements for buildings taller than 45 metres?

10. Does the Proposal respond to the policy direction of the TOCore Downtown Plan Official Plan Amendment 406, as amended, which was adopted by City Council on May 22, 2018?

11. Does the Proposal respond to Official Plan Amendment 352, adopted by City Council on October 5, 2016 and currently under appeal?

Good Planning and Urban Design

12. Does the Proposal represent good planning and urban design and is it in the public interest?

13. Are the height and massing of the proposal, including the impact of the height on matters such as views, privacy, overlook, shadowing, wind, and the streetscape appropriate?

14. Does the proposed height and massing fit with the existing and planned built form context in the King-Spadina area, in particular the West Precinct?

15. Does the proposal make an appropriate built form transition in relation to the scale and character of the surrounding area, including existing and proposed developments?

16. Is the site appropriate for a tall building?

17. Are the proposed setbacks from the front and rear property lines and the adjacent properties to the east and west appropriate?

18. Is the size and location of the indoor and outdoor amenity space proposed appropriate?

19. Does the proposal building provide an appropriate range of unit types?

Transportation and Engineering

20. Does the proposal provide the appropriate number of vehicular and bicycle parking spaces?

21. Does the proposal provide adequate loading?

22. Does the proposal provide appropriate vehicular and pedestrian access to the site (including in relation to adjacent streets and neighbouring properties)?

23. Has the applicant demonstrated that adequate municipal services are in place to support the Proposal, including but not limited to the availability of adequate sanitary sewage capacity and the implementation of appropriate stormwater management measures and groundwater management measures?

Zoning By-law

24. Does the Proposal incorporate appropriate zoning standards, including height, floorplate size, setbacks, step backs, and separation distances from existing or potential development on adjacent lands?

Precedent

25. Would the approval of the proposal set an inappropriate precedent?

Section 37

26. In the event that the Board 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?

Conditions

27. If the Proposal is approved by the Tribunal in whole or in part, should the Tribunal's final Order be withheld until the Tribunal has been advised by the City Solicitor:

- that the proposed Zoning By-law Amendment is in a form satisfactory to the City;
- a Section 37 Agreement has been executed to the satisfaction of the City Solicitor;
and
- the owner has addressed outstanding items in relation to servicing, solid waste, fire services, and groundwater discharge for the proposed development and has submitted revised servicing and storm water management reports and associated

municipal servicing plans to the satisfaction of the Chief Engineer and Executive Director, Engineering & Construction Services?

Issues of the Garment District Neighbourhood Association

Curbside Activity

1. Does the proposal represent good planning, having regard to the impact of curbside activity (courier delivery and passenger pick-up / drop-off) on Richmond Street West given:

- The existence of the bike lane immediately adjacent?
- The use of such services by residents of the building?
- The nature of the bend in the road for motorists proceeding westward on Richmond Street West from Spadina Avenue?
- Reference to TOCore policy 8.27?

2. The Transportation Impact Study assumes that the service vehicle parking space at the rear of the building will accommodate “Courier vans/trucks; and Delivery vans/cars”. How can the proposal be improved to take into account the fact that such vehicles may be directed to access the building from Richmond Street due to its municipal address?

Graffiti Alley

3. Does the proposal take into account the popularity of Rush Lane (aka Graffiti Alley) as a tourist destination with the potential for pedestrian/vehicular conflicts?

4. Does the proposal adequately respond to the status of laneways in the King-Spadina HCD Plan (section 9.3)? Does the proposal respect the cultural heritage values, attributes and character inherent in this celebrated alley?

5. Is the location of the Type C loading space appropriate?

6. Does the proposal consider the current configuration of the laneway and pedestrian traffic in the laneway and the impact of these elements on the ability of garbage trucks and moving vans to safely service the site?

7. Is the location and size of the double parking space for “car share small car” appropriate?

Construction

8. Does the proposal demonstrate adequate capacity for staging construction in view of limitations imposed by:

- The bend in Richmond Street West just east of the site
- The presence of the bike lane on the north side of Richmond Street West

- The heritage and tourist value of Rush Lane (aka Graffiti Alley) at the rear of the building

Built Form

9. Does the proposal take into account the effect this building will have on its neighbour to the east, the Morgan, with respect to:

- Blockage of its west facing windows?
- Shadow on its outdoor amenity space?

10. Does the proposal take into account that three almost-identically-designed buildings (450, 452, 457 Richmond Street West, assuming they are all approved) will flank this particular section of the road and contribute a built-form that resembles a canyon, with negative results on shadow and wind?

Community Services and Facilities

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

Issues of the Grange Community Association

1. If the Tribunal is otherwise inclined to approve the Appellant's Proposal but determines that a vehicular drive-through is required between Richmond Street West and Rush Lane (notwithstanding its decision in PL160081 regarding 452-458 Richmond) to satisfy the requirements of the Provincial planning documents with respect to good planning and good urban design, is it appropriate for the Tribunal to prescribe a grade-level redesign following the reasoning of *inter alia* PL140705 (170 Spadina) and PL160264 (203 College)?
2. Does the Proposal represent good planning and urban design and is it in the public interest?
3. Does the Proposal provide appropriate vehicular and pedestrian access to the site, including in relation to adjacent streets and neighbouring properties?
4. Does the Proposal represent good planning, having regard to the impact of curbside activity (courier delivery and passenger pick-up/drop-off) on Richmond Street West?

There will be no changes to this list unless the Tribunal permits, and a party who asks for changes may have costs awarded against it.

6. Any person intending to participate in the hearing should provide a telephone number to the Tribunal as soon as possible (*preferably before the prehearing conference.*) Any such person who will be retaining a representative should advise the other parties and the Tribunal of the representative's name, address and phone number as soon as possible.

Requirements Before the Hearing

7. A party who intends to call witnesses, whether by summons or not, shall provide to the Tribunal, the other parties and to the Clerk a list of the witnesses and the order in which they will be called. This list must be delivered at least 60 calendar days before the hearing.

8. An expert witness shall prepare an expert witness statement, which shall list any reports prepared by the expert, or any other reports or documents to be relied on at the hearing. Copies of this must be provided as in section [11]. 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.

9. A witness and participant must provide to the Tribunal and the parties a witness or participant statement at least 30 calendar days before the hearing, or the witness or participant may not give oral evidence at the hearing.

10. 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, as in section [11].

11. On or before 30 calendar days before the hearing date, the parties shall provide copies of their witness and expert witness statements to the other parties and to the Tribunal.

12. On or before seven calendar days before the hearing date, the parties shall provide copies of their visual evidence to all of the other parties. If a model will be used, all parties must have a reasonable opportunity to view it before the hearing.

13. Parties may provide to all other parties and file with the Clerk a written response to any written evidence within 14 days after the evidence is received.

14. 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 15 days before the Tribunal hears the motion.)

15. A party who provides a witness' written evidence to the other parties must have the witness attend the hearing to give oral evidence, unless the party notifies the Tribunal at least 7 days before the hearing that the written evidence is not part of their record.

16. Documents may be delivered by personal delivery, facsimile or registered or certified mail, or otherwise as the Tribunal may direct. The delivery of documents by fax shall be governed by the Tribunal's 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.

17. If the Appellant intends to seek approval of a revised proposal at the hearing, the Appellant shall provide copies of the revised proposal, including all revised plans and drawings, to the other parties on or before 60 days before Witness Statement Exchange. After that date, no revisions to the proposal shall be permitted except with consent of the City

18. No adjournments or delays will be granted before or during the hearing except for serious hardship or illness. The Tribunal's Rule 17 applies to such requests.

This Member is not seized.

So orders the Tribunal.

BEFORE:

Name of Member)
)
)
Date:

TRIBUNAL REGISTRAR

ATTACHMENT TO SAMPLE PROCEDURAL ORDER

Purpose of the Procedural Order and Meaning of Terms

The Tribunal recommends that the parties **meet to discuss this sample Order before the prehearing conference** to try to identify the issues and the process that they want the Tribunal to order following the conference. The Tribunal will hear the parties' comments about the contents of the Order at the conference.

Prehearing conferences usually take place only where the hearing is expected to be long and complicated. If you are not represented by a lawyer, you should prepare by obtaining the Guide to the Local Planning Appeal Tribunal, and the Tribunal's Rules, from the Tribunal Information Office, 15th Floor, 655 Bay Street, Toronto, M5G 1E5, 416-327-6800, or from the Tribunal website at _____.

Meaning of terms used in the Procedural Order:

Party is an individual or corporation permitted by the Tribunal 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 must accept the other responsibilities of a party as set out in the 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.

NOTE that a person who wishes to become a party before or at the hearing, and who did not request this at the prehearing conference, must ask the Tribunal to permit this.

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 Tribunal on all or some of the issues in the hearing. Such persons may also be identified at the start of the hearing. The Tribunal will set the time for hearing this statement. **NOTE** that such persons will likely not receive notice of a mediation or conference calls on procedural issues. They also cannot ask for costs, or review of a decision as parties can. If a participant does not attend the hearing and only files a written statement, the Tribunal will 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 material and do not attend.

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.

Witness Statements: A **witness statement** is a short written outline of the person's background, experience and interest in the matter; a list of the issues which he or she will discuss and the witness' opinions on those issues; and a list of reports that the witness will rely on at the hearing. An **expert witness statement** should include his or her (1) name and address, (2) qualifications, (3) a list of the issues he or she will address, (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. 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 the participant will address and a short outline of the evidence on those issues; and a list of reports, if any, which the participant will refer to at the hearing.

Additional Information

Summons: A party must ask a Tribunal Member or the senior staff of the Tribunal to issue a summons. This request must be made before the time that the list of witnesses is provided to the Tribunal and the parties. (See Rule 13 on the summons procedure.) If the Tribunal requests it, an affidavit must be provided indicating how the witness' evidence is relevant to the hearing. If the Tribunal 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 Tribunal;

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 Tribunal.