

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: April 23, 2019

CASE NO(S): PL170294

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	CCB Bathurst Street Investments 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 a 19-storey residential development with retail at the ground floor
Property Address/Description:	149, 151, 153, 155 and 157 Bathurst Street
Municipality:	City of Toronto
Municipality File No.:	16 191733 STE 20 OZ
OMB Case No.:	PL170294
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OMB Case Name:	CCB Bathurst Street Investments Inc. v. Toronto (City)

Heard: September 24, 2018 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

CCB Bathurst Street Investments Inc.	David Bronskill
City of Toronto	Sharon Haniford
Allied Properties REIT	Meagan Barrett

**MEMORANDUM OF ORAL DECISION DELIVERED BY K.J. HUSSEY ON
SEPTEMBER 24, 2018**

[1] On July 16, 2016 CCB Bathurst Street Investments Inc. (the “Applicant”) filed an application with the City of Toronto (“City”) for a Zoning By-law amendment in order to facilitate the development of a 19-storey mixed use building on the property located at 149, 151, 153, 155, and 157 Bathurst Street (the “subject site”). The City failed to make a decision within the requisite time and pursuant to subsection 34(11) of the *Planning Act* (“Act”), the Applicant filed an appeal to this Tribunal.

[2] The City was not satisfied with the proposal they received. In the City’s view, it would be overdevelopment of the site in terms of both building form and density. City Council authorized staff to continue discussions with the Applicant on a revised proposal to address, among other matters, reducing the proposed height and massing on the site, and limiting negative impact on adjacent properties.

[3] The subject site is located within the King-Spadina area, on the east side of Bathurst Street between Richmond Street west and Adelaide Street west. The site has an area of approximately 749 square metres (“m²”). It is currently occupied by five two-storey row-houses. The mixed-use development proposed by the Applicant was for 155 residential units with a total gross floor area of approximately 9,363 m², including 172 m² nonresidential gross floor area on the ground floor. The building height would be 57.8 metres (“m”) (61.6 m including the mechanical penthouse).

[4] The Applicants submitted revisions to the proposed development, which the City generally supported. The City and the Applicant jointly presented the settlement to the Tribunal subject to conditions attached to this decision.

[5] The revisions represent reduction in the building height to approximately 49.5 m from 57.8 m, reduction in the total number of residential units from 155 to 88 units, gross floor area from 9,363 m² to 5,466 m². Setbacks were adjusted and balcony encroachment reduced. The revised proposal would include an increase in the number

of larger units and the amount of indoor and outdoor amenity space per unit.

[6] On September 24, 2018 the Tribunal gave an oral decision approving in principle, the settlement, subject to the conditions requested by the City. Upon hearing the uncontroverted evidence of a qualified land use planner, Mike Dror, the Tribunal was satisfied that the proposal constituted good planning. Mr. Dror, reviewed the policy and regulatory framework applicable to the proposal including excerpts from the following documents:

- The Planning Act, the Provincial Policy Statement 2014 (“PPS”) and the Growth Plan for the Greater Golden Horseshoe 2017 (“Growth Plan”);
- The City Official Plan; King-Spadina Secondary Plan; King-Spadina Secondary Plan Review (Official Plan Amendment 2);
- City Tall Building Design Guidelines; King-Spadina Urban Design Guidelines, City Mid-Rise Building Guidelines and the King-Spadina Heritage Conservation District Study;
- Former City zoning By-law No. 438-86; City-Wide zoning By-law No. 569-2013.

[7] It was Mr. Dror opinion, based on the review of the planning instruments that the proposal would result in contextual and appropriate intensification of an underutilized site within the City’s Downtown, in proximity to existing transit, that meets the policy directions in the PPS, the Growth Plan and the City Official Plan. It would provide new residential units and new retail opportunities in a built form that conforms with the applicable Official Plan and Secondary Plan policies.

[8] The height and built form would fit harmoniously with the existing and planned context. The built form proposed is compatible with the surrounding properties that are also designated *Regeneration Area* in the Official Plan, and would be compatible with

the recent development pattern along both Bathurst Street and Richmond Street West. With the reduction in height from 61.7 m to 50.0 m including the mechanical penthouse, the height of the proposed building would now be less than a number of existing buildings along the Bathurst Street frontage. There would also be a 1.5 m lane widening at the rear.

[9] With respect to massing, Mr. Dror noted that with the introduction of a two-storey base of 8.66 m, the building would relate to the height of the row-houses that are approximately 10 m to the top of the peaked roofs. The base of the building would also match the setbacks to the north and south, creating a continuous street-wall along Bathurst Street. He opined that the streetscape along Bathurst Street would be improved.

[10] It was Mr. Dror's opinion that the revised proposal would have no unacceptable impacts in terms of light, view and privacy, sky view, shadowing and wind impacts. Overall his opinion was that the proposal is a desirable response to a small and challenging site.

[11] The Tribunal relied on the unchallenged evidence of Mr. Dror in finding that the proposed development is appropriate and represents good planning. As required by section 2.1 of the Act, the Tribunal has had regard for the decisions of the City, including the supporting material that it considered, and notes that this matter is brought on consent of the City. The Tribunal finds that the application is consistent with the PPS and conforms with the Growth Plan and the City Official Plan, including the King-Spadina Secondary Plans.

[12] By an Oral decision, the Tribunal approved in principle the requested Zoning By-Law application. The Tribunal withholds its final Order of Approval until confirmation is received that the conditions requested by Council, which are attached hereto as Attachment 1, are met.

"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

LPAT Case No. PL170294

PRE-APPROVAL CONDITIONS FOR FINAL ORDER

1. The final form of the Zoning By-law amendment is to the satisfaction of the parties;
2. The City Solicitor has confirmed that the applicant has withdrawn its site-specific appeals to OPA 352 and the associated zoning by-laws (1106-2016 and 1107-2016);
3. The City Solicitor has confirmed that the applicant has submitted a construction management plan to the satisfaction of the Director, Community Planning, Toronto and East York District, in consultation with the Ward Councillor, which construction management plan shall include but not be limited to the size and location of construction staging areas, location and function of gates, information on concrete pouring, lighting details to ensure that safety lighting does not negatively impact adjacent residences, construction vehicle parking and queuing locations, refuse storage, site security, site supervisor contact information, a community strategy with the surrounding community, vibration monitoring for the integrity of neighbouring buildings, and any other matters requested by the Director, Community Planning, Toronto and East York District, in consultation with the Ward Councillor;
4. The applicant has provided revised drawings to the City, to the satisfaction of the Director, Solid Waste Management, Collections and Litter Operations:
 - a. removing all annotations pertaining to City of Toronto waste collection;
 - b. annotating that the Site Plan Agreement and Condominium Declaration will include conditions identifying that the building must use private waste collection;
 - c. demonstrating that sufficient space for storage of the roll off bin is provided;
 - d. annotating that a flagman or a spotter will be present during any instance of reversal of the collection vehicle in relation to the laneway;
 - e. indicating a warning system to caution motorists leaving the parking garage of heavy vehicles when loading and reversal operations are occurring. This warning system should include lights, signage/mirrors and audible warning signals;
 - f. demonstrating that the loading space can accommodate vehicles to exit the site in a forward motion; and,
 - g. demonstrating that the loading space is fully enclosed by a door at all times except when a vehicle is entering or existing.
5. The applicant has provided revisions/additional information to the City, to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services:
 - a. identify on all applicable drawings the 1.43 metre wide strip of land along the west limit of the site abutting the public lane as "lands to be conveyed to the City for road widening purposes";
 - b. identify on all applicable drawings a pedestrian clearway with a minimum width of 2.1 metres along Bathurst Street;