

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



**ISSUE DATE:** March 21, 2019

**CASE NO.:** PL170861

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:	321 Davenport Road Limited
Subject:	Application to amend Zoning By-law No. 438-86 and City of Toronto Zoning By-law 569-2013 - Neglect of City of Toronto to make a decision
Existing Zoning:	CR T2.0 C2.0 R1.5 CR 2.0 (c2.0; r1.5) SS2 (x2357)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the redevelopment of the subject site by constructing an 8-storey mixed-use building with 16 dwelling units and 30 parking spaces to be provided in a 2-level garage located at the ground floor and basement levels
Property Address/Description:	321 Davenport Rd
Municipality:	City of Toronto
Municipality File No.:	16 145386 STE 20 OZ
OMB Case No.:	PL170861
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OMB Case Name:	321 Davenport Road Limited v. Toronto (City)

**Heard:** February 27, 2019 in Toronto, Ontario

**APPEARANCES:**

**Parties**

321 Davenport Road Limited  
("Applicant")

**Counsel**

Calvin Lantz

City of Toronto (“City”)

Kelly Matsumoto

Admiral Taddle Creek Residents  
Association Inc. (“ATCRA Inc.”)

Samantha Lampert

**MEMORANDUM OF ORAL DECISION DELIVERED BY DAVID L. LANTHIER  
ON FEBRUARY 27, 2019 AND ORDER OF THE TRIBUNAL**

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**INTRODUCTION**

[1] The Applicant made application for a zoning by-law amendment (“Application”) to permit the redevelopment of 321 Davenport Road (“Site”). The proposed development was a mixed-use 8-storey building with 16 dwelling units and 31 parking spaces in a 2-level garage at ground/basement level. The City did not make a decision within the statutory time period and the Applicant accordingly filed this appeal (“Appeal”) before the Board, as it then was. ATCRA Inc. was granted party status and one non-profit corporate participant, “Toronto Housing Matters” was granted participant status at a Pre-hearing Conference.

[2] As a result of mediation conducted by the Tribunal, and the efforts of the Parties, a settlement was eventually reached and approved by City Council. The proposed settlement now comes before the Tribunal for approval, with the consent of the Parties. The Tribunal received expert planning evidence from Ms. Sasha Lauzon who was qualified by the Tribunal to provide planning evidence in support of the proposed settlement.

[3] The final iteration of the project on the 860 square meter Site, which is now before the Tribunal, is for a single 9-storey, 36.5 meter (“m”) high building with 52 units and 168 square meters of indoor amenity space and parking for 30 vehicles within a total gross floor area of 4,459 square meters and a Floor Space Index of 5.19 (the “Development”). The final design has undergone a number of revisions to address various concerns expressed by the City and ATCRA Inc., including a substantial increase in the setbacks on the west (rear) side of the building to deal with concerns

over transition and privacy. The final design, with a comparison between the initial and final design, was reviewed in some detail by Ms. Lauzon, which was inclusive of a south-view red outline overlay showing the set-back revisions, most notably at the top three floors below the mechanical penthouse. The final set of plans and drawings was filed as Exhibit 2 to the hearing.

[4] The settlement arises from mediation that was conducted by the Tribunal which led to the presentation of a with-prejudice settlement letter dated December 18, 2018 from the Applicant to the City (Tab 11, Exhibit 1A). The initial form of the two draft forms of the zoning by-law amendments (“ZBLAs”) to both Zoning By-law 569-2013 and Zoning By-law 438-86, that would permit the Development, are before the Tribunal (Tab 9, Exhibit 1A). The ZBLAs will increase the permitted height and density and revise a number of other development/performance standards such as bicycle parking, vehicle parking and amenity space.

[5] The final form of the two ZBLAs were not, however, available to the Tribunal and are currently being prepared for final review by the Parties. The Tribunal was accordingly asked, under the terms of the settlement, to approve the Application and the two ZBLAs in principle, and to hold the issuance of its final Order pending notice from the Applicant that the final form of the two ZBLAs has been confirmed and agreed-upon by all Parties.

[6] Upon hearing the evidence the Tribunal was satisfied that the proposed Development, achieved through approval of the two ZBLAs, in principle, represents good planning and achieves conformity and consistency with Provincial and Municipal planning policies and legislation. The Panel provided a brief Oral Decision approving the Development as outlined in the terms of the settlement, and the two ZBLAS, in principle. The Oral Decision was provided on the basis that this Memorandum of Decision, more fully setting out the reasons supporting the Tribunal’s decision, would then follow.

## **THE DEVELOPMENT AND ITS PHYSICAL AND PLANNING CONTEXT**

[7] Ms. Lauzon has provided a detailed overview of the Development on the Site, both the physical and planning context of the proposed Development, and the general requirements and intent of the draft ZBLAs amending Zoning By-law 438-86 and Zoning By-law 569-2013 now submitted for approval in principle by the Tribunal. The Tribunal was provided with a compendium of visual exhibits (Exhibit 4) and a Photo Book (Exhibit 3) to assist in the presentation of Ms. Lauzon's testimony.

[8] The Site is located on the west side of Davenport Road ("Davenport") between Dupont Street and Bedford Road in the Annex neighbourhood. The Site is currently underutilized and contains a 2-storey commercial building with a less than desirable street-front façade. To the west of the Site lies a residential neighbourhood with detached residential dwellings immediately located at the rear off of Admiral Road. To the south of the Site are three commercial buildings in converted residential buildings. The Site fronts on Davenport to the east and along Davenport to the east are various commercial buildings. A 3-storey multi-use rental building and an Esso car wash building are located immediately to the north of the Site.

[9] The Tribunal was provided with a further overview of the further reaches of the local area including the height context confirming a number of existing, approved and proposed mid-rise and high-rise buildings. The Site is generally within an area characterized by a mix of uses, heights and densities, with higher low-rise and mid-rise, and some high-rise buildings along Davenport Road and the peripheral arterial streets.

[10] The Site is designated as Mixed Use Areas in the City's Official Plan and is currently zoned CR T2.0 and C2.0 R1.5 under Zoning By-law 438-86 and CR 2.0 (c2.0; r1.5) SS2 (x2357) under the comprehensive Zoning By-law 569-2013.

[11] Ms. Lauzon provided a thorough overview of the final design of the Development on the Site. As indicated, the most noticeable revisions to the original Application resulted in increased setback of the internal ground level parking garage from the rear lot line, additional increased setback of the second floor from the rear, and increased

set-backs of the top three floors of units on the west side (with additional set-back for the mechanical penthouse). Other design changes to improve privacy and transition on the west/rear side included the reduction of balcony projections/depths and the inclusion of privacy screens on the second to the sixth storeys resulting in a six-storey street wall.

[12] There is no evidence before the Tribunal as to any negative impacts arising from the Development and specifically no unacceptable built-form impacts on surrounding streets, open spaces or properties, including the residential areas to the west within Neighbourhoods designation. Ms. Lauzon opined that concerns of light, privacy and view have been addressed through the spatial separation, orientation and mitigation measures such that any impacts will be acceptable considering the urban context of the Site and its environs and the 27.45-meter wide right of way of Davenport. Ms. Lauzon confirmed that the incremental shadow impact as compared with existing shadows during the spring and autumn equinoxes and the summer solstice, would be limited to the edge of the rear yards of five properties.

[13] It is Ms. Lauzon's planning opinion that the proposal will appropriately intensify an underutilized site, improve the Davenport streetscape and provide an architecturally sensitive building that respects the surrounding context and contribute to the regeneration and revitalization of the area. Ms. Lauzon indicated that the Development would represent appropriate and desirable optimization of density and intensification and achieve a number of the listed policy directives set out in the Provincial Policy Statement ("PPS") and the Growth Plan, as well as support of transit and existing municipal infrastructure in Mixed Use Areas in the Downtown.

[14] One of the factors referred to by Ms. Lauzon was the fact that the Site would be considered to be part of a "major transit station area" as defined in the Growth Plan given the fact that the Site is within a 430 m radius distance of the Dupont subway station. The City and ATCRA Inc. took no exception to the evidence presented by Ms. Lauzon in support of the settlement save and except that the City clarified that the City had not yet formally delineated the boundary of the area as a "major transit station area" in accordance with the Growth Plan. Notwithstanding this technical matter of

delineation, there is no disagreement on the part of the City that the proximity of the residential units on the Site, to the Dupont TTC station, represents consistency with the transit oriented policies in the PPS and conformity to the transit policies in the Growth Plan.

[15] Insofar as urban design and issues of height, massing and scaling, Ms. Lauzon opined that the proposed height and density would, from an urban structure perspective, be compatible with the predominantly mid-rise character of Davenport and was appropriate given the context of existing and approved buildings in the area. As a mid-rise design the Development also reinforced the existing and planned built-form context along Davenport, and as articulated along Davenport, and particularly in relation to the residential area to the west, allowed for appropriate transitioning and integration to the streetscape and to adjacent properties through the mix of inset and projecting balconies, multiple setbacks and step-backs. The Development largely complies with a 45-degree angular plane with the exception of a small portion of the ninth floor and the mechanical penthouse, and is in keeping with the intent of the performance standards in the Mid-Rise Guidelines with the setbacks and step-backs, and minimized shadow impacts. In Ms. Lauzon's view the proposed density is also appropriate and desirable, given the Development's location within the Downtown, and its generally lower density than other proposed mid-rise densities in the Davenport Road corridor.

[16] It was Ms. Lauzon's opinion that the proposed building height and massing relative to its separation from the closest Neighbourhoods designated residential dwellings are appropriate, particularly in view of the Site's proximity to the Dupont subway station and the importance of promoting intensification on underutilized lands in the Downtown. Ms. Lauzon concluded that the proposed Development conforms with the built-form policies of the Official Plan and is generally in keeping with the objectives of the Avenues and Mid-Rise Building Guidelines as it is located in the Mixed Use Areas in the Official Plan and fronts on a Major Street. This is based on Ms. Lauzon's opinion that in a case such as this, some exceptions to the performance standards in the Guidelines may still achieve good design where the specific characteristics of a site and location means that a specific performance standard, in the whole context, is not

appropriate.

[17] Ms. Lauzon's planning evidence to the Tribunal, in support of the proposed settlement, is that the Development is consistent with the PPS and conforms to both the Growth Plan and the City's Official Plan, and accordingly represents good planning, in the public interest and should be approved. Ms. Lauzon recommended approval, subject to the withholding of the final Order until the form of the draft ZBLAs of the two Zoning By-laws have been approved.

### **FINDINGS OF THE TRIBUNAL**

[18] The Tribunal has considered the uncontroverted expert planning testimony and the opinions provided by Ms. Lauzon. The Tribunal accepts that evidence and finds that the proposed Development will provide an appropriate form of intensification on an underutilized site, provide improvements to this area of Davenport Road and will result in the addition of a designed built-form that is appropriate in massing, density and scale

[19] The final iteration of the proposal has been the subject of collaborative review with the City and ATCRA Inc. On the evidence before the Tribunal, that process has now resulted in a final agreement as to the addition of an appropriate and desirable development that will have no unacceptable built-form impacts, have access to existing municipal infrastructure in proximity to public transit, and will be compatible with the predominantly mid-rise character of this segment of Davenport.

[20] The Tribunal accepts this evidence and finds that the proposed ZBLAs as they will permit the Development, and the Development itself, are consistent with the policies of the PPS and conform to the Growth Plan. The Tribunal also finds that the Development as it has been designed in its final iteration, and presented to the Tribunal, and the ZBLAs, conform to the City's Official Plan, and achieve the objectives of applicable and in-force design guidelines as reviewed by Ms. Lauzon.

[21] As such the Tribunal finds that the Development, and the two planning instruments, as they are approved in principle, represent good planning in the public interest.

[22] In reaching this conclusion, the Tribunal has had regard for the approval of the proposed settlement by City Council as it adopted the recommendations leading to the presented instruments, in draft form and responded to the report for action from City staff.

[23] The Tribunal will accordingly grant the appeal in part and will approve the draft ZBLAs in principle and withhold the final Order pending finalization and approval of the final form of the two instruments by the Applicant with the City and ATCRA Inc. The Tribunal will issue its final Order approving the ZBLAs, and the Development, at such time as the Tribunal has been advised by the Applicant that the final form of the ZBLAs has been reviewed and confirmed by the Applicant, the City and ATCRA Inc.

## **ORDERS**

[24] The Tribunal orders that the Appeal relating to the amendments of Zoning By-law No. 438-86 and the City's Comprehensive Zoning By-law 569-2013 is allowed in part and, subject to the holding of the final Order, as provided below:

- (a) the Application is approved, as amended;
- (b) the Zoning By-law Amendment to Zoning By-law No. 438-86, as it will be prepared and confirmed in final form by all Parties, is approved in principle; and
- (c) the Zoning By-law Amendment to Zoning By-law No. 569-2013, as it will be prepared and confirmed in final form by all Parties, is also approved in principle.

[25] The Tribunal's final Order shall be withheld until such time as the Tribunal is advised by the Applicant that the Applicant, the City and ATCRA Inc. are all satisfied as to the final form and content of the two draft Zoning By-law Amendments, and the instruments are presented for final review by the Tribunal.

[26] The Panel shall remain seized and available for further attendance of the Parties

in the event any matters arise with respect to the final form and content of the two planning instruments. If the Parties do not submit the final drafts of the Zoning By-law Amendments, and request the issuance of the final Order, by **July 31, 2019**, the Applicant 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 two draft Zoning By-law Amendments and issuance of the final Order by the Tribunal. The Panel will, 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.

*“David L. Lanthier”*

DAVID L. LANTHIER  
MEMBER

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**Local Planning Appeal Tribunal**

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