

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 23, 2015

CASE NO(S): PL140368

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Referred by: Madison Briar Hill Ltd.
Subject: Site Plan
Property Address/Description: 1100 Briar Hill Avenue
Municipality: City of Toronto
OMB Case No.: PL140368
OMB File No.: PL140368
OMB Case Name: Madison Briar Hill Ltd. v. Toronto (City)

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

Applicant and Appellant: Madison Briar Hill Ltd.
Subject: Application to amend Zoning By-law No. 7625 and 1-83 – Refusal or neglect of the City of Toronto to make a decision
Existing Zoning: Residential (R5) in Zoning By-law 7625 and Residential (R2) in Zoning By-law 1-83
Proposed Zoning: Mixed Commercial (C5)
Purpose: To permit townhouse and commercial units
Property Address/Description: 1100 Briar Hill Avenue
Municipality: City of Toronto
Municipal File No.: 13 221087 NNY 15 OZ
OMB Case No.: PL140368
OMB File No.: PL140401

Heard: November 25, 2014 in Toronto, Ontario

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Representative</u>
Madison Briar Hill Ltd	A. Brown*
City of Toronto	T. H. Wall*
Stayner Residents Community Centre	F. Volpe

DECISION DELIVERED BY K. J. HUSSEY AND ORDER OF THE BOARD

[1] Madison Briar Hill Ltd. (the “Applicant”) has appealed the failure of Council for the City of Toronto (the “City”) to make decisions within the statutory time frame on applications related to its property known municipally as 1100 Briar Hill Avenue (the “subject site”). The Applicant seeks amendments to two Zoning By-laws (the former City of North York Zoning By-law No. 7625 and the former City of North York Zoning By-law No. 1-83), and site plan approval, which would permit development of 124 stacked back-to-back townhouse units and four commercial units arranged in six blocks above an underground parking garage.

Preliminary Matter

[2] At the commencement of this hearing, the Board received a request for an adjournment from the Ward Councillor for the reason that a Land Use Planner had not yet been retained by the City. Counsel for the City advised the Board that he did not received instructions to seek an adjournment and he took no position on the Ward Councillor’s request. The Applicant objected to the request on the grounds that the appeal was filed some six months prior and the City had agreed to the date set for the hearing. The Board denied the request.

[3] The Board’s *Rules of Practice and Procedure* (the “Rules”) state that a last minute adjournment will only be granted for emergencies. The Board found no existing

emergencies or compelling circumstances to warrant an adjournment without consent.

[4] Where there is no consent, as in this case, the party requesting the adjournment must bring a motion at least ten days before the date set for the hearing event. No motion to adjourn was brought in compliance with the Rules. All parties are notified in writing when an application is filed, that the hearing event will be scheduled for the earliest available date on the Board's calendar and the parties should be prepared to proceed at any time. Parties are also informed of the substance of the Rules: they are told that once dates are set, adjournments are not granted except where compelling circumstances exist, and with consent of all parties and /or the approval of the Board.

[5] In any event, the City speaks through its legal Counsel. There was no request from Counsel, who informed the Board that his instruction was to appear at the hearing to oppose the appeal. The Board was also not presented with any resolution of Council to indicate its intention to seek an adjournment.

[6] The Board proceeded to hear the appeal.

Background and Context

[7] The subject property was previously owned by the Toronto District School Board, which declared the lands surplus to its needs. Disposition of the lands was referred to the Toronto lands Corporation (the "TLC"). The City was circulated to see whether there was any interest in purchasing the lands. In response, the Division of Parks, Forestry, and Recreation, acquired 1409 square metres ("sq. m") of the lands located at the south-west corner of the subject property where there is a row of mature trees and a playground area that was being utilized by the local community as park space. Parks, Forestry, and Recreation have maintained the area as a public park. Beyond that there was no further interest from City in acquiring the rest of the property. The Applicant subsequently purchased the remainder of the lands on the northeast corner of Dufferin Street and Briar Hill Avenue.

[8] The subject site is irregular in shape because of the severance for the park and the curvilinear form of Briar Hill Avenue. It has an area of 0.80 hectare, with 37.96 metres (“m”) of frontage on Dufferin Street and 97.39 m of frontage on Briar Hill Avenue. The depth is approximately 61 m on the east side of the lot and approximately 81 m in the centre. The site is now vacant. Previously, the Briar Hill Junior Public School, a three-storey structure built in 1927, was on the subject site. It was demolished by the procurement of a demolition permit issued by the City in October 2013.

[9] Directly north abutting the subject site is a 24 hour carwash and automotive repair shop. Also north fronting onto Stayner Avenue, are one and two-storey detached dwellings. To the east along Briar Hill Avenue are one and two-storey detached dwellings, and directly south on Briar Hill Avenue, are one and two-storey detached dwellings. Along the east side of Dufferin Street there are detached dwellings, apartment buildings and commercial plazas ranging in height from two to three-storeys. On the west side of Dufferin is the Fairbank United Church and the Dufferin business Centre which contains a mix of office, retail and service uses. Within a short walking distance from the subject property there is access to public transit.

[10] The portion of Dufferin Street on which the subject site fronts, is designated “Mixed Use Area” in the City’s Official Plan. It is also identified as an “Avenue”. The remaining portion is designated “Neighbourhoods”. The site is subject to two Zoning By-laws: the northerly portion is zoned R5 by the Former City of North York By-law No. 7625, which permits family detached dwellings with accessory buildings, home occupation and recreational uses such as parks, and institutional uses such as schools; the southerly portion is zoned R2 Former City of York Zoning By-law No. 1-83 which permits detached, semi-detached, duplexes and accessory uses; parks, schools, places of worship and home occupations. Neither By-law permits townhouses.

[11] The site is subject to the Infill Townhouse Guidelines, which address development impacts of infill townhouses with a focus on protecting streetscapes and integrating new development with existing housing patterns.

The Proposal

[12] The Applicant proposes a development of 124 stacked back to back townhouse units and four commercial units arranged in six blocks above an underground parking garage. The four commercial units, one one-bedroom unit and 12 two-bedroom units would be located on the block within the *Mixed Use Areas* designation on Dufferin Street. The remaining five blocks that would contain 111 two-bedroom townhouse units, are proposed to be located in the designated *Neighborhood Areas*.

[13] The buildings would be in a north/south orientation, perpendicular to Briar Hill Avenue and parallel to Dufferin Street. Pedestrian access to the individual units would be provided by a series of linear private open spaces between the blocks, in the interior of the site. Additional linear space would be provided in an east-west direction at the north end of the site and the middle of the site. The proposed development would have a gross floor area of 12,531.38 m² which represents a floor space Index of 1.61. There would be 127 residential parking spaces, 19 visitors and four retail parking spaces, all located in an underground garage. Also proposed are 130 bicycle parking spaces, 13 of which would be for visitors and five for service and retail uses.

[14] The Applicant proposes to meet a portion of the required parkland dedication on-site, by adding approximately 7.5 m x 31 m of lands onto the north end of the park. The Applicant has also voluntarily agreed to a s. 37 contribution in the amount of Thirty Thousand Dollars.

The Issues

[15] The main questions to be determined are the following:

1. Was a legitimate archeological assessment or heritage evaluation carried out on the subject property that would to allow the proposed development to proceed?

2. Are stacked-townhouses appropriate on the subject site which is not zoned for that use, and would such a development alter the character of the neighbourhood?

The Board's Decision

[16] The Board allows the appeal. For reasons that are set out below, the Board finds that the proposal is consistent with the Provincial Policy Statement, is in conformity with the Growth Plan, is in conformity with the City's Official Plan, meets the Infill Townhouse Guidelines, and constitutes good planning.

Evidence and Analysis

[17] The Applicant called Michael Goldberg, a qualified land use planner, to provide evidence on the proposal. Mr. Goldberg was the only expert witness to testify in these proceedings. The Board received his signed acknowledgement that he would provide fair objective and non-partisan opinion evidence, related only to matters within his area of expertise.

[18] Mr. Goldberg's evidence included an analysis of how the proposal meets the requirements of the relevant planning instruments. He described the neighbourhood character and how the proposal would interface with the surrounding development. Mr. Goldberg informed the Board of the consultation process with the City. He confirmed that the Applicant met the City's demands. He gave a detailed account of the changes sought by the City during the review process and presented the list of changes made by the Applicant, in response to the City's review. Mr. Goldberg also recounted the efforts made by the Applicant, which were not successful, to meet and consult with the area residents.

[19] Mr. Goldberg's conclusion was that the proposal is consistent with the Provincial Policy Statement, conforms to the Growth Plan, implements the City's Official Plan, and meets all applicable guidelines. His evidence was not controverted.

[20] The area residents who testified at the hearing had two primary objections to the application. The first was that the site contains remnant heritage value within the foundation of the demolished school, which ought to be conserved. The second is that a townhouse is not a dwelling type found in the neighbourhood and the proposed development would alter the neighbourhood character and diminish property values.

[21] With respect to the first issue, the heritage value of the subject site, the Board heard from area residents that the site had a continuous 180 year history as a community, education and religious centre. It was the location of a one room schoolhouse that was built in 1863, known as the Fairbanks school site, to which an extension was added in 1908. That two room school was demolished and replaced in 1927 by the Briar Hill Junior Public School, which remained in use until 2012. It was the Residents' position that the Building was injudiciously demolished in 2013 as a result of the City not following proper procedure when it issued the demolition permit.

[22] It is noted that the property has never had a heritage designation. The Applicant nevertheless carried out two archeological assessments on the subject property after the demolition. The reports from these assessments were filed with the Board.

[23] The first report was on the stage one to three assessments, which were concluded in April 2014. The report stated that "the 1863 to 1927 one room schoolhouse component of the Fairbanks school site does have cultural heritage value". It recommended that the site should be subject to stage four excavations to completely expose, document and excavate the foundation trench of the 1863 to 1927 one room schoolhouse component of the site.

[24] The report concluded that "the more recent 1908 to 1927 one room extension component of the Fairbanks school site has no archaeological value in terms of its potential for contributing to our understanding of the past due to its recent date of occupation". It was recommended that this later component of the site "does not require stage-four mitigation" and is not a planning concern.

[25] The second report from the stage four assessments states the following:

The Fairbanks school site, and the 1100 Briar Avenue subject property in general, is considered free of further archaeological concern. The cultural heritage value of the site has been addressed through stage IV excavation and documentation as required by the Ontario Ministry of Tourism, Culture and Sport. No further archaeological assessment is required.

[26] The report further states that the Ministry is satisfied that the fieldwork and reporting for the archaeological assessment are consistent with the Ministry's 2011 standards and guidelines for consultant archaeologists and the terms and conditions for archaeological licensing.

[27] Based on those two reports the Board finds that there are no cultural attributes to be conserved on the subject site and therefore no impediment on that basis to the Applicant proceeding with the proposed development.

Is the Townhouse Dwelling Type in that Location Detrimental to the Neighbourhood Character?

[28] The Board is required to make decisions that have regard to matters of provincial interests and in that context the Board has considered the specific policy directions in the Provincial Policy Statement and the Growth Plan on the appropriate location for growth and development, transit supportive development and the adequate provision of a full range of housing. These policies promote the efficient development and use of lands, intensifying and optimizing under-utilized lots in residential areas to ensure that public infrastructure is efficiently used and public transportation is supported. The Board has concluded that the application satisfies those policy directions.

[29] The Official Plan is, however, the most important vehicle for implementing provincial policies. The proposed Zoning By-law amendment (Exhibit 5) must conform to the Official Plan and the Board finds that it does.

[30] The westerly portion of the subject site is designated "*Mixed Use Areas*" by the

Official Plan which, according to s. 4.5 will absorb most of the anticipated growth in retail, office and service employment in Toronto in the coming decades as well as much of the new housing. The portion of Dufferin Street, on which the subject property fronts, is also identified as an “*Avenue*”. Avenues are areas that are anticipated to accommodate growth.

[31] The Board finds that the commercial units, the one-bedroom unit and 12 two-bedroom units that would be located within the *Mixed Use Areas* designation on Dufferin Street, fully conform to the policies for *Mixed Use Areas* and *Avenues*.

[32] The remainder of the property is designated “*Neighbourhood*”. The Board finds unsupportable the residents’ position that townhouses are not the typical dwelling type found in the neighbourhood, and if introduced on the subject site the neighbourhood character would be adversely altered.

[33] The evidence clearly indicates that townhouses, apartments and other multiple attached dwelling units are existing building forms in the study area which was used by Mr. Goldberg in his analysis, which study area the Board finds to be a reasonable reflection of the character of the neighbourhood in both the immediate and larger context. Based on the photographic evidence (Exhibit 4), the Board agrees with Mr. Goldberg that the neighbourhood is an eclectic mix of single detached residence, multiple attached residences and other building types, including commercial buildings, and all of which co-exist harmoniously.

[34] It was noteworthy that the owner of the auto complex and car wash establishment that abuts the subject property testified at the hearing and expressed concerns that the proposed sensitive use on the subject property could affect the running of his business. His concerns abated when the Applicant explained that the designers of the development took into consideration mitigation measures for those possible impacts with which he was concerned. That event however, underscores the eclectic character of the neighbourhood, even within the immediate vicinity of the

subject property.

[35] In addition to the evidence that the neighbourhood is not exclusively or even predominantly one of single detached dwellings, it is important also to recognise that the Official Plan does not resist change. Instead, it anticipates that changes will occur in *Neighbourhoods*; that *Neighbourhoods* will not remain static. The Official Plan also states that *Neighborhoods* are considered physically stable areas made up of residential uses in lower scale buildings such as detached houses, semi-detached houses, duplexes, triplexes and townhouses, as well as interspersed walk-up apartments that are no higher than four stories.

[36] The Board finds that the proposed townhouse development is consistent with the direction provided by all the relevant planning documents. It would provide minor intensification on this underutilized site located on an arterial road, which is suitable for intensification. It uses an efficient, compact built form that is appropriate in this eclectic neighbourhood and that would provide an appropriate transition from the mixed use area to the west and north, to the single detached homes to the immediate east and south of the subject property.

[37] The Board was presented with visual evidence of the proposal (Exhibit 3), which illustrates the thoughtfulness of the design for this particular context. The existing residences would be adequately separated and buffered from the proposed development; it respects the scale, height, massing and the prevailing building types in the surrounding area; the building arrangement has been carefully considered to create openness and increased visibility into the site and it is designed to frame the streets and the existing public park, providing “eyes” on the public realm.

[38] For all those reasons, the Board finds that the proposal is in conformity with the *Neighbourhoods* policies of the Official Plan. The Board finds that it is appropriate in its context and it fits generally with the existing character of the neighbourhood. The Board is convinced that the neighbourhood would not be diminished in any way by this

proposal.

[39] The City called no witnesses, presented no evidence, and made no submissions with respect to the merits of the application. Its only request at this hearing, should the appeal be allowed in whole or in part, was for the Board to withhold for thirty days any order to approve a Zoning By-law Amendment, so that the proposed Zoning By-law can be reviewed by City staff.

Disposition

1. The Board allows the appeal to amend the City of North York Zoning By-law No. 7625 and the former City of North York Zoning By-law No. 1-83.
2. The Board approves the site plans substantially as presented in Exhibit 6.

[40] On consent of the parties, the Board withholds its final Order for thirty days for City Staff to review the proposed Zoning By-law that was presented as Exhibit 5.

“K. J. Hussey”

K. J. HUSSEY
VICE CHAIR

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Ontario Municipal Board

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