

City Council

Notice of Motion

MM9.32	ACTION			Ward:20
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Request for Attendance at Ontario Municipal Board Hearing - Appeal of Committee of Adjustment Decision respecting 24 Mercer Street - by Councillor Joe Cressy, seconded by Councillor Ana Bailão

** Notice of this Motion has been given.*

** This Motion is subject to referral to the Toronto and East York Community Council. A two-thirds vote is required to waive referral.*

** This Motion relates to an Ontario Municipal Board Hearing and has been deemed urgent.*

Recommendations

Councillor Joe Cressy, seconded by Councillor Ana Bailão, recommends that:

1. City Council direct the City Solicitor and other appropriate staff to appear at the Ontario Municipal Board in support of the Toronto and East York Committee of Adjustment's refusal of the application for variances for 24 Mercer Street and City Council authorize the City Solicitor to retain outside consultants, as necessary.
2. City Council direct the City Solicitor to caution the Appellant that their application for minor variances and their subsequent appeal of the Committee of Adjustment's refusal are not consistent with the Section 37 Agreement (Instrument No. AT3724916) between the City and the Appellant or the May 6, 7 and 8, 2014 (MM51.14) heritage demolition authority and direct the City Solicitor to report back to City Council in the event the Ontario Municipal Board allows the appeal in whole or in part, in order for the City Council to provide instruction on the enforcement of the Section 37 Agreement and any other matters.

Summary

On June 10, 2015, Toronto East York Committee of Adjustment refused three (3) variances required to increase the height of the permitted mixed-use building at 24 Mercer Street.

The site is currently occupied by a two and a half storey heritage building designated by the City under the Ontario Heritage Act. In August 2011 (Zoning amendment application file no. 11 261965 STE 20 OZ), the Applicant sought a site specific zoning by-law amendment to permit a 20 or 21-storey building having a maximum height of 74.145 metres excluding mechanical elements (80 metres including mechanicals) on these lands. The then as of right zoning permitted a maximum height of 30 metres. The Applicant appealed a non-decision of City Council to the Ontario Municipal Board (the "Board" and/or the "OMB") and after much consultation and negotiation the Applicant and City Council reached a settlement in 2013,

revised in 2014, to permit a specific form of building expressly limited to a maximum height of 17 storeys and 57.5 metres excluding mechanical elements (64 metres including mechanicals).

The settlement involved amongst other matters, the Applicant and the City entering into and registering on the lands a Section 37 Agreement which included requiring the owner to construct and maintain the development in accordance with specific plans, a heritage impact statement and a conservation plan all to be consistent with the City Council decision allowing a building have a specified built form, including a maximum height not exceeding the 17 storeys and 57.5 metres excluding mechanical elements (64 metres including mechanicals). As part of the settlement the City authorized at the May 6, 7 and 8, 2014 (Item MM51.14) meeting of City Council meeting a conditional demolition under the Ontario Heritage Act for the purpose of permitting the specific development then before Council. The Board Decision and Interim Order issued November 2013, recognize this settlement between the City and the Applicant and the final Board Order issued November 2014.

It is noted that notwithstanding City Council's decision to settle, the applicant's 17-storey development proposal which required the demolition of the heritage building located on the site, was not supported by City Heritage staff or the Toronto Preservation Board.

Despite the Applicant's original 2011 rezoning application for a 20 or 21 storey building having a height of 74.145 metres having been opposed by City Planning staff and City Council and despite the Applicant having expressly settled that rezoning appeal and hearing on the basis of the development having amongst other matters, a maximum 17 storey, 57.5 metre height as described above, the Applicant's recent application to the Committee of Adjustment and appeal to the Ontario Municipal Board are for approval of a 21 storey building having a height of 72.17 metres excluding mechanical elements, that is to say a building of almost the same height as in their original 2011 rezoning application.

The applicant seeks to justify the increase in height based upon taller buildings having been approved in the area.

The Committee of Adjustment, in its Decision issued June 16, 2015, refused the variances sought on the basis that they failed to maintain the general intent and purpose of the Official Plan, that they failed to maintain the general intent and purpose of the 2014 site specific Zoning By-law together with the Section 37 provision, that they were not considered desirable for the appropriate development of the land, that they were not minor and contradict the recent Ontario Municipal Board settlement resulting from extensive stakeholder consultation. City Planning staff had submitted a report to the Committee of Adjustment recommending refusal of the variances.

The Applicant has appealed the refusal of the Committee of Adjustment to approve the variances to the Ontario Municipal Board. The hearing has been scheduled for October 28, 2015.

Subsequent to the filing of the appeal, on August 25, 2015 the Applicant submitted a Site Plan Control application (file no. 15 212573 STE 20 SA) for a 17-storey development having a maximum height of 64.216 metres, including mechanical elements (57.48 metres excluding mechanicals).

The purpose of this Motion is twofold: to seek Council's direction for the City Solicitor, together with City Planning and other appropriate staff and/or retained outside consultants, to

oppose the appeal of the variances at the OMB; and in addition, to direct the City Solicitor to caution the Appellant that their application for minor variances and their subsequent appeal of the Committee of Adjustment's refusal are not consistent with the Section 37 Agreement between the City and the Appellant or the May, 2014 heritage demolition authority and to direct the City Solicitor to report back to the City Council in the event the Ontario Municipal Board allows the appeal in whole or in part, in order for the City Council to provide instruction on the enforcement of the Section 37 Agreement and any other matters.

This Motion has been prepared in consultation and with the assistance of the Chief Planner and Executive Director, City Planning, the Manager, Heritage Preservation Services and the City Solicitor.

Background Information (City Council)

Member Motion MM9.32

Committee of Adjustment, Toronto and East York District Notice of Decision on application for Minor Variance/Permission for 24 Mercer Street

(<http://www.toronto.ca/legdocs/mmis/2015/mm/bgrd/backgroundfile-84195.pdf>)