

70 & 100 Edward Street and 636 Bay Street Committee of Adjustment Application

Date: April 10, 2019

To: Chair and Committee Members of the Committee of Adjustment, Toronto and East York District

From: Director, Community Planning, Toronto and East York District

Ward: 11, Toronto - University-Rosedale (27, Toronto - Toronto Centre-Rosedale)

File No: A0454/18TEY

Application to be heard: April 17, 2019

RECOMMENDATIONS

Planning staff recommend that the Committee of Adjustment refuse Application Number A0454/18TEY, as currently proposed. Should a deferral be granted, Planning staff will continue to work with the applicant to revise the proposal.

APPLICATION

The applicant is seeking relief from the provisions of the applicable zoning by-laws to construct a new 19-storey (Building 'A' - 100 Edward Street) and 22-storey (Building 'B' - 70 Edward Street & 636 Bay Street) mixed use building with a connected 7-storey base building and five levels of below grade parking.

The proposal is also subject to Site Plan Application No. 16 136299 STE 27 SA, which is currently under review by City staff.

Variances are requested with respect to building height and penetration of an angular plane, tower setbacks, building setbacks, floor space index and gross floor area, number of dwelling units, amenity space, and location of long-term bicycle parking spaces.

The following variances have been requested as part of Application Number A0454/18TEY:

1. Chapter 10.10.40.40.(1)(A), By-law 569-2013

The maximum permitted floor space index for all uses on the lot is 7.80 times the area of the lot (20,099.82 m²).

The mixed-use condominium building will have total floor space index for all uses equal to 8.98 times the area of the lot (23,151.40 m²).

2. **Chapter 40.10.40.40.(1)(C), By-law 569-2013**
 The maximum permitted floor space index for residential uses on the lot is 7.8 times the area of the lot (20,099.82 m²).
 The mixed-use condominium building will have a floor space index for residential uses equal to 8.57 times the area of the lot (22,090.90 m²).
3. **Chapter 600.10.10.(1)(A)(ii) Development Standard Set 1, By-law 569-2013**
 The minimum required setback for a tower is 12.5 m from the centre line of an abutting lane.
 The mixed-use condominium building will be located 9.47 m from Barnaby Lane.
4. **Chapter 600.10.10.(1)(A)(iii) Development Standard Set 1, By-law 569-2013**
 The minimum required setback for a tower is 12.5 m from a lot line having no abutting street or lane.
 The mixed-use condominium building will be located 5.38 m from the north lot line.
5. **Chapter 230.5.1.10.(9(B)(iii), By-law 569-2013**
 The required long-term bicycle parking spaces for the dwelling units may be located on levels of the building below-ground, commencing with the first level belowground and moving down, in one level increments provided that at least 50% of the area of that level is occupied by bicycle parking spaces until all required bicycle parking spaces have been provided.
 In this case, the required long-term bicycle parking spaces for the dwelling units will occupy 9% of the area of the first level below-grade and continue onto the second level below-grade.
6. **Chapter 40.10.40.10.(1)(A) Development Standard Set 1, By-law 569- 2013**
 The maximum permitted height is 61.0 m.
 The mixed-use condominium building will have a height of 72.25 m.
7. **Chapter 40.10.40.50.(1)(A), By-law 569-2013**
 A building with 20 or more dwelling units must provide 2.0 m² of indoor amenity space for each dwelling unit, for a total of 644.0 m² of indoor amenity space.
 The mixed-use condominium building will have 621.20 m² of indoor amenity space.
8. **Chapter 40.10.40.70.(1)(A), Development Standard Set 1, By-law 569-2013**
 A minimum of 75% of the main wall of the building facing a front lot line must be located at or between the front lot line and a maximum of 3 m from the front lot line.
 The main walls of the mixed-use condominium building will be located 4.5 m from the Bay Street lot line and 4.71 m from the Edward Street lot line.
9. **Chapter 40.10.40.70.(1)(B), Development Standard Set 1, By-law 569-2013**
 Where the main wall of a building has windows or openings, the main wall must be setback at least 5.5 m from a lot line that is not adjacent to a street or lane.
 The main wall of the mixed-use condominium building will be located 5.38 m from the north lot line.
1. **Section 4(2)(a) and Section 12(2) 260(II)&(III), By-law 438-86**
 The maximum permitted height of Building 'B' is 61.0 m, and the building must not penetrate a 60 degree angular plane at the permitted height.
 Building 'B' will have a height of 72.4 m and will penetrate the 60 degree angular plane.

- 2. Section 4(2)(a) and Section 12(2) 260(II)&(III), By-law 438-86**
The maximum permitted height of Building 'A' is 46.0 m and the building must not penetrate a 60 degree angular plane at the permitted height.
Building 'A' will have a height of 63.8 m and will penetrate the 60 degree angular plane.
- 3. Section 8(3) Part I 1, By-law 438-86**
The maximum permitted combined non-residential and residential gross floor area is 7.8 times the area of the lot (20,099.82 m²).
Building 'B' will have a combined non-residential and residential gross floor area equal to 8.99 times the area of the lot (23,153.7 m²).
- 4. Section 8(3) Part I 3(A), By-law 438-86**
The maximum permitted residential gross floor area is 7.8 times the area of the lot (20,099.82 m²).
Building 'B' will have a residential gross floor area equal to 8.57 times the area of the lot (22,093.20 m²).
- 5. Section 12(2) 111(a)(i), By-law 438-83**
The minimum required above-grade setback from the Bay Street lot is 4.5 m
Building 'B' will be located 2.76 m from the Bay Street lot line.
- 6. Section 12(2) 111(a)(ii), By-law 438-83**
The exterior face of the exterior wall of the building or structure must be set back no less than 7.5 m from the Bay Street lot line for a height of not less than 3.0 m above grade.
Building 'B' will be setback 3.48 m from the Bay Street lot line, measured from the column.
- 7. Section 12(1) 386, By-law 438-86**
The maximum permitted combined non-residential and residential gross floor area is 11,186 m².
Building 'A' will have a combined non-residential and residential gross floor area equal to 13,475.6 m².
- 8. Section 12(1) 386(ii), By-law 438-86**
The maximum permitted residential gross floor area is 10,697 m².
Building 'A' will have a residential gross floor area equal to 13,144.9m².
- 9. Section 12(1) 386(v), By-law 438-86**
A maximum of 165 dwelling units are permitted, of which not fewer than 19 may be one-bedroom units, and not more than 6 may be bachelor dwelling units.
Building 'A' will have 204 dwelling units, of which 171 will be one-bedroom units.
- 10. Section 12(1) 386(vi), By-law 438-86**
The maximum permitted height of Building 'A' is 46.0 m.
Building 'A' will have a height of 63.55 m.
- 11. Section 12(2) 380(1)(b), By-law 438-83**
The minimum required setback for a tower is 12.5 m from the centre line of an abutting lane.
Building 'A' will be located 9.29 m from Barnaby Lane, and Building 'B' will be located 9.47 m from Barnaby Lane

12. Section 12(2) 380(1)(c), By-law 438-83

The minimum required setback for a tower is 12.5 m from a lot line having no abutting street or lane.

Building 'A' will be located 6.53 m from the north lot line, and Building 'B' will be located 5.38 m from the north lot line.

13. Section 4(12), By-law 438-83

A minimum of 408.0 m² of indoor residential amenity space and 408.0 m² of outdoor residential amenity space is required to be provided.

Building 'A' will have 442.0 m² of indoor residential amenity space, and 368.4 m² of outdoor residential amenity space.

14. Section 4(12), By-law 438-83

A minimum of 644.0 m² of indoor residential amenity space and 644.0 m² of outdoor residential amenity space is required to be provided for Building 'B'.

Building 'B' will have 621.2 m² of indoor residential amenity space, and 686.5 m² of outdoor residential amenity space.

CONTEXT

The subject property is located on the north side of Edward Street, between Bay Street and Elizabeth Street. The property is bisected by Barnaby Place, a public lane which runs north-south from Elm Street to Edward Street. Despite the presence of the public lane, Building 'A' and Building 'B' will be treated as one building on one lot. Despite any existing or future severance, partition or division of the lot, the provisions of this by-law shall apply to the whole lands known as 70 & 100 Edward Street and 636 Bay Street, as if no severance, partition or division occurred.

The property is designated *Mixed Use Areas* in the Official Plan. The *Mixed Use Areas* designation provides for a broad range of commercial, residential and institutional uses. Development in *Mixed Use Areas* will locate and mass new buildings to provide a transition between areas of different development intensity and scale; frame streets with good proportion and provide an attractive, comfortable and safe environment for pedestrians.

The proposed development is adjacent to two properties listed on the City of Toronto's Heritage Register, including 604 Bay Street, adopted by City Council on May 19, 1987, and 77 Elm Street, adopted by City Council on June 22, 2004. The Official Plan states that new construction adjacent to a property on the Heritage Register will be designed to conserve the cultural heritage values, attributes and character of that property and to mitigate visual and physical impact on it.

The property is designated *Mixed Use Areas 1* in the Downtown Plan Official Plan Amendment (OPA 406). Development within *Mixed Use Areas 1* will include a diverse range of building typologies, including tall buildings, with height, scale and massing, dependent on the site characteristics. The property is also located within the *Health Sciences District* which requires that any increase in density above the existing as-of-right permissions contained within the in-force Zoning By-law will only contain institutional and/or non-residential gross floor area. While this OPA is under consideration by the Minister, Council has directed staff to use the policies contained within the Downtown Plan to inform evaluation of current and future development applications.

City Council has also adopted OPA 352 – Downtown Tall Building Setback Area (currently under appeal) which establishes the policy context for tall building setbacks and separation distances between tower portions of tall buildings Downtown. At the same meeting, City Council adopted area specific Zoning By-laws 1106-2016 and 1107-2016 (also under appeal), which provide the detailed performance standards for portions of buildings above 24 metres in height.

The property at 100 Edward Street is zoned CR T6.0 C2.0 R6.0 in Zoning By-law 438-86 and is not subject to By-law 569-2013. Site-specific permissions for 100 Edward Street allow for a mixed-use building with a specific maximum building height, gross floor area and unit count, as well as the minimum parking supply. The properties at 70 Edward Street & 636 Bay Street are zoned CR T7.8 C2.0 R7.8 in Zoning By-law 438-86 and CR 7.8 (c2.0; r7.8) SS1 (x2308) in Zoning By-law 569-2013. The zoning contains several regulations specific to buildings fronting onto Bay Street, including setback and angular plane requirements from Bay Street.

BACKGROUND

The companion Site Plan Control application for 70 & 100 Edward Street and 636 Bay Street (File No. 16 136299 STE 27 SA) was submitted in April 2016. Through the review of the application, several issues were identified with respect to the SickKids Hospital flight path, heritage views from City Hall, amenity area being provided, tower separation and vehicular loading ingress and egress in the City-owned lane. These comments were provided to the applicant in June 2016. The file remained inactive until May 2018, when a second submission was received. Staff advised the applicant in November 2018 that the original comments were not sufficiently addressed in the second submission. Staff recommended that a hearing on the Minor Variance application should not be scheduled until such time as a revised submission is received that addresses all of the outstanding concerns.

COMMENTS

The application is not supportable in its current form as there are a number of outstanding issues with the proposal which have been identified through review of the Site Plan Control application. As a result, the requested variances do not meet the intent of the Official Plan and Zoning By-law, and are not a desirable use of the land. Staff respectfully recommend that the Committee of Adjustment refuse Application Number A0454/18TEY, as currently proposed. Should the application be deferred, Planning staff will continue discussions with the applicant to revise the proposal to address the outstanding concerns.

Building Height and Angular Plane Variances (By-law 569-2013 variance 6; By-law 438-86 variances 1, 2 and 10)

The proposed height of Building 'A' is 63.55 metres, whereas 46.0 metres is permitted. The proposed height of Building 'B' is 72.25 metres, whereas 61.0 metres is permitted. A 60 degree angular plane measured from a height of 28 metres along the Elizabeth Street frontage and a height of 34 metres along the Bay Street frontage is required. There is no angular plane requirement on Edward Street.

Policies 3.1.2.3, 3.1.2.4, and 4.5.2 e) of the Official Plan direct that new buildings be located and massed to frame the edges of streets with good proportion and maintain sunlight, sky view, and

comfortable wind conditions for pedestrians on adjacent streets. The non-policy text of the Official Plan states that angular planes are one of the design relationships used to achieve appropriate transitions in scale. Angular planes are commonly used in zoning by-laws to provide transition between areas of different development intensity and to emphasize the streetwall height. Section 12(2) 260 of Zoning By-law 438-86 sets out angular plane requirements for several specific segments of Bay Street and Elizabeth Street, as well as several other street segments within the Downtown where specific base heights and angular planes are identified. This proposal does not sufficiently demonstrate how it meets the general intent of the above-noted Official Plan policies and Zoning provisions by penetrating the angular plane.

In the June 2016 and November 2018 Site Plan comments the applicant was asked to provide views to the north from the south sidewalk on Queen Street West directly in front of City Hall to ensure that the proposed development complies with Official Plan policies 3.1.5.45 and 3.1.1.9 and 10 which protects the view from the public realm to City Hall and Old City Hall by preventing any further intrusions visible above and behind the building silhouette as well as protecting the view to the buildings. The City has initiated an Official Plan Amendment process with the intent of modifying the view corridor to enhance the silhouette view protection policies.

Until such time as a view corridor analysis has been provided, reviewed and accepted by City Staff, the height variances should not be approved as it has not been determined how the general intent of these existing and emerging Official Plan policies have been met.

The June 2016 and November 2018 Site Plan comments also identified that the proposal is located within the flight path to the SickKids Hospital heliport, which is protected under Official Plan policy 4.8.4 and Section 12(2) 256 of Zoning By-law 438-86, as well as an airport zoning regulation (By-law 1432-2017). In order to comply with these protections, any development including all temporary and permanent structures such as parapets, antenna, light fixtures and crane activities have to be below or outside the protected flight path. The Site Plan application was circulated to SickKids Hospital who has indicated that the proposal cannot proceed until a proper Aeronautical Impact Assessment (AIA) is completed.

Until such time as an Aeronautical Impact Assessment has been provided, reviewed and accepted by City Staff, the height variances should not be approved as it does not meet the general intent of the above-noted Official Plan policies and Zoning provisions.

Tower Setback Variances (By-law 569-2013 variances 3 and 4; By-law 438-86 variances 11 and 12)

Official Plan Built Form policies 3.1.2.3 d) and 3.1.2.4 state that new development will limit its impact by providing for adequate light and privacy and ensuring adequate access to sky view.

Tall Building Design Guideline 3.2.2 a) refers to coordinating tower placement with other towers on the same block to maximize access to sunlight and sky views for surrounding streets, parks and properties. Guideline 3.2.3 refers to tower separation distances of 12.5 metres or greater from the side and rear property lines in order to limit negative impact on sky view, privacy and daylighting.

City Council has recently added to these policies and guidelines through the adoption of OPA 352 and the area-specific Zoning By-laws 1106-2016 and 1107-2016 which makes the 12.5 metre tower setback requirement a zoning regulation.

The tower portion of Building 'A' is proposed to be setback 9.29 metres from the centre line of Barnaby Place and 6.53 metres from the north lot line. The tower portion of Building 'B' is proposed to be setback 9.47 metres from the centre line of Barnaby Place and 5.38 metres from the north lot line. A minimum setback of 12.5 metres is required in all four instances.

The sum of the setbacks on either side of Barnaby Place results in a tower separation distance of 18.76 metres, whereas 25.0 metres is required between two tall buildings to prevent negative impacts to privacy for occupants, and access to light and skyview from the public realm. The applicant was requested to revise the proposal to provide a tower separation distance of 25.0 metres in the June 2016 Site Plan comments. The applicant was further advised in the November 2018 comments that the proposed tower conditions are not acceptable with respect to their lack of consistency with the Official Plan and Zoning By-law.

Until such time as the proposal is revised to provide adequate tower setbacks and separation distances, the requested variances should not be approved as they do not meet the general intent of the Official Plan and Downtown Plan policies or the new Zoning regulations

Building Setback Variances (By-law 569-2013 variances 8 and 9; By-law 438-86 variances 5 and 6)

The Zoning By-laws contain several specific regulations with respect to building setbacks from Bay Street, Edward Street, and the north lot line.

There are several outstanding items from the June 2016 and November 2018 Site Plan comments which may affect the building setbacks. The applicant has been requested to confirm that a minimum 6 metre wide pedestrian clearway is provided between the curb and building face; to provide for a prominent, pedestrian-oriented entrance to the building from Bay Street; and to ensure that the design of the base building mitigates visual and physical impacts on the adjacent properties on the Heritage Register. Acceptable setbacks for this site should provide for an appropriate interface with the public realm as well as abutting properties. These comments are supported by Official Plan policies including 2.4.14, 3.1.1.6, and 3.1.2.5 which describe streets that encourage and support pedestrian movement through the design of sidewalks and boulevards that are attractive, safe, interesting, comfortable, functional, and include sustainable design elements such as tree planting and landscaping, pedestrian-scale lighting, and quality street furnishings.

Until such time as the design of the buildings and the adjacent public realm is finalized, the requested variances should not be approved as they do not meet the general intent of the above-noted Official Plan policies.

Floor Space Index, Gross Floor Area, and Number of Dwelling Units Variances (By-law 569-2013 variances 1 and 2; By-law 438-86 variances 3, 4, 7, 8 and 9)

Building 'A' proposes an increase in residential density above the existing as-of-right permissions of 2,447.9 m² and 39 residential units. Building 'B' proposes an increase in residential density above the existing as-of-right permissions of 1,991.08 m².

The proposed increase in density is related to other built form factors on the site such as building height and tower setbacks, which have been discussed previously in this report.

The June 2016 and November 2018 Site Plan comments also noted that Tall Building Design Guideline 3.2.1 limits the tower floor plate to 750 m² or less per floor while acknowledging that

modest increases may be permitted for very tall buildings. This guideline implements Official Plan policy 3.1.3.1 b) which directs that the middle of tall buildings should be designed with a floor plate size and shape that has appropriate dimensions and orientation for the site. Oversized tower floor plates are typically undesirable due to their impacts on light and shadowing, privacy, and wind conditions for neighbouring streets, parks, open spaces and properties, which are important massing considerations set out in Policies 3.1.2.3 of the Official Plan.

While it appears that Building 'A' has a tower floor plate under 750 m², Building 'B' is significantly larger at approximately 1,066 m² when all tower massing is included. The comments noted that this condition is unacceptable and needs to be revised. A reduction to the floor plate of Building 'B' will result in an increase to the overall density on the site.

Until such time as an acceptable building massing has been provided, reviewed and accepted by City Staff, the requested variances should not be approved as they do not meet the general intent of the above-noted Official Plan policies.

Furthermore, policy 6.15.2 of the Downtown Plan states that development within the *Health Sciences District* will only contain institutional and/or non-residential gross floor area for any increase in density above the existing as-of-right permissions contained within the in-force Zoning By-law. The proposed increase in residential gross floor area is not in conformity with this policy.

Location of Long-Term Bicycle Parking Spaces Variance (By-law 569-2013 variance 5)

Long-term bicycle parking spaces are proposed within Building 'B' with 49 residential long-term spaces provided on the ground floor, 163 spaces provided on parking level 1, and 101 spaces provided on parking level 2. Long-term bicycle parking spaces are permitted on the ground floor, the second storey, the first underground parking level, and levels below the first underground parking level once at least 50% of the area of the first underground parking level is occupied by bicycle parking spaces. In this case, only 9% of the parking level 1 is occupied by bicycle parking spaces.

The purpose of this regulation is to provide for safety and ease of access for bicycle parking users. There is an outstanding comment from the November 2018 Site Plan comments requesting confirmation of how the bicycle parking areas will be accessed.

Until such time as information regarding the design and use of the bicycle parking area has been provided, reviewed and accepted by City Staff, the requested variance cannot be supported by City Planning.

CONTACT

Katherine Bailey, Planner
Community Planning, Toronto and East York District
416-397-1761
katherine.bailey@toronto.ca

SIGNATURE

A handwritten signature in black ink, appearing to read "David Sit for", written over a horizontal line.

Signed by David Sit, Manager, Community Planning on behalf of
Lynda H. Macdonald, MCIP, RPP, OALA
Director, Community Planning, Toronto and East York District

Copy: Councillor Mike Layton, Ward 11
Tommy Chang, Agent