

Leaside Residents Association Incorporated
1601 Bayview Avenue
P.O. Box 43582, Toronto, Ontario M4G 3B0

December 4, 2024

Toronto City Hall
100 Queen Street West
Toronto, ON M5H 2N2
Attention: Nancy Martins

RE: PH17.12 - Minor Variances for Additional Height and Density on Related Zoning By-law Amendments

Dear Chair Councillor Gord Perks, and Members of Planning and Housing Committee,

The above noted report responds to Councilor Saxe's motion, which requested staff to report back on whether the City should adopt a by-law under Section 45 of the *Planning Act* to establish criteria that would limit what qualifies as a minor variance when applicants request additional height and density for large scale multi-storey development proposals that already hold site-specific zoning permissions as an outcome of a private application for a zoning by-law amendment (ZBA).

The report examines applications before and after Bill 23 (2022), which repealed the two-year prohibition on making a minor variance application, following approval of site-specific ZBA. The number of such applications went from 24 to 65. However the report states that the existing four tests under the *Planning Act* work well to determine the appropriateness of a minor variance for increased height and density related to a zoning by-law amendment. Staff believe a more impactful change would be for "more consistent, and predictable commenting practices on these types of applications by Community Planning, which staff will implement administratively as a best practice going forward".

From a Ward 15 perspective, where the number of such applications went from 0 to 7, it appears the report understates the issue, and the implications of such applications.

- 1) The vast majority of CofA applications involve small scale buildings i.e., renovations and new builds of mostly single family homes, whereas requests for additional height and density for large scale multi-storey developments involve impacts and implications of orders of magnitude greater. For example 1837-45 Bayview (see attachment) was approved by the North York CofA for

25 storeys, an additional 3 storeys above the height approved by City Council and the OLT. The 3 storeys amounts to over 30 units, or about the same amount of new density as is proposed for mid-rise buildings on Avenues. Is this “minor”? The implications of the density increase deserves a much more serious assessment than the few minutes that the CofA normally spends on such applications in going through their 30 application agendas . .

- 2) In an unknown (but believed to be significant) number of cases as in the 1837 Bayview case, the Committee of Adjustment application is further to a mediation process with other parties, and reaching a settlement with residents, and City Planning. This suggests bad faith bargaining on the part of the developer, and an abuse of the Committee of Adjustment process. Unfortunately the staff report does not investigate, or even mention, this important point
- 3) Again in 1837-46 Bayview. City Planning engaged in negotiation with the applicant, apparently to make it acceptable, such that no objection was made by staff to the amended application. (And so it was approved)
- 4) Lastly, the appropriateness of the Committee of Adjustment to vary a decision made by the Ontario Land Tribunal, a higher order tribunal, and approved by City Council is questionable.

As such we recommend that

- City Planning report back to Planning and Housing Committee on the review practices to be instituted to eliminate the process and policy concerns regarding requests for additional height and density for large scale multi-storey developments

Respectfully submitted,

Geoff Kettel
Co-President (with Carol Burtin Fripp)

Cc: Councillor Rachel Chernos Lin
Councillor Dianne Saxe
Kyle Knoeck, Interim Chief Planner and Executive Director, City Planning Division
Carolyn Samuel, Director (Acting), Zoning and Secretary-Treasurer, Committee of Adjustment, City Planning Division
Victoria Malloy, Project Coordinator, Committee of Adjustment, City Planning Division,

Attachment: Leaside Residents Association Request for Investigation by Ombudsman Toronto Re 1837-1845 Bayview Avenue

The Federation of North Toronto Residents' Associations (FoNTRA) is a non-profit, volunteer organization comprised of over 30 member organizations. Its members, all residents' associations, include at least 250,000 Toronto residents within their boundaries. The residents' associations that make up FoNTRA believe that Ontario and Toronto can and should achieve better development. Its central issue is not *whether* Toronto will grow, but *how*. FoNTRA believes that sustainable urban regions are characterized by environmental balance, fiscal viability, infrastructure investment and social renewal.

**Leaside Residents Association
Request for Investigation by Ombudsman Toronto
Re 1837-1845 Bayview Avenue**

Summary of Application

A development application was made to the City of Toronto for a high-rise mixed-use building at 1837-1845 Bayview Ave., at the southeast corner of Bayview Avenue and Broadway Avenue in Leaside (North York District) in 2021, and appealed by the applicant (The GUPTA Group) to the Ontario Land Tribunal (OLT).

The Parties entered mediation and a settlement was reached between the applicant , the City of Toronto, and Bayview Broadway Better Planning Inc. (BBBPI) residents group in July 2023, and approved by the Ontario Land Tribunal. City Council approved the settlement on April 11, 2024. A key provision of the Ontario Land Tribunal settlement was to reduce the height of the building to 22 storeys from the originally proposed 25 storeys.

On April 29, 2024 the developer submitted a Committee of Adjustment application for a “minor variance” – for an additional 5 storeys (to 27 storeys) above the OLT and City approved mediated settlement.

On June 24, 2024, an amended application was submitted for an additional 3 storeys, (to 25 storeys) - the same number as the original 2021 submission. The developer indicated that this amendment was made “further to discussions with City Planning”.

On July 18, 2024, the North York Committee of Adjustment (NYCofA) approved the amended application. The Committee received 72 individual letters (not form letters or petitions) of opposition, and a dozen members of the public spoke at the hearing (held in person and virtually) in opposition.

On July 25, 2024 the NY CofA decision was posted/mailed, with a last date of appeal of August 7, 2024. Given that residents no longer have a right of appeal of the CofA decision (further to Bill 23), and Ward 15 had no sitting councillor at the time (due to the passing of Councillor Jaye Robinson), residents made efforts to contact City Council members to request that Council approve making an appeal; however these were unsuccessful.

On August 12, 2024 the Leaside Residents Assn (LRA) Initial request for investigation to Ombudsman Toronto (OT), and received a response from Ombudsman Toronto that LRA must “allow the City a reasonable opportunity to resolve the complaint through its own complaint process”.

Subsequently the LRA requested copies of the Minutes of the July 18 NY CofA hearing (these are not posted on the City website), and these were made available. These were examined and to the LRA's surprise there was mention of letters of support for the application whereas the LRA had already documented and noted in its deputation to the CofA hearing that there were no letters of support posted on the Application Information Centre. The LRA submitted documents to the Zoning and Committee of Adjustment Branch regarding this anomaly.

The LRA submitted a Letter of Complaint to City Planning/Development Review as directed by the Ombudsman Toronto, who provided an official response on October 9, 2024. This response was comprehensive, and included admitting the errors in regard to the Minutes, which they stated were officially corrected by the NY CofA. However the LRA feels that this whole process involving the application for minor variances deserves investigation by the Ombudsman Toronto in its mandate to "hold the City of Toronto accountable to the people it serves" We also believe that it may reflect "systemic concerns of serious unfairness by the City government", in how it deal with development applications, especially in light of the elimination of right of appeal of decisions of the Committee of Adjustment further to Bill 23.

Issues

A. Process

- (a) The applicant (GUPTA) making a Committee of Adjustment application further to engaging in a mediation process with other parties, and reaching a settlement with Bayview Broadway Better Planning Inc. (BBBPI), and City Planning suggests bad faith bargaining on the part of the developer, and an abuse of the Committee of Adjustment process.
- (b) City Planning/Development Review Division upon receipt of the Committee of Adjustment application, and engage in negotiation with the applicant apparently to make it acceptable, such that no objection was made by staff to the amended application
- (c) The appropriateness of the Committee of Adjustment to vary a decision made by the Ontario Land Tribunal, a higher order tribunal and approved by City Council.

B. Policy

The failure of the application to meet the established planning tests for variances to be considered as "minor variances".

To approve variances applied for, the Committee of Adjustment must be satisfied that:

- the variance requested is minor;
- the proposal is desirable for the appropriate development or use of the land and/or building;
- the general intent and purpose of the City's Zoning Code and/or By-law are maintained; and
- the general intent and purpose of the Official Plan are maintained.

With respect to Test 1 - the variances being “minor”.

The additional number of units over the number approved by the OLT and the City of Toronto is 33 units (25 storeys).

These unit increases above permitted are similar in amount to the number of units expected from a 6 storey building on a Major Street (as recently approved by City Council) –hardly “minor”!!

As such the application fails Test 1- the variance is NOT “minor”.

For the Committee to accept a 25 storey height for the subject proposal would run counter to the approved Official Plan policies. If 20-35 35 storeys is accepted as of right anywhere within the Bayview Focus Area, the result would be excessive density, plus situations where tall buildings are immediately abutting low density development with minimal transition.

As such the Committee of Adjustment application for 25 storeys fails the other three Planning Tests:

- the proposal is not desirable for the appropriate development or use of the land and/or building
- does not maintain the general intent and purpose of the Official Plan and
- does not maintain the general intent and purpose of the Zoning Bylaw.

What do you hope will happen to your complaint?

- A. City Council approve appeal of the NY CofA decision to the TLAB
However we acknowledge this action is not feasible – as noted Ward 15 did not have a sitting councillor at the time of the period for appeal to TLAB.**
- B. The City make application to Divisional Court for judicial review of CofA decision. (Note City Planning /Development Review comment that this is not feasible)**
- C. City Council provide direction to City Planning/Development Review to reconsider its process and policy with respect to Committee of Adjustment and tall building related applications**
- D. City Council direction to City Planning/Development Review to respect the mediated settlement agreements reached involving development applications with the Parties i.e. residents, resident associations, and the City.**
- E. City Council express its strong objection to the Ontario Government regarding the elimination of appeal rights for residents and resident associations to the TLAB (Bill 23) and the OLT (Bill 185)**

Geoff Kettel,
Co-President
Leaside Residents Association
November 13, 2024

Appendix: Chronology of Application

November 4, 2021 Initial application (25 storeys)

February 23, 2022 – ZBA application – Preliminary Report - NYCC

November 29, 2022 – ZBA and SPA Request for Direction – NYCC

December 14, 2022 – as above - City Council

July 19,20, 2023 OLT Hearing – Report for Direction - City Council accepted the without prejudice offer to settle dated July 4, 2023

November 15, 2023 Ontario Land Tribunal decision - approved settlement (22 storeys)

April 11, 2024 City Council approved settlement offer (25 storeys)

April 19, 2024 Application to North York Committee of Adjustment (5 storeys to 27 storeys)

June 24, 2024 Amended application to NY CofA (3 storeys to 25 storeys)

July 18, 2024 NY CofA Hearing (3 storeys to 25 storeys approved)

August 12, 2024 Leaside Residents Assn (LRA) Initial request for investigation to Ombudsman Toronto (OT)

August 2, 2024 Response from Ombudsman Toronto – LRA must “allow the City a reasonable opportunity to resolve the complaint through its own complaint process”

August 9 2024 LRA Letter of Complaint to City Planning/Development Review re CofA Hearing

September 4, 2024 Further to Letter fo Complaint LRA submitted additional documents to City Planning/Development Review re recorded Minutes of July 18 NY CofA Hearing

October 9, 2024 City Planning/Development Review official response to Letter of Complaint

November 13, 2024 LRA submitted formal request for investigation to Ombudsman Toronto (OT)