

DECISION AND ORDER

Decision Issue Date Monday, May 28, 2018

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): HILTIN HILLS DEVELOPMENT INC

Applicant: TRIBUTE (MUTUAL STREET) LIMITED

Property Address/Description: 2135 SHEPPARD AVE E

Committee of Adjustment Case File Number: 17 226392 NNY 33 MV (A0800/17NY)

TLAB Case File Number: **17 268352 S45 33 TLAB**

Hearing date: Monday, April 30, 2018

DECISION DELIVERED BY G. BURTON

INTRODUCTION

This was an appeal to the Toronto Local Appeal Body ("TLAB") by the owner and developer of a proposed residential high rise structure at 2135 Sheppard Ave. E. It also has frontage at 299 Yorkland Boulevard in the former North York. The appeal was from a Committee of Adjustment ("COA") decision that approved variances for a reduction in parking spaces and added a definition to the North York By-law (the Old By-law), but refused to approve an increase in the number of units on the subject site. The new comprehensive By-law No. 569-2013 does not apply to the subject property. The parties informed the panel that they had reached a settlement of the issues, but required conditions to be applied to any approval.

BACKGROUND

Some years ago the owners of the subject site, Hiltin Hills Developments Inc., had sought an Official Plan ("OP") amendment and rezoning(s) in support of a multi-phase mixed-use development. These were approved by the Ontario Municipal Board ("OMB") in 2014. The OMB's Final Order was issued on November 8, 2016, and the amending by-law was numbered 1182-2016(OMB). The rezoning permitted a standalone

commercial retail building and a residential development consisting of three residential towers, with heights of 26-, 34- and 43-stories. These towers were to have a total of 1,100 units and a maximum gross floor area of 83,500 square metres (including up to 18,750 square metres of non-residential gross floor area.)

In August 2017 the applicant sought three minor variances from the COA for the residential component, Phases 1 and 2, that would:

- increase the total unit count from 1,100 units to 1,200 units;
- reduce the total resident parking space requirement from 928 parking spaces to 627, including 20 car-share parking spaces (subsequently reduced to 3); and to
- establish the definition of “car-share parking space” and “car-share motor vehicle” in the applicable Zoning By-law 7625 (as they did not previously appear there.)

The specific variances sought were only to Bylaw 7625, as amended by Site Specific By-law 1182-2016(OMB). These were:

1. Section 64.23(142)(j), By-law No. 7625 as amended

The number of dwelling units shall not exceed 1,100.

The proposed number of dwelling units is 1,200.

2. Section 64.23(142)(t) of By-law No. 7625 as amended

The minimum required number of resident parking spaces is 928.

The proposed number of parking spaces is **644** for residents and **3** car-share parking spaces.

3. Section 2, Bylaw No. 7625 as amended

The Zoning Bylaw does not define "car-share parking space" and "car-share motor vehicle".

A car-share parking space will mean a parking space used exclusively for the parking of a car-share motor vehicle. Further, a car-share motor vehicle will mean a motor vehicle available for short term rental, including an option for hourly rental, for the use of at least the occupants of a building erected on the lot.

The COA approved Variances 2 (the reduced number of spaces lowered by the Transportation staff to 3, rather than 20 spaces) and 3, the definitions, but refused the increase in the number of dwelling units.

MATTERS IN ISSUE

Where there is a settlement by the parties, the TLAB must still hear evidence on the variances to reach its conclusions on the merits, as the appeal is a hearing *de novo*.

The only variance that was required to be addressed in any detail was the one refused by the COA, the increase in the number of units by 100, from 1,100 to 1,200. This increase would cause a reevaluation of the number of parking spaces required, as seen in Variance 2.

JURISDICTION

For variance appeals, the TLAB must ensure that the variances sought meet the tests in subsection 45(1) of the Planning Act (the “Act”). This involves a reconsideration of the variances considered by the Committee in the physical and planning context. The

subsection requires a conclusion that each of the variances, individually and cumulatively:

- is desirable for the appropriate development or use of the land, building or structure;
- maintains the general intent and purpose of the official plan;
- maintains the general intent and purpose of the zoning by-law; and
- is minor.

These are usually expressed as the “four tests”, and all must be satisfied for each variance.

In addition the TLAB must have regard to matters of provincial interest as set out in section 2 of the Act, and the variances must be consistent with provincial policy statements and conform with provincial plans (s. 3 of the Act). A decision of the TLAB must therefore be consistent with the 2014 Provincial Policy Statement (‘PPS’) and conform to (or not conflict with) any provincial plan such as the Growth Plan for the Greater Golden Horseshoe (‘Growth Plan’) for the subject area.

Under s. 2.1 (1) of the Act, TLAB is also to have regard for the earlier Committee decision and the materials that were before that body.

EVIDENCE

The owner’s planning evidence was provided by Mr. David Huynh, qualified as an expert due to his long and varied experience. He provided the context for the site, supplementing his Witness Statement (Exhibit 1).

The area is located east of Highway 404, west of Victoria Park Avenue, south of Old Sheppard Avenue and north of Highway 401. His study area was more limited to all of Sheppard Avenue East between Highway 404 and Victoria Park and all of Consumers Road and Yorkland Boulevard immediately adjacent to the Subject Site.

The subject site is on the southwest corner of the Sheppard Avenue East and Consumers Road intersection, on the south side of Sheppard Avenue East, west side of Consumers Road and the north side of Yorkland Boulevard. The whole of the site comprises 2.09 ha, with 88 m frontage on Sheppard, 106 m on Consumers Rd. and 111 m on Yorkland. Phase 1 of the project is under construction. The present application would provide for Phase 2, a residential tower of up to 43 storeys.

The site is 1.1 km east of eastern terminus of the Sheppard subway line at Don Mills Road, but lies along the planned Sheppard East LRT line. A station for the LRT line will be located immediately adjacent to the site at Consumers Road. There are many bus routes on the principal streets.

The site is included in the Consumers Road Business Park. As Mr. Huynh set out in his statement:

“While the majority of the Consumers Road Business Park has retained

characteristic uses and built form, the south side of Sheppard Avenue within the precinct is in the midst of undergoing a transformation into a mixed-use corridor. This transformation has seen the redevelopment of a number of underutilized sites for mixed-use development including the Heron's Hill redevelopment (2025-2045 Sheppard Avenue East) located west of the Subject Site and the more recently approved and under construction, Atria IV development (2205 Sheppard Avenue East) to the east of the Subject Site." (Ex. 1, para. 26)

The rationale was set out in the Final Report for the ConsumersNext Transportation Master Plan (the "TMP", May 2017, in Exhibit 2). It stated, "Following its recent Municipal Comprehensive Review of Toronto's employment lands policies, the City adopted land use changes through Official Plan Amendment 231 (OPA 231) for the lands bordering the Consumers Road Business Park. Lands fronting on the south side of Sheppard Avenue East and the west side of Victoria Park Avenue were redesignated from *Employment Areas* to *Mixed Use Areas* allowing additional residential and commercial development."

The TMP Final Report states the following :

"Recent changes to permitted uses within the Consumers Road Business Park and areas around the Sheppard Avenue East and Victoria Park Avenue intersection signal the potential for an increase in development, including significant new residential and employment intensification. To manage the growth, support employment uses and direct investments into broader community improvements, the City of Toronto is undertaking a study of the area called ConsumersNext."

Further: "The Consumers Road Business Park and the surrounding area were planned for cars. The roads are wide with complex intersections, the street network is disconnected, land parcels are large with a significant portion of land dedicated to surface parking, and walking distances are longer between destinations and transit stops....These conditions create a challenging environment for pedestrians, cyclists, and transit users, and only further encourage people to drive their cars despite traffic delays, congestion, and safety issues...."

"ConsumersNext and the planned Sheppard LRT (light rail transit) represent significant opportunities to redevelop the Business Park and surrounding area to promote safe and accessible transportation choices for all users and age groups by:

- Promoting shorter trips between places of residence and places of work;
 - Creating world class infrastructure, including streets that are seen as both a link and a place;
 - Promoting an active community and lifestyle;
 - Improving connections to, from and within the business park; and
 - Providing convenient and safe connections with existing and future transit services."
- (Exhibit 2, see ConsumersNext Final Report, May 2017.)

Thus when the present application was made to the COA requesting an increase in overall number of units from 1100 to 1200, a reduction in parking spaces from 928 to

644, and (only) three car share spaces, and definitions to address car sharing, the City staff saw an opportunity to further the implementation of the TMP in this area.

Mr. Huynh explained the rationale for the variances. The owners realized that smaller units were in demand in this area. This change in internal design led to a reduction in the number of residential parking spaces, on the formula in force in the site specific By-law. There would be no changes to the heights, the envelope or the gross floor area, and thus no built form impact on others. Transportation and Planning staff had no objections to the application, but merely wished for conditions to be applied to ensure gains for public transit rather than automobile use. A reduction in parking spaces would assist in implementing the TMP promoted by ConsumersNext, as described below.

This site is located in a “priority transit corridor”, and in a “major transit station area” as set out in the Growth Plan, as well as on an Avenue, as is the preferred location for development in the OP. It is within walking distance of the future Consumers Road LRT station/stop, and will contribute to achieving minimum density targets in this area. The subject site is well-positioned to support existing and planned active transportation networks.

Therefore in Mr. Huynh’s opinion, the proposal conforms to the Growth Plan, is consistent with the PPS, and is within the intent of the OP (para. 34 and 35 of Exhibit 1). As well, it meets the intent of the Zoning By-law respecting enhancement of the employment uses, and encouragement of public transit. The increase in the number of units would have no impact on the rest of the development or the built form, and is therefore minor. It is desirable as it will enhance intensification where there are existing and planned transit services.

In the explanation before Policy 2.2 of the OP it states: “... future growth within Toronto will be steered to areas which are well served by transit, the existing road network and which have a number of properties with redevelopment potential. Generally, the growth areas are locations where good transit access can be provided along bus and streetcar routes and at rapid transit stations. Areas that can best accommodate this growth are shown on Map 2: Downtown , including the Central Waterfront , the Centres , the Avenues and the Employment Areas.”

Policy 2.4.4 was met, he opined: “Require new development on lands adjacent to existing or planned transportation corridors and facilities to be compatible with, and supportive of, the long-term purposes of the corridors and facilities and be designed to avoid, mitigate or minimize negative impacts on and from the transportation corridors and facilities.”

Mr. Guy Matthew, a well qualified Senior Planner in the North York District of the City, provided his Expert Witness Statement, in which he concurred with the conclusion that the proposed variances met the applicable tests.

This development would reduce auto dependency, aided by the reduction in parking and other measures, as was explained in the evidence of Mr. Stephen Krossy. He was confirmed as an expert in transportation planning and construction. His November 7,

2017 Report was filed as Exhibit 3. He set the context of the road network here, with three streets surrounding the subject property. Sheppard is a major east-west arterial with 7 lanes, Consumers is to the east, a collector from 2 to 5 lanes, and Yorkland to the south, is a 2-lane local road. There would be several access points for traffic to and from the complex, the most important being a new north-south public street along the west side of the site, off Yorkland. This would be a cul de sac in the short term, but provide right-turn access eventually to Sheppard East. There would be two driveways providing access points to this street. The City plans improvements to the existing public street network, such as widening of Yorkland to accommodate turn lanes, the signalization of the Consumers and Yorkland intersection, and possible median extensions on Sheppard to reinforce the right turn only plan for the area.

Mr. Krossy's firm, BA Group Transportation Consultants, was involved in the initial designs of this project, producing a Report in 2012 on the Urban Transportation considerations. This was followed by updates, and the proposals were finally approved by the OMB in By-law 1182-2016. This applied the parking standards of the City's comprehensive 2013 By-law to the site, even though it did not otherwise. As mentioned, only the North York By-law has application here. The 2013 By-law included Policy Area 3 parking standards for Phases 1 and 2 (residential only.)

The development of the ConsumersNext initiative was City-wide, but the important part here was the transportation portion that recommended an implementation schedule for projects. In a Parking Study Update dated November 7, 2017, Mr. Krossy outlined the background, at p. 1:

"The Site is located within the geographical boundaries set for a recent study on the Consumers Road Business Park. As part of a larger scale comprehensive planning study, a transportation master plan (TMP) process was undertaken to address the existing travel patterns, transportation challenges, and opportunities within the area."

This TMP provided a summary and timetable of recommended projects to be implemented. At page 161 of the TMP (found in Ex. 2), ID #s 29- 34 and 37-38, under the heading Table 11-6: Cycling Safety and Infrastructure Project Implementation, high priority is given to pre-LRT new cycling facilities on Sheppard Avenue East...Victoria Park Ave, Consumers Road, Yorkland and Settlers Road. # 37/38 promotes a "New network of Bike share spaces, funding, operation and maintenance. This was to be a shared responsibility of the City/ TPA/ Metrolinx/ and the landowner.

At p. 110 of the TMP, the City's projected modal share assumptions are set out – vehicle, transit, walking and cycling. This is relevant here as there is a 20% decrease projected (86% today to 65% in future) for vehicle modal share. This is the time for focus on transit and other improvements to facilitate this change. In the present application, the intent of the By-law's requirements for residential parking can be met.

11.1.4 of the TMP sets out the parking space formulas applying to various sections of the City. The explanation is found on p. 155: "The City's Zoning By-Law identifies Policy Areas which reflect the urban structure in terms of transit availability and population density. The downtown core of the City is mostly Policy Area 1, meaning that

it has the lowest parking rates and therefore also the smallest parking supply requirements relative to the rest of the City. Parking rates are increased incrementally for Policy Area 2, 3, 4, and are the highest for 'all other areas of the City'. Policy Areas 1 to 4 also dictate maximum parking rates, since oversupplying parking spaces can encourage a higher vehicle modal split....The Consumers Road Business Park currently does not fall under a specific Policy Area, and thus falls under 'all other areas of the City' as defined by the City Zoning By-law...."

At p. 156 it states: "At a minimum it is recommended that the Mixed Use Areas as defined in OPA 231 be amended to fall under Policy Area 4. Furthermore, site specific reductions in parking space rates may also require a Zoning By-law Amendment (ZBA) to reduce the amount of parking on-site, but it is recommended that these site specific reductions be accompanied with TDM and innovative mobility checklist than can support the preferred TMP Solution."

The present application has proposed to do just as this recommendation requires. It seeks a minor variance (and not a zoning amendment, which would have a similar result) for a reduced number of parking spaces, although the number of units will increase. The justification is that the conditions required by the City would have the desired effect of implementing the "innovative mobility checklist" in furtherance of the TMP for this area. They would encourage non-auto commuting, and discourage parking of private autos.

Mr. Krossy testified as to how the variances contributed to this goal.

1. The reduction in vehicle parking is consistent with evolving provincial policies. The Five-Year Climate Action Plan recommended elimination of parking minimums in municipal by-laws, especially along transit corridors, in favour of other strategies.
2. The variances are consistent with the current City practice of granting relief from by-law parking requirements for new residential buildings. Many examples are set out at page 9 of the November 7, 2017 update (see # 5 below.)
3. There is no risk to the City in reducing the minimums. It would not lead to increased demand for on street parking, as the City controls the supply of on street parking by a permit system.
4. Residents will be aware of the mobility alternatives, and can choose to live without a vehicle if they desire.
5. It is good transportation planning to discourage private parking when alternatives exist. Here, there are good options and there will be more in future. In August 2017 (updated in November) a targeted Transportation Demand Management Plan ("TDMP") was proposed for the site, to include physical and policy measures to help discourage peak period commuting, especially by single vehicles.

The update followed consultation with City staff, who recommended a redistribution of parking within the site. There would be 644 resident spaces (0.54 per unit), 3 car share

spaces, and 120 visitor spaces. The City staff found that the proposed 20 car share spaces was an unrealistically high number. 17 of these could be redistributed back into conventional resident spaces.

The amended TDMP would provide a number of measures for those who do not wish to have a private vehicle, or who could be dissuaded from this. These would be conditions to the variances which the City has drafted, and the owners have agreed to their imposition:

- 1) There would be an arrangement for joining Smart Commute North Toronto, Vaughan. This operates a free shuttle service along Sheppard Avenue East, Consumers Road, and Yorkland Boulevard at morning and afternoon peak periods on weekdays, as well as during the lunch hour. It ferries commuters to and from the Don Mills subway station. It would provide motivation to commuters to abandon their reliance on personal vehicles for these trips. If no arrangement can be made, the owner of the subject site may provide a similar private shuttle service for the project.
- 2) Reduction in parking spaces has proven to be an effective method of traffic management.
- 3) Carpool parking is typically provided on sites with non-residential uses to encourage employees to commute together. This will not work in this context, so alternatives, such as the provision of car-share parking vehicles and spaces are considered. These will serve to reduce reliance on the private automobile and therefore parking demands. The owner has agreed to enter a formal agreement with a car-share provider to utilize the proposed dedicated car-share parking spaces.
- 4) Bicycle Parking- Toronto Green Standards Tier 2 bicycle parking requirements will be met. This higher number will be marketed as such, so choices may be made to forego a private car.
- 5) Community Marketing Outreach - Residents will receive information about their transportation options including pedestrian, cycling and transit routes.
- 6) PRESTO Cards -A pre-paid PRESTO card, valued at \$200, will be given to first-time residents of each dwelling unit on the Site; this is a one-time provision. This will help to encourage transit use and complement the other TDM initiatives proposed.
- 7) Transit Information Screens -Transit Screens in the Lobbies of the Phase 1 and Phase 2 residential towers, to provide such information as the arrival time of the next bus.
- 8) Bike Share – the owner will fund four Toronto Bike Share stations. As well, contributions would be given to the City to implement cycling infrastructure such as bike lanes on Consumers Road.

In Mr. Krossy's professional opinion, the proposed number of parking spaces for each use is appropriate. Respecting vehicular traffic to and from the project as amended, he

performed a study at a nearby building. In the result and from his experience, he calculated that from an extra 100 units, only 20 or 25 cars would go out and in during peak periods. This amounted to only 5 an hour, or every 12 minutes, and would have negligible impact on the traffic in the area. He is more than satisfied that the traffic circulation at the convergence of the three streets here would operate well.

Mr. Muskat confirmed that the City was now satisfied with the proposed variances. He attended the hearing to ensure that the proposed conditions are attached to any approval.

ANALYSIS, FINDINGS, REASONS

I am satisfied on the evidence of both professional witnesses that the variances sought are reasonable, and meet the tests in both section 45 of the Act, and all of the applicable provincial policies and plans as set out above. On the issue of impact, part of the test of "minor", Mr. Huynh was of the opinion that because the requested variances do not alter the approved building heights or envelopes of the proposed development, they maintain the urban design objectives developed through the planning approvals process. In particular, the proposed buildings are within the angular plane and sun/shadow parameters which guided the preparation of the applicable zoning heights and envelopes. Further, there are no variances to total gross floor area, recreational amenity areas, bicycle parking or loading requirements.

The City would impose several conditions on any approval, and the owner has agreed to meet them.

DECISION AND ORDER

The appeal is allowed.

The variances from the North York By-law 7625 as amended by By-law 1182-2016 as found in Attachment 1 are approved, subject to the conditions found in Attachment 2.

ATTACHMENT 1 - VARIANCES

1. Section 64.23(142)(j), By-law No. 7625 as amended

The number of dwelling units shall not exceed 1,100.

The proposed number of dwelling units is 1,200.

2. Section 64.23(142)(t) of By-law No. 7625 as amended

The minimum required number of resident parking spaces is 928.

The proposed number of parking spaces is **644** for residents and **3** car-share parking spaces.

3. Section 2, Bylaw No. 7625 as amended

The Zoning Bylaw does not define "car-share parking space" and "car-share motor vehicle".

A car-share parking space will mean a parking space used exclusively for the parking of a car-share motor vehicle. Further, a car-share motor vehicle will mean a motor vehicle available for short term rental, including an option for hourly rental, for the use of at least the occupants of a building erected on the lot.

ATTACHMENT 2 - CONDITIONS

Prior to the issuance of any above grade building permit, or at a later date at the discretion of the Chief Planner and Executive Director, City Planning, the owner shall enter into and register, an agreement pursuant to Section 45(9) of the *Planning Act*, satisfactory to the City Solicitor in consultation with City Planning Staff, securing:

a. Prior to occupancy of the Phase 1 building of the development:

- i. Provide a cash contribution of \$100,000 to the City for the provision of two bike share stations.
- ii. Enter into a formal agreement with Smart Commute North Toronto, Vaughan that Smart Commute will add a stop on the site for service to and from Don Mills subway station. Alternatively, the applicant may operate a private shuttle from the site to and from Don Mills subway station.
- iii. Enter into a formal agreement with a car-share provider to utilize the proposed dedicated car-share spaces. These spaces are to be secured for the long term and have exclusive use on the site.
- iv. Provide a Presto card to each unit (310 total) with \$200 pre-loaded on it.
- v. Amend the necessary drawings to secure a Transit Screen in the lobby of the Phase 1 building.
- vi. Amend the necessary drawings to meet the Tier 2 requirements of the Toronto Green Standard for resident and visitor bicycle parking.
- vii. Provide a cash contribution of \$39,000 to the City which is to be allocated to any one or more of the following uses:
 1. Towards the City's Capital Revolving Fund for Affordable Housing for the purpose of maintaining and constructing affordable rental housing units in Ward 33, to the satisfaction of the Chief Planner and Executive Director, City Planning, in consultation with the local councillor.
 2. Towards capital improvements to Toronto Community Housing Corporation properties in Ward 33.

b. Prior to occupancy of the second residential building of the development:

- i. Provide a cash contribution of \$100,000 to the City for the provision of two bike share stations.
- ii. Provide a Presto card to each unit (890 total) with \$200 pre-loaded on it.

- iii. Provide a financial contribution in the amount of \$300,000 to the City of Toronto for the construction of grade related cycling infrastructure.
 - iv. Amend the necessary drawings to secure a Transit Screen in the lobby of the second residential building of the development.
 - v. Amend the necessary drawings to meet the Tier 2 requirements of the Toronto Green Standard for bicycle parking.
 - vi. Provide a cash contribution of \$111,000 to the City for the provision of new affordable rental housing in Ward 33, to be directed to the Capital Revolving Fund for Affordable Housing.
- c. All cash amounts shall be indexed upwardly in accordance with the Statistics Canada Residential Construction Price Index for Toronto for the period from the date of the execution of the Section 45(9) Agreement to the date of payment.**

X 

G. Burton

Panel Chair, Toronto Local Appeal Body