

DECISION AND ORDER

Decision Issue Date: Friday, September 14, 2018

PROCEEDING COMMENCED UNDER Section 53, subsection 53(19), and Section 45(12), subsection 45(1) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): CITY OF TORONTO

Applicant: KIM KOVAR

Property Address/Description: 16 YORK ST

Committee of Adjustment Case File: 17 267144 STE 20 MV

TLAB Case File Number: **18 159358 S45 20 TLAB**

Motion Hearing date: Thursday, August 30, 2018

DECISION DELIVERED BY S. Makuch

APPEARANCES

Name	Role	Representative
KIM KOVAR	Applicant	
CITY OF TORONTO	Appellant (CITY)	MATTHEW SCHUMAN
MLADEN KUKIC	Expert Witness	
OPB (16 YORK) INC.	Party (TLAB)	
BLOCK 9A DEVELOPMENTS LTD	Party (TLAB)	TOM HALINSKI
JOSHUA BUTCHER	Expert Witness	

INTRODUCTION

This is an appeal, by the City, of two minor variances to Bylaw 494-2009, granted by the Committee of Adjustment. Both variances permitted the reduction of the amount of street related retail uses and the reduction of the total width of commercial space

fronting on the street in a 32 storey commercial office building at York St. and Bremner Blvd.

BACKGROUND

The City and the applicant/ owner reached an agreement regarding the application and the appeal hearing became a settlement hearing.

MATTERS IN ISSUE

There were no matters in issue except as in any settlement whether the variances met the four tests and conformed with relevant provincial policy.

JURISDICTION

A decision of the Toronto Local Appeal Body ('TLAB') must be consistent with the 2014 Provincial Policy Statement ('PPS') and conform to the Growth Plan of the Greater Golden Horseshoe for the subject area ('Growth Plan').

In considering the applications for variances from the Zoning By-laws, the TLAB Panel must be satisfied that the applications meet all of the four tests under s. 45(1) of the Act. The tests are whether the variances:

- maintain the general intent and purpose of the Official Plan;
- maintain the general intent and purpose of the Zoning By-laws;
- are desirable for the appropriate development or use of the land; and
- are minor.

EVIDENCE

Joshua Butcher was qualified to give expert evidence on behalf of the applicant. His evidence was that the variances were consistent with the PPS and conformed with the Growth plan. Moreover, the variances met the four tests of the Planning Act. The detailed reasons for these conclusions are set out in his Expert Witness Statement filed by M. Miceli with TLAB on August 28, 2018. I accept his evidence, as set out in that statement and given orally. I understand that the variances are to facilitate the display of certain public art and to facilitate the location of a security desk. Moreover, I understand his evidence that the variances will not diminish the animation of the street, will have no adverse impact, will not diminish the planned function of the building or the street and will increase the security of the building. The applicant agrees with the City's proposed conditions as set out in Appendix 1.

ANALYSIS, FINDINGS, REASONS

I accept the uncontradicted evidence of Mr. Butcher as set out above and find that the four tests are met and that the variances meet the requirements related to provincial policies and documents. I also accept the evidence that the conditions requested by the City should be imposed.

DECISION AND ORDER

The appeal is allowed, and the variances set out in Appendix 1 are approved subject to the conditions set out in that Appendix

X 

S. Makuch
Panel Chair, Toronto Local Appeal

APPENDIX 1

Minor Variances

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

- Section 8, By-law 494-2009**
The maximum permitted non-residential gross floor area is 74,513 m², provided that street related retail and service uses shall occupy a minimum of 40% of the length of the building face as shown by the heavy line on Alternative Map I0.
The non-residential gross floor area of the building will be equal to 74,503 m²; and 33% (44 m) of the building face length on Parcel 3 will be street related retail and services.
- Section 16, By-law 494-2009**
The commercial space located on the main floor of a building on Parcel 3 shall have a minimum combined width of 40% of the building frontage on Bremner Boulevard.
The altered building will have the minimum combined width of 21% (15.9 m) of the building frontage on Bremner Boulevard.

Conditions

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Agreed Upon Conditions

- The Parties acknowledge that a public art plan, the "Phase Three of 16 York Street Public Art Plan prepared by Ben + Karen Mills, Public Art Management dated September 27, 2017" has been agreed to and secured in a section 16 agreement.
- The Owner agrees to install and maintain seating areas in the lobby of the Development on the Site generally in accordance with the ground floor plan by B+H Architects dated (August 29, 2018), or as may be agreed to by the parties from time to time. The location of such seating areas shall be subject to the installation of public art, pedestrian circulation, security desks and equipment and retail operations. Seating may be temporarily moved or removed at the owner's sole discretion to accommodate activities and events or to address any crowd management and security concerns.
- The Owner agrees to contribute Twenty-Five Thousand Dollars (\$25,000.00) to the Entertainment District Business Improvement Area for the purposes of streetscape and furniture improvements along Bremner Boulevard that are consistent with the City of Toronto's Urban Design Streetscape Manual for Bremner Blvd. (Lower Simcoe St. to Lake Shore Blvd. W.), the Toronto

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Entertainment District Master Plan., and the approved Site Plan drawings, including the Landscape Plan prepared by NAK Design Group, revised October 4, 2013.

4. The Owner agrees to enter into an agreement with the City under the authority of s. 45(9) of the Planning Act to secure the foregoing conditions.
5. The Parties agree that conditions 3 and 4 above shall be implemented by December 31, 2018, failing which the TLAB may be spoken to with respect to any order issued in this matter.