

## DECISION AND ORDER

**Decision Issue Date** Tuesday, September 24, 2019

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): DOWNING STREET (333 BERING AVE) INC

Applicant: DOWNING STREET (333 BERING AVE) INC

Property Address/Description: 333 BERING AVE

Committee of Adjustment Case File: 19 128123 WET 03 MV

**TLAB Case File Number: 19 160387 S45 03 TLAB**

**Hearing date:** Monday, September 16, 2019

**DECISION DELIVERED BY Ian James LORD**

### APPEARANCES

Name	Role	Solicitor
Downing Street Inc.	Appellant/Applicant/Owner	Brendan Ruddick
TJ Cieciura	Expert Witness	

### INTRODUCTION

This matter comes before the Toronto Local Appeal Body (TLAB) by way of appeal from the Etobicoke York Panel of the City of Toronto (City) Committee of Adjustment (COA).

The COA refused four variances sought for the purpose of legalizing and maintaining eight (8) office units in an existing building at 333 Bering Avenue (subject property) in the former City of Etobicoke.

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The matter was originally set for a Hearing earlier in the month, but was adjourned at the request of the Applicant/Appellant.

There are no other Parties or Participants registered for this appeal. The requisite filings had been made; Mr. Ruddick indicated he was standing-in as a replacement for Mr. Joblin, former counsel of record for the Applicant/Appellant.

## **BACKGROUND**

The COA record filed indicates that one of the variances sought, the recognition of twelve (12) parking spaces was considered and refused in 2012. There is no indication that an appeal was taken from that decision.

In 2018, the present Applicant acquired the subject property which, it is understood, was constructed in 2013 with the prior owner completing the building in the manner for which relief is now sought. A 'stop work' order had been issued and the subject property and its current application are for the purpose of recognizing that work, its completion and subsequent arrangements made with the City. The 'subsequent arrangements' include an agreement with the City to achieve angled boulevard parking permission for 10 vehicle spaces on the west side of Shawbridge Avenue, on lands partly on the subject property and partly on the municipal right-of-way.

The proposed angled parking has in fact been laid out, signed and marked on site and is in use pursuant to the agreement and license. Two (2) additional spaces, located entirely on the subject property parallel to Bering Avenue at its north building face complete the proposed request to recognize the twelve (12) spaces, whereas the City's By-law 569-2013 requires thirteen (13) spaces.

Despite the four (4) variances applied for, no new exterior building construction is proposed. The building footprint is to remain unaltered. The building itself is a modern and presentable edifice consisting of two stories and a partial third storey, recessed from the Shawbridge frontage.

## **MATTERS IN ISSUE**

The Applicant/Appellant wishes the recognition and maintained permission of eight (8) office spaces/units within the constructed building. The variances sought to permit this recognition relate to a floor space index excess (said to be derived from the third floor addition), the landscaped open space standards applicable, and parking space attributes and number.

Also raised are a number of 'errors' in the description of the variances derived in what was asserted to have occurred in the transposition between the Examiners Notice and the COA Notice and Decision record.

## **JURISDICTION**

### **Provincial Policy – S. 3**

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 for the Greater Golden Horseshoe for the subject area ('Growth Plan').

### **Minor Variance – S. 45(1)**

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**

I accepted that Mr. Cieciura would provide expert opinion evidence of a land use planning nature, as a qualified land use planner, a Registered Professional Planner and member of the Ontario Professional Planners Institute.

Mr. Cieciura was the only witness to give evidence and, as such, his opinions were uncontested. He supplied a consolidated 'Portfolio' of the filed documents, disclosed at the pre-hearing stage, paginated and compiled for ease of reference. This was entered as Exhibit 1, albeit filed September 16, 2019. It includes his witness statement dated July 29, 2019, which, in turn, makes reference to documents internal to the Portfolio.

At the outset, I indicated I had visited the subject property and familiarized myself with the surrounding area – a light industrial district of large, open and expansive lots, often with outdoor storage. A rail line parallels the east side of Shawbridge Avenue directly to the east of the subject property.

Both Mr. Ruddick and Mr. Cieciura pointed out several relevant evidentiary considerations: there are no changes proposed to the existing built form; no variances proposed for building height, number of stories or setbacks for the building; and, no neighbour or City objections had been lodged. At one point, City Planning Staff were said to have no objections; at another, that Staff supported the recognized and requested variances. The file does not reveal such commentary; however, an extensive Memorandum from the City's Transportation Services Department attests to the arrangement for the permission of licensed and angled boulevard parking and 'no objection' to the request to recognize the provision of twelve (12) parking spaces on-site to meet the proposed office use recognition.

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Transportation Services did suggest a condition that the Agreement must be kept in good standing, should the variances be approved.

It further referenced, without identification particulars, a 'site plan' about which more will be said later in these reasons.

Mr. Cieciora provided a Witness Statement and documentary record, all contained in Exhibit 1. The Witness Statement and oral evidence are to the effect that the variances sought, with the 'errors' revised, are appropriate and that all policy and applied aspects of the four tests are met.

As this evidence is uncontested, I make reference to only those aspects considered relevant in disposing of the matter. They include:

1. the factual assertion that provincial policy, the City Official Plan and the applicable zone category contemplate and specifically permit 'office' uses within employment areas and that there is no change of use or use conversion issue engaged. The site is designated 'Core Employment Area' in the City Official Plan and is zoned 'E 1.0', being Employment, with a density of one times lot area; there is 'no harm' being occasioned to the integrity of the employment area.
2. the additional Floor Space Index (FSI) recognition sought (from permitted 1 x to 1.2 times the area of the lot) is notionally in the third storey level, recessed and barely visible from adjacent streets and for which no height, setback or storey relief is sought; this is Variance 1 on **Appendix A**, being a list of the requested variances.
3. the issuance of a license to the Applicant/Appellant (Permit 5778) and signage for ten (10) angled boulevard parking spaces, together with the provision of two on-site parking spaces and a cash payment already made for the one (1) deficient space, satisfied the City Transportation Services concern for compliance with zoning parking standard requiring 13 spaces, generated on the floor space usage for offices. The older Etobicoke zoning standard, in generating a need for 45 spaces is, essentially, obsolete with the advent of the new Zoning standard which calculates 13 spaces based upon the office space utilization proposed to be recognized; this is Variance 4 on **Appendix A**, the list of variances sought.
4. without tandem parking, the configuration of the subject site realistically only permits a maximum of twelve (12) arguably on-site parking spaces;
5. a landscape plan identifies areas for soft landscaping improvements where none is now provided; however, relief is required from the soft landscaping standard occasioned by the provision and agreement and license for boulevard parking and proximity to the abutting street network, both along Shawbridge and Bering Avenues; no objection or comment was said to have been taken to the 'landscape plan', which contemplates, amongst other plantings, some removal of existing asphalt on the City boulevard and its replacement thereon by grass.
6. while nothing substantive arises from the transition errors in the COA Notice of Decision, there were five (5) errors noted as are corrected and shown in ***bold italics*** on **Appendix A**, being the list of variances sought.
7. The site plan (A-10), prepared by Kohn Architect is found at page 24 of Exhibit 1; the landscape plan at page 51. These plans assume Bering Avenue is the frontage and were said to have been before the COA and available in the pre-

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filed material. The landscape plan delimits the extent of the landscaping and therefore the extent of the relief required from the applicable by-law provisions respecting street adjacency and parking separation, Variances 2 and 3 in **Appendix A.**

In summary, Mr. Cieciura asserted consistency with provincial policy and conformity with the 2019 Growth Plan in that the application optimizes the use of an existing employment site for employment use purposes, while further improving the visual appearance of the site. He asserted conformity with the intent and purpose of the employment and zoning designations on the subject property. Further, that the variances, individually and collectively, were minor and desirable being devoid of adverse impact and small in scale - providing for desirable and improved building performance and efficiency.

## **ANALYSIS, FINDINGS, REASONS**

It is the practice of the TLAB to examine applications to 'recognize and maintain' buildings that have been constructed out of compliance with zoning regulations from the perspective as if the improvements do not exist. In this case, Variances 1 and 4, FSI and parking, fall primarily into this category of consideration.

From an FSI perspective, the increase from 1 to 1.2 times site area is relatively minor in scale and, on the evidence, absent any impact. I agree with Mr. Cieciura's opinion that the distribution of FSI is a relevant consideration and, in this circumstance, can notionally be attributed to the addition of third storey space. That space is setback and relatively obscure; it has received no adverse comment. It also presents a modern design element to the building of some interest and undoubtedly provides attractive space for the proposed use of offices, a permitted use. In that the FSI increment has no footprint impact and does not itself drive any other requested performance criteria variance, I agree with the opinion of the planner that it is appropriate to be considered and allowed. It furthers the useability of the building in accord with provincial and local policy and is justifiable on the application of the 'four tests'.

The parking variances are not tied to the use, but the gross floor area of the office space. I find that the calculation of office space and the applicable parking standard of thirteen (13) spaces to be the relevant and current regulatory consideration. How the calculation was actually made was not clearly brought to my attention as the statistics of the building, the amount of office space use and any residual space was not specified.

As for FSI, no area 'standards' analysis was undertaken and may not be germane to this unique circumstance of a newly constructed building out of compliance with zoning. Nevertheless, I am left with a request to recognize that twelve (12) parking spaces can realistically be provided, close to the assessed office requirement. Transportation Services and the Planning Departments of the City have offered no adverse comment.

I have walked the site and note the considerable amount of pavement that surrounds the building envelop, suggestive of some flexibility in the movement of vehicles on-site.

I accept that the agreement, undertaking and license issuance for angular boulevard parking is an appropriate use of public and private space, in the circumstance of the subject

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property. Mr. Cieciura asserted as well that the presence of parking availability on the east side of Shawbridge and the proximity of higher order transit (subway and GO services) offers some mitigation should higher transportation demands be generated.

Practically, twelve (12) accessible spaces is all that the site can readily accommodate. So long as the agreement on boulevard spaces is kept in good standing, those twelve (12) spaces should be adequate to service the existing building, including the eight (8) office uses. Should additional uses in the building generate a higher demand standard, the adequacy of parking may have to be re-assessed, as described by Mr. Cieciura, on a complaint basis.

I am content that the FSI and parking variances are realistic, appropriate and responsive to the use proposed for recognition. The Applicant/Appellant and the City have worked co-operatively to produce a solution that appears satisfactory to all, including cash-in-lieu for the one deficient space; for so long as that solution is maintained, the requested approvals have merit despite their *ex poste facto* origin.

The subject property is currently essentially devoid of landscaping. Despite this being an employment area, policy and regulatory language supports the enhancement of built form with landscaping requirements, for front and side yards. The Applicant/Appellant proposes a landscape plan that betters on-site plantings, vegetation and grassed areas, previously non-existent. The request is to relax the depth and length of some landscape open space requirements made necessary by the agreed parking configuration: a simple trade off in objectives.

Mr. Cieciura supports these reductions as being consistent with area character as well as an improvement within a streetscape environment that has suffered from aesthetic neglect.

I agree that Variances 2 and 3 protect a significant vestige of the by-law soft landscaping intention and are supportable given the arguably greater need to ensure obvious off- street parking is provided.

I also accept Mr. Cieciura's surmises that errors were made in the transposition of by-law references between the Examiners Notice and the identification of required variances in the COA Notices. I find that these transposition errors are not material but that their recognition and correction is important to the integrity of the process and the need for clarity in the application of plans examination and building permit issuance.

I will make adjustments for these 'errors' and am prepared to relieve against any changes to the variance language pursuant to Section 41 (18 .1.1) so as to not require further notice. The positive movement to increased set backs in the case of the front lot line, from that proposed is a case in point. The negative clarification as to landscape reductions to meet setback requirements on Shawbridge and Bering Avenue so as to recognize the parallel parking thereon is not such as to warrant further public participation. There have been no change to the plans that have been publically available for many months.

Subject to several minor modifications to the wording of the variances as was before the COA and the imposition of conditions to track the delivery of the intentions of the owner,

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I am satisfied with the evidence of Mr. Cieciura that warrants coming to a different conclusion than that advanced by the COA.

## **DECISION AND ORDER**

The appeal is allowed. The purpose and variances identified as 'proposed' in **Appendix A** are approved subject to the Conditions identified in **Appendix B**.

The **Appendices** are an integral part of this decision and order.

If difficulties arise in the implementation of this decision and order, the TLAB may be spoken to.

### **Appendix A**

To legalize, recognize and maintain eight office units in the existing building.

#### **VARIANCE(S) TO THE ZONING BY-LAW:**

**1. Section 60.5.40.40.(1), By-law 569-2013**

The maximum permitted floor space index is 1 times the area of the lot (1166.45 m<sup>2</sup>).

The altered building ***proposed*** will have a floor space index of 1.2 times the area of the lot (1396.85 m<sup>2</sup>).

**2. Section 60.20.50.10 (1), By-law 569-2013**

Any lot line abutting a street must have a minimum 3 m wide strip of soft landscaping along the entire length of the lot line.

The soft landscaping is ***proposed to be*** 2 m wide on the east side and 1 m wide on the north side, ***exclusive of parking spaces and driveways***.

**3. Section 60.5.80.10.(1)(A), By-law 569-2013**

A required parking space in a street yard must be at least 3 m from the front lot line.

The parking spaces are ***proposed to be*** located 1.0 m from the ***front (north)*** lot line ***and 0.0 m for the side (exterior) lot line***.

**4. Section 200.5.10.1.(1), By-law 569-2013**

The minimum required number of parking spaces is 13.

**Section 320-18(C)3 f (Etobicoke Zoning Code)**

The minimum required number of parking spaces is 45.

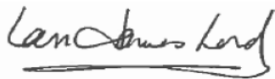
**Section 200.5.10.1.(1), By-law 569-2013 and Section 320-18(C)3f (Etobicoke Zoning Code)**

Two parking spaces are ***proposed to be*** provided ***entirely on site***  
***and ten parking spaces are required to be provided by boulevard***  
***parking license, or other form of approval.***

## Appendix B – Conditions

1. The parking layout and landscaping plan shall be constructed substantially in accord with that depicted as the site plan by Kohn Architects, Drawing A 10 and the landscape plan by MEP Design, Drawing L- 01 in Exhibit 1, pages 24 and 51, respectively, attached hereto as **Appendices C and D**.
2. The site plan, **Appendix C**, is revised to include the following notation: 'The applicant must maintain the boulevard parking agreement for the ten boulevard parking spaces along the Shawbridge Avenue right-of-way in good standing, including payment of annual fees as required.'
3. Any variances shown on **Appendix C or D** not identified in **Appendix A** are specifically not approved.
4. Variances 2, 3 and 4 are subject to Condition 2 hereof.
5. The landscape plan in **Appendix D** shall be substantially completed to the satisfaction of the Chief Planner of the City, or his or her delegate, and as evidenced by letter or notation on the City subject property file, within two (2) years of the issue date of this decision, failing which the variances approved herein shall be null and void. Landscape improvements involving or on the City boulevard shall be completed in consultation with the Director of Transportation Services, Etobicoke District, or equivalent.

X



Ian Lord  
Panel Chair, Toronto Local Appeal Body  
Signed by: Ian Lord

## Attachments;

**Appendix C** (site Plan)

**Appendix D** (landscape Plan)



# Kohn

**Kohn Partnership Architects Inc.**  
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No.	Date	Note
1	19.03.06	ISSUED FOR C of A
2	19.03.18	REISSUED FOR C of A

 SOFT LANDSCAPING

**NOTE\*:**  
REMOVE EXISTING CURB AND REPLACE W/  
DROPPED CURB AS PER CITY OF TORONTO  
STANDARD T-310.030-10 & T-310.030-11



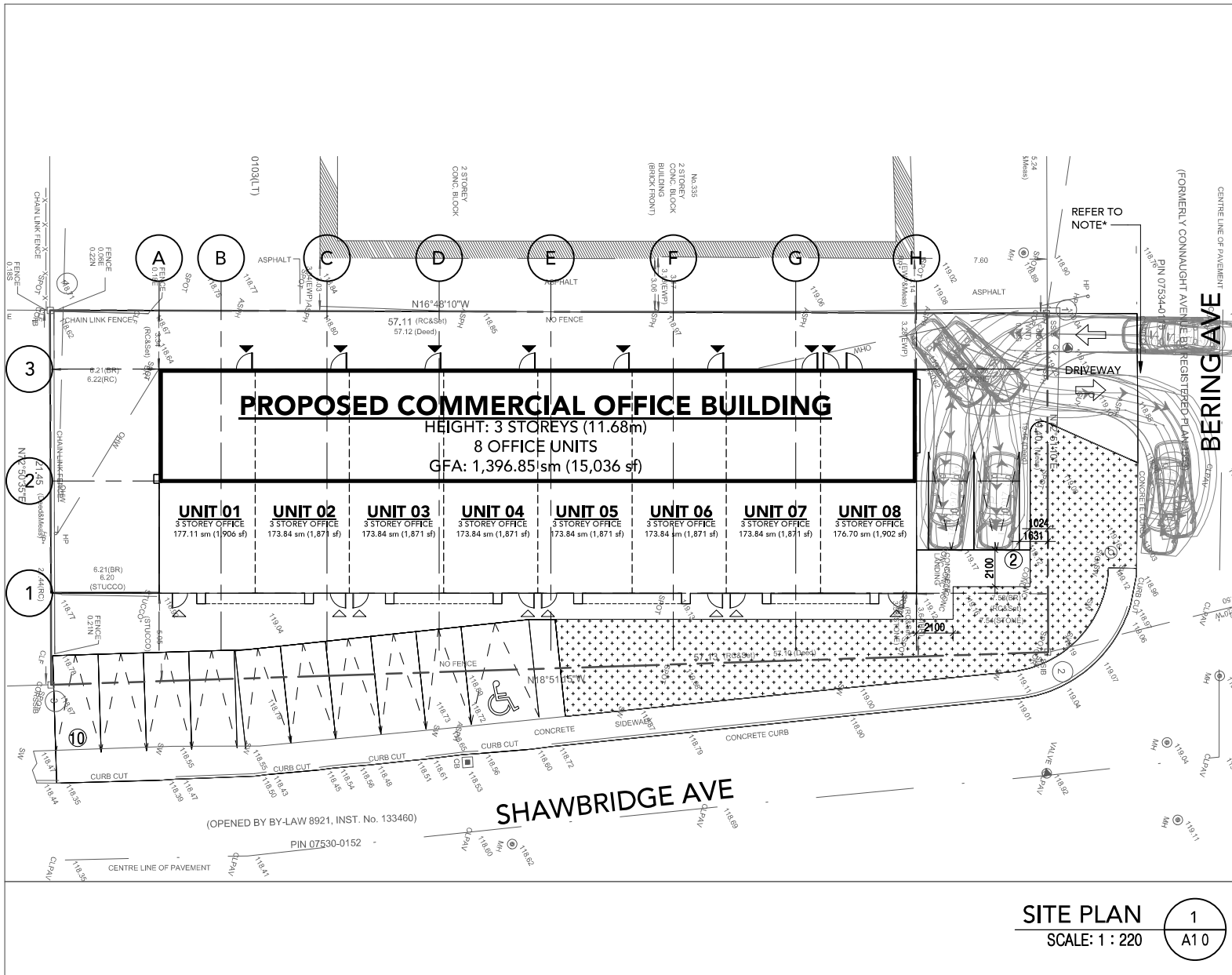
Project:  
**333 BERING AVE**  
DOWNING STREET GROUP  
333 BERING AVE  
ETOBICOKE ON

Drawing Title:

## SITE PLAN

Drawn By: DT	Checked By: TM	Project No. 18-153
Date Plotted: 3/18/2019 10:37:17 AM	As indicated	Scale:
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