

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, January 12, 2021

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

Appellant(s): CITY OF TORONTO

Applicant: HUNTER & ASSOCIATES

Property Address/Description: 1474 ST CLAIR AVE W

Committee of Adjustment Case File: 19 262545 STE 09 MV (A1328/19TEY)

**TLAB Case File Number:** 20 196873 S45 09 TLAB

**Hearing date:**      Friday, January 08, 2021

**DECISION DELIVERED BY Ted Yao**

## REGISTERED PARTIES AND PARTICIPANTS

|  |       |                 |
|--|-------|-----------------|
| Birch Tree Developments<br>(1474 St. Clair) GP Inc | Owner | David Bronskill |
|--|-------|-----------------|

|                 |           |                |
|-----------------|-----------|----------------|
| City of Toronto | Appellant | Derin Abimbola |
|-----------------|-----------|----------------|

## INTRODUCTION

Birch Tree seeks to build a new nine-storey mixed-use building with two levels of below-grade parking, retail space at-grade and residential space above. It needed numerous variances (Please see Table 2). On September 2, 2020, the Committee of Adjustment authorized all of the variances subject to the condition that Birch Tree build in accordance with the plans on file. However, due to a late arrival of a memo<sup>1</sup> from the local Councillor, the Committee did not insert the condition that Birch Tree pay an

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<sup>1</sup> The reason that the condition did not arrive in time to be incorporated in the Committee of Adjustment decision is because new and more stringent filing deadlines were imposed and apparently all commenting departments were operating under the previous timelines.

agreed upon “financial contribution”. Ms. Abimbola wrote in her letter of appeal on behalf of the City of Toronto, explaining why the matter was being appealed to the TLAB:

[The purpose of the condition] was to secure financial contribution for the benefit of the local community to be allocated toward local community projects, such as parks, recreation facilities, and streetscape and open space improvements.

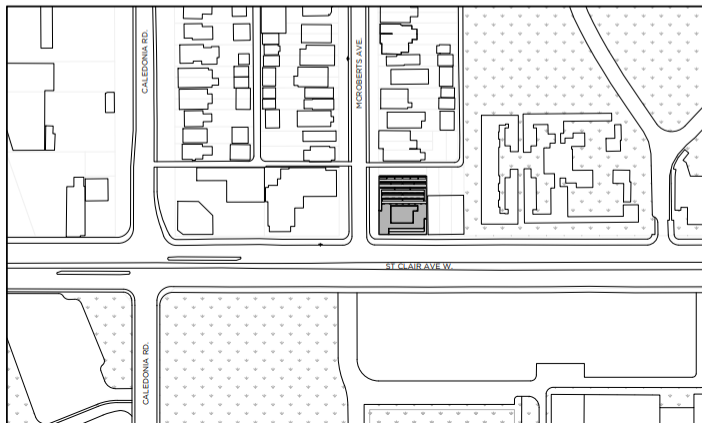
Because of the City’s appeal, this matter comes to the TLAB, where only the City and Birch Tree have appeared as parties. An appeal of any part of the original decision starts the matter afresh, and all the requirements of the *Planning Act* have to be established once more at the TLAB, even if the applicant was completely successful at the Committee of Adjustment.

### Concept plan



Figure 1. Concept Image

2 CONCEPT IMAGE  
SCALE NTS

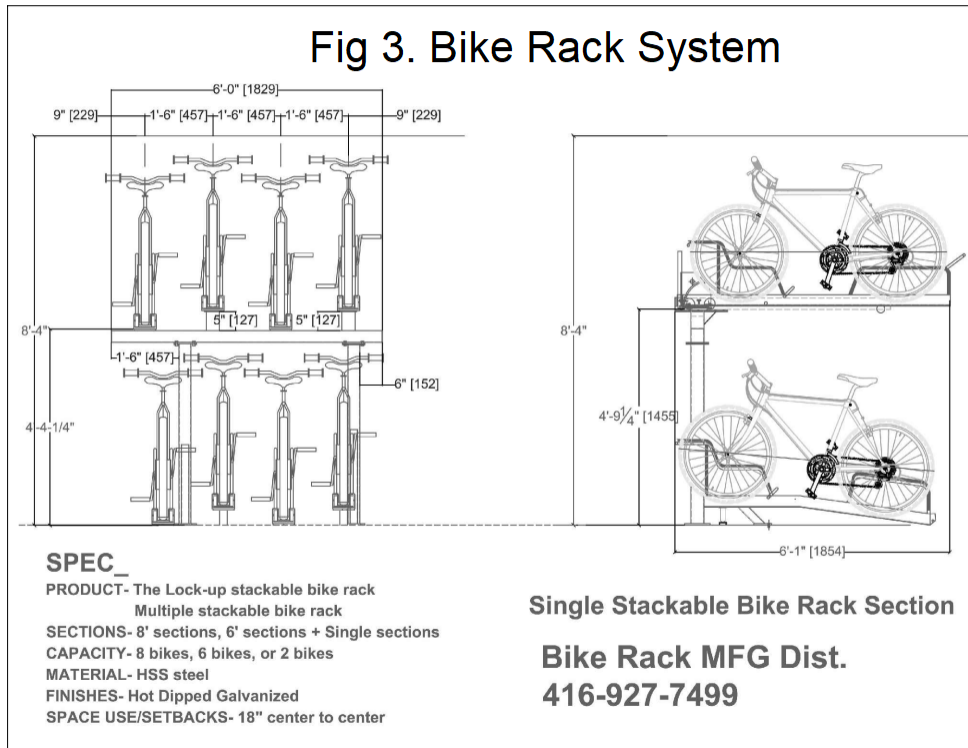


Birch Tree seeks the variances shown below in Table 2.

| <b>Table 2. Variances sought for 1474 St Clair Ave W</b> |  |  |  |
|--|--|--|--|
|  |  | Required/Permitted   | Proposed   |
| 1  | Building Height  | The lesser of five storeys or 16.5 m.  | Nine stories, which is 29.49 m.                                |
| 2  | Height of roof encroaching elements  | 21.5 m.  | 31.42 m.   |
| 3  | Roof encroaching elements  | Cannot penetrate the rear angular plane  | Will penetrate the rear angular plane                          |
| 4  | Minimum permitted first storey floor   | 4.5 m.   | 3.4 m.   |
| 5  | Minimum setback from McRoberts Ave   | 1.5 m.   | 0 m.   |
| 6  | Maximum permitted encroachment into the required building step back facing St. Clair Avenue West | 16% (3.91 m.)  | 21.03% (5.11 m.)   |
| 7  | Mixed use building step back from McRoberts Avenue   | 1.5 m. at the lesser of five storeys or 16.5 m. and 3.0 m. at the lesser of seven storeys or 22.5 m. from McRoberts Avenue | No step backs  |
| 8  | First five storeys "build to line", measured from the St. Clair Avenue West curb line            | 4.50 m   | 5.29 m (i.e., more than what is required)                      |
| 9  | Minimum resident parking spaces,   | 27 resident parking spaces   | 21 resident parking spaces                                     |
| 10   | Minimum visitor parking spaces   | 3 visitor parking spaces   | Zero spaces  |
| 11   | Min. parking stacker space dimensions  | 5.9 m. parking stacker space length; platform length of 5.4 m.   | 5.4 m. parking stacker space length; platform length of 5.2 m. |
| 12   | Combined residential and non-residential GFA   | 5.0 times the area of the lot  | 5.15 times the area of the lot                                 |
| 13   | Residential GFA  | 4 x the area of the lot  | 4.92 x the area of the lot                                     |
| 14   | Roof recreation structure setback  | 2.0 m. to adjacent outside wall  | No setback   |

|    |   |   |  |
|----|---|---|--|
| 15 | Minimum depth of first floor commercial use                 | 7.5 m.  | 4.9 m.   |
| 16 | Additional height for roof structures                       | 19.50 m.  | 27.3 m.  |
| 17 | The minimum width of a motor vehicle entrance               | 4.27 m.   | 3.5 m.   |
| 18 | Location of required indoor amenity space                   | In a multi-purpose room or contiguous multi-purpose rooms   | Does not comply  |
| 19 | Indoor amenity space  | Requires kitchen and washroom within the indoor amenity area  | Provided in separate room outside the indoor amenity space                         |
| 20 | Min. outdoor amenity space                                  | 108 m <sup>2</sup>  | 79 m <sup>2</sup>  |
| 21 | Min. bicycle parking spaces                                 | 8   | 4  |
| 22 | Min. width of parking space, obstructed on both sides       | 3.2 m.  | 2.9 m.   |
| 23 | Driveway  | No below grade driveway (i.e., not more than 0.3 m. below average elevation of the street)  | More than 0.3 m. below average elevation of the street                             |
| 24 | Max. width of roof elements within 6 m. of McRoberts Avenue | Not more than 6.10 m.   | 8.95 m.  |
| 25 | Occupant bicycle parking spaces                             | Parked horizontally with dimensions of at least 0.6 m. by 1.8 m. and a vertical dimension of at least 1.9 m. or parked vertically with dimensions of at least 0.6 m. by 1.2 m. and a vertical dimension of at least 1.9 m. with a maximum 50% vertical bicycle parking spaces | Please see Figure 3 showing arrangement with a width of 0.46 m. per parking space. |

## PROPOSED BIKE RACK SYSTEM

**MATTERS IN ISSUE**

The variances must be consistent with and conform to higher level Provincial Policies. This 54-unit rental building composed of 2- and 3-bedroom apartments is transit-supportive, accommodates a significant range of housing options through intensification and is located where planned infrastructure exists. In particular, this development is located on a street with its own streetcar right of way.

The development contributes to density targets for urban growth centres set out in Growth Plan ("A Place to Grow"), as well as to a diverse range and mix of housing options and densities. Accordingly, the requirements of the *Planning Act* are met with regard to these documents.

S. 45 of the *Planning Act* requires that the variances must individually and cumulatively:

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

The most relevant policy of Official Plan of the City of Toronto is par. 4.5:2, for Mixed Use Areas, which states in part:

Mixed Use Areas will absorb most of the anticipated increase in retail, office and service employment in Toronto in the coming decades, as well as much of the new housing.

## EVIDENCE

Birch Tree's planner Benjamin Larson gave planning evidence and I qualified him as able to give opinion evidence in the area of land use planning.

## ANALYSIS, FINDINGS, REASONS

This is a case with an agreed upon result, similar to a joint submission by lawyers for opposing parties. I find the principles in *Law Society v. Cooper*<sup>2</sup> are applicable; namely I should defer to the joint submission, while nonetheless retaining overall freedom to reject it. As an overview, Birch Tree agrees to the financial contribution, which is the only issue raised in the appeal letter. Mr. Larson said that this contribution is provided for under s. 37 (Density Bonuses) of the *Planning Act*<sup>3</sup>.

Nonetheless all the variances have to be reexamined anew, as explained previously. The roots of good planning for this development originate in By-law 1109-2009, a 2009 by-law which set out design criteria for midrise mixed use buildings along avenues. These ideas were incorporated into By-law 569-2013, so that all requested variances are from the former City of Toronto By-law 438-86, not to the current zoning by-law. As such, the number of variances is misleading.

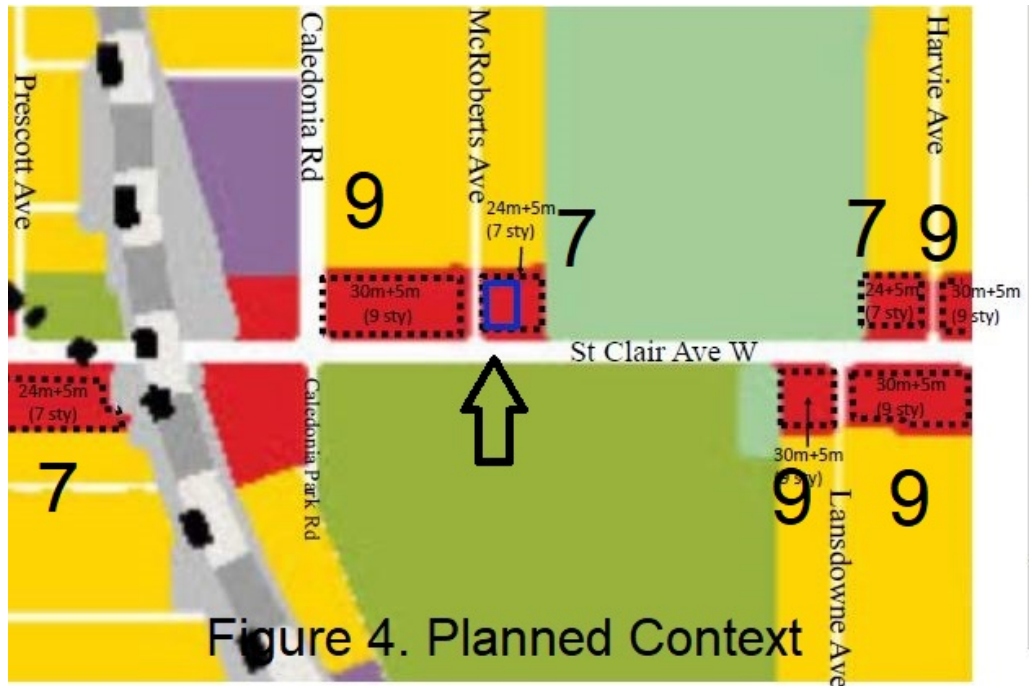
This proposal has had a great deal of consultation both with elected representatives and staff. In particular since many of the issues of building form relate to the site planning process, Birch Tree worked closely with those professionals to ensure that shadowing, angular planes etc., would be consistent with the principles in By-law 1109-2009.

As an example, Mr. Larsson explained in Figure 4, that the seven storeys is consistent with other planned or built buildings in this stretch of St Clair Ave West. Birch Tree's building is roughly 30 m high which is similar to the right of way for the roadway. Please see Figure 4, in which I have relabeled the number of stories because the original black on red lettering was hard to read. I have noted the subject site with a heavy arrow.

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<sup>2</sup> *Law Society of Upper Canada V. Stephen Alexander Cooper*, 2009 ONLSAP 7 (CANLII)

<sup>3</sup> A pending amendment permits density bonuses for variances to come into force on a date to be proclaimed, which has not happened as of Jan. 8, 2021.



A TLAB planning case is somewhat different from a Law Society Tribunal hearing in that its planning “facts” are generally adduced through a concise oral recitation by the proponent’s planner. In this case I am satisfied from the oral evidence of Mr. Larson, the letters written by planning and transportation staff at the City and the exchange of correspondence by the two lawyers that the **statutory tests** under s. 45(1) of the *Planning Act* are met and I so find. Sections 45(9) and 45(9.1)<sup>4</sup> also require a finding that any condition of a granting is advisable, and I find the conditions **are** advisable.

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<sup>4</sup> Conditions in decision:

45(9) Any authority or permission granted by the committee under subsections (1), (2) and (3) may be for such time and subject to such terms and conditions as the committee considers advisable and as are set out in the decision. R.S.O. 1990, c. P.13, s. 45 (9).

Agreement re terms and conditions

45(9.1) If the committee imposes terms and conditions under subsection (9), it may also require the owner of the land to enter into one or more agreements with the municipality dealing with some or all of the terms and conditions, and in that case the requirement shall be set out in the decision. 2006, c. 23, s. 18 (3).

Registration of agreement

45(9.2) An agreement entered into under subsection (9.1) may be registered against the land to which it applies and the municipality is entitled to enforce the agreement against the owner and, subject to the Registry Act and the Land Titles Act, against any and all subsequent owners of the land. 2006, c. 23, s. 18 (3).

**DECISION AND ORDER**

I authorize the variances set out in Table 2 subject to the following conditions:

1. Prior to the issuance of the first above-grade building permit, the owner of the lands known as Block D on Plan 886 Designated as Part of Lots 27, 28 and 29 on Registered Plan 66R3380 municipally known as 1474 St. Clair Avenue West, City of Toronto shall pay to the City of Toronto in the amount of \$160,000.00, to be allocated towards local community projects including, but not limited to: parks, recreation facilities, and streetscape and open space improvements, to be determined in consultation with the Ward Councillor and the Chief Planner and Executive Director, City Planning. The financial contribution shall be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for Toronto, calculated from the date of final approval of the minor variance application to the date of payment.
2. The building shall be constructed in accordance with the requested variances and substantially in accordance with the plans submitted and held by the Committee of Adjustment, date stamped February 25, 2020, to the satisfaction of the Director, Community Planning, Etobicoke York District. Any other variances that may appear on these plans but are not listed in the written decision are not authorized.

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T. Yao  
Panel Chair, Toronto Local Appeal Body