

# DECISION AND ORDER

**Decision Issue Date**      Tuesday, March 02, 2021

PROCEEDING COMMENCED UNDER Section 45(12), subsection 45(2)(a)(i) of the Planning Act, R.S.O. 1990, c. P.13, as amended (the "Act")

Appellant(s): John Douglas Kennedy Macdonald

Applicant(s): Architect Luc Bouliane

Property Address/Description: 686 Richmond St W

Committee of Adjustment File

Number(s): 19 257676 STE 10 MV (A1252/19TEY)

**TLAB Case File Number(s): 20 127503 S45 10 TLAB**

**Hearing date: January 21, 2021**

**DECISION DELIVERED BY A. Bassios**

## APPEARANCES

Appellant	John Douglas Kennedy Macdonald
Appellant's Legal Rep.	Meaghan McDermid, Aaron Platt (Davies Howe)
Applicant	Architect Luc Bouliane
Expert Witness	Sean Galbraith

## INTRODUCTION

This is an appeal by John MacDonald of the decision of the Toronto and East York panel of the City of Toronto (City) Committee of Adjustment (COA) decision to refuse an application under s. 45(2) of the Planning Act to alter the existing legal non-conforming mixed use building at 686 Richmond St. (the subject property) by converting the building into one dwelling unit and constructing third and fourth storey additions.

## **REQUESTED PERMISSION UNDER SUBSECTION 45(2)(a)(i) & (ii) OF THE PLANNING ACT:**

It is asserted that the property has lawful non-conforming status under the *Planning Act*, as the mixed-use building with commercial uses and one residential unit existed prior to the passing of the Zoning By-law, which does not permit residential uses in an I1 zone. Any change of use, alteration or addition to the building requires the permission of the Committee of Adjustment.

On March 11, 2020, the COA refused the application. The Decision of the COA was issued on March 31, 2020 and again June 23, 2020 as a result of the COVID 19 pandemic – related Ontario Regulation 149/20. On March 30, 2020, an Appeal was filed on behalf of Mr. MacDonald.

The hearing of this matter occurred by Electronic Hearing on January 21, 2021. In attendance electronically via WebEx were: Meaghan McDermid, counsel for the Appellant, and Sean Galbraith, a land use planning expert witness retained by the Appellant. Mr. Jim Kampula, an advisor to Mr. Macdonald, and Mr. Matt Helfand observed the proceedings.

## **BACKGROUND**

The subject property is located in the Queen West/ Niagara area of the former City of Toronto, which is an area of historically mixed uses. The existing building on the site is a former industrial building and is currently used as a residence and home recording studio by the Owner.

The subject property is designated as *Neighbourhood* in the Official Plan (OP). It is subject to Zoning By-law No. 438-86 and is zoned Industrial (I1 D3 H18m). The proposed single family residential dwelling is not permitted under the By-law (section (9(1)(F) – Use not Permitted).

The proposal before the TLAB is to remove the commercial uses and expand the residential unit with a rear basement, ground and second floor addition and full third and fourth floor additions.

## **MATTERS IN ISSUE**

Firstly, the legal status of the existing use must be confirmed. Secondly, is the process of applying for relief from the COA and the subsequent filing of an Appeal to the TLAB the correct route for consideration of this application, or does the size and nature of the application warrant a full rezoning process, which is outside the mandate of the TLAB. If the matter is found to be properly before the TLAB, on what bases will the matter be evaluated by the TLAB?

## **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').

### **Section 45(2)**

Upon Appeal, the TLAB, upon any such application where any land, building or structure, on the day the pertinent by-law was passed, was lawfully used for a purpose prohibited by the by-law, may permit:

#### ***Legal Non-Conforming Use And Other Relief Applications– S. 45(2)(a)***

- i) the enlargement or extension of the building or structure, if the use that was made of the building or structure on the day the by-law was passed, or a use permitted under subclause (ii) continued until the date of the application to the committee, but no permission may be given to enlarge or extend the building or structure beyond the limits of the land owned and used in connection therewith on the day the by-law was passed, or
- (ii) the use of such land, building or structure for a purpose that, in the opinion of the committee, is similar to the purpose for which it was used on the day the by-law was passed or is more compatible with the uses permitted by the by-law than the purpose for which it was used on the day the by-law was passed, if the use for a purpose prohibited by the by-law or another use for a purpose previously permitted by the committee continued until the date of the application to the committee; or

#### ***Uses Defined Generally by the By-Law – S. 45(2)(b)***

Where the uses of land, buildings or structures permitted in the by-law are defined in general terms, may permit the use of any land, building or structure for any purpose that, in the opinion of the Panel, conforms with the uses permitted in the by-law. R.S.O. 1990, c. P.13, s. 45 (2).

## **EVIDENCE**

This Appeal was unopposed. Ms. McDermid framed her client's request in her opening statement, stating that the expanded building would be used as a four storey single family home, eliminating the existing home recording studio. She described the proposal as a unique structure for a unique owner. The Owner is a musician, and the dwelling would provide multigenerational accommodation for the Owner, one or more of his grown children, and a live-in caregiver.

Mr. Sean Galbraith was qualified as an expert in land use planning to provide professional opinion evidence, and for his evidence relied on his Expert Witness Statement which was marked as Exhibit A. The Disclosure Documents filed on behalf of the Appellant were marked as Exhibit B and the Visual Exhibits filed on behalf of the Appellant were marked as Exhibit C.

The jurisdiction under which this Appeal regarding expansion of legal non-conforming uses is filed with the TLAB, is s. 45(2) of the *Planning Act (Act)*, does not set out similar tests as are mandated under s. 45(1) of the *Act* (which deals with variances from the Zoning By-law). Principles of good planning have generally been applied in deciding whether permission should be granted under s. 45(2)(a)(i). It is Mr. Galbraith's opinion, which he substantiated with reference to case law, that while not mandated by the *Act*, it is appropriate to apply the third and fourth tests cited under s. 45(1) of the *Act* in consideration of the application.

Accordingly, he applied the third and fourth parts of the s. 45(1) test: is the proposal desirable for the appropriate development of the subject property? Is its impact upon surrounding uses unacceptably adverse?

### **Neighbourhood**

Mr. Galbraith identified the neighbourhood boundaries he used for his analysis and made use of maps and photographs to describe the characteristics of the broader neighbourhood. He described the neighbourhood as exhibiting a mix of characteristics reflecting its historic mixed industrial and residential nature. Built forms reflect a wide variety of low-rise residential forms, medium-density apartment buildings, former industrial-style buildings, places of worship, schools, and other non-residential buildings.

On the block where the Subject Site is located, the north side alone features (in addition to the Subject Site itself) a residential loft conversion in an old industrial building, a textile company, several semi-detached houses, and a small office building. The south side of the block features semi-detached houses, townhouses, and a large school site. In Mr. Galbraith's words, "the neighbourhood character is eclectic and incredibly varied and defies any single description."

### **Subject Property**

The subject property currently has a legacy former industrial building onsite; a brick 2.5 storey building. The building is built to the lot line on the west and has minimal setbacks to the south and east. A 3 m wide driveway runs the length of the north property line for the full depth of the property. Adjacent to the subject property on the east side there is a new four storey apartment building,

### **Proposal**

The proposal has been revised following the COA meeting. The height has been reduced and the 3<sup>rd</sup> and 4<sup>th</sup> floors have been stepped back from the floors below, and the new deck areas reduced. Mr. Galbraith attests that the revisions to the proposal do not result in any change to the relief being sought, nor do they trigger any variances under Toronto By-law 438-86. The Owner is proposing to renovate and enlarge the existing building with a 2-storey addition on the roof and the addition of an elevator at

the northeast corner of the driveway. The current single dwelling unit in the existing building will be expanded to the entirety of the enlarged building. The existing 2.5 storey brick building will be retained. The 3rd and 4th floor additions are partially cantilevered above the driveway and are built to the north property line. The cantilever would be partially supported by the elevator proposed at the northeast corner of the building, at the east end of the driveway. (A site plan and elevations are appended to this decision as Attachment A).

### **Legal Non-Conforming Status**

Mr. Galbraith attests that the existing building on the subject property was constructed prior to 1947. The subject property is industrially zoned I1 D3 by the former City of Toronto Zoning By-law 438-86. The subject property, and other properties with the same zoning in proximity to the Subject Site, were excluded from Toronto's new Harmonized Zoning By-law (569-2013). Mr. Galbraith was not able to confirm when part of the building was first used for residential uses. As evidence supporting the legal non-conforming status of residential use on this site, Mr. Galbraith references two COA Decisions, one from 1995 and one from 1996, which identify the dwelling unit and recognize the non-conforming status of the uses. The application before the TLAB seeks permission to enlarge what Mr. Galbraith identifies as the existing, legal non-conforming residential dwelling use, pursuant to Section 45(2) of the *Planning Act*.

### **PPS and Growth Plan**

Mr. Galbraith addressed the requirements of the Growth Plan and the PPS and concluded that approval of the proposal would expand the existing residential uses on the Subject Site and will contribute to the mix and range of housing options in the area. He opined that the proposed development is compatible with adjacent uses and would appropriately utilize existing infrastructure, would contribute to a diverse range and mix of housing options available to different household sizes.

In his opinion, the proposal conforms to the requirements of the PPS and Growth Plan.

### **Official Plan**

Although s. 45(2) of the *Act* does not require that a proposed enlargement of a legal non-conforming use meet the general intent and purpose of the OP, Mr. Galbraith nonetheless provided an analysis of pertinent OP Policies for context.

The Subject Site is designated '*Neighbourhoods*' by the in-force Toronto Official Plan. *Neighbourhoods* are considered physically stable areas made up of residential uses in lower scale buildings such as detached houses, semi-detached houses, duplexes, triplexes and townhouses, as well as interspersed walk-up apartments that are no higher than four storeys. Development and redevelopment within *Neighbourhoods* is to be respectful of the existing neighbourhood context and is to reinforce the existing physical character of buildings, streetscapes, and open space patterns in these areas. Development is to "fit within its existing and/or planned context".

The evolution of this neighbourhood is evident in the varied residential and non-residential uses that are found. Mr. Galbraith asserts that while some legacy industrial

zoning remains in pockets of the neighbourhood, including the Subject Site, but he has not been able to identify any remaining industrial uses in the immediate surroundings. The largest former industrial building is the one immediately east of the subject property, which was converted to residential. It is Mr. Galbraith's opinion that the proposed expansion of the existing building containing a legal non-conforming residential use on the Subject Site is in keeping with the character of the area.

The subject property is also located within the Garrison Commons North Secondary Plan. It is Mr. Galbraith's evidence that the existing residential use, and the proposed application to enlarge the building containing that use, is consistent with the major goals of the secondary plan. The use would be integrated into, and reflective of, the existing city fabric uses and density patterns, would contribute to providing a range of housing types in the area, and would not negatively impact any existing or potential industrial, communications, or media organizations in the area.

Mr. Galbraith asserts that while the subject property is zoned industrial, it is designated *Neighbourhoods* in the OP. With the exception of some small-scale retail, service and office uses, employment and industrial uses are not permitted in the *Neighbourhoods* designation. He concludes that the existing, non-conforming residential use of the subject property is therefore better aligned with the *Neighbourhoods* designation, than the industrial uses permitted in the Zoning By-law.

### **Zoning**

The subject property has not been included in Toronto's Harmonized Zoning By-law and is still subject to the former City of Toronto By-law 438-86. The I1 zone permits a small variety of uses and can be described as a "light industrial" zone. The only residential use permitted is an artist live/work studio. The By-law specifically recognizes pre-existing uses and includes the following exception:

*12(1)(394) "Notwithstanding anything hereinbefore contained, none of the provisions of this by-law or of any restrictive by-law applies... (394) to prevent the... (ii) use of a building or structure, lawfully erected on a lot in 1994 and located in an I1 district in the Niagara Area, for residential uses including live-work units, provided there is compliance with all other provisions of this By-law".*

Although the above exception would appear to permit residential use in an existing building, in Mr. Galbraith's opinion the provision is not applicable to this proposal. He asserted that the existing residential use "continues to enjoy legal non-conforming status" and may be enlarged under the provisions of s. 45(2) of the *Act*. This perspective, in his opinion, is supported by the Zoning Review provided by the City Zoning Examiner, which identified the need for an application to expand the existing building containing a non-conforming use.

The zoning on the subject property permits a density of three times the lot area, i.e., a floor space index (fsi) of 3.0. The existing fsi is 1.4. Mr. Galbraith attests that the proposed development would result in an fsi of 2.84, although the drawings indicate an fsi of 3.4 due, he asserts, to the inclusion of the third and fourth floor decks which are typically excluded from fsi calculations.

It is Mr. Galbraith's opinion that the proposed addition has been designed to meet the building standards in the applicable I1 zone so that the massing of the building is as intended by the Zoning By-law but, with the legally permitted non-conforming and more compatible residential use. It is his opinion that the proposed application meets the intent and purpose of the Zoning By-law, as it is intended to apply to non-conforming uses.

### **Desirable for the Appropriate Use or Development of the Subject Property**

The proposed development is an adaptive reuse of a legacy industrial building, that has not been used for industrial purposes for decades. The building is a unique structure in a unique neighbourhood. Mr. Galbraith attests that partial residential use of the property has continued since at least 1986 when the in-force Zoning By-law was passed. The residential use of the property is, in Mr. Galbraith's opinion, more in keeping with how the neighbourhood has evolved. The Zoning By-law contemplates a building of this size on the subject property and no additional variances are required. It is Mr. Galbraith's opinion that the proposed enlargement of the existing building is appropriate and desirable for the Subject Site.

### **No Unacceptable Adverse Impacts**

The test of whether an application is "minor" under s. 45(1) of the *Act*, (which although it does not apply in this case, has been used as a test to establish the planning merits of the proposal) generally rests in large measure on whether there are any unacceptable adverse impacts of a planning nature. The proposed addition does not introduce a new use on the subject property, and the use currently exists on other similarly zoned properties in the neighbourhood. In Mr. Galbraith's opinion, there would be no unacceptable adverse impacts.

## **ANALYSIS, FINDINGS, REASONS**

The conversion and expansion of a building on a property with a long-standing industrial zoning to a completely residential use prompts the question of whether an application to the COA and a subsequent Appeal to the TLAB is the correct avenue for consideration of this matter, or whether an application for rezoning of the property is warranted under the circumstances. There are features of the proposal that give pause in this regard: the elimination of all uses other than residential in what has been historically a mixed use building with industrial zoning; the expansion with a two-storey addition of what is already a large building with, for a single residential dwelling, a significant gross floor area (573.1 m<sup>2</sup>/ 6,167.7ft<sup>2</sup>); and the bypassing of some of the normal planning assessments such as parking provision or traffic generation that would be customary in consideration of a rezoning application.

I find that Mr. Galbraith has successfully established that a residential dwelling has legally existed on the subject property and has been acknowledged as such in two previous Decisions of the COA in the 1990's. This establishes the jurisdiction of the TLAB. In consideration of whether or not to permit the enlargement or expansion of a

legally non-conforming use on a property, the *Act* does not guide decision-making or offer tests or criteria for evaluation of the application. While general principles of good planning can, and should be applied, the Zoning By-law development parameters are established for the performance of light industrial buildings and are not geared to the specific performance expectations of residential use. Questions such as: “is parking required?” or “how much amenity space is appropriate?” which address living conditions or standards for residential buildings are simply not in place. It is all well and good to say that the building as proposed does not require variances from the Zoning By-law when the standards in the By-law are designed around the use of buildings for industrial purposes and not for the successful habitation of the building for residential purposes.

I put forward these concerns for the record. Under the circumstances of this particular application, given the historic evolution of similar industrial- zoned buildings in this neighbourhood and the eclectic mix of uses which already exists, as well as the pre-existing single dwelling unit in the property, and the fact that the proposal is limited to only one dwelling unit, I find that concerns regarding the missing tests for successful residential performance are not significant enough, in this instance, to redirect the application into a rezoning process instead of through the COA/ TLAB approach. In addition, I take into consideration the specific permissive exception in the Zoning By-law regarding residential uses lawfully erected prior to 1994 and also the OP *Neighbourhoods* designation. Any further alteration, expansion, or conversion of the building or the uses on the subject site, for example for multi-residential, would require the owner to obtain the approval of the COA again or that of Council.

I concur with the Owner’s representatives that the proposed development is an adaptive reuse of a legacy industrial building. While still a colourful and unique district of the Toronto, the evolution of the area has shown a steady increase in residential uses over time and a diminishment of some of the artisanal/ artist occupations. While this might be regrettable to some, the character of the neighbourhood continues to evolve in this direction and is reinforced by the OP designation of *Neighbourhoods* which is premised upon residential uses.

The Owner’s representatives assert that the proposed addition does not introduce a new use that does not already exist on the subject property. Residential uses are well represented in the neighbourhood, in traditional low-rise form, as well as in apartment and mixed-use form.

The subject property is located on the north east corner of Richmond St. and Tecumseth St. The additions to the existing building are complementary to the condominium building adjacent on Richmond St. and to the other buildings in the block on the north side of Richmond St. The proposal is compatible with the adjacent retail use on the north side of the subject property on Tecumseth St. and is not out of scale with the taller features of the church located on the north west corner of Richmond and Tecumseth Streets. Some ground floor retail/ commercial with flats above can be found across Richmond St. from the subject property with historic tight fabric of two-storey residential dwellings facing on to Richmond St as one moves westward. I find that the third and fourth storey additions to the existing building on the subject property will not



have unacceptable adverse impact on the immediate context or on the broader neighbourhood.

I find that the proposal conforms to the PPS and the Growth Plan, that it respects the character of the neighbourhood, will have no adverse effects and represents good planning.

## DECISION AND ORDER

The relief requested under s. 45(2) of the *Planning Act* to allow the enlargement and extension of the legal non-conforming use on the subject property is granted to permit the alteration of the existing two-storey mixed-use building by constructing third and fourth storey additions and a four-storey north side addition, and converting the building into one dwelling unit, subject to the condition, and to the plans and elevations contained in **Appendix A**.

Any variances that may appear on the plans are NOT authorized.

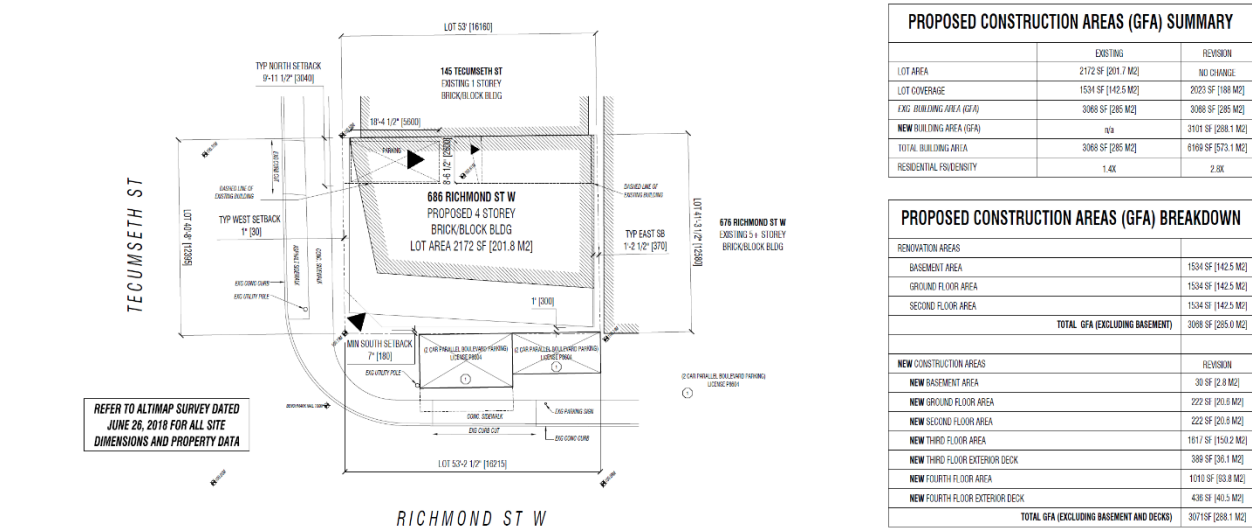
## CONDITION

The proposed additions and alterations shall be constructed substantially in accordance with the Site Plan (A4) and Elevations (A11 to A14) contained as Tab 9B in Exhibit B and dated November 30, 2020, prepared by LEBEL & BOULIANE and attached as **Appendix A**.

A handwritten signature in black ink, appearing to read 'A. Bassios', is written over a horizontal line.

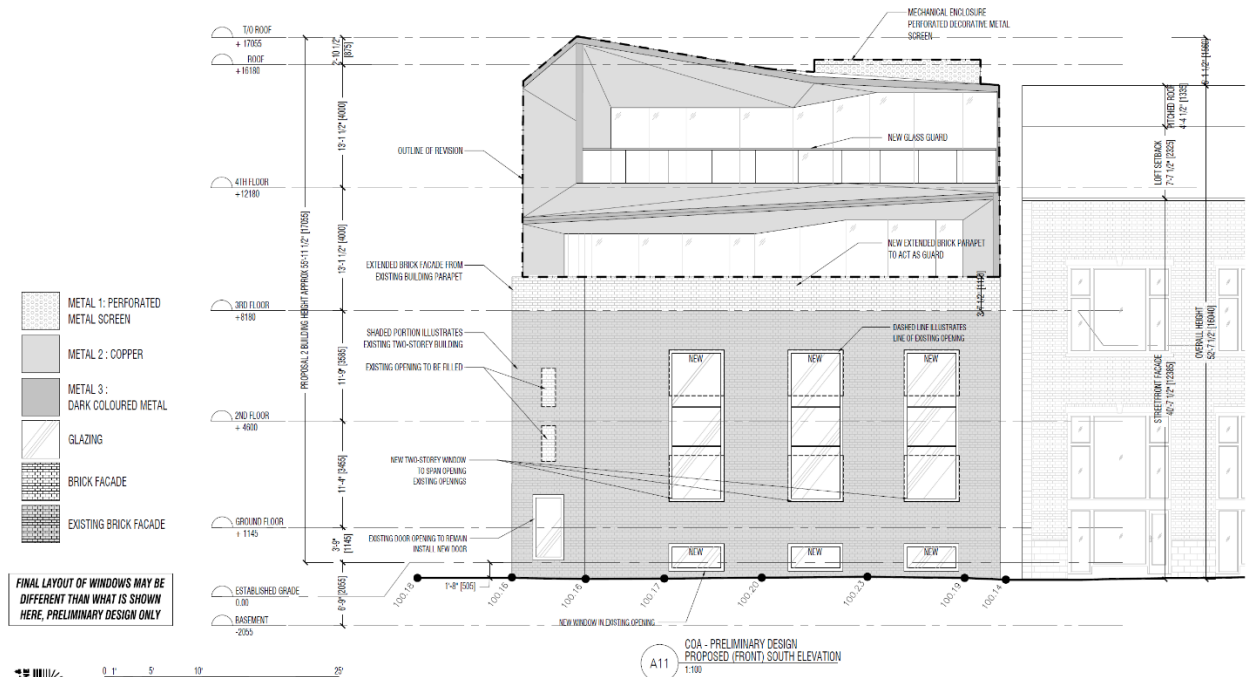
A. Bassios  
Panel Chair, Toronto Local Appeal Body

APPENDIX A



**GENERAL SITE PLAN NOTES**

1. EXISTING LICENSED BOULEVARD PARKING SPACES TO REMAIN. PARKING SPACES ACCESSED BY EXISTING CURB CUT ON RICHMOND ST W. ONE REGULAR PARKING SPACE 2.88X5.0M AND ONE SHARED FREE PARKING SPACE 4.4M X 5.8M. EXISTING SIGN AFFIXED TO BLDG STATES: "PRIVATE PARKING 2 CARS PARALLEL, AS PERMITTED BY LICENSED BOULEVARD PARKING. COMMISSIONER OF PUBLIC WORKS CITY OF TORONTO P. 800P"





Decision of Toronto Local Appeal Body Panel Member: A. Bassios  
TLAB Case File Number: 20 127503 S45 10 TLAB

