

Local Planning Appeal Tribunal
Tribunal d'appel de l'aménagement
local



ISSUE DATE: September 26, 2018

CASE NO(S): PL161134

The Ontario Municipal Board (the “OMB”) is continued under the name Local Planning Appeal Tribunal (the “Tribunal”), and any reference to the Ontario Municipal Board or Board in any publication of the Tribunal is deemed to be a reference to the Tribunal.

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 2418832 Ontario Inc.
Applicant (jointly): 2418832 Ontario Inc., 2419732 Ontario Inc.
Subject: Request to amend the Official Plan - Failure of City of Toronto to adopt the requested amendment
Existing Designation: Neighbourhoods
Proposed Designated: Apartment Neighbourhoods, Natural Areas
Purpose: To permit the development of a 12-storey residential apartment building with approximately 241 dwelling units and a 3-storey semi-detached building
Property Address/Description: 250 Lawrence Avenue West, 219 Glengarry Avenue
Municipality: City of Toronto
Approval Authority File No.: 15 133424 NNY 16 OZ
OMB Case No.: PL161134
OMB File No.: PL161134
OMB Case Name: 2418832 Ontario Inc. v. Toronto (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Appellant: 2418832 Ontario Inc.
Applicant (jointly): 2418832 Ontario Inc., 2419732 Ontario Inc.
Subject: Application to amend Zoning By-law No438-86 - Refusal or neglect of City of Toronto to make a decision
Existing Zoning: R2 Z0.6
Proposed Zoning: Site Specific (To be determined)

Purpose: To permit the development of a 12-storey residential apartment building with approximately 241 dwelling units and a 3-storey semi-detached building

Property Address/Description: 250 Lawrence Avenue West, 219 Glengarry Avenue

Municipality: City of Toronto

Municipality File No.: 15 133424 NNY 16 OZ

OMB Case No.: PL161134

OMB File No.: PL161135

PROCEEDING COMMENCED UNDER subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Referred by: 2418832 Ontario Inc., 2419732 Ontario Inc.

Subject: Site Plan

Property Address/Description: 250 Lawrence Avenue West, 219 Glengarry Avenue

Municipality: City of Toronto

OMB Case No.: PL161134

OMB File No.: PL161158

Heard: May 22-29, 2018 in Toronto, Ontario

APPEARANCES:

Parties

Counsel/Representative*

2418832 Ontario Inc. and 2419732 Ontario Inc.

Christopher Tanzola

City of Toronto

Mark Crawford

Old Orchard Grove Ratepayers Association
South Armour Heights Residents Association
Lytton Park Residents' Organization

Marc Kemerer

Toronto and Region Conservation Authority

Steven Heuchert*

DECISION OF THE TRIBUNAL DELIVERED BY GERALD S. SWINKIN

[1] Although it consumed a number of hearing days, this was an appeal which was essentially fought over very narrow ground, more particularly about an angle over that ground.

[2] 2418832 Ontario Inc. and 2419732 Ontario Inc. (the “Appellants”) are the owners of 250 Lawrence Avenue West and 219 Glengarry Avenue (the “Site”), in the City of Toronto (the “City”).

[3] The Appellants sought an official plan amendment and zoning amendment for the Site in order to redevelop it for higher density residential purposes. The applications for those purposes were not dealt with by the Council of the City within the time limits prescribed by the *Planning Act* (the “Act”) and the Appellants, as they were entitled, filed their notices of appeal with respect to that failure to make a decision on their applications, which brings the matter before the Local Planning Appeal Tribunal (the “Tribunal”).

[4] For the reasons which follow, the Tribunal will allow those appeals in part and authorize the requested official plan amendment and zoning amendment in accordance with the terms of this Decision.

SITE LOCATION AND DESCRIPTION

[5] The Site is located on the north side of Lawrence Avenue West, east of Avenue Road by approximately 160 metres (“m”). It is comprised of 0.58 hectares (“ha.”) (1.42 acres) of land. The Site has 83.74 m frontage on Lawrence Avenue West and 32.42 m frontage on Glengarry Avenue. It apparently has the distinction, apart from the school sites of Havergal College and Lawrence Park Collegiate Institute on the south side of Lawrence Avenue West, of being the largest parcel of land on Lawrence Avenue West between Bathurst Street to the west and Yonge Street to the east.

[6] Lawrence Avenue West is a five lane, centre turn, 27 m wide arterial road identified as a Major Street in the City Official Plan (“OP”).

[7] The portion of the Site municipally known as 250 Lawrence Avenue West is currently improved with a 3-storey medical office building and a very large paved surface parking area to the north and east of the building. It is served by a single driveway to Lawrence Avenue West.

[8] The paved parking area extends north within what is designated under the OP as the Ravine and Natural Feature Protection Area limit to a treed ravine area. The existing paved parking area currently extends well within the Ravine Lands. The Tribunal was advised at the outset of the hearing that as a result of a settlement with the Toronto and Region Conservation Authority (“TRCA”), the ravine area is to be preserved and protected and as part of the negotiated redevelopment process there has been the establishment of the Long Term Stable Slope Crest, a Toe Erosion Allowance, and an Erosion Access allowance. These valley land and open space areas are intended to be zoned in an appropriate open space zone, and will be dedicated to the City or to the TRCA, as the public authorities may agree upon and advise.

[9] The City currently owns the adjacent valley lands north of the subject site. These lands are known as the Douglas Greenbelt ravine lands. This existing valley feature north of the Site is in a generally naturalized state with a number of mature trees, well-defined side slopes, and an open creek. At the north limit of the Site, this creek enters into an existing large pipe where it travels underground in a southeasterly direction through the Site until it crosses under Lawrence Avenue West. It then travels under the Lawrence Park Collegiate sports field immediately across the street.

[10] Although the stormwater system flowing through the Site is part of the City stormwater management network, the Tribunal was advised by Michael Goldberg, the Consulting Planner retained by the Appellants, that there are no existing easements in favour of the City or otherwise associated with the existing below grade and at-grade storm water management facilities on the property. As part of the redevelopment proposal, the City would be granted below grade rights for the stormwater pipe (upgraded at the Appellants’ expense) and a 22 m wide surface easement for overland flow.

[11] The Site is also comprised of 219 Glengarry Avenue located in the northeast portion of the Site. The 219 Glengarry portion is improved with a 2^{1/2}-storey triplex (4 storeys at its rear) located on the south side of Glengarry Avenue. Its parking is at the rear in the lowest basement level of the triplex and is accessed by way of a paved laneway shared with other triplexes on Glengarry Avenue and other multiple attached residential buildings on the north side of Lawrence Avenue West. 219 Glengarry Avenue enjoys easements over the rear portions of 217, 215 and 213 Glengarry Avenue and 232 and 230 Lawrence Avenue West for vehicular access; however, as it is at the end of the line, the 219 Glengarry property is not subject to an easement in favour of those other properties.

[12] Private open space for each unit in the triplex at 219 Glengarry Avenue is comprised of small rear facing balconies which are primarily fire escapes and only secondarily function as balcony space. 219 Glengarry Avenue also contains six surface parking spaces located on the south side of the rear laneway noted, south of the triplex itself.

[13] By its unusual size, its configuration, its adjacency to a major arterial road on one side and to valley natural features on the other side, and then its positioning as the pivot between low density residential uses and main street commercial, the Site can properly be characterized as unique in this neighbourhood and therefore worthy of special scrutiny without slavish adherence to conventional guidelines.

THE AREA CONTEXT

[14] Directly to the south of the Site, on the opposite side of Lawrence Avenue West, is the open space sports field of Lawrence Park Collegiate Institute, and to the west of that a 6-storey apartment building at 515 Rosewell Avenue, located at the southeast corner of Lawrence Avenue West and Rosewell Avenue. This building has an apparent height of 21.7 m. South of the building at 515 Rosewell Avenue are several 4-, 5- and 6-storey apartment condominium buildings fronting onto Rosewell Avenue. These residential apartment buildings are designated Apartment Neighbourhoods in the

City OP. Those designations resulted from a site-specific official plan amendment exercise in 2002.

[15] It is worth noting at this juncture that these Rosewell Avenue apartment buildings displaced a string of post-war 4-storey walk-up apartment buildings. Despite the intensification inherent in that exercise and the resultant taller buildings (up to the 6-storey building at Lawrence Avenue West, which presents as a 7-storey plus building on its Lawrence Avenue elevation), this development has not only not destabilized the neighbourhood, but is now a fully integrated part of it. No witness in the proceeding, including the community participants, took any exception to these Rosewell Avenue apartment buildings. In fact, Terry Mills, the consulting planner for the resident/ratepayer associations, used 515 Rosewell Avenue as his benchmark for height.

[16] On the west side of Rosewell Avenue is the open space sports field of Havergal College.

[17] Further south, beyond the Rosewell Apartment Neighbourhoods site and Lawrence Park Collegiate Institute, are the Glenview Senior Public School, the John Ross Robertson Junior School, the Chatsworth Ravine, open air ice rinks, and a residential neighbourhood. The Chatsworth Ravine is a continuous open space park and pedestrian system which crosses Yonge Street and Blythwood Avenue to the southeast, connecting with Sherwood Park south of Blythwood Avenue.

[18] Avenue Road is within walking distance of the Site. Avenue Road is identified in the City OP as an "Avenue" between Lawrence Avenue West and Wilson Avenue, with an existing "mainstreet" character for most of this stretch. According to Mr. Goldberg, this commercial corridor includes a rich and vibrant mix of 1- to 7-storey street-related buildings occupied by retail, restaurant, service commercial and residential uses. This corridor is the commercial heart and destination of the surrounding residential neighbourhood both north and south of Lawrence Avenue for a wide range of daily, weekly and infrequent shopping, dining and service needs. According to Mr. Goldberg,

very few vacancies exist along this corridor and when a vacancy occurs, it is usually quickly filled, signaling the very strong and successful nature of this Avenues corridor.

[19] To the north of the Site, as described above, is the Douglas Greenbelt ravine lands contained within the well-defined valley feature, from the Site to Douglas Avenue. North of Douglas Avenue, the valley feature enters a private condominium property, where it extends to the corner of Woburn Avenue and Avenue Road. No public access is permitted within the open space area on the private property between Douglas Avenue and Woburn Avenue. This private condominium property includes 3-storey townhouses and 5- to 6-storey apartment condominium buildings fronting onto Avenue Road and Sylvan Valley Way.

[20] Further to the north is a residential neighbourhood comprised of single and semi-detached dwellings generally on narrow lot frontages. This part of the neighbourhood includes John Wanless Primary School, which school accommodates the John Wanless Child Care Program.

[21] At the southwest and northeast corners of Avenue Road and Fairlawn Avenue are two mixed use residential and commercial properties. The southwest corner is a 7-storey mixed use building that is under construction, which will contain 115 residential units with a Floor Space Index ("FSI") of 3.7 times lot area. The northeast corner is a recently constructed and occupied 6-storey mixed use building containing 85 residential units with a FSI of 3.17 times lot area.

[22] Immediately to the west of the Site is a 3-storey office building containing medical, financial, insurance, accounting and computer consulting offices.

[23] To the west of this office building are a 3-storey apartment building, two 2-storey commercial office buildings containing a travel agency office and a recently renovated office building. These properties to the immediate west are not within the Avenue designation but rather are designated as Neighbourhoods in the City OP.

[24] The northeast corner of Avenue Road and Lawrence Avenue West is presently improved with a 1-storey commercial building containing a former and now vacant convenience store. The Avenue Road frontage properties are within the "Avenues" and are designated Mixed Use Areas.

[25] Immediately to the east along Lawrence Avenue West are multiple-unit residential buildings comprised of 2½-storey triplex buildings which are accessed from a driveway leading to/from Lawrence Avenue West to rear entry basement level garages. Similar to 219 Glengarry Avenue, these buildings are served by rear fire exits/balconies. The rear yards of these triplex properties are entirely paved, functioning as parking areas and driveways for vehicles.

[26] Further to the east along Lawrence Avenue West, as well as along the local streets to the north are principally 2-storey single and semi-detached dwellings. At the intersection of Lawrence Avenue West and Yonge Street is the Lawrence subway station. In addition to the public library at the southeast corner, there are commercial developments at the intersection, including a building on the northwest corner currently under renovation, which will include a supermarket at street level.

[27] Similar to Avenue Road, Yonge Street north of Lawrence Avenue is a "mainstreet" corridor, comprised of a vibrant mix of retail, service, restaurant and residential uses in buildings of 2- to 6-storeys. South of Lawrence Avenue West, the west side of Yonge Street includes 5- to 12-storey residential and mixed use apartment buildings.

DESCRIPTION OF THE PROPOSAL

[28] The Appellants' proposal is to demolish the existing 3-storey medical building and the triplex on the Site and replace these buildings with a 9-storey, stepped and terraced, "L" shaped residential apartment building. The proposal will also realign and rebuild the City's deteriorated storm water infrastructure under the Site. The Appellants have committed to transfer easement rights to the City to accommodate these works on

a going forward basis, which will remedy the current lack of any City rights over these works.

[29] The building is proposed to be set back 4.05 m from the front lot line, which front lot line will be adjusted from the current front lot line by reason of a 0.4 m road widening of Lawrence Avenue West being required by the City.

[30] The building will rise from the ground to the top of the seventh storey, at which point, the eighth and ninth floors are stepped back 3.445 m. As advised by Mr. Goldberg, this configuration at the front creates an angular plane that accords with the commonly used, although not required, "Mid-rise Guideline" standard of a vertical line of 80% of the width of the right-of-way at the front lot line (80% of 27 m = 21.6 m) and from that point, a 45 degree angular plane.

[31] The overall height of the building is 29.89 m. The Mid-rise Guideline suggests that building height should not exceed the planned right-of-way width of the street upon which the building fronts. The planned right-of-way width for Lawrence Avenue West is 27 m, therefore the building height exceeds the planned width of the right-of-way by 2.89 m. By reason of the application of the angular plane and the lack of demonstrated impact, Mr. Goldberg, as well as the Appellants' urban design witness, Robert Glover, believe that the proposed building height is supportable and represents good planning.

[32] Mr. Goldberg indicates to the Tribunal that in contrast to the circumstances on an Avenue, which seeks to create a streetwall and typically neither permits nor allows a front setback, the front setback of 4.05 m in the instance of this proposal, with the intended terrace and flower bed, creates a residential character of treatment to the front yard and is more consistent with the residential properties which lie to the east and north of the Site.

[33] There is to be a 15 m setback from the east lot line to the most easterly building wall of the proposed building.

[34] In addition to the lands to be dedicated to public ownership in accordance with the TRCA Settlement (approximately 1910 square metres (“sq m”)), the City has also required, and the applicant is to be providing, an on-site parkland dedication in the northeast corner of the property adjacent to Glengarry Avenue in the amount of approximately 280 sq m and create publicly accessible open space to link to Lawrence Avenue West from the dedicated parkland.

[35] As there is no City OP policy or City guideline document precisely applicable to the circumstances applicable to this Site, as it is not on an Avenue, specifying the required or preferred angular plane to utilize for the site, Messrs. Goldberg and Glover attempted to apply policy intent to find the right transitioning to the low rise residential buildings to the east. They have used an east side yard angular plane starting at the existing zoning side yard setback of 0.9 m, rising vertically 10 m (the existing height permission of applicable to the Site), and then employed a 45 degree angular plane from that point. This angular plane assumes the presence of a notional, zoning compliant building adjacent to the east lot line, with a 45 degree angular plane starting at its zoned height.

[36] As previously noted, the east side of the building is setback from the east lot line 15 m from the second floor to the top of the fifth level. The sixth floor has a further angled step back of 3.28 m; the seventh floor has a further angled step back of 3.54 m; the eighth floor has a further angled step back of 3.22 m; and the ninth floor has a final angled step back of 3.51 m. At the ninth floor, the building is setback 23.1 m from the east side lot line. The stepping back of the building and angling allows the building to fall under the applicant's proposed angular plane when measured along the entire property line.

[37] The west side of the building, next to the 3-storey medical building at 272 Lawrence Avenue West, is setback 5.5 m from its lot line for floors one to seven, at which point the eighth and ninth floors are stepped back 3.0 m, like the front of the building. The 5.5 m setback is chosen in order to allow a similar 5.5 m setback on the adjacent westerly property so as to achieve an 11 m facing distance and therefore the

opportunity to have windows in those walls. Furthermore, this setback will comfortably allow for a 2.2 m walkway.

[38] The rear of the building, facing the new lot line created by the expanded open space ravine lands, varies considerably from a minimum of 0.90 m to 1.1 m to the Erosion Access Allowance at the rear-most portion of the western portion of the building to 16.63 m at the east/west portion of the proposed building. This setback accords with the TRCA Settlement.

[39] Access to the site is designed by way of a single two-way, full turning access driveway onto Lawrence Avenue West, located toward the eastern portion of the Site, which driveway travels beneath the second floor of the proposed building. This driveway is approximately 10 m wide and the second floor canopy height has been raised in order to ensure access for all vehicles destined to the underground parking, rear loading and lobby area, specifically anticipating waste removal and moving trucks. This driveway will also provide access to the ravine for TRCA and Toronto Water service vehicles. The driveway has additionally been designed to accommodate the City's required 22 m overland flow easement.

[40] The eastern setback will accommodate an 8.6 m to 11.2 m wide landscaped area that includes a privately landscaped walkway. This walkway will enable public pedestrian access through this portion of the Site from Lawrence Avenue West in the south to the dedicated public park at the northeast portion of the Site, and to the ravine and Glengarry Avenue. As part of the approval of the proposal, and Section 37 discussions, the City and the Appellants are suggesting that this linkage may be identified as a privately owned although publicly accessible open space ("POPS").

[41] Two car-share spaces are included on the east side of the driveway as an amenity for the building and a public amenity to the surrounding area.

[42] The existing storm water pipe, located at the approximate mid-point of the Site, is proposed to be realigned, reconstructed as an improved facility, and maintained

below a 22 m wide overland flow corridor within a 9 m wide access easement, which alignment is designed to avoid the proposed building and which overland flow route is entirely contained on the Site. During a major storm event, the existing un-engineered overland flow route is not contained solely on the Site. It currently would overtop onto the driveway and basements of the triplexes to the east. This will be remedied by the proposed development. These infrastructure improvements will be made at the expense of the Appellants, however it was indicated to the Tribunal that the cost to construct such infrastructure may be a consideration in future Section 37 discussions with the City.

[43] In total, the proposal would create 13,251 sq m (142,632 square feet) of residential gross floor area, amounting to an overall density of 3.74 net FSI (exclusive of the dedicated lands). The gross building coverage is 31.6% of the lot area and the net building coverage is 51.4% of the lot area. Almost 40% of the site is to be given to public use, not including the area of the easements (22 m and 9 m) and the potential POPS.

[44] The proposed apartment building includes 159 condominium units, of which, 9 units are at-grade 2-storey townhouse units with direct access to the outside and to the building's interior corridor. The condominium units by type are proposed as follows:

- 1 bedroom: 34 (21%)
- 1 bedroom: plus den 34 (21%)
- 2 bedrooms: 49 (31%)
- 2 bedrooms: plus den 42 (26%)

[45] Vehicular parking for the building is provided in three levels of underground parking with a total of 181 parking spaces. This is comprised of 160 resident spaces, 19 visitor spaces, and two car-share spaces. Seven barrier free spaces are included in this

total. Two car-share parking spaces are proposed at grade on the east side of the driveway. This parking space provision is based on parking ratios of 0.8 spaces/unit for one bedroom (plus den), 0.9 spaces/unit for two bedroom (plus den); and 0.15 spaces/unit for visitors. These parking rates are supported by the Traffic Impact and Parking Study prepared by WSP (formerly MMM Group), the Appellants' Transportation Consultants, and accepted by the City.

[46] Bicycle parking is provided at a ratio of 0.89 spaces/unit in compliance with Zoning By-law No. 569-2013 and the Toronto Green Standard Tier 1.

[47] The pedestrian entrance to the lobby is proposed by way of a 3.67 m sidewalk to/from Lawrence Avenue West. This enables a direct pedestrian access to the street and to bus stops located on Lawrence Avenue West.

[48] Indoor and outdoor amenity areas are provided on the ground floor and Level 9. A green roof of 616.7 sq m is proposed.

[49] Indoor amenity space is provided in a large space of 209 sq m at the rear of the building adjacent to the rear outdoor amenity space along the west side and at the rear of the building adjacent to the dedicated valleylands. There is also an indoor amenity lounge near the ground floor lobby. In total, 637 sq m of combined indoor and outdoor amenity space is provided. Balconies and terraces are also being proposed for each unit. The significant setbacks and stepbacks to the east and north, combined with the well treed valley feature, effectively address privacy or overlook concerns toward the adjacent neighbourhood.

[50] The project went through iterations as it made its way through the public consultation and City and agency review. The early version proposed the apartment building at a greater height and involved the introduction of semi-detached and townhouse forms of dwellings on the Site. The initial proposed residential gross floor area was approximately half again greater than now proposed.

[51] Mr. Goldberg created a table to illustrate the evolution of the project. For record purposes, that table is here transcribed:

**250 Lawrence Avenue West and 219 Glengarry Avenue
Summary of Statistics of Revised Development Proposals**

	March 2015	June 2016	August 2017	February 2018
Site Area (Gross)	5,766 m ²	5,766 m ²	5,766 m ²	5,766 m ²
Site Area (Net)	5,064 m ²	5,064 m ²	3,543 m ²	3,543 m ²
Total Gross Floor Area	21,123 m ²	18,028 m ²	14,908 m ²	13,251 m ²
FSI (Gross)	3.6	3.1	2.6	2.3
FSI (Net)	4.1	3.6	4.2	3.7
Apartment Height (storeys)	11 storeys + amenity level	12 storeys	12 storeys	9 storeys
Apartment Height (metres)	40.2 m	39.3 m	39.3 m	29.9 m
Semi-detached Height (storeys)	3 storeys	3 storeys	-	-
Semi-detached Height (metres)	10.6 m	10.6 m	-	-
Townhouse Height (storeys)	3 storeys	-	-	-
Townhouse Height (metres)	9.8 m	-	-	-
Units	264	243	189	159
Parking Spaces	225	241	187	181
Bicycle Parking	194	181	143	143

THE PLANNING EVIDENCE

[52] The planning evidence came before the Tribunal through five expert witnesses all of whom were qualified by the Tribunal in their respective areas of expertise. The Appellants called Mr. Goldberg and Mr. Glover, the latter offering testimony more focussed on urban design considerations. The City called Vanessa Covello and Sasha Terry, the latter offering testimony more focussed on urban design. The three

resident/ratepayer associations/organization (the “Associations”) were collectively represented by Marc Kemerer and collectively retained and called Mr. Mills.

[53] In addition to the expert testimony, the Tribunal heard from eight Participants from the community. That testimony will be dealt with further on in the Decision.

PROVINCIAL PLANNING POLICY

[54] As noted at the very outset of the Decision, the conflict here was over relatively narrow ground. None of the Parties took the position that the Site was not appropriate for intensification or for residential use.

[55] Based upon the testimony of the five planners, the Tribunal accepts and is persuaded by the summary of opinion of Mr. Goldberg regarding the policy of the Provincial Policy Statement, 2014 (“PPS”) and the Growth Plan for the Greater Golden Horseshoe, 2017 (the “Growth Plan”). The City planners did not effectively dispute his opinion on the matter of Provincial planning policy, save with respect to the matter of transition, which will be dealt with below. Mr. Mills took the position that a further segment study should be undertaken before a proper final opinion could be formed, and he was troubled by the potential precedent that an approval of the Appellants’ proposal might establish. The Tribunal rejects any suggestion that a further segment study is required and rejects any concern regarding precedent as the Site is clearly unique and no evidence was tendered about any other sites in the vicinity that might stand as candidates for similar treatment.

[56] The Tribunal here reproduces the opinion of Mr. Goldberg as it was set forth in his witness statement concerning the matter of PPS consistency and Growth Plan conformity:

- a) As an initial comment, it is important to recognize that the Growth Plan 2017 came into effect on July 1, 2017. This very recent Provincial plan post-dates all the City policy and guideline documents that will be reviewed later in this Witness Statement. This is significant since, after some period of review, the Province brought into effect, a new Growth Plan which contains policies that are materially different than, and

augment, the Growth Plan of 2006, upon which the existing City OP and guideline documents were based.

- b) The overarching policy direction of the Growth Plan 2017, states and strengthens the "intensification first" approach to planning, much more so, when compared to the Growth Plan 2006. In so doing, the new Growth Plan strengthens and augments intensification policies. Targets are included to the horizon of the Growth Plan (2041) which is only 23 years from now and these targets are minimum targets, which the Growth Plan encourages municipalities to exceed.
- c) In my opinion, the decision arising from the LPAT decision of this hearing is long-term and careful examination needs to be made of the circumstances of the subject site to ensure that the most appropriate long-term solution is established for the subject site. This is a decision that will last for generations and every care should be made to ensure that opportunities are not lost on the subject site, in accordance with the optimization policy direction of the Province.
- d) On pages 12 and 13 of the March 17, 2017 Request for Direction Report, City staff states that the subject site is not within a specific area of the City's OP which is designed for intensification. On page 14 of the same March 17, 2017 Request for Direction Report, City staff indicate:

"Staff are open to the Official Plan Amendment for the portion of the site fronting onto Lawrence Avenue West as long as an appropriate mid-rise built form is proposed that transitions in scale to the Neighbourhoods designation to the north and east, and an appropriate height and density."

Staff indicates in this report that an overall height of 27 m would be appropriate.

Section 4.7 of the PPS indicates that "policies of [this] Provincial Policy Statement continue to apply after adoption and approval of an official plan."

While City staff concludes that the then proposed 12 storey building does not conform, and conflicts with the Growth Plan, it is my opinion, that the site is within a strategic growth area, as defined by the Growth Plan, and that the now proposed 9 storey building is an appropriate height and form for this intensification site.
- e) The City is supportive of redesignating the land to Apartment Neighbourhoods although in a lower building. As such, the City has identified, or agreed that, the subject site is an appropriate site for residential infill, intensification and population growth. The main issue to be determined in this regard therefore relates to maximum height and the appropriate built form or urban design measures to employ on this site.
- f) *Strategic growth areas* are areas to where growth is directed to include a compact, intensified, transit-supportive, pedestrian-oriented form of redevelopment. The proposed redevelopment also is supportive of this as well as the site and area context is conducive to alternative modes of active transportation such as walking and cycling.
- g) The proposal optimizes the redevelopment of the subject site. The principle of optimization seeks to ensure that once developed, the development optimizes the land, infrastructure and transit facilities, while at the same time having appropriate regard for the site size and configuration, and the surrounding and nearby area context. In this regard, the subject proposal has appropriately considered the opportunities and the moderating elements of the neighbourhood context.

By striking the right balance between these opportunities and moderating elements, the proposal optimizes the use of the land, location and its nearby facilities.

- h) The proposal makes more efficient use of, and optimizes the land base and infrastructure, in a location well served by public transit and within walking proximity to employment buildings, recreation, shops, and services. The subject site is a comfortable walking distance to the Yonge Street commercial uses and subway station at Yonge/Lawrence intersection. As such, rapid transit and alternative active forms of transportation are ideal options for the population of this future redevelopment.
- i) The proposal respects the natural environment and, in particular, the ravine feature forming part of the north portion of the subject site. This has been appropriately addressed by the many technical investigations which are now reflected in the TRCA Settlement.
- j) The proposal contributes to the municipality achieving its minimum intensification and density targets as set out in the Growth Plan.

THE CITY OP AND THE APPROACH TO HEIGHT AND MASSING

[57] The finally revised development proposal advanced by the Appellants is for a 29.89 m tall building terraced and stepped back from south, east and west.

[58] Although the City would prefer a building whose height does not exceed the right-of-way width of Lawrence Avenue West, which is 27 m, the City planning evidence and position does not focus on that but rather on the appropriate angular plane to apply relating to the relationship of the building mass to the east lot line. The City position would carve back floor area on the east end of the building beginning from a portion of the fourth floor of the building on up to the ninth floor.

[59] The City position utilizes a 45 degree angular plane, as do the Appellants, but rather than constructing it from a point 10 m above grade, the City constructs it at grade from the lot line. The City position is derived from the Mid-Rise Building Performance Standards and an addendum thereto adopted by City Council in June, 2016.

[60] Ms. Terry asserts that the standards in this document should apply to this mid-rise development on the basis of it meeting the two criteria laid out in the document concerning use of the standards in evaluation of mid-rise projects, whether they are on an Avenue or not. The two criteria are that, firstly, the site has an existing land use

designation for Mixed Use Area, Employment, Institutional or some Apartment Neighbourhoods where the existing built form context supports mid-rise development (underlining added), and secondly, that the site fronts onto a Major Street on Map 3 of the OP with a planned right-of-way at least 20 m wide.

[61] The key OP policies referred to and interpreted by the planning witnesses were Policy 2.3.1.2 under the Healthy Neighbourhoods section of the OP, Policy 3.1.2.3 under the Built Form section of the OP and Policy 4.2.2 under the Apartment Neighbourhoods section of the OP. As they are the policies that most particularly relate to the matter before the Tribunal, they are here set forth in full:

Policy 2.3.1.2

Developments in Mixed Use Areas, Regeneration Areas and Apartment Neighbourhoods that are adjacent or close to Neighbourhoods will:

- a) be compatible with those Neighbourhoods;
- b) provide a gradual transition of scale and density, as necessary to achieve the objectives of this Plan through the stepping down of buildings towards and setbacks from those Neighbourhoods;
- c) maintain adequate light and privacy for residents in those Neighbourhoods; and attenuate resulting traffic and parking impacts on adjacent neighbourhood streets so as not to significantly diminish the residential amenity of those Neighbourhoods.

Policy 3.1.2.3

New development will be massed and its exterior facades will be designed to fit harmoniously into its existing and/or planned context, and will limit its impact on neighbouring streets, parks, open spaces and properties by:

- a) massing new buildings to frame adjacent streets and open spaces in a way that respects the existing and/or planned street proportions;
- b) incorporating exterior design elements, their form, scale, proportion, pattern and materials, and their sustainable design, to influence the character, scale and appearance of the development;
- c) creating appropriate transitions in scale to neighbouring existing and/or planned buildings for the purpose of achieving the objectives of this Plan;
- d) providing for adequate light and privacy;
- e) adequately limiting any resulting shadowing of, and uncomfortable wind conditions on, neighbouring streets, properties and open space, having regard to the varied nature of such areas; and
- f) minimizing any additional shadowing and uncomfortable wind conditions on neighbouring parks as necessary to preserve their utility.

Policy 4.2.2

Development in Apartment Neighbourhoods will contribute to the quality of life by:

- a) locating and massing new buildings to provide a transition between areas of different development intensity and scale, as necessary to achieve the objectives of this Plan, through means such as providing setbacks from, and/or a stepping down of heights towards, lower-scale Neighbourhoods;
- b) locating and massing new buildings so as to adequately limit shadow impacts on properties in adjacent lower-scale Neighbourhoods, particularly during the spring and fall equinoxes;
- c) locating and massing new buildings to frame the edge of streets and parks with good proportion and maintain sunlight and comfortable wind conditions for pedestrians on adjacent streets, parks and open spaces;
- d) including sufficient off-street motor vehicle and bicycle parking for residents and visitors;
- e) locating and screening service areas, ramps and garbage storage to minimize the impact on adjacent streets and residences;
- f) providing indoor and outdoor recreation space for building residents in every significant multi-unit residential development;
- g) providing ground floor uses that enhance the safety, amenity and animation of adjacent streets and open spaces; and
- h) providing buildings that conform to the principles of universal design, and wherever possible contain units that are accessible or adaptable for persons with physical disabilities.

[62] The consensus of the planners seemed to be that regard must be had to the matter of transition from the newly proposed Apartment Neighbourhood development to the existing Neighbourhoods, most particularly with reference to the immediate lands to the east.

[63] This consensus assumed a material turn in that it rested upon the references in the aforementioned OP policies to the adequacy of light and privacy, and the limiting of shadowing and uncomfortable wind conditions.

SUN/SHADOW STUDIES

[64] The City and the Appellants produced shadow studies. Both parties followed the established protocol of demonstrating shadow impact from the building on the date of summer solstice, June 21, and at an equinox date, which in this case was March 21.

Both studies also were presented in a comparison format, showing the expected shadow impact from the Appellants' proposed building and from the City revised version of that building applying the City's 45 degree angular plane approach.

[65] The studies were essentially identical regarding extent of shadow at the defined times of day.

[66] The studies showed negligible shadow impact at any time of day on adjoining properties on June 21st.

[67] The studies confirmed that on March 21st there would be no shadow impact on Neighbourhoods designated lands in the morning and early afternoon hours.

[68] By 1:18 p.m. on March 21st, there is incremental shadow impact on the proposed parkland arising from the Appellants' proposed building. By 2:18 p.m. on March 21st, the City proposed building begins to throw a shadow on the southern portion of the proposed parkland.

[69] In the hours thereafter on March 21st, both proposals extend shadows along the southern portion of the proposed parkland and into the rear yard areas of the Glengarry and Lawrence Avenue triplexes, the shadow thrown by the Appellants' proposal incrementally more extensive in each instance than the City proposal.

ASSESSMENT OF IMPACT

[70] Mr. Goldberg attempted to take the position that the assessment of impact on the properties to the east should be tempered by the fact that as they were triplexes rather than single family or semi-detached dwellings, they should be treated as a transitional use and thereby less sensitive and capable of bearing a greater impact.

[71] The Tribunal rejects that view. The triplex form of dwelling is contemplated and permitted in the Neighbourhoods designation and is not in any way distinguished from the other forms of residential development permitted in that designation.

[72] In the instance of the triplex dwellings to the east of the Site, since they present from the street as 2½-storey dwellings, one would be hard pressed to say that they depart from the character of the neighbourhood within which they are found.

[73] However, Mr. Goldberg and Mr. Glover make very salient observations about the nature of the area where the shadow impact is sustained. With a conventional single family dwelling, as is the case for many of them in this neighbourhood, the rear yard is an amenity area for personal resort and use, and the deprivation of direct sunlight for portions of the day may result in some negative impact or consequence.

[74] As the photographic evidence makes abundantly clear, and as it was characterized by Mr. Goldberg in his testimony, the rear yards of the immediately adjacent properties at 217, 215 and 213 Glengarry Avenue and 232 and 230 Lawrence Avenue West, are effectively fully paved parking areas for vehicles. These rear yards do not function as areas of respite or recreation for the occupants of the associated dwellings.

[75] The OP policy is not intended to protect vehicles from shadows. In fact, it is probably advantageous that vehicles be shadowed in the heat of the midday sun.

[76] Also associated with the question of impact, and as expressly referenced in OP Policies 2.3.1.2 (c) and 3.1.2.3, is the matter of providing privacy for neighbouring properties.

[77] Once again, the photographic evidence is demonstrative. Each of the five triplexes adjacent to the east has a rear “balcony” where the occupants may take to the outdoors. Although each of these areas has a low screen around it as a matter of protection from falling off, these do not operate as privacy screens in any functional sense. The consequence is that there are nine such areas on the north side of the rear yard, separated laterally from each other by a limited distance, and six such areas on the south side. The north and south side areas, based upon the reference plan of

survey dimensions found in the materials, are separated by approximately 13 m of entirely open space not mediated by any trees or other vegetation.

[78] Thus, the use of these areas cannot presently come with any expectation of privacy as it currently stands. The Tribunal, on the evidence, does not find a likelihood of loss of privacy where none now exists.

COMPATIBILITY

[79] Policy 2.3.1.2 (a) of the OP stipulates that Apartment Neighbourhoods that are adjacent or close to Neighbourhoods will be compatible with those Neighbourhoods.

[80] The question of compatibility is often, and typically, associated with the question of whether impacts of an adverse nature will ensue from the proposed juxtaposition of uses.

[81] The assessment of the Tribunal on the matter of light, shadow and privacy is as canvassed above and it is the determination of the Tribunal that no material adverse impact on the Neighbourhoods lands will result.

[82] There is no evidence of any likelihood of unwarranted traffic infiltration into the Neighbourhoods or conflicts arising from the character of residential use proposed here.

[83] In fact, by reason of the land dedications proposed for public purposes, the Tribunal finds that a more than adequate buffer will be created between the proposal and the developed lands to the north and the east. The Tribunal heard no persuasive evidence to the effect that this proposal will in any way compromise any development within the Avenue or on the immediately abutting lands to the west.

[84] In the result, and in contrast to the situation between Lando and L3-37, the Tribunal finds no basis to conclude that there will be any incompatibility as referenced in the policy.

THE EVIDENCE OF THE PARTICIPANTS

[85] As noted earlier, the Tribunal heard from eight members of the community as Participants.

[86] Andrew Baise, who resides north of the Site on the south side of Douglas Avenue, acknowledged that intensification was appropriate for the Site but he was of the view that 29.89 m of height was too much. He believed that a 7-storey building would be more appropriate.

[87] Mr. Baise was not enamoured of the exterior treatment of the proposed building. He referred to it as a glass building. He was of the view that to be consistent with the character of the area as he knew it, the building should have a brick treatment.

[88] He suggested that the balconies on the north side of the building should be removed on the basis that they will be cluttered with extraneous things and be unaesthetic, and that the use of them will result in noise projection in his direction. However, under cross-examination by Mr. Tanzola, he admitted that he was unaware that the balconies were inset and only 1.5 m deep.

[89] Mia Macfarlane, who resides on the fourth floor of one of the apartment buildings on Rosewell Avenue, felt that there had not been proper disclosure as to the cost of the green space which was to be provided through the development. She also expressed concern about traffic, noise and impacts on mental health.

[90] In cross-examination by Mr. Tanzola, she indicated that a 5- to 6-storey building for the Site would be acceptable. She was opposed to a high-rise development, which is how she characterized the proposal.

[91] Bradley Tate, who resides on the south side of Glengarry Avenue, just west of Elm Street, was in opposition to the height and density of the proposal. In his view, a 7-storey building should be the maximum for the Site. He was of the view that the City's Mid-Rise Guidelines should govern and thereby limit the height to seven storeys.

[92] He suggested that within the gaps in the tree cover on the street, he will have a view of the building. This was apparently an unacceptable outcome.

[93] He was, however, pleased with the aspect of the proposal which would tidy up the natural area and create a walking path through it.

[94] Jennifer Arp, who resides further to the north on Glen Park Avenue, appeared by reason of her interest as the public school trustee for the area, and at the request of the community. She made plain that she was appearing in her personal capacity and not as authorized to speak on behalf of the Toronto District School Board.

[95] Ms. Arp spoke about the state of the schools in what she referred to as the Yonge corridor. She expressed the view that it is better for children in the K to 8 grades to be able to attend a local school but that the public schools in this area were all over capacity at present.

[96] She was concerned about the requirement stipulated by the Toronto District School Board that agreements of purchase and sale for the development contain warning clauses as to this overcapacity issue and that students may have to be bussed to schools outside of the immediate neighbourhood.

[97] She did acknowledge that the Toronto District School Board did not have an Education Development Charge on the basis that there is excess capacity in the system on a Board-wide basis.

[98] In cross-examination by Mr. Tanzola, Ms. Arp acknowledged that she has been aware of the School Board policy regarding this type of notice and she also acknowledged that the unit count of this project has been reduced considerably since its inception.

[99] Finally, she acknowledged that intensification is appropriate.

[100] Colin Graham, who resides within what is referred to as the Bedford Glen development north of the Site, took the position that the massing and scale of the proposal was too large, that it will not respect the character of the neighbourhood.

[101] He was not opposed to growth and intensification but was shocked by the stance of the City in not holding to 23 m of height. He asserted that the development on Rosewell Avenue should be the benchmark.

[102] Jess Hungate, who resides on Woburn Avenue to the north of the Site, advised that Bedford Glen is the development which the community is proud of, which he described as massive but good. He was of the view that although intensification was appropriate, there had to be balance and that the new development should be respectful of the scale of the current and future planned development.

[103] He believed that the Appellants' proposal was excessive and without justification for same.

[104] Ted Butler, who resides in the triplex on Lawrence Avenue West immediately adjacent to the Site, and who also owns a triplex on the south side of Glengarry Avenue near to the Site, advised that he not only lives in the dwelling but conducts his business from it.

[105] Mr. Butler was concerned about the loss of direct sunlight to the windows on the west side of his dwelling unit. He expressed the view that a preferred form of development for the Site would be for townhouse dwellings. However, in cross-examination by Mr. Tanzola, he acknowledged that townhouse development to the permitted height of 10 m at the permitted side yard setback may also impact the penetration of direct sunlight.

[106] He was happy about the improvement of the natural area and welcomed the restoration of a path to it, as he advised that there had been a path prior to 2005.

[107] The final Participant was Kirsten Cooke, who resides on Douglas Avenue, and whose property is adjacent to the ravine. She had concerns about invasion of her privacy and about noise intrusion but did acknowledge that she has a long lot and that there will be a buffer of natural area and her own rear yard garage between the new building and her dwelling, bearing in mind that there will be a vegetative screen all the while that the trees are in leaf.

[108] She was not opposed to development of the Site but advised that its height should not exceed the height of 515 Rosewell Avenue.

ANALYSIS OF THE EVIDENCE

[109] The Tribunal has determined that the Site is a unique parcel of land in its neighbourhood.

[110] There was consensus amongst all of the planning witnesses and all members of the community that the Site was appropriate for intensification, that residential use in an apartment format was correct (except for the opinion of next door neighbour Mr. Butler) and that re-designation of the Site under the OP to Apartment Neighbourhoods designation was warranted.

[111] The Tribunal has accepted the evidence of Mr. Goldberg and Mr. Glover that the proposal will be consistent with the PPS and will conform with the Growth Plan. This opinion was supported by the City planning witnesses, subject to the caveat regarding transition.

[112] A key element of the PPS and the Growth Plan is to achieve efficiencies out of land and infrastructure, and to optimize the use of land. Those policy goals inform the view of the Tribunal in this case that the Appellants' proposal should be sustained without modification.

[113] As will be clear from the reasons above, the Tribunal does not treat the incremental shadow impact as between the Appellants' proposed building and the modified version being advanced by the City as at all material.

[114] However, the impact of abiding by the City modified version, according to the testimony of Mr. Goldberg, would result in a potential loss of 1100 sq m of floor space, or 15 dwelling units, due to the necessary structural reconfiguration which would have to occur. This is not sensible as this floor area is now being supported by the underground parking facility, the indoor and outdoor amenity space, the Site infrastructure and the natural area improvement package which the Appellants will be delivering. Such an outcome is the reverse of optimization and therefore inconsistent with Provincial policy.

[115] The planning witnesses for the Parties brought many examples of other developments in the City where various angular planes, and approaches to angular planes, were utilized. The point of this canvas appeared to be a test of whether a uniform approach was employed elsewhere in the City, most specifically arising out of the Mid-Rise Guidelines. There were examples of strict adherence and departures from strict adherence.

[116] The matter of appropriate transition is not a science. Despite the development of guidelines and formulae, they can only function as tools to aid in the inquiry but their application will not necessarily always yield the appropriate outcome. There must be a balance of considerations in making this judgment. In this instance, this is a unique site and it is the Tribunal's view that the loss of the potential to provide needed housing would considerably outweigh any benefit to the immediately adjacent neighbours or to the broader public from the City suggested physical modifications. The Tribunal does not treat those benefits as sufficiently material to warrant attention here and cause a modification to the proposal.

[117] Height was a live issue in the hearing and attracted definitive views from all of those who gave testimony.

[118] The original proposal was for a building with a height of 40 m. The version before the Tribunal after adjustment by the Appellants was for a building with a height of 29.89 m, which is stepped on the higher floors.

[119] The OP policy would allow a building with a height no greater than the public road right-of-way. For the abutting road, Lawrence Avenue West, the designated right-of-way is 27 m.

[120] The City planners had no issue with the height, even though City Council suggested limiting height to 23 m.

[121] Mr. Goldberg made two assertions about height which the Tribunal accepts. Firstly, he asserted that the mere fact of seeing something is not an impact.

[122] The Tribunal recognizes that the City is an intensely urban environment and is increasingly marked by tall buildings. These buildings constitute key parts of this complete community and contribute to its vitality. To suggest then that there is a harm in the visibility of a structure accommodating a permitted use is an untenable position.

[123] Secondly, Mr. Goldberg asserted that “it was no big deal being the tallest building in the neighbourhood”. This may have been a somewhat glib expression but the Tribunal treats it as a fair one in that no demonstrable negative impacts were established associated with this proposed height. Prior to the construction of 515 Rosewell Avenue in the early 2000s, there were 4-storey buildings lining Rosewell Avenue. The current building at 515 Rosewell is permitted by its zoning provision to have a height of 21.7 m to top of roof and 26.95 m to top of mechanical penthouse. A current surveyor’s sketch was provided to the Tribunal in evidence and it confirms compliance with these permitted heights. The mechanical penthouse appears to occupy approximately a quarter of the roof area. This building is now taken by the community not only as a fixed and acceptable part of the built environment but as the benchmark. Change is often sensed as disruptive but the community is dynamic and today’s change becomes tomorrow’s status quo.

[124] Associated with these findings, the Tribunal determines that there is no need to eliminate the balconies on the northeast of the building. The Appellant may wish to do so but will not be required to do so by the Tribunal.

FINAL DISPOSITION

[125] The Tribunal will allow the appeals in part as stipulated in the following paragraphs.

[126] The appeal with respect to the official plan amendment will be allowed to re-designate the Site from Neighbourhoods to Apartment Neighbourhoods. Counsel for the Appellant shall settle a form of Amendment with counsel for the City and submit the final draft to the Tribunal for issuance of a final Order regarding same.

[127] The appeal with respect to the zoning amendment will be allowed to permit use of the Site for apartment building purposes, open space – parkland, and natural areas as generally set out in the Site Plan and Architectural Drawings which are found on pages 15-31 of Exhibit 9, the Visual Evidence – Volume 1 book tendered by the Appellants. Counsel for the Appellant shall settle a form of Amendment with counsel for the City and submit the final draft to the Tribunal for issuance of a final Order regarding same.

[128] The Tribunal understands that the Appellants and the City have agreed that the proposed development triggers the Section 37 policies in the OP and that a Section 37 contribution is to be settled between the Appellants and the City. The outcome of such discussions usually is specifically incorporated into the zoning amendment by-law.

[129] The Appellants have requested that the Tribunal retain its jurisdiction over this matter with specific reference to the Section 37 contribution in the event that the Appellants and the City are unable to come to terms on that contribution. The Tribunal will reserve that jurisdiction and if it is necessary for the Tribunal to arbitrate the matter, the Appellants shall so advise the Case Co-ordinator at the Tribunal for the purpose of scheduling a further proceeding to dispose of that issue. This holds true with respect to

the final form of the zoning amendment by-law as well. If the Appellants and the City are not able to settle the form of that amending by-law, the Tribunal will convene a further hearing event to hear evidence and submissions on that matter and will determine the final form of the amending by-law.

[130] Finally, there is also a site plan approval appeal before the Tribunal in this proceeding but on consent of the Parties, that appeal has been held in abeyance pending the Tribunal's decision on the merits of the land use question. As with the Section 37 contribution, the Tribunal understands that the Appellants and the City propose to attempt to settle a site plan. The Tribunal encourages them to do so. However, if they are not able to come to terms, counsel for the Appellants may contact the Case Co-ordinator at the Tribunal for the purpose of scheduling a further proceeding to dispose of that appeal.

[131] This Member shall remain seized of the final disposition of these appeals.

"Gerald S. Swinkin"

GERALD S. SWINKIN
MEMBER

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Local Planning Appeal Tribunal

A constituent tribunal of Environment and Land Tribunals Ontario
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