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ISSUE DATE:
Oct. 29, 2004
DECISION/ORDER NO:
1714



PL040215

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

468 Avenue Road Holdings Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Toronto to permit the construction of a 19-storey, 140 unit building with a gross floor area of 18, 697 m² located at 468 Avenue Road (formerly 151, 153, 165 & 169 St. Clair Avenue West) in the City of Toronto
OMB File No. O040031

468 Avenue Road Holdings Inc. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-Law 438-86 of the City of Toronto to permit the construction of a 19-storey, 140 unit building with a gross floor area of 18, 697 m² located at 468 Avenue Road (formerly 151, 153, 165 & 169 St. Clair Avenue West) in the City of Toronto
OMB File No. Z040037

468 Avenue Road Holdings Inc. has referred to the Ontario Municipal Board under subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, determination and settlement of details of a site plan for lands known municipally as 468 Avenue Road (formerly 151, 153, 165 & 169 St. Clair Avenue West) in the City of Toronto
OMB File No. M040025

APPEARANCES:

Parties

468 Avenue Road Holdings Inc.
City of Toronto
South Hill District Homeowners
Association Inc.

Counsel*/Agent

A.J. Brown*
W. Hawryliw*
K.M. Kovar*

Participant

First Unitarian Congregation of Toronto

G. Burton

DECISION DELIVERED BY S.W. LEE AND S.B. CAMPBELL

These appeals relate to a development proposal on a site located at the southwest corner of Avenue Road and St. Clair Avenue West in the City of Toronto. An earlier Board hearing was held with respect to this site and the Board denied the appeals for the planning instruments that would have given rise to the development. Since then, the proposed plan has been modified, to address the concerns arising from matters raised at the hearing. As a result, the heights, the widths and the massing of the proposal have been modified and a revised 19-storey condominium tower is proposed with underground parking.

These modifications have not been proved to be successful with the City as the latter had refused to enact the requisite instruments and the appeals have been once again brought before the Board. Another hearing was accordingly scheduled and was heard by this panel.

The Evidentiary Contests

At this hearing, the Board heard conflicting evidence from the developer, the City and a resident group, all of whom adduced planning evidence in support of their respective positions. The developer and the City joined issue on other fronts, including the questions of urban designs, for which evidence of architectural and urban designs were proffered as well as the questions of the widening of St. Clair Avenue for which conflicting evidence of traffic planning was heard.

Many residents came forward to give evidence at an evening session and delineated their unified concerns. Some of the misgivings are given in analytical terms, others in more impassioned and personal voices. The First Unitarian Congregation's Church is located to the immediate west. It also voiced its concerns through a representative. All in all, four days were consumed for this hearing.

Despite the many differences, the main contenders agreed on one matter. There is a general agreement that there ought not to be a repetition of another such hearing as the financial and emotional tolls on every one would be far too onerous. Almost all the main contenders urged the Board to impose some finality in this matter. In other words, if the Board were to find the present proposal wanting, it is not sufficient to end

there. In the words of Mr. Stagl, the planner for the South Hill District Homeowners Association Inc., the Board ought to impose a "closure" and delineate what can be considered an acceptable development outline.

The central issue in this hearing is the appropriateness of the proposal from a planning and urban design standpoint. There is no issue relating to infrastructure sufficiency, microclimate environment, or noise impacts. There is no serious disagreement that a residential use and some form of intensification on site would be appropriate. What is specifically disputed is how much and how tall.

For the residents at Lynwood Avenue, which runs east and west from Avenue Road, it is unacceptable to have a building of such mass and height. Similarly, for those residents at 2 Lynwood Avenue, a condominium building located south of the subject site, the proposal is viewed with misgivings. Furthermore, the City took issue with the proposed height as it considered the shadow to be cast onto the Glen Gould Park to be unacceptable. The City also took a planning position this is not the proper site where such intensification is justifiable.

A Modified Proposal & the Policy Contexts

The Board finds the modifications have been designed and fine-tuned to address the local conditions and concerns.

As indicated earlier in the decision, the development has been revised to have the height of 59.95m to the main roof. At the north elevation, there would be a podium as well as terracing back of the upper floors to allow sunlight penetration to address the shadowing onto the Glen Gould Park located on the northwesterly corner of the intersection. Not only is there an overall reduction of widths and heights to the building, but there is a reduction of floor to ceiling heights as well. To the west where it abuts the church, there is a westerly podium. The building is pushed to the edge of the property line at the north elevation and is pulled back further from the Avenue Road edge at the easterly elevation. The building design is aesthetically pleasing and the covered pedestrian promenade along St. Clair and Avenue Road is not only a flourish to a good design but in keeping with the currency of architectural and urban designs.

From the policy perspectives, the Board finds from the evidence presented that the location of the site is an appropriate candidate for a residential intensification as it is situated at the intersection of two major traffic carriers in the City. It is well served by the T.T.C. and in close proximity to the amenities and conveniences of urban living. Although the site is not within the Part II Yonge-St. Clair Plan, both the easterly and westerly edges of Avenue Road are within it. It must be pointed out, a point that is almost a truism, that intensification in a well chosen urban area, well served by amenities, is a goal that is worthy and needed and it is a goal that has an urgency far beyond this site.

The current proposal as presented possesses a high degree of conformity on many policy fronts to the Provincial Policy Statements, Metro Official Plan and the current City Official Plan. Whether it is in the area of utilization of existing resources and infrastructure to ensure lesser urban sprawl, a proper balance between growth and appropriate impact on the physical character of the low density of residential areas, responsiveness to the streets and pedestrian comfort zones, appropriate use of built-forms and urban designs to ensure appropriate mass and height and to allow sunlight penetration and eyes on the streets, the proposal possesses elements that would address these goals and more.

There is little dispute that a strict adherence to the blanket height of 14 metres and 2 times coverage permission pursuant to the current performance standards is neither warranted nor desirable. In fact, both the planner for the residents and the urban designer for the City concede that a higher height than what is permitted can be considered appropriate, albeit it should not exceed the suggested 13 or 14 storeys. In both Mr. Granger's and Mr. O'Brien's decisions, the same points have been enunciated or implied. As for the juxtaposition between the proposed development and the low density residential uses at Lynwood Avenue and the interior streets, it is not without precedents in this vicinity and the Board will make a more in depth analysis in the later parts of the decision.

The Riva Glade Site

In dealing with the questions of both planning and urban designs, a great deal of time at the hearing was consumed with the debate about whether the subject site

should be compared with the Riva Glade site at 135 St. Clair W. at the southeasterly corner of St. Clair Avenue West and Avenue Road. The latter site has an existing office commercial building and had been approved by way of settlement before the Board for a residential project of 21 storeys in height. It is important that this panel engages an analysis with respect to this site.

The Board finds the last-mentioned site to be of critical importance as no urban designer or land use planner can legitimately dismiss that as a symmetrical and comparable site in more ways than one. Mr. S. Wassermuhl, the architect for the project, insists that to consider that site as a comparable is appropriate and apt as the proposed buildings on these sites, once constructed, would form the frame for the series of apartment complexes on the Avenue Road promenade north of St. Clair Avenue. In his view, the frame formed by the proposed buildings on both sites can be considered a gateway to the vista of the clock tower of Upper Canada College as one travels northerly rising with the topographical features of Avenue Road and in this vicinity. The latter mentioned vista is a much-vaunted significant view that has been identified in Map 4 of the Official Plan.

The Board is mindful that the two sites reside in different designations. However, we are persuaded by the propositions put forward by Mr. Wassermuhl and Mr. Glover. In fact, it is our finding that the last-mentioned "frame" would be wholly consistent with the concept that it is to be the divide between the two designations, the High Density Residence Area to the west and the Yonge-St. Clair Medium Density Mixed Commercial Residential Area to the east.

It is also our finding that whether one approaches the intersection from the easterly and westerly directions or from the northerly and southerly directions, the proposed developments on this and the Riva Glade sites would fit appropriately within the existing or future planning fabrics and would not be jarring or an affront to the streetscape or to any measures of urban design. The lower building forms west of Avenue Road would not be fast disappearing as a result of the proposed development. The blanket zoning performance standards will remain, regardless of what happens here. There are some scanty enunciations made at the hearing by more than one witness that the existing office-commercial complex on the Riva Glade site is likely to stay and the proposed development is unlikely to be realized. The Board finds that the

last mentioned propositions highly conjectural. In our view, to compare this site and integrate this site with what has been approved at the Riva Glade site is both realistic and necessary.

Shadowing Issues

Despite the proposed terracing and sculpting at the northerly elevation, the City of Toronto is critical of the shadows to be cast onto the Glen Gould Park. The City's urban designer maintains that the amount of shadow to be cast on this park exceeds that which to be cast on the other park by the Riva Glade site at noon in the month of September.

The Board has examined in full the shadow evidence before us. We are satisfied that this small park would be in considerable shade given the abundant existing tree canopy at that park. Furthermore, the impugned shadowing of the September month peaked at noon and in a highly urbanized setting such as this, it is not a situation that is so unconventional. Finally, we have viewed the video evidence presented as well as examining the shadow studies in an overall seasonal basis and have concluded it is not at all unacceptable.

The Interrelations to the Neighbourhoods to the south

As for the relation to the low-density residential buildings at Lynwood Avenue and the condominium building at 2 Lynwood Avenue to the south, the Board has the following findings.

One must evaluate the modified proposal in light of the highly urbanized environments of this vicinity. If one were to compare the stately and majestic homes located at Forest Hills Road or Heath Avenue having the apartment buildings or office complexes on Avenue Road or Yonge Street silhouetted in the backdrops, the situations in this vicinity would not be that drastically different. The exclusiveness of the neighbourhood at Lynwood Avenue, its beauty and repose created by the tree canopies and the high quality of the homes cannot be marred or sullied by the presence of a well-designed tower at the major streets in the backdrops. In addition, the backyards of those homes at the Lynwood Avenue abutting or near the subject site will look onto the open landscaped areas. The portions of the building with the tower would be at a more

oblique angles and at a distance. From all the illustrative plans the Board has examined, the landscaping and planting can be done in such a manner so that there would be a buffer and that the residents at the proposed building would be deterred from approaching the areas that abut or near the backyards of these homes. This in fact will be the direction ordered by the Board to ensure the inter-phasing of the areas can be so accommodated.

As for the relation of 2 Lynwood Avenue to the proposed building, the Board has the proxies for comparison with the Riva Glade site at 135 St. Clair Avenue West to the Bradgate Arms.

Whether it is in the area of separation distance (14m vs. 12m), or the differentials of heights (21 storeys to 4 storeys vs. 19 storeys to 7/8 storeys), the subject proposal to 2 Lynwood is quite comparable, if not better. There is a line of coniferous trees located at the north phase of 2 Lynwood Avenue reaching almost to the 5th storey at 2 Lynwood Avenue. The latter building also has easterly windows facing onto Avenue Road. Most importantly, the Board is persuaded by the evidence of Mr. Wassermuhl in the area of comparison of possible heights for which he had given graphic demonstrations. It is his view that given the fact that any building higher than 10 or 11 storeys will have the same effect on the north facing windows at 2 Lynwood, the residual effect of the proposed height is negligible. In short, what we have here is an inevitable situation of a building abutting another building site which fronts on major streets.

It is important to underline the point that a further reduction of heights to 13 or 14 storeys would not result in any greater benefit for the north facing windows. This does not mean that there is a license for any unfettered increase of heights, but it is a point which can be easily ignored as the suggested reduced height to 13 or 14 storeys by the City urban designer would have the same effect for the north-facing windows.

Miscellaneous Matters

All in all, the Board is satisfied that any further modification would not have resulted in any greater margin of benefits. We have run through several scenarios in our deliberations to see whether a 14 or 15 storeys tower or a massing reductions at different elevations may endow any more discernible benefits and have not detected

any such results. We are mindful that change to a community can be traumatic and in this instance, the residents' concerns are ever present in our deliberations.

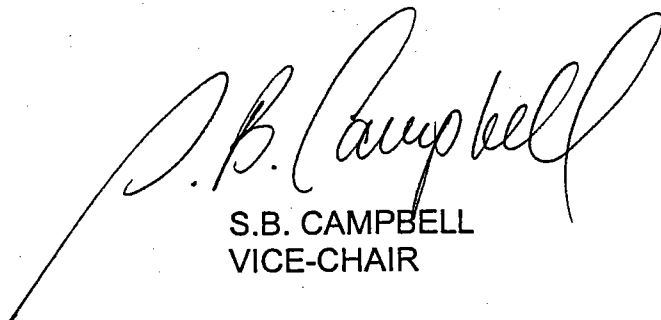
A point has been raised by the City with respect to the possible road widening of St. Clair Avenue West to add an exclusive lane for the streetcar and the implication is that the footprint to the north may not be appropriate. The Board is satisfied from the reply evidence adduced by the appellant that the widening envisaged is still feasible within the road allowance constraints. We are also unsure from the evidence presented how realistic and imminent the widening project would be as well as the fact that this concern was not brought to the attention of the designers of this project until recently. As such, we attach little weight to this concern.

The only other matter that was raised is the requirement of entering an agreement pursuant to Section 37 of the *Planning Act*. Mr. Brown has submitted the requisite authorities before us. Based on what has been presented, the Board is not persuaded that such a requirement is warranted.

The Board would allow the appeals. The Official Plan and the requisite Zoning By-law will be amended in accordance with Exhibits 29 & 30. The Board will approve the site plans generally in accordance with what have been presented at the hearing. The Board will not issue the Order until the applicant and the City have mutually come to an agreement as to the format of these planning instruments. The Board directs that the City and the applicant will report to the Board three weeks subsequent to the issuance of the decision.



S.W. LEE
VICE-CHAIR



S.B. CAMPBELL
VICE-CHAIR