

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: June 25, 2014

CASE NO(S): PL130195

Queen EMPC Six Limited 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 neglect to enact a proposed amendment to Zoning By-law 438-86 of the City of Toronto to rezone lands respecting 1884 Queen Street East to permit the redevelopment of a 6-storey mixed-use building
O.M.B. File No. PL130195

APPEARANCES:

Parties

Counsel

Queen EMPC Six Limited (the
"Applicant")

D. Bronskill

City of Toronto ("City")

J. Braun

Greater Beaches Neighbourhood
Association ("GBNA")

D. Wood/A. Sadvari

HEARING EVENT INFORMATION:

Hearing:

Held in Toronto, Ontario on June 18, 2014

DECISION OF THE BOARD DELIVERED BY BLAIR S. TAYLOR

INTRODUCTION

[1] This was the continuation of a matter for which a decision was issued on December 11, 2013. That decision, following two weeks of evidence, allowed the appeal in principle of a zoning by-law amendment application for the lands known municipally as 1884 Queen Street East ("Subject Lands"), but withheld the Board's Order with the direction that a revised site specific zoning by-law be prepared implementing the terms of the settlement with 1409620 Ontario Limited, and

implementing the findings of the Board in its decision. As the parties were unable to resolve the zoning by-law amongst themselves the matter came back to the Board for a decision.

[2] A revised draft zoning by-law (Exhibit 1) was filed with the Board by counsel for the Applicant. He advised Exhibit 1 was the result of the combined efforts of the Applicant's land use planner, and the City's lands use planner, (GBNA not having retained a land use planner at the hearing). The Board was advised by counsel for the City that Exhibit 1 was acceptable to the City.

[3] Exhibit 1 was not acceptable to the GBNA. Counsel for the GBNA filed Exhibit 2, being a lengthy submission that had been forwarded to counsel for the Applicant the previous evening, which put forward seven concerns and suggested modifications for consideration by the Board.

[4] As four of the identified concerns and suggested modifications were generally acceptable to both the Applicant and the City, the Board will deal with those first.

[5] Concern No. Three of the GBNA was to add certain additional dimensions onto Map 2 to Exhibit 1 as shown on Tab 12 (Appendix 11) of Exhibit 2. Concern No. Five of the GBNA was to add (diagrammatically) a 4.5 metre ('m') notch in the east wall starting at the second floor on Map 2 to Exhibit 1 as shown on Tab 12 (Appendix 11) of Exhibit 2. Concern No. Four was to add (diagrammatically) an architectural screen for the mechanical penthouse onto Map 2 to Exhibit 1 as shown on Tab 12 (Appendix 11) of Exhibit 2, and also to amend the chart shown in s.1 (f) of Exhibit 1, by deleting the reference to "trellis and mechanical screening on the roof" at a maximum height of 3 m, and replacing it with wording reflecting "screen fence line" at a maximum height of 2 m. Concern No. Six of the GBNA dealt with projections that would be allowed by Exhibit 1 into the east most notch along Queen Street East. More specifically GBNA submitted that s. 1(f) should be amended by adding a provision to not permit any projections into the east most notch along the Queen Street East frontage.

[6] Counsel for the Applicant was agreeable to these proposed modifications, save and except for the specific location of the screen fence line shown on Tab 12 (Appendix 11) of Exhibit 2. Counsel for the Applicant submitted if a screen fence were used, that it might be less noticeable if it were moved westerly. This submission was agreeable to the counsel for the GBNA, and Map 2 to Exhibit 1 will be revised.

[7] Turning now to the outstanding concerns of the GBNA, Concern No. One dealt with the GBNA's proposed amendment to Map 1 which depicts by a heavy dark line the current lot, and depicts within that lot in hatched marking, a 1.6 m lane widening allowance. S. 1 (c) of Exhibit 1 states that: "the lot on which the proposed building is to be located shall comprise at least those lands delineated by heavy lines on Map 1..." Counsel for GBNA submits that in light of the proposed lane widening, Map 1 should be amended to move the heavy dark line to the limit of the lot after the lane widening. Counsel for the City advised the Board that Map 1 to Exhibit 1 reflects the standard practice of the City and that the zoning applies to the entire lot, in the event that no development occurs and the proposed lane widening remains with the owner of the lot. The Board accepts the position of the City in this regard, and finds it is not appropriate to amend Map 1 to Exhibit 1.

[8] Concern No. Seven of the GBNA dealt with the lack of a restriction on the size of retail units as found in the "Lick's" by-law for 1960 and 1962 Queen Street East. It was suggested that such restriction be added to Exhibit 1. Counsel for the Applicant submits that this was not an issue on the Issues List of the Procedural Order for the hearing, no evidence was heard on this matter and that it cannot be raised now. The Board concurs with those submissions and finds it is not an appropriate issue to be brought forward at this time. The Board will not so amend Exhibit 1.

[9] Concern No. Two of the GBNA was that Map 2 to Exhibit 1 should be amended to add step backs along Queen Street and Woodbine Street as per the Lick's zoning by-law. This submission is said to be based primarily on paragraph 231 of the Board decision:

On the Lick's development application, the staff recommended a rezoning

based on a site plan design to implement the performance standards of the 2010 Mid-Rise Guidelines. Council modified the rezoning and the design with the introduction of a 0.9 m setback above the third floor at 10.4 m. The Board has considered that recommendation by staff and that decision by Council to utilize the 2010 Mid-Rise Guidelines and the Board finds it appropriate to do so in this case, but also with the additional 0.9 m setback at 10.4 m.

[10] In support of this concern, counsel for the GBNA sought to reference the Board to some new massing drawings that had recently been prepared and were included in Exhibit 2. Counsel for the Applicant objected to the admission of those new massing drawings on the basis that this was the introduction of new evidence that was not tendered during the hearing of this matter, that was not being entered by evidence in chief and would be without cross examination, and therefore was inappropriate to be entered now. The Board declined to admit the new massing drawings into evidence as they had not been previously entered as evidence during the original hearing of this matter.

[11] Counsel for the GBNA submitted that paragraph 231 of the Board's decision should be read as adding step backs along Queen Street East and Woodbine Avenue to reflect the Lick's zoning by-law and site plan, placing emphasis on the word "additional" in the last line of paragraph 231. In that regard the Board was taken to Exhibit 2, Tab 11 (Appendix 10) which drawing depicts two step backs: first 0.9 m at the height of 10.5 m only along Queen Street East, and secondly 2.86 m at the height of 13.5 m along Queen Street East and 3.42 m at the height of 13.5 m along Woodbine Avenue. Thus counsel for GBNA submitted Map 2 of Exhibit 1 should be amended to include these setbacks.

[12] Counsel for the Applicant submits that what the GBNA proposes is a second attempt to review the December 11, 2013 decision, through the stretching of the wording of the December 11, 2013 decision for the purposes of GBNA. Counsel for the Applicant submits that the Board never takes a "cookie cutter" approach to land use planning. What the Board did, in his submission, was to look to how City staff (and City Council) had utilized the 2010 Mid-Rise Guidelines for the Lick's development. He took the Board to the City staff report of April 26, 2012 for the Lick's development found in

Exhibit 2, Tab 9 (Appendix 8) at page 8 of the report and highlighted the following paragraph:

A motion was adopted by City Council on July 8, 2010 that removed Queen Street East from the study area map. Notwithstanding the exclusion, the Mid-Rise Guidelines remain a useful tool for the review of development applications for mid-rise buildings on Avenues where there are adjacent residential uses. For example, the mid-rise guidelines encourage setbacks of the base of buildings and stepbacks of upper floors to ensure that acceptable sun/shadow and privacy conditions to adjacent residential neighbourhoods. In addition, the mid-rise guidelines ensure that an appropriate pedestrian scale is incorporated along street edges.

[13] Thus counsel for the Applicant submitted, City staff had recommended the use of the 2010 Mid-Rise Guidelines for the Lick's application, City Council had considered the staff recommendation and had agreed to utilize those 2010 Guidelines, but modified the zoning by-law to add a setback of 0.9 m at 10.4 m. He stated that the Board in its decision had taken the same approach: it utilized the 2010 Mid-Rise Guidelines, and added a setback of 0.9 m at 10.4 m in height. That, he said, was the plain reading of paragraph 231, the effect of which was to establish more firmly the three storey datum for a pedestrian passing by at grade. Thus he requested that the Board not accept the submissions of the GBNA Concern No. Two.

[14] The Board accepts the submission of the Applicant that Exhibit 1 was prepared by the two land use planners who gave evidence at the hearing based on their reading of the Board's decision. The Board notes that Exhibit 1 is acceptable to the City. The Board concurs with counsel for the Applicant that the Board's December 11, 2013 decision did not effectively take the Lick's zoning (and site plan) and apply it to the Subject Lands. The Board in paragraph 231 was firstly looking at the staff and City Council utilization of the 2010 Mid-Rise Guidelines, and secondly the City Council's modification to add the 0.9 m setback at 10.4 m in height to establish the three storey appearance of the building along the Queen Street East frontage. As the Subject Lands are also on Queen Street East, the Board found that 0.9 m setback at 10.4 m in height, was in keeping with the character of the area. Thus the Board will not amend Exhibit 1 as requested by GBNA as shown in Exhibit 2, Tab 11 (Appendix 10).

[15] The Board, in light of the agreed upon modifications noted above, will withhold its final order pending receipt of a revised version of Exhibit 1.

“Blair S. Taylor”

BLAIR S. TAYLOR
MEMBER

Ontario Municipal Board

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