

ISSUE DATE:

**Dec. 30, 2004**

DECISION/ORDER NO:

**1995**



Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

PL030740

The Estate of Henry and Bella Berger 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 rezone lands respecting 533 Richmond Street West by introducing development standards to permit a residential condominium development of a 14-storey building with 79 units OMB File No. Z030145

The Estate of Henry and Bella Berger 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 composed of 533 Richmond Street West, in the City of Toronto  
OMB File No. M030080

#### **APPEARANCES:**

##### **Parties**

Portland Investments Inc.

City of Toronto

##### **Counsel**

A.M. Heisey

S. Haniford

#### **DECISION DELIVERED BY J.R. BOXMA AND ORDER OF THE BOARD**

The lands, which were the subject matter of this hearing, are located at 533 Richmond Street West, in the City of Toronto. An application had been made to rezone these lands in order to permit a residential condominium development. The application was refused by the Council of the City of Toronto at its meeting held on February 23, 23, 24 & 25, 2003 and this refusal was appealed to the Board, pursuant to s. 35(11) of the *Planning Act*.

The hearing of this appeal commenced on February 17, 2004, however insufficient time was available to complete the hearing and it continued, on various days in June and July 2004.

The Board heard from 16 witnesses; 79 exhibits were filed; the Board held an evening session on June 14, 2004, which was well attended and the Board heard from 8 members of the public that evening; it had a full presentation from Richard Brault, who, with Dianne Croteau, owns the property at 550 Richmond Street West. More will be said about that property and the involvement of Ms Croteau and Mr. Brault later in the decision.

### PROPOSAL

The initial application sought approval to permit a 14 storey, 79-unit condominium building at the southeast corner of Richmond Street West and Portland Street. The Staff Report of August 21, 2003 stated the proposal had a total height of 45.20 metres. When the hearing commenced in February the proposal had a total height of 42.6 metres and when the hearing re-commenced in June, a further revision had been made which reduced the height of the proposal to 39.6 metres and the number of units was reduced to 72 and a one floor reduction. The building's main residential entrance would be on Portland Street with a lobby and a separate at-grade retail component on the Richmond Street West frontage. Parking is proposed via a parking stacker system accessed from the building's ground floor and the adjacent north-south public lane. The total area of the property is 698 m<sup>2</sup>. Until recently, the site was occupied by King Lumber Co., a commercial retail builder's supply yard.

### SURROUNDING LAND USES

To the north is Portland Place, a 4-storey supportive housing building on the northeast corner of Richmond Street West and Portland Street; the Alex Wilson Community Garden, which is a public park and which was given to the City by Ms Croteau and Mr. Brault; the home of Ms Croteau and Mr. Brault, which is a rather unique structure and which has photovoltaic cells on the second floor for the production of energy; to the east of 550 Richmond Street West, low scale mixed use buildings; and, a parking lot on the northwest corner of Richmond Street West and Portland Street.

To the south is a low scale mixed-use area. To the east is a 10-storey (29.6 m) residential building currently nearing completion of construction. To the west is a surface parking lot and loading bays for a commercial building on the southwest corner of Richmond Street West and Portland Street and further west, a mix of commercial and office uses.

## OFFICIAL PLAN

The lands are designated Reinvestment Area under the King-Spadina Part II Plan of the (former) City of Toronto. The Plan provides for a specific planning framework for guiding growth and change in the area including, but not limited to, desired urban structure and built form. The Reinvestment Area designation permits a wide range of uses including light industrial, residential, commercial and entertainment uses. The proposed residential use is permitted.

## NEW TORONTO OFFICIAL PLAN

At its meeting of November 26-28, 2002, Council adopted the new Official Plan for the City of Toronto. It is under appeal to the Board, but once it comes into force and effect, it will designate the lands as Regeneration Area. This designation encourages a broad mix of commercial, residential, light industrial and live/work uses. The Plan requires specifically tailored policies to be set out in a Secondary Plan to guide a Regeneration Area's revitalization. Of the 113 Part II Plan's that the former City of Toronto had, the King-Spadina Part II Plan, along with 24 others, was brought forward as a Secondary Plan to the new Official Plan and, therefore, a new Secondary Plan for this area is not required.

## DECISION OF THE BOARD AND ITS REASONS

The Board has carefully reviewed and considered all of the evidence it heard; the exhibits filed; the excellent final argument presented by both counsel to the Board and it is the decision of the Board to dismiss the appeal and it does so for the following reasons:

1. After all is said and done this proposal is simply too big; it is too massive; it flies in the face of the King-Spadina Part II Plan; its impacts on surrounding properties are too great; it is an attempt to over-build on this, relatively small lot; and, its approval could send a wrong message to those in the immediate area who may be seeking to redevelop their properties and, similarly, a wrong message to those seeking to redevelop elsewhere in the area covered by the King-Spadina Part II Plan as to what constitutes appropriate intensification.
2. The Board accepts and prefers all of the planning evidence given by those

planners and urban designers called on behalf of the City over those called by the proponent. The starting point for consideration of this proposal are s. 3.13 and s. 3.14 of the Part I Official Plan and they read as follows:

#### BUILT FORM

##### 3.13 RELATIONSHIP OF NEW BUILDINGS TO THEIR BUILT FORM CONTEXT

Council shall encourage a high quality of urban design for new buildings and structures which harmonize with neighbouring development by:

- (a) Ensuring that the siting and massing of new buildings is appropriate in relationship to neighbouring development; and
- (b) Encouraging compatibility of design consistent with the objectives of Section 5 of this Plan where new developments are proposed for sites adjacent to, or integrated with, existing listed or designated historic buildings, streetscapes, or landscapes.

##### 3.14 BUILDING SETBACKS, HEIGHTS AND DENSITIES

It is the policy of Council that the siting and massing of new buildings should provide an appropriate degree of continuity and enclosure to the street spaces that the buildings frame. The massing of the buildings should respect the existing street proportions and provide transition between areas of differing development intensity. Adequate sunlight access and sky views, and comfortable wind conditions and public safety should be maintained or improved in the streets and public open spaces surrounding buildings. To achieve these objectives, Council may:

- (a) Establish consistent minimum and maximum setbacks from the property line, where appropriate;
- (b) Define maximum desirable building heights at the street edge;
- (c) Require the upper portions of buildings to be massed, if necessary, to ensure comfortable street level conditions; and
- (d) Establish maximum density limits that, in concert with other built form and siting controls, result in appropriate building mass.

The Board finds that the massing of this proposal is not appropriate in relationship to neighbouring development.

The Board finds that the King-Spadina Part II Plan in implementing these policies sets out a framework to guide growth and change in the area. That Part

II Plan is current and up-to-date. It was considered a very forward looking document and approach to planning at the time of its adoption and the fact that it has been brought forward as the Secondary Plan for the area in the City's new Official Plan is a recognition of its relevancy and importance for guiding growth and change in the area.

3. The Part II Plan removed use controls and FSI but is very much about built form. It established a vision and direction for this area, that of mixed-use with mid scale development west of Spadina. In turn, the maximum heights were established in the zoning by-law and the Board finds this an entirely appropriate approach to have been used.

The following is from the 1996 Report on King-Spadina and captures the essence of what this planning approach entails:

The focus of this new approach to planning is on built form, not a density number. The new policies will emphasize how a new building fits into the established pattern and scale of existing buildings. Much greater emphasis will be placed on height, mass, access to sunlight and setback conditions. Together, these provisions will establish the building envelope in which new development can occur and will replace a density number.

The intent of these new initiatives is to create a climate of confidence that will stimulate investment in the revitalization of King-Spadina. My recommendations provide incentives that will allow each building and each site to achieve its full potential and contribute to the collective economic and social health of the area.

The Report then recommended 5 matters and they were:

as-of-right development permission within general height limits;

maximum flexibility in land use policies which, for most of the area, would permit new buildings and conversions of existing buildings for almost any commercial, light industrial or residential use;

Density numbers removed from the Official Plan and Zoning By-law;

new built form regulations that focus on building height, massing and light, view and privacy standards; and

the relaxation of a number of general By-law standards regarding parking and loading, with exemptions being given to existing and heritage buildings.

4. The lands are zoned RA which sets the height limit of 23 metres if the building steps back 3 metres at the 20 metre height on both Portland and Richmond. These provisions height limit and upper level setback – combine to define a building envelope that allows for mid-rise buildings with upper floors terraced back from the public street.

The proposed height of 39.6 metres and no setbacks from either Richmond Street West or Portland has little or no regard for the by-law provisions which sets the standard for the area. Although an “architectural” treatment is proposed, the fact is that the proposal’s massing places a solid 39.6 metre tall façade on the Richmond Street West frontage. A similar treatment is proposed on the Portland Street frontage with the exception that the building has a setback of 5.5 metres from the south property line.

5. Spadina Avenue is the spine of this planning area and the zoning by-law sets the height limit on Spadina at 39 metres. The Part II Plan calls for mid scale development west of Spadina Avenue. The Board agrees with Mr. Cambray, the planner for the City, that there is nothing unique about this site that should exempt it from the provisions of the Part II Plan. The development of this site, once it occurs, will result in a building being fitted into the neighbourhood and it must be compatible, harmonious and producing a net benefit. The by-law amendment necessary for the proposal before the Board does not implement either the Part I or the Part II Official Plan.
6. On the question of intensification the Board, again, agrees with Mr. Cambray when he testified that intensification is important but the policies on intensification do not override the other principles of compatibility, fit, scale, transition and impact and that it must be a good development to add to the urban fabric, and not to just simply be intense.

7. The Board had examples cited to it of other properties in the area of similar or smaller size which developed as-of-right or with some minor variances obtained through the Committee of Adjustment. The Board is reminded of the cases in the 1970's when the phrase developed that good planning was not achieved by dollar planning. This site is, undoubtedly, capable of being developed, but the proposal is out of scale, and is not compatible with the surrounding neighbourhood.
8. The two key regulatory features of the King-Spadina zoning by-law are height and setback and this proposal respects neither. The zoning by-law demonstrates the importance of the 1 to 1 ratio of 20 metres and then stepping back.

This proposal is almost a 2 to 1 ratio.

9. The proposal would also have the following impacts:
  - a) An additional 2 ½ hours of shadow for 3 additional months for the Alex Wilson Community Garden;
  - b) 2 hours of additional shadowing on the solar panels of 550 Richmond Street West for an additional 4 months;
  - c) On the rooftop amenity area at 525 Richmond Street West, 3 hours of additional impact for 12 months, but especially from June to September;
  - d) On the sidewalk on the north side of Richmond Street West, there will be 6 months of additional shadowing for a 3 hour period;
  - e) The impact on those residents of Portland Place. There are 27 tenants in units facing south who will experience increased shadowing and it was the testimony of Norma McClure, the general manager of Portland Place, that those tenants who face east have an important need to see the sun in the garden.

Cumulatively, these impacts reinforce the Board's decision that this proposal cannot be approved. It is also one of those few instances where approval of the proposal might create an impression that the 2 vacant sites nearby ought to develop at a much greater scale and height than what can be built as-of-right and that would be the absolutely wrong message to convey when the Part II Plan and zoning by-law clearly establish the vision for how King-Spadina should develop over the next several years.

As a result, the appeal is dismissed and the Board's file on the site plan referral is closed.

This is the Order of the Board.

"J.R. Boxma"

J.R. BOXMA  
MEMBER