

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: May 3, 2016

CASE NO PL150845

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

Applicant and Appellant:	Amexon Development Corporation
Subject:	Application to amend Zoning By-law No. 438-86 - Refusal or neglect of City of Toronto to make a decision
Existing Zoning:	CR T3.5 C2.0 R2.0
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit the construction of a 45-storey residential tower building addition and podium
Property Address/Description:	225 Jarvis Street
Municipality:	City of Toronto
Municipality File No.:	15 134245 STE 27 OZ
OMB Case No.:	PL150845
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OMB Case Name:	Amexon Development Corporation v. Toronto (City)

Heard: January 11 and 14, 2016 in Toronto, Ontario

APPEARANCES:

Parties

Amexon Development Corporation
City of Toronto
Dundas Residences Inc.
St. Michael's Hospital

Counsel

M. Flynn-Guglietti, A. Forristal
R. Kallio
A. Brown, J. Smuskowitz
C. MacDougall

Ministry of Municipal Affairs and
Housing

I. Shachter, U. Popadic, R.Scheihauf (student-
at-law)

**MEMORANDUM OF ORAL DECISION OF THE BOARD DELIVERED BY
SYLVIA SUTHERLAND ON JANUARY 14, 2016**

[1] This was a settlement hearing in relation to an application by Amexon Development Corporation (“Amexon”) for Zoning By-law amendments (“ZBLA”) to City of Toronto (“City”) Zoning By-laws Nos. 438-86 and 569-2013 (currently before the Board) to rezone a property at 225 Jarvis Street (“subject site”) to a site specific zoning involving a mixed-use development which would reconfigure and update an existing hotel while adding a 45-storey residential condominium tower and a new podium element ranging from two to six storeys. The condominium tower would be 147.93 metres (“m”) tall, excluding the mechanical penthouse.

[2] Amexon appealed pursuant to s. 34(11) of the *Planning Act* (“Act”) Council's failure to make a decision within the statutory timeframe.

HEARING

[3] Michael Gagnon gave expert land use planning evidence and opinion on behalf of Amexon. Mr. Shachter addressed the Board concerning Provincial interest, particularly concerning health and safety issues related to flight paths and heliports.

[4] At the commencement of the hearing, Catherine Lyons, counsel for The Hospital for Sick Children (“SickKids”), a participant at the hearing, advised that SickKids’ aeronautical consultant had reviewed both Amexon’s application and an application from neighbouring Dundas Residences Inc. (“DRI”) and that SickKids’ was satisfied that the flight path serving SickKids helipad was adequately protected. Ms. Lyons submitted a document (Exhibit 4), requesting that the language contained in the document be included in any decision approving either the Amexon or DRI applications. She also advised that the proposed language of the document, which also involves St. Michael’s Hospital (“St. Michael’s”), was consented to by all Parties.

[5] Glen Simourd, who had been granted Participant status at the hearing, informed the Board that his issues had been satisfied and that he no longer had a reason to address the Board.

SUBJECT SITE

[6] The subject site is located near the southeast quadrant of the intersection of Jarvis Street and Dundas Street East. The site measures approximately 0.46 hectares, and has approximately 66.50 m of frontage along both Jarvis Street and Dundas Street East. It has a minimal depth of approximately 69 m.

[7] The subject site is the location of The Grand Hotel and Suites Toronto, a 13-storey building originally constructed in 1974 as the Royal Canadian Mounted Police's Southern Ontario "O" Division headquarters. The property was extensively renovated in 1999 for the purpose of accommodating the current hotel use.

[8] The area to the north of the subject site is high density residential and mixed-use rental housing and retail commercial; to the south residential townhouses and high-rise; to the east residential and L'ecole Gabrielle Roy Elementary School; and to the west high density and mixed-use residential.

APPLICATION

[9] The Amexon application proposed a gross floor area ("GFA") of 49,076.77 square metres: 35,858.57 of which would be residential and 13,218.20 of which would be hotel, including 997 square metres of hotel restaurant.

[10] The proposed floor space index ("FSI") was 10.61, with a typical tower floor plate size of 750 square metres. The tower setback was 12.5 m to the north property line. There were 541 residential units and 177 hotel suites.

[11] A City Preliminary Report, dated May 11, 2015 (Exhibit 5, Tab 10) included the

following as “issues to be resolved”:

- the potential impact of the proposed residential tower height on the SickKids and St. Michael’s flight paths
- residential tower separation, setback and podium transition

[12] Mr. Gagnon told the Board that the major issue identified by the public at a Community Consultation meeting held on September 2, 2015 was the size and scale of the proposed building podium. Of particular concern, said Mr. Gagnon, was the relationship and transition of the podium to adjacent lands.

[13] On November 15, 2015, Amexon submitted revised development plans to the City which incorporated modifications of the proposed building podium as a means of addressing the issues related to size, scale, relationship and transition. The revised plans show a reconfigured building podium ranging from two to six storeys, and a somewhat reduced GFA and FSI. A Request for Direction report dated December 7, 2015 identified the “primary” issue to be resolved was the potential impact of tower height on the flight paths for SickKids and St. Michael’s.

[14] Mr. Gagnon said that on December 10, 2015, Amexon submitted further revised development plans to the City incorporating modifications to the proposed residential tower to ensure that it would not impact the St. Michael’s flight path (referenced as the Obstacle Limitation Surface Boundary).

[15] A pre-hearing was held by the Board on December 11, 2015 after which the Ministry of Municipal Affairs and Housing, registered as a Party to the Amexon hearing, declared the appeal a matter of Provincial interest pursuant to s. 34.27 of the Act. As a result, the Board’s decision on this matter is not final, but will be considered by the Lieutenant Governor in Council who may confirm, vary or rescind the decision of the Board.

[16] Following the December 11, 2015 pre-hearing, Amexon continued settlement negotiations with the City, SickKids, St. Michael's and DRI. As a result of these negotiations, Amexon finalized its development plans and it is these plans (Exhibit 11), dated January 11, 2016, that are before the Board. They include the following:

- proposed GFA: 53,724 square metres, with a proposed Residential GFA of 41,408.34 square metres and a proposed Hotel GFA of 12,315.66 square metres, of which 980 square metres is hotel restaurant
- proposed FSI: 11.61
- reconfigured 45-storey (145.98 m tall, excluding mechanical penthouse) residential tower addition
- typical tower floor plate size: 750 square metres
- tower setback: 11 m to the north property line (narrowing to 8.59 m at the northeast corner of the residential tower)
- 546 residential units
- 177 hotel suites

EVIDENCE AND FINDINGS

[17] It was Mr. Gagnon's uncontested expert opinion that the final Amexon proposal meets the requirements of the applicable planning instruments, including matters of provincial interest found in s. 2 of the Act.

[18] It was his opinion, having reviewed the relevant sections of the planning documents that the final revised Amexon application is consistent with the 2014 Provincial Policy Statement ("PPS") as it relates to:

- promoting efficient land use and development patterns which support sustainability and the building of strong, healthy communities
- representing an appropriate built form for residential intensification
- contributing to and supporting employment policies, noting that the Amexon-owned and operated Grand Hotel and Suites will not only be retained, but will remain open during the redevelopment of the subject site thereby retaining 200 jobs
- supporting sustainable land use patterns

[19] It was Mr. Gagnon's opinion, having reviewed the Growth Plan for the Greater Golden Horseshoe ("GP") that the application conforms to the GP as it relates to:

- supporting intensification
- representing an appropriate built form
- promoting vibrant neighbourhoods
- providing residential and employment opportunities
- promoting economic development and competitiveness
- providing opportunities for a diversified economic base
- balancing the application of the various goals and objectives of the GP
- contributing to the accommodation of growth projections

[20] Having reviewed the relevant maps, sections and policies of the City's Official Plan ("OP"), Mr. Gagnon opined that the application conforms to the intent and spirit of the OP as it relates to:

- promoting mixed-use development to the greatest extent possible
- protecting existing employment in the area
- balancing opportunities to both live and work in the Downtown
- respecting and improving neighbourhood character
- achieving appropriate transitions to neighbouring existing and/or planned buildings
- providing adequate light, privacy, sky views and reducing/minimizing shadow impacts
- achieving key urban design considerations related to tall buildings
- suitably applying urban design guidelines in the pursuit of the appropriate implementation of OP policy
- protecting health and safety

[21] Mr. Gagnon also exhaustively reviewed both the City's Tall Building Design Guidelines ("TBDG") and Downtown Tall Buildings Vision and Supplementary Design Guidelines – 2013 ("DTBDG"), identified by the OP as useful in analyzing development applications. Based on his review of the Amexon application in the context of these guidelines, he was of the opinion that the application is consistent with, conforms to and supports the City's urban design goals and objectives as outlined in the OP. He outlined 17 areas of the guidelines where he found this to be the case (Exhibit 6, pages 12 and

13).

Mr. Gagnon also examined each of the relevant planning documents as they relate to the critical issue of flight paths. He noted that s. 5(a) of the proposed ZBLs (Exhibits 13 and 14) addresses this issue in so far as any site plan agreement entered into and registered against the subject site is concerned. He also took the Board to the following documents, each of which addresses directly, or indirectly, the importance of protecting flight paths:

- s. 2 (o) of the Act
- s.1.1.3.5 of the PPS
- s. 4.8.4 of the OP which states, “New buildings and structures in the vicinity of hospital heliports will be sited and massed to protect the continued use of flight paths to hospital heliports.”

[22] Irvin Shachter noted in addressing the importance of protecting flight paths that using aircraft to transport the ill and injured has its origin in the military and dates back to 1870 when, during the Siege of Paris, 160 wounded French soldiers were transported back to France by hot-air balloon.

[23] Mr. Gagnon told the Board that Zoning By-Laws have been prepared taking into consideration all the applicable provisions of the “former” and “new” by-laws. In his opinion these draft ZBLs serve to facilitate the implementation of the Amexon plans before the Board.

[24] It was Mr. Gagnon’s concluding opinion that the Amexon application represents good planning and that the development proposal should proceed on the basis that:

- it is consistent with the PPS and conforms to the GP

- it represents an appropriate and suitable approach to implementing Provincial policy which promotes the pursuit of residential intensification and the protection of employment opportunities
- it conforms to the intent and purpose of the City's OP and the TBDG and DTBDG including, but not limited to, the policies related to built form and mixed-used areas

[26] On the basis of Mr. Gagnon's uncontested expert testimony and that I am satisfied that the critical issue of the protection of flight paths has been addressed, the Board allows the appeal and amends By-law No. 438-86 in the manner set out in Attachment 1 and By-law No. 569-2013 in the manner set out in Attachment 2. Both By-laws are subject to the conditions set out in Attachment 3.

[27] This member remains seized.

"Sylvia Sutherland"

SYLVIA SUTHERLAND
MEMBER

If there is an attachment referred to in this document
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

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