

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** November 24, 2017

**CASE NO(S):** PL151148

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

Applicant and Appellant:	Bathurst & Glencairn Square Limited
Subject:	Request to amend the Official Plan - Failure of City of Toronto to adopt the requested amendment
Existing Designation:	Neighbourhoods and Mixed Use Areas
Proposed Designated:	Mixed Use Areas (entirely)
Purpose:	To permit a residential/mixed-use building consisting of 10 storeys
Property Address/Description:	491 Glencairn Ave/278,280 &282 Strathallan Wood Rd
Municipality:	City of Toronto
Approval Authority File No.:	14 102505 NNY 16 OZ
OMB Case No.:	PL151148
OMB File No.:	PL151148
OMB Case Name:	Bathurst & Glencairn Square Limited v. Toronto (City)

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

Applicant and Appellant:	Bathurst & Glencairn Square Limited
Subject:	Application to amend Zoning By-law No. 7625 - Refusal or neglect of City of Toronto to make a decision
Existing Zoning:	C1 (General Commercial) and RM3 (Residential Multiple-Family)
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit a residential/mixed-use building consisting of 10 storeys
Property Address/Description:	491 Glencairn Ave/278,280 &282 Strathallan Wood Rd
Municipality:	City of Toronto
Municipality File No.:	14 102565 NNY 16OZ
OMB Case No.:	PL151148
OMB File No.:	PL151149

**Heard:** January 30, 2017 in Toronto, Ontario

**APPEARANCES:**

**Parties**

**Counsel**

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Dan Scheiner, Albert Freidberg and  
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M. Melling

Andor Roberts and Ilona Roberts

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**DECISION DELIVERED BY R.G.M. MAKUCH AND ORDER OF THE BOARD**

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**Background**

[1] Bathurst and Glencairn Square Limited (“Applicant/Appellant”) made applications on January 9, 2014 for official plan and zoning by-law amendments to permit the development of the subject site known municipally as 491 Glencairn Avenue, 278, 280 and 282 Strathallan Wood Road. The applications proposed to amend the Official Plan (“OP”) and Zoning By-law No. 7625 for the former City of North York as well as the new City-wide By-law No. 569-2013 to permit a 12 storey mixed use building with a density of 4.3 floor space index (“FSI”) containing 150 residential units, 428 square metres of commercial space at grade and 149 car parking spaces in three levels of underground parking resulting in an overall height of 38.5 metres, excluding an elevator overrun. The proposed gross floor area was approximately 12,609 square metres. A number of modifications were made to the proposal following the filing of the applications in response to comments from City staff and to the issues raised by the community.

[2] The Applicant/Appellant appeals the official plan and zoning by-law amendment applications on the grounds that City Council has failed to make a decision on the applications within the statutory limits set out in the Planning Act.

[3] The proposal was revised in November 2016 consisting of a reduction in height from 38.5 metres (10 storeys plus a two-storey wrapped mechanical penthouse) to 32.5 metres (10 storeys plus a 5 metre mechanical penthouse), a reduced gross floor area (from 12,609 square metres to 12,039 square metres), a reduction in units (from 150 to 122) and an increase in non-residential gross floor area (from 477 square metres to 508 square metres).

[4] The subject site is comprised of four separate lots.

[5] The northerly portion of the site (491 Glencairn Avenue) is vacant, and was formerly used for automotive sales and service uses. It is in a Mixed Use Area under the City's OP.

[6] The southerly portion of the subject site is occupied by three 1-½ storey residential dwellings (278, 280 and 282 Strathallan Wood Road), all of which are currently vacant. It is designated "Neighbourhoods" in the Official Plan. Strathallan Wood Road is characterized by single detached homes on spacious lots.

[7] The depth of the site varies where the "Mixed Use Areas" portion of the site has a depth of 33.34 metres and the depth of the assembled "Neighbourhoods" portion of the site is 40.26 metres.

[8] The complete site is also designated "Avenues" under Map 2 (Urban Structure) of the Official Plan. The OP amendment application is to redesignate the southerly portion (278, 280 and 282 Strathallan Wood Road) of the site from "Neighbourhoods" to "Mixed Use Areas".

[9] The site is currently zoned C1 (General Commercial) on the northern portion of the site and RM3 (Residential Multiple-Family) on the southern portion of the site under the Former City of North York Zoning By-law No. 7625.

[10] Under the former North York Zoning By-law No. 7625, the C1 zone permits a wide range of commercial uses which include retail stores, restaurants and business and professional office uses. This zone also permits residential uses that are permitted in an RM5 zone, including apartment house dwellings and multiple attached dwellings subject to compliance with the RM5 provisions.

[11] A maximum density of one time the lot area and maximum lot coverage of 33.3 percent is permitted in the C1 zone. There is no specified maximum height limit for commercial buildings, except for commercial buildings having dwelling units above the first floor, which are subject to a maximum height of 9.2 metres or three storeys above grade, whichever is lesser.

[12] For residential buildings, the permitted maximum height and density are those specified by the RM5 provisions, which are 11.5 metres and 1.0 Floor Space Index ("FSI").

[13] The portion of this site now zoned C1 was previously included in an RM4 Zone, which was amended by By-law Number No. 14068 (enacted on May 11, 1959). This site specific by-law did not amend any development regulations.

[14] The RM3 zone which applies to the southerly portion of the site permits a wide range of residential uses, including apartment houses, multiple attached dwellings and semi-detached dwellings. For apartment house dwellings, the RM3 zoning specifies a maximum density of 0.75 times the lot area, a maximum lot coverage of 35 percent and a maximum building height of 9.2 metres.

[15] The site is currently not included in the new Toronto City Wide by-law No. 569-2013 and any approval will require the site zoning to be amended under the former

North York By-law No. 7625 and under the new Toronto City Wide by-law No. 569-2013.

[16] The site is located at the southeast corner of Bathurst Street and Glencairn Avenue, and occupies the full block between Glencairn Avenue to the north and Strathallan Wood Road to the south. It is generally rectangular in shape, with a somewhat greater depth along Strathallan Wood Road than along Glencairn Avenue. It has a site area of approximately 2,928 square metres, which would be reduced by a proposed 3.44 metre road widening along Bathurst Street and a 6.1 metre corner rounding at Glencairn Avenue and Strathallan Wood Road. It has frontage of approximately 72.9 metres along Bathurst Street, 36.9 metres along Glencairn Avenue and 45.1 metres along Strathallan Wood Road. The site slopes noticeably from north to south and, to a lesser extent, from east to west to a low point at the southwest corner of the site resulting in a grade differential of approximately 4 metres along Bathurst Street, between the north and south ends of the subject site. There is also a grade differential along Strathallan Wood Road of approximately 2 metres (i.e. sloping down from the east property limit).

[17] The site is adjacent to Bathurst Street which has a planned 27 metre right-of-way and is classified as a Transit Priority Segment under Map 5 (Surface Transit Priority Network) of the Official Plan.

[18] It was agreed at the commencement of the hearing that the evidence in this phase of the hearing would deal with matters related to purely planning and urban design issues, while traffic and s. 37 issues would be left to a future Phase 2 hearing.

[19] It is noted that Dan Scheiner, Albert Freidberg and Marvin Sigler had entered into Minutes of Settlement with the "Applicant/Appellant" filed as Exhibit 2 in these proceedings and confirmed that they would not be participating in this phase of the hearing.

[20] The evidence in support of the appeals consists of the testimony of Charles Gane, an architect and urban designer and that of Peter Smith, a land use planning consultant, both of whom were retained by the “Applicant/Appellant”.

[21] The professional evidence in opposition to the appeals consists of the testimony of Vanessa Covello, land use planner and that of Sasha Terry, Urban Designer both employees of the City of Toronto. The Board also heard the testimony of Christian Chan and that of Paul E. Johnston, the land use planning consultants retained by the Glencairn & Bathurst Community Coalition (“GBCC”) and Andor and Ilona Roberts respectively.

[22] The other witnesses were Daniel Shiff and Nadia Vakharia on behalf of GBCC as well as Abigail Romberg, who lives at 481 Glencairn Avenue who had been granted participant status. Neil Smiley, counsel for the “Shaarei Shomayim Congregation”, also a participant, read a statement on behalf of the congregation.

### **Applicant/Appellant’s Position**

[23] The Applicant/Appellant argues that its proposal strives for design excellence and would result in a high-quality, well-designed mid-rise building on an under-utilized site and would be a positive addition to the area and would help to re-urbanize and revitalize Bathurst Street. Approval of this development would represent residential intensification which is encouraged by the Provincial Policy Statement (2014), the Growth Plan (2006) and the City of Toronto Official Plan and would not generate unacceptable built form impacts. Furthermore, approval of this development would be consistent with the approach taken to the Mid-Rise Guidelines throughout the City.

[24] It is asking the Board to allow the appeals, in part, and approve the development generally in accordance with the plans and drawings provided in Exhibit 4, on a contingent basis, pending the parties advising the Board as to the matters to be addressed in a potential Phase 2 hearing process. This would give the parties sufficient opportunity to review the final form of the planning instruments.

[25] The Applicant/Appellant argues that while all planning decisions must balance and reconcile a variety of potentially conflicting planning objectives, the Provincial Policy Statement (“PPS”) places much weight on the importance of making efficient use of land and infrastructure in that process of balance and reconciliation. The PPS directs municipalities to identify areas for intensification, having regard to certain matters in certain corridors and the City has done so in this corridor with a specific policy direction for intensification.

[26] It maintains that the provincial policies on residential intensification are more than permission but actually actively promotes it within the existing built-up area, particularly in locations well-served by municipal infrastructure, including public transit. It also maintains that the Mid-Rise Guidelines do not have status as policy in the City Official Plan and should not be used to guide application of high level provincial documents and residential intensification on the subject site, which would make efficient use of an underutilized parcel at the corner of a Major Arterial road (Bathurst Street) and a Minor Arterial/Collector Road (Glencairn Avenue).

[27] A “Mixed Use Areas” designation is appropriate for the southern portion of the lands provided that a building having an appropriate built form is developed. The re-designation would essentially be a “rounding out” of the block – not in the sense of a boundary adjustment or regularizing a site but in the sense of creating a meaningful block frontage to give effect to the “Avenues” overlay and to enable the comprehensive redevelopment of the block, including a parcel that has sat underutilized for 30 years.

[28] Approval of the development as proposed would allow for consolidated access from Glencairn Avenue, a collector street, rather than from Strathallan Wood Road, thereby protecting the character of that local road. A stand-alone redevelopment of these three lots would result in continued access onto Strathallan Wood Road.

## **The City's Position**

[29] The City argues that the proposed development at a height and massing of 10 storeys, 37.50 metres and a density of 4.11, represents an overdevelopment of the lot and is not acceptable on either the "Mixed Use Areas" or "Neighbourhoods" portion of the site. An "Avenue" overlay and "Mixed Use Areas" designation does not mean that any amount of intensification should be supported, without regard to context and good urban design.

[30] "Mixed Use Areas" are intended to absorb a large amount of the City's growth but new development needs to fit harmoniously with the existing and planned context, including providing appropriate transition to areas designated "Neighbourhoods".

[31] The subject site includes the property at 282 Strathallan Wood Road, with flankage on Bathurst, and the two lots to the east of it at 280 and 279 Strathallan Wood Road, all of which are situated within a "Neighbourhoods" area designation. The Official Plan seeks to protect "Neighbourhood" designations along "Avenues" where the plan clearly states that "Neighbourhoods" policies to respect and reinforce the neighbourhood character prevail in areas designated as "Avenues".

[32] The City maintains that the proposed redesignation of the "Neighbourhoods" portion of the site to "Mixed Use Areas" under the Official Plan is not supportable given this proposal and its impacts on the adjacent "Neighbourhoods" designation to the east.

[33] The proposal does not provide appropriate transition to the neighbourhood to the east, has an inappropriate height and density and would act as an unwelcome precedent for future development along this stretch of Bathurst Street as it is the first of many to be reviewed in the absence of an Avenue Study.



**Glencairn and Bathurst Community Coalition**

[34] The GBCC is opposed to the appeals on the grounds that the proposed development does not respect the character of the area and will impact on the privacy of the residents adjacent to the east. The community is not opposed to the development of the subject lands but the proposed development just does not fit into the neighbourhood.

[35] The community would like to see a development that conforms with the policies set out in the official plan and that implements the Mid-Rise Guidelines but does not need to have strict adherence to these.

**Andor and Ilona Roberts**

[36] The proposal will generate unacceptable adverse impacts on the neighbourhood to the east in the form of shadows and loss of privacy, all of which are contrary to the various neighbourhood protection policies of the Official Plan.

[37] The failure of the proposal to minimize or contain adverse impacts is a direct result of the excessive height and massing of the building together with the marginal setbacks on the east side of the building (1.8 metres versus the Mid-Rise Guideline standard of 7.5 metres).

**Findings**

[38] The Board has carefully considered all of the evidence as well as the submissions of counsel for the parties and finds that the proposal as it is before the Board does not represent appropriate land use planning.

[39] The evidence in support of the appeals was simply not convincing that the development represented land use planning. The evidence of Mr. Gane and Mr. Smith did not adequately address the issues before the Board.

*Growth Plan for the Greater Golden Horseshoe (Growth Plan)/Provincial Policy  
Statement 2014*

[40] While both the Growth Plan and PPS encourage intensification, this objective of intensification is not unlimited or to occur at any cost. Intensification is subject to limitations and s. 1.1.3.3 of the PPS provides that planning authorities shall identify appropriate locations and promote opportunities for intensification and redevelopment where this can be accommodated taking into account existing building stock or areas.

[41] The PPS (s. 4.7) views the Official Plan as the most important vehicle for the implementation of its policies. While the OP, on a structural level, identifies at least some of this site as an “Avenue”, the underlying land use designations are “Neighbourhoods” and “Mixed-Use Areas”, with the “Neighbourhoods” component being larger than the “Mixed-Use Areas” component.

[42] All planners, who testified, including Peter Smith, agreed that the proposed density is not necessary to achieve consistency with the PPS and that less units would not pose an issue with respect to the provincial policies. The intensification goals of provincial policy documents should not be utilized in this case as a basis or justification for intensification without appropriate limits. Ultimately, a development at the intensity proposed is not required for consistency with the PPS or Growth Plan conformity.

[43] The planned context is comprised of the Official Plan, Zoning by-law No. 7625, Zoning By-law No. 569-2013, and the Mid-Rise Guidelines.

*Official Plan*

[44] The onus is on the Applicant/Appellant to proffer satisfactory evidence with respect to Official Plan conformity to support its position that the proposed development is considered 'good planning' and is in conformity with the City's OP.

[45] Peter Smith proffered the opinion that the Board should not apply the “Neighbourhood” policies to the three southern lots making up the southern portion of

the site because doing so would result in an effective prohibition of a re-designation of the lands. The Board does not agree. Firstly, Mr. Smith's analysis assumes the re-designation of this portion of the site to "Mixed-Use Area" as a given, and provided his opinion as to whether the proposed building would have any unacceptable adverse impacts on the "Neighbourhood". This approach ignores the planned function of these three lots that are currently designated as "Neighbourhood", the function of which is to develop in accordance with the "Neighbourhood" policies that currently prevail for those three lots.

[46] Policy 2.3.1.1 provides that "Neighbourhoods" and "Apartment Neighbourhoods" are considered to be physically stable areas and that development within these areas will be consistent with this objective and will respect and reinforce the existing physical character of the areas.

[47] Policy 5.3.1.3 also provides that development permitted under an amendment to the plan will be compatible with its physical context and will not affect nearby "Neighbourhoods" or "Apartment Neighbourhoods" in a manner contrary to the neighbourhood protection policies of the plan.

[48] Mr. Smith did not address appropriateness of re-designating the lands from "Neighbourhood" to "Mixed-Use Areas", other than to suggest that it is a 'rounding out' of the "Mixed-Use Areas" designation. He took it as a given in the context of the development that the three properties would be re-designated. He is elevating the "Avenues" designation and the concept of intensification in the PPS and the Growth Plan to a status that is superior to the "Neighbourhood" policies.

[49] This could not be considered to be a rounding out of the "Mixed Use Area" designation on the Glencairn portion of the site given that the "Mixed- Use Area" designation applies to only 40% of the site with the balance being the three residential lots fronting on Strathallan Wood Road, which comprise 60% of the site designated "Neighbourhoods".

[50] While the Avenues overlay indicates an intention to intensify, it does not signify an intention to re-designate. Simply being on an Avenue is not sufficient grounds to be re-designated. The Board prefers the opinion evidence of Ms. Covello, Mr. Chan and Mr. Johnston over that of Mr. Smith. Their opinions were that the “Avenues” overlay is always subject to the “Neighbourhood” protection policies.

[51] Section 2.2.3 – Avenues: Reurbanizing Arterial Corridors – specifically states that not all lands that fall within “Avenues” are designated for growth and that where a portion of an “Avenue” is designated as a “Neighbourhood”, the “Neighbourhood” protection policies of Chapter 4.1 prevail. The evidence shows that the existing physical character of the area is low-rise in nature and that the planned context contemplates a more gradual transition than what is being proposed.

[52] It appears that the OP policies view only the smaller “Mixed-Use Areas” component of the site as an area designated for growth and supports the contention that a less dense development occupying the entirety of the site would satisfy the degree of intensification that the OP contemplates for this site. The policy directs that “Neighbourhoods” are considered to be physically stable areas and development in such areas is to respect and reinforce the existing physical character of buildings and streetscapes. Intensification must be limited or tempered to ensure that it respects and reinforces the existing physical character of “Neighbourhoods”.

[53] It is also clear from the evidence that not all “Mixed-Use Areas” will experience the same level of development.

[54] Policy 2.3.1.2 - Development in “Mixed-Use Areas” 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 setbacks from those Neighbourhoods;

c) maintain adequate light and privacy for residents in those Neighbourhoods;

[55] Also, Policy 2.3.2.3 provides that intensification of land adjacent to “Neighbourhoods” will be carefully controlled so that neighbourhoods are protected from negative impacts.

[56] Furthermore, the Official Plan provides that a cornerstone policy is to ensure that new development in our neighbourhoods respects the existing physical character of the area, reinforcing the stability of the neighbourhood.

[57] At the boundary points between the “Neighbourhoods” and growth areas, development in the “Mixed-Use Areas” will have to demonstrate a transition in height, scale and intensity as necessary to ensure that the stability and general amenity of the adjacent residential area are not adversely affected.

[58] The entire site bears the same relationship to the neighbourhood to the east. It is submitted that in the context of an OPA application to re-designate the site from Neighbourhoods to Mixed Use, if the Mixed-use policies are to apply, then the treatment of adjacent neighbourhoods should be consistent for the entire site. Transition techniques should be applied equally in terms of how the development addresses the properties on Strathallan and Glencairn. At present it does not, with the southerly component providing better transition to the adjacent properties as compared to the north section.

[59] Mr. Chan indicated that he was prepared to accept the potential for a re-designation of the designated “Neighbourhood” portion of the site provided that the development is appropriate to the existing and planned context for the site as a whole as well as the character of the surrounding area and is in conformity with the OP policies and the Mid-Rise Guidelines with particular regard for the transition of higher scale and density development in Mixed-Use Areas to the abutting “Neighbourhood”.

[60] The planned context in this area is to have a mixed use building at the corner of Bathurst and Glencairn and to have a “Neighbourhood” development on the three lots to

the south. The proposed development, is for a tall building and does not fit with the planned context. It does not provide appropriate setbacks and/or stepping down of heights, particularly to the “Neighbourhood” lands to the east.

[61] The OP addresses the issue of transitioning towards neighbourhoods in its Built Form, Mixed Use and Healthy Neighbourhoods policies as well as the stepping down of building and setbacks from the “Neighbourhoods”. The massing of a building helps to control the transition in terms of scale, overlook, privacy and shadowing. Ultimately the lower and the further back the building is from the adjacent neighbourhood, the less impactful the massing, privacy and shadow implications.

[62] While the Mid-Rise Guidelines are just that – guidelines, and do not have the weight of official plan policies that have undergone the scrutiny of an official public consultation process under the Planning Act, these nevertheless represent an appropriate tool to assist planners evaluate the appropriateness of development proposal against official plan policies. It is noted that Council demonstrated its intention to adopt some of the performance standards such as a 7.5 metre setback from the rear lot line, a 45 degree rear angular plane requirement for lots abutting a residential zone and a 45 degree front angular plane beginning at a height of 80% of the right-of-way as these relate to CR Zones in Zoning By-law No. 569-2013.

[63] While it is admitted that these are merely guidelines, it is also abundantly clear that the guidelines themselves are based upon the best principles (Official Plan policies) and best practices (urban design criteria and guidelines) to ensure that mid-rise buildings are responsive to both their existing and planned context and have been well thought-out.

[64] The guidelines provide that mid-rise buildings are to be no taller than the width of the street right-of-way or between five and 11 storeys. The maximum height is established based on a 1:1 ratio where the maximum height of the building is equivalent to the width of the right-of-way.

[65] The ability to realize the maximum height is tempered by the application of angular planes of 45 degrees applied to the front of the site and the rear of the site respectively. It follows that not all sites on “Avenues” will be able to achieve the maximum height, as some properties are physically constrained.

[66] The purpose of these guidelines is ensuring that buildings will provide an appropriate transition in scale to adjacent neighbourhoods. In this case, the proposed building is too tall and doesn't provide for good street proportion.

[67] The professional witnesses agreed that the Bathurst frontage was the relevant side from which to assess height but disagreed as to the proper way to calculate the height of the proposed building. Mr. Gane and Mr. Smith argue that according to their method of measurement, the height of the building is nine storeys plus a penthouse and that the height to "the top of the main roof" is 28.9 metres, 32.5 metres to the top of the residential penthouse and 37.5 metres to the top of the mechanical penthouse.

[68] Mr. Smith took the position that total height should be a function of the space between the buildings, including the increased space at higher levels as the building steps back at taller heights based on his interpretation of the OP. On the other hand, Ms. Terry argued that total height should be a function of the planned width of the right-of-way in accord with the associated commentary in the “Built Form” policies respecting Tall Buildings found in s. 3.1.3 of the OP, which state that Tall buildings are typically buildings whose height is greater than the width of the adjacent road allowance. The right-of-way width is a constant according to Ms. Terry that supports the mid-rise vision of a moderate built form that does not overwhelm the pedestrian experience and provides for pedestrian comfort.

[69] The Board agrees with the City's submission that the building as proposed should be looked at as a whole and has 10 residential storeys. Grade should be determined from an average elevation along Bathurst (this would be consistent with the approach of Zoning By-law No. 7625 which measures height from the centre line of the street at the mid-point of the front lot line). This would put grade at a lower elevation by

approximately two metres and as such the height of the building is approximately 39.5 metres at the top of the mechanical penthouse and 34.5 metres at the main roof.

[70] The Board also agrees that the planned width of the right-of-way should determine the maximum overall height and notes that generally, the Built Form and “Mixed-Use Areas” policies both speak to massing new buildings in a way that addresses street proportion.

[71] Performance Standard #1 of the Mid-Rise Guidelines specifically speaks to a 1:1 proportion as the maximum allowable height of buildings on the Avenues with buildings being no taller than the width of the Avenue right-of-way.

[72] The planned right-of-way for Bathurst is 27 metres and the height of the proposed building to the main roof is 34.5 metres, which means that the building is 7.5 metres higher than the planned right-of-way width, a height which more than slightly exceeds the 1:1 ratio. The guidelines also indicate that the 1:1 performance standard will be tempered by the angular plane requirements and contemplate mechanical penthouse protrusions above the right-of-way width.

[73] It is clear from the evidence that the north and south elevations of the proposed building protrude beyond the apex of the angular planes. The entire 10th storey and the mechanical penthouse protrude the angular plane in terms of height and accordingly the proposed building does not appropriately and adequately implement the guidelines.

[74] The Board finds Ms. Terry’s approach was both reasonable and flexible towards the application of the guidelines. This approach is context specific and allows for some flexibility in terms of compliance.

[75] A number of examples of other mid-rise building in the City were cited by the witnesses and it is clear from this evidence that the intrusions of the angular plane by the subject building stands out from those examples and furthermore, it appears to be the only example, which does not provide a clear 7.5 metre setback towards the adjacent neighbourhood.



[76] There is also no evidence before the Board to support the notion advanced by Mr. Smith that the maximum height limit in the Mid-Rise Guidelines should be exceeded by reason of the design excellence of the subject building. It is noted that the more recent mid-rise developments along Bathurst Street generally range from five to seven storeys.

[77] These guidelines are not intended to be rigorously applied, however, the Board finds that a gentle application of the guidelines would yield a building that provides better transition towards the neighbourhoods and better street proportion.

[78] While this site might have some constraints, Mr. Smith agreed on cross-examination that there are entire sites that are narrower and shallower than the northern portion of this site alone. We heard that there are sites that are shallower than this site. A building should be able to adapt to its context. The context should not have to adapt to the building in this case given the impacts on the low-rise neighbourhood to the east.

[79] Ms. Terry referred to “minor impacts” and “major impacts” from the application of the guidelines and would find it acceptable to have minor impacts that exceed the guidelines but not major impacts as she described these. It is noted that the City did not challenge the exceedances of the guidelines at the southern portion of the subject property and shows that the City is taking a reasonable approach in its application of the guidelines.

[80] The Board also notes that Ms. Vakharia confirmed during her evidence in chief that the GBCC is also prepared to accept something less than strict adherence to the Mid-Rise Guidelines and agreed with Ms. Terry’s usage of minor impacts and major impacts when applying the Guidelines.

## **Zoning**

[81] Zoning By-law No. 569-2013 was adopted in 2013 and further relevant amendments were adopted in 2015. It does not apply to the subject property, but does apply to many of the sites within the area of study prepared by the City. The

performance standards as these relate to CR zones such as a 7.5 metre setback from the rear lot line, a 45 degree rear angular plane requirement for lots abutting a residential zone and a 45 degree front angular plane beginning at a height of 80% of the right-of-way are all standards that would have to be complied with for the purpose of building permit issuance for other CR zoned properties in the area and forms part of the planned context.

[82] In adopting these particular provisions as part of Zoning By-law No. 569-2013, Council is demonstrating its intention to elevate certain Mid-Rise Guidelines Performance Standards to by-law status.

### **Shadows**

[83] The shadow study compares a mid-rise building at 27 metres to the proposed building at 37.5 metre (32.5 metre, plus 5 metre mechanical) and show that the additional shadow caused by this tall building will create significant impacts in the neighbourhood to the east. This assumes a 27 metre mid-rise building as the “as-of-right” condition rather than a four storey building for the ‘as-of-right’ shadow, which is the existing as of right permission on the southern portion of the site (three residential lots). At 16:18 on March/September 21, there is significant shadow at the front of the houses on Glencairn and on the roofs of those homes immediately adjacent to the subject site along Glencairn, which have skylights on the roofs and that the fronts also have sun-rooms. These will clearly be negatively impacted by the development due to its height and failure to achieve a 45-degree angular plane on the north side of the property. The review of impacts from shadow should not only be limited to looking at only impacts in the rear yards.

[84] It was Ms. Covello’s evidence that the proposed building will cause excess overlook and shadow impact. Although challenged on this opinion, she did not resile from it during cross-examination. She was clear that if the building height is reduced and if there is general compliance with the 45-degree angular plane, the impacts of shadow and overlook would be reduced.

[85] The Board finds that shadow impacts from the proposed development have not been adequately limited.

## **Conclusion**

[86] The Board concludes that the proposed development is not compatible with adjacent Neighbourhoods; does not 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 the neighbourhood to the east; and, does not maintain adequate light and privacy for residents in adjacent Neighbourhoods to locate and mass new buildings to frame the edges of streets with good proportion.

[87] In summary, the Board finds that the proposal does not meet the intent of Toronto's Official Plan, in particular the policies regarding Avenues, Healthy Neighbourhoods, Built Form, Neighbourhoods and Mixed Use Areas. The proposal does not appropriately and adequately implement the City of Toronto Mid-Rise Building Performance Standards. The proposal as currently designed is not compatible with the existing physical character of the neighbourhood.

[88] Accordingly, the Board will not approve the proposed development but will also not dismiss the appeal and allow the Applicant/Appellant to amend its proposal in accordance with the directions outlined in this decision and to continue discussions with the City and other parties to these matters.

[89] The Board has no issues with a re-designation of the southern portion of the site from "Neighbourhoods" to "Mixed-Use Areas" provided that the built form of the new building implements the intent of the Mid-Rise Guidelines with minor impacts as described by Sasha Terry in her evidence. The Board finds that a building of eight stories plus mechanical facilities on the roof would be more appropriate.

*"R.G.M. Makuch"*

R.G.M. MAKUCH  
VICE-CHAIR

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**Ontario Municipal Board**

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