

ISSUE DATE:
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 DECISION/ORDER NO:
0052



PL051203
 PL060087
 PL060443

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

2059946 Ontario Limited 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 former City of Toronto for the purpose of introducing site-specific policies to the current "Low Density Mixed Commercial Residential Area" designation on the northern portion of the site fronting onto Queen Street West, as well as to the current "Mixed Industrial-Residential Area" designation on the southern portion of the site, to permit the development of a 10-storey residential building, with retail at grade, on the northern portion of the site fronting onto Queen Street West as well as a 26-storey residential building on the southern portion of the site on lands located at 1171 and 1171R Queen Street West

Approval Authority File No. 05 133454 STE 18 OZ
 O.M.B. Case No. PL051230
 O.M.B. File No. O050191

2059946 Ontario 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, as amended, of the former City of Toronto for the purpose of amending the current MCR T3.0 C1.0 R2.5 zone on the northern portion of the site fronting onto Queen Street West, as well as to amend the current I1 D3 zone on the southern portion of the site, to permit the development of a 10-storey residential building, with retail at grade, on the northern portion of the site fronting onto Queen Street West as well as a 26-storey residential building on the southern portion of the site on lands located at 1171 and 1171R Queen Street West

O.M.B. Case No. PL051203
 O.M.B. File No. Z050191

Verdiroc Development Corporation 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 former City of Toronto by introducing a site-specific policy to the current "Mixed Industrial-Residential Area B" designation in the Garrison Common North Part 2 Plan for the purpose of permitting the proposed development of a 3-storey building containing 5 live-work units, a 19-storey residential building on the southern portion of the subject lands and a 25-storey residential building containing live-work units at grade on the eastern portion of the subject lands on property municipally known as 48 Abell Street

Approval Authority File No. 99 036168 SHY 18 OZ
 O.M.B. Case No. PL060087.
 O.M.B. File No. O060039

Verdiroc Development Corporation 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, as amended, of the former City of Toronto to permit, as an exception to the current "I1 D3" zone, a proposed

development on lands municipally known as 48 Abell Street to consist of a 3-storey building containing 5 live-work units, a 19-storey residential building on the southern portion of the subject lands, and a 25-storey residential building containing live-work units at grade on the eastern portion of the subject lands

O.M.B. Case No. PL060087

O.M.B. File No. Z060009

Landmark Developments 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 former City of Toronto by introducing a site-specific policy to the current "Mixed Industrial-Residential Area B" designation in the Garrison Common North Part 2 Plan for the purpose of permitting the proposed development of a 16-storey residential building and 3 rows of 5 ½-storey residential buildings in stacked townhouse form, which now has been revised to a proposal to consist of 2 residential buildings, ranging in height from 6 to 13 storeys, to frame a central landscaped open space with the west building at 6 storeys at the street edge (18 metres), stepping back an additional 2 storeys for a total height of 24 metres and the east building at 6 storeys at the street edge, stepping back to 8 storeys and again to 10 storeys for a total height at the south end of the building of 36 metres on lands municipally known as 150 Sudbury Street

Approval Authority File No. 05 199171 STE 18 OZ

O.M.B. Case No. PL060443

O.M.B. File No. O060093

Landmark Developments 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, as amended, of the former City of Toronto to permit, as an exception to the current "I1 D3" zone, a proposed development on lands municipally known as 150 Sudbury Street to consist of a 16-storey residential building and 3 rows of 5 ½-storey residential buildings in stacked townhouse form, which now has been revised to a proposal to consist of 2 residential buildings, ranging in height from 6 to 13 storeys, to frame a central landscaped open space with the west building at 6 storeys at the street edge (18 metres), stepping back an additional 2 storeys for a total height of 24 metres and the east building at 6 storeys at the street edge, stepping back to 8 storeys and again to 10 storeys for a total height at the south end of the building of 36 metres

O.M.B. Case No. PL060443

O.M.B. File No. Z060066

Westside Lofts and Towns 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 composed of Part 1, Plan 66R-17443, Part of Ordnance Reserve and Part of Abell Street, municipally known as 150 Sudbury Street

O.M.B. Case No. PL060443

O.M.B. File No. M060056

APPEARANCES:

<u>Parties</u>	<u>Counsel*/Agent</u>
2059946 Ontario Limited and Bohemian Embassy Residences Inc.	R. Kanter*
City of Toronto	D. Jubb* and student at law T. Stroedel
Active 18 Community Association	C. Campbell*
Verdiroc Development Corporation and Abell Investments Limited	D. Bronskill*
Landmark Developments Inc.	A. Paton*
Canadian National Railway Company and Greater Toronto Transit Authority	M. Hackl*

DECISION DELIVERED BY D. R. GRANGER - (1171 QUEEN)

These are appeals by 2059946 Ontario Limited (1171 Queen), Verdiroc Development Corporation and Abell Investments Limited (48 Abell) and Landmark Developments Inc. (150 Sudbury) from the Council of the City of Toronto's (City) refusal to enact proposed amendments to the applicable Official Plan for the former City of Toronto (OP) and to By-law 438-86, as amended, (By-law) to permit development in the area known as the West Queen Street West Triangle (Triangle).

On consent of the parties, the Board has heard the appeals regarding the three separate proposals, one following the other, before this panel of the Board with macro evidence regarding the overall "Triangle" area given at the commencement and applicable to all appeals.

Overall, the combined evidence and argument resulted in 35 full days of hearing with 160 Exhibits presented.

This decision addresses the appeal by 2059946 Ontario Limited (1171 Queen).

Triangle Area

The Board will first address the evidence and findings common to each of the three applications following from the overall Triangle area macro evidence presented. This portion of the decision is common to each of the three decisions for each of the applications.

On behalf of the City, S. P. Bain provided expert policy planning evidence; K. Benham provided expert planning evidence with a specialty in economic development; M. S. Gertler provided expert planning evidence with a specialty in urban economic development; M. Williams provided expert policy planning evidence related to Section 37; L. Martin provided expert planning evidence with a specialty in cultural uses; P. Prieditis provided expert community service planning evidence; D. J. Douglas provided expert planning evidence with a specialty in parks; E. Hug provided expert area land use planning evidence; and M. Van Elsberg provided expert urban design evidence.

On behalf of the three applicants, P. Smith provided expert land use planning evidence; G. Patterson provided expert civil and municipal engineering evidence and J. Gillezeau provided expert economic evidence with a specialty in housing.

T. Jones, Chief Executive Officer of Artscape provided evidence in support of artist, gallery and studio space being located along a proposed new "Mews" incorporating unconventional retail uses.

On behalf of Active 18 Community Association (Active 18), J. Gladki provided expert land use planning evidence; J. Farrow, Chair of Active 18, set out the core values for Active 18; and M. Zeidler recounted experience in the operation of older heritage buildings.

Area residents P. Little and V. Frankel provided evidence related to the provision of park and the retention of live/work opportunities for existing artists and entrepreneurs.

A. Snow, on behalf of Canadian National Railway Company and Go Transit provided expert transportation planning evidence in support of the proposed crash barrier integration with the Sudbury Street extension as agreed between the parties. He also confirmed satisfaction with requirements for fencing and noise and vibration studies. Mr. Snow's evidence was not contradicted.

The Triangle represents one of the remaining opportunities for new development along Queen Street West within the applicable Garrison Common North Part II Official Plan area. The area is designated Low Density Mixed Commercial-Residential Areas along Queen Street West and Mixed Residential-Industrial Areas southerly to the lands of Canadian National Railway Company (CNR).

Non Residential Land Use

One of the fundamental issues for this hearing is the appropriate amount of non-residential land use that should result from the redevelopment and intensification of the Triangle.

The City Planners set out the difficulties being faced in meeting employment targets within the City. They contend it necessary to set minimum targets for the retention of non residential land uses to provide future employment opportunities especially in areas designated as Mixed Residential-Industrial Areas.

It was acknowledged that all residential uses proposed would permit work at home opportunities but as live/work units, unless secured by a not for profit ownership/lease, were considered as residential.

It was also acknowledged that areas designated as exclusive Employment Districts within the City offered the best long-term protection of employment lands for employment uses.

The urban economic development planner for the City confirmed that creative industries were holding their own quite well but warned of the need to protect affordable and stable space recommending government intervention and innovative partnerships with organizations like Artscape. He considered the general Triangle area as one of Canada's and the City's most important concentrations of creative industries.

The economic development planner and land use planner for the City set out a minimum amount of non residential land use on a development by development basis that equated to a 0.7 times the area of the lot requirement. This was determined by adding up existing non-residential space within the Triangle and re distributing it across the Triangle on a site-by-site basis. This was referred to as a "no net loss policy."

The area land use planner for the City set out that redevelopment could occur with up to two times the area of the lot as residential only in accordance with the policies of the OP. She also confirmed it to be acceptable for 48 Abell to be limited to a non residential amount at 0.5 times the area of the lot instead of 0.7 times the area of the lot due to special provisions including secured and affordable live/work units and studios and workshop space being proposed. Based on this evidence, the Board finds this to be an inconsistent approach that could not satisfy, with any degree of certainty, any employment deficiency alleged to be growing within the City.

The City planners have relied on OP policy that permits up to three times the area of the lot as gross floor area as industrial or mixed use with a cap of two times the area of the lot for residential only. They are of the opinion that this equates to a one third industrial/two third residential ratio that could be extended to apply to any higher densities proposed.

The planners for the applicants do not agree with the interpretation of the City planners finding no other examples of such an application in the past. It is their opinion that each site must be measured on its own merits and that it is not appropriate to endeavour to protect employment uses without some policy derived objective criteria relating to a quantifiable need.

While appreciating the importance of maintaining some non residential mix within an area designated for mixed use development, especially recognizing the creative enterprises that have located in the general area, the Board finds no basis for quantifying a specific amount for each site based on a general poorly defined no net loss policy basis.

If the City is intending to rely on the securing of a specific amount of employment land use on individual sites based on a quantifiable goal for each planning area, district or neighbourhood, it must be able to rely on objective criteria and data achieved through some comprehensive analysis of the planning area and City wide employment objectives to be achieved. In this case, the City's designation of exclusive employment districts offers a more objective approach in that regard.

The Board notes that the City's reliance on a mix of residential and employment uses under policies of the old OP. No similar policies were presented suggesting some minimum amount of non-residential land use being applied in the new OP. While the concern of City staff may be well founded in their experience, more work must be done to establish defensible policy if it is the City's intent to achieve certain employment targets through mixed-use developments and regeneration areas in the future.

It was clear in the evidence of the economic development planner for the City that the Triangle employment base was relatively stable over fifteen years and that within one kilometre there had been a 13 percent growth in employment. This stability has occurred in spite of the subject sites being predominantly vacant or illegal in use.

Having found no basis for the application of any across the board amount of non residential land use per site, in the circumstances of this case, and balancing the interests of the parties as presented, the Board does find it appropriate to require all ground floor spaces related to Queen Street, the proposed parallel running "Mews" and frontage along Abell Street opposite existing non residential land uses to be secured for non residential uses including affordable live/work artist studios where subsidy is available. This will insure an appropriate amount of non-residential land use in excess of what exists today on the three subject sites.

By-law Holding Provisions to Secure Sudbury Street and Future Public Parkland

Another important issue at this hearing is the use of holding provisions proposed to secure the financing and timing for the extension of Sudbury Street from east of Abell Street westerly and northerly to Queen Street intersecting with Gladstone Avenue. The extension incorporates a required crash barrier to protect from the CN/GO right of way abutting to the south.

There was no dispute of the importance of securing the future Sudbury Street extension prior to any of the three applications proceeding. While the end seems to be agreed in principle, the means of securing Sudbury was not.

The City Council wants the protection within a By-law holding provision whereas the three applicants are satisfied to have the extension secured through the use of a Section 37 agreement and/or condition of this Board prior to issuing a final Board Order.

Having considered the evidence of all of the experts at this hearing regarding the securing of the Sudbury Street extension, the Board is satisfied that the matter can be resolved as a condition prior to the Board issuing its final Order and will require the same.

The City Council has similarly required that a holding provision insure that no implementing by-law apply until such time that future public parkland serving the Triangle be secured by the City in the order of 0.4 hectares.

This request is even more problematic than a holding provision related to the Sudbury Street extension. In this case, the applicants have no control over how and when the city will proceed in the acquisition of parkland. The applicants are obligated to provide parkland dedication in accordance with the *Planning Act* but otherwise have little control over the acquisition of lands not associated with lands forming part of the applications.

It was confirmed by city experts, and not disputed, that City Council has authorized the acquisition or expropriation of appropriate lands in the Triangle and that City staff are actively pursuing that end.

Having considered all of the relevant evidence related to the park issue, the Board is satisfied that bona fide efforts by the City are underway and is satisfied that a reasonable time frame, in the order of up to six months, to withhold the Board's final Order will allow the City to conclude its efforts in that regard. If the city is unable to conclude the duly authorized acquisition of parkland, not disputed to be deficient in the Triangle, the Board will be able to be spoken to.

General

The Board did express some disappointment in the inability of the parties to settle their disputes for this large vacant area of the Triangle acknowledged by all to be an ideal opportunity for the intensification and remediation of an older abandoned industrial area. The unanimous expression of the unique and creative nature of the general area only compounded that disappointment in no mutually creative solution being able to be found.

The Board does acknowledge the extraordinary efforts of the parties over the past year in accomplishing some consensus with respect to some general design principles to be applied. The parties have accomplished some unanimity in the establishment of a considerable amount of additional private but publicly accessible open space including the creation of a new "Mews" running parallel to Queen Street West with the hope of showcasing arts and other creative employment spaces. The future extensions of Sudbury Street and Abell Street are other acknowledged public benefits that will result from the redevelopment of the area.

The Board is hopeful a creative spirit will continue to flourish and take advantage of the as of right live/work nature of all residential units and addition of at-grade uses focussing on the creative and artistic trends in the area.

While the Board itself was encouraged to consider creative solutions in its deliberations, it must point out its obligation to carefully consider the evidence in the context of the existing statutory and policy framework. The Board encourages the ongoing objective formulation of new policies that will lead to more innovative and creative solutions to protecting and enhancing the growing importance of creative employment opportunities for future applications.

All parties acknowledged the expectation that the Board would come to a decision that would set out the general nature and form of development for each of the three applications based on its best analysis of the evidence presented in the context of the existing policy regime. All expressed optimism that with that in place, the final form and content of appropriate official plan and by-law amendments, Section 37 agreements and site plans could be settled between the parties within a reasonable period of time. The Board will hold the parties to that test.

In setting what the Board has found to be reasonable development parameters in consideration of the extensive detailed architectural, urban design and land use planning evidence presented, the Board has not found any need to set a maximum density for each application at this time. As confirmed by most of the experts presenting, the density number should follow from the appropriate form, massing and heights established. The final density figures should be set out in the final By-law amendments resulting from this decision.

Reasonable by-law standards related to the addressing of difficulties with the co-location of bar/nightclub and residential uses, appropriate non residential land uses to be permitted and appropriate parking requirements to be applied for an area well served by public transit should be resolved. The Board also strongly encourages the parties, where possible, to establish shared or common utility use locations including those necessary for garage access, garbage collection and loading in an effort to reduce the amount of such space in favour of additional open space.

1171 Queen Street Applications

On behalf of the applicant, B. Sicklé provided expert architectural evidence and R. Glover provided expert land use planning and urban design evidence in support of the applications.

On behalf of Active 18, D. Goodman, architect, provided evidence related to some concerns with the applications.

On behalf of the City, M. Van Elsberg provided expert urban design evidence in opposition to the applications and E. Hug provided expert land use planning evidence in opposition to the applications.

The fundamental issues in dispute related to 1171 Queen are the form, massing and height of the proposed building fronting onto Queen Street West (Queen building), the form, massing and height of the building fronting onto the proposed Sudbury Street extension (Sudbury building), the location of and view along the proposed Northcote Avenue extension pedestrian open space (Northcote extension) and the appropriate location and mix of uses.

The City and applicant have resolved, for the most part, differences in the approach to the Queen Building. While Active 18 would prefer a less high structure, the architect for Active 18 acknowledged there being no negative shadow impact on the north side of Queen Street and that the proposed building setbacks, tower feature and cornices offered some relief and modulation of the vertical.

The City urban designer set out a preference for strict compliance with the maintaining of the angular plane in accordance with the MCR zone requirements, insuring reduced shadow impacts and greater sky view.

The architect for the applicant set out the proposal for the protection of a 45-degree angular plane from the curb on the north side of Queen Street affording reasonable protection from shadow.

The planner and urban designer for the applicant expressed confidence that the MCR zone angular plane was in fact generally being complied with.

The Board finds it appropriate that the MCR zone angular plane, generally being applied along Queen Street, should be applied in this circumstance. This may result in some reconfiguration of the eighth floor as proposed by the applicant.

The Board finds that the proposed height of 8 storeys at a limit of 25 metres, excluding the tower feature over the proposed passage at a height limit of 27 metres and allowing a limited reasonable amount of mechanical height outside of the required angular plane, to be appropriate.

The urban designer for the City set out a preference for a reduced setback from Queen Street to provide greater opportunity for future abutting developments noting additional setback would be wasted space being in shadow for much of the time.

The applicant and Active 18 prefer the greater setback, the planner and urban designer for the applicant equating the setback to those existing for the historic postal office and library buildings in the immediate vicinity to the east and Active 18 acknowledging a desire and expectation for shops along Queen Street to spill out into the setback area.

The Board finds the maximum setback of 3.8 metres proposed by the applicant to be appropriate.

One of the City's proposed park location options, albeit not the preferred option, locates a proposed park abutting the Queen building to the west. The parties acknowledge the need for a more articulated façade facing west should this park location be secured. Based on submissions of the parties, the Board finds that up to six months is a reasonable period to allow for a determination of whether or not these lands are intended to be secured for park or not.

There was no consensus regarding the height and location of the proposed passage leading from Queen Street into the north south publicly accessible private open space intended to replace a proposed extension of Northcote Avenue southerly.

The City urban designer is of the opinion that the passage should be directly aligned with Northcote Avenue with an unobstructed view south through the publicly accessible private open space at a minimum height of 7.5 metres.

The applicant originally proposed aligning the passage with Northcote with some obstruction resulting from the Sudbury building. The architect for the applicant set out the constraints of providing an unobstructed view including the reduction of the necessary westerly service area for the Sudbury building. He proposed a compromise to shift the passage easterly, no longer fully aligning with Northcote, to maintain an open view through to the private open space at a height of approximately two storeys or minimum of 5.8 metres.

The City has relied heavily on the OP for the extension of Northcote Avenue in securing all City requirements including additional publicly accessible private open space, albeit it acknowledging that there are no written policies in the OP and only one drawing outlining a proposed street pattern. Interestingly, this drawing in the OP shows the proposed southern extension of Northcote as being slightly offset from the existing northern leg.

The architect for Active 18 while expressing a desire for a passage open to the sky, did acknowledge it not being necessary to line up the passage with Northcote Avenue.

The Board finds the latest proposal by the applicant to be a reasonable compromise in the circumstance. While offset from the north leg of Northcote Avenue, a view down the east sidewalk still exists and the passage will provide a greater open space view than originally proposed. The Board has not been persuaded in the necessity of a formal alignment of the centreline of a predominantly low-density residential street and a pedestrian entrance from a commercial street to additional

publicly accessible commercial and open space behind. Roads, and spaces intended to emulate roads, do not always line up.

Based on the many examples of other passages in the City presented, the Board finds that a minimum height of 5.3 metres combined with the agreed 11 metre width and less obstructed view serves the intent of attracting pedestrian traffic into the publicly accessible private "Mews" open space and commercial area.

With respect to the Sudbury building, the Board finds little dispute with respect to the lower building attributes including the ground related two-storey façade of family townhouse units and/or live work artist units stepping up to a 6-storey façade then stepping up to the higher storeys. If not for the two-storey façade proposed, the Board would require a continuation of a minimum four-storey façade in keeping with the general character along Queen Street and related to existing industrial buildings in the immediate vicinity.

The total height is in dispute with the City proposing 14 storeys and the applicant proposing 19 storeys. Active 18 had less concern with respect to tower height and more concern with building mass, preferring a point tower approach. All parties acknowledged the higher elements being directed to the south along the existing rail corridor.

The City prefers that the Sudbury building not be visible from Queen Street whereas the applicant agrees that it should not fall within the angular plane related to Queen Street.

The Board finds that an approximate 19 storey height to a maximum of 62.5 metres above the Queen Street grade, including mechanical whether wrapped or not, all outside of the required MCR zone angular plane from Queen Street, to be appropriate. In keeping with the City urban designer's reasonable opinion that the heights in the Triangle should transition down to the east toward existing low density ground related dwellings, the Board finds the Sudbury building to be the furthest removed in that regard, outside the angular plane required along Queen Street, closest to the existing

rail corridor and still lower than other buildings proposed along the south side of the same existing rail corridor.

With respect to non residential land uses, as noted above, the Board finds that all ground related and/or accessible space fronting along Queen Street and the proposed parallel east-west "Mews" to the south, including the northeast corner of the Sudbury building, should be restricted in that regard. This appropriate area will constitute the minimum non-residential use area to be set out in any proposed by-law. The two-storey units proposed along the north-south publicly accessible open space should maintain the flexibility of being secured as live-work artist units or townhouse units suitable for families.

Otherwise, the Board finds that the proposal, substantially in the form as set out in Exhibit No. 86A, is appropriate, represents good planning and is in the overall public interest of the community.

In conclusion, the appeal by Bohemian Embassy Residences Inc. is allowed and the OP and By-law are to be amended in a manner that incorporates the findings of this decision.

The Board will withhold its Order pending successful completion of the following:

1. The finalization of an Official Plan Amendment incorporating the above findings of the Board in a form satisfactory to the City.
2. The finalization of a By-law Amendment incorporating the above findings of the Board in a form satisfactory to the City. The By-law amendment will include a schedule confirming the proposed zoning restrictions related to heights and setbacks for 1171 Queen Street West, 48 Abell Street and 150 Sudbury Street.
3. The finalization of a site plan and agreement.
4. The finalization of a Section 37 agreement.

5. Adequate opportunity for the owners of 1171 Queen Street West, 48 Abell Street and 150 Sudbury Street together with the City to resolve an agreement regarding the securing, financing and timing of the extension of Sudbury Street.
6. Adequate opportunity for the owners of 1171 Queen Street West, 48 Abell Street and 150 Sudbury Street together with Canadian National Railway Company and Go Transit to resolve agreements regarding issues related to the rail corridor including crash protection and noise and vibration studies.
7. Adequate opportunity for the City of Toronto to secure land for a public park within the area of the Triangle as authorized by City Council.

The Board will require resolution of the above before September 1, 2007 or six months following from the submission by the applicant to the City of revised plans incorporating the findings of this decision, whichever is greater. If no actions are taken to implement this decision of the Board within this prescribed timeline, the appeals will be dismissed.

The Board may be spoken to should difficulties arise in the completion of the above. This Board Member is seized in that regard. The parties should be diligent in bringing this matter to a final conclusion on the basis of mutual consent.

D. R. GRANGER
VICE-CHAIR

