

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: March 23, 2017

CASE NO(S): PL161089

PROCEEDING COMMENCED UNDER subsection 45(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant:	Eracon Holdings (Pape) Ltd.
Subject:	Minor Variance
Variance from By-law No.:	438-86
Property Address/Description:	450 Pape Avenue
Municipality:	City of Toronto
Municipal File No.:	A1078/15TEY
OMB Case No.:	PL161089
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OMB Case Name:	Eracon Holdings (Pape) Ltd. v. Toronto (City)

Heard: March 16, 2017 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Eracon Holdings (Pape) Ltd.

David Bronskill

**MEMORANDUM OF ORAL DECISION DELIVERED BY SHARYN VINCENT ON
MARCH 16, 2017 AND ORDER OF THE BOARD**

INTRODUCTION

[1] The Committee of Adjustment (“COA”) of the City of Toronto (“City”) refused the variances necessary to allow the proposed renovation and enlargement of the existing designated heritage structure and two-storey annex addition located at 450 Pape Avenue, owned by Eracon Holdings (Pape) Ltd. (“Applicant/Appellant”).

[2] The Applicant seeks to restore and adaptively reuse the substantial three-storey original residence, known as the Harris House, 1901, which was bequeathed to the Salvation Army and operated for many years as the Bethany Home for Pregnant Women. During its institutional/residential use, the Salvation Army added a two-storey annex addition to the rear (west) of the original house with vehicular access to five internal parking spaces, provided from the flanking street, Riverdale Avenue. Six other surface parking spaces were provided, three accessed from Pape Avenue to address the parking requirements of the former use. More recently the buildings have been used variously as a temporary shelter operated by the Salvation Army while the Jarvis facility known as the Lighthouse was constructed, and as the site for movie shoots.

[3] The entire house form and significant interior elements were designated in 2011.

[4] The current owners and Applicant, Eracon Holdings (Pape) Ltd. propose to add two storeys to the annex addition erected in the sixties and to restore and renovate the enlarged building to accommodate 28 apartment residential units.

[5] The property is designated Neighbourhoods and zoned by both applicable zoning by-laws to permit a density of 0.6 to a height of 10 metres ("m"). Apartment buildings are a permitted use.

[6] Attachment 1 sets out the required variances, a perhaps daunting list at first glance of 42 variances, some of which are of course attributable to the plurality of Toronto's by-laws, and otherwise are in the majority required to allow the restoration and retention of the designated building as originally sited.

[7] The Board heard evidence from two witnesses qualified to give expert opinion evidence in the areas of Architecture and Cultural Heritage, and Land use planning; Cathy Nasmith and Andrew Ferancik respectively.

[8] A neighbour, Nick Shcherban, owner of 456 Pape Avenue, joined the hearing in

progress after the evidence of Ms. Nasmith was complete, and Mr. Ferancik had commenced with his detailed analysis of the variances after having provided his evidence with respect to the neighbourhood context, the Official Plan and Zoning provisions and had described the visual evidence in Exhibit 4, detailing the existing site conditions and adjacencies.

[9] Mr. Shcherban advised that while he supported the revitalization of the site, he was of the opinion that the neighbourhood would be better served if the opportunity for more public consultation was afforded as would be, in his opinion, the case through a rezoning application. When questioned by Counsel for the Applicant, it was made apparent to the Board that aside from the two hearings before the COA, that the Applicant had hosted a public open house, had followed up with meetings on two other occasions with interested parties, and emailed packages of revised drawings illustrating the input from the internal circulation of the site plan application drawings to all interested parties on record with an invitation to discuss the plans before today's proceedings.

[10] The Board is satisfied that the variances are largely technical in nature and that they are appropriately before the Board as variance requests.

[11] The variances can be grouped into the following three areas:

- i) height, density and massing
- ii) yards, porches and landscaping; and
- iii) driveways and parking.

[12] It is noted that 27 of the required variances deal with the last category of driveways and parking, with only nine being a result of the overlapping by-laws.

[13] The proposal is subject to Site Plan Approval, has under gone two full

circulations in addition to the circulation for the COA hearing, and is satisfactory to the Transportation Division of the City as evidenced by the memo supporting the application at Tab 9 of Exhibit 1. Similar approval from Heritage Preservation is found at Tab 8 of Exhibit 1.

[14] The Board also heard evidence that Urban Forestry would require the preservation of the mature perimeter trees on both public and private property, and that the extensive supplementary new landscaping would appropriately screen the onsite parking so as not to detract from the integrity of the heritage building, its ceremonial landscape pedestrian approach from Pape Avenue and its prominent visibility to all passersby resulting from the slightly elevated height of the corner property.

FINDINGS

[15] The Board concurs with the opinion evidence that the majority of the variances are technical in nature and are required to achieved the highly desirable result of preserving and restoring the house form and its original accessory elements such as the front porch along Pape Aveune.

[16] The two storey addition to the annex is capped at a height respectful of the ridge of the original house, (which exceeds the current 10m restriction) and the new density created on site maintains a 7.5 m westerly setback from the abutting residence which is to be used as passive amenity space as it abuts the rear yard of 266 Riverdale Avenue. Extensive landscaping is proposed to complement the existing mature trees along this property line and will be secured through site plan approval.

[17] Shadow studies compliant with the Official plan ("OP") policies for times and dates were submitted to the Board in support of the proposal, and the incremental shadow created by the new two stories meet the OP policy.

[18] By allowing the adaptive reuse and expansion of the existing floor area to create

a modest residential intensification project, the heritage house can appropriately be re-integrated into the low scale stable neighbourhood which has developed around it.

[19] The Board is satisfied by the evidence and the fact that through the requisite iterative refinement of the project to that which was presented today, that the variances requested, both individually and cumulatively have been vetted and are satisfactory to the Heritage Preservation, Transportation, Planning and Urban Forestry Departments of the City.

[20] The proposal represents an opportunity to breathe life into the important structure by creating new housing opportunities in a stable, highly desirable and transit supported neighbourhood.

[21] The proposal represents the very type of intensification and heritage preservation encouraged by the various Provincial and City policy documents and can be physically achieved without adverse shadowing or overlook impacts on abutting or adjacent properties.

[22] The Board finds that the proposal and associated variances satisfy the four tests and are consistent with, and conform to Provincial policies.

[23] The Board finds that the proposal represents good planning and is in the public interest.

ORDER

[24] The Board orders that the appeal is allowed and the variances to By-law Nos. 438-86 and 569-2013 as set out in Attachment 1 to this order, are authorized. With respect to the variances to By-law No. 569-2013, this decision is contingent on By-law No. 569-2013 coming into full force and effect.

"Sharyn Vincent"

SHARYN VINCENT
MEMBER

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

Ontario Municipal Board

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ATTACHMENT 1

REQUESTED VARIANCE(S) TO THE ZONING BY-LAW:

1. Chapter 10.10.40.10.(1)(A), By-law 569-2013
The maximum permitted building height is 10.0 m.
The apartment building will have a height of 14.04 m.
2. Chapter 10.5.40.10.(3)(B), By-law 569-2013
The maximum permitted height by which an elevator shaft used for the functional operation of a building may exceed the permitted height for that building is 5.0 m.
The elevator shaft will exceed the maximum permitted height by 5.59 m.
3. Chapter 10.10.40.10.(7), By-law 569:-2013
Floor levels within an addition, extension or enlargement to the rear of a residential building may not be higher than the uppermost floor level in the existing building.
The floor level of the addition will be higher than the uppermost floor level of the existing building.
4. Chapter 10.10.40.30.(1), By-law 569-2013
The maximum permitted depth of an apartment building is 14.0 m.
The apartment building will have a depth of 43.43 m.
5. Chapter 10.10.40.40.(1)(A), By-law 569-2013
The maximum permitted floor space index of an apartment building is 0.6 times the area of the lot (1366.94 m² .
The apartment building will have a floor space index equal to 0.86 times the area of the lot (1959.7 m²).
6. Chapter 10.10.40.70.(3)(C)(ii), By-law 569-2013
The minimum required side yard setback is 7.5 m.
The apartment building will be located 5.82 m from the north side lot line, measured to the third and fourth floor 'Annex' addition.
7. Chapter 10.5.40.60.(1)(E), By-law 569-2013
A platform without main walls, attached to or less than 0.3 m from a building, with a floor no higher than the first floor of the building above established grade may encroach into the required side yard setback 1.5 m if it is no closer to a side lot line than 0.3 m.
The north side ground floor porch will encroach 2.47 m into the required side yard setback.
- 8., Chapter 10.5.40.60.(1)(F)(ii), By-law 569-2013
A platform without main walls, attached to or less than 0.3 m from a building, with a floor higher than the first floor of the building above established grade may not encroach into the required side yard setback if the side yard does not abut a street.
The Unit 3E third storey balcony will encroach 4.03 m into the required side yard setback and the 'Annex' ground floor deck will encroach 3.7 m into the required side yard setback.
9. Chapter 10.5.50.10.(4)(A), By-law 569-2013
A minimum of 50% (1139.12 m²) of the lot area must be maintained as landscaping.
In this case, 45.19% (1029.43 m²) of the lot area will be maintained as landscaping.
10. Chapter 10.5.50.10.(5), By-law 569-2013
A 1.5 m wide minimum strip of soft landscaping must be provided for a lot with an apartment building, along any part of a lot line abutting a lot in a Residential Zone.
In this case, a 0.91 m strip of soft landscaping will be provided along the west rear lot line.

11. Chapter 10.5.80.1.(2)(A), By-law 569-2013
A lot may have an ancillary outdoor area used for the parking or storage of more than 3 vehicles if the ancillary outdoor area is no closer than 6.0 m to a residential building on the same lot.
The ancillary outdoor area will be 0.0 m from a residential building on the same lot.
12. Chapter 10.5.80.1.(2)(B), By-law 569-2013
A lot may have an ancillary outdoor area used for the parking or storage of more than 3 vehicles if the ancillary outdoor area is fenced, excluding the portions used for vehicle or pedestrian access.
The ancillary outdoor area will not be fenced.
13. Chapter 10.5.80.1.(2)(0), By-law 569-2013
A lot may have an ancillary outdoor area used for the parking or storage more than 3 vehicles if the ancillary outdoor area is no closer than 7.02 m to a lot line that abuts a street.
The ancillary outdoor area will be located 0.9 m from the south lot line that abuts a street (Riverdale Avenue).
14. Chapter 10.5.80.10.(2), By-law 569-2013
A minimum of 50% (12 parking spaces) of the required parking spaces, other than required visitor parking spaces, must be located in a building or in an underground parking structure.
In this case, 20.83% (5 parking spaces) of the required parking spaces will be provided in a building or underground parking structure.
15. Chapter 10.5.80.10.(3), By-law 569-2013
A parking space may not be located in a front yard or a side yard abutting a street. The parking spaces will be located in the front yard and side yard abutting a street.
16. Chapter 10.5.80.10.(6), By-law 569-2013
A parking space on a corner lot must be located in a building or structure, in a rear yard, or in a side yard that does not abut a street.
The parking spaces will be located in a side yard that does abut a street.
17. Chapter 10.5.80.30.(1), By-law 569-2013
A surface parking space must be a minimum 3.0 m from all main walls of an apartment building.
Parking spaces will be located 0.0 m from the main wall of the apartment building.
18. Chapter 10.5.80.40.(3)(A), By-law 569-2013
Vehicle access to a parking space on a corner lot that abuts a lane must be from the lane. Access to the parking spaces will be from the flanking street (Riverdale Avenue) and the lane.
19. Chapter 10.5.100.1.(4)(A), By-law 569-2013
The minimum permitted driveway width for an apartment building is 3.0 m for each lane. In this case, the driveway width will be 2.5 m for each lane.
20. Chapter 10.5.100.1.(4)(B), By-law 569-2013
The maximum permitted driveway width for an apartment building is 6.0 m. In this case, the driveway width will be 8.44 m.
21. Chapter 10.5.100.1.(5), By-law 569-2013
For an apartment building with 25 or more dwelling units, unobstructed vehicle access must be provided between the street and the principal pedestrian entrance to the building so a vehicle can enter and leave the lot while driving forward in one continuous movement.
This type of access will not be provided.
22. Chapter 10.5.100.1.(7), By-law 569-2013
A driveway with a hammerhead turnaround is not permitted on a lot with a residential building with

25 or more dwelling units.

In this case, there will be a driveway with a hammerhead turnaround.

23. Chapter 10.5.100.1(8), By-law 569-2013
A hammerhead turnaround must have a maximum width of 3.0 m, extend no more than 4.5 m from one edge of the driveway, and extend no more than 3.0 m from each opposite edge of the driveway. In this case, the hammerhead turnaround is 5.1 m wide, extended 5.0 m from one edge of the driveway, and 5.0 m from each opposite edge of the driveway.
24. Chapter 200.5.10.1(1), By-law 569-2013
A minimum of 29 parking spaces are required to be provided, consisting of 24 resident parking spaces and 5 visitor parking spaces.
In this case, 17 parking spaces will be provided, consisting of 13 resident parking spaces, 3 visitor parking spaces, and 1 car share space.
25. Chapter 200.5.1(3), By-law 569-2013
The minimum required drive aisle width is 6.0 m where the centreline of a parking space is at an interior angle of 70 to 90 degrees to the centreline of the drive aisle providing vehicle access. The drive aisle width will be 5.91 m within the building, and 5.0 m outside the building.
26. Chapter 200.5.1.10(2), By-law 569-2013
The required parking spaces must have a minimum width of 2.9 m where they are unobstructed. Three unobstructed parking spaces in the parking garage will be 2.6 m in width.
27. Chapter 200.5.1.10(2), By-law 569-2013
The required parking spaces must have a minimum width of 3.2 m where they are obstructed on one side.
Two parking spaces in the parking garage obstructed on one side will be 2.9 m in width.
28. Chapter 200.15.10. (1)(B), By-law 569-2013
A minimum of two accessible parking spaces must be provided.
In this case, one accessible parking space will be provided.
1. Section 4(2)(a), By-law 438-86
The maximum permitted building height is 10.0 m. The apartment building will have a height of 15.36 m.
2. Section 4(2)(a)(i)A, By-law 438-86
The maximum permitted height of an elevator shaft is 15.0 m. The height of the elevator shaft will be 16.91 m.
3. Section 6(3) Part II 5, By-law 438-86
The maximum permitted depth of an apartment building is 14.0 m. The apartment building will have a depth of 43.43 m.
4. Section 6(3) Part I 1, By-law 438-86
The maximum permitted residential gross floor area of an apartment building is 0.6 times the area of the lot (1366.94 m²).
The apartment building will have a gross floor area equal to 0.96 times the area of the lot (2194.70 m²).
5. Section 4(12), By-law 438-86
Residential amenity space is required to be provided in a multi-purpose room or contiguous multi-purpose rooms, at least one of which contains a kitchen and washroom.
The indoor amenity space will not contain a kitchen or washroom.

6. Section 6(2) 21 (i), By-law No. 438-86
A parking station is a permitted use provided the portion of the lot upon which the parking station is located is fenced and suitably landscaped.
In this case, the parking station will not be fenced.
7. Section 6(2) 21 (iv), By-law No. 438-86
A parking station is a permitted use provided no portion of the parking station is located closer to the residential building than 6.0 m.
In this case, the parking station will be located 0.0 m from the residential building.
8. Section 6(2) 21 (vi), By-law No. 438-86
A parking station is a permitted use provided no portion of the parking station is located closer to the flank of a lot than 7.02 m.
In this case, the parking station will be located 0.90 m from the flanking lot line.
9. Section 4(4)(b), By-law 438-86
A minimum of 29 parking spaces are required to be provided, consisting of 22 resident parking spaces and 7 visitor parking spaces.
In this case, 17 parking spaces will be provided, consisting of 13 resident parking spaces, 3 visitor parking spaces, and 1 car share space.
10. Section 4(4) (c)(ii), By-law 438-86
The minimum width of a driveway providing two-way access to the parking facilities required for the apartment building is 5.5 m.
The driveway providing two-way access to the parking facilities from the flanking lot line will be 5.0 m wide.
11. Section 4(17)(b), By-law 438-86
The required parking spaces must have a minimum width of 3.0 m where they are unobstructed. Three unobstructed parking spaces in the parking garage will be 2.6 m in width.
12. Section 4(17)(b), By-law 438-86
The required parking spaces must have a minimum width of 3.0 m where they are unobstructed. Six unobstructed surface parking spaces will be 2.9 m in width.
13. Section 4(17)(b), By-law 438-86
The required parking spaces must have a minimum width of 3.3 m where they are obstructed on one side.
Two parking spaces in the parking garage obstructed on one side will be 2.9 m in width.
14. Section 4(13)(d), By-law 438-86
A maximum of 50% of resident bicycle parking spaces are permitted to be provided in a manner that requires a person to park the bicycle in a vertical position.
In this case, 100% of resident bicycle parking spaces will be provided in a manner that requires a person to park the bicycle in a vertical position.