**Ontario Land Tribunal**
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# Party Status Request Form

This form is expected to be provided at least 10 days in advance of the first hearing event to the Tribunal and all parties. Please contact the assigned Tribunal Case Coordinator to verify the relevant contact information for the parties. (A paper copy of this form must also be provided to the Tribunal Member when the event is in person).

**Important:** This form is your written request for party status. The presiding Tribunal Member will consider your request at the hearing event and will provide a determination on whether to grant you party status.

Request Date *(yyyy/mm/dd)*: January 26, 2024

## Case Information

Tribunal Case Number: OLT-23-000901

Date of Case Management Conference/Hearing *(yyyy/mm/dd)*: 2024-02-08

## Contact Information

Last Name: HIRSH

First Name: DAVID

Company Name: 1000776391 Ontario Inc.O/A Mt Pleasant Village Revival Residents Association

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### Representative Contact Information (if applicable)

Last Name: HIRSH

First Name: DAVID

Company Name:

Telephone Number: 416-951-4701

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☒ I certify that I have written authorization to act as a representative and I understand that I may be asked to produce this authorization at any time.

## Status Request Details

A person who is authorized to participate in a proceeding as a party may participate fully in the proceeding in accordance with Rule 8 of the OLT's Rules of Practice and Procedure.

In the space below, please provide an outline of your interest and an explanation as to how your involvement will help the Tribunal resolve the issues raised in the appeal. You may also provide documentation or attachments to support your request:

Please see attached supporting letter for this application.

**Notes:**

1. Please refer to Rules 8.1 and 8.3 of the OLT's Rules of Practice and Procedure regarding the Role and Obligations of a Party and how a Non-Appellant Party may participate in a proceeding.
2. The OLT issues all correspondence to parties and participants electronically.
3. Personal information or documentation requested on this form is collected under the authority of the *Ontario Land Tribunal* Act and the legislation under which the proceeding is commenced.
4. All information collected is included in the OLT case file and the public record in this proceeding.
5. In accordance with the *Freedom of Information and Protection of Privacy Act* and section 9 of the *Statutory Powers Procedure Act*, all information collected is available to the public subject to limited exceptions.

MTPLEASANTVILLAGEREVIVAL
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January 26, 2024

Ontario Land Tribunal,
655 Bay Street, Suite 1500,
Toronto, Ontario M5G 1E5

**APPLICATION FOR PARTY STATUS – ADDENDUM TO APPLICATION**

**Case number:** OLT-23-000901; **Property Address:** 551 Mount Pleasant Road, Toronto;
**City of Toronto Act Reference No:** 23 110086 NNY 15 SA; **Case Process:** Bill 245;
**Case Coordinator/Planner:** Melvyn Hiew

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1000776391 Ontario Inc. o/a Mt. Pleasant Village Revival Residents Association ("MPVRRA") represents many residents and homeowners within the vicinity of the subject property. The City of Toronto Committee of Adjustment has determined that the variances being requested in the proposed development application (the "Proposal") are not "minor" and do not represent appropriate development for this neighbourhood. Furthermore, there is significant doubt as to the status of the purported "legal non-conforming" use zoning exemption of this property. For these reasons, it is our submission that the proper process for adjudicating this Proposal is for Regent Revival Inc. ("Regent" or "Applicant", alternatively known as Terra-Bruce Productions Inc.) to submit a proper application for Zoning by-law and Official Plan Amendments as required.

MPVRRA hereby requests Party status ("Party") for the upcoming Ontario Land Tribunal ("OLT") hearing on this matter (the "Hearing"). Its core organizing group, Christof Haussmann, David Hirsh, Amir Shapira, Margaret Thompson, Andy Wilson, and Blair Wilson (the "Residents"), are the spokespersons for MPVRRA. The Residents reside on Hadley Road and Belsize Drive, in the immediate vicinity of the proposed project and will be among the most affected should the Proposal go forward as it stands.

It is MPVRRA's position that OLT cannot adjudicate the matter in a fair and transparent manner without its participation. MPVRRA will present contrary evidence and arguments germane to a full understanding of the Proposal and its effects of which OLT would otherwise be unaware. The Proposal from Regent has not been presented in an open and transparent manner. Three meetings have been held with Regent, one for the general public, one on-site with the Residents, and a ZOOM call with Regent's consulting team with no satisfactory results.

The Applicant's proposal contains many inaccuracies and fails to address significant negative effects on the neighbourhood as a result of the proposal. To ensure a complete hearing of all relevant matters pertaining to this application, it is imperative that OLT grant MPVRRA Party standing. An overview of MPVRRA's main issues of concern are as follows:

**Legal Non-Conforming Use and Acquired Rights (Continuous Use):**

MPVRRA asserts that any acquired rights the Applicant is relying upon for the Proposal have lapsed.

The Proposal is founded on the assumption that the use of the lands as a theatre (i.e. for public theatrical performances) constitutes a legal non-conforming use of the lands. There are serious questions as to the evidence (particularly the lack thereof) relating to this assumption.

The application being sought by Regent pursuant to s. 45(2)(a) [as opposed to s. 34 or 45(1)] of the Planning Act rests entirely on the assumption that the theatre use is legal non-conforming, thereby allowing the approval of an "enlargement or extension" of the existing building across the lands and creating new accesses/interfaces where none existed historically. MPVRRA submits that the use of the lands for a theatre being a legal non-conforming use is an unsupported assumption insofar as there have been extensive periods when the theatre use was abandoned, and furthermore, that the now proposed use of the subject property is substantially different from any pre-existing use, let alone a use that has been continuous since the theatre was established.

The date of application for the Regent Proposal to the Committee is February 10, 2023. The supporting letter from Regent's solicitor, states "*The Property is occupied by the historic 2-story Regent Theatre…has been in continuous use as a live theatre and/or cinema*." <u>This is an incorrect statement.</u> The theatre has <u>not</u> been used for live theatre for decades (1985). Any ostensibly established legal non-conforming use of the lands as a theatre lapsed on several occasions in periods when the theatre operated sporadically, on a very limited basis, or not at all. This is particularly evident in the period since 1985, the year referenced in the September 19, 2022 report of the City Chief Planner (regarding *Ontario Heritage Act* designation) as the point after which "subsequent attempts to lease the theatre to a non-profit musical theatre company also failed to materialize."

For Regent to enjoy continued acquired rights under legal non-conforming use provisions, the Ontario Municipal Board ("OMB"), found that under the Planning Act, section 45(2)(a)(ii), *"that the use must have continued "until the date of application to the Committee'."*[1] (Committee of Adjustment, City of Toronto.) The OMB dismissed the appeal as the use was not continuous. It is clear that the use of the Regent Theatre did not continue until the February 10, 2023 Committee of Adjustment application. On that basis, any remaining acquired rights have expired.

The theatre is in derelict condition, as the Applicant itself noted in its application to the Toronto Historical Board for permission to demolish the building, only keeping the façade of this historically designated building. No evidence has been provided demonstrating a continuous use of the building as a theatre or cinema.

The courts have held that continuous use is considered "*abandoned or interrupted for a 'reasonable period' no shorter than six months, otherwise the acquired rights no longer prevail."* In the same decision, the judgement states: *"Acquired rights confer immunity on the actual use of land being exercised before a change to the by-law*<u>***, while merely contemplated use will not***</u>

[1] Ontario Municipal Board, Parker v. City of Toronto, March 16, 1986; Docket No. V850323

***enjoy the same immunity.***"[2] (Emphasis added). Any acquired rights for Regent must also be considered expired or abandoned on this basis.

**Legal Non-Conforming Use and Acquired Rights (Remoteness of Intended Use):**

The Proposal is also deficient and opaque in stating the intended use of the building. The Applicant is advertising the Proposal to the public as a "Neighborhood (sic) Arts Centre." There is no explanation provided as to what this means. The Residents have reviewed the myriad reports and drawings provided by Regent through available Toronto portals. The provided information indicates that the intended use of the lands is far greater than existing *presumed* acquired rights. "*The remoteness of the intended use and the neighbourhood effects have a role to play in the proper disposition of this type of case."*[1]

Notwithstanding the issue of lapsed use, the pre-existing use can be characterized as a commercial movie theatre, or a theatre presenting live performances, offering snacks, drinks, ambiance, and lawful entertainment to the public. The Applicant is proposing to change this form of entertainment to include many uses never before seen at this facility including a 174.5M$^2$/1,878ft$^2$ "Ancillary Area" as well as a 182.5M$^2$/1,964ft$^2$ "Reception Area" suitable for event hosting, conversion of existing street front retail space to an 168.5M$^2$/1,814ft$^2$ café and a main auditorium floor where the seats flip over "at the push of a button" to create a flat floor suitable for cabaret, nightclub, business lunches, banquet hall or discotheque, all serviced by a 74.8M$^2$/805ft$^2$ commercial kitchen facility. There is also a 172.8M$^2$/1,860ft$^2$ rear "Rehearsal and Community Space" (with supporting washroom, lobby and foyer space adding a further 30.2M$^2$/325ft$^2$).

MPVRRA asserts, as stated by the Supreme Court of Canada: "*If the use undertaken after the change to the by-law is of the same nature as the actual use under the former by-law, it will be protected by acquired rights. If, on the other hand, it is even minimally different, the protection will be lost. That is, I reiterate, because any use that has not yet materialized must, as a general rule, be excluded from the sphere protected by acquired rights. …"*[3]. The Proposal is substantially different from any former use as a movie and (previously) live-performance theatre.

**Legal Non-Conforming Use and Acquired Rights (Change in Use):**

The Parker v. City of Toronto case heard by the OMB and cited above has significant notable elements very similar to the Proposal at hand in that a new operator of a cinema, while continuing to show films on the screen, removed seats and added two dance floors, with cabaret type tables in the premises. The Regent intends to offer such flexibility by simply "flipping a switch" and the theatre turns into a flat floor disco, cabaret, etc.

In its decision, the OMB found that *"The screen was in fact left up and although films were shown, we believe that this fact alone could not be said to constitute an intent to continue the use of the*

[2] Supreme Court of Canada, Saint Romuald (City) v. Olivier; 2001-09-27, Case number 27210

[3] Supreme Court of Canada, Saint Romuald (City) v. Olivier; 2001-09-27, Case number 27210

*building as a theatre"* and *"We believe that it would constitute a bona fide and real change of use with an individuality of its own"* [4]. The Proposal contemplates a change in use in many ways analogous to that in the Parker v. City of Toronto case, and a similar determination must be made that change in use causes any existing acquired rights not to apply to the Proposal going forward.

**Legal Non-Conforming Use and Acquired Rights ("Category" Approach):**

The Applicant is using a "category" approach to the proposal and will argue that protection of acquired rights extends to any use in the by-law category ("cultural arts centre"). The theory is that the implementation of one use, that of a theatre, triggers protection to all uses included in the same category, even other non-conforming uses. The courts do not agree with this approach. "*Relying on categories such as these, which are sometimes overly general or even residual, creates a risk both of granting disproportionate protection to those who enjoy the acquired rights and significantly fettering municipal planning powers."* [5]

The Supreme Court of Canada dismissed the appeal. MPVRRA requests that OLT dismiss this Application as well.

**Committee of Adjustment, City of Toronto:**

The Applicant asserts that the Committee of Adjustment does not express concerns about the proposed built-form or heritage alterations. The Committee of Adjustment had no need to express these concerns, having decided the entire Proposal was undesirable and inappropriate, which would, by definition, include built-form and heritage concerns. The Committee, on August 24, 2023, rejected the application giving the following reasons:

a. *The general intent and purpose of the Official Plan is not maintained.*
b. *The general intent and purpose of the Zoning By-law is not maintained.*
c. *The variance(s) is not considered desirable for the appropriate development of the land.*
d. *In the opinion of the Committee, the variance is not minor.*

The Applicant asserts "*that City staff are supportive of the proposal and did not express any concerns to the Committee of Adjustment*." No staff appeared at any hearing to support the approval for minor variances, so there is no evidence concerning the basis or extent of any such support or lack of concern. MPVRRA submits that the Committee of Adjustment findings are relevant and germane pursuant to s.45(3) of The Planning Act, and therefore the proposal by Regent is not appropriate for these lands.

It appears City zoning staff assessed the requested variances as a result of ostensible acquired rights without investigation or report on these rights, citing only variances to existing by-law

[4] Ontario Municipal Board, Parker v. City of Toronto, March 16, 1986; Docket No. V850323
[5] Supreme Court of Canada, Saint Romuald (City) v. Olivier; 2001-09-27, Case number 27210

requirements in both the commercial and residential zones. MPVRRA asserts that no substantive study of the land-use matters in question have been undertaken, and if such a study was completed, its conclusion is opaque and inaccurate. The Applicant suggests that City staff are supportive of the Proposal, however has not presented any planning report to support this assertion. In fact, City planning staff have merely provided a checklist of variances required based on the incorrect assumption of acquired rights, without opinion in recommending support or disapproval of the Proposal.

Regent states in its appeal letter, that a "3-storey addition" to the existing building footprint, situated on Hadley Road on the existing residential lots, will be constructed. The letter fails to disclose the height of the addition, which is the equivalent of 6 residential storeys above Hadley Road, Belsize Drive and the rest of the neighbourhood, creating a towering structure. This, coupled with commercial access, commercial waste management and loading facilities operating on Hadley Road, and the question of land use of all the adjacent residential properties purchased by parties related to the Applicant will, without a doubt, destabilize the century old residential neighbourhood.

The Proposal contemplates, among other things, waste disposal and delivery areas that will operate from 8:00AM to 11:00PM every day adjacent to, and upon, lands zoned for residential purposes clearly disrupting existing neighbourhood activities on Hadley Road and Belsize Drive. The Official Plan of Toronto also designates the Hadley Road lands as residential. The intended uses of the property include theatre showings, cabaret events, and banquet events such as weddings and bar-mitzvahs supported by commercial access from the current quiet residential street (Hadley Road) at the back of the property for some of the patrons and all of the employees, and 8AM-11PM, seven days a week, deliveries & pickups for food, liquor, supplies, props, sets and waste. None of the quiet residential streets in the vicinity have the commercial infrastructure or scale that will be required for the significant commercial operations planned for the back side of the proposed design fronting onto Hadley Road. A busy daycare centre, Little Tot's Manor, is situated on Belsize Drive, the street along which all commercial traffic associated with the proposal would travel. MPVRRA is most concerned about the safety of the residents and their children should this Proposal be approved.

Finally, this Proposal is not in compliance with the City of Toronto by-law 1124-2018:

*(1) Loading Requirements for Heritage Sites Designated Under the Ontario Heritage Act*

*The number of **loading spaces** required for a designated **heritage site**, is the lesser of the requirements of Clause 220.5.10.1 or the number of **loading spaces** that existed on July 20, 1993.*

*(2) Loading Requirements for Additions or Alterations to Heritage Sites Designated Under the Ontario Heritage Act*

*For a **building** on a **heritage site**, if floor area is added through an addition, alteration or extension, or if existing floor area is replaced, **loading spaces** must be provided in compliance with this By-law for that added or replaced floor area.*

The Regent proposal cites its supposed acquired rights in reverse. The Proposal claims that since the existing Heritage designation did not have a modern-day loading dock, the highly expanded new building would have no such loading dock obligation because of assumed acquired rights on vacant residential lands behind the theatre which Regent owns.

**Conclusion**

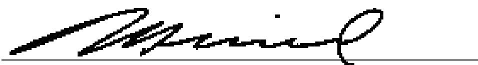
MPVRRA supports the Committee of Adjustment decision. While it also supports restoration of the Regent Theatre to its former historical significance, the fact remains that the proposal as presented is incongruous with any previous permitted uses of the land in both scale and function, and therefore the wrong review and approvals process is being followed. Any property rights purported to be acquired through legal non-conforming use status have expired or been abandoned. As a result, while the commercial zoning related to the western lots of the parcel of property subject to the Application will continue to provide rights for commercial operation on that land, the eastern lots of land should revert fully to the residential uses for which they have been zoned for the past century. In the current housing policy environment, this is understood to be a high priority imperative at the municipal, provincial and federal levels. At the very least the Proposal should be subject to the full Zoning by-law and Official Plan Amendment processes with requisite levels of study if this residential land is to be converted into commercial land contrary to current public policy priorities. As such this Application should be denied.

MPVRRA also wishes to point out that at the several Committee of Adjustment hearings (particularly the August 24 hearing), many of the residents pointed out a significant number of factual inaccuracies in Regent's submissions and its arguments. MPVRRA believes it is necessary for this application for Party status to be granted to ensure the submissions and arguments put before this hearing have been tested for factual accuracy and fairness.

MPVRRA thanks this honourable Tribunal for its consideration of this Party status request and looks forward to an early reply.

Yours truly,

1000776391 Ontario Inc. o/a Mt. Pleasant Village Revival Residents Association



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