

|                  |   |
|------------------|---|
| <b>ITEM: 6.8</b> | <b>COMMITTEE OF ADJUSTMENT REPORT SUMMARY<br/>MINOR VARIANCE APPLICATION<br/>FILE NUMBER A017/23<br/>27 KORDA GATE, CONCORD</b> |
|------------------|---|

**THIS REPORT CONTAINS COMMENTS FROM THE FOLLOWING  
DEPARTMENTS & AGENCIES:**

\*Please see **Schedule B** of this report for a copy of Development Planning and Agency correspondence.

Additional comments from departments and agencies may be received after the publication of the Staff Report. These comments will be processed as an addendum and posted on the City's Website.

| DEPARTMENTS                                 | Circulated                          | Comments Received                   | Conditions                          | Nature of Comments              |
|---|-------------------------------------|-------------------------------------|-------------------------------------|---------------------------------|
| Committee of Adjustment                     | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | General Comments                |
| Building Standards (Zoning Review)          | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | General Comments                |
| Building Inspection (Septic)                | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | No Comments Received to Date    |
| Development Planning                        | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | Application Under Review        |
| Development Engineering                     | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | Recommend Approval w/Conditions |
| Parks, Forestry and Horticulture Operations | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | General Comments                |
| By-law & Compliance, Licensing & Permits    | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | No Comments Received to Date    |
| Development Finance                         | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | General Comments                |
| Real Estate                                 | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            |                                 |
| Fire Department                             | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | No Comments Received to Date    |
| AGENCIES                                    | Circulated                          | Comments Received                   | Conditions                          | Nature of Comments              |
| TRCA  | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | No Comments Received to Date    |
| Ministry of Transportation (MTO)            | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            |                                 |
| Region of York                              | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | General Comments                |
| Alectra                                     | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | General Comments                |
| Bell Canada                                 | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | No Comments Received to Date    |
| YRDSB                                       | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            |                                 |
| YCDSB                                       | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            |                                 |
| CN Rail                                     | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            |                                 |
| CP Rail                                     | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            |                                 |
| TransCanada Pipeline                        | <input checked="" type="checkbox"/> | <input type="checkbox"/>            | <input type="checkbox"/>            | No Comments Received to Date    |
| Metrolinx                                   | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            |                                 |
| Propane Operator                            | <input type="checkbox"/>            | <input type="checkbox"/>            | <input type="checkbox"/>            |                                 |

**PUBLIC & APPLICANT CORRESPONDENCE**

\*Please see **Schedule C** of this report for a copy of the public & applicant correspondence listed below.

The deadline to submit public comments is **noon on the last business day prior to the scheduled hearing date.**

Comments and written public submissions received after the publication of this Staff Report will be processed as an addendum and posted on the City's Website.

All personal information collected because of this public meeting (including both written and oral submissions) is collected under the authority of the Municipal Act, the Municipal Freedom of Information and Protection of Privacy Act (MFIPPA), the Planning Act and all other relevant legislation, and will be used to assist in deciding on this matter. All personal information (as defined by MFIPPA), including (but not limited to) names, addresses, opinions and comments collected will become property of the City of Vaughan, will be made available for public disclosure (including being posted on the internet) and will be used to assist the Committee of Adjustment and staff to process this application.

| Correspondence Type | Name | Address | Date Received (mm/dd/yyyy) | Summary                       |
|---------------------|------|---------|----------------------------|-------------------------------|
| Agent               |      |         |                            | Planning Justification Report |

**PREVIOUS COA DECISIONS ON THE SUBJECT LAND**

\*Please see **Schedule D** for a copy of the Decisions listed below

| File Number | Date of Decision MM/DD/YYYY | Decision Outcome |
|-------------|-----------------------------|------------------|
| A144/21     | 08/12/2021                  | COA APPROVED     |

**ADJOURNMENT HISTORY**

\* Previous hearing dates where this application was adjourned by the Committee and public notice issued.

|      |  |
|------|--|
| None |  |
|------|--|



**COMMITTEE OF ADJUSTMENT REPORT  
MINOR VARIANCE APPLICATION  
A017/23  
27 KORDA GATE, CONCORD**

|  |   |
|--|---|
| <b>ITEM NUMBER: 6.8</b>                          | <b>CITY WARD #: 4</b>   |
| <b>APPLICANT:</b>                                | Granerola Residences Ltd.   |
| <b>AGENT:</b>                                    | Sandra K. Patano Weston Consulting  |
| <b>PROPERTY:</b>                                 | 27 Korda Gate, Concord  |
| <b>ZONING DESIGNATION:</b>                       | See Below   |
| <b>VAUGHAN OFFICIAL PLAN (2010) DESIGNATION:</b> | Vaughan Official Plan 2010 ('VOP 2010'): "High-Rise Mixed-Use" by Volume 2, Schedule 11.7 - Vaughan Mills Centre Secondary Plan ('VMCSP') with a Maximum Building Height of 28-storeys and within Primary Centre by Volume 1, Schedule 1. |
| <b>RELATED DEVELOPMENT APPLICATIONS:</b>         | DA.20.060.  |
| <b>PROPOSAL:</b>                                 | Relief from the Zoning By-law is being requested to permit the development of a mixed-use high rise building on Block 'C' Lands (Phase 2) and to facilitate related Site Development Application DA.20.060.                               |

The following variances are being requested from the City's Zoning By-law to accommodate the above proposal:

**The subject lands are zoned RM2(H) – Multiple Unit Residential Zone, subject to a Holding provision, and subject to the provisions of Exception 14.699 under Zoning By-law 001-2021, as amended.**

This application has been deemed to be Transitioned under section 1.6.

| # | Zoning By-law 01-2021 | Variance requested |
|---|-----------------------|--------------------|
|   | None.                 |                    |

**The subject lands are zoned RA3(H), Residential Apartment Zone subject to a Holding Provision, and subject to the provisions of Exception 9(1472) under Zoning By-law 1-88, as amended.**

|    | Zoning By-law 1-88  | Variance requested  |
|----|---|---|
| 1. | A maximum Building Height of 91.5 metres and 28 storeys is permitted [Exception 9(1472) hvii].  | To permit a maximum building height of 95 metres and 29 storeys.  |
| 2. | The total maximum Gross Floor Area on the Phase 1 Lands and Phase 2 Lands shall be 131,702 m2, consisting of 128,962 m2 of residential GFA and 2,740 m2 of non-residential GFA [Exception 9(1472) hxi]. | To permit a maximum Gross Floor Area on the Phase 1 Lands and Phase 2 Lands of 134,062 m2, consisting of 131,322 m2 of residential GFA and 2,740 m2 of non-residential GFA. |

**HEARING INFORMATION**

**DATE OF MEETING:** Thursday, March 16, 2023  
**TIME:** 6:00 p.m.  
**MEETING LOCATION:** Vaughan City Hall, Council Chamber, 2141 Major Mackenzie Drive, Vaughan  
**LIVE STREAM LINK:** [Vaughan.ca/LiveCouncil](http://Vaughan.ca/LiveCouncil)

**PUBLIC PARTICIPATION**

If you would like to speak to the Committee of Adjustment at the meeting, either remotely or in person, please complete the [Request to Speak Form](#) and submit to [cofa@vaughan.ca](mailto:cofa@vaughan.ca)  
 If you would like to submit written comments, please quote file number above and submit by mail or email to:  
**Email:** [cofa@vaughan.ca](mailto:cofa@vaughan.ca)

### HEARING INFORMATION

**Mail:** City of Vaughan, Office of the City Clerk, Committee of Adjustment, 2141 Major Mackenzie Drive, Vaughan, ON, L6A 1T1

**THE DEADLINE TO REGISTER TO SPEAK OR SUBMIT WRITTEN COMMENTS ON THE ABOVE NOTED FILE(S) IS NOON ON THE LAST BUSINESS DAY BEFORE THE MEETING.**

### INTRODUCTION

Staff and Agencies act as advisory bodies to the Committee of Adjustment. The comments contained in this report are presented as recommendations to the Committee.

Section 45(1) of the Planning Act sets the criteria for authorizing minor variances to the City of Vaughan's Zoning By-law. Accordingly, review of the application may consider the following:

- That the general intent and purpose of the by-law will be maintained.
- That the general intent and purpose of the official plan will be maintained.
- That the requested variance(s) is/are acceptable for the appropriate development of the subject lands.
- That the requested variance(s) is/are minor in nature.

Public written and oral submissions relating to this application are taken into consideration by the Committee of Adjustment as part of its deliberations and final decision on this matter.

### COMMITTEE OF ADJUSTMENT COMMENTS

|  |  |  |
|--|--|--|
| <b>Date Public Notice Mailed:</b>  | March 2, 2023  |  |
| <b>Date Applicant Confirmed Posting of Sign:</b>   | February 24, 2023  |  |
| <b>Applicant Justification for Variances:</b><br><small>*As provided by Applicant in Application Form</small>  | The proposed development generally maintains the intent and purpose of the Zoning By-law and meets all zoning provisions, but the three variances sought. The requested variances are required to accommodate changes to the urban design composition of the proposed building per City of Vaughan Staff's comments, provided through Site Plan Application DA.20.060. |  |
| <b>Adjournment Requests (from staff):</b><br><small>*Adjournment requests provided to applicant prior to issuance of public notice</small>   | None   |  |
| <b>Was a Zoning Review Waiver (ZRW) Form submitted by Applicant:</b><br><br><small>*ZRW Form may be used by applicant in instances where a revised submission is made, and zoning staff do not have an opportunity to review and confirm variances prior to the issuance of public notice.<br/><br/>*A revised submission may be required to address staff / agency comments received as part of the application review process.<br/><br/>*Where a zoning review has not been completed on a revised submission, an opportunity is provided to the applicant to adjourn the proposal prior to the issuance of public notice.</small> | No   |  |
| <b>Adjournment Fees:</b><br>In accordance with Procedural By-law 069-2019, an Adjournment Fee is applicable to reschedule an application after the issuance of public notice where a request for adjournment has been provided to the applicant prior to the issuance of public notice.<br><br>An Adjournment Fee can only be waived in instances where adjournment of an application is requested by the Committee or staff <b>after</b> the issuance of public notice.   |  |  |
| <b>Committee of Adjustment Comments:</b>   | None   |  |
| <b>Committee of Adjustment Recommended Conditions of Approval:</b>   | None   |  |

### BUILDING STANDARDS (ZONING) COMMENTS

**\*\*See Schedule B for Building Standards (Zoning) Comments**

|   |      |
|---|------|
| <b>Building Standards Recommended Conditions of Approval:</b> | None |
|---|------|

### DEVELOPMENT PLANNING COMMENTS

**\*\*See Schedule B for Development Planning Comments.**

### DEVELOPMENT PLANNING COMMENTS

|   |                          |
|---|--------------------------|
| <b>Development Planning Recommended Conditions of Approval:</b> | Application Under Review |
|---|--------------------------|

### DEVELOPMENT ENGINEERING COMMENTS

[Link to Grading Permit](#)   [Link to Pool Permit](#)   [Link to Curb Curt Permit](#)   [Link Culvert Installation](#)

The Development Engineering (DE) Department does not object to variance application A017/23 subject to the following condition(s):

|  |  |
|--|--|
| <b>Development Engineering Recommended Conditions of Approval:</b> | The Owner/Applicant shall obtain approval for the related Site Development Application (DA.20.060) from the Development Engineering (DE) Department. |
|--|--|

### PARKS, FORESTRY & HORTICULTURE (PFH) COMMENTS

Forestry: Forestry has no comment at this time

|  |      |
|--|------|
| <b>PFH Recommended Conditions of Approval:</b> | None |
|--|------|

### DEVELOPMENT FINANCE COMMENTS

No comment no concerns

|  |      |
|--|------|
| <b>Development Finance Recommended Conditions of Approval:</b> | None |
|--|------|

### BY-LAW AND COMPLIANCE, LICENSING AND PERMIT SERVICES COMMENTS

No Comments Received to Date

|  |      |
|--|------|
| <b>BCLPS Recommended Conditions of Approval:</b> | None |
|--|------|

### BUILDING INSPECTION (SEPTIC) COMMENTS

No Comments Received to Date

|  |      |
|--|------|
| <b>Building Inspection Recommended Conditions of Approval:</b> | None |
|--|------|

### FIRE DEPARTMENT COMMENTS

No Comments Received to Date

|  |      |
|--|------|
| <b>Fire Department Recommended Conditions of Approval:</b> | None |
|--|------|

### SCHEDULES TO STAFF REPORT

\*See Schedule for list of correspondence

|                                 |   |
|---------------------------------|---|
| <b>Schedule A</b>               | Drawings & Plans Submitted with the Application   |
| <b>Schedule B</b>               | Staff & Agency Comments                           |
| <b>Schedule C</b> (if required) | Correspondence (Received from Public & Applicant) |
| <b>Schedule D</b> (if required) | Previous COA Decisions on the Subject Land        |

Should the Committee find it appropriate to approve this application in accordance with request and the sketch submitted with the application, as required by Ontario Regulation 200/96, the following conditions have been recommended:

### SUMMARY OF RECOMMENDED CONDITIONS OF APPROVAL

All conditions of approval, unless otherwise stated, are considered to be incorporated into the approval “if required”. If a condition is no longer required after an approval is final and binding, the condition may be waived by the respective department or agency requesting conditional approval. A condition cannot be waived without written consent from the respective department or agency.

| # | DEPARTMENT / AGENCY   | CONDITION(S) DESCRIPTION   |
|---|---|--|
| 1 | Development Engineering<br><a href="mailto:ian.reynolds@vaughan.ca">ian.reynolds@vaughan.ca</a><br><a href="mailto:Rex.bondad@vaughan.ca">Rex.bondad@vaughan.ca</a> | The Owner/Applicant shall obtain approval for the related Site Development Application (DA.20.060) from the Development Engineering (DE) Department. |
| 2 | Development Planning<br><a href="mailto:roberto.simbana@vaughan.ca">roberto.simbana@vaughan.ca</a>  | Application under review.  |

## IMPORTANT INFORMATION – PLEASE READ

**CONDITIONS:** It is the responsibility of the owner/applicant and/or authorized agent to obtain and provide a clearance letter from respective department and/or agency (**see condition chart above for contact**). This letter must be provided to the Secretary-Treasurer to be finalized. All conditions must be cleared prior to the issuance of a Building Permit.

**APPROVALS:** Making any changes to your proposal after a decision has been made may impact the validity of the Committee's decision.

An approval obtained from the Committee of Adjustment, where applicable, is tied to the building envelope shown on the plans and drawings submitted with the application and subject to the variance approval.

A building envelope is defined by the setbacks of the buildings and/or structures shown on the plans and drawings submitted with the application, as required by Ontario Regulation 200/96. Future development outside of an approved building envelope, where a minor variance was obtained, must comply with the provisions of the City's Zoning By-law.

Elevation drawings are provided to reflect the style of roof (i.e. flat, mansard, gable etc.) to which a building height variance has been applied. Where a height variance is approved, building height is applied to the style of roof (as defined in the City's Zoning By-law) shown on the elevation plans submitted with the application.

Architectural design features that are not regulated by the City's Zoning By-law are not to be considered part of an approval unless specified in the Committee's decision.

**DEVELOPMENT CHARGES:** That the payment of the Regional Development Charge, if required, is payable to the City of Vaughan before issuance of a building permit in accordance with the Development Charges Act and the Regional Development Charges By-law in effect at the time of payment.

That the payment of the City Development Charge, if required, is payable to the City of Vaughan before issuance of a building permit in accordance with the Development Charges Act and the City's Development Charges By-law in effect at the time of payment.

That the payment of the Education Development Charge if required, is payable to the City of Vaughan before issuance of a building permit in accordance with the Development Charges Act and the Boards of Education By-laws in effect at the time of payment

That the payment of Special Area Development charge, if required, is payable to the City of Vaughan before issuance of a building permit in accordance with the Development Charges Act and The City's Development Charge By-law in effect at the time of Building permit issuance to the satisfaction of the Reserves/Capital Department.

**NOTICE OF DECISION:** If you wish to be notified of the decision in respect to this application or a related Ontario Land Tribunal (OLT) hearing you must complete a Request for Decision form and submit to the Secretary Treasurer (ask staff for details). In the absence of a written request to be notified of the Committee's decision you will **not** receive notice.

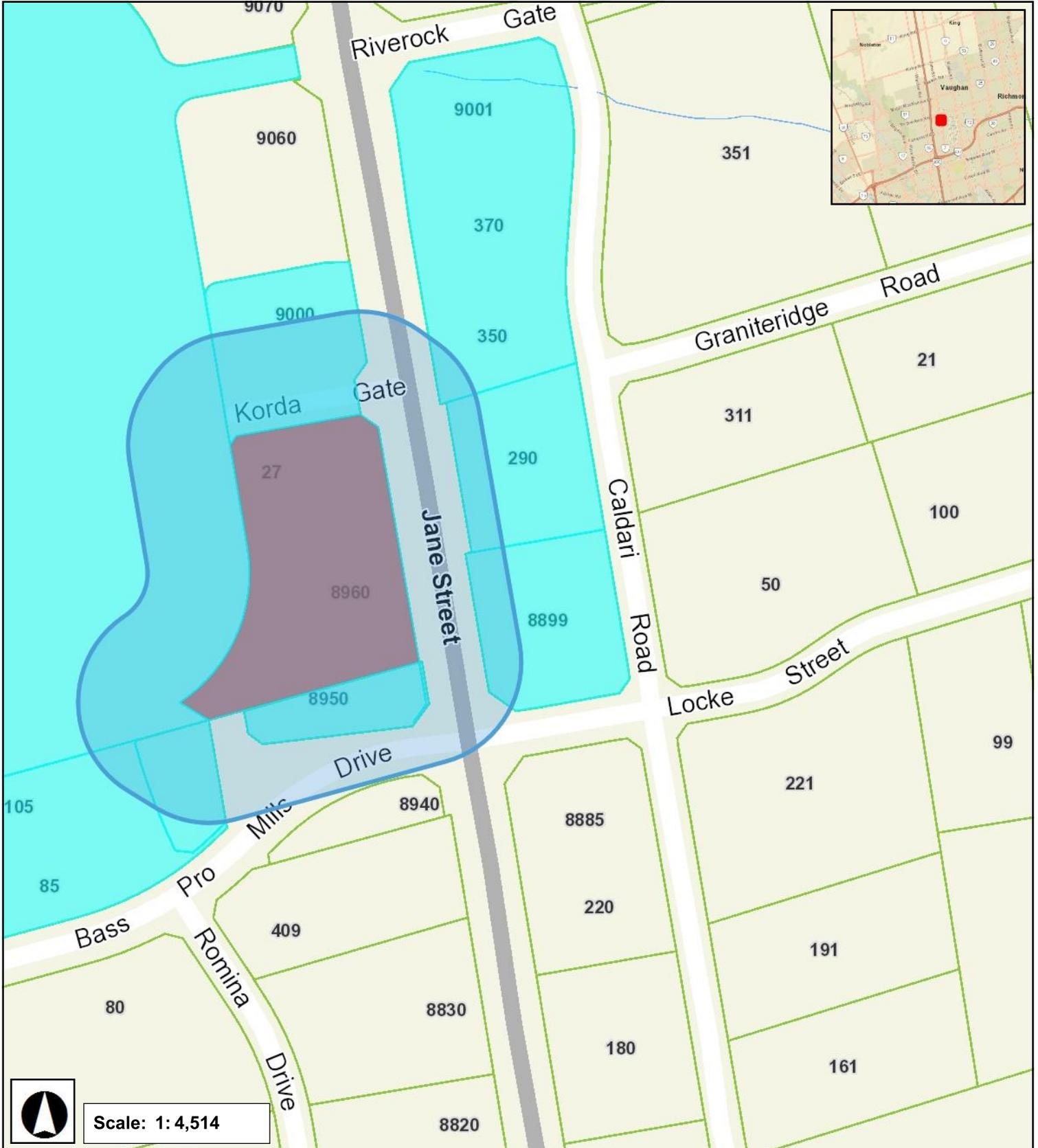
**SCHEDULE A: DRAWINGS & PLANS**



# LOCATION MAP - A017/23

27 KORDA GATE, VAUGHAN

## Rutherford Road



## Langstaff Road

February 27, 2023 10:13 AM

| PROJECT STATISTICS<br>CHARISMA BLOCK 'C' DEVELOPMENT  |                              |                                 |       |
|---|------------------------------|---------------------------------|-------|
| <b>1. LOCATION</b>  |                              |                                 |       |
| PART OF BLOCK 'K' PLAN 0594-3896<br>PART 'C' OF TOWER BARRIERS<br>CITY OF VAUGHAN<br>REGIONAL MUNICIPALITY OF YORK                                      |                              |                                 |       |
| <b>2. SITE AREA</b>   |                              |                                 |       |
|   | AREA                         | PERMITS                         |       |
| BLOCK A   | 7,044.00                     | 1,355                           |       |
| PUBLIC ROAD   | 2,200.00                     | 0                               | 0.004 |
| BLOCK BC  | 11,307.24                    | 2,266                           |       |
| AVENUE STREET WIDENING  | 5,011.32                     | 0                               | 0.200 |
| MUSIC PARK  | 5,011.32                     | 1,250                           |       |
| <b>TOTAL</b>  | <b>28,124.88</b>             | <b>4,861</b>                    |       |
| <b>3. UNDER GROUND PARKING</b>  |                              |                                 |       |
| LEVEL P4  | 4,405 m <sup>2</sup>         | 47,410 ft <sup>2</sup>          |       |
| LEVEL P1  | 4,405 m <sup>2</sup>         | 47,410 ft <sup>2</sup>          |       |
| LEVEL P2  | 4,405 m <sup>2</sup>         | 47,410 ft <sup>2</sup>          |       |
| LEVEL P3  | 4,405 m <sup>2</sup>         | 47,410 ft <sup>2</sup>          |       |
| <b>TOTAL</b>  | <b>17,619 m<sup>2</sup></b>  | <b>188,640 ft<sup>2</sup></b>   |       |
| * THE "TOTAL FLOOR AREA" REPRESENTS ENCLOSED SPACES MEASURED TO FINISH OF INTERIOR SURFACES OF ROOMS EXCEPT FOR   |                              |                                 |       |
| <b>4. GROSS FLOOR AREA</b>  |                              |                                 |       |
| <b>POORM LEVELS</b>   |                              |                                 |       |
| LEVEL 01  | 1,372 m <sup>2</sup>         | 14,771 ft <sup>2</sup>          |       |
| LEVEL 02  | 1,331 m <sup>2</sup>         | 14,327 ft <sup>2</sup>          |       |
| LEVEL 03  | 1,568 m <sup>2</sup>         | 16,979 ft <sup>2</sup>          |       |
| LEVEL 04  | 1,568 m <sup>2</sup>         | 16,979 ft <sup>2</sup>          |       |
| LEVEL 05  | 1,568 m <sup>2</sup>         | 16,979 ft <sup>2</sup>          |       |
| LEVEL 06  | 1,572 m <sup>2</sup>         | 16,922 ft <sup>2</sup>          |       |
| <b>SUBTOTAL</b>   | <b>8,967 m<sup>2</sup></b>   | <b>96,327 ft<sup>2</sup></b>    |       |
| <b>TOWER LEVELS</b>   |                              |                                 |       |
| LEVEL 07  | 874 m <sup>2</sup>           | 9,407 ft <sup>2</sup>           |       |
| LEVEL 08  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 09  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 10  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 11  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 12  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 13  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 14  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 15  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 16  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 17  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 18  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 19  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 20  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 21  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 22  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 23  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 24  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 25  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 26  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 27  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 28  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 29  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| LEVEL 30  | 879 m <sup>2</sup>           | 9,467 ft <sup>2</sup>           |       |
| <b>SUBTOTAL</b>   | <b>26,675 m<sup>2</sup></b>  | <b>287,341 ft<sup>2</sup></b>   |       |
| <b>TOTAL PROPOSED RESIDENTIAL G.F.A.</b>  |                              |                                 |       |
| POORM LEVELS  | 28,089 m <sup>2</sup>        | 303,125 ft <sup>2</sup>         |       |
| TOWER LEVELS  | 273 m <sup>2</sup>           | 2,938 ft <sup>2</sup>           |       |
| <b>TOTAL PROPOSED RESIDENTIAL G.F.A.</b>  | <b>28,362 m<sup>2</sup></b>  | <b>306,063 ft<sup>2</sup></b>   |       |
| <b>TOTAL PROPOSED COMMERCIAL G.F.A.</b>   |                              |                                 |       |
| POORM LEVELS  | 25,385 m <sup>2</sup>        | 273,401 ft <sup>2</sup>         |       |
| TOWER LEVELS  | 273 m <sup>2</sup>           | 2,938 ft <sup>2</sup>           |       |
| <b>TOTAL PROPOSED COMMERCIAL G.F.A.</b>   | <b>25,658 m<sup>2</sup></b>  | <b>276,339 ft<sup>2</sup></b>   |       |
| <b>TOTAL PROPOSED PROJECT G.F.A. ABOVE GROUND</b>   |                              |                                 |       |
| RESIDENTIAL   | 56,020 m <sup>2</sup>        | 602,404 ft <sup>2</sup>         |       |
| COMMERCIAL  | 25,658 m <sup>2</sup>        | 276,339 ft <sup>2</sup>         |       |
| <b>TOTAL</b>  | <b>81,678 m<sup>2</sup></b>  | <b>878,743 ft<sup>2</sup></b>   |       |
| <b>TOTAL G.F.A. MAXIMUM</b>   |                              |                                 |       |
| RESIDENTIAL   | 138,132 m <sup>2</sup>       | 1,480,897 ft <sup>2</sup>       |       |
| COMMERCIAL  | 138,132 m <sup>2</sup>       | 1,480,897 ft <sup>2</sup>       |       |
| <b>TOTAL</b>  | <b>276,264 m<sup>2</sup></b> | <b>2,961,794 ft<sup>2</sup></b> |       |
| * THE "G.F.A. RESIDENTIAL" AREA REPRESENTS THE RESIDENTIAL AREA DEFINED BY THE ZONING BY-LAW. ALL COMMON INTERIOR AMENITY & RESIDENTIAL AREAS INCLUDED. |                              |                                 |       |

| 5. AMENITY  |   |   |   |
|---|---|---|---|
| TOTAL REQUIRED AMENITY @ 2.0m <sup>2</sup> PER UNIT = 855 m <sup>2</sup> @ 0.203 R <sup>2</sup> |   |   |   |
| TOTAL PROVIDED:   |   |   |   |
| INDOOR AMENITY  | OUTDOOR AMENITY                               | BALCONY                                       |   |
| POORM LEVELS  |   |   |   |
| LEVEL 01  | 170 m <sup>2</sup> / 1,828 ft <sup>2</sup>    | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          |
| LEVEL 02  | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 111 m <sup>2</sup> / 1,199 ft <sup>2</sup>    |
| LEVEL 03  | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 138 m <sup>2</sup> / 1,486 ft <sup>2</sup>    |
| LEVEL 04  | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 138 m <sup>2</sup> / 1,486 ft <sup>2</sup>    |
| LEVEL 05  | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 138 m <sup>2</sup> / 1,486 ft <sup>2</sup>    |
| LEVEL 06  | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 134 m <sup>2</sup> / 1,450 ft <sup>2</sup>    |
| <b>TOWER LEVELS</b>   |   |   |   |
| LEVEL 07  | 715 m <sup>2</sup> / 7,696 ft <sup>2</sup>    | 809 m <sup>2</sup> / 8,679 ft <sup>2</sup>    | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          |
| LEVEL 08-14 (14 x 1.4 x 1.4 x 1.4 x 1.4 x 1.4 x 1.4 x 1.4)                                      | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 1,273 m <sup>2</sup> / 13,703 ft <sup>2</sup> |
| LEVEL 15-17 (3 x 1.4 x 1.4 x 1.4 x 1.4 x 1.4 x 1.4)   | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 1,071 m <sup>2</sup> / 11,547 ft <sup>2</sup> |
| LEVEL 18  | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 254 m <sup>2</sup> / 2,738 ft <sup>2</sup>    |
| LEVEL 19  | 448 m <sup>2</sup> / 4,839 ft <sup>2</sup>    | 320 m <sup>2</sup> / 3,445 ft <sup>2</sup>    | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          |
| LEVEL MH  | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          | 0 m <sup>2</sup> / 0 ft <sup>2</sup>          |
| <b>SUBTOTAL</b>   | <b>1,340 m<sup>2</sup></b>                    | <b>14,423 ft<sup>2</sup></b>                  | <b>3,320 m<sup>2</sup></b>                    |
| <b>TOTAL INDOOR + OUTDOOR</b>   |   |   |   |
| INDOOR  | 1,340 m <sup>2</sup> / 14,423 ft <sup>2</sup> | 1,326 m <sup>2</sup> / 14,314 ft <sup>2</sup> |   |
| <b>TOTAL AMENITY WITH BALCONY</b>   | <b>2,680 m<sup>2</sup></b>                    | <b>28,737 ft<sup>2</sup></b>                  | <b>3,320 m<sup>2</sup></b>                    |

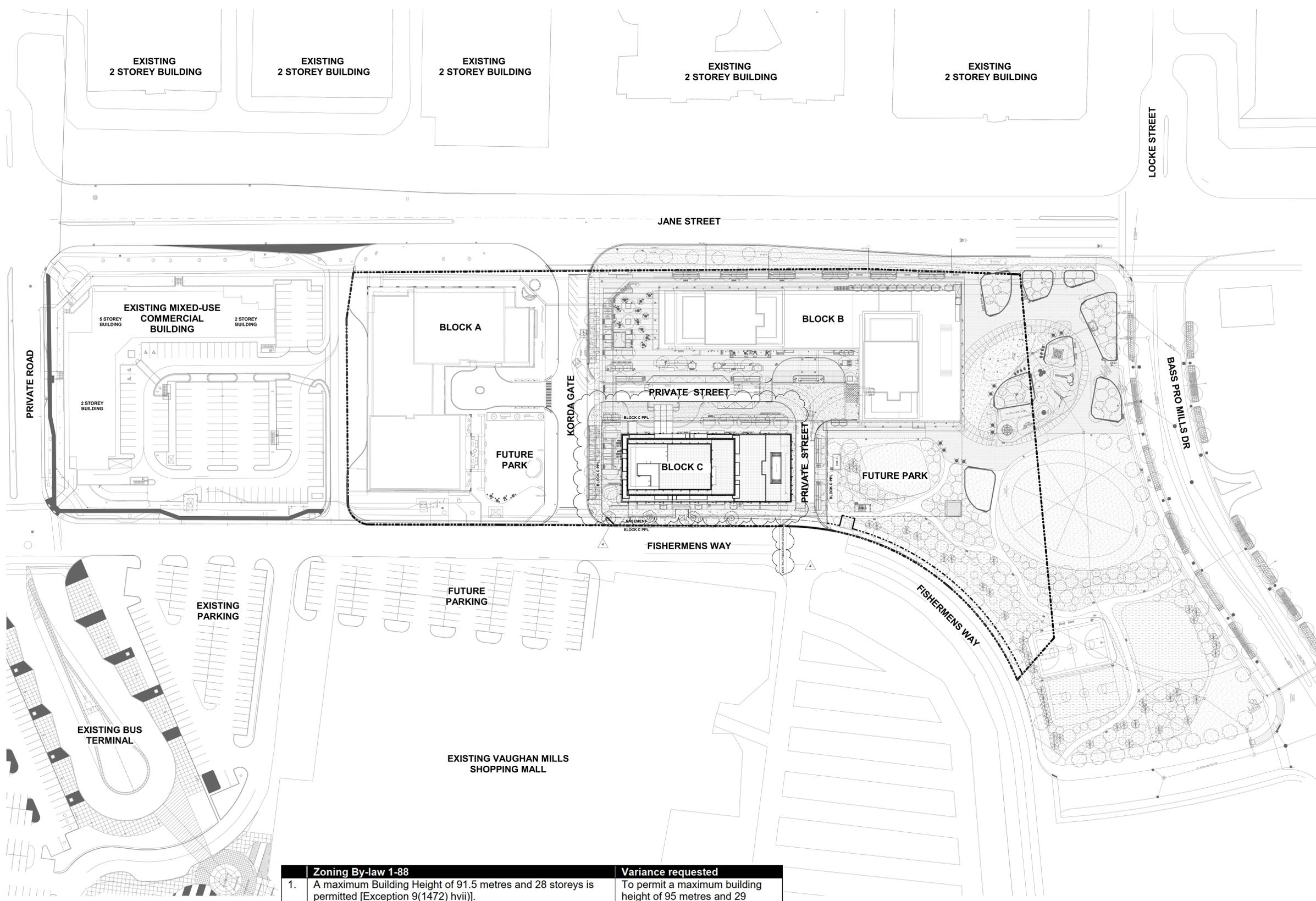


| 6. VEHICULAR PARKING  |                                |                                       |   |
|---|--------------------------------|---------------------------------------|---|
| REQUIRED PARKING  | RATE                           | TOTALS                                |   |
| RESIDENTIAL   | 0.28 SPACES / UNIT (1:342 U)   | 335 SPACES REQUIRED MIN.              |   |
| VEHICULAR   | 1.25 SPACES / UNIT (1:342 U)   | 394 SPACES REQUIRED MIN.              |   |
| COMMERCIAL  | 0.2 SPACES / 100M <sup>2</sup> | 19 SPACES REQUIRED                    |   |
| <b>TOTAL MIN. PARKING</b>   |                                | <b>403 SPACES REQUIRED</b>            |   |
| * THE PARKING SPACES PROVIDED TO SATISFY THE REQUIREMENTS FOR THE COMMERCIAL USES WILL ALSO COUNT TOWARDS SATISFYING THE RESIDENTIAL, VEHICULAR PARKING REQUIREMENTS AND V.P.E. USES. |                                |                                       |   |
| <b>PROVIDED PARKING</b>   |                                |                                       |   |
| LEVELS  | REGULAR                        | VEHICULAR                             | VEHICULAR                               |
| PA  | 106                            | 1                                     | 0                                       |
| P2  | 86                             | 2                                     | 0                                       |
| P3  | 85                             | 1                                     | 0                                       |
| GROUND  | 0                              | 0                                     | 0                                       |
| <b>SUBTOTAL</b>   | <b>267</b>                     | <b>4</b>                              | <b>0</b>                                |
| * 30 VISITOR SPOTS PROVIDED IN BLOCK 'B' - 10 VISITOR SPOTS PROVIDED IN BLOCK 'C'   |                                |                                       |   |
| * IN TOTAL, RESIDENTIAL - 5 TYPE 'B' & 5 TYPE 'B' BARRIER-FREE SPACES ARE PROVIDED  |                                |                                       |   |
| VEHICULAR - 1 TYPE 'A'  |                                |                                       |   |
| PARKING SPACE SIZE: 2.7m x 5.0m   |                                |                                       |   |
| ACCESSIBLE PARKING SPACE SIZE: TYPE 'A' - 2.4m x 5.0m   |                                |                                       |   |
| LOADING SPACES: 1 LOADING ON GROUND LEVEL   |                                |                                       |   |
| 4.20 (MIN) CLEAR HEIGHT   |                                |                                       |   |
| <b>7. LOCKERS / STORAGE</b>   |                                |                                       |   |
| BIKE LOCKERS  | PROVIDED                       | PROVIDED                              | STORAGE LOCKERS                         |
| LEVELS  | RESIDENTIAL                    | VEHICULAR                             | LEVELS                                  |
| POA   | 88                             | -                                     | POA                                     |
| PO1   | 84                             | -                                     | PO1                                     |
| PO2   | 79                             | -                                     | PO2                                     |
| PO3   | 74                             | -                                     | PO3                                     |
| LO1   | -                              | 2                                     | LO1                                     |
| LO2   | -                              | 2                                     | LO2                                     |
| LO3   | -                              | 2                                     | LO3                                     |
| LO4   | -                              | 2                                     | LO4                                     |
| LO5   | -                              | 2                                     | LO5                                     |
| <b>TOTAL</b>  | <b>345</b>                     | <b>6</b>                              | <b>50</b>                               |
| <b>8. LANDSCAPE</b>   |                                |                                       |   |
| JANE ST   | 2.2                            | 2.2                                   | 3.0 m                                   |
| VAUGHAN MILLS   | 1.2                            | 1.2                                   | 3.0 m                                   |
| AVENUE  | 1.2                            | 1.2                                   | 3.0 m                                   |
| RIGHT TRIANGLE  | 4.2                            | 4.2                                   | 3.0 m                                   |
| LANDSCAPED AREA   | 9.8                            | 9.8                                   | 14.88 m <sup>2</sup>                    |
| <b>9. SETBACKS</b>  |                                |                                       |   |
| NORTH   | 2.0                            | 2.0                                   | 7.30 m                                  |
| SOUTH   | 6.0                            | 6.0                                   | 15.24 m                                 |
| EAST  | 2.0                            | 2.0                                   | 6.70 m                                  |
| WEST  | 6.0                            | 6.0                                   | 16.76 m                                 |
| <b>10. BUILDING HEIGHT</b>  |                                |                                       |   |
| DISTANCE BETWEEN BUILDINGS (ABOVE 7 STOREYS)  | 76.0 m                         | 14.65 m (BLOCK A & BLOCK B - TOWER 1) | 44.85 m (BLOCK C & BLOCK B - TOWER 2)   |
| 25 STY  | 95 m                           | 25 STOREYS / 95.0 m                   | 25 STOREYS / 94.0 m = 70 MPH = 19.307 m |
| MIN. FLOOR HEIGHT COMMERCIAL:   | 4.5 m                          | 4.5 m                                 |   |

| 11. UNIT MIX        |              | REQUIRED     | PROVIDED     | * UNITS UNDER 700 SQ FT = 236 UNITS<br>* 30 UNITS (15% OF TOTAL PROVIDED UNITS) ARE BARRIER FREE<br>* UNITS OVER 700 SQ FT (10 UNITS) ARE BARRIER FREE<br>* 16 UNITS (15% OF TOTAL PROVIDED UNITS) ARE BARRIER FREE |            |          |            |            |          |          |   |
|---------------------|--------------|--------------|--------------|---|------------|----------|------------|------------|----------|----------|---|
| BLOCK A & B         | 1125         | 1152         | 1,407        | 1   | 2          | 3        | 0          | 0          | 0        | 0        | 0 |
| BLOCK C             | 542          | 347          | 1,407        | 1   | 2          | 3        | 0          | 0          | 0        | 0        |   |
| <b>TOTAL</b>        | <b>1,667</b> | <b>1,504</b> | <b>2,814</b> | <b>2</b>  | <b>4</b>   | <b>6</b> | <b>0</b>   | <b>0</b>   | <b>0</b> | <b>0</b> |   |
| POORM               | STUDD        | 1 BEDROOM    | 1 BR + DEN   | 2 BEDROOM   | 2 BR + DEN | 3 BR     | 3 BR + DEN | TOTAL      |          |          |   |
| LEVEL 2             | -            | 1            | 12           | 3   | 0          | 0        | 0          | 15         |          |          |   |
| LEVEL 3             | -            | 3            | 13           | 4   | 0          | 0        | 0          | 20         |          |          |   |
| LEVEL 4             | -            | 3            | 13           | 4   | 0          | 0        | 0          | 20         |          |          |   |
| LEVEL 5             | -            | 3            | 13           | 4   | 0          | 0        | 0          | 20         |          |          |   |
| LEVEL 6             | -            | 1            | 13           | 2   | 0          | 0        | 2          | 28         |          |          |   |
| <b>SUBTOTAL</b>     | <b>-</b>     | <b>11</b>    | <b>64</b>    | <b>17</b>   | <b>0</b>   | <b>2</b> | <b>-</b>   | <b>83</b>  |          |          |   |
| TOWER               |              |              |              |   |            |          |            |            |          |          |   |
| LEVEL 7             | -            | 0            | 0            | 0   | 0          | 0        | 0          | 0          |          |          |   |
| LEVEL 8             | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 9             | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 10            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 11            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 12            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 13            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 14            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 15            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 16            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 17            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 18            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 19            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 20            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 21            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 22            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 23            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 24            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 25            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 26            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 27            | -            | 5            | 3            | 4   | 0          | 0        | 0          | 12         |          |          |   |
| LEVEL 28            | -            | 0            | 0            | 7   | 1          | 0        | 0          | 8          |          |          |   |
| <b>SUBTOTAL</b>     | <b>-</b>     | <b>100</b>   | <b>60</b>    | <b>87</b>   | <b>1</b>   | <b>0</b> | <b>-</b>   | <b>248</b> |          |          |   |
| <b>GRAND TOTALS</b> | <b>-</b>     | <b>111</b>   | <b>124</b>   | <b>104</b>  | <b>1</b>   | <b>2</b> | <b>-</b>   | <b>342</b> |          |          |   |
| PERCENTAGES         | -            | 32%          | 36%          | 36%   | 1%         | 1%       | -          | 100%       |          |          |   |

| 12. BARRIER FREE UNIT | STUDD    | 1 BEDROOM | 1 BR + DEN | 2 BEDROOM | 2 BR + DEN | 3 BEDROOM | 3 BR + DEN | TOTAL     |
|-----------------------|----------|-----------|------------|-----------|------------|-----------|------------|-----------|
| POORM                 | -        | 10        | 05         | 05        | -          | -         | -          | 20        |
| TOWER                 | -        | -         | 21         | 12        | -          | -         | -          | 33        |
| <b>TOTAL</b>          | <b>-</b> | <b>10</b> | <b>26</b>  | <b>17</b> | <b>-</b>   | <b>-</b>  | <b>-</b>   | <b>53</b> |

| DRAWING LIST |               |                |
|--------------|---------------|----------------|
| DESCRIPTION  | DRAWING TITLE | DRAWING NUMBER |
| FOUNDATION   | FOUNDATION    | 01-01          |
| FOUNDATION   | FOUNDATION    | 01-02          |
| FOUNDATION   | FOUNDATION    | 01-03          |
| FOUNDATION   | FOUNDATION    | 01-04          |
| FOUNDATION   | FOUNDATION    | 01-05          |
| FOUNDATION   | FOUNDATION    | 01-06          |
| FOUNDATION   | FOUNDATION    | 01-07          |
| FOUNDATION   | FOUNDATION    | 01-08          |
| FOUNDATION   | FOUNDATION    | 01-09          |
| FOUNDATION   | FOUNDATION    | 01-10          |
| FOUNDATION   | FOUNDATION    | 01-11          |
| FOUNDATION   | FOUNDATION    | 01-12          |
| FOUNDATION   | FOUNDATION    | 01-13          |
| FOUNDATION   | FOUNDATION    | 01-14          |
| FOUNDATION   | FOUNDATION    | 01-15          |
| FOUNDATION   | FOUNDATION    | 01-16          |
| FOUNDATION   | FOUNDATION    | 01-17          |
| FOUNDATION   | FOUNDATION    | 01-18          |
| FOUNDATION   | FOUNDATION    | 01-19          |
| FOUNDATION   | FOUNDATION    | 01-20          |
| FOUNDATION   | FOUNDATION    | 01-21          |
| FOUNDATION   | FOUNDATION    | 01-22          |
| FOUNDATION   | FOUNDATION    | 01-23          |
| FOUNDATION   | FOUNDATION    | 01-24          |
| FOUNDATION   | FOUNDATION    |                |



|    | Zoning By-law 1-88   | Variance requested   |
|----|--|--|
| 1. | A maximum Building Height of 91.5 metres and 28 storeys is permitted [Exception 9(1472) hvii].   | To permit a maximum building height of 95 metres and 29 storeys.   |
| 2. | The total maximum Gross Floor Area on the Phase 1 Lands and Phase 2 Lands shall be 131,702 m <sup>2</sup> , consisting of 128,962 m <sup>2</sup> of residential GFA and 2,740 m <sup>2</sup> of non-residential GFA [Exception 9(1472) hxi]. | To permit a maximum Gross Floor Area on the Phase 1 Lands and Phase 2 Lands of 134,062 m <sup>2</sup> , consisting of 131,322 m <sup>2</sup> of residential GFA and 2,740 m <sup>2</sup> of non-residential GFA. |

|   |                                     |            |
|---|-------------------------------------|------------|
| 1 | ISSUED FOR SITE PLAN APPROVAL (KTH) | 2022-01-09 |
| 2 | ISSUED FOR SITE PLAN APPROVAL (JRD) | 2022-07-08 |
| 3 | ISSUED FOR SITE PLAN APPROVAL (JRD) | 2021-09-30 |
| 4 | ISSUED FOR SITE PLAN APPROVAL       | 2022-03-09 |

NO. REVISIONS DATE

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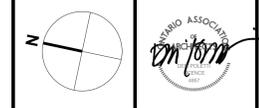
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**CHARISMA BLOCK C**

VAUGHAN, ONTARIO

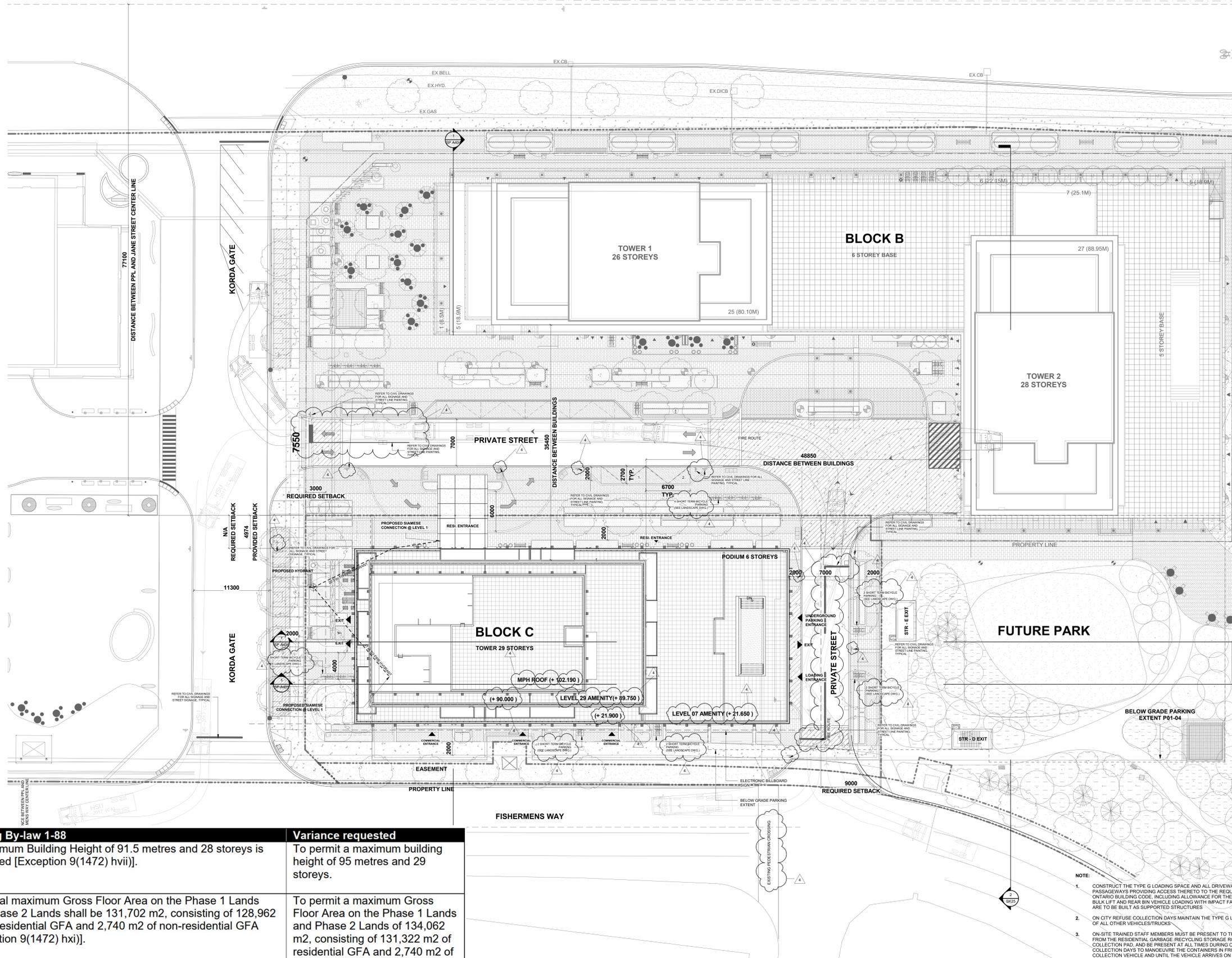


|                     |                    |
|---------------------|--------------------|
| DRAWN<br>LS, AR, NG | SCALE<br>1 : 500   |
| CHECKED<br>FV       | DATE<br>2022-05-11 |

TITLE  
SITE CONTEXT

DATE: 19-05-2022 11:15:00 AM

DASHED LINE INDICATES APPROX. CENTRE LINE OF JANE STREET



| Zoning By-law 1-88 |  | Variance requested   |
|--------------------|--|--|
| 1.                 | A maximum Building Height of 91.5 metres and 28 storeys is permitted [Exception 9(1472) hvii].   | To permit a maximum building height of 95 metres and 29 storeys.   |
| 2.                 | The total maximum Gross Floor Area on the Phase 1 Lands and Phase 2 Lands shall be 131,702 m <sup>2</sup> , consisting of 128,962 m <sup>2</sup> of residential GFA and 2,740 m <sup>2</sup> of non-residential GFA [Exception 9(1472) hxi]. | To permit a maximum Gross Floor Area on the Phase 1 Lands and Phase 2 Lands of 134,062 m <sup>2</sup> , consisting of 131,322 m <sup>2</sup> of residential GFA and 2,740 m <sup>2</sup> of non-residential GFA. |

- NOTE:
- CONSTRUCT THE TYPE G LOADING SPACE AND ALL DRIVEWAYS AND PASSAGEWAYS PROVIDING ACCESS THERETO TO THE REQUIREMENTS OF THE ONTARIO BUILDING CODE, INCLUDING ALLOWANCE FOR THE CITY OF TORONTO BULK LIFT AND REAR BIN VEHICLE LOADING WITH IMPACT FACTORS WHERE THEY ARE TO BE BUILT AS SUPPORTED STRUCTURES.
  - ON CITY REFUSE COLLECTION DAYS MAINTAIN THE TYPE G LOADING SPACE CLEAR OF ALL OTHER VEHICLES/TRUCKS.
  - ON-SITE TRAINED STAFF MEMBERS MUST BE PRESENT TO TRANSFER THE REFUSE FROM THE RESIDENTIAL GARBAGE/RECYCLING STORAGE ROOM TO THE COLLECTION PAD, AND BE PRESENT AT ALL TIMES DURING CITY REFUSE COLLECTION DAYS TO MANOEUVRE THE CONTAINERS IN FRONT OF THE COLLECTION VEHICLE AND UNTIL THE VEHICLE ARRIVES ON SITE, THE VEHICLE WILL LEAVE AND NOT RETURN UNTIL THE NEXT SCHEDULED DAY.
  - TYPE G LOADING SPACE IS LEVEL (+2%), AND IS CONSTRUCTED OF A MINIMUM OF 200 MM REINFORCED CONCRETE.

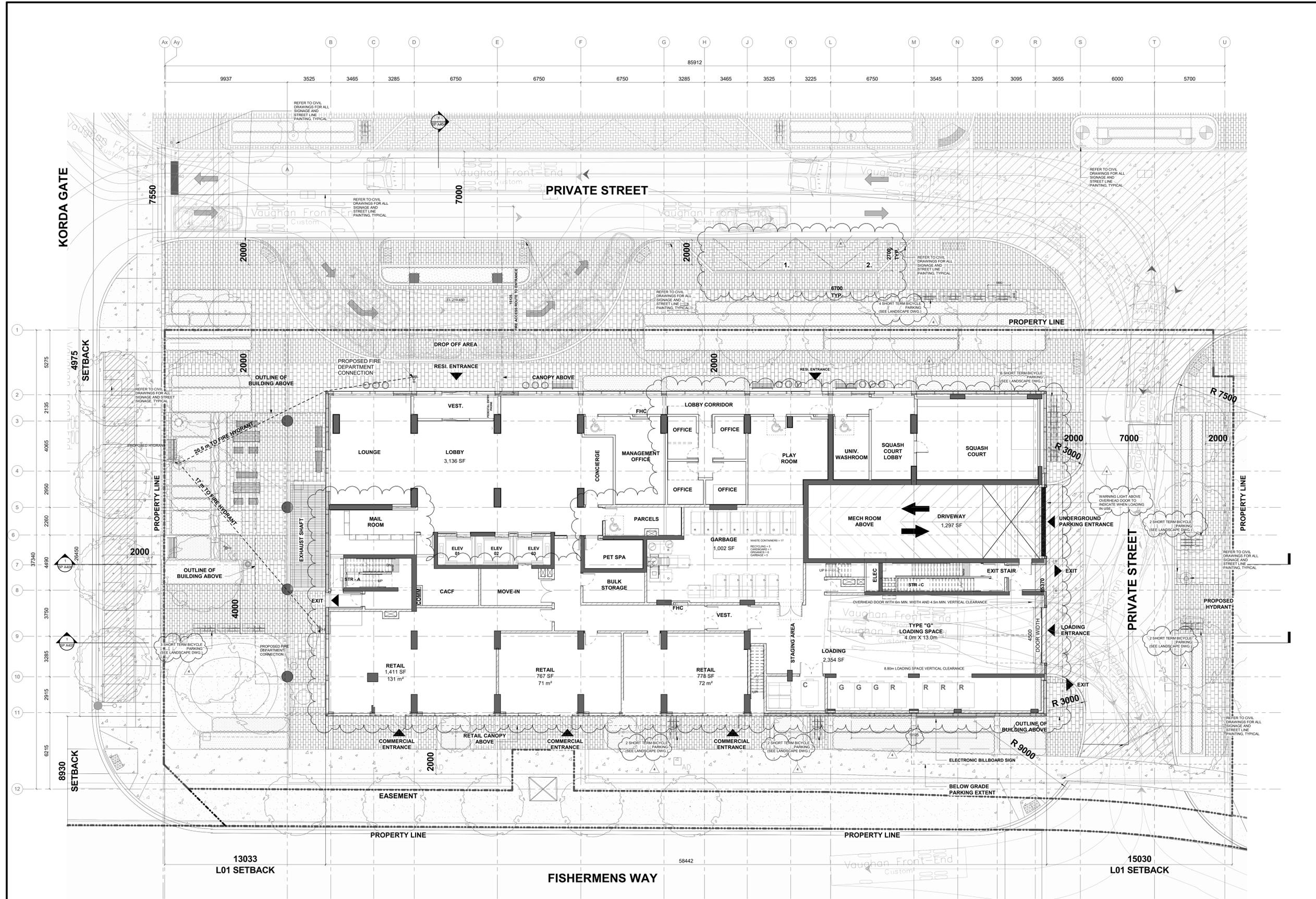
|   |                                     |            |
|---|-------------------------------------|------------|
| 1 | ISSUED FOR SITE PLAN APPROVAL (4TH) | 2023-01-09 |
| 2 | ISSUED FOR SITE PLAN APPROVAL (3RD) | 2022-07-06 |
| 3 | ISSUED FOR SITE PLAN APPROVAL (2ND) | 2021-06-26 |
| 4 | ISSUED FOR SITE PLAN APPROVAL       | 2020-12-03 |
| 5 | ISSUED FOR INFORMATION              | 2022-05-29 |

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**Greenpark**  
**CHARISMA BLOCK C**  
 VAUGHAN, ONTARIO



|           |            |       |            |
|-----------|------------|-------|------------|
| DRAWN     | LS, AR, NG | SCALE | 1 : 200    |
| CHECKED   | FV         | DATE  | 2022-05-11 |
| TITLE     |            |       |            |
| SITE PLAN |            |       |            |



|    | Zoning By-law 1-88  | Variance requested  |
|----|---|---|
| 1. | A maximum Building Height of 91.5 metres and 28 storeys is permitted [Exception 9(1472) hvii].  | To permit a maximum building height of 95 metres and 29 storeys.  |
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ISSUED FOR SITE PLAN APPROVAL (KTH) 2022-01-09  
 ISSUED FOR SITE PLAN APPROVAL (URD) 2022-07-08  
 ISSUED FOR SITE PLAN APPROVAL (LND) 2021-09-30  
 ISSUED FOR SITE PLAN APPROVAL 2022-10-09

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**Greenpark**

**CHARISMA BLOCK C**

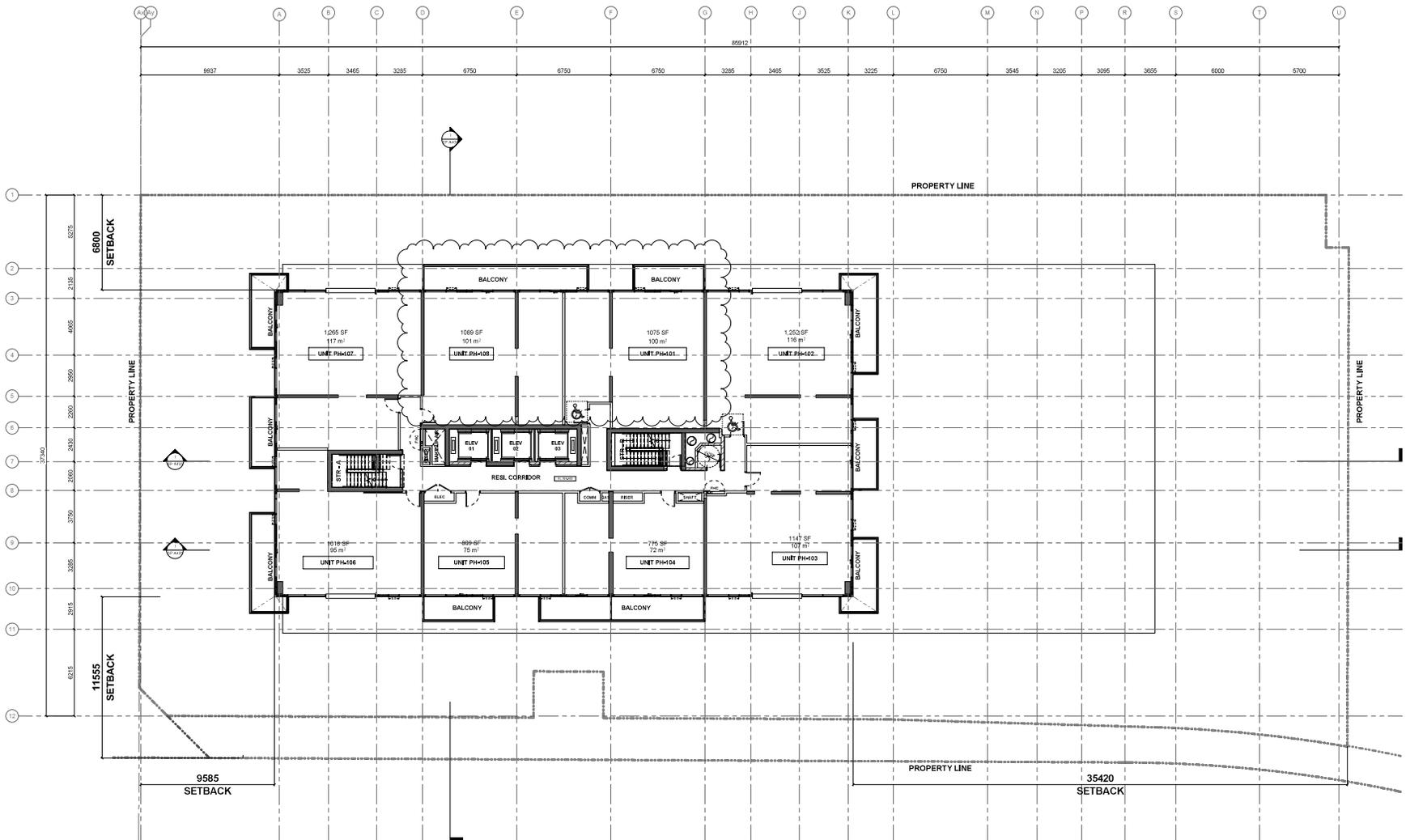
VAUGHAN, ONTARIO

DATE ASSOCIATION

DATE ASSOCIATION

DRAWN: LS, AR, NG SCALE: 1:100  
 CHECKED: FV DATE: 2022-05-11  
 TITLE: LEVEL 01  
 PROJECT NO: 19-175 DRAWING NO: SP A205





| Zoning By-law 1-88  | Variance requested   |
|---|--|
| 1. A maximum Building Height of 91.5 metres and 28 storeys is permitted [Exception 9(1472) hvii)].  | To permit a maximum building height of 95 metres and 29 storeys.   |
| 2. The total maximum Gross Floor Area on the Phase 1 Lands and Phase 2 Lands shall be 131,702 m <sup>2</sup> , consisting of 128,962 m <sup>2</sup> of residential GFA and 2,740 m <sup>2</sup> of non-residential GFA [Exception 9(1472) hxii)]. | To permit a maximum Gross Floor Area on the Phase 1 Lands and Phase 2 Lands of 134,062 m <sup>2</sup> , consisting of 131,322 m <sup>2</sup> of residential GFA and 2,740 m <sup>2</sup> of non-residential GFA. |

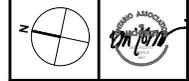
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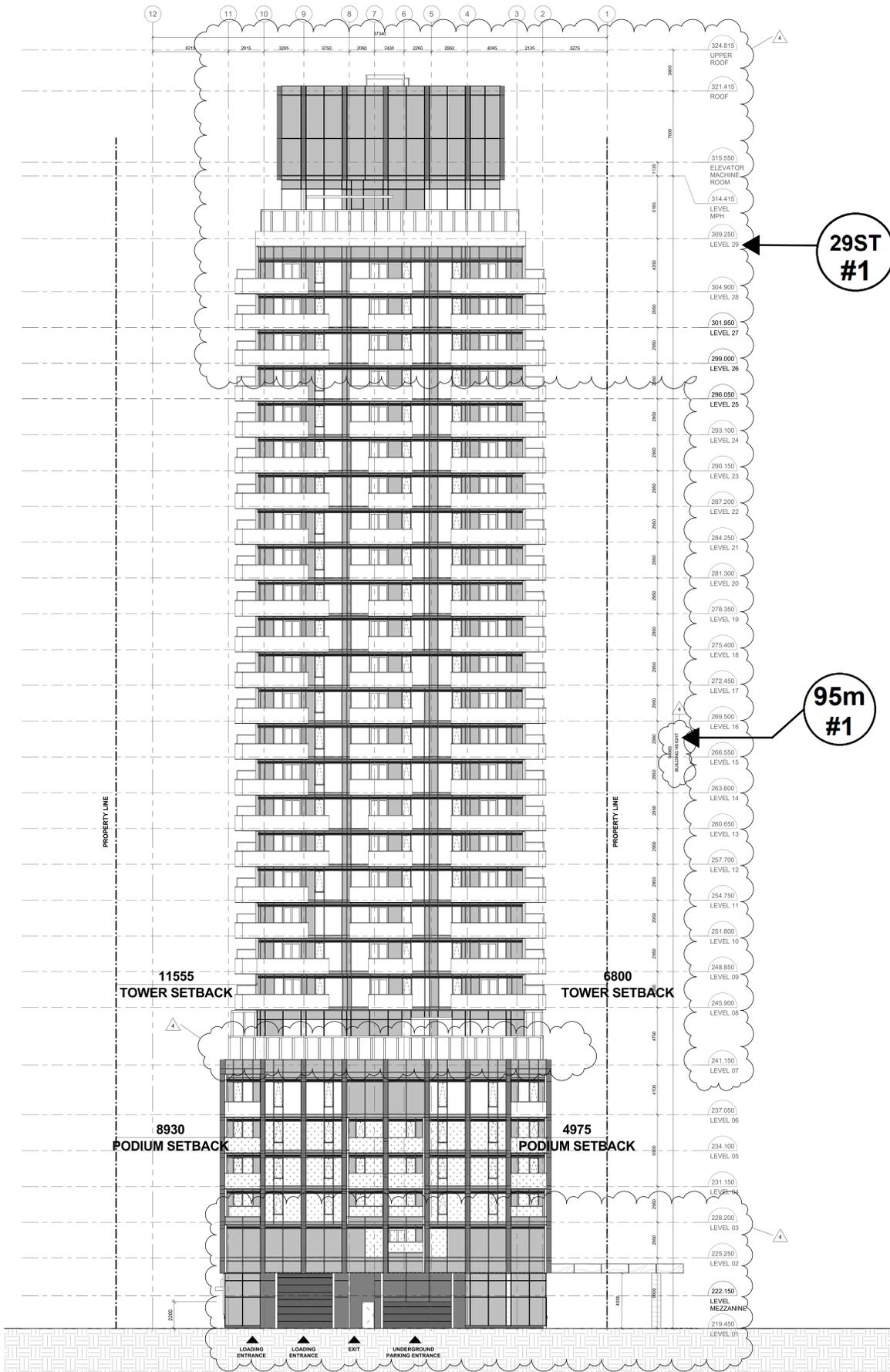
**CHARISMA BLOCK C**

VAUGHAN, ONTARIO

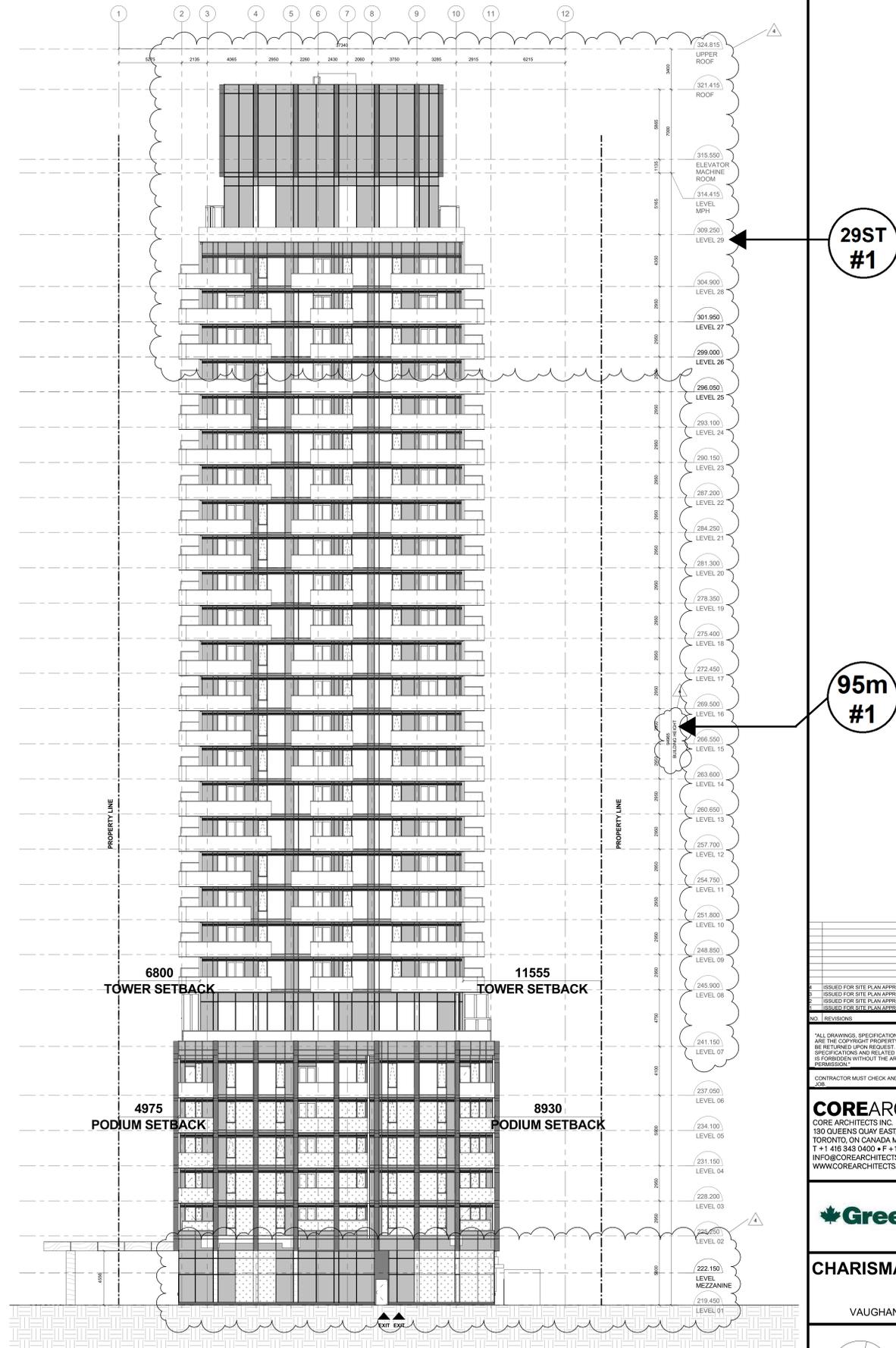


DRAWING NO: PV  
 DATE: 2020-05-11  
 SCALE: 1:100

TITLE: LEVEL 28



2 SOUTH ELEVATION - SPA  
A401



1 NORTH ELEVATION - SPA  
A401

|     |                                     |            |
|-----|-------------------------------------|------------|
| NO. | REVISIONS                           | DATE       |
| 1   | ISSUED FOR SITE PLAN APPROVAL (1TH) | 2023-01-09 |
| 2   | ISSUED FOR SITE PLAN APPROVAL (2ND) | 2022-07-08 |
| 3   | ISSUED FOR SITE PLAN APPROVAL (2ND) | 2021-09-30 |
| 4   | ISSUED FOR SITE PLAN APPROVAL       | 2022-10-03 |

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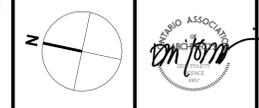
CONTRACTOR MUST CHECK AND VERIFY ALL DIMENSIONS ON THE JOB.

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INFO@COREARCHITECTS.COM  
WWW.COREARCHITECTS.COM



**CHARISMA BLOCK C**

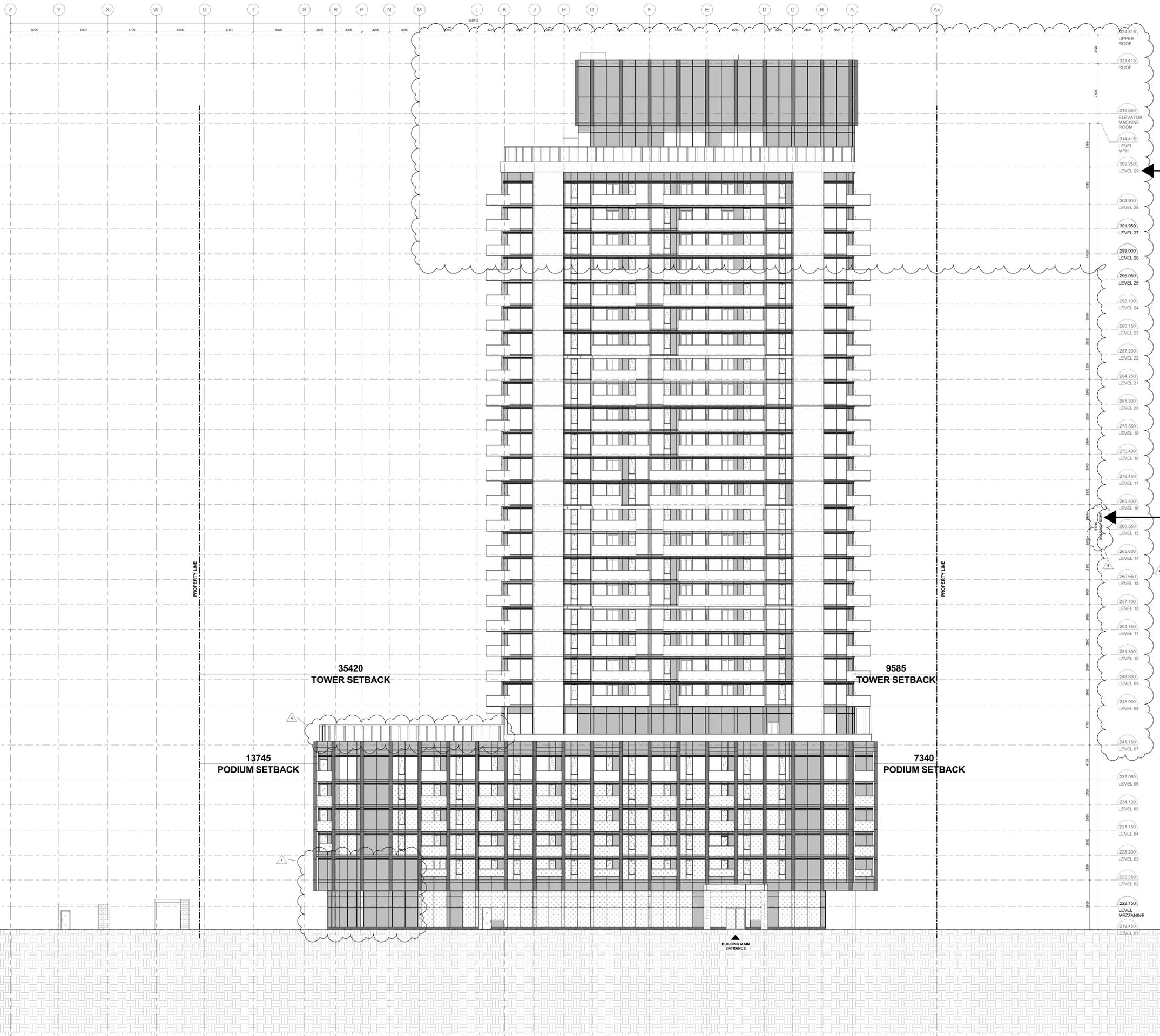
VAUGHAN, ONTARIO



|         |            |       |            |
|---------|------------|-------|------------|
| DRAWN   | LS, AR, NG | SCALE | 1 : 150    |
| CHECKED | FV         | DATE  | 2022-05-11 |

TITLE  
NORTH AND SOUTH ELEVATION

DATE PLOTTED: 2022-05-11 10:26:43 AM



**29ST #1**

**95m #1**

| NO. | REVISIONS                           | DATE       |
|-----|-------------------------------------|------------|
| 1   | ISSUED FOR SITE PLAN APPROVAL (KTH) | 2022-01-09 |
| 2   | ISSUED FOR SITE PLAN APPROVAL (LND) | 2022-07-06 |
| 3   | ISSUED FOR SITE PLAN APPROVAL (LND) | 2021-09-30 |
| 4   | ISSUED FOR SITE PLAN APPROVAL       | 2022-03-09 |

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**CHARISMA BLOCK C**

VAUGHAN, ONTARIO

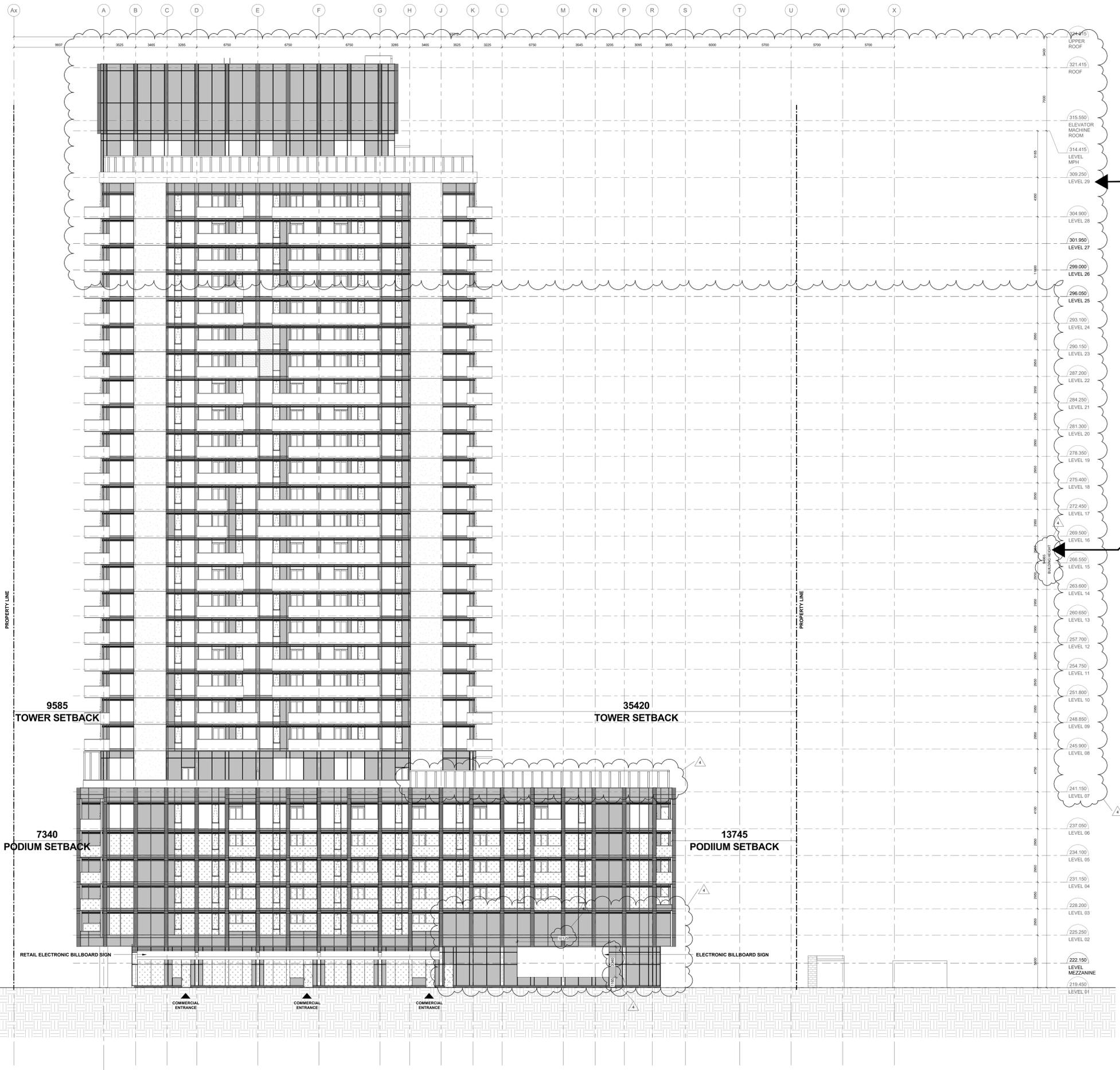


DRAWN: LS, AR, NG  
 SCALE: 1 : 150  
 CHECKED: FV  
 DATE: 2022-05-11

TITLE: EAST ELEVATION

PROJECT NO: 19-175  
 DRAWING NO: SP A402

DATE: 19-05-2022 09:51:13 AM



**29ST #1**

**95m #1**

| NO. | REVISIONS                           | DATE       |
|-----|-------------------------------------|------------|
| 1   | ISSUED FOR SITE PLAN APPROVAL (KTH) | 2022-01-09 |
| 2   | ISSUED FOR SITE PLAN APPROVAL (LND) | 2022-07-06 |
| 3   | ISSUED FOR SITE PLAN APPROVAL (LND) | 2021-09-30 |
| 4   | ISSUED FOR SITE PLAN APPROVAL       | 2022-03-09 |

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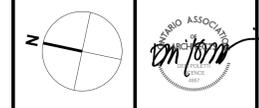
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**CHARISMA BLOCK C**

VAUGHAN, ONTARIO



DRAWN: LS, AR, NG  
 SCALE: 1 : 150  
 CHECKED: FV  
 DATE: 2022-05-11

TITLE: WEST ELEVATION

PROJECT NO: 19-175  
 DRAWING NO: SP A403

DATE PLOTTED: 2022-05-11 10:26:14 AM

**SCHEDULE B: STAFF & AGENCY COMMENTS**

| <b>DEPT/AGENCY</b>                           | <b>Circulated</b> | <b>Comments Received</b> | <b>Conditions</b> | <b>Nature of Comments</b>    |
|--|-------------------|--------------------------|-------------------|------------------------------|
| TRCA *Schedule B                             | X                 |                          |                   | No Comments Received to Date |
| Ministry of Transportation (MTO) *Schedule B |                   |                          |                   | No Comments Received to Date |
| Region of York *Schedule B                   | X                 | X                        |                   | General Comments             |
| Alectra *Schedule B                          | X                 | X                        |                   | General Comments             |
| Bell Canada *Schedule B                      | X                 |                          |                   | No Comments Received to Date |
| YRDSB *Schedule B                            |                   |                          |                   |                              |
| YCDSB *Schedule B                            |                   |                          |                   |                              |
| CN Rail *Schedule B                          |                   |                          |                   |                              |
| CP Rail *Schedule B                          |                   |                          |                   |                              |
| TransCanada Pipeline *Schedule B             | X                 |                          |                   | No Comments Received to Date |
| Metrolinx *Schedule B                        |                   |                          |                   |                              |
| Propane Operator *Schedule B                 |                   |                          |                   |                              |
| Development Planning                         | X                 |                          |                   | Application Under Review     |
| Building Standards (Zoning)                  | X                 | X                        |                   | General Comments             |

**Date:** February 14<sup>th</sup> 2023

**Attention:** **Christine Vigneault**

**RE:** Request for Comments

**File No.:** **A017-23**

**Related Files:**

**Applicant** Granerola Residences Ltd.

**Location** 7 Korda Gate



Discover the possibilities

### COMMENTS:

- We have reviewed the proposed Variance Application and have no comments or objections to its approval.
- We have reviewed the proposed Variance Application and have no objections to its approval, subject to the following comments (attached below).
- We have reviewed the proposed Variance Application and have the following concerns (attached below).

Alectra Utilities (formerly PowerStream) has received and reviewed the proposed Variance Application. This review, however, does not imply any approval of the project or plan.

All proposed billboards, signs, and other structures associated with the project or plan must maintain minimum clearances to the existing overhead or underground electrical distribution system as specified by the applicable standards, codes and acts referenced.

In the event that construction commences, and the clearance between any component of the work/structure and the adjacent existing overhead and underground electrical distribution system violates the Occupational Health and Safety Act, the customer will be responsible for 100% of the costs associated with Alectra making the work area safe. All construction work will be required to stop until the safe limits of approach can be established.

In the event construction is completed, and the clearance between the constructed structure and the adjacent existing overhead and underground electrical distribution system violates the any of applicable standards, acts or codes referenced, the customer will be responsible for 100% of Alectra's cost for any relocation work.

### References:

- Ontario Electrical Safety Code, latest edition (Clearance of Conductors from Buildings)
- Ontario Health and Safety Act, latest edition (Construction Protection)
- Ontario Building Code, latest edition (Clearance to Buildings)
- PowerStream (Construction Standard 03-1, 03-4), attached
- Canadian Standards Association, latest edition (Basic Clearances)

If more information is required, please contact either of the following:

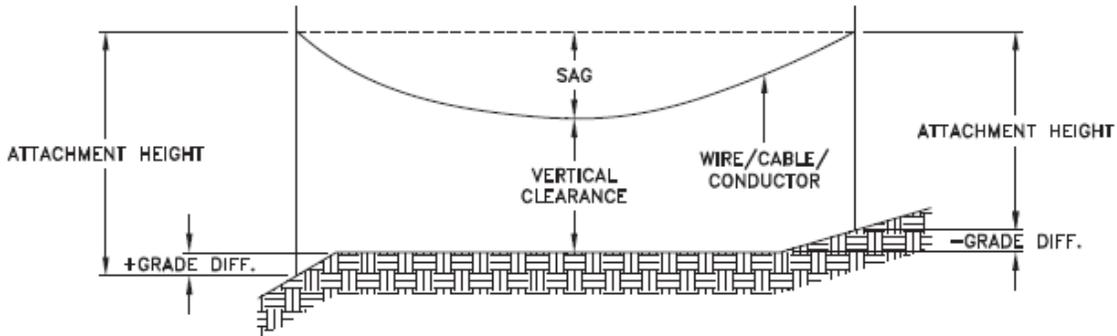
Mr. Stephen Cranley, C.E.T  
Supervisor, Distribution Design, ICI & Layouts (North)  
**Phone:** 1-877-963-6900 ext. 31297

**E-mail:** [stephen.cranley@alectrautilities.com](mailto:stephen.cranley@alectrautilities.com)

Mitchell Penner  
Supervisor, Distribution Design-Subdivisions  
**Phone:** 416-302-6215

**Email:** [Mitchell.Penner@alectrautilities.com](mailto:Mitchell.Penner@alectrautilities.com)

| LOCATION OF WIRES, CABLES OR CONDUCTORS                                   | SYSTEM VOLTAGE                     |                        |                                      |       |
|---|------------------------------------|------------------------|--------------------------------------|-------|
|   | SPAN GUYS AND COMMUNICATIONS WIRES | UP TO 600V AND NEUTRAL | 4.16/2.4kV TO 27.6/16kV (SEE NOTE 1) | 44kV  |
| MINIMUM VERTICAL CLEARANCES (SEE NOTE 2)                                  |                                    |                        |                                      |       |
| OVER OR ALONGSIDE ROADS, DRIVEWAYS OR LANDS ACCESSIBLE TO <u>VEHICLES</u> | 442cm                              | 442cm                  | 480cm                                | 520cm |
| OVER GROUND ACCESSIBLE TO <u>PEDESTRIANS AND BICYCLES ONLY</u>            | 250cm                              | 310cm                  | 340cm                                | 370cm |
| ABOVE TOP OF RAIL AT <u>RAILWAY CROSSINGS</u>                             | 730cm                              | 730cm                  | 760cm                                | 810cm |



MINIMUM ATTACHMENT HEIGHT = MAXIMUM SAG  
 + MINIMUM VERTICAL CLEARANCE (FROM ABOVE TABLE)  
 ± GRADE DIFFERENCE  
 + 0.3m (VEHICLE OR RAILWAY LOCATION)  
 + SNOW DEPTH (PEDESTRIAN LOCATION, SEE NOTE 3)

**NOTES:**

1. THE MULTIGROUNDED SYSTEM NEUTRAL HAS THE SAME CLEARANCE AS THE 600V SYSTEM.
2. THE VERTICAL CLEARANCES IN THE ABOVE TABLE ARE UNDER MAXIMUM SAG CONDITIONS.
3. REFER TO CSA STANDARD C22.3 No.1, ANNEX D FOR LOCAL SNOW DEPTH VALUES.
4. ALL CLEARANCES ARE IN ACCORDANCE TO CSA STANDARD C22.3.

**CONVERSION TABLE**

| METRIC | IMPERIAL (APPROX) |
|--------|-------------------|
| 810cm  | 27'-0"            |
| 760cm  | 25'-4"            |
| 730cm  | 24'-4"            |
| 520cm  | 17'-4"            |
| 480cm  | 16'-0"            |
| 442cm  | 15'-5"            |
| 370cm  | 12'-4"            |
| 340cm  | 11'-4"            |
| 310cm  | 10'-4"            |
| 250cm  | 8'-4"             |

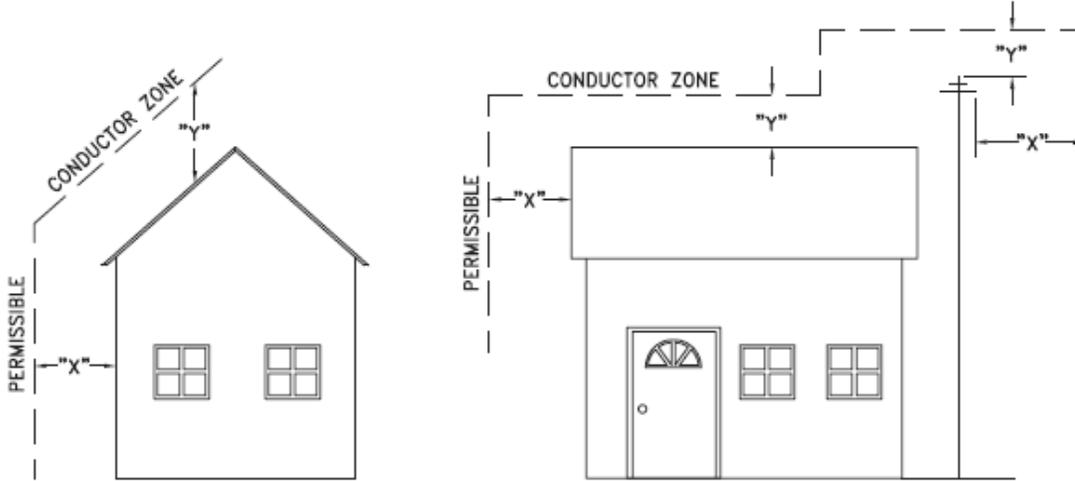
**REFERENCES**

SAGS AND TENSIONS | SECTION 02

**MINIMUM VERTICAL CLEARANCES OF WIRES, CABLES AND CONDUCTORS ABOVE GROUND OR RAILS**

ORIGINAL ISSUE DATE: 2010-DEC-24 REVISION NO: R1 REVISION DATE: 2012-JAN-09

| Certificate of Approval   |             |
|---|-------------|
| This construction Standard meets the safety requirements of Section 4 of Regulation 22/04 |             |
| Joe Crozier, P.Eng.   | 2012-JAN-09 |
| Name  | Date        |
| P.Eng. Approval By:   | Joe Crozier |



| VOLTAGE            | MINIMUM HORIZONTAL CLEARANCE UNDER MAXIMUM SWING CONDITIONS DIMENSION "X" (SEE NOTES 1, 3 & 4) | MINIMUM VERTICAL CLEARANCE UNDER MAXIMUM DESIGN SAG CONDITIONS DIMENSION "Y" (SEE NOTES 1, 2, 4 & 5) |
|--------------------|--|--|
| 0-600V AND NEUTRAL | 100cm  | 250cm  |
| 4.16/2.4 TO 44kV   | 300cm  | 480cm  |

**NOTES**

1. UNDER NO CIRCUMSTANCES SHALL A CONDUCTOR BE PERMITTED TO PENETRATE THE ENVELOPE SHOWN BY THE DOTTED LINE.
2. THE VERTICAL CLEARANCES ARE UNDER CONDITIONS OF MAXIMUM DESIGN SAG.
3. THE HORIZONTAL CLEARANCES ARE UNDER CONDITIONS OF MAXIMUM SWING. WHERE THE CONDUCTOR SWING IS NOT KNOWN A HORIZONTAL CLEARANCE OF 480CM SHALL BE USED.
4. BUILDINGS THAT EXCEED 3 STOREYS OR 15M IN HEIGHT, THE MINIMUM HORIZONTAL CLEARANCE OF THE SECONDARY CONDUCTORS SHOULD BE INCREASED TO 300cm WHERE IT IS NECESSARY TO ALLOW FOR THE RAISING OF LADDERS BY LOCAL FIRE DEPARTMENTS.
5. IN SITUATIONS SUCH AS MULTI-LEVEL GARAGES, WHERE ROOFS ARE NORMALLY USED BY PERSONS AND VEHICLES, THE VERTICAL CLEARANCES OF POWERSTREAM STANDARD 03-1 SHALL APPLY.
6. DISTRIBUTION LINES CONSTRUCTED NEAR BUILDINGS SHALL BE BUILT TO AVOID OVERHANG WHEREVER POSSIBLE. WHERE LINES MUST BE CONSTRUCTED OVER OR ADJACENT TO BUILDINGS THE APPLICABLE HORIZONTAL AND VERTICAL CLEARANCES SHALL BE AT CONDITIONS OF MAXIMUM CONDUCTOR SWING AND MAXIMUM SAG. THE ABOVE CLEARANCES ARE DESIGNED TO PREVENT PERSONS ON OR IN BUILDINGS AS WELL AS EXTERNAL MACHINERY USED IN CONJUNCTION WITH A BUILDING TO COME IN CONTACT WITH CONDUCTORS. EFFORTS SHOULD BE MADE TO INCREASE THESE CLEARANCES WHERE POSSIBLE.
7. ALL CLEARANCES ARE IN ACCORDANCE TO CSA C22.3 NO.1-06 (TABLE-9).

| METRIC | IMPERIAL (APPROX) |
|--------|-------------------|
| 480cm  | 16'-0"            |
| 300cm  | 10'-0"            |
| 250cm  | 8'-4"             |
| 100cm  | 3'-4"             |

**MINIMUM VERTICAL & HORIZONTAL CLEARANCES OF CONDUCTORS FROM BUILDINGS OR OTHER PERMANENT STRUCTURES (CONDUCTORS NOT ATTACHED TO BUILDINGS)**

**Certificate of Approval**  
This construction Standard meets the safety requirements of Section 4 of Regulation 22/04  
Debbie Dadwani, P.Eng. 2010-MAY-05  
Name Date  
P. Eng. Approval By: *D. Dadwani*

ORIGINAL ISSUE DATE: 2010-MAY-05 REVISION NO: REVISION DATE:  
PS:\System Planning and Standards\Standard Design\PowerStream Standards\PowerStream Standards working files\Section 3-1-02\WG 03-4 R0 May 5, 2010.dwg, 5/5/2010 10:22:02 AM, Adobe PDF

**To:** Committee of Adjustment  
**From:** Lindsay Haviland, Building Standards Department  
**Date:** February 23, 2023  
**Applicant:** Granerola Residences Ltd.  
**Location:** 27 Korda Gate  
 PLAN 65M3696 Part of Block 1  
 PLAN 65R38270 Part 3  
**File No.(s):** A017/23

**Zoning Classification:**

The subject lands are zoned RM2(H) – Multiple Unit Residential Zone, subject to a Holding provision, and subject to the provisions of Exception 14.699 under Zoning By-law 001-2021, as amended.

This application has been deemed to be Transitioned under section 1.6.

| # | Zoning By-law 01-2021 | Variance requested |
|---|-----------------------|--------------------|
|   | None.                 |                    |

The subject lands are zoned RA3(H), Residential Apartment Zone subject to a Holding Provision, and subject to the provisions of Exception 9(1472) under Zoning By-law 1-88, as amended.

|    | Zoning By-law 1-88  | Variance requested   |
|----|---|--|
| 1. | A maximum Building Height of 91.5 metres and 28 storeys is permitted [Exception 9(1472) hvii)].   | To permit a maximum building height of 95 metres and 29 storeys.   |
| 2. | The total maximum Gross Floor Area on the Phase 1 Lands and Phase 2 Lands shall be 131,702 m <sup>2</sup> , consisting of 128,962 m <sup>2</sup> of residential GFA and 2,740 m <sup>2</sup> of non-residential GFA [Exception 9(1472) hxi)]. | To permit a maximum Gross Floor Area on the Phase 1 Lands and Phase 2 Lands of 134,062 m <sup>2</sup> , consisting of 131,322 m <sup>2</sup> of residential GFA and 2,740 m <sup>2</sup> of non-residential GFA. |

**Staff Comments:**

**Stop Work Order(s) and Order(s) to Comply:**

There are no outstanding Orders on file

**Building Permit(s) Issued:**

Building Permit No. 21-115612 for Retaining Wall - New, Issue Date: Sep 08, 2021  
 Building Permit No. 21-129646 for Condo. Apartment Building - New, Issue Date: (Not Yet Issued)

**Other Comments:**

| General Comments |  |
|------------------|--|
| 1.               | The applicant shall be advised that additional variances may be required upon review of detailed drawing for building permit/site plan approval. |

**Conditions of Approval:**

If the committee finds merit in the application, the following conditions of approval are recommended.

\* Comments are based on the review of documentation supplied with this application.

**Lenore Providence**

---

**Subject:** FW: [External] RE: A017/23 - REQUEST FOR COMMENTS, CITY OF VAUGHAN

**From:** Development Services <developmentsservices@york.ca>

**Sent:** February-15-23 5:13 PM

**To:** Lenore Providence <Lenore.Providence@vaughan.ca>

**Cc:** Committee of Adjustment <CofA@vaughan.ca>

**Subject:** [External] RE: A017/23 - REQUEST FOR COMMENTS, CITY OF VAUGHAN

Hi Lenore,

The Regional Municipality of York has completed its review of the above minor variance and has no comment.

Please note regional comments would be sent through the associated Site Plan (once submitted).

Many thanks,

*Our working hours may be different. Please do not feel obligated to reply outside of your scheduled working hours. Let's work together to help foster healthy work-life boundaries.*

**Niranjan Rajevan, M.Pl.** | Associate Planner, Programs and Process Improvement, Planning and Economic Development, Corporate Services

-----  
The Regional Municipality of York | 17250 Yonge Street | Newmarket, ON L3Y 6Z1  
1-877-464-9675 ext. 71521 | [niranjan.rajevan@york.ca](mailto:niranjan.rajevan@york.ca) | [www.york.ca](http://www.york.ca)

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**SCHEDULE C: PUBLIC & APPLICANT CORRESPONDENCE**

| <b>Correspondence Type</b> | <b>Name</b> | <b>Address</b> | <b>Date Received<br/>(mm/dd/yyyy)</b> | <b>Summary</b>                |
|----------------------------|-------------|----------------|---------------------------------------|-------------------------------|
| Agent                      |             |                |                                       | Planning Justification Report |



# WESTON CONSULTING

planning + urban design

City of Vaughan  
2141 Major Mackenzie Drive  
Vaughan, ON L6A 1T1

January 24, 2023  
File 10516

**Attn: Christine Vigneault, AMP, ACST**  
**Manager Development Services & Secretary Treasurer to the Committee of Adjustment**

**Re: Planning Justification in Support of Minor Variance Application**  
**Granerola Residences Ltd., filed under Dulcina Investments Inc.**  
**8960 - 9000 Jane Street, City of Vaughan and specifically Phase 2, Block 'C' -**  
**Charisma Site at 27 Korda Gate**  
**Related City Files: DA.20.060, Z.20.037, 19CDM-22V003 and OP.07.001, Z.09.038**

Weston Consulting is the planning consultant for Dulcina Investments Inc. ('Dulcina'), regarding the property municipally known as 8960-9000 Jane Street and 27 Korda Gate (Block 'C'), in the City of Vaughan (herein referred to as the "subject property"). It is noted that subsequent to receiving approval of amendments to the Official Plan and Zoning By-law for the subject property, Dulcina transferred ownership of the Block A lands to Genazzano and Block B and C lands to Granerola Residences Ltd. Dulcina is the agent with respect to all planning applications related to the site.

This letter is prepared as a planning opinion to present the merits and support for a Minor Variance Application being submitted to the City of Vaughan's Committee of Adjustment for variances relating particularly to Phase 2, Block 'C' lands for the Charisma site located at 27 Korda Gate. The proposed building on Block 'C' is herein known as, Building C. Refer to Figure 1 for graphic representation of the subject property.

The purpose of the Minor Variance Application is to facilitate the development of a mixed-use high-rise building and permit relief from the following zoning regulations from By-law 033-2019, for Phase 2, Block 'C' lands:

1. An increase to the proposed building height in both, storeys, and geodetic height for Building 'C' in Block 'C' on the Phase 2 Lands from 28-storeys to 29-storeys, and 91.50 metres to 95.0 metres;
2. An increase to the total maximum permitted Gross Floor Area (GFA) for the subject lands (Phase 1 and 2 Lands) from 131,702 square metres to 132,788 square metres; and,
3. An increase to the total maximum permitted Residential Gross Floor Area (GFA) for the subject lands (Phase 1 and 2 Lands) from 128,962 square metres to 131,242 square metres.

## 1 Description of Subject Property

The subject property is located on the west side of Jane Street and on the east side of Vaughan Mills Circle, north of Bass Pro Mills Drive and northeast of the future Romina Drive extension. The subject property is currently vacant; however, portions of the larger land development holdings are either under construction or have already been constructed into high-rise residential buildings (City Files: DA.18.047 and DA.19.084). Refer to Figure 1 (Site Context Map) for graphic representation of the subject property and specifically Block 'C'.

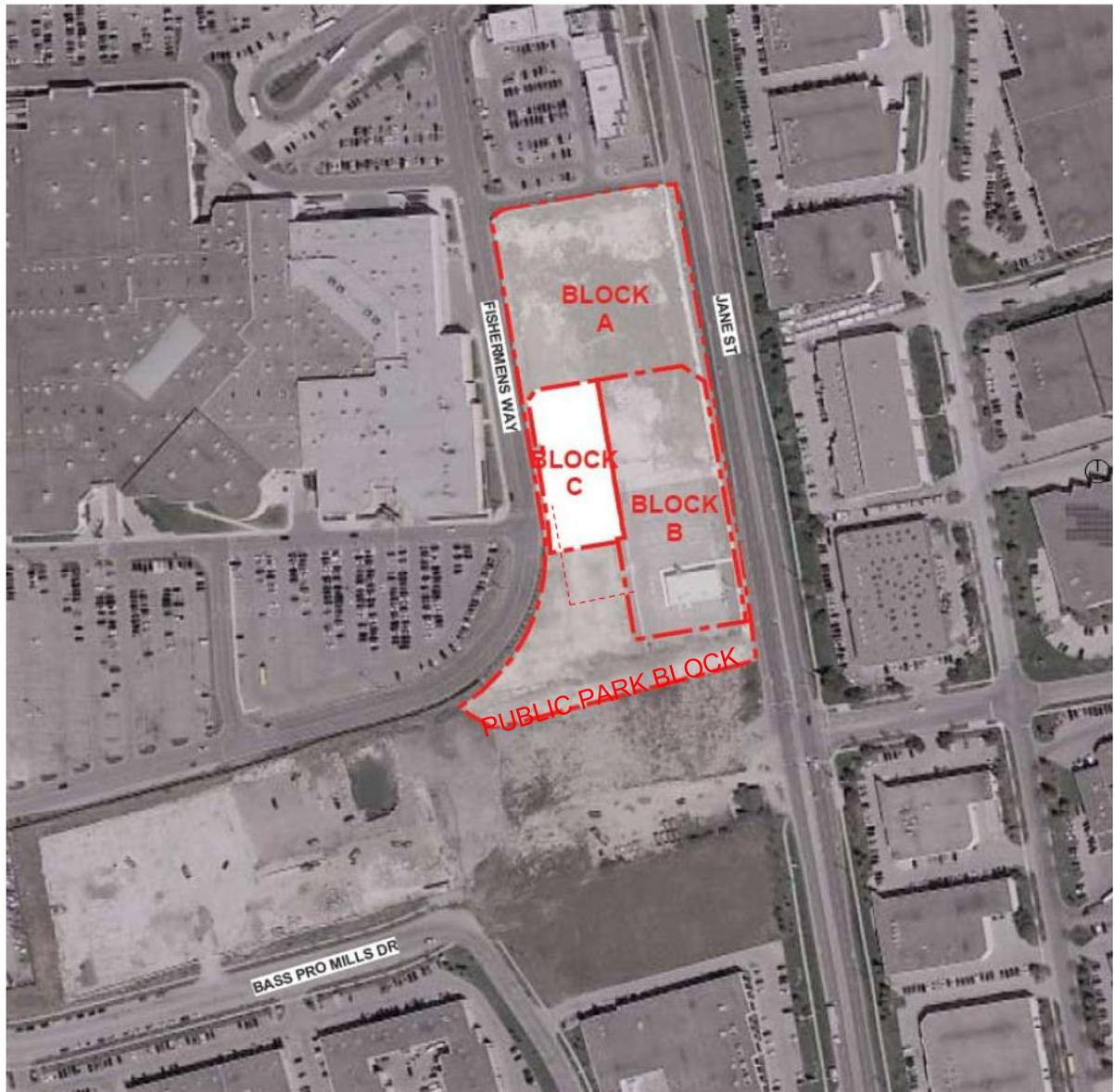


Figure 1 – Site Context Map

The subject property (Blocks B, C, and the Public Park Block) is 1.78 hectares (17,779.02 square metres) in total land area. The subject property maintains frontage along Jane Street to the east, Fishermens Way to the west and Riverock Gate to the north. Vehicular access is provided from Jane Street and Fishermens Way directly from the subject property.

The subject property is identified as Development Block 'B7' within Schedule I: Development Blocks of the Vaughan Mills Centre Secondary Plan, and is subject to Official Plan Amendment (OPA 2) and Zoning By-law Amendment (Zoning By-law 033-2019) approvals rendered by the Ontario Land Tribunal (OLT), which grant permissions for a phased high-rise, high-density residential and commercial development. The subject property is identified as Block C in site-specific Zoning By-law 033-2019.

## **2 Surrounding Context**

This section provides a brief overview of existing and planned built form in proximity of the subject property:

**North:** Directly north within the same parcel are multi-storey multi-family buildings part of the Charisma development project. North of the subject lands is a mid-rise office building with surface parking and pad retail uses associated with Vaughan Mills Mall west of Jane Street and south of Rutherford Road. North of Rutherford Road on the west side of Jane is a mix of office and retail in low-rise built-forms, low-rise residential, open space, and institutional uses. On the east side of Jane are open space uses and existing high-rise and proposed high-rise residential with heights of 36-storeys.

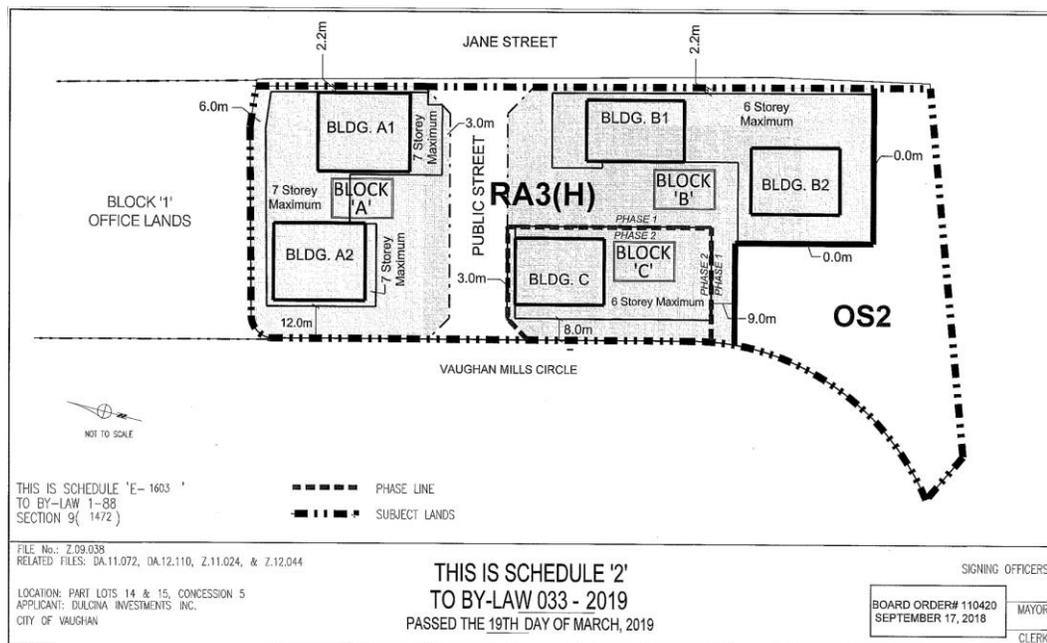
**West:** West of the subject lands is Vaughan Mills Mall that is centralized around a ring road (Fishermens Way). The main mall is approximately 1.3 million square feet with pad retail surrounding the main mall building around Fishermens Way. The mall is planned for future development and will be anchored by bus rapid transit and planned subway transit infrastructure.

**South:** Directly south of the subject lands will be a future park and roadway extending east-west to Jane Street. North of Bass Pro Mills Drive, west of Jane Street is a planned high-rise residential development. West of the planned development and east of Fishermens Way is a hotel use and vacant lands. South of Bass Pro Mills Drive, east and west of Jane Street are low-rise employment-built forms.

**East:** Stemming south from Riverock Gate to approximately north of Highway 7 on the east side of Jane Street are low-rise employment uses. North of Riverock Gate on the east side of Jane Street is a mix of retail, commercial, open space and high-rise residential (existing and planned) uses. The existing residential buildings are 20 and 23 storeys in height and the planned buildings are 26, 27 and 30-storeys in building height. The existing and proposed residential buildings are within the Vaughan Mills Centre Secondary Plan Area.

### 3 Overview of Previous Planning Approvals

The subject property is subject to site specific amendments under By-law 033-2019 and to OLT approvals under file number PL110420. The zoning and OLT approvals were based on a Development Concept presented to both the City and the OLT. Figure 2 displays the Development Concept, Schedule 2 of By-law 033-2019.



**Figure 2 – Schedule ‘2’, By-law 033-2019 – OMB Approved Development Concept**

By-law 033-2019 permits the following development standards for the property identified in Figure 2, above:

- The development of two phases comprised of three blocks, Block ‘A’ and Block ‘B’ in Phase 1 and Block ‘C’ in Phase 2;
  - Block ‘A’: two mixed-use buildings with maximum heights of 24-storeys (79.5 m) and 26-storeys (85.5 m);
  - Block ‘B’: two mixed-use buildings with maximum heights of 26-storeys (85.5 m) and 28-storeys (91.5 m); and,
  - Block ‘C’: one mixed-use building with a maximum height of 28-storeys (91.5 m);
- A maximum dwelling unit count of 1,125 units within Phase 1 and 342 units within Phase 2;
- A total maximum Gross Floor Area (GFA) of 131,702 square metres (128,962 square metres of residential GFA and 2,740 square metres of non-residential GFA) on the Phase 1 and Phase 2 Lands;
- A minimum floor-to-floor ceiling height for commercial uses of 4.5 metres;
- Minimum amenity areas of 2.5 square metres per dwelling unit;

- A minimum parking rate of 0.95 residential parking spaces per dwelling unit and a maximum parking rate of 1.15 residential parking spaces per dwelling unit;
- A minimum visitor parking rate of 0.20 spaces per dwelling unit – commercial parking spaces will also count towards satisfying the residential visitor parking requirements and vice versa; and,
- A minimum commercial parking rate of 3.0 parking spaces per one hundred square metres of GFA.

Enclosed with this letter is site specific By-law 033-2019, which outlines all site-specific zoning regulations applicable to the subject property, in addition to those identified above, and details on the “H” Holding Symbol and Holding provisions.

This letter provides an overview of zoning compliance, and identifies the variances requested to facilitate the proposed development of Building C, a high-rise mixed-use apartment building on Block ‘C’.

It should be noted that a Minor Variance Application (File A144/21) for the subject lands was approved by the City of Vaughan’s Committee of Adjustment in August 2021 for Building ‘B2’ in Block ‘B’ of the Phase 1 Lands. The Committee approved the following variances:

1. An increase in the maximum geodetic height for Building ‘B2’ on Block ‘B’ from 91.5 metres to 92.95 metres; and,
2. An increase in the maximum permitted dwelling units within the Phase 1 Lands from 1,125 dwelling units to 1,152 dwelling units.

Development Planning Staff had no objections to the proposed variances and supported both the increase in maximum building height and increase in dwelling units, stating that it conforms with the Vaughan Mills Centre Secondary Plan. The increase in building height and dwelling units would not result in Building ‘B2’ exceeding the 28-storey maximum, and the overall maximum permitted GFA, and dwelling unit counts for Phases 1 and 2 was maintained, as established through Zoning By-law 1-88, subject to site-specific Exception 9(1472), By-law 033-2019. A copy of this Decision is enclosed to this letter and the Minor Variance Application for reference.

There is an active Site Plan Control Application for Block ‘C’ (DA.20.060). City Staff have requested that a re-submission of the Site Plan Control Application for Block ‘C’ be provided under separate cover letter to reflect the updated and modified development proposal, as discussed and reviewed with City staff. The re-submission of the site plan application will be forthcoming.

#### **4 Development Proposal and Planning Considerations**

The development proposal contemplates modifications to the OLT [(previously Ontario Municipal Board (OMB)/ Land Use Appeal Tribunal (LPAT)] approved concept plan and Schedule ‘2’ of By-law 033-2019 (Refer to Figure 2 of this letter). The modifications include the following and are also identified in Table 1 of this letter:

1. An increase to the proposed building height in both, storeys, and geodetic height for Building 'C' in Block 'C' on the Phase 2 Lands from 28-storeys to 29-storeys, and 91.50 metres to 95 metres;
2. An increase to the total maximum permitted Gross Floor Area (GFA) for the subject lands (Phase 1 and 2 Lands) from 131,702 square metres to 132,788 square metres; and,
3. An increase to the total maximum permitted Residential Gross Floor Area (GFA) for the subject lands (Phase 1 and 2 Lands) from 128,962 square metres to 131,242 square metres.

Consistent with the approved planning documents, the landowner proposes a two-phase high-density mixed-use development with a public park block, at-grade parking, and vehicular accesses off a new public street perpendicular to Vaughan Mills Circle and Jane Street, and north of Block 'C' (refer to Figure 2 of this letter).

Enclosed with this Letter is an architectural set prepared by Core Architects, dated January 9, 2023, which outlines the proposed development statistics for the Phase 1 and Phase 2 Lands, as well as the modified development proposal for Block 'C', Phase 2 Lands.

The following provides an overview of key development statistics for Block 'C' and the Phase 1 and Phase 2 Lands, as it relates to GFA, amenity space, number of dwelling units, and parking spaces:

- A total Gross Floor Area (GFA) of 132,788 square metres (131,242 square metres of Residential GFA and 1,546 square metres of Commercial GFA) is proposed on the Phase 1 and Phase 2 Lands;
  - 29,011 square metres of Residential GFA and 275 square metres of Commercial GFA is proposed in Building 'C' on Block 'C' (Phase 2 Lands);
- 2,466 square metres of indoor and outdoor amenity space and 3,315 square metres of balcony amenity space is proposed in Building 'C';
  - The proposed building has an indoor and outdoor amenity space rate of 7.21 square metres per unit, which exceeds the minimum of 2.5 square metres per unit required under the site-specific by-law;
  - A total of 9,477.38 square metres of amenity space is proposed between the three buildings on the subject lands (exclusive of balcony space);
- 342 residential dwelling units (including 53 barrier-free units) within Building 'C';
  - A range and mix of units consisting of 1-bedroom to 3-bedroom units.
- A total of 463 parking spaces (394 residential parking spaces and 69 visitor/commercial parking spaces) within four underground parking levels and at-grade to accommodate Building C's residential, visitor and commercial parking demand;
- 345 resident (long-term) bicycle parking spaces spread through the four underground parking levels and 21 visitor (short-term) at-grade bicycle spaces;
- 40 residential lockers spread evenly through floors 2 and 6; and,
- A building height for Building 'C' of 29-storeys – 94.97 metres, plus a 7.0-metre mechanical penthouse (not included in the total building height in metres or storeys under the Site-

Specific Zoning By-law definition). Certain taller floors have contributed to the overall height increase but are desirable and creates more quality space.

The proposed modifications are minimal, as discussed with City staff through the site plan application review process, and are not anticipated to impact the Vaughan Mills Centre Secondary Plan's planned context. Through the site plan application process, the owner has considered the impact that the proposed modifications will have on other site-specific development considerations and has made appropriate changes and accommodations to ensure urban design considerations are being met and to generally comply with the intent and purpose of the zoning provisions both in the site-specific zoning by-law and Zoning By-law 1-88, as warranted. The proposal provides adequate vehicle and bicycle parking supply (both resident and visitor), barrier-free vehicular parking spaces and indoor and outdoor amenity space. The owner has also considered the technical considerations of the approval including municipal infrastructure and servicing plans, which include stormwater, sanitary, transportation demand management, and waste management Master Plans and capital studies for the lands and Secondary Plan Area.

A re-submission of Site Plan Control Application (DA.20.060) was submitted under separate cover letter to the City of Vaughan on September 20, 2022, and was supported by updated technical studies, reports, and plans, which include a Transportation Impact Study (TIS) Addendum prepared by Paradigm Transportation Solutions Limited, dated June 23, 2022, and a subsequent Traffic Reliance Letter, dated January 12, 2023 is also provided. The materials prepared by Paradigm takes into consideration the proposed modifications and anticipated influence on existing and planned transportation infrastructure within the Secondary Plan Area.

An additional re-submission of the site plan application addressing comments received from Staff from the September 20, 2022 re-submission and reflecting the modified site plan, is forthcoming under separate cover.

## **5 Phase 2 Lands and Region of York Transportation Infrastructure Updates**

The approved site-specific Zoning By-law 033-2019 requires the developer to provide periodic transportation study updates on transportation infrastructure matters within the Vaughan Mills Centre Secondary Plan to the Regional Municipality of York, per the Secondary Plan's policy framework. The Secondary Plan recommends maximum development limits based on the necessary transportation improvements to ensure appropriate transportation capacities are in place to support development proposed on the Phase 1 and 2 Lands, and within the Secondary Plan Area. The desire is for the ongoing monitoring of proposed development thresholds and levels of development and transportation demand to facilitate the orderly progression of development in the Vaughan Mills Centre Secondary Plan Area, which is identified in Table 2 of the Secondary Plan (Table 2 is enclosed with this letter). The Region and City's goal is to ensure that development progression takes place in the context of provision of adequate infrastructure.

Paradigm asserts in their Transportation Impact Study Addendum, dated June 23, 2022 and subsequent Reliance Letter dated January 12, 2023, that the modified development proposal adequately meets transportation infrastructure framework and targets set out in the Vaughan Mills

Centre Secondary Plan, and that the new proposal does not differ greatly from the Transportation Impact Study work that was undertaken in March 2020. Furthermore, they extend professional reliance that there is not a need for updated analysis, based on the following:

- The Region providing sign-off in March 2020 that they are satisfied with the transportation infrastructure analysis produced, which addresses the site-specific Holding Provisions and the Secondary Plan policy framework including Table 2.
- The developer accommodating the parking demand and providing adequate parking supply, which meets and exceeds parking minimums per By-law 033-2019.
- The increase in Gross Floor Area does not pose a deterrent or impact to the transportation operations within the Secondary Plan Area and beyond.

## **6 Purpose of this Planning Rationale & Proposed Variances**

As previously mentioned, this letter is prepared to present to City of Vaughan Planning Staff the suitability and appropriateness of a Minor Variance Application to support the proposed variances required for the subject property – Block ‘C’ of the Charisma Project in support of the proposed development and Site Development Application DA.20.060.

The purpose of the requested Minor Variance Application is to seek relief from site-specific Zoning By-law 033-2019 with respect to increasing geodetic height and height in storeys for two of the five high-rise mixed-use buildings, increasing the maximum permitted non-residential GFA for Phases 1 and 2. The following Table provides an overview of the Zoning By-law Provision in By-law 033-2019 and the proposed variances:

| By-Law 033-2019 Provision  | Proposed Variance  |
|--|--|
| 1. The by-law permits a maximum Building Height of 28-storeys (91.50 metres)   | 1. The proposed Building Height for Building 'C' in Block 'C' (Phase 2 Lands) is proposed to be increased to 29-storeys, 95 metres   |
| 2. The by-law permits a total maximum Gross Floor Area (GFA) of 131,702 square metres on the Phase 1 and 2 Lands             | 2. The proposed total maximum Gross Floor Area (GFA) on the Phase 1 and 2 Lands is 132,788 square metres [Note: this is an increase of 1,086 square metres or 0.8% of total permitted GFA for Phase 1 and 2 Lands]                         |
| 3. The by-law permits a total maximum Residential Gross Floor Area (GFA) of 128,962 square metres on the Phase 1 and 2 Lands | 3. The proposed total maximum Residential Gross Floor Area (GFA) on the Phase 1 and 2 Lands is 131,242 square metres [Note: this is an increase of 2,256 square metres or 1.7% of total permitted Residential GFA for Phase 1 and 2 Lands] |

**Table 1 – Proposed Variances**

It is our opinion that the variances for the proposal will not significantly deviate from what was approved through the OLT and enacted by Council in 2019. There is a slight increase in the total number of building storeys and height, a redeployment of Gross Floor Area (GFA) from Commercial to Residential Uses resulting in an increase in the maximum permitted total Residential GFA and total GFA for Phase 1 and Phase 2 Lands. The Commercial GFA proposed does not exceed the maximum permitted non-residential GFA, and the development proposes to meet all parking requirements for both residential and non-residential GFA.

As discussed with City Staff, the revisions to the proposed development can be facilitated through a Minor Variance Application and a re-submission of the Site Development (Site Plan Control) Application.

## **7 Overview of Adjacent Development Applications, Minor Variance Approvals and Legal Precedents**

This section of the letter provides an overview of adjacent development applications, similar approved minor variance applications in the City of Vaughan and precedents that relate to the four tests under the *Planning Act*. The intent of this section is to provide context to existing and planned built form (i.e., building type, form, and height), as well as instances within the City of Vaughan and under the *Planning Act* where applications for height variances and other performance standards, such as additional dwelling units were supported by the municipality and favorable decisions were received by the Committee of Adjustment.

### **7.1 Block 'B' Dulcina (9000 Jane Street) – City File Numbers: A144/21 & DA.19.084**

This site forms part of the subject property and is subject to site-specific By-law 033-2019. A Minor Variance Application Approval was granted from the City of Vaughan Committee of Adjustment for

an increase in geodetic height (from 91.5 metres to 92.95 metres) and an increase in residential dwelling units (from 1,125 to 1,152). The application was accompanied by a letter prepared by the law firm of McMillan LLP, dated May 11, 2020, supporting the proposed variances.

A Staff Report was prepared by Planning Staff in support of the Minor Variance Application, and outlined no objections from internal commenting departments, including Development Engineering. The Staff Report recommended approval and identified that the application met the four tests.

7.2 Rutherford Land Development Corp. (2901 Rutherford Road) – OLT File Number: PL140154 – City File Numbers: DA.19.010, OP.06.028 and Z.06.075

This development is located on the southeast corner of Rutherford Road and Jane Street and is subject to a LPAT approval granting permissions for a transit-supportive mixed-use development with three residential towers measuring 30-storeys, 27-storeys, and 26-storeys. A Site Plan Control Application is being reviewed by City of Vaughan Staff.

These lands are afforded the following designations and characteristics in the Vaughan Mills Centre Secondary Plan:

- Located within the *Jane Street Corridor* under Schedule A: Plan Area;
  - The subject property is also within this corridor;
- Designated *High-Rise Mixed-Use* under Schedule B: Height and Density;
  - The subject property affords the same land use designation under the Secondary Plan;
- Identified as Block b4 with reference to site-specific zoning approvals for a maximum of 30-storeys.

These lands lend an example to the proposed development on the subject property and for building heights exceeding 28-storeys in the Secondary Plan Area and adjacent to existing and future transit infrastructure. It is our opinion that based on similar land use designations and characteristics, that an increase in height on the subject property to 29-storeys is suitable seeing as heights of 30-storeys are permitted as-of-right on Block b4 lands within the Secondary Plan policy framework.

7.3 Eastwood Holdings Corp. – Balleria 2 (9291 Jane Street) – City Files: OP.20.017 and Z.20.044 – OLT File Number: PL210333/PL210334

This site is located at 9291 Jane Street, which is on the east side of Jane Street north of Rutherford Road. It is adjacent to existing high-rise residential buildings directly to the south, consisting of 16 and 17-storeys in height. The proposal is outside of the Secondary Plan Area; however, contemplates two 36-storey storey buildings near the subject property. The planning applications are currently under review by Staff and have since been appealed to the OLT.

A planning justification report was included as part of the documents in support of the proposed development at 36-storeys. This site is an example of the emerging and realized development trends in the community both within and in proximity of the Vaughan Mills Centre Secondary Plan, as well as, within a Major Transit Station Area.

The above applications demonstrate that the proposed variances, in particular, an increase in height is supportable within the neighbourhood context, and that the proposed development maintains the general intent and purpose of the Official Plan, as it does not deviate or deploy greatly from approved heights in proximity of the subject property.

#### 7.4 – Legal Precedents for Minor Variance Applications

In addition to this Planning Justification letter, we are also attaching a letter dated May 2020 prepared by our client's legal representative Mary Flynn-Guglietti of McMillan LLP for consideration. Ms. Flynn-Guglietti's letter provides her legal opinion regarding the application of the four tests under section 45(1) of the *Planning Act* with respect to the four variances being requested for the Charisma site. The analysis reviews the variances requested and relevant case law regarding the four tests. Ms. Flynn-Guglietti's letter, together with this Planning Justification letter should be read together in support of the variances we are seeking.

### **8 Land Use Planning Framework**

This section provides an overview of the land use planning policy and regulatory framework applicable to the subject property and the proposed development on the subject property. The following planning documents are referenced in this section of the letter:

- *Planning Act, R.S.O. 1990, c. P.13, as amended;*
- Provincial Policy Statement (2020);
- Growth Plan for the Greater Golden Horseshoe, 2020;
- York Region Official Plan (2022);
- City of Vaughan Official Plan, (2010); and,
- City of Vaughan Zoning By-law 1-88, Site-Specific By-law 033-2019.

#### 8.1 *Planning Act, R.S.O. 1990, c. P.13*

As identified in this letter, we are seeking approval from the City of Vaughan's Committee of Adjustment to permit minor variances to site-specific zoning by-law 033-2019. For the Committee of Adjustment to permit a variance they must be satisfied that the tests in *Subsection 45(1)* of the *Planning Act* have been satisfied. The tests in *Subsection 45(1)* of the *Planning Act* are as follows:

1. *The variances maintain the general intent and purpose of the Official Plan;*
2. *The variances maintain the general intent and purpose of the Zoning by-law;*
3. *The variance must be desirable for the appropriate development or use of the lot; and*
4. *The variances must be minor.*

The former sections of this letter provide a brief overview of how the modification to the approved development on the subject property can be facilitated through a Minor Variance Application to the City of Vaughan's Committee of Adjustment.

### 8.2 Growth Plan for the Greater Golden Horseshoe, 2020

The Growth Plan for the Greater Golden Horseshoe (the "Growth Plan") provides policy direction to support the development of strong, prosperous communities and to assist in the management of future growth. The subject lands are located within the designated Built-Up Area of the Growth Plan and is identified as a Strategic Growth Area, due to its proximity to planned rapid transit within the Vaughan Mills Centre Secondary Plan. The Minister of Municipal Affairs and Housing recently approved the 2022 York Regional Official Plan, which identifies the subject property as being within the *Vaughan Mills BRT Station Major Transit Station Area (MTSA)*.

The City of Vaughan has delineated the Vaughan Mills MTSA to guide the development of a transit-supportive community. Policy 2.2.4.3 of the Growth Plan plans for minimum density targets of 160 residents and jobs combined per hectare for areas supported and served by bus rapid transit and 200 residents and jobs per hectare for areas supported and served by subway service.

The Growth Plan defines *Transit-supportive* as *relating to development that makes transit viable and improves the quality of experience of using transit. It often refers to compact, mixed-use development that has a high level of employment and residential densities.*

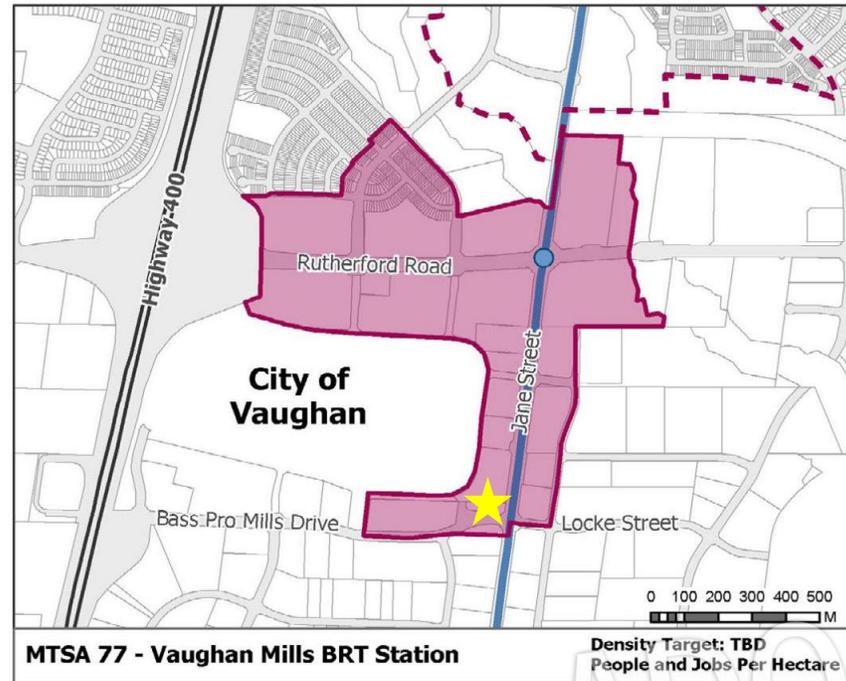
The Vaughan Mills MTSA is an area with existing and planned municipal infrastructure that can accommodate future growth and intensification through the development of higher-density mixed uses in a more compact built form. The proposed modifications for the redevelopment of the subject property, is in line with the Growth Plan's objective to support the creation of complete communities, through the provision of a range of public services within an existing community. The subject property is located within a Secondary Plan Area that is centred around Vaughan Mills Mall, a landmark, super-regional mall, and destination, which is anticipated to accommodate growth through redevelopment and intensification and is planned to attract reinvestment in rapid transit infrastructure. The proposed development and increase in height and GFA are appropriate for a planned MTSA, will support the viability of the surrounding mixed-use and commercial land uses, and will contribute to viability of Vaughan Mills Centre as a destination and landmark.

### 8.3 York Region Official Plan (YROP)

York Regional Council approved the new York Region Official Plan (YROP) in July 2022 and received Minister approval on November 4, 2022.

The subject property is located within the *Urban Area*, in accordance with Map 1 – Regional Structure, within the *Community Area*, in accordance with Map 1A – Land Use Designations, within the *Built-Up Area* and within a *Major Transit Station Area*, in accordance with Map 1B – Urban System Overlay of the YROP. In addition, the subject property is located within a Rapid Transit Network, in close proximity to an *Existing Bus Terminal*, on a *Rapid Transit Corridor* and planned

to be supported by future *Subway Service subject to further study*, as indicated on Map 10 – Rapid Transit Network. Appendix 2 – York Region Major Transit Station Areas (MTSAs) depicts the subject property as being within MTSA 77 – the Vaughan Mills BRT Station (refer to Figure 3 below for MTSA 77 – Vaughan Mills BRT Station).



**Figure 3 – MTSA 77 (Vaughan Mills BRT Station) and the Subject Property**

As identified in Map 10 of the YROP, the intersection of Jane Street and Rutherford Road are planned for future subway transit, which will service the subject property and the planned development within the City of Vaughan’s Vaughan Mills Centre Secondary Plan Area.

The YROP identifies that *the primary location for growth and development within the Region takes place within the Urban System, which includes [Community Areas]* (Policy 4.1.1). It states that the development to accommodate population and employment growth that is forecasted for the Region and its municipalities to the planning horizon of 2051 will occur mainly and within *strategic growth areas*, which include *subway station major transit station areas* and *other major transit station areas* (Policy 4.1.3.a). The subject property is located within a *strategic growth area* and the proposed increase in GFA and height are appropriate to support the Region’s policy framework.

Policy 4.1.3 of the YROP identifies that *strategic growth areas will attract the majority of development and contain a mix of uses, with densities (highest to lowest) based on the following hierarchy: Regional Centres, Subway station major transit station areas, Other major transit station areas, Regional Corridors outside of major transit station areas, and Local centres and corridors*. The YROP identifies that *Community Areas are where the majority of residents, retail, arts, culture, recreational facilities, and human service’s needs, will be located* (Policy 4.2.1). *Community Areas shall contain a wide range and mix of housing types, sizes, tenures that include options that are*

*affordable to residents of all stages of life [and] require that local municipal official plans and zoning by-laws implement this mix and range of housing consistent with other Regional forecasts, intensification and density targets and the objectives of the Plan (Policy 4.2.2).*

The YROP identifies that *strategic growth areas be the primary locations for concentration of high density and mixed-use development in the Region (Policy 4.4.3), that local municipal official plans, secondary plans, or other comprehensive plans, and development contemplated within strategic growth areas, shall grow consistent with:*

- a. *the Regional intensification hierarchy outlined in policy 4.1.3;*
- b. *existing and/or planned transit identified on Map 10 of [the] Plan;*
- c. *water, water-wastewater, and road infrastructure capacities;*
- d. *the provision of/access to local parks, schools, and other social, cultural, and commercial services (Policy 4.4.5).*

The YROP identifies that *local municipalities shall identify minimum and maximum density and height targets for strategic growth areas in a manner that is consistent with Regional and local intensification hierarchies (Policy 4.4.12), that development within strategic growth areas be of an urban form and design that is compact, accessible, mixed-use, oriented to the street, pedestrian- and cyclist friendly and transit supportive (Policy 4.4.18).*

Policy 4.4.38 of the YROP states that *the built form and scale of development within major transit station areas shall further support and implement the Regional intensification hierarchy...in accordance with the intensification level determined by the minimum density targets in Appendix 2.* It is noted here that the Region has not yet established a minimum density target for MTSA 77 in Appendix 2 of the YROP.

Chapter 6 of the YROP identifies goals, objectives and a policy framework that aims to coordinate the provision of services with the city and community building policies of the Plan. The policies in this section *support and implement the long-term vision of the York Region Transportation, and Water Wastewater Master Plans, Long-Term Conservation Strategy, and the Solid Waste Strategy (SMART Living Plan).* As identified in this letter, the Region was satisfied with the March 2020 Transportation Impact Study prepared by Paradigm Transportation Solution Limited and have initiated the removal of the Holding Symbol as it relates to the transportation demand matters. Enclosed with this letter is a Transportation Impact Study (TIS) Addendum, dated June 23, 2022, in response to Vaughan Staff's comments in support of the modified development proposal for Block 'C'. comments. In addition, a Transportation Reliance Letter prepared by Paradigm, dated January 12, 2023, in support of the modified development proposal is enclosed with the minor variance application.

The YROP plans and supports the growth and intensification of the Vaughan Mills Centre Secondary Plan Area, which is anchored by a super-regional mall, existing transit services and planned BRT/future subway service and municipal infrastructure. It provides a land use planning policy framework that is supportive of the modified development proposal and the development of high-density mixed-use and compact built form.

8.4 Vaughan Official Plan (VOP), Volumes 1 and 2, 2010 (Office Consolidation December 2020)

Volumes 1 and 2 of the Vaughan Official Plan (VOP) apply to the subject property. Volume 1 contains policies that apply City-wide, whereby, Volume 2 contains policies that apply to Secondary Plans and Site/Area- Specific policies (1.7).

8.4.1 VOP, Volume 1

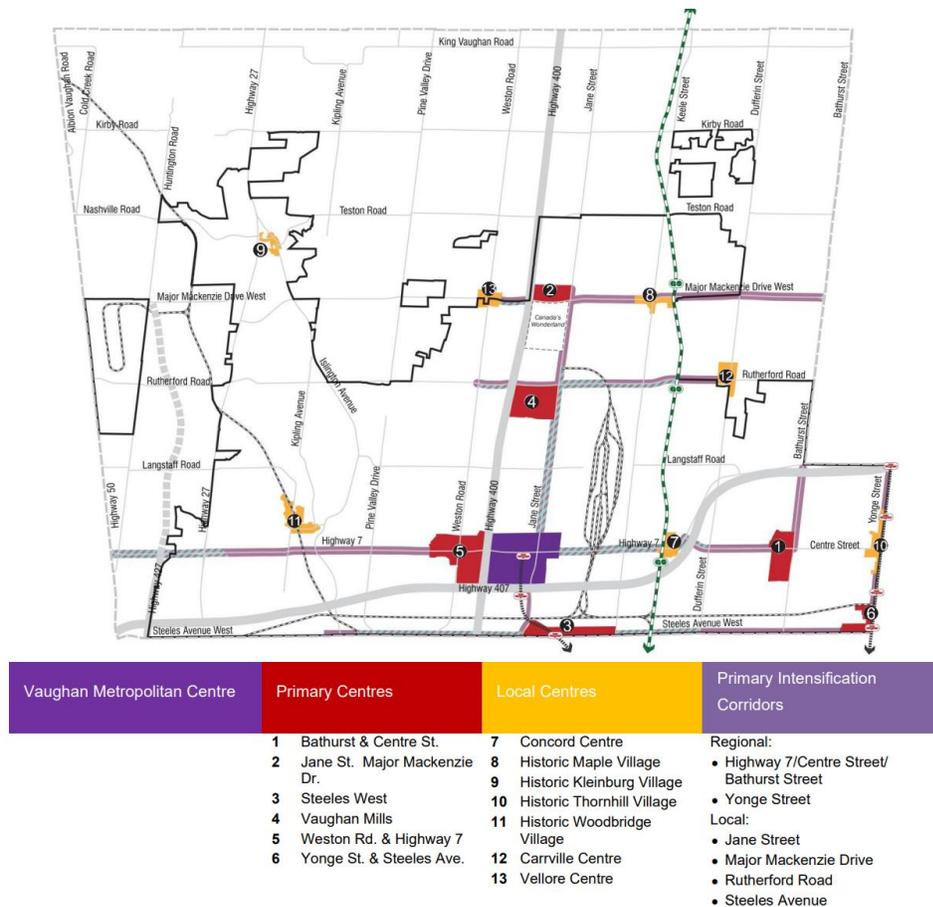
The following section provides an overview of the applicable Volume 1 policies to the modified development proposal on the subject property.

Intensification Areas & Primary Centres

Schedule 1 – Urban Structure in Volume 1 of the Vaughan Official Plan (VOP) designates the subject property as *Intensification Area – Primary Centre* (refer to Figure 4 of this letter for Figure 6 of the VOP, which depicts the *Vaughan Mills Primary Centre* and other Intensification Areas within the City).

Schedule 1 of the VOP establishes a hierarchy of *Intensification Areas* that range in height and intensity of use. *Primary Centres* are identified as *locations for intensification accommodated in the form of predominately mixed-use high- and mid-rise buildings, development at an intensity supportive of transit (2.2.1.1.d.iii)*. *Intensification Areas will be the primary locations for the accommodation of growth and the greatest mix of uses, heights and densities in accordance with the prescribed hierarchy established in the VOP (2.2.1.2)*. Overall, *Intensification Areas have been established to make efficient use of underutilized sites served with a high-level of existing or planned transit. They will be developed with a mix of uses and appropriate densities to support transit use and promote walking and cycling (2.2.5)*.

The subject property is within the Vaughan Mills Primary Centre as identified in Figure 5 (Figure 6 of the VOP) and displays Vaughan Mills Primary Centre as affording direct connection to *Vaughan Metropolitan Centre*, the City's downtown with existing subway service via a *Primary Intensification Corridor* (Jane Street).



**Figure 5 – Figure 6 of the VOP – Intensification Areas**

Primary Centres are planned to evolve as distinct places of major activity around planned subway stations and existing regional shopping centres [and] will become mixed-use areas with residential development as well as a wide range of other uses that will service the residents of the Primary Centre, the surrounding Community Areas, and the city, including retail uses, institutional uses, office uses, community facilities and human services. They will be designed as transit-friendly places.

Policy 2.2.5.6 identifies that *Primary Centres shall be planned to:*

- develop with a mix of housing types and tenures, including housing suitable for seniors and families with children and affordable housing;*
- include a mix of non-residential uses including retail, office, institutional, community facilities, and human services intended to serve both the local population and the city, and attract activity throughout the day;*
- develop at densities supportive of planned public transit;*
- have a fine grain of streets suitable for pedestrians and cyclists, with appropriate internal links and links to the surrounding Community Areas which may take the form of sidewalks and/or greenways;*

- e. *include well designed public open spaces that are either landscaped parks, or public plazas or both in a manner that is appropriate to the local context;*
- f. *encourage a pedestrian-friendly built form by locating active uses at grade; and*
- g. *be designed and developed to implement appropriate transition of intensity and use to surrounding Community Areas, and/or separation from adjacent Employment Areas.*

Policy 5.2.3.9 identifies the following regarding *Intensification Areas*:

*Intensification Areas have been designed to fulfill a specific role in the City's structural hierarchy. Consisting of centres and corridors, shown on Schedule 1, they are intended to be the primary locations for accommodating the City's 45% residential intensification target. Intensification Areas, as described in Policy 2.2.5 of this Plan, provide for mixed-use development at a range of higher densities, primarily in recognition of their location adjacent to planned and existing rapid transit facilities. Achieving the desired densities and mix of uses requires the use of transit supportive development forms and the avoidance of land consumptive development forms. A main goal is to take advantage of major public investments in rapid transit services and promote more sustainable development by shifting the transportation modal split toward transit. General design criteria for Intensification Areas are set out in Policies 9.1.2.7 and 9.1.2.9. More detailed guidance may be provided by individual secondary plans or site or area specific amendments in Volume 2 of this Plan, which respond to the conditions of the individual Intensification Area.*

The modified development proposal meets the policy framework within the VOP for Primary Centres and Intensification Areas as it is planned to contribute to the planned contexts within these designations, including being planned as a transit-supportive and compact built-form.

#### *Transit-Oriented Development*

Schedule 10 – Major Transit Network of the VOP identifies Jane Street as a *Regional Rapid Transit Corridor* and *Conceptual Subway Extension*.

The VOP supports a comprehensive transit system and identifies that *high quality and convenient transit service will be the primary means for expanding Vaughan's transportation network capacity [and that] land uses and transportation are interrelated. Vaughan's future growth and intensification will be dependent on transportation capacity increases [and] Intensification Areas must be supported by efficient and effective transit to serve the expected population increases. The VOP encourages that higher density development should be directed to areas well-served by transit, and all areas of the City should be developed with a street pattern and densities that support transit use (4.2.2).*

The VOP identifies transit-oriented development as a priority for the City's growth and intensification and outlines the following policy directives:

- 1.2.2.13 *That the highest intensity uses be planned so that they are directed to areas served by higher-order transit, including subway stations and Viva bus rapid transit corridors, in accordance with Chapter 2 of this Plan and the York Region Official Plan, which set out the appropriate development hierarchy. Higher-order transit investments that serve the Intensification Areas should be prioritized in order to meet the mobility needs of these high-intensity growth areas.*
- 1.2.2.14 *To encourage the provision of transit service within five hundred metres of at least 90% of residences and the majority of jobs, and consistent with approved YRT service standards and guidelines, and within 200 metres of at least 50% of residents in the Urban Area.*
- 1.2.2.15 *To direct major trip-generators, institutional uses and generally intensive land uses to Intensification Areas in order to promote increased transit mobility for all residents and particularly those that are dependent on transit.*
- 1.2.2.16 *To utilize the York Region Transit-Oriented Development Guidelines, and Provincial Transit Supportive Land Use Guidelines, in the review and evaluation of development applications and related studies.*
- 1.2.2.17 *To develop complete pedestrian and bicycle networks and associated facilities in and around transit stops to encourage transit use and extend the catchment area of the transit stops.*
- 4.2.2.20 *That all new development applications are required to prepare a mobility plan and identify the proposal's approach to transit as per the complete application submission requirements as contained in subsection 10.1.3 of this Plan.*

The modified proposed development further supports the City's transit-oriented and transit-supportive development and policy objectives by offering high-density mixed-use and compact built form along an existing *Regional Rapid Transit Corridor* (Jane Street) and a future subway line (extension of the Spadina Subway from the VMC to Vaughan Mills Centre) identified as a *Conceptual Subway Extension* on Map 10 of the VOP.

The proposed development is designed as a compact built-form that is transit-oriented and supportive of existing and planned transit in the Vaughan Mills Centre Secondary Plan and within the City of Vaughan. The type of development that is proposed on the subject property is encouraged and meets the general intent and purpose of the planned context and supports the long-term vision for the City of Vaughan and region.

### Municipal Services, Utilities & Infrastructure

The subject property is in an area that is planned for growth and intensification, as well as future rapid transit infrastructure improvements.

Policy 8.1.1.6 of the VOP directs that *development will proceed in concert with the provision of infrastructure as determined by York Region and Vaughan Infrastructure master plans and appropriate phasing, including the identification of infrastructure triggers that will be established through the secondary and block plan processes as detailed in subsection 10.1.1 of [the Regional] Plan.*

Policy 8.1.1.7 of the VOP plans *to ensure delivery and planning of infrastructure is coordinated, through the master planning process, with the growth management objectives of this Plan and the Regional Official Plan in terms of Intensification, phasing of new communities and completion of existing communities.*

The Functional Servicing and Stormwater Management Report prepared by Counterpoint Engineering identifies that the existing infrastructure for storm, sanitary and water can support all aspects of the proposed development.

### Urban Design and Built Form

Section 9.1.2 of the VOP sets out the intentions and expectations for how building should be developed in different parts of the City of Vaughan. The following provides an overview of the urban design and built form policies that apply to *Intensification Areas* and whereby generally apply to the proposed development on the subject property:

9.1.2.7 *That in Intensification Areas, new development will be designed to:*

- a. *have buildings front onto a public street with generally consistent setbacks and built form along sidewalks;*
- b. *locate main building entrances so that they are clearly visible and directly accessible from the public sidewalk;*
- c. *provide active ground floor uses and avoid blank facades;*
- d. *mass new buildings to frame adjacent streets in a way that respects the existing or planned street width but also provides for a pedestrian-scaled environment;*
- e. *create appropriate transitions in scale to areas of lower intensity while fulfilling the intensification objections for the Intensification Areas;*
- f. *provide appropriate parks and open spaces as set out in Section 7.3;*
- g. *provide for adequate light and privacy for occupants of the new development and for occupants of adjacent properties;*
- h. *adequately limit shadow and/or wind impacts on neighbouring properties or public realm areas as demonstrated through the submission of the appropriate studies;*

- i. provide appropriate indoor and outdoor amenity space for the occupants of the new development; and*
- j. contribute to an interesting and attractive skyline through architectural treatment and roof design.*

9.1.2.9 *That in Intensification Areas, new development will locate and organize vehicle parking, access, and service areas to minimize their impact on surrounding properties and the public realm by:*

- a. using shared service areas where possible within blocks, including public and private lanes, driveways, and service courts;*
- b. consolidating and minimizing the width of driveways and curb cuts across public sidewalks;*
- c. providing vehicle service areas within buildings where possible;*
- d. providing underground parking where appropriate;*
- e. prohibiting surface parking between the front face of a building and the public sidewalk, except in the case of gas stations;*
- f. ensuring that any surface parking areas are buffered and screened from all property lines through the use of setbacks and landscaping; and*
- g. where a structured parking facility fronts onto a street or public space, the parking structure on all levels, shall be fronted with active uses.*

The proposed development considers the applicable land use planning and urban design policy framework and is designed to maintain this policy framework. The detailed design will be further reviewed through the site plan review process.

#### *Land Use Designations and Permitted Building Types*

This Section provides an overview of the land uses designations and building typologies applicable to the subject property within the VOP. The policies within Section 9.2 of the VOP *form the primary mechanisms for achieving the growth management strategy set out in Chapter 2 and the various thematic policies set out in Chapters 3 through 8 of the Plan*. Notwithstanding Schedule 13 – Land Use identifying that the subject property is within the *Vaughan Mills Centre Secondary Plan* per Schedule 14A – Areas Subject to Secondary Plan of the VOP, the policy framework set out in Chapter 9 of Volume 1 of the VOP referencing land use designations and permitted building types should be relied upon generally as it relates to building typologies, general height, and density permissions and for general development and built form criteria.

The following policies in Section 9.2.1 of Volume 1 of the VOP apply to the subject property

9.2.1.2 *The development criteria for various building types are set out in subsection 9.2.3. Any variations from the policies in subsection 9.2.3, shall, to the satisfaction of the City, be minor and shall respond to unique conditions or context of a site. Such variations, with the exception of variations to height and or density, will not require an amendment to this Plan provided that they are supported through an Urban*

*Design Brief that has been prepared to the satisfaction of the city. Detailed development standards to implement the policies set out in subsection 9.2.3 will be provided through the City's Zoning By-law.*

- 9.2.1.6 *The heights and densities indicated on Schedule 13 are independent maximums in that one maximum may be achieved without achieving the other. Any proposed amendment to the Official Plan to increase the maximum height or density provisions will be evaluated on its merits based on an analysis of the site-specific conditions and development context of the application.*

As reviewed and discussed with City staff, the policy framework within Volume 1 of the VOP allows for minor modifications to this development proposal through the Committee of Adjustment without the need for an amendment to the Official Plan for increases in heights or densities by way of an evaluation of merits based on an analysis of the site-specific conditions and development context of the application (9.2.1.6).

- 9.2.1.7. *Where no height or floor space index is indicated on Schedule 13, the maximum height and density shall be established through a Secondary Plan or Area Specific Policy as contained in Volume 2 of this Plan, where such a Secondary Plan or Area Specific Policy exists, or through the application of the various policies of this Plan.*

As identified above, the height and densities applicable to the subject property are established through the Vaughan Mills Centre Secondary Plan in Volume 2 of the VOP. The Volume 1 and Volume 2 policies should be read concurrently to establish and assess the general policy framework and planning merits to support a minor variation from the originally approved high-rise mixed-use development on the subject property. The proposed modifications and development can be facilitated through a Minor Variance Application to the City of Vaughan's Committee of Adjustment, as reviewed and discussed with City Staff.

#### Implementation and Interpretation

This Section of the letter provides an overview of the implementation policies applicable to the subject property and proposed development.

- 10.1.1.7 *That, where a Secondary Plan has been prepared, to provide a context for coordinated development, and to demonstrate conformity with the policies of the Secondary Plan, each development application, in particular those applications intended to develop over a number of phases, shall include a Development Concept Report, providing a detailed description of the proposed development, and the manner in which it addresses the policies of the Secondary Plan. The Development Concept Report may form part of the justification for a development application as determined through a pre-consultation meeting with the Planning Department and address [matters a. through v. in policy 10.1.1.7 in Volume 1 of the VOP].*

- 10.1.1.8 *That, in evaluating development applications throughout the Secondary Plan Area, the City shall consider [criteria a. through j. in policy 10.1.1.8 in Volume 1 of the VOP].*
- 10.1.1.10 *That, within each block of the Secondary Plan, development applications should coordinate neighbouring development proposals in a mutually complementary fashion. Non-participating lands in the block shall be shown conceptually in the Development Concept Report and Phasing Plan.*
- 10.1.1.11 *Phases are to be based upon the existence of, or commitment to construct, the following infrastructure elements, where applicable:*
- a. components of the local and primary road network;*
  - b. bus-rapid transit;*
  - c. subway; and*
  - d. public and community services.*

Section 10.2.1 of the Official Plan identifies that the *Official Plan is to be read in its entirety and all policies are to be considered and balanced in its implementation* (Policy 10.2.1.1). Policy 10.2.1.8 states the following:

*Lands subject to policies found in Volume 2 of this Plan are identified on Schedule 14. For the purposes of this Plan, references to Schedule 14 include Schedules 14-A through 14-C, inclusive. Volume 2 policies are derived from area-specific land-use planning studies or from the processing of specific development applications and, as such, provide more specific direction than found in Volume 1 policies. Where the policies of Volume 1 of this Plan conflict with policies in Volume 2 of this Plan, the Volume 2 policies shall prevail.*

#### 8.4.2 – Volume 2 – Vaughan Mills Centre Secondary Plan (VMCSP), OPA#2 – November 2020

The subject property is located within the Vaughan Mills Centre Secondary Plan (VMCS). Schedule A: Plan Area identifies the subject property as being within the *Jane Street Corridor*. Schedule C: Land Use Designations designates the subject property as *High-Rise Mixed-Use*. Schedule I: Development Blocks designates the subject property as Block b7(b).

#### *Jane Street Corridor (Section 1.4.1 of VOP Volume 2)*

The following provides an overview for the vision of the *Jane Street Corridor* per the VMCS:

- *The Jane Street Corridor includes lands within the Jane Street and Rutherford Road intersection and lands fronting along the Jane Street Corridor between Locke Street and Rutherford Road. The Jane Street and Rutherford Road area plays an important role as a*

*transportation node, as well as an employment and mixed-use commercial corridor in the city. The area is in transition and is part of a chain of major redevelopment currently planned such as the proposed Hospital redevelopment area to the north (Jane Street and Major Mackenzie Drive) and the Vaughan Metropolitan Centre to the south (Jane Street and Highway 7). This area provides an opportunity for intensification along with future higher-order transit in coordination with other planned development along Jane Street.*

- *The overall vision for the area is towards achieving a higher density mixed use neighbourhood supported by high order transit that is served by accessible open space and parks, pedestrian connections, community services, and an enhanced pedestrian realm.*
- *The Jane Street Corridor is proposed to become a key destination and gateway within the emerging Vaughan Mills Centre. The Jane Street Corridor will be urban in nature, reflecting its function as a regional point of attraction and transit-oriented development.*

The proposed development and variances maintain the intent and purpose of the Official Plan and is in line with the City's vision of the Jane Street Corridor.

#### High-Rise Mixed-Use (Section 3.6.1 of VOP Volume 2)

*The VMCS identifies that the High-Rise Mixed-Use designation is intended to provide for the creation of a connected urban block structure adjacent to the main arterial corridors surrounding the Vaughan Mills Mall area including Jane Street and Rutherford Road, in a higher density and mixed-use development form that is pedestrian and transit oriented. The highest densities will be focused along the Jane Street and Rutherford Road intersection and along Jane Street to benefit from existing transit, and future high-order transit facilities anticipated for these areas.*

The proposed variances maintain the intent and purpose of the Official Plan and is in line with the planned context for lands designated High-Rise Mixed-Use. Furthermore, the planned subway station and bus rapid transit infrastructure provides a context that supports greater intensification and increased heights and density in proximity of this infrastructure.

#### Built Form (Section 3.8 of VOP Volume 2)

Section 3.8 of the Secondary Plan prescribes Built Form policies that *define the parameters of a desired built environment in Vaughan Mills Centre (3.8.1)*. Consideration of the following shall be given in planning applications:

- *The built form policies of this Plan define the desired future character and function of the built environment including height and massing, parking and movement, and landscaping in contributing to a pedestrian-oriented environment. The intent is to ensure that new buildings reinforce a coherent, harmonious, and appealing urban environment, as well as contribute to the enhancement of the public realm according to the following built form criteria.*

The City of Vaughan and other approval agencies are currently reviewing a Site Plan Control Application (DA.20.060) for the development of the Block 'C' lands.

Interpretation (Section 4.0 of VOP Volume 2)

The following policies under Section 4 of the VMCS are applicable to the subject property and proposed development:

- 4.1 *This Secondary Plan is a statement of policy intended to guide the development of the Vaughan Mills Centre Secondary Plan area. A degree of flexibility in interpretation is permitted, provided the intent of the principles and policies of this Plan are maintained at the sole discretion of the City of Vaughan.*
- 4.4 *That where policies of this Plan contain numerical standards, minor variations from those standards may be permitted without amendment to this Plan, with the exception of any variations to floor space index, height or environmental standards set out in Chapter 3 of VOP 2010, provided that such variations respond to unique conditions or context of a site and are supported through a Planning Justification Report and/or Urban Design Brief to the satisfaction of the City.*

The proposed development follows the guiding principles and conforms to the general intent and purpose, and standards set out in the Vaughan Mills Centre Secondary Plan. It is acknowledged that any variations to the maximum or minimum standards within the Secondary Plan can be achieved without an amendment at the discretion of the City of Vaughan, whereby the intent of the principles and policies of the Secondary Plan are maintained. A planning justification report that speaks to the merits of the proposed development from the perspective of good land use planning and urban design principles will be submitted to the Committee of Adjustment as part of the Minor Variance Application.

18.1 – Special Provisions Governing the Development of Block B7(b)

Schedule I: Development Blocks identifies the subject property as Block B7(b). The Secondary Plan identifies specific policies and special provisions under Section 18 that outline development provisions and requirements applicable to the subject property. The following special policies in Section 18.2 of the Secondary Plan govern the development of Block B7b (the subject property):

- a) *the subject lands shall be developed in two phases that correspond with the Horizons outlined in Table 2 "Transportation Network Improvements", subject to the delivery of infrastructure identified in Policy 7.4.1 (Part C) pertaining to Block 8 and Blocks 7 and 8 in accordance with site specific policies which follow. **The boundaries of the Phase 1 and Phase 2 areas will be confirmed in the implementing zoning by-law or any amendment thereto. Development within each Phase may be staged through a site development application(s) in a manner satisfactory to the City and York Region.***
- b) *A by-law may be passed under Section 34 of the Planning Act authorizing increases in heights or densities above those permitted in Schedule B: Heights and Densities" of this*

*Secondary Plan in accordance with Policies 18.2 c) and d), subject to the application of Section 37 of the Planning Act, as specified in Policy 9.0 (Part C) of this Secondary Plan, and provided that the use of the Subject Lands shall be subject to the removal of a Holding Symbol ("H") in accordance with Policy 10.3 (Part C) of this Secondary Plan and the policies contained in this Policy 18.2.*

- c) Notwithstanding the heights permitted in Schedule B of this Secondary Plan, a by-law may be passed under Section 34 of the Planning Act to increase the average height for development in Block B7(b) to be approximately twenty-six storeys. Individual building heights shall be prescribed in the zoning by-law, and no individual building shall exceed a maximum height of twenty-eight storeys.*
- d) Notwithstanding the maximum densities permitted in Schedule B of this Secondary Plan, a by-law may be passed under Section 34 of the Planning Act to increase the permitted density (FSI) to permit the phased development of a total maximum Gross Floor Area of 131,702 m<sup>2</sup> (consisting of 128,962 m<sup>2</sup> of residential GFA and 2,740 m<sup>2</sup> of non-residential GFA) for Phase 1 and Phase 2 within the Subject Lands, provided that the maximum number of residential units permitted shall not exceed 1125 residential units in Phase 1; and 342 residential units in Phase 2.*
- e) The removal of the Holding Symbol ("H") may be staged within each Phase, which is set out in the implementing Zoning By-law, to the satisfaction of the City and York Region.*

The policies that apply to the removal of the Holding Symbol ("H") for the development of Phases 1 and 2 are enclosed with this letter in By-law 033-2019. Also enclosed with this letter is an email from Region of York Transportation and Infrastructure Planning, Transportation Services Staff identifying satisfaction with the transportation materials and initiation for the removal of the Holding Symbol ("H") for the Phase 2 Lands (Block 'C').

The variances that are sought from the Committee of Adjustment to facilitate the modified development proposal request minor variation to the following site-specific policies and provisions on Block 'C' (Phase 2 Lands):

1. An increase to the proposed building height in both, storeys, and geodetic height for Building 'C' in Block 'C' on the Phase 2 Lands from 91.50 metres to 95.0 metres;
2. An increase to the total maximum permitted Gross Floor Area (GFA) for the subject property (Phase 1 and 2 Lands) from 131,702 square metres to 132,788 square metres; and,
3. An increase to the total maximum permitted Residential Gross Floor Area (GFA) for the subject lands (Phase 1 and 2 Lands) from 128,962 square metres to 131,242 square metres.

### 8.5 City of Vaughan Zoning By-laws

A Zoning By-law Amendment permitting the development of a high-rise mixed-use community was approved by the Local Planning Appeal Tribunal (LPAT) and enacted by Vaughan City Council on March 19, 2019. By-law 033-2019, which outlines the site-specific provisions, holding provisions and details of the approvals, is enclosed with this letter.

The subject property is zoned RA3(H) – Apartment Residential Zone with a Holding Symbol and contains a portion zoned OS2 – Open Space Park Zone. The OS2 portion of the subject property is to be dedicated to the City of Vaughan for the development of a public park.

The site-specific by-law contains a concept plan within Schedule ‘two’ of the By-law, which identifies the location of three blocks with five high-rise buildings and phasing lines. The Schedule was approved by the LPAT alongside the site-specific zoning by-law. Table 1 of this letter identifies the specific provisions of the By-law that is being varied.

Vaughan Council has enacted By-law 001-2021, the Comprehensive Zoning By-law on October 20, 2021. The subject property is zoned “RM2(H) - Multiple Unit Residential Zone” subject to exception 570 by Zoning By-law 001-2021. The owners of the subject property have appealed Comprehensive Zoning By-law 001-2021 to the Ontario Land Tribunal (OLT).

The modified proposal maintains the general intent and purpose of the approved site-specific zoning by-law. The variations between the current proposal and previously approved proposal are minor, which is described in further detail in Section 9.0 of this letter.

## **9.0 Tests for Minor Variance**

The *Planning Act* sets out the legal framework that governs the consideration of Minor Variance applications. Section 45 of the *Act* authorizes the Committee of Adjustment to make decisions regarding Minor Variance Applications. Pursuant to Section 45(1) of the *Planning Act*, a minor variance must satisfy the following tests:

- The variance requested maintains the general intent and purpose of the Official Plan;
- The variance requested maintains the general intent and purpose of the Zoning By-law;
- The variance is desirable for the appropriate use of the land; and,
- The variance is minor in nature.

### ***1. Maintains the General Intent and Purpose of the Official Plan***

The newly approved YROP designates the subject property as *Urban Area* and the designates the subject property as *Community Area* and is located within a *Major Transit Station (Vaughan Mills BRT MTSA)* associated with bus rapid transit and planned subway transit infrastructure. Urban Areas are intended to accommodate a significant portion of planned growth, and it is the Region’s objective to enhance Urban Areas through city building, intensification, and compact and complete communities. The existing and planned municipal infrastructure, including transit infrastructure will support the proposed development of a high-density mixed-use compact community. The proposed development and additional building height and density is suitable for the location and planned context. The Region of York has provided sign-off on transportation infrastructure matters through the Site Plan Control Application process, is satisfied with the proposed development, and have provided clearance to initiate the removal of Holding Provisions for the Phase 2 Lands.

The City of Vaughan Official Plan (Volume 1) identifies the subject property as being within an *Intensification Area – Primary Centre* and along a *Regional Rapid Transit Corridor* and *Conceptual Subway Extension*. These designations plan for high-density, mixed-use, compact, and transit-supportive development. The proposed modification strives to meet the planned context and expectations within the VOP.

Section 3.8 of the Secondary Plan sets out the built form policy framework that defines the parameters for a desired future built environment in the Secondary Plan Area that is pedestrian friendly, transit oriented and that concentrates the highest densities in proximity of future higher-order facilities, which include subways and GO Transit stations and infrastructure.

Section 18.1 of the Vaughan Mills Centre Secondary Plan and the site-specific zoning by-law identify key provisions and policies that permits maximum Gross Floor Area (density), height, and other standards within the Phase 1 and 2 Lands. While the zoning by-law limits heights in both metres and storeys on a Block-by-Block basis on both Phases, the Secondary Plan only limits the height in storeys not geodetic height. It is noted here that there are two sites within the Secondary Plan Area that have approved and proposed building heights that exceed the maximum building height in the Volume 2 document, which consist of 26, 27 and 30-storeys approved via OP.06.028 and Z.06.075 and 36-storeys proposed via Z.20.044 and OP.20.017.

Section 4.4 in Part C of the VMCS Plan permits flexibility in the modification of policies and provisions, and states: *That where policies of this Plan contain numerical standards, minor variations from those standards may be permitted without amendment to this Plan, with the exception of any variations to floor space index, height or environmental standards set out in Chapter 3 of VOP 2010, provided that such variations respond to unique conditions or context of a site, and are supported through a Planning Justification Report and/or Urban Design Brief to the satisfaction of the City.*

The standards that are sought to be varied are: increases in building height (29-storeys, 95 metres from 28-storeys, 91.50 metres) for Block 'C', Phase 2 Lands, increase of total Gross Floor Area (132,788 square metres from 131,702 square metres) for the Phase 1 and 2 Lands, and an increase of total Residential Gross Floor Area (131,242 square metres from 128,962 square metres). Minor alterations to development thresholds are permitted without an amendment to the Secondary Plan through Section 7.7 of the VMCS Plan where servicing exists, stating, *Minor alterations to the development thresholds shall be permitted through agreements between the proponent of development and the City without amendment to this Secondary Plan, and shall ensure that the necessary servicing infrastructure and servicing capacity allocation for those uses are available, to the satisfaction of the City.* These modifications respond to the planned context of the Secondary Plan and VOP, Volume 1, including existing and planned servicing and transit infrastructure and development trends in the VMCS Plan Area, and as supported by the transportation and engineering studies prepared by Paradigm Transportation and Counterpoint Engineering.

The additional building height will further contribute to the high-density community that is planned for the subject property and the Vaughan Mills Centre Secondary Plan Area. The City of Vaughan

Volume 2 Official Plan provides policies for the Vaughan Mills Centre Secondary Plan Area, which encourages the highest mix and intensity of uses and activities in the City of Vaughan, secondary to the Vaughan Metropolitan Centre (Downtown Vaughan). The Secondary Plan Area is to consist of a mix of land uses, including commercial and office uses, and higher density residential uses, and for the creation of transit-oriented, transit-supportive, compact built-forms and complete communities.

The site-specific policies and special provisions permit a maximum of 28-storeys in height on the subject property (policy 18.1.c). The proposed development is in an area that is planned to accommodate and account for improvements in rapid transit infrastructure and mixed-use development. It is our opinion that the slight increase in height of the building on Block 'C' (Phase 2 Lands) from 28-storeys to 29-storeys generally maintains the intent and purpose of the Official Plan, as the proposed development contemplates a redistribution of the approved densities, reflects a high-rise mixed-use built-form, and does not offend the planned context of the VMCSPP. The policy language itself within the VMCSPP provides flexibility and permits variances before the Committee of Adjustment without the need for an amendment to the official plan.

It is also within the powers of the Committee of Adjustment to consider a minor variance application through the assessment of planning merits under Section 45(1) of the *Planning Act*. The test pursuant to Section 45(1) of the *Planning Act* does not require "specific" compliance with an Official Plan, only maintain general intent and purpose of the Official Plan.

Careful consideration has been applied to ensure that the proposed variances maintain the general intent and purpose of the land use policies in Volume 1 and Volume 2 of the VOP. The proposed development meets the general intent of the Official Plan by providing a slight increase in maximum and aggregate height and intensification consisting of slightly more GFA on the subject property in a context appropriate built form. The proposed variances respond to the planned context and will have no impact on the transportation capacity or servicing infrastructure, thus maintaining the general intent and purpose of the Official Plan.

## **2. Maintains the General Intent and Purpose of the Zoning By-law**

The subject property is subject to site-specific zoning by-law 033-2019 that was granted under Zoning By-law 1-88

The proposed height, residential GFA and re-orientation of the development phasing maintain the general intent of the Official Plan, allowing for the general intent and purpose of the Zoning By-law to be maintained, as follows:

### Maximum Height

The marginal increase from 28-storeys (91.50 metres) to 29-storeys (95 metres) will allow for the subject property and Secondary Plan to maintain its prominence as a destination and landmark, while reflecting an appropriate built-form that is designed to adapt to the existing and planned urban design and locational context. The proposed height of 29 storeys for the one building reflects

proposed and permitted heights within the Vaughan Mills Centre Secondary Plan and other areas with similar intensification hierarchies within the City of Vaughan. Building heights more than 30-storeys are approved and proposed within the VMCS Plan Area (i.e., OP.06.028 and Z.06.075 approved for 30-storey maximum building height and OP.20.017 and Z.20.044 proposed for 36-storey buildings). The floors that have contributed to the overall increase in height are levels 1 (lobby and amenity at 5.8 metres), 7 (amenity at 4.75 metres) and 29 (amenity at 5.165 metres). These levels are taller levels and are designed to provide quality space and are designed as either lobby or amenity spaces.

#### Increase in total and residential GFA

The applicable land use planning policies and regulations subject to the property encourages and permits mixed-use buildings with residential and non-residential uses. The slight increase in total GFA and residential GFA will contribute to viability of creating a complete community, one that offers existing and future residents essential services to meet their daily needs. The increase in Residential and Total GFA also strives to meet market demands within the Secondary Plan Area and the City of Vaughan. It is noted that the non-residential GFA is reduced and does not exceed the maximum permitted GFA under the site-specific policy framework. Furthermore, the proposal meets the minimum zoning requirements for parking and amenity space.

It is our opinion that the requested variances for additional building height, and an increase in total residential and total GFA maintains the general intent and purpose of the Zoning By-law. The increase in height provides for an appropriate building height in an area, which is reflective of similar planned and approved heights. The increase in height is appropriate as the property and area are planned to accommodate growth through intensification and will continually act as a destination and landmark in Vaughan, York Region and the GTA. The increase in Gross Floor Area from what was originally approved is an improvement that more closely aligns with land use planning policy, which encourages complete communities and live, work, play environments. Despite the increase in GFA, the proposed development can accommodate the demand for parking spaces and meets the minimum required parking space for visitors/non-residential uses, as prescribed in the site-specific Zoning By-law. The overall proposal does not propose to offend land use policies, existing approvals, and the applicable city-wide Zoning By-laws.

### ***3. Desirable for the Appropriate Development of the Land***

The proposed modifications to the development meet the general intent and purpose of both the Official Plan and Zoning By-law 033-2019. The following provides an overview of how the development is desirable for the appropriate development of the land:

- There has been several years between the approval of the conceptual plan and the final design of buildings through the site plan process. As such, it is not unusual for the refinement of the development to result in minor modifications to the original design in order to appropriately respond to the current planning context and market conditions. Thus, the requested variances are an extension of the entire planning approval process as we work towards site plan approval.

- A slight increase in GFA and height maintains the spirit and objectives of the approved development proposal and does not deviate from the conclusions of the planning approval process and is attributable to the finalization of the conceptual plan to the final design.
- The proposed variances are suitable to meet the planned context within the Vaughan Mills Centre Secondary Plan Area, including bus rapid transit and future subway transit infrastructure.
- The proposed variances will not have a negative or adverse impact. The increase in height from the maximum building height does not generate additional impact to shadows and existing / planned contexts and uses surrounding the proposed building. The increase of one storey is insignificant relative to the maximum permitted height for the subject property and the building heights approved in the surrounding area. The built-form continues to be proposed as a high-rise building and the addition of 1-storey does not generate an undesirable and inappropriate use of the lands.
- As a result of the increase in height, increases in total GFA and Residential GFA are also proposed. The design, composition and orientation of the building is not changing because of the increase in height or GFA, and the urban design principles and policies outlined in the Official Plan and Vaughan Mills Centre Secondary Plan are being maintained, including its high-rise-built form.

#### **4. Minor in Nature**

The proposed modifications to the development concept can be regarded as minor considering the degree of deviation from the zoning standards as well as the sense of proportion and its regard to the built and planned environment within the Vaughan Mills Centre Secondary Plan. It is our opinion that the planning objectives set out in the Official Plan, as well as By-law 033-2019 are being fulfilled. The proposed variances respond to the planned context and will have no impact on the transportation capacity, servicing infrastructure and strives to meet the demands of the local community and regional and provincial objectives. The development proposes acceptable built form and minimum shadow and other impacts to adjacent properties and on-site built form.

#### **10. Conclusion**

Based on our preliminary discussions with City Staff and our analysis provided above, we are of the opinion that the proposed modifications can proceed through a Minor Variance Application.

As demonstrated in this planning rationale letter, the proposed application for Minor Variance maintains the general intent and purpose of the Official Plan and Zoning By-law, is desirable and appropriate for the development of the subject property and is minor in nature.

We are of the opinion that the proposed variances have merit, meet the four tests under section 45(1) of the *Planning Act*, *represents* good planning and is supportable by way of a Minor Variance Application.

We request that this letter and enclosed materials be reviewed by Staff and the Committee of Adjustment as part of the Minor Variance Application to facilitate the proposed development on Block 'C'.

We trust that this information is in order. Should there be any questions or additional information that is required, please do not hesitate to contact Sandra K. Patano at extension 245 or Mathew Halo at extension 282.

Yours truly,  
**Weston Consulting**  
**Per:**



Sandra K. Patano, BES, MES, MCIP, RPP  
 Vice President

cc. Client  
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 Carol Birch, City of Vaughan  
 Roberto Simbana, City of Vaughan

Encl.

1. Minor Variance Application Cover Letter prepared by Weston Consulting, dated January 23, 2023
2. Committee of Adjustment – Minor Variance Application Form
3. Zoning By-law 033-2019
4. Architectural Set prepared by Core Architects, dated January 9, 2023
5. Functional Servicing and Stormwater Management Report prepared by Counterpoint Engineering, dated January 10, 2023
6. Transportation Impact Study Addendum prepared by Paradigm, dated June 23, 2022
7. Transportation Reliance Letter prepared by Paradigm, dated January 12, 2023
8. Email from Region of York Staff on Holding Provision Clearance, dated May 11, 2020
9. Email from City of Vaughan Staff on Advancement of Minor Variance Application, dated December 23, 2022
10. Email from City of Vaughan Staff on Holding Provisions, dated January 5, 2023
11. Letter from McMillan LLP, dated May 11, 2020
12. GeoWarehouse Report for Block C, dated January 23, 2023



Reply Attention of Mary L. Flynn-Guglietti  
Direct Line 416.865.7256  
Internet Address mary.flynn@mcmillan.ca  
Our File No. 237032  
Date May 11, 2020

Delivered via email: [bill.kiru@vaughan.ca](mailto:bill.kiru@vaughan.ca)

**City of Vaughan**  
Development Planning  
2141 Major Mackenzie Drive  
Vaughan, ON L6A 1T1

**Attention: Bill Kiru, Acting Deputy City Manager**

Dear Mr.Kiru:

Re: **DULCINA INVESTMENTS INC., filed under Granerola Residences Ltd.**  
**9000 Jane Street, City of Vaughan**  
**City File No. DA.19.084, Z.19.032**  
**Related Files OP.07.001, Z.09.038**  
**Jurisdiction of the Committee of Adjustments**

We are the solicitors representing Dulcina Investments Inc. (“**Dulcina**”) in connection with a proposed application for minor variance with respect to the above noted matter. We also acted for Dulcina with respect to proceedings before the Ontario Municipal Board (now called the Land Planning Appeal Tribunal) related to amendments to the City of Vaughan’s Official Plan and zoning by-law for its lands located at 8960 and 9000 Jane Street, in the City of Vaughan. The purpose of the application for minor variance seeks to permit the following amendments related to the development of Phase 1, Block B2 lands municipally known as 8960 Jane Street:

1. A request to increase the number of units permitted within Phase 1 from 1125 to 1152 (an increase of 27 units, representing an increase to the unit count of 2.4%);
2. A request to increase the permitted building height of the building referred to as Phase 1, Block B2 from 91.5 m to 93.0 m (an increase of 1.5 m or 1.5%), while maintaining Block B2’s 28 - storey maximum height.

Section 18.1 of the Vaughan Mills Centre Secondary Plan (“**VMCS plan**”) and the site specific zoning by-law (the “**Zoning by-law**”) limit the number of units as between the Dulcina Phase 1 plan and the Dulcina Phase 2 plan. However, it is important to note that there are no unit maximums applicable to the individual Blocks. Section 18.1 of the VMCS plan limits building heights in stories only across the entire Dulcina site, while the Zoning by-law limits heights in both metres and stories on a Block by Block basis within the entire Dulcina site.

Part C, Section 7.3 of the VMCS plan deals with Development Thresholds, such as the 3631 total unit Phase I cap that applies to the development lands within the Jane Corridor Area, and of which the 1125 Phase I units for Dulcina is one component. This section states that the cap may be increased through a five-year review, or where appropriate due to improved transportation capacity or adjustments to planning policy. We respectfully submit that this language does not preclude consideration of a minor increase in unit counts in Phase I such as proposed by Dulcina and which is appropriately supported by a transportation analysis.

Of particular importance Part C, Section 4.4 of the VMCS plan permits flexibility as it states that “where policies of this plan contain numerical standards, minor variations from those standards may be permitted without amendment to this plan, with the exception of any variations to the floor space index (FSI), height or environmental standards.....”. The relevant numerical standard in the VMCS plan relates to the permitted 1125-unit cap in Phase I of the Dulcina project as set out in Section 18.1(d) and does not deal with FSI, height in metres or environmental standards. As noted above the height in the VMCS Plan only restricts height in stories and the Block B2 stories will not be modified by the variance. Also in addition Section 7.7 of the VMCS plan permits minor alterations to the development thresholds without amendment to the Secondary Plan where servicing infrastructure permits.

As noted above the VMCS itself provides flexibility and permits variances before the Committee of Adjustment related to certain performance standards within the official plan without the need for an amendment to the official plan. In addition, it is well established law that variances to official plans are permissible if the variance sought is “generally” in compliance with the official plan. The test pursuant to section 45(1) of the *Planning Act* (the “Act”) does not require “specific” compliance with an official plan but rather “general” compliance with the official plan.

In order for the Committee of Adjustment to permit a variance they must be satisfied that the tests in subsection 45 (1) of the Act have been satisfied. The tests in subsection 45(1) of the Act are as follows:

1. The variances maintain the **general** intent and purpose of the Official Plan;
2. The variances maintain the **general** intent and purpose of the Zoning by-law;
3. The variance must be desirable for the appropriate development or use of the lot; and
4. The variances must be minor.

One of the leading cases related to the four tests under section 45(1) of the Act is the decision of S. W. Lee in *Toronto Standard Condominium Corp. No. 1517 v. Toronto (City)* 2006 CarswellOnt 3996, [2006] O.M.B.D. No. 707. Vice-Chair Lee in his decision carefully reviews the four tests in light of potential doubts cast on the state of the law addressing the questions of performance standards as a result of the Divisional Court decision in *DeGasperis v. Toronto (City) Committee of Adjustment*. He starts by reviewing the Divisional Court decision in *McNamara Corp. v. Colekin Investments Ltd.* and concludes that no hard and fast criteria can be laid down, the question whether a variance is minor must in each case be determined in the light of the particular facts and circumstances of the case. Vice-Chair Lee states that the dicta in *McNamara* has not been overruled or overturned and has stood the test of time. As found at paragraph 11 of the decision, Vice-Chair Lee states:

“Firstly, whether it is “minor” or not cannot be regarded as a robotic exercise of the degree of numeric deviation, but must be held in light of the fit of appropriateness, the sense of proportion, a due regard to the built and planned environ, the reasons for which the requirement is instituted, the suggested mitigation conditions to address the possible concerns and last, but not the least, the impact of the deviation. Secondly, Re: McNamara recognizes that the performance standards of the zoning-by-law are not an end, but a means to an end.....The decision maker must therefore chase after the question whether the planning objectives would be fulfilled if the variance were allowed. She must not embark on a tautological and circular exercise of why one cannot abide by the requirements. Neither should she use a yardstick of means, median or any singular numeric approach as a measurement for an appropriate minor variance.”

At paragraph 14 Vice-chair Lee states that two of the other four tests require applications of and probing into the planning instruments that have been enacted by the municipality. He believes that the decision-maker must enquire whether the general intent and purposes of the Official Plan and zoning by-law can be met. It is important to note that the test is not whether the variances “specifically” comply with the intent and purpose of the Official Plan and Zoning by-law but rather does the variance “generally” comply with the intent and purpose of the Official Plan and Zoning by-law. The test itself provides flexibility in interpreting any performance standards in the Official Plan and the Zoning by-law.

This principle has been adopted in subsequent OMB/LPAT decisions. In the *Berkeley Parliament Inc. v. Toronto (City)* decision at paragraph 34, the Member articulated that “the test of the success of variances under s. 45 of the Act was whether the variances maintain the general intent and purpose of the zoning by-laws and not the specific intent of the site-specific by-law”. At paragraph 75 the Member ruled that “the site-specific by-law is not frozen in time as to follow that approach would make s. 45 meaningless and when considering the general intent and purpose of the zoning by-laws, the additional storeys meet such general intent”

The following cases specifically deal with variance applications that have permitted additional units and building heights and were found to generally maintain the Official Plan and Zoning by-law policies. In *Port Royal Place Developments Inc. v. Toronto (City) Committee of Adjustment*, the Committee had authorized a variance to permit 1425 dwelling units instead of 1275 units. The Board found that the variance maintained the general intent and purpose of the official plan and zoning by-law.

In *Re: English Lane Residential Developments Ltd.*, the Applicant sought an order of the Board for approval to expand its already approved (but not yet built) eight-stories, 192-unit condominium apartment building to a nine-stories, 350-unit seniors residential building. The Board concluded that “even though unit caps were identified in a number of documents provided in evidence, the Board does not find such measurements to be set in stone as the City might wish in this case....In these cases, the City has consistently set aside these unit caps to increase the number of units permitted...[and that] flexibility has been maintained by the City in its treatment of these allegedly fixed numbers where appropriate intensification and redevelopment policies of the Official Plan have been deemed to be met” (paragraph 68). The Member found that expansion to a ninth floor and “reconfiguration of the residential mix” will result in 549 persons, a net addition of 17 persons and allowed the amendments.

Although an increase in unit count to 1152 units from 1125 units is being sought in Phase I, the variance only represents an increase of 2.4%. The purpose of the Phase I cap in the Secondary Plan and zoning by-law was a result of a concern regarding the transportation capacity. Dulcina has provided the municipality and the Region with the May 2019 Paradigm, *Final Transportation Impact Study and Transportation Management (TDM) Plan* for the Dulcina Phase I development which demonstrates that the increase of 27 units will have no negative impact on the transportation capacity, thus supporting the



general intent and purpose of the unit cap. The Paradigm Report has been supported by the Region of York.

As there has been several years between the conceptual plan and the final design of the Phase I, Block B2 building it is not unusual for the refinement of the ultimate building to result in minor modifications to the original design. The issue is whether the refinement that results in 27 more units in Phase I will have an adverse impact to the degree that it undermines the general intent and purpose of the official plan and zoning by-law. We respectfully submit that the “general” intent and purpose of both the official plan and the zoning by-law will be maintained.

As noted above the number of stories for Phase I, Building B2 remains unchanged and the variance for height to the zoning by-law is only 1.5 m. The difference in the height is also attributable to finalization of the conceptual plan to the final design and also will not have a negative or adverse impact and is appropriate for the site and continues to meet the general intent and purpose of the Official Plan and Zoning By-law. The reason for the increase in the height is directly related to the 6m height requirements of the Public Indoor Recreational Space (PIRS) on the 1<sup>st</sup> floor of the building to be operated by the City of Vaughan.

It has been long recognized in OMB/LPAT jurisprudence that variances sought to site-specific Official Plan amendments and site-specific zoning by-laws resulting from final design plans, is not unusual and any variances should be reviewed on their own merits. In *Berkeley Parliament Inc. v. Toronto (City)* the OMB succinctly stated:

“Put another way, the subsequent “tweaking” of a development in the planning processes, through minor variances, should not be seen to denigrate the original efforts of the parties or the ultimate result of the planning processes that led to the eventual endorsement of what was then considered a final version of the development in 2015. To the contrary, they are an extension of that process arising from a subsequent change in circumstances, such that the ultimate form of the development, with the additional variances, can be considered to be the result of the entire process, from beginning to end, inclusive of those additional variances that meet the four tests”.

For the reasons as stated above we believe that the 2 variances requested meet all four tests under subsection 45(1) of the *Planning Act* and should be supported. Both the case law and the language of the VMCS Plan allow flexibility with respect to certain performance standards without the need for a formal amendment to the official plan as long as it can be demonstrated that the variance generally complies with the official plan. Should you have any questions please do not hesitate to call me.

Yours very truly,

Mary L. Flynn-Guglietti

Cc: Mr. Joseph Di Giuseppe (joed@greenpark.com)

2006 CarswellOnt 3996  
Ontario Municipal Board

Toronto Standard Condominium Corp. No. 1517 v. Toronto (City)

2006 CarswellOnt 3996, [2006] O.M.B.D. No. 707, 35 M.P.L.R. (4th) 152, 54 O.M.B.R. 102

**Toronto Standard Condominium Corporation #1517 has appealed to the Ontario Municipal Board under subsection 45(12) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from a decision of the Committee of Adjustment of the City of Toronto (Toronto and East York Panel) which granted an application by Concord Adex Developments Corp. numbered A0680/05TEY for variance from the provisions of By-law 438-86, as amended, respecting 361-397 Front Street West and 12-16 Blue Jays Way**

OMB File No. V050599

S.W. Lee V-Chair

Judgment: June 21, 2006 \*

Docket: PLO51279

Counsel: K.M. Kovar for Concord Adex Developments Corp  
W.H.O. Mueller for Toronto Standard Condominium Corporation #1517  
T. Wall for City of Toronto

Subject: Public; Municipal

#### Headnote

Municipal law --- Zoning — Zoning variances — Types of variances — Parking

Portion of two-way driveway to underground parking facilities of two existing condominium towers was 5.0 metres wide rather than 5.5 metres as required by zoning by-law — During construction, developer experienced delay during building permit process in securing railway authorities' agreement to permit encroachment solely for construction purposes to enable driveway to be constructed to 5.5 metre width — In order to avoid encroachment, developer revised building permit plans, reducing driveway to 5.0 metres, which plans bore city's stamps on their face — Committee of adjustment granted developer minor variance — Condominium corporations appealed — Appeal dismissed — Variance authorized subject to conditions that no right turn be permitted at base and north wall be redesigned to eliminate encroachment at levels of winged mirrors — Deficiency was small in degree and minor in amplitude — Ramp was designed for residents' vehicles, not for bicycles, loading, or servicing — Additional 0.5 metres would not act as important feature for improvement of operational efficiency or safety — General intent and purposes of official plan and by-law were met by variance — Adequacy and passageway for purposes of ramp of residents' motor vehicles were met — There was no evidence that variance would have any effect on usage, passageway, or queuing, on any on or off site inconveniences — Slope or curvature were not substandard, ramp was workable and efficient, and there was no evidence that additional 0.5 metres could decisively add to benefits or decisively address concerns raised — There was no evidence of bad faith nor intentional hiding of errors on developer's part.

#### Table of Authorities

##### Cases considered by S.W. Lee V-Chair:

*DeGasperis v. Toronto (City) Committee of Adjustment* (2005), 2005 CarswellOnt 2913, (sub nom. *Vincent v. DeGasperis*) 200 O.A.C. 392, 12 M.P.L.R. (4th) 1, (sub nom. *Rosedale Golf Assn. v. DeGasperis*) 256 D.L.R. (4th) 566, (sub nom. *Rosedale Golf Assn. v. DeGasperis*) 51 O.M.B.R. 1 (Ont. Div. Ct.) — considered

*McNamara Corp. v. Colekin Investments Ltd.* (1977), 15 O.R. (2d) 718, 2 M.P.L.R. 61, 76 D.L.R. (3d) 609, 1977 CarswellOnt 332, 21 M.P.L.R. 61 (Ont. Div. Ct.) — considered

**Statutes considered:**

*Planning Act*, R.S.O. 1990, c. P.13

s. 45(1) — considered

APPEAL by condominium corporations from decision of committee of adjustment granting developer minor variance in respect of width of driveway.

**S.W. Lee V-Chair:**

1 These proceedings relate to a driveway constructed to the underground parking facilities of two existing condominium towers at the address set out in the title of proceedings in the City of Toronto. A portion of the driveway has a width of 5.0 metre whereas the applicable zoning by-law requires a 5.5metre. The driveway is currently used for a two-way traffic operation.

2 To correct this deficiency, Concord Adex, the developer applied to the Committee of Adjustment for a minor variance. It was successful. The decision was appealed to this Board by the condominium corporations. The Board may add, parenthetically, that the condominium corporations have launched legal actions against the developer and the City with respect to this non-conformity and all parties agree that the Board's decision should precede the legal actions.

3 The Board heard an array of evidence of conflicting expert evidence in these proceedings, which include land use planners and traffic engineers. The Board also heard evidence in relation to a civil engineer adduced by the appellant as to the feasibility of conformity and the relative costs of correction if the driveway is to be widened either to the north or to the south. In addition, non-expert evidence was also adduced, including the residents.

4 The driveway leading to the underground parking facilities is a two-way traffic ramp, having a total length of 36 metre from grade to the garage entrance. The driveway is also located at the south portion of the site. There is a grade difference between the subject site and the property to the south owned by the railway authorities CN Rail, not only because of the sloping nature of the ramp, but because of the nature of the site as well. It is a gentle ramp and relatively straight in the sense that there is little curvature. At the bottom, the ramp turns at an angle to the garage door, but remaining at level.

5 The agreed statement of facts indicates that there was delay experienced by Concord during the building permit process in securing the necessary agreement of the railway authorities to permit Concord to encroach, solely for construction purposes, over railway owned lands in order to enable the driveway to be constructed as intended, to conform to the zoning by-law driveway width of 5.5metre. Accordingly, in order to avoid the encroachment, revised building permit plans were prepared and submitted to the Chief Building Official of the City whereby the width of the driveway was reduced by 0.5 metre. These building permit plans bear the stamps of the City of Toronto on their face.

6 It is trite to state that a relief under Section 45(1) of the *Planning Act* requires the satisfaction of the requisite tests, traditionally known as the four tests. There has been a wealth of jurisprudence enunciated pertaining to these provisions over the years, from both the Courts and the Board. In light of the most recent decision rendered by the Divisional Court in *DeGasperis v. Toronto (City) Committee of Adjustment*, [2005] O.J. No. 2890 (Ont. Div. Ct.), some doubts have been cast on the state of the law that may pertain to the application of this relief addressing the questions of performance standards. In the course of our analysis, the Board would make the requisite enunciations in the rightful place.

7 It is necessary to re-iterate the long-standing affirmation recognized by the Board for at least three decades that the legislature has in s. 45(1) of the *Planning Act* created a statutory process whereby a relief is made available to avoid the strait-jacket or rigid applications of the zoning by-law. The relief in question has been designed so that an independent tribunal, whether it is a Committee of Adjustment or the Board, can review and determine whether it can be granted on an individual case using the statutory tests set out. This relief stems from the Legislature's recognition that a zoning by-

law, if it is to be applied unfailingly with scant regard for individual circumstances and without due regard to the matters at hand, can result in very odd, undesirable and in some cases wrong situations because the facts in the planning world can be sometimes stranger than fiction. The relief is not to be regarded as an extraordinary remedy. In fact, the relief should be granted in some circumstances, not because non-conformity would be less costly, expedient or convenient, but because nonconformity can, in fact, be satisfactory and acceptable from a planning standpoint.

8 The first question to be answered is whether it is "minor" or not. Neither of the land use planners in these proceedings, Mr. Stagl for the applicant nor Mr. Rendl, for the appellant has made the assertion that it is a matter of the degree of numerical deviation. This is important as both planners have rightfully rejected the mistaken interpretation of certain enunciations of the judgement of DeGarsperis. Neither accepted that the question of the size of deviation is determinative to the question whether it is "minor" or not. In this case, a deficiency of 0.5 metre appears, on the surface, to be quite innocuous, but both planners agree that that in itself is insufficient, incomplete or unnecessary to answer this question.

9 The leading case *McNamara Corp. v. Colekin Investments Ltd.* (1977), 15 O.R. (2d) 718 (Ont. Div. Ct.) has this to say in terms of variance on a performance standard:

The Legislature by s. 42(1) confided to committees of adjustment and ultimately to the Municipal Board the authority to allow "minor variances". The statute does not define these words and their exact scope is likely incapable of being prescribed. The term is a relative one and should be flexibly applied: *Re Perry et al. and Taggart et al.*, [1971] 3 O.R. 666, 21 D.L.R. (3d) 402 (Ont. H.C.). No hard and fast criteria can be laid down, the question whether a variance is minor must in each case be determined in the light of the particular facts and circumstances of the case. In certain situations total exemption from a by-law will exclude a variance from falling within the category of "minor variances". But not necessarily so. In other situations such a variance may be considered a minor one. It is for the committee and, in the event of an appeal, the Board to determine the extent to which a by-law provision may be relaxed and a variance still classed as "minor".

10 The recent case of DeGasperis has this to say on the question of being minor:

A minor variance is, according to the definition of "minor" given in the Concise Oxford Dictionary, one that is "lesser or comparatively small in size or importance". This definition is similar to what is given in many other authoritative dictionaries and is also how the word, in my experience, is used in common parlance. It follows that a variance can be more than a minor variance for two reasons, namely, that it is too large to be considered minor or that it is too important to be considered minor. The likely impact of a variance is often considered to be the only factor which determines whether or not it qualifies as minor but, in my view, such an approach incorrectly overlooks the first factor, size. Impact is an important factor but it is not the only factor. A variance can, in certain circumstances, be patently too large to qualify as minor even if it likely will have no impact whatsoever on anyone or anything. This can occur, for example, with respect to the first building on a property in a new development or in a remote area far from any other occupied properties.

11 The dicta of *Re: Namara* have not been overruled or overturned by the most recent *DeGasperis* case. This is not surprising as the ratio decidendi of *Re: Namara* has stood the test of time because the judgment recognizes and pays homage to two very important underlying principles. Firstly, whether it is "minor" or not cannot be regarded as a robotic exercise of the degree of numeric deviation, but must be held in light of the fit of appropriateness, the sense of proportion, a due regard to the built and planned environ, the reasons for which the requirement is instituted, the suggested mitigation conditions to address the possible concerns and last, but not the least, the impact of the deviation. Secondly, *Re: Namara* recognizes that the performance standards of the zoning-law are not an end, but a means to an end. The decision maker must therefore chase after the question whether the planning objectives would be fulfilled if the variance were to be allowed. She must not embark on a tautological and circular exercise of why one cannot abide by the requirements. Neither should she use a yardstick of means, median or any singular numeric approach as a measurement for an appropriate minor variance. Furthermore, a long line of Board cases has held that the assessment of whether it is minor or not cannot be fathomed on an *a priori* basis. It has been our consistent practice that the question of minor is

best to be assessed on an empirical, a concrete and fact-specific basis. In other words, a seemingly "small" deviation may not qualify as "minor". On the other hand, a seemingly "large" deviation or an obliteration of the numeric requirement may be quite appropriate. In short, the numbers themselves are devoid of meaning unless the context is known and rationale for those numbers are known.

12 The Board finds that the driveway width in this nature should not be confused with what is the driveway linking to the public roadway. In fact, the evidence of Mr. Mark, the traffic engineer for the appellant, in giving his evidence has made that confusion in the course of his analysis. Nor should the width of this driveway be confused with the requisite width of the traveled width of a road allowing a two-way traffic even though the former does allow the operation of both inbound and outbound traffic.

13 Unlike a roadway, the speed limit, the use and convention of the ramp such as this would ensure that this is quite different from a highway or a public traveled transportation facility. The Board agrees with Mr. Stagl's analysis that such a driveway is to allow adequate and unobstructed access to parking facilities and from that standpoint, there is evidence to support that the deficiency satisfies the test amply. This does not mean drivers can avoid due caution and care. On the contrary, it is imperative that drivers should exercise such caution. In fact, as our analysis would bear, the proposed conditions would ensure and strengthen the cautionary behavior of drivers. Exhibit 8 sets out a number of examples whereby the City has approved a number of projects allowing driveway or ramp provisions less than 5.5 metre. These include apartment buildings and residential towers. These comparables obviously are not determinative but illustrative that they have been done in other instances and that the City has not been unduly punctilious or strict in applying the requirement of 5.5 metres and the deficiency of that nature can be regarded as small in degree and minor in amplitude.

14 Two of the other four tests require applications of and probing into the planning instruments that have been enacted by the municipality and completed its review and appeal process. They require the decision-maker to inquire whether the general intent and purposes of the Official Plan and zoning by-law can be met. Both of the planners agree tacitly that the more pertinent consideration is the zoning by-law rather than the Official Plan as there is no issue that both the Part 1 and Part 2 Plans do allow and encourage a high intensity development of this nature. The Board has noted, as pointed out by Mr. Stagl, that in section 16.18 of the Official Plan, the minimum width of a public lane serving residential and park lands are 5.0 metre.

15 The relevant portion of the by-law, Zoning By-law 438-86 sets out the 5.5 metre requirement. Mr. Stagl, in his analysis, has traced from the parent provision of the by-law that this numeric requirement has either replaced or amplified the requirement of adequate and unobstructed driveways or passageway. These indeed are the principal intent and purposes underlying the requisite provisions. They are not to be confused with the design objectives of a transportation facility whereby speed, turning maneuver, traffic volume and other safety factors resulting from speeds are the principal concerns.

16 It is also important to note that this ramp is to be designed for the residents' vehicles, not for loading or servicing, as there are facilities for the latter. Although there is disagreement at the hearing whether this ramp should allow bicycles traffic, the Board is satisfied from the design of the underground parking floor plans that this ramp is not designed for bicycles traffic. The Lea Consulting Report dated November 7, 2005, indicates that with due caution from drivers, this ramp operates efficiently as designed. The Board agrees. On the other hand, the Board has not been presented with any cogent or persuasive evidence that a 0.5 metre of additional width would act as an important marginal feature for the improvement of operational efficiency, conveniences, or safety. The Board is well-satisfied that the general intent and purposes of the Official Plan and by-law are met by this variance and that the adequacy and the passageway for the purposes of a ramp of residents' motor vehicles are met.

17 As for whether this would meet the test of the desirable for appropriate development or use of the land, building or structure, the Board finds that the test is met. There is no evidence that the variance would have any effect on usage, passageway, queuing, on any on or off site inconveniences. The slope or curvature are not substandard. This ramp is only for residential vehicles and there is no pick-ups, drop-offs or service vehicles uses. All the technical evidence shows

that this ramp with its 5.0 metre width is workable and efficient. Furthermore, there has not been any demonstrable evidence to show that an extra 0.5 metres can add decisively to the benefits or address decisively to those concerns raised.

18 The questions of safety is debated at length in these proceedings. There is no doubt that there have been incidents scratches and marks on the walls and two incidents, one involving a \$2,400 and another \$3,400 claim. Mr. Mark, in his report to the Board, maintains that 6.0 metre is what should be required. When crossed-examined, he conceded that the TAC Geometric Design Guide on which he based his opinions represent guidelines but not standards. This is critical as the introduction of TAC specifically delineates that this Guide does not attempt to establish standards and indeed does not use the term. He also admitted he has had little project experience in the City of Toronto, especially for such multi-unit, high intensity projects and he is not aware of 5 metre requirement for the public lane set out in the Official Plan. The Board prefers on the whole the evidence proffered by Mr. Leingruener. In the a.m. peak, as expected, the traffic flow is predominately outbound; in the p.m. peak, the traffic flow is predominately inbound and there are more potential conflict between inbound and outbound traffic at the p.m. peak; however, the duration for such opposing traffic is not high. Nonetheless, to eliminate those instances where there may be conflict, the proposed conditions set out in Exhibit 6 will go a long way to enhance cautions. For example, if flashing red or amber signals are provided at certain locations, drivers would be more aware of on-coming traffic. If the central dividing line is painted and repainted at regular intervals, alertness can be heightened. The two additional conditions suggested should also be included: one indicating no right-turn on red at the base, two, the north wall lights redesigned to eliminate encroachment at the levels of wing mirrors.

19 In conclusion, the Board finds that the variance should be authorized as the four tests are fully addressed. Mr. Mueller urged the Board to find that these proceedings are designed for the collateral purposes to minimize the damages of the legal actions and to frustrate or stay the legal proceeding launched on behalf of his client. The Board is not persuaded that these proceedings represent any bad faith in the legal or moral sense. It is unfortunate that the original plan to conform is not adhered to; but one must not lose sight of the fact as well that a construction job of this size is a major undertaking and a remission such as this, regrettable as it may be, does happen. It is fortunate that it is caught at last. The Board has not heard any evidence that the respondent had done this intentionally or attempted to hide the errors and our decision is not made to avoid the further expenses that may accrue for corrections. It is our finding that the proposed conditions will go a long way to ensure driver's cautions.

20 Accordingly, the Board orders that the appeal be dismissed and the variance is authorized subject to the conditions set out in Exhibit 6 as amended by the two additional conditions. Exhibit 6 (Attachment "1") is attached hereto to this decision.

*Appeal dismissed.*

## APPENDIX

### ATTACHMENT "1"

#### Requested Variance

#### 361-397 Front Street

#### City of Toronto

§ Variance from the following Section of Zoning By-law 1994-0806 (as amended):

1. Section 4(5)(h), for a driveway width of 5.0 metres for a two-way operation leading to parking facilities, whereas By-law 1994-0806 requires a minimum driveway width of 5.5 metres for a two-way operation.

subject to the following conditions

1. A white stop bar painted at the bottom of the ramp for incoming vehicles. The stop bar will be located in a position that will provide the driver with clear access to the garage door sensor and will situate the vehicle away from the potential zone of conflict between turning vehicles.
2. A white stop bar be painted at the stop sign at the top of the ramp.
3. The yellow centre line be repainted with a highly visible and reflective paint. All pavement markings should be maintained regularly.
4. The garage door opening mechanisms/detectors are connected to a signal system that can differentiate and manage the respective inbound and outbound calls.
5. Flashing red or amber signals be provided at specific locations to inform drivers of potential on-coming traffic.
6. The signals would be grouped in respect to inbound and outbound traffic.
7. When an inbound call is made through the garage door opener sensor, the signals located inside the garage and on the parapet wall (for outbound traffic) are activated. These would be flashing amber signals to indicate that drivers should proceed with caution.
8. When an outbound call is detected by the garage sensor, the signals located at the bottom (mounted on the wall beyond the garage) and the top of the ramp will be activated. The signal at the bottom of the ramp will flash red to inform drivers that they must yield the right of way to on coming traffic. The signal at the top of the ramp would be a flashing amber signal to inform drivers that they should proceed with caution.
9. An intelligent controller device will be required to manage this operation.
10. The right-of-way is provided to outbound traffic since there is insufficient room for vehicle queues in the garage. The ramp, as indicated by the survey undertaken will have sufficient capacity to queue up to five inbound vehicles. The probability of five vehicles queuing in one instance is anticipated to be minimal at this time based on the surveys undertaken.
11. The gates located on the ramp west of the garage access should be relocated further west and be closed. The extra space will allow vehicles to make a three point turn if access to the garage is not granted. Additional caution is required for this occasional manoeuvre.
12. The metal cover above the garage door sensor and intercom should be enlarged to increase the sensor's line of sight. This will reduce the number of vehicles stopping in the outbound lane to open the garage door. An alternate technology may also be considered.
13. Painting the walls of the ramp white to increase reflectivity and visibility.

NOTE: Residents will need to be informed of the system's purpose and operation once designed and installed.

#### Footnotes

- \* A corrigendum issued by the court on July 7, 2006 has been incorporated herein.

2006 CarswellOnt 4080  
Ontario Municipal Board

DeGasperis v. Toronto (City) Committee of Adjustment

2006 CarswellOnt 4080, 53 O.M.B.R. 305

**Freddy and Wendy DeGasperis have appealed to the Ontario Municipal Board under subsection 45(12) of the Planning Act, R.S.O. 1990, c. P.13, as amended, from a decision of the Committee of Adjustment of the City of Toronto which dismissed an application numbered A045/03M for variance from the provisions of By-law 7625, as amended, respecting 35 Green Valley Road**

O.M.B. File No. V030264

Freddy and Wendy DeGasperis have 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 municipally known as 35 Green Valley Road in the City of Toronto

OMB File No. M050120

R.G.M. Makuch Member, and S.J. Stefanko Member

Heard:

Judgment: June 27, 2006

Docket: PL030529

Counsel: A. Brown, L. Townsend Renaud for, Freddy DeGasperis and Wendy DeGasperis  
J. Pepino, H. Book (Student-at-Law) for, Kitson Vincent and E. Ginsler  
D. Wood for, The Rosedale Golf Association Limited  
S. Haniford, M. Pacholok (Student-at-Law) for, City of Toronto  
P. Spence (Agent) for, York Mills Valley Residents Association

Subject: Public; Municipal

**Headnote**

Municipal law --- Zoning — Zoning variances — Types of variances — Area

Municipal law --- Zoning — Zoning variances — Types of variances — Height

Municipal law --- Zoning — Zoning variances — Types of variances — Miscellaneous

Municipal law --- Zoning — Zoning variances — Practice and procedure on variance application — Test

**Table of Authorities**

**Cases considered by R.G.M. Makuch Member:**

*DeGasperis v. Toronto (City) Committee of Adjustment* (2005), 2005 CarswellOnt 2913, (sub nom. *Vincent v. Degasperis*) 200 O.A.C. 392, 12 M.P.L.R. (4th) 1, (sub nom. *Rosedale Golf Assn. v. DeGasperis*) 256 D.L.R. (4th) 566, (sub nom. *Rosedale Golf Assn. v. DeGasperis*) 51 O.M.B.R. 1 (Ont. Div. Ct.) — followed  
*Motisi v. Bernardi* (1987), 20 O.M.B.R. 129, 1987 CarswellOnt 3719 (O.M.B.) — considered

**Statutes considered:**

*Planning Act*, R.S.O. 1990, c. P.13

s. 45(1) — considered

**R.G.M. Makuch Member:**

## Background

1 The matter before the Board during this hearing has had a storied history. The narrative began in January, 2003, when Freddy and Wendy DeGasperis ("Appellants" or "Owners") made application to the Committee of Adjustment for a number of variances related to height, side yard setback, size of balconies and dwelling length to permit the demolition of an existing two-storey dwelling and the construction of a new two-storey replacement dwelling at 35 Green Valley Road. The property is located in what is referred to as the "Rosedale" area of the City of Toronto; an area of mature landscaping, large lots and prestigious homes. The Committee of Adjustment refused the relief requested by the Owners and an appeal was filed by them with this Board. At the Board level, Mr. O'Brien allowed the appeal and authorized the variances sought. However, that did not end the matter as Mr. O'Brien's decision was subsequently appealed to the Divisional Court. The Divisional Court allowed the appeals, set aside the order of the Ontario Municipal Board and remitted the appeal of the Owners back to the Board to be heard by a different panel in accordance with the reasons given by the Divisional Court ("Divisional Court Decision").

## Property Description and Area Characteristics

2 35 Green Valley Road is located in the York Valley Neighbourhood within the valley lands of the West Don River (Hogg's Hollow) and is specifically situated at the end of Green Valley Road on its west side. The property is rectangular in shape except that the front lot line is on a diagonal. It is a large deep lot, which extends back and includes the West Don River channel. The property has a frontage of 22.95 m (75.29 ft), average depth of 90.82 m (298 ft) and a total area of 1862.8 m<sup>2</sup> (20051 ft<sup>2</sup>). A portion of the lot in the rear is below the top of the bank resulting in a useable depth of 79 m (259.18 ft). The Rosedale Golf Club is immediately to the south and is separated by a hedge and trees along the property line as well as by a larger treed area to the southeast and southwest. The property across Green Valley Road to the east measures approximately 21 m × 79 m (70 ft × 220 ft) and has a modest one to two-storey dwelling set back a considerable distance behind a stone wall. Immediately to the north is 33 Green Valley Road owned by Eleanor Ginsler, one of the objectors to the proposal. Her lot is approximately 21 m × 79 m (70 ft × 260 ft) in size with a one-storey bungalow dating back to the 1960s set well back from the street. Her driveway and garage are situated on the north side of the lot. On the west side of 35 Green Valley, across the Don River, at the end of Knightswood Road sits a small unimproved City owned parkette having an area of approximately 0.41 acres. The property owned by Kitson Vincent, another objector to the proposal is immediately north of the City owned lands and across the Don River from the subject property. Approximately 33 m (110 ft) and a heavily treed area separates the existing Vincent dwelling from the property line the Vincent property shares with the DeGasperis property. This existing dwelling is currently being demolished to be replaced by a new two-storey dwelling having a gross floor area of approximately 731 m<sup>2</sup> (7871 ft<sup>2</sup>) on the first and second floors.

3 The neighbourhood was described as a very desirable low-density residential area with generally substantial detached homes having a variety of ages. Many houses on Green Valley Road and nearby York Valley appear to have been built in the 1960s. In the area, there are also a number of new dwellings as well as large-scale renovations. The new dwellings are almost exclusive two-storeys and have a wide variety of architectural styles and building materials.

4 The proposed replacement dwelling will be L-shaped with the longer side running along the south property line adjacent to the Rosedale Golf Club and the shorter side along the north property line adjacent to the Ginsler property at 33 Green Valley Road. The footprint of the new dwelling will be shallower than and approximately as wide as the existing dwelling exclusive of the covered rear porch, which would be 5.4 m (17.7 ft) deep. The new dwelling will be set further back from the north and south lot lines than the existing home. It will also be set closer to the street than the existing home. The depth of the new dwelling will also be reduced with 17.4 m (57.15 ft) on the north side and 20.8 m (68.2 ft) on the south side, again exclusive of the covered porch.

5 Two balconies are proposed on the second floor level, one at the southeast corner of the home having an area of 16.5 m<sup>2</sup> (177 ft<sup>2</sup>) and one at the southwest corner of the rear of the house having an area of 32m<sup>2</sup> (344 ft<sup>2</sup>).

## Variations Requested

6 At the commencement of this hearing Mr. Brown advised the Board, that the extent of variance relief required at this time was less than what was previously before the Committee of Adjustment and the Board. Specifically, the variations requested from this panel were as follows:

(i) To permit the maximum dwelling length to be 21.3 m (69.9 ft) measured to the rear of the living space and 26.9 m (88.3 ft) to the rear of the covered porch/terrace instead of the maximum 16.8 m (55.1 ft) permitted ("Dwelling Length Variance").

(ii) To permit a maximum height of 10.63 m (34.9 ft) instead of the permitted 8.0 m (26.2 ft) for a flat roof ("Height Variance").

(iii) To permit a balcony at the front of the home to be constructed to have an area of 16.5 m<sup>2</sup> (177 ft<sup>2</sup>) and a balcony at the rear having an area of 32 m<sup>2</sup> (344 ft<sup>2</sup>) instead of the maximum area of 3.8 m<sup>2</sup> (41 ft<sup>2</sup>).

7 As an ancillary matter, Mr. Brown also advised the Board at the outset of this hearing that the Owners have also appealed the City of Toronto's refusal to approve the plans submitted by them for site plan approval. The Board therefore consolidated the site plan appeal with the variance relief sought and in relation to the site plan appeal, party status was granted Kitson Vincent, Eleanor Ginsler, The Rosedale Golf Association Limited and York Mills Valley Residents Association.

## Issues

8 The issues before the Board are straight forward. Simply put, does each variance meet the tests imposed by section 45(1) of the *Planning Act*, which reads as follows:

45(1) The Committee of Adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under Section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the Committee, the general intent of the by-law and of the Official Plan, if any, are maintained.

9 Each variance will be addressed separately.

## Analysis

### *Dwelling Length Variance*

10 The starting point for any analysis of section 45(1) is whether the variance is minor? What constitutes minor? Prior to the Divisional Court Decision, it is clear that the Ontario Municipal Board did not apply a mathematical calculation to determine whether a variance was minor but rather, focused on the concept of unacceptable adverse impacts. For example, in *Motisi v. Bernardi* (1987), 20 O.M.B.R. 129 (O.M.B.), when considering whether certain variances were minor, Mr. Chapman stated:

Are they minor? It is almost trite to say that what is minor and what is not minor cannot be calculated mathematically. What is considered a minor variance in one case could well be considered not minor in another case. It depends on the established facts of each particular case. The statute is not much help in deciding what is or what is not minor. It is left to the discretion of the Committee of Adjustment or on appeal to the Board. Without attempting to limit this discretion, if the variance requested does not produce an unacceptable adverse impact on the neighbours, then it can probably be considered as minor.

11 However, the Divisional Court in *DeGasperis v. Toronto (City) Committee of Adjustment* (2005), 256 D.L.R. (4th) 566 (Ont. Div. Ct.), expanded upon what constituted a minor variance and provided further commentary in that regard. Speaking for the Court, Matlow J. stated:

The likely impact of a variance is often considered to be the only factor which determines whether or not it qualifies as minor but, in my view, such an approach incorrectly overlooks the first factor, size. Impact is an important factor but it is not the only factor. A variance can, in certain circumstances, be patently too large to qualify as minor even if it likely will have no impact whatsoever on anyone or anything.

12 The evidence presented was clear that the proposed home will be less in length than the existing dwelling with no discernable adverse impacts on the streetscape. Moreover, Mr. Johnston, who gave planning evidence for the City, did not have any concerns with this requested variance. By applying the considerations of the Divisional Court Decision with respect to minor, that is, size and impact, this panel finds that the first test is met.

13 The second test for consideration is whether the variance was desirable for the appropriate use of the property. In that regard, Mr. Smith, on behalf of the Owners, pointed out that there were a number of other variances to dwelling length in the area, including a variance at 37 Knightswood by Kitson Vincent, one of the parties opposing the proposal. The length variance for this property is 24.2 m. Mr. Stagl, advanced arguments on behalf of Kitson Vincent and Eleanor Ginsler that no other variances in the area for length also dealt with height and that shadow impacts were a concern.

14 From a planning and public interest point of view this panel cannot overlook the number of length variances which have been granted in the vicinity. Insofar as shadowing is concerned, most if not all serious shadowing concerns are related to the front yard. In this case, there is no front yard or north side yard variance required and therefore the home can be situated in those areas as of right. This panel finds that the Dwelling Length Variance meets the appropriate use test.

15 The third test requires that the proposed variance meet the general intent and purpose of the by-law. The intent of the dwelling length provisions in the by-law are to ensure that such dwellings do not extend too far into the rear yard open space because of potential privacy concerns and shadowing impacts. In this panel's view, the general intent and purpose of the by-law is not being compromised because the proposal maintains substantial separation distance to 37 Knightswood to the rear and, given that the proposed dwelling will only extend to about the half way point of the Ginsler home at 33 Green Valley, no meaningful overlook or shadowing will result to the Ginsler property. This test is therefore met.

16 The fourth test to be considered is whether the variance would maintain the general purpose and intent of the official plan. Under the Housing Objectives Section of the Official Plan, Council is to be guided by a number of objectives including the objective "to ensure that new residential development within, or on the edge of stable residential neighbourhoods occurs in a manner that is generally compatible with, and sensitive to the surrounding physical development". Those in opposition to the proposal suggest that the length of the contemplated home is incompatible with and insensitive to the surrounding area. This panel does not agree. Compatibility does not mean the same as or identical to, but rather to co-exist with on the basis there are no unacceptable impacts. In this case, this panel finds that the contemplated length does not have any negative impact on the streetscape because it will be more or less imperceptible from the street. Moreover, because of separation distance, intervening mature trees and meeting required side yard setback requirements no negative impact with respect to length will be felt by the Golf Club, 33 Green Valley or 37 Knightswood. Insofar as sensitivity is concerned, the length variance is created primarily by the portion of the new L-shaped dwelling located furthest from the Ginsler property at 33 Green Valley. The actual length of the dwelling adjacent to the Ginsler property is 17.4 m (57.15 ft), only 0.6 m (2.05 ft) longer than the dwelling permitted by the current by-law. This panel therefore finds that the fourth test has been met in relation to the Dwelling Length Variance.

### **Height Variance**

17 In relation to this variance request, this panel is guided by certain comments of P. H. Howden in his decision which was marked as Exhibit "55" in this proceeding. Mr. Howden dealt with by-laws which preceded the by-law currently in place and which affects the subject property. He was called upon to establish certain performance standards for the area including height. At page 29 he states:

The Board finds that in enacting By-laws 31181 and 31182, Council took another step towards more complete implementation of the Official Plan residential policies begun belatedly in 1987. Those by-laws recognize the

predominately low-density and less massive character of the existing house and attempt at least in a limited way to reduce potential building height and coverage...

18 The evidence heard in opposition to this variance focused on it not being minor because of its massing effects and the fact that it did not maintain the general intent and purpose of the by-law. To put the thrust of the argument in succinct terms, the City of Toronto has taken great pain in establishing the height standard for this area of the City and such standard should not be compromised. Mr. Moore, on behalf of the Rosedale Golf Club, also provided evidence that the plans submitted for the attic suggest the possibility of a third floor being added in the future. This, in his view, contributes directly to the variance sought and should not be allowed.

19 On behalf of the Owners, Mr. Smith suggested that the zoning by-law specifies a maximum two-storey height limit and since the proposal is for a two-storey building, compliance is achieved and there is no unacceptable built form impact. Insofar as a possible third floor is concerned, the position advanced is that because the chief building official for the City has not made any such determination, it is a non-issue.

20 In this panel's view, the variance for height is not minor and does not maintain the general intent and purpose of the by-law for two compelling reasons. Firstly, the intent of the building height provision is to ensure that dwellings fit into the streetscape and do not create any unacceptable impacts on adjoining properties. In this case, the additional height will make the home visually dominant and thereby create an unacceptable impact on the Ginsler property and perhaps even on the Rosedale Golf Course property. There is no doubt that the proposal, from a height perspective, introduces a built form which is not only out of character with the immediate area, but dominates the surrounding lands. Secondly, great pains have been taken over the years to establish the appropriate height requirement for this area. To deviate from this, at this time, would be to fly in the face of the by-law's purpose and intent.

21 Having concluded that two of the four tests have not been met for the height variance, it is unnecessary to canvass the other two tests.

### **Balcony Variances**

22 In view of the size of the proposed balconies in relation to what is permitted, some further elaboration is required concerning the Divisional Court Decision and whether the balcony variances are minor. The Divisional Court Decision has recognized the importance of impact but has also pointed out the significance of size. In order to appropriately apply size considerations, one must avoid a mechanical approach, which is entirely mathematical in nature because such an approach does not, in this panel's view, properly reflect the provisions of section 45(1) taken in their entirety. It is important that any such analysis not be anchored by a numerical calculation, but rather, take into account such additional considerations as proportion, the rationale for the requested relief, the effect of the deviation and whether mitigation conditions can be imposed to alleviate concerns. By so doing, the issue of size is put in a proper context and becomes a meaningful exercise.

23 In relation to the front yard balcony proposal, this panel heard evidence that since it will be located in the front of the property, it would not affect, in any material way, the properties surrounding 35 Green Valley Road. Mr. Smith also suggested that its size, in relation to the area of the lot, is very small. The front balcony represents less than 1% of the area and the rear balcony is approximately 1.7% of the area of the lot. Ms Pepino suggested, among other things, that the magnitude of the proposed variance, as a percentage of the permitted area, is significant and should not be authorized. When applying the foregoing additional considerations to the front yard balcony, this panel is of the view that the relief requested is minor. The balcony location is such that it is isolated from the Golf Club and the Vincent property and does not impinge on the amenity space of Ms Ginsler. Proportionally speaking, it is extremely small when compared to the area of the lot and size of the home in the neighbourhood. This panel should not be constrained by a pure arithmetical exercise.

24 The rear yard balcony raised other issues. Specifically, the objectors felt that because of its size, this balcony could easily be used for social gatherings and functions. This possibility only exacerbated, from the objector's perspective, the overview and

privacy concerns which the proposed rear yard balcony brought to bear on the adjacent properties. In assessing whether the rear yard balcony variance is appropriate, this panel finds the following factors persuasive:

- (a) The Vincent property and the Golf Course are both separated from the proposed balcony by large and mature trees. The Ginsler property also has tree separation but to a lesser extent;
- (b) The proportionality argument advanced by Mr. Smith also applies to the rear yard balcony; and
- (c) To the extent overview and privacy are justifiable complaints, this Board can impose certain conditions to alleviate those concerns.

25 Accordingly, this panel finds that the rear yard balcony variance is minor, subject to the conditions which are hereinafter set out.

26 Turning now to the second test of appropriateness.

27 Mr. Johnston has suggested that no compelling reason has been given to justify the balconies and therefore the prescribed by-law standards should be applied. He also goes on to say that there is no public interest served to support the relief sought.

28 As to whether the Owners must establish a need for the variance requests, the Divisional Court Decision adopted the view that a minor variance is not a special privilege that requires an applicant to justify the relief sought on the basis of need or hardship. Insofar as public interest is concerned, this panel notes that the Official Plan does not specifically refer to the balcony size or in fact, balconies at all. Moreover, the fact that the City of Toronto staff and the TRCA have evaluated and approved the proposal is significant. Their affirmation indicates to this panel that the proposal is desirable and that the public interest is protected. This panel finds that the front yard balcony variance and the rear yard balcony variance are both desirable for the appropriate development or use of the land.

29 The third test to be addressed under Section 45(1) is whether the Balcony Variances maintain the general intent and purpose of the by-law. The intent of the by-law is clearly to deal with overview or privacy. Messieurs Stagl and Johnston both felt that such intent was not being met by the balcony relief sought. This panel disagrees. As Mr. Smith testified, in terms of overview, proximity has more of an effect than the size of a balcony. The current by-law would in fact allow balconies on a sidewall subject only to the modest setback requirements in existence. In other words, the existing by-law allows for balconies which could be significantly more obtrusive than what is proposed. This rationale coupled with the distance of the front balcony from adjacent properties and the conditions this panel will impose in relation to the rear balcony, supports the conclusion that by-law intent and purpose is maintained.

30 The fourth and final test to be addressed under this heading is whether the intent and purpose of the Official Plan is maintained. As has already been mentioned in these reasons, the Official Plan does not specifically refer to balconies or their size. However, Mr. Johnston and Mr. Stagl testified that there is nothing comparable in the area and for that reason alone, the fourth test is not met. Again, this panel cannot agree. The balconies in question are located at the southwest and southeast corners of the proposed home. They are at maximum distance from the Ginsler property and are separated from the Vincent property and Golf course by a substantial distance and large, mature trees and shrubs. In addition, the front balcony will have screening approximately 3 feet in height and the rear balcony, along with the conditions hereinafter set out, will have a decorative screen and planter on three sides. This test must be viewed in the context of what is proposed and its affect, if any, on adjacent properties; not whether the proposal is novel for the area. In this panel's view therefore, the Balcony Variances do meet the fourth test.

31 Before concluding these reasons, a brief comment is in order regarding the site plan appeal of the Owners, which was dealt with in conjunction with the variance relief sought. Although Mr. Wood and Ms Pepino filed their own suggested conditions, this panel must be guided by the agreement reached between the Owners and the City concerning the conditions which will apply. They were marked as Exhibit 65 and include modified versions of certain conditions proposed by Mr. Wood and Ms Pepino. In this panel's view, the agreed upon provisions are fair, reasonable and serve the public interest.

## Disposition

32 Based on all the foregoing:

- (1) The Dwelling Length Variance is hereby authorized;
- (2) The Height Variance is not authorized and the appeal in that regard is dismissed;
- (3) The Front Yard Balcony Variance is hereby authorized;
- (4) The Rear Yard Balcony is hereby authorized on condition that:
  - (i) A 5 foot masonry wall shall be constructed and maintained along the entire south limit of such rear yard balcony;
  - (ii) The rear yard balcony shall only be accessed from the master bedroom suite and shall have no access from the exterior, ground floor, upstairs halls or stairs; and
  - (iii) A decorative planter, being at least 1 foot in width and at least as high as the westerly railing of the rear yard balcony, shall be installed and maintained along the entire westerly limit of the rear yard balcony; and
- (5) Subject to the relief granted herein, the conditions of Site Plan Approval set out in Exhibit 65 in this proceeding are hereby approved on the basis that the word "northwesterly" is inserted in Condition 19 following the word "extending".

33 The authorizations and approval above mentioned are also conditional upon the following:

- (a) Subject to the relief granted herein, the proposed dwelling shall be substantially in accordance with the drawings of Thomas Marzotto, Architect, revision date September, 2005 and filed as Exhibit 10 in this proceeding.
- (b) Subject to the relief granted herein, the Owners shall implement the tree protection measures outlined in the arborist report prepared by Aboud & Associates dated May 7, 2004; and
- (c) Subject to the relief granted herein, the proposed dwelling shall also be substantially in accordance with the Landscape Plan marked as Exhibit 11 to this proceeding.

**Most Negative Treatment:** Not followed

**Most Recent Not followed:** Kings (County) v. Marvel Metal & Glass Products Ltd. | 1985 CarswellINS 98, 30 M.P.L.R. 123, 163 A.P.R. 22, 69 N.S.R. (2d) 22 | (N.S. T.D., Mar 18, 1985)

1977 CarswellOnt 332  
Ontario Divisional Court

McNamara Corp. v. Colekin Investments Ltd.

1977 CarswellOnt 332, [1977] 1 A.C.W.S. 668, [1977] O.J. No.  
2222, 15 O.R. (2d) 718, 2 M.P.L.R. 61, 76 D.L.R. (3d) 609

## **McNamara Corporation Ltd. et al. v. Colekin Investments Ltd.**

Evans C.J.H.C., Weatherston and Robins JJ.

Judgment: April 19, 1977

Counsel: *M.J. McQuaid*, for appellants.

*I.A. Blue*, for respondent.

Subject: Public; Municipal

### **Headnote**

Municipal Law --- Zoning — Variances from zoning by-laws — Jurisdiction and powers — Decision maker of first instance

Municipal Law --- Zoning — Variances from zoning by-laws — Jurisdiction and powers — Appeal board

Minor variance — Meaning — Whether variance minor when by-law requirement totally eliminated — The Planning Act, s. 42.

A municipal zoning by-law provided that retail stores with a floor area in excess of 6,000 square feet required one loading dock. The appellants were the owners of a building, and applied for a building permit to construct a stairwell to join two retail spaces for bookstore purposes. The application was rejected since the two spaces being joined would have a total area of more than 6,000 square feet.

The design of the building was such as virtually prevented the construction of a loading dock. The applicants applied to the committee of adjustment for a "minor variance" and upon being satisfied that a particular form of loading chute would satisfy the requirements of the store, and upon the condition that such chute be installed, the committee purported to exempt the lands from the by-law requirement.

On appeal to the Ontario Municipal Board, the Board concluded that the variance requested was desirable, in keeping with the general intent of the zoning by-law, and in keeping with the general intent of the official plan. However, it held that neither it nor the committee had the power to authorize, as minor variance, something totally eliminating the by-law requirement.

Upon appeal to the Divisional Court, *held*, the appeal should be allowed and the matter remitted to the Board for decision. The power granted is to authorize "such minor variance ... as in its opinion is desirable for the appropriate development or use of the land, building or structure". Nothing in the grant of power to the committee or the Board prevents a complete release from a by-law provision. Such an exemption may, or may not, be minor, and the question is for the committee of adjustment or, on appeal, the Board. A complete waiving of a side or back yard set-back could be a minor variance.

### **Held further:**

The owners were entitled to have their application determined by the committee of adjustment, and were not required to seek an amending by-law.

### **Annotation**

It is unfortunate that the recent case of *Min-En Laboratories Ltd. v. Bd. of Variance of North Vancouver* (1977), 1 M.P.L.R. 306, in the Supreme Court of Canada, was not before the Court. In that case the Supreme Court upheld the power of the North Vancouver Board of Variance to exempt an owner from the side yard set-back requirement. In delivering the majority opinion,

Laskin C.J.C., noted that the power of a Board of Variance, to relieve against "hardship" was a power going "far beyond" the power granted to committees of adjustment to relieve against "minor variances". In view of those words, and notwithstanding the merits of the decision, the Ontario Divisional Court ruling cannot be taken to be the final consideration of the matter.

K.D. Jaffary

### Table of Authorities

#### Cases Considered:

*Perry and Taggart, Re*, [1971] 3 O.R. 666, 21 D.L.R. (3d) 402 — referred to

*R. v. London Committee of Adjustment* — referred to

*Ex parte Weinstein*, [1960] O.R. 225, (sub nom. *Re London By-law, Western Tire & Auto. Ltd. and Weinstein*) 23 D.L.R. (2d) 175 — referred to

*251555 Projects Ltd. and Morrison, Re* (1974), 5 O.R. (2d) 763, 51 D.L.R. (3d) 515 (D.C.) — referred to

#### Statute Considered:

The Planning Act, R.S.O. 1970, c. 349, s. 42 [am. 1971, Vol. 2, c. 2, s. 5; 1972, c. 118, s. 10(1), (2)].

#### Words and phrases considered:

### MINOR VARIANCES

The Legislature by s. 42(1) [of *The Planning Act*, R.S.O. 1970, c. 349] confided to committees of adjustment and ultimately to the Municipal Board the authority to allow "minor variances". The statute does not define these words and their exact scope is likely incapable of being prescribed. The term is a relative one and should be flexibly applied: *Re Perry and Taggart*, [1971] 3 O.R. 666 . . . No hard and fast criteria can be laid down, the question whether a variance is minor must in each case be determined in the light of the particular facts and circumstances of the case. In certain situations total exemption from a by-law will exclude a variance from falling within the category of "minor variances". But not necessarily so. In other situations such a variance may be considered a minor one. It is for the committee and, in the event of an appeal, the Board to determine the extent to which a by-law provision may be relaxed and a variance still classed as "minor".

Whether the variance proposed is in fact minor, is desirable for the appropriate development or use of the land, building or structure and maintains the general intent and purpose of the by-law and official plan are all matters to be judged by the committee and Board in relation to all the surrounding circumstances of the application. There is no warrant for concluding, as the Board here did, that its jurisdiction and that of a committee of adjustment is automatically cut-off whenever a variance amounts to a complete elimination of a requirement of a by-law.

Appeal from a decision of the Ontario Municipal Board setting aside a decision of the committee of adjustment of the City of Toronto authorizing a minor variance from the loading space requirement in a zoning by-law.

#### The judgment of the Court was delivered by *Robins J.*:

1 This appeal raises a question of the jurisdiction of the Municipal Board and committees of adjustment to authorize minor variances under s. 4 [am. 1971, Vol. 2, c. 2, s. 5; 1972, c. 118, s. 10(1), (2) of *The Planning Act*, R.S.O. 1970, c. 349].

2 The appellants are the owners of a building located at the corner of Yonge Street and Dundas Square in downtown Toronto which in 1973 was converted from a theatre to retail stores and office space. In 1975 Classic Bookshops rented 3,490 square feet on the ground and second floors of the building for the retail sale of books and subsequently an additional 5,968 square feet in the basement. No access was available from the ground floor of the store to the basement, and consequently the owners agreed to construct a stairwell connecting the two areas. They duly applied to the building department for the building permit necessary to do the renovations. Their application was however refused because City of Toronto Zoning By-law No. 20623 requires that retail stores with a floor area in excess of 6,000 square feet have loading facilities. Here the owners would be required by the by-law to:

...provide and maintain at the premises loading facilities, on land that is not part of a highway, comprised of one or more loading spaces, each not less than thirty (30) feet long, twelve (12) feet wide and having a vertical clearance of at least fourteen (14) feet, according to the floor area of the building or structures as follows:

| Floor Area  | Number of Loading Spaces         |
|---|----------------------------------|
| 6,000 square feet or less<br>from and including 6,001<br>square feet to and including<br>25,000 square feet | none<br><br><br>1 loading space. |

3 While no loading space was needed for premises the size of the existing store, the addition of a basement section produced a total floor area of 9,450 square feet bringing into play the by-law calling for one loading space. Because however the building occupies the entire parcel of land on which it stands, it is impossible for the owners, short of demolishing a part of it, to comply with the by-law. In an effort to solve the problem they retained an architect to design an alternate system for unloading merchandise. He devised a "loading chute" that is to be located at the rear of the building within easy access from the street and which, it appears, constitutes a safe, efficient and satisfactory method of unloading, equal or perhaps superior to the method stipulated in the by-law.

4 The owners then applied to the City of Toronto committee of adjustment for relief from the provisions of the zoning by-law. The committee found the application a reasonable one and, acting under the jurisdiction conferred on it by s. 42(1) of The Planning Act, to authorize minor variances, exempted the owners from the by-law requirement on condition that a loading chute be installed instead. This decision was appealed by the respondent, the owner of a nearby building in which a Coles Book Store is located, to the Ontario Municipal Board.

5 On an appeal to the Municipal Board, the Board, by virtue of s. 42(16) of The Planning Act, may dismiss the appeal and may make any decision that a committee of adjustment could have made on the original application. The power of a committee in the first instance and the Board on appeal to authorize variances is found in s. 42(1):

42. — (1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that implements an official plan or is passed under section 35, or a predecessor of such section, or any person authorized in writing by the owner, may, notwithstanding any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, provided that in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.

6 In this case the Board, after hearing the appeal and considering the requirements of s. 42(1), see *Re 251555 Projects Ltd. and Morrison* (1974), 5 O.R. (2d) 763, 51 D.L.R. (3d) 515 (D.C.) — concluded: (i) that the variance requested is desirable for the appropriate development or use of the land, building or structure; (ii) that it is in keeping with the general intent and purpose of the zoning by-law; and (iii) that it is in keeping with the general intent and purpose of the official plan. But holding as a matter of jurisdiction that neither it nor the committee is empowered to authorize as a minor variance one which totally eliminates a by-law requirement, the Board allowed the appeal and set aside the committee's decision. Its reasoning was expressed in the following terms:

...a variance from one loading space to no loading space, which is what is requested here, cannot be considered minor. The by-law says that between 6,000 square feet and 25,000 square feet, you must provide one loading space. To consider that variance as minor would in my view, amount to completely obliterating the requirement, not just shaving it a little but obliterating it. To put it another way, it is not a variance but an exception. It completely eliminates the requirement and in my view that can only be done by the legislature, in this instance, the City Council of this City by an amendment to its

zoning by-law. *There is no jurisdiction, in my view, in the Committee of Adjustment or in the Board to find a variance from one to zero which completely eliminates the requirement as minor.* (The italics are mine.)

7 The Board erred, in my opinion, in its interpretation of the scope of its jurisdiction. By s. 42(1) it is empowered, as is a committee of adjustment, to authorize "such minor variance ... as in its opinion is desirable for the appropriate development or use of the land, building or structure ...". There is nothing to be found in the section which deprives a committee or the Board of jurisdiction in the event a variance eliminates a by-law requirement or fully exempts an owner from it; nor, in my view, can the section be construed so as to preclude the Board or committee from granting as a minor variance one which completely releases an owner from a provision of a by-law.

8 The Legislature by s. 42(1) confided to committees of adjustment and ultimately to the Municipal Board the authority to allow "minor variances". The statute does not define these words and their exact scope is likely incapable of being prescribed. The term is a relative one and should be flexibly applied: *Re Perry and Taggart*, [1971] 3 O.R. 666, 21 D.L.R. (3d) 402. No hard and fast criteria can be laid down, the question whether a variance is minor must in each case be determined in the light of the particular facts and circumstances of the case. In certain situations total exemption from a by-law will exclude a variance from falling within the category of "minor variances". But not necessarily so. In other situations such a variance may be considered a minor one. It is for the committee and, in the event of an appeal, the Board to determine the extent to which a by-law provision may be relaxed and a variance still classed as "minor".

9 Whether the variance proposed is in fact minor, is desirable for the appropriate development or use of the land, building or structure and maintains the general intent and purpose of the by-law and official plan are all matters to be judged by the committee and Board in relation to all the surrounding circumstances of the application. There is no warrant for concluding, as the Board here did, that its jurisdiction and that of a committee of adjustment is automatically cut-off whenever a variance amounts to a complete elimination of a requirement of a by-law. It is for the Board and committee to decide whether, to take the case of the by-law in these proceedings, an owner of retail premises having an area more than 6,000 square feet is entitled to a "minor variance" exempting him from the loading space provision; this issue is not removed from their jurisdiction solely because the effect of the variance is a total exemption. Similarly, to take another example, in the case of side or rear yard set-back requirements, the fact the exemption sought is the full elimination of the set-back distance does not of necessity mean that the variance is not minor and must be beyond the jurisdiction of the committee and the Board. With the multitude of by-laws covered by s. 42(1) and the number of details they contain, there must be many instances where full exemption can properly be considered no more than a minor variance. It is, as I have said, for the committee and Board to make that determination.

10 Section 42 was enacted to provide a more expeditious and less cumbersome procedure than that required to effect a by-law amendment: *R. v. London Committee of Adjustment; Ex parte Weinstein*, [1960] O.R. 225, (sub nom. *Re London By-law, Western Tire & Auto. Ltd. and Weinstein*) 23 D.L.R. (2d) 175 (C.A.). The owners in this case are entitled to have their application determined under the procedure of s. 42 and not required, as suggested, to seek relief from city council by amendment to the zoning by-law unless the Board determines if it does on the merits of the matter that the exemption sought is not, as the committee of adjustment found, a minor variance.

11 In sum, the Board erred in law in concluding it was without jurisdiction in respect to the variance in question. As a result it improperly declined to exercise its statutory powers under The Planning Act. The appeal must therefore be allowed and the matter remitted to the Municipal Board for decision. Costs of the appeal and the application for leave to appeal will be paid by the respondent.

*Appeal allowed.*

2018 CarswellOnt 805  
Ontario Municipal Board

Berkeley Parliament Inc. v. Toronto (City)

2018 CarswellOnt 805, [2018] O.M.B.D. No. 48, 4 O.M.B.R. (2d) 199

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

Applicant and Appellant: Berkeley Parliament Inc.

Subject: Minor Variance

Variance from By-law No.: 438-86

Property Address/Description: 93-95 Berkeley Street & 112-124 Parliament Street

Municipality: City of Toronto

Municipal File No.: A0703/16TEY

OMB Case No.: PL170213

OMB File No.: PL170213

OMB Case Name: Berkeley Parliament Inc. v. Toronto (City)

Thomas Hodgins, David L. Lanthier Members

Heard: August 14, 2017

Judgment: January 15, 2018

Docket: PL170213

Counsel: Kim Kovar, for Berkeley Parliament Inc.

Alexander Suriano, for City of Toronto

Subject: Public; Municipal

**Headnote**

Municipal law --- Zoning — Zoning variances — Types of variances — Frontage and set back — Side yard set back

Municipal law --- Zoning — Zoning variances — Types of variances — Area — Gross floor area

Municipal law --- Zoning — Zoning variances — Types of variances — Height

Municipal law --- Zoning — Zoning variances — Types of variances — Parking

**Table of Authorities**

**Cases considered by *Thomas Hodgins, David L. Lanthier Members*:**

*DeGasperis v. Toronto (City) Committee of Adjustment* (2005), 2005 CarswellOnt 2913, (sub nom. *Vincent v. DeGasperis*)

200 O.A.C. 392, 12 M.P.L.R. (4th) 1, (sub nom. *Rosedale Golf Assn. v. DeGasperis*) 256 D.L.R. (4th) 566, (sub nom.

*Rosedale Golf Assn. v. DeGasperis*) 51 O.M.B.R. 1 (Ont. Div. Ct.) — considered

*Toronto Standard Condominium Corp. No. 1517 v. Toronto (City)* (2006), 2006 CarswellOnt 3996, 54 O.M.B.R. 102, 35

M.P.L.R. (4th) 152 (O.M.B.) — considered

*2071430 Ontario Inc. v. Toronto (City)* (2015), 2015 CarswellOnt 18813, 88 O.M.B.R. 256 (O.M.B.) — considered

**Statutes considered:**

*Ontario Heritage Act*, R.S.O. 1990, c. O.18

Pt. IV — referred to

*Ontario Municipal Board Act*, R.S.O. 1990, c. O.28

s. 87 — considered

s. 87(1) — considered

*Planning Act*, R.S.O. 1990, c. P.13

Generally — referred to

s. 2 — considered

s. 37 — considered

s. 45(1) — considered

s. 45(9) — considered

s. 45(18.1.1) [en. 1996, c. 4, s. 25(1)] — considered

***Thomas Hodgins, David L. Lanthier Members:***

## **INTRODUCTION**

1 Berkeley Parliament Inc. ("BPI"/"Owner") applied to the City of Toronto ("City") Committee of Adjustment ("COA") for a number of variances intended to allow changes to a 21-storey mixed-use development being constructed at 93-95 Berkeley Street and 112, 114, 116, 118, 120, 122 and 124 Parliament Street (the "Site") by increasing the building height and gross floor areas ("GFAs") through the addition of three extra storeys, decreasing the amount of indoor and outdoor amenity space required, altering certain setbacks and changing some parking space requirements.

2 The COA refused the application as recommended by the City's Community Planning Branch.

3 BPI appealed the COA decision to this Board.

4 Mr. Michael Goldberg was retained to provide evidence on behalf of BPI, was qualified by the Board to provide expert opinion evidence in land use planning and spoke in support of the variances.

5 Mr. Henry Tang is a Planner employed by the City, was qualified by the Board to provide expert opinion evidence in land use planning and spoke in opposition to certain of the variances.

6 One Participant, Ms. Susan Kavanagh, appeared as a representative of the St. Lawrence Neighbourhood Association ("SLNA") in opposition to the variances.

## **AMENDED APPLICATION**

7 Ms. Kovar advised the Board at the outset of the hearing that BPI was seeking the authorization of variances in an amended application. Attachment 1 is a clean copy of the variances as requested in the amended application including revised Diagram 2 and revised Map 2. Attachment 2 illustrates, using strike outs and insertions, the differences between the variances in the original application and the variances in the amended application.

8 Mr. Goldberg and Mr. Suriano both advised the Board that, in their opinions, the amendments were minor pursuant to s. 45 (18.1.1) of the *Planning Act* ("Act").

9 The Board finds that the amendments to the original application are minor and that, pursuant to s. 45(18.1.1) of the Act, no further notice is required.

10 For clarity, the variances before the Board for adjudication at this hearing are as set out in Attachment 1.

## LEGISLATIVE FRAMEWORK

11 The Board has the power to authorize variances if, in its opinion, the variances maintain the general intent and purpose of the Official Plan ("OP"); maintain the general intent and purpose of the zoning by-law ("ZBL"); are desirable for the appropriate development or use of the land, building or structure; and are minor.

12 In making its decision the Board must also, in accordance with the Act: have regard to matters of Provincial interest; have regard to any decision made by the Council or the COA (as a Council delegated approval authority) and any information the Council or COA considered in making its decision; ensure that any decision is consistent with applicable provincial policy; and ensure that any decision conforms with or does not conflict with any applicable Provincial plan.

13 Section 45(9) of the Act authorizes the Board to impose conditions of approval.

14 Section 87(1) of the *Ontario Municipal Board Act* allows the Board to issue contingency orders. This is relevant because ZBL No. 569-2013 has been appealed and is not yet in full force and effect.

## EVIDENCE AND SUBMISSIONS

### *The Site and Previous Approvals*

15 The Site is about 0.29 hectares in area and fronts onto Berkeley Street to the west and Parliament Street to the east. It is a through lot within the block bordered by Berkeley Street, Richmond Street East, Parliament Street and Adelaide Street East.

16 In 2015 the Site was rezoned by means of two site specific ZBLs to permit a 21-storey mixed-use building that includes a five-storey street wall/base building component along Parliament Street, a 10-storey component on the western portion of the Site (set back from Berkeley Street) and a 21-storey component on the eastern portion of the Site (with step backs from Parliament Street) (City staff report to COA, Exhibit 1, Tab 18). The approved project includes a retail component, is site plan approved for 289 residential units and will restore and be integrated with the Christie Brown & Co. Stables heritage building, which is designated under Part IV of the *Ontario Heritage Act*.

17 In January 2016 the COA approved a number of variances, now in effect for the Site, which altered the building envelope and height provisions of the applicable ZBLs and reduced the required amount of office space (Revised Notice of Decision for File A1014/15TEY, Exhibit 10, Tab 15). Mr. Goldberg said that these variances were primarily technical corrections resulting from the site plan approval process, that the originally approved height of 21-storeys was not varied and that City staff supported the variances.

18 In June 2016 the Owner submitted to the COA the application that is the subject of this hearing.

19 By all accounts, a great deal of consultation involving many parties such as the developer, City Council, City staff, local neighbourhood associations and others, went into the final design, the final conditions of approval and the final site specific ZBLs that were endorsed in 2015. As a result, some of those involved in the processes back then feel quite "invested" in the original approval and somewhat betrayed by the current effort to once again alter the project as defined by the site specific ZBLs in 2015.

### *Context*

20 Mr. Goldberg and Mr. Tang did not disagree to any significant extent on the context of the Site. It is in an area in transition that is targeted for growth and regeneration. Many of the low rise commercial and industrial properties in the area are being redeveloped or are approved for redevelopment and there are many heritage properties.

21 Both Planners provided diagrams which illustrated the height/storey permissions on properties in the area. Many of these properties are quite removed from the Site and are of no interest to the Board. However, two of the properties are of significant interest: 53 Ontario Street which is immediately west of the Site across Berkeley Street, which is now approved for 25 storeys or 83.4 metres ("m") in height; and 48 Power Street which is immediately east of the Site across Parliament Street and now approved for a project that includes a tower of 22 storeys and 78.4 m in height. The two latter approvals occurred after the 21 storey site specific ZBLs were adopted for the Site.

22 To emphasize the importance of context in planning terms, Mr. Goldberg pointed to the following excerpt from the City staff report that recommended the 21-storey project on the Site to Council in 2015 (Exhibit 1, Tab 13):

The proposed height is generally consistent with the building heights approved and constructed within the last 5 years in the King-Parliament area. Further, the height of this proposal provides for an appropriate transition from the taller buildings within the area designated Regeneration Area "A" (Jarvis-Parliament) towards the low to mid-rise built form permitted within the area designated Mixed Use Area "A" (Corktown) of the King -Parliament Secondary Plan, where redevelopment east of Parliament Street is expected to continue transitioning towards lower building heights.

23 Mr. Goldberg said that in 2015, the City assumed that a 21-storey building on the Site would be complemented by a lower height building to the east across Parliament Street and that both would be part of an appropriate descending height transition to the lower rise character in Corktown. He advised that this assumption did not come true and that a higher, 22-storey project had now been approved immediately across Parliament Street from the Site in the area of transition between the Site and Corktown. Mr. Goldberg was of the opinion that an increase in the height and size of the project on the Site was now appropriate given the changed context and would not negatively impact the nature of the transition to Corktown that was put in place by the recent approval to the east. As Mr. Goldberg succinctly explained by referencing the sequential order of storeys, the transition in the Regeneration Area "A" from west to east should more appropriately be "25 - 24 - 22" storeys instead of "25 - 21 - 22" storeys as previously approved.

24 Mr. Tang did not agree with Mr. Goldberg's argument and rationale and felt that the currently approved project still fit its context and still formed part of an appropriate transition with a built form that was balanced and appropriate for the Site.

### ***Illustrations***

25 Mr. Goldberg provided the Board with architectural renderings (Exhibit 3) that compare the approved 21-storey building to the proposed 24-storey building from the southwest and from the south. The renderings from the southwest provide the perspective from about five-storeys up while the renderings from the south present a ground level perspective from Parliament Street. His renderings, he felt, showed that the expanded building would be a minor change from what was already approved, would be attractive and would generate no negative impact on the streetscape or visual context of the area.

26 Mr. Tang presented four drawings (part of Exhibit 11) which compare the 21-storey building on the Site to the proposed 24-storey building from eye level on Parliament Street looking both north and south. He said that his drawings showed that the larger building would have a negative visual impact.

### ***Shadow Studies***

27 Mr. Goldberg submitted shadow studies (Exhibit 4) prepared by the project architect that, in his opinion, showed that the incremental shadows produced by the three additional floors were minor and created no additional adverse impact to neighbouring properties including Orphan Greens Park to the east.

28 The City's evidence did not raise shadowing as an issue.

### ***Provincial Policy Statement and Growth Plan for the Greater Golden Horseshoe***

29 Mr. Goldberg and Mr. Tang agreed that all of the requested variances were consistent with the Provincial Policy Statement ("PPS") and complied with the Growth Plan for the Greater Golden Horseshoe ("GP").

***General Intent and Purpose of the OP***

30 Mr. Goldberg and Mr. Tang also agreed that the requested variances would maintain the general intent and purpose of the OP. Given this agreement, the Board will not dwell on the applicable policy framework and will simply say that it accepts the following as a result of the testimony and submissions:

(a) The Site is within the Downtown and Central Waterfront in the Urban Structure portion of the OP. The Downtown is to accommodate development as an urban growth centre in the Provincial Growth Plan including a full range of housing opportunities through residential intensification in Regeneration Areas. New development is to fit harmoniously into its existing or planned context and is to limit its impact on neighbouring areas by creating appropriate transitions in scale to neighbouring buildings, providing adequate light and privacy and by adequately limiting any resulting shadowing or uncomfortable wind conditions. Tall buildings will be located to ensure there is adequate access to sky view for the proposed and future users of these areas. Significant new multi-unit residential development is to provide indoor and outdoor amenity space.

(b) The Site is designated Regeneration Area in the OP. Regeneration Areas are in need of revitalization and are intended to attract investment, fill the buildings and bring new life to the streets. The framework for new development in a Regeneration Area is to be set out in a Secondary Plan.

(c) The Site is within the King-Parliament Secondary Plan (KPSS) and is designated Regeneration Area "A" (Jarvis-Parliament). The Site is also within the Corktown Area of Special Identity. Regeneration Area A is targeted for significant growth with new buildings that define and create edges along the street, are massed to provide adequate light, views and privacy for neighbouring properties and have built form that exhibits appropriate heights, massing, setback, step backs etc. In the Corktown Area of Special Interest new development will follow the urban design policies adopted by Council: and

(d) The King-Parliament Urban Design Guidelines identify both Parliament Street and Berkeley Street as "Special Streets".

31 Since 2006, the City has reviewed property line setback requirements for tall buildings using a series of Guidelines (Exhibit 10, Tab 26). In October 2016, as a formal extension of the Guidelines, an Official Plan Amendment (OPA 352) and a related Zoning By-law Amendment with new policies and provisions for tall buildings were adopted by Council but have been appealed.

32 The Board notes that in 2015, when the currently approved 21-storey project on the Site was recommended by City staff to Council and approved by Council, it was considered by the City to comply with the OP, the King-Parliament Secondary Plan ("KPSS"), the K-P Urban Design Guidelines and the Tall Building Guidelines.

***General Intent and Purpose of the ZBLs***

*General*

33 The Site is zoned "RA" (Reinvestment Area) in ZBL No. 438-86 and zoned "CRE" (Commercial Residential Employment) in ZBL No. 569-2013. The Site is subject to site specific ZBL Nos. 819-2015 and 820-2015, which permit a 21-storey mixed-use building within the building envelope and height limits approved by COA in 2016 in Decision No. A1014/15TEY (City Staff Report to the COA, Exhibit 10, Tab 10).

34 Speaking on a broad basis, Mr. Goldberg stated that the intent of a site specific ZBL is to capture a specific design put forward at a certain point in time. He advised however, that the regulations in a site specific ZBL are not frozen in time and are eligible to be varied in accordance with the Act. Mr. Goldberg noted that the test for the success of variances under s. 45

of the Act was whether the variances maintain the *general* intent and purpose of the zoning by-laws and not the *specific* intent of the site-specific by-law.

35 Mr. Tang, on the other hand, felt that a site specific by-law was the outcome of a comprehensive review process that ultimately endorsed a well-defined, specific development and that the provisions in a site specific ZBL were customized performance standards that worked individually and collectively to implement a balanced and acceptable project. He felt that a high degree of deference should be paid to site specific provisions, their site specific rationale for inclusion and the manner in which such provisions work together on a site to create a package.

*Variances 1, 2, 3, 8, 9, 10, 11 and 12*

36 Mr. Tang advised that he had no objection to: Variances 1, 2, 10 and 11 (increased GFAs); Variance 3 (building envelope); Variances 8 and 9 (location of accessible parking spaces) and Variance 12 (setbacks).

37 Mr. Goldberg supported the above noted variances and was of the opinion that they maintained the general intent and purpose of the applicable ZBLs and were also desirable and minor.

*Height - Variances 4, 5 and 13*

38 Variances 4, 5 and 13 are intended to permit the tower portion of the project to increase from 21 storeys to 24 storeys and to increase the height according to the specified height in meters set out in Diagram 2 and Map 2 to the List of Requested Variances.

39 Mr. Goldberg was of the opinion that the additional height maintained the general intent and purpose of the ZBLs because it implemented the OP, did not create any adverse impacts such as shadowing, and resulted in a project that fit within its context and was compatible with the neighbourhood. He noted the changing context of the area and the recent approval of higher buildings to the immediate west and east of the Site as mentioned earlier. Mr. Goldberg felt that a higher building on the Site would maintain a proper transition to the Corktown neighbourhood. Mr. Goldberg said that his architectural renderings of the 21-storey building versus the 24-storey building showed how reasonable and modest the height increase will be in the field. He noted that neither the OP nor the KPSS included a height limit for the Site or the area.

40 Mr. Tang was of the opinion that the height variances did not maintain the general intent and purpose of the ZBLs. He felt that the height variances would inappropriately change the approved built form from a bulky warehouse character to that of a tall building typology not contemplated by the site specific by-laws and that the altered building would not complement or be compatible with the King Parliament area, as specified in the KPSS. In making his point, Mr. Tang referenced his illustrations which he felt showed the negative visual impact of 24-storeys versus 21-storeys.

*Tower Setbacks - Variances 7 and 15*

41 Variances 7 and 15 deal with the setbacks of the tower portion of the building. Mr. Goldberg advised that these setbacks were consistent with the existing approved tower and met the general intent and purpose of the ZBLs when applied to the additional three floors. He took the position that if the setbacks were reasonable for a 21-storey building, they were equally appropriate for the modestly increased height of a 24-storey building as well.

42 Mr. Tang had no objection to those parts of the tower setback variances which permitted a setback of 0.5 m from the western portion of the north lot line, 2.5 m from the western portion of the south lot line and 6.6 m from the west lot line not abutting a street. He did not support a reduced setback for the tower in the north east part of the Site, which is proposed to be increased in height. Mr. Tang felt that any additional tower height should have a larger setback consistent with the standards in the parent ZBLs, which promote a sense of openness, privacy and access to light and air.

*Amenity Area - Variances 6 and 14*

43 Variances 6 and 14 deal with the amount of indoor and outdoor amenity space to be provided on the Site. The applicable ZBLs currently require 2.3 square metres ("sq m") per dwelling unit ("du") of indoor amenity space and 1.25 sq m per du of

outdoor amenity space. The original approach by BPI requested that the "space-per-du" approach be abandoned in favour of one which specifies that a fixed amount of both indoor and outdoor amenity space be provided for the enlarged building (688.83 sq m of indoor amenity space and 381.75 sq m of outdoor amenity space).

44 Mr. Goldberg recommended the amenity space variances and noted that each unit will have a balcony, some quite large, that augment the other amenity areas on the Site. Mr. Goldberg advised that the difference between the amount of amenity space available to residents under the current ZBLs versus that which would be provided in the event the variances were approved, was extremely minor and maintained the general purpose and intent of the ZBLs.

45 Mr. Tang did not support, in principle, the authorization of a variance that established a fixed amount of amenity space for the Site and said that this type of approach did not maintain the general intent and purpose of the ZBLs which is to have the amount of amenity space linked to the number of units. He recommended the retention of a "space-per-du" requirement because the latter maintains a logical connection between the number of dwelling units (and to some degree the number of people) and the amount of amenity space provided. Mr. Tang said that a fixed rate of amenity space was not appropriate because it would allow non-residential floor space to be converted to dwelling units without a corresponding increase in the amount of amenity area.

46 During her cross examination of Mr. Tang, and in response to his opposition to a fixed amount of amenity area, Ms. Kovar advised that BPI would agree to having the Board authorize a variance which converted the requested fixed amount of amenity space to a corresponding space-per-du rate. She said the variance as converted would be 2.1 sq m of indoor amenity area per du (for a total of 688.83 sq m) and 1.16 sq m of outdoor amenity area per du (for a total of 381.75 sq m).

47 In response, Mr. Tang advised that: the parent ZBL or general City standard requires 2 sq m of indoor and outdoor amenity area per du, totalling a combined rate of 4 sq m per du; that the site specific ZBLs for the Site altered the typical City rates to allow 2.3 sq m per du of indoor amenity area and 1.25 sq m per du of outdoor amenity area for a combined rate of 3.55 sq m per du; and that the currently requested combined rate of 3.26 sq m of total amenity area per du would be the lowest combined rate approved in this area in the last five years. Mr. Tang felt the reduced rates were too low and did not recommend them.

#### ***Variances are Desirable***

48 As indicated, the Planners were *ad idem* that Variances 1, 2, 3, 8, 9, 10, 11 and 12 were desirable for the appropriate use and development of the Site. Their professional opinions regarding the balance of the variances differed.

49 Mr. Goldberg advised that the requested variances and the resulting building would create much needed housing including more family housing in the downtown area. His overall testimony reflected his belief that the building would fit harmoniously into the area, create no unreasonable impacts and maintain the positive aspects of the original project including the streetscape and heritage features. Mr. Goldberg felt the variances were desirable for the appropriate development and use of the land, building or structure.

50 Mr. Tang did not agree that the variances for height, north east tower setback and amenity space were desirable for the appropriate development or use of the land, building or structure. In a broad sense, he felt that they undermined the site specific zoning exercise that had been undertaken in 2015 and may increase a lack of trust in the planning process. Mr. Tang further advised that the approval of the variances might create instability in the area by encouraging requests for height increases on other properties that went through a comprehensive site specific rezoning process. He said that in the last 10 years, there had not been any minor variance applications in the area to increase the height or number of storeys on a site that went through a comprehensive site specific zoning process. More specifically, Mr. Tang advised that the additional height was undesirable because it had a negative visual impact, that the northeast tower setback did not promote access to sky views, light, air and privacy and that reducing the amount of amenity space would not be desirable for the residents of the Site and would set an unnecessarily low standard and precedent for the area.

#### ***Variances Are Minor***

51 Again, both Mr. Goldberg and Mr. Tang agreed that Variances 1, 2, 3, 8, 9, 10, 11 and 12 were minor, but disagreed as to whether the balance of the variances were minor.

52 Mr. Goldberg testified that all of the remaining variances were minor pursuant to s. 45(1) of the Act. He said none of the variances, individually or collectively, or the resulting built-form, would create any adverse impacts and all of the variances were within the range of what he considered minor.

53 Mr. Tang was of the opinion that the height, north east tower setback and amenity area variances were not minor. The additional three storeys would create a negative visual impact along Parliament Street, which is identified in the KPSS as a special street. The reduced setback between the north lot line and the north east tower is not minor as it inappropriately reduces the setback required and will have a negative impact. Mr. Tang also advised that the amenity area variances were not minor or appropriate and would negatively impact residents.

### ***Section 37***

54 In return for the City's 2015 approval of the original project on the Site, the Owner entered into an agreement under s. 37 of the Act. The agreement requires the Owner, amongst other matters, to contribute certain monies to the City. Mr. Goldberg and Mr. Tang both agreed that an additional contribution would be appropriate in the event the Board authorized additional height. Mr. Tang felt that a contribution of \$177,000 was appropriate and Ms. Kovar advised that this amount was acceptable to BPI. A draft condition was presented to the Board to reflect this agreement of the parties.

### **PARTICIPANT - ST. LAWRENCE NEIGHBOURHOOD ASSOCIATION**

55 Ms. Kavanagh submitted a statement identifying the SLNA's concerns (Exhibit 15). Ms. Kavanagh advised that the SLNA supported the project as presented in 2014 but could not support the currently requested changes primarily because: there will be too much built form and going from 21 to 24-storeys is a substantial increase and not minor; the most appropriate built form is the one currently permitted; the Site is not appropriate for more intensification and the proposed changes and additional height do not fit in the neighbourhood which has a special look and feel; the proposed changes will negatively affect the vibrancy of the neighbourhood; a "deal is a deal" and the Owner should be required to build the project that was approved previously and agreed to in good faith by the SLNA and others; and the current proposal if approved would establish a negative precedent in the neighbourhood. Ms. Kavanagh advised that the members of SLNA expect finality when a site specific ZBL is adopted following the consultation process.

### **ANALYSIS AND FINDINGS**

#### ***Variances 1, 2, 3, 8, 9, 10, 11 and 12***

56 This case involves 15 variances and the two Planners agree that eight of them as identified above, are appropriate and that each of them meets the four tests set out in s. 45(1) of the Act and represent good planning in the public interest. The two Planners further agree on the appropriateness of all the tower setbacks except the one proposed between the north lot line and the north east tower. The Board accepts the evidence of the Planners in this regard and finds that these variances should be approved.

57 It is the variances for height, north east tower setback and the amount of amenity space that accordingly remain at issue.

#### ***Variances 6 and 14 - Amenity Areas***

58 The Board finds that the amenity area variances (Variance 6 and 14) as amended, and as proposed by BPI, do not meet the general intent and purpose of the ZBLs and are not desirable for the appropriate development or use of the land, building or structure.

59 The Owner in support of the amenity area variances, focused on the relative numbers in a generic manner and did not provide any relevant or helpful evidence on the qualitative aspects of the amenity space to be provided, or such things as: how

many users such space can accommodate based on its design and features; the relative success of other projects with similar amounts of amenity space; or an analysis or rationale justifying the reduced amount of space being requested, including the proximity of easily accessible public amenity areas such as parks in the neighbourhood that might affect the need for the required quantity of amenity space.

60 The Board prefers the evidence of Mr. Tang on this issue and his conclusion that the reduction of the indoor and outdoor amenity space is inappropriate. In this case, Mr. Tang's opinion was that the reduction of amenity space to that proposed by the Owner (3.26 sq m per du) would be significantly lower than other residential developments in this area in the last five years and lower still from what was provided for in the initial agreed-upon proposal. In isolation, if additional floors and units are to be added and those variances approved, the Board agrees that is not desirable to further limit the benefit of amenity space made available to residents.

61 Upon all the evidence, the Board accordingly finds that each of the four tests relating to the amenity space variances have not been satisfied and do not represent good planning. Variances 6 and 14 are therefore not approved. The existing zoning provisions (2.3 sq m per du of indoor amenity space and 1.25 sq m per du of outdoor amenity space) therefore remain in force and effect.

***Variances 4, 5, and 13 (Height) and Variances 7 and 15 (Tower Setbacks)***

62 The Board finds that the balance of the variances relating to height and the remaining tower setback meet the four tests under s. 45(1) of the Act and maintain the general intent and purpose of the OP and the ZBLs, are desirable for the appropriate development or use of the land, building or structure and are minor.

***Summary***

63 The Board is satisfied that all the variances (except Variances 6 and 14) will maintain the general intent and purpose of the OP and will advance the objective of providing additional housing in an area targeted for growth. The project is designed in a manner that will allow it to fit harmoniously within its context and will not create unreasonable adverse impacts in this built-up urban area. An appropriate transition to Corktown will still be maintained and in fact, the additional storeys and resultant height will represent a more appropriate transition from 25 storeys to the west and 22 storeys to the east. Further, the original project was deemed to comply with the OP and KPSS in 2015 and the proposed modifications are not significant enough now to offend the key provisions in those policy documents.

64 The Board is satisfied that the Variances (except Variances 6 and 14) maintain the general intent and purpose of the ZBLs. It is not disputed that site specific by-laws can be varied. This Panel is aware of previous Board decisions that refused to vary site specific ZBLs. A distinguishing and compelling characteristic of this case, however, is the rather significant changes in context that have occurred since the site specific ZBLs were approved. The context envisioned by the City as set out in the 2015 approval report for the currently approved development and used as the rationale for limiting the Site to 21-storeys at the determined height (of 74 m inclusive of mechanical penthouse), did not unfold as expected.

65 The Board finds the variances (except Variances 6 and 14) to be desirable from a planning perspective and a public interest point of view. They will enable reinvestment, the better utilization of a centrally located Site and provide more housing. The illustrations at the hearing reflect an expanded building that will fit within the surrounding context. It is the Board's findings that both the Owner's renderings (Exhibit 3) and the City's renderings (Exhibit 11) with the additional three storeys, reflect a harmonious built-form that is as much a "fit" and as compatible as that which was expected from the development approved at 21 storeys.

66 The Board further finds that the variances (except Variances 6 and 14) are also minor. They will not cause any unacceptable adverse impact in this built-up urban environment. From a visual and qualitative perspective, the variances that would permit the three additional storeys are, in the Board's view, minor.

67 The Board will accordingly authorize those variances as indicated. The Board's authorization of the variances is being made subject to one condition that was agreed to and crafted by the Parties.

68 Neither the City nor the Participant convinced the Board that the balance of the variances were inappropriate, unreasonable or failed the applicable legislative tests.

69 In making its decision, the Board has had regard to Provincial interests as set out in s. 2 of the Act, the COA decision and material considered by the COA as provided to the Board. The Board also had regard to the decision of Council to authorize staff to attend the hearing in opposition to the variances.

70 The Board finds that its decision is consistent with the PPS and conforms to the GP.

71 The Board understands the position of the City and the SLNA that it is not, in principle, appropriate to vary to any significant extent a site specific ZBL that was the topic of much discussion, negotiation and concern within the community during its processing and adoption. They feel that variances and changes to the project undermine and negate their original efforts to achieve an appropriate and acceptable project and offend the concepts of finality and closure. The Board understands these sentiments but notes that the Applicant is nevertheless permitted by law to apply for the variances, and in doing so, the variances are to be considered upon the evidence as it now exists, and in the context of what now exists, including such changes that have occurred since the earlier form of the development was first approved. The variances must be authorized in the event the applicable legislative tests are met.

72 It is the Board's view that the application for the variances should be viewed upon that approach rather than one that is resistant to go beyond that which was already approved through the community consultation process. Certainly, the prior processes that led to the agreed-upon components of the development should not be lightly ignored in the absence of new evidence or changes in circumstances and contextual parameters. Where however, as in this case, the context of the Site has changed in a significant manner since that time, it is the obligation of the Board to consider such evidence and such changes, in context. Where appropriate, and if, and only if, the four tests can be satisfied, the Board may then find that such additional variances are warranted.

73 On this issue, the Board has carefully considered the decisions submitted in argument including *2071430 Ontario Inc. v. Toronto (City)* [2015 CarswellOnt 18813 (O.M.B.)], (PL150612 Issued December 1, 2015) ("*2071430 Ontario Inc.*") where the Board was similarly asked to approve variances which would add four storeys to a building already capped at 17-storeys through a prior approval and Board order. That case however can be distinguished as the Applicant, in that case, sought variances to a site specific by-law after-the-fact, for what was largely the Applicant's original development concept as first proposed without establishing that there had been intervening changes that warranted a re-examination of the matter.

74 The facts of *2071430 Ontario Inc. supra*, did not include as is the case here, rather notable changes to the contextual neighbourhood and the intervening approvals of developments surrounding the Site. The additional recent approvals of nearby developments reflect heights similar to that requested by the Owner, and demonstrate contextual changes that alter the relative assessment of what represents an appropriate transition of development heights. The Board accepts Mr. Goldberg's opinion evidence in this regard, that the Applicant is not asking for what it could not get originally, but rather, is seeking height variances based upon the way in which the site context has evolved in the short period of time since 2015.

75 The Board accepts Mr. Goldberg's opinion that the site-specific by-law is not "frozen in time" as to follow that approach would make s. 45(1) meaningless and when considering the general intent and purpose of the zoning by-laws, the additional storeys meet such general intent. In Mr. Goldberg's view, the comparative assessment of the renderings (Exhibit 3) and the contextual transition of height are such that the order of magnitude is small, and the variance permitting the three additional storeys with the setbacks, are minor. The Board agrees and accepts Mr. Goldberg's opinion as expressed and with his conclusion, that the height and tower setback variances will result in a development that is desirable in that it will promote growth and optimize the use of the Site while fitting within the context of what has evolved in the nearby area through other development approvals.

76 The Board has also considered the decision of *DeGasperis v. Toronto (City) Committee of Adjustment*, 2005 CarswellOnt 2913 (Ont. Div. Ct.) proffered by the City. The City refers to this Divisional Court decision in support of its submission that even without evidence of impact, the Board should exercise its discretion and find that three additional storeys are not minor because the resultant building is patently too large. While the Board certainly retains such discretion in the consideration of the four tests, in the circumstances of this case, the Panel prefers the approach of the Board, as enunciated in many instances, including *Toronto Standard Condominium Corp. No. 1517 v. Toronto (City)*, 2006 CarswellOnt 3996 (O.M.B.). The Board in that case confirmed that the magnitude of the numerical deviation of the variance is often not of assistance in determining whether variances are minor and that rather than relying upon the robotic exercise of examining numbers or quantitative considerations (i.e. that a development may be patently "too large") it is more important to examine the nature of the development's built-form and the context in which it will exist. This includes such things as the "fit" and appropriateness of the development, the sense of proportion, whether there is due regard to the built and planned environ, the reasons the zoning by-law requirements have been imposed and the impact of the deviations upon the nearby area. Applying this approach the Board finds that, upon the evidence relating to recent approvals granted for nearby developments and the height of those developments to the west and east, the additional variances which would permit the proposed heights and tower setbacks, are compatible with the context of the area and are minor.

77 The Board is satisfied that the project as varied will, as opined by Mr. Goldberg, continue to represent a quality addition to the community as it was previously approved through intensive review and consultation. Significant credit in this regard is due to the work and effort that went into the discussions and the give-and-take associated with the approval of the original project, which is in no way diminished through the approval of the additional variances now considered and approved by the Board under this application. The heritage preservation aspects of the proposal remain intact and the manner in which the building addresses the public realm is not changing.

78 The Board is of the view that the additional three storeys will not be a negative, and there is no evidence before it to suggest that the variances will destabilize the area by encouraging future increases to developments that were already approved through a comprehensive rezoning process, as the City argues. Neither can the Board agree with the City's submission that the approval of the variances will disrupt the balance of objectives achieved through the previous site specific amending by-laws, or represent a distraction. In this case, where the evidence discloses that there have been specific contextual changes arising from recent approvals in the immediate area, and where the four tests under s. 45(1) can be met, the approved variances permitting additional height, with the approved setbacks, do not adversely impact the public interest in having certainty in the planning process. To the contrary, the public interest may be served by permitting minor variances of an already-approved development that more appropriately reflect the inclusive context of what has recently been happening in the immediate area.

79 Put another way, the subsequent "tweaking" of a development in the planning processes, through minor variances, should not be seen to denigrate the original efforts of the parties or the ultimate result of the planning processes that led to the eventual endorsement of what was then considered a final version of the development in 2015. To the contrary, they are an extension of that process arising from a subsequent change in circumstances, such that the ultimate form of the development, with the additional variances, can be considered to be the result of the entire process, from beginning to end, inclusive of those additional variances that meet the four tests.

## **ORDER**

80 The Board having been asked to consider an application which has been amended from the original application, determines that, pursuant to s. 45(18.1.1) of the Act, no further notice is required.

81 The Board orders that the appeal is allowed in part and the Board approves all of the variances in Attachment 1, *except* Variances 6 and 14, which are not approved.

82 The approval of the specified variances is subject to the following condition:

The Owner shall enter into an agreement pursuant to s. 45(9) of the Act to secure the payment to the City of the sum of \$177,000, which shall be paid prior to the issuance of a building permit allowing the construction of the additional three storeys permitted by this Decision and Order, and which shall be allocated by the City toward some or all of the community benefits identified in the s. 37 Agreement for the Site to the satisfaction of the Chief Planner and Executive Director, City Planning Division in consultation with the Ward Councillor.

83 Pursuant to s. 87 of the *Ontario Municipal Board Act*, R.S.O. 1990, c. O.28, the variances to By-Law No. 569-2013 are authorized contingent upon that By-law coming into full force and effect.

#### **Attachment 1 — LIST OF REQUESTED VARIANCES**

1. *Chapter 900.12.10 CRE(1)(B), By-law 569-2013*

The maximum permitted gross floor area on the lots is 20,680 m<sup>2</sup>.

In this case, the gross floor area of the building will be 22,693 m<sup>2</sup>.

2. *Chapter 900.12.10 CRE(1)(B)(i), By-law 569-2013*

The maximum permitted residential gross floor area is 19,630 m<sup>2</sup>.

In this case, the residential gross floor area will be 21,750 m<sup>2</sup>.

3. *Chapter 900.12.10 CRE(1)(C), By-law 569-2013*

The whole of the building must be located within the area delineated by heavy lines on Diagram 2. Decision A1014/15TEY permitted the building to be located within the area delineated by heavy lines on Revised Diagram 2.

In this case, parts of the building located below grade will extend to the property lines and the portion of the building above grade will be located within the areas delineated by heavy lines on the attached revised Diagram 2.

4. *Chapter 900.12.10 CRE(1)(E), By-law 569-2013*

The maximum number of storeys in a building must not exceed the number following symbol ST on Diagram 2. Decision A1014/15TEY permitted the number of storeys as shown on Revised Diagram 2.

In this case, the height of the tower portion of the building will not exceed the number following symbol ST on the attached revised Diagram 2.

5. *Chapter 900.12.10 CRE(1)(D), By-law 569-2013*

The maximum height of a building or structure is measured from the Canadian Geodetic Datum elevation of 82.11 metres and must not exceed the height in metres specified by the numbers following the symbol HT on Diagram 2. Decision A1014/15TEY permitted building heights as shown on Revised Diagram 2.

In this case, the height of the tower portion of the building will be specified in metres by the number following the symbol HT on the attached revised Diagram 2.

6. *Chapter 900.12.10 CRE(1)(H)(i) & (ii), By-law 569-2013*

The minimum indoor amenity space provided on the lot shall be 2.3 m<sup>2</sup> per dwelling unit (752.1 m<sup>2</sup>) and the minimum outdoor amenity space provided on the lot shall be 1.25 m<sup>2</sup> per dwelling unit (408.75 m<sup>2</sup>).

In this case, the indoor amenity space will be  $2.1 \text{ m}^2$  per dwelling unit ( $688.83 \text{ m}^2$ ) and the outdoor amenity space will be  $1.16 \text{ m}^2$  per dwelling unit ( $381.75 \text{ m}^2$ ).

7. *Chapter 600.10.10(1)(A)(iii), By-law 569-2013*

Every tower must be set back at least 12.5 m from a lot line having no abutting street or lane.

In the case, the tower floors will be setback 0.5 m from the north lot line, 2.5 m from the south lot line and 6.6 m from the west lot line not abutting a street.

8. *Chapter 200.15.1(3), By-law 569-2013*

The entire length of an accessible parking space must be adjacent to a 1.5 metre wide accessible barrier free aisle or path.

In this case, the accessible parking spaces will not be adjacent to a 1.5 metre wide accessible barrier free aisle or path.

9. *Chapter 200.15.1(4), By-law 569-2013*

Accessible parking spaces must be the parking spaces closest to a barrier free entrance to a building, passenger elevator that provides access to the first storey of the building, and shortest route from the required entrances.

In this case, 3 of the accessible parking spaces will not meet these requirements.

10. *Section 2(c), Site Specific By-law 819-2015*

The maximum permitted gross floor area on the lot is  $22,050 \text{ m}^2$ .

In this case, the gross floor area of the building will be  $23,564 \text{ m}^2$ .

11. *Section 2(c)(i), Site Specific By-law 819-2015*

The maximum permitted residential gross floor area is  $21,020 \text{ m}^2$ .

In this case, the residential gross floor area will be  $22,534 \text{ m}^2$ .

12. *Section 2(d), Site Specific By-law 819-2015*

The minimum yard setbacks for all buildings and structures shall be as set out on Map 2. Decision A1014/15TEY permitted building and structure setbacks as specified on Revised Map 2.

In this case, the building will be constructed in accordance with the setbacks and separation distances as shown on the attached revised Map 2.

13. *Section 2(e), Site Specific By-law 819-2015*

The heights of the building shall not exceed the height in metres and the number of storeys specified on Map 2. Decision A1014/15TEY permitted the building heights and number of storeys as shown on Revised Map 2.

In this case, the maximum building height and number of storeys will be specified on the attached revised Map 2.

14. *Section 2(h), Site Specific By-law 819-2015*

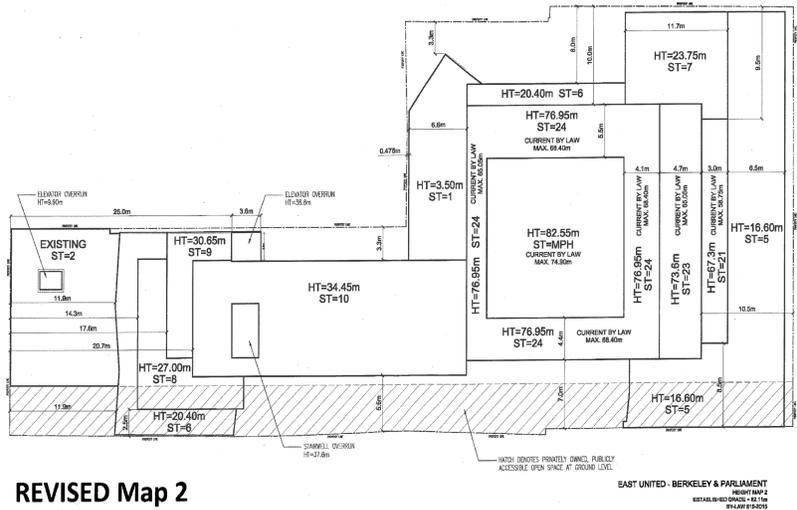
Indoor amenity space shall be provided at the rate of 2.3 m<sup>2</sup> per dwelling unit (752.1 m<sup>2</sup>) and outdoor amenity space at the rate 1.25 m<sup>2</sup> per dwelling unit (408.75 m<sup>2</sup>).

In this case, the indoor amenity space will be 2.1 m<sup>2</sup> per dwelling unit (688.83 m<sup>2</sup>) and the outdoor amenity space will be 1.16 m<sup>2</sup> per dwelling unit (381.75 m<sup>2</sup>).

15. Section 12(2) 380(1)(c), By-law 438-86

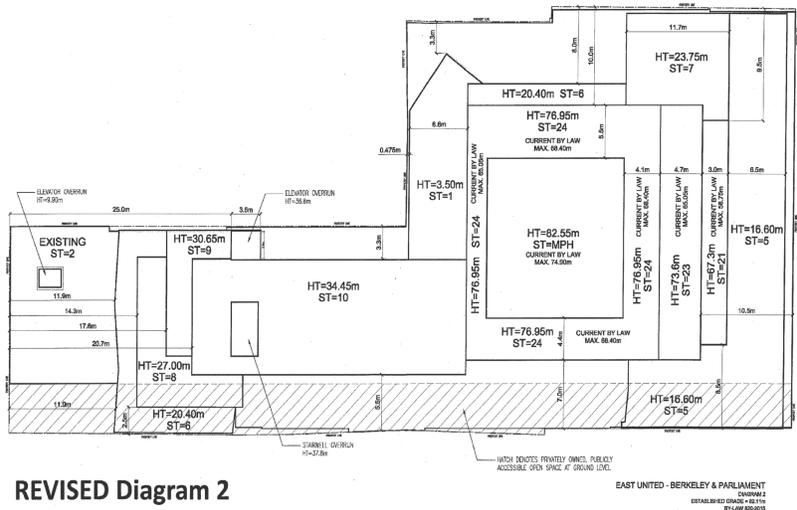
The setbacks for towers higher than 24 m is 12.5 m from a lot line having no abutting street.

In this case, the tower floors will be setback 0.5 m from the north lot line, 2.5 m from the south lot line and 6.6 m from the west lot line not abutting a street.



REVISED Map 2

Graphic 1



REVISED Diagram 2

Graphic 2

Attachment 2 — LIST OF REQUESTED VARIANCES

1. Chapter 900.12.10 CRE(1)(B), By-law 569-2013

The maximum permitted gross floor area on the lots is 20,680 m<sup>2</sup>.

In this case, the gross floor area of the building will be 22,693 m<sup>2</sup>.

2. *Chapter 900.12.10 10 CRE(1)(B)(i), By-law 569-2013*

The maximum permitted residential gross floor area is 19,630 m<sup>2</sup>.

In this case, the residential gross floor area will be 21,750 m<sup>2</sup>.

3. *Chapter 900.12.10 CRE(1)(C), By-law 569-2013*

The whole of the building must be located within the area delineated by heavy lines on Diagram 2. Decision A1014/15TEY permitted the building to be located within the area delineated by heavy lines on Revised Diagram 2.

In this case, parts of the building located below grade *will extend to the property lines and a* the portion of the roof level west of the ~~mechanical penthouse~~ *building above grade* will be located as *within the areas* delineated by heavy lines on the attached revised Diagram 2.

4. *Chapter 900.12.10 10 CRE(1)(E), By-law 569-2013*

The maximum number of storeys in a building must not exceed the number following symbol ST on Diagram 2. Decision A1014/15TEY permitted the number of storeys as shown on Revised Diagram 2.

In this case, the height of the tower portion of the building will not exceed the number following symbol ST on the attached revised Diagram 2.

5. *Chapter 900.12.10 10 CRE(1)(D), By-law 569-2013*

The maximum height of a building or structure is measured from the Canadian Geodetic Datum elevation of 82.11 metres and must not exceed the height in metres specified by the numbers following the symbol HT on Diagram 2. Decision A1014/15TEY permitted building heights as shown on Revised Diagram 2.

In this case, the height of the tower portion of the building will be specified in metres by the number following the symbol HT on the attached revised Diagram 2.

6. *Chapter 900.12.10 CRE(1)(H)(i) & (ii), By-law 569-2013*

The minimum indoor amenity space provided on the lot shall be 2.3 m<sup>2</sup> per dwelling unit (752.1 m<sup>2</sup>) and the minimum outdoor amenity space provided on the lot shall be 1.25 m<sup>2</sup> per dwelling unit (408.75 m<sup>2</sup>).

In this case, the indoor amenity space will be 668.83 688.83 m<sup>2</sup> and the outdoor amenity space will be 381.75 m<sup>2</sup>.

7. *Chapter 600.10.10(1)(A)(iii), By-law 569-2013*

Every tower must be set back at least 12.5 m from a lot line having no abutting street or lane.

In the case, the tower floors will be setback 0.5 m from the north lot line, 2.5 m from the south lot line and 6.6 m from the west lot line not abutting a street.

8. *Chapter 200.15.1(3), By-law 569-2013*

*The entire length of an accessible parking space must be adjacent to a 1.5 metre wide accessible barrier free aisle or path.*

*In this case, the accessible parking spaces will not be adjacent to a 1.5 metre wide accessible barrier free aisle or path.*

*9. Chapter 200.15.1(4), By-law 569-2013*

*Accessible parking spaces must be the parking spaces closest to a barrier free entrance to a building, passenger elevator that provides access to the first storey of the building, and shortest route from the required entrances. In this case 3 of the accessible parking spaces will not meet these requirements.*

*10. 8 . Section 2(c), Site Specific By-law 819-2015 The maximum permitted gross floor area on the lot is ~~20,050~~ 22,050 m<sup>2</sup> .*

*In this case, the gross floor area of the building will be 23,564 m<sup>2</sup> .*

*11. 9 . Section 2(c)(i), Site Specific By-law 819-2015*

*The maximum permitted residential gross floor area is 21,020 m<sup>2</sup> .*

*In this case, the residential gross floor area will be 22,534 m<sup>2</sup> .*

*12. ~~10~~ . Section 2(d), Site Specific By-law 819-2015*

*The minimum yard setbacks for all buildings and structures shall be as set out on Map 2. Decision A1014/15TEY permitted building and structure setbacks as specified on Revised Map 2.*

*In this case, the west parking access will be setback 0.475 m from the west lot line, the building adjacent to the parking access will be 3.3m from the north lot line building will be constructed in accordance with the setbacks and separation distances as shown on the attached revised Map 2.*

*13 ~~11~~ . Section 2(e), Site Specific By-law 819-2015*

*The heights of the building shall not exceed the height in metres and the number of storeys specified on Map 2. Decision A1014/15TEY permitted the building heights and number of storeys as shown on Revised Map 2.*

*In this case, the maximum building height and number of storeys will be specified on the attached revised Map 2.*

*14 ~~12~~ . Section 2(h), Site Specific By-law 819-2015*

*Indoor amenity space shall be provided at the rate of 2.3 m<sup>2</sup> per dwelling unit (752.1 m<sup>2</sup>) and outdoor amenity space at the rate 1.25 m<sup>2</sup> per dwelling unit (408.75 m<sup>2</sup>).*

*In this case, the indoor amenity space will be ~~668.83~~ 688.83 m<sup>2</sup> and the outdoor amenity space will be 381.75 m<sup>2</sup> .*

*15. ~~13~~ . Section 12(2) 380(1)(c), By-law 438-86*

*The setbacks for towers higher than 24 m is 12.5 m from a lot line having no abutting street. In this case, the tower floors will be setback 0.5 m from the north lot line, 2.5 m from the south lot line and 6.6 m from the west lot line not abutting a street.*

2002 CarswellOnt 4655  
Ontario Municipal Board

Port Royal Place Developments Inc. v. Toronto (City) Committee of Adjustment

2002 CarswellOnt 4655, 43 O.M.B.R. 503

**Port Royal Place Developments Inc. Appealed to the Ontario Municipal Board Under Subsection 45(12) of the Planning Act, R.S.O. 1990, c. P.13, as Amended, from a Decision of the Committee of Adjustment of the City of Toronto which Granted an Application Numbered A77/01E for Variance from the Provisions of By-law 438-86, as Amended, Respecting 5055 Dundas Street West, City of Toronto (Etobicoke)**

Culham Member

Judgment: February 4, 2002

Docket: PL010003

Counsel: *S.H. Diamond*, for Port Royal Place Developments Inc. (Port Royal)

Subject: Public; Municipal

**Headnote**

Municipal law --- Zoning — Zoning variances — Conditions

Dedication and construction of walkway — Conflict with existing Section 37 agreement — Whether condition makes planning sense.

Upon an application to increase the number of dwelling units, the committee of adjustment imposed a condition requiring the dedication and construction of a walkway. This condition duplicated but was in conflict with the subject matter of an existing agreement made under s. 37 of the Planning Act. Additional lands would have to be acquired by the city to meet this requirement. The Ontario Municipal Board heard evidence of changed conditions and the lack of planning relevance for the location of the facility, which would in any event be costly to provide.

**Held:** Conditions deleted.

There was no planning documentation supporting the walkway condition and that the walkway itself, if constructed, would present unnecessary security risks with little pedestrian circulation advantage. The walkway lacked passive surveillance, and it would be unreasonable to force construction of a facility that does not go anywhere and may detract from the safety and security of the proposed project. The condition was redundant, unrelated to potential impacts from the requested variances and did not fairly or reasonably relate to the permitted development. Furthermore, the s. 37 agreement more appropriately addressed issues of pedestrian access.

**Table of Authorities**

**Statutes considered:**

*Planning Act*, R.S.O. 1990, c. P.13

s. 45(1) — referred to

s. 45(12) — referred to

APPEAL of condition of approval of minor variance.

***D. J. Culham:***

1 Port Royal appealed to the Board the decision of the Toronto Committee of Adjustment concerning their 3.8-hectare property at 5055 Dundas Street West in the former municipality of Etobicoke. The Committee of Adjustment decision, as recommended by the Toronto Planning Department, authorized the following variance request:

1. Section 3.6 of Decision/Order No. 0981, as amended by Decision/Order No.1018 Not more than 1275 dwelling units, in aggregate, shall be permitted on the lands. It is proposed that the lands will provide 1425 dwelling units.

What is at issue is the two imposed conditions. They are as follows:

1. The applicant shall be required to design and construct an easterly extension of the proposed public pedestrian walkway to Mabelle Avenue, at no cost to the municipality and to the satisfaction of Works and Emergency Services.

2. The applicant shall be required to construct a public, barrier-free, concrete sidewalk connecting the south limit of Michael Power Place to the existing sidewalk on the north side of Bloor Street West, at no cost to the municipality and to the satisfaction of Works and Emergency Services. The design of the sidewalk shall permit for mechanical snow clearing.

2 Mr. Peter Milizyz, the local Councillor, requested an adjournment at the start of the hearing. He stated that the legal staff had not reported to City Council and thus the Council had not taken a position to be represented at this Board hearing. Mr. Milizyz indicated that he did not wish to participate or question the witnesses but required more time to seek Council's direction.

3 The Board considered and denied the request. Given the amount of time between the Committee of Adjustment decision and this hearing, the Board concludes that more than sufficient time had been available to resolve this matter or to gain the direction of Council.

4 Ms Lindsay Dale-Harris, a qualified planner, and Mr. John Day, a qualified landscape architect and expert in urban design for crime prevention, testified in support of the Port Royal appeal to the Board. No one else, other than Councillor Milizyz, appeared or testified.

5 The site is located on the south side of Dundas Street between Kipling and Islington Avenues in what is designated in the Etobicoke Official Plan as "City Centre". The lands are just north of Bloor Street on what was the old Michael Power High School site. The nature of the planning context is detailed in the July 6, 2000 Board decision (Board Order 0981).

6 After hearing and questioning the testimony, the Board finds that the requested variance, as authorized by the Toronto Committee of Adjustment, does indeed maintain the general intent and purpose of the Official Plan and Zoning By-law, is minor in nature and is both desirable and appropriate for this site. The Committee of Adjustment came to the same conclusion during their two public hearings. The Toronto Planning Department in their planning documents recommended it. Ms Dale-Harris testified that the variance meets the requirements of Section 45(1) of the *Planning Act*. She further testified that the variance allows for 150 more units in a more affordable size within the same approved built form of the 8 apartment buildings, under the same approved density provisions. There is no additional vehicular or pedestrian traffic demand created beyond the sizing of the facilities to be constructed under the terms of the Section 37 Agreement.

7 In regard to condition 1, the dedicating of a walkway space and the construction of the walkway itself, Ms Dale-Harris testified that the request is inappropriate. The requirement to dedicate the space for the potential walkway on the Port Royal project and to potentially construct it, is already within the approved Section 37 Agreement. However under Section 20 of the Agreement, the dedicated lands for the potential walkway are to be held by the City in escrow. The time period is a minimum of two years. The City has a further 6 months to require and direct Port Royal to build the sidewalk on the walkway. However, importantly within the Section 37 Agreement, the City can only require this to be done if it has acquired the needed space for the extension of the pathway on the apartment lands to the east. These apartments front on to Mabelle Avenue. If this land is not acquired by the City for this purpose, then the dedicated lands on the Port Royal project, held in escrow, are to be returned to Port Royal. The condition 1 then contradicts the existing Section 37 Agreement.

8 It is Ms Dale-Harris' testimony that the concept of a walkway no longer makes any planning sense. It evolved at an earlier stage of the project when townhouses were contemplated. The walkway provided backyard access to the rear yards of the two rows of townhouses. So at that time it made planning sense within the proposed project. The townhouses, however, are no longer in the project. Presently apartment, with greater setbacks and a totally different orientation to this pathway space, are now approved. Port Royal continues to be obligated, within the Section 37 Agreement, to dedicate the space and build the walkway but only after the City fulfilled its part. The City must first acquire the lands to the east. Without a connection to the lands to the east, the walkway makes no planning sense. It becomes a negative liability.

9 It is Ms Dale-Harris' testimony that the eastward pathway extension, over the land occupied by the existing apartment buildings, does not represent good planning. It is highly unlikely, in her opinion, that this portion would be constructed. The potential lands have significant elevation differences making any future construction very costly. The existing apartment buildings fronting on Mabelle Avenue are owned by non-profit corporations responsible to manage low cost rental accommodation. The lands are yet to be acquired by the City from the Housing Corporations. Ms Dale-Harris testified that, from her review of the Police records, a high demand for Police service presently exists. The potential walkway, located between the ends of two apartments without any direct tenant visibility, would place greater demand on the Police. The location is below the massive wall of the parking structure out of view from the street or the apartment windows. There exist no justified planning documentation from the Planning Department, Works Department or the Boards of Education for this potential pedestrian access at this location. The condition is arbitrarily imposed. There is no impact of the variance itself that warrants this condition.

10 Mr. Day testified that the proposed walkway is ill conceived, and presents additional safety and future management problems. The present design of the Port Royal lands call for two controlled entrance points with a secured perimeter fence in the location of the proposed walkway. The walkway is not needed in this arrangement. Access from the proposed walkway would, in his opinion, create additional security concerns. In Mr. Day's opinion the 5 metres wide, 90-metre long walkway presents unnecessary security risks with little pedestrian circulation advantage.

11 With respect to the proposed eastward extension on to the existing apartment lands, he agrees with the limitations as described by Ms Dale-Harris. There is little opportunity for passive surveillance by tenants. The proposed walkway space is not visible from the street or the activity points on the existing apartments lands. In his opinion, a proposed walkway presents additional problems for the apartment management and for the Police in controlling criminal behavior. The proposed walkway presents excellent escape routes. Because the proposed walkway is very long and narrow and does not serve a functional use within the project, it becomes what he describes as "an unassigned space". By weakening the defined boundaries of the private properties involved, such space discourages the proprietorship needed to maintain the upkeep and the security of the properties.

12 The testimony of both qualified witnesses is credible. The Board finds that it is an unreasonable condition to force the construction of a walkway that does not go anywhere and that may, as a result of its presence, detract from the safety and security of the proposed project.

13 The Board is not prepared to assess judgement on the appropriateness of the eastward extension of the walkway over the adjoining apartment lands despite hearing credible evidence that it is not. Such a future undertaking requires very detailed analysis and scrutiny that is not available at this time.

14 In considering the evidence in regard to the condition 2, that of the sidewalk to Bloor Street, imposed by the Committee of Adjustment, the Board makes a number of findings, which are as follows:

1. The request is already noted and required in the approved Official Plan text as being part of a Section 37 Agreement;
2. The request is repeated in the text of the approved amended Zoning as being part of a Section 37 Agreement; and further
3. The request is more fully defined and detailed under Section 19, Bloor Street Connection, within the approved text of the actual Section 37 Agreement than in the modified condition 2 of the Committee of Adjustment.

15 The Board concludes that the condition 2 as imposed by the Committee of Adjustment is redundant, inappropriate, totally without justification and in no way relates to any potential impacts arising out of the requested variance.

16 The Board is aware that the Committee of Adjustment has the right, in granting approvals, to impose conditions. This Board, in turn, has the right to make any decision that the Committee of Adjustment could have made on the original application. In arriving at a decision, the Board needs to assess whether the conditions are reasonable and "fairly and reasonably relate to the permitted development". After assessing the evidence, the Board finds that the conditions are not reasonable in themselves and do not arise out of the development permitted by the authorized variance. The Board finds that the conditions contradict those already imposed by the Section 37 Agreement, which more appropriately addresses the pedestrian access issues to which the new conditions are directed.

17 From the correspondence submitted in evidence, it appears that various staff disagreed over the issue. Port Royal and the Planning Department agreed upon a \$35,000 payment subject to the matter being settled at the Committee of Adjustment. Unfortunately, that is not the case. This Board can not retrieve these funds as an imposed condition as they do not present a reasonable connection to the authorized variance.

18 The Board allows the appeal by Port Royal Place Developments Inc. under Section 45(12) of the *Planning Act*, from a decision of the Committee of Adjustment of the City of Toronto. The Board authorizes the requested variance respecting 5055 Dundas Street West, City of Toronto (Etobicoke) without the two conditions impose by the Committee of Adjustment.

19 The Board so orders.

*Appeal allowed.*

2011 CarswellOnt 14127

Ontario Municipal Board

English Lane Residential Developments Ltd., Re

2011 CarswellOnt 14127, 70 O.M.B.R. 145, 95 M.P.L.R. (4th) 126

**In the Matter of subsection 41(12) of the  
Planning Act, R.S.O. 1990, c. P. 13, as amended**

Subject Site Plan

Referred by English Lane Residential Developments Limited

Property Address/Description 39 Green Belt Drive

Municipality City of Toronto

OMB Case No. PL110393

OMB File No. PL110393

English Lane Residential Developments Limited 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 7625, as amended, of the former City of Toronto to rezone lands respecting 39 Green Belt Drive to permit the development of a nine-storey residential building

OMB File No: PL110440

R. Rossi Member

Judgment: December 16, 2011

Docket: PL110393

Counsel: Ira Kagan, for English Lane Residential Developments Limited  
Gordon Whicher, for City of Toronto

Subject: Public; Property; Municipal

**Headnote**

Municipal law --- Zoning — Zoning by-laws — Amendment — Miscellaneous

Applicant E Ltd. was developer of condominium building — E Ltd. brought application to amend certain provisions of zoning by-law that applied to property; seeking order of board for approval to expand already-approved eight-storey, 192-unit condominium building to nine-storey, 350-unit building — Application was dismissed — E Ltd. appealed to Ontario Municipal Board — Appeal allowed — Zoning by-law was amended — Board approved increased number of residential units from 192 to 350 and reduced parking standard for tenant parking as requested — Board was persuaded by planning evidence that expansion of ninth floor for full residential uses and relocation of amenity space to lower level represented good planning, just as similar approvals were granted to C — Board accepted that provision of these additional one and two-bedroom apartments in proposed mix of unit types was achievable with no increase in height and density and would provide more affordable units for current market — Proposed development responded well to current market trends and official plan spoke to meeting needs of residents, both existing and future — Building was already approved to be constructed and proposed changes created no unacceptable or adverse impacts.

## Table of Authorities

### Statutes considered:

*Planning Act*, R.S.O. 1990, c. P.13

s. 37 — referred to

APPEAL by applicant from decision of council which dismissed application to amend certain provisions of zoning by-law that applied to property.

### **R. Rossi Member:**

1 English Lane Residential Developments Limited ("Ghods"), the Applicant, has proposed to amend certain provisions of the existing, site-specific Zoning By-law that applies to its property, which is located on David Dunlap Circle, in the Central Don Mills area of the City of Toronto, and is known municipally as 39 Green Belt Drive (the original address given to the Ghods plan of subdivision stemming from the late 1990s). The Applicant seeks an order of the Board for approval to expand its already-approved (but not yet built), eight-storey, 192-unit condominium apartment building to a nine-storey, 350-unit building. The Applicant's Zoning By-law Amendment and request for Site Plan approval seeks permission to add 158 additional dwelling units to the building.

2 In addition to the proposed increase in the number of dwelling units from 192 to 350, the Applicant proposes to relocate the indoor recreational amenity space from the ninth floor to a lower level of the building and to increase the overall size of the ninth floor, increasing its floor area above the 30% maximum permitted in the By-law. Despite the addition of residential living space to the expanded ninth floor, the building is proposed to be 28 metres tall, whereas the existing performance standard actually provides for a 30-metre height maximum for eight storeys. No changes are proposed to the approved zoning permissions regarding density and gross floor area; only a re-sizing of the units is proposed. Finally, by virtue of the increased number of suites, the Applicant wishes to add more parking spaces for suite owners. Specifically, it seeks to reduce the performance standard for tenant parking from 1.35 to 1.1 while maintaining the City's performance standard of 0.25 vehicles for visitor parking spaces.

3 The Applicant proposes to construct a building designed with two, nine-storey wings connected by a two-storey central element that will contain the entrance lobby. The proposed gross floor area (GFA) is in accordance with the maximum allowed in the site-specific Zoning By-law. Vehicular access to the parking and loading facility will occur from David Dunlap Circle at the east end of the site. There will be a circular drop-off facility at the main entrance. A total of 498 parking spaces are provided (411 tenant spaces and 87 visitor spaces).

4 The Applicant's Counsel, Mr. Kagan, advised the Board that the City's conditions for Site Plan approval (Exhibit 1, Tab 9) are acceptable to the Applicant. However, the Applicant vigorously opposes the City's request for imposition of a Section 37 benefit condition in exchange for approval of its proposed development.

### **Context**

5 The subject site is located along the southern portion of a residential plan of subdivision situated on the south side of Green Belt Drive, in the area north of Eglinton Avenue and east of Don Mills Road. There are some 220 townhouses built along Green Belt Drive, Humphrey Gate, Jessie Drive and David Dunlap Circle (known formerly as 39 Green Belt Drive). The subject apartment building site fronts onto the south side of David Dunlap Circle, a circular internal roadway that connects to Green Belt Drive via Humphrey Gate. Behind the apartment building site is a Canadian Pacific Railway line. The Applicant developed this area for residential purposes and the homes around David Dunlap Circle comprise townhouse development. The subject site is the only remaining vacant parcel of land within the plan of subdivision left to be developed.

6 Directly east of this residential enclave is the area known formerly as 45 Green Belt Drive. This is a separate and similarly-shaped residential development known as the "Camrost" development. At the north end of that site, where Dallimore Circle connects to Green Belt Drive, is situated an already-built apartment building (16 Dallimore Circle). At the south end of Dallimore Circle, which is easterly adjacent to the subject site, is situated a residential building (120 Dallimore Circle) that is partially

occupied and is nearing completion for its remaining residents to arrive. Like the Ghods development to the west, the balance of the Camrost development on this circular internal roadway comprises townhouse development. The two neighbourhoods abut one another but connect separately to Green Belt Drive.

7 The subject site is designated *Apartment Neighbourhoods* in the Official Plan and is located within the southern limits of the Central Don Mills Secondary Plan. The lands are zoned RM6 (85) (Multiple Family Dwellings Sixth Density Zone) in Zoning By-law 725. There are zoning performance standards for maximum building height, gross floor area, minimum yard setbacks, building separation, the provision of parking at a rate of 1.25 spaces per unit for tenants and 0.25 spaces per unit for visitors and the provision of indoor recreational amenity area equal to 1.5 square metres per dwelling unit. As for the building height, the By-law sets out a maximum height of eight-storeys, not including rooftop mechanical and indoor amenity space that may not exceed five metres in height and may not exceed 30% of the floor area of the roof top.

### History

8 The Ghods lands (39 Green Belt Drive) were part of an Official Plan and Zoning By-law Amendment application that was heard by the Board in 1999, in conjunction with an application for the Camrost lands (45 Green Belt Drive). The Ghods lands were rezoned to permit a residential subdivision comprising 183 townhouses and an eight-storey, 192-unit apartment building with a community park. On a second rezoning application in 2004 (made after City Council refused it), this Board approved the Applicant's request for an additional 27 townhouse units. The apartment building site was the subject of an application to remove the Holding (H) Symbol, which applied to the zoning of the site. For the (H) Symbol to be removed, criteria included receipt of confirmation from GO Transit that the lands were no longer necessary for the expansion of commuter rail facilities and from Canadian Pacific Railway that the lands were no longer necessary for safety setback reasons. The (H) Symbol was removed from the zoning by-law in 2005. The adjacent Camrost subdivision was the subject of another rezoning and two minor variance applications subsequent to the 1999 Board approval.

9 In October 2005, Toronto City Council also approved a Camrost application to amend the Zoning By-law in order to accommodate an increase in building height and dwelling units for the 120 Dallimore Circle apartment building. The implementing Zoning By-law included provisions to increase the height of the building from eight to nine storeys, increase the number of dwelling units from 144 to 204 units and to reduce the rear yard setback (to the railway right-of-way) from 20 metres to 18.5 metres. In 2009, the Committee of Adjustment also approved an increase in the number of dwelling units for the 120 Dallimore Circle building from 204 to 207 units and to reduce the tenant parking rate from 1.25 to 1.1 spaces per unit. In 2010, the Committee of Adjustment subsequently approved a further increase in the number of dwelling units from 207 to 225. The Board observed that there is great similarity between what the City has approved for this Camrost building and what the Applicant is requesting for its larger building on David Dunlap Circle.

### Traffic Evidence

10 On consent and in order to accommodate a number of Interested Participants in attendance, the Board commenced the hearing with the contextual and specific traffic evidence of Transportation Engineer and Traffic Consultant, Jim Bacchus from the firm Sernas Transtech, who was qualified to provide his expert evidence in respect of the impacts, if any, of traffic on the immediate neighbourhood, which might result from the proposed development of the subject lands with the increased number of apartment units.

11 The Board reviewed Mr. Bacchus's April 2010 - "Traffic Impact Study" that assessed the traffic impacts of the proposed residential development, which concluded that the traffic generated by the site can be accommodated on David Dunlap Circle. The Board also reviewed Mr. Bacchus's September 2010 - "Traffic Impact Study Addendum — Response to City Comments" wherein he responded to the direction of the City's Transportation Services Division to consider a number of other factors referenced later in these reasons that resulted in the provision of this later addendum. Mr. Bacchus's revision of his April 2010, traffic flow calculations and distribution of subject site trips to achieve revised totals were then subjected to standardized intersection capacity analysis testing. Mr. Bacchus submitted his revised study response to the City and advised staff that "the changes do not impact our final recommendations documented in our April 2010 traffic study", noting a possible requirement

for the extension of the eastbound left turn storage length at the Don Mills Road and Barber Green Road intersections, not part of the subject site's immediate neighbourhood. Mr. Bacchus added:

In addition, introduction of the traffic that the proposed development will generate will not create adverse operational issues along David Dunlap Circle and total future traffic volumes traveling this local roadway will remain well within its design capacity after build out of the neighbourhood.

12 Mr. Bacchus's study reported that, based on trip generation survey rates, the subject site will generate a total of 35 inbound and 161 outbound automobile trips in the morning peak hours and 95 inbound and 48 outbound automobile trips during the afternoon peak hours. Newly generated trips resulting from the 158 additional apartment units result in a total of 16 inbound and 73 outbound trips during the morning peak hours and 43 inbound and 21 outbound trips during the afternoon peak hour. Therefore, there will be 196 total new trips from the residential building with a net effect increase of 89 new trips, or approximately 1.5 new vehicles per minute, a figure Mr. Bacchus called "insignificant".

13 Mr. Bacchus told the Board that the Applicant intends to provide all of the requisite tenant parking spaces and visitor spaces entirely within its building. The Board also heard that the parking standard for which the Applicant has applied for is the same one that the City approved for the nearby Camrost building at 120 Dallimore Circle on the abutting circular road system to David Dunlap Circle. That building, somewhat smaller in size than the subject proposal, is already occupied with completed residences being readied for the remainder of unit purchasers.

14 Interested Participants, all of whom live in the near and proximate area, were also invited to express their concerns to the Board in respect of traffic. It was apparent from their comments, provided during this portion of the hearing as well as from the comments they made during statutory public meetings and at the Committee of Adjustment (in evidence), that the key issues for them related to neighbourhood traffic flow, insufficient visitor parking, function of the local road system, snow accumulation and impacts of snow on the road system; and how the proposed new building will impact the road system.

15 Interested Participants, Pat Browne and Jim Catalano, made a joint presentation to the Board of their parking survey of the neighbourhood. Along with others, they compiled the responses from their survey of the townhouse residents at David Dunlap Circle and identified available street parking spaces on this road and in the larger area. They expressed their concerns related to the volume of traffic in the neighbourhood, which they said poses a risk to children in the community. They also told the Board that there is not enough on-street parking and the construction of a new apartment building will take away from an already inadequate number of limited visitor parking spaces in the neighbourhood. These two Participants told the Board that they had not opposed the City's 2009 and 2010 approvals for an intensified number of dwellings and reduced parking requirements for the Camrost building at 120 Dallimore Circle because they were unaware of the applications.

16 Mr. Kagan observed that the area respondents to these two Participants' survey were from the townhouses, whereas no responses were provided from apartment dwellers. Mr. Catalano responded that "someone else will speak to the [results of] to the townhouse survey" but no one came forward in the course of the hearing to speak to those results. Mr. Kagan also responded to these residents that despite their concerns about the perceived insufficiency in the number of visitor parking spaces on the local streets, the Applicant is not seeking to build townhouses. Further, the building will house all tenant and visitor parking on its lands and within its building. As for their concerns that the new building will take away existing visitor parking spaces along the stretch of David Dunlap Circle where the new building will be built, allegedly exacerbating the impact of the deficiency in the number of visitor parking spaces for the townhouses on David Dunlap Circle, the Applicant's building is in fact already permitted to be constructed with 192 units. Whether 192 units as approved or 350 units as sought, the same number of on-street parking spaces will be lost with construction of the building regardless of the increase in the number of apartment units. Mr. Bacchus confirmed this during his response to residents' traffic concerns, adding that no matter how tall the building, the access points will be where the Applicant proposes them to be. The Board accepts that the increased number of units as proposed has no impact on the loss of visitor parking on David Dunlap Circle any more than what is currently proposed to be built on the subject lands.

17 Terrence West spoke for a ratepayers' group, Don Mills Residents' Incorporated. Mr. West told the Board that residents had opposed the 2004 approval granted to the Applicant for 27 additional townhouses, citing their concern that there was insufficient visitor parking available in the subdivision to accommodate 27 additional dwellings. Like the previous two Participants, Mr. West acknowledged that neither he nor the ratepayers' group opposed the increase in the number of units and corresponding parking space number reduction for the Camrost building located at 120 Dallimore Circle. Several residents claimed they had not been notified of the 120 Dallimore proposals in either 2009 or 2010.

18 Mr. West referenced a series of turn restrictions imposed on a number of local intersections, put in place by the City to dissuade non-resident commuters and drivers from using the local area to avoid traffic congestion during peak hours on the larger Don Mills Road and Barber Greene Road. His concerns also extend to traffic use and pedestrian safety along roadways like Moccasin Trail, which leads to Greenland Public School located one block behind it. That road has no sidewalks, although he noted that residents on that street did not want the City to put sidewalks on the roadway. He told the Board that the closest public bus stop is located nearly one kilometre from the subject site and he added that the Toronto Transit Commission has refused to add bus service to the neighbourhood. He thought that the proposed development is too dense and runs counter to the City's goal of getting people out of their cars and using public transit.

19 Chris Halper spoke on behalf of the board of directors of Metropolitan Toronto Condominium Corporation (MTCC) 2060, which is responsible for the Camrost building at 120 Dallimore Circle, which is approximately 50% completed. Mr. Halper explained that most of the building residents in the 114 completed units in early 2011, preferred to drive their vehicles instead of using the building's short-lived, courtesy shuttle service. The Board heard that the building's supply of parking spaces is sold out and parking is insufficient for residents, some of whom park their vehicles illegally in the visitor parking spaces. He supplanted his evidence with photographs of on-street parking conditions and he opined that the parking situation will become worse once the building is completed and all of the residents are living there.

20 Suzanne Cayley who manages the 120 Dallimore Circle building confirmed the parking situation at this building. She also gave figures for the completed apartment building at 16 Dallimore Circle, also managed by AA Property Management Inc., the company that employs her. Ms Cayley advised the Board that the same challenges regarding parking and resident abuse of the building's visitor parking spaces exist at 16 Dallimore Circle as they do at 120 Dallimore Circle.

21 Judy Filson of 160 Dallimore Circle also expressed concerns with the increase in traffic, the increase in vehicular speed and the casual attitudes of drivers to observance of the stop signs, cars parking on Dallimore Circle that block driveways and safety for children and the elderly. Allison McLean of 227 David Dunlap Circle told the Board that as a result of traffic concerns, she and her husband alternated in conducting car counts at two local intersections, which produced a number of 1,156 vehicles recorded during two, two-hour peak traffic periods. Mr. Kagan noted that they had counted every car and all cars traveling in all directions.

22 James Garland lives at 30 North Hills Terrace, just outside of the subject area, and he spoke of the increased traffic by virtue of the proximity of the Shops at Don Mills shopping centre and traffic to come with the approval of new condominiums in the future.

23 Jeff Dell of 2 Jesse Drive spoke of road congestion and when placed on the streets, the garbage bins contribute to that congestion. He said cars on the roadway near him take the corner quite quickly and this proposal will add to traffic congestion, especially as he understood the roadway to be narrower than the City standard. He added that snow accumulation in the winter narrows the roads further. A resident who already spoke sought to augment her evidence with photographs of the accumulation of snow on the roads, snow banks and their penetration into the roadway in the winter months in order to assist the Board in its understanding of residents' concerns with the operation of David Dunlap Circle in the winter. The Board initially advised Mr. Dell and this other resident that it accepted as fact the winter conditions as presented by them and it would not require the photographs as proof. Counsel for the City, Mr. Whicher, stood to make a 'procedural objection', recording in his notes that the Member 'refused to accept this information' from the residents. The Board advised Mr. Whicher that his objection was a premature one and that in fact, the Board had not refused to accept the evidence but rather, it had told the residents at the

hearing that it accepted their characterization of the winter conditions on David Dunlap Circle as a fact and the photographs were not needed. The Board also told Mr. Whicher that it further accepted *prima facie* that the townhouse driveways along David Dunlap Circle were designed to a standard no longer used by the City, a fact supported and already in evidence in the Applicant's document book at Exhibit 1, Tab 8. Mr. Kagan, Counsel for the Applicant, also confirmed orally his understanding of the Board's direction to the residents in this regard. Notwithstanding the Board's direction, on the next day of the hearing, Mr. Whicher provided the Board with an exhibit that comprised the same four pages of winter photographs that the residents had initially proffered for the Board's convenience on the first day of the hearing. The Board accepted this evidence from the City Counsel and entered it as Exhibit X to confirm the winter conditions on David Dunlap Circle.

24 Following the comments of interested Participants, the expert witness, Mr. Bacchus returned to the dais to provide his responses to their specific traffic concerns. This expert noted that while residents are concerned with the lack of adequate, existing visitor, on-street parking spaces in the townhouse development, the construction of the new building does not affect that condition as the Applicant will not only provide all of its tenant parking on site as Mr. Kagan mentioned, but it is maintaining the very visitor parking standard that City staff directed it should maintain. The Board has already cited his confirmation that no additional visitor parking spaces are lost on David Dunlap Circle beyond what will result from the approved building.

25 As for the size of driveways, which were designed to a standard no longer employed by the City, and which now require more space between entrances than in the past, Mr. Bacchus opined that the Applicant's development has no impact on this existing condition.

26 As for snow storage, Mr. Bacchus did not disagree with residents that there are problems with on-street snow storage such as snow banks piled high and snow that overflows into the roadway, narrowing David Dunlap Circle during heavy snowfalls. City staff noted these same concerns arising from the community consultation meeting regarding the design of the subdivision (Exhibit 1, Tab 6):

Residents noted snow piles creating obstruction views, reduce opportunity for street parking, and may also make emergency vehicle access difficult as snow storage in some cases reduces the travel portion of the road to a single lane.

27 Despite this fact, and as stated in the same staff report, City staff still found favour with the application and noted that "Transportation Services will be investigating the situation and has advised the on-street parking prohibitions on David Dunlap Circle may need to be extended during the winter months to address this concern."

28 Further, Mr. Bacchus noted that the Applicant will be required to deal with its own snow and snow removal, either by melting it or stockpiling it and to ensure that accumulated snow does not encroach on the right-of-way. Mr. Bacchus added that as for snow accumulation on David Dunlap Circle, there was "very little" that the Applicant could do about the roadway condition in the winter — a responsibility of the City. As the expert said: "The City can come and remove it; melters can come in or it will be stockpiled." He added that there is no uniform policy applied across the City for snow removal and a municipal response to the conditions of the road might happen if a resident made a complaint. In point of fact, the City staff report also noted these problems and while Mr. Whicher called the roadway a "flaw in site design", neither staff (through its reports) nor the expert witness proffered any evidence to suggest that the proposed development should be turned down because of site design or because of existing snow storage and removal conditions on David Dunlap Circle in the winter months. The Board finds that these conditions are not the responsibility of the Applicant let alone made worse through approval of additional units for the subject building.

29 As for speeding in this residential neighbourhood, Mr. Bacchus noted that no member of "City staff" identified any prevailing safety or speeding operations and it was only later, he advised, that they had learned of a resident petition to reduce the speed limit. Mr. Bacchus added that had the City asked him to analyze speeds in the area, this would have been done, but they had not done so. In any case, this expert observed that residents had been successful with their petition by persuading City Council to pass a resolution to reduce the speed from 50 kilometres per hour to 40 kilometres per hour — a statutory and mandated speed posting. Clearly, the residents had expressed this concern with speed and City Council responded accordingly. Other than that, Mr. Bacchus opined that the Board's approval or refusal of the Applicant's proposal does not affect the speed

of traffic on David Dunlap Circle. The Board notes that all citizens are required to obey all traffic signs and posted speed limits and these are matters of enforcement that should not and cannot be visited upon the Applicant or his development proposal.

30 Mr. Bacchus noted that in achieving his traffic projections, the traffic reports had to be built on a series of assumptions that he made as to how many people would take transit, car pool and walk. These were vetted by City staff. He added that because there was an existing residential development on which to rely for capturing this information and because he could use the locally-derived data, this data was preferable to working from "a clean slate" or relying on an engineer's "typical rates" or using "proxy sites" elsewhere. In his words, "we had the luxury of seeing the existing traffic generation from the neighbourhood — the "measured rates" with use of the units as variables to the numbers." Thus, this traffic expert was able to study and record the actual trips in and out of this existing townhouse and apartment building development, thereby capturing the full range of transit modal splits such as public transit and carpooling. Mr. Bacchus added that because he was studying an expansion within an existing neighbourhood, it is common among transportation experts to "up" the modal split in order to reduce the number of cars. In this case and in his study, he did not do this because he was able to use the actual, existing neighbourhood instead of a proxy site and his data inherently included the transit modal split. The Board heard no evidence to challenge Mr. Bacchus's methodology and no expert evidence was presented to counter this expert's findings and opinions that no adverse traffic impacts will result from the addition of units in the approved building.

31 City staff reviewed Mr. Bacchus's study and subsequently directed Sernas Transtech to further include the "background development at 888 Don Mills Road" in its calculations, and to "reassign the site traffic to the trip distribution as derived by Transportation Services Division". Mr. Bacchus complied and as he wrote, the inclusion of these factors and the changes effected "do not impact our final recommendations documented in our April 2010 traffic study..." other than the need to consider at some future time a potential extension of the eastbound left turn storage length at the intersection of Don Mills Road and Barber Green Road to accommodate the future 888-900 Don Mills Road site expansion. The City's Transportation Services Division reviewed all of Mr. Bacchus's work; it had input into revisions that would satisfy staff that the issues it felt had to be addressed were studied; it provided its approval of Mr. Bacchus's work; and it raised no concern with the Applicant's proposed maintenance of the visitor parking performance standard, which staff insisted the project maintain with the increase in the number of proposed additional apartment units and reduction in the tenant parking ratio. The Board finds all of this evidence to be persuasive of the resulting expert opinion of Mr. Bacchus that there are no traffic impacts created by the addition of the increased number of units in the Applicant's building.

32 For area residents, traffic and the associated functioning and use components of the roadways in the neighbourhood and in particular along David Dunlap Circle comprise the majority of their concerns. The Board found these generalized concerns result in part from site design, insufficient visitor parking for the townhouses and the challenges of snow piling and lack of timely removal. Indeed, Mr. Whicher's opening remark included his submission that "traffic is a key issue in this hearing" but the City elected not to call a traffic witness or provide an expert's opposing evidence to rebut the findings contained in Mr. Bacchus's studies. Mr. Bacchus was the only expert witness to provide traffic evidence to the Board.

33 Mr. Whicher submitted that Mr. Bacchus had not examined the operation of David Dunlap Circle and that the Board should favour "the significant body of evidence from users" on this matter. Mr. Whicher not only asked the Board to look critically upon the impact of City staff's decision not to direct Mr. Bacchus to look at road function on David Dunlap Circle, but he argued that the staff omission in this regard should not be the "fault of local residents" and it should not "be visited upon them." The Board is equally bound to turn Mr. Whicher's submission around and ask: why should the fact that the City had not required the expert to look at the road function, or the fact that no opposing professional evidence was called to refute the findings of the Applicant's expert evidence, be used against the Applicant as a means to dismiss the application? Why should the fact that residents do not like how the road functions be visited upon the Applicant, particularly where the expert has shown persuasively that there is no adverse impact on the road function from the proposed development? The only professional opinion and expert evidence derives from the solitary expert witness in this case, Mr. Bacchus, who conducted his research and analysis in accordance with recognized methodologies and standards and took further direction from the City's Transportation Services Division on the scope of his work and to augment the report's findings with other factors, all of which achieved the same finding — that no impacts will be created by the addition of 158 apartment units to the approved building's total of 192 units. Given

this evidence, the City provided no persuasive reasons for preferring residents' concerns over the operation of David Dunlap Circle over the objective analysis of Mr. Bacchus. In contrast, the Board accepts as highly persuasive Mr. Bacchus's data that of the trip generation total of 196 new trips resulting from the new building, the net effect of the increased condominium unit development is 89 trips, or 1.5 vehicles per minute — a frequency of travel along David Dunlap Circle the Board accepts as "insignificant", to quote Mr. Bacchus. He added that had the City wished him to study whether the standard was working in nearby buildings, he would have undertaken such analysis. None were asked of the expert and no negative inference should be taken from the expert's findings, which did not include an investigation of the workability of the City-approved reduced standard in the building located at 120 Dallimore Circle.

34 Mr. Manett attempted to provide the Board with his opinions in respect of traffic flow and function along David Dunlap Circle. The Board was required to set aside much of this information, however, by virtue of the fact that the only professional traffic witness was that of Mr. Bacchus, who was rightly qualified to provide professional traffic evidence at this hearing. And in that regard, the Board has made its determination that Mr. Bacchus had followed the parameters of City staff to frame and conduct his research and he further modified his analysis when subsequent refinements were sought. Evidence from Mr. Manett regarding the roadway was situated in the context of the professional traffic evidence in this regard, with the Board ultimately assigning the most persuasive weight to the traffic engineer who testified at the hearing. The Board was persuaded that the net effect of the addition of 192 units is 17 people based on earlier projections. In any event, no witness, not even the traffic engineer, could say with any precision what number of cars would "tip the balance" to make the roadway unworkable or entirely unsafe. In any case, Mr. Manett's concerns are not correctly visited upon this proposal as they relate to traffic. Those concerns, and those of the residents, are properly placed with the City whose business it is to deal with traffic matters, speed postings, signage and parking restrictions that respond to residents' needs.

35 The Board accepts that the residents have legitimate concerns with a lack of visitor parking spaces on this road and the way snow storage and removal occur, but these concerns are entirely unrelated to the development of the subject site in accordance with the Applicant's plans and the City's responsibilities in this regard are uniquely their own. The expert witness's evidence was unshaken on this subject, despite attempts by the City's Counsel to find fault with a methodology that Transportation Services Division had itself supported, or the fact that Mr. Bacchus's drawings did not depict a mid-block intersection. Mr. Bacchus responded that his renderings were approved by City staff and that his study proposed the two key intersections at either end of Green Belt Drive — those of Nob Lane/Humphrey Gate and Don Mills Road, and that calculations were compiled from the study of traffic along Green Belt Drive as well as access to and from Green Belt Drive to the subject roadway, David Dunlap Circle and also to Dallimore Circle. Mr. Whicher's questioning did not shake the evidence of Mr. Bacchus in respect of the methodology used for his study of the subject area. Moreover, as City staff remarked in the already-cited staff report: "Transportation Services Division staff has reviewed the study and accepts its conclusions. No modifications will be necessary to accommodate the additional units proposed by this application."

36 As for the proposed reduction in the parking standard to 1.35 spaces per unit, which leaves 1.1 tenant spaces and 0.25 visitor spaces, the same persuasive weight must be given to Mr. Bacchus's evidence, who opined that the standard is workable, regardless of whether this same visitor standard, which exists in the building at 120 Dallimore Circle, is not working. As stated earlier, if the City was desirous of demonstrating that the reduced parking standard it had approved for 120 Dallimore Circle was not functioning well, it needed only to bring expert evidence to the hearing to test Mr. Bacchus's expert opinion. While Mr. Halper told the Board that residents are using (and abusing) the visitor spaces in that building, the property manager of the building could not confirm that the visitor parking spaces are always full or that visitors to the building cannot park in the allocated spaces. In this regard, the Board was not assisted by Mr. Whicher's submission that the approved parking in the two Camrost buildings do not work. This Counsel submitted that the Board must hear whether a reduced parking standard will work in the subject building, given that the Applicant is seeking an 82% increase over the approved number of units, from 192 to 350 units. The Board is not so compelled, given that City staff raised no concern and provided no direction to the expert witness to conduct such investigations. As mentioned, the City did not bring expert evidence to speak to this matter although it had the opportunity to do so and Mr. Bacchus has demonstrated the Applicant's capacity to provide sufficient parking spaces for both tenants and visitors wholly on its site.

37 Having considered all of the traffic evidence, the Board finds that the proposed development will not create adverse impacts on the townhouse development along David Dunlap Circle or on the larger neighbourhood.

### **Residents' Planning Concerns**

38 The Board also heard from three interested Participants who spoke in opposition to the proposed intensification of the subject site in respect of planning issues. Area resident, Sid Catalano, noted that incremental intensification of the neighbourhood had occurred over the past decade. He expressed concern with the effect of the proposed building's height on the light conditions and privacy in respect of abutting townhouses. His cousin, Joe Catalano, who had already spoken to the traffic situation, explained that there had been a previous neighbourhood fire that had illustrated for some residents the challenges of getting emergency vehicles into the area. He suggested that, as this is a landlocked area with limited access to the interior of the site, further intensification might prove difficult for emergency vehicles to reach the proposed building.

39 Lastly, one of the townhouse residents who lives adjacent to the subject site, Rana Basma, expressed her concern and frustration that prior to moving into her house in 2010, no one had told her that apartment buildings had been approved to be built in proximity to her end unit townhouse on David Dunlap Circle. She lamented the impacts of construction work on her rear yard during construction of the Camrost building at 120 Dallimore Circle, which is situated east of her rear yard. This included noise, digging and dust. She expressed concerns with overlook and privacy from that site as well as from the subject site, from the location of the proposed underground parking entrance for the Applicant's building and from the height of the subject building and the shadows that it might cast on her house. Mrs. Basma had a number of questions for which she needed answers about the development. Mr. Kagan generously offered to have Mr. Behar, his planning witness, meet with her to answer design questions following the hearing but he noted in cross-examination of the City's planning witness, Mr. Manett that the edge of the Applicant's building will not extend to her rear yard.

40 The Board heard no expert evidence to support the anecdotal comments of Participants that the proposed additional units or any aspect of the proposed development would make their deficient parking situation *vis-à-vis* the townhouses any worse. The Board was appreciative of the good organization and presentations of the area residents and the Board was sympathetic to the road function issues that some residents say they face on David Dunlap Circle. The Board determines, however, that they did not establish a nexus, from either a traffic or planning context, between their issues and any impacts the proposed development might have on David Dunlap Circle. The residents' concerns as expressed did not raise legitimate planning grounds on which the Board could deny the applications. In respect of some planning matters raised by two other residents, Mr. Behar (below) and Mr. Bacchus (above) have both provided the Board with their supportive expert opinions to demonstrate how the proposed application can be designed to accommodate the expanded number of units without creating impacts.

41 Moreover, the City's Senior Planner for the North York Community District, Steve Forrester, whom the Applicant summoned to this hearing as a witness, adopted the planning evidence of Mr. Behar and his methodologies detailed in the planning evidence of these reasons. Mr. Forrester authored both of the staff reports in Exhibit 1, Tabs 6 and 7 for the Planning Director(s) to submit to North York Community Council. Mr. Forrester advised the Board that his current director, Allen Appleby, agreed with the contents of his report that went to Community Council.

### **Planning Evidence**

42 Planner Moiz Behar spoke in support of the application and he was qualified to provide his expert evidence in both planning and urban design. Planner Michael Manett was qualified to provide expert evidence in planning matters alone and he spoke in opposition to the proposed development. Both planners presented vastly different opinions as to the appropriateness of the Applicant's proposal. On matters as broad as whether the proposal is consistent with the Provincial Policy Statement (PPS) or as specific as the types of calculations to be made to determine the projected population figures for the proposed development, there was great variance and divergence between their views. The Board considered all of the planning evidence and opinions provided and given the comparatively high level of planning experience that both planners brought to the hearing, the Board determined it was necessary to examine closely the comparative and divergent bases and rationales for the experts'

opposing opinions. This included the Board's review of the reasons for the planners' particular methodological approaches to the planning analyses and it determined that only one of these planners was able to offer persuasive planning evidence and opinions in respect of this proposal.

43 On that basis, the Board recognized that Mr. Manett's reading of the planning instruments flowed from and was predicated in large part on his use of an alternative form of mathematical calculation as well as a later application of a unit ratio that he asked the Board to prefer over that used by Mr. Behar. Mr. Manett's calculations resulted in a higher number of people projected to live in the subject building and on this basis, he opined that various planning policies were not met or maintained by the proposed development. Alternatively, Mr. Manett suggested that a "reasonable solution" to the Applicant's request for 158 additional units could be found by offering to the community a comparable design with a lower number of units to maintain the existing planned population figures. Referencing Mr. Behar's Comparative Analysis Chart (Exhibit 1, Tab 1) and comparing the population figures from 2005 with those from 2011, Mr. Manett calculated that the Applicant could reduce his proposed residential unit number from 350 units to 254 units while retaining the same number of 83 two-bedroom apartments, which would permit the Applicant to instead bring 62 additional units to market while generating a population of 174 persons.

44 Mr. Manett also opined that even if he used Mr. Behar's Persons Per Unit (PPU) numbers, he still calculated far more people living in the area than Mr. Behar has calculated. For example, his number of total persons planned for 2011 rose beyond the 549 persons to a high of 641 persons. For illustrative purposes on Mr. Manett's reading of Mr. Behar's Comparative Analysis Chart, the Board has reproduced in an abridged format of Mr. Behar's Chart, which provided the following information:

| Year   | 1999                                      | 2005  | 2011                                      |
|--|---|---|---|
| Number of Units proposed   | 192                                       | 192   | 350                                       |
| Unit breakdown   | 64 2-bedroom units<br>128 3-bedroom units | 31 1-bedroom units<br>129 2-bedroom units<br>32 3-bedroom units | 267 1-bedroom units<br>83 2-bedroom units |
| Unit Mix and Total population based on Person Per Unit (PPU) breakdown | $(64 \times 2.1) = 135$ persons           | $(31 \times 1.4) = 43$ persons                                  | $(267 \times 1.4) = 374$ persons          |
| —  | $(128 \times 3.1) = 397$ persons          | $(129 \times 2.1) = 270$ persons                                | $(83 \times 2.1) = 175$ persons           |
| —  |   | $(32 \times 3.1) = 99$ persons                                  |   |
| —  | Total = 532 persons                       | Total = 412 persons   | Total = 549 persons                       |

45 Assuming Mr. Manett's willingness to use Mr. Behar's PPU ratio, he opined that the net number of persons being added to the building is 137 persons. Mr. Behar told the Board that if one were to calculate the net increase in persons to be added to the site resulting from the increase from 192 units to 350 units versus what was approved previously, however, one must compare the original 1999 approvals of 532 persons to those of 2011 (549 persons) and not from the 2005 numbers (412 persons) as Mr. Manett had done.

46 This is a reasonable approach in the Board's view. The in-force By-law does not limit the building's unit mix, nor does this planning instrument establish the mix, which might take a variety of unit forms as the abridged chart above demonstrates. The population figure will change, therefore, according to the unit mix. It can be inferred from the statistical evidence presented by Mr. Behar during the hearing that any population resulting from any of these mixes is dependent upon the number of units and mix and since the By-law does not control the unit mix, one cannot say with precision how many people will live in the building because one cannot know what the unit mix will be. As both Mr. Manett and Mr. Behar evidenced, in theory, the Applicant could offer a mix of 192 3-bedroom units within the approved building, which would yield yet another population figure (recognizing, however, that if the total GFA were to remain constant, this would result in rather small-sized units). In any event, the Applicant's proposed number of 350 units is not the only unit mix or population allocation possible, but as it represents the Applicant's requested number of units in this application to the Board, Mr. Behar is quite correct to show, in the Board's view, that the net increase in total population from what was approved in 1999 to today is a net increase of 17 persons — not the 137 people that Mr. Manett had calculated. This evidence lends credence to Mr. Behar's position that one must compare the 1999 and 2011 figures, not the 2005 and 2011 figures. Thus, by extension, the Board accepted as persuasive the evidence

that the difference between what the Applicant could build as of right in 1999, in the already-approved building and what he seeks today is a net increase of 17 persons, the result of which must be regarded as insignificant in terms of any perceivable impacts this would have on the surrounding neighbourhood.

47 Secondly, the Board failed to see any merit in, or relevance to Mr. Manett's introduction of Units Per Hectare (UPH) calculations into a scenario, buoyed by the zoning, that actually supports and contemplates the use of PPU figures. The City provided the Board with an excerpt from a Statistics Canada document that had UPH data (Exhibit 8, page 4A), but the Board determines that the PPU usage, in the case at hand, is the preferable and best means of calculating the population figures for this area as outlined in Mr. Behar's chart. The Board also finds this Statistics Canada exhibit to represent nothing more in this case than a notable disconnect between what the Municipality's practice is in utilizing the PPU ratio and the opinion of its own North York Community District planner who supported Mr. Behar's use of the PPU ratio.

48 The result of Mr. Manett's use of UPH calculations was to raise Mr. Behar's population numbers higher, yet there was no persuasive reasons provided for doing so. Relying on his higher calculations, however, led Mr. Manett to form his planning opinion that with a possible doubling of population (as Mr. Whicher submitted to the Board), the proposed development would offend numerous PPS and Official Plan policies.

49 The Board determines Mr. Manett's approach to the calculation to represent a flaw in his analysis, whereas the Board finds persuasive the planning methodology of Mr. Behar who worked with the standardized and accepted PPUs to provide his calculations and which are contained in the Zoning By-law. Further, Mr. Manett's opinion that one could simply replace PPUs with UPHs to do the calculations was rejected by the Board, wherein the performance standards provide clear evidence of the manner in which the calculations should be made; that is, on the basis of PPUs.

50 The PPU ratio used by Mr. Behar were the same as those used in the project engineering analysis information contained in the MMM Group Limited letter regarding servicing to the City of Toronto's Technical Services Division (Exhibit 1, Tab 14). Mr. Behar subsequently confirmed with the City's Planning Department that it also uses these PPUs as their numbers. Appearing under a summons from the Applicant was North York Community District Senior Planner Steve Forrester, who confirmed the use of PPUs, who confirmed that he had reviewed these figures with planning staff and who also adopted the approach of Mr. Behar in his appearance before the Board. The Board was also provided with an excerpt from the City of Toronto's "Design Criteria for Sewers and Watermains" (Exhibit 1, Tab 15), which lists "Population Equivalents Based on Type of Housing"; these PPUs match the comparative chart in the Applicant's documents and Mr. Behar's Comparative Analysis Chart.

51 Given this information — a mix of documents supporting the basis for Mr. Behar's analysis and corroborated by the City's Senior Planner for the district — there were no good or persuasive planning reasons offered by Mr. Manett why the Applicant and, in particular, the City should deviate from these standardized and recognized approaches to unit calculations and impose the alternative calculation he proffered, particularly where the Zoning By-law gives guidance on how to perform the calculations in this instance. This was another reason why the Board determines that Mr. Manett's methodology must be set aside, in that he compared numbers from the wrong pairing of years — 2005 and 2011, instead of 1999 and 2011. His resulting figures are deemed to be inaccurate; they create confusion through a flawed comparison; and his overall planning opinion results in an unpersuasive reading of the planning instruments, founded as his opinion is on the 2005 numbers and in UPH calculations that imply larger population figures than the more appropriate PPU ratio calculates. The Board assigns very little persuasive weight to his evidence then, that there is too much intensification proposed through the Applicant's development or that the introduction of additional units in a building that requires no additional height or density will adversely impact area residents. The only impacts he proffered were ones involving traffic movement and the Board has already ruled on the subject of the planner providing transportation evidence. This was given further credence by the corresponding affirmation and opinion of Mr. Forrester, who confirmed Mr. Behar's uncontradicted evidence that planning staff had no issue with these calculations and that staff was able to support the proposed development at this level of 549 persons; a net gain of 17 persons over the 1999 figure of 532 persons.

52 In this context, the Board assigns little weight to Mr. Manett's recitation of policy excerpts and his review of these to form his opinion that the proposed development represents over intensification of the subject site.

53 Prior to considering the planning instruments, Mr. Behar reviewed several technical elements of the proposal and offered his opinion that represented good planning. For example, he opined that the difference in the proposed height of nine storeys and 28 metres versus eight storeys and 30 metres is not discernible to the resident on the ground and is a height that is in fact permitted in the performance standards currently in place. Nor is there a noticeable visual difference between what is proposed on this site and the approved and built, eight-storey, 27-metre-tall building located at 16 Dallimore Circle. It was also Mr. Behar's expert opinion that the imposition of a metric maximum height limit in the By-law is better than a mere storey limit as currently exists, particularly where metric heights provide certainty in respect of a case where the Municipality wishes to set a specific performance standard. Mr. Behar added that it assists with planning height generally as the heights of storeys can differ greatly between residential and commercial floors, with the latter type of development having higher floors than residential buildings.

54 Mr. Behar also justified his support for the proposed addition to the number of apartment units by reviewing what exists and what has been approved in the immediate and surrounding area. He cited the City's 2004 approval of 27 additional townhouses for the Applicant in 2004, without the need for any increase in the GFA. He cited the approvals granted to the increases in the numbers of units for the Camrost building at 120 Dallimore Circle. He noted that the 1999 approvals for this same building (144 units) whereas today, the building has been approved to increase its number to 225 units, representing an increase of approximately 57%. He noted that in all of the three Camrost applications, neither staff nor the City opposed the applications and no Section 37 benefits were sought or paid. The first Camrost application resulted in City approval for rezoning to permit construction of a nine-storey apartment building with a total of 201 dwelling units. The second Camrost application received Committee of Adjustment approval of minor variances to increase the number of building units from 204 to 207 and to provide a parking space standard of 1.35 spaces per dwelling unit of which 0.25 spaces would be for the use of visitors. The third application by Camrost was for the reduced parking standard and yet another increase in the number of units permitted, upwards by 18 units to 225 units. The increase in suites was 81 units. Mr. Behar noted that no one opposed these requested additions to the number of suites and he emphasized that the parking standard the Applicant has requested is the same that the City granted to Camrost for the adjacent building at 120 Dallimore Circle.

55 Given this information, the Board accepts as persuasive the appropriateness of Mr. Behar's decision to review what additional unit approvals had been granted in the area in order to assist in his assessment of the planning merits of adding further units to the area and, in particular, to the Applicant's building. The City offered no persuasive opposing evidence to support its position that it was inappropriate for him to consider the surrounding developments in this way. And despite Mr. Manett's opinion that this proposal represents over intensification of the area, the evidence revealed how the City has consistently provided approvals for both the Ghods and Camrost subdivisions to add units to their buildings (as late as 2009 and 2010 for the latter). If then, in late-2011, the City Council was now determining that "enough is enough" and that there should be no further intensification of the Ghods development, it had an obligation to show the Board through persuasive planning evidence how this was so. The City has provided no such persuasive evidence, however, and by contrast, in August 2011, City planning staff shows planning staff's approval (with conditions) of adding further units to the Applicant's building, and its planning justification for doing so without requirement for Section 37 benefits. Only Mr. Behar showed by means of persuasive planning evidence and expert opinion how the proposed development can be accomplished without adverse impacts on the abutting community. Unfortunately and as stated, Mr. Manett's opinions flowed from traffic evidence he was not qualified to give and from mathematical calculations based on a UPH standard that is not used in the By-law. His calculations based on the wrong year (2005 versus 1999) create figures that are insupportable as well as lead to an unsubstantiated submission from the City's Counsel that the Applicant is "doubling the population in the area." The Board preferred Mr. Behar's use of the appropriate PPU calculations to reveal a net increase of only 17 persons over the 1999 population figures, supported and substantiated further by the witness under summons, Senior City Planner Steve Forrester.

56 As for the previous traffic and parking evidence, Mr. Behar adopted the evidence of Mr. Bacchus. He opined that from a planning perspective only, the traffic impacts associated with the addition of the new units are not negative in any way. Mr. Behar was also supportive of the proposed reduction in the parking standard as Mr. Bacchus had identified no quantifiable impact from the reduced internal parking standard for the tenant spaces on the neighbourhood especially where the visitor standard is being maintained. The Board accepts there are no external road impacts created by the addition of 158 units, given Mr. Bacchus's

evidence that the resulting addition of 1.5 vehicular trips per minute on the roadway was "insignificant" as already noted in these reasons. The Applicant's proposed Zoning By-law Amendment identifies 350 apartments, a number that will require 87 visitor parking spaces (350 units  $\times$  0.25 visitors), a requirement the Applicant has shown through the Site Plan, he can satisfy. The Applicant proposes to maintain the required 0.25 visitor spaces per dwelling unit, which is the performance standard in the By-law. For tenant parking spaces, the Applicant has requested a parking range from 1.35 to 1.5 spaces inclusive of the 0.25 visitor parking standard (1.1 and 1.25 spaces respectively without the 0.25 standard). At a rate of 1.1 tenant spaces and 0.25 visitor spaces, the Applicant will provide 385 tenant parking spaces, increasing to 437 spaces using the maximum ratio of 1.25 and 0.25 visitor spaces).

57 At 0.25 visitor spaces per tenant space, 350 apartment units will necessitate the provision of 87 visitor parking spaces. While the Board notes that there is no parking standard in the 1999 By-law at Exhibit 1, Tab 3 — Zoning By-law 193-2001, the current parking standard for the Applicant's development is found in the parent Zoning By-law, 7625, which requires 1.5 tenant spaces as the total and 0.25 for visitor spaces.

58 As for the proposed height of the building, the approved Zoning By-law Amendment set no numerical maximum height limit other than to say that the maximum building height is eight storeys not including the roof top, mechanical and indoor recreation amenity space, "which shall not exceed five metres in height and shall not exceed 30% of the floor area of the roof top." Mr. Behar opined that it is better to have what the Applicant has offered; that is, a 30-metre building height maximum in place, which the Applicant can still achieve at 28 metres while reconfiguring the ninth floor for greater residential uses. The planner added that the City did not take issue with the height of the building, which is lower than what has already been approved and which creates no negative impacts, including from what shadows it might cast. From an urban design perspective, for which Mr. Behar was also qualified to give expert evidence, he noted that with a mid-rise building such as the one proposed in this case, the shadows do not cast out as far as a taller building but it will cast a "more consistent" shadow onto David Dunlap Circle. He noted that the proposed building will be shorter than what is already permitted to be built despite the expansion of the ninth floor for additional residential uses. In the Board's determination, the height is not excessive and creates no adverse impacts on the north-situated townhouses.

59 Mr. Behar turned to the various planning instruments that informed his opinion in this case. Starting with the Growth Plan, Mr. Behar opined that the proposed development complies with the direction given in the Growth Plan. In the Board's view, at 750 metres, the distance from the subject site to the nearest bus stop cannot be considered as ideal but the Board accepts Mr. Behar's opinion that the level of transit service for the area is "adequate". He added that the subject area includes infrastructure that is required to support intensification in a compact and efficient form. The proposed development density optimizes the use of land while complementing the existing development context of the area, which is a key direction in the Growth Plan. Mr. Behar emphasized the optimization of the land — not to maximize it — and the Board accepts as persuasive that the Applicant has sought to strike a balance between what currently exists in the community, what is adjacent to the site and what is proposed. He opined that the GFA and the number of units can achieve the Growth Plan's goal of optimization.

60 In the Board's determination, Mr. Behar's evidence regarding the proposal's consistency with the PPS was unshaken. He opined that the proposed development is consistent with the direction provided in a number of relevant policies of the Provincial Policy Statement (PPS): Policy 1.1.2, making sufficient land available through intensification and redevelopment; Policy 1.1.3, that settlement areas such as this promote vitality and regeneration; Policy 1.1.3.3, promoting opportunities for intensification and redevelopment where it can be accommodated; and Policy 1.1.3.7, that new development occurring in this designated growth area be adjacent to existing built up areas and be in a compact form that offers a mix of uses and density, as the proposed development does. Mr. Behar cited Policy 1.4.3, Housing, where one is directed to provide for an appropriate range of housing types and densities to meet projected requirements of current and future residents of the regional market area. Mr. Behar opined that the proposed development accounts for the current market by offering a mix of one and two-bedroom suites which the Board heard is a trend of current condominium construction in Toronto. Mr. Behar also cited subsection e) of this policy, which directs development to establish standards for residential intensification and redevelopment. Policy 1.6.5.2 is also met through a proposal that will make use of the existing infrastructure and Mr. Behar relied on Mr. Bacchus's opinion

on Policy 1.6.5.4 that promotes land use density and a type of development pattern that will minimize vehicle trips and allow for efficient use of public transit.

61 Mr. Behar opined that there was nothing in the Don Mills Secondary Plan that was directly relevant to the subject proposal and no opposing evidence was called in this regard. Mr. Behar was not cross-examined on this opinion and Mr. Manett did not speak to this planning instrument.

62 Mr. Behar opined that the proposed development complies with the in-force City of Toronto Official Plan and maintains its general intent and purpose. By reducing the size of the proposed units and meeting current market demands, the proposed units are intrinsically more affordable thereby implementing the City's housing goals related to affordability. And, by way of generalized analysis, the details of the site design will be refined in keeping with the conditions of the NOAC.

63 Mr. Behar reviewed the relevant sections of the Official Plan's *Apartment Neighbourhoods* policies. In Policy 2.3, the Board is reminded that neighbourhoods are "stable but not static". The Board reviewed Mr. Behar's reading of the "Development Criteria in Apartment Neighbourhoods", which he opined are satisfied by this development proposal. Several of these apply, most notably: 2a) whereby the proposed building's location and massing will provide a transition to the north-situated townhouses, achieved through step backs and heights and with what amounts essentially to two wings of the building that are massed to provide a dynamic feature by stepping the building at its sides; 2b), by limiting shadow impacts through the creation of two separate wings of the building; 2c) by locating the building consistently along the streetscape of David Dunlap Circle to frame the street (what Mr. Behar called "a worthwhile urban design goal and policy"); 2d) by including sufficient off-street vehicle and bicycle parking for both residents and visitors contained wholly within the building; and 2e) by locating the service and garbage areas and parking entrance at one central point at the end of the building to minimize their impact on the adjacent street and residences.

64 The applicable built form policies are also achieved as referenced by Mr. Behar. He added that the built form as proposed complies with what these policies require, noting that all of the landscaping that has been incorporated into the Applicant's design as well as his acceptance of the Notice of Approval Conditions (NOACs) will refine the Site Plan further. He added that the Official Plan does not direct that a 9-storey building with its proposed 28-metre height cannot be built here, nor does it say that one cannot add 158 dwelling units to the remaining GFA of the building. The building will preserve the standardized requirements for the provision of outdoor amenity space for each unit and no variance is sought or needed.

65 Like the earlier housing policy, Mr. Behar opined that the Official Plan policies regarding the affordability of housing, Policy 3.2.1, requires that adequate and affordable housing is a basic requirement for everyone. The Applicant proposes to reduce the size of units and to create an opportunity to create more intrinsically affordable units, addressing specifically this policy. The housing policies and the aforementioned built form policies were not challenged.

66 The Board finds persuasive Mr. Behar's professional planning evidence and expert opinion that the proposed development is consistent with the PPS and complies with the Growth Plan; it maintains the intent of the applicable City of Toronto Official Plan and Secondary Plan policies; and is designed to fit within the existing parameters of the zoning as outlined in Zoning By-law 193-2001. Further, the Board is persuaded that the proposed Zoning By-law Amendment and Site Plan provide modest changes to the 2001 By-law; they maintain the general intent of land use and massing of the original development proposal; and the planned function of this development proposal is in keeping with the original proposal as reflected in Zoning By-law 193-2001.

67 The Board also determines that the increased number of units represents an efficient use of land and responds to current market trends toward building smaller units. The proposed development fits within the character of the adjacent units and through iterations of the Site Plan, the Board accepts Mr. Behar's evidence that it will comply with the conditions set out in the August 2011 report. Mr. Behar opined that the Site Plan and the configuration as proposed and reflected in the proposed Zoning By-law Amendment represents good planning and good urban design.

68 Even though unit caps were identified in a number of the documents provided in evidence, the Board does not find such measurements to be set in stone as the City might wish in this case. The Board finds support for its finding in the actions of the

City in respect of both the Applicant's and in particular the Camrost developments. In these cases, the City has consistently set aside these unit caps to increase the number of units permitted, demonstrated through approval for the addition of 27 townhouses to the Ghods development in 2004 and through the subsequent unit additions to the building at 120 Dallimore Circle. It is reasonable to conclude that the City has made allowances for such applications based on their review of the proposals and the input and recommendations of City planning staff, a member of which appeared at this hearing. Flexibility has been maintained by the City in its treatment of these allegedly fixed numbers where appropriate intensification and redevelopment policies of the Official Plan have been deemed to be met. The Board sees no reason to depart from the City's practice in this regard and it determines that it is reasonable to approve the addition of 158 units given the superior planning and traffic impact evidence of Mr. Bacchus and Mr. Behar in this case.

69 Mr. Whicher suggested that the Applicant was attempting to double the population of the neighbourhood with 567 persons in the townhouses and 549 persons in the apartment units. Mr. Behar repeated his assertion that the in-force By-law allows for 192 units with a total population of 532 persons in a building that has already received approval to be built. The Applicant's reconfiguration of the residential mix — something which is entirely permitted and not prevented from any of the planning instruments before the Board — will result in 549 persons, a net addition of 17 persons. Mr. Behar also countered that not only were Mr. Manett's calculations abstract on this point, but the impacts on the community that he proffered to the Board were non-existent. Where Mr. Kagan argued that there is no relevance to referencing mathematical calculations in this rezoning application, let alone forcing the Board to make those calculations, Mr. Behar opined that the proposed building represents an intensification that is sensitive to, and in context with what has been occurring in the area. As such, the Board accepts as persuasive that the 158-unit increase causes no undue impacts.

70 Finally, City planning witness Steve Forrester provided evidence regarding the position of City planning staff on the proposed development to the hearing by the Applicant. Mr. Forrester confirmed for the Board that he holds the same opinions in respect of his recommendations to Council in August 2011 that City staff be authorized to attend the Board hearing in support of the proposed Zoning By-law Amendment and that Council give approval in principle of the Draft Notice of Approval Conditions and authorize the City Solicitor and any other appropriate City staff to take such actions as necessary to give effect to the recommendations of his report (Exhibit 1, Tab 6, Page 3). Mr. Forrester also confirmed for the Board that Mr. Behar had consulted with him in preparing the proposed Zoning By-law Amendment to make it "more acceptable." In the context of his evidence as a professional planner, he told the Board: "It is acceptable to me if the Board allows the appeal." It is notable that Mr. Forrester authored the staff reports related to these applications and his two supervising directors signed off on these reports. Mr. Forrester explained to the Board that by signing the reports, the Directors agreed with the content and all applicable Official Plan policies. He opined that the proposed development will not harm the neighbourhood, it meets the relevant Official Plan policies and the applications represent good planning.

71 In the context of the planning evidence and for the reasons stated, the Board prefers the evidence and opinions of Mr. Behar and Mr. Forrester to those of Mr. Manett.

72 Despite Mr. Manett's opinion to the contrary, the Board determines that the proposal is supported by rationalized planning evidence that supports this development proposal and indicates that the Board's approval of additional units (and a reduced parking standard that will still see sufficient parking provided for all of its tenants and visitors on site) will not diminish the neighbouring townhouse residents' residential amenity and will not impact adversely their quality of life. The fact that the subject site is landlocked and not part of the arterial road system to which such a development would connect normally was covered in the evidence of Mr. Bacchus and found also not to impact adversely the neighbourhood's existing layout and function.

### **The City's Requested Section 37 Benefit**

73 Lastly, were the Board to approve the Applicant's Site Plan and amend the Zoning By-law with the Applicant's proposed Zoning By-law Amendment, the City requested that the Board impose the condition of a Section 37 benefit on its approval, and that the Board withhold its Order pending the Applicant's payment of a sum of money between \$72,000 and \$158,000, depending on the method of calculation, which represents the Section 37 benefit sought. The benefit was originally thought to be a contribution toward a splash pad for children to play in at the local park.

74 Section 5.1.1 of the Official Plan, which deals with "Height and/or Density Incentives", provides policies that are instructive of the steps the City must take in determining whether a Section 37 community benefit should be sought. These policies are to be read in concert with the City's "Implementation Guidelines for Section 37 of the *Planning Act*" and "Protocol for Negotiating Section 37 Community Benefits" (Exhibit 1, Tab 12). The document states:

Section 37 authorizes a municipality with appropriate Official Plan provisions to pass zoning by-law involving increases in the height or density otherwise permitted by the Zoning By-law, in return for the provision by the owner of community benefits. The community benefits must be set out in the zoning by-law. The community benefits may be secured in an agreement which may be registered on title.

75 Policy 4 of the Official Plan states: "Where the Zoning By-law measures residential density in units per hectare (UPH), the units are to be converted to gross floor area at a rate of 100 metres per unit to determine whether these thresholds are exceeded." The Board recognized that this direction assisted Mr. Manett, in his aforementioned earlier calculations, that led him to ascribe higher population figures to the alleged impacts of the proposed development on the surrounding neighbourhood, resulting in him forming an opinion that many planning policies were allegedly not met through this proposal. The Board has already set out its reasons for assigning little weight to Mr. Manett's opinion in that respect. While the Applicant's development exceeds the 10,000 square metres of gross floor area as referenced in Policy 4, which enables the City to contemplate the payment of a Section 37 benefit, the development does not increase the permitted density by at least 1,500 square metres "and/or significantly increases the permitted height" as this policy also states. As Mr. Kagan submitted to the Board, the proposed Zoning By-law Amendment does not increase the density by 1,500 square metres; it does not increase the height; the 1999, in-force Zoning By-law retains the GFA permitted in that instrument; and it does not reference UPH, only the number of units.

76 Mr. Behar opined that as there is no increase in height or density sought for the proposed apartment building, there is no planning basis to warrant the imposition of a Section 37 condition. He reminded the Board that the subject Zoning By-law does not measure in units per hectare, rendering this policy inapplicable to the case at hand. Further, even if the measurement were valid for this case, which it is not, the UPH number is unhelpful as the Applicant proposes no increase in density and the planning instrument does not use it. He emphasized that the requested increase in density is related to gross floor area and not to the number of units. In intensification scenarios, Mr. Behar opined that GFA is a better indicator of density. He added that there is no relevance in respect of the increase in units, which neither proves the need nor requires the payment of money and thus, there is no reason to seek the benefit. The Board also heard evidence that Camrost, the adjacent developer, had applied to the City for increases in the number of units it wished to add to its development at 120 Dallimore Circle but the City never asked Camrost to pay a Section 37 benefit.

77 While residential intensification as seen in the PPS counts the number of units in its definition, there is no direct corollary to payment of a Section 37 benefit. Also, City planning staff never put any request for a Section 37 benefit in its preliminary staffing report, despite the fact that the City's "Implementation Guidelines and Protocol" requires planning staff to identify in its report whether a Section 37 benefit might be required. By extension, there is no such request found in the staff's final recommendations report either.

78 The Board was taken to a number of references in this document and was shown by Mr. Behar how none of the direction in the "Implementation Guidelines and Protocol" was followed. In defence of City planning staff, however, given its support of the proposed development as shown in its reports, staff had not recommended imposition of a Section 37 benefit as a condition of approval; the subsequent request came to light very late in the process leading to the hearing at the Board.

79 The Board was unable to ascertain the City's reasoning in requesting that the Applicant pay a Section 37 benefit where the Applicant has not requested relief from either the height or density provisions for the subject site. In the context of Official Plan Policy 5.1.1, already cited, the proposed Zoning By-law Amendment to accommodate the development of this site would not result in greater height and/or density increases than the Amendment would otherwise permit and there is no change of use proposed.

80 It was also evident that the Ghods site and the Camrost site have grown in tandem and together since the late 1990s. This is significant information, particularly where Camrost sought and received approvals for similar increases in the numbers of units to be built at 120 Dallimore Circle (albeit a lesser number of additional units as that building is smaller than what the Applicant proposes to build). No Section 37 benefit was requested by the City or paid by Camrost. The Board accepts as persuasive Mr. Kagan's submission that the Board is entitled to consider the similarity of the developments, the heights and the reasonably comparable GFA as it attempted to understand how the adjacent developer was not assessed such Section 37 benefit conditions whereas the Applicant was in this case. By extension, the Board reiterates here that City staff did not make such a recommendation for the Applicant in its report.

81 As this request was brought forward at the hearing, and as the Board was only given a precise dollar figure of \$158,000 as the requested amount to be paid, the Board analyzed the aforementioned "Implementation Guidelines and Protocol" to determine whether the City was justified in seeking payment of this benefit in this case.

82 First, in respect of any precedent set for requesting that a Section 37 benefit be paid, Mr. Whicher told the Board that the figure he put before the Board in this hearing was based on a figure seen in the City staff report of March 2004, authored by Steve Forrester (Exhibit 8, Page 7). That report states that the Applicant at the time agreed to provide a cash contribution in the amount of \$27,000 for neighbourhood park improvements as a Section 37 benefit in exchange for the City's approval of 27 additional townhouses in the subdivision (\$1,000 per new townhouse). Mr. Behar opined that as the Applicant had not sought either an increase in the height or density, he should not have paid this amount to the City. Even if the Applicant were to agree to provide a benefit, Mr. Behar opined that there is no justification for calculating the amount at \$1,000 per unit as Mr. Whicher confirmed for the Board. Mr. Behar cautioned that there is a distinct difference between townhouse sizes and apartment sizes, where townhouses are larger than the apartments that the one and two-bedroom apartments the Applicant proposes to build. Under cross-examination, Mr. Manett also agreed that the amount that the Applicant had paid in 2004 was "voluntary" and he admitted that the proposed \$1,000 figure for each unit, paid for each townhouse, "might not apply" for a mix of 158 additional one and two-bedroom apartments.

83 Mr. Behar did not consider the figure to reflect a reasonable planning relationship. He added that there must be an appropriate geographic relationship; that is, on site or in the local area, and he was unable to quantify the City's dollar value, as he explained that he could not tie the \$1,000 per unit previous contribution to anything directly.

84 Page 4 of the "Implementation Guidelines and Protocol" directs that "The community benefits must be set out in the zoning by-law." They are not. Further, City Planner Forrester was instrumental in crafting a form of the Applicant's proposed Zoning By-law Amendment that would be of assistance to City Council, yet no Section 37 benefit was included in that document as the guidelines suggest is the instrument in which the benefit be added.

85 At page 6 of the document, the Board read: "There should be a reasonable planning relationship between the secured community benefits and the increase in height and/or density in the contributing development." Mr. Behar was unable to identify any such planning relationship between the proposed development and a contribution to a splash pad, which, in the latter part of the hearing, was removed from the table as the tangible "benefit" by Mr. Whicher.

86 Guideline 2.12 reads: "City Planning staff should always be involved in discussing or negotiating Section 37 community benefits with developers/owners." Mr. Behar advised the Board that this never happened and Mr. Forrester confirmed this never happened. Mr. Forrester added that he considered that payment to be "voluntary", adding that the policy framework at that time was different than the current regime, in that the North York Official Plan had no direction for such payment to be made, other than the regular practice available to the City of requesting such benefits. Most notable was Mr. Forrester's statement that not only did he share Mr. Behar's expert opinion that the Applicant has not asked for either a height increase or a density increased density, but he also shared Mr. Behar's views and interpretation of the Section 37 policies and guidelines.

87 Mr. Forrester also agreed that the in-force, 1999 Zoning By-law does not measure density for the subject site as Units Per Hectare (UPH). He added that he does not use PPU's in his work and he had never seen the Statistics Canada PPU's. While this

planner acknowledged to Mr. Whicher that the Official Plan can request a Section 37 benefit be paid when the matter relates to an increase in population, this planner also cautioned that the policy is not formulated that way.

88 As the Guidelines also state:

iii) Section 37, where relevant, should be identified as a planning issue in [sic] preliminary report:

- The preliminary planning report should identify, where possible and if relevant, the use of Section 37 as a planning issue; and
- If not identified in the preliminary report, the applicant, Ward Councillor and the community should be made aware of City staff's intention to use Section 37 as soon as possible in the processing of the application.

89 None of this occurred. The Board accepts as persuasive Mr. Kagan's argument that the City is not being consistent by seeking a Section 37 community benefit in this case. The Guidelines also direct that there be community consultation "...to provide the public with opportunities to comment on the proposed development and the appropriate type and/or level of Section 37 community benefits." While Mr. Behar confirmed that a public meeting was held, no City official or member of the attending public raised the issue of Section 37 benefits.

90 The Board determines that the City's request for a Section 37 benefit in this case does not comply with the relevant Official Plan policies in Section 5.1.1. The Board also finds that there is no connection between the alleged impact on the community, which is traffic, and how the City wishes to use the money. The Guidelines state that the term "community benefits" reflects the City's priority on providing public benefits within the local community in which the contributing development project is located. The increase in height and/or density is an incentive to the developer to provide such benefits at no cost to the City. In this case, there is no request for increases to height and density, however, a fact not lost on City planning staff who never recommended a Section 37 benefit be paid to approve this development. The City's Counsel was never clear for the Board as to the proposed amount to be paid. He had initially suggested a dollar range and he also mentioned a splash pad but these were set aside when he imparted to the Board a precise dollar figure in his closing submissions; a figure that was devoid of a rationale as to its calculation other than to base it on an amount paid for a different built form dwelling — a payment that both Mr. Behar and Mr. Forrester said should not have been paid. Further there was nothing in the Official Plan policy 5 that linked the benefit sought with the proposed development and as for point e), which says that Section 37 may be used "as may otherwise be agreed upon..." there was no agreement between these Parties and never an indication from City planning staff that the recommendation would be sought. In fact, the Board notes that virtually all of its Guidelines were not followed in requesting a Section 37 benefit as a condition for approval of the proposed development.

91 The proposed amount is all the more specious given that the Board has accepted as persuasive evidence that the proposed development will yield a net increase of only 17 more people today versus the approved amount in 1999. The City has provided no apparent planning connection between the addition of 17 more people in the Applicant's apartment building and the payment of thousands of dollars as sought. The City's own planner, Mr. Manett, agreed with Mr. Kagan's statement that that this does not represent a fair contribution and this planner suggested that the range, if imposed, should be a half or a third of the \$1,000 per unit. The Board is of the view that the imposition of the proffered Section 37 community benefit in this case is devoid of substantive rationale or planning considerations (it reiterates that planning staff did not recommend such a condition just as it did not for Camrost) and the City has not followed its Official Plan policies nor adhered to its "Implementation Guidelines and Protocol" in respect of this matter. The Board will not impose a Section 37 condition on the Applicant in this case for all of these reasons.

### Final Determination

92 The Board was persuaded by Mr. Behar's planning evidence that expansion of the ninth floor for full residential uses and the relocation of the amenity space to the lower level represent good planning, just as similar approvals were granted to Camrost. As for the parking standard, which applies only to the owner standard, the visitor standard remains the same, with a range similar to that requested by Camrost. The Board accepts that the provision of these additional one and two-bedroom apartments in the

proposed mix of unit types is achievable with no increase in height and density and will provide more affordable units for the current market. The Board determines that the proposed development responds well to current market trends and the Official Plan speaks to meeting the needs of residents, both existing and future. The building is already approved to be constructed and the proposed changes create no unacceptable or adverse impacts.

93 Having considered all of the evidence, the Board allows the Applicant's appeals and amends the Zoning By-law with the Zoning By-law Amendment attached to this Order as Attachment "1". The Board grants conditional Site Plan approval in accordance with the NOAC conditions attached to this Order (from Exhibit 1, Tab 9) as Attachment "2". The Board withholds its Order until it is notified by the Parties that the Site Plan conditions have been fulfilled. This Member remains seized should there be anything arising from the Site Plan finalization process that requires further direction from the Board in respect of the Site Plan. The Board also dismisses the City's request that it impose upon the Applicant a Section 37 community benefit for the reasons stated. The Board approves the increased number of residential units from 192 to 350 and reduces the parking standard for the tenant parking as requested as per the proposed Amendment.

### **Attachment "1"**

#### **Attachment 8: Draft Zoning By-law Amendment**

Authority: North York Community Council Item - as adopted by City of Toronto Council on -, 2011

Enacted by Council: -, 2011

#### **CITY OF TORONTO**

**Bill No.-**

**BY - LAW No. -2011**

**To amend former City of North York Zoning By-law No. 7625, as amended,  
in respect of lands known as  
39 Green Belt Drive**

WHEREAS authority is given to Council by Section 34 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, to pass this By-law; and

WHEREAS Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Section 64.20-A (85) of By-law 7625 of the former City of North York is amended by the following:

(a) Replacing Subsection 64.20-A (85) (e) Definitions with the following:

(e) For the purposes of this exception, "Gross Floor Area" shall exclude all space below grade, enclosed or unenclosed residential balconies and any part of the building used for mechanical purposes, bicycle parking, and in the case of a multiple attached dwelling any first floor uses such as furnace, laundry, storage, recreational amenity areas, recreational uses, areas used for automobile parking and other similar uses.

(b) Replacing Subsection 64.20-A (85) (g) Building Height with the following:

(g) The maximum building height shall be nine storeys and 28 metres not including rooftop mechanical space which shall not exceed 5 metres in height and not exceed 30% of the area of the rooftop.

(c) Replacing Subsection 64.20-A (85) (h) Dwelling Units with the following:

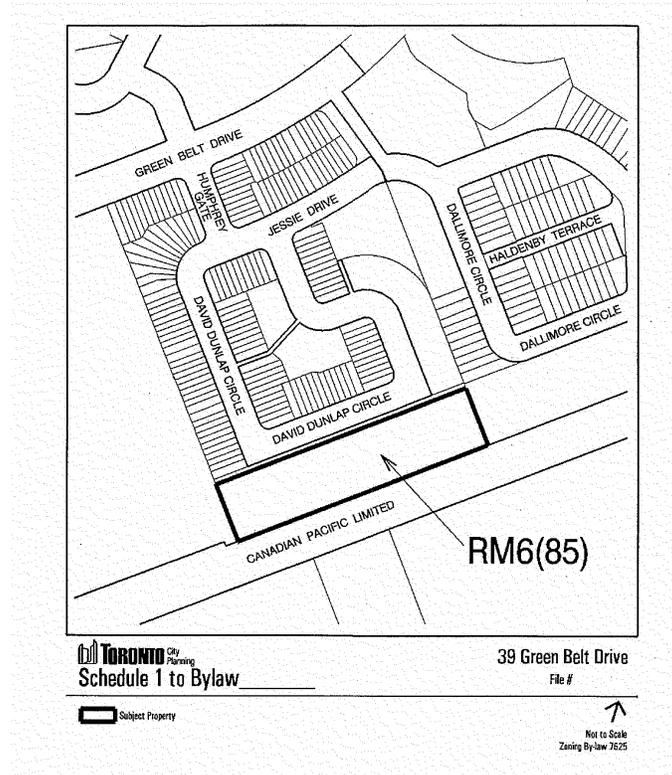
- (h) The maximum number of dwelling units shall be 350.
  - (d) Replacing Subsection 64.20-A (85) (j) Yard Setbacks with the following:
    - (j) (i) Front Yard Setback (at ground floor) - 3 metres.
    - (ii) Front Yard Setback (above ground floor) - 2 metres
    - (iii) Rear Yard Setback - 17.5 metres.
  - e) Subsection 64.20-A (85) (l) Parking is amended by adding the following:
    - (iv) Notwithstanding Section 6A(2)(a) of By-law 7625 parking for an apartment house dwelling shall be provided at a minimum rate of 1.35 parking spaces and a maximum of 1.5 parking spaces per dwelling unit shall be provided of which 0.25 parking spaces per dwelling unit shall be for the use of visitors.
    - (v) Bicycle parking for an apartment house dwelling shall be provided as follows:
      - (i) Long-term: 0.6 spaces per dwelling unit.
      - (ii) Short-term): 0.15 spaces per dwelling unit.
  - (f) Adding the following to Subsection 64.20-A (85):
    - (o) The provisions of Section 6(9)(c) for permitted projections into one minimum side yard setback only shall not apply.
    - (p) Exterior stairways, wheelchair ramps, canopies, balconies, bay windows, and covered porches and decks, shall be permitted to project into the minimum yard setbacks.
2. No person shall use any land or erect or use any building or structure unless the following municipal services are provided to the lot line and the following provisions are complied with:
- (a) all new public roads have been constructed to a minimum of base curb and base asphalt and are connected to an existing public highway, and
  - (b) all water mains and sanitary sewers, and appropriate appurtenances, have been installed and are operational.

**ENACTED AND PASSED this - day of -, A.D. 2011**

ROB FORD,  
Mayor

ULLI, S WATKISS,  
City Clerk

(Corporate Seal)



**Attachment "2"**

**Attachment 9 Draft Notice of Approval Conditions**

| <b>Drawing/Plan No.</b> | <b>Title</b>           | <b>Prepared By</b>             | <b>Date</b>   |
|-------------------------|------------------------|--------------------------------|---------------|
| A-01                    | Site Plan              | M. Shami Architect             | May 2011      |
| A-02                    | P3 Level Parking Plan  | M. Shami Architect             | May 2011      |
| A-03                    | P2 Level Parking Plan  | M. Shami Architect             | May 2011      |
| A-04                    | P1 Level Parking Plan  | M. Shami Architect             | May 2011      |
| A-05                    | Ground Floor Plan      | M. Shami Architect             | May 2011      |
| A-10                    | Front Elevation        | M. Shami Architect             | May 2011      |
| A-11                    | Rear Elevation         | M. Shami Architect             | May 2011      |
| A-12                    | Side Elevations        | M. Shami Architect             | May 2011      |
| SKL-1                   | Landscape Concept Plan | Terraplan Landscape Architects | February 2011 |

**A. DRAFT PRE-APPROVAL CONDITIONS**

**LEGAL SERVICES**

1. Enter into the City's standard site plan agreement to and including registration of the site plan agreement on title on the subject lands by the City at the Owner's expense.

**CITY PLANNING**

2. Submit a cost estimate and financial security to guarantee the provision of landscape development works as detailed on the approved landscape plans in an amount satisfactory to the Director, and in a form satisfactory to the City's Corporate

Finance division. The letter of credit shall be in accordance with its standard format for letters of credit as of the date of submission of the letter of credit to the City, and which shall provide for automatic renewal rights at the end of the term, to complete all outstanding work required by these conditions.

3. Submit revised landscape plans which includes but is not limited to details of the following; the location, size, number and species of all plantings on site and on adjacent road allowance, soil depths; paving materials of all sidewalks, walkways, vehicular areas and other hard surface areas; the location, height and material of all fences, screen walls, retaining walls, recreational facilities, benches; the location, height and type of lighting; proposed utilities, transformers, gas regulators, air intakes/exhausts, garage access stairs, etc., existing and proposed elevations at property lines, driveways and building entrances.

4. The owner shall submit confirmation that arrangements have been made to satisfy the requirements of Technical Services, North York District, as noted in their memorandum dated July 4, 2011.

5. The owner shall submit confirmation that arrangements have been made to satisfy the requirements of Urban Forestry Services, North York District, as noted in their memorandum dated February 11, 2011.

6. The owner shall submit confirmation that arrangements have been made to satisfy the requirements of the Energy Efficiency Office as noted in their memorandum dated January 19, 2011.

7. The owner shall submit revised plans and drawings as follows:

a) 1:50 Scale detailed colour Building Elevations showing:

- A minimum building width of three typical bays, including the main building entrance, for the first three-storeys;
- Exterior design features, exterior materials and window type (e.g. vision glass, spandrel) must be labelled and the fenestration patterns and treatment on the first 10 to 12 metres to reduce bird collisions must be shown.

b) Elevations shall be submitted in two forms, one that shows the full extent of the front elevation, as well as another that includes the adjacent townhouse building information.

c) The use of a different façade treatment is preferred over the use of stucco as it is not sustainable, nor is it a durable material; material details and façade colours of the proposed building should be used to complement the existing townhouses in the neighbourhood; further details of glass and other design features to minimize the risk for migratory birds need to be provided;

d) A Perspective Drawing which illustrates the proposed development from an adjacent street location at the height of a pedestrian showing the building, major building entrances and adjacent built form;

e) A Roof Plan which addresses the Green Roof By-law and appropriately incorporates the design of the rooftop mechanical enclosure into the design of the building;

f) The pedestrian walkway leading from the public sidewalk on David Dunlap Circle to the main entrance to be a minimum of 1.5 m at the sidewalk and increasing to 3m at the main entrance door to allow for space for seating and pedestrian movement;

g) Seating areas shall be provided directly beside the main entrance doors, under the protection of the canopy;

h) Additional space and planting material shall be provided at the main entrance;

i) The canopy's mass should be reduced with a finer design treatment.

- j) The orientation of ground floor unit 1 must be reconfigured so that it faces in a westerly direction rather than its current relationship with the end of the townhouse unit in Block 10;
- k) Retaining walls are not permitted adjacent to public space and shall be avoided at all other property edges;
- l) Individual grade-related entrances should be connected to the public sidewalk, with individual, direct and well defined pedestrian walkways. To provide appropriate privacy and transition from private to public space, the front yards could be designed similar to the units fronting onto the rear landscape amenity space, with a fence, walkway, appropriate landscaping and entrance gate;
- m) The grade-related residential units fronting onto David Dunlap Circle should have a slightly elevated entrance compared to street grade. The front stoop should be elevated a minimum of 0.6 m and a maximum of 0.9m above the grade of the adjacent municipal sidewalk;
- n) Details of the façade treatment of the walls that enclose the loading operations including details of adjacent planting materials;
- o) balconies and terraces (as part of a step back) is encouraged so as to provide more individual amenity space and further articulate the building façade; and,
- p) To improve accessibility, additional access points should be provided to access the common outdoor amenity area from the proposed residential building.

## **TECHNICAL SERVICES**

### 8. Site Plan Drawings

#### 8.1 Transportation Services

- a) The driveway access must be aligned at 90 degrees to the road;
- b) A minimum 3.0 m between the proposed driveway access and the existing driveway for 212 David Dunlap Circle must be shown on revised plans;
- c) There are five barrier free visitor parking spaces on the P2 level which were not included in the statistics. This must be clarified;
- d) A continuous dropped curb must be illustrated at the driveway accesses; and
- e) For the applicant's information, the underground ramp designs must satisfy all of the following criteria:
  - The maximum slope of a covered or heated ramp shall be 15 percent;
  - The maximum slope of an outdoor unheated ramp shall be 10 percent;
  - The minimum width of a clear straight driveway shall be 3.0 metres per lane;
  - The maximum sloped floor for direct access to parking areas shall be 5 percent;
  - The minimum centreline radius for two way driveways, including curved parking ramps, shall be 7.5 metres;
  - For curved ramp sections, a width of 4.0 metres shall be provided for a lane on the inside of the curve and a width of 3.5 metres shall be provided for a lane on the outside of the curve;

- For ramp slope changes of 7.5 percent or greater, a transition area with a minimum length of 3.65 metres (measured parallel to the direction of travel on the ramp) must be provided. The slope of the transition area shall be half the difference of the first slope of the ramp or driveway and the second slope of the ramp or driveway; and
- Safe sightlines and "daylight triangles" related to the intersections of internal ramps must be designed to the satisfaction of the General Manager of Transportation Services.
- A transitions area for the P2 to P3 ramp must be provided on revised plans and satisfy the above requirements. All curved ramp sections must be a minimum of 7.5 m wide and satisfy the above;

f) The proposed location of the loading space (moving/delivery) does not have direct access to loading corridors. The applicant must clarify how on-site loading operations will occur;

g) The applicant must revise the parking level plans as there are numerous parking spaces (regular, tandem and barrier free spaces) that do not meet minimum dimensions of  $2.6 \times 5.6$  m or  $3.65 \times 5.6$  m (for barrier free spaces). A regular or tandem parking space that is obstructed must be increased by 0.3 m for each side of the parking space which is obstructed;

h) The applicant has distributed visitor parking spaces at different locations of all underground parking levels. The applicant must provide rationale for this approach; and

i) A minimum of 210 long-term and 52 short-term bicycle parking spaces are required. The applicant is proposing 40 short-term and did not indicate the amount of long-term spaces.

## 8.2 Fire Services

(a) Please indicate locations of Fire Hydrant and Fire Department Siamese Connection(s).

(b) Hydrant: To be located no more than 45 metres from a fire department Siamese connection.

## 8.3 Solid Waste Services

a) Solid waste and recycling will be collected in accordance with By-Law No. 235-2001, Waste Collection, Residential Properties, of the City of Toronto Municipal Code, as amended. The owner shall be required to meet the guidelines of the "City of Toronto Requirements for Garbage and Recycling Collection from the Developments and Redevelopments". The revised requirements can be found at [www.toronto.ca/garbage/](http://www.toronto.ca/garbage/)

b) The bin holding area shall be level and constructed of 8" reinforced concrete. Please show on drawing.

c) The loading area shall be level (+2%). Please show grades on plan.

d) The loading area has structures overhead. Please clearly show the 6.1 m vertical clearance.

## 8.4 Technical Services

a) Submit easement documents NY185203 & NY298830 for review.

b) Show the David Dunlap Circle roadway curb extending through the driveways.

c) Show the property lines for the adjacent blocks 10 & 20.

9. The owner shall deposit, prior to site plan approval, a letter of credit or certified cheque with the Technical Services for the estimated cost of construction and a certified cheque for the 5% engineering review fee of the following works:

- a) \$18,000.00 for the construction of a 1.5 m concrete sidewalk along the frontage of the site.
- b) \$900.00 representing the 5% Engineering review fee of the above construction works.

The above works shall be constructed by the owner anytime after the Site Plan Approval provided all necessary arrangements with Technical Services for work on City's Right of Way have been satisfied.

#### 10. Site Servicing Plan

- a) The water service connection to be revised as per drawing No. T-1105.02-1. (show meter room).
- b) Inspection maintenance access holes (or approved equivalent) are required for the service connections at the east side of the development.
- c) The proposed storm connection must be required in size in order to reduce stormwater flow to City sewers as per the Stormwater Management Report.

#### 11. Municipal Infrastructure Discharge Criteria

- a) For development sites < 2 ha, the proponent may use a simplified approach such as the Rational Method / IDF curves to compute peak flows. Please review pg 32, Wet Weather Flow Management Guidelines, Nov 2006, and revised the Report Accordingly.
- b) Include in the Stormwater Management Report, the storm detention pipe shown in the Site Servicing Plan and describe the purpose.

### **URBAN FORESTRY SERVICES**

12. A revised landscape plan shall be submitted which shows a row of within the David Dunlap Circle road allowance planted at a minimum spacing of 8 to 10 metres. A combination of Japanese katsura trees, Chinkapin oak trees or Firehall maple trees (*Acer X Freemanii* "Firehall" is recommended.

13. A tree planting security deposit in the amount of **\$583.00** per tree is required for the tree planting within the road allowance. These costs are subject to change.

### **ENERGY EFFICIENCY OFFICE**

14. The applicant shall submit the Final Design-Stage Energy Modeling Report, using EE4, DOE2, EQuest or other software approved by the Energy Efficiency Office. Financial (technical assistance is available from the Energy Efficiency Office's Better Buildings Partnership-New Construction Program) to the satisfaction of the Executive Director, Facilities Management Division.

### **B. POST APPROVAL CONDITIONS**

In addition to the above pre-approval conditions, the following post approval conditions are to be fulfilled by the Owner following site plan approval and will be incorporated into a site plan agreement:

### **TECHNICAL SERVICES**

#### 1. Facilities to Provide Access to and from the Land

- 1.1 Remove all existing accesses, curb cuts, traffic control sign, etc. along the development site frontage that are no longer required and reinstate the boulevard within the right-of-way, in accordance with City standards and to the satisfaction of the Executive Director of Technical Services.

1.2 The proposed driveway on City property must be graded downward towards the roadway and have a 2% to 6% slope.

2. Off-street Vehicular Loading and Parking Facilities and Access/Driveways

2.1 Provide and maintain off-street vehicular loading and parking facilities and access driveways in accordance with the approved plans and drawings, to the satisfaction of the Executive Director, Technical Services;

2.2 All on-site driveways and parking areas must be surfaced and maintained with asphalt, concrete, or interlocking stone; and

2.3 The owner must install and maintain appropriate signage and pavement markings on-site directing such as but not limited to: vehicle stopping and circulation, designated disabled parking, loading, and pedestrian walkways, to the satisfaction of the Executive Director, Technical Services.

3. Boulevard Maintenance

3.1 The owner shall maintain the sod covered portion including any walkways within the City's Right-of-Way fronting and/or flanking the site in accordance with the approved plans and drawings to the satisfaction of the City.

4. Facilities for Landscaping the Lands or Protecting Adjoining Lands

4.1 The owner acknowledges that anything other than concrete sidewalks, trees and sod that they locate within the untraveled portion of the adjoining public highway(s) are encroachments that must be installed, planted and maintained at the owner's expense, specifically:

4.1.1 All landscape/streetscape features illustrated on the applicant's approved landscaping plan; and,

4.1.2. Plant irrigation systems.

4.2 These encroachments shall be permitted by the City of Toronto pursuant to the following terms:

4.2.1 The property owner accepts this boulevard area in its current condition as of the date of the agreement, and shall not call upon the City to do or pay for any work or supply any equipment to make the boulevard more suitable for the uses specified herein;

4.2.2 All encroachments within the boulevard areas of the adjoining public highways shall be constructed and maintained according to the approved site and landscaping/streetscaping plan(s) approved by this Division, and the Executive Directors of Technical Services and City Planning;

4.2.3 To provide unobstructed driver sight lines, the owner shall ensure that all vegetation, street furniture, retaining walls and fences located within 4.5 m of the travelled portion of the adjoining public highway do not exceed a maximum height of 0.85 m measured from the travelled surface of the adjoining highway. The owner shall maintain all trees located within 4.5 m of the travelled portion of the adjoining highway with a minimum clearance of 2.5 m measured between the bottom of the tree canopy and the travelled portion of the street;

4.2.4 The owner agrees that they will, at their expense, maintain the encroachments in a state of good repair, free of graffiti, posters, litter, snow and ice, and that vegetation will be maintained in a healthy and vigorous state of growth. The owner shall not make any additions or modifications to the encroachments beyond what is allowed pursuant to the terms of this site plan agreement. The owner further acknowledges that should they neglect to maintain the encroachment(s), then the City, after providing 24 hours notice, shall, at the owner's expense, perform the required maintenance and remove graffiti, posters, litter, snow and ice, and the City may recover its costs in a like manner as municipal taxes;

4.2.5 The owner agrees that if the City should at any time undertake any widening or other alteration to the adjoining public highway(s) necessitating the removal of any encroachment(s), the City shall not be liable to pay any compensation whatsoever for such removal, nor shall it restore any encroachment that it removes. The encroachments permitted by this agreement shall be removed by the owner, at their expense, within 14 days of receiving written notice from the General Manager of Transportation Services Division or his/her designate. In default of the removal not occurring as requested, the City may carry out the removal, at the owner's expense, and may recover its costs in a like manner as municipal taxes;

4.2.6 The owners acknowledges that there may exist municipal and/or utility services within, upon or under the boulevard, and acknowledges that the City or the utility responsible for such service(s) may need to undertake repairs or carry out maintenance on such service(s) or to replace such service(s) or to install new service(s). The owner agrees that the City or utility shall have the right to remove the encroachments for the purpose of carrying out such installation, replacement, repair or maintenance. Prior to removing the encroachment, the City shall give 48 hours notice of its intention to remove the encroachment for maintenance purposes, except in the case of emergency, in which case no notice shall be required. On completing the installation, replacement, repairs or maintenance, the owner, at their sole expense, shall proceed immediately to restore the encroachments to the condition it was in prior to the commencement of such installation, replacement, repairs or maintenance. Under no circumstances, shall the City be required to so restore the lands, or to compensate the owner for the cost of doing so; and

4.2.7 The owner agrees to defend, save and keep harmless and fully indemnify the City, its officers, employees, agents and other representatives, from and against all actions, claims, suits or damages whatsoever that may be brought or made against the City as a result of the owner's use of the boulevard area of the adjoining public highways.

### **CITY PLANNING**

5. The Owner agrees to develop the Land and construct the Project in substantial conformity with the plans and drawings listed in Schedule "B" of the Site Plan Agreement, and in accordance with the conditions set out in Schedule "C" of the Site Plan Agreement, including, without limiting the generality of the foregoing, those plans and drawings setting out the approved exterior design and sustainable design features of the Project.

6. The Owner shall construct and maintain the development in accordance with Tier 1 performance measures of the Toronto Green Standard, as adopted by Toronto City Council at its meeting held on October 26 and 27, 2009 through the adoption of Item PG32.3 of the Planning and Growth Committee.

7. If the conditions of Site Plan Approval are not fulfilled within 3 years of the date of approval, then this approval is no longer valid and a new submission is required unless a written request for time extension is received and granted by the Director.

### **URBAN FORESTRY SERVICES**

8. Trees indicated for planting on the City road allowance must be planted in accordance with Planting Detail No. 101 for Balled and Burlapped Trees in Turf Areas, dated June 2002.

9. The applicant must conduct an investigation of underground utilities prior to proposing tree planting within the City road allowance. If planting is not possible due to a utility conflict, a utility locate information sheet from the respective utility company should be provided to the City.

10. The required tree planting security deposit is to be in the form of an irrevocable Letter of Credit or certified cheque. The tree planting security deposit must be sent to the attention of Harold Moffatt, Supervisor of Urban Forestry Planning

and Protection (Hmoffat@toronto.ca), prior to the issuance of a landscaping permit which must be obtained from Works and Emergency Services, Transportation Services North District, Right of Way Management (416-395-7112).

11. The tree planting security deposit is held for the duration of the renewable guarantee period.

12. The funds from the tree planting security deposit will be drawn upon to cover any costs Urban Forestry incurs as a result of enforcing and ensuring that the trees are kept in a healthy and vigorous state.

13. If during or at the end of the renewable guarantee period the trees are not in good condition, require maintenance or require replacement, the applicant will be responsible for rectifying the problem as determined by and to the satisfaction of the General Manager of Parks, Forestry & Recreation.

14. The owner will be required to provide an additional two-year renewable guarantee period for any trees requiring replacement.

#### **ENERGY EFFICIENCY OFFICE**

15. The owner shall construct and maintain the development substantially in accordance with the accepted Energy Report to ensure that the energy savings identified continue to be achieved, to the satisfaction of the Executive Director Facilities Management Division.

#### **SITE PLAN ADVISORY COMMENTS**

1. The Owner is advised that the Green Roof By-law (By-law No. 583-2009) (Chapter 492 of the City of Toronto Municipal Code) including Article IV the Toronto Green Roof Construction Standard, is applicable to the proposed development. For further information, please contact Diane Damiano, Toronto Building.

2. In the event that buried archaeological remains are encountered on the property during the construction activities, the Owner should immediately notify the Heritage Operations Unit of the Ministry of Culture 416-314-7146 as well as the City of Toronto, City Planning Division, Policy and Research Section, Heritage Preservation Services Unit (416) 338-1096.

3. In the event that human remains are encountered during construction, the Owner should immediately contact both the Ministry of Culture, and the Registrar or Deputy Registrar of Cemeteries at the Cemeteries Regulation Unit, Ministry of Government Services (416) 326-8393.

4. The applicant must obtain the necessary authorizations and permits from our Right-of-Way Management Section before excavating or encroaching into municipal road allowance. The applicant is advised to contact our Right-of-Way Management Section at (416) 395-7112 regarding site-specific permit and licensing requirements.

5. The applicant cannot use the municipal right-of-way for construction-related purposes without first receiving written authorization from our Right-of-Way Management Section, including payment of the necessary fees. The Owner will be required to provide the City with a Construction Management Plan outlining the following:

- a) Dust/mud control on and offsite;
- b) Location of truck loading points, trailer parking;
- c) Location of temporary material storage areas;
- d) Access/truck routing;
- e) Provision of hoarding, temporary fencing & covered walkways;
- f) Location and extent of aerial crane operations; and

g) Parking for construction trades.

For further information, please contact the Right-of-Way Management Section, North York District, at 416-395-6221.

6. Any encroachments within Municipal Road Allowances will not be permitted unless they are explicitly approved by the Right-of-Way Management section of Transportation Services Division. The applicant is required to contact the section through the permit approval process to obtain the exact particulars of these requirements. For further information, please contact the Right-of-Way Management Section, North York District at (416) 395-7112.

7. The applicant is advised to contact Mr. Robert Sevigny, Municipal Numbering Supervisor, at 416-392-8451 to obtain or verify new municipal addresses prior to submitting a building permit application. It should be noted that all addressed parcels and structures must have the correct municipal addresses posted. Please see <http://www.toronto.ca/mapping/numbers/index.htm> for details.

8. The applicant must obtain approval from Toronto Hydro Street Lighting Incorporated before removing and/or relocating any utility with attached municipal street lighting.

9. Canada Post requires buildings with 100 or more units to have a secure mailroom with access to rear loaded mailboxes. Detailed construction specifications are available in the Canada Post Delivery Planning Standards Manual for Builders and Developers.

*Appeal allowed.*

**Most Negative Treatment:** Distinguished

**Most Recent Distinguished:** Fiorino v. Toronto (City) Committee of Adjustment | 2007 CarswellOnt 5347, 37 M.P.L.R. (4th) 311, 57 O.M.B.R. 55 | (O.M.B., Aug 16, 2007)

2005 CarswellOnt 2913  
Ontario Superior Court of Justice (Divisional Court)

DeGasperis v. Toronto (City) Committee of Adjustment

2005 CarswellOnt 2913, [2005] O.J. No. 2890, 12 M.P.L.R. (4th) 1, 140  
A.C.W.S. (3d) 752, 200 O.A.C. 392, 256 D.L.R. (4th) 566, 51 O.M.B.R. 1

**KITSON VINCENT (Appellant) and FREDDY  
and WENDY DEGASPERIS (Respondents)**

THE ROSEDALE GOLF ASSOCIATION LIMITED (Appellant) and FREDDY  
DEGASPERIS JR. and WENDY DEGASPERIS (Respondents) and ONTARIO  
MUNICIPAL BOARD (Intervenor) and CITY OF TORONTO (Intervenor)

Matlow, Jarvis, Molloy JJ.

Heard: February 21, 2005

Judgment: July 8, 2005

Docket: Toronto 775/03, 777/03

Proceedings: reversing *DeGasperis v. Toronto (City) Committee of Adjustment* (2003), 2 M.P.L.R. (4th) 124, (sub nom. *Degasperis v. Toronto (City)*) 46 O.M.B.R. 407, 2003 CarswellOnt 5960 (O.M.B.); additional reasons at *DeGasperis v. Toronto (City) Committee of Adjustment* (2005), 2005 CarswellOnt 7202 (Ont. Div. Ct.)

Counsel: N. Jane Pepino for Appellant, Kitson Vincent  
A. Brown, L. Richetti for Respondents  
Chris Paliare for Appellant, Rosedale Golf Association Limited  
M. Michaels for Intervenor, Ontario Municipal Board  
Andrew Weretelnyk for Intervenor, City of Toronto

Subject: Public; Civil Practice and Procedure; Municipal

**Headnote**

Municipal law --- Zoning — Zoning variances — Types of variances — Frontage and set back  
Homeowners applied to committee of adjustment for four minor variances — Minor variances sought included setback, height of dwelling, and area of dwelling and balconies — Committee of adjustment dismissed application for all variances — Homeowners appealed to Ontario Municipal Board — Board upheld decision regarding setback, but allowed appeal related to height and area of dwelling and balconies, and granted those variances — Homeowners appealed — Appeal allowed — Four part test mandated by Planning Act requires that variance be minor, desirable for use of land, maintain intent and purpose of zoning by-law, and maintain intent and purpose of official plan — Board required to examine each variance sought and determine whether variances, alone or together, met requirements of test — Board's reasons focused on likely impact of variances sought with little or no regard for anything else — Board failed to consider general intent and purpose of by-law and official plan — Board committed numerous errors in its interpretation and application of four-part test — Standard of review to be applied to decision in which Board interprets its own statute was reasonableness — Board's errors failed to meet standard of reasonableness — Matter remitted to Board to be heard by different panel.

Municipal law --- Zoning — Zoning variances — Jurisdiction and powers — Decision maker of first instance

Homeowners applied to committee of adjustment for four minor variances — Minor variances sought included setback, height of dwelling, and area of dwelling and balconies — Committee of adjustment dismissed application for all variances — Homeowners appealed to Ontario Municipal Board — Board upheld decision regarding setback, but allowed appeal related to height and area of dwelling and balconies, and granted those variances — Homeowners appealed — Appeal allowed — Four part test mandated by Planning Act requires that variance be minor, desirable for use of land, maintain intent and purpose of zoning by-law, and maintain intent and purpose of official plan — Board required to examine each variance sought and determine whether variances, alone or together, met requirements of test — Impact of variances sought was not only factor to be considered by Board — Board failed to consider general intent and purpose of by-law and official plan — No separate tests for hardship or need existed — Grant of minor variance application did not constitute special privilege — Committees of adjustment and Ontario Municipal Board entitled to consider issue of need and hardship even if four tests under s. 45(1) of Act satisfied. Municipal law --- Zoning — Zoning variances — General principles

Homeowners applied to committee of adjustment for four minor variances — Minor variances sought included setback, height of dwelling, and area of dwelling and balconies — Committee of adjustment dismissed application for all variances — Homeowners appealed to Ontario Municipal Board — Board upheld decision regarding setback, but allowed appeal related to height and area of dwelling and balconies, and granted those variances — Homeowners appealed — Appeal allowed — Four part test mandated by Planning Act requires that variance be minor, desirable for use of land, maintain intent and purpose of zoning by-law, and maintain intent and purpose of official plan — Board required to examine each variance sought and determine whether variances, alone or together, met requirements of test — Impact of variances sought was not only factor to be considered by Board — Board failed to consider general intent and purpose of by-law and official plan — No separate tests for hardship or need existed — Grant of minor variance application did not constitute special privilege — Committees of adjustment and Ontario Municipal Board entitled to consider issue of need and hardship even if four tests under s. 45(1) of Act satisfied — Committees of adjustment required to provide careful and detailed analysis of decisions and not able to rely on "template catchword" checklist as reasons for decisions.

#### Annotation

The Ontario Divisional Court's judgment in *Vincent v. DeGasperis* makes a noteworthy number of important statements regarding the law concerning minor variances under subsection 45(1) of the *Planning Act*, R.S.O. 1990, c. P.13. The decision provides important guidance as to how subsection 45(1) is to be interpreted. The judgment also provides clarification on a number of issues regarding the authority to provide minor relief from zoning requirements and it creates some new law.

Relying principally upon the Ontario Court of Appeal's detailed comments in *Mississauga (City) v. Erin Mills Corp.* (2004), 50 M.P.L.R. (3d) 1, 2004 CarswellOnt 2617 (Ont. C.A.), that, in that case, the Ontario Municipal Board was not interpreting its "home statute" and did not have any unique experience or expertise in interpreting the term "conflict" under O. Reg. 82/98 of the *Development Charges Act, 1997*, the Divisional Court held that the situation at hand in *Vincent v. DeGasperis* was quite different. The Court noted that the *Planning Act* "is the Board's home statute and there is good reason to presume that the Board does have 'unique experience in interpreting it' in relation to the provision dealing with minor variances." It also relied on two other appellate decisions in finding that the appropriate standard of review of the Ontario Municipal Board's decision on an appeal from a committee of adjustment decision is reasonableness.

The Divisional Court re-states that the test under subsection 45(1) is four-fold: an applicant seeking a minor variance must satisfy a committee of adjustment or the Ontario Municipal Board on appeal that a variance from the zoning by-law: (i) is minor in nature, (ii) is objectively appropriate for the use and development of the land, building or structure, (iii) maintains the general intent of the official plan; and (iv) maintains the general intent of the zoning by-law. As noted by Ken Hare in his article "Rearticulating the Four Tests in *Vincent v. DeGasperis*" in 2 D.M.P.L. (2d) (October 2005), the Court engages in a bit of disentanglement of the four minor variance tests which had over the years merged with one another.

Justice Matlow (writing for the unanimous Ontario Divisional Court) re-iterates the historic interpretation of the minor variance test that goes back to the Divisional Court's seminal decision in *251555 Projects Ltd. v. Morrison* (1974), 5 O.R. (2d) 763, 1974 CarswellOnt 549 (Ont. Div. Ct.). Matlow J.'s restatement is significant because the Ontario Municipal Board in a large number of decisions had appeared to articulate a different approach to the consideration of minor variance applications. More recently and

increasingly more reliant, the Ontario Municipal Board had appeared to make its determinations on whether a variance was minor based on the adverse impact approach. (There are numerous examples and an assortment of slightly varying enunciations of the same approach — see, for example, *Goodwood Club v. Uxbridge (Twp.)* (1990), 24 O.M.B.R. 199 (O.M.B.); *Darling v. Brockville (City) Committee of Adjustment* (1994), 31 O.M.B.R. 285 (O.M.B.); *Quesnelle v. Brookfield Homes (Ontario) Ltd.* (2003), 46 O.M.B.R. 417, 2003 CarswellOnt 6136 (O.M.B.)).

The Court held that the Ontario Municipal Board had erred in this case by essentially subsuming three of the four statutory tests under subsection 45(1) to the single test of "impact". Mr. Justice Matlow determined that the Ontario Municipal Board's decision had not sufficiently analyzed the second, third and fourth tests under subsection 45(1) of the *Planning Act* and that it focused on the likely impact of the variances sought with little or no regard for anything else.

The Court noted that while impact may be an important factor, it is not the *only* factor. Moreover, "impact" cannot be the only consideration in determining whether a variance is "minor" — the size of the variance must also be considered. With respect to the second test of desirability, the Court stated that the test requires variances to be desirable, and not simply compatible, with appropriate development. Whether a variance is desirable is an objective test to be considered from a planning and public interest point of view.

The Ontario Divisional Court also confirmed that subsection 45(1) does not include a fifth test of "need" or a sixth test of "hardship." While this may have been plainly evident from a reading of the language in subsection 45(1), both of these factors had been raised and considered by the Ontario Municipal Board in numerous decisions, including most prevalently in the oft-cited case of *Assaraf v. Toronto (City) Committee of Adjustment* (1994), 31 O.M.B.R. 257, 1994 CarswellOnt 5429 (O.M.B.). Opponents to minor variance applications often attempted to elevate the status of these factors to additional and separate tests for the granting of minor variance relief. The Divisional Court specifically addresses *Assaraf* in noting that the granting of a minor variance is not a "special privilege" that can only be granted or conferred in cases that demonstrate either need or hardship.

Remarkably, however, the Court also found that the inclusion of the word "may" in subsection 45(1) conferred on a committee of adjustment (and on the Ontario Municipal Board on appeal) a "residual discretion" as to whether or not to grant a variance approval, even if the four tests were satisfied. This is a revolutionary finding by the Court and appears to run counter to its own re-articulation of the four tests in subsection 45(1). Based on the Divisional Court's ruling, a committee of adjustment and the Ontario Municipal Board are entitled to take into account additional factors beyond the four tests in considering a minor variance application. The Court notes that in exercising its residual discretion, a decision-maker may "take into account anything that reasonably bears on whether or not an application [for a minor variance] should be granted." It is within this residual discretion that the factors of need and hardship may, in some instances, properly be taken into account. The residual discretion is a significant variation from the existing jurisprudence and will create a substantial degree of uncertainty in the short term.

Finally, the Divisional Court also noted that committees of adjustment must provide reasons for their decisions so that they can be understood and challenged, if necessary. The Court noted that, "it is not sufficient for the Board to use template catchwords that refer to the four tests in order to show that it properly considered and applied those tests." The Court wrote that "the proper performance of this prescribed four-step exercise will rarely be simple. It requires, without exception, a careful and detailed analysis of each application to the extent necessary to determine if each variance sought satisfies the requirements of each of the four tests."

While the Ontario Municipal Board has always provided reasons for its decisions, committees of adjustment have historically not done so, preferring instead to issue decisions indicating approval or non-approval based on the "template catchword" checklist. Based on the Ontario Divisional Court's ruling, it appears that committees of adjustment will have to completely overhaul their method of decision-writing. This will not be easy or administratively uncomplicated — as stated in the judgment itself, "the proper performance of this prescribed four-step exercise will rarely be simple."

The Ontario Association of Committees of Adjustment and Consent Authorities (OACA) is presently considering the judgment and attempting to determine how its members should endeavour to comply with the requirement for complete comprehensive reasons that demonstrate the interpretation and application of the four tests under subsection 45(1) of the *Planning Act*. If it was

not already sufficiently complicated, the attainment of minor variance approval at the committee of adjustment level will most certainly become more complex, time-consuming and expensive.

The decision has not been appealed.

John Mascarin

#### Table of Authorities

##### Cases considered by *Matlow J.*:

*Assaraf v. Toronto (City) Committee of Adjustment* (1994), 1994 CarswellOnt 5429, 31 O.M.B.R. 257 (O.M.B.) — not followed

*Eastpine Kennedy-Steeles Ltd. v. Markham (Town)* (2004), 45 M.P.L.R. (3d) 14, 237 D.L.R. (4th) 177, 46 O.M.B.R. 353, 2004 CarswellOnt 679, 184 O.A.C. 65 (Ont. Div. Ct.) — followed

*London (City) v. Ayerswood Development Corp.* (2002), 34 M.P.L.R. (3d) 1, 2002 CarswellOnt 4301, 167 O.A.C. 120 (Ont. C.A.) — followed

*Mississauga (City) v. Erin Mills Corp.* (2004), 50 M.P.L.R. (3d) 1, 188 O.A.C. 133, 71 O.R. (3d) 397, 2004 CarswellOnt 2617 (Ont. C.A.) — considered

##### Statutes considered:

*Ontario Municipal Board Act*, R.S.O. 1990, c. O.28

s. 96(1) — pursuant to

*Planning Act*, R.S.O. 1990, c. P.13

Generally — referred to

s. 45(1) — considered

s. 45(9) — considered

APPEAL from decision of Ontario Municipal Board reported at *DeGasperis v. Toronto (City) Committee of Adjustment* ((2003)), 2003 CarswellOnt 5960, (sub nom. *Degasperis v. Toronto (City)*) 2 M.P.L.R. (4th) 124, 46 O.M.B.R. 407 ((O.M.B.)), granting three of four requested minor variances upon leave to appeal.

##### *Matlow J.*:

1 Both of these appeals are allowed. The order of the Ontario Municipal Board is set aside and the appeal by the DeGasperis' before the Board is remitted to the Board to be heard by a different panel in accordance with these reasons. If the parties cannot agree on the disposition of costs, written submissions regarding costs may be exchanged and submitted by counsel in triplicate. The submissions by parties claiming costs are to be submitted within one month and all submissions in response are to be delivered within two weeks thereafter.

2 The appeals are brought pursuant to section 96 (1) of the Ontario Municipal Board Act, R.S.O. 1990, c. O.28 ("the OMB Act") which provides for an appeal from an order of the Board to this Court, with leave, on a question of law. Leave was granted by Cunningham, A.C.J.S.C. whose reasons are reported at [2004] O.J. No. 1153 (Ont. Div. Ct.). Both appeals were heard together on the consent of all of the parties and the intervenors.

3 The order in appeal was an order made by the Board allowing, in part, an appeal by the "DeGasperis", from a decision of the Committee of Adjustment of the City of Toronto which had dismissed their application for certain minor variances from the zoning by-law applicable to their property at 35 Green Valley Road.

4 The DeGasperis' initial application is described at the outset of the Board's reasons as follows;

Green Valley Road is located in the City of Toronto (formerly the City of North York) along which are large lots with substantial homes. The property at No. 35 is one such lot and dwelling. The area is a mature enclave of prestige structures. The applicants, (Mr. F. and Mrs. W. DeGasperis, Jr.) propose to demolish the existing structure and to replace it with a

larger, modern, home. Minor variances to the Zoning By-law provisions were sought from the Committee of Adjustment as follows:

1. north side yard setback of 1.22 metres to the proposed dwelling whereas 1.8 metres is required;
2. length of dwelling to the rear (living space portion) of 21.3 metres, and length of dwelling to the rear of the proposed covered patio and open terrace above of 26.9 metres whereas 16.8 metres is permitted;
3. dwelling height of 10.63 metres whereas 8.0 metres for a flat roof is permitted; and
4. front balcony area of 23.5 square metres and rear balcony area of 81.47 square metres (revised from 110.6 on appeal — the Board accepts the amendment to the application is minor and no further notice is required, invoking Section 45 (18.1) and 45 (18.1.1) of the Planning Act) whereas 3.8 square metres is permitted for each balcony.

5 By its order, the Board upheld the Committee of Adjustment's decision with respect to the first of these variances sought. However, with respect to the remaining three, the appeal was allowed and the variances sought were granted.

6 Various issues arise in this appeal regarding the interpretation and application of section 45 (1) of the *Planning Act*, R.S.O. 1990, c. P.13 ("the Act") which confers jurisdiction on committees of adjustment to grant minor variances. It reads as follows:

45(1) The committee of adjustment, upon the application of the owner of any land, building or structure affected by any by-law that is passed under section 34 or 38, or a predecessor of such sections, or any person authorized in writing by the owner, may, despite any other Act, authorize such minor variance from the provisions of the by-law, in respect of the land, building or structure or the use thereof, as in its opinion is desirable for the appropriate development or use of the land, building or structure, if in the opinion of the committee the general intent and purpose of the by-law and of the official plan, if any, are maintained.

7 The issues raised by the appellants on which leave to appeal was granted are set out in the reasons of the Associate Chief Justice as follows:

The moving parties raise four issues which they say demonstrate how the OMB erred in law. These issues are as follows:

1. That the OMB erred in law by subsuming three of the four tests under ss. 45(1) of the Planning Act to the sole question of impact, thereby failing to properly address three of the four tests under that section.
2. That the Board erred in law in rejecting previous decisions of the OMB that a minor variance is a "special privilege" and that applicants must be able to demonstrate why they could not adhere to the by-law. By taking the position it did, the moving parties say the OMB erred in law by holding that the respondents herein were not required to demonstrate any need for the minor variance in order to satisfy one or more of the prescribed tests.
3. That the Board manifestly misapprehended the evidence and thereby erred in law by holding that the length of the "habitable" portion of the proposed new dwelling was within the requirements of the by-law. Further, that the OMB erred in law by holding that the height limit set out in the by-law was merely a "technical" requirement such that a variance ought to be granted.
4. That the OMB erred in law by taking into account and relying upon an irrelevant consideration when it concluded that no impact would result from an illegal and unenforceable condition as related to the rear balcony.

8 To the extent that I am persuaded that these issues raise questions of law, I will now address them in roughly the same order, commencing with my analysis of the four tests established by section 45 (1) of the *Act*. I will first deal with the applicable law and then review the proceeding before the Board.

9 An application for a minor variance must meet what is often referred to as the four part test mandated by the *Act*. To satisfy the requirements of the test a variance must:

1. be a minor variance;
2. be desirable, in the opinion of the committee, for the appropriate development or use of the land, building or structure;
3. maintain, in the opinion of the committee, the general intent and purpose of the zoning by-law; and
4. maintain, in the opinion of the committee, the general intent and purpose of the official plan.

10 These tests can, and therefore must, be interpreted in accordance with the adequately clear and ambiguous language used in section 45 (1) of the *Act*.

11 It is incumbent on a committee of adjustment, or the Board in the event of an appeal, to consider each of these requirements and, in its reasons, set out whatever may be reasonably necessary to demonstrate that it did so and that, before any application for a variance is granted, it satisfied all of the requirements.

12 A minor variance is, according to the definition of "minor" given in the Concise Oxford Dictionary, one that is "lesser or comparatively small in size or importance". This definition is similar to what is given in many other authoritative dictionaries and is also how the word, in my experience, is used in common parlance. It follows that a variance can be more than a minor variance for two reasons, namely, that it is too large to be considered minor or that it is too important to be considered minor. The likely impact of a variance is often considered to be the only factor which determines whether or not it qualifies as minor but, in my view, such an approach incorrectly overlooks the first factor, size. Impact is an important factor but it is not the only factor. A variance can, in certain circumstances, be patently too large to qualify as minor even if it likely will have no impact whatsoever on anyone or anything. This can occur, for example, with respect to the first building on a property in a new development or in a remote area far from any other occupied properties.

13 Accordingly, in my view the Board was required, at the outset, to examine each variance sought and to determine whether or not, with respect to both size and importance, which includes impact, it was minor.

14 The second test requires the committee to consider and reach an opinion on the desirability of the variance sought for the appropriate development or use of the land, building or structure. This includes a consideration of the many factors that can affect the broad public interest as it relates to the development or use.

15 Accordingly, in my view the Board was required to consider each variance sought and reach an opinion as to whether or not it, either alone or together with the other variances sought, was desirable for the appropriate use of the subject property. The issue was not whether the variance was desirable from the perspective of the DeGasperis' plans for their home but, rather, whether it was desirable from a planning and public interest point of view.

16 The third test requires the committee to consider and reach an opinion on whether or not the variance sought would maintain the general intent and purpose of the zoning by-law.

17 Accordingly, in my view the Board was required to engage in an analysis of the zoning by-law to determine its general intent and purpose and to consider whether the variance sought would maintain that general intent and purpose.

18 The fourth test requires the committee to consider and reach an opinion on whether or not the variance sought would maintain the general intent and purpose of the official plan.

19 Accordingly, in my view the Board was required to engage in an analysis of the official plan to determine its general intent and purpose and to consider whether the variance sought would maintain that general intent and purpose.

20 I pause here to observe that the proper performance of this prescribed four-step exercise will rarely be simple. It requires, without exception, a careful and detailed analysis of each application to the extent necessary to determine if each variance sought satisfies the requirements of each of the four tests.

21 I turn now to the reasons given by the Board and my analysis of how the Board interpreted and applied the four statutory tests.

22 In its reasons the Board expressed its view that obtaining a minor variance is not a "special privilege", a view contrary to a number of earlier decisions of the Board. In those decisions such as *Assaraf v. Toronto (City) Committee of Adjustment* (1994), 31 O.M.B.R. 257 (O.M.B.), the Board had held that a minor variance is a "special privilege" and will not be granted in the absence of need or hardship. The Board in this case rejected that view, stating at page 3 as follows:

A minor variance is not a "special privilege" that requires the applicant to justify the relief sought on the basis of need or hardship. The Planning Act authorizes variances to the Zoning By-law if four "tests" are met. Section 45 (1) does not create yet a fifth test of need or a sixth test of hardship. Provided the applicant can satisfy Section 45 (1), the application ought to be authorized if proper planning for the site will result, always mindful of what is in the public interest. It can be said an application is "needed" in every case involving a variance — otherwise the application would be redundant if the proposal adhered to the zoning by-law performance standards. To require proof of hardship is to import words and a test which do not exist upon a reasonable interpretation of Section 45 (1). One can think of a multitude of situations where no hardship is evident but where the application has merit and meets Section 45 (1). Are those applications to be arbitrarily denied? Provided the statutory criteria are applied and the application withstands the scrutiny of acceptable planning practice, then additional, unsanctioned, hurdles will not be imposed by the Board to evaluate minor variance requests.

23 I agree with the Board's analysis and interpretation of the law as to whether the obtaining a minor variance is a special privilege. However, in addition to what the Board stated I would add that the inclusion of the word "may" in section 45 (1) indicates that the jurisdiction given to a committee of adjustment to grant minor variances is permissive and confers on it a residual discretion as to whether or not grant them even when the four tests are satisfied. In exercising its discretion, a committee is entitled to take into account anything that reasonably bears on whether or not an application should be granted and, in my view, need and hardship are factors that, in appropriate cases, can properly be taken into account. However, even when these factors are taken into account and an application for a minor variance is granted, that does not transform the granting of the minor variance into a special privilege.

24 I turn next to how the Board applied the four tests to the minor variances sought. With respect to variances #2, 3 and 4, there is nothing in the Board's reasons that indicates that the Board considered whether those variances were patently too large to qualify as minor. The only factor addressed in the Board's reasons appears to be the likely impact of the variances. It follows, therefore, that the Board's consideration of this test was inadequate.

25 The Board's application of the remaining three tests can be dealt together. In brief, I am persuaded that the Board's reasons, taken in their entirety, reveal that the Board failed to interpret and apply these tests correctly. In some instances, the Board erred in its interpretation of the tests; in others it failed to consider matters that were essential to their correct application. Throughout the Board's reasons, there are references to the evidence of witnesses whose evidence the Board accepted but those references do not state what the evidence was and why it was preferred over other evidence. Throughout the Board's reasons the focus is on the likely impact of the variances sought with no or little regard for anything else. Of equal importance is the omission of any analysis by the Board of the general intent and purpose of the by-law and the official plan and how the granting of the minor variances sought would maintain those intents and purposes.

26 Examples of some of the inadequacies of the Board's interpretation and application of these tests can be seen in the following excerpts.

Collectively and individually, the other variances [My note: this refers to the variances other than variance #1] meet the general intent and purpose of the Official Plan. The site is designated Residential Density One (RD-1). The new development will be compatible with the existing area in terms of scale, function and physical character. The evidence presented by the applicants' planner pertaining to the Official Plan, and the opinion regarding intent and purpose, are preferred and accepted by the Board.

The Board accepts the evidence of the applicants' planner that the general purpose and intent of the Zoning By-law will be maintained for the length and height variances.

There is nothing here which satisfies the requirements set out above in paragraph 11 and paragraphs 14 to 19, inclusive. The second test requires consideration of "desirability" and not "compatibility". There is no analysis of either the zoning by-law or the official plan or how their respective intents and purposes are maintained. The evidence of the planner pertaining to the official plan is not specified and, because no transcript of the hearing is available, there is no way of determining what that evidence was. Nor are there any details given of the apparently contrary evidence given and why the Board preferred that of the applicants' planner.

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The Board prefers the evidence of the applicants' planner that the four tests in Section 45 (1) are met for the height and length relief.

This repeats the same error described above.

The remaining request for relief deals with the balconies, both at the front and the rear of the dwelling. There is no issue in the Board's view, the intent of the Official Plan is maintained — balconies are integral to residential structures. The real issue is the size of the balconies and the intent of the Zoning by-law. Balconies, be they functional or decorative, are limited to 3.8 square metres in area. The proposed balconies exceed the limit. But the Board must consider the impact. The front balcony is located on the south side of the dwelling, away from the Ginsler property and adjacent to the service area of the Golf Club. No one is adversely impacted by the front balcony. It will not create a precedent for the area given the location and context. The Board accepts the applicant's planning evidence the four tests are met for the front balcony.

This repeats many of the same errors described above. The focus is on impact. There is nothing here which satisfies the requirements set out above in paragraph 11 and paragraphs 14 to 19, inclusive.

The rear balcony is large but it is intended only for the personal use of the occupants of the dwelling. The spectre of party revelers using the balcony to disrupt the neighbouring property uses was tempered by the offer of the applicants, through their counsel, to physically screen and eliminate access to the majority of the balcony and to turn most of it into a decorative feature of the home. About 32 square metres would be allocated to use by the applicants. Counsel for the objectors question the enforceability of such a restriction or condition. However, the Board is satisfied if the rear balcony is restricted physically as proposed by the applicants, enforceability should not be a problem. Any issue of overview to the neighbouring properties will also be eliminated. No adverse impacts will result. The four tests in Section 45 (1) will be met if the useable area of the rear balcony is confined.

This too repeats many of the same errors described above. The focus is on impact. There is nothing here which satisfies the requirements set out above in paragraph 11 and paragraphs 14 to 19, inclusive. Despite section 45 (9) of the Act, the restriction imposed requiring screening of the balcony and use of only "about 32 square metres" is beyond the scope of the Board's authority. The use that can be made of a balcony does not change the fact that the balcony still remains a balcony. As well, the notion that the restricted use of the balcony could or would be effectively enforced is unreasonable.

Page 7

In conclusion, the Board accepts and prefers the evidence of the applicants' planner that the variances for length, height and balconies meet the general purpose and intent of the Official Plan, meet the general intent and purpose of the Zoning By-law, that they are desirable for the appropriate development of the land and that they are minor, subject to the condition noted and subject to filing revised plans.

This too repeats many of the same errors described above. There is nothing here which satisfies the requirements set out above in paragraph 11. It is not sufficient for the Board to use template catchwords that refer to the four tests in order to show that it properly considered and applied those tests.

27 Accordingly, on my reading of the entirety of the Board's reasons, I am persuaded that the Board committed numerous errors in its interpretation and application of the four tests. The consequence of those errors must, however, be determined only after consideration of the proper standard of review that is applicable, namely, correctness or reasonableness.

28 Counsel did not refer us to any cases in which the standard of review was addressed in appeals from decisions of the Board involving applications for minor variances, nor could I find any. Nevertheless, I am satisfied that there is now sufficient guidance from the Court of Appeal and, as well, from this Court to require us to hold that the standard to be applied is that of reasonableness.

29 The most recent guidance from the Court of Appeal can be found in *Mississauga (City) v. Erin Mills Corp.* (2004), 71 O.R. (3d) 397, [2004] O.J. No. 2690 (Ont. C.A.). The relevant portion of the judgment in which the related but different issue before the Court is described and the issue of standard of review is addressed is found in the following excerpt from the reasons for judgment of Goudge, J.A.:

[33] The Board's fundamental task in each case was to determine the test to be used to decide if there was "a conflict" between the various subdivision agreements and the relevant development charge by-law. In other words, what meaning should be given to that term in s. 17(2)? Having settled on a definition of conflict, the Board's task was to go on to apply it to each instance where the developer alleged that a conflict existed.

[34] In my view, the Board's interpretation of "conflict" in s. 17(2) is properly reviewed using a standard of correctness. The considerations relevant to the pragmatic and functional approach to determining the proper standard of review all point in this direction. Those considerations are well known: see *Pushpanathan v. Canada (Minister of Citizenship and Immigration)*, [1998] 1 S.C.R. 982, 160 D.L.R. (4th) 193.

[35] There is no privative clause protecting the Board's decisions when they come before the Divisional Court on appeal with leave pursuant to s. 96(1) of the Ontario Municipal Board Act. This suggests a less differential standard of review.

[36] The appeal to the Divisional Court can only be on a question of law. Thus, what is reviewed by the court is a finding of law, not one of fact. In this case the legal question is the interpretation to be given to the term "conflict" in a regulation to the 1997 DCA. This is not the Board's home statute nor is there any other reason to presume that the Board has unique experience in interpreting it. Neither is it apparent that the Board's general expertise in matters of planning and land use is engaged in defining this term. The Board would seem to have no greater expertise than the court in giving meaning to the concept of "conflict" between a contract and a by-law. This points to closer scrutiny of the Board's decision.

30 In the case at bar, however, the *Act* is the Board's home statute and there is good reason to presume that the Board does have "unique experience in interpreting it" in relation to the provisions dealing with minor variances. In *London (City) v. Ayerswood Development Corp.*, [2002] O.J. No. 4859 (Ont. C.A.), the Court of Appeal held that a reasonableness standard should be applied to decisions in which the OMB is interpreting its own statute. A similar analysis was made and the same conclusion reached by this Court in *Eastpine Kennedy-Steeles Ltd. v. Markham (Town)*, [2004] O.J. No. 644 (Ont. Div. Ct.), a case involving another provision of the *Act*. Accordingly, I conclude that reasonableness is the standard of review that must be applied here.

31 In the circumstances of this case, I am persuaded that the Board's Reasons cannot withstand the somewhat probing examination involved in the reasonableness test. The errors of the Board are so serious and extensive that they fail to meet the standard of reasonableness.

*Appeal allowed.*

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**End of Document**

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| <b>SCHEDULE D: PREVIOUS COA DECISIONS ON THE SUBJECT LAND</b> |  |                         |
|---|--|-------------------------|
| <b>File Number</b>  | <b>Date of Decision<br/>MM/DD/YYYY</b> | <b>Decision Outcome</b> |
| A144/21   | 08/12/2021                             | COA APPROVED            |

**NOTICE OF DECISION**  
**Minor Variance Application A144/21**  
 Section 45 of the Planning Act, R.S.O., 1990, c.P.13

- Date of Hearing:** Thursday, August 12, 2021
- Applicant:** Granerola Residences Ltd.
- Agent:** Greenpark Group
- Property:** **8960 Jane St Vaughan**
- Zoning:** The subject lands are zoned RA3(H) and subject to the provisions of Exception 9(1472) under By-law 1-88 as amended.
- OP Designation:** Vaughan Official Plan 2010, Volume 2, Vaughan Mills Centre Secondary Plan ('VMCSP'): "High-Rise Mixed-Use" with a maximum building height of 28 storeys.
- Related Files:** Site Plan Application DA.19.084
- Purpose:** Relief from By-law 1-88, as amended, is being requested to permit the construction of a proposed 28 storey apartment building and to facilitate Site Plan Application DA.19.084

The following variances are being requested from By-Law 1-88, as amended, to accommodate the above proposal:

| By-law Requirement   | Proposal  |
|--|---|
| 1. The by-law requires that the maximum permitted Building Height on Block 'B' (Phase 2 Lands), for Building B2 is 28-storeys (91.5m). [9(1472) B. hvii] | 1. The proposed Building Height for Building B2 is 28 Storeys (92.95m). |
| 2. The by-law requires that the maximum permitted number of Dwelling Units within the Phase 1 Lands shall be 1,125. [9(1472) B. hix)]                    | 2. The proposed number of dwelling units on Phase 1 lands is 1,152.     |

**Sketch:** A sketch illustrating the request has been attached to the decision.

**Having regard to the requirements of Section 45 of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, including the written and oral submissions related to the application, it is the decision of the Committee:**

THAT Application No. A144/21 on behalf of Granerola Residences Ltd. be **APPROVED**, in accordance with the sketch submitted with the application (as required by Ontario Regulation 200/96)

**For the following reasons:**

1. The general intent and purpose of the by-law will be maintained.
2. The general intent and purpose of the official plan will be maintained.
3. The requested variance(s) is/are acceptable for the appropriate development of the subject lands.
4. The requested variance(s) is/are minor in nature.

**Please Note:**

It is the responsibility of the owner/applicant and/or authorized agent to address any condition(s) of approval noted in this decision to the satisfaction of the commenting department or agency. Once conditions have been satisfied, the Secretary Treasurer will be in a position to issue a clearance letter which is required prior to the issuance of a Building Permit.

Relief granted from the City's Zoning By-law is determined to be the building envelope considered and approved by the Committee of Adjustment.

Development outside of the approved building envelope (subject to this application) must comply with the provisions of the City's Zoning By-law or additional variances may be required.

Elevation drawings are provided to reflect the style of roof to which building height has been applied (i.e. flat, mansard, gable etc.) as per By-law 1-88 and the Committee of Adjustment approval. Please note, that architectural design features (i.e. window placement), that do not impact the style of roof approved by the Committee, are not regulated by this decision.

**Written & oral submissions considered in the making of this decision were received from the following:**

| <b>Public Written Submissions</b><br>* Public Correspondence received and considered by the Committee in making this decision | <b>Public Oral Submissions</b><br>*Please refer to the approved Minutes of the Thursday, August 12, 2021 meeting for submission details. |
|---|--|
| None  | None:  |

**Late Written Public Submissions: N/A**

Public written submissions on an Application shall only be received by the Secretary Treasurer until **noon** on the last business day prior to the day of the scheduled Meeting.

**MEMBERS PRESENT WHO CONCUR IN THIS DECISION:**

|                         |                      |                        |
|-------------------------|----------------------|------------------------|
| <i>H. Zheng</i>         | <i>A. Perrella</i>   | <i>R. Buckler</i>      |
| H. Zheng<br>Member      | A. Perrella<br>Chair | R. Buckler<br>Member   |
| <i>S. Kerwin</i>        |                      | <i>A. Antinucci</i>    |
| S. Kerwin<br>Vice Chair |                      | A. Antinucci<br>Member |

|   |  |
|---|--|
| <b>DATE OF HEARING:</b>   | <b>August 12, 2021</b>                 |
| <b>DATE OF NOTICE:</b>  | <b>August 20, 2021</b>                 |
| <b>LAST DAY FOR *APPEAL:</b><br>*Please note that appeals must be received by this office no later than 4:30 p.m. on the last day of appeal.  | <b>September 1, 2021<br/>4:30 p.m.</b> |
| <b>CERTIFICATION:</b><br>I hereby certify that this is a true copy of the decision of the City of Vaughan's Committee of Adjustment and this decision was concurred in by a majority of the members who heard the application.<br><br><br><hr/> Christine Vigneault, AMP, ACST<br>Manager Development Services &<br>Secretary Treasurer to the Committee of Adjustment |  |

**Appealing to The Ontario Land Tribunal**  
 The *Planning Act*, R.S.O. 1990, as amended, Section 45

The applicant, the Minister or any other person or public body who has an interest in the matter may within 20 days of the making of the decision appeal to the Ontario Land Tribunal (OLT) against the decision of the Committee by filing with the Secretary-Treasurer of the Committee a notice of appeal setting out the objection to the decision and the reasons in support of the objection accompanied by payment to the Secretary-Treasurer of the fee prescribed by the Tribunal under the *Ontario Land Tribunal Act*.

A notice of appeal may not be filed by an unincorporated association or group. However, a notice of appeal may be filed in the name of an individual who is a member of the association or group on its behalf.

When **no appeal is lodged** within twenty days after the giving of notice the decision becomes final and binding and notice to that effect will be issued by the Secretary-Treasurer.

**PLEASE NOTE:** As a result of COVID-19, Vaughan City Hall and all other City facilities are closed to the public at this time. **Please notify the Secretary Treasurer by email at [cofa@vaughan.ca](mailto:cofa@vaughan.ca)** that you will be filing an appeal and mail or courier appeals and prescribed fees to:

Office of the City Clerk - Committee of Adjustment  
 2141 Major Mackenzie Drive  
 Vaughan Ontario, L6A 1T1

If you have questions regarding the appeal process, please email [cofa@vaughan.ca](mailto:cofa@vaughan.ca)

**Appeal Fees & Forms**

**ONTARIO LAND TRIBUNAL (OLT):** The OLT appeal fee is \$400 plus \$25 for each additional consent/variance appeal filed by the same appellant against connected applications. The OLT Appeal Fee must be paid by certified cheque or money order payable to the "Minister of Finance". OLT appeals must be filed with the Secretary Treasurer, City of Vaughan.

**City of Vaughan OLT Processing Fee:** \$866.00 per application

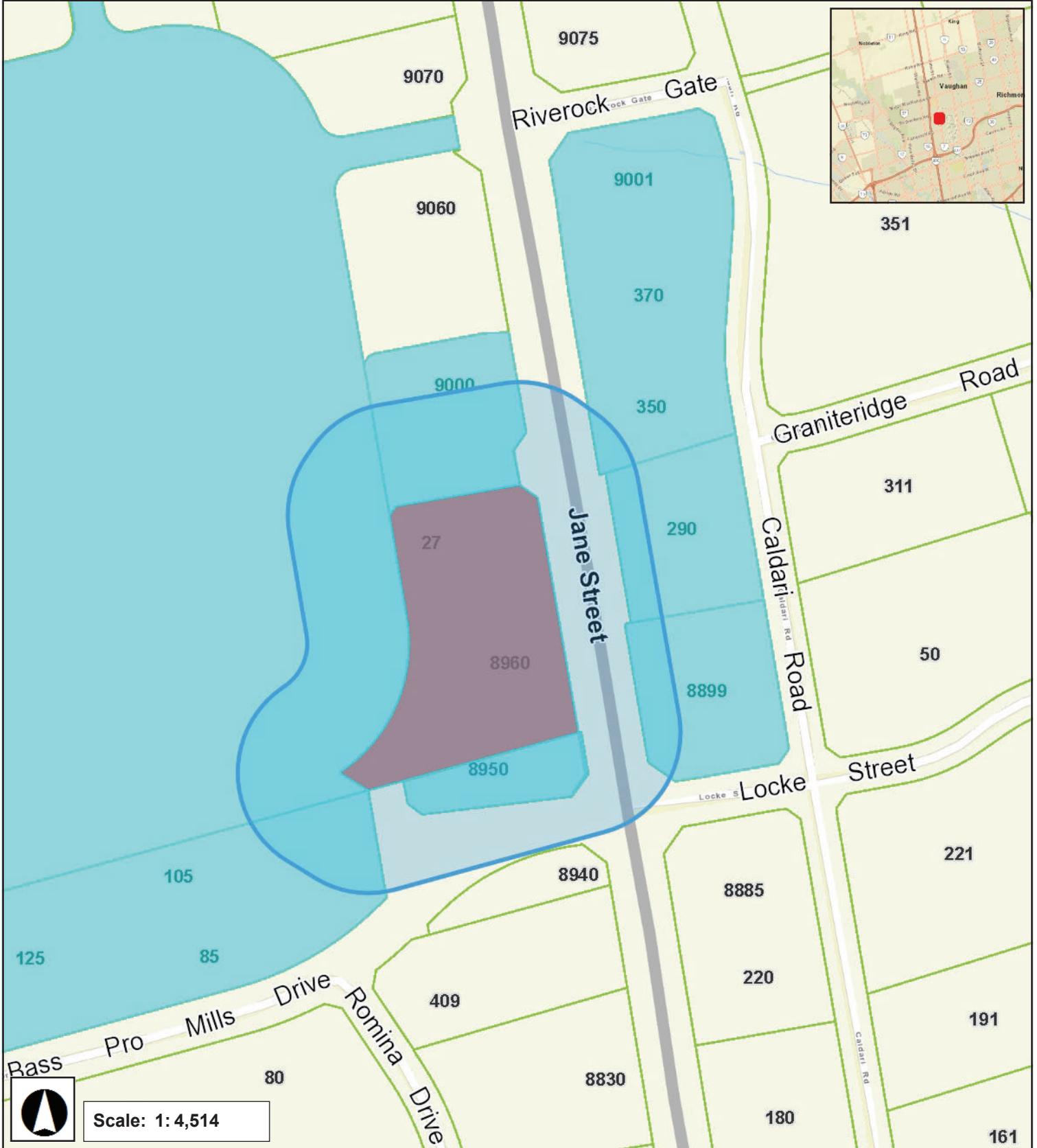
\*Please note that all fees are subject to change.



# LOCATION MAP A144/21

8960 JANE STREET, VAUGHAN

## Rutherford Road



Scale: 1:4,514

## Langstaff Road

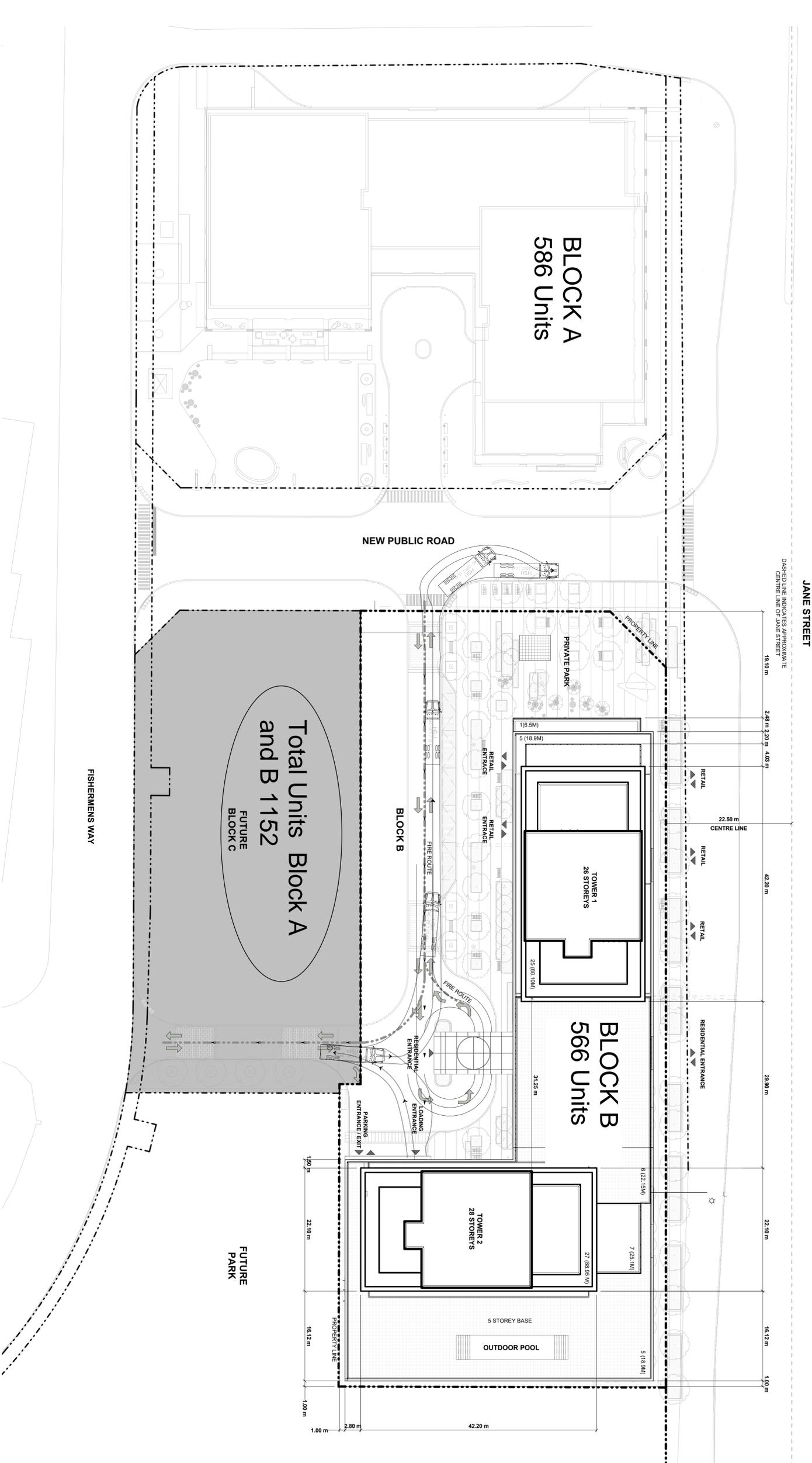
July 26, 2021 2:12 PM

A144/21

EXISTING 2 STOREY BUILDING

EXISTING 2 STOREY BUILDING

EXISTING 2 STOREY BUILDING



JANE STREET

DASHED LINE INDICATES APPROXIMATE CENTRE LINE OF JANE STREET

19.10 m

2.48 m 2.20 m 4.03 m

22.50 m

CENTRE LINE

42.20 m

RETAIL

1.90 m

22.10 m

16.12 m

1.00 m

42.20 m

2.80 m

1.00 m

22.10 m

16.12 m

1.00 m

5 (18.3M)

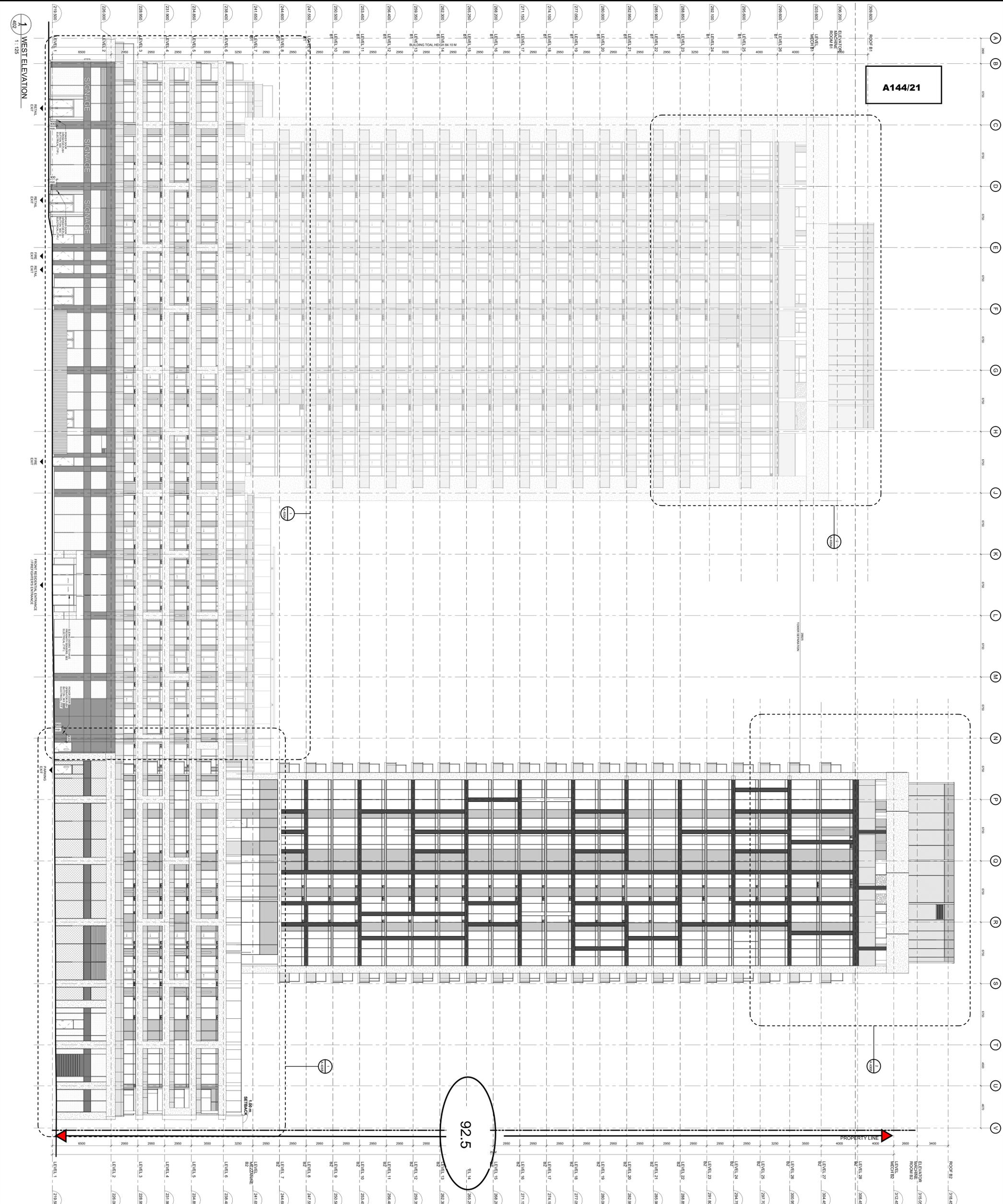
7 (25.1M)

27 (88.95 M)

5 (18.3M)

1.00 m

1.00 m</



A144/21

92.5

|  |  |  |  |
|--|--|--|--|
| <p><b>WEST ELEVATION</b></p> <p>PROJECT NO: 17-336</p> <p>DATE: 04/27/2021</p> <p>SCALE: 1:125</p> <p>DRAWN BY: ADRIAN</p> <p>CHECKED BY: CHARLES</p>  |  | <p><b>CHARISMA BLOCK B</b></p> <p>VAUGHAN, ON</p>  |  |
| <p><b>CORE</b></p> <p>CORE ARCHITECTS INC.</p> <p>317 Adelaide St. West, Suite 600</p> <p>Toronto, ON Canada M5V 1P9</p> <p>Tel: 416 943 0400</p> <p>Fax: 416 943 0401</p> <p>corearchitects.com</p> |  | <p><b>MATERIALS LEGEND:</b></p> <ul style="list-style-type: none"> <li>01 CURTAIN WALL - 6MM ANNEALED GLASS</li> <li>02 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>03 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>04 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>05 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>06 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>07 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>08 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>09 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>10 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>11 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>12 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>13 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>14 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>15 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>16 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>17 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>18 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>19 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>20 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>21 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>22 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>23 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>24 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>25 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>26 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>27 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>28 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>29 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>30 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>31 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>32 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>33 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>34 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>35 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>36 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>37 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>38 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>39 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>40 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>41 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>42 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>43 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>44 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>45 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>46 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>47 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>48 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>49 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>50 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>51 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>52 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>53 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>54 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>55 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>56 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>57 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>58 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>59 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>60 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>61 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>62 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>63 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>64 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>65 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>66 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>67 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>68 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>69 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>70 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>71 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>72 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>73 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>74 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>75 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>76 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>77 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>78 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>79 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>80 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>81 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>82 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>83 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>84 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>85 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>86 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>87 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>88 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>89 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>90 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>91 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>92 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>93 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>94 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>95 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>96 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>97 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>98 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> <li>99 WINDOW WALL - 6MM ANNEALED GLASS</li> <li>100 ANCON GAS FILLED DOUBLE GLAZED UNITS</li> </ul> |  |