

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: May 13, 2025

CASE NO(S).:

OLT-24-001000

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

Applicant and Appellant:	NYX Yonge LP Inc.
Subject:	Minor Variance
Description:	To permit the development of a 15-storey building.
Reference Number:	24 164447 NNY 08 MV
Property Address:	3180-3202 Yonge Street
Municipality/UT:	City of Toronto
OLT Case No.:	OLT-24-001000
OLT Lead Case No.:	OLT-24-001000
OLT Case Name:	NYX Yonge LP Inc. v. Toronto (City)

Heard: March 25, 2025 by video hearing and by written on April 15, 2025

APPEARANCES:

Parties

NYX Yonge LP Inc.

City of Toronto

Toronto Catholic District School Board

Counsel

David Bronskill

Jamie Dexter
Simona Messina

Tara Piurko

DECISION BY T.F. NG AND ORDER OF THE TRIBUNAL

[Link to Order](#)

INTRODUCTION

[1] The matter before the Tribunal is an Appeal by NYX Yonge LP Inc. (“Applicant/Appellant”) of a Committee of Adjustment’s (“COA”) decision refusing the minor variances application (“MV application”) pursuant to s. 45(12) of the *Planning Act* (“Act”) in the City of Toronto (“City”).

[2] The property’s municipal addresses are 3180 – 3202 Yonge Street (“Subject Property/Site”). The Application is to facilitate the development of a 15-storey residential building on the Subject Property.

BACKGROUND

Past Approval

[3] There was the prior 2022 Zoning By-law Amendment (“ZBA”) approval pertaining to the Site. On July 19, 2022, City Council endorsed a Settlement Offer to permit the redevelopment of the Site with an 11-storey mixed-use building, aimed to resolve the owner’s appeal of their Zoning By-law Amendment application. The Tribunal subsequently approved the Settlement Offer and the ZBA (By-law No. 1248-2022) through a Final Order, issued on October 7, 2022. The approved ZBA consists of an 11-storey (41.9 metres (“m”), including 5.0 m mechanical penthouse (“MPH”) mixed-use building, with 104 residential units, and a minimum of 400 square metres (“sq. m”) of non-residential GFA at-grade.

The Variance Application

[4] The Appellant's MV application sought permission to increase the height of the previously approved 11-storey mixed-use building by four (4) additional storeys, for a total height of 15-storeys, plus a mechanical (MPH) level containing amenity space.

[5] In response to comments received from area residents, other stakeholders, and City Staff, a Planning Addendum Letter, dated August 22, 2024, was prepared outlining the details of a revised proposal to reduce the height by one-storey (3.0 m), bringing the total height down to 14-storeys (46.13 m plus MPH).

[6] The MV application for a 14-storey mixed-use building was on August 29, 2024, refused by the COA.

[7] The MV application refusal was appealed on September 10, 2024, plus an appeal of the City's failure to make a decision on the related Site Plan Application ("SPA"). The SPA appeal was on November 5, 2024, on the request of the Appellant, put on hold, pending the determination of the MV appeal.

[8] Following the COA's refusal, the Appellant's consulting team, engaged in communications with City Staff which resulted in a revised set of plans dated February 2025 and the amended MV application currently put before the Tribunal.

[9] The proposed variances are as follows:

Site Specific By-law No.1248-2022

1. Maximum Permitted Height - 4. (D)

Required: The permitted maximum height of a building or structure is the numerical value, in metres, following the letters "HT" and the permitted maximum

number of storeys is the numerical value following “ST” on Diagram 3 of By-law No. 1248-2022(OLT);

Proposed: The permitted maximum height of a building or structure is the numerical value, in metres, following the letters “HT” and the permitted maximum number of storeys is the numerical value following “ST” on Revised Diagram 3 of By-law No. 1248-2022(OLT) and a mechanical penthouse containing amenity space shall not constitute a storey;

2. **Maximum Mechanical Penthouse Height - 4. (F)(i)**

Required: The following equipment and structures may project beyond the permitted maximum height shown on Diagram 3: equipment used for the functional operation of the building including electrical, utility, mechanical and ventilation equipment, enclosed stairwells, roof access, maintenance, equipment storage, elevator shafts, chimneys, and vents, by a maximum of 5.0 m;

Proposed: The following equipment and structures may project beyond the permitted maximum height shown on Revised Diagram 3: equipment used for the functional operation of the building including electrical, utility, mechanical and ventilation equipment, enclosed stairwells, roof access, maintenance, equipment storage, elevator shafts, chimneys, and vents, by a maximum of 9.0 m.

3. **Maximum GFA - 4. (G)**

Required: The maximum gross floor area is 12,000 sq m, of which the maximum gross floor area for residential uses is 11,500 sq m;

Proposed: The maximum gross floor area is 15,316.2 sq m, of which the maximum gross floor area for residential uses is 14,899.4 sq m;

4. Height and Setback Diagram - Diagram 3

Required: Diagram 3;

Proposed: Revised Diagram 3;

By-law 569-2013

**5. Minimum landscape strip for lots abutting a Residential Zone -
40.10.50.10.(3)**

Required: A minimum 1.5 m wide strip of soft landscaping must be provided along the part of the lot abutting the lot in a Residential Zone category or Residential Apartment Zone category;

Proposed: A minimum 1.5 m wide strip of soft landscaping must be provided along a minimum of 50% of the length of the west lot line abutting a lot in a Residential Zone or Residential Apartment Zone category.

HEARING

[10] There was a Party status request from the Toronto Catholic District School Board (TCDSB). The Tribunal granted party status to TCDSB without objections from the Appellant or the City. Eleven Participant status requestors were granted status by consent. They were: Bedford Park Residents Organization; Lytton Park Residents Organization; Bryan Walenius; Michelle Borthwick; Michael Monahan; Nicole Spence; Richard Libby; Stuart Smith; Hilde Reis-Smart; Brent Hourd; and Monique Hourd.

[11] The City opposed the appeal, did not call any expert witness, but counsel cross examined the Appellant's expert witness and made closing arguments.

[12] The added party TCDSB did not oppose the appeal, having resolved its issues with the Appellant. Counsel for TCDSB did not cross examine nor made closing arguments.

[13] Counsel for the Appellant informed the Tribunal that the MV application is an amended application. The Tribunal determined that the amendment is minor, as such further notice is not required and the provisions of s.45(18.1.1) of the Act applies.

[14] Michael Goldberg, the expert witness called on behalf of the Appellant was qualified to give expert opinion evidence in land use planning matters. His witness statement was marked as **Exhibit 1**.

[15] This is a *de novo* hearing and s.45(1) of the Act establishes the ‘four tests’ that the Tribunal must be satisfied that the variances:

- a. maintain the general intent and purpose of the Official Plan;
- b. maintain the general intent and purpose of the Zoning By-law (“ZBL”);
- c. are desirable for the appropriate development or use of the land, building or structure; and
- d. are minor in nature.

[16] In addition, s. 3(5) of the Act requires the Tribunal's Decision to be consistent with the Provincial Planning Statement 2024 (“PPS”). The Tribunal must also have regard to matters of provincial interest set out in s. 2 of the Act.

[17] Where conditions are applicable, the appeal must also be consistent with s. 45(18) of the Act, which allows the Tribunal to make any decision the COA could have made with conditions in its decision pursuant to s. 45(9) of the Act:

(9) Any authority or permission granted by the committee under subsections (1), (2) and (3) may be for such time and subject to such terms and conditions as the committee considers advisable and as are set out in the decision.

(9.1) If the committee imposes terms and conditions under subsection (9), it may also require the owner of the land to enter into one or more agreements with the municipality dealing with some or all of the terms and conditions, and in that case the requirement shall be set out in the decision.

Site Context

[18] The Subject Property is located within the North York District of the City, at the southwest corner of Yonge Street and Woburn Avenue.

[19] The Site is located approximately 290 m north of the intersection of Yonge Street and Lawrence Avenue where there is the existing southern entrance of the Lawrence subway station along the TTC Line 1- Yonge-University-Spadina line. The northern entrance to the same subway station is located at the northeast corner of Yonge Street and Bedford Park Avenue, immediately south of, or within 20 m of the subject Site.

[20] The subject Site is a regularly shaped, (near) rectangular lot, bounded by Woburn Avenue to the north, a two-storey commercial TD bank building to the south, which abuts Bedford Park Avenue, and an existing TTC subway entrance, Yonge Street to the east, and a shared public laneway behind, or west of the subject Site, beyond which, are single-detached dwellings and the Blessed Sacrament Catholic School (an elementary school) further west. The total site area is 1,895.4 sq. m. (0.46 ac), with frontages of approximately 63.5 m on Yonge Street and 30.4 m on Woburn Avenue.

[21] The Site is located along an *Avenues* in Map-2, Urban Structure, is designated *Mixed-Use Areas* within the City of Toronto Official Plan ("City OP") and is located within the Council adopted Lawrence *Protected Major Transit Station Area* ("PMTSA") (OPA 570). Still pending Ministerial approval, OPA 570 sets out a minimum population and employment target of 200 residents and jobs combined per hectare, and the subject site is planned for a minimum density target of 2.0 floor space index ("FSI").

[22] The lands were occupied by a series of vacant, two-storey buildings fronting Yonge Street, with surface parking at the rear, backing onto a laneway which laneway is shared

with the TD commercial bank building located immediately to the south. The existing buildings and structures on site have been demolished and as such, the site is currently a vacant urban redevelopment site.

[23] The topography of the subject site is generally flat, does not contain existing trees, and does not constrain the redevelopment of the site. The September 2023 SPA resubmission (file no. 21 162972 NNY 08 SA) includes three (3) concrete planters along Yonge Street, additional planters along Woburn Avenue and a raised planting bed abutting the shared laneway along the majority of the western lot line.

[24] The Subject Property has excellent access to transit being located within approximately 20 m north of the north entrance of the Lawrence subway station, and approximately 290 m north of the primary Lawrence subway station entrance (representing an approximate three-to-four minute walk) along the TTC Line 1.

[25] The surrounding area contains a mix of existing and approved low to mid-rise, mixed-use buildings with existing and approved heights from 2- to 13-storeys in the area, located both north and south of Lawrence Avenue, within 800 m of the subject site. In a greater level of detail, the surrounding context, including building heights, are described as follows:

South:

[26] Immediately south of the subject site are lands designated *Mixed Use Areas*, including an existing two-storey TD Commercial Bank building, fronting Yonge Street and Bedford Park Avenue, and the north Lawrence subway station entrance.

[27] Further southeast, fronting Lawrence Avenue East in the *Neighbourhoods* designated lands is a recent OLT approval permitting a 10-storey residential building (49-59 Lawrence Avenue East). This appeal was converted into a settlement hearing which was supported by City Staff and endorsed by City Council at the November 13, 2024, City Council meeting.

[28] South of Lawrence Avenue West, fronting on the west side of Yonge Street are several mid-rise, mixed-use or residential buildings, including the most recently constructed 13-storey mixed-use building located at 3020 Yonge Street.

[29] Further south of the above along Yonge Street is a 'main street' character corridor, wherein, a number of mid-rise and tall buildings are approved, some of which are under construction.

West:

[30] Immediately west of the subject site, is a public laneway shared with the TD Commercial Bank building to the south, abutting which to the west, is a laneway and parking area owned and used by the TCDSB for the Blessed Sacrament Catholic School.

[31] Fronting on Woburn Avenue, west of the lane are interior low-scale *Neighbourhoods* designated lands, lots and dwellings.

North and East:

[32] Immediately north and east of the subject site along Yonge Street is a 'mainstreet' character corridor of two- to -three storey mixed-use buildings with commercial uses at-grade and residential and commercial uses above.

[33] Approximately 120 m further east is a recent City Council approved four-storey residential building in a designated *Neighbourhoods* area (47 Ranleigh Avenue).

[34] Further north, at 40 Snowdon Avenue is a recently approved four-storey residential building similarly located in a *Neighbourhoods* designated area.

[35] The subject site, along with other properties to the north, south, and east along Yonge Street are designated *Mixed Use Areas*, as shown within the City OP. Properties located to the east and west of the *Mixed-Use Areas* are designated *Neighbourhoods* in the City OP. Some redevelopment has taken place along the Yonge Street corridor to reflect the 'edge' location of the Yonge Street corridor, the land use designation of this corridor, and the excellent subway access created by the Lawrence subway station.

Neighbourhood Amenities

[36] The subject site is very well served by community facilities, indoor and outdoor recreational facilities, religious institutions, shopping, and educational facilities. The site is located within very convenient walking distance to existing transit, shops, services, restaurants, and institutional uses.

[37] The subject site is located adjacent to both northbound and southbound bus stops along Yonge Street which services the 320 Yonge (night) and 97 Yonge bus routes. The north entrance of the Lawrence subway station is located approximately 20 m south of the subject site at Bedford Park Avenue and the south entrance is located approximately 290 m south of the subject site near Lawrence Avenue. A TTC bus terminal forms part of the subway station, servicing many surface transit routes.

[38] Lawrence Station is accessible from four different entrances; the main entrances are located on the east and west sides of Yonge Street near Lawrence Avenue. Two north entrances also exist; one is located at the intersection of Yonge Street and Ranleigh Avenue, approximately 35 m east of the subject site and the other north entrance is located at Yonge Street and Bedford Park Avenue, approximately 20 m south of the subject site.

[39] The subject site is located close to parks and public outdoor recreational spaces including an approximate four-minute walk to Woburn Avenue Playground to the west, and Ranleigh Park to the east. The proposal is near various green spaces including

gardens and ravines to the immediate south of Lawrence Avenue including Lawrence Park Ravine, Alexander Muir Memorial Gardens, Duplex Parkette, and Chatsworth Ravine.

[40] The subject site is clearly well located in relation to available services and facilities.

[41] Yonge Street is a Major Arterial Road and a Major Street in the City OP with a 27 m wide planned right-of-way width (Map 3 of City OP).

[42] Woburn Avenue operates as a Local Road and is signalized at Yonge Street and at Avenue Road to the west.

Public Transit

[43] The subject site is well served by public transit including the subway (Line 1 Yonge – University) as well as surface transit. Lawrence Station is located at the north side of Lawrence Avenue along Yonge Street. The station provides access to the TTC subway which operates generally from 6 am to 2 am from Monday to Saturday and 8 am to 2 am on Sundays. The subject site is serviced by the following TTC routes: 97 Yonge, 74 Mount Pleasant, 320 Yonge night bus, 162 Lawrence-Donway, 352 Lawrence West Blue night, 52 Lawrence west, 124 Sunnybrook and 952 Lawrence West express.

Development Activity

[44] The subject site is located along a corridor that is planned for change and growth through intensification, resulting in an evolving built form context of higher densities and heights, reflective of the site being designated as a *Mixed-Use Area* in the City OP, and within a proposed PMTSA, with minimum density targets. This area is anticipated to accommodate more growth in the form of taller and denser developments along this

portion of Yonge Street which is within steps of a subway station entrance. The area is evolving and will continue to evolve in order to accommodate much needed housing to meet population growth needs.

[45] There are development applications at various stages of the planning process, in close proximity to the subject site and along the Yonge Street corridor. These developments contribute to the evolving built form context within the area and along this corridor. The Visual Evidence Book (**Exhibit 2**) provides a visual summary of the height of existing, proposed, and approved developments in the area and along the Yonge Street corridor.

DEVELOPMENT PROPOSAL

[46] The revised proposal is for a 14-storey residential building with a mechanical penthouse.

[47] To accommodate the proposed development, variances from the existing site-specific ZBL are required related to the height, gross floor area, setbacks, and soft landscape strips.

[48] The plans were revised to support the future planning context, height and massing for the area as a Protected Major Transit Area designated site.

ISSUE: Whether the Minor Variance application meets the four tests under s.45(1) of the Act?

[49] The Tribunal finds that there is no impediment to the application for variances after a site-specific zoning amendment. The approval of the MV application is subject to fulfillment of the required four tests under s.45(1) of the Act. For the Appellant, the four tests are met.

Mr. Goldberg's testimony and evidence

[50] Mr. Goldberg addressed the Participants' concerns as follows:

Nature of prior OLT Approval

[51] Residents expressed concern that the owner had participated in OLT mediation with the area residents and the City, leading to a settlement and the prior approval for an 11-storey building on the subject site, and have since filed the new subject application for increased height. Residents expressed that they feel the subject application undermines the previous 2022 approval, which was negotiated in good faith.

[52] Response: The prior application was approved in 2022, approximately three (3) years ago. Since then, a number of circumstances have changed, including the approval of various Provincial and City housing policies and initiatives, as reviewed in the Witness Statement. The revised proposal was conceived in response to the evolving policy context, and to assist in ensuring the ongoing viability of constructing the project, not as a means to undermine the previous negotiations. The economic viability of a project becomes a planning matter if the permitted zoning standards hinder the ability to construct the project, and to deliver much needed housing. The proposal also does not require variances to many of the elements which were negotiated and secured through the prior approval and settlement offer, such as the amenity rate, the bicycle and vehicular parking rates, and many of the key setbacks and public realm features.

[53] The revised proposal was submitted in compliance with all application requirements and procedures under the Act, and has been conceived with regard for area residents, current policies and policy priorities, and remains in the public interest.

Shadow Impacts

[54] Residents raised concerns regarding shadow impacts on the surrounding area, stating that properties on the north side of Woburn Avenue will be shadowed in the morning, and that properties on the east side of Yonge Street will be shadowed in the late afternoon.

[55] Response: The shadow drawings included with the application, dated August 20, 2024, and contained in TAB 9 of the Appellant's Document Book (Exhibit 3) demonstrate that the shadow resulting from the proposed development is slender, moves quickly through the landscape and on any one spot, the shadow does not stay for any undue length of time. Additionally, the shadow study demonstrates that the incremental shadow resulting from the proposed increase in height, as compared to the prior 11-storey approval, is extremely minor, if not negligible. As such, the shadow implications of the proposal have been appropriately addressed and are adequately limited.

Nature of Variances

[56] Concerns were raised that the variances being sought are not minor in nature, and result in a building height that is too tall and does not respect the angular planes previously implemented in the 2022 approval.

[57] Response: The variances represent incremental differences that will maintain a good fit, do not alter the overall perceived design as compared to the previously approved development, and do not give rise to any adverse planning impacts. Therefore, the variances being sought are minor in nature.

[58] With respect to the angular planes, the updated 2024 Mid-Rise Urban Design Guidelines (MUDG) no longer apply angular planes.

Traffic Impacts

[59] Residents raised concerns regarding the traffic impacts of the proposed development.

[60] Response: A Traffic and Parking Update Letter prepared by BA Group, dated June 5, 2024, was submitted as part of the original 15-storey COA application. This letter assessed the impacts of the proposal, including the increase of 38 dwelling units. The traffic letter states that the proposal continues to meet the vehicular parking, loading, and bicycle parking requirements set out in By-law No. 1248-2022 and concludes that the increased unit count is anticipated to have a negligible impact on the road network. Since this letter was prepared, the proposal has been reduced by one-storey, and the unit count has decreased from 153 dwelling units, down to 80 units. As such, the traffic related impacts were deemed acceptable under the previous 15-storey scenario which contained 73 more units and will therefore remain acceptable under the conditions of the current 14-storey proposal containing 80 dwelling units.

[61] In view of the above, the proposal has satisfied all transportation related matters to the satisfaction of the City, and it remains in the public interest.

Construction Impacts

[62] Residents and the Blessed Sacrament School (TCDSB) expressed concerns over the impact of the demolition of the existing buildings located on the subject site, as well as the impact of construction on the Blessed Sacrament School building, as well as on the students.

[63] Response: The demolition is now complete. The owner is committed to implementing a Construction Management Plan as part of the Site Plan Approval application which will ensure the safety of all students and the school building itself

during the construction stages. While the owner will continue to coordinate these matters directly with the TCDSB, construction matters are not a Planning issue germane to the consideration of the subject MV application.

Character of the Surrounding Area

[64] Concerns were raised that the initial 15-storey proposal would be out of character with the area, set a precedence for taller heights, and destabilize the neighbourhood.

[65] Response: The revised 14-storey proposal, is in-keeping with, and contributes to the directions of both local and provincial policies. Additional heights, density and scale is anticipated by these policies.

[66] The subject site is designated *Mixed-Use Areas* and an *Avenues* in the City OP, where the higher levels of intensification are intended to occur, and is within a Council adopted PMTSA, being steps away from a subway station entrance.

[67] The various step-backs have been carefully designed to ensure that the building will compatibly co-exist with the surrounding area. Overall, the area is also intended to evolve with forms of development like the proposal.

[68] The proposed built form has been designed to have an appropriate relationship to the closest *Neighbourhoods*, optimizing its potential to fulfil its planned function as a site located within a *Mixed-Use Areas*, and providing an appropriate method of transition to the *Neighbourhoods* to the west. Therefore, a desirable built form is achieved, in conformity with the policy objectives of the City OP and the 2024 PPS and generally satisfying the vision expressed in the 2024 MUDG. The proposal is only three (3) storeys more than what was approved for the site in 2022.

Policy Framework

S. 2 Planning Act

[69] The proposed development has regard for the applicable matters of provincial interest, as follows:

1. The proposed transit-oriented development will contribute to the efficient use of transportation, sewage and water services;
2. Redevelopment of the subject site represents the orderly development of a safe and healthy community;
3. The development will add a range of residential units to the existing stock of housing;
4. The subject site is an appropriate location of growth and development;
5. The design is sustainable, will support public transit and is pedestrian oriented; and
6. The built form includes a well-designed streetscape that is accessible and attractive, contributing to a vibrant sense of place.

Mr. Goldberg concluded that the proposed development and MV application have regard for Section 2 of the Act.

[70] Mr. Goldberg opined and the Tribunal agrees that the Applications have regard for matters of provincial interest, since they propose high- density residential development where intensification is envisioned and acceptable, implement Provincial

Policies 2(h) and 2(q) of the Act and represent orderly development in a location suitable for growth and development.

PPS

[71] The 2024 PPS replaces both the Provincial Policy Statement, 2020 and A Place to Grow: Growth Plan for the Greater Golden Horseshoe, 2020. The 2024 PPS is intended to be a streamlined province-wide land use planning policy framework that provides municipalities with the tools and flexibility in order to facilitate the development of at least 1.5 million homes by 2031.

[72] The 2024 PPS provides a policy framework that enables municipalities to support the achievement of *complete communities*, and to support the provision of housing options and densities to meet projected requirements of current and future residents.

[73] Mr. Goldberg opined that the proposed development is consistent with the 2024 PPS policy directions, and in particular advances the directions of sections 2.2, 2.3.1 and 2.4.1., by providing housing which contributes to the promoted range of “housing options”, as defined, in a location with excellent access to existing transit and within a *large and fast-growing municipality* as identified on Schedule 1 of the 2024 PPS. The proposed development is also located within a *strategic growth area*. As such, the subject site is located within an appropriate area for higher density, mixed use intensification and growth, and the subject proposal contributes to the achievement of *complete communities*, a compact built form, and towards the minimum density target.

[74] It is Mr. Goldberg’s opinion that the existing ZBA permissions for maximum building height of 11-storeys would lead to an under-utilization of the subject site and would not optimally advance the policy directions of the 2024 PPS. Conversely, the subject proposal better supports, advances, and is consistent with, the 2024 PPS policy direction to optimize the use of the land within a *strategic growth area* and contribute to the supply of

housing. The proposed 14-storey building, with its proposed built form is appropriate and suitable for this site and its surrounding, existing, and planned context.

City OP

[75] The proposed development conforms to the City OP.

[76] The subject site is designated *Mixed-Use Areas* in the OP, a designation which permits the type of mixed-use residential building proposed. The proposed development and site-specific ZBL conform to the existing *Mixed Use Areas* designation policies and to all other applicable policies of the OP.

[77] The zoning on the subject site is Commercial Residential 'CR' 3.0 (c2.0, r2.5)(SS2)(x787), pursuant to the City of Toronto ZBL No. 569-2013, as amended by site-specific By-law No. 1248-2022 which permits a maximum height of 41.9 m (including the MPH). A Minor Variance is required to amend ZBL No. 569-2013, as amended by By-law No. 1248-2022 to implement the proposal. Zoning standards related to the setbacks, maximum GFA (density), permitted projections, and building height will need to be varied to implement the proposed development.

[78] A Site Plan Approval ("SPA") is also required to establish the detailed design and technical requirements required to implement and build the proposal. A SPA application was initially filed in June 2021 and was subsequently appealed due to the City's failure to make a decision within the statutory timeframe.

[79] The subject MV application must be reviewed in the context of satisfying the four tests set out under Section 45(1) of the Act, the policies of the Act, the Provincial Planning Statement 2024 (PPS), the City's OP, and the adopted, although not yet approved Official Plan Amendment 570 (*Major Transit Station Areas*). In addition, regard has been given to the City's recently approved Mid-Rise Design Guidelines (November 2024).

Mr. Goldberg concluded that the variances meet the four tests and represent good planning. He proposed that the variances be approved and final order withheld until stated preconditions are satisfied.

TESTS FOR MINOR VARIANCES

Maintain the General Intent of the City Official Plan

[80] The site is designated *Mixed-Use Areas* in the OP. The *Mixed-Use Areas* is a designation which permits a broad range of commercial, residential, and institutional uses, in single use or mixed-use buildings, as well as parks and open spaces and utilities.

The site is also located within a *Major Transit Station Area* as established by the Council adopted PMTSA – Lawrence Station, which also sets out minimum density targets. The PMTSAs demonstrate the City's latest intensification intent although they have not yet been approved by the Minister and are not in force and effect. In this case, OPA 570 prescribes minimum density targets are 200 residents and jobs per hectare for the Lawrence Station Area and a minimum density of 2.0 FSI for the subject site.

[81] The site is along Yonge Street, which is an identified *Avenues*, on Map 2 of the City OP. *Avenues* are growth areas within the OP where the policies direct that land should be utilized efficiently and in a compact form.

[82] There is a high demand and need for more housing units. Chapter 3.2.1.1 of the OP directs that "a full range of housing, in terms of form, tenure and affordability, across the City, will be provided and maintained to meet the current and future needs of residents." The revised 14-storey mixed use building, representing a moderate 3-storey addition which will augment the range and choice of housing opportunities within this neighbourhood, by contributing 100%, two- and three-bedroom units to accommodate

families. Given the more recent Provincial and City housing priorities and policies, the circumstance is appropriate to augment the 2022 approval with three (3) more floors of housing units.

[83] The site is located within a context that merits the consideration of optimizing the height and density in order to achieve the policy objectives of the Province and the City. Therefore, the general intent and purpose of the OP would be maintained by the proposal.

[84] The Tribunal finds that the proposed development is within an area designated for significant intensification and is within a short walking distance to the Lawrence Subway station. The subject property is connected to active transportation and rapid transit. It is near to commercial uses, parks and other services. Thus this site will support a complete community and efficiently use existing infrastructure.

[85] The site-specific ZBA was based upon the development plans at the time and was adopted prior to council approved OPA 570 on PMTSA, which will permit higher heights and density on the site. The general intent and purpose of the site-specific ZBL is to ensure that there is an appropriate transition between the high-rise development and the residential neighbourhood to the west. The MUDG has no angular plane requirement and permits a built form transition with appropriate stepbacks and setbacks that negates the need for the angular plane. The Tribunal notes the variances on the setbacks and stepbacks permit an appropriate transition to the west at Woburn Avenue. Elevation maps demonstrate that the public realm perspective is not impacted by the addition of the additional three storeys.

[86] The Tribunal finds that the variances maintain the general intent and purpose of the City OP.

Maintain the general intent and purpose of the ZBL

[87] The general intent and purpose of the By-law is to establish the permitted uses, together with a range of other performance standards, which once acted upon in a building project, implement the City OP, continue to maintain a compatible neighbourhood environment, and not give rise to any adverse planning impacts. The site, as approved under the Site-Specific ZBL No. 1248-2022, permits an 11- storey mixed-use building. This Minor Variance would add three (3) floors to a building that has already been recognized as suitable for moderately greater height and scale.

[88] The proposed built form and massing is largely preserved in comparison to the approved design. The notable modification involves the addition of three residential floors to the mixed-use building. Notably, all base building setbacks remain as approved in 2022, maintaining the original massing and pedestrian scale of the project. Other elements such as vehicular parking and bicycle parking rates will satisfy the previously approved zoning requirements. Some elements such as the southern setback and the proposed amount of amenity space are being increased and improved through this application.

[89] The proposed variances relating to height, GFA, MPH height, location of amenity space, and the landscape strip will maintain the general intent and purpose of the ZBL to implement the approved built form, much of which will remain largely similar, if not consistent with, the original approval. There are no unacceptable or adverse planning impacts that arise from the proposal.

[90] City Council enacted By-law No. 1248-2022, implementing a site-specific ZBA for the development plans at that time. The planned context for the site is changing, due to the PMTSA, and an increased housing allocation, thus, a more intense development is appropriate for the Subject Property.

Variances

[91] The MV application seeks relief from zoning standards identified in the Site-Specific By-law Exception No. 1248-2022 and to the City of Toronto By-law No. 569-2013, as follows:

By-law No. 1248-2022

(1) Maximum Permitted Height and Setbacks [Section D] & [Diagram 3]:

- I. On Diagram 3 in the Site-Specific By-law, the existing maximum permitted overall building height is 36.9 m (11-storeys), plus a 5.0 m MPH. In order to facilitate the addition of the three (3) proposed residential storeys, the overall building height will increase by an additional 11.19 m, for a new overall building height of 48.09 m (14-storeys), plus a 9.0 m mechanical penthouse level containing amenity space, and the gas generator and makeup air unit. The requested variance seeks to substitute Diagram 3 with a Revised Diagram 3 (Appendix 3, Document Book -Exhibit 3).
- II. The proposed 'Revised Diagram 3' illustrates a maximum permitted height of 14-storeys (48.09 m) plus a 9.0 m mechanical penthouse level. In this instance the mechanical penthouse level contains GFA for indoor amenity space, connected to outdoor amenity space. An additional, specific provision is added to ensure that the proposed mechanical/amenity level does not constitute a storey. This configuration allows for an optimized amenity configuration, including connected indoor and outdoor amenity space, and the provision of a total of 5.5 sq. m. of amenity space per unit.

- (2) Maximum MPH Height (Permitted Projections) [Section F (i)]
- I. The approved site-specific By-law permits a maximum MPH height of 5.0 m. Due to the development of the detailed design of the building, including consultation with engineers and the relocation of mechanical equipment, it has been determined that an additional 4.0 m are required to accommodate specified elements, being the required gas generator and makeup air unit (MAU), resulting in a total MPH height of 9.0 m. This equipment only occupies a smaller part of the MPH roof space and will be screened. This small coverage on the roof will ensure that the visible impact of this element is minimized.
- (3) Maximum Permitted Gross Floor Area (GFA) [Section G]
- I. The total maximum GFA (residential and non-residential) permitted under the Site- Specific By-law is 12,000 sq m. The requested variance seeks to increase the overall maximum permitted GFA to 15,316.2 sq m, which represents an increase of 3,316.2 sq m. The maximum residential GFA permitted under the Site-Specific By-law is 11,500 sq m. The requested variance seeks to increase the maximum permitted residential GFA to 14,899.4 sq m, which represents an increase of 3,399.4 sq m. This increase in GFA is required in order to facilitate the addition of the three (3) additional residential storeys for the mixed- use buildings. No change is proposed to the minimum required non-residential GFA of 400 sq m.
- (4) Height and setback diagram 3, revised diagram 3.

By-law No. 569-2013

- (5) Minimum landscape strip for lots abutting a Residential Zone
[40.10.50.10.(3)]

- I. A minimum 1.5 m wide soft landscaping strip is required along a lot line abutting a *Residential* zone, which in this circumstance would be the west lot line which abuts the lane that is within a *Residential* Zone. The 2022 ZBA approved architectural plans provide the same landscape strip as is currently shown and proposed plans, however, this provision was overlooked in the drafting and approval of the original site-specific By-law. A 1.5 m wide landscape strip continues to be proposed along the majority of the west lot line, in-keeping with the original approval and therefore this variance is minor and technical in nature as it does not change the approved 2022 design.

Variances 1, 2 and 3

[92] Variances 1, 2 and 3 are development standards that have been altered to allow for the revised design. The variances to the building height and GFA are required as the design has changed, and the previous By-law included regulations to control the development being considered at the time. The requested variances are appropriate for a high-density use along Yonge Street with a midrise residential building with a mechanical penthouse as a component of the overall site development.

Variance 2

[93] Variance 2 is requested to permit the mechanical penthouse with rooftop equipment to be located within the height limits set. The intent of this regulation is to control building heights to ensure adequate light, air, and privacy for neighboring properties while maintaining a consistent and appropriate urban form. This variance seeks to permit a 9.0 m increase in height to the mechanical penthouse.

Variance 3

[94] Variance 3 is requested to permit a maximum residential Gross Floor Area (“GFA”) of 14,899.4 m², whereas the site-specific By-law permits a maximum residential GFA of 11,500 m². This regulation was based on the site-specific development plans that were proposed at the time. The intent of the maximum residential GFA is to control the density based on the availability of municipal servicing allocation. The variance is intended to facilitate the additional three storeys.

Variance 4

[95] Variance 4 is the height and setback revised diagram 3.

Variance 5

[96] Variance 5 was a requirement of 1.5 m soft landscaping strip that was in the original approved 11-storey plans but was overlooked inadvertently in the drafting of the site specific ZBL. This variance is requested to make good the oversight.

[97] The Tribunal notes that the variance application proposed is a more efficient use of land located next to an MTSA which is adjacent to a TTC station consistent with the broader goals and objectives in the area’s planning framework and additional servicing allocation. The Tribunal finds that the variances maintain the general intent and purpose of the ZBL.

Are desirable for the appropriate development or use of the land, building or structure

[98] The revised 14-storey building will provide a more efficient and optimized utilization of the built-form. The additional three-storeys and significant increase in the percentage of larger family sized units will increase the range and choice of housing

opportunities within this segment of Yonge Street. It will also contribute to the City's supply of new housing units, aimed to achieve the 2023 City Council approved Housing Pledge of 285,000 new housing units by 2031. As such, it is appropriate and desirable development of the land and building on this site. Given the project is nearing construction, the Minor Variance approval will not just be an approved quantity of new housing but will directly translate into progress in the ongoing construction efforts of much needed housing.

[99] The Tribunal acknowledges that the proposed development is based on a previously approved 11-storey building design layout and built form. The variances provide for greater height and density of 14-storeys which can be achieved due to the imminent PMTSA of the Subject Property. All levels of Government direct the most efficient use of land with high density development, particularly near existing and planned infrastructure. The revisions to the previously approved high-rise residential development will permit a higher density development that is suitable for a site adjacent to the Lawrence Subway Station.

[100] The proposal implements the existing and planned development in this area of Yonge Street and the site's optimal use of the transportation network in the City. The proposed development's compact built form represents an appropriate use of land that is compatible with the area context. It supports the City's objective of intensification in strategic growth areas.

[101] The Tribunal finds that the variances are desirable for the appropriate development of the Subject Property.

Minor in Nature

[102] The above-described Minor Variances represent incremental differences that will maintain a good fit, does not alter the overall perceived design as compared to the

previously approved development, and does not give rise to any adverse planning impacts.

The proposed 14-storey residential development requires variances from the site-specific By-law to allow for a higher and more efficient development on the site. These variances are required to enable the increase of three additional storeys from the previous approved 11-storeys. Efficiency is obtained in the better utilization of the higher density accorded at areas designated near subway stations. An additional three storeys will translate to more housing units that accord with the Province's and the City's housing targets. As the shadowing studies have indicated, the additional storeys impact on shadowing, were minimal, with shadows not lingering long, due to the higher structure. There are thus no adverse impacts with the taller proposed building.

[103] The variances were required as the existing by-law was designed to enable the 11-storey development at the time so the revised plans need minor variances. The increase in height of three-storeys for the building with the mechanical penthouse is supportable and the GFA increase is minor. The site is near a subway station and at a transit bus hub in the City. The increase in height of 11.19 m for the three-storeys plus 9 m for the mechanical penthouse provides for a building that is comparable in height to other developments along Yonge Street. The proposal at 14-storeys, is characterized as a tall mid-rise building and it remains in scale with the existing and planned context. The proposal maintains the continuous five-storey pedestrian scale street wall above which the building then steps back. The street wall and the public realm elements remain the same as the 2022 approval.

[104] There is no evidence that the revised development will have any adverse impacts on neighbouring properties. The conditions of approval for the variances are appropriate and represent good planning. The Tribunal finds that the variances are minor in nature.

Appellant's Submissions.

[105] Counsel for the Appellant submitted that there is a housing crisis in the Province and the City had pledged to build 285,000 new homes by 2031. Since the 2022 settlement between the Parties, the provincial and municipal policy had some significant changes. The 2024 PPS and the City's Mid-Rise Urban Design Guidelines apply to the proposed development, which Mr. Goldberg had testified to and his sole opinion evidence on land use matters have not been contradicted.

[106] Debating whether a 14-storey building should be sited on this location adjacent to Lawrence Subway station misses the point, as there is no policy that warrants treating the Lawrence subway station in a different manner to other MTSA's. The focus of density and intensification at this location is prioritized in provincial and municipal policies. Optimization of strategic growth areas apply to this subway station as is to other subway station areas. The subject site is a mere 20 m from the north entrance of the Lawrence Subway station.

[107] The City did not call any planning evidence in opposition to the Appellant's land use evidence.

[108] Mr. Goldberg's thorough review of the policy framework and opinion has not been contradicted nor successfully challenged in cross examination. The proposed changes and variances meet the four tests, and there are no adverse impacts of shadows, privacy, overlook or a lack of transition or incompatibility demonstrated. There is simply no planning evidence advanced by the City.

[109] At the settlement of 2022, Parties had a s.37 agreement, which the Appellant has now proposed a proportionate monetary contribution for the additional three-storeys and density in the proposed development.

Counsel stated that the SPA is adjourned sine die to enable a resolution, of which, the Appellant had resolved issues with TCDSB. The Appellant has committed to provide the Construction Management Plan to TCDSB.

City's Submissions.

[110] Counsel for the City submitted that the application, individually or cumulatively failed to meet the four tests. The height for the MPH and the setbacks variances do not meet the tests, while the GFA variance fails as a result of failure of those variances.

[111] The setbacks proposed fronting Woburn Avenue, a local road that leads into *Neighbourhoods*, destroy the 2022 settlement achieved by the parties. Built form in OP s.3.1.3, emphasized good transition and fitting into the planned context, the proposed setback disrupt the fit and compatibility. Section 3.1.4 of the OP, built type, gives guidance with respect to mid-rise and tall mid-rise buildings. The 2022 settlement achieved a building of 36.9 m with a MPH. The right of way ("ROW") of Yonge Street is 27 m. The policy direction is 1:1 ratio of building height to ROW. Thus the 2022 settlement had already gone beyond the 1:1 ratio.

[112] The approved 11-storey is already the tallest building at this location. The 2022 settlement had already considered the TTC proximity (20 m from north entrance). The MUDG has not changed the 1:1 ratio.

[113] Counsel stated that OP s.3.2.1 refers to the form of tenure and affordability. The apartment units are ownership units and not affordable, counsel added.

[114] The overall height in relation to Woburn Avenue was already captured in the 2022 settlement, which blew past the mid-rise guidelines of 1:1. Now, with the new proposal, the applicable guidelines will be the tall building guidelines, not the MUDG. The site specific ZBL had already achieved standards that fit the existing character and context relative to Woburn Avenue. The changes undermine the ZBL.

[115] The variances are not desirable as it destroys the achieved balance of community interests that the 2022 settlement obtained and public trust is undermined. The 11-storey building was agreed to by two resident organizations, residents and the City, as such the MV proposed will destroy that balance of community interest and fit of the neighbourhood.

[116] The PPS 2024 and the MUDG were not around at the time of the 2022 settlement but the city council approved 11-storeys at 2.0 FSI. Now the MV application seeks to quadruple the FSI. Further the TTC was considered and baked into the approval. The site was a SGA and OLT had prioritized intensification at the site in 2022.

[117] Counsel quoted *Degasperis v. Toronto (City)*(2005) CarswellOnt 2913 OSCJ (Div. Ct), that the variance cannot be minor, if it is too large or too important to be considered minor. Here the MV and the sheer size is likely to impact public trust which will be undermined. The height of the mid-rise building is more than doubled, now should be a tall building where tall building guidelines apply. The height increase is 36% (41.9 m to 57.09 m). The Variances are too large coming off the backs of the 2022 settlement where the City had compromised, and tipped to the Appellants.

[118] Counsel stated if the MV is approved, the City agrees with conditions being imposed, except for the condition that the form and content of the MV be reviewed and finalized by the department. City's approvals must be tied to the architectural plans in support of the MV.

DISPOSITION

[119] The Tribunal considered the uncontradicted testimony of Mr. Goldberg - which withstood cross examination, the documentation and counsel's submissions.

Submissions on Degasperis have to be evaluated on the basis 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...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’” [McNamara Corporation Ltd. and Colekin Investments Ltd (1977) 150 R.(2d) 718].

[120] In other words, the variance is not looked at in a vacuum but within the context of existing and planned built environment as regards its appropriateness and fit. It is not just an exercise in numerical and mathematical calculation on how much the deviation is. The question of minor is assessed on a fact specific and empirical basis with respect to a particular site and proposed development.

[121] The Tribunal has carefully considered the several variance requests and concludes that these variances meet the ‘four tests’ of s. 45(1) of the Act, are consistent with the PPS and have regard to the matters of provincial interest set out in s. 2 of the Act.

[122] The Tribunal finds that the proposed development and the variances are consistent with the PPS policies for strategic growth areas, specifically the residential mixed-use apartments “support the achievement of complete communities, a range and mix of housing options, intensification... “(PPS s.2.4.1.2).

[123] The Tribunal finds that the proposed development and variances conform to the OP objectives in particular, s. 3.1.1 and s.3.1.3 relating to the interaction of the proposed building and the immediate surroundings of Yonge Street and Woburn Avenue, to achieve efficient and compact built form; and s. 2.2(2)a, to optimize the use of existing infrastructure and services; and s.2.2.(2)b, to concentrate jobs and people in areas well served by transit and higher order transit stations.

[124] The variances are specific in the quest to add three additional storeys to the development requirements. The Tribunal considered the Application background of the site specific ZBA that preceded the MV application. In the context of the already approved 11-storey building, this variance application to add another three-storeys to optimize density at this site where intensification is targeted, is reasonable. The variances maintain the general intent of the OP, the ZBL, are minor and are desirable to facilitate the proposed development.

[125] The Tribunal finds that the variances requested are compatible with the character of the area without adverse impacts and represent good planning.

[126] Mr. Goldberg's comprehensive analysis of the variances was helpful and persuasive to the Tribunal. In particular, the fact that the site can now support the higher residential density and take advantage of the transport infrastructure network in the prospective PMTSA area. The Tribunal approves the variances and withholds final order subject to the imposed conditions that form part of the Order.

ORDER

[127] **THE TRIBUNAL** having been asked to consider an application which has been amended from the original application, and the Tribunal having determined as provided for in subsection 45(18.1.1) of the *Planning Act* that no further notice is required;

[128] **THE TRIBUNAL ORDERS** that:

1. Party Status is granted to the Toronto Catholic District School Board;
2. Participant Status is granted to Bedford Park Residents Organization; Lytton Park Residents Organization; Bryan Walenius; Michelle Borthwick; Michael Monahan; Nicole Spence; Richard Libby; Stuart Smith; Hilde Reis-Smart; Brent Hourd; and Monique Hourd;

[129] **AND THE TRIBUNAL FURTHER ORDERS THAT** the Appeal is allowed in part and the Minor Variances to the City of Toronto By-law set out in **Attachment 1** are authorized in principle with Final Approvals withheld subject to fulfillment of the preconditions as set out in **Attachment 2** to this Order; and,

[130] **THE TRIBUNAL FURTHER ORDERS** that the Parties shall inform the Tribunal in writing by **Friday, August 29, 2025**, of the status of fulfillment of conditions. The Tribunal may be spoken to in the event of matters arising in the implementation of this Order.

“T.F. Ng”

T.F. NG
MEMBER

Ontario Land Tribunal

Website: www.olt.gov.on.ca Telephone: 416-212-6349 Toll Free: 1-866-448-2248

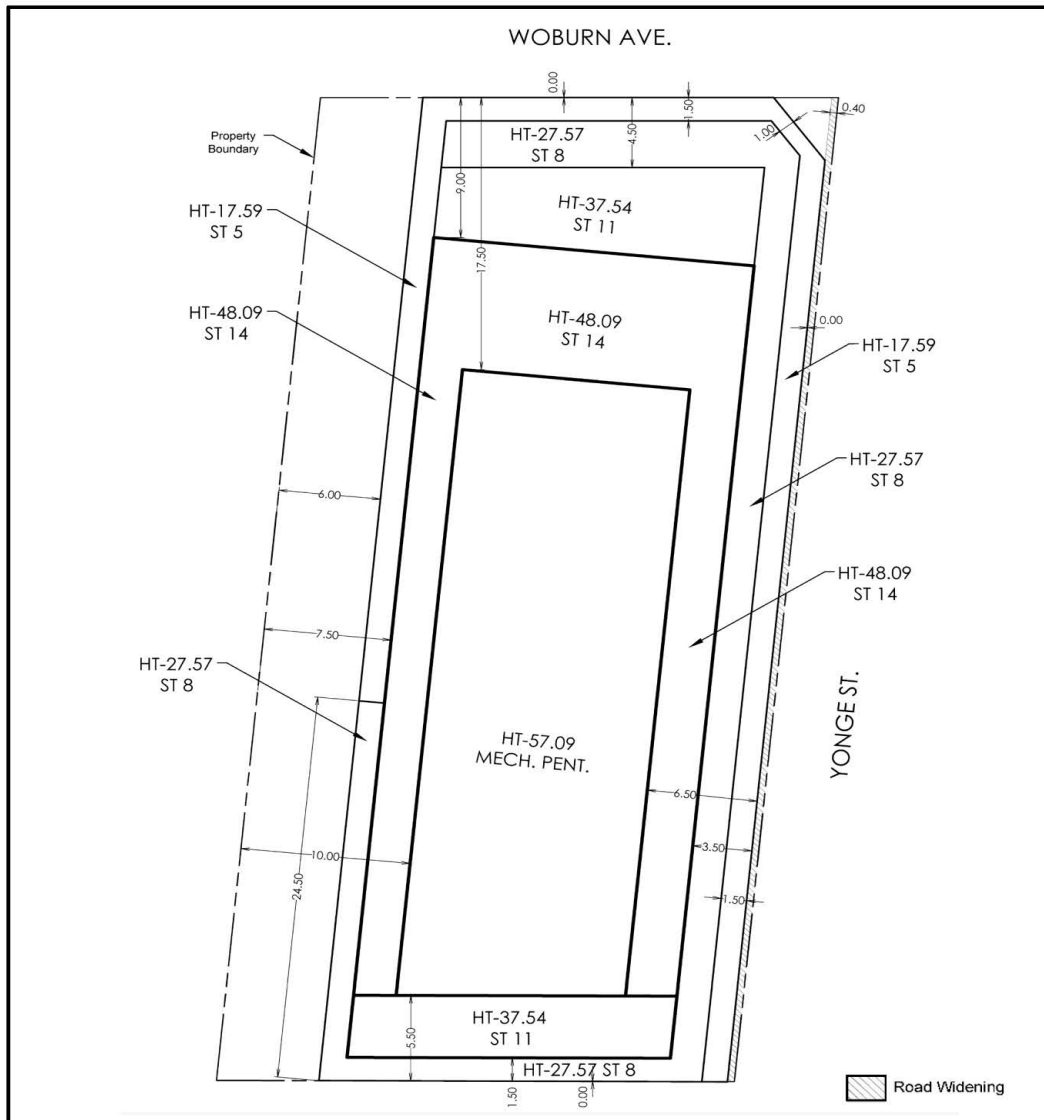
The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

ATTACHMENT 1

Revised Diagram 3 and List

City of Toronto By-law 1248-2022 (OLT)

Revised Diagram 3



**3180 – 3202 Yonge Street**

File # 20 214204 NNY 08 OZ

Revised Diagram 3

Not to Scale

City of Toronto By-law 569-2013

03/04/2025

List of Variances

Site Specific By-law 1248-2022 (OLT)

1. Maximum Permitted Height - 4. (D)

- Required: The permitted maximum height of a building or structure is the numerical value, in metres, following the letters “HT” and the permitted maximum number of storeys is the numerical value following “ST” on Diagram 3 of By-law 1248-2022(OLT);
- Proposed: The permitted maximum height of a building or structure is the numerical value, in metres, following the letters “HT” and the permitted maximum number of storeys is the numerical value following “ST” on Revised Diagram 3 of By-law 1248-2022(OLT) and a mechanical penthouse containing amenity space shall not constitute a storey;

2. Maximum Mechanical Penthouse Height - 4. (F)(i)

- Required: The following equipment and structures may project beyond the permitted maximum height shown on Diagram 3: equipment used for the functional operation of the building including electrical, utility, mechanical and ventilation equipment, enclosed stairwells, roof access, maintenance, equipment storage, elevator shafts, chimneys, and vents, by a maximum of 5.0 metres;
- Proposed: The following equipment and structures may project beyond the permitted maximum height shown on Revised Diagram 3: equipment used for the functional operation of the building including electrical, utility, mechanical and ventilation equipment, enclosed stairwells, roof access, maintenance, equipment storage, elevator shafts, chimneys, and vents, by a maximum of 9.0 metres;

3. Maximum GFA - 4. (G)

- Required: The maximum gross floor area is 12,000 square metres, of which the maximum gross floor area for residential uses is 11,500 square metres;
- Proposed: The maximum gross floor area is 15,316.2 square metres, of which the maximum gross floor area for residential uses is 14,899.4 square metres;

4. Height and Setback Diagram - Diagram 3

- Required: Diagram 3;
- Proposed: Revised Diagram 3;

By-law 569-2013**5. Minimum landscape strip for lots abutting a Residential Zone - 40.10.50.10.(3),**

- Required: A minimum 1.5 metre wide strip of soft landscaping must be provided along the part of the lot abutting the lot in a Residential Zone category or Residential Apartment Zone category;
- Proposed: A minimum 1.5 metre wide strip of soft landscaping must be provided along a minimum of 50% of the length of the west lot line abutting a lot in a Residential Zone or Residential Apartment Zone category;

GOLDBERG GROUP

ATTACHMENT 2

PRE-CONDITIONS TO FINAL ORDER

1. The form and content of the minor variances is reviewed and finalized, to the satisfaction of the City of Toronto Building Department;
2. The owner has provided an updated Functional Servicing Report that demonstrates how the incremental change in servicing demand as a result of the increased density will be accommodated; and,
3. The owner has entered into an agreement pursuant to Section 45(9.1) of the *Planning Act*, in a form satisfactory to the Chief Planner and Executive Director, City Planning and the City Solicitor, which agreement shall be registered on title to the land pursuant to Section 45(9.2) of the *Planning Act*, to:
 - a. Secure the obligation to enter into a Municipal Infrastructure Agreement for the incremental increase in servicing demand, as part of the site plan approval process, should it be determined that upgrades are required to the infrastructure to support the development, in accordance with the updated FSR; and,
 - b. Provide a cash contribution of \$363,192.00 to the City. The cash contribution will be directed towards capital improvements in the vicinity of the Lands, to the satisfaction of the Chief Planner and Executive Director, City Planning, in consultation with the local Ward Councillor. The cash contribution shall be indexed upwardly in accordance with the Statistics Canada Building Construction Price Index for Toronto for the period from the date of the Ontario Land Tribunal decision to the date of payment. In the event that the cash contribution has not been used for the intended purpose within three (3) years after the date of the Ontario Land Tribunal's Final Order, the cash contribution may be redirected for another purpose or purposes, at the discretion of the Chief Planner in consultation with the local Ward Councillor, provided that the purpose or purposes are identified in Official Plan Policy 5.1.1 and will benefit the community in Ward 8.