

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: November 03, 2023

CASE NO(S): OLT-22-004078

PROCEEDING COMMENCED UNDER subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 128 Lakeshore Road East LP Inc.
Subject: Request to amend the Official Plan – Failure to adopt the requested amendment
Purpose: To permit an 11-storey mixed-use building
Property Address: 128 Lakeshore Road East
Municipality: City of Mississauga
Municipal File No.: OZ/OPA 22-5 W1
OLT Case No.: OLT-22-004078
OLT Lead Case No.: OLT-22-004078
OLT Case Number: 128 Lakeshore Road East LP Inc. v. Mississauga (City)

PROCEEDING COMMENCED UNDER subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Applicant and Appellant: 128 Lakeshore Road East LP Inc.
Subject: Application to amend Zoning By-law - Refusal or neglect to make a decision
Purpose: To permit an 11-storey mixed-use building
Property Address: 128 Lakeshore Road East
Municipality: City of Mississauga
Municipal File No.: OZ/OPA 22-5 W1
OLT Case No.: OLT-22-004079
OLT Lead Case No.: OLT-22-004078

Heard: October 17, 2023 by video hearing

APPEARANCES:**Parties****Counsel**

128 Lakeshore Road East LP Inc. David Bronskill

City of Mississauga Raj Kehar

MEMORANDUM OF ORAL DECISION DELIVERED BY C. HARDY ON OCTOBER 17, 2023 AND INTERIM ORDER OF THE TRIBUNAL

[Link to the Order](#)**BACKGROUND**

[1] 128 Lakeshore Road East LP Inc. (“Appellant”) applied to the City of Mississauga (“City”) for an Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) (collectively “Applications”) for the property municipally known as 128 Lakeshore Road East in the City (“Subject Property”). The City failed to render a decision within statutory timelines respecting the Applications and the Appellant appealed to this Tribunal pursuant to s. 22(7) and s. 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended (“Act”).

[2] On January 31, 2022, the Appellant submitted the Applications to the City to permit an 11-storey mixed-use building consisting of 42 residential units, approximately 149.6 square metres of grade-level retail, 41 vehicle parking spaces and 25 bicycle spaces (“Original Proposal”). The Applications for the Original Proposal were accompanied by a number of supporting studies and plans.

[3] The Applications for the Original Proposal were deemed complete by City staff on February 18, 2022, and a community meeting was held on March 29, 2022. In advance of the statutory public meeting on June 20, 2022, a Public Meeting Information Report was prepared by City staff dated May 27, 2022, noting a number of matters to be further considered.

[4] On June 29, 2022, the Appellant appealed the City's failure to render a decision on the Applications for the Original Proposal.

[5] Subsequent to the filing of the appeals, the Appellant and the City engaged in a number of discussions which resulted in the Appellant providing revised technical materials and a revised plan dated September 5, 2023, to address comments related to the Original Proposal's height, massing and site design.

PROPOSED SETTLEMENT

[6] Briefly summarized, the Subject Property is proposed to be redeveloped with an eight-storey (26 metres) mixed-use building, plus one technical storey (4.5 metres) which includes a mechanical penthouse and enclosed rooftop amenity area. There will be a total of 37 residential units, a total building Gross Floor Area ("GFA") of 5,064 square metres, a density of 5.4 Floor Space Index ("FSI") and 117 square metres of at-grade retail ("Proposed Development").

[7] The Proposed Development includes a total of 33 vehicle parking spaces and 37 bicycle spaces with loading bay and waste collection areas located internal to the building. The Proposed Development incorporates revised setbacks, stepbacks and landscape buffers, all of which respond to comments raised regarding the Original Proposal.

[8] The draft OPA which facilitates the Proposed Development is attached to this Decision as Schedule 1 and provides for a Special Site to be added to Section 13.0 of the Port Credit Local Area Plan ("PCLAP") to permit a residential building with a maximum building height of eight-storeys and 26 metres (plus one technical storey).

[9] The draft ZBA which facilitates the Proposed Development is attached to this Decision as Schedule 2 and proposes to rezone the Subject Property from C4

(Mainstreet Commercial) to C4 – Exception (Mainstreet Commercial – Exception). The site-specific exception addresses:

- a. Height – permit eight-storeys / 26 metres exclusive of the technical storey;
- b. Parking – 0.8 resident parking spaces per dwelling unit and 0 non-residential parking spaces per dwelling unit and 0 parking spaces per 100 square metres of non-residential GFA. There are 10 visitor and non-residential parking spaces proposed to be provided through an application to the City’s Payment in Lieu program;
- c. Underground Parking Structure – minimum setback from the parking structure to the rear lot line of 3.0 metres and to any other lot line of 1.2 metres;
- d. Minimum Non-residential GFA – 110 square metres proposed on the first storey; and
- e. Rear Yard Setback and Landscape Buffer – 3.0 metres are proposed.

[10] The Parties jointly requested that the Tribunal allow the appeals in part and approve the Proposed Development in principle in accordance with the plans set out as Exhibit D to the Affidavit of Dana Anderson which the Tribunal marked as Exhibit 1 (“Revised Plans”). The Parties requested that the Tribunal approve the OPA and ZBA attached as Schedules 1 and 2 in principle, acknowledging that the final draft OPA and ZBA may be further refined to ensure that the draft instruments appropriately implement the Revised Plans. The Parties further requested that the Tribunal withhold the Final Order pending confirmation that:

- a. The final form and content of the draft OPA and ZBA are to the satisfaction of the City;

- b. The Appellant has entered into a development agreement with the City in a form satisfactory to the City; and
- c. The Appellant has submitted an updated traffic impact study to the satisfaction of the City.

AREA CONTEXT

[11] The Subject Property is approximately 929.7 square metres and is currently occupied by a two-storey funeral home. The Subject Property is located in the Port Credit Community Node and in the Port Credit Major Transit Station Area (“MTSA”).

[12] The Subject Property is well-served by a variety of transit, including four existing bus routes. Approximately 350 metres to the north of the Subject Property is the Port Credit GO Station and the future terminus of the Hazel McCallion LRT is located approximately 350 metres from the Subject Property.

[13] Land uses immediately surrounding the Subject Property include a variety of residential, commercial and retail uses in keeping with the Port Credit Community Node character. Immediately north of the Subject Property is a 15-storey residential building, immediately east across Ann Street is an existing 20-storey residential apartment building and immediately west is a five-storey residential apartment building. Immediately south of the Subject Property are a number of low-rise commercial and retail buildings situated along Lakeshore Road.

HEARING

[14] As evidence at the hearing, the Tribunal received the Affidavit of Dana Anderson sworn on October 6, 2023, which was marked as Exhibit 1. Ms. Anderson is a Fellow of the Canadian Institute of Planners and a Registered Professional Planner with the Ontario Professional Planners Institute. The Tribunal qualified Ms. Anderson to provide land use planning opinion evidence on the consent of the Parties.

[15] Ms. Anderson provided an affidavit and delivered a comprehensive contextual and planning rationale in support of the Proposed Development. She opined that the OPA and ZBA which will facilitate the Proposed Development satisfy all requisite legislative tests and overall are representative of good planning and urban design and are in the public interest.

[16] Ms. Anderson highlighted a number of policies and guidelines noting that the Proposed Development represents an intensification of an underutilized site that has been well-designed to integrate into the surrounding context. The Subject Property is located in close proximity to existing and future transit and an active transportation network that includes a mix of multi-unit housing and supports existing employment and retail uses.

[17] During the course of her testimony, Ms. Anderson addressed concerns raised by the Participants and opined that the Proposed Development was revised from the Original Proposal to address issues related to height and design in the context of the location of the Subject Property in an MTSA. She noted that all outstanding issues have been addressed by the Proposed Development to the satisfaction of the City and opined that the concerns raised by the Participants have been adequately addressed and will continue to be refined through the site plan process.

[18] Ms. Anderson recommended that the Tribunal allow the appeals in part and approve the draft OPA and ZBA in principle pending confirmation from the City that the pre-conditions had been satisfied.

ANALYSIS AND DISPOSITION

[19] On the strength of the uncontradicted land use planning testimony and sworn Affidavit of Ms. Anderson, the Tribunal is satisfied that the proposed OPA and ZBA represent an efficient use of land, resources and infrastructure and achieve important local, regional and provincial policy objectives, including providing for a range of

housing and leveraging proximity to existing and planned transit in order to accommodate growth targets and assist the Region of Peel in achieving its density targets and the City in achieving its housing targets.

[20] The unique corner location of the Proposed Development provides an opportunity to enhance the streetscape. Ms. Anderson emphasized the importance of the height of the Proposed Development which will result in an eight-storey building being located between 15 and 20-storey buildings to the north and east and a five-storey building to the west. The Tribunal agrees with Ms. Anderson that the location of the Proposed Development provides for an appropriate transition that is compatible with the surrounding area. The Tribunal finds that the proposed OPA and ZBA which will facilitate the Proposed Development provide for a built form and design that is compatible with the surrounding context.

[21] The Tribunal wholly accepts Ms. Anderson's opinion that the proposed OPA and ZBA satisfy all statutory tests and represent good planning in the public interest.

ORDER

[22] The Tribunal orders that the appeals are allowed in part, on an interim basis, contingent upon confirmation, satisfaction or receipt of those pre-requisite matters identified in paragraph 24 below and the Proposed Development of the lands municipally known as 128 Lakeshore Road East, Mississauga are approved in principle in accordance with the plans set out in Exhibit D of the Affidavit of Dana Anderson filed as Exhibit 1.

[23] The Tribunal further orders that the Official Plan Amendment and Zoning By-law Amendment set out in Schedules 1 and 2 to this Interim Order are hereby approved in principle and may be further refined by the Parties prior to the request for a Final Order.

[24] The Tribunal will withhold issuance of its Final Order contingent upon satisfactory fulfillment of the following pre-requisite matters;

- a. Confirmation that the final form and content of the draft Official Plan Amendment and Zoning By-law Amendment are to the satisfaction of the City;
- b. Confirmation that the Appellant has entered into a development agreement with the City in a form satisfactory to the City; and
- c. Confirmation that the Appellant has submitted an updated traffic impact study to the satisfaction of the City.

[25] The Member will remain seized for the purposes of reviewing and approving the final draft of the Official Plan Amendment and Zoning By-law Amendment and the issuance of the Final Order.

[26] If the Parties do not submit the final drafts of the Official Plan Amendment and Zoning By-law Amendment, and provide confirmation that all other contingent pre-requisites to the issuance of the Final Order set out in paragraph 24 above have been satisfied, and do not request the issuance of the Final Order within six months of issuance of this Decision, the Appellant and the City shall provide a written status report to the Tribunal by that date, as to the timing of the expected confirmation and submission of the final form of the draft Official Plan Amendment and Zoning By-law Amendment and issuance of the Final Order by the Tribunal. In the event the Tribunal fails to receive the required status report, and/or in the event the contingent pre-requisites are not satisfied by the date indicated above, or by such other deadline as the Tribunal may impose, the Tribunal may then dismiss the Appeal.

[27] The Tribunal may, as necessary, arrange the further attendance of the Parties by Telephone Conference Call to determine the additional timelines and deadline for the

submission of the final form of the instruments, the satisfaction of the contingent pre-requisites and the issuance of the final Order.

[28] The Member may be spoken to should any issues arise with respect to the implementation of this Order.

“C. Hardy”

C. HARDY
MEMBER

Ontario Land Tribunal

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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.

SCHEDULE 1

Draft Official Plan Amendment – October 6, 2023

The Corporation of the City of Mississauga

By-law Number _____

A by-law to Adopt Mississauga Official Plan Amendment No. XX

WHEREAS in accordance with the provisions of section 17 or 22 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, Council may adopt an Official Plan or an amendment thereto;

AND WHEREAS, pursuant to subsection 17(10) of the *Planning Act*, the Ministry of Municipal Affairs and Housing may authorize the Regional Municipality of Peel, an approval authority, to exempt from its approval any or all proposed Local Municipal Official Plan Amendments;

AND WHEREAS, Regional Council passed By-law Number 1-2000 which exempted all Local Municipal Official Plan Amendments adopted by local councils in the Region after March 1, 2000, provided that they conform with the Regional Official Plan and comply with conditions of exemption;

AND WHEREAS, the Commissioner of Public Works for the Region of Peel has advised that, with regard to Amendment No. XX, in his or her opinion the amendment conforms with the Regional Official Plan and is exempt;

NOW THEREFORE the Council of the Corporation of the City of Mississauga ENACTS as follows:

1. The following explanatory text attached hereto, constituting Amendment No. XX to Mississauga Official Plan, specifically the Port Credit Community Node within the Port Credit Local Area Plan, of the City of Mississauga Planning Area, are hereby adopted.

ENACTED and PASSED this ____ day of _____, 2023.

Signed _____
MAYOR

Signed _____
CLERK

Draft Official Plan Amendment– August 15 2023

**EXPLANATORY NOTE TO PROPOSED
OFFICIAL PLAN AMENDMENT
NUMBER XX**

**TO THE MISSISSAUGA OFFICIAL PLAN OF THE
CITY OF MISSISSAUGA PLANNING AREA**

City of Mississauga File No. _____

The Proposed Official Plan Amendment applies to lands located at the north-western corner of Lakeshore Road East and Ann Street, in the City of Mississauga. The lands are legally described as PT LOT 2, PL PC2 ECR, N/S Toronto St As In PC2417; Mississauga, and are municipally known as 128 Lakeshore Road East.

The purpose of the Official Plan Amendment is to amend the height limit applying to the subject lands as contained in Schedule 2B of the Port Credit Local Area Plan. This Official Plan Amendment proposes to introduce Special Site XX to Section 13.0 of the in-force Port Credit Local Area Plan in order to permit a residential building with a height of 8-storeys (plus one technical storey that includes the mechanical penthouse and an enclosed rooftop amenity area).

Draft Official Plan Amendment – August 3 2023

Amendment No. XX
To
Mississauga Official Plan

The following text and schedules attached constitute Official Plan Amendment No. XX.

PURPOSE

The purpose of this Amendment is to amend the height limit applying to the subject lands located at the north-west corner of Lakeshore Road East and Ann Street as contained in Schedule 2B of the Port Credit Local Area Plan, with a Special Site policy.

The Amendment will permit the development of a proposed 8-storey residential building on the subject lands.

LOCATION

The subject lands affected by this Amendment are located at 128 Lakeshore Road East, located at the north-west corner of Lakeshore Road East and Ann Street. The subject lands are located within a Community Node Character Area in the Port Credit Local Area Plan of the Mississauga Official Plan.

BASIS

The subject lands are located within the Port Credit Community Node in the Port Credit Local Area Plan. The subject lands are designated *Mixed Use* and located within an area identified as part of the Mainstreet Node Precinct. This area is identified in the Mississauga Official Plan as allowing for residential uses, in conjunction with other permitted non-residential uses. This area is identified in the Port Credit Local Area Plan as a place to accommodate street related commercial uses and multi-use residential buildings. Permitted building heights for the subject lands range from 2 to 3 storeys, while the existing built form context adjacent the Subject Lands includes 5 storeys immediately west (122 Lakeshore Rd E), 15 storeys immediately north (8 Ann St), and 20 storeys immediately east (5 Ann St).

The proposed development for the subject lands consists of an 8-storey mixed use residential building (plus one technical storey that includes the mechanical penthouse and an enclosed rooftop amenity area), including at-grade commercial uses along Lakeshore Road East and Ann Street. The proposed development includes private indoor and outdoor amenity spaces, at-grade landscaping, 33 underground vehicle parking spaces and 37 bicycle spaces.

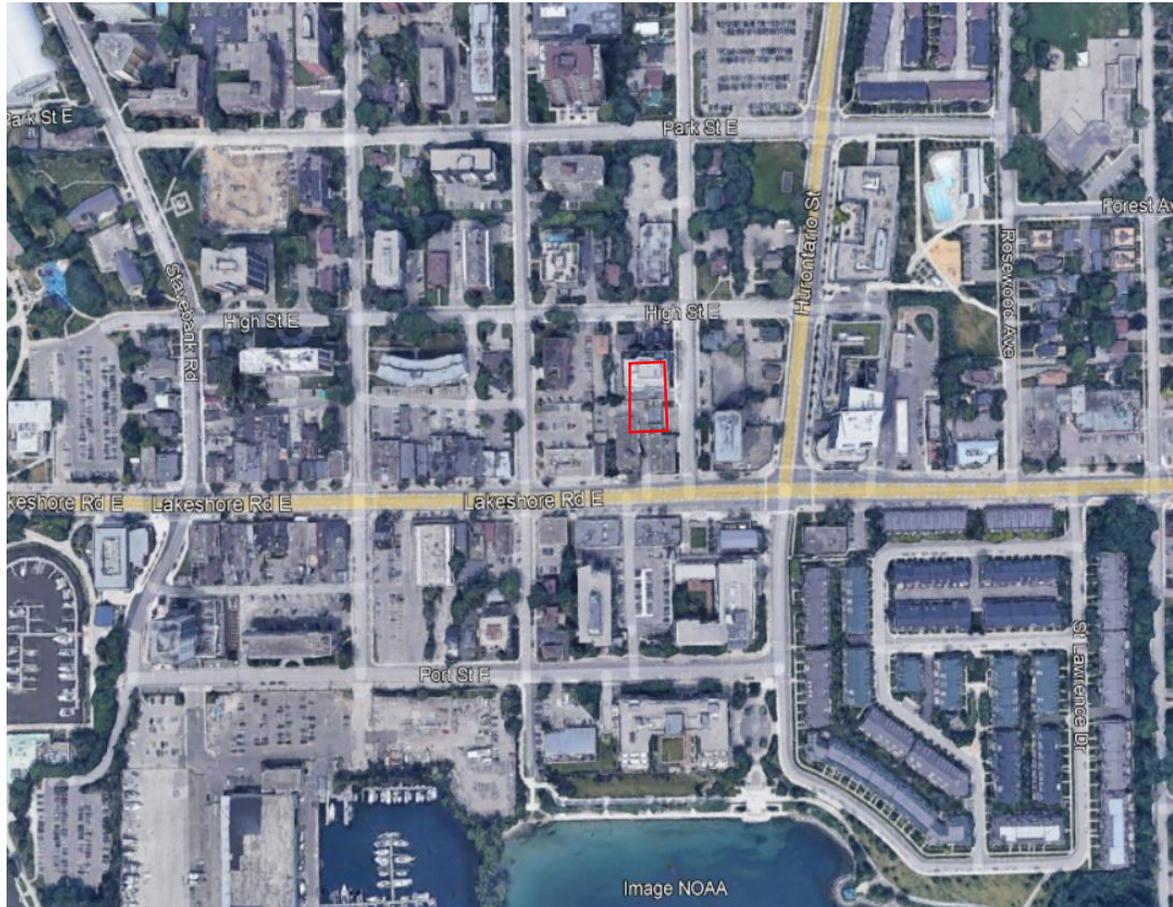
Schedule 2B of the Port Credit Local Area Plan prescribes a height limit of 2 to 3 storeys on the subject lands. The proposed Official Plan Amendment to permit additional height and density on the subject land is appropriate from a planning standpoint and should be approved for the following reasons:

1. The proposed amendment is supportive of the policy framework provided in the Provincial Policy Statement, the Growth Plan, and the Region of Peel Official Plan, which each promote a range and mix of housing options as well as the redevelopment of underutilized lands within the existing built-up area that are served by existing transit and infrastructure.
2. The policies and objectives of the Region of Peel Official Plan are supported by the proposal as it contributes to achieving an urban structure, form, and densities which are pedestrian-friendly and transit-supportive. The proposal is located within a Major Transit Station Area, and provides for transit-supportive densities which contribute to the Region's goals of achieving intensification of residential and non-residential development along corridors and mobility hubs to support a higher level of transit service.
3. The policies and objectives of the Mississauga Official Plan are supported by the proposal as it contributes to the range of housing types, sizes, and tenure, and provides for a compatible built form. The proposal provides residential growth within a designated Intensification Corridor, and will contribute to a livable and accessible complete community.
4. The proposed development provides for a compact built form that makes efficient use of land and existing infrastructure, including nearby transit. The subject lands are located within 500 metres of Port Credit GO Station, within a designated Major Transit Station Area, which is recognized in the Growth Plan, Region of Peel Official Plan, and Mississauga Official Plan as a focus area for higher density transit-oriented development.
5. The greatest densities within the Port Credit Community Node are to be located in the vicinity of the GO Station and Light Rail Transit station. The proposed development responds to the existing built form and scale of the surrounding properties, as well as the scale of the overall Port Credit Context, and provides a transition in height and density from the existing commercial uses to the west, to the high-density residential uses to the north and east.

DETAILS OF THE AMENDMENT AND POLICIES RELATIVE THERETO

1. The Port Credit Local Area Plan Special Site Policies are hereby amended by adding the following key map and text to Section 13.1 as Special Site XX:

13.1.XX Site XX



13.1.XX.X The lands identified as Special Site XX are located at the north-west corner of Lakeshore Road East and Ann Street.

13.1.XX.X Notwithstanding the provisions of the Desirable Urban Form policies, a mixed use building with a maximum height of 8-storeys is permitted ((plus one technical storey that includes the mechanical penthouse and an enclosed rooftop amenity area) to provide appropriate transition to and from the existing built form context which is unique to the site.

IMPLEMENTATION

Upon the approval of this Amendment by the Council of the Corporation of the City of Mississauga, the Mississauga Official Plan and the Zoning By-law applicable to the

subject lands will be amended to the appropriate classification, in accordance with the intent of this Amendment.

Provisions will be made through the rezoning and site development plan approval process of the lands subject to the Amendment, for development to occur subject to the approved site development plan, to ensure that development occurs in accordance with the intent of the Amendment.

Provisions will be made through the rezoning of the lands subject to this Amendment, for development to occur subject to approved site development, architectural and landscape plans, to ensure that site access, buildings, parking and landscaping are satisfactorily located and designed.

INTERPRETATION

The provisions of the Mississauga Official Plan, as amended from time to time regarding the interpretation of that Plan, shall apply in regard to this Amendment.

This Amendment supplements the intent and policies of the Local Area Plan.

Upon approval of this Amendment, Section 13.0 of the Port Credit Local Area Plan will be amended in accordance with intent of this Amendment.

SCHEDULE 2

Draft Zoning By-law Amendment – Oct. 6, 2023

The Corporation of the City of Mississauga

By-law Number _____

A by-law to amend By-law Number 0225-2007, as amended

WHEREAS pursuant to sections 34, 36, and 37 of the *Planning Act*, R.S.O. 1990 c.P.13, as amended, the council of a local municipality may, respectively, pass a zoning by-law;

NOW THEREFORE the Council of the Corporation of the City of Mississauga ENACTS as follows:

1. By-law Number 0225-2007, as amended, being a City of Mississauga Zoning By-law, is amended by adding the following new Exception Table:

6.2.5.X	Exception: C4-X	Map # 08	By-law:
In the C4-X zone, the permitted uses and applicable regulations shall be as specified for a C4 zone except that the following uses/regulations shall apply:			
Regulations			
6.2.5.X.1	The regulations of Lines 9.1, 11.1, 12.4 contained in Table 6.2.1 of this By-law shall not apply		
6.2.5.X.2	Minimum rear yard		3.0 m
6.2.5.X.3	Maximum height exclusive of enclosed rooftop amenity area and mechanical penthouse		26 m and 8 storeys
6.2.5.X.4	Minimum depth of a landscaped buffer measured from any other lot line		3.0 m
6.2.5.X.5	Minimum number of resident parking spaces per dwelling unit		0.8
6.2.5.X.6	Minimum number of visitor parking spaces per dwelling unit		0
6.2.5.X.7	Minimum number of parking spaces per 100 m ² gross floor area – non-residential for a retail store or personal service establishment		0
6.2.5.x.8	Minimum setback from a parking structure completely below finished grade, inclusive of external access stairwells, to the rear lot line		3.0 m

6.2.5.x.9	Minimum setback from a parking structure completely below finished grade, inclusive of external access stairwells, to any other lot line	1.2 m
6.2.5.x.10	Minimum gross floor area – non residential that shall be located within the first storey	110 m2

2. Map Number 8 of Schedule B to By-law Number 0225-2007, as amended, being a City of Mississauga Zoning By-law, is amended by changing thereon from “C4” to “C4-X”, the zoning of Part of the Town Plot of Port Credit, in the City of Mississauga, PROVIDED HOWEVER THAT the “C4-X” zoning shall only apply to the lands which are shown on the attached Schedule “A”, which is deemed to be an integral part of this By-law, outlined in the heaviest broken line with the “C4-X” zoning indicated thereon.

APPENDIX “A” TO BY-LAW NUMBER _____

Explanation of the Purpose and Effect of the By-law

The purpose of this by-law is to permit an 8-storey mixed use building (plus one technical storey that includes the mechanical penthouse and an enclosed rooftop amenity area) on the lands municipally addressed as 128 Lakeshore Road East (the ‘subject lands’).

This By-law removes the current C4 zoning provisions that apply to the subject lands in order to apply a C4 zone with special exceptions (C4-X).

Location of Lands Affected

The lands are located at the north-west corner of the intersection of Lakeshore Road East and Ann Street, in the City of Mississauga, as shown on the attached Map designated as Appendix “B”.

Further information regarding this By-law may be obtained from _____ of the City Planning and Building Department at _____