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PL120119

Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

Menkes Church Street Holdings Inc. 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 neglect to enact a proposed amendment to Zoning By-law 438-86, as amended, of the City of Toronto to rezone lands respecting 365 to 375 Church Street to permit the development of a 30-storey mixed-use building  
O.M.B. File No.: PL120119

**APPEARANCES:**

**Parties**

**Counsel/Agent\***

Menkes Church Street Holdings Inc.

Adam Brown

City of Toronto

Sharon Haniford

McGill Granby Village Residents  
Association

Ian Gemmell\*/Mary Eastwood\*

**DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD**

Menkes Church Street Holdings Inc., the Applicant/Appellant (Applicant), has appealed to the Ontario Municipal Board (Board) following their application to the City of Toronto for a rezoning of the subject site at 365-375 Church Street in order to permit construction of a 29-storey, mixed use residential building that comprises 358 residential units and parking for 161 vehicles and 250 bicycles. The Applicant has requested increases in height and density and elimination of the provision of an angular plane along the Church Street frontage among other things.

Counsel Adam Brown represented the Applicant. Counsel Sharon Haniford represented the City of Toronto (City). Agents Ian Gemmell and Mary Eastwood represented the McGill Granby Village Residents Association (MGVRA).

The Board heard from the Applicant's witnesses, Urban Design Planner Robert Glover and Planner Peter Smith. The City's witnesses were Urban Design Planner Myron

Boyko and City Planner Alex Teixeira. A number of interested participants also expressed their views on the character of the McGill Granby neighbourhood and on the proposed development.

The Board deliberated for eight weeks before delivering its decision and it read and considered all of the evidence presented from all parties; specifically: document books, planning instruments, witness statements and outlines of evidence, photographic exhibits, context plans, site plan drawings, a Land Use plan, a density chart, elevations, aerial photographs, shadow studies, a transition report, planning staff and supplementary report exhibits, the *viva voce* evidence of the expert witnesses, the statements of the interested participants and the oral arguments and submissions of counsels and agents.

After a careful review of all of the evidence before it, the Board determined that the following key issues were central to the appeal:

1. Is this site an appropriate one for a tall building?
2. Does the Applicant offer an appropriate transition from the proposed tall building to the adjacent low-rise neighbourhood?
3. Does the incremental aspect of shadowing generated by the proposed building impact adversely the adjacent low-rise neighbourhood to the east?
4. Does the proposed rezoning application conform to the policies of the Official Plan?
5. Is the payment of a section 37 benefit appropriate in this case?

### **The proposal**

Reading from the May 14, 2012 City staff report (Exhibit 1 Tab 11), the Applicant proposes to construct a 29-storey, mixed use residential building comprised of a 3-storey podium and a 26-storey tower housing 358 residential units and 177 square metres of ground floor retail space. The building height would be 95.1 metres (100 metres to the mechanical penthouse). The ground floor of the podium is set back 4.5 metres from the Church Street lot line and 2 metres from the McGill Street lot line. The

tower steps back from the podium at 3 storeys and 3 metres on the Church Street side and 2 metres on the McGill Street side. The podium is six storeys in height on the north side of the site. The tower is also stepped back from the podium on both the north and east sides. The proposed building will have a north-south orientation and the proposed typical tower floor plate is 732 square metres as measured in gross floor area (GFA). There are balconies on all building elevations and they project into the tower setbacks. The proposal also offers 161 vehicle parking spaces underground with no surface parking. There are 250 bicycle parking spaces provided. In an attempt to respond to comments received from planning staff and area residents, the Applicant revised its application to increase the tower setback from the *Neighbourhoods* designation to the east to between 7.5 and 15 metres and to increase the tower stepback from McGill Street to 2 metres. The tower massing in its north-south alignment has been decreased by 5 metres at the north end of the tower. The ground floor has been pulled back from the Church Street property line to allow for a 4.5-metre sidewalk. The building height is slightly less at 0.65 metres.

### **The site and surroundings**

The subject site, known municipally as 365-375 Church Street, is rectangular in shape and is located at the northeast corner of Church Street and McGill Street. The subject site is currently used as a commercial surface parking lot with a 3-storey building and two retail units at grade with four residential rental units above. This building will be demolished to accommodate the proposed development. A small commercial building at the very northwest corner of the site belongs to a separate owner; that building is not part of this development application and will continue to stand on the northwest corner of the site.

The site is designated *Mixed Use Areas* in the City's Official Plan and is located within this Plan's Downtown and Central Waterfront Area. Map 1 of the "Downtown Tall Buildings Vision and Performance Standards Design Guidelines" (Office Consolidation June 2012) complements the City's 2006 Tall Buildings Guidelines designates the subject portion of Church Street as a High Street. Map 2, the Downtown Vision Height Map, depicts this portion of Church Street as capable of accommodating tall buildings of between 15 and 25 storeys in height. The site is zoned dually with the majority of the site zoned CR T3.0 C2.0 R3.0 (permitting a variety of residential, commercial,

recreational, community service, institutional and cultural uses) and a small, north easterly portion of the site, including the frontage on Granby Street (that will serve as the driveway access to Granby Street) being zoned R3 Z1.0 in Zoning By-law No. 438-86 (permitting a variety of residential uses from detached uses to apartment buildings). The maximum permitted density is 3.0 times the lot area and the maximum height permitted is 18 metres.

A 12-storey Toronto Community Housing Corporation (TCHC) residential building is located on the north side of Granby Street at Church Street. South of the site across McGill Street is the two-storey Family Service Toronto building that sits just north of the subject site on Granby Street. That site is also the subject of a rezoning application for a 34-storey mixed use building. East of the site is the low-rise McGill Granby neighbourhood. On the west side of Church Street is another commercial surface parking lot and at the southwest corner of Church Street and Granby Street is a designated heritage building (Stephen Murphy House), currently used as a nightclub and bar. Further west is the other part of the McGill Granby low-rise neighbourhood. There are tall residential towers – some many storeys taller than what the Applicant proposes to build – along Gerrard Street East, Carlton Street, Yonge Street and Jarvis Street.

### **The McGill-Granby neighbourhood**

The subject site is located on the east side of Church Street between McGill Street and Granby Street. This section of Church Street bisects the low-rise McGill-Granby neighbourhood. This neighbourhood is bounded broadly by Yonge Street to the west, Carlton Street to the south, Jarvis Street to the east and Gerrard Street to the north. The neighbourhood comprises older homes situated among large mature trees and abundant vegetation with tall residential and commercial buildings situated on the boundary streets surrounding the interior low-rise neighbourhood. The Official Plan anticipates little change in house forms that comprise the low-rise neighbourhood and change generally has been minimal in respect of the interior of this neighbourhood.

Besides bisecting the low-rise neighbourhood, a significant character of this short stretch of Church Street is that, like the low-rise neighbourhood to the west and east of Church Street, there has been little change over the years. Ryerson University

continues its development goals farther south along Church Street and Mr. Glover opined that development of the university is improving the area. Maple Leaf Gardens is situated only a few blocks north has also contributed to this improvement through the revitalization as a grocery store and sports facility. Change has been slow in coming relative to this section of the street with far more development occurring farther north and south as well as in the Downtown Core and in other nearby neighbourhoods.

Currently, the subject area of Church Street between Carlton Street and Gerrard Street is home to several commercial parking lots and under-developed buildings. This portion of Church Street has been called rundown and under-utilized in comparison to its potential for residential and mixed use development such as that presented by the Applicant in this hearing. Off of Church Street, the interior component of the McGill-Granby neighbourhood remains stable and largely unchanged. The Board is of the view that this rezoning application has the potential to assist in improving the character of this section of Church Street while addressing the City's planning, policy and urban design goals and in particular in a manner that does not disrupt or adversely affect the character of the adjacent McGill-Granby neighbourhood to the east and west of Church Street.

The City's solicitor, the City's planner and a number of residents told the Board that for more than three decades, planning commissioners and city councils have adopted special policies in various iterations of the City's Official Plans that address this area and give protection to the low-rise neighbourhood. The 1980 McGill/Granby Study (Exhibit 1, Tab 14) proposed that the area be designated as the "McGill/Granby Area of Special Identity." The Board finds that the special identity of this neighbourhood has been established.

In attaining this recognition from the City, the Study also addressed area-specific planning issues in the low-rise neighbourhood and provided guidelines for development in the area. The Study recognized the impacts experienced in the area, which include among other things overshadowing by high-rise buildings. A 1979 Residents Association letter on file states two objectives for planning policy in this area: first, the protection of existing housing pockets, the encouragement of more residential development and the reinforcement of existing residential development; and second, the enhancement of the quality of the residential environment within the housing

pockets and to protect them against the adverse impact of surrounding non-residential development.

The McGill/Granby Study also references Church Street as a spine that intersects the two low-rise pockets that comprise this neighbourhood (recognizing that the neighbourhood is surrounded by “non-residential uses and taller buildings”). Council was urged to promote “the conservation and stability of the area by encouraging the preservation of house form buildings and their continued use for housing” in Residence Areas. In the “Medium Density Mixed Commercial-Residential Areas” that surround the Residence Areas, Council was urged to encourage the development of new housing while ensuring that such projects are designed to minimize the impact of such development on the low-rise housing pockets.

Special consideration of this low-rise neighbourhood found expression in previous Official Plans. Today, the current City’s Official Plan includes Area Specific Policy No. 151 that seeks to conserve and keep stable the McGill Granby Area through the preservation of house-form buildings and their continued use for housing, and to encourage the development of new housing in *Mixed Use Areas*. In the Board’s view, the achievement of these two objectives is *prima facie* evidence of the proposal’s successful achievement of these goals. The third component of this Policy requires the Board’s fuller assessment of the proposed rezoning against this objective in the Policy section of this Decision.

- c) New buildings within the *Mixed Use Areas* will be designed to minimize the extent to which they overlook, overshadow, or block views from existing or committed house-form buildings, and to ensure that the location of new vehicular access routes does not interfere with the use of the private open space of adjacent houses.

In assessing the rezoning application, the City’s two planning witnesses used the McGill-Granby neighbourhood bounded by Yonge, McGill, Jarvis and Granby Streets as their study area whereas the Applicant’s two planning witnesses also used this area but also broadened their study area to include Church Street as far north as Wellesley Street and as far south as either the Spire residential tower at Adelaide Street (Mr. Glover) or as far south as Queen Street (Mr. Smith). As Urban Design Planner Peter Smith told the Board, the preferred approach to assessing the appropriateness of the subject site lies not only in its immediate context (that short portion of Church Street

between Carlton Street and Gerrard Streets) but instead in the context of the existing and emerging city structure. Mr. Smith reasoned that in looking at a sample size that is too small, like this narrow section of Church Street book-ended as it is by the low-rise neighbourhood, one might not be able to derive enough information to guide the analysis, thus potentially limiting conclusions regarding the readiness of a site to develop or leading to inappropriate conclusions. With a study area of only three blocks and opining that only limited development should occur here and not a tall building, Planner Smith suggested that the context is too narrow and the Board is persuaded by this logic and approach. Thus, to look at the existential question of height in this area, one must consider the aforementioned Area Specific Policy No. 151 as well as the entire Church Street corridor, particularly where this short section has seen comparatively less development up until recent years than the west Downtown Area and along the Yonge Street and University Avenue corridors. As Mr. Smith explained, it is unusual to find a street like Church Street in the Downtown Area with a number of parking lot uses, automotive uses, under-utilized land and without much redevelopment.

The Board accepts as persuasive the evidence that this low-rise neighbourhood behaves as an enclave among larger downtown residential and commercial development in the form of tall building. However, the Board finds the broader study area to be a necessary component of the analysis required to inform any planning opinion of this proposal. One must consider the broader downtown context of tall buildings and similar development as well as the existence of tall buildings to the north and south along Church Street if a full and fair understanding of the application is to be achieved. By focusing solely on the site's potential for development in its immediate context – that is, how this building might impact a portion of the east-lying low-rise neighbourhood – while failing to consider development more broadly all around this area, the Board is not satisfied that all of the information could be fully and sufficiently presented to capture an accurate picture of the context – that is, a tall building on a street that anticipates tall buildings in the Downtown Core of the largest city in Canada and where tall buildings coexist with low rise built forms of all types. The Board prefers the approach proffered to it by the Applicant's planners for these reasons.

## **The policy context**

The Board was presented with references to specific policy excerpts found in the 2005 Provincial Policy Statement, the Growth Plan for the Greater Golden Horseshoe, the City's Official Plan and its Area Specific Policy No. 151 as well as the Tall Building Guidelines.

After a thorough reading of the provincial documents and the various planners' evidence surrounding these, the Board finds that the rezoning of the subject site does not offend these upper-tier planning instruments. It is clearly a site that is worthy of residential and mixed use intensification within the rubric of broad provincial direction. It is a site served well by proximate bus and subway transit modes in the downtown area and is within walking distance to all of the usual conveniences associated with employment, commerce and recreation.

In the context of these provincial documents, the Board was not persuaded by those portions of the City planner's evidence that recited sections of the *Planning Act* (Act) and referenced broad policy objectives of the Provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe to opine that this particular proposal offends Official Plan policies to the extent that conformity with the upper-tier documents is somehow not achieved. This evidence went on at length and in considerable detail in this planner's evidence outline to opine that the building should not be built. This was, in the Board's view, an unhelpful part of his analysis and an unnecessary methodological exercise in top-down criticism of the development proposal at hand to the point of overkill. The planner's dissecting of this site-specific rezoning application in this manner of situating it within necessarily and purposely broad upper-tier policies associated with provincial growth and intensification directives (which he opined the proposed development allegedly offends) could be as rigidly applied to a myriad of existing and prospective tall building sites in Toronto where degrees of variation in heights, mass and density are to be found in the context of adjacent low-rise built forms. The Board is hard-pressed to consider this type of intensification in the Downtown Area of the City to offend these documents. The City planner's approach to assessing the proposal against the provincial planning instruments was a most unhelpful exercise in the Board's view and one that the Applicant's planners correctly avoided, offering more balanced opinions and focusing on the Official Plan policies. It was far more



appropriate, germane and important for the Board's determination to consider this proposal in the context of the relevant and specific municipal policies to assess the application. The concept of creating a tall building in Downtown Toronto does not lend itself to the level of contraventions of upper tier planning policies – not to mention those of the Act – which the City planner espoused. In the Board's determination, Mr. Glover's evidence regarding the rezoning application's achievement of general and broad development objectives that are consistent with the direction and intent of the Official Plan was an approach that the Board finds more digestible, credible and reflective of the immediate policy provisions that must be considered. The rezoning application does not offend the direction and policies found in the Provincial Policy Statement (PPS) and the Growth Plan for these reasons.

The Board turned next to the Official Plan, which has a clear objective of ensuring that development within and adjacent to *Neighbourhoods* respects and reinforces the existing physical character of the neighbourhood and requires that no changes be made that are out of keeping with its physical character. While the Board read the Official Plan policies together and in their entirety, most relevant to the Board's determination were the Tall Buildings Guidelines and the June 2012 Downtown Tall Buildings Vision and Performance Standards Design Guidelines as well as the excerpted Official Plan policies and statements found in Chapters 2 to 5, including: Policy 2.2.1 Downtown: the Heart of Toronto; section 2.3.1 Healthy Neighbourhoods; section 3.1.3 Built Form – Tall Buildings; section 4.5 Mixed Use Areas (development criteria); and Site and Area Specific Policy No. 151.

In the case at hand, the proposed tall building is very like the other tall buildings that exist in proximity to it, that exist all around the low-rise neighbourhood and that exist throughout the downtown area of the City. These are built atop sites of similar and larger sites and the Board does not accept as persuasive the City planner's opinion that the subject site is some sort of anomaly. This under-developed and under-utilized strip of Church Street already bisects the low-rise neighbourhood. The introduction of a tall building on the subject site introduces uses that are expressly permitted and contemplated in the Official Plan and in the Board's view, revitalizes an area in a manner entirely consistent with the development considerations espoused in the Official Plan.

The Board considered the proposed design of the building and its capacity to offer a gradual transition of scale and density as called for in Official Plan Policy 2.3.1 Healthy Neighbourhoods, Policy 2. The Board is persuaded that the separation distance between the subject site and the abutting low-rise neighbourhood, while close, nevertheless achieves a level of transition that is acceptable and successful in maintaining adequate light and privacy for residents in the low-rise neighbourhood. The Plan doesn't call for "unobstructed" light and privacy – only that it be adequate, which is what the proponent offers through a most thoughtful on-site design for the building. It is not as if the proposed tower is massive or out of keeping with the pattern of tall and taller built forms proximate to this site. Almost predictably, the design provides for a podium structure atop which will sit a narrow tower whose built form is an expression of the current approach to tall building construction in Toronto – the point tower. Accordingly, its mass and built form will stand out against the western sky for the east-lying low-rise neighbourhood but no more than any of the other tall buildings that surround the entire low-rise neighbourhood and certainly not in a manner that makes its siting here inappropriate. There was no persuasive planning or urban design evidence to support that contention by the City's two witnesses.

The Board determines it is an unrealistic proposition that development should somehow be confined to small-scale built forms on this site given the provincial goal of intensification (and in an area of the City where such growth is contemplated and at taller heights). The City has retained an 18-metre height limit for this *Mixed Uses Area* of Church Street but the previously-cited Downtown Tall Buildings Vision and Performance Standards Design Guidelines clearly identify this section of Church Street as worthy of a tall building with heights of between 15 and 25 storeys so long as certain performance standards are met.

The target of between 15 and 25 storeys and the identification of this section of Church Street as a High Street are not in dispute but the Applicant's planner should not be criticized (as the City's counsel did) for the witness having placed less weight on some performance standards and not had regard for others as enumerated in the aforementioned Guidelines. The act of applying municipal guidelines (and by extension their corresponding performance standards) to Official Plan policies in the assessment of development applications is a familiar exercise in these hearings. The weight to attribute to those guidelines and corresponding standards and criteria is often

overstated by witnesses who oppose development applications. It is an area that is open to wide interpretation by all, including the Board in its assessment of the proposal. However, the City provides some guidance through Policy 1 of section 5.3.2 of the Official Plan, "Implementation Plans and Strategies for City-Building", on the weight to ascribe to guidelines related to Official Plan policies. This policy directs that:

...guidelines will be adopted to advance the vision, objectives and policies of this Plan. These...guidelines...are not part of the Plan unless the Plan has been specifically amended to include them, in whole or in part, and do not have the status of policies in this Plan adopted under the *Planning Act*.

Further, the City's supplementary report to the Downtown Tall Buildings Project (Exhibit 12) – a report to amend the Downtown Tall Buildings Vision and Performance Standards Design Guidelines, Revised Downtown vision Height Map – removes height ranges and leaves the determination of heights to the rezoning process in individual cases. The report notes that the Guidelines will evolve over time to reflect new findings or recommendations. Although focused on a developing section of Bloor Street East, there is general application of this approach to assessment of the subject site and the concomitant application for increased height. The Board finds that the Guidelines do not carry the weight of Official Plan policies and they should not be construed as such. Moreover, it is not fatal to any planner's evidence should consideration of various criteria, standards or other elements of such materials be absent from planning analysis proffered to the Board given the above-cited direction in section 5 of the Official Plan.

In this context, the Board finds that Mr. Glover had appropriate regard for these Guidelines to the extent that he made an evaluation of their utility (as he stated) and attributed to some performance standards the weight necessary to inform his overall planning opinion. His exercise was to focus on the policy context and this is an approach that the Board finds persuasive. Further, the Board is of the view that had the City been inclined to offer protection to the McGill Granby neighbourhood from development occurring in the form of tall buildings, it had the opportunity to undertake such protection in its Plan beyond guidelines and to do so on Church Street. It chose not to and the fact that tall buildings are identified for development potential along this section of Church Street lends persuasive evidentiary weight to the possibility of locating a tall building on the subject site. It also supports broadly the Official Plan policies that speak to matters of intensification, growth, built form, transition and the

protection of the low-rise neighbourhood as long as the development does not threaten or destabilize the interior low-rise neighbourhood in the matter at hand. The Board finds that the spirit of these Guidelines finds expression in the subject proposal, and though not determinative of the planning analysis, they confirm the City's policies which the Applicant's proposal satisfies. In the Board's view, the rezoning application for the subject site is worthy of approval.

The Board also observed that despite existence of comprehensive Guidelines and Official Plan policies affecting tall buildings and development from which the McGill Granby neighbourhood continues to benefit – policies that acknowledge its special identity – development through residential intensification in the form of tall buildings continues all around the area.

In section 2.2.1 – Downtown: The Heart of Toronto of the Official Plan, the City recognizes that a dynamic downtown is critical to the health of a city and to the region that surrounds it.

This section also notes that growth will not be spread uniformly across the whole of Downtown and there are many residential communities Downtown that will not experience much physical change at all, nor should they...and their physical setting will remain largely unchanged. The City planner would have the Board accept that this neighbourhood should not be changed by this rezoning application. In examining the lots and built forms of the McGill Granby neighbourhood, the Board is so persuaded. The interior of the low-rise neighbourhood, comprising single, row and semi-detached dwellings on uniformly-shaped lots, appears to be generally static from Yonge Street almost to Church Street where it is interrupted by a series of *Mixed Use Areas* uses such as surface parking lots, commercial buildings and other non-residential uses. The character of this section of Church Street differs markedly from the low-rise neighbourhood on either side. From Church Street, the neighbourhood then continues east from the subject site over to Jarvis Street. Development has occurred all around this neighbourhood while it has stayed generally unchanged.

There was a clear expression by those in opposition that this tall building cannot be built on the lands which in fact already bisect this neighbourhood along both sides of Church Street. It is evident that low-rise built forms are not being contemplated for this site or

for adjacent Church Street sites to the north and south given the City's contemplation of tall buildings of between 15 and 25 storeys along this section of the street. Both sides acknowledged (as did most residents who spoke to the Board) that a higher use is anticipated for this *Mixed Use Areas* site. The area around the neighbourhood has developed, grown and changed as a significant number of tall buildings have been constructed on the streets of its periphery. The Board is not persuaded that this site on this spine of Church Street – which delineates and separates both sides of the McGill-Granby neighbourhood – should not be developed in the manner requested. In the Board's determination, development of this type does not change physically the neighbourhood around it. If anything, it appears to contribute to its dynamic growth and revitalization and no opposing opinion or submission could or did counter this assumption. The Board finds that this is an appropriate site for a tall building and it will not affect the physical character of the interior low-rise neighbourhood situated west and east of Church Street.

The Board considered the proposal in the context of section 2.3.1 Health Neighbourhoods of the Official Plan whose policies address the relationship between *Neighbourhoods* and areas with other designations in order to ensure development is sensitive to the physically stable areas within the *Neighbourhoods* designation. Therefore, the proposal must satisfy various Official Plan policies that require development in *Mixed Use Areas* that are either adjacent or close to *Neighbourhoods* be compatible with those *Neighbourhoods*; provide a gradual transition of scale and density through the stepping down of buildings towards, and setbacks from those *Neighbourhoods*; and to maintain adequate light and privacy for residents of those *Neighbourhoods*. In this vein, the Board finds the subject proposal achieves this direction in the Official Plan. The Board is not persuaded that the customary and usual design components articulated on the proposed podium and tower differ from the style and design found on dozens of other tall residential buildings throughout the neighbourhood and the Downtown area. To the extent possible that impacts are minimized, the proposal provides screening of the podium's outdoor amenity area; balconies begin well above the ground; and an appropriate degree of separation is achieved such that the extent of overlook caused by the new structure is nothing different than what one experiences elsewhere in the compact urban environment.

Development is anticipated and expected to occur and the impacts that this building create vary little with what so many others create.

Interpretation of the degree of impacts is an exercise in which many participate during Board hearings and whether the City, the experts, local residents or the Board, all have their own views. The City planner was methodical in his analysis of the local context and in each case he characterized every other tall building surrounding the subject low-rise neighbourhood as a success, achieving degrees of transition through stepback, scale and built form that responded favourably to the local low-rise built forms. They were somehow distinct and different from what the Applicant proposes to build. Residents who opposed the proposal did not want the shadows and loss of privacy to be created by the overlook of a “looming” tower in their midst. The Board notes, however, that many of the other tall buildings on the periphery already cast long shadows across, and have balconies that overlook the low-rise neighbourhood. Their proximity is not and cannot always be mitigated by lengthy and/or gradual transitions of scale through built form and distance. There is simply not the room in this dense area of the City and neither the City’s witnesses nor the residents demonstrated persuasively a distinction between these tall buildings and the subject site. If it is then an argument of this section of Church Street bisecting the two halves of the low-rise neighbourhood, the Board has more to say on that below. There was no satisfactory reason proffered to the Board or supported by any planning rationale to declare this site to be too small to provide room for transition.

The juxtaposition of a modern tall building and old low-rise built forms at this location can and will provide a contemporary and appropriate balance of uses on a largely *Mixed Use Areas* site adjacent to a *Neighbourhoods* designation using modern design techniques such as those explained by the Applicant’s planners – a podium to mirror the nearby low-rise context, a stepped back tower, ample fenestration and contemporary materiality and a narrow built form that is designed to minimize shadows as much as possible during the months when the sun is low in the sky. Sky views are not obliterated to the extent the City would have the Board find and in fact the tower has the potential to create visual interest for persons looking west from Jarvis Street and the east-lying low-rise neighbourhood. The Board was not persuaded by the City’s planner’s opinion. Rather, it determines that an appropriate and acceptable level of

transition has been achieved given the context of the site and its proximity to the low-rise neighbourhood in a way that satisfies this policy of the Official Plan.

The Board considered the proposal in the context of section 3.1.3 Built Form – Tall Buildings of the Official Plan whose policies require development proposals to fit with the existing and/or planned context and limit local impacts on neighbouring streets (among other things) by creating appropriate transitions in scale to neighbouring existing and/or planned buildings; providing adequate light and privacy; limiting any resulting shadowing of neighbouring streets, properties and open spaces; and locating vehicular parking, access, service area and utilities so as to minimizing their impact on the surrounding properties. The Board finds this proposal takes into account the setting of the low-rise interior neighbourhood with appropriate levels of stepping back, placing balconies on higher levels of the building and offering design features as presented that mirror the other contemporary tall buildings that the City and this Board have found worthy of approval on similar sites throughout the downtown area.

The Board also considered the proposal in the context of section 4.5 *Mixed Use Areas* of the Official Plan whose policies direct, among other things, that development provide a transition between areas of different development intensity and scale through appropriate setbacks and stepping down of height, particularly toward lower scale *Neighbourhoods*; that locate and mass buildings so as to adequately limit shadow impacts on adjacent *Neighbourhoods*; that locate and mass new buildings to frame the edges of streets; and locate and screen service areas, ramps and garbage storage to minimize the impact on adjacent streets and residences; and provide indoor and outdoor recreation space for building residents. The Applicant's witnesses offered comprehensive explanations of how the massing and other considerations for development in this designation achieve the required level of transition between areas of different development in the manner identified above and most notably, in a manner that limits shadow impacts (discussed later in this Decision).

As stated in these reasons, the site is subject to Official Plan Area Specific Policy No. 151. The Board finds the two first objectives of this policy to be achieved through this rezoning application: first, that no rezoning is proposed for the stable low-rise interior neighbourhood and the house-form buildings continue to be used for housing; and second, that new housing in the form of condominium residences in a tall building is

being proposed in the *Mixed Use Areas*. As for the third objective already listed on page 6, the Board finds that the building has been designed in a manner that is sensitive to its surroundings to the extent possible in this compact and dense urban environment with balconies placed on higher floors, the shadowing is incremental over the as of right condition based on the shadow studies; and only a partial sky view is blocked from the rear yards of the east-lying neighbourhood. Also, vehicular access has been designed strategically to provide access to the site in a manner that in no way interferes with the neighbours' use of their private open spaces.

As noted, the Board considered the proposal in the context of the City's Tall Building policies and it had regard for the Tall Building Guidelines. Section 1.2 deals with transition in scale; that is, with the relationship in massing between a tall building and its surroundings. In this case, the transition is achieved at the scale of the block by the podium of similar scale to the adjacent low-rise neighbourhood and the stepping back of the tower. While the Tall Building Guidelines suggest that greater step backs should be achieved the taller a building is in relation to its base, and both the City planner and the City's Counsel criticized the proposal for this design element, Counsel for the Applicant advised the Board that the Applicant had initially designed the building so as to provide a greater transition between the site and the low-rise neighbourhood but City staff had directed the Applicant to bring the building closer to the edge of Church Street. This was not disputed by the City and speaks for itself as to how seriously the City truly considers this design element to be in the Board's assessment of the overall application.

Section 2.1 deals with building placement and orientation. The proposed tower is located at the west end of the site in order to provide separation from the east-lying houses and rear yards. There are no servicing issues or impacts identified. The Board finds section 3.1 to be achieved with the base podium designed to be similar in scale with the adjacent *Mixed Use Areas* and *Neighbourhoods* residential buildings. Section 3.3 suggests spatial separation of 25 metres between tower faces and the proposed tower will be approximately 24 metres from the existing TCHC building on the north side of Granby Street.

Section 4.1 addresses streetscape and landscape issues. The Board finds the podium design to be contemporary and the entire proposal will improve the existing streetscape



adjacent to the site particularly as the Applicant proposes to replace the existing parking lot with street-related retail and residential uses that has the propensity to revitalize this tired section of Church Street.

Section 4.3 speaks to “adequately limiting” shadow and skyview impacts on neighbouring streets, properties and open spaces. The Board’s finding on such impacts is equally applicable to its finding that the recommendation for this section of the guidelines is achieved and the impacts are acceptable.

There are also many fine elements of design that the McGill/Granby Study asks the City to bear in mind when considering development applications in and around the subject neighbourhood. That being said, one is hard-pressed to justify the application of these 30-plus-year-old guidelines as important and non-negotiable considerations for development in and around this neighbourhood. The City and opposing residents would have the Board apply them very narrowly in its assessment of the appropriateness of rezoning the subject site. However, in the context of contemporary intensification projects and of current growth and development in Toronto, the rigid application of these guidelines, which do not carry the same weight as policy, is not an acceptable assignment of weight in the Board’s view. The same may not be said for the extra layer of protection that Official Plan Area Specific Policy No. 151 offers for the area. The Board places greater weight on the policy instrument and this particular policy but finds that the Applicant has satisfied its requirements for sensitive development in a manner that protects the residential uses.

In the Board’s determination, the proposed design satisfies the intent of the guidelines contained in the Design Criteria for Review of Tall Building Proposals.

### **Height and transition**

Although discussed above in the policy context, in terms of height and overlook, it is not in dispute that there are many tall buildings in the surrounding area. Of note is the closest tall building – a 12-storey Toronto Community Housing Corporation building at the corner of Church Street and Granby Street and due north of the subject site that offers overlook into the rear yards of a number of low-rise dwellings in the McGill/Granby neighbourhood. To the west, tall buildings of heights ranging between 5 and 43 storeys already overlook the rear yards of the single and semi-detached houses

on the north side of Granby Street. Two towers of 43 and 33 storeys are built on the west side of the McGill/Granby neighbourhood and these very tall towers abut these yards while a 20-storey slab building extends across the yards of more than a dozen of these houses on this street. There are 20 and 18-storey buildings on the east side of Yonge Street that provide overlook and shadows on the low-rise neighbourhood. A 34-storey tower and a 12-storey building on the north side of Gerrard Street East also cast shadows on the low-rise neighbourhood. A 25-storey tower and a 22-storey tower on the same street also cast shadows on the eastern part of this low-rise neighbourhood.

It was uncontested evidence that the City was able to support many of these buildings being built along the neighbourhood streets and area residents did not oppose their construction (21 Carlton Street, 50, 56 and 296-298 Jarvis Street for example). The City's counsel and the City planner told the Board that the heights of these tall buildings tend to be located on the perimeter of the low-rise neighbourhood. However, the Board looked closely at the shape and nature of the low-rise neighbourhood's physical layout and observed that McGill-Granby neighbourhood is not contiguous in terms of its built form development. It is evident from all of the visual exhibits that the west and east low-rise components of this neighbourhood do not link up in some seamless fashion. Church Street separates the two halves and as detailed, a number of parking lots, a night club, some mixed use buildings and a number of under-developed sites comprise the spine of Church Street as it bisects this area. In the context of the physical condition of the area, the Board does not find persuasive that the argument of placing a tall building in a manner that separates the two halves has merit. Height is a relevant consideration when considering the siting and placement of a tall building. The Applicant's planning witnesses have shown persuasively how this might be achieved on this site. And, given the context of the placement of tall buildings all around the neighbourhood, the Board finds this site also to be a reasonable one for the placement of this tall building as designed, which will impact positively its immediate context and contribute to the character of the broader area both west and east of Church Street by mirroring a built form that already exists.

On this evidence alone, the Board is persuaded that the subject site is an appropriate one for the placement of a podium-based tall building whose height is entirely in keeping with what is occurring in the immediate and surrounding area. Such buildings have been built and will continue to be built and the Board neither read nor heard any

persuasive planning evidence that distinguishes this development from other tall built forms in both the immediate, proximate and broader areas of study. Naturally, it is recognized that no amount of transition can ever mitigate entirely the impacts of a tall structure in proximity to dwellings of lower heights but the loss of a portion of some sky views and the shadows that a point tower such as this might create are not impacts that this Board Member considers to be significant or adverse.

Transition mitigates issues that may arise from locating tall buildings adjacent to low-rise *Neighbourhoods*. As already discussed, Official Plan Area Specific Policy No. 151 requires that any new development in *Mixed Use Areas* within its boundaries mitigate impacts on views and shadowing on the existing house-form buildings in the area. The Board has found persuasive evidence through its design that this tall building, with its height and massing, will not impact views from the existing houses to the east and their rear yards as well as the public realm in a manner that diverges significantly from the as of right condition, which the City showed in its shadow studies. Overlook will be possible from the balconies but these are placed at higher levels (beginning at the fifth floor), creating an appropriate response to the City's requirement for appropriate levels of transition from *Mixed Use Areas* to *Neighbourhoods*. Also, the step back conditions on the south half of the east elevation of the tower and podium overhang are deemed by the Board to be sufficient to implement the intent of the Official Plan in respect of section 4.5 *Mixed Use Areas* that require transitions between areas of different development intensity and scale, particularly towards lower scale *Neighbourhoods*. The east wall of the tower is 15 metres distant to the majority of the easterly property line that faces the sides of low-rise dwellings. At 15 metres of distance between the proposed tower and the closest west-facing windows of the side walls of the most adjacent row of houses (the closest property situated east on Granby Street), the Board determines that the tower setback from the low-rise neighbourhood to the east is acceptable and implements the intent of this policy (albeit planning staff typically recommend 20 metres).

The Board was told that the podium edge has terraces to serve as visual barriers with plantings to block views from people using the terrace. As stated, there will be no balconies on the tower portion of the building until the 5-storey point. The goal was to minimize interface and overlook conditions in the immediate vicinity. As for higher views, this is addressed by virtue of the five-storey height distance and during the

summer, the existing of mature trees that exist to the east and west obscure views and in fact eliminate issues of privacy and overlook during these months when most people are out of doors enjoying their rear yard amenity spaces.

In the Board's determination, issues of overlook and privacy will always be created by any tall building. Such development is contemplated, anticipated and planned for in the City's Official Plan. There are already overlook views existing between the low-rise houses into the rear yards and windows among and between these houses that are more direct than any views that the proposed building will afford from the balconies, which look from greater heights and separation distances down and across the broad rear yard condition of the east-lying neighbourhood. The Board does not find the introduction of this type of overlook or alleged loss of privacy to be a valid planning consideration in the context of what already exists and what has been approved in terms of tall building development throughout the area.

The difference between 25 storeys and 29 storeys is to be measured in metres and the long shadows to be cast are the consequences of this type of development in the City. But even with an additional four storeys above the 25-storey level, the Board finds the Applicant's design not to be dissimilar from other tall buildings that are built on small sites where there is simply not the room to accommodate long and gradual stepping back of structures and stepping down of heights toward lower-scale development. In this case, the Applicant has managed to achieve a worthy design in conformity with the direction with the guidelines and policies that find expression in the Official Plan.

### **Shadow studies**

The Board examined in detail the Wallman Architect shadow renderings and models and sees relative consistency in the data contained in both the Applicant's and City's shadow studies. The City examined the as of right condition while the Applicant chose to focus on the impact from the proposed built form. With both sets of data presented, it is clear that as the shadows lengthen eastward, they create impacts on the low-rise neighbourhood and at times of the year can stretch toward Allan Gardens further east across Sherbourne Street. Allan Gardens has been identified as an area of particular importance given the City's preference that the impacts of shadows on parks be limited and that such shadows do not adversely impact the park's function. However,

shadowing from the urban development is inescapable and indeed the park's own mature landscaping contributes to the shadow effects.

Between March 21<sup>st</sup> and September 21<sup>st</sup>, there is no shadow impact on Allan Gardens after 4 p.m. For March 21<sup>st</sup>, when the sun is lower than the summer months, the Board observed that most impacts to be felt by the building's shadow will occur for several hours in the afternoon from 2:18 p.m. through 5:18 p.m. The Board can find no evidence of adverse shadow impacts on Allan Gardens that this site would create. The difference between the as of right condition and what is proposed is not significant enough to warrant dismissal of the application. There was also no evidence of incremental shadow impacts on Allan Gardens that exceed Official Plan policy.

Most evident from the studies is the fact that the incremental shadows created by the proposed building as opposed to a 15-storey building (as contemplated in the Tall Building Guidelines) are in fact minimal; they are not significant; and they do not create adverse impacts. The extent of the incremental impact of shadow on the low-rise neighbourhood at various times of the day and seasons were detailed for the Board in this regard. The Board is mindful that the City has already approved tall buildings in the neighbouring area that cast longer shadows of greater duration on *Neighbourhoods-*designated areas than those that might be cast by this new building. The three hours of moving shadow that this or an as of right building cannot be seen to adversely impact the stability of this area given its context. There was no evidence presented to say that the previously constructed peripheral tall buildings that already shadow the neighbourhood have somehow destabilized it particularly where the City's witnesses admitted that the neighbourhood continues to remain stable despite their presence.

The Board determines that shadowing of the type presented in the evidence for this case is acceptable in the urban context and environment and in the characteristics of this particular area. It is also acceptable by virtue of the City's past practice of approving tall buildings of greater heights abutting this (and other) low-rise neighbourhoods; and in respect of the conditions resulting from what one might reasonably expect from the siting of a taller point tower near lower-rise dwellings – shadows that are relatively fast moving. In this case, the shadows will last for three hours on portions of the neighbourhood to the east. This is a usual impact of the tall built form that one finds in the surrounding area, downtown and throughout the City where *Mixed Use Areas* abut

*Neighbourhoods* areas. The Board notes that there are existing shadow impacts from the actual low-rise dwellings themselves as they create and cast shadows on their neighbours' dwellings and rear yards. The Board finds that the addition of shadows to the as of right condition in this case will not to create unacceptable impacts on the adjacent low-rise built forms and rear yards.

### **Section 37 of the *Planning Act***

The City contends that the Applicant should be required to provide a cash contribution to the City to be used by it for capital improvements to public parks in the vicinity of the site with priority given to Allan Gardens. In its view, there should be public benefits from an Applicant who requests several hundred residential units that the City submits create neighbourhood impacts.

In justifying its request for an amount in the sum of \$1,230,000, City staff examined a number of recent section 37 contributions from the area as calculated based on the requested GFA in those cases. The City removed both the higher and lower figures to arrive at the requested figure for the Applicant. As the staff report states:

“Section 37 benefits have not been determined in the absence of an agreement on appropriate height and massing and other issues that were raised in the report.”

However, when asked by the Applicant's counsel, the City planner could not furnish the Board with either the costing estimate or details on the proposed amount to be charged. The Board was persuaded by the evidence of the City planner that the Applicant has legitimate concerns regarding the request for a sum above one million dollars when there are no site-specific details or calculations provided; no costing plan provided; no information provided in any reports to Council; and where the City planner, who is speaking to this proposal, acknowledges he did not do an assessment and he cannot furnish any of the information.

The use of section 37 must be grounded in fair, clear, transparent, predictable and specific requirements that are set out in the Official Plan and that are not arbitrary in their application. The Board is adamant that the Applicant has a right to know how the figure is derived in sufficient detail. While the City's counsel submitted that City staff

reviewed other section 37 benefits related to similar and larger development in the area, it does not appear to have been part of any detailed assessment. On this basis, the Board was concerned that the City simply took the median range of the benefits provided in other cases and planted the subject application squarely therein. The Board is not persuaded that this was a particularly helpful exercise in helping it to understand why a certain amount was decided upon. Other than the formulaic calculations, there is nothing substantive in its request for the benefit that justifies the amount sought.

The Board determines that the City has not assessed sufficiently the requirement for a section 37 benefit from the Applicant nor established a nexus between the amount of money sought and the subject site. Accordingly, the Board will not assign to the Applicant a payment of a section 37 benefit in this case.

### **Conclusion**

Given the context of tall building development in the downtown core of the City of Toronto as well as its immediate area, the proposed building does not represent over development of the site. Through its design, the proposed building will provide adequate and appropriate transition to the low-rise neighbourhood to the east. The Board also finds that it creates no significant issues of shadow impact, overlook and privacy for the low-rise houses to the east. The Board determines that the rezoning application conforms to the Official Plan policies and further implements the Council-approved guidelines "Design Criteria for the Review of Tall Building Proposals".

The proposed development would result in an appropriate residential intensification of an under-utilized site located within the Downtown Urban Growth Centre and within walking distance of the College Street subway station. The proposal is in keeping with the planning policy framework established by the Provincial Policy Statement, the Growth Plan and the City of Toronto Official Plan. Its height, massing and density are contextually appropriate and the overall proposal is considered to be compatible with surrounding development and is in keeping with both the existing and planned city structure in this area of the Downtown Core.

From an urban design perspective, the proposal replaces a surface parking lot with a building of high architectural quality that will animate the public realm with street-related

uses and residential uses and which provides appropriate transition to the adjacent land uses.

The Board finds that the proposed development and the proposed Zoning By-law Amendment that implements the development is appropriate for the site and represents good planning. The Board notes that this is a smaller-sized site but it is not so small that a successful high-density development such as the one before this Board cannot accommodate the propose structure. The *Neighbourhoods* development objectives contained in the Official Plan and associated criteria are not offended by this proposal.

In consideration of the issues established at this hearing, the Board determines that the site is an appropriate one for a tall building of this size and design. The Applicant has offered an appropriate transition from the building to the adjacent low-rise neighbourhood and the incremental aspect of shadowing generated by the proposed building does not impact adversely that neighbourhood. The proposed rezoning application conforms to the relevant policies of the Official Plan and finally, the payment of a section 37 benefit is not appropriate in this case.

**THE BOARD ORDERS** that the appeal is allowed and Zoning By-law 438-86 is amended with the Zoning By-law Amendment contained in the final version of that Amendment (as inserted in Exhibit 1, Tab 12).

So Orders the Board.

“R. Rossi”

R. ROSSI  
MEMBER



**CITY OF TORONTO**

**BY-LAW No. XXXX - 2012**

**To amend the General Zoning By law No. 438- 86 of the former City of Toronto with respect to lands known municipally in the year 2012 as 365 – 375 Church Street.**

WHEREAS authority is given to Council of the City of Toronto by Section 34 of the Planning Act, R.S.O. 1990, c.P. 13, as amended, to pass this by law; and

WHEREAS Council has provided adequate information to the public and has held at least one public meeting in accordance with the Planning Act; and

The Council of the City of Toronto HEREBY ENACTS as follows:

1. None of the provisions of Section 2 with respect to *bicycle parking space – visitor, height, grade, and parking space*, Section 4(2)(a), Section 4(5)(b), Section 4(10) Section 4(12), Section 4(13)(d), Section 4(14), Section 4(16), Section 6(3) Part I 1, Section 6(3) Part II, Section 6(3) PART III, Section 6(3) Part IV, Section 8 (3) Part I 1, 2 and 3, Section 8 (3) Part II, Section 8 (3) Part III, Section 8 (3) Part XI, Section 12(1) 232, Section 12 (2) 132, Section 12(2) 260 and Section 12(2) 286 of Zoning By law No. 438-86, as amended, being By-law No. 438-86 of the former City of Toronto, being “A By-law to regulate the use of land and the erection, use, bulk, height, spacing of and other matters relating to buildings and structures and to prohibit certain uses of lands and the erection and use of certain buildings and structures in various areas of the City of Toronto”, as amended, shall apply to prevent on the erection or use of any buildings or structures on the *lot* provided that:
  - (1) the *lot* consists of those lands delineated by heavy lines on the attached Map 1;
  - (2) the *residential gross floor area* erected or used on the *lot* does not exceed 21,550 square metres and shall not comprise more than 360 *dwelling units*;
  - (3) the *non-residential floor area* erected or used on the *lot* does not exceed 200 square metres;
  - (4) the *height* of any building or structure, or portion thereof including mechanical penthouse, erected above *grade* within the *lot* shall, in respect of the building envelope area, have a maximum *height* in metres as shown following the symbol “H” on the attached Map 2, with the exception of the following:

- (i) railings, parapets, balconies, cornices, window washing equipment, lighting fixtures, ornamental elements, stair towers, trellises, planters, partitions dividing outdoor recreational areas, guard rails, stairs, stair enclosures, wheelchair ramps, vents, fences, screens, architectural features, elements of a green roof, lightning rods, and exhaust flues, located above the *height* of each of the roof levels of the building; and
  - (ii) elevator overruns, to a maximum of 3.0 metres above the roof level shown as 99.8 metres on the attached Map 2;
- (5) no portion of building or structure erected and used above *grade* is located otherwise than wholly within the *lot* and wholly within the areas delineated by heavy lines on the attached Map 2, subject to the following which may extend beyond the areas delineated by such heavy lines:
- (i) cornices, lighting fixtures, awnings, canopies, ornamental elements, parapets, trellises, eaves, window sills, planters, guardrails, balustrades, railings, stairs, stair enclosures, vents, fences, screens, wheel chair ramps, underground garage ramps and their associated structures and landscape and public art features; and
  - (ii) *balconies* may extend up to 1.5 metres beyond the heavy lines shown on Map 2., except that:
    - A. east facing *balconies*, including *juliette balconies* shall be not be permitted below a height of 17.2 metres above average grade;
- (6) north facing windows shall not be permitted within 5.0 metres of the north lot line;
- (7) *residential amenity space* for the *dwelling units* shall be provided in accordance with Section 4(12) of By-law No. 438-86 of the former City of Toronto, as amended, with the exception that:
- (i) the indoor *residential amenity space* may be provided in multipurpose rooms which are not contiguous;
- (8) *parking spaces* shall be provided and maintained on the *lot* in accordance with the following minimum requirements:
- (i) 0.22 *parking spaces* for each *bachelor dwelling unit*;
  - (ii) 0.36 *parking spaces* for each one *bedroom dwelling unit*;
  - (iii) 0.58 *parking spaces* for each two *bedroom dwelling unit*;
  - (iv) 0.76 *parking spaces* for each three or more *bedroom dwelling unit*;

- (v) 0.035 *parking spaces* for each *dwelling unit* for visitor parking;
- (9) the maximum resident parking space reduction permitted by the provision of car-share parking spaces is capped for the subject development by the application of the following formula:  $4 \times (\text{Total No. of Units} \div 60)$ , rounded down to the nearest whole number ;
- (10) despite any existing or future severance, partition, or division of the lot, the provisions of this By-law shall apply to the whole of the lot as if no severance, partition or division occurred;
- (11) a *Temporary Sales Centre* is a permitted use;
- (12) for the purposes of this By-law all words, terms and phrases appearing in italics shall have the same meaning as they have for the purpose of the aforesaid By-law No. 438-86, as amended, except as limited or re-defined by this By-law. The following definitions shall apply:

*“balcony”* – an elevated platform which projects from a wall and includes a Juliette balcony;

*“bicycle parking space – occupant”* means an area that is equipped with a bicycle rack, stacker or locker for the purpose of parking and securing bicycles, and:

- (i) where the bicycles are to be parked on a horizontal surface, has horizontal dimensions of at least 0.6 metres by 1.8 metres and a vertical dimension of at least 1.9 metres;
- (ii) where the bicycles are to be parking in a vertical position, has horizontal dimension of at least 0.6 metres by 1.2 metres and a vertical dimension of at least 1.9 metres;
- (iii) Notwithstanding (i) and (ii) above, where the bicycles are to be parked in a stacker, being a device that allows parking spaces to be positioned above or below one another with the aid of an elevating mechanism, the parking space within the stacker shall have a length of at least 1.6 metres and the stacker shall be located in an area with a vertical dimension of at least 2.5 metres; and
- (iv) in the case of a bicycle rack, is located in a secured room or area;

*“bicycle parking space – visitor”* means an area that is equipped with a bicycle rack for the purpose of parking and securing bicycles, and:

- (i) where the bicycles area to be parked on a horizontal surface, has horizontal dimensions of at least 0.6 metres by 1.8 metres and a vertical dimension of at least 1.9 metres;
- (ii) where the bicycles are to be parking in a vertical position, has horizontal dimension of at least 0.6 metres by 1.2 metres and a vertical dimension of at least 1.9 metres; and
- (iii) may be located outdoors or indoors and may be within a secured room, enclosure or bicycle locker;

"*grade*" means 98.5 metres Canadian Geodetic Datum;

"*car-share*" shall mean the practice where a number of people share the use of one or more motor vehicles that are owned by a profit or non-profit car-sharing organization, such *car-share* motor vehicles to be made available for short term rental, including hourly rental. *Car-share* organizations may require that the *car-share* motor vehicles be reserved in advance, charge fees based on time and/or kilometers driven, and set membership requirements of the car-sharing organization, including the payment of a membership fee that may or may not be refundable;

"*car-share parking space*" shall mean a *parking space* exclusively reserved and signed for a car used only for *car-share* purposes and such *car-share* is for the use of at least the occupants of the building;

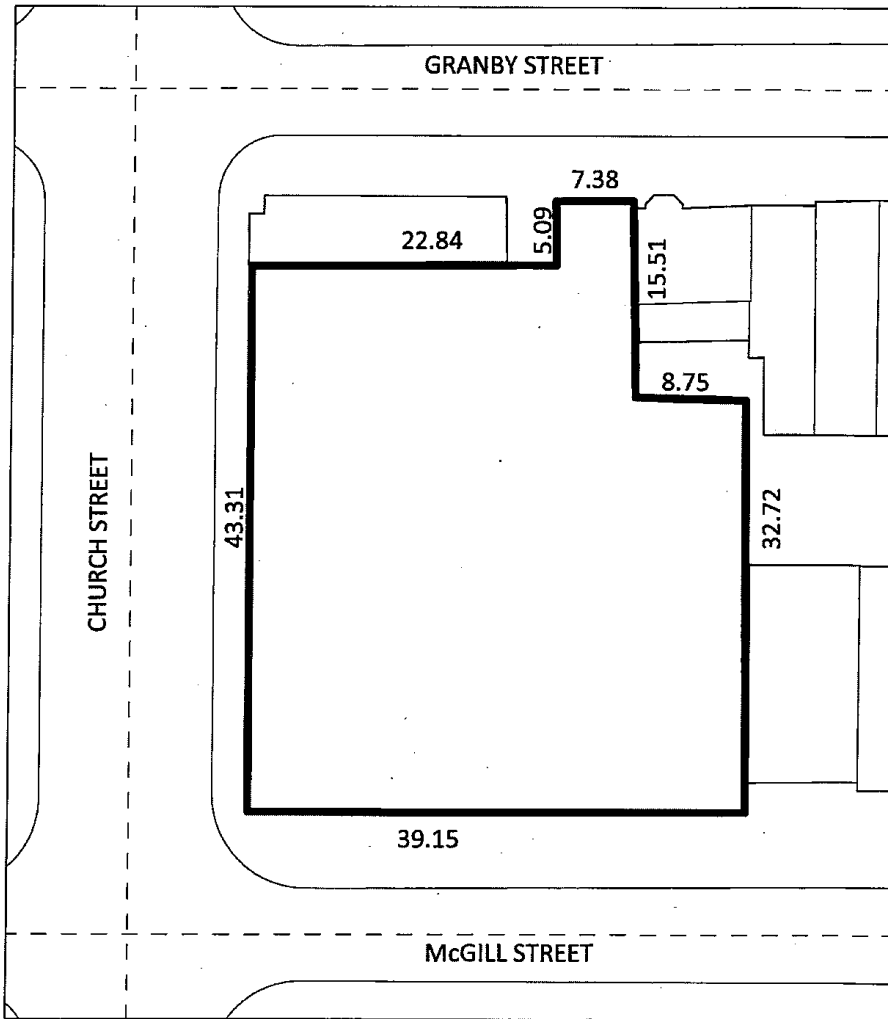
"*height*" means the vertical distance between *grade* and the highest point of the building or structure except for those elements otherwise expressly prescribed in this By-law;

"*parking space*" means an unimpeded area having minimum dimensions of 5.6 metres in length and 2.6 metres in width which is readily accessible at all times for parking and removal of a motor vehicle without the necessity of moving another vehicle; and

"*Temporary Sales Centre*" shall mean a temporary office provided for the marketing or selling of *dwelling units* located or to be located on the *lot*.

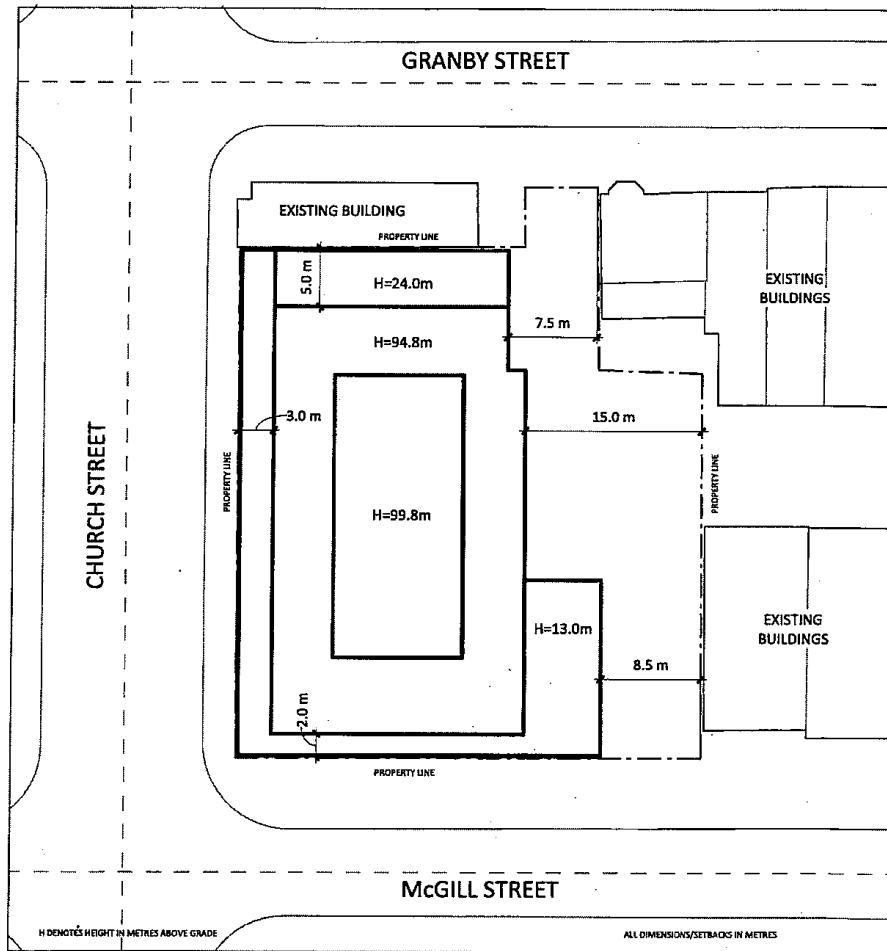
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### Map 1



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Map 2



N.T.S.