

**Ontario Municipal Board**  
Commission des affaires municipales  
de l'Ontario



**ISSUE DATE:** June 19, 2014

**CASE NO(S):** PL120328

KCAP College 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 of the City of Toronto Zoning By-law No. 438-86, as amended, to rezone land municipally known as 245-255 College Street and 39 & 40 Glasgow Street to permit the development of a 25-storey mixed-use academic residence building  
O.M.B. File No. PL120328

KCAP College Inc. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's neglect to enact a proposed amendment to the Official Plan for the former City of Toronto to redesignate the lands municipally known as 245-255 College Street and 39 & 40 Glasgow Street to permit the development of a 25-storey mixed-use academic residence building  
Approval Authority File No. 13 146991 STE 20 OZ  
O.M.B. File No. PL131148

Subject:	Site Plan
Legislative Authority:	Subsection 114(15) of the <i>City of Toronto Act</i> , 2006, S.O. 2006, c. 11, Sched. A
Referred by:	KCAP College Inc.
Property Address/Description:	245-255 College Street and 39 & 40 Glasgow Street
Municipality:	City of Toronto
OMB Case No.	PL120328
OMB File No.	PL131120

**APPEARANCES:**

**Parties**

**Counsel\*/Representative**

KCAP College Inc.

D. Bronskill<sup>+</sup>, N. Staubitz<sup>+</sup>

City of Toronto

R. Kallio<sup>+</sup>, S. Rogers<sup>+</sup>

Jenny Friedland

Grange Community Association

C. Ramkhalawansingh

The Harbord Village Residents  
Association

S. Dexter

The Annex Residents Corporation      D. Harrison

The Huron-Sussex Residents  
Organization      J. Mathien

Julie Lam

Bailey and Company Inc.      C. Lantz<sup>+</sup>

**HEARING EVENT INFORMATION:**

Hearing:      Held in Toronto, Ontario on November 18, 2013

**DECISION OF THE BOARD DELIVERED BY C. CONTI AND ORDER OF THE BOARD**

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**INTRODUCTION**

[1]      This is the decision for an appeal by KCAP College Inc. (“Appellant”) against the failure of the City of Toronto to enact an Official Plan Amendment, a Zoning By-law Amendment and the failure to approve a site plan application for a property at 245 to 255 College Street and 39 and 40 Glasgow Street, Toronto. The Appellants are proposing to construct a twenty-five storey mixed-use building on the site that will serve as an academic residence to house students, primarily from the University of Toronto (“University”), but also potentially from other universities and colleges in the area. The proposed building will also contain some retail space at the ground and basement levels.

[2]      Three planning instruments are before the Board. The proposed Zoning By-law Amendment will implement changes to a number of the zoning provisions for the site including for height of the building, density, and relief from the 45 degree projection provisions. The proposed Official Plan Amendment seeks to change the Official Plan designation for 40 Glasgow Street from Neighbourhoods to Mixed Use Area. If approved, the site plan application will implement the site plan for the property.

[3]      At the beginning of the hearing Calvin Lantz advised that his client is satisfied with the version of the proposal that is currently before the Board and that he would be attending the hearing only to monitor the proceeding.

[4] The Board heard that the Resident and Community Association parties would at times be pooling their resources at the hearing. One of these parties, Jenny Friedland who is Counsel, but does not practice in the area on municipal law, would at times undertake some functions on behalf of all of these parties. At other times, Sue Dexter or Ceta Ramkhalawansingh undertook functions on behalf of these parties.

[5] In addition to the parties noted above, the following participants attended the hearing; Stan Makow, on behalf of Martin Zimmerman and Reina Britstone, Ursula Buck, Mary-Anne Prodanovic, Shirley Beatty, Pearl Quong, Harry S. Chong, Chuen Lee, Anthony D'Arcy, Steve Russell on behalf of Toronto Architectural Conservancy, Munib Sajjad for Abigail Cudjoe on behalf of the University of Toronto Students Union, and Laura Storey and Chad Nuttall on behalf of the Ontario Association of Colleges and Universities Housing Officers. Participant status had been granted to the above through the Board pre-hearing process for this appeal. In addition, Susanne Waldorf attended a portion of the hearing and requested participant status on behalf of the University of Toronto Graduate Students Union. Participant status was granted on consent.

[6] The site consists of five properties on the south side of College Street, east of Spadina Avenue which have been assembled for the proposal. Three of these, 245, 251 and 255 College Street are contiguous properties along the College Street frontage. Two of the properties, 39 and 40 Glasgow Street abut the south boundaries of the College Street properties. The site is part of the downtown area of Toronto.

[7] College Street is a major east\west arterial road that contains a mix of uses in the subject area. Glasgow Street is a narrow north\south street that runs north from Cecil Street and ends at the southwest boundary of 245 College Street and the south limit of 251 College Street.

[8] The subject site is located four properties to the east of the corner of Spadina Avenue and College Street. Spadina Avenue is a major north/south arterial road characterized mainly by commercial and some residential uses in the immediate area. A five storey building is located immediately east of the subject property, and further to the east is the Lillian H. Smith Library at the southwest corner of Huron Street and College Street. A small parkette is located at the south end of the library along Huron Street. The parkette abuts the eastern boundary of 39 Glasgow Street.

[9] The St. George campus of the University of Toronto is located on the north side of College Street and East of Spadina Avenue. It contains a number of institutional buildings that comprise part of the University.

[10] The total area of the site is approximately 2488 square metres ("sq m") with a frontage of approximately 39.4 metres ("m") on College Street. The site has a somewhat irregular shape because of some variation in depth of properties on College Street, the intrusion of a public lane along the western portion of the site, and the depths of the Glasgow Street properties. Furthermore, Glasgow Street extends approximately 19 m into the southern portion of the site between 39 and 40 Glasgow Street.

[11] Each of the properties fronting on College Street contains a building ranging from two to five stories. 245 College Street contains a vacant two storey building and it is owned by the University of Toronto. The Appellant has a lease agreement with the University for this parcel (Exhibit 2B, Tab 18). The other parcels are owned by the Appellant. 39 Glasgow Street is a vacant parcel that contains no buildings, but has some surface parking. 40 Glasgow Street contains a small garage and surface parking.

[12] The proposed 25 storey building has been designed with a nine-storey podium oriented along the College Street frontage. The podium portion of the building extends along the full width of the frontage. The proposed building height is 72.9 metres, plus a five metre mechanical penthouse.

[13] The proposed building contains 277 residential units and 829 beds in a mixture of 2, 3, 4, and 5 bedroom units. Three two storey "townhouse" units are located along the 40 Glasgow Street frontage which have direct access to Glasgow Street. Other residential units which connect directly into either the podium or tower portion of the building are proposed to be located above the townhouse units.

[14] The proposal contains 2382 sq m of indoor amenity space. At least 20 per cent of the units have kitchens and there is a large dining facility on the second floor.

[15] The central part of the tower portion of the building is set back 10 m from the east and west property lines. The north and south parts of the tower have a smaller setback from the east and west property lines.

[16] The proposal includes two 1.48 m lane widenings, one for the public lane to the west and the other for the lane to the south.

[17] The southeast portion of the building extends along the east side of Glasgow Street and it is setback 9.055 m from the south property line. This setback area is planned to be landscaped open space.

[18] The southwest portion of the building contains the townhouse units. The southerly unit is setback 2.295 m at the street line from the lane which runs along the south limit of 40 Glasgow Street. The units above the townhouses are stepped back so that the third and fourth floor of the building in this area are 5.562 m from the property line, the fifth and sixth floors are 8.662 m from the property line and the remainder of the building is setback 11.662 m from the property line in this area.

[19] The laneway at the southwest limit property divides 40 Glasgow Street from 36 Glasgow Street. It has a width of 2.795 m and it connects with other laneways to provide a link between Glasgow Street and Spadina Avenue. The evidence provided at the hearing does not clearly establish whether this is a public or private lane. It connects to public lanes which run to the north and west connecting to Spadina Avenue.

[20] No vehicle parking is proposed in conjunction with the building. An enclosed service laneway is provided at the eastern end of the ground level and a bicycle storage facility is proposed at the southeast corner of the ground level. A landscaped area comprises the remainder of the southeast part of the property.

[21] At the beginning of the hearing Ray Kallio noted that there had been a miscommunication about a site plan issue regarding a lane widening and that issues regarding s. 37 of the *Planning Act* are outstanding. He requested that consideration of these matters be deferred until after a decision is made regarding the proposal, and if it is approved by the Board, additional days should be set aside on the Board's calendar to deal with this site plan issue and section 37 issues if necessary. The Board agreed to consider this request and the hearing proceeded.

## **ISSUE**

[22] The main issue in this appeal is whether the proposed Zoning By-law Amendment, Official Plan Amendment and Site plan comply with the applicable provisions of the *Planning Act*, are consistent with the Provincial Policy Statement 2005 ("PPS") and comply with the provisions of the Growth Plan for the Greater Golden Horseshoe ("Growth Plan"), the City of Toronto Official Plan and other relevant planning

documents. Nine specific issues which were included in the Procedural Order for the appeal were addressed at the hearing. Through the evidence, issues of the suitability of the site for use as an academic residence, the management of the proposed facility, the proposed height, massing and density of the building, the transition of the proposed building to the neighbourhood at the rear, and the provision of a pedestrian connection between College and Glasgow Streets emerged as the primary matters in dispute.

## **EVIDENCE**

[23] The Board heard evidence on behalf of the Appellant from Donald Schmitt, Steven Krossey, Eric Luskin and Robert Glover. Mr. Schmitt is a founding Principal of Diamond Schmitt Architects and is a licensed architect, and Fellow of the Royal Architecture Institute of Canada. He was qualified by the Board as an expert in architecture and urban design.

[24] Mr. Krossey is an Associate with BA Consulting Group Limited. He is a Registered Professional Engineer and member of the Institute of Transportation Engineers. He was qualified by the Board as an expert in transportation engineering.

[25] Mr. Luskin is a senior Vice President and Principal with the Scion Group LLC which provides advisory services to campuses across North America on student housing. Mr. Luskin has more than thirty years of experience in the areas of student housing administration, residence life programming and property management. He was qualified by the Board to provide opinion evidence in the areas of student housing, planning, design and operations.

[26] Mr. Glover is a partner with Bousfields Inc. and is a member of the Ontario Association of Architects and a Registered Professional Planner who has more than thirty-five years of experience. He was qualified by the Board as an expert in land use planning and urban design.

[27] The Board heard evidence on behalf of the City from Michael Spaziani and Franco Romano. Mr. Spaziani, Principal with Michael Spaziani Architect Inc., is a Registered Professional Architect and a fellow of the Royal Architecture Institute of Canada. He was qualified by the Board as an expert able to give opinion evidence with respect to architecture and urban design.

[28] Mr. Romano is founding Principal of Action Planning Consultants. He is a Registered Professional planner who has more than twenty-five years of experience. He was qualified by the Board to give expert opinion evidence in land use planning.

[29] The Board heard evidence on behalf of the Annex Resident's Corporation, the Harbord Village Residents Association, the Huron Sussex Residents' Association and the Grange Community Association from Beate Bowron and Phillip Carter, who were qualified as experts. Beate Bowron, President of Beate Bowron Etcetera Inc., is a Registered Professional Planner who has more than thirty-five years of experience. She was qualified by the Board as an expert in land use planning.

[30] Phillip Carter is Principal of Phillip H. Carter Architect. He is a member of the Ontario Association of Architects and Fellow of the Royal Architecture Institute of Canada who has over forty years of experience. He was qualified by the Board as an expert in architecture and heritage planning.

[31] The Board also heard evidence in support of the residents associations, the Grange Community Association and the individual resident parties from Toronto Councillor Adam Vaughan.

[32] Julie Mathien provided evidence on behalf of the Huron Sussex Residents' Association, Susan Dexter provided evidence on behalf of the Harbord Village Residents Association, David Harrison provided evidence on behalf of the Annex Residents' Association and Ceta Ramkhalawansingh provided evidence on behalf of the Grange Community Association.

[33] Julie Lam and Jenny Friedland provided evidence on the own behalf.

[34] The Board also heard evidence from Stan Makow, on behalf of participants Martin Zimmerman and Reina Britstone, who own property to the west of the subject lands at 257 to 267 College Street and 431 to 439 Spadina Avenue. Mr. Makow is a member of the Ontario Association of Architects, who did not request, and was not given by the Board, qualification as an expert.

[35] Participants Anthony D'Arcy, Ursula Buck, Mary Ann Prodanovic, Shirley Beatty, Steve Russell on behalf of Toronto Architectural Conservancy, Pearl Quong, Munib Sajjad on behalf of the University of Toronto Students Union, Chad Nuttall on behalf of the Ontario Association of Colleges and Universities Housing Officers, and Susanne

Waldorf on behalf of the University of Toronto Graduate Students Union provided evidence at the hearing.

## **RELEVANT FACTS**

[36] Based upon the evidence, the Board has determined that the following facts are relevant to this appeal.

[37] The parcels at 245, 251 and 255 College Street are designated as Mixed Use Areas in the City of Toronto Official Plan. The parcels at 39 and 40 Glasgow Street are designated as *Neighbourhoods* in the Official Plan (Exhibit 2A, Tab 4, p. 84). While the designation of 40 Glasgow Street is Neighbourhoods, the property is included in a Mixed Commercial Residential zone.

[38] The Appellant contends that the limits of Official Plan designations are more specifically defined by the zoning in the By-law, and therefore the Mixed Use Area Official Plan designation should cover the whole of the 40 Glasgow Street property. Section 5.6.5 of the Official Plan indicates that the boundaries of land use designations are general except where delimited by a defined Secondary Plan or area specific policy or where they coincide with fixed physical features. In other instances boundaries of land use designations will be defined by a review of a number of factors including existing zoning by-laws (Exhibit 2A, Tab 4, p. 77). The Appellant maintains that through this provision the use identified in the Zoning By-law should apply to the property and the Official Plan amendment which proposes to redesignate 40 Glasgow Street from Neighbourhoods to Mixed Use Area is a technical amendment.

[39] The Neighbourhoods designation permits a range of lower scale residential uses (Exhibit 2A, Tab 4, p. 52). Neighbourhoods are considered to be stable areas that will experience some change that is gradual and sensitive. The Official Plan requires that new development must “respect and reinforce” the existing physical character of Neighbourhoods. A key Official Plan policy for Neighbourhoods is in s. 4.1.5 which specifies a number of ways in which new development must respect and reinforce the existing physical character (Exhibit 2A, Tab 4, p. 53).

[40] The Mixed Use Area designation permits a range of residential, commercial and institutional uses. These areas are intended to absorb most of the anticipated growth in retail, office and service employment as well as a substantial amount of the new

housing growth. The Official Plan indicates that the majority of growth in Mixed Use Areas is to occur in the Downtown, particularly in the Financial District (Exhibit 2A, Tab 4, p. 59). The subject lands are included in the Downtown and Central Waterfront Area identified in the Official Plan (Exhibit 2A, Tab 4, p. 83).

[41] Official Plan policy 2.3.1.2 requires that development in Mixed Use Areas must be compatible with Neighbourhoods, provide for a gradual transition of scale and density, maintain adequate light and privacy for residents of the Neighbourhoods, and attenuate parking and traffic impacts (Exhibit 2A, tab 4, p. 29). A key provision for Mixed Use Areas is s. 4.5.2.2 which identifies a number of requirements among which are; that a balance of high quality uses be provided that reduce automobile dependency and meet the needs of the local community, that new development provide a transition between areas of different development density and scale, particularly with regard to Neighbourhoods, that new development limit shadow impacts, maintain sunlight and comfortable wind conditions and that it provide adequate indoor and outdoor amenity space (Exhibit 2A, Tab 4, pp. 59-60).

[42] The Official Plan Built Form Policies and Tall Buildings policies in s. 3.1.2 and 3.1.3 are also relevant. Policy 3.1.2.3 (Exhibit 2A, Tab 4, p.40) is a key provision which states the following:

“ New development will be massed and its exterior façade will be designed to fit harmoniously into its existing and/or planned context, and will limit its impact on neighbouring streets, parks, open spaces and properties by:

- a) massing new buildings to frame adjacent streets and open spaces in a way that respects the existing and /or planned street proportion;
- b) incorporating exterior design elements, their form, scale, proportion, pattern and materials, and their design, to influence the character, scale and appearance of the development;
- c) creating appropriate transitions in scale to neighbouring existing and/or planned buildings for the purpose of achieving the objective of this Plan;
- d) providing for adequate light and privacy;
- e) adequately limiting any resulting shadowing of, and uncomfortable wind conditions on, neighbouring streets, properties and open spaces, having regard for the varied nature of such

areas; and

- f) minimizing any additional shadowing and uncomfortable wind conditions on neighbouring parks as necessary to preserve their utility.

[43] According to these policies both the existing and planned context can be considered in evaluating a development proposal. New development must provide appropriate transitions, provide for adequate light and privacy and be designed to limit impacts on neighbouring areas.

[44] Tall buildings are generally considered to be those whose height is greater than the width of the adjacent road allowance (Exhibit 2A, Tab 4, p. 41). The Tall Buildings policies require that tall buildings should have three parts, a base, a middle or shaft, and a top (Exhibit 2A, Tab 4, p. 42).

[45] The College Street parcels and 40 Glasgow Street are zoned Mixed Commercial Residential, MCR T2.5 C1.0 R2.5, in Toronto Zoning By-law No. 438-86 (Exhibit 2A, Tab 6, p.105). The MCR zone permits a wide range of residential and commercial uses. The existing zoning permits a total density of 2.5 on the property. The By-law limits building heights on the College Street parcels to 14 m.

[46] The By-law requires buildings in MCR zones to provide a minimum of 11 m facing distance between windows on a property and a minimum of 5.5 m window setback from a shared lot line. Furthermore, the By-law requires a minimum 7.5 m setback between buildings in a MCR zone and any lot in an R zone line (Exhibit 2A, Tab 6, p 47) except if the property zoned R abuts a side lot line of the property in the MCR zone. It also requires that buildings be contained within 45 degree angular planes projected from specified heights above lot lines and setback lines.

[47] The parcel at 39 Glasgow Street is zoned R3 Z1.0. This zoning permits residential uses with a density of 1.0 m. The By-law limits building height at 39 Glasgow St. to 12 m.

[48] There are a number of other policy documents that are relevant. The City's Design Criteria for the Review of Tall Buildings, the Downtown Tall Buildings Vision and Performance Standards Design Guidelines, and the Tall Building Design Guidelines all provide guidance to be used in determining the suitability of the proposed building.

Specific provisions of these documents are referenced in the remainder of this decision where relevant.

[49] In addition the City's University of Toronto Secondary Plan (Exhibit 2A, Tab 5), the City's University of Toronto Urban Design Guidelines (Exhibit 2A, Tab 7), and the University of Toronto's St. George Campus Master Plan (Exhibit 2B, Tab 15) while not applying specifically to the subject property are relevant in determining the context within which to review the application.

[50] Provisions of the PPS and the Growth Plan call for intensification of uses, transit supported development, and better use of existing infrastructure. In particular sections 1.1.3.3 to 1.1.3.7 of the PPS promote these objectives in the planning of new developments. Section 1.4.3 of the PPS encourages the construction of all forms of housing and intensification.

[51] Section 2.2.3.6 of the Growth Plan requires municipalities to develop and implement intensification policies and strategies. The Growth Plan also directs growth to built-up areas that are well served by transit.

[52] The proposed development is generally consistent with the PPS policies. The proposal represents a form of intensification and is located in the built up area as directed through these Growth Plan policies.

### **ISSUES, ANALYSIS AND FINDINGS**

[53] The Board has carefully considered the evidence and submissions of the parties and participants including the authorities. Furthermore, all issues on the issues list attached to the Procedural Order for the hearing have been considered, whether or not they are specifically referred to in this decision.

[54] Through the evidence the Board understands that this proposal has undergone substantial revision in response to concerns raised by the City and area residents. The original proposal was for a 42 storey rather than a 25 storey building. Also, the previous version of the proposal included a portion of the building on the property at 39 Glasgow Street, rather than maintaining this area as open space. These changes have assisted in narrowing the issues that are still in dispute.

[55] There was general agreement among the parties that the subject property is suitable for a more intense use than currently exists. There was also general agreement among the expert planning witnesses and the experts in architecture and urban design that the site is a suitable location for a tall building. The main dispute among the parties involved the height of the proposed building, its massing, design details such as the podium height, setbacks and the transition between the building and the neighbourhood to the south. The parties presented three alternative building concepts to the Board. The Appellant's concept proposes a 25 storey building with a nine storey podium along College Street. The City's proposal is for an 18 storey building with a six storey podium. The Neighbourhood Associations presented a proposal for a 12 storey building. In addition, the transition to the neighbourhood at the rear differs in each concept.

[56] The proposed use of the site as an academic residence and potential impacts from the students using the proposed facility on the neighbourhood also raised a number of issues. Concerns were raised about potential parking issues and general disturbance resulting from locating a large number of students in the proposed building. A major concern was the potential for students to party and congregate at the rear of the proposed building, and the Board heard from a number of witnesses that access to the rear of the building should be restricted.

[57] Based upon the evidence and the above considerations, the Board has determined that the issues discussed in the following sections are critical for making a determination in this appeal. The Board's findings are provided where it is appropriate.

## **Height**

[58] A key provision of the Official Plan's Built Form policies in s. 3.1.2 and Built Form Tall Buildings policies in s. 3.1.3 is that new development, and tall buildings specifically, must be designed to fit into their existing and/or planned context and to limit impacts on the surrounding area (Exhibit 2A, tab 4, pp. 39 to 42). The evidence provided by the parties demonstrates that the existing context in the immediate vicinity on the south side of College Street is one of lower rise buildings, in the two to five storey range. To the east at the southeast corner of McCaul Street and College Street there is the six storey former Toronto Board of Education building now owned by the University. Further east toward University Avenue there are taller buildings. At the southwest corner of University Avenue and College Street there is the 20 storey building which was formerly the headquarters of Ontario Hydro.

[59] The north side of College Street in this vicinity is under a different planning regime being within the area of the University of Toronto Secondary Plan. A number of tall buildings are located on the north side of College Street within the Secondary Plan area, including the Centre for Addiction and Mental Health which is 55 m high and located almost directly opposite the subject property. Further to the east there are University buildings of 60 m and 39 m in height (Exhibit 2D, Tab 70. p. 8)

[60] The Board was presented with evidence of numerous tall buildings being located just beyond the perimeter of the University of Toronto Secondary Plan area, some of which have a connection to the University (Exhibit 4, p. 6). These buildings range from 50 m to 100 m in height. Many of the taller buildings are located close to the intersection of University Avenue and Bloor Street.

[61] Mr. Schmitt and Mr. Glover contended that these buildings influence the existing context and should be used to inform an acceptable height for the building on the subject property. The witnesses for the City and Neighbourhood Associations maintained that the buildings within the University Secondary Plan are subject to a different planning context and the buildings around the perimeter are not necessarily representative of an acceptable built form for the property.

[62] Mr. Romano contended that the property is not suitable for the construction of a building as tall as is being proposed. Mr. Romano maintained that there is a gradation of building heights within the planning regime for the Downtown area of the City where the tallest buildings are intended for the Financial District. The Financial District is identified on Map 6 of the Official Plan and it is located well to the south and east of the subject lands (Exhibit 2A, Tab 4, p. 83).

[63] He also noted that there is a Central Core identified in Zoning By-law No. 438-86. He contended that the zoning permissions generally allow taller buildings in the Central Core, in contrast to the Downtown area outside of the Central Core. The Central Core area includes the area along the south side of College Street, east of McCaul Street, but does not extend west to include the subject property (Exhibit 7, p 9).

[64] Mr. Romano also noted that the City's Downtown Tall Buildings Guidelines, which provides the City's vision for heights in the Downtown area, does not recommend building heights for the area on the south side of College Street, west of McCaul Street but identifies it as a Special Study Area. (Exhibit 2A, Tab 12, p. 103). The proposed

heights for buildings on the south side of College Street, east of McCaul Street are in the range of 62 m. to 107 m.

[65] Mr. Romano also raised the Avenue Study which has been completed by the City for the section of College Street from Spadina Avenue west to Ossington Avenue (Exhibit 2A, Tab 8). Mr. Romano noted that the study recommended building heights up to 56 m at the westerly corners of Spadina Avenue and College Street and mid-block heights of 9 to 11 m. He indicated that while the study does not apply to the subject properties it informs the planned context in that the proposal building is too high for its mid-block location.

[66] The Board also heard about examples of approved tall buildings in the area and applications for tall buildings which are in the review process. The Board heard considerable evidence about a mixed use building recently approved at 297 College Street with a height of 56 m. Like the subject property, 297 College Street is not at the corner of a major intersection.

[67] In addition, the Board heard about recent proposals for a 30 storey building at 243 College Street which is immediately east of the subject site and for a 19 storey building at 233 College Street at the southeast corner of College Street and Huron Street. At the time of the hearing, these proposals were in the planning process and there was no indication in the evidence that either would be considered to be appropriate by the City.

[68] After considering all of the evidence, the Board concludes that the existing context of the subject property is influenced by the built form on the University lands and by the pattern of tall buildings around the perimeter of the Secondary Plan area. The University of Toronto Secondary Plan provides policies for lands within the plan's boundary and does not apply to the subject property. The intent of the plan is to provide for the continuation of the institutional uses of the University and protect specific areas and features.

[69] However, the Board was not provided with any substantive evidence that the physical presence of the University buildings at the perimeter of the Secondary Plan area should not influence the existing context. A sidebar to the Official Plan states that "The existing context of any given area refers to what is there now. The planned context refers to what is intended in the future" (Exhibit 2A, Tab 4, p. 40). The taller buildings on

the north side of College Street are “there now” and must be considered part of the existing context.

[70] In addition, the Board considers the taller buildings that are located just beyond the perimeter of the Secondary Plan area to be part of the existing context for the subject property. The Board heard that the University owns properties beyond the perimeter of the Secondary Plan boundary, and that many students currently live in buildings beyond the perimeter of the Secondary Plan boundary. These areas clearly have some association with the University in terms of use, and the built form of the existing buildings is a component of the visual perspective and streetscape.

[71] With regard to the planned context, it is clear that taller buildings have been approved and are being proposed for the south side of College Street. As intensification of uses continues in the future, it is reasonable to conclude that a trend toward locating more tall buildings along College Street will continue.

[72] Furthermore, the direction of the Tall Building Guidelines for Downtown policies appears to be that taller buildings are anticipated moving east on College toward Yonge Street. The Board recognizes that the subject property is part of a special study area and that the City’s guidelines for building heights have not yet been determined. However, if a 56 m building is suitable for 297 College Street and 107 m is acceptable on the east side of McCaul Street, the Board finds that the proposed 25 storey building at 72.9 m plus 5 m mechanical penthouse is a reasonable height for the subject site which is between these other locations and is close to the corner of College Street and Spadina Avenue. .

[73] The Built Form policies in s. 3.1.2 and the Built Form-Tall Buildings policies in s. 3.1.3 of the Official Plan require consideration of a number of other factors when proposing tall buildings. The main requirements related to height are policy 3.1.2.3 (d), (e), and (f) which involve providing for adequate light and privacy, and limiting shadow and uncomfortable wind conditions on neighbouring areas (Exhibit 2A, Tab 4, p. 40). Also, policy 3.1.2. 3 in the Tall Buildings section refers to limiting local impacts when considering tall buildings (Exhibit 2A, Tab 4, p. 41). In addition, Mixed Use Areas policy 4.5.2 (d) and (e) requires limiting shadow impacts and maintaining sunlight and comfortable wind conditions.

[74] The Appellant's submissions addressed these requirements in part through a shadow study prepared by Mr. Schmitt included in Exhibit 5. He maintained that the impact of the proposed 25 storey building is not significant. The Board agrees with Mr. Schmitt's opinion on the basis that any increase in shadowing is mainly confined to institutional buildings on the north side of College Street and commercial buildings to the east and west. Impacts on the Neighbourhoods properties to the south are negligible.

[75] Furthermore, after reviewing the evidence the Board agrees with the opinions of Mr. Schmitt and Mr. Glover that any effect of the proposal on light, privacy and wind conditions will be at an acceptable level. These issues are discussed more fully in the following sections.

[76] After considering all of the evidence and submissions, the Board finds that the proposed height of the building is acceptable and does not offend the requirements of the Official Plan and the relevant guidelines.

### **Massing**

[77] Massing is a function of building height, width, setback distances, step backs at different floor elevations, and articulation of the structure and facades.

[78] The proposed building extends to the east and west property lines along the College Street frontage. This width of building continues up to the ninth floor. There is some variation in the front of the building for entrances and there is a step back at the sixth floor for the west half of the building.

[79] The tower starts above the ninth floor, the main part of which is setback 10 m from the east and west property lines. At the northern end of the building, there are extensions from the tower above the ninth floor which provide a 6.01 m setback to the west property line and a 6.1 m setback from the east property line. At the southern end of the building there are extensions from the main tower, the easterly one extends to the east property line and the westerly one is setback 3.942 m from the west property line. This same width of the building with the extensions is maintained to the 25<sup>th</sup> floor.

[80] The witnesses for the Appellant contended that the podium height and massing of the building are appropriate, and comply with the relevant policies of the Official Plan and have regard for the relevant City guidelines.

[81] Mr. Spaziani, Mr. Romano, Mr. Carter and Ms. Bowron and other witnesses raised concerns about the building mass. Mr. Spaziani and Mr. Romano maintained that the nine storey podium is too high. Mr. Romano contended that it is not sufficiently differentiated from the base. Also, Mr. Spaziani and Mr. Romano contended that the proposed building will have excessive mass at the back, adjacent to the residential neighbourhood. Mr. Spaziani's opinion was that the podium should be a maximum of 24 m which he indicated was 80 per cent of the width of this section of College Street. The 2013 Tall Buildings Guidelines has set this as one of the criteria for podium height (Exhibit 2A, Tab 12, p. 37).

[82] Both Mr. Spaziani and Mr. Romano referred to provisions of the Official Plan and the City's Tall Buildings Guidelines to support their concerns for the proposal.

[83] After reviewing the evidence, the Board understands that the relevant policies of the Official Plan and the City's guideline documents are intended to assist in determining if the design of a proposed building is acceptable with regard to factors such as massing, podium height and transition. However, the suitability of a particular design is largely a matter of the judgement with regard to whether or not the design sufficiently fits in the context of an area and will have sufficiently little impact on the area.

[84] In the current case, the experts have differing opinions about the suitability of the massing and podium height of the building. However, when considering the podium height, and the massing of the building and proposed width of the building along College Street in relation to the requirements of Official Plan policy 3.1.2.3 the Board concludes that the proposal appropriately addresses this policy and does not conflict with any of its provisions. The Board notes that proposal contains exterior design elements along College Street including the sixth floor step back, and the podium is within the scale of buildings on College Street. While nine stories is marginally higher than existing buildings in the immediate vicinity on the south side of College Street, there is a variety of existing building heights in the area, the context is influenced by the taller buildings on the north side of College Street, and the Official Plan policy does not provide specific criteria for determining podium height. The sixth floor step back relates more directly to the height of other existing buildings on the south side of College Street.

[85] As noted earlier, it appears that building heights in the area will be increasing in the future. The Board heard evidence about an approved tall building at 297 College

Street and other proposals for tall buildings in the area. Based upon the evidence, the context of the area is changing and will include a number of other tall buildings.

[86] The Built Form-Tall Buildings policies in s. 3.1.3 of the Official Plan indicate that tall buildings should consist of three parts, a base, middle and top. The policy indicates that the base should provide definition and support at an appropriate scale and integrate with adjacent buildings (Exhibit 2A, Tab 4, p. 42). The design of the proposed podium complies with these policies.

[87] The provisions of the Zoning By-law for MCR properties contains a requirement for fitting new buildings within a 45 degree angular plane projected from a line 10 m above adjacent lot lines (Exhibit 2A, Tab 6, p. 48). However, the intent of this requirement is to fit the entire building under the projected 45 degree angular plane line, not just the podium. None of the alternative designs presented at the hearing by the architects for the parties meet this requirement for the proposed buildings, although Mr. Carter's design comes close. This provision does not specifically apply to the podium height and it is one of the requirements that would be amended for the proposal by the proposed By-law Amendment.

[88] The 2006 Design Criteria for the Review of Tall Building Proposals indicates that the massing and height of the base of buildings should be considered within the zoning envelope and the adjacent historical context (Exhibit 2A, Tab 10, p. 27). The 2013 Tall Buildings Guidelines includes provisions to ensure an appropriate transition to adjacent buildings (Exhibit 2A, Tab 12, p. 20).

[89] Generally these guideline documents and the relevant provisions of the Official Plan do not provide specific numerical criteria for determining height and massing. An exception to this is the provision in the 2013 Tall Building Design Guidelines which was referenced by Mr. Spaziani which indicates that podium height should be 80 per cent of the road right of way width and it should be a maximum of 24 m (Exhibit 2A, Tab 12, p. 37). The Board understands that the width of College Street in this area is 30 m and therefore 80 per cent would be 24 m the same as the recommended maximum. Mr. Schmitt acknowledged this guideline, but indicated that it was not in effect when the building design was commenced. It was his evidence that the proposed podium height of 30 m is appropriate within the context of the area.

[90] The Board heard some concern expressed that the proposed tower setback is not sufficient. The main portion of the tower is set back 10 m from the east and west property lines. The extensions at the north and south ends of the building have lesser setbacks. The 2006 Design Criteria for the Review of Tall buildings and the 2013 Tall Building Guideline require a 12.5 m setback for the tower portion of tall buildings from the property line. Mr. Glover referred to a 2010 Tall Buildings Study which recommended a 10 m setback. Mr. Glover also prepared a chart which compared the proposed setbacks and a number of other criteria for the proposal and a number of other approved tall buildings in the City proposed setbacks. Mr. Glover contended that the proposal is generally comparable to a number of these other approvals in terms of setbacks and other criteria.

[91] Mr. Spaziani contended that the floor plate of the tower is too large. He maintained that for residential buildings larger floor plates are acceptable in the lower portions of the building. However, he contended that the tower portion of residential buildings should have floor plates no larger than 750 sq m. Mr. Glover addressed this issue noting that there was no floor plate size limit specified in the 2006 guideline document (Exhibit 2A, Tab 10). He stated that the 2012 guideline document established the 750 sq m limit for residential buildings (Exhibit 2A, Tab 11, p. 23). He noted that there were a number of exceptions to this limit including one for institutional buildings. In his opinion the proposal is an institutional building and it qualifies under this exception. (Exhibit 2A, Tab 12, p. 19).

[92] After reviewing the evidence, the Board will not make a specific finding regarding whether the proposal should be classified as a residential or institutional building. Properties designated as Mixed Use Areas allow institutional uses as do areas with the MCR zoning. In reviewing the proposed use in light of the uses permitted in the MCR zone it is clear that the proposal has characteristic of both a commercial-residential use and an institutional use (Exhibit 2A, pp. 33 to 40).

[93] However, the provisions of the Tall Buildings Design Guidelines and other guideline documents are not requirements, they are guidelines. They are intended to guide the planning and design process to reduce negative impacts and ensure high quality design. It is clear from reviewing the submissions that many projects have been approved and are considered appropriate even if recommendations in the guideline documents are not strictly followed. After considering the evidence and reviewing the

above submissions, the Board is satisfied that the intent of the guideline documents will be achieved by the proposal.

[94] While there is some variation from the guideline documents for both podium height, tower setback distances and residential floor plate size, based upon the evidence the Board finds that the guidelines have been considered and that they are appropriately reflected in the design of the building.

[95] After reviewing the evidence, the Board concurs with the expert evidence provided by Mr. Schmitt and Mr. Glover and finds that the proposed podium height, tower setback, tower floor plate size, and the massing at the College Street frontage are appropriate in the context of the existing buildings along this portion of College Street and they comply with the Official Plan and take into account the relevant guideline documents.

[96] With regard to the massing at the rear of the proposed building, the Board acknowledges that the extensions at the south east and south west ends of the tower maintain a greater width than the main tower, and this greater width extends up the full height of the building. However, the massing resulting from the width is mitigated by the measures the Appellant has incorporated to provide a transition to Glasgow Street and the residential neighbourhood to the south. There are combinations of setbacks, step backs at different levels and open area that should serve to break up the massing at the rear of the building. In the Board's view this should serve to mitigate impacts on the neighbourhood to the south. The issue of transition is dealt with in detail below.

### **Transition**

[97] There are a number of sections of the Official Plan that require that an appropriate transition be provided between developments in areas designated as Mixed Use Areas and existing neighbourhoods in order to achieve the objectives of the Official Plan and to minimize impact. These include policies 2.3.1.2, 3.1.2.3, and 4.5.2. In addition, as noted above, the 2013 Tall Building Guidelines also address the need for an appropriate transition.

[98] The main residential neighbourhood that could potentially be impacted by the proposal consists primarily of the section of Glasgow Street, north of Cecil Street.

Glasgow Street has a very narrow right of way and most of the houses are built virtually at the street line with little or no front yard.

[99] The proposal will occupy the two northerly properties on Glasgow Street. The property at 39 Glasgow is designated as Neighbourhoods and through the proposal, it will be maintained as landscaped open space. This will provide a 9.05 m landscaped buffer between the southeast side of the building and the northernmost property on the east side of Glasgow Street. The southeast part of the building is then stepped back by approximately 1.85 m at the third floor, by another 3 m at the fifth floor, and by another 3 m at the seventh floor (Exhibit 5) Above the sixth floor of the building, there is a 16.9 m separation between the building and 33 Glasgow Street which is the northernmost property on the east side.

[100] The property at 40 Glasgow Street is designated as Neighbourhoods, but is zoned MCR. The Board has noted earlier that s. 5.6.5 of the Official Plan indicates that boundaries of land use designations are identified generally in the Official Plan and that where not clearly defined by a Secondary Plan, an area specific policy, or certain fixed distinguishable features, the boundary should be defined in reference to the Zoning By-law. It is clear from a review of both the Official Plan and the Zoning By-law that while the Neighbourhoods designation appears to include 40 Glasgow Street, it is also included in the MCR Zone. Boundaries identified in the zoning by-law are intended to be depicted accurately. Therefore the Board agrees with the Appellant's interpretation of s. 5.6.5 of the Official Plan that the intended use of 40 Glasgow Street is Mixed Residential Commercial as defined in the MCR zone in the By-law, and therefore a more intense use has been anticipated for this property. The zoning recognizes the affinity of 40 Glasgow Street with the properties on College Street.

[101] The southwest part of the building will be setback 2.295 m from property line which abuts the lane at the south limit of 40 Glasgow Street. The lane which has a width of 2.795 m separates the site from 36 Glasgow Street which is the northernmost property on the west side. At the third floor this part of the building is stepped back by 5.562 m from the property line, the fifth floor is stepped back 8.662 m from the property line and the seventh floor is stepped back 11.662 m from the south property line. If the width of the lane is included, the southwest part of the building above the sixth floor is stepped back by approximately 14.5 m from the property line at 36 Glasgow Street (Exhibit 5).

[102] As noted earlier, the southwest part of the building contains three two-storey townhouse units at grade which front onto the west side of Glasgow Street. No access to these units is proposed from the remainder of the building. Starting at the third floor additional units are proposed to be constructed above the townhouse units which have direct access into the remainder of the building, but not into the townhouse units or to Glasgow Street.

[103] Through the proposal the section of the Glasgow Street right of way that extends between the properties at 39 and 40 Glasgow Street will be retained and will remain open. According to the plans there may be some landscaping proposed for this area.

[104] The provisions of the Official Plan require appropriate transitions to lower scale buildings and Neighbourhoods. Section 2.3.1.2 refers to providing a “gradual transition in scale and density as necessary to achieve the objectives of this Plan through the stepping down of buildings towards and setbacks from those Neighbourhoods...” (Exhibit 2A, Tab 4, p. 29). Similar policies are included in the section for Mixed Use Areas in s. 4.5.2 (c) (Exhibit 2A, Tab 4, p. 60).

[105] As noted above, the areas at the rear of the proposed building are stepped back to provide a transition. The portion of the property within the Neighbourhoods designation and the Residential zoning, and where low scale development would be anticipated, that is 39 Glasgow Street, will not be occupied by the proposed building, but will be retained as open space. The proposed building occupies portions of the property at the rear that are zoned MCR and where a more intense building form would be anticipated. In these areas, the building is stepped back as described above to provide a gradual transition to the houses on Glasgow Street. The landscaped area on the east side and the open section of Glasgow Street that extends between the properties at 39 and 40 Glasgow Street are also aspects of this transition.

[106] With regard to achieving other objectives of the Official Plan, the Board notes that the relevant sections of the Plan require providing for “adequate light and privacy and adequately limiting any resulting shadowing of and uncomfortable wind conditions on, neighbouring streets, properties...” (Exhibit 2A, Tab 4, p. 40). Policy 3.1.2.4 in the Built Form section states, “Taller buildings will be located to ensure adequate access to sky view for the proposed and future use of these areas” (Exhibit 2A, Tab 4, p. 40). Mixed Use Area policies 4.5.2 (d) and (e) indicate the need to “adequately limit shadow impacts” and to “maintain sunlight and comfortable wind conditions...” (Exhibit 2A, Tab

4, p. 60). The 2013 Tall Buildings Guidelines also recommend that transition mechanisms be employed to maintain “access to light and skyview” (Exhibit 2A, Tab12, p. 20).

[107] Shadowing has already been discussed in the section of this decision on height. With regard to concerns for loss of privacy, overlook and skyview, the existing designation and zoning of the subject property along College Street and at 40 Glasgow Street permit a more intense built form. Some increase in overlook and loss of privacy would result from any more intense development of the property which would be anticipated by the Official Plan designation and zoning.

[108] Furthermore, any of the three alternative proposals provided by the parties at the hearing would cause some increase in overlook and loss of skyview. The Board recognizes that the proposal is taller than the other alternatives and it has greater mass at the rear. However, the Board finds that the transition mechanisms that are proposed that is the step backs of the building, the set back and proposals for landscaped open space and the articulation of the building are appropriate. The Board was not made aware of any numerical or definitive criteria in the planning documents with regard to the amount of overlook that may be acceptable and the amount of light and skyview that must be maintained. These are matters that must be determined for each specific proposal.

[109] The step back provisions and massing of the building toward the rear of the property are similar to the City approved proposal for 297 College Street. The Board heard that this property abuts townhouses at the rear.

[110] The Board understands the concerns expressed by witnesses, some of whom are residents of Glasgow Street, about potential impacts. However, given the land use designations and zoning of the properties, the relevant policies, and the changing character of the area, a more intensely developed urban character has been anticipated and is appropriate.

[111] Mr. Mackow proposed a number of changes to the design of the building in order to comply more closely with the various City guideline documents and to ensure that the use of his clients lands to the west are not compromised. The Board has considered the proposed changes, but will not order that they be incorporated into the proposal. As noted earlier in this decision, the Board is satisfied that the Appellant has

addressed the provisions of the City's guidelines through the design of the proposal. The Board cannot conclude from the evidence that the proposal will cause any significant negative impact on the existing or future use of adjacent properties.

[112] In view of the above and in consideration of all of the evidence, the Board accepts the expert opinion evidence of Mr. Schmitt and Mr. Glover that the proposal will adequately maintain light and skyview and impacts on overlook and privacy will be acceptable. Therefore, the Board finds that the proposed transition of the building to the Neighbourhood is appropriate, that it complies with the relevant provisions of the Official Plan, and it takes into account the relevant City guideline documents.

### **Use**

[113] The suitability of the proposed use was raised as a concern by Ms. Friedland and a number of other witnesses who reside in the area. Much of the concern of area residents relates to the potential impacts of locating 829 students at the site, in proximity to a residential neighbourhood. The Board heard that the residents were concerned about the students congregating and partying in the area at the rear of the building and along Glasgow Street. The residents were opposed to access being provided through the proposed building or through the subject site to Glasgow Street.

[114] The Appellant had originally suggested a potential walkway access to the rear of the building through the service laneway, but by the end of the hearing had removed this option. In addition, the Appellant is not proposing any access from the interior of the building to rear and onto Glasgow Street.

[115] The City's proposal would include pedestrian access along the west side of the building to the rear as well as potential access from the building itself. The City proposal also included retaining most of the property at 40 Glasgow Street as open space.

[116] After considering the evidence, the Board finds that the Appellant's approach to dealing with access to the area at the rear of the building responds appropriately to the concerns expressed by the residents. In the Board's opinion, direct access from the building or pedestrian access around the side of the building will simply encourage residents of the building to use Glasgow Street. Providing additional open space in the vicinity of 40 Glasgow Street will encourage congregating. Given the narrow road right

of way and constricted built form, access of students to the Glasgow Street area should be discouraged.

[117] One of the advantages of the Appellant's proposal is that it includes the two storey units with access directly onto the north end of Glasgow Street. The Board understands that part of the intent in proposing these units and in limiting open space in this area was to provide better security and discourage students from congregating and partying in the area. This is an additional factor in support of the transition proposed by the Appellant.

[118] In addition, if at some time in the future, pedestrian access to the rear is desirable, the Board heard that there may be potential for this through a City parkette located to the south of the Lillian H. Smith Library which could link to the proposed open space at 39 Glasgow Street.

[119] Based upon the above factors, the Board finds that the proposal is acceptable with regard to limiting access to the rear of the building.

[120] A number of witnesses also expressed concern about management of the building and ensuring that controls are adequate for potential student activities and behaviour in the building and on the subject property. The Board heard that while the facility will be owned by the Appellant, the parcel at 245 College Street will remain in the University of Toronto's ownership, and management of the building will be the responsibility of the Scion Group.

[121] The Board heard testimony from Eric Luskin, Principal and senior Vice-President of the Scion Group. He indicated that the Scion Group specializes in providing student housing at various locations in the United States and is starting to provide similar services in Canada.

[122] Mr. Luskin indicated that the design and location of the building would provide for a high quality student residence. The Board heard that privately owned and operated university and college residences were becoming a more common means of providing student housing in part because of diminishing financial resources.

[123] Mr. Luskin indicated that locating a large number of students in the proposed building would focus activity at a location which is managed. He indicated that this could help reduce potential problems in the local community.

[124] Mr. Luskin indicated that Scion would have a leadership team on site 24 hours a day and seven days a week and they would be focussed on safety and building operations. Mr. Luskin indicated that disciplinary problems with students will be dealt with and if necessary leases would be revoked. However, he noted that it has never been necessary to take this type of action in any of the other facilities that Scion manages.

[125] The measures employed by Scion to manage the use of the building by residents is a planning concern only in the context of planning policies which require that the neighbourhood be protected from negative impacts. Policy 2.3.1.3 of the Official Plan requires that intensification adjacent to neighbourhoods, "...will be carefully controlled so that adjacent neighbourhoods are protected from negative impact" (Exhibit 2A, Tab 4, p. 29).

[126] Based upon the submissions, the Board is satisfied that the management program described by Mr. Luskin is an appropriate means of ameliorating any potential impacts of residents of the building. The Board finds that the measures proposed by Scion, in combination with the above noted control of access to the rear of the building, the proposed townhouse units, and the transition are appropriate for protecting the neighbourhood and surrounding area from negative impacts.

[127] A number of witnesses from the residents associations and student associations questioned the need for providing student housing outside of the University of Toronto Secondary Plan area and the spread of university functions into adjacent neighbourhoods. Some witnesses from the students associations questioned the need for privately owned and operated student residences. However, as noted in the evidence of Mr. Luskin, because of diminishing financial resources, these types of arrangements are becoming more common and necessary to provide high quality facilities.

[128] There were also questions raised about the need for facility to serve the St. George Campus of University of Toronto. The need for the facility in part was based upon the St. George Residence Demand Analysis: Forecast 2020 prepared by the University of Toronto (Exhibit 2B, Tab 20). There were questions about the projections in the demand analysis and suggestions that student housing requirements should be filled by residences owned and operated by the University of Toronto on the campus grounds.

[129] The Board must review these concerns based upon the provisions of the in-force planning documents. There were no provisions raised in the evidence that required buildings providing University of Toronto functions to be within the boundary of the Secondary Plan Area. Potential impacts on neighbourhoods are dealt with through the provisions of the Official Plan. As noted earlier in this decision, the Board is satisfied that the proposal complies with the provisions of the Official Plan and it contains appropriate measures to mitigate negative impacts on neighbourhoods.

[130] With regard to privately owned and operated student residences, the Board has experience with these types of facilities in other municipalities and from the evidence, they are becoming a successful method of delivering required services in light of shrinking financial resources.

[131] With regard to the projections in the Demand Analysis, the Board does not have a basis from the evidence to seriously question the numbers. The Board will only take from this report that there is a requirement for more student residence spaces at the St. George campus and both the University of Toronto management and the Appellant have determined that the proposal is a viable means of responding to the demand.

### **Other Issues**

[132] Ms. Bowron raised issues about the proposed definition of the building as an “academic residence” in the By-law Amendment (Exhibit 2B, Tab 43). She maintained that the definition is similar to that of “university residence”. However, the definition of “university residence” in the By-law requires that it be “owned or operated by a university” (Exhibit 2A, Tab 6, p. 7.61). She also noted that Mr. Glover indicated that the proposal could be classified as one of the permitted residential uses in MCR zones which allows residences “affiliated with a hospital or university to house patients, students or employees...” (Exhibit 2A, Tab 6, p. 35).

[133] Ms. Bowron contended that the only association of the facility with the University of Toronto is the lease agreement for the property at 245 College Street and the residence will not be owned, operated or affiliated with the university. There is no guarantee that the building will be used to accommodate students. She maintained that the building will really function as a large rooming house, but the By-law does not permit rooming houses with more than 25 dwelling rooms and dwelling units combined. Ms.

Bowron maintained that the definition of “academic residence” is not consistent with the definitions in Zoning By-law No. 438-86 and it should not be introduced.

[134] The Board understands that some of the concern expressed by Ms. Bowron and others is that because of the unique nature of the proposal, and because the proposed use does not fall under one of the defined uses in the By-law, that there may be future difficulties in ensuring that the property is used for the intended purpose. The Board heard from a number of the Appellant’s witnesses that while the proposed building will cater to University of Toronto students, it potentially could take students who attend other institutions. Also, it appears that there is nothing to prevent units being rented to non-students, although this is clearly not the intent of the Appellant or the Scion Group.

[135] However, Mr. Bronskill noted that the University of Toronto supports the proposal. He referred to the lease agreement between the Appellant and the University in which the University agrees to promote the building as an academic residence (Exhibit 2B, Tab 18, p. 19). He also noted that the lease requires that if the building is sold it must continue to be used as an academic residence and at the end of the lease the University shall purchase the building (Exhibit 2B, Tab 18, p. 31).

[136] Mr. Bronskill stated that if the Board has difficulty with the wording of the definition of the term “academic residence”, the definition could be revised before final approval of the By-law.

[137] After reviewing the proposed By-law Amendment and the provisions of Zoning By-law No. 438-86, the Board finds that the proposed use is consistent with other uses permitted in the MCR zone and the proposed definition of “academic residence” is similar to the By-law definition of “university residence”. Furthermore, as noted by Mr. Bronskill, the clear intent of the University of Toronto stated in the lease agreement is “take all necessary action to designate and promote the Building as a U. of T. affiliated residence...” (Exhibit 2B, Tab 18, p. 19). It is clear that the university considers the proposed building to be an academic residence affiliated with the University of Toronto.

[138] The Board notes that the City witnesses did not raise concerns about the definition of “academic residence” in the By-law and the Board was not informed of any concern about the definition raised in correspondence from City staff.

[139] Based upon the above considerations, the Board finds that the proposed definition is appropriate and the use is consistent with uses permitted in the By-law for MCR zoned lands.

[140] Concern was expressed by some witnesses about the clause in the definition of “academic residence” that would permit the facility to be used as a hotel during the months of May, June, July and August. However, from the evidence provided by the Appellant, provision for this use is simply a contingency to provide some additional use of the facility during the slower times of the academic year when most students are on summer break. The Appellant expects that the majority of rooms would be leased on a yearly basis and would not be available for hotel use. Based upon these considerations, the Board has no difficulty with this part of the definition.

[141] A concern was raised about the legislative control that would apply to the building and if there would be difficulties enforcing evictions if required. Mr. Bronskill maintained that the *Residential Tenancies Act* would apply to the proposed building and any required actions could be taken under this legislation.

[142] The Board heard only brief evidence on this issue and will not make a specific finding. Furthermore, it is not clear that this is a planning issue that is within the Board’s jurisdiction. The Board recognizes that the proposal is a somewhat unique residential use in the City of Toronto as a privately owned and operated student residence. However, privately owned and operated university and college residences are functioning in other municipalities. The Board is not aware that this issue has been concern for any of these other facilities.

[143] The residents raised concerns about parking demand that the facility might generate. As noted earlier, no parking is proposed for the building and the City indicated that they were satisfied with the proposal in this regard. The Board heard that there are existing parking issues on Glasgow Street and that the residents are concerned that any increase in parking demand will worsen the situation.

[144] Mr. Krossey indicated that the proposal is appropriate with regard to parking issues. He indicated that 4 per cent to 5 per cent of students may own a car, but the proposal will be marketed to those who don’t want to use cars. He indicated that there are a significant number of parking lot spaces available within walking distance. He also referred to Exhibit 10 in which the Appellant commits to not oppose measures taken by

the City to make residents of the building ineligible to obtain on-street parking permits and to provide an information package to residents indicating that there is no on-site parking, that residents are not eligible for parking permits, and about nearby parking lots.

[145] The Board considers the submissions of Mr. Krossey to adequately address the parking issue and that the Appellant is taking appropriate measures to ensure that parking problems will not arise from the proposal.

[146] The residents also raised a concern about lack of a turnaround at the north end of Glasgow Street and about emergency vehicles needing to back out of Glasgow Street because of the narrow right of way. The Board understands that vehicles in the past have used the properties at 39 and 40 Glasgow Street to turn around. It appears that there is no space within the Glasgow Street right of way for the turn around and vehicles have been using the private properties for this function.

[147] Mr. Bronskill filed a copy of City staff comments on the site plan (Exhibit 17) and indicated that they represent the current position taken by City Staff. These comments do not raise the issue of a requirement for a turn around, although lane widenings are required. The comments also do not refer to any issues with regard to emergency vehicles. The Board expects that any concerns for access by emergency vehicles and any difficulties that would result from the proposal would be identified in these comments.

[148] Based upon the submissions, the Board will not order changes to the site plan to deal with these issues.

## **CONCLUSION**

[149] The Board has given full consideration of all of the evidence and finds that subject to the changes to the By-law's provisions for the site, the proposal complies with all applicable planning provisions and addresses all relevant guidelines.

[150] Furthermore, the Board has considered the authorities raised by the parties. In the Board's view, there are substantial differences between this appeal and those that are the subject of the decisions raised by the parties opposed to the proposal.

[151] In the decision *David Grains (In Trust) v. City of Toronto* (2005) O.M.B.D. No. 0347, the Board refused an application for variances which would have facilitated the development of a three storey triplex at 28 to 30 Glasgow Street. The parties opposing the Appellant's proposal raised this case as an example where the Board refused the proposal on Glasgow Street because it did not fit with the existing character of the area and also in part because of the restricted nature of Glasgow Street. However, the development that the Board considered in the above-noted case was south of the Appellant's proposal on lands that were designated and zoned for low density residential uses, and parking would have been required in conjunction with the triplex. This differs significantly from the Appellant's proposal where no construction is proposed on the portions of the site that are designated and zoned for low density residential uses. The only construction on the Glasgow Street portion of the site will occur in the area that is zoned MCR and where the anticipated form of development is influenced by proximity to College Street. Furthermore, no parking is being proposed with the Appellant's proposal.

[152] With regard to the authorities raised by the City, in the Board decision *GCD Trust Ltd. v. Toronto (City)* [2010] O.M.B.D. No. 672, minor zoning amendments for a previously approved proposal for a tall building were approved through the decision. The Board allowed the parties, time to bring the proposal into closer conformity with the City's Tall Buildings Guidelines before issuing the final order. The design of the building that the Board was considering was based upon standards that were developed prior to the adoption of the current Official Plan and the existence of the Tall Buildings Guidelines. Standards for the design of the building had been incorporated into the Zoning By-law. The provisions of the By-law would have permitted the construction of a building that deviated substantially from the guidelines. Through the decision the Board was attempting to ensure that the building design would conform to the provisions of the Official Plan and have greater regard for the guidelines. This differs greatly from the Appellant's proposal which has taken into account various iterations of the Tall Buildings Guidelines from the beginning. Furthermore, the Appellant's proposal conforms to the provisions of the Official Plan, except with regard to the need for the proposed Official Plan Amendment for 40 Glasgow Street which the Board agrees is a technical amendment.

[153] In the decision, *Imperial Oil Ltd. v. Toronto (City)* [2012] O.M.B.D. No. 925, the Board refused a By-law Amendment which proposed a drive-through facility in

conjunction the development of a service station. The Board refused the application and noted the lack of conformity of the proposal with the City's Urban Design Guidelines for Sites with drive-through facilities. However, a major reason for the refusal was the lack of conformity of the proposal with Official Plan policies and with the provisions of City By-laws which regulate the development of drive-through facilities. In the current appeal, the Appellant's proposal complies with the provisions of the Official Plan, except with regard to the proposed amendment for 40 Glasgow Street. Furthermore, the provisions of the By-law which will be altered through the Appellant's proposal generally result from the location of a tall building on the site which the City agrees is an appropriate built form.

[154] The Board understands that the decision *Abode Varsity Living Inc. v. Guelph (City)* 76 OMBR 26 [2013] OMBD No 338 required changes to a student housing proposal because of lack of conformity with provisions of the Official Plan and Zoning By-law, not the lack of conformity with guideline documents. In the current case, the Board is satisfied that the provisions of the Official Plan and Zoning By-law, except as altered through the proposed planning instruments, will be met. The revisions that the City is requesting would be based upon the provisions of the Tall Buildings Guidelines, which as the Board has noted earlier, provide guidance for the design of the proposal, but do not require strict adherence. The Board has found in this decision that the proposal has appropriately taken the guidelines into account.

[155] Based upon a full consideration of the evidence and the authorities, the Board finds that the proposal is consistent with the requirements of the PPS and complies with the relevant provisions of the Growth Plan. The proposed Official Plan Amendment will bring the 40 Glasgow Street property into conformity with the zoning of the property and provide for an appropriate use of the site. The Board finds that the proposed Zoning By-law Amendment complies with the provisions of the Official Plan and will provide for an appropriate use of the property. Furthermore, the Board finds that the details of the proposed site plan that were provided in the evidence (Exhibit 4, p. 19) are acceptable in principle.

[156] Based upon the above, the Board will allow the appeal and through this decision will approve the Official Plan Amendment, the Zoning By-law Amendment (Exhibit 2B, Tab 43), and the site plan in principle. Mr. Kallio requested that if the Board were to approve the proposal the Board should reserve dates on its schedule to deal

with outstanding site plan issues regarding the lane to the south of 40 Glasgow Street and to deal with any concerns related to s. 37 of the *Planning Act*.

[157] Mr. Bronskill requested that if the Board were to approve the proposal it should withhold its final order until it received confirmation from the City solicitor that the proposed Official Plan Amendment and Zoning By-law Amendment are in their final form and that agreements have been executed for the site plan and regarding s. 37 requirements.

[158] The Board also notes that the wording of the Official Plan Amendment was not included in the evidence.

[159] In consideration of the above, and the requests from Counsel for the Appellant and the City, the Board will withhold its final order regarding the proposed planning instruments as requested until it receives the above noted confirmation from the City solicitor, and until it receives final version of the proposed planning instruments.

[160] The member will remain seized and if there are outstanding s. 37 issues or site plan issues, the parties are directed to contact the Board case worker for this file to schedule time for resolution of these matters. The Board considers that the majority of the site plan details have been settled through this Decision and it is expected that any issues that may come forward should primarily be related to the lane south of 40 Glasgow Street.

[161] The appropriate order is provided below.

## **ORDER**

[162] The Board orders that the appeal is allowed and the proposed amendment to the City of Toronto Official Plan, the proposed amendment to Toronto Zoning By-law No. 438-86 and the proposed site plan are approved in principle. The Board will withhold its final order on the planning instruments until it is informed by the City solicitor that the wording of the Official Plan Amendment and Zoning By-law Amendment have been finalized and the final versions of those instruments have been provided to the Board, and until the Board is informed that the site plan agreement and the agreement regarding s. 37 of the *Planning Act* have been executed.

[163] The parties are to contact the Board to schedule a continuation of the proceeding if concerns regarding the s. 37 matters, or site plan issues related to the lane located south of the 40 Glasgow Street parcel and associated matters, cannot be resolved.

*"C. Conti"*

C. CONTI  
MEMBER

**Ontario Municipal Board**

A constituent tribunal of Environment and Land Tribunals Ontario

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