

Ontario Municipal Board
Commission des affaires municipales
de l'Ontario



ISSUE DATE: July 06, 2015

CASE NO(S): PL140790

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

Applicant and Appellant: Rosedale Developments Ltd.
Subject: Request to amend the Official Plan - Failure of the City of Toronto to adopt the requested amendment
Existing Designation: 12.27
Proposed Designation: Residential and Commercial/Retail
Purpose: To permit 34 storey mixed use building
Property Address/Description: 4917-4975 Yonge Street Et Al
Municipality: City of Toronto
Approval Authority File No.: 11 330487 NNY 23 OZ
OMB Case No.: PL140790
OMB File No.: PL140790
OMB Case Name: Rosedale Developments Limited v. Toronto (City)

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

Referred by: Rosedale Developments Inc.
Subject: Site Plan
Property Address/Description: 4917-4975 Yonge Street
Municipality: City of Toronto
OMB Case No.: PL140790
OMB File No.: PL150005

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

Applicant and Appellant: Rosedale Developments Ltd.
Subject: Application to amend Zoning By-law No. 7625 – Refusal or neglect of the City of Toronto to make a decision

Existing Zoning: RM6(155) and RM6(107)
 Proposed Zoning: Site Specific (To be determined)
 Purpose: To permit 34 storey mixed use building
 Property Address/Description: 4917-4975 Yonge Street Et Al
 Municipality: City of Toronto
 Municipal File No.: 11 330487 NNY 23 OZ
 OMB Case No.: PL140790
 OMB File No.: PL140791

Heard: May 19, 2015 in Toronto, Ontario

APPEARANCES:

Parties

Counsel

Rosedale Developments Ltd.	John Alati
City of Toronto	Gordon Whicher

DECISION DELIVERED BY SYLVIA SUTHERLAND AND ORDER OF THE BOARD

[1] Rosedale Developments Ltd. (“Rosedale”) has appealed the failure of the City of Toronto (“City”) to make a decision on its Official Plan Amendment (“OPA”) and Zoning By-law Amendment (“ZBA”) pursuant to s. 22(7) and s. 34(11) of the *Planning Act* (“Act”) for lands at 4917-4975 Yonge Street (“subject property”). An appeal pursuant to s. 41(12) of the Act for failure to make a decision on a site plan was administratively consolidated with these appeals, but was not before the Board at this hearing. An issue of parkland dedication has been referred to the Divisional Court.

PROPOSAL

[2] The OPA would permit the maximum height for the mixed-use building to increase from a maximum of 100 metres (“m”) to a maximum of 114 m. It would also reduce the minimum required non-residential gross floor area (“GFA”) from 9,000 square metres (“sq m”) to 8,400 sq m and increase the maximum permitted residential

GFA from 36,800 sq m to 37,400 sq m. It would adjust the long range development levels of the North York Centre Secondary Plan (“NYCSP”) accordingly, and allow portions of the first three floors to be used for residential support purposes such as garbage rooms, mail rooms and corridors, in addition to a residential lobby and commercial uses.

[3] The ZBA would permit a revised design for the previously approved 34-storey mixed-use building on the subject property, which is the entire block bounded by Yonge Street, Doris Avenue, Spring Garden Avenue and Hollywood Avenue. The height would increase from 100 m to a maximum of 114 m, and there would be an increase in height for portions of the podium. The parking uses within the building would be shared; there would be an increase in the maximum permitted lot coverage, a reduction in the minimum permitted landscaped area, and portions of the first three floors would be used in accordance with the uses outlined in the OPA.

[4] The ZBA also proposes that the existing north-south driveway, which serves the apartment buildings at 23 Hollywood Avenue and 18 Spring Garden Avenue, would also serve the proposed building on the subject property. The western extent of the permitted building envelopes for the adjacent apartment building and recreational amenity building at 23 Hollywood Avenue would coincide with the eastern edge of the existing driveway.

[5] The ZBA would increase the number of dwelling units by 47 units - from 431 to 478. This would be brought about not by increasing the density of the proposed building, but by redesigning of some of the units. These changes do not impact overall height or massing of the building, the building envelope, or overall GFA permissions and requirements for non-residential uses on the site.

[6] Five levels of underground parking with 612 parking spaces are proposed. Rosedale wishes to include a new provision in the ZBA to enable up to 77 residential parking spaces to be reallocated for commercial or visitor parking if they are not sold in

association with the sale of the condominium dwelling units. It was this proposal, along with a City Council requirement for a s. 37 contribution for public benefits in the amount of \$41,428.00 to be allocated in an off-site public art project at Lee Lifeson Park, which formed the basis of this hearing. There were no other issues of contention between the Parties regarding the OPA or the ZBA, the City being otherwise in support of both.

HEARING

[7] Alex Edmison, vice president of CBRE, which specializes in the investment sale and leasing of flagship retail properties in downtown and midtown Toronto, gave expert evidence in the area of retail and commercial leasing on behalf of Rosedale. G. M. Johnson, a professional engineer with more than 46 years' experience in transportation planning, civil and municipal engineering and highway design, gave expert evidence in transportation planning on behalf of Rosedale. Paul Lowes, a land use planner with 25 years' experience, gave expert land use planning evidence on behalf of Rosedale.

[8] Daniel Samson, a traffic planning technologist with the City since 2008, gave expert transportation planning evidence on behalf of the City.

[9] Perry Shoom, a resident in the area, spoke as a Participant at the hearing. Mr. Shoom was concerned about the cumulative impact of increased traffic resulting in safety and bottleneck issues (Exhibit 9). Ian Sugg, first vice president of Branch 66 of the Royal Canadian Legion, and Jackie North, secretary of Branch 66 of the Royal Canadian Legion, which will have access to 40 spaces of underground parking in the proposed building, attended as Participants, but did not speak.

FINDINGS

[10] Section 8.1 (1.5) of the NYCSP states:

The *North York Centre* is to be multi-use in character, containing a variety of office, retail, institutional, hotel, entertainment, residential and open space uses.

[11] Section 8.1 (1.6) states:

A broad variety of uses and facilities which will increase the diversity, vitality and interest of the *North York Centre* for residents of the entire City, as well as the surrounding regions is encouraged.

[12] Section 8.2 (2.1.1 b) states:

Generally, the lands fronting along Yonge Street should contain substantial office buildings, or other commercial uses including retail and entertainment uses.

[13] All of which point to the objective in the NYCSP of attracting destination retail to the area; in this case, to the subject property. Among the proposed tenants is a destination retailer - a 4,000 sq m whole foods retail store, which, as Mr. Edmison stated in his uncontested evidence, will require the support of 50,000 to 100,000 customers and that the "captive audience" would not be enough to support such a store. He explained that the need for parking is greater for grocery stores than for many other stores because of the nature of the products purchased. He said it would be "a leap of faith" for any large grocery store to locate in a building without an adequate supply of customer parking. Mr. Edmison said that two spaces per 100 sq. m is the average required for a whole foods store.

[14] If destination retailers are to be attracted to the North York Centre, as is proposed in the NYCSP, then their needs, including parking, must be met; otherwise both the NYCSP and the retailers are set up for failure.

[15] Mr. Samson maintained that the proposal to convert up to 77 residential parking spaces into non-residential spaces does not meet the parking policies of Appendix 1 in the NYCSP, resulting in a shortfall of 19 residential spaces. He based this figure on his assumption that the subject property would most reasonably be located in Policy Area 3 of the Citywide Zoning By-law Policy Areas (Exhibit 6).

[16] In fact, the subject property is located in no By-law Policy Area, and the Board finds that Mr. Johnson's approach of placing it in the average of all four policy areas to be the more reasonable one. Mr. Johnson also noted that the subject property is close to three subway stations, which, along with the increase in the number of bachelor and one-bedroom units, would make the building attractive for residents without cars in accordance with the City's objective to reduce the reliance on automobiles and increase the usage of public transit.

[17] Mr. Samson suggested that there are other ways of adding more commercial spaces, including building more physical spaces. This, as counsel for Rosedale pointed out, would necessitate the creation of another half-floor of underground parking which would be cost prohibitive.

[18] Mr. Samson suggested that a possible mitigation measure would be car share spaces suggesting, on the basis of the subject property being in Policy Area 3, five such spaces. Mr. Johnson supported the idea of car share spaces, stating that, based on his averaging of the policy areas, two such spaces.

[19] The Board finds, on review of Mr. Johnson's Traffic Impact Study ("TIS") (Exhibit 4), that the proposal is consistent with the City's auto modal split objective and that, overall, the proposal represents a minor change to the previously approved development proposal for the site. To quote from the TIS:

The change will have a minimal impact on the traffic on the road network and insignificant alteration to the operation of traffic movements at intersections in the area. At the request of City staff a new traffic impact study was prepared and two future road network scenarios were examined, one which kept the road network the same as it is now, with the downtown service road complete except for the south east quadrant referred to as the Doris Avenue Extension, and a second which would include that remaining "missing link". Under both of these scenarios the impact of the subject development is small and acceptable; however, an overall benefit to traffic operations in the North York Centre and to developments both functioning and planned or under construction, including the subject development, will be realised if the Doris Avenue Extension is constructed and becomes operational in the near future.

[20] The Board trusts that the TIS addresses, to some extent, Mr. Shoom's concerns. In this regard, the Board notes that it had before it no expert evidence to support Mr. Shoom's opinion that "the roadways were not designed to support the level of development currently approved" or that "the conclusion provided by 'experts' in support of multiple developments in the same area" is "based on incomplete, flawed or misrepresented information." (Exhibit 9).

[21] Mr. Lowes carefully led the Board through the relevant planning documents, supporting his uncontested opinion that the application is consistent with the City's Official Plan ("OP") and conforms to the ZBL. He also found it in conformity with the NYCSP. The Board accepts Mr. Lowes' evidence and opinion in regards to all three documents.

[22] As to the issue of s. 37 Benefits: the Board finds that the City is not entitled to s. 37 benefits as a result of this application. There is no increase in density as a result of the application to trigger such benefits. Nowhere in s. 3.3 of the NYCSP (Ex.1B, Tab 31) is public art listed as a use for s. 37 benefits, nor did City staff recommend it be asked for in relation to the application before the Board; rather it resulted as a motion of Council (Exhibit 1A, Tab 4) made without any reference to the provisions of the NYCSP.

ORDER

[23] The Board orders that the appeal is allowed and the Official Plan for the City of Toronto is modified as set out in Attachment 1 to this Order.

[24] The Board further orders that the appeal related to the Zoning By-law is allowed conditional upon Rosedale Developments Ltd. providing two "car share" parking spaces, and the City of Toronto is directed to amend By-law No. 7625 as set out in Attachment 2 to this Order.

“Sylvia Sutherland”

SYLVIA SUTHERLAND
MEMBER

If there is an attachment referred to in this document,
please visit www.elto.gov.on.ca to view the attachment in PDF format.

Ontario Municipal Board

A constituent tribunal of Environment and Land Tribunals Ontario

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

CITY OF TORONTO

BY-LAW No. ~ -2015(OMB)

To Adopt Amendment No. 58 to the Official Plan of the City of Toronto in respect of lands fronting onto Yonge Street between Spring Garden Avenue and Hollywood Avenue, municipally known as 4917-4975 Yonge Street

WHEREAS the Ontario Municipal Board, pursuant to its Order issued on ~ 2015, having held a hearing, has decided to amend the Official Plan of the City of Toronto;

THEREFORE the Official Plan for the City of Toronto is amended by the Ontario Municipal Board as follows:

1. Amendment No. 58 to the Official Plan of the City of Toronto in respect of lands fronting onto Yonge Street between Spring Garden Avenue and Hollywood Avenue, municipally known as 4917-4975 Yonge Street, consisting of the attached text and the map designated as Schedule '1', is hereby adopted.

PURSUANT TO THE DECISION/ORDER OF THE ONTARIO MUNICIPAL BOARD
ISSUED ON ~ 2015 IN BOARD FILE NO. PL140790.

AMENDMENT NO. 58

**TO THE OFFICIAL PLAN OF THE CITY OF TORONTO
IN RESPECT OF LANDS FRONTING ONTO YONGE STREET
BETWEEN SPRING GARDEN AVENUE AND HOLLYWOOD AVENUE,
MUNICIPALLY KNOWN AS 4917-4975 YONGE STREET**

The Official Plan of the City of Toronto is amended as follows:

Clause 1

Chapter Six, Section 8 (North York Centre Secondary Plan) is amended by modifying Site Specific Policy 27 in Section 12, North York Centre South Site Specific Policies, as follows:

1. Section 12.27, paragraph (a) is revised by replacing "36,800" with "37,400" and "9,000" with "8,400" and by inserting the words "and other supportive residential uses" after the words "Except for residential lobbies".
2. Section 12.27 is revised by adding the following subsection after subsection (c):

"(d) Pursuant to Section 5.4.2 of this Secondary Plan, a maximum building height of 114 metres is permitted at the location identified on Map 8-8c."

Clause 2

Figure 4.3.1 of Chapter Six, Section 8 (North York Centre Secondary Plan) titled "Long Range Development Levels" is amended by increasing the Downtown Residential Gross Floor Area (and relevant totals) by 600 m² and decreasing the Downtown Non-Residential Gross Floor Area (and relevant totals) by 600 m².

Clause 3

Map 8-8c of the North York Centre Secondary Plan is amended in accordance with Schedule '1' attached.

SCHEDULE '1'



CITY OF TORONTO

BY-LAW No. ~ -2015(OMB)

**To amend the former City of North York By-law No. 7625, as amended,
with respect to lands known municipally as
4917-4975 Yonge Street, 23 Hollywood Avenue and 18 Spring Garden Avenue**

WHEREAS the Ontario Municipal Board, pursuant to its Order issued on ~ 2015, having held a hearing, has decided to amend By-law No. 7625 of the former City of North York; and

WHEREAS the Ontario Municipal Board has decided that the minor variances granted by the Committee of Adjustment on June 23, 2010 in File No. A0221/10NY are to be superseded by amending Section 64.20-A(155)RM6(155) in Zoning By-law No. 7625 for the former City of North York; and

WHEREAS the Ontario Municipal Board has decided to also otherwise amend Sections 64.20-A(155)RM6(155) and 64.20-A(107)RM6(107) of By-law No. 7625;

THEREFORE By-law No. 7625 of the former City of North York is hereby amended as follows:

64.20-A(155)RM6(155)

1.1 Subsection 64.20-A(155)RM6(155)(e) of By-law No. 7625, headed “GROSS FLOOR AREA”, is amended by replacing

“(ii) below grade space used exclusively for motor vehicle parking; and”

with

“(ii) below grade space used exclusively for motor vehicle or bicycle rack parking and access thereto, and at grade space used exclusively for motor vehicle loading; and”

1.2 Subsection 64.20-A(155)RM6(155)(h) of By-law No. 7625, headed “PERMITTED USES” is amended as follows:

(a) by replacing “retail stores” in the list of permitted uses with “retail stores (including grocery stores, supermarkets and pharmacies)”;

(b) by replacing the first sentence in the second paragraph “Only non-residential uses, except for residential lobby space, shall be contained in the first three floors of the building.” with “Only non-residential uses shall be contained in the first three floors of the building, except for accessory residential uses (including but not limited to

residential lobby space, mail rooms, garbage/recycling rooms, mechanical rooms, utility rooms, exit stairs and corridors).”;

- (c) by replacing the second sentence in the second paragraph “No non-residential uses shall be permitted in the remainder of the building.” with “No non-residential uses shall be permitted in the remaining floors of the building.”; and
- (d) by deleting the last sentence in the third paragraph “All other ground floor uses shall be subject to a maximum frontage width of 14 metres.”

1.3 Subsection 64.20-A(155)RM6(155)(j) of By-law No. 7625, headed “NUMBER OF DWELLING UNITS”, is amended by replacing “420” therein with “478”.

1.4 Subsection 64.20-A(155)RM6(155)(l) of By-law No. 7625, headed “BUILDING ENVELOPE”, is amended by replacing the entire subsection as follows:

“BUILDING ENVELOPE

- (l) No portion of any building or structure erected and used above established grade shall be located otherwise than wholly within the building envelope identified on Schedule “RM6(155)” except for a canopy and a three storey roof element along the Yonge Street frontage, which may project a maximum of 2.5 m into the yard setback.”

1.5 Subsection 64.20-A(155)RM6(155)(m) of By-law No. 7625, headed “PARKING”, is amended by replacing the entire subsection as follows:

“PARKING

- (m) Parking spaces shall be provided within the net site in accordance with the following requirements and conditions:
 - (i) A minimum of 1.00 parking spaces per dwelling unit, including 0.10 parking spaces per dwelling unit allocated for residential visitor use.
 - (ii) A maximum of 1.20 parking spaces per dwelling unit, including 0.10 parking spaces per dwelling unit allocated for residential visitor use.
 - (iii) A minimum of 0.90 parking spaces per 100 m² of gross floor area devoted to retail, service commercial and office uses.
 - (iv) A maximum of 1.26 parking spaces per 100 m² of gross floor area devoted to retail, service commercial and office uses.
 - (v) Up to 40 additional parking spaces may be allocated for use by the social facility located on the lands zoned C1(103) and known municipally as 6

Spring Garden Avenue, provided that the overall number of parking spaces does not exceed the sum of the maximum limits specified in (ii) plus (iv) above.

- (vi) Residential visitor parking spaces and social facility parking spaces may be commingled with commercial parking spaces. Non-residential parking spaces and residential visitor parking spaces may be made available to the general public and a charge may be imposed for the use of such spaces.
- (vii) Notwithstanding the minimum requirement specified in (i) above and the maximum limit specified in (iv) above, unsold residential tenant parking spaces located on the second level of the underground garage may be converted from residential to non-residential use provided that at least two parking spaces located in the non-residential portion of the garage are dedicated to motor vehicle sharing. As used herein, “motor vehicle sharing” refers to a practice whereby a number of people share the use of one or more vehicles owned by an entity so authorized by the owner of the non-residential portion of the underground garage.
- (viii) Notwithstanding the requirement that parking spaces are to be provided within the net site, a maximum of 64 parking spaces may be contained, in whole or in part, in a directly accessible, underground parking garage located, in whole or in part, on abutting lands zoned RM6(107).
- (ix) No surface parking spaces shall be permitted other than a maximum of 40 temporary spaces on an interim basis for the use of the social facility located on the lands zoned C1(103) and known municipally as 6 Spring Garden Avenue, pending completion of the building to be located on lands zoned RM6(155).
- (x) A maximum of 64 parking spaces, located in the first four levels of the underground garage, shall have a minimum width of 2.7 metres and a minimum length of 5.5 metres, irrespective of any side obstructions.”

- 1.6 Subsection 64.20-A(155)RM6(155)(o) of By-law No. 7625, headed “LOT COVERAGE”, is amended by replacing “74 per cent” with “82 per cent”.
- 1.7 Subsection 64.20-A(155)RM6(155)(p) of By-law No. 7625, headed “LANDSCAPING”, is amended by replacing “900 m²” with “500 m²”.
- 1.8 Subsection 64.20-A(155)RM6(155)(t) of By-law No. 7625, headed “PROVISIONS NOT APPLICABLE”, is amended by adding 6A(3)(d)(ii) to the list specified therein.
- 1.9 Subsection 64.20-A(155)RM6(155)(w) of By-law No. 7625, headed “ADDITIONAL GROSS FLOOR AREA”, is amended by replacing “bicycle rack or locker” wherever it appears in (ii) therein with “bicycle locker”.

- 1.10 Schedule “RM6(155)” to By-law No. 7625 is replaced with Schedule “RM6(155)” attached to this By-law.

64.20-A(107)RM6(107)

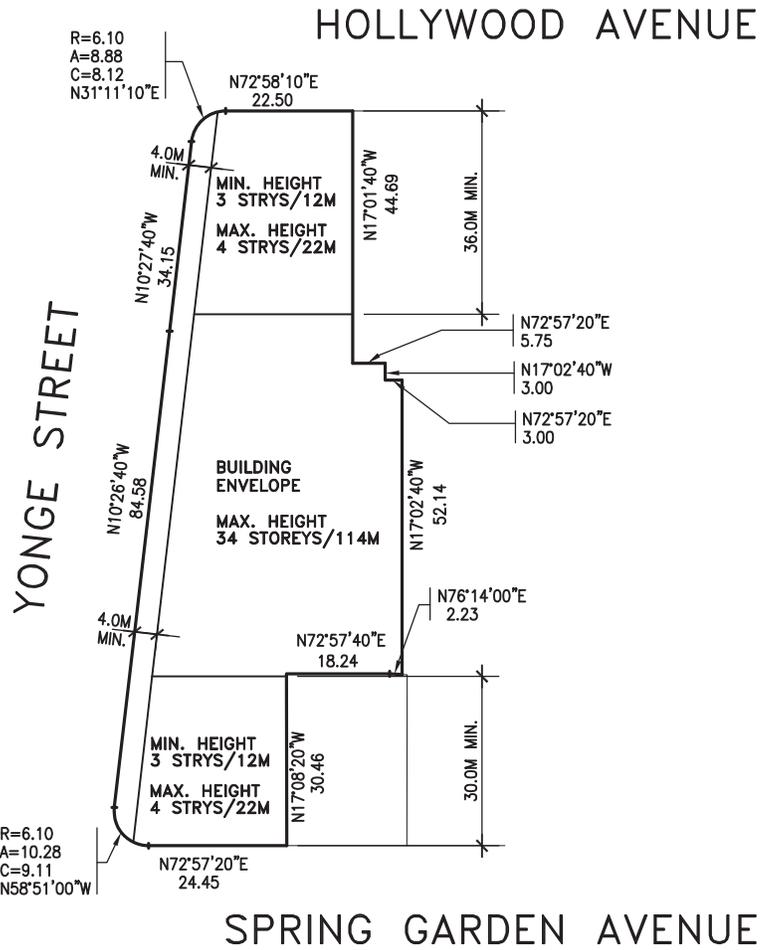
- 2.1 Subsection 64.20-A(107)RM6(107)(h) of By-law No. 7625, headed “PERMITTED USES”, is amended by deleting the word “and” at the end of the first item in the list of permitted uses, replacing the period at the end of the second item with a semi-colon followed by the word “and”, and adding to the list of permitted uses the following uses:

“a commercial driveway and related uses (including but not limited to loading bays, pedestrian walkways, surface parking spaces associated with the abutting lands zoned C1(103), and parking garage ramps and entrances) within the area so identified on Schedule “RM6(107)”, serving the buildings located on the abutting lands zoned C1(103) and RM6(155) in addition to serving the buildings located on the lands zoned RM6(107)”.

- 2.2 Schedule “RM6(107)” to By-law No. 7625 is replaced with Schedule “RM6(107)” attached to this By-law.

PURSUANT TO THE DECISION/ORDER OF THE ONTARIO MUNICIPAL BOARD ISSUED ON ~2015 IN BOARD FILE NO. PL140791.

DIMENSIONS ARE IN METERS & MAY BE CONVERTED TO FEET BY DIVIDING BY 0.3048



CITY OF TORONTO

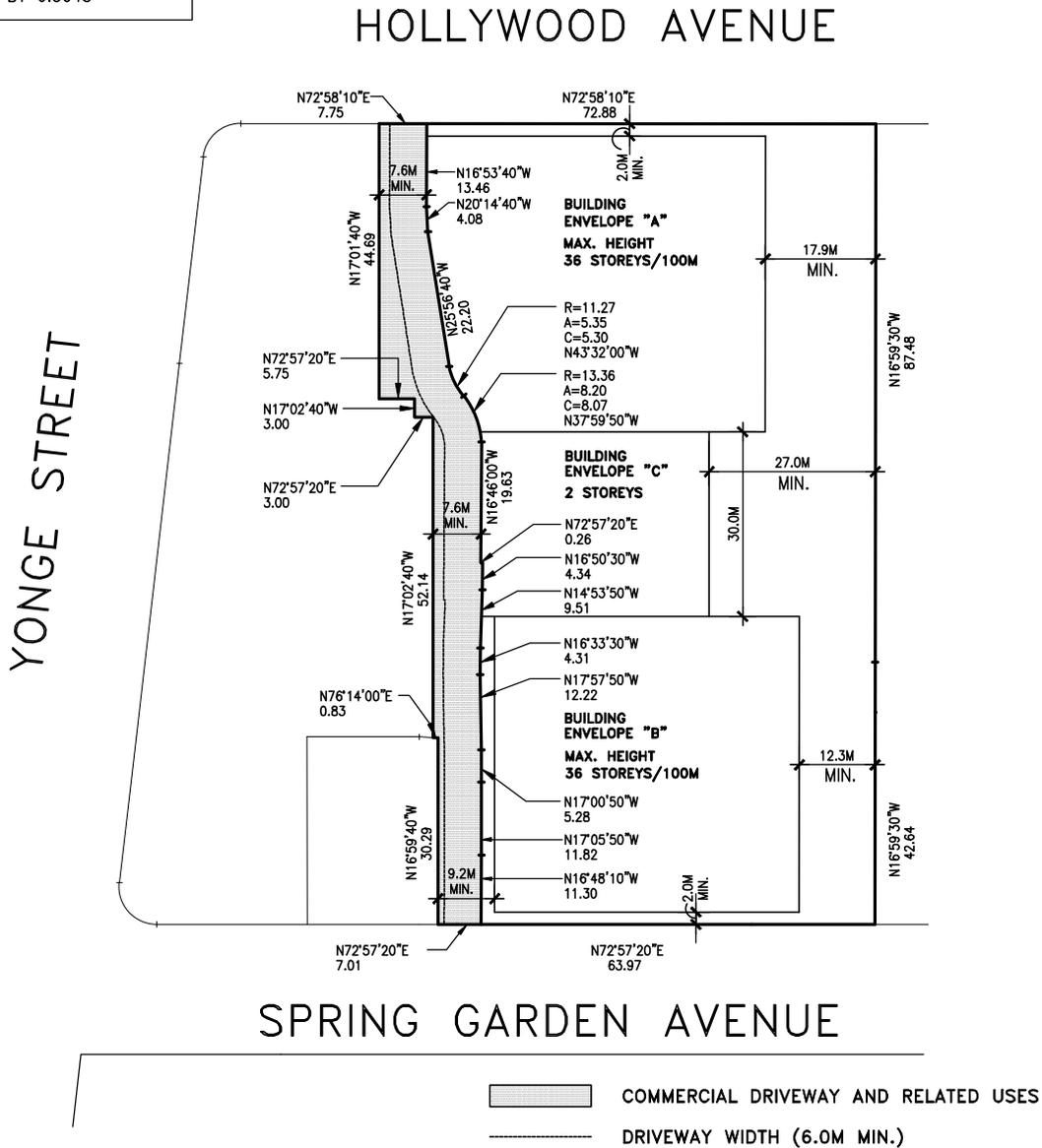
SCHEDULE "RM6(155)" TO BY-LAW _____

PASSED ON _____

FILE NO.

LOCATION: 4917-4975 YONGE ST., 23 HOLLYWOOD AVE., 18 SPRING GARDEN AVE.

DIMENSIONS ARE IN METERS &
MAY BE CONVERTED TO FEET
BY DIVIDING BY 0.3048



CITY OF TORONTO

SCHEDULE "RM6(107)" TO BY-LAW _____

PASSED ON _____

FILE NO.

LOCATION: 4917-4975 YONGE ST., 23 HOLLYWOOD AVE., 18 SPRING GARDEN AVE.