

Ontario Land Tribunal
Tribunal ontarien de l'aménagement
du territoire



ISSUE DATE: January 18, 2022

CASE NO(S): PL210017

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

Applicant and Appellant:	Skale 1375 QSW LP
Subject:	Application to amend Zoning By-law No. 438-86 - Refusal or neglect of City of Toronto to make a decision
Existing Zoning:	MCR T2.5 C1.2 R2.0
Proposed Zoning:	Site Specific (To be determined)
Purpose:	To permit an 8-storey mixed use rental building
Property Address/Description:	1375 Queen Street West
Municipality:	City of Toronto
Municipality File No.:	20 124823 STE 04 OZ
OLT Case No.:	PL210017
OLT File No.:	PL210017
OLT Case Name:	Skale 1375 QSW LP v. Toronto (City)

Heard: January 11, 2022 by telephone conference call

APPEARANCES:

Parties

Counsel

Skale 1375 QSW LP

D. Bronskill

City of Toronto

J. Davidson

**MEMORANDUM OF ORAL DECISION DELIVERED BY HUGH S. WILKINS ON
JANUARY 11, 2022 AND ORDER OF THE TRIBUNAL**

INTRODUCTION

[1] Skale 1375 QSW LP ("Appellant") has appealed under s. 34(11) of the *Planning*

Act the failure of the City of Toronto (“City”) to make a decision with respect to the Appellant’s application for zoning by-law amendments regarding the property located at 1375 Queen Street West (“subject property”).

[2] The subject property is designated as Mixed Use Area in the City’s Official Plan and zoned as Commercial Residential under the City’s Zoning By-law Nos. 569-2013 and 438-86. The Appellant’s proposed zoning for the subject property would add site-specific provisions to this zoning.

[3] The Tribunal held a Case Management Conference in this proceeding on May 18, 2021 at which it granted Participant status to Korosh Baghal Asl who owns land in the vicinity of the subject property.

[4] On November 11, 2021, the Tribunal was informed by the Parties that they had reached a tentative settlement of the appeals.

[5] On January 11, 2022, the Tribunal held a settlement hearing to address the proposed settlement.

ISSUES

[6] On a zoning by-law amendment appeal under s. 34(11) of the *Planning Act*, the Tribunal must determine whether the proposed amendment:

- a) is consistent with policy statements issued by the Minister (in this case, the Provincial Policy Statement, 2020 (“PPS”));
- b) conforms with applicable provincial plans (in this case, the Growth Plan for the Greater Golden Horseshoe, 2019 (“Growth Plan”));
- c) conforms with applicable official plans (in this case, the City’s Official Plan); and,

- d) represents good planning.

The Tribunal must also have regard to the matters of provincial interest set out in s. 2 of the *Planning Act* and regard to the information and materials that City Council received in relation to the matter under s. 2.1(2) of the *Planning Act*.

EVIDENCE AND SUBMISSIONS

[7] Prior to the settlement hearing, the Appellant filed an affidavit sworn by David McKay, dated December 29, 2021. He is a land use planner retained by the Appellant. He also provided oral testimony at the settlement hearing. The Tribunal qualified him to provide opinion evidence in the area of land use planning.

[8] Mr. McKay stated that based on the proposed settlement, the proposed Zoning By-law Amendments would facilitate the development of a seven-storey mixed use building with a floor space index of 5.49 times the area of the lot, a streetwall height of four storeys, front and rear stepbacks, and below ground parking for 15 vehicles. He stated that the subject property is presently vacant and is subject to site plan control. He stated that the Appellant will work with the City to determine if there are opportunities for affordable housing units as part of the proposed development. He said the Parties have agreed to request that the Tribunal's Order be withheld pending confirmation from the City that the proposed Zoning By-law Amendments are in final form and context to the City's satisfaction. He opined that this was an appropriate way forward.

[9] Mr. McKay opined that the proposed Zoning By-law Amendments are consistent with the PPS, conform with the Growth Plan, conform with the City's Official Plan, and constitute good planning. He stated that the proposed Zoning By-law Amendments would facilitate efficient development of underutilized lands on an existing mixed-use designated property. He said they would facilitate intensification and that the proposed development would fit in with the character of the area and provide rental housing and commercial services that will service the local community. Mr. McKay opined that the

proposed development would enhance the existing built form in the area and would be compatible with the existing and planned context of the area. He stated that the proposed massing and scale of the proposed development is appropriate and the proposed development would appropriately provide transitioning to nearby residential uses. He stated that the subject property is adjacent to public transit and the proposed development would efficiently use existing infrastructure. He also said the proposed development would provide a mix of uses that will animate the public realm and would include low-impact development measures contributing to the City's sustainability and climate change objectives.

[10] Mr. McKay stated that he has had regard to the matters of provincial interest set out in s. 2 of the *Planning Act*, including those related to built form, land use, and energy efficiency. He said that he also has had appropriate regard to the City's Official Plan Amendment No. 445 (which implements the City's Site and Area Specific Policy 566), which has been approved by City Council, but is under appeal. Mr. McKay further stated that he considered the City's Mid-Rise Building Performance Standards and that any potential impacts on nearby heritage buildings have been reviewed by the City and no concerns have been raised.

[11] The Participant, Mr. Korosh Baghal Asl, filed brief written submissions prior to the settlement hearing expressing concerns that businesses in the area would be negatively affected by the proposed development. In response, Mr. McKay stated that the proposed Zoning By-law Amendments would facilitate a development that is compatible and fits within the existing and planned context of the area and would have minimal physical impacts on established businesses.

FINDINGS

[12] Based on Mr. McKay's uncontradicted opinion evidence, the Tribunal finds that the proposed Zoning By-law Amendments are consistent with the PPS, conform with the Growth Plan, conform with the City's Official Plan, and constitute good planning. The Tribunal has had regard to the matters of provincial interest in s. 2 of the *Planning*

Act and the information and materials that City Council received in relation to the matter.

ORDER

[13] The Tribunal orders that the appeal is allowed, in part, and the Zoning By-law Amendments attached as Schedules 1 and 2 to this Interim Order are approved in principle contingent upon the satisfaction of the pre-requisite matters identified in paragraph 14 below.

[14] The Tribunal will withhold the issuance of its Final Order contingent upon written confirmation provided to the Tribunal from the Parties that:

- a. the proposed zoning by-law amendments, attached as Schedules 1 and 2 to this Interim Order are in a form satisfactory to the Parties;
- b. the Appellant has submitted a revised Transportation Impact Study and Parking Study acceptable to, and to the satisfaction of, the City's General Manager, Transportation Services and that such matters arising from such study, be secured at no cost to the City, if required;
- c. the Appellant has provided a revised Functional Servicing Report, Stormwater Management Report, Municipal Servicing and Grading Plan, and any other reports or documents deemed necessary in support of the development to the City for review and acceptance by and to the satisfaction of the City's Chief Engineer and Executive Director, Engineering and Construction Services, with such reports to determine whether the municipal water, sanitary and storm sewer systems can support the proposed development and whether upgrades to or improvements of the existing municipal infrastructure are required; and,
- d. the Appellant has withdrawn its appeal of Official Plan Amendment No. 445 (Parkdale Main Street and West Queen West Site and Area Specific Policy) and associated Zoning By-laws.

[15] If the Parties do not submit the final drafts of the Zoning By-law Amendments, provide confirmation that all other contingent pre-requisites to the issuance of the Final Order set out in paragraph 14 above have been satisfied, and request the issuance of the Final Order by **July 11, 2022**, the Appellant and the City shall provide a written status report to the Tribunal by that date regarding the timing of the expected

confirmation and submission of the final form of the draft Zoning By-law Amendments and issuance of the Final Order by the Tribunal.

[16] The Tribunal may, as necessary, require the further attendance of the Parties by Telephone Conference Call to determine the additional time lines and due dates for the submission of the final form of the instruments, the satisfaction of the contingent prerequisites, and the issuance of the Final Order.

“Hugh S. Wilkins”

HUGH S. WILKINS
MEMBER

Ontario Land Tribunal

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

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

SCHEDULE 1

Authority: Toronto and East York Community Council Item ##, as adopted by City of Toronto Council on ~, 20~

CITY OF TORONTO BY-LAW NO. XXXX-

20XX

To amend Zoning By-law No. 569-2013 with respect to the lands known municipally known in the year 2021 as 1375 Queen Street West.

Whereas authority is given to the Council of a municipality by Section 34 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, to pass Zoning By-laws;

Whereas Council of the City of Toronto has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*,

The Council of the City of Toronto enacts:

1. The lands subject to this By-law are outlined by heavy black lines on Diagram 1 attached to this By-law.
2. The words highlighted in bold type in this By-law have the meaning provided in Zoning By-law No. 569-2013, Chapter 800 Definitions.
3. Zoning By-law No. 569-2013, as amended, is further amended by amending the zone label on the Zoning By-law Map in Section 990.10, respecting the lands municipally known in the year 2021 as 1375 Queen Street West, as outlined in heavy black line to CR (xx), as shown on Diagram 2 attached to this By-law.
4. Zoning By-law No. 569-2013, as amended, is further amended by adding to Article 900.11.10 Exception Number (xx):

Exception CR (xxx)

The lands, or a portion thereof as noted below, are subject to the following Site Specific Provisions.

Site Specific Provisions:

On 1375 Queen Street West, if the requirements of by-law [Clerks to supply by-law ##] are complied with, none of the provisions of By-law 569-2013 shall apply to prevent the erection or use of a mixed use building in compliance with (B) through (K) below;

Despite Regulation 40.5.40.10, the height of the building is the distance between a Canadian Geodetic Datum elevation of 97.90 metres and the elevation of the highest point of the building;

Despite Regulation 40.10.40.10, any building or structure erected on the lands must not exceed the height in metres and storeys specified by the numbers following the symbols HT and ST, as shown on Diagram 3 of this By-law;

Despite Regulation 40.10.40.10(2), no portion of any building or structure on the lot may have a height greater than the height in metres specified by the number following the “H” symbol as shown on Diagram 3 attached to and forming part of this By-law, excluding:

wind screens, elevator overruns, mechanical equipment and any associated enclosure structures, parapets, awnings, fences, guard rails, railings and dividers, pergolas, trellises, balustrades, eaves, screens, stairs, stair enclosures, roof drainage, window sills, window washing equipment, chimneys, vents, terraces, lightning rods, light fixtures, architectural features, landscaping, and elements of a green roof, which may project above the height limits shown on Diagram 3;

Despite Regulation 40.10.40.60, the portions of a building or structure above ground must be located within the areas delineated by heavy lines on Diagram 3 attached to and forming part of this By-law, except that:

cornices, light fixtures, ornamental elements, parapets, art and landscape features, patios, decks, pillars, trellises, balconies, terraces, eaves, window sills, planters, ventilation shafts, guardrails, balustrades, railings, stairs, stair enclosures, doors, wheelchair ramps, fences, screens, site servicing features, awnings and canopies, and underground garage ramps and associated structures may extend beyond the heavy lines shown on Diagram 3 of this By-law;

(F) Despite Regulation 40.10.40.40, the total gross floor area of all buildings and structures on the lot shall not exceed 4,000 square metres, provided:

The residential gross floor area does not exceed 3,550 square metres; and,
The non-residential gross floor area does not exceed 450 square metres.

(G) Despite Regulation 40.10.40.70(2):

- (i) the minimum building setbacks are those setbacks shown in metres on Diagram 3 of By-law (Clerks to inset By-law ###); and
- (ii) the mixed use building may penetrate the 45 degree angular plane along the front and rear lot lines.

(H) Despite Regulation 40.10.40.50(1)(B), amenity space shall be provided and maintained on the lot in accordance with the following minimum requirements:

Indoor residential amenity space shall be provided at a minimum rate of 2.0 square metres per dwelling unit; and

Outdoor residential amenity space shall be provided at a minimum rate of 2.0 square metres per dwelling unit.

(I) Despite Regulation 200.5.10.1, and Regulation 900.11.10 (2609), a minimum of 18 parking spaces shall be provided and maintained on the lot, of which a minimum of:

0.4 parking spaces must be provided for residents of the dwelling units.

(J) Despite regulation 220.5.10, no Type “G” loading space will be provided and maintained on the lot;

(K) A minimum of one (1) car-share space shall be provided and maintained on the lot. For the purposes of this By-law, car-share space shall mean a program that operates on a self-serve system, where members may rent a vehicle from any of the car-share lots available across the City.

Prevailing By-laws and Prevailing Sections: (None Apply)

ENACTED AND PASSED this _____ day of _____ 20XX.

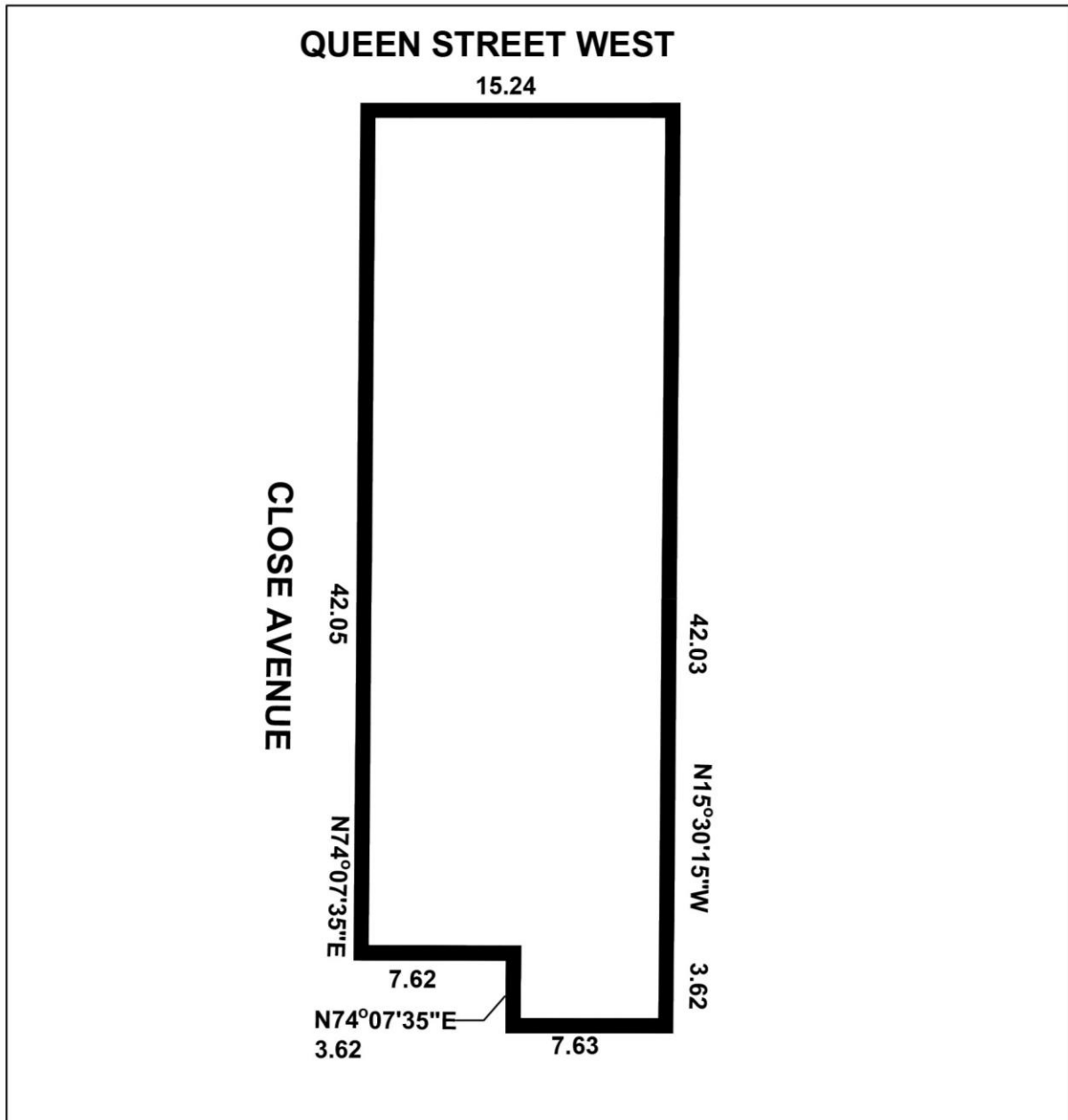
JOHN TORY,

Mayor

JOHN ELVIDGE

City Clerk

(Corporate Seal)

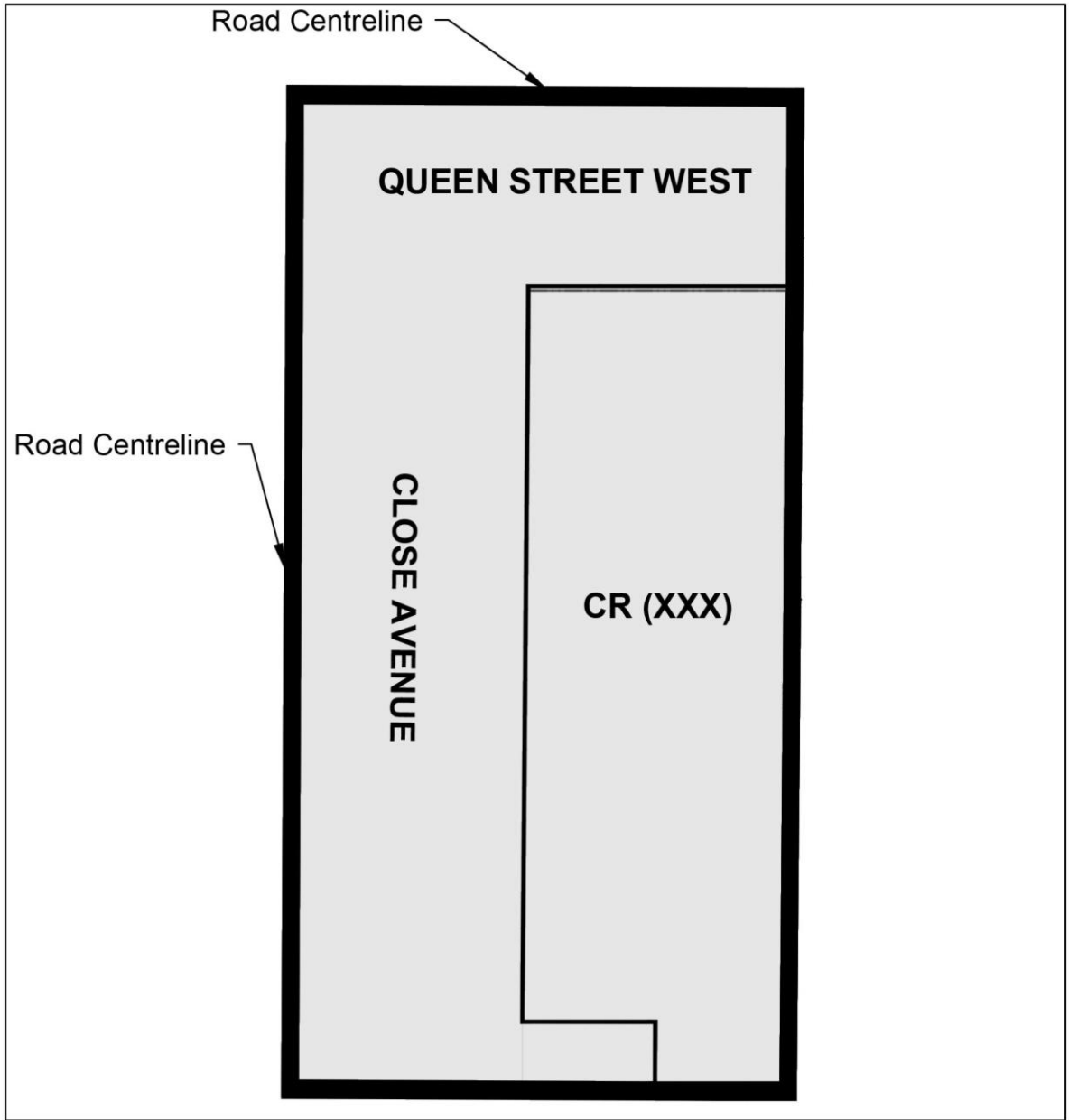


1375 Queen Street West

DIAGRAM 1

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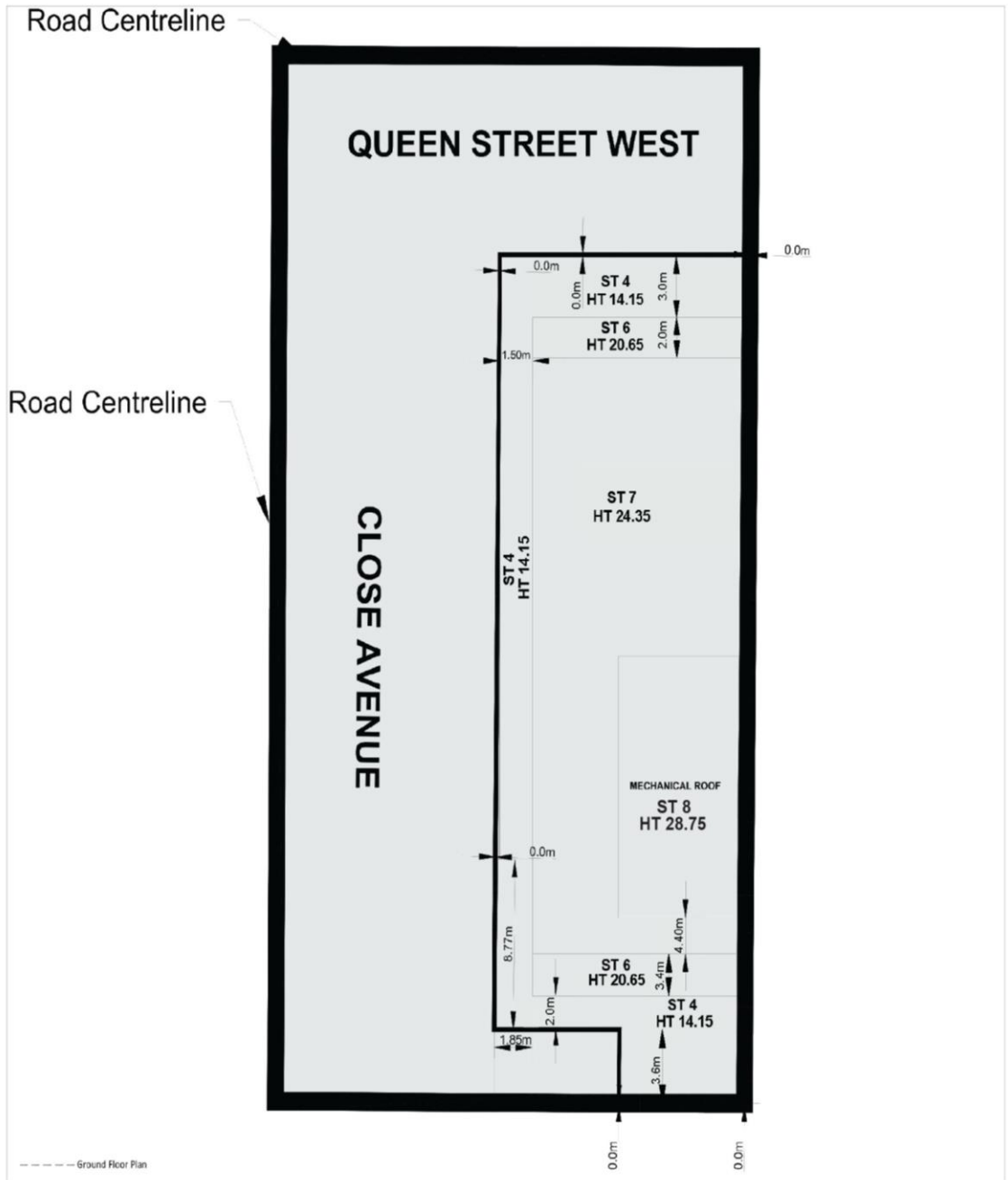




1375 Queen Street West

DIAGRAM 2

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----- Ground Floor Plan



DIAGRAM 3

1375 Queen Street West

File#



SCHEDULE 2

Draft Zoning By-law Amendment (December 21, 2021)

CITY OF TORONTO

BY-LAW NO. XXXX-20XX

To amend Zoning By-law No. 438-86 of the former City of Toronto with respect to the lands known municipally as 1375 Queen Street West.

WHEREAS authority is given to the Council of a municipality by Section 34 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, to pass Zoning By-laws;

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

WHEREAS Council of the City of Toronto, at its meeting on _____, 20xx, determined to amend the former City of Toronto Zoning By-law No. 438-86 with respect to lands known municipally in the year 2021 as 1375 Queen Street West;

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

1. Except as otherwise provided herein, the provisions of Zoning By-law 438-86 shall continue to apply to the *lot*.
2. None of the provisions of Section 2(1) with respect to “*grade*”, “*height*”, “*residential gross floor area*”, and “*lot*”, and Sections 4(2)(a), 4(3)(a), 4(12), 4(13)(a), 8(3) Part I, 8(3) Part II, and Section 12(7) of By-law No. 438-86 of the former City of Toronto, being “A By-law to regulate the use of land and the erection, use, bulk, height, spacing of and other matters relating to buildings and structures and to prohibit certain uses of lands and the erection and use of certain buildings and structures in various areas of the City of Toronto” as amended, shall apply to prevent the erection and use of a *mixed-use building* on the *lot*, provided that:
 - (a) The *lot* on which the buildings are to be located comprises the lands outlined by heavy lines on Map 1 attached to and forming part of this By-law;
 - (b) The total *gross floor area* of all buildings and structures on the *lot* shall not exceed 4,000 square metres, provided:
 - (i) The residential *gross floor area* does not exceed 3,550 square metres; and,
 - (ii) The non-residential *gross floor area* does not exceed 450 square metres.
 - (c) No portion of any building or structure on the *lot* shall have a *height* greater than the *height* in metres specified by the number following the “H” symbol as shown on Map

2 attached to and forming part of this By-law, excluding:

- (i) wind screens, elevator overruns, mechanical equipment and any associated enclosure structures, parapets, awnings, fences, guard rails, railings and dividers, pergolas, trellises, balustrades, eaves, screens, stairs, stair enclosures, roof drainage, window sills, window washing equipment, chimneys, vents, terraces, lightning rods, light fixtures, architectural features, landscaping, and elements of a green roof, which may project above the height limits shown on Map 2;
- (d) The portions of a building or structure above ground must be located within the areas delineated by heavy lines on Map 2 attached to and forming part of this By-law, except that:
 - (i) architectural elements, cornices, light fixtures, ornamental elements, parapets, art and landscape features, patios, decks, pillars, trellises, balconies, terraces, eaves, window sills, planters, ventilation shafts, guardrails, balustrades, railings, stairs, stair enclosures, doors, wheelchair ramps, fences, screens, site servicing features, awnings and canopies, and underground garage ramps and associated structures may extend beyond the heavy lines shown on Map 2 of this By-law;
- (e) Vehicle *parking spaces* shall be provided and maintained on the *lot* in accordance with the following:
 - (i) A minimum of 0.4 *parking spaces* for residents of the *dwelling units*.
- (f) No *loading space - Type "G"* shall be provided and maintained on the *lot*;
- (g) *Residential amenity space* must be provided in accordance with the following:
 - (i) Indoor *residential amenity space* shall be provided at a minimum rate of 2.0 square metres per dwelling unit; and
 - (ii) Outdoor *residential amenity space* shall be provided at a minimum rate of 2.0 square metres per dwelling unit.
- (h) A minimum of one (1) *car-share space* shall be provided and maintained on the *lot*.

3. For the purposes of this By-law, each word or expression that is italicized in the By-law shall have the same meaning as each such word or expression as defined in By-law No. 438-86, as amended, with the exception of the following terms:

- (i) "*grade*" shall mean 97.90 metres Canadian Geodetic Datum;
- (ii) "*height*" shall mean, the vertical distance between *grade* and the highest point of the structure, except for those elements otherwise expressly permitted in this By-law;
- (iii) "*lot*" shall mean the parcel of land outlined by heavy lines on Map 1 attached to and forming part of this By-law; and

- (iv) floor area of the *mixed use building* is reduced by the area in the building used for:
 - i. Bicycle parking below *grade*;
 - ii. Loading spaces at the ground level and bicycle parking spaces at or above grade;
 - iii. Storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms below *grade*;
 - iv. Residential amenity space required by this By-law;
 - v. Elevator shafts;
 - vi. Garbage shafts;
 - vii. Mechanical penthouse; and
 - viii. Exit stairwells in the building.

(v) “*car-share space*” shall mean a program that operates on a self-serve system, where members may rent a vehicle from any of the car-share lots available across the City.

(vi)

4. Except as otherwise provided herein, the provisions of By-law No. 438-86, as amended, shall continue to apply to the *lot*.

5.

ENACTED AND PASSED this _____ day of _____, 20xx.

JOHN TORY,

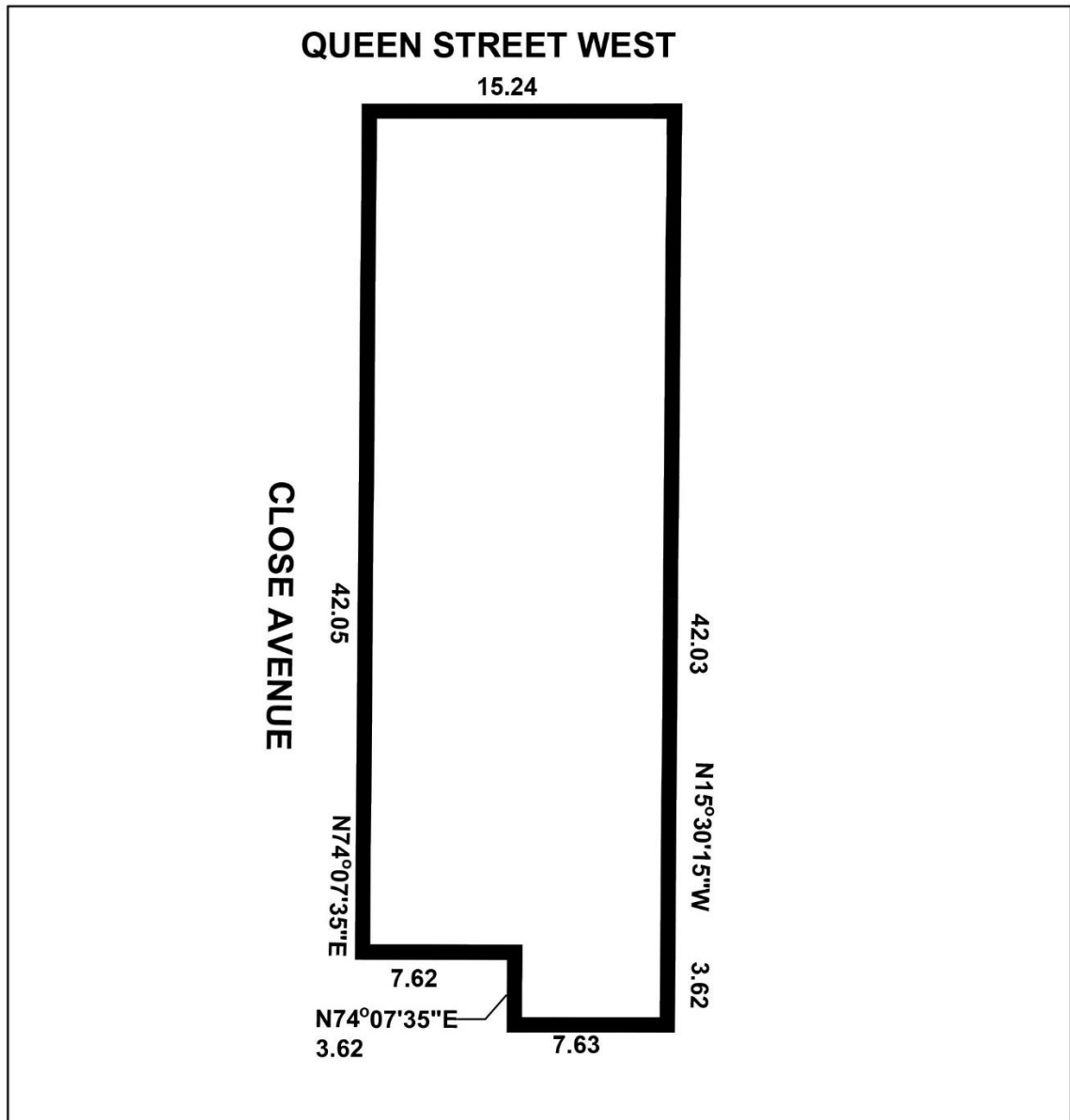
JOHN ELVIDGE

Mayor

City Clerk

(Corporate Seal)

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1375 Queen Street West

MAP 1

File#

