

**23 & 33 Sheppard Avenue East, and 4 Anndale Drive
Zoning Amendment and Site Plan Control Applications –
Request for Direction Report**

Date:	March 13, 2007
To:	North York Community Council
From:	Director, Community Planning, North York District
Wards:	Ward 23 – Willowdale
Reference Number:	File Nos. 05 211881 NNY 23 OZ & 05 211888 NNY 23 SA

SUMMARY

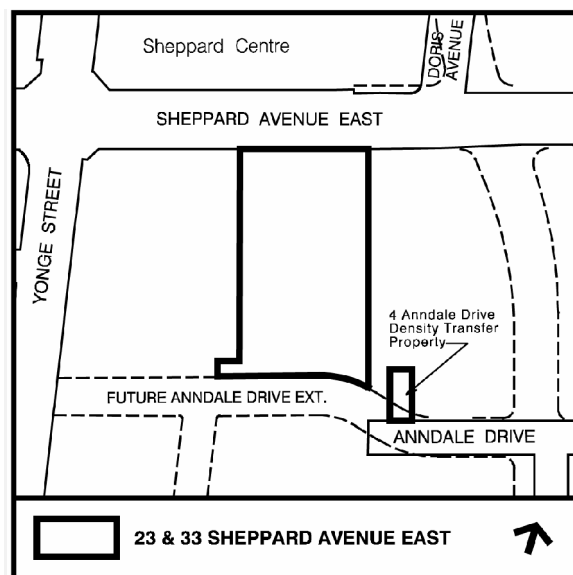
An application has been submitted to permit a 33-storey residential building for phase 2 (southern portion) of the development at 23 and 33 Sheppard Avenue East.

The purpose of this report is to recommend approval of the proposed Zoning Amendment and Site Plan Control Approval applications, subject to modifications as outlined in this Report, and to seek Council’s direction for staff to attend at the Ontario Municipal Board in support of the position described herein.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council support a Zoning Amendment to allow a phase 2 residential tower of up to 33 storeys in height on the southern portion of the site, for an overall maximum gross floor area of 57,090.9 m² on a site of 9,539 m², which includes density incentives and density transfers permitted by the North York Centre Secondary Plan, and subject to the zoning provisions as generally outlined



in Attachment 9 (draft zoning provisions).

2. City Council require that the applicant convey to the City the lands municipally known as 2 Anndale Drive, with an area of approximately 395 m², for the purpose of the City's construction of the Service Road, in exchange for the density attributed to this property under the North York Centre Secondary Plan, prior to the implementing zoning by-law coming into effect. Should the applicant be successful in purchasing the 2 Anndale Drive property for conveyance to the City, those lands should also be rezoned to recognize the density transfer to the development project.
3. As an alternative to Recommendation 2, should the applicant (Minto) have used reasonable efforts to acquire the 2 Anndale Drive property and have not been successful in acquiring those lands, that City Council authorize City staff to initiate the expropriation process including serving and publishing Notices of Application for Approval to Expropriate, forwarding to the Chief Inquiry Officer any requests for hearing received, attending at the hearing to present the City's position, and reporting the Inquiry Officer's recommendations to Council for its consideration, with all costs incurred and compensation payable as a result of any expropriation to be at the owner's (Minto's) sole expense, up to a total maximum limit of \$125,000 for these additional costs.
4. City Council support a Site Plan Control Approval application for the proposed development, subject to the zoning requirements of Recommendation (1) and subject to the Site Plan Control Approval conditions outlined in Attachment 10.
5. City Council authorize the City Solicitor and the appropriate City staff to attend at the Ontario Municipal Board to support the position outlined in this Report.
6. City Council require the Owner to have provided a written undertaking in a form satisfactory to the City Solicitor, that upon the site-specific zoning by-law coming into effect, any outstanding appeal that the Owner may have in relation to the new Toronto Official Plan respecting this site, be withdrawn.

FINANCIAL IMPACT

There are no financial implications resulting from the adoption of this report.

DECISION HISTORY

The proposal represents phase 2 of the development of the former Seneca College lands, now being developed by Minto. The previous owner had sought and obtained for the original Seneca lands a site-specific zoning approval for up to 45,018 m² gross floor area for either, or both, commercial and residential uses.

In 2002, Minto sought and obtained site plan approval for a 33-storey residential building (phase 1, north tower) and a 20-storey residential building (south tower) for the former Seneca College

site. That approval lapsed and Minto subsequently proceeded with a revised site plan application, including retail uses, for the phase 1 lands only.

In 2002 Minto sought and obtained a variance from the Committee of Adjustment to allow for a gross floor area of 43,928.4 m², of which 910.4 m² was to be used for retail space. The Secondary Plan recognizes the provision of retail space as a form of density incentive, within the limits provided by the Plan.

In 2003, site plan control approval was granted to Minto for phase 1 (northern portion of the site), consisting of a 33-storey residential building with 377 units, grade-related commercial uses along Sheppard Avenue East, and a residential amenity podium.

In 2005, Minto sought site plan approval for phase 2 (southern portion) consistent with its original site plan application, that is, for a 20-storey residential building. Minto withdrew that site plan application and, in December 2005, submitted an Official Plan and Zoning Amendment and Site Plan Control Approval application in relation to the phase 2 lands.

As part of the development of the phase 2 project, the applicant has acquired additional lands north of the proposed Anndale Drive extension, which were originally part of the development application to the south at 27-49 Bales Avenue and 30, 32, 34 and 42 Glendora Avenue. As a result the overall site now has frontage on both Sheppard Avenue East and on the future Anndale Drive extension, and has a total site area of approximately 10,391 m².

On July 4, 2006, the developer appealed its application for Official Plan and Zoning By-law amendments and for Site Plan Control approval to the Ontario Municipal Board on the basis of Council's failure to have made a decision on the applications (Minto has subsequently withdrawn its Official Plan Amendment application).

A prehearing conference was held on January 3, 2007. At that time, the Board established as Parties to the hearing the applicant, the City, and the "South of Sheppard Preservation Group et al" (a collective of 5 ratepayer groups). At that time, a number of Participants to the hearing were also identified, including the developer of the property to the immediate west and several area residents.

The next prehearing conference has been scheduled for March 21, 2007, for the purpose of issues identification. The City's solicitor and the applicant's solicitor both anticipate that the scheduled March 21, 2007 pre-hearing date will be used for the purpose of identifying a further pre-hearing date. Both the City and the applicant recognize that a further pre-hearing conference will need to be scheduled for the purpose of determining the issues list, in order for City staff to have had an opportunity to obtain Council's instructions in relation to Minto's application, for which revisions were submitted in February and March, 2007. The full hearing is currently scheduled for late May and early June, 2007.

ISSUES BACKGROUND

The applicant is seeking approval of a proposed 33-storey residential building as their phase 2 (south) tower on the subject lands. The applicant made Official Plan Amendment, Zoning Amendment, and Site Plan Control Approval applications on December 23, 2005. As the application has been appealed to the Ontario Municipal Board, instructions need to be obtained from City Council for staff to attend at the Board.

The applicant has made modifications to the proposal, including but not limited to clarifying their proposed density incentives and transfers package, and design and technical revisions to the project.

By letters dated February 9, 2007 and February 23, 2007 from Minto Gardens Inc. and Minto L8 Inc. to City Planning staff, Minto has confirmed that it is their intent to comply with the density incentive and density transfer provisions of the Official Plan and intends to withdraw their Official Plan Amendment application, which they had appealed to the Ontario Municipal Board. Minto's solicitor, Fraser Milner Casgrain LLP, provided a further letter to Planning staff, dated March 1, 2007, in which they advise that while their client had originally filed an Official Plan Amendment application, they have now withdrawn that application and are proceeding solely with a Zoning By-law amendment application.

This Report identifies modifications that need to be made to the project and statistics in order to achieve that objective.

In order to comply with the Traffic Certification requirements of North York Centre Secondary Plan, the applicant must provide a driveway connection to Anndale Drive at the south end of the property, and must convey to the City or alternatively fund the City's acquisition of additional properties on Anndale Drive in order to achieve an operational connection along Anndale Drive to Tradewind/Bonnington, as outlined in further detail in this Report.

Issues related to density and density incentives and transfers, Traffic Certification, and other matters related to built form, landscaping and technical issues are discussed in this Report.

COMMENTS

1. Proposal

The applicant is proposing a 33-storey residential building on the southern portion of the site. The proposed building is L-shaped and has a 9-storey portion along the future Anndale Drive alignment. The total proposed gross floor area (including the existing phase 1 residential and retail development on the site) is 57,090.9 m². Phase 2 proposes 353 residential units, for a total unit count of 730 over the entire site. The total proposed parking on the site is 744 spaces, of which 391 spaces are proposed for phase 1 and 353 spaces are proposed for phase 2. Existing vehicular access to the site is via Sheppard Avenue East, with a parking ramp to be shared by the

phase 1 and phase 2 components. The development is proposed to connect in future with the Anndale Drive extension.

2. Site Description and Surrounding Land Uses

The development site is located within the southeast quadrant of the North York Centre Downtown area. The site is adjacent to the future Anndale Drive, which is to be improved and extended to connect with Yonge Street and with the future Doris Avenue extension south of Sheppard Avenue as part of the South Downtown Service Road network. The southern portion of the site is currently vacant.

Surrounding lands uses are as follows:

North: across Sheppard Avenue to the north of the phase 1 development are the Sheppard Centre commercial development and three 29-storey residential buildings;
South: two 23-storey residential buildings across the future Anndale Drive;
East: two commercial buildings of 7 and 9 storeys; and
West: the Willowdale Plaza, subject of a 37-storey and 45-storey commercial and residential development application.

3. Official Plan

The new Official Plan is in effect, with the exception of Housing Policies 5(b) and 9(b) of Section 3.2.1 and Policy 3(c) of Section 4.2 of the Plan, Policy 3.1.2.5 (Built Form), Policy 4.2.3(c) (Apartment Neighbourhoods), as well as the policies regarding the floodplain “Special Policy Areas”. The policies in the City of North York Official Plan and Metro Plan respecting these areas remain in effect.

The developer has appealed the new Official Plan with respect to the former Seneca College lands. The application is also subject to a site-specific appeal. None of the policies and land use designations of the new Official Plan are in effect for this parcel. The existing Secondary Plan under OPA 477 is still in effect for those lands, as is the general North York Official Plan.

This Report recommends that the applicant withdraw their appeal of the new Official Plan, upon the site-specific zoning by-law for the development coming into effect.

The north portion of the subject site (former Seneca College portion) is designated Downtown Mixed Use – 3 (DMU-3) by the North York Centre Secondary Plan. This designation permits residential uses and there is a site-specific policy in the Secondary Plan to provide various development criteria.

The southerly portion of the site, as well as 4 Anndale Drive (the proposed density transfer property), are designated Mixed Use Area – B by the North York Centre Secondary Plan of the new Official Plan. This designation permits a maximum of 50% of those lands to be used for residential purposes.

The Secondary Plan permits a maximum density of 4.5 FSI for the large northerly portion of the site which is designated DMU-3 and which also includes the phase 1 project lands. The Secondary Plan provides that the 4.5 fsi density may be increased by up to a maximum of 33% additional gross floor area through combined density incentives and transfers permitted by the Secondary Plan.

The density originally attributed by the Secondary Plan to the southerly lands that now form part of the development site has already been used in the development to the south across the Anndale Drive extension (27-49 Bales Avenue and 30, 32, 34 and 42 Glendora Avenue) and consequently, the density attributable to those lands is not available.

The Secondary Plan provides for a maximum height of 100 m for the larger northerly portion of the site, and 65 m for the southerly portion of the site to the north of the future Anndale Drive extension.

The Secondary Plan contains a range of additional policies including those related to built form, urban design, transportation and traffic certification, parks and open space and other matters.

The portion of the site comprising the former Seneca College lands is also subject to site-specific policy 12.17, which recognizes the DMU-3 designation and 4.5 fsi density (plus available density incentives and density transfers), and provides direction with respect to Traffic Certification.

4. Zoning

The larger, northerly portion of the site is zoned with a site-specific exception C1(87) which permits residential and commercial uses in accordance with specified development standards. This zoning includes the phase 1 lands and the original phase 2 lands.

The smaller southerly portion of the site is zoned RM6(133), a site-specific exception that provides for zero gross floor area on this strip of land, to reflect the previous allocation of density from this parcel to the project across the Anndale Drive extension lands to the south.

It is recommended that Council support a zoning by-law amendment for a 33-storey residential building on the phase 2 land, subject to the Recommendations and modifications as outlined in this Report. The zoning amendment should also incorporate the RM6(133) lands into the same site-specific zoning for the overall project (recognizing that there is zero density available on the RM6(133) zoned lands), and should rezone 4 Anndale Drive, the density transfer property, to a suitable site-specific zoning category to recognize the transfer of density from the 4 Anndale Drive property to the development site. Should the applicant be successful in purchasing the 2 Anndale Drive property for conveyance to the City, those lands should also be rezoned in a similar fashion to 4 Anndale, to recognize the density transfer to the development project.

Attachment 9 contains the proposed draft zoning provisions.

5. Community Consultation

A community consultation meeting was held on June 6, 2006 to discuss both this application and another application in the southeast Downtown North York Centre area (9 & 15 Bales Avenue and 34 and 44 Avondale Avenue). Approximately 100 area residents attended, along with the local Councillor, the applicants and City staff.

The Ward Councillor held an additional community meeting on February 12, 2007, to which residents of the phase 1 tower at 33 Sheppard Avenue East, as well as the two Menkes towers to the south of the subject site, were invited. Approximately 50 residents attended that meeting, along with the Ward Councillor and City staff.

Written and telephone comments have also been provided in relation the 23 and 33 Sheppard Avenue East proposal. Comments received to date from area residents and/or their representatives in relation to the subject development project include the following matters:

- proposed density and density incentives;
- building height;
- the desire to preserve the single family character of the area;
- sunlight, wind, and view impacts;
- access, circulation and parking;
- traffic;
- progress of the Downtown Service Road;
- pedestrian access to the subway at Yonge and Sheppard;
- adequacy of proposed indoor recreational amenity space for both phases; and
- adequacy of infrastructure to support the development, including roads and TTC, sewers, and parks and open space.

6. Secondary Plan Density and Density Incentives

On the basis of the site area of 9,539 m², the following chart (Table 1) outlines the maximum permitted densities and gross floor areas. The applicant has indicated that they wish to take full advantage of the maximum density incentives available under the Secondary Plan, in order to achieve the total maximum permitted gross floor area of 57,090.9 m². This figure includes the maximum allowable density incentive of 14,165.4 m², which the applicant proposes to provide through density incentives and/or transfers in accordance with Secondary Plan provisions.

Table 1 – Secondary Plan Provisions – Maximum Permitted Density

	Maximum Gross floor area (m ²)
Base density (4.5 fsi)	42,925.5 m ²
Incentive density (33% increase over 4.5 fsi)	14,165.4 m ²
Total permitted density (with permitted density incentives & transfers) (5.985 fsi)	57,090.9 m ²

7. Density Analysis

Policies pertaining to density incentives and transfers and the determination of additional gross floor area potentially available through these provisions are outlined in detail in the North York Centre Secondary Plan. The Secondary Plan contains provisions for a range of other facilities and matters that may be proposed as density incentives and transfers, alone or in combination, in addition to the property transfer and the retail and indoor amenity area incentive proposed by the applicant, including a general amendment that provides for a further incentive in the form of a monetary contribution toward the City’s cost of providing public recreational centres or social facilities and/or toward the City’s cost of purchasing additional lands for the Service Road. The Secondary Plan requires that developers fully fund their proposed additional gross floor area, up to the maximum permitted 33% density increase, as provided for in the Plan. The Secondary Plan contains policies requiring that the maximum permitted densities are absolute and cannot be amended on an ad hoc basis in considering individual development proposals. To date, developers in the North York Centre have been consistent in providing the total required benefits to the City in relation the gross floor area they are seeking, and the City has consistently achieved the related facilities, amenities and improvements as outlined in the Plan.

The revised project statistics submitted to the City in the applicant’s letter dated March 9, 2007, indicate that the applicant’s proposed density incentives and transfers comply with the provisions of the Secondary Plan, subject to the plans being revised to reflect the required inclusion of the 565.5 m² phase 1 amenity space within the permitted density incentives, and to include a ground floor bicycle parking area in phase 2 (see additional details following the chart below).

Table 2 – Applicant’s Proposal (including Proposed Density Incentives and Transfers)

Applicant’s Proposed Density Incentives and Transfers		
Item	Gross Floor Area (m ²)	Description
Base gross floor area	42,925.5 m ²	9,539 m ² site times 4.5 fsi base density
4 Anndale Drive (for Service Road)	1,386.0 m ²	396 m ² (approximately) at 3.5 fsi
Street related retail	851.5 m ²	Retail provided in phase 1
Private indoor amenity area	1,095.0 m ² *	1.5 m ² / unit @ 730 units
Bicycle storage	1,406.8 m ² **	Bicycle storage and parking
Monetary contribution for density	9,426.1 m ²	Monetary contribution for density as per Secondary Plan as amended by OPA 557
Total proposed density incentives and transfers	14,165.4 m ²	2,472.4 m ²
Total proposed gfa	57,090.0 m ²	Total proposed gross floor area (with density incentives and transfers)

(Note: minor adjustments may be made to the final figures, to the satisfaction of City Planning and City Legal staff. These adjustments would include any necessary reallocations of incentives within the 33% maximum permission).

*The applicant has indicated that they wish to comply with the Secondary Plan. This requires that all density incentives and transfers, combined, be included within and not exceed 33% additional density over and above 42,925.5 m² gross floor area, i.e. a total of 14,165.4 m² incentive density. The plans submitted on February 19, 2007 calculate the 565.5 m² private indoor amenity space constructed within phase 1 over and above the maximum total permitted 57,090.9 m² (rather than being contained within this total maximum permitted gross floor area figure). The plans will have to be adjusted so that the maximum 57,090.0 m² gross floor area permission, including density incentives and transfers authorized by the Secondary Plan, is not exceeded.

**Further, the inclusion of additional bicycle storage and parking space was a revision to the applicant’s proposal following the February 19, 2007 plan submission. The plans will also have to be revised in this regard.

The draft zoning provisions recommend that the monetary contribution component of the applicant’s proposed density incentives under the Secondary Plan be allocated to help secure additional lands for the Service Road in the southeast Downtown area.

8. Transportation

a) North York Centre Service Road

Policy

The provision of the Service Road and associated road network, whose role and objectives are articulated within policy contained in the North York Centre Secondary Plan, together with the relevant Environmental Study Reports, continues to be implemented as the Centre develops.

The Service Road network is intended to “provide capacity to the road network, as well as vehicular circulation and access to developments”. The functioning of the Service Roads within the North York Centre is further articulated by reference to the following policy:

“The higher density portion of the Downtown is intended to be encircled by a four-lane collector road (service road) which will provide access to development in the Downtown and thereby relieve traffic pressure on Yonge Street and Sheppard Avenue.” (Section 8.6a); and

“Driveways to individual developments should preferably be from local roads, and where necessary from a Service Road.” (Section 8.11a).

The application currently proposes access only to Sheppard Avenue East and as such does not recognize policy on the role and functioning of the road network. This is discussed in the section titled Traffic and Traffic Certification and is further detailed in Development Engineering comments dated March 12, 2007.

Implementation

The planning and design of the road network north of Eglinton Avenue and Norton Avenue is set out in the “Uptown Service Road and Associated Road Network Environmental Study Report April 1993”. An implementation strategy put forward in 1998, together with the development of the Centre, has resulted in contributing to significant advancement of the Service Road.

Transportation Services has advised that the road network on the east side of Yonge Street is nearing completion. With the construction of a new section from Blyth Avenue to Finch Avenue East scheduled for this year, the Service Road on the east side from Sheppard Avenue East to Finch Avenue East will be complete. The west side is progressing in the form of current construction activity from Finch Avenue to Kempford Boulevard. In step with this construction, properties on the west side south of Kempford Boulevard to Eglinton Avenue required for the road network continue to be acquired through a combination of property transfers associated with development, active City initiated acquisition and direction to commence expropriation.

At the south end of the North York Centre, the Environmental Study Report Addendum April 1998 identifies the road network required to support the ultimate development in the southeast

quadrant of Sheppard Avenue East and Yonge Street (see Attachment 7). The subject application is located within this quadrant.

The following details the status of the road network as it is emerging. More specifically, it outlines the transportation infrastructure that has been secured and is anticipated in association with development, as part of the orderly implementation of the road network in the Environmental Study Report Addendum.

Elements of the road network which have been secured and/or are currently emerging include:

- Anndale Drive – property for right-of way along frontage secured in association with Cosmo residential development
- widening of Avondale Drive at Yonge Street for a westbound right turn lane and traffic control signals at Avondale Avenue and Tradewind
- Anndale Drive from just east of Bales to Yonge Street at Poyntz intersection – it is anticipated that this portion will be acquired by the City as part of redevelopment proposal for Willowdale Plaza lands which application was received by the City in August 2006.

b) Traffic and Traffic Certification

The Transportation Services Division advises that based on the proposed access scheme, Traffic Certification requirements as per Section 4.8 of the North York Centre Secondary Plan have not been satisfied.

Currently, development on the site is served by two access points on Sheppard Avenue East. The easterly access driveway provides for service related functions for Phase 1. The westerly access point provides for access to the underground garage and a drop-off/pick-up area together with short term surface parking spaces. Northbound left turn prohibitions during weekday peak hours are in effect at both access driveways with signage in place. (Funding for the signage was secured in association with the Phase 1 of the development).

The proposed access scheme maintains both these access points. The easterly access will continue to provide access for service related functions for Phase 1. The westerly access will serve as the only access which leads to the underground garage that is to be expanded as part of this development to serve both Phases 1 and 2. This driveway point also continues to facilitate access to the drop-off/pick-up area.

The proposed access scheme is unacceptable to Transportation Services. Specifically, Sheppard Avenue East as the primary access to the site cannot be supported as its ability to serve the site is limited. This access point will function as a right-in, right-out only. Access to the south of the site via Anndale Drive, while acknowledged through design of the Phase 2 development, is identified as a future connection.

Accordingly, Transportation Services advises that the following road network elements are required to satisfy Traffic Certification requirements:

- Access to Anndale Drive together with a connection between the south frontage of the property and Tradewind Avenue via Anndale Drive is required commensurate with this development (Phase 2). The connection is in accordance with the “Downtown Plan South of Sheppard Avenue Environmental Study Report Addendum. Transportation Infrastructure Requirements April 1998”
- A preliminary /functional design and financial security for extension of the Sheppard Avenue East median island to the east of the driveway.
- Financial security in the amount of \$1,000 for the introduction of modified turn restrictions at the westerly site driveway to right-in/right-out movements only.

The current site plan filed with the City should be revised to indicate a direct driveway connection to Anndale Drive.

As the 2 Anndale and 4 Anndale properties are functional sections required for Traffic Certification for this development, it is recommended that the applicant convey to the City these two properties, each with an area of approximately 395 m², for the purpose of the City’s construction of the Service Road, prior to the implementing zoning by-law for the development coming into effect.

The applicant has advised that it has already acquired the 4 Anndale Drive property and has included those lands in its application. The applicant also advises that they have attempted to acquire the 2 Anndale Drive property. Should the applicant (Minto) have used reasonable efforts to acquire the 2 Anndale Drive property and have not been successful, it is recommended that City staff be authorized to initiate the expropriation process, with any costs incurred and compensation payable as a result of any expropriation to be at the owner’s (Minto’s) sole expense (up to \$125,000). These requirements are to be secured through the section 37 agreement.

All above noted conditions must be met to the satisfaction of General Manager of Transportation Services at no cost to the City of Toronto.

c) Parking

The total parking supply of 744 spaces is in keeping with the Parking Policy minimum of 1.0 to 1.2 spaces per unit of which 0.1 spaces are for visitors. Transportation Services staff advise that while the overall residential parking requirements have been met, the matter of allocation of parking between Phases 1 and 2 requires clarification (see Technical Services memorandum, Attachment 11). The proposed development provides for 8 parking spaces allocated for commercial uses. This is also in keeping with commercial parking as set out in the Parking policy. All parking spaces and their organization are to conform to the applicable provision of By-Laws 7625 and 31770.

d) Pedestrian Circulation

The applicant is proposing a surface pedestrian route running in a north/south direction, within the western portion of the site. This phase 2 pedestrian route will connect with the phase 1 route and will facilitate pedestrian access between Sheppard Avenue and Anndale Drive for both phases of the development, and will recognize the location of the subway station entrance. The desire to maximize pedestrian connections from the site to the TTC station is also identified in the TTC memorandum of August 24, 2006 (see Attachment 11).

9. Built Form, Streetscape and Landscaped Open Space

The second phase addresses the future Anndale Drive with a 9 storey high base building that is set back 5 m from the future Anndale Drive right-of-way. The proposed ground floor uses along the future street include grade-related apartments and a lobby. The setback is proposed to be landscaped providing an entry forecourt for the lobby and private landscaped gardens and entry areas for the grade related apartments.

The tower floor rises above the 9 story base with a step-back from the base of approximately 15 metres. The base is at the upper limit of base heights but has been carefully articulated into a two storey grade related base, a middle and a stepped back top floor, making the slight increase in the base height acceptable in form.

The tower itself is sculpted at 10 storeys and at 33 storeys. The floor plate above the 9th floor is approximately 725 m². This small plate tower respects the Tall Buildings Guidelines. The proposed tower step-back of 15 metres from the base building has been increased, and together with a reduced floor plate area, there will be reductions to sun/shadow, wind and skyview impacts on adjacent areas and improvements to the built form relationships on Anndale Drive.

The tower remains in the same relationship to the properties to the east with most of the tower being set back 12.5 metres from the property line. The current distribution of building mass is an improvement over the previous scheme and generally represents good urban design.

The applicant has made progress in addressing the design, built form and streetscape issues identified by staff, and the form of the proposed development is generally in conformity with policies on built form however the following site plan matters must be addressed in a manner satisfactory to the City before final site plan approval:

- A set of 1 to 50 large-scale, detailed plan, section and elevation drawings of the lower three storeys of the building, to further illustrate the detailed relationship of the building's built form edge conditions, including grades and materials, and to provide additional details for the landscaped setback along the length of the southern property frontage to Anndale Drive.
- The design of the proposed loading area in the southwest portion of the site to facilitate a midblock pedestrian circulation.

- The hard and soft landscape details of the courtyard to ensure the proper support and amenity for residents of the new and existing apartments.
- The location and treatment of servicing elements including hydro vaults, gas meters, and the proposed parking garage vents alongside the future Anndale Drive to fit within a landscape concept, minimize pedestrian circulation safety (hazards of walking over open metal grilles) and integrate with the detailed streetscape edge conditions mentioned above.

With respect to streetscape treatment within the City right-of-way, the applicant will be required to post any necessary securities for boulevard improvements and tree plantings along Anndale Drive, to the satisfaction of the City Planning Division (Urban Design), Transportation Services, and Parks, Forestry and Recreation (Urban Forestry Services).

10. Additional Technical Issues

The applicant will be required to satisfy the additional technical issues identified in the Technical Services Division memorandum of March 12, 2007 (please see the Technical Services memorandum, Attachment 11, for additional details).

11. Parkland Dedication

Parks, Forestry and Recreation (Policy and Development staff) recommend that the applicant be subject to a 5% cash-in-lieu payment to be provided to the City prior to the issuance of the first building permit (see Attachment 11).

12. School Boards

The application was circulated to the Toronto District School Board and the Toronto Catholic District School Board. The School Boards' comments advise of the current status of local school accommodation and are provided in Attachment 11.

13. Conclusions

This staff report recommends that City Council support a proposed Zoning Amendment and Site Plan Control Approval application for a 33-storey residential building as the Phase 2 south tower for 23 and 33 Sheppard Avenue East, subject to the conditions and recommended modifications outlined in this Report. It is further recommended that the City Solicitor and appropriate City staff bring forward to the Ontario Municipal Board for approval a modified project for the total site as outlined in the Recommendations, and generally consisting of a maximum of 730 units, a maximum gross floor area of 57,090.9 m² (including density incentives and transfers permitted by the North York Centre Secondary Plan), and a vehicular connection of the site to Anndale Drive and improvements to Anndale Drive as outlined in this Report.

CONTACT

Catherine Cieply, Senior Planner
Tel. No. 416 395 7109
Fax No. 416 395 7155
E-mail: ccieply@toronto.ca

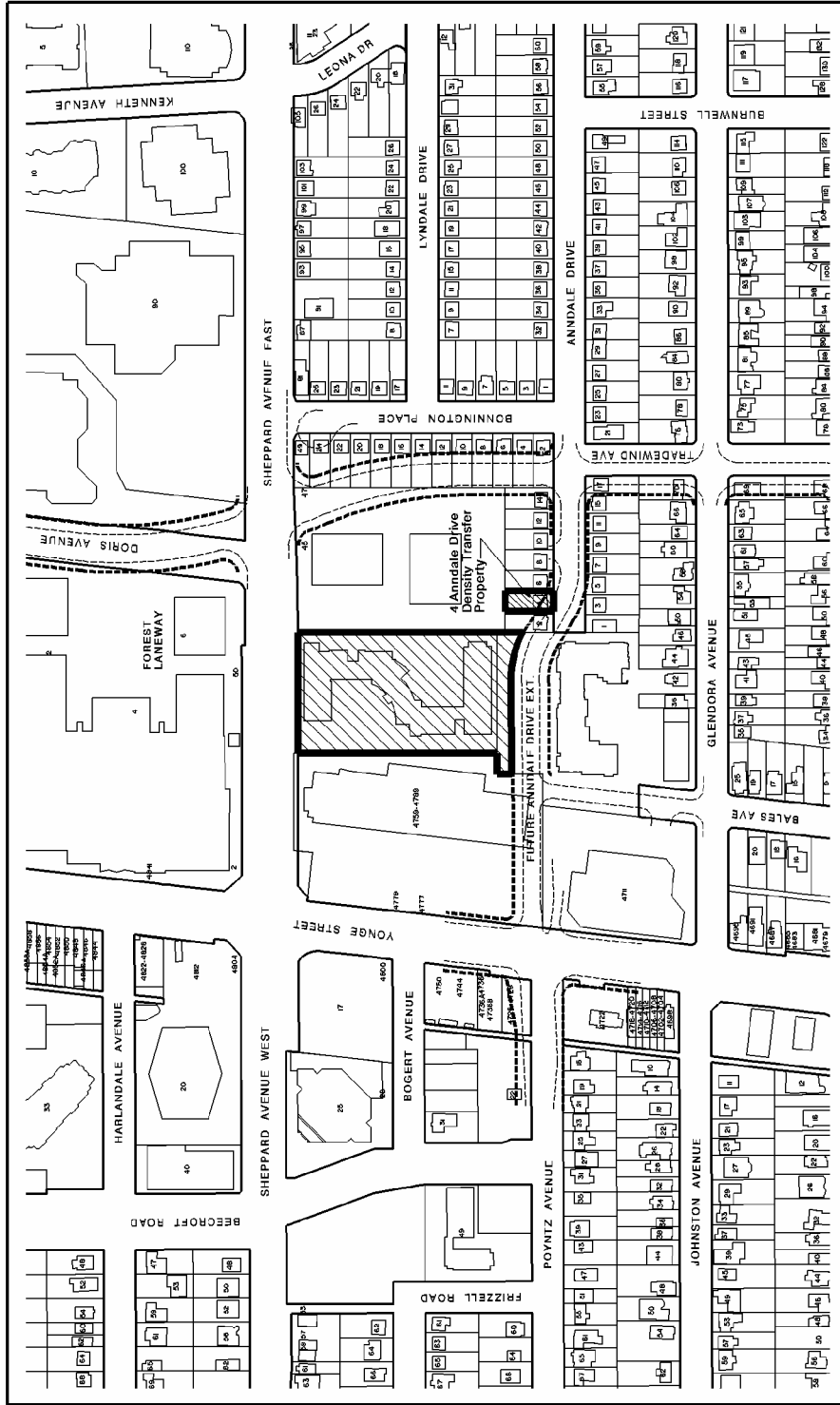
SIGNATURE

Thomas C. Keefe, Director
Community Planning, North York District

ATTACHMENTS

Attachment 1: Context Plan
Attachment 2: Site Plan
Attachment 3a: South Elevation
Attachment 3b: West Elevation
Attachment 3c: North Elevation
Attachment 3d: East Elevation
Attachment 4: Official Plan
Attachment 5: New Official Plan
Attachment 6: Zoning
Attachment 7: Planned Service Road Infrastructure, South of Sheppard
Attachment 8: Application Data Sheet
Attachment 9: Draft Zoning Provisions
Attachment 10: Site Plan Control Approval Conditions
Attachment 11: Circulation Comments

Attachment 1: Context Plan

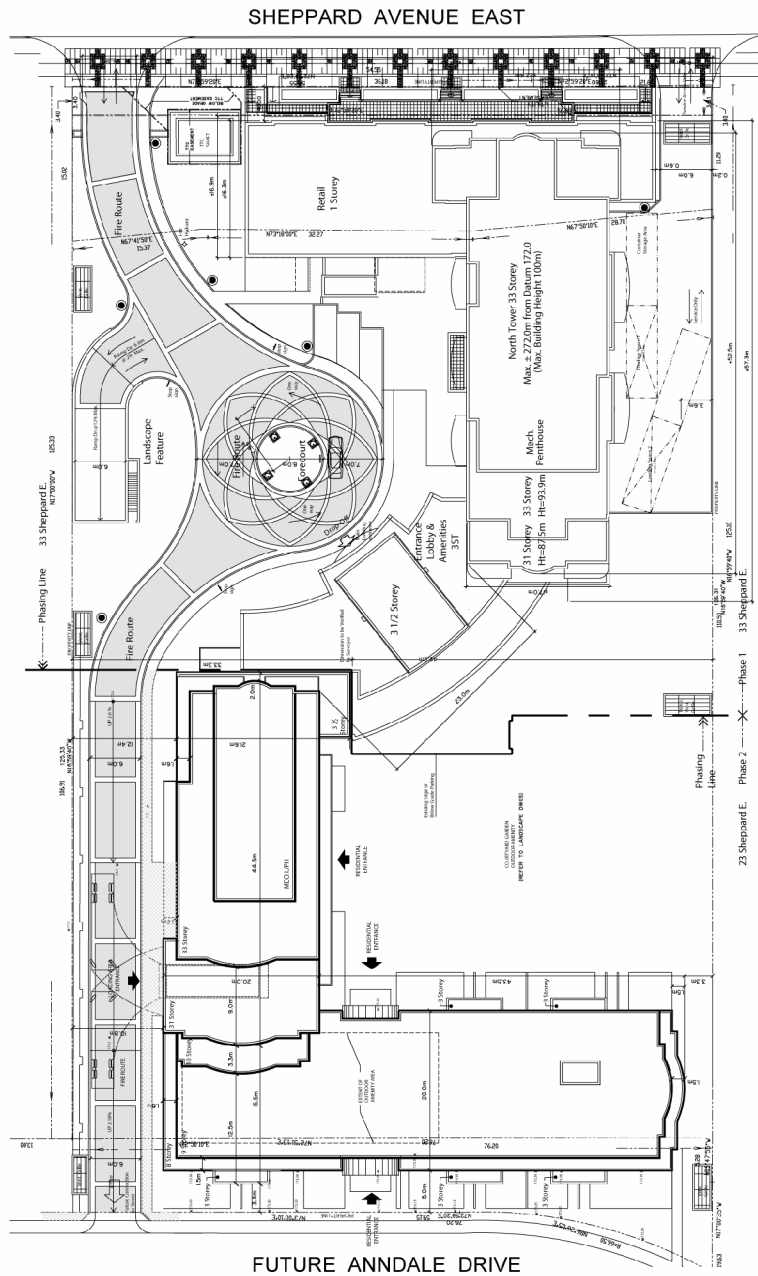


Toronto City Planning Division
Context Plan

23 & 33 Sheppard Avenue East
 File # 05_211881

↗
 Not to Scale
 01/13/06

Attachment 2: Site Plan



Site Plan

Applicant's Submitted Drawing

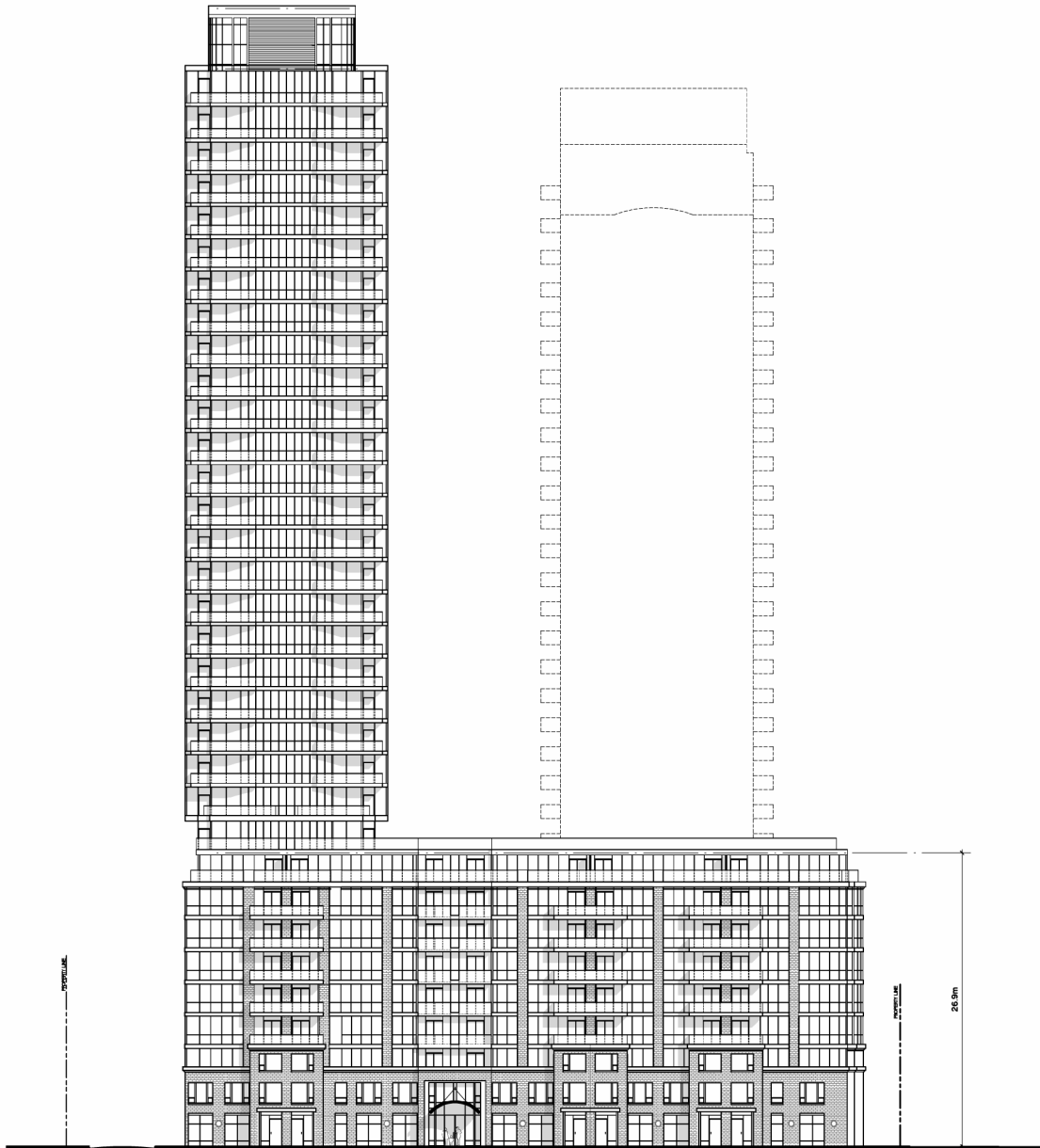
Not to Scale
03/06/07



23 & 33 Sheppard Avenue East

File # 05_211881

Attachment 3a: South Elevation



South Elevation

Elevations

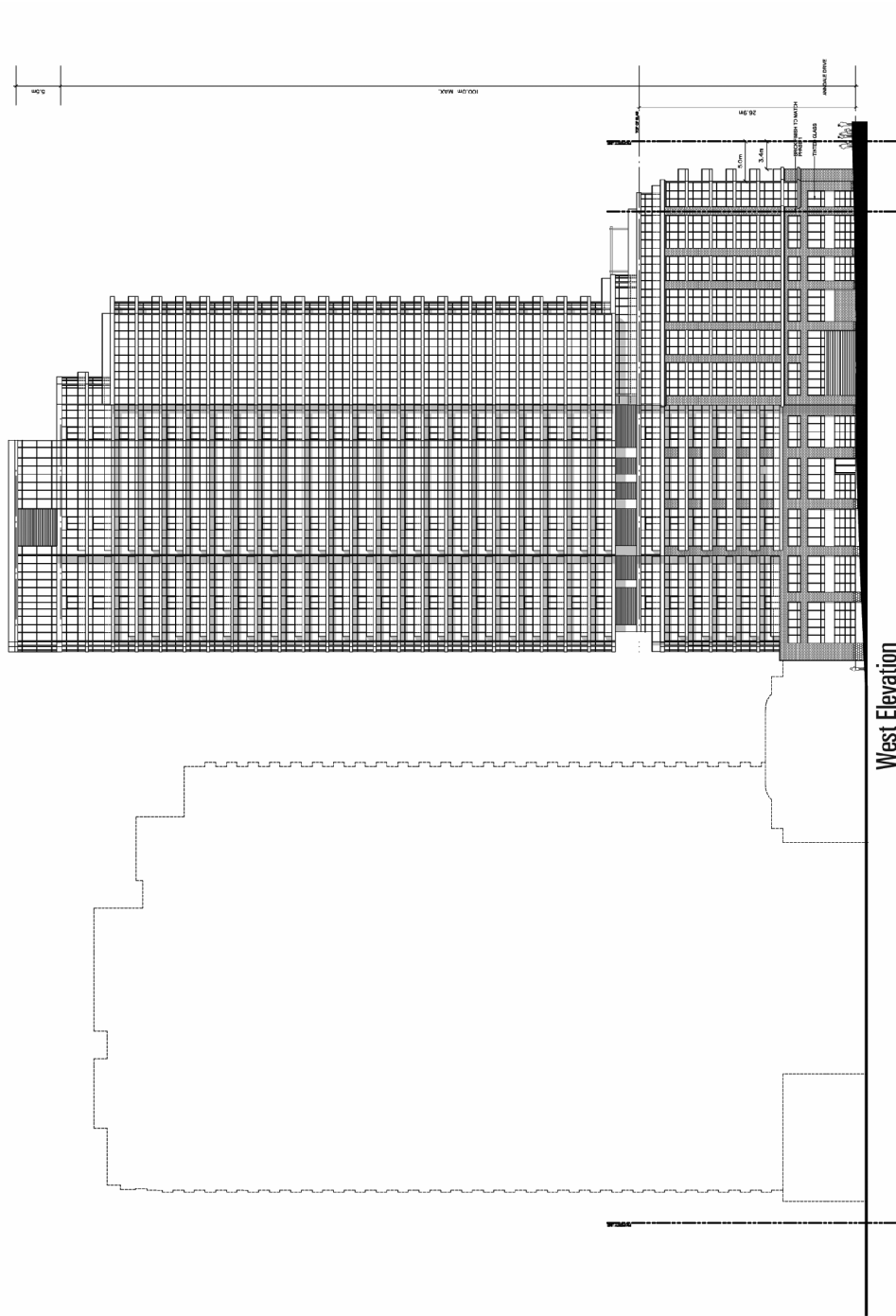
Applicant's Submitted Drawing

Not to Scale
03/06/07

23 & 33 Sheppard Avenue East

File # 05_211881

Attachment 3b: West Elevation



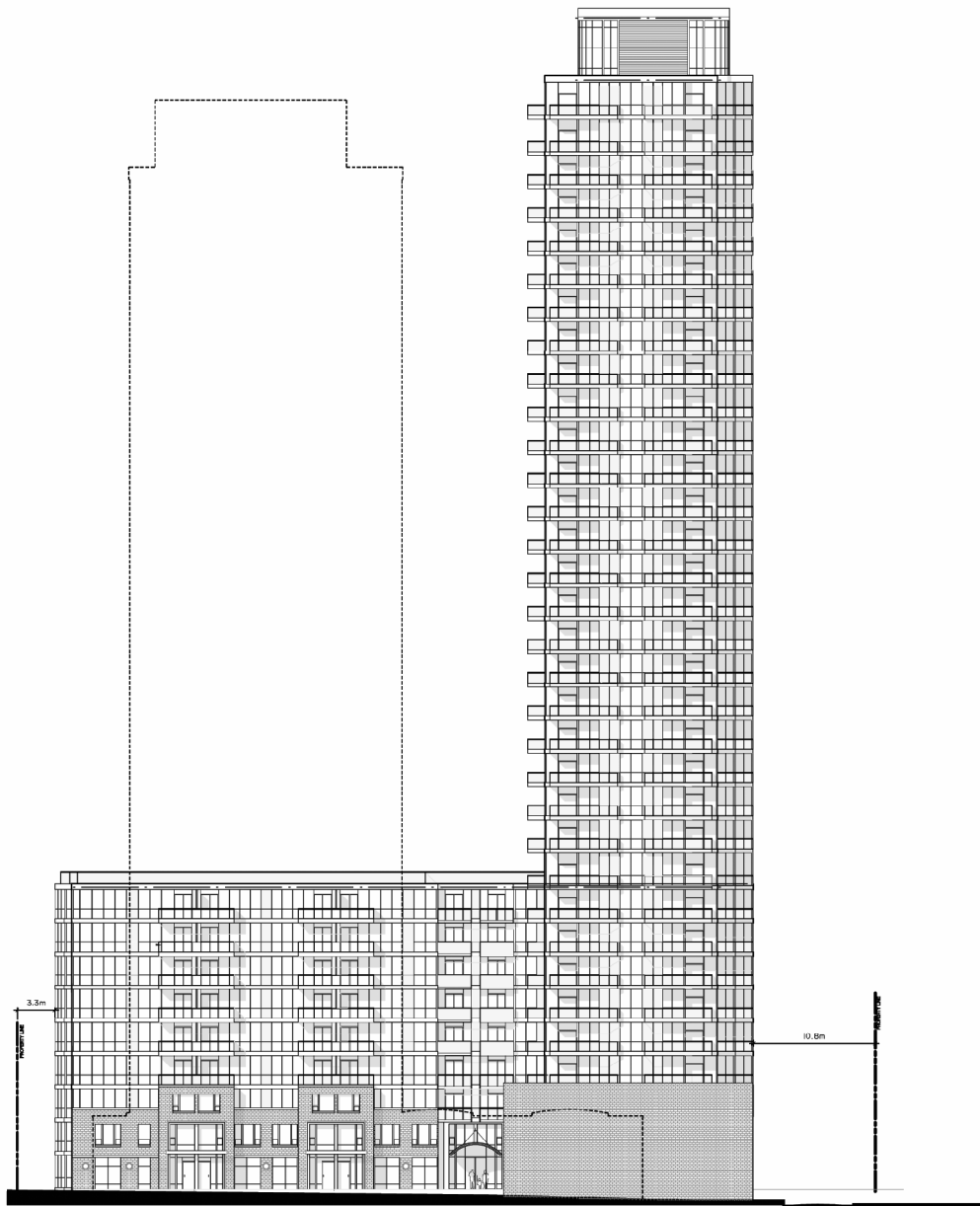
West Elevation

Elevations
23 & 33 Sheppard Avenue East

Applicant's Submitted Drawing
Not to Scale
03/06/07

File # 05_211881

Attachment 3c: North Elevation



North Elevation

Elevations

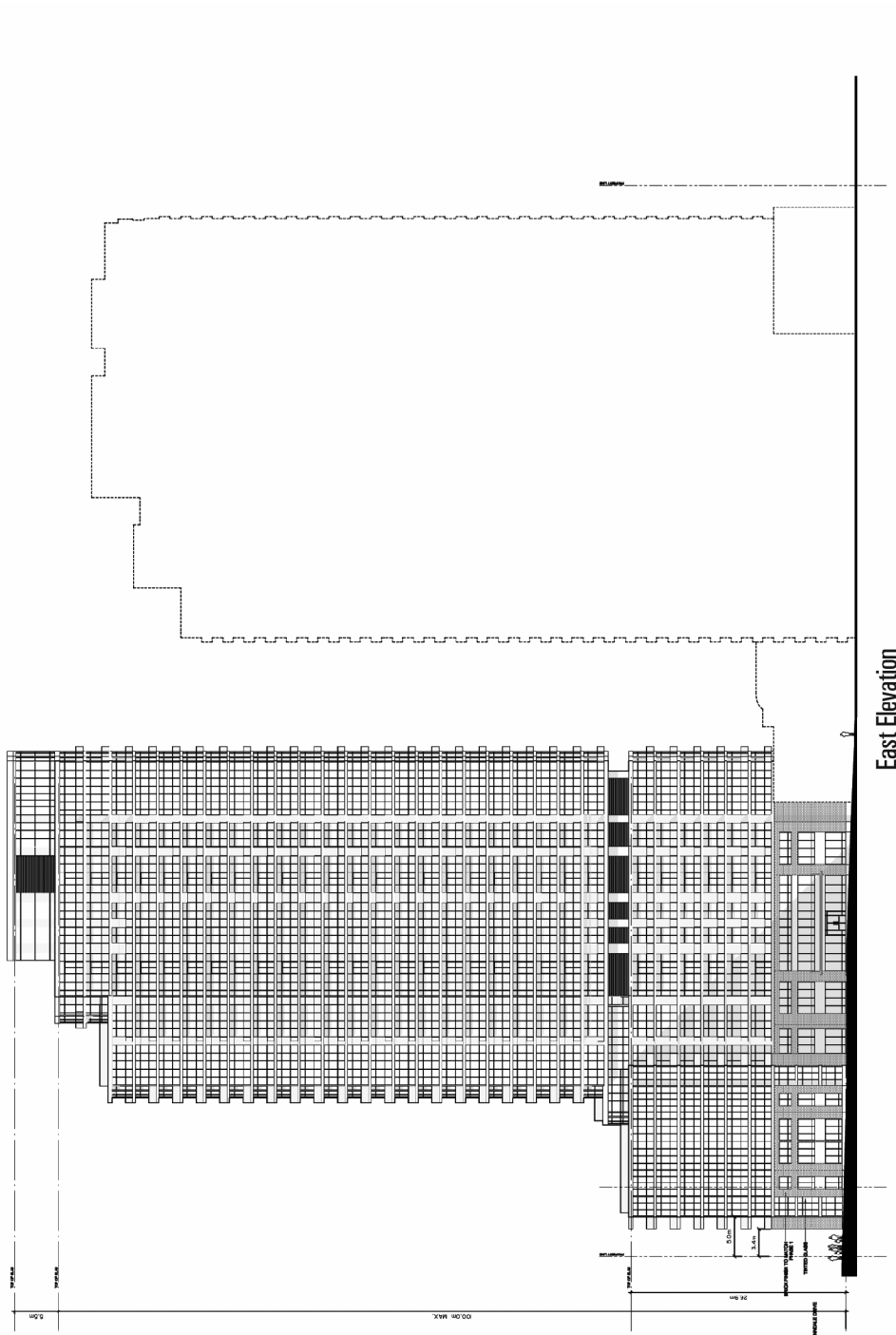
Applicant's Submitted Drawing

Not to Scale
03/06/07

23 & 33 Sheppard Avenue East

File # 05_211881

Attachment 3d: East Elevation



East Elevation

23 & 33 Sheppard Avenue East

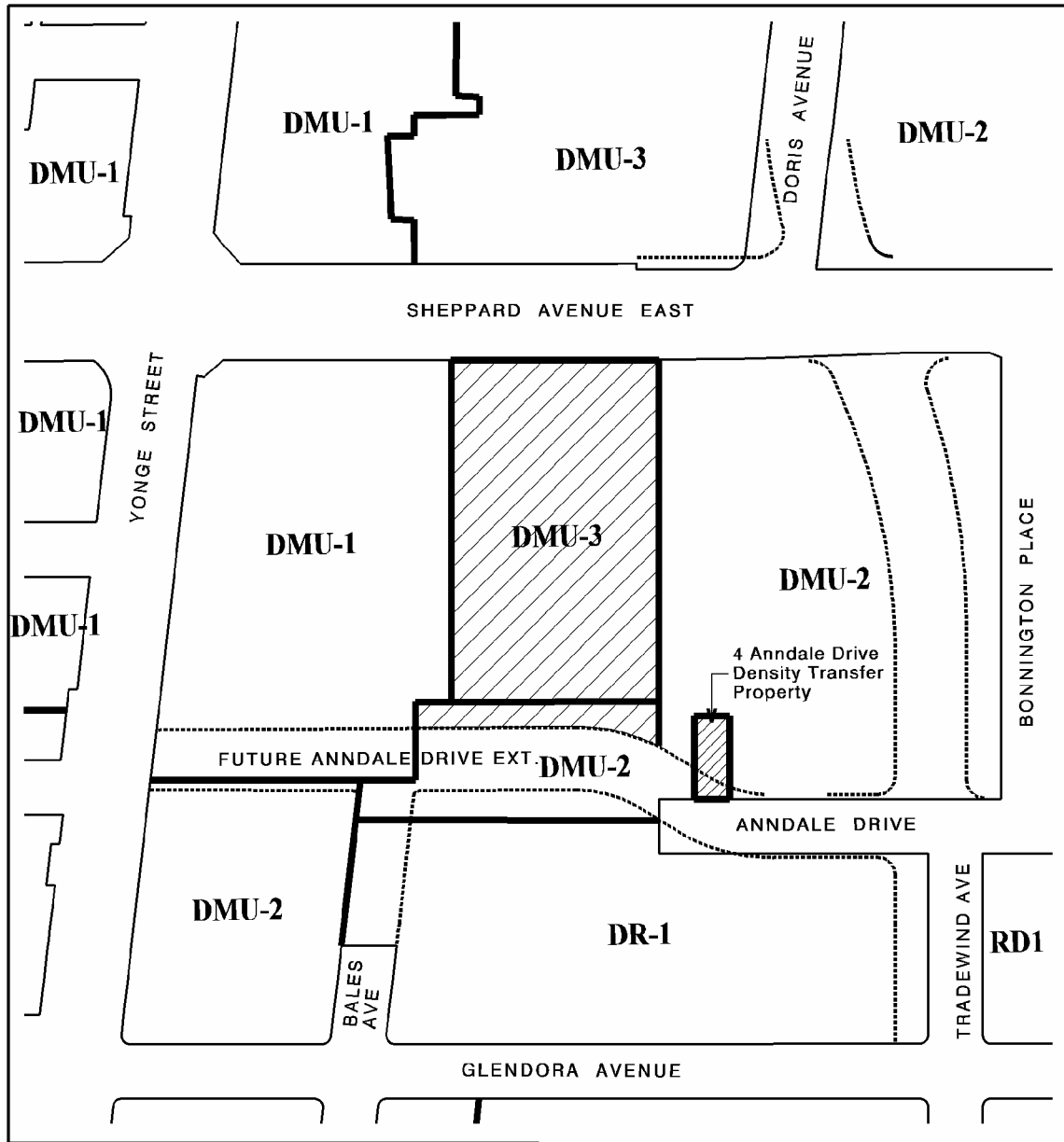
Elevations

Applicant's Submitted Drawing

Not to Scale
03/06/07

File # 05_211881

Attachment 4: Official Plan



TORONTO City Planning Division
Official Plan

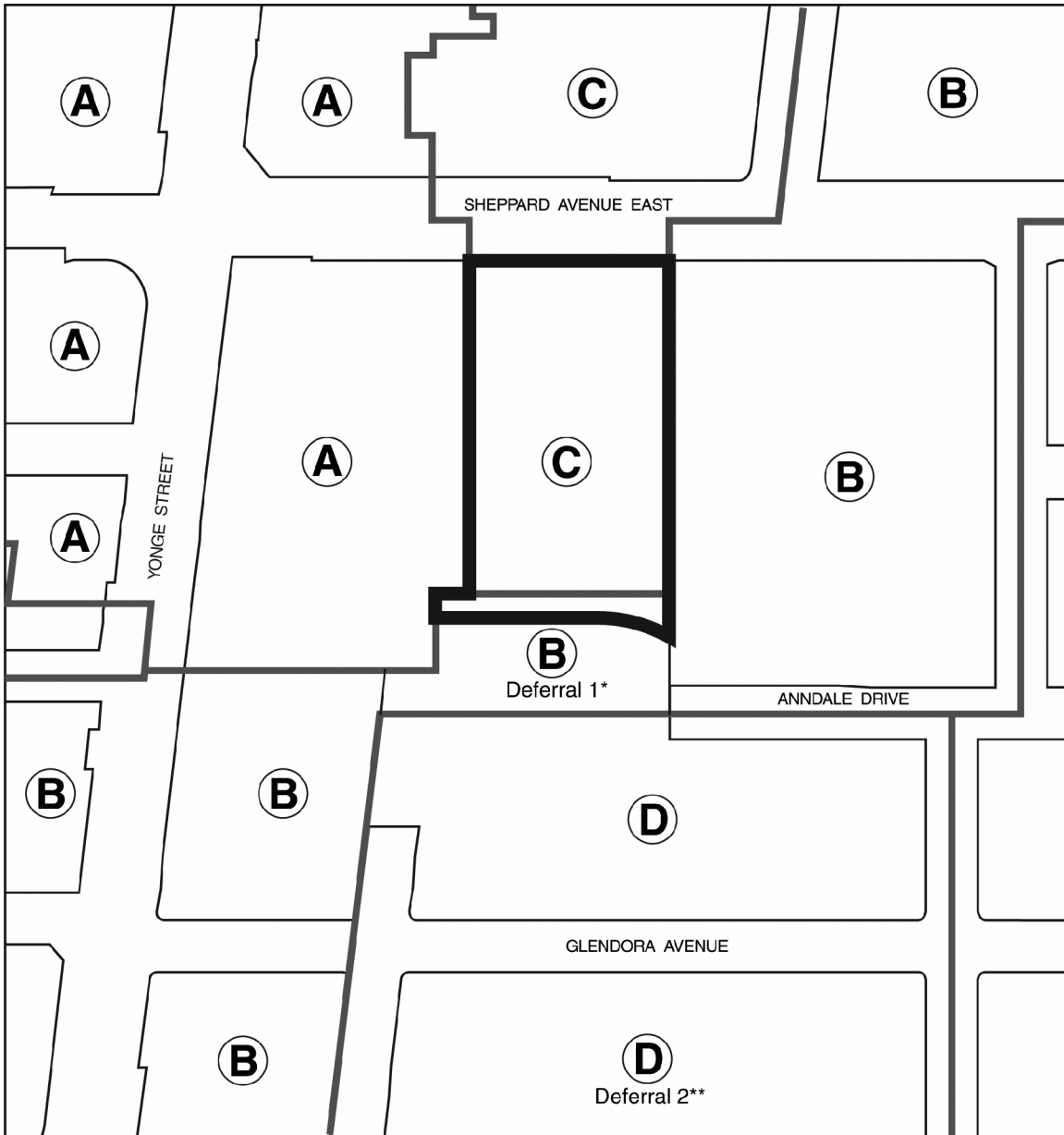
23 & 33 Sheppard Avenue East

File # 05_211881

- DMU-1 Downtown Mixed Use - 1
- DMU-2 Downtown Mixed Use - 2
- DMU-3 Downtown Mixed Use - 3
- DR-1 Downtown Residential-1
- RD1 Residential Density One

Not to Scale
 North York Official Plan
 Extracted 01/16/06

Attachment 5: New Official Plan



TORONTO City Planning Division
Official Plan

23 & 33 Sheppard Avenue East
 File # 05_211881

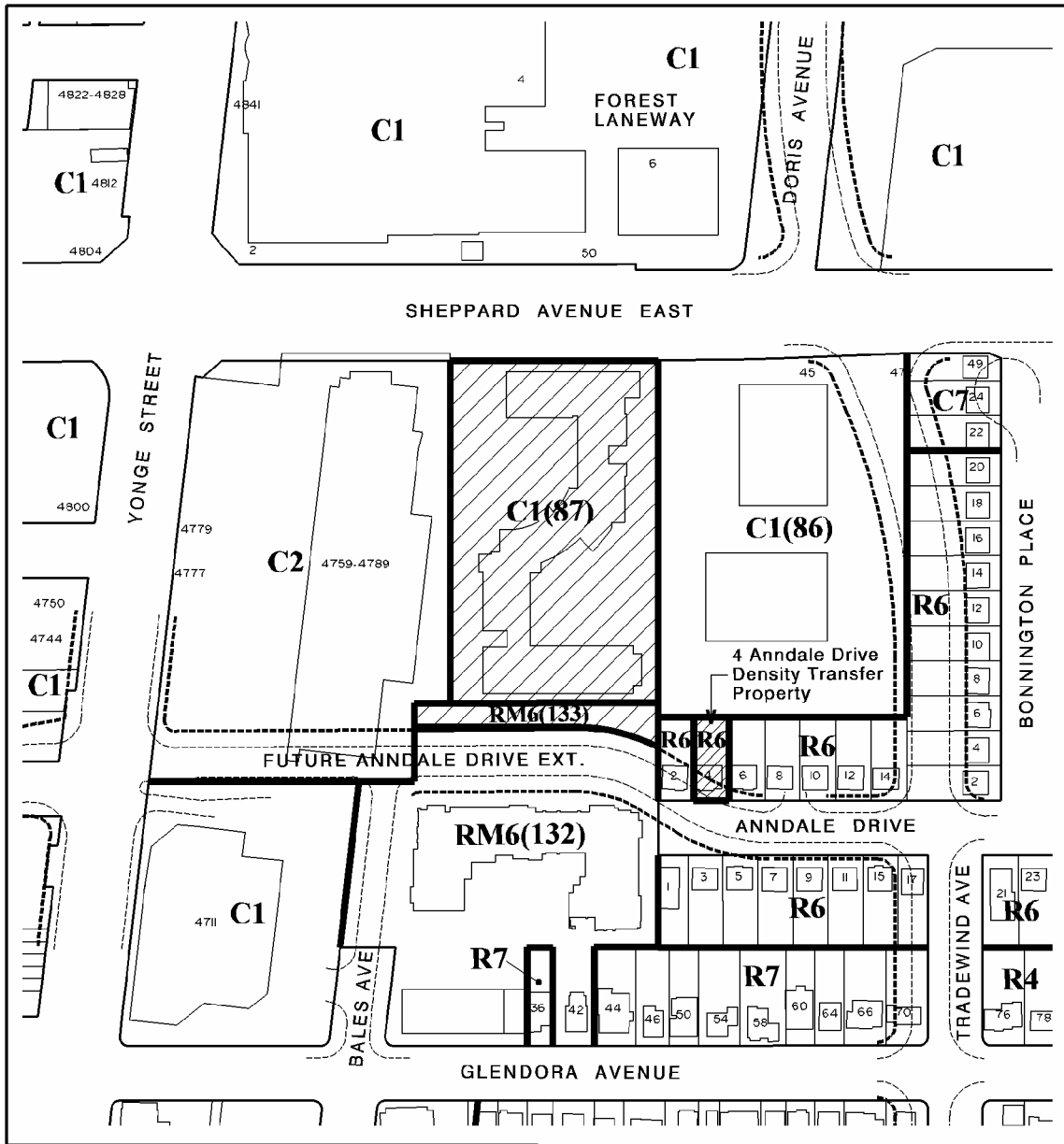
 Subject Lands
 Mixed Use Areas



*Deferral 1 No decision made by Ministry on lands identified as Deferral 1
 **Deferral 2 Lands identified as Deferral 2 have not yet received approval from the OMB

Not to Scale
 Extract from Map 8-3 North York Centre South Land Use Areas
 June 2006

Attachment 6: Zoning



TORONTO City Planning Division
Zoning

23 & 33 Sheppard Avenue East

File # 05_211881

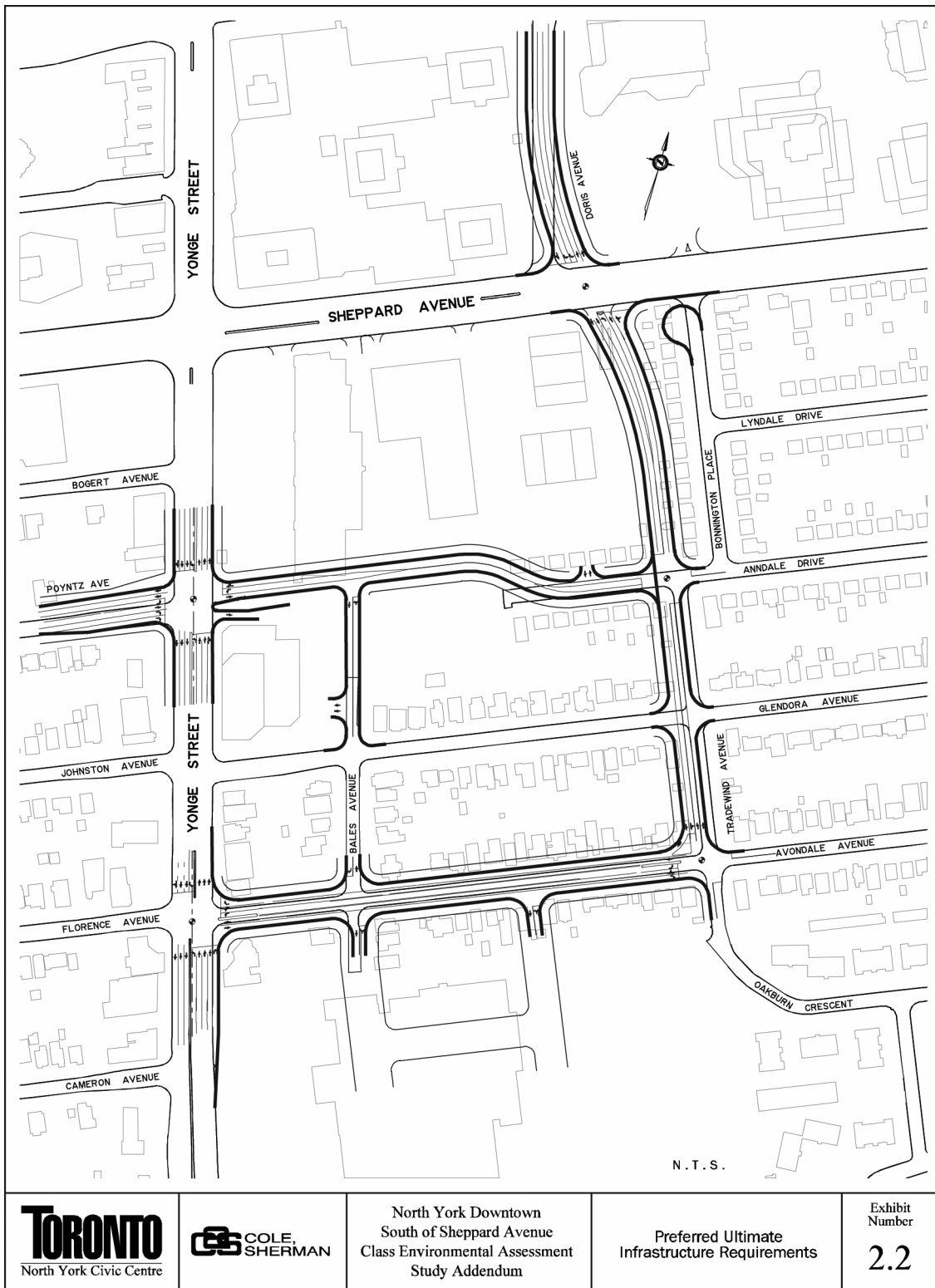
- C1 General Commercial Zone
- C2 Local Shopping Centre Zone
- RM6 Multiple-Family Dwellings Sixth Density Zone

- R4 One-Family Detached Dwelling Fourth Density Zone
- R6 One-Family Detached Dwelling Sixth Density Zone
- R7 One-Family Detached Dwelling Seventh Density Zone

NOTE: Numbers in Brackets Denote Exceptions to the Zoning Category

Not to Scale
 Zoning By-law 7625
 Extracted 01/16/06

Attachment 7: Planned Service Road Infrastructure, South of Sheppard



Attachment 8: Application Data Sheet

APPLICATION DATA SHEET

Application Type	Rezoning and Site Plan	Application Number:	05 211881 NNY 23 OZ
Details	Standard	Application Date:	December 23, 2005

Municipal Address:	23 & 33 SHEPPARD AVE E, TORONTO ON
Location Description:	PLAN 2090 PT BLK A RP 66R19563 PARTS 1 2 AND 7 **GRID N2306
Project Description:	Proposed 33-storey residential building

PLANNING CONTROLS

Official Plan Designation:	DMU-3, DMU-2 & MUA-B	Site Specific Provision:	Y
Zoning:	C1(87), RM6(133), &R6	Historical Status:	N
Height Limit (m):	100 m & 65 m	Site Plan Control Area:	Y

PROJECT INFORMATION

Site Area (sq. m):	10391 (9539 for density purposes)	Height:	Storeys:	33
Frontage (m):	76.15		Metres:	100
Depth (m):	134.03			
Total Ground Floor Area (sq. m):	3739			Total
Total Residential GFA (sq. m):	56,239.4 (to be confirmed)	Parking Spaces:		744
Total Non-Residential GFA (sq. m):	851.5	Loading Docks		2
Total GFA (sq. m):	57,090.0			
Lot Coverage Ratio (%):	39			
Floor Space Index:	5.985			

DWELLING UNITS

FLOOR AREA BREAKDOWN (upon project completion)

			Above Grade	Below Grade
Tenure Type:	Rental, Condo			
Rooms:	0	Residential GFA (sq. m):	56,239.4	0
Bachelor:	Tbc	Retail GFA (sq. m):	851.5	0
1 Bedroom:	Tbc	Office GFA (sq. m):	0	0
2 Bedroom:	Tbc	Industrial GFA (sq. m):	0	0
3 + Bedroom:	Tbc	Institutional/Other GFA (sq. m):	0	0
Total Units:	730			

CONTACT: PLANNER NAME: Catherine Cieply, Senior Planner, 416 395 7109

Attachment 9: Draft Zoning Provisions

The site-specific amendment to Zoning By-law 7625, is to include, among other matters, the following provisions to be specified in the implementing zoning by-law to the satisfaction of the City Solicitor and the Director, Community Planning, North York District:

- (i) the only permitted uses shall be apartment house dwellings (which may have access from either an interior corridor or direct at-grade exterior access, or both) and uses accessory thereto, and the non-residential uses currently permitted by site-specific zoning C1(87) with such non-residential uses to be limited to the Sheppard Avenue East retail frontages;
- (ii) a maximum total of up to 730 total residential units on the site, including a maximum of 377 residential units in the phase 1 development and a maximum of 353 units in the phase 2 development;
- (iii) a maximum gross floor area of 42,925.5 m², being a maximum base density limit of 4.5 FSI in conformity with the North York Centre Secondary Plan, for the site of total area 9,539 m²;
- (iv) a maximum additional gross floor area of up to 14,165.4 m², for a total maximum gross floor area of 57,090.0 m², being a maximum additional gross floor area of 33% over and above the gross floor area specified in (iii) above, with combined density incentives and transfers permitted in conformity with the North York Centre Secondary Plan, subject to the Owner providing, at its expense, the following facilities, services and/or matters to be secured in a section 37 agreement to the satisfaction of the City Solicitor:
 - (a) lands municipally known as 4 Anndale Drive, with an area of approximately 395 m², and a density of 3.5 FSI, for a maximum additional gross floor area of approximately 1,386 m², with the density of the 4 Anndale Drive lands to be reduced to zero gross floor area to recognize the density transfer, and with these lands to be provided to the City prior to the implementing zoning by-law for the development project coming into effect;
 - (b) lands municipally known as 2 Anndale Drive, with an area of approximately 395 m², and a density of 3.5 FSI, for a maximum additional gross floor area of approximately 1,386 m², with the density of the 2 Anndale Drive lands to be reduced to zero gross floor area to recognize the density transfer, and with these lands to be provided to the City prior to the implementing zoning by-law for the development project coming into effect;

- (c) the required monetary contribution for density of section (h) is to be reduced by the density attributed to the 2 Anndale Drive property under the Secondary Plan (3.5 times the area of the lot), should the Owner have conveyed to the City the property known as 2 Anndale Drive to the City prior to the implementing zoning by-law coming into effect, with such equivalent density to be permitted as an incentive in the Owner's development;
- (d) should the Owner (Minto) have used reasonable efforts to acquire the required 2 Anndale Drive property and have not been successful, City staff are authorized to initiate the expropriation process including serving and publishing Notices of Application for Approval to Expropriate, forwarding to the Chief Inquiry Officer any requests for hearing received, attending the hearing to present the City's position and reporting the Inquiry Officer's recommendations to Council for its consideration, with all costs incurred and compensation payable as a result of the expropriation to be at the Owner's (Minto's) total expense, up to a maximum limit of \$125,000 for such costs;
- (e) a minimum of 1.5 m² per unit of private indoor recreational area to be provided on the site, being a maximum of 730 total units for the phase 1 and phase 2 development and 1,095 m² of private indoor recreational area, for a maximum additional gross floor area of approximately 1,095 m² for the development;
- (f) a street-related retail incentive of up to 851.5 m² for the Sheppard Avenue East retail frontages (this has already been provided in phase 1);
- (g) bicycle storage and bicycle parking facilities for the phase 2 project, with a gross floor area of approximately 1,406.8 m², to include a bicycle parking area at the ground floor level to the satisfaction of the Director, Community Planning, North York District, for a maximum additional gross floor area of approximately 1,406.8 m² for the development;
- (h) a monetary contribution to fund any additional requested density up to the maximum 5.985 fsi permitted by the North York Centre Secondary Plan, in accordance with the provisions of Section 3.3, Density Incentives, of the Secondary Plan, with such moneys to be directed to the City's acquisition of required Service Road properties south of Sheppard Avenue and east of Yonge Street, or alternatively, the Owner may acquire and convey to the City additional property or properties required for the Service Road

south of Sheppard Avenue and east of Yonge Street, as identified in the Downtown Plan South of Sheppard Avenue Environmental Study Report (ESR), or a combination of the monetary contribution and such Service Road properties, for a total additional gross floor area of up to 9,426.1 m², with any monetary contribution to be based on the market value of density in the North York Centre as determined by the Director of Real Estate Services. Within 30 days of the issuance of the Ontario Municipal Board's Order implementing the site-specific zoning by-law amendment, the Owner shall provide to the City, in a form satisfactory to the City Treasurer, a letter of credit in the amount of \$700,000, and the City shall secure in an appropriate legal agreement the requirement for the applicant to fund the balance of the density prior to the issuance of the first above grade building permit for the development.

- (v) minor reallocations may be made among the above provisions, to the satisfaction of the City Solicitor and the Director, Community Planning, North York District, prior to the final implementing zoning by-law going forward to the Ontario Municipal Board for enactment;
- (vi) "Gross Floor Area" shall mean the aggregate of the areas of each floor, measured between the exterior faces of the exterior walls of the building or structure at the level of each floor, including any areas used as balconies, but excluding:
 - (a) any parts of the buildings used for mechanical purposes, including the floor area within a building that is used exclusively for the accommodation of mechanical equipment necessary to physically operate the building such as heating, ventilation, air conditioning, electrical (including electronics), plumbing, fire protection and elevator equipment;
 - (b) any space used for motor vehicle parking; and
 - (c) the floor area of unenclosed residential balconies.
- (vii) the maximum building height shall be regulated as provided in site-specific zoning C1(87), and shall include an additional provision that while the maximum height on the majority of the site is 100 m, the maximum permitted height on the southerly portion of the site is 65 m, in accordance with the North York Centre Secondary Plan. The phase 2 building shall be stepped as generally shown on Attachment 2 (Site Plan), to a maximum height of 33 storeys.

- (viii) no building shall be located outside the building envelope generally as shown on Attachment 2 (Site Plan).
- (ix) a minimum of 1.5 m² of private outdoor amenity space shall be provided on the site;
- (x) parking shall be provided at the following rates:
 - (a) for residential uses, a minimum of 0.9 parking spaces and a maximum of 1.3 parking spaces per residential unit, plus 0.1 parking space per residential unit for residential visitors;
 - (b) a minimum of 0.9 parking spaces per 100 square metres gross floor area and a maximum of 1.04 parking spaces per 100 m² gross floor area;
 - (c) in all other aspects, the parking is to comply with the North York Centre Parking Policy, By-law 31770 in relation to disabled parking spaces, and Zoning By-law 7625 (with the exception of 36 existing parking spaces in the phase 1 development which may have minimum dimensions of 5.0 m (length) by 2.7 m (width) by 1.8 m (height)).
 - (d) bicycle parking is to be provided at a rate of 0.1 spaces per residential unit in relation to the phase 2 development only, with such parking area to be provided in an interior location at grade level within the phase 2 development.
- (xi) loading space requirements, including supply, dimensions and accessibility, are to comply with Zoning By-law 7625;
- (xii) a minimum of 25% of the total number of condominium residential units constructed are to be provided with the maximum floor area restrictions:
 - (a) 70 m² for a bachelor unit or a one-bedroom unit;
 - (b) 80 m² for a two-bedroom unit;
 - (c) 120 m² for a three-bedroom unit;
 - (d) any combination of the above.
- (xiii) the general zoning provisions related to lot coverage, lot depth and lot area, shall not apply.
- (xiv) notwithstanding any severance or division of the lands subject to this exception, the regulations of this exception shall continue to apply to the whole of the lands.

- (xv) all other provisions of the C1(87) site-specific zoning shall continue to apply, except as amended above.
- (xvi) the southerly strip of land currently zoned RM6(133) shall be rezoned to include it in the same overall zoning for the subject site, recognizing that the density previously attributable to that strip is no longer available.
- (xvii) the 4 Anndale Drive property shall be rezoned to permit a maximum density of 0 m², to reflect the transfer of density from this property to the development project.
- (xviii) Should the applicant be successful in purchasing the 2 Anndale Drive property for subsequent conveyance to the City prior to the implementing zoning by-law coming into effect, the 2 Anndale Drive property shall be rezoned to permit a maximum density of 0 m², to reflect the transfer of density from this property to the development project.

Attachment 10: Site Plan Control Approval Conditions

City staff have reviewed the Site Plan Control Application for the proposed 33-storey residential building for the phase 2 lands at 23 and 33 Sheppard Avenue east, as outlined in the following plans and drawings:

Architectural Plans prepared by Page & Steele Architects:

Plan Number	Plan Title	Revision Date	Date Stamped Received by Planning
1	Site Plan	February 15, 2007	February 19, 2007
2	Ground Floor Plan	February 8, 2007	February 15, 2007
5	4 th – 8 th Floor Plan	February 8, 2007	February 15, 2007
5a	9 th Floor Plan	February 8, 2007	February 15, 2007
3	2 nd Floor Plan	June 29, 2006	June 30, 2006
4	3 rd Floor Plan	December 16, 2005	June 30, 2006
6	10 th Floor Plan (Mechanical)	February 8, 2007	February 15, 2007
7	11-31 Floor Plan (Typical)	February 8, 2007	February 15, 2007
9	Parking Level Plan P1	February 19, 2007	February 19, 2007
9a	Parking Level Plan P2	February 8, 2007	February 15, 2007
9b	Parking Level Plan P3	February 19, 2007	February 19, 2007
10	South Elevation	February 8, 2007	February 15, 2007
11	West Elevation	February 8, 2007	February 15, 2007
12	North Elevation	February 8, 2007	February 15, 2007
13	East Elevation	February 8, 2007	February 15, 2007

Landscape Plans prepared by NAK Design Group:

Plan Number	Plan Title	Revision Date	Date Stamped Received by Planning
L1	Landscape Master Plan	March 1, 2007	March 2, 2007
L2	Grading Plan	March 1, 2007	March 2, 2007
L3	Planting Plan	March 1, 2007	March 2, 2007
LD1	Details	March 1, 2007	March 2, 2007

The following conditions are to be fulfilled prior to final Site Plan Control Approval:

1. The Owner shall address the requirements of Section A, “Revisions and Additional Information Required for Site Plan, Studies and Drawings”, and Section C, “(Preliminary) Notice of Approval Conditions”, of the Technical Services memorandum dated March 12, 2007, to the satisfaction of the Executive Director of Development Engineering.
2. The Owner shall provide final architectural and landscape plans to the satisfaction of the Director, Community Planning, North York District, detailing the following matters:

- (a) revisions to the plans and statistics accompanying the plans, to provide for all density incentives within the maximum permitted 33% increase, including the 565.5 m² indoor amenity space related to phase 1;
 - (b) a bicycle parking area for a minimum of 0.1 bicycle parking spaces for the phase 2 development, to be provided at grade within the phase 2 building;
 - (c) a driveway between the south portion of the property and Anndale Drive;
 - (d) a set of 1 to 50 large-scale, detailed plan, section and elevation drawings of the lower three storeys of the building, to further illustrate the detailed relationship of the building's built form edge conditions, including grades and materials, and to provide additional details for the landscaped setback along the length of the southern property frontage to Anndale Drive;
 - (e) the design of the proposed loading area in the southwest portion of the site to facilitate a midblock pedestrian circulation;
 - (f) the hard and soft landscape details of the courtyard to ensure the proper support and amenity for residents of the new and existing apartments; and
 - (g) the location and treatment of servicing elements including hydro vaults, gas meters, and the proposed parking garage vents alongside the future Anndale Drive to fit within a landscape concept, minimize pedestrian circulation safety (hazards of walking over open metal grilles) and integrate with the detailed streetscape edge conditions mentioned above.
3. The Owner shall provide the necessary securities, in the form of a letter of credit or certified cheque, for existing and proposed City trees to the satisfaction of Parks, Forestry and Recreation (Urban Forestry Services).
 4. The Owner shall provide the necessary securities, in the form of a letter of credit or certified cheque, for a public sidewalk along the Anndale Drive frontage of the subject lands, to the satisfaction of the Transportation Services, Technical Services, and City Planning Divisions.
 5. The Owner shall submit to the Chief Financial Officer and Treasurer as a deposit a letter of credit or certified cheque for 120% of the value of the on-site landscaping including fencing, plantings, decorative paving, retaining walls and other landscape features. The letter of credit shall be in a form satisfactory to the City Treasurer in accordance with its standard format for letters of credit as of the date of submission of the letter of credit to the City, and which shall provide for automatic renewal rights at the end of the term, to complete all outstanding work required by these conditions. The deposit shall be returned to the Owner at such time as the Director is satisfied that the property has been developed in accordance with the approved drawings and the conditions of approval.

6. The Owner shall have executed the necessary site plan agreement to the satisfaction of the City Solicitor and the Director, Community Planning, North York District.
7. The Owner acknowledges that if these conditions are not fulfilled within 2 years of the date of the approval in principle of the Site Plan Control Application, then this notice is no longer valid and a new submission is required unless a written request for time extension is received and granted by the Director, Community Planning, North York District.

In addition to the above, the following conditions are to be fulfilled following Site Plan Control Approval and will be incorporated into a site plan agreement:

1. The lands shall be developed and maintained substantially in accordance with the approved Site Plan drawings referenced in the attached list of plans, and the conditions of approval. The Owner acknowledges that notwithstanding this approval, the lands shall be developed in accordance with the applicable zoning by-law(s) and that it is the responsibility of the Owner to ensure that the development is in conformity with the applicable zoning by-law(s) to the satisfaction of the Chief Building Official.
2. All of the work shown on the approved drawings and all of the work required by the conditions of this approval shall be completed within 3 years from the date of this approval failing which, this approval shall require an extension by the Director, Community Planning, North York District (the "Director"), or his successor, prior to the issuance of any building permit.
3. All refuse and recycling storage shall be contained within the building. Refuse and recycling materials shall be transported to collection areas on collection days only. The Owner acknowledges that garbage shall be collected in accordance with garbage by-law 235-2001, as amended.
4. All driveways, loading and parking areas shall be paved with asphalt, turfstone, concrete or concrete unit pavers.
5. All site illumination shall be designed to prevent the spread of light onto adjacent properties.
6. No signage, satellite dishes, cellular telephone antennae or associated equipment shall be provided on the roof of the building, without the prior approval of the Director.

7. Above-grade electrical transformers, gas regulators, and other equipment are not permitted above grade in any yard abutting a public street unless screened from view with landscaping or fencing to the satisfaction of the Director or his successor. All clearances from Toronto Hydro-Electric System Limited facilities must be maintained to the satisfaction of Toronto Hydro or such successor body. The owner shall make arrangements to the satisfaction of the affected Utility for the installation, relocation and protection of all utilities.
8. The municipal address of the project is to be well illuminated, provided in a prominent location and designed to be easily readable from adjacent streets.
9. Site grading shall be designed to ensure that there are no drainage problems created on adjacent lands.
10. All designated parking spaces for persons with disabilities shall be identified with signage and logos to the satisfaction of the Executive Director of Technical Services, or his/her successor. All designated parking spaces, walkways and curb ramps shall conform with the City of Toronto (formerly North York) "Barrier-Free Accessibility Design Guidelines and Policy Handbook (Exterior Guidelines)".
11. All existing trees scheduled to be preserved shall be maintained in accordance with the City of Toronto (formerly North York) "Standards for the Protection and Care of Trees". Any tree that is removed in contravention of the Site Plan Approval, or that is severely damaged, shall be replaced with a tree, or trees, of similar value to the satisfaction of the Director.
12. The Owner shall develop the lands in accordance with the requirements and conditions contained in the following:
 - (a) Technical Services Division memorandum dated March 12, 2007;
 - (b) Parks, Forestry and Recreation (Policy & Development) memorandum dated March 6, 2007;
 - (c) Toronto Transit Commission memorandum dated August 24, 2006;
 - (d) Toronto District School Board memorandum dated September 5, 2006;
 - (e) Toronto Catholic District School Board memorandum dated September 22, 2006; and
 - (f) Bell Canada memorandum dated February 6, 2006.

13. The site plan agreement will also stipulate the following:
- (a) The Owner acknowledges that where it fails to promptly complete the work required by this Agreement, the City, in addition to and without prejudice to any other rights which it may have pursuant to this Agreement or otherwise at law, may enter onto the lands, perform such work and take any steps as are required, in the sole discretion of the City, to carry out and complete the work.
 - (b) The Owner agrees that the City has the right to recover the total cost of all work and materials, plus a management fee equal to 20 percent of the total cost of such work and materials. In addition to any other remedies it may have, the City may collect the sums owing in like manner as municipal taxes, with all such amounts to be payable as directed by City Council pursuant to Section 427 of the Municipal Act.
 - (c) The Owner acknowledges that the City enters onto the lands solely as the agent of the Owner, and such entry shall not be deemed, for any purpose, to constitute acceptance or assumption of all or any portion of the work required by this Agreement.
 - (d) The Owner shall, at all times, indemnify and save harmless the City from and against any and all claims, demands, losses, costs, charges, expenses, actions and other proceedings (including those in connection with workplace safety and insurance compensation or any similar or successor arrangements) made, brought against, suffered by or imposed on the City or its property in respect of any failure by the Owner to fulfill any of its obligations under this Agreement in respect of its responsibility for any potential soil contamination or remediation of the lands.
 - (e) The Owner agrees:
 - (i) that it shall save harmless, defend and fully indemnify the City, and each of the persons under the City's jurisdiction, from and against all actions, suits, claims, and demands which may be brought against or made upon the City, and any persons under the City's jurisdiction, and from and against all loss, costs, charges, damages and expenses which may be sustained, incurred or paid by the City, and each of any persons under the City's jurisdiction, by reason of, or on account of, or in consequence of this clause;
 - (ii) that it will pay to the City and to each of any persons under the City's jurisdiction, on demand, any loss, costs, or damages which may be sustained, incurred or paid by the City in consequence of any such action, suit, claim or demand; and

- (iii) on default of such payment all such loss, costs or damages and all such monies so paid or payable may be recovered in any court of competent jurisdiction.