

355 King St W, Part of 343 King Street West and 119 Blue Jays Way Rezoning Application – Final Report

Date:	August 16, 2010
To:	Toronto and East York Community Council
From:	Director, Community Planning, Toronto and East York District
Wards:	Ward 20 – Trinity-Spadina
Reference Number:	08 150526 STE 20 OZ

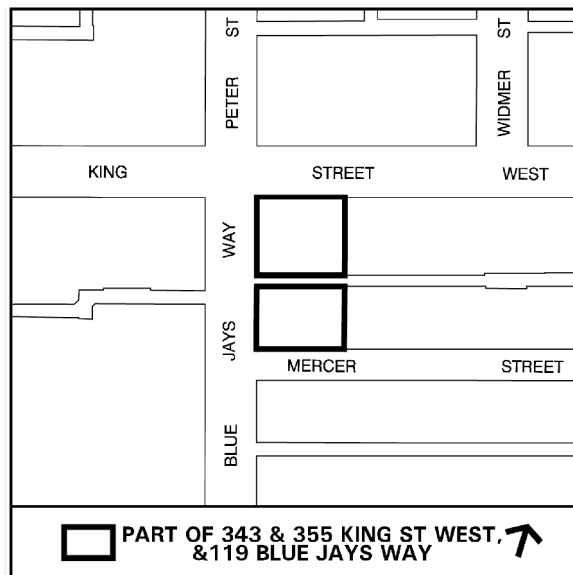
SUMMARY

This application was made on or after January 1, 2007 and is subject to the new provisions of the Planning Act and the City of Toronto Act, 2006.

An application has been made to amend Zoning By-law 438-86 of the former City of Toronto for the property at 355 King Street West, part of 343 King Street West and 119 Blue Jays Way. The proposal is to erect 42 and 47 storey condominium towers on a 7 storey podium building. The project proposes 661 residential units and 4,066 sq.m. of non-residential gross floor area. Four hundred and twenty parking spaces are proposed in 5 levels below grade. The project incorporates parts of the heritage designated Westinghouse Building at 355 King Street West and a mid block pedestrian connection from Mercer Street to King Street.

Contributions under Section 37 of the Planning Act will be secured including a space for a non-profit cultural use and \$1.25 million towards affordable housing and streetscape improvements in the area.

This report reviews and recommends approval of the application to amend the Zoning By-law.



RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council amend Zoning By-law 438-86, as amended, for 355 King Street West, part of 343 King Street West and 119 Blue Jays Way, substantially in accordance with the draft Zoning By-law Amendment attached as Attachment 9 to the August 16, 2010 report from the Director, Community Planning, Toronto and East York District.
2. City Council authorize the City Solicitor to make such stylistic and technical changes to the draft Zoning By-law Amendment as may be required.
3. Before introducing the necessary Bills for enactment, City Council authorize the appropriate City officials and require the owner to execute an Agreement pursuant to Section 37 of the Planning Act satisfactory to the Chief Planner and Executive Director, City Planning Division, and the City Solicitor. Such agreement shall be registered on title to the lands in a manner satisfactory to the City Solicitor, to secure the following facilities, services and matters:
 - a. An indexed cash contribution of \$1,250,000.00 of which 10 per cent will be allocated to affordable housing in Ward 20, and the remainder for the provision of one or more of the following:
 - capital improvements to non-profit arts and cultural facilities in Ward 20;
 - streetscape improvements to John Street and Mercer Street;
 - design development supporting the John Street streetscape project;
 - b. the indexed cash contribution is to be provided prior to the issuance of an above-grade building permit;
 - c. provision of a minimum of 900 sq.m. within the project for one or more non-profit arts, cultural, community or institutional facilities to be approved by the Executive Director, Cultural Services, in consultation with the Ward Councillor or an appropriate alternate community benefit to be negotiated with City Planning staff and the Ward Councillor, acting reasonably, should the cultural space not be viable;

The following matters are also recommended to be secured in the Section 37 Agreement as a legal convenience to support development:

- d. Construction, provision and maintenance of a mid-block pedestrian connection through the project from Mercer Street to King Street West.
- e. The owner shall provide a minimum of ten percent (10%) of the residential units in the building having at least three bedrooms;
- f. Architectural plans, elevations and landscaping including 1:50 elevations will be secured to the satisfaction of the Chief Planner and Executive Director, City Planning Division, and the owner will be required to, in conjunction with each Site Plan Application submit 1:50 scale drawings in conformity with this requirement for the seven storey podium;

- g. The owner shall incorporate in the construction of the building, and thereafter maintain, exterior building and landscape materials to the satisfaction of the Chief Planner and Executive Director, City Planning Division;
 - h. Prior to the issuance of any building permit for the site, including shoring and excavation, the owner shall have obtained title to the land shown on Attachment 5 and labelled “Old Lane” and shall have conveyed to the City the land labelled as “New Lane”;
 - i. Provision of detailed design drawings showing drainage patterns from the public lane located on the east side of the site, locations of proposed catch basins, transitioning of grades along the centreline and limits of the laneway curb cut details on Mercer Street and all proposed underground utility relocations from the existing laneway to the proposed new laneway to the satisfaction of the City’s Executive Director of Technical Services prior to the issuance of any building permits for the site;
 - j. The owner shall be encouraged to build in conformity with the Green Development Standard Checklist on file with the Chief Planner and Executive Director. City Planning Division, date-stamped June 3, 2009;
 - k. Submission of a wind study to be submitted as part of an application for Site Plan Approval for the property. The owner shall implement wind mitigation measures required by the wind study, satisfactory to the Chief Planner and Executive Director, City Planning Division; and
 - l. The owner shall provide and maintain in good order and operation an irrigation system, at the owner’s expense, for proposed trees within the public road allowances, including an automatic timer, designed to be water efficient by a Certified Landscape Irrigation Auditor (CLIA) and constructed with a back flow preventer to the satisfaction of the Executive Director, Technical Services.
 - m. Prior to Site Plan Approval, the owner shall make alternative arrangements with respect to charter bus parking for the Princess of Wales Theatre in accordance with the Development Agreement between Ed Mirvish Enterprises Limited and the City of Toronto dated June 17, 1991.
4. Prior to the introduction of Bills, City Council shall require the applicant to withdraw the appeal to the Ontario Municipal Board regarding Zoning By-laws 921-2006 and 922-2006 arising from the 2006 King-Spadina Secondary Plan Review.
 5. City Council require the owner to obtain a heritage permit under Section 33 of the Ontario Heritage Act prior to Site Plan Approval for the property at 355 King Street West.
 6. City Council require the owner to enter into a Heritage Easement Agreement with the City for the retained portion of the heritage property at 355 King Street West prior to Site Plan Approval.

Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

King-Spadina Built Form Review

In 2005, a review of the King-Spadina Secondary Plan was initiated by Council to evaluate specific matters related to entertainment uses in the area, community infrastructure, built form policies and the policies related to the public realm. In September 2006, City Council enacted amendments to the King-Spadina Secondary Plan and RA zoning to update the planning framework for the Plan area which resulted in Official Plan Amendment 921-2006 and Zoning By-law Amendment 922-2006. The Official Plan Amendment introduced new policies to reinforce the major objectives of the planning framework for King-Spadina that encourages reinvestment for a range of uses in a manner that protects and enhances its unique physical attributes and historic built form. It introduced a new urban structure for King-Spadina removing the historic Queen Street West area, and identifying three distinct areas: the East and West Precincts; and the Spadina Avenue Corridor shown on Attachment 1. It provides that development will complement and reinforce the distinctive qualities of these precincts and corridor. Heritage areas are identified in the East and West Precincts and Spadina Avenue Corridor. A new policy 3.7 provides criteria for considering tall buildings in certain parts of the East Precinct, which include setbacks above the base building and a requirement to not export facing distance constraints onto adjacent sites. The Zoning By-law amendment includes a provision that permits an additional 5 metres of building height, including mechanicals, subject to the mechanicals being wrapped and falling within a 45 degree angular plane from the street, for a total height of 35m.

These amendments are currently under appeal to the Ontario Municipal Board by some area owners and developers, including the applicant. A series of pre-hearing conferences have resulted in many appeals being withdrawn or settled. A further pre-hearing on the outstanding appeals has not yet been scheduled by the OMB. The applicant will be required to withdraw their appeal prior to Bills being enacted by Council.

King-Spadina East Precinct Built Form Study

A further study of the East Precinct of King-Spadina was initiated by Council in April 2008 due to the number of development applications in this area of King-Spadina proposing heights above those permitted by the Zoning By-law. This study was intended to evaluate the character of the East Precinct and provide more specific direction on where and how additional development can be accommodated while protecting the features that make this area distinctive and successful.

The study identified five character areas in the East Precinct, as shown on Attachment 2, and established an approach to considering development within each area in a manner that protects, reinforces and enhances its character.

Among other things, it established 'First' and 'Second Tier' height zones within the character areas shown on Attachment 3. In the 'First Tier' zones, height is limited to the as-of-right permissions in the Zoning By-law. Heights that are greater than the as-of-right permission can be considered in the 'Second Tier' height zones subject to a number of considerations, among these; respect for heritage in the immediate context, including podium scale, materiality, proportion and architectural rhythm, preservation of sunlight on parks and important pedestrian streets, conformity with the King-Spadina design guidelines and achieving a 25 metre tower separation and maximum 750 square metre floor plate

to address light, view and privacy. Appropriate Section 37 contributions for increased height would also be required. This framework for considering development applications within the East Precinct was considered by City Council at its meeting of September 30, October 1, 2009 and has been applied to the review of development applications subsequent to Council consideration.

Further work by staff will involve preparation of detailed guidelines regarding urban design, built form and performance criteria to guide future development, and the development of a revised Secondary Plan and Zoning By-law for the King-Spadina East Precinct.

ISSUE BACKGROUND

Proposal

The original application proposed the construction of a 48-storey mixed-use building with a 6 storey podium, accommodating a hotel, art gallery and retail uses at 355 King Street West. The total building height was 177m to the building's decorative peak. The property is currently developed with the "Canadian Westinghouse Building", which is designated under Part IV of the Ontario Heritage Act. The north and west exterior walls of the building were proposed to be incorporated into the new development, with the balance to be demolished.

The southern portion of the lands, municipally known as 119 Blue Jays Way, was proposed to be developed with an 18 storey residential building with retail and restaurant uses at grade and a building height of 62.85m.

The application has been revised to reduce the residential tower at 355 King Street West to 47 storeys. The tower at 119 Blue Jays Way has been increased to 42 storeys. The tower separation distances have been increased and the tower floor plates have been reduced. Both sit on a 7 storey podium accommodating retail and residential uses. The hotel use has been eliminated.

The project proposes 661 residential units and 4,066 sq.m. of non-residential gross floor area with a total combined floor area of 55,721 sq.m. The density is 14.4 times the area of the lot. Four hundred and twenty parking spaces are proposed in 5 levels below grade. The project continues to incorporate the north and west exterior walls of the Westinghouse Building. A mid-block pedestrian connection from Mercer Street to King Street is proposed with a courtyard located centrally on the block.

The site is bisected east to west by a public lane that the applicant intends to relocate to the eastern limit of the property as part of a land exchange with the City as shown on Attachment 8. Complete site statistics are included on Attachment 7.

Site and Surrounding Area

The subject lands are located at the south-east corner of King Street West and Blue Jays Way and consist of two parcels municipally known as 355 King Street West, part of 343 King Street West and 119 Blue Jays Way with a 4.27 metre wide lane bisecting the site, which runs from John Street to Blue Jays Way. The site area is 3869 sq.m. and is currently occupied by a 6 storey office building that is designated under Part IV of the Ontario Heritage Act (The Canadian Westinghouse Building). The remainder of the site is currently used as a surface commercial parking lot.

The subject site is surrounded by the following uses:

North: There are a variety of uses including office, hotel, restaurant, theatre and residential, within buildings ranging in heights from 2-storeys to 42-storeys. A 20-storey hotel building (Holiday Inn) on the north side of King Street West; the 42 storey (157 metre) Festival Tower and Bell Lightbox building is under construction further east at the corner of King Street W. and John Street.

South: Across Mercer Street to the south is the recently approved 20 storey (63.75m) residential condominium on the southeast corner of Mercer Street and Blue Jays Way (99 Blue Jays Way) and the three buildings on the north side of Wellington Street ranging in height from 13 storeys to 18 storeys (250 Wellington Street).

East: Directly to the east, on the south side of King Street W. are a series of 2 and 3 storey mixed use historic buildings. East along Mercer Street is an 11 storey building at 26-30 Mercer Street (the Hotel Le Germain) and a 3 storey building at 24 Mercer Street, which is a listed heritage building.

West: Directly west of the site, are mixed use buildings ranging in heights from 2 to 5-storeys. Further west along King Street W. is an OMB approved 35-storey residential building site (379 King Street W.). On the west side of Blue Jays Way (56 Blue Jays Way) is an approved 41 storey (142 metres) building site. The 16 storey (54 metres) Soho Metropolitan Hotel is located southwest of the site at the northwest corner of Wellington Street and Blue Jays Way (318 Wellington Street West).

Provincial Policy Statement and Provincial Plans

The Provincial Policy Statement (PPS) provides policy direction on matters of provincial interest related to land use planning and development. The PPS sets the policy foundation for regulating the development and use of land. The key objectives include: building strong communities; wise use and management of resources; and, protecting public health and safety. City Council's planning decisions are required to be consistent with the PPS.

The Growth Plan for the Greater Golden Horseshoe provides a framework for managing growth in the Greater Golden Horseshoe including: directions for where and how to grow; the provision of infrastructure to support growth; and protecting natural systems and cultivating a culture of conservation. City Council's planning decisions are required by the Planning Act, to conform, or not conflict, with the Growth Plan for the Greater Golden Horseshoe. The Growth Plan provides that municipalities will have Official Plan policies and a strategy to achieve the intensification targets in the Growth Plan, achieving a range and mix of housing and the conservation of heritage resources.

City Council's planning decisions are required by the Planning Act, to conform, or not conflict, with the Growth Plan for the Greater Golden Horseshoe.

Official Plan

The Official Plan locates the subject site within the *Downtown*. Chapter Two - Shaping the City identifies that the downtown area offers opportunities for substantial employment and residential growth, but that this growth is not anticipated to be uniform. Rather, it is expected that the physical setting of many areas will remain unchanged and that design guidelines specific to districts of historic or

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distinct character will be implemented to ensure new development fits into the context of existing built form, streets, setbacks, heights and relationship to landmark buildings.

Chapter Three - Building a Successful City identifies that most of the City's future development will be infill and redevelopment and, as such, will need to fit in, respect and improve the character of the surrounding area. Development will be located, organized and massed to fit harmoniously with existing and/or planned context. Development will limit its impacts on neighbouring properties and the public realm by respecting street proportions, creating appropriate transitions in scale, providing for adequate light and privacy, and limiting shadow and wind impacts. This section of the Plan also contains specific policies on tall buildings and built form principles to be applied to the location and design of tall buildings, including locating buildings parallel to the street, with clearly visible entrances and ground floor uses with views to the street; locating and organizing parking and servicing to minimize impacts; providing an appropriate scale for adjacent streets; minimizing shadowing, loss of sky view and wind impacts; contribution to the skyline character; and fit within the local context.

Section 3.15 of the Plan addresses the conservation of heritage resources and includes policies that state the heritage resources on properties listed on the Cities Inventory of Heritage Properties will be conserved.

The site is designated as a Regeneration Area, which permits the proposed residential and commercial uses.

King-Spadina Secondary Plan

The subject site is located within the King-Spadina Secondary Plan area. The King-Spadina Secondary Plan (Chapter 6.16 of the Official Plan) provides a framework for reinvestment and development, the fundamental intent of which is to encourage reinvestment for a wide range of uses in the context of a consistent built form that relates to the historic building stock and the pattern of streets, lanes and parks.

In particular the policies of Section 3 – Built Form specify that new buildings will achieve a compatible relationship with their built form context through consideration of such matters of building height, massing, scale, setbacks, stepbacks, roof line and profile and architectural character and expression. The policies encourage buildings to be located along the street edge with lower levels providing public uses accessed from the street; encourage servicing and parking to be accessed from rear lanes; site new buildings for adequate light, view and privacy; compatibility with the built form context; provide appropriate proportional relationships to streets and open spaces; and minimize wind and shadow impacts on streets and open spaces.

By-law 921-2006, which is under appeal to the Ontario Municipal Board, proposed amendments to the King-Spadina Secondary Plan that are intended to further clarify and reinforce the fundamental intent of the Plan, re-emphasizing that new development should respond to the unique physical character of the area.

King-Spadina Urban Design Guidelines

The King-Spadina Urban Design Guidelines (2004) support the implementation of the King-Spadina Secondary Plan. The Guidelines also state that height and massing are to be based on prevailing building types in the area. Building articulation and fenestration is to be based on the articulation of historic buildings.

Updated King-Spadina Urban Design Guidelines were endorsed by Council in September 2006. The updated Guidelines seek to evaluate tall buildings in terms of massing and height, and impacts on light, view, privacy, sunlight access and wind conditions, as well as ensuring that the potential for other sites appropriate for tall buildings to develop in a similar manner is maintained. The Guidelines also note that the Zoning-By-law's angular plane provisions to preserve sunlight on certain streets, including King Street, should be upheld. In addition, stepbacks between 3 and 9 m are encouraged so that tall portions of buildings do not overwhelm the street wall. In addition to these Guidelines, tall buildings are to be assessed in accordance with the City's Tall Building Design Guidelines, including guidelines for tower separation and sky view and shadow impacts.

City of Toronto Tall Building Guidelines

The Tall Building Guidelines provide direction on matters including the scale of buildings, building floor plates and spatial separation. Key criteria in the Guidelines are minimum facing distances of 25 metres between towers in order to achieve appropriate light and privacy, minimum side and rear yard tower setbacks of 12.5 metres, and articulation of tower floorplates that are larger than 743 sq. m to break down the mass of the building.

King-Spadina East Precinct Built Form Study

The findings of the King-Spadina East Precinct Built Form Study include the principle that heights decrease generally from east to west (University Avenue to Spadina Avenue), and from south to north (Front Street to Queen Street). Within this general height trend are areas of localized conditions. One of these localized areas is south of Adelaide Street to Front Street and west of Widmer Street, which contains the subject site. This is a Second Tier height area with the potential for additional height. Given the local context of the site, including the approved developments at 56 Blue Jays Way (142 m), 371-379 King Street West (119 m) and the Soho and Icon developments to the south (approx. 40-64 m), a Second Tier height of up to 90 m or more may be appropriate, subject to meeting appropriate performance criteria including the objectives of the King-Spadina Secondary Plan, the 2006 King-Spadina Urban Design Guidelines and the City's Tall Building Guidelines, as well as providing an appropriate Section 37 contribution.

Additional considerations for this particular site include shadow impacts on King Street West, which has been identified as a sunlight street and is subject to angular plane provisions in Section 12(2)260 of Zoning By-law 438-86, shadow impacts on Blue Jays Way, which is subject to a 3-hour sunlight standard mid-day between March and September in the 2004 King-Spadina Urban Design Guidelines, and ensuring adequate spacing distances for tall building elements given the OMB-approved development at 371-379 King Street West, as well as visual impacts on the Restaurant Row portion of King Street West.

Toronto Entertainment District Master Plan

In 2008 the Entertainment District Business Improvement Association (BIA) initiated a Master Plan Study of the BIA that was completed in May 2009 intended to articulate the long-term vision for the BIA and provide guidance for change. Although the boundaries of the BIA are different than those of King-Spadina it does encompass the East Precinct and a portion of the Spadina Avenue Corridor and the Master Plan complements the planning framework for King-Spadina.

Similar to the Built Form Study, the Master Plan identifies areas of distinct character within the BIA, and three are within the East Precinct of King-Spadina. These include the 'Warehouse Precinct', the

‘King Street Precinct’ and the ‘Front Street Precinct’ and they are closely related to the character areas identified in the Built Form Study.

Zoning

The site is zoned Reinvestment Area (RA) by Zoning By-law 438-86, as amended. The RA zoning permits a range of uses and a maximum building height of 30 metres for this site. An additional 5 metres is permitted for rooftop mechanical elements. The Zoning By-law permits development to the front lot line and to the side lot lines to a depth of 25 metres. Beyond a depth of 25 metres, a 7.5 metre setback is required. A 7.5 metre setback to the rear lot line is also required. Section 12(2)246 of the Zoning By-law requires a 3-metre setback above 20 metres on all street frontages.

By-law 922-2006, implementing the zoning by-law amendments arising from the 2006 King-Spadina Secondary Plan review, added provisions that included requirements for windows of dwelling units to maintain a minimum separation of 15 m, and 7.5 m to a lot line that is not a public street. By-law 922-2006 is under appeal to the Ontario Municipal Board.

Site Plan Control

The proposed development would be subject to site plan approval. An application for site plan approval has not been submitted.

Reasons for Application

The Zoning By-law Amendment application proposes a building that exceeded the permitted maximum building height by 120 metres, for a height of approximately 155.80m including the mechanical penthouse and elevator/stair overrun.

A number of other variances are required for the proposal, including the following:

- rear and side yard setbacks for the podium portion of the building
- tower setback of 3 m beyond a 20 m height
- dimensions of obstructed parking spaces

Community Consultation

A community consultation meeting was held on June 25, 2008. It was attended by approximately 40 people representing area residents and businesses. In response to the original application, which included a wind turbine on top of the 48 storey tower for a total height of 177 m, the following issues were raised:

- concerns with the height of the proposal and setback of the tower from the east property line
- a mix of comments on the design of the project both positive and negative
- questions about how the heritage building was to be conserved
- concerns from King Street restaurant owners to the east about the effect of the development on the service lane and that they had not been consulted earlier
- comment that the central courtyard should not mix pedestrians and vehicles

In response to community comments the applicant has eliminated the wind turbine element and made the taller tower lower than the Bell Lightbox (TIFF) tower so as it maintain the prominence of the Lightbox on the skyline. The service lane for King Street businesses is being realigned and widened in

sections to provide access to Mercer Street rather than Blue Jays Way and not to negatively impact existing businesses. Vehicles will not be able to enter the central pedestrian courtyard.

City Planning also hosted a charrette which was attended by stakeholders and landowners in the area. The charrette looked at the block bounded by King Street, Blue Jays Way, Mercer Street and John Street including both sides of all the streets. This area had been subject to a number of applications for tall building and also includes the historic house form “restaurant row” immediately to the east of 355 King. The charrette looked at the relationship of the various applications with respect to height, tower spacing and floor plates, the public realm and heritage. The 355 King Street West application was revised to respond to direction of the charrette by changing the tower orientation and spacing, floor plates and proposed improvements to the public realm.

Agency Circulation

The application was circulated to all appropriate agencies and City divisions. Responses received have been used to assist in evaluating the application and to formulate appropriate by-law standards.

COMMENTS

City staff had raised concerns about the application related to height, conformity with the Tall Building and King Spadina Guidelines and Heritage.

Provincial Policy Statement and Provincial Plans

The proposal was consistent with the PPS by proposing intensification within a built-up urban area near higher-order transportation.

The proposal conformed and did not conflict with the Growth Plan for the Greater Golden Horseshoe by proposing intensification within the Downtown, which is identified as an Urban Growth Area.

Land Use

The proposed mix of residential, retail and cultural uses are consistent with the land use permissions of the Official Plan, Secondary Plan and Zoning By-law.

Any new site-specific zoning by-law for the site will not permit an entertainment facility use on the site.

Height and Massing

The proposed two towers of 155.80 and 140.35 metres are significantly higher than than the 35 metres permitted by the plan but through a series of discussions with staff and modifications to the plan the proposal can be accommodated on a site of this size and on a corner lot.

Staff acknowledge that the local context of this proposal has changed over the last years including recent approvals in the King, Peter and Mercer Street vicinity. To the immediate south of the proposal are recently built or approved condominiums in the 60-70 m height range. The tallest approved buildings in the immediate vicinity are 142 m (56 Blue Jays Way), 157 m. (326 King Street West – Bell Lightbox), 119.5 m (371-379 King Street West) and. In addition, the King-Spadina East Precinct Built Form Study acknowledges that additional height could be contemplated south of King Street subject to mitigating shadow impacts, and the visual effects of height on the character of King Street West, particularly on the “Restaurant Row” area between Blue Jays Way and John Street. The site is within a Second Tier height area of 90 m as identified in the Built Form Study which the proposed heights of 155 and 140 m exceed.

However, the Built Form review acknowledges that higher heights can be contemplated subject to meeting various mitigating measures and tall building guidelines.

Subsequent to discussions with the applicant, the tower floor plates have been reduced and spacing increased. This decreases the mass facing King Street West, improving sky view as experienced by pedestrians on King Street and improving the separation distance from adjacent tall development as compared to the original proposal.

The proposal's revised tower setback from the side (east) property line of 10 m now more closely meets the general intent of Policy 3.7(b) of the 2006 King-Spadina Secondary Plan (under appeal), requiring a proposal to not export facing distance constraints onto adjacent sites. The Tall Buildings Guidelines recommend a minimum 25 m separation distance between tower elements, with a minimum setback of 12.5 m on each property. Staff can accept the compromise of a 10 m setback as part of the charrettes master plan approach to how towers are to be sited in this area. The properties to the east in restaurant row are intended to be the subject of a Heritage Conservation District to protect the scale and character of this pocket of heritage. The proposed towers are offset and are designed to have a varied floor plate the shifts as it moves up. This results in a tower separation of approximately 20 m that varies upwards and downwards based on the shifting floors. On the west and north the project faces public streets. In the context of other approved and planned towers in the neighbourhood the current proposal is acceptable.

The tower does not meet the setback requirement of 3 m beyond a height of 20 m on the King Street or Blue Jays Way frontages. On both frontages, the podium has been designed to match the height and rhythm of the historic Westinghouse building. On King Street the tower is set back 1.5m from the podium, however at the corner of King and John, the new buildings are set back approximately 17 metres to maintain the prominence and massing of the heritage building. On Blue Jays Way the tower does not step back from the podium. This is acceptable as a balance between the need to maintain tower separations between towers against the step back at the street. In addition, the major setback at the corner acknowledges the priority minimizing the visual impact on the heritage building

Staff do not have issues with the podium levels of the proposal.

The project includes a mid-block pedestrian connection between Mercer and King Streets that will be secured through the Section 37 Agreement. In addition, a central courtyard is included in the project that will be opened onto by retail/restaurant space and a proposed non-profit cultural facility.

Shadow Impacts

The site is directly south of King Street West, which has a height limit of 30 metres and a 44 degree angular plane from the street line at the 16 metre height level. The purpose of the angular plane is to minimize shadow impacts and ensure sky views at pedestrian level on King Street West.

The north tower shadows a portion of the north King Street West sidewalk through the lunch hour with shadows off the north sidewalk by mid afternoon in March and September, including what appear to be minor impacts on Restaurant Row between approximately 3:30 and 4:00 in the afternoon. The proposal does not meet the angular plane provisions of the By-law.

Wind Impacts

The development application for 355 King has been amended several times as the applicant and staff have worked together on this project. The applicant has submitted a letter confirming that they have retained a wind consultant to carry out a detailed wind analysis for the project. Now that the general massing of the project has been confirmed the wind analysis will be initiated.

The implementation of wind mitigation measures to the satisfaction of staff will be secured in the Section 37 agreement.

Heritage

The proposal includes re-development of The Canadian Westinghouse Building which was designated by Toronto City Council under Part IV of the Ontario Heritage Act on January 13, 1992 (By-law 115-92). The property was designed in the Commercial Style by Prack and Prack Architects and was constructed in two stages in 1927 and 1934 for the sales and service departments and warehouse of the company's Toronto office.

The Westinghouse building is in good condition and the interior includes the original Westinghouse elevator, structural systems, wood floors and cast iron stairs. The applicant proposes to retain and restore only the existing north and west facades with a one bay return on the east and south faces to provide some dimensionality to the façade. Some modifications are proposed to windows and changes to the main entrance with a large window above. Floor to floor heights are proposed to be retained and the new roof of the building will be used as outdoor amenity space for the new condominium towers. A Heritage Impact Assessment submitted with the application indicates that the interior space of the building and the east and south elevations cannot be preserved due to the need to excavate for parking and to create a central courtyard space. A supplementary Heritage Impact Assessment identifies some interior elements and materials that could be re-used such as the brass finishes.

The 1992 Reasons for Designation state that the structure “is characterized by its height, the expression of the internal skeleton as a grid, large expanses of glass and the use of non-supporting materials (such as terra cotta), ground display windows with commercial or industrial windows above, and a flat roof with a terminating cornice. The Canadian Westinghouse building, constructed of steel and concrete and clad with brown pressed brick, features a six-storey square plan with terra cotta decoration”. Thus, conveyance of the designated building's importance is lent credibility through retention of both exterior architectural characteristics and internal structural components.

City staff do not support the retention of only two side walls of the heritage property and are recommending the adaptive re-use of the building within the new development. The council adopted “Standards and Guidelines for the Conservation of Historic Places in Canada” does not consider reconstruction a method of conservation and the current application proposes that the majority of the building be removed and replaced. Where heritage resources are in good repair, the Standards call for an approach of “minimal intervention,” which allows functional goals to be met with the least amount of physical intervention. Given that the Westinghouse building is in good condition, sits on a large site, and is capable of being re-purposed and given that the applicant can modify the parking or excavate below the structure to maintain the designated building in situ, staff believe that the current proposal does not constitute appropriate conservation of a significant protected heritage property. It is acknowledged that some alterations to the structure may be necessary to achieve the objective of providing a mid-block pedestrian connection or to improve access at the street level.

The timing of this planning report did not allow for an application to be made under Section 33 of Ontario Heritage Act for the alteration of the structure or for a Council decision to be made on the heritage matters with the required consultation of the Toronto Preservation Board. Therefore the current re-zoning has been structured in such a way as to not prejudice Council's future consideration of the heritage matters. The proposal for the new building to be built behind the heritage facades replicates the mass of the Westinghouse building as well as the floor to floor heights, and the south tower encroaches only marginally onto the heritage footprint. The re-zoning envelope is therefore sufficient to contain a development that includes either two or four walls of the heritage building. The applicant is required to obtain a heritage permit for the alteration prior to site plan approval.

Traffic Impact, Access, Parking

A Traffic Impact Study submitted by the applicant was satisfactory to Technical Services staff.

Site access is proposed from the public lane and Mercer Street. This proposal is based on a land exchange between the owner and the City to redirect the lane. The proposed access is subject to Council approval to stop up a close and portion of lane and dedicating a new lane access to Mercer Street. The access to below-grade parking is at the east end of the property via the east-west laneway. Residential drop-off is also accessed via the lane. This arrangement is satisfactory to Technical Services staff.

The proposal exceeds the parking requirements of the Zoning By-law by providing 443 parking spaces in five levels below grade, assuming that the unit mix remains essentially as proposed. The applicant will have to satisfy the requirements of the Toronto Green Standard with respect to the oversupply of parking. In addition, a number of spaces do not meet the Zoning By-law required dimensions and will have to be addressed. Proposed loading arrangements satisfy the minimum requirements of the Zoning By-law. The applicant will be required to provide further refinements to the layout and access to loading during the Site Plan review process.

Servicing

The Functional Servicing Report provided by the applicant has been accepted by Technical Services staff.

Open Space/Parkland

The Official Plan contains policies to ensure that Toronto's system of parks and open spaces are maintained, enhanced and expanded. Map 8B of the Toronto Official Plan shows local parkland provisions across the City. The lands which are the subject of this application are in an area with 0.42 to 0.78 hectares of local parkland per 1,000 people. The site is in the second lowest quintile of current provision of parkland. The site is in a parkland priority area, as per Alternative Parkland Dedication By-law 1420-2007.

The application proposes 661 residential units on a total site area of 0.3869 hectares (3,869m²). At the alternative rate of 0.4 hectares per 300 units specified in By-law 1420-2007, the parkland dedication would be 0.8813 hectares (8,813m²). However, a cap of 10 per cent applies and hence the parkland dedication for the residential component of the development would be 0.03869 hectares (386.9m²). The commercial component of the development would be subject to a 2 per cent parkland dedication requirement under Chapter 165 of the former City of Toronto Municipal Code (which remains in full force and effect) to implement Section 42 of the Planning Act RSO 1990, c.P.13.

The non-profit/institutional component of the application is exempt from the parkland dedication by-law under Chapter 165 of the former City of Toronto Municipal Code (which remains in full force and effect) because it is under 1000 m².

The applicant proposes to satisfy the parkland dedication requirement through cash-in-lieu. This is appropriate as there is no suitable location for an on-site parkland dedication and the site would be fully encumbered with below grade parking.

The actual amount of cash-in-lieu to be paid will be determined at the time of issuance of the building permit.

Toronto Green Standard

The Zoning Amendment application was submitted in December 2009 and is not subject to the new mandatory Green Development Standard. An extensive green roof system is proposed on the roof of the mechanical penthouse, and low reflective materials are proposed for the outdoor terraces.

Should the zoning amendment application be approved a site plan application will be required prior to development and would be reviewed for compliance with the City's new Green Development Standard.

Section 37

This development will reach a height beyond the Second Tier identified in the King Spadina East Precinct Built Form Study. In keeping with framework of the Built Form Study, the applicant will be expected to provide a high level of community benefits, which will assist in providing the facilities and services that this area requires to support increasingly intense development.

The Section 37 agreement is recommended to include the following elements:

- a. An indexed cash contribution of \$1,250,000.00 of which 10% will be allocated to affordable housing in Ward 20, and the remainder for the provision of one or more of the following:
 - capital improvements to non-profit arts and cultural facilities in Ward 20;
 - streetscape improvements to John Street and Mercer Street;
 - design development supporting the John Street streetscape project;
- b. the cash contribution is to be provided prior to the issuance of an above-grade building permit;
- c. provision of a minimum of 900 sq.m. within the project for one or more non-profit arts, cultural, community or institutional facilities to be approved by the Executive Director, Cultural Services, in consultation with the Ward Councillor or an alternate Section 37 benefit should City Council deem that the cultural space is not be viable;

The following matters are also recommended to be secured in the Section 37 Agreement as a legal convenience to support development:

- d. Provision of a mid-block pedestrian connection through the project from Mercer Street to King Street West.

- e. The owner shall provide a minimum of ten percent (10%) of the residential units in the building having at least three bedrooms;
- f. Architectural plans, elevations and landscaping including 1:50 elevations will be secured to the satisfaction of the Chief Planner and Executive Director, City Planning Division, and the owner will be required to, in conjunction with each Site Plan Application submit 1:50 scale drawings in conformity with this requirement for the seven storey podium;
- g. The owner shall incorporate in the construction of the building, and thereafter maintain, exterior building and landscape materials to the satisfaction of the Chief Planner and Executive Director, City Planning Division;
- h. Prior to the issuance of any building permit for the site, including shoring and excavation, the owner shall have obtained title to the land shown on Attachment 5 and labelled “Old Lane” and shall have conveyed to the City the land labelled as “New Lane”;
- i. Provision of detailed design drawings showing drainage patterns from the public lane located on the east side of the site, locations of proposed catch basins, transitioning of grades along the centreline and limits of the laneway curb cut details on Mercer Street and all proposed underground utility relocations from the existing laneway to the proposed new laneway to the satisfaction of the City’s Executive Director of Technical Services prior to the issuance of any building permits for the site;
- j. The owner shall be encouraged to build in conformity with the Green Development Standard Checklist on file with the Chief Planner and Executive Director, City Planning Division, date stamped June 3, 2009;
- k. Submission of a wind study to be submitted as part of an application for Site Plan Approval for the property. The owner shall implement wind mitigation measures required by the wind study, satisfactory to the Chief Planner and Executive Director, City Planning Division; and
- l. The owner shall provide and maintain in good order and operation an irrigation system, at the owner’s expense, for proposed trees within the public road allowances, including an automatic timer, designed to be water efficient by a Certified Landscape Irrigation Auditor (CLIA) and constructed with a back flow preventer to the satisfaction of the Executive Director, Technical Services.

Development Charges

It is estimated that the development charges for this project will be \$4,026,289.50. This is an estimate. The actual charge is assessed and collected upon issuance of the building permit.

Conclusion

Staff have analyzed the proposal in the context of the King-Spadina Built Form Study, the Tall Buildings guidelines, the Mercer Street Charrette and other approvals and applications for tall buildings in the area.

The revised proposal proposes slender towers, below the tower floor plate maximum of 750 sq. m. The north tower floor plate is 547 sq.m. and the south tower a variable floor plate of which at its largest is 523 sq.m. By purchasing the additional property at 335 King Street West, the applicant was able to increase the lot size and achieve an adequate separation between approved tall buildings and potential tall building applications in the immediate vicinity.

The application also provides Section 37 benefits including the creation of a new space for non-profit Arts and Cultural facilities that will complement the performing arts activities in the area. Staff are satisfied with the overall massing of the proposal and the technical issues have been resolved. City Planning recommends approval of the rezoning application subject to the retention of the Westinghouse Building, including its interior, in order to maintain the integrity of the designated structure.

The revised proposal, with the inclusion of the designated Westinghouse Building achieves a balance of interests sought by the King-Spadina East Precinct Built Form Study and existing Tall Building Guidelines, and can be supportable without unduly compromising the intent of the East Precinct Built Form Study's emerging planning framework.

CONTACT

Lynda H. Macdonald, Manager
Tel. No. 416-392-7618
Fax No. 416-392-1330
E-mail: lmacdon1@toronto.ca

SIGNATURE

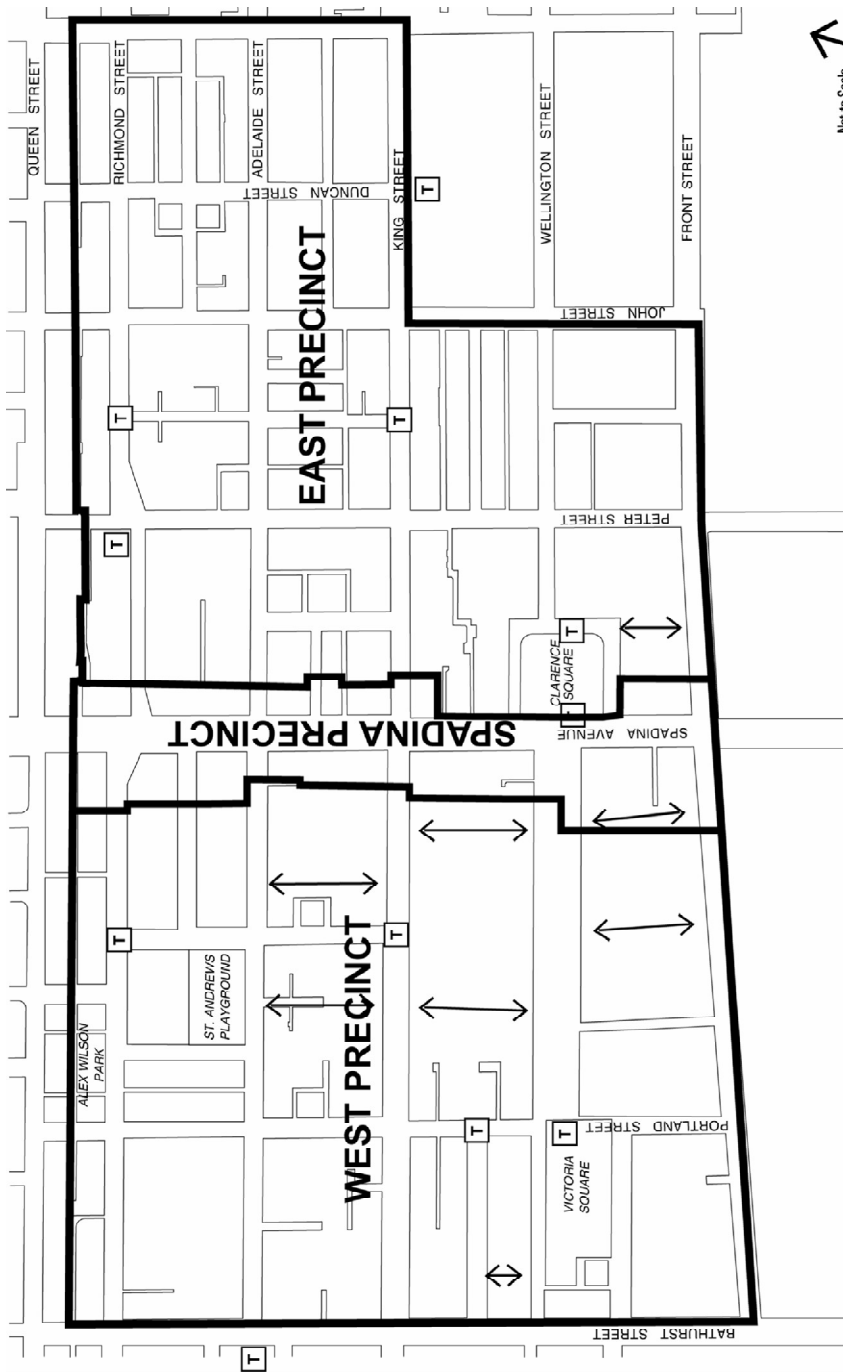
Raymond David, Director
Community Planning, Toronto and East York District

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ATTACHMENTS

Attachment 1: King Spadina Precinct Key Map
Attachment 2: King-Spadina East Precinct Study - Character Areas
Attachment 3: King-Spadina East Precinct Study - Height Areas
Attachment 4: Site Plan
Attachment 5: Elevations
Attachment 6: Zoning
Attachment 7: Application Data Sheet
Attachment 8: Lands to be exchanged for redirection of Public Lane
Attachment 9: Draft Zoning By-law Amendment

Attachment 1: King Spadina Precinct Key Map

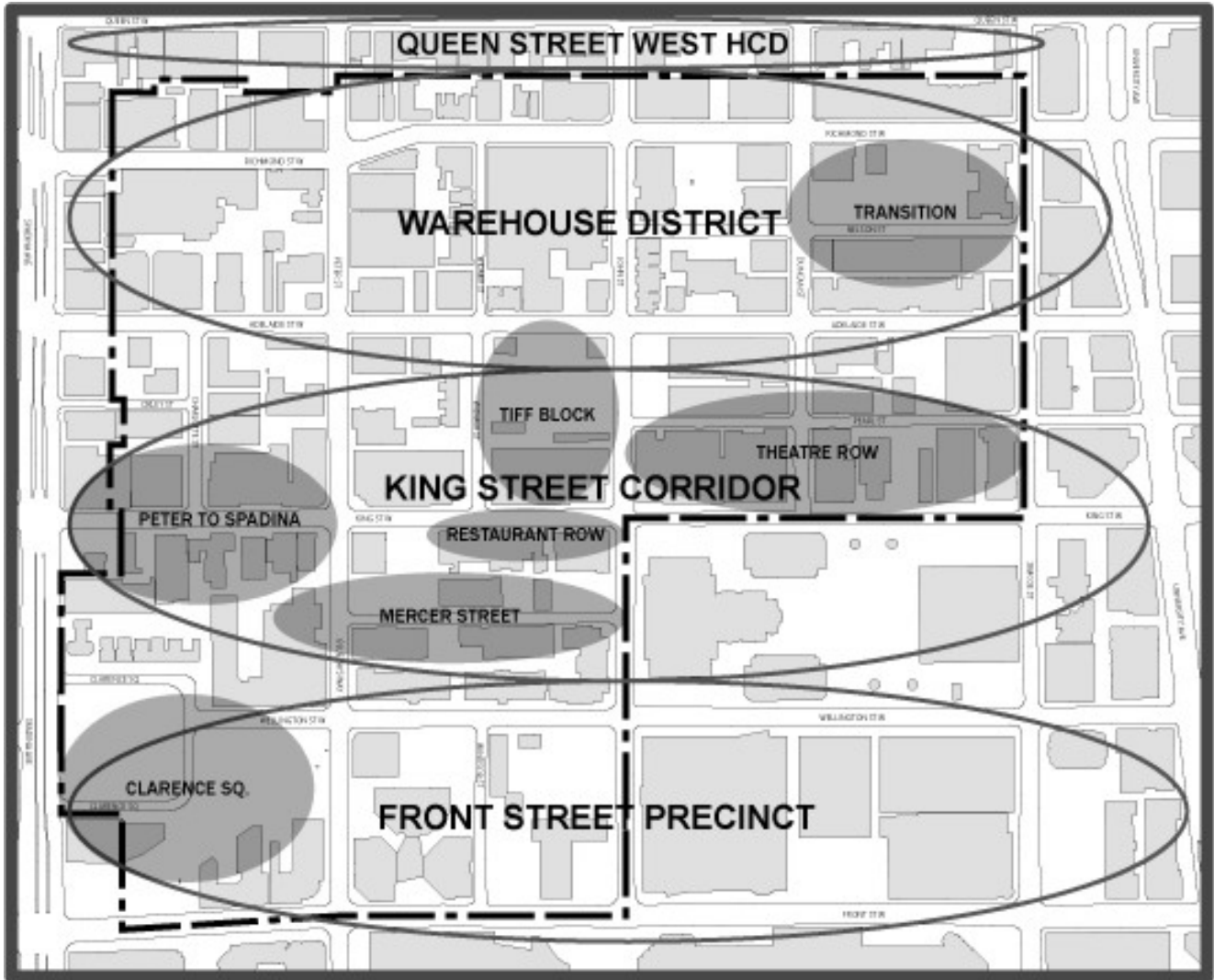



Official Plan Amendment No. 2 for King-Spadina Secondary Plan MAP 16-1 Urban Structure Plan

- Secondary Plan Boundary
- T View Terminus
- ↔ Potential Mid-block Connections

July 2006

Attachment 2: King-Spadina East Precinct Study - Character Areas




Character Areas

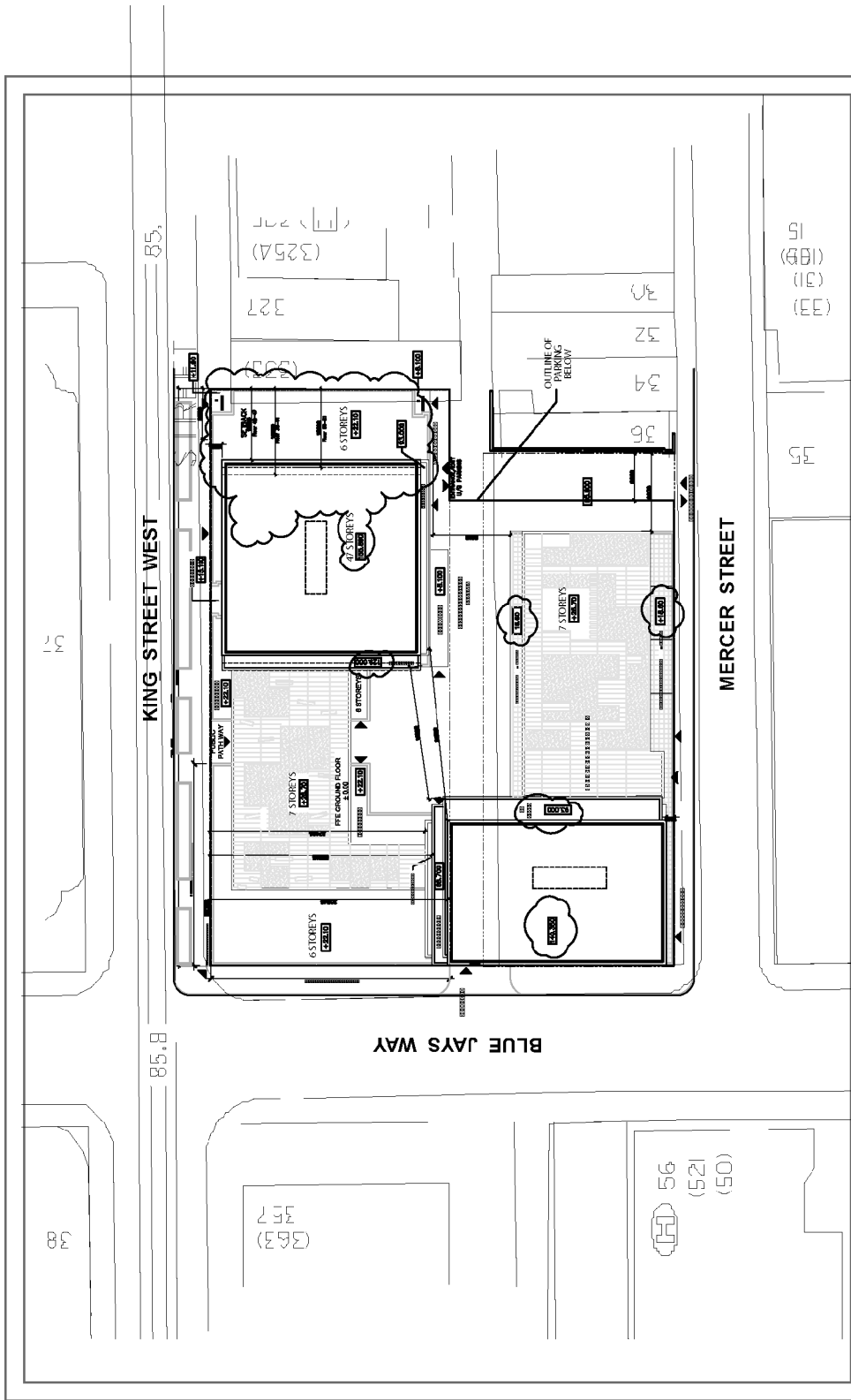

Sub - Character Areas


East Precinct Boundary

Attachment 3: King-Spadina East Precinct Study - Height Areas



Attachment 4: Site Plan



355 King Street West

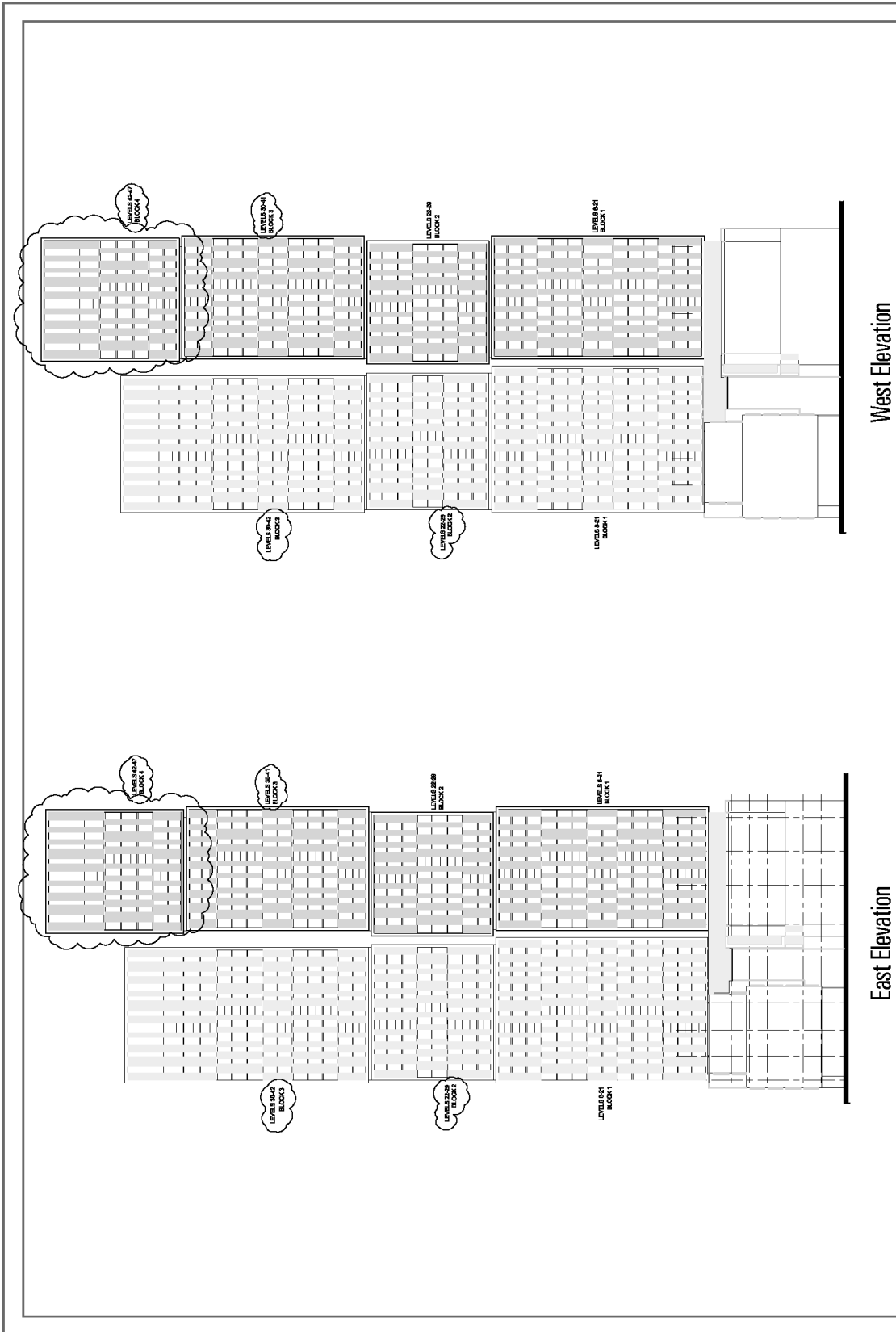
Site Plan

Applicant's Submitted Drawing

Not to Scale
8/1/10

File # 08-150626 0Z

Attachment 5: Elevations

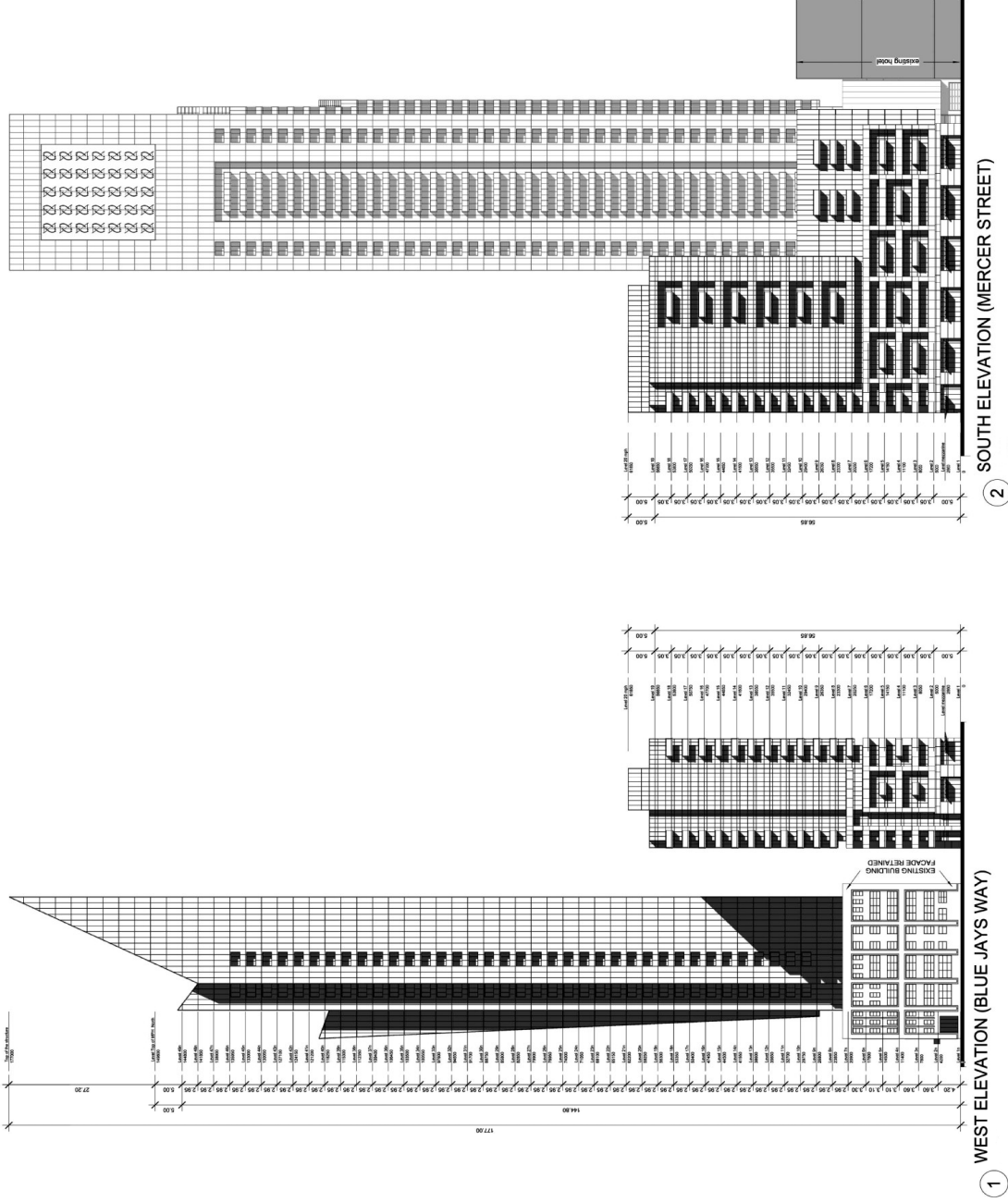


355 King Street West

Elevations
Applicant's Submitted Drawing

Not to Scale
8/11/10

File # 08-150526 OZ



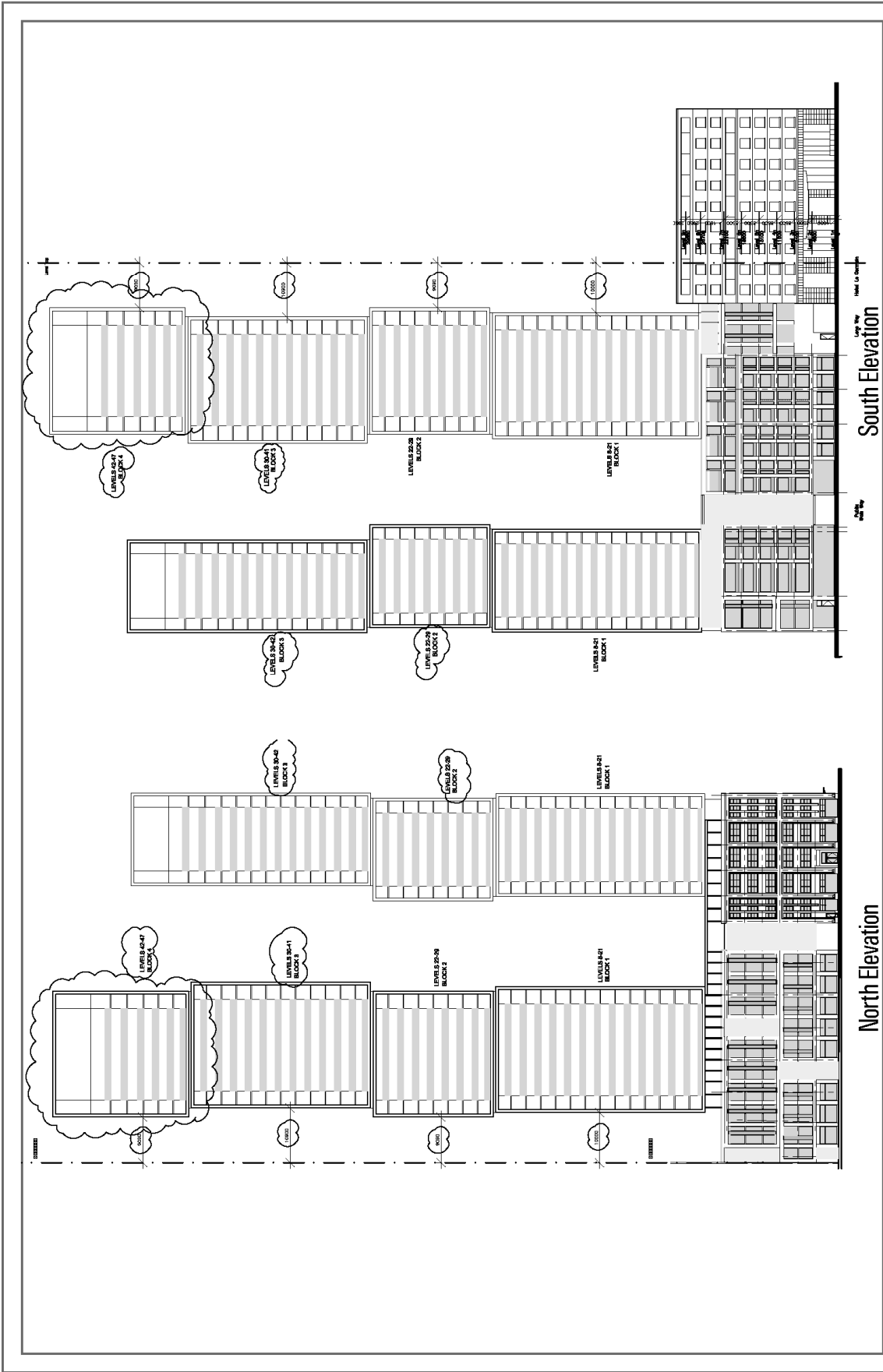
Elevations

Part of 343 & 355 King Street West, & 119 Blue Jays Way

Applicant's Submitted Drawing

Not to Scale
05/26/08

File # 08_150526



355 King Street West

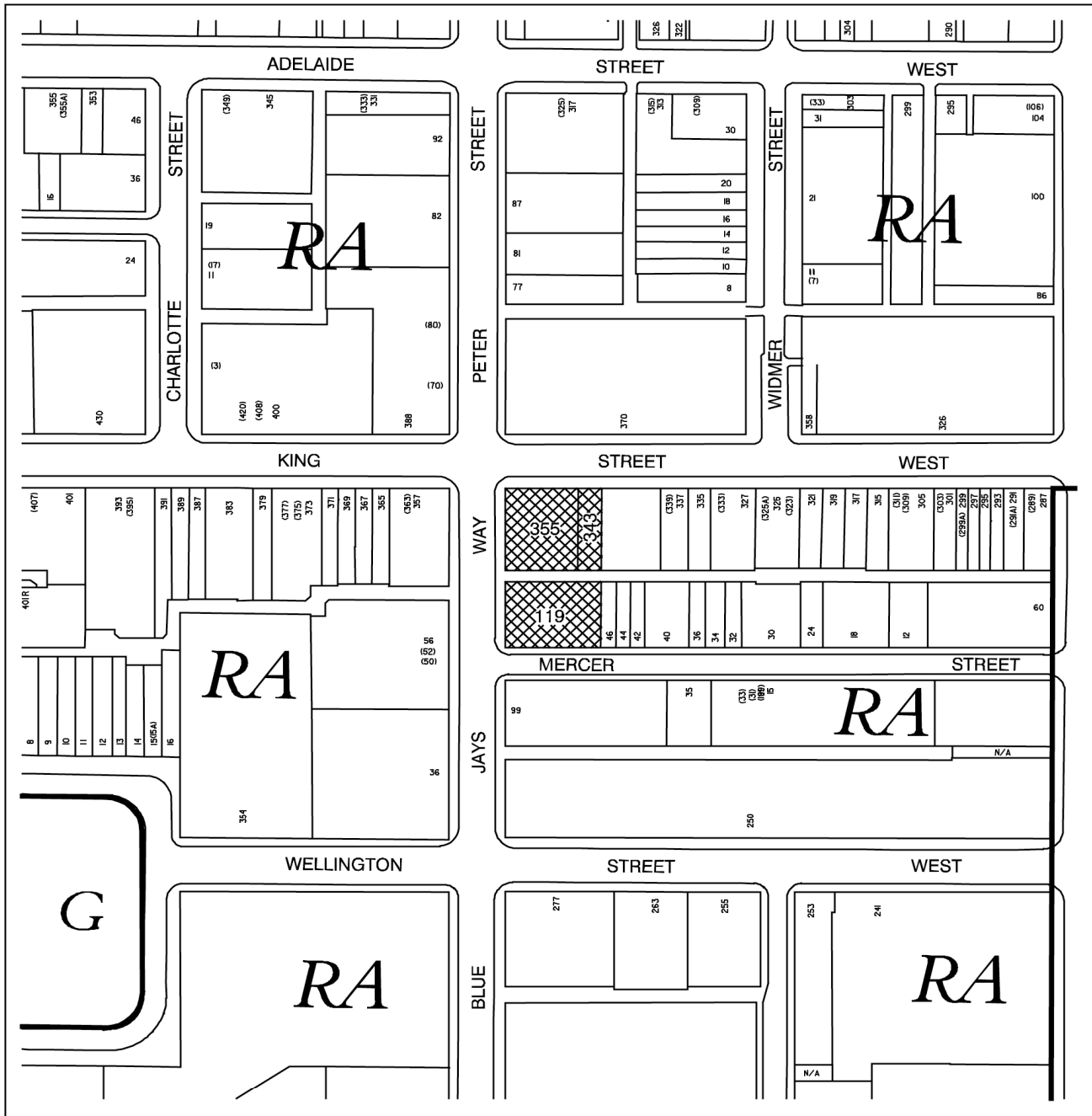
File # 08-150526 OZ

Elevations

Applicant's Submitted Drawing

Not to Scale
8/11/10

Attachment 6: Zoning



Part of 343 & 355 King Street West, & 119 Blue Jays Way

File # 08_150526

- G Parks District
- RA Mixed-Use District



Not to Scale
Zoning By-law 438-86 as amended
Extracted 05/26/08- DR

Attachment 7: Application Data Sheet

Application Type	Official Plan Amendment & Rezoning	Application Number:	08 150526 STE 20 OZ
Details	OPA & Rezoning, Standard	Application Date:	April 23, 2008

Municipal Address: 355 KING ST W

Location Description: PL 57 LT1 TO 8 **GRID S2015

Project Description: Official Plan Amendment and Zoning Bylaw Amendment for redevelopment of lands with two proposed mixed use towers having heights of 47 and 42 storeys. The existing public lane separating the proposed redevelopment will be reconfigured to exit onto Mercer Street however, east west access from Blue Jays Way will continue to be maintained. Revised submission (June 2010) includes 661 residential units, commercial uses and non-profit space.

Applicant:	Agent:	Architect:	Owner:
PATRICK DEVINE		KPMB and Page + Steele	PETER KOFMAN

PLANNING CONTROLS

Official Plan Designation:	Regeneration Areas	Site Specific Provision:	
Zoning:	RA	Historical Status:	Y
Height Limit (m):	30	Site Plan Control Area:	Y

PROJECT INFORMATION

Site Area (sq. m):	3869	Height:	Storeys: 47
Frontage (m):	65.75		Metres: 148.3
Depth (m):	65.75		
Total Ground Floor Area (sq. m):	1850		Total
Total Residential GFA (sq. m):	51713	Parking Spaces:	443
Total Non-Residential GFA (sq. m):	4066	Loading Docks	3
Total GFA (sq. m):	55779		
Lot Coverage Ratio (%):	47.8		
Floor Space Index:	14.42		

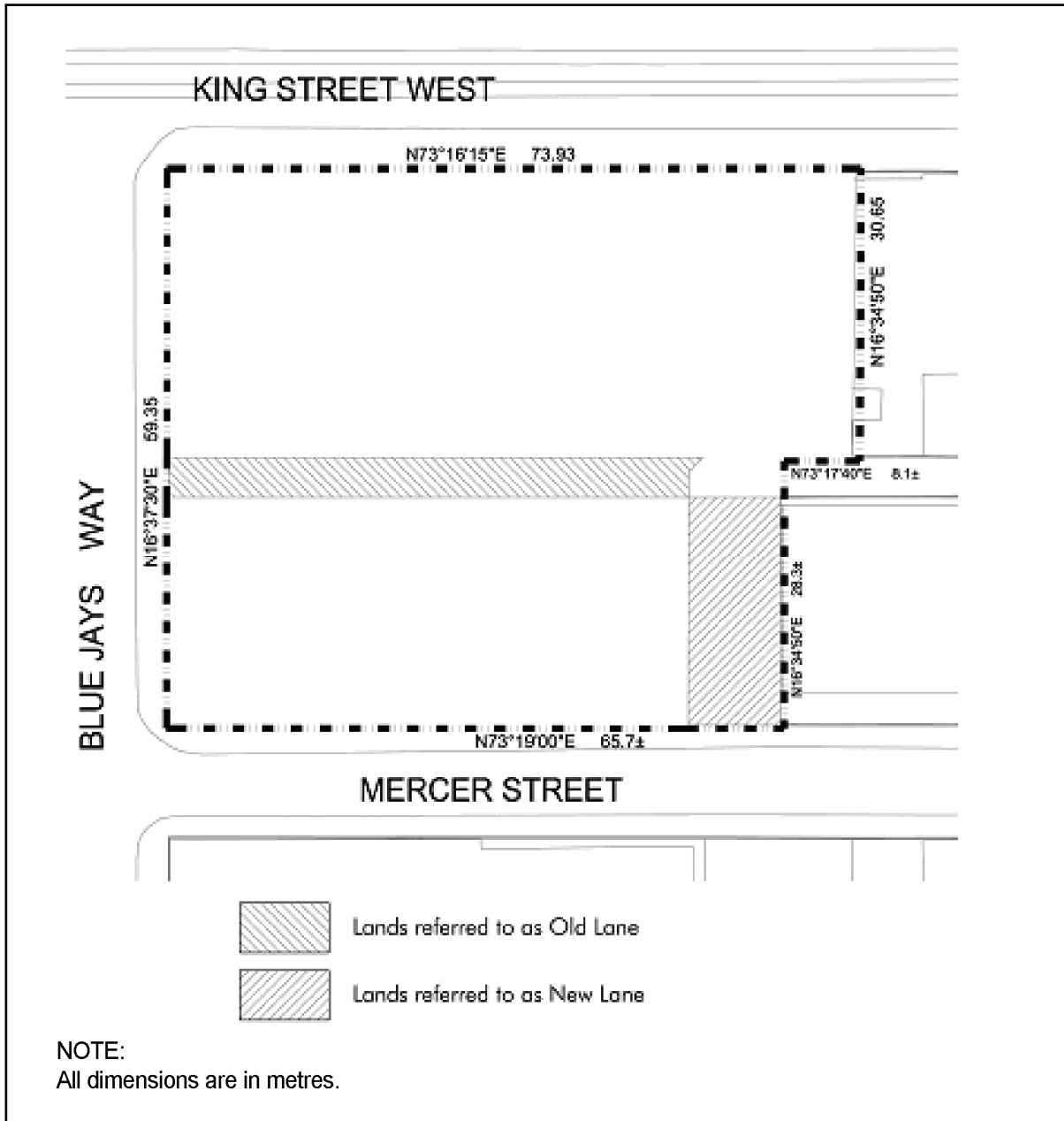
DWELLING UNITS

FLOOR AREA BREAKDOWN (upon project completion)

			Above Grade	Below Grade
Tenure Type:	Condo			
Rooms:	0	Residential GFA (sq. m):	51713	0
Bachelor:	66	Retail GFA (sq. m):	1153	0
1 Bedroom:	416	Office GFA (sq. m):	2913	0
2 Bedroom:	152	Industrial GFA (sq. m):	0	0
3 + Bedroom:	27	Institutional/Other GFA (sq. m):	0	0
Total Units:	661			

CONTACT: PLANNER NAME: Lynda H. Macdonald, Planning Manager
TELEPHONE: (416) 392-7618

Attachment 8: Lands to be exchanged for redirection of Public Lane



Attachment 9: Draft Zoning By-law Amendment

Authority: Toronto and East York Community Council Item ~ [or Report No. ~, Clause No. ~] as adopted by City of Toronto Council on ~, 20~
Enacted by Council: ~, 20~

CITY OF TORONTO

Bill No. ~

BY-LAW No. ~-20~

**To amend the City of Toronto Zoning By-law No 438-86, as amended,
With respect to the lands municipally known in 2009 as 335 King Street West,
355 King Street West and 119 Blue Jays Way**

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

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*; and

WHEREAS the Official Plan of the City of Toronto contains provisions relating to the authorization of the *height* and density of development; and

WHEREAS pursuant to section 37 of the *Planning Act*, the Council of a municipality may, in a by-law passed under section 34 of the *Planning Act*, authorize increases in the height or density of development beyond that otherwise permitted by the by-law in return for the provision of such facilities, services and matters as are set out in the by-law; and

WHEREAS subsection 37 (3) of the *Planning Act* provides that, where an *owner* of land elects to provide facilities, services or matters in return for any increase in the *height* or density of development, the municipality may require the *owner* to enter into one or more agreements with the municipality dealing with the facilities, services and matters; and

WHEREAS the *owner* of the lands hereinafter referred to has elected to provide the facilities, services and matters as are hereinafter set forth;

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

1. The lands subject to this By-law are those lands identified in the year 2009 as 335 King Street West and 119 Blue Jays Way as shown on Map “1” attached hereto.
2. None of the provisions of Sections 4(2)(a), 4(14), 7(3) Part I 1, 7(3) Part II 1(i) and (ii), 7(3) Part II 3, 4, 5 and 8(ii), and 12(2)246(a) of Zoning By-law No. 438-86, of the former City of Toronto, as amended, 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 or use of a *mixed-use building* on the *lot* provided that:

- (a) the *lot* on which the building is located comprises at least those lands delineated by heavy lines on Map 1, attached to and forming part of this By-law;
- (b) the aggregate of the *residential gross floor area* and *non-residential gross floor area* erected and used on the *site* shall not exceed 55,750 square metres, subject to the following:
 - (i) the *residential gross floor area* shall not exceed 51,750 square metres; and
 - (ii) the *non-residential gross floor area* shall not exceed 4,100 square metres.
- (c) no portion of the building or structure erected or used above grade is located otherwise than wholly within the areas delineated by heavy lines on the attached Map 2, subject to the following:
 - (i) awnings, lighting fixtures, ornamental elements, trellises, window sills, balustrades, stairs, stair enclosures, wheelchair ramps, underground garage ramps, landscape and public art features may extend to a maximum of 1.5 metres beyond the heavy lines shown on Map 2; and
 - (ii) other projections shall be permitted beyond the heavy lines shown on Map 2 in accordance with Section 7, Part II 7.
- (d) no portion of the building or any structure erected on the *site* shall have a greater *height* in metres than the *heights* in metres specified by numbers following the symbol H on the attached Map 2, with the exception of the following:
 - (i) any parapets, terrace guards and dividers, planters, railings, decorative screens, chimney stack or other heating, cooling or ventilating equipment or window washing equipment, provided that the maximum *height* of the top of any such element is no higher than the sum of 2.1 metres and the applicable *height* limit shown on Map 2.

- (e) despite section 4(8) and 12(2)246(e) to (i) of Zoning By-law 438-86, as amended, at least one *loading space – Type “G”* and two *loading spaces – Type “B”* shall be provided and maintained on the *site*.

3. Section 37 Requirements

The facilities, services and matters set out herein are the matters required to be provided by the *owner* of the *site* at its expense to the *City* in accordance with an agreement or agreements, pursuant to Section 37(3) of the *Planning Act*, in a form satisfactory to the *City* with conditions providing for indexing escalation of both the financial contributions and letters of credit, indemnity, insurance, GST, termination and unwinding, and registration and priority of the agreement:

- i) An indexed cash contribution of \$1,250,000.00 of which 10 per cent will be allocated to affordable housing in Ward 20, and the remainder for the provision of one or more of the following:
 - capital improvements to non-profit arts and cultural facilities in Ward 20;
 - streetscape improvements to John Street and Mercer Street;
 - design development supporting the John Street streetscape project;
- ii) the indexed cash contribution is to be provided prior to the issuance of an above-grade building permit;
- iii) The provision of space for a non-profit arts, cultural or institutional facility in an amount of not less than 900 square metres; or an appropriate alternate community benefit to be negotiated with City Planning staff and the Ward Councillor, acting reasonably, should the cultural space not be viable;
- iv) Construction, provision and maintenance of a publicly accessible walkway providing a mid-block connection through the site in a north and south direction between King Street West and Mercer Street;
- v) Provision of a minimum of ten percent (10%) of the residential dwelling units in the building having at least three bedrooms,
- vi) Provision by the *owner* of detailed design drawings showing drainage patterns from the public lane located to

the east of the site, locations of proposed catchbasins, transitioning of grade along the centreline and limits of the laneway, curb cut details on Mercer Street and all proposed underground utility relocations from the existing laneway to the proposed new laneway, to the satisfaction of the City's Executive Director of Technical Services, prior to the issuance of any building permits for the site or any portion thereof;

- vii) Provision by the *owner* of architectural plans, elevations and landscape drawings to the satisfaction of the Chief Planner and Executive Director, City Planning Division, including submission by the *owner* of 1:50 scale elevation drawings for the podium illustrating materials and finishes to the satisfaction of the Chief Planner and Executive Director, City Planning Division prior to any site plan approval pursuant to Section 114 of the City of Toronto Act, 2006 for the site or any portion thereof;
- viii) Incorporation in the construction of the building by the *owner*, and thereafter maintenance, of the exterior building and landscape materials by the *owner* to the satisfaction of the *City's* Chief Planner and Executive Director;
- ix) Submission of a wind study to the satisfaction of the Chief Planner and Executive Director, *City* Planning Division, and provision and implementation of any wind mitigation measures required therein, to the satisfaction of the Chief Planner and Executive Director, *City* Planning Division, prior to the issuance of any *site* plan approval pursuant to Section 114 of the *City of Toronto Act*, 2006 for the *site* or any portion thereof;
- x) Provision and maintenance of an irrigation system, at the *owner's* expense, for proposed trees within the public road allowances including an automatic timer, designed to be water efficient by a Certified Landscape Irrigation Auditor (CLIA) and constructed with a back flow preventer to the satisfaction of the *City's* Executive Director, Technical Services Division, and requirement to maintain in good order and operation;
- xi) Prior to the issuance of any building permits for the *site* or any portion thereof, including for excavation and shoring, the *owner* shall have obtained title to the land shown on Maps 1 and 2 and labelled "Old Lane" and shall have

conveyed to the City the land shown on Maps 1 and 2 and labelled “New Lane”;

- xii) The *owner* will ensure and the City shall permit the *owner* to undertake the proposed underground utility relocations from the “Old Lane” to the “New Lane” and the construction of the “New Lane” prior to any actions by the *owner* to limit or prohibit public access through the lands identified as the “Old Lane”;
- xiii) The *owner* acknowledges the requirement to make alternative arrangements to the satisfaction of the General Manager of Transportation Services with respect to charter bus parking for the Princess of Wales Theatre in accordance with the Development Agreement between Ed Mirvish Enterprises Limited and the City of Toronto dated June 17, 1991.

4. For the purposes of this By-law, all italicized words and expressions have the same meanings as described in By-law No. 438-86, as amended, with the exception that the following expressions shall have the following meanings:

“*City*” means the City of Toronto;

“*grade*” means 85.8 metres Canadian Geodetic Datum; and

“*height*” means the vertical distance between *grade* as defined in this By-law and the highest point of the roof except for those elements prescribed in Section 6(f) of this By-law;

“*owner*” has the same meaning as in Zoning By-law No. 438-86, as amended, except it shall not include the *City*;

“*site*” means the lands delineated by heavy lines on Map 1 attached to and forming part of this By-law;

“*temporary sales office*” means a temporary building, structure, facility or trailer on the *site* used for the purpose of the sale of the dwelling units to be erected on the *site*.

5. Upon execution and registration of an agreement or agreements with the *owner* of the *lot* pursuant to Section 37 of the *Planning Act* securing the provisions and facilities, services or matters set out in Section 3 i) through xi) above, the *lot* is subject to the provisions of this By-law provided that in the event of said agreement(s) requires the provision of a facility, service or matter as precondition

- to the issuance of a building permit, the *owner* may not erect or use such building until the *owner* has satisfied said requirements.
6. None of the provisions of By-law No. 438-86 shall apply to prevent a *temporary sales office* on the *site*.
 7. For the sake of clarity, nothing herein shall be interpreted as preventing the issuance of building permits required to repair or maintain the buildings existing on the *site* in the year 2010.
 8. Within the lands shown on Map "1" attached to this By-law, no person shall use any land or erect or use any building or structure unless the following municipal services are provided to the lot line and the following provisions are complied with:
 - (a) all new public roads have been constructed to a minimum of base curb and base asphalt and are connected to an existing public highway, and
 - (b) all water mains and sanitary sewers, and appropriate appurtenances, have been installed and are operational.
 9. Building permit issuance with respect to the lands to which this By-law applies shall be dependent upon satisfaction of the provisions in the By-law and in the Section 37 Agreement relating to building permit issuance, including the provision of monetary payments and the provision of financial securities.
 10. Despite any existing or future consent, severance, partition, or division of the *site*, the provisions of this By-law shall apply to the whole of the *site* as if no consent, severance, partition or division occurred.

ENACTED AND PASSED this ~ day of ~, A.D. 20~.

DAVID R. MILLER,
Mayor

ULLI S. WATKISS,
City Clerk

(Corporate Seal)