

40 Wellesley Street East – Rezoning Application – Refusal and Directions Report

Date:	June 18, 2008
To:	Toronto and East York Community Council
From:	Acting Director, Community Planning, Toronto and East York District
Wards:	Ward 27 – Toronto Centre-Rosedale
Reference Number:	05 212275 STE 27 OZ

SUMMARY

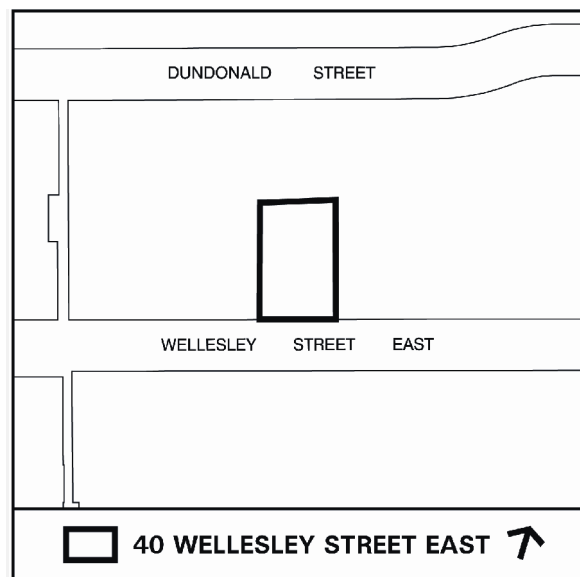
This application, revised on March 10, 2008, proposes a 29-storey mixed-use building, with 163 residential condominium units and 435 square metres of commercial space at 40 Wellesley Street East. The current proposal is subsequent to an earlier 44-storey proposal, received December 28, 2005, that was circulated by City staff and the subject of a community consultation meeting.

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

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council refuse Zoning By-law Amendment Application Number 05 212275 STE OZ, as amended on March 10, 2008, for the following reasons:
 - (a) the proposal does not comply with the intent of some of the development criteria in the Official Plan;



- (b) the proposal does not comply with regulations in Zoning By-law 438-86, as amended, including set-backs and height;
 - (c) the proposal does not comply with the Council-approved Design Criteria for the Review of Tall Building Proposals, including building-to-building spatial separation, and
 - (d) the proposal creates unacceptable impacts, including shadowing;
2. City Council authorize the City Solicitor and other appropriate City staff to oppose the Ontario Municipal Board appeal made by the applicant in respect of their December 28, 2005 application, as amended by the March 10, 2008 submission, should a hearing be scheduled, and
 3. City Council request staff to hold an area information meeting should the revised proposal be scheduled for a hearing at the OMB, and to notify landowners and residents within 120 metres of the site and the Ward Councillor.

Financial Impact

The recommendations in this report have no financial impact.

DECISION HISTORY

A Zoning By-law amendment for the adjacent property to the west (22 Wellesley Street East) was enacted by Council on May 23, 2003. The development, now built, is a 158-unit residential building of 73.5 metres in height.

A Zoning By-law amendment for the adjacent property to the east (46 Wellesley Street East) was enacted by Council on July 21, 2005. This proposal is a mixed-use building with 227 residential units of 88.1 metres in height, and has not yet been constructed.

In December 2005, City Planning received an application for 40 Wellesley Street East for a 44-storey mixed-use (residential and hotel) building containing a total of 214 condominium units and 126 hotel rooms. The residential gross floor area totalled 18,447 square metres, resulting in a density of 21.4 times the lot area. The proposal included a total of 628 square metres of indoor residential amenity space and 318 square metres of outdoor residential amenity space. The height to the main roof was 148 metres plus 14.4 metres for the mechanical penthouse for a total height of 162.4 metres.

The original proposal was submitted while the former City of Toronto Official Plan was in effect. This site was designated as “High Density Residence Area” in that Plan, which permitted residential buildings with retail uses at grade, and allowed for consideration of development up to 3.0 times the area of the lot. The site is zoned R3 (Residential) with a density permission of 2.5 times the area of the lot and a height limit of 30 metres. The original proposal required an Official Plan amendment and rezoning.

The application was circulated to City divisions in February 2006 and a community consultation meeting was held in June of 2006.

The applicant filed an appeal against the City to the Ontario Municipal Board (OMB) in April of 2006. Although a hearing had been scheduled for October 2006, legal counsel for the applicant requested, in July 2006, that the hearing be cancelled to allow the applicant to discuss potential changes to the proposal with City Planning.

The applicant also filed an appeal to the OMB concerning the approved development at 46 Wellesley Street East. The main issue was the westerly side yard setback of 46 Wellesley Street East from the property line shared with 40 Wellesley Street East. The applicant also filed an appeal to the OMB to consolidate these two appeals.

In May of 2006, the OMB dismissed First Urban's motion to consolidate these two appeals. In September 2006, the OMB issued a decision in favour of Wellesley Residences Corp. and their development proposal at 46 Wellesley Street East.

The applicant advised the City that they would be revising their proposal and further processing of the file was held. On March 10, 2008, the applicant submitted a significantly revised proposal for the site that is the subject of this report.

ISSUE BACKGROUND

Proposal

The proposed development consists of a 29-storey mixed use (commercial and residential) building containing a total of 163 condominium units. The building is comprised of a 4-storey podium and a tower rising to a height of 102.8 metres (including the mechanical penthouse). The commercial/retail gross floor area totals 435 square metres and the residential gross floor area totals 16,197 square metres, as well as 1,432 square metres of amenity space, resulting in a density of 12.44 times the lot area. A total of 99 underground parking spaces are proposed. Attachment 1: Data Application Sheet contains further detailed information regarding the proposal.

Site and Surrounding Area

A 5-storey commercial (office) building with retail uses at grade currently occupies the site.

The following uses surround the site:

North: abutting the site is a 8-storey residential building, stepped back on the east side. To the northeast, adjacent to this building, are four 2.5-storey houses.

South: on the south side of Wellesley Street East is a 2-storey commercial (office) building. To the east of this is the 8-storey Orthopaedic and Arthritic Institute.

East: abutting the site is 46 Wellesley Street East. To the east of this site is Paul Kane Park with a 3-storey residential building at the north end of this site (Paul Kane House).

West: abutting the site is a 23-storey residential building. To the west of this is the Wellesley TTC subway and bus station.

Provincial Policy Statement

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.

Official Plan

The property is designated *Mixed Use Areas* within the *Downtown and Central Waterfront* urban structure area. The applicant has advised staff that, in their opinion, an Official Plan amendment to the new Plan is not required. The lands adjacent to the subject site are designated *Mixed Use Areas, Apartment Neighbourhoods and Neighbourhoods*. The Plan contains development criteria that direct the form and quality of development in this area. The proposal has been reviewed against these criteria and all other relevant policies of the Plan. The proposal does not comply with the intent of some of the development criteria for *Mixed Use Areas* and some policies regarding *Built Form*. This conclusion is discussed in detail below.

Zoning

The site is zoned R3 (Residential) with a density permission of 2.5 times the area of the lot and a height limit of 30 metres. Attachment 7: Zoning outlines the zoning of the site and surrounding area.

Site Plan Control

An application for Site Plan Approval has not been filed.

Reasons for Application

The application is a mixed use development and the property is designated as *Mixed Use Areas* in the Official Plan, however the proposal does not comply with the intent of some of the development criteria for *Mixed Use Areas* and policies regarding *Built Form*. City Planning staff do not consider however, that an Official Plan amendment is required.

An amendment to the Zoning By-law is required because the proposal does not comply with height, density, setbacks and use permissions. The site is zoned R3 (residential) and the proposal is for a mixed-use building. New permissions are required to accommodate the size of building and type of uses proposed. At a height of 102.8 metres (including the mechanical penthouse), the building is higher than the 30-metre height permitted under the zoning. The permitted density on the site is 2.5 times the area of the lot, and the

proposed development would result in a density of 12.44 times the area of the lot. In addition, the east side of the building does not meet the minimum setback required by the Zoning By-law.

Community Consultation

The original proposal was the subject of a community consultation meeting on June 27, 2006. A number of issues were raised with respect to this proposal including the size and use of the development. There has not been a community consultation meeting regarding the revised submission.

Agency Circulation

The revised proposal has not been circulated for review by agencies and City divisions.

COMMENTS

The proposal does not comply with the intent of some of the development criteria in the Official Plan for *Mixed Use Areas* and policies regarding *Built Form*. The unshaded text of Section 3.1.2. of the Official Plan states that “developments must be conceived not only in terms of the individual building site and program, but also in terms of how that building and site fit within the context of the neighbourhood and the City”. As such, it is necessary to consider the context of the adjacent properties, and the proximity of these buildings, when reviewing the proposed development. Policy 3.1.2.3 states that “new development will be massed to fit harmoniously into its existing and/or planned context, and will limit its impacts on neighbouring streets, parks, open spaces and properties”. Policy 3.1.2.4 states that “new development will be massed to define the edges of streets, parks and open spaces at good proportion. Taller buildings will be located to ensure adequate access to sky view for the proposed and future use of these areas”. The proposal is located in between two approved towers, creating a wall of buildings that would have a substantial adverse impact on the access to the sky view from adjoining public streets.

The westerly side setback of the tower component of the revised proposal is approximately 5.5 metres from the property line and the easterly side setback is 0 metres from the property line. On the east side, the proposed building is approximately 5.5 metres from the adjacent tower at 46 Wellesley Street East. The approved development at 46 Wellesley Street East has no setback at podium level and a 5.5 metre setback for the tower portion of the building. On the west side, the proposed building is approximately 5.5 metres from the adjacent tower at 22 Wellesley Street East. The building at 22 Wellesley Street East is not set back from its east property line. The units in this residential building have windows facing in an easterly direction. The Zoning By-law requires that a minimum side setback of 5.5 metres be provided. The easterly side setback of the proposal does not meet this requirement.

The Design Criteria for the Review of Tall Buildings Proposals, adopted by Council, was one of several criteria that City staff use to evaluate the application. In order to support certain policies in the Official Plan, including Policies 3.1.2.3 and 3.1.2.4, there are

design criteria provided for the spatial separation between towers. The document states that setbacks beyond those required when planning for an as-of right development are often necessary in order to achieve appropriate tall building conditions, including light, view and privacy. In particular, “the minimum spacing between the shafts of two tall buildings will equal the widest tower width measured perpendicularly to building face, but it will be no less than 25 metres”.

The spatial separation provisions exist to allow for light, view and privacy not only for new and existing buildings, but also for allowing appropriate sunlight, wind and sky view to adjacent streets, parks, open spaces and properties. These factors are influenced by the orientation, site characteristics, heights and distances between adjacent buildings.

The proposed development also has a rear condition that is different than that of its neighbours. An 8-storey residential building is situated approximately 2.5 metres from its rear property line, which creates a constrained rear condition. Attachment 2: Site Plan demonstrates the location of these buildings. Similar to the side neighbours, the units of the adjacent building to the rear would be impacted with respect to their light, view and privacy with the introduction of the proposed development.

Development criteria for *Mixed Use Areas* are found in Section 4.5 of the Official Plan. Policy 4.5.2(d) states that development will “locate and mass new buildings so as to adequately limit shadow impacts on adjacent *Neighbourhoods*, particularly during the spring and fall equinoxes.” During the planning process for the development to the east (46 Wellesley Street East), a working group was formed and the community was actively involved in addressing their concerns about that proposed development. One of these significant concerns was the shadow impacts on the low-scale residential houses on Dundonald Street to the north. 46 Wellesley Street East was reduced in height and designed (terraced) to minimize shadowing.

Policy 4.5.2(c) of the Official Plan states that development will “locate and mass new buildings to provide a transition between areas of different development intensity and scale, as necessary to achieve the objectives of this Plan, through means such as providing appropriate setbacks and/or a stepping down of heights, particularly towards lower scale *Neighbourhoods*”. Furthermore, Policy 4.5.2(e) states that development will “locate and mass new buildings to frame the edges of streets and parks with good proportion and maintain sunlight and comfortable wind conditions for pedestrians on adjacent streets, parks and open spaces”. The Zoning By-law amendment for 46 Wellesley Street East, approved by Council, ensures the building will meet sunlight access provisions on Dundonald Street. A taller building would have compromised the sunlight access which was discussed with the surrounding community, and would not be acceptable. The subject development is approximately 15 metres higher (including the mechanical penthouse) than the approved 46 Wellesley Street East development.

Section 37

Section 37 of the Planning Act allows the City to grant increased density and/or height in exchange for community benefits. Discussions between staff and the applicant to date

have focussed primarily on built form issues and as the built form has not been resolved, discussions regarding Section 37 have not commenced.

Conclusion

Beginning with the original proposal in 2005, City Planning staff have conveyed to the applicant the inherent development constraints that exist with respect to this site. In particular, concerns have been raised regarding the spatial separation of buildings and the anticipated negative impact of this on light, view and privacy. Likewise, concerns were expressed respecting impacts on the surrounding public realm, including shadow impacts. The applicant has made efforts to address some of these issues. However, a significant reduction in height and increase in the side and rear setbacks from what is currently proposed is required in order to provide for a building form that meets the planning objectives for the site and lessens impacts on the surrounding neighbourhood. The application in its current revised form is not supportable.

CONTACT

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SIGNATURE

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

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ATTACHMENTS

Attachment 1: Application Data Sheet

Attachment 2: Site Plan

Attachment 3: East Elevation

Attachment 4: West Elevation

Attachment 5: North Elevation

Attachment 6: South Elevation

Attachment 7: Zoning

Attachment 1: Application Data Sheet

Application Type	Official Plan Amendment & Rezoning	Application Number:	05 212275 STE 27 OZ
Details	OPA & Rezoning, Standard	Application Date:	December 28, 2005

Municipal Address: 40 WELLESLEY ST E
 Location Description: CON 1 FB PT PARK LT8 **GRID S2708
 Project Description: Proposed 29-storey mixed use building containing 435 m2 of commercial at grade and 163 dwelling units complete with 5 levels of below grade parking.

Applicant:	Agent:	Architect:	Owner:
2060580 Ontario Inc. 30 Pennsylvania Avenue, Unit 1, Concord, Ontario, L4K 4A5		KPMB Architects 322 King Street West, 3 rd floor, Toronto, Ontario, M5V 1J2	2060580 Ontario Inc. 30 Pennsylvania Avenue, Unit 1, Concord, Ontario, L4K 4A5

PLANNING CONTROLS

Official Plan Designation:	Mixed Use Areas	Site Specific Provision:
Zoning:	R3 Z2.5	Historical Status:
Height Limit (m):	30	Site Plan Control Area: Y

PROJECT INFORMATION

Site Area (sq. m):	1335.64	Height:	Storeys:	29
Frontage (m):	29.22		Metres:	103
Depth (m):	45.71			
Total Ground Floor Area (sq. m):	691			Total
Total Residential GFA (sq. m):	16197		Parking Spaces:	99
Total Non-Residential GFA (sq. m):	435		Loading Docks	1
Total GFA (sq. m):	16632			
Lot Coverage Ratio (%):	51.72			
Floor Space Index:	12.44			

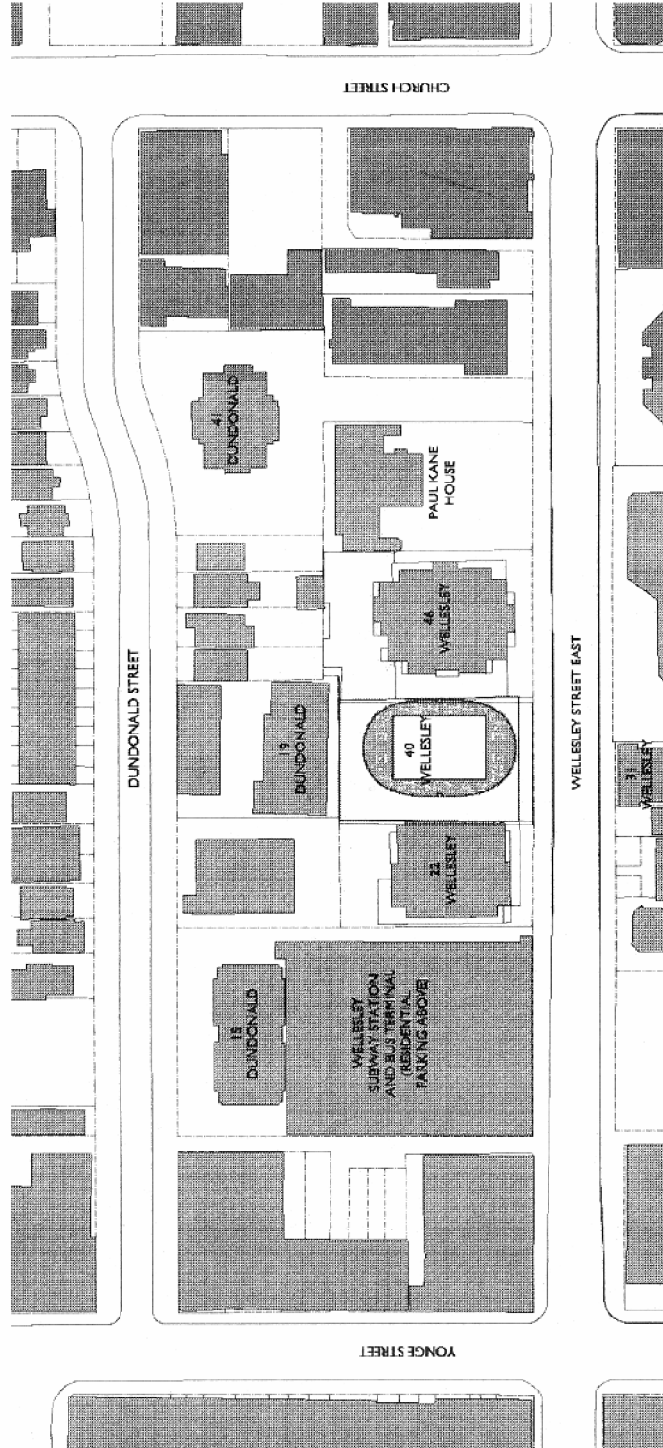
DWELLING UNITS

FLOOR AREA BREAKDOWN (upon project completion)

			Above Grade	Below Grade
Tenure Type:				
Rooms:	0	Residential GFA (sq. m):	16197	0
Bachelor:	56	Retail GFA (sq. m):	435	0
1 Bedroom:	42	Office GFA (sq. m):	0	0
2 Bedroom:	24	Industrial GFA (sq. m):	0	0
3 + Bedroom:	41	Institutional/Other GFA (sq. m):	0	0
Total Units:	163			

CONTACT:	PLANNER NAME:	Jocelyn Deeks, Planner
	TELEPHONE:	416-392-0459

Attachment 2: Site Plan



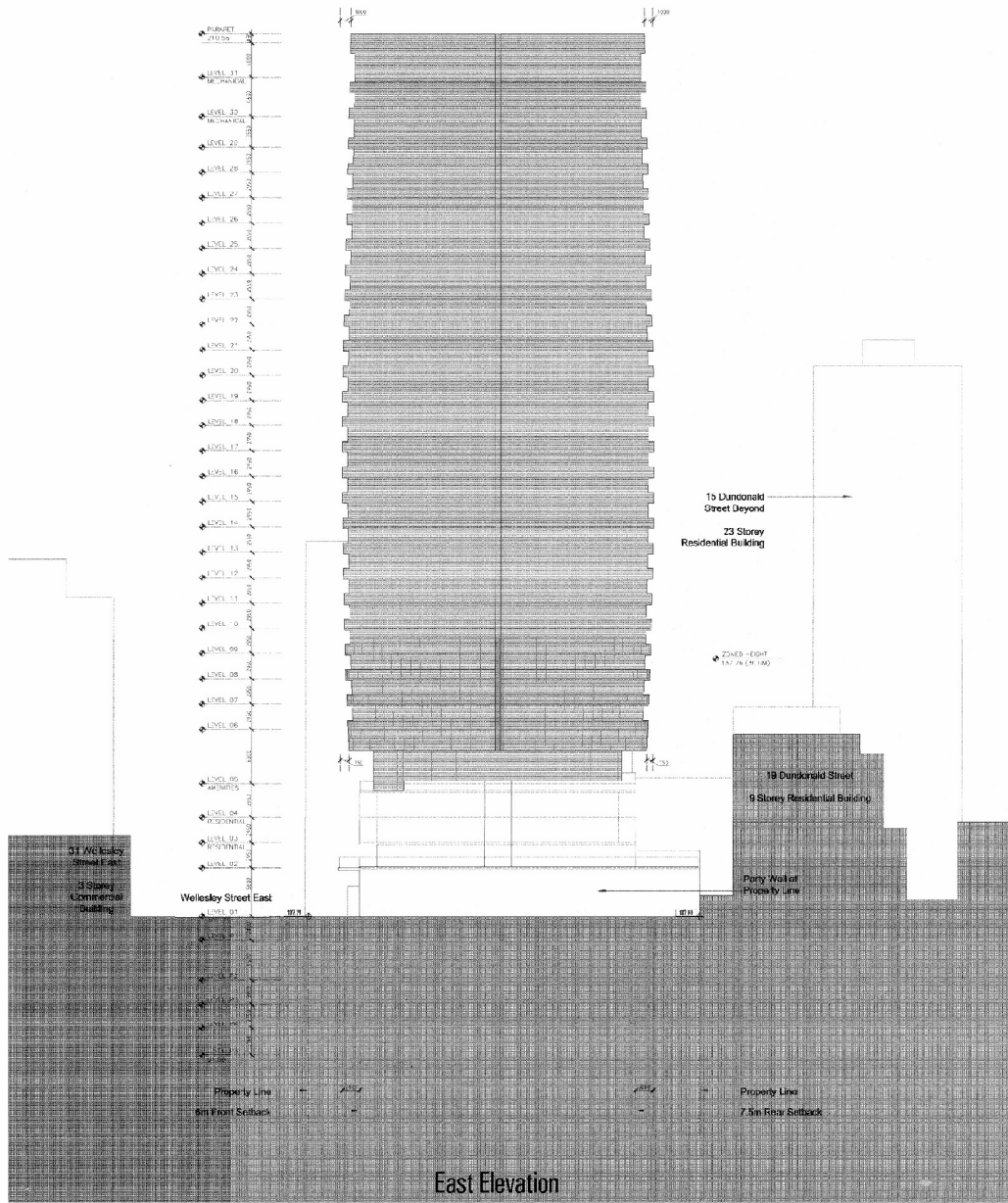
40 Wellesley Street East

Site Plan
Applicant's Submitted Drawing

Not to Scale
06/02/08

File # 05_212275

Attachment 3: East Elevation



Elevations

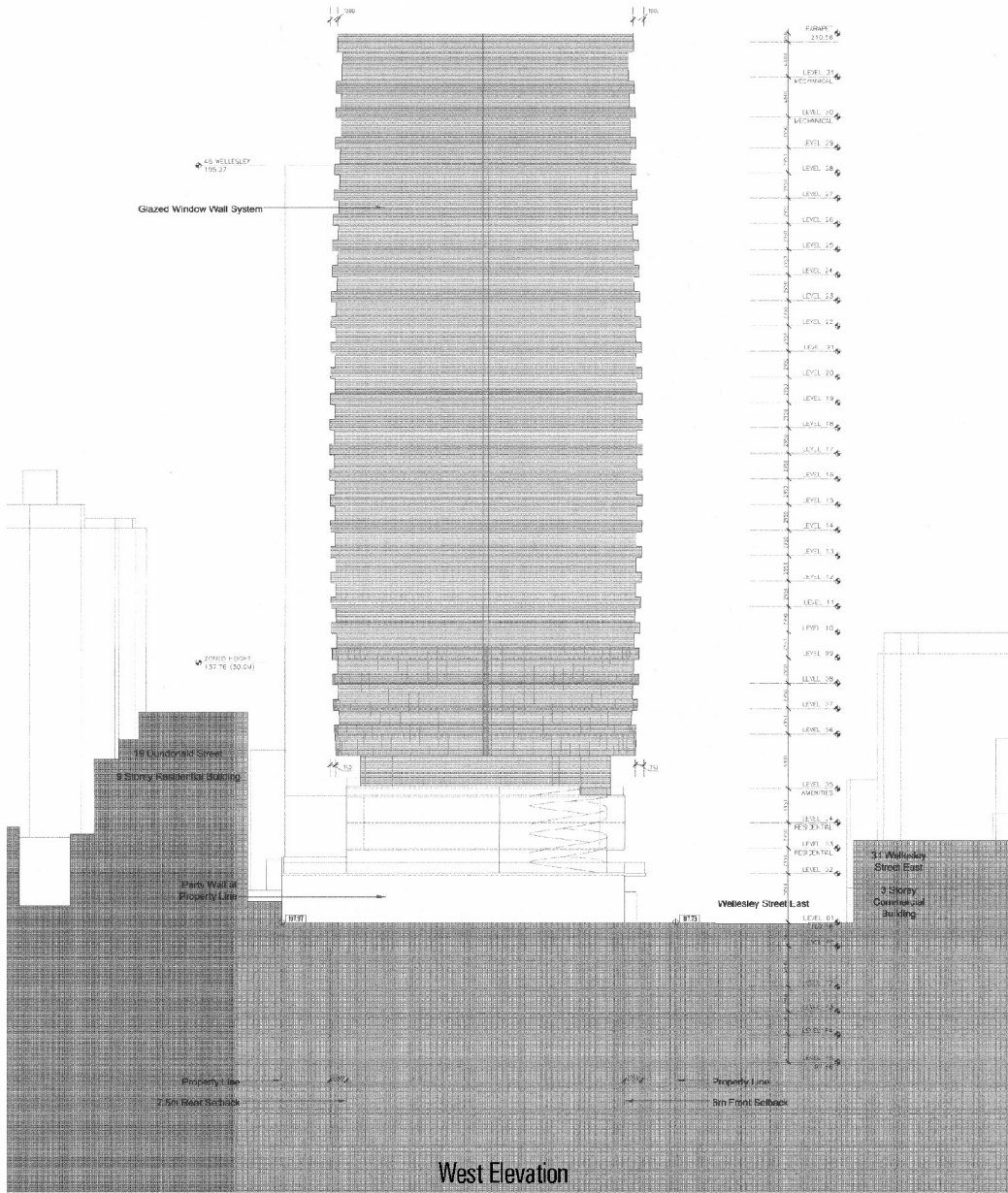
40 Wellesley Street East

Applicant's Submitted Drawing

Not to Scale
06/02/08

File # 05_212275

Attachment 4: West Elevation



Elevations

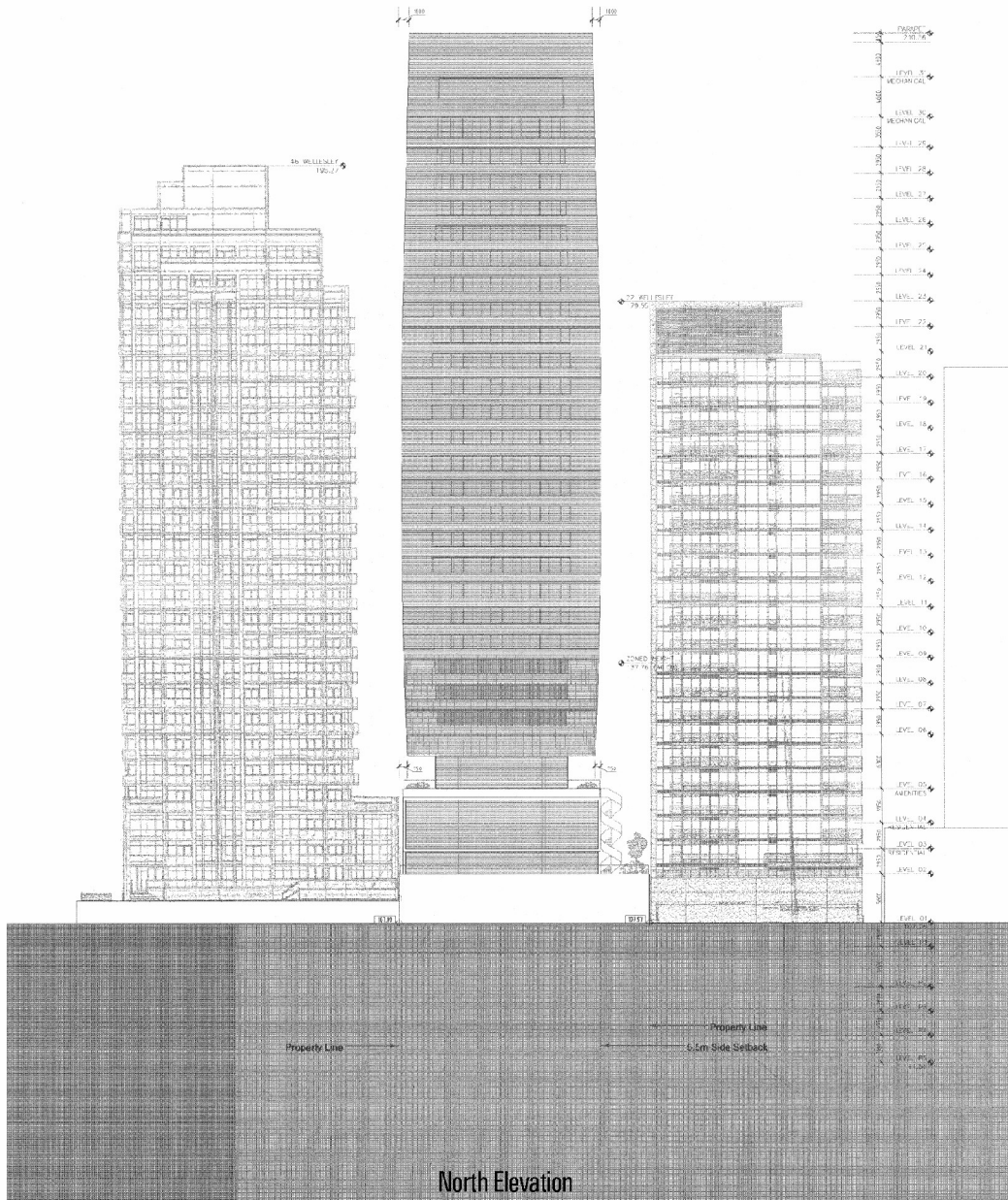
Applicant's Submitted Drawing

Not to Scale
06/02/08

40 Wellesley Street East

File # 05_212275

Attachment 5: North Elevation



Elevations

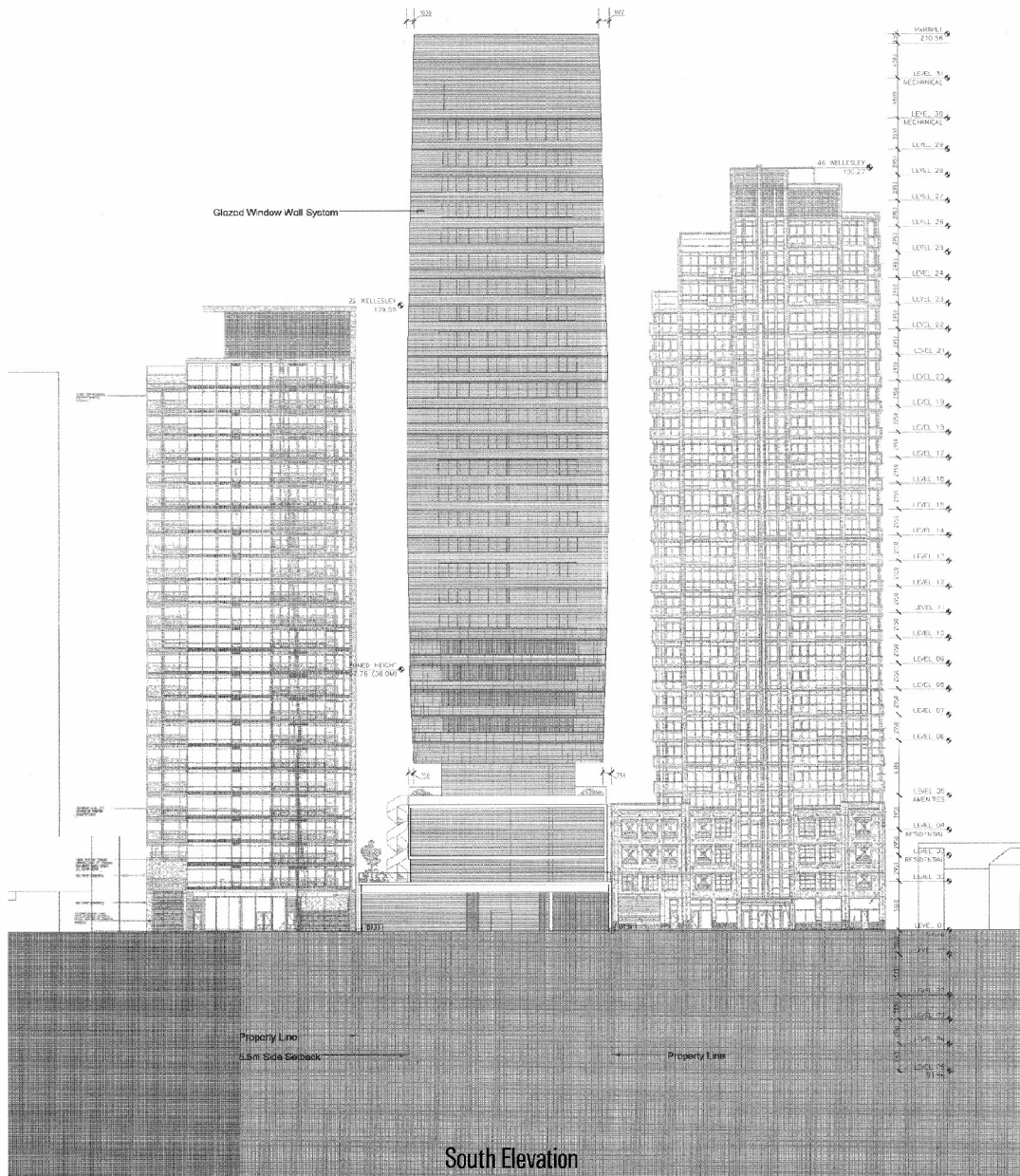
Applicant's Submitted Drawing

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40 Wellesley Street East

File # 05_212275

Attachment 6: South Elevation



Elevations

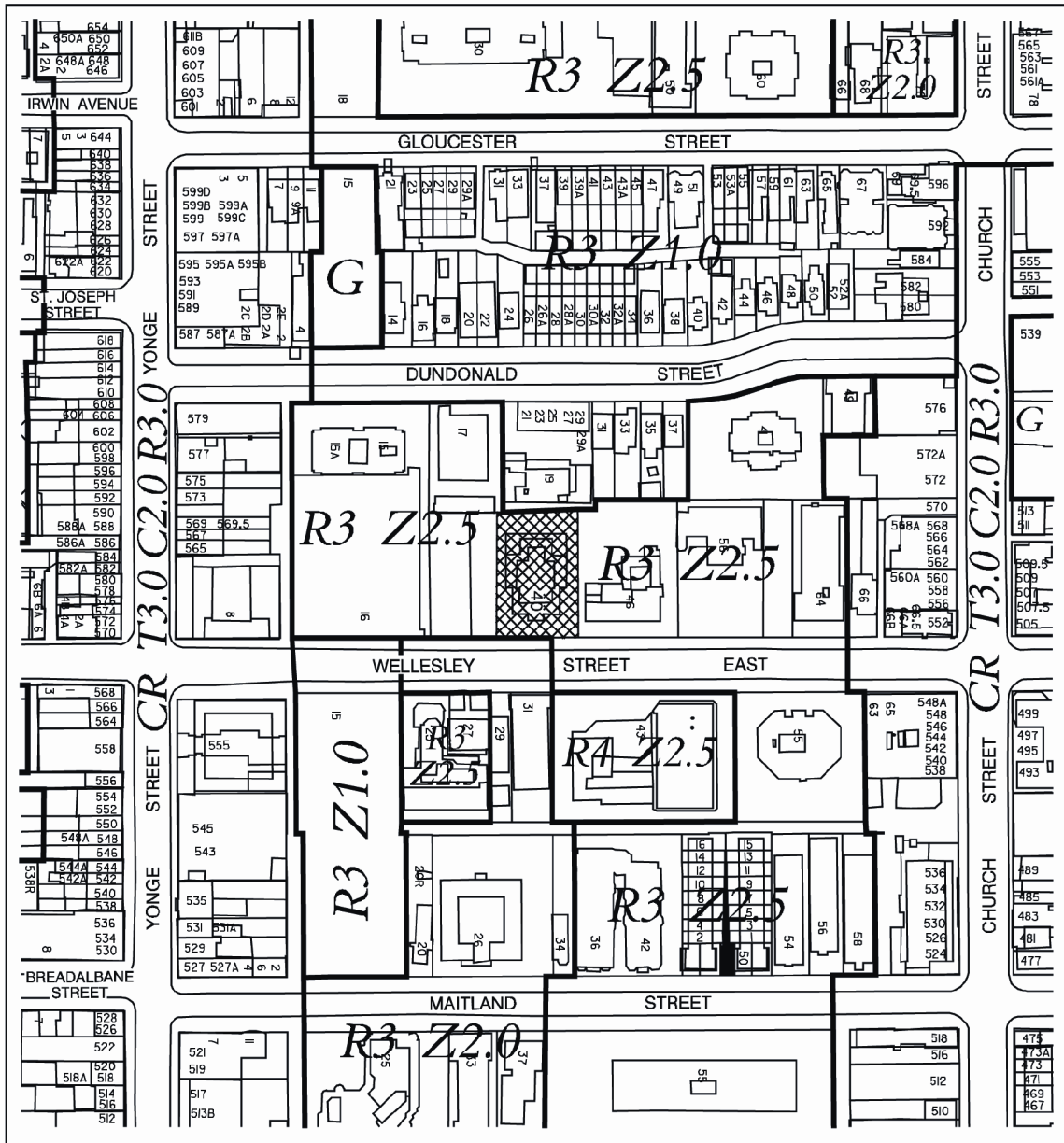
40 Wellesley Street East

Applicant's Submitted Drawing

Not to Scale
06/02/08

File # 05_212275

Attachment 7: Zoning



40 Wellesley Street East
File # 05_212275

- R3 Residential District
- R4 Residential District
- CR Mixed-Use District
- G Parks District



Not to Scale
Zoning By-law 438-86 as amended
Extracted 05/29/08 - TA