

5799 to 5915 Yonge Street, 45 and 53 Cummer Avenue, and 46 and 47 Averill Crescent – Application to Lift a Holding Provision "(H)" on Phase 2 Lands – Final Report

Date: November 1, 2021

To: North York Community Council

From: Director, Community Planning, North York District

Ward 18- Willowdale

Planning Application Number: 21 132353 NNY 18 OZ

SUMMARY

This application proposes to lift the Holding provision "(H)" for the Phase 2 lands of the 5799 to 5915 Yonge Street, 45 and 53 Cummer Avenue, and 46 and 47 Averill Crescent development. The Holding provision "(H)" for Phase 3 of the subject lands will continue to apply. The lifting of the "(H)" for Phase 2 will permit the development of a mixed-use building with a total gross floor area (GFA) of 66,838.9 square metres, consisting of 63,152.3 square metres of residential GFA, 58.6 square metres of retail GFA and 3,628.0 square metres of commercial GFA.

The mixed-use building contains two towers on a shared podium. One tower will be 34 storeys (106.3 metres excluding the mechanical penthouse) and the other tower will be 40 storeys (123.5 metres excluding the mechanical penthouse).

Phase 2 also includes a minimum 5190 square metre, City-owned community recreation facility, including a daycare of 900 square metres, and an abutting 300 square metres of outdoor play space as required by the zoning by-law and the Section 37 agreement.

The development was approved on May 2nd, 2019, by the Local Planning Appeal Tribunal (Case No. PL140111) (the "LPAT", now called the Ontario Land Tribunal or "OLT") under City file number 11 287471 NNY 24 OZ, including the Holding provision.

The development of Block 2 is contingent on the lifting of the Holding provision. Section 9 of By-law No. 64-2021 (LPAT) requires the clearance of conditions, which are outlined further in this report. These conditions have been cleared to the satisfaction of Engineering and Construction Services, Transportation Services and City Planning.

This report reviews and recommends approval of the application to amend the Zoning By-law by lifting the Holding provision "(H)" on the Phase 2 lands as the proposed development is consistent with the Provincial Policy Statement (2020) and conforms with A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020), and also conforms to the City's Official Plan.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council amend Zoning By-law 64-2021(LPAT), as amended by Zoning By-law 75-2021, for Phase 2 of the 5799 to 5915 Yonge Street, 45 and 53 Cummer Avenue, and 46 and 47 Averill Crescent development to remove the Holding provision "(H)" substantially in accordance with the draft Zoning By-law Amendment attached as Attachment No. 1 to this report.
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.

FINANCIAL IMPACT

The City Planning Division confirms that there are no financial implications resulting from the recommendations included in this report in the current budget year or in future years.

DECISION HISTORY

In October 2011 the owner of Newtonbrook Plaza (5799-5915 Yonge Street) made Official Plan and Zoning By-law Amendment applications to permit the redevelopment of the site to a mixed-use project. The owner appealed Council's failure to make a decision to the Ontario Municipal Board, now the Ontario Land Tribunal (OLT). The City and the owner settled the appeals at the City Council meeting of July 7, 2015. Link to settlement:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2015.NY7.37>

The City Council adopted settlement was for 4 towers with heights of 112, 109, 104 and 86 metres in buildings with 37, 36, 34 and 28 storeys respectively. Among other benefits, the settlement also included a community recreation facility of 3,232 square metres including a daycare of 900 square metres and an abutting 300 square metres of outdoor play space, and a parkland over-dedication of approximately 2310 square metres.

On May 2nd, 2019, the Local Planning Appeal Tribunal (LPAT now the OLT) approved (Case No. PL140111) an Official Plan Amendment and a Zoning By-law Amendment permitting the redevelopment of the subject site in accordance with a number of

conditions. One of those conditions was the provision of a community recreation facility space of 3,232 square metres in Phase 2/Block 2 of the development.

The LPAT (OLT) approved Official Plan Amendment permits the redevelopment of the subject site consisting of three blocks with four mixed-use residential buildings on the first two blocks/phases with a total gross floor area of 164,994 square metres.

The LPAT (OLT) approved Zoning By-law Amendment provides greater detail with respect to the development of each block. It allows for two residential buildings with maximum heights of 113 metres and 86 metres, a maximum residential gross floor area of 61,200 square metres and up to 748 dwelling units on Phase 2/Block 2. Both the LPAT (OLT) approved OPA and ZBA require a community recreation facility on Phase 2/Block 2. It also contains a Hold provision to ensure that the area road network can accommodate the zoned development on Blocks 2 and 3 to the satisfaction of the City, without the connection of the new public street to one of Yonge Street or Cummer Avenue.

The Section 37 Agreement was registered on March 12, 2019 as Instrument No. AT5093428.

The Draft Plan of Subdivision application was approved by the Local Planning Appeal Tribunal (OLT) on May 6, 2019, Case No. PL140111. The subdivision agreement has been executed by the City and the owner but has not been registered. The Notice of Approval Conditions for Phase 1/Block 1 of the Site Plan application was issued on December 17, 2019. Phase 1/Block 1 is currently under construction. The Phase 2/Block 2 site plan application was submitted on October 22, 2020 and is currently under review.

On October 7, 2020, North York Community Council authorized staff by motion to enter into discussions with the owner to explore the possibility of increasing the size of the proposed community recreation facility and to report back to North York Community Council no later than December 3, 2020 with possible mechanisms of implementation. Link to motion:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.NY18.22>

On December 3, 2020, Planning staff brought forward an Official Plan and Zoning By-law Amendment final report to increase the size of the Community Recreation Facility to 5190 square metres and increasing the height and density for the proposed buildings in Phase 2/Block 2. City Council adopted this item on December 16, 2020. See link to report below:

<https://www.toronto.ca/legdocs/mmis/2020/ny/bgrd/backgroundfile-158438.pdf>

See link to City Council decision below:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.NY20.2>

On March 29, 2021, Real Estate staff brought forward a report to the General Government and Licensing Committee (Item No. GL21.11) entitled "Expropriation of a Portion of 5795 Yonge Street for Public Street Purposes - Stage 2." This report sought

authorization from City Council, as the approving authority under the Expropriations Act, to expropriate part of the condominium property known municipally as 5795 Yonge Street for a new road connecting Cummer Avenue to Yonge Street through a northerly adjacent development. The public road once completed, will provide public street access for the adjacent condominiums to the south and the subject development. See link to City Council's decision and the report below:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.GL21.11>

On October 20, 2021, Real Estate staff brought forward another report to the Government and Licensing Committee (Item No. GL26.8) entitled "Application for Approval to Expropriate a Portion of 5791-5793 Yonge Street and 5795 Yonge Street for Public Street Purposes - Stage 1." This report sought authority to initiate expropriation proceedings two property interests: one temporary easement in part of the property known municipally as 5795 Yonge Street and; one fee simple interest in part of the property municipally known as 5791-5793 Yonge Street. The properties are required for construction of a future public street connecting Cummer Avenue to Yonge Street. See link to the Committee's decision below:

<http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2021.GL26.8>. This report will be considered by City Council on November 9, 2021.

PROPOSAL

This application proposes to lift the Holding provision "(H)" for Phase 2 of the 5799 to 5915 Yonge Street, 45 and 53 Cummer Avenue, and 46 and 47 Averill Crescent development. The "(H)" for Phase 3 of the subject lands will continue to apply. The lifting of the "(H)" for Phase 2 will permit the development of a mixed-use building with a total GFA of 66,838.9 square metres, consisting of 63,152.3 square metres of residential GFA, 58.6 square metres of retail GFA and 3,628.0 square metres of commercial GFA. The mixed-use building contains two towers on a shared podium. One tower will be 34 storeys (106.3 metres excluding the mechanical penthouse) and the other tower will be 40 storeys (123.5 metres excluding the mechanical penthouse). Phase 2 also includes a minimum 5190 square metre, City-owned community recreation facility, including a daycare of 900 square metres, and an abutting 300 square metres of outdoor play space.

The development of Block 2 is contingent on the lifting of the holding provision. Section 9 of By-law No. 64-2021 (LPAT) requires the clearance of conditions, which are outlined below. The holding provision "(H)" includes the following conditions:

The Holding provision shall not be lifted, and development shall not occur on the lands identified as Blocks 2 and 3 on Schedule 1 of By-law 64-2021(LPAT) prior to the earlier of:

1. the conveyance to the City of the lands required to complete the construction of a new public street from Yonge Street to Cummer Avenue, generally as shown on Schedule 1 of By-law 64-2021(LPAT); or

2. six months from the date of Substantial Demolition of the office building known municipally in 2018 as 5799 Yonge Street, provided that it is demonstrated to the satisfaction of the Chief Planner and Executive Director, City Planning in consultation with the Executive Director of Engineering and Construction Services that the area road network can accommodate the zoned development on Blocks 2 and 3 to the satisfaction of the City, without the connection of the new public street to one of Yonge Street or Cummer Avenue.

The development of Phase 2 is contingent on the lifting of the holding provision "(H)" subject to the conditions noted above. The applicant has applied to lift the holding provision by submitting a Traffic Study demonstrating that the area road network can accommodate the zoned development on Block 2 without a connection of the new public street to Yonge Street.

APPLICATION BACKGROUND

Application Submission Requirements

The following study was submitted in support of the lifting of the holding provision "(H)":

- Transportation Study Update

This study along with the other submitted materials can be found on the City's Application Information Centre at the following link:

<http://app.toronto.ca/AIC/index.do?folderRsn=Ru5w6leZLymkiTc3%2BasyJQ%3D%3D>

Agency Circulation Outcomes

The application together with the report noted above, have been circulated to all appropriate agencies and City Divisions. Responses received have been used to assist in evaluating the application and to facilitate the lifting of the Holding provision "(H)" for Phase 2 of the 5799 to 5915 Yonge Street, 45 and 53 Cummer Avenue, and 46 and 47 Averill Crescent development.

POLICY CONSIDERATIONS

Provincial Land-Use Policies: Provincial Policy Statement and Provincial Plans

Provincial Policy Statements and geographically specific Provincial Plans, along with municipal Official Plans, provide a policy framework for planning and development in the Province. This framework is implemented through a range of land use controls such as zoning by-laws, plans of subdivision and site plans.

The Provincial Policy Statement (2020)

The Provincial Policy Statement (2020) (the "PPS") provides policy direction province-wide on land use planning and development to promote strong communities, a strong economy, and a clean and healthy environment. It includes policies on key issues that affect communities, such as:

- the efficient use and management of land and infrastructure; and
- ensuring the appropriate transportation, water, sewer and other infrastructure is available to accommodate current and future needs.

The provincial policy-led planning system recognizes and addresses the complex inter-relationships among environmental, economic and social factors in land use planning. The PPS supports a comprehensive, integrated and long-term approach to planning, and recognizes linkages among policy areas.

The PPS is issued under Section 3 of the Planning Act and all decisions of Council in respect of the exercise of any authority that affects a planning matter shall be consistent with the PPS. Comments, submissions or advice affecting a planning matter that are provided by Council shall also be consistent with the PPS.

The PPS recognizes and acknowledges the Official Plan as an important document for implementing the policies within the PPS. Policy 4.6 of the PPS states that, "The official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long-term planning is best achieved through official plans."

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020)

A Place to Grow: Growth Plan for the Greater Golden Horseshoe (2020) came into effect on August 28, 2020. This was an amendment to the Growth Plan for the Greater Golden Horseshoe, 2019.

The Growth Plan (2020) continues to provide a strategic framework for managing growth and environmental protection in the Greater Golden Horseshoe region, of which the City forms an integral part. The Growth Plan (2020), establishes policies that require implementation through a Municipal Comprehensive Review ("MCR"), which is a requirement pursuant to Section 26 of the Planning Act.

Policies not expressly linked to a MCR can be applied as part of the review process for development applications, in advance of the next MCR. These policies include:

- Directing municipalities to make more efficient use of land, resources and infrastructure to reduce sprawl, contribute to environmental sustainability and provide for a more compact built form and a vibrant public realm;
- Directing municipalities to engage in an integrated approach to infrastructure planning and investment optimization as part of the land use planning process; and
- Achieving complete communities with access to a diverse range of housing options,

protected employment zones, public service facilities, recreation and green space, and better connected transit to where people live and work.

The Growth Plan (2020), builds upon the policy foundation provided by the PPS and provides more specific land use planning policies to address issues facing the GGH region. The policies of the Growth Plan (2020), take precedence over the policies of the PPS to the extent of any conflict, except where the relevant legislation provides otherwise. In accordance with Section 3 of the Planning Act all decisions of Council in respect of the exercise of any authority that affects a planning matter shall conform with the Growth Plan (2020). Comments, submissions or advice affecting a planning matter that are provided by Council shall also conform with the Growth Plan (2020).

Toronto Official Plan

This application has been reviewed against the policies of the City of Toronto Official Plan and the North York Centre Secondary Plan. The outcome of staff analysis and review are summarized in the Comments section of the Report.

The subject site is designated *Mixed Use Areas* on Land Use Plan Map 16 in the Official Plan. *Mixed Use Areas* are intended to include a broad range of commercial, residential and institutional uses, in single use or mixed use buildings, as well as parks and open spaces and utilities.

Section 5.1.2 of the City's Official Plan - Holding By-laws, recognizes that there are instances where development of lands should not take place until specific facilities are in place or conditions are met. Policy 1 of this Section indicates a holding provision may be placed on lands where the desired use of the lands is specified but cannot take place until conditions set out in the by-law are satisfied. Policy 2 of this Section indicates conditions to be met prior to the removal of the Holding provision may include servicing improvements.

The City of Toronto Official Plan can be found here: <https://www.toronto.ca/city-government/planning-development/official-plan-guidelines/official-plan/>.

North York Centre Secondary Plan

The subject site is also subject to the North York Centre Secondary Plan. The subject lands are located in the North York Centre North portion of the Secondary Plan, they are designated 'Mixed Use Areas' and are subject to Site Specific Policy 13.6.

The North York Centre Secondary Plan can be found here: <https://www.toronto.ca/wp-content/uploads/2017/11/8fe9-cp-official-plan-SP-8-North-York-Centre.pdf>

Zoning

On May 2nd, 2019, the Local Planning Approval Tribunal (LPAT now OLT) approved (Case No. PL140111) thereby approving the 2011 Zoning By-law Amendment

application. The Zoning By-law Amendment rezoned the subject site from C1 to RM6 under the Former City of North York Zoning By-law No. 7625. This by-law was further amended by By-law No. 75-2021. There is a holding provision (H) on Block 2/Phase 2 and Block 3/Phase 3 of this zoning by-law.

This zoning by-law amendment sets performances standards, such as, but not limited to, the permitted uses, the maximum permitted residential gross floor area, the number of units, the built form envelopes, and minimum parking standards. A quick summary of some of the key performances standards is as follows: the maximum residential gross floor area for Phase 2/Block 2 is 63,165 square metres, the overall maximum residential gross floor area for the entire lands is 136,785 square metres. The total number of units in Phase 2/Block 2 is 867 and the overall residential unit count is 1769.

Link to By-law No. 64-2021(LPAT) below:

<https://www.toronto.ca/legdocs/bylaws/2021/law0064.pdf>

Link to By-law No. 75-2021 below:

<https://www.toronto.ca/legdocs/bylaws/2021/law0075.pdf>

This site is not subject to City of Toronto Zoning By-law 569-2013.

Site Plan Control

The Site Plan Application (File No. 20 209468 NNY 18 SA) for Phase 2 of the development was submitted on October 22, 2020, and is presently under review by Staff.

Draft Plan of Subdivision

The Draft Plan of Subdivision application was approved by the LPAT on May 6, 2019, Case No. PL140111. The subdivision agreement has been executed by the owner and the City and will be registered in the near future.

COMMENTS

Provincial Policy Statement and Provincial Plans

The proposal has been reviewed and evaluated against the PPS (2020) and the Growth Plan (2020). Staff have determined that the proposal is consistent with the PPS and conforms with the Growth Plan (2020) as the proposed amendments support the development of complete communities and the intensification of a site within built-up areas, particularly in locations which are well served by existing municipal infrastructure. The applicant has now satisfied the Holding provision (H) requirements which contemplates a new public road from Yonge Street to Cummer Avenue to support the proposed development.

Official Plan

This application has been reviewed against the City's official plan policies as a whole

and the North York Centre Secondary Plan policies. The lifting of the holding provision "(H)" continues to meet the objectives of the City of Toronto Official Plan, including the North York Centre Secondary Plan policies.

Lifting of the Holding Provision "(H)" and Traffic Impact

As of the writing of this report, the acquisition of the future right of way from the 5791-5795 Yonge Street lands (see Attachment No. 2 - Off-Site Portion of Proposed Public Road) by the City for the purposes of completing the construction of the new public street as shown on Schedule 1 of By-law 64-2021 (LPAT), has yet to be finalized. In addition, it has been over six months since the demolition of the former office building at 5799 Yonge Street.

In accordance with the requirements of Section 9(2) of By-law 64-2021(LPAT), a Traffic Study was prepared by BA Consulting Group, in order to demonstrate that the existing road network can accommodate the Phase 2 development without the connection of the new public road to Yonge Street. The BA Traffic Study reviews the increase in traffic volume from the Phase 2 development on the interim road (cul-de-sac) condition which was approved as part of the Phase 1 approvals. The interim road condition (cul-de-sac) recognizes that the public road cannot connect to a signalized intersection at Yonge Street prior to the City completing the acquisition of the necessary right-of-way. The BA Traffic Report concludes that the proposed Phase 2 development will operate within acceptable traffic levels, and as such, can be appropriately accommodated within the existing road traffic network. Transportation Services and Transportation Planning have reviewed this updated traffic study and advise they have no concerns.

Based on this traffic report and review by City staff, the conditions of the Holding Provision "(H)" as set out in Section 9 of By-law 64-2021 (LPAT) have been appropriately met, and that the Holding "(H)" symbol on the Phase 2 lands should be lifted.

In addition, Condition No. 15 from the executed subdivision agreement states that "in the event that satisfactory access to Yonge Street from Street A2 (proposed east-west public road) on Phase 1 is not available when Street A1 (proposed north-south public road) is dedicated to the City, the Owner agrees at the time no later than the registration of the plan of subdivision for Phase 2, it will prepare all documents and transfer to the City, at nominal cost, Street A2 and provide the City with a letter of credit to guarantee the removal of the turning circle, to the satisfaction of Engineering and Construction Services." This ensures that the street will ultimately be connected to Yonge Street and the lifting of the Holding (H) symbol does not release the applicant from this obligation.

Community Consultation

Community consultation is not required for the proposed application to lift the holding provision "(H)" for Phase 2 of the 5799 to 5915 Yonge Street, 45 and 53 Cummer Avenue, and 46 and 47 Averill Crescent development.

Section 37

The Official Plan provides for the use of Section 37 of the Planning Act to pass by-laws for increases in height and/or density not otherwise permitted by the Zoning By-law in return for the provision by the applicant of community benefits in the form of capital facilities. It is standard to secure community benefits in a Section 37 Agreement which is then registered on title. The development at 5799 to 5915 Yonge Street, 45 and 53 Cummer Avenue, and 46 and 47 Averill Crescent is subject to an existing Section 37 Agreement.

The lifting of the holding provision "(H)" for Phase 2 will unlock the following benefits:

- (a) a Community Recreation Facility of a minimum of 5190 square metres, finished, including a daycare of 900 square metres, and an abutting 300 square metres of outdoor play space, and
- (b) a minimum of 6,006 square metres of parkland dedication.

Conclusion

The proposal has been reviewed against the policies of the PPS (2020), the Growth Plan (2020), the Toronto Official Plan, the North York Centre Secondary Plan, and site-specific approvals. Staff are of the opinion that the proposal is consistent with the PPS (2020) and conforms with the Growth Plan (2020). The conditions of the holding provisions in By-law 64-2021(LPAT) have been satisfied for Phase 2 of the 5799 to 5915 Yonge Street, 45 and 53 Cummer Avenue, and 46 and 47 Averill Crescent development. Staff recommend that Council approve the application.

CONTACT

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SIGNATURE

David Sit, MCIP RPP,
Director, Community Planning, North York District

ATTACHMENTS

City of Toronto Data/Drawings

Attachment 1: Draft Zoning By-law Amendment

Attachment 1: Draft Zoning By-law Amendment

Authority: ~ Community Council Item No. ~,
as adopted by City of Toronto Council on ~, 20~
Enacted by Council: ~, 20~
North York
CITY OF TORONTO
Bill No. ~
BY-LAW No. ~-20~

To amend former City of North York Zoning By-law No. 7625, as amended by site specific By-laws 64-2021(LPAT) and 75-2021, to remove the holding symbol (H) with respect to the lands known municipally in the year 2020 as 5799 to 5915 Yonge Street, 45 and 53 Cummer Avenue, and 46 and 47 Averill Crescent.

WHEREAS authority is given to Council by Section 34 and Section 36 of the Planning Act, R.S.O. 1990, c.P. 13, as amended, to impose the holding symbol (H) and to remove the holding symbol (H) when Council is satisfied that the conditions relating to the holding symbol have been satisfied; and

WHEREAS Council is satisfied that the conditions relating to the holding symbol have been satisfied in order to lift the holding symbol in relation to the lands to which this by-law applies; and

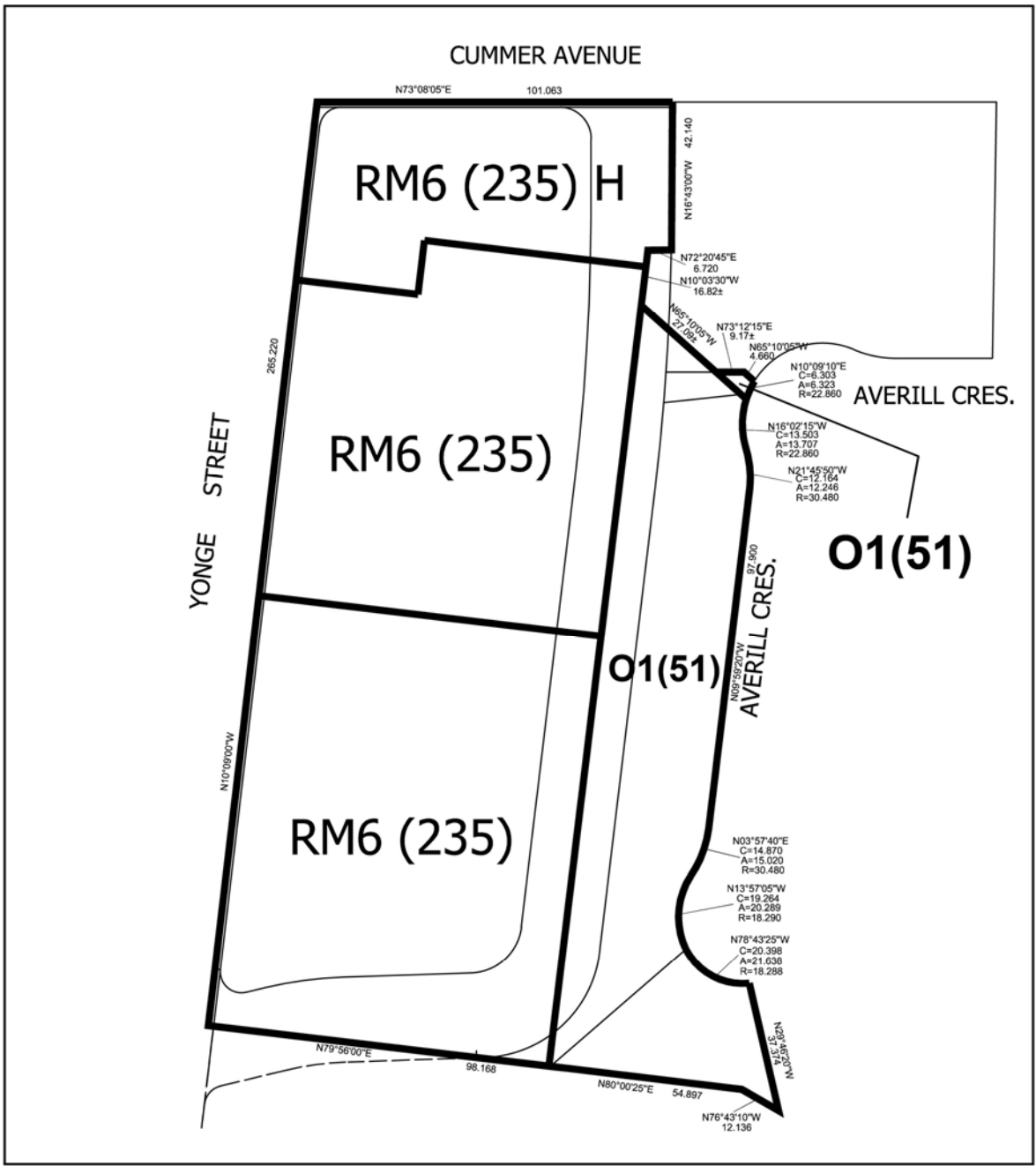
WHEREAS Council has provided notice of the intent to pass this By-law;
The Council of the City of Toronto HEREBY ENACTS as follows:

1. Zoning By-law 7625, as amended, is amended by removing the holding symbol (H) from Phase 2/Block 2 such that the designation is revised from "RM6(235)(H)" to "RM6(235)" as shown on Schedule '2' attached.

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

JOHN TORY, JOHN D. ELVIDGE
Mayor City Clerk

(Corporate Seal)



Toronto
Schedule 2

5799 to 5915 Yonge Street, 45 & 53 Cummer Avenue, & 46 & 47 Averill Crescent

File # 21 132353 NNY 18 0Z

See Former City of North York By-law 7625
Not to Scale
10/05/2021