

**245-251 College Street, and 39 and 40 Glasgow Street –
Rezoning Application – Further Report**

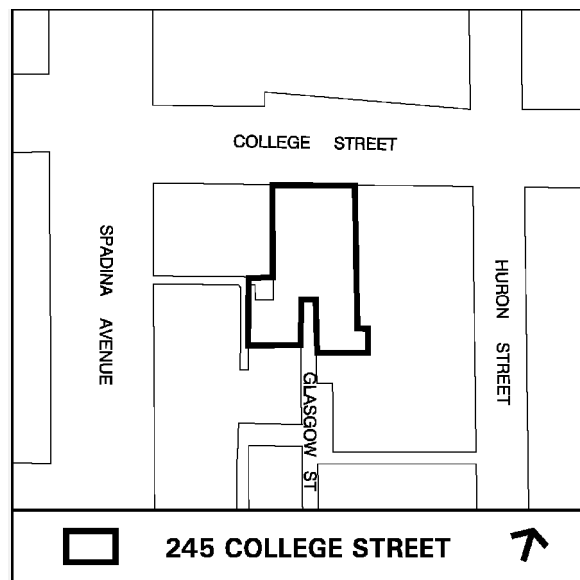
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| Date: | June 30, 2012 |
| To: | City Council |
| From: | Acting Chief Planner and Executive Director, City Planning Division Executive Director Building, Chief Building Official |
| Wards: | Ward 20 – Trinity-Spadina |
| Reference Number: | Cc12047 (File Number: 10 239490 STE 20 OZ) |

SUMMARY

At its meeting of June 13, 2012, Toronto and East York Community Council requested the Chief Planner, in consultation with the Chief Building Official and Executive Director, City Building, and the Executive Director of Municipal Licensing and Standards, to report directly to City Council at its meeting of July 11 and 12, 2012 regarding the compliance of the proposed development at 245-251 College Street and 39 and 40 Glasgow Street to the Rooming House Licensing By-law and Zoning regulations related to rooming houses.

At that same meeting, Toronto and East York Community Council requested that the City Manager, Chief Financial Officer, and the Chief Planner and Executive Director, City Planning Division, in consultation with Revenue Services, report directly to City Council at its meeting of July 11 and 12, 2012 on whether or not the proposed building would be subject to assessment as a Rooming House, Multi-unit residential building, or if other levies would apply.

This report provides further information regarding the above.



RECOMMENDATIONS

The City Planning Division and Toronto Building recommends that:

1. City Council receive this report for information.

Financial Impact

There are no financial implications. Revenue Services and Financial Planning have been consulted on the content of this report.

DECISION HISTORY

On August 13, 2010, Goodmans LLP made a rezoning application for a 42-storey academic residence to be privately built and operated. A 3-storey podium was proposed to contain retail, academic services and lecture halls to be used by the University of Toronto at 245-51 College Street, and 39 and 40 Glasgow Street. The application was revised in response to a community consultation process and after discussions with City staff and the Ward Councillor to a 24 storey building with a similar mix of uses.

The applicant appealed the rezoning to the Ontario Municipal Board on March 12, 2012 on the basis of Council's failure to enact the requested amendment within the timelines prescribed by the *Planning Act*. A Request for Directions report from The Director of Community Planning, Toronto and East York District was considered by Toronto and East York Community Council (TEYCC) at its meeting of June 13, 2012. The report requested direction for City staff to attend the Ontario Municipal Board to oppose the application. At that meeting TEYCC requested further information on how the uses in the proposed building would be defined under the Zoning By-law and how the uses would be assessed by the City in terms of taxes or levies. This report responds to that request.

COMMENTS

Proposed Use

The applicant proposes to develop the lands municipally known as 245-251 College Street and 39 and 40 Glasgow Street with a private student residence. Based on the Toronto Zoning By-Law No. 438-86, as amended, the lands are dually zoned MCR T2.5 C1.0 R2.5 and R3 Z1.0.

The portion of the lands upon which the building would be constructed is zoned MCR and is owned by both the University of Toronto and a private developer. The remaining lands, zoned R3 Z1.0, are owned by University of Toronto and would be used to provide loading, a vehicle turnaround area, and pedestrian access to service the building. The University of Toronto has stated that it is the University's intention to lease their portion

of the lands to the applicant in order that a student residence could be erected by the private developer on the site.

A lease agreement entered into by the University of Toronto (Landlord) and KCAP College Inc. (Tenant) which sets out the terms that the parties would be obliged to comply with has recently been disclosed by the parties and serves to confirm this. As part of the agreement, once the student residence is constructed in accordance with the terms as set out in the agreement, the University will receive a minimum rent annually for the first five years of the lease, to be adjusted for inflation after that on a regular basis. A review of the lease agreement also provides the following additional information.

In accordance with Section 1.03 of the Agreement, the lands upon which the building would be erected would be permitted to be occupied by parties other than students when classes are not in session or during a summer semester. Similarly, with respect to the location and provision of food services, the lease agreement would require the tenant to provide a student cafeteria/food service area to serve the student population in the building but would not restrict other office and commercial uses nor retail or other restaurant uses at the street level of the building.

In accordance with Section 1.07 of the Agreement, while the lands upon which the building would be constructed would continue to be owned by the University of Toronto, the building would be owned by the tenant and would not constitute part of the University. Title to the building for a period of 99 years has been secured in favour of KCAP Inc.

It was the initial opinion of staff that the proposed building containing dwelling units and dwelling rooms could comply with the standards of a "university residence" as defined by former City of Toronto Zoning By-law 438-86. Refinements to the proposal have since been made so that the project now contains dwelling rooms only with shared bathroom facilities for every two beds. The revised proposal includes a cafeteria on the second floor to serve the residents of the building. There are no shared culinary facilities included in the revised proposal. Space is also available for other commercial and retail uses.

The By-law defines a "university residence" as a building that is owned or operated by a university or polytechnical institute, that contains dwelling accommodation consisting of dwelling rooms and/or dwelling units for students, employees, or persons in short-term residence at such university, whether or not shared culinary facilities are provided in the building. The terms of the lease agreement referred to above clearly indicate that the building will not be owned or operated by the University. Staff are of the opinion that the proposed building does not meet the Zoning By-law definition as a university residence.

The building would be one that contains dwelling rooms as a primary use. The By-law defines a "dwelling room" as a room used or designed for human habitation and may include either, but not both, culinary or sanitary conveniences. In the MCR district, the

Zoning By-Law permits dwelling rooms to be located in both a "rooming house" or in a "mixed use building" subject to qualification.

For the purposes of the Zoning By-law, a rooming house would be one that includes dwelling rooms located in a building containing residential units or rooms only including accessory uses thereto. A rooming house is limited to a maximum number of 25 units/rooms in aggregate.

A "mixed-use building", on the other hand, is a building containing a combination of residential uses with non-residential uses and any accessory uses thereto. In the MCR district, a mixed-use building that contains dwelling rooms complete with office and commercial uses including retail or other restaurant uses not associated with the student population is permitted on the lands and the number of dwelling rooms in the mixed-use building would not be subject to limitation.

The information contained in the lease agreement explicitly permits the tenant to use the building for residential and non-residential purposes other than a student residence or uses associated with it. Staff are of the opinion that it is the applicant's intent to operate the building for one or more of these purposes as a mixed-use building.

It should be noted that a new harmonized Zoning By-law for the City of Toronto was before Planning and Growth Management Committee on June 18, 2012. As defined in the draft Zoning By-law, a "student residence" is a premises (or part thereof) owned or operated by, or on behalf of, any public school, private school, post-secondary school or educational facility, consisting of dwelling units, bed-sitting rooms or rooms used for student accommodation. Under the proposed Zoning By-law, the building could be defined as a "student residence".

The lease agreement allows the tenant to use the building for uses other than a student residence. Should the harmonized Zoning By-law be applicable to the lands, staff are of the opinion that the use of a portion of the building for a student residence would be permitted at this address. As to any additional uses that may be located in the proposed building, they would be required to be considered in accordance with the uses and zoning standards of the zone they may be situated in.

Building Staff has determined that the proposal is for a mixed-use building that contains dwelling rooms for student and other residential purposes including non-residential uses.

Rooming House Licensing By-law and Zoning Regulations Related to Rooming Houses

In August of 2009, City Council adopted "Housing Opportunities Toronto: An Affordable Housing Action Plan 2010-2020". The report is the City's Action Plan to address Toronto's affordable housing challenges over the next 10 years, and includes 67 proposed actions. Action 31 of this report recommends that the City "preserve and

expand the supply of affordable housing available to single persons by encouraging and permitting an increase in legal, well run rooming houses and other appropriate forms of housing where current zoning by-laws allow, and subject to any future changes to the zoning by-law". The link to the Housing Opportunities Toronto: An Affordable Housing Action Plan 2010-2020 can be accessed via:

<http://www.toronto.ca/legdocs/mmis/2009/ex/bgrd/backgroundfile-21571.pdf>

In January of 2010, the Planning and Growth Management Committee considered the report from the Chief Planner and Executive Director, City Planning that recommended an approach for rooming house zoning regulations predicated on an associated licensing regime. The report also provided a new definition of "rooming house" and several qualifications to ensure consistent minimum standards of design. The recommendations of the report were consistent with the proposals of the Housing Opportunities Toronto action plan.

Zoning is a regulatory tool under the *Planning Act*, which allows the City to regulate the use of land, along with the height, bulk, size, floor area, spacing and location of buildings. Section 35(2) of the *Planning Act* stipulates that this authority to regulate the physical form of the City by means of zoning does not include the authority to distinguish between persons who are related or unrelated in respect to their occupancy or use of a building, including the occupancy of a single housekeeping unit.

The Former City of Toronto Zoning By-law 438-86, as amended, permits a rooming house in most residential zones, provided the building was originally constructed as a detached or semi-detached house and it: meets the minimum size of rooms requirement; has a minimum number of washrooms; exhibits no substantial change to the exterior appearance of the dwelling; satisfies the requirement that, if in a former semi-detached house, both halves of the building must be a rooming house; has a maximum number of dwelling rooms depending on the zone category and location; and meets the parking standard of 1 space for each 3 rooms, in excess of 3 rooms.

In the mixed-use and reinvestment zones, the rooming house regulation has no qualifications based on type of building and size of rooms, provided the maximum number of rooms does not exceed 25. A number of exceptions in the former City of Toronto Zoning By-law provide different regulations for rooming houses in some areas. These exceptions to the former Toronto Zoning By-law, found in the R2, R3, R4 and R4A zones, either are more permissive, or place restrictions on their location. For instance, some exceptions allow rooming houses in areas if they legally existed on specific dates, while other restrictive exceptions do not allow rooming houses to locate in specific areas of the former City of Toronto.

In this instance, the building will contain a combination of residential and non-residential uses permitted in the MCR district. Building Staff and Municipal Licensing and Standards Staff have determined that the applicant's proposal meets the definition of a mixed-use building and is not a rooming house. Accordingly, the proposal is not subject

to the Rooming House Licensing By-law and the number of dwelling rooms that can be contained in the building is not regulated.

Assessment and Property Tax Treatment of Proposed Development

The assessment and property tax treatment of the proposed development will be subject to applicable provincial legislation, including the *Assessment Act*, the *City of Toronto Act, 2006* and the *University of Toronto Act, 1971*. The annual property taxes payable, if any, will ultimately be based on the current value assessment (CVA) of the property, and the tax classification of the property, both as determined by the Municipal Property Assessment Corporation (MPAC), and the tax rates set by City Council for the applicable property tax class(es).

Under the *Assessment Act*, land owned, used and occupied by a university is exempt from taxation – this would include a student residence owned and operated by a university. Additionally, the *University of Toronto Act, 1971*, provides that all property vested in the University and any lands and premises leased to or occupied by it are exempt from property taxation for municipal or school purposes. This exemption also applies to properties owned by the University but leased to and occupied by third parties, including commercial tenants that would otherwise be liable for property taxation. Where land owned by the University of Toronto is occupied by a commercial tenant that would otherwise be taxable, a voluntary agreement between the University and the City of Toronto permits the University to make payments to the City equivalent to the property taxes that would be payable by the tenant, subject to the terms of the agreement.

Despite these statutory exemptions and the voluntary agreement referred to above, Section 285 of *City of Toronto Act, 2006*, allows the City to levy, by by-law, an annual tax payable on universities for each full-time student enrolled in the university. This levy is referred to as the annual "heads and beds" levy on public institutions – the City of Toronto enacts a by-law each year to levy these amounts on all universities, colleges, community colleges and schools located within Toronto. Section 15 of Ontario Regulation 121/07 under the *City of Toronto Act, 2006* prescribes a rate of \$75 for each full time student, provincially-rated bed or resident place respectively.

Therefore, a newly constructed student residence that was owned and operated by a university would not attract direct taxation in its own right – the annual tax levy paid by the university would remain subject to the number of full-time students in attendance at the university.

The proposal in question, however, is unique in that the development will be constructed on lands partially owned by the University of Toronto, and partially owned by a private developer, with additional university-owned lands to be leased to the developer (for loading, vehicle turnaround area and pedestrian access). The lease agreement also provides that the building itself will be owned by KCAP Inc. for a period of 99 years, such that the building is not owned or operated by the University. The complexity associated with the ownership and use of the property and the long term lease will require

focused consideration by MPAC to determine which portions of the property may be subject to taxation and which portions may be exempt.

It is expected that the portion of this development that sits on land owned by the University will continue to be exempt from taxation under the *University of Toronto Act*; however, the remaining land and the building owned by the developer could be assessable for tax purposes, with portions classified within the residential, new multi-residential or commercial property tax classes, depending on the respective uses.

With respect to the portions of the building used for student residences, Ontario Regulation 282/98 under the *Assessment Act* establishes that land used for a municipally-licensed rooming house is subject to taxation within the residential tax class, however, this report concludes above that the building is deemed not to be a rooming house.

If the residence units are rentable dwelling units that are self contained (i.e., that include kitchen and bathroom facilities) similar to an apartment building, they could be classified within the new multi-residential tax class, and therefore would be taxed at the same rate as the residential tax class. Alternately, depending on the tenure and rental structure, these units could be classified within the commercial tax class, similar to short-term rentals or hotel rooms. Ultimately, the determination of the applicable tax class will depend on the nature of the occupancy of the residence units, this cannot be determined at this time.

Finally, with respect to portions of the building used for non-residential purposes (e.g., for retail or other restaurant uses not associated with the student population) it can be expected that these portions would be assessed and taxed within the commercial property tax class.

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