



**NOTICE OF DECISION**  
**MINOR VARIANCE/PERMISSION**  
**(Section 45 of the Planning Act)**

|                    |                                      |            |                          |
|--------------------|--------------------------------------|------------|--------------------------|
| File Number:       | A0968/11TEY                          | Zoning     | MCR T2.5 C2.0 R2.0 (PPR) |
| Owner:             | RIOCAN PS INC                        | Ward:      | Trinity-Spadina (19)     |
| Agent:             | MARK NOSKIEWICZ                      |            |                          |
| Property Address:  | <b>410-446 BATHURST ST</b>           | Community: |                          |
| Legal Description: | PLAN 74 PT LOT 131 RP 63R4676 PART 1 |            |                          |

Notice was given and a Public Hearing was held on **Wednesday, May 30, 2012**, as required by the Planning Act.

**PURPOSE OF THE APPLICATION:**

To demolish the existing three buildings and to construct a new three-storey commercial building with a three-level below grade parking garage.

**REQUESTED VARIANCES TO THE ZONING BY-LAW:**

- Section 1½(2)270(a)(i), By-law 438-86**  
No building shall be erected or used for any purpose permitted in sections 8(1)(f)(b)(iv) or 9(1)(f)(b)(iv) and (xi), where the total non-residential gross floor area used for such purpose is greater than the amount which existed on the lot in July 20, 1993, plus an additional 1,800 m<sup>2</sup>.  
The new building will be greater than the existing non-residential gross floor area, plus an additional 1,800 m<sup>2</sup>.
- Section 12(2)270(a)(ii), By-law 438-86**  
No building shall be erected or used for any purpose permitted in sections 8(1)(f)(b)(iv) or 9(1)(f)(b)(iv) and (xi), provided the total non-residential gross floor area is not greater than the amount permitted on the lot by sections 8(3) Part I 2 and 9(3) Part I 2 & 3 (9,874 m<sup>2</sup>).  
**The new building will have a maximum non-residential gross floor area of 12,000 m<sup>2</sup>.**
- Section 12(2)270(a)(iii), By-law 438-86**  
No building shall be erected or used for any purpose permitted in sections 8(1)(f)(b)(iv) or 9(1)(f)(b)(iv) and (xi), provided no single retail or service use, unless existing on August 29, 1994 exceeds a non-residential gross floor area of 8,000 m<sup>2</sup>.  
**The maximum non-residential gross floor area of the single retail or service known as Store "C" will be 8,800 m<sup>2</sup>.**
- Section 4(2), By-law 438-86**  
The maximum permitted height is 14.0 m.  
**The new building will have a maximum height of 20 m to the top of the feature wall.**

5. **Section 8(3) Part I 2, By-law 438-86**  
The maximum permitted non-residential gross floor area is equal to 2.0 times the area of the lot (9,874 m<sup>2</sup>). **Following the dedication of land for lane widening purposes, the new building will have a maximum non-residential gross floor area equal to 2.45 times the area of the lot, (12,000 m<sup>2</sup>).**
6. **Section 8(3) Part II 4(A), By-law 438-86**  
The minimum required setback for a building from a lot in a residential or park district is 7.5 m. **The new building will be setback 5.50 m from the west adjacent residential district.**
7. **Section 8(3) Part II 4(C)(I), By-law 438-86**  
No building shall penetrate the 45 degree angular plane projected over the lot from an elevation of 13 m above the average elevation of the ground at the street line.  
The new building will penetrate the 45 degree angular plane.
8. **Section 8(3) Part II 4(C)(III), By-law 438-86**  
A building shall be within the 45 degree angular plane projected over the lot from an elevation of 10 m above the average elevation of the ground at a distance of 7.5 m from a lot in a residential or park district. **The extent of penetration of the building into the 45 degree angular plane projected over the lot from an elevation of 10 m above the average elevation of the ground at a distance of 7.5 m from a lot in a residential or park district will not exceed that which is illustrated in Attachment Nos. 1 and 2 of this decision.**

**IT WAS THE DECISION OF THE COMMITTEE OF ADJUSTMENT THAT:**

**The Minor Variance Application is Refused**

It is the decision of the Committee of Adjustment to **NOT** approve this variance application for the following reasons:

**The general intent and purpose of the Official Plan is not maintained:**

The applicant did not demonstrate adequately that:

- impacts on the neighbourhood were minor in relation to Official Plan Section 2.2, Policy 1(i) which states "*protect neighbourhoods, green spaces, and natural heritage features and functions from nearby development.*";
- the proposed development mitigated the transitioning of scale from the mixed use area to the adjacent neighbourhood area with appropriate setbacks or stepping down of heights, as intended by Section 4.5 Mixed Use Areas policy 2.(c) which provides that the development criteria for mixed use development "locate and mass new buildings to provide transition between areas of different development intensity and scale, as necessary to achieve the **objectives of this Plan**, through means such as appropriate setbacks and/or a stepping down of heights, **particularly** towards lower scale *Neighbourhoods.*"; and
- there is sufficient transportation/traffic capacity and that the "economic health of nearby shopping districts are not adversely affected by this **large scale retail store**" which Official Plan, Section 4.5, Policy 3 permits only by way of zoning by-law amendment in mixed-use areas located outside of the Central Waterfront and Downtown.

**The general intent and purpose of the Zoning By-law is not maintained.**

- Cumulatively, the requested variances to the by-law represent over development with development and zoning complexities that would be more appropriately addressed through a Zoning By-law Amendment.

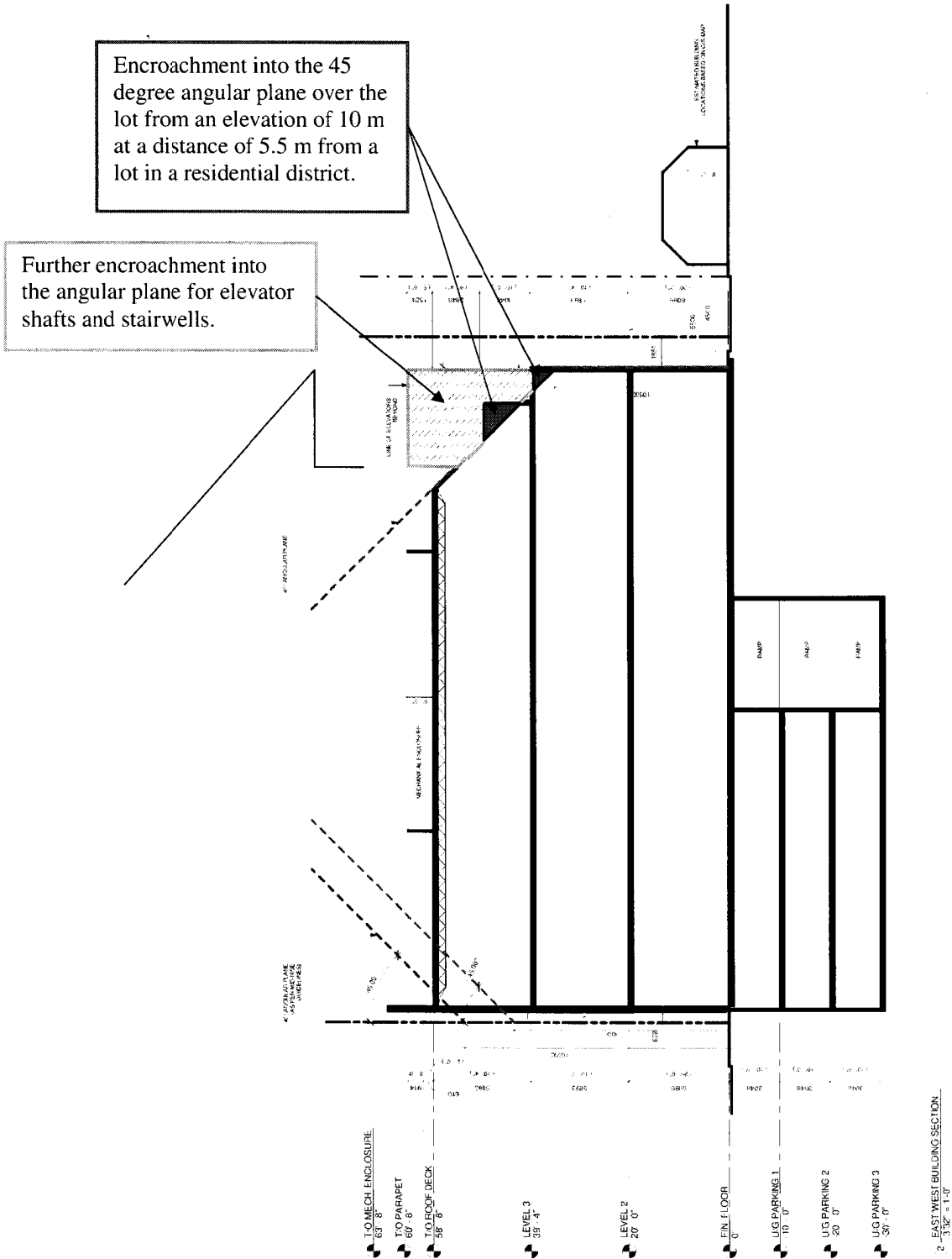
**The variance(s) is not considered desirable for the appropriate development of the land.**

- The massing transition and the built form relationship of the proposed development with the adjacent Residential Neighbourhood designated areas are not desirable or appropriate; and
- The size and purpose of the proposed development was inconsistent with the predominately small scale commercial uses of the community.

**The variance requests are not minor:**

- The impact of the development extends well beyond the immediate neighbourhood defined by the 60 m notification radius prescribed by the *Planning Act*; and
- The general provisions of the as-of-right zoning were generous for the site, and despite this, the proposal sought to exceed the provisions resulting in a scale of development that did not maintain the intent of the by-law.

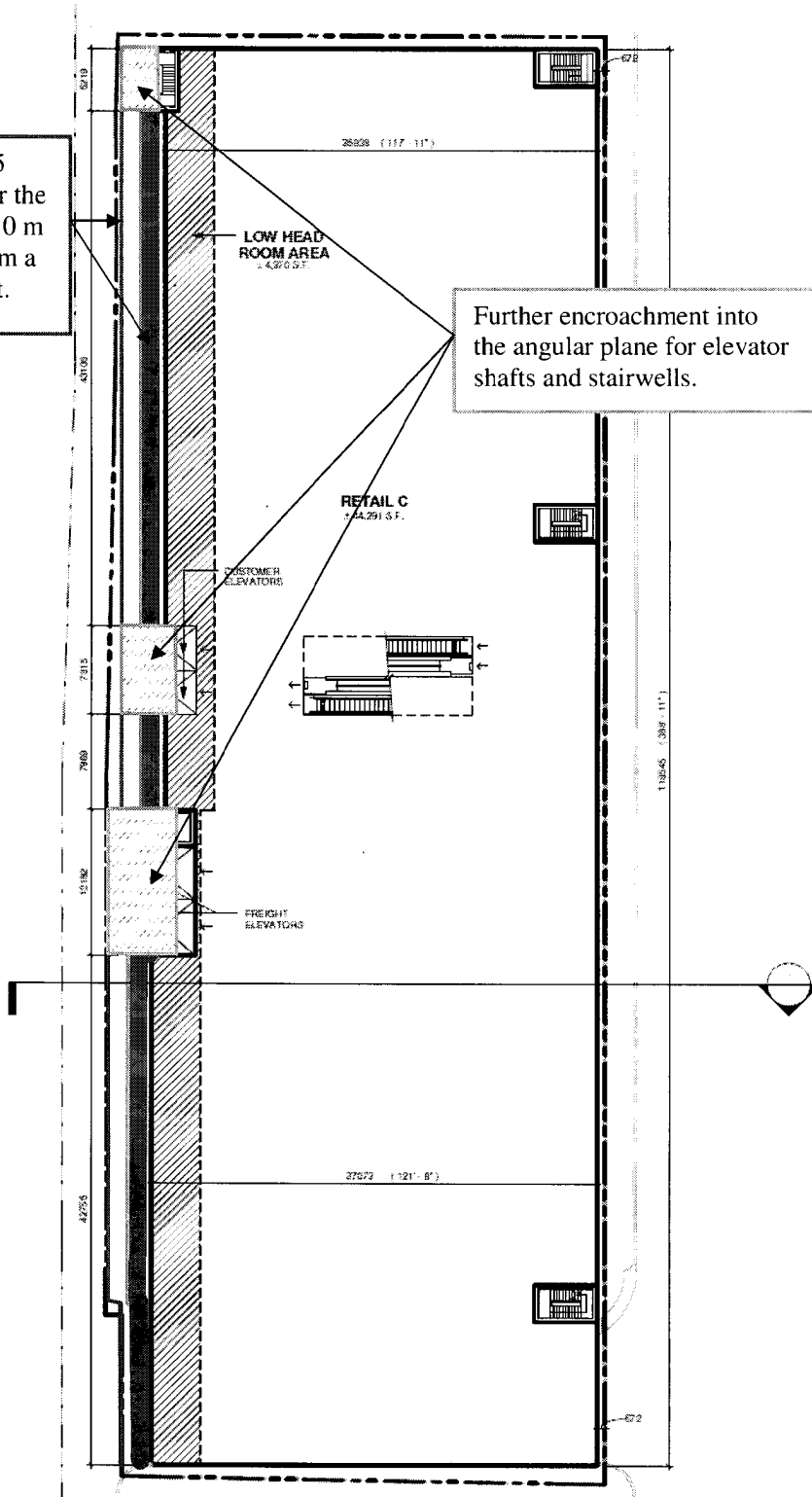
Attachment No. 1: Building Section (dated May 7, 2012)



Attachment No. 2: Roof Plan (dated May 7, 2012)

Encroachment into the 45 degree angular plane over the lot from an elevation of 10 m at a distance of 5.5 m from a lot in a residential district.

Further encroachment into the angular plane for elevator shafts and stairwells.



**SIGNATURE PAGE**

|                    |                                      |            |                          |
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Gillian Burton (signed)

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David Pond (signed)

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Yim Chan (signed)

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John Tassiopoulos (signed)

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Heather Gardiner (signed)

DATE DECISION MAILED ON: **Tuesday, June 5, 2012**

LAST DATE OF APPEAL TO THE ONTARIO MUNICIPAL BOARD: **Tuesday, June 19, 2012**

CERTIFIED TRUE COPY

To appeal this decision to the Ontario Municipal Board, send a completed OMB Appellant Form (A1) to the Manager & Deputy Secretary-Treasurer, Committee of Adjustment. You must pay a filing fee of \$125.00, by certified cheque or money order, in Canadian funds, payable to the Minister of Finance. An additional reduced fee of \$25.00 is required for each connected appeal filed by the same appellant. To obtain a copy of Appellant Form (A1) and other information about the appeal process please visit the Ontario Municipal Board web site at [www.omb.gov.on.ca](http://www.omb.gov.on.ca).