



STAFF REPORT ACTION REQUIRED

24 Mercer Street - Zoning Amendment Application - Request for Direction Report

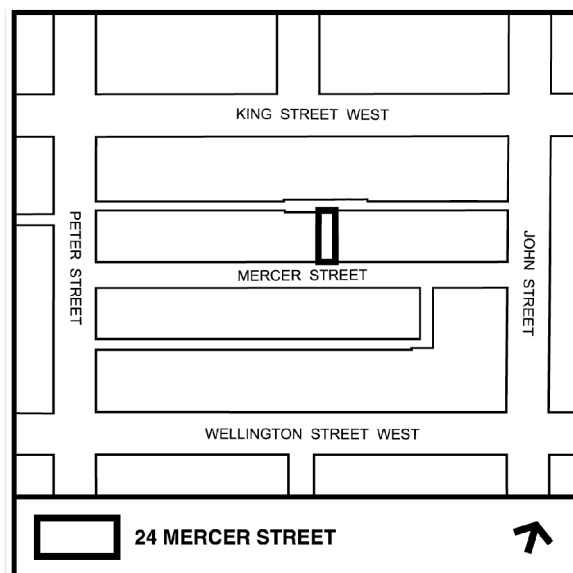
Date:	August 8, 2012
To:	Toronto and East York Community Council
From:	Director, Community Planning, Toronto and East York District
Wards:	Ward 20 – Trinity-Spadina
Reference Number:	11 261965 STE 20 OZ

SUMMARY

This application has been appealed by the Applicant to the Ontario Municipal Board. It proposes to amend the former City of Toronto Zoning By-law 438-86 to permit the construction of a new 21-storey residential building. The façade of the listed heritage building on the site is proposed to be retained. The building would include 27 units and 4 levels of below-grade accessory use. No vehicular parking is proposed. Twenty-seven bicycle parking spaces are proposed on the ground floor.

The proposal represents over-development of the property contrary to the planning framework for King-Spadina. The small size of the property makes it an inappropriate location for a tall building. The proposed development would overwhelm the façade of the existing two and a half storey listed heritage building on the site which is proposed to be retained. Its approval would set a negative precedent for future development that undermines the vision for this area of the City.

The purpose of this report is to seek City Council's direction for the City Solicitor, together with Planning and other appropriate City staff, to attend any Ontario Municipal Board hearing of the appeal in opposition to such proposal at the OMB.



The application in its current form is not supportable. Of considerable concern to staff is the appropriateness of the massing of the proposed tall building built with no setback to the adjacent lot lines. Also of concern is the loss of a significant portion of the heritage building with minimal retention of the built form and no sense of the existing building's scale, form and mass. The absence of any vehicular parking is also an outstanding issue.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council authorize the City Solicitor, together with City Planning staff and any other appropriate staff, to oppose the applicant's appeal respecting the Zoning By-law Amendment application for 24 Mercer Street (File 11 261965 STE 20 OZ), and attend any Ontario Municipal Board hearings in opposition to such appeal, and retain such experts as the City Solicitor may determine are needed in support of the position recommended in the report (August 8, 2012) from the Director, Community Planning, Toronto and East York District.
2. City Council authorize the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor, to secure services, facilities or matters pursuant to Section 37 of the *Planning Act*, as may be required by the Chief Planner, should the proposal be approved in some form by the Ontario Municipal Board.
3. City Council authorize the City Solicitor and other City staff to take any necessary steps to implement the foregoing.

Financial Impact

There are no financial implications resulting from the adoption of this report.

DECISION HISTORY

Planning History for King-Spadina

In 1996, Council of the former City of Toronto approved Part II Official Plan and Zoning By-law amendments for King-Spadina and King-Parliament (the Kings) that introduced a planning framework aimed at encouraging rejuvenation of these historic districts that were instrumental in shaping the City. The Part II Plan for King-Spadina was included as a Secondary Plan in the new City of Toronto Official Plan adopted by Council in 2002. Along with the objectives and policies of the Official Plan, the Secondary Plan seeks to encourage investment in King-Spadina for a broad range of uses in a manner that reinforces its historic built form, pattern of streets, lanes and parks. These objectives were implemented through the Reinvestment Area (RA) zoning, urban design guidelines and a community improvement plan.

There has been significant investment through new construction and conversions of existing buildings in King-Spadina since the approval of the planning framework in 1996. Along with this investment, a number of issues have arisen related to land use, community services and facilities, quality of life, built form and the public realm.

In 2006 Council enacted amendments to the King-Spadina Secondary Plan and the Zoning By-law and adopted new urban design guidelines for the area. Also in 2006, Council adopted design criteria for the review of tall building proposals that implement the built form policies of the Official Plan and these apply throughout the City including King-Spadina. A study of the built form in the East Precinct of King-Spadina, within which the subject site is situated, that addressed area specific issues related to height, massing and built form context was considered by Council in 2009. A community improvement plan has also been approved for King-Spadina. In addition the Entertainment District Business Improvement Association's Master Plan, that includes portions of King-Spadina, provides the BIA's recommended directions for King-Spadina.

Together these initiatives provide a framework for development in King-Spadina. They encompass the vision for King-Spadina as an area where growth is encouraged, while ensuring that its place as an historic district, essential to the development of the City, is maintained and reflected in its buildings and along its streets well into the future.

King Spadina Secondary Plan 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 (Official Plan Amendment No. 2/By-law 921-2006 and Zoning By-law Amendment 922-2006).

The amendments are currently under appeal to the Ontario Municipal Board by some area owners and developers. A series of pre-hearing conferences have resulted in many appeals being withdrawn or settled. The pre-hearing has been deferred with the consent of all parties. As of August 8, 2012, this deferral remains unchanged. The By-laws were not appealed by the owner of 24 Mercer Street.

King Spadina East Precinct Built Form Study

In April 2008, Council directed staff to undertake a study of the built form in the East Precinct of the King-Spadina Secondary Plan Area, in response to the large number of applications that continued to challenge the planning framework of the East Precinct area. This study recognizes areas within the East Precinct, identified as Second Tier height areas, that can accommodate more height than currently permitted as-of-right. Achieving additional height is subject to meeting criteria for development as set out in the King-Spadina Secondary Plan, the 2006 King-Spadina Urban Design Guidelines and the City's Tall Building Guidelines, and subject to providing an appropriate contribution pursuant to Section 37 of the *Planning Act*. Any proposal seeking a Second Tier height beyond the current zoning permission of 30 metres plus 5 metres for a mechanical penthouse will be required to undergo a rezoning process. This framework was endorsed by City Council at its meeting of September 30, October 1, 2009.

The subject site is within a Second Tier height area. It is anticipated by the study that heights up to 115 metres could be considered as appropriate from approximately mid block to John Street (which includes the subject site) while heights of approximately 90 metres would be appropriate from mid-block to Blue Jays Way. The study stated that additional heights beyond the permitted

as-of-right heights could only be permitted where, among other criteria, buildings are adequately spaced, that sunlight and sky views are preserved and podiums should relate to the heritage scale and character within the area.

Pre-Application Discussion

A pre-application consultation meeting was held with the applicant on June 8, 2011 to discuss the proposed development. The applicant was told by City staff that a proposal as presented for a tall building on a very small site with no tower setbacks to adjacent properties, no provision for parking and the substantial demolition of a listed heritage building present a concern to staff.

ISSUE BACKGROUND

Discussions with the Applicant

The application was submitted on August 26, 2011. On December 2, 2011, City Planning staff met with the applicant and owner and outlined their concerns regarding the absence of any meaningful setback from the proposed tower to the adjacent properties to the east and west and the impacts on the listed heritage building which currently occupies the site. Staff stated that given the absence of an opportunity to provide tower setbacks on the property (as the entire property is only 8.026 metres wide) staff would accept appropriate limiting distance agreements with the adjacent property owners which would remove the opportunity for towers to be built on these adjacent properties with unacceptably small (or no) separation between towers. The applicant discussed their plans to negotiate a limiting distance agreement with the adjacent property owner to the east and ongoing discussions with the owners to the west to reach a similar arrangement. The provisions of parking for the site on adjacent properties which may have surplus parking was also discussed.

A Preliminary Report on the proposal was presented at the January 12, 2012 TEYCC meeting. The Preliminary Report stated that the project could not be supported in its current form.

On August 9, 2012 the applicant provided a limiting distance agreement with the adjacent property owners to the east (the site of the future 33-storey tower at 60 John Street and 12 and 18 Mercer Street). This agreement will be reviewed by City legal staff. On August 13, 2012 the applicant submitted revised plans for a 21-storey building which acknowledged the required 0.87 metre laneway conveyance on the north side of the property. The applicant has also indicated that they will be providing a parking study and agreements with nearby landowners regarding the provisions of off-site parking for residents of the proposed development. Staff have confirmed with the applicant that this parking must be surplus to the Zoning By-law requirements of these donor sites and secured through a long-term lease.

Proposal

The applicant proposes the development of a 21-storey residential building (77.8 metres in height, excluding mechanicals). The proposed tower covers virtually the entire lot, with no setbacks to the east or west lot line to the top of the 7th storey and only a 0.2 metre (8 inch) setback above the 7th floor to the top of the mechanical penthouse. The south façade of the first two storeys of the two and a half storey heritage building currently located on the site is proposed to be retained in place with no additional depth or step back or return on the side

elevations. The proposed building would be built to the front lot line above the third floor, cantilevering over the retained heritage building which is set back approximately 2.5 metres from the front lot line.

The building would include 27 units and 4 levels of below-grade accessory use (predominantly storage). The units on the second and third floors are proposed to be live-work units. No vehicular parking is proposed. Twenty-seven bicycle parking spaces are proposed on the first floor below grade. Garbage collection is to be provided by curbside pickup on Mercer Street. The total gross floor area proposed is 4,257 square metres. The proposed development would have a floor space index of approximately 21.9.

The proposal includes a 43 square metre common rooftop garden as outdoor amenity space and a 46 square metre billiards room as indoor amenity space. The indoor and outdoor amenity space requirements as per Zoning By-law 438-86 is 2 square metres per unit, or 54 square metres.

Further details are provided in Attachment 6 - Site Plan, Attachment 7 and 8 - Elevations, and Attachment 12 - Application Data Sheet.

Site and Surrounding Area

The site is located on the north side of Mercer Street and comprise a 8.036 metre (26 foot 4 inch) wide lot located between the future site of the approved development at 60 John Street and 12 and 18 Mercer Street (a 33-storey tower and a 5- storey podium) and the 10-storey Hotel Le Germain. The site is 24.5 metres (80 feet) deep and has an area of 193.5 square metres. The site backs onto a public laneway which also serves the restaurants on the south side of King Street West.

The property at 24 Mercer Street is occupied by a two and a half storey building which is listed on the City of Toronto Inventory of Heritage Properties. On November 29, 2011 City Council stated its Intention to Designate this property under Part IV of the *Ontario Heritage Act*. The owner of 24 Mercer Street has appealed the Intention to Designate to the Conservation Review Board. A heritage impact assessment has been completed by the applicant and submitted in support of the proposed development. The building on the site was designed by Toronto Architect John Tully and constructed in 1857. The building is described in the submitted Heritage Impact Assessment as an 'Adams Style' terrace house, which was originally a two storey structure. The third storey attic space was added later. The interior of the building has been substantially altered.

The site is surrounded by the following uses:

North: The northern edge of the site is defined by a public laneway. The laneway is sub-standard and would require a 0.87 metres widening as part of the proposed development. Backing on to the north side of the laneway are a row of two to three-storey commercial buildings fronting on King Street West. Most of these structures date from the 19th century and most of these are listed on the City's Inventory of Heritage Properties. On November 29, 2011, City Council adopted a motion to declare its intention to designate several of these structures under Part IV of the *Ontario Heritage Act*. The properties at 323-333 King Street West (two of which are currently listed and identified as properties

to be designated under Part IV of the *Ontario Heritage Act* as per Council's November 29th decision) are the subject of an application for a mixed-use development comprising a three to four-storey base building and a 47-storey tower. On the north side of King Street West are the 20-storey Hyatt Regency Hotel and the 42-storey Festival Tower and Bell Lightbox (TIFF).

South: The southern edge of the site is defined by Mercer Street which has a right-of-way of 12.2 metres. On the opposite side of Mercer Street are a series of two-to four storey commercial buildings and a commercial parking lot at 15-35 Mercer Street. This property is subject to a zoning amendment application to permit a mixed-use development consisting of a six-storey base building and a 49-storey residential tower. All of the buildings on the site are designated under Part IV of the *Ontario Heritage Act* (By-law No. 347-92). To the west of this site on the south side of Mercer Street toward Blue Jays Way is a two-storey building currently occupied by the Second City Comedy Club at 51 Mercer Street. Further west at 99 Blue Jays Way at the south-east corner of Blue Jays Way and Mercer Street is a three-storey building currently occupied by Wayne Gretzky's Restaurant. The site of these two buildings has been approved for a 40-storey mixed-use building with a 6 and 8-storey podium (By-law 1129-2010). To the east of 15-35 Mercer Street is a 20-storey residential apartment building at 50 John Street.

West: Immediately to the east of the subject site is the 10-storey Hotel Le Germain. To the west of the Hotel Le Germain is the property at 355 King Street West and 119 Blue Jays Way, which is occupied by the six-storey Canadian Westinghouse Building and a commercial parking lot. The site has been approved for 42 and 47-storey mixed-use building with a 7-storey podium (By-law No. 1041-2010). The proposed 42-storey tower would be located at the corner of Blue Jays Way and Mercer Street.

East: To the east of the subject site at 60 John Street and 12-18 Mercer Street is a four-storey commercial building and a one-storey sales centre. This property has been approved as the site of a 33-storey mixed-use building with a five-storey podium (the Mercer) through By-law No. 1238-2009. The proposed tower on the site would be located approximately 37 metres from the eastern property line of the subject site. To the east of John Street is Metro Hall, a 27-storey office tower fronting on John Street and two related 15-storey office towers at 225 King Street West and 200 Wellington Street West.

Planning Act, Provincial Policy Statement and Provincial Plans

Section 2 of the *Planning Act* sets forth matters of Provincial interest which municipal Councils shall have regard to in making decisions under the *Act*. These include 2(d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest; 2(h) the orderly development of safe and healthy communities; 2(l) the protection of the financial and economic well-being of the Province and its municipalities; and 2(p) the appropriate location of growth and development.

The Provincial Policy Statement 2005 (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. Its objectives include: building strong communities; wise use and management of resources, including cultural heritage resources, over the long term;

and carefully managing land use to accommodate appropriate development to meet the full range of current and future needs, while achieving efficient development patterns. Section 3(5) of the *Planning Act* requires City Council's planning decisions to be consistent with the PPS.

The *Planning Act*, PPS and the City's Official Plan are inter-connected. One of the stated purposes of the *Planning Act* in Section 1.1(f), is to recognize the decision-making authority of municipal councils in planning. Section 1.1.3.3 of the PPS provides that planning authorities shall identify and promote opportunities for intensification and redevelopment where this can be accommodated taking into account existing building stock or areas, including brownfields sites, and the availability of existing or planned infrastructure and public facilities required to accommodate projected need.

Section 4.5 of the PPS provides that the official plan is the most important vehicle for implementation of the PPS. In addition, the PPS provides that comprehensive, integrated and long term planning is best achieved through municipal official plans, that official plans are to identify provincial interests and set out appropriate land use designations and policies, and that official plans shall provide clear, reasonable and attainable policies to protect provincial interests and direct development to suitable areas. The PPS provides minimum standards and states that it does not prevent planning authorities and decision makers from going beyond the minimum standards established in specific policies, unless doing so would conflict with any policy in the PPS. Planning authorities are to keep their Official Plans up to date with the PPS in order to protect Provincial interests.

The City's Official Plan is up to date, having been approved at the OMB in 2006, and, along with guiding development in the City, it implements the PPS in order to protect Provincial interests. The King-Spadina Secondary Plan is one of 27 secondary plans to the Official Plan. As described earlier in this report, the King-Spadina Secondary Plan area was reviewed in its entirety in 2006, with amendments (By-laws 921-2006 (OPA 2), and accompanying Zoning By-law amendment 922-2006) adopted by Council and under appeal.

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.

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 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. Section 3.1.2 Built Form provides policies that are aimed at ensuring that new development fits within and supports its surrounding context. Policies 3.1.2.1 to 3.1.2.4 seek to ensure that development is located, organized and massed to fit harmoniously with existing and/or planned context; frames and appropriately defines streets, parks and open spaces at good proportion; and limits impacts of servicing and vehicular access on the property and neighbouring properties. Meeting these objectives requires creating consistent setbacks from the street, massing new buildings to frame adjacent streets and open spaces in a way that respects the existing and/or planned street proportion, creating appropriate transitions in scale to neighbouring existing and/or planned buildings, and limiting shadow and wind impacts on streets, properties and open spaces and minimizing shadowing and wind impacts on parks.

Section 3.1.3 contains specific policies on tall buildings and built form principles to be applied to the location and design of tall buildings. The background text in Section 3.1.3, which provides context for the policies, is clear in stating that tall buildings do not belong everywhere. Tall buildings are generally limited to areas in which they are permitted by a Secondary Plan, an area specific policy, a comprehensive zoning by-law, or site specific zoning. Tall buildings will only be permitted in other areas on the basis of appropriate planning justification consistent with the policies of the Official Plan.

Policy 3.1.3.1 indicates that where a tall building is appropriate, it should have a base at an appropriate scale for the street and that integrates with adjacent buildings, a middle with a floor plate size and shape with appropriate dimensions for the site, and a top that contributes to the skyline character. Policy 3.1.3.2 requires new tall development to address key urban design considerations, including:

- meeting the built form principles of the Official Plan;
- demonstrating how the proposed building and site design will contribute to and reinforce the overall City structure;
- demonstrating how the proposed building and site design relate to the existing and/or planned context;
- taking into account the relationship of the site to topography and other tall buildings;
- providing high quality, comfortable and usable publicly accessible open space areas; and
- meeting other objectives of the Official Plan.

Section 3.1.5 deals with the City's heritage resources. Policy 3.1.5.1 seeks to conserve significant heritage resources through listing or designating properties, and designating areas with a concentration of heritage resources as Heritage Conservation Districts and adopting conservation and design guidelines to maintain and improve their character. Policy 3.1.5.2 requires that development adjacent to listed or designated heritage buildings respect the scale, character and form of the heritage buildings and landscapes.

The site is designated as a *Regeneration Area*, the boundaries of which correspond with the boundaries of the King-Spadina Secondary Plan Area. The *Regeneration Area* designation

permits a wide range of uses, including the proposed residential and commercial uses. Section 4.7.2 of the Official Plan provides development criteria in Regeneration Areas, which is to be guided by a Secondary Plan. The Secondary Plan will provide guidance through urban design guidelines related to each *Regeneration Area*'s unique character, greening, community improvement and community services strategies, and a heritage strategy identifying important resources, conserving them and ensuring new buildings are compatible with adjacent heritage resources, and environmental and transportation strategies. See Attachment 10 - Official Plan Schedule.

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 3.6 – General Built Form Principles specify that:

- buildings are to be located along the front property line to define edges along streets; lower levels are to provide public uses accessed from the street;
- encourage servicing and parking to be accessed from lanes rather than streets and minimize pedestrian/vehicular conflicts;
- site new buildings for adequate light, view and privacy; compatibility with the built form context;
- new buildings 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;
- provide appropriate proportional relationships to streets and open spaces; and minimize wind and shadow impacts on streets and open spaces;
- provide coordinated streetscape and open space improvements; and
- provide high quality open spaces.

Heritage policies in Section 4 acknowledge that heritage buildings are essential elements of the physical character of King Spadina. Policy 4.3 requires that new buildings achieve a compatible relationship to the heritage buildings within their context through consideration of matters including height, massing, scale, setback, stepbacks, roof line and profile, and architectural character and expression.

King-Spadina Secondary Plan Review

OPA No. 2 (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 Secondary Plan. Where tall buildings are contemplated by this policy, proposals must demonstrate that they do not export facing distance constraints onto adjacent sites and that they do not preclude other appropriate tall buildings in the area.

King-Spadina Urban Design Guidelines (2006)

The King-Spadina Urban Design Guidelines (2006) support the implementation of the King-Spadina Secondary Plan as amended through OPA No. 2 discussed above. The Guidelines were adopted by Council on September 27, 2006.

Tall buildings, where appropriate, must meet the policies of the Official Plan and should maintain the intent of the Urban Design Guidelines, achieve adequate light, privacy and views, and maintain the potential for adjacent sites to develop in a similar manner. New development should reinforce a street wall height that reflects the character and scale of the area, particularly that of heritage buildings on the same block face.

Section 5.4.3 deals with angular planes and setbacks to minimize shadows and ensure adequate sunlight, and strengthen the existing streetwall scale to maintain a comfortable pedestrian experience. Section 5.4.4 addresses light, view and privacy requirements.

The Guidelines point out that accommodations in tall building tend to be small, so access to natural light and reasonable views will particularly important in improving the livability of these units. Protecting privacy is also important in a high density neighbourhood. Light, view and privacy are described as "quality of life" issues, which must be evaluated based on the existing and potential development.

With regard to separation distances (facing distances) between towers, the 2006 Guidelines refer to the standard of 25 metres between towers or a distance of 12.5 metres between the tower and the property line, as called for in the City's Design Criteria for the Review of Tall Buildings Proposals.

Design Criteria for the Review of Tall Building Proposals

The City's 'Design Criteria for the Review of Tall Building Proposals' provide guidelines for the design and evaluation of tall buildings in the City. Aimed to implement the built form policies of the City's Official Plan, they include measurable criteria and qualitative indicators to assist in the review of tall building proposals. Criteria and indicators are related to four main areas; site context, site organization, building massing and the pedestrian realm.

In considering site context, tall building proposals must address concerns related to transitions between taller buildings and lower scale features nearby. Measures such as height limits, setbacks, setbacks and angular planes are used to achieve appropriate transitions in scale and the protection of sunlight and sky views.

New tall buildings are expected to enhance the public realm by providing active frontages, and high quality streetscape and landscape design elements. To reduce negative impacts of taller buildings elements, a minimum setback of 5 metres for the tower from the street edge of the base building is required. Other considerations include weather protection, limiting shadowing impacts and uncomfortable wind condition on nearby streets, properties and open spaces, as well as minimizing additional shadowing on neighbouring parks to preserve their utility.

King-Spadina East Precinct Built Form Study

In April 2008, Council directed staff to undertake a study of the built form in the East Precinct of the King-Spadina Secondary Plan Area, in response to the large number of applications that continued to challenge the planning framework of the East Precinct area.

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.

Under the study, the subject site is within a Second Tier height area. It is anticipated by the study that heights up to 115 metres could be considered as appropriate from approximately mid block to John Street (which includes the subject site) while heights of approximately 90 metres would be appropriate from mid-block to Blue Jays Way. The study stated that additional heights beyond the permitted as-of-right heights could only be permitted where, among other criteria, buildings are adequately spaced, that sunlight and sky views are preserved and podiums should relate to the heritage scale and character within the area.

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, three of which 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. The subject site is in the 'King Street Precinct' which is described as, "Defined by the animated and active King Street West corridor comprised of contemporary and pockets of historically significant buildings".

Zoning

The site is zoned Reinvestment Area (RA) by Zoning By-law 438-86, as amended (see Attachment 9 - Zoning Map, By-law No. 438-86). As part of the RA zoning controls, density standards were replaced by built form objectives expressed through height limits and setbacks.

The Zoning By-law permits a maximum building height of 30 metres for this site. An additional 5 metres is permitted for rooftop mechanical elements. The By-law also requires a 3.0 metre setback above 20 metres on all street frontages.

Site Plan Control

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

Reasons for Application

The Zoning By-law Amendment application proposes a building that exceeds the permitted maximum building height of 30 metres by approximately 48 metres, resulting in a proposed building height of approximately 77.8 metres, excluding the mechanical penthouse. A number of other variances were required for the proposal, including the requirement for no parking to be provided on-site and the requirement for a 3.0 metre setback.

Ontario Municipal Board Appeal

On June 15, 2012 the City Clerk's office received notification the applicant had filed an appeal of the Zoning By-law Amendment application to the Ontario Municipal Board, citing Council's failure to make a decision on the application within the prescribed timelines of the *Planning Act*. No date has yet been set for a hearing, however, the Board planner has requested that dates be provided for a possible pre-hearing conference in October.

Designation under the Ontario Heritage Act

The property was listed on the City of Toronto's Inventory of Heritage Properties in 1983, and on November 29, 2011 City Council stated its Intention to Designate this property under Part IV of the *Ontario Heritage Act*.

The property is worthy of designation under Part IV, Section 29 of the Ontario Heritage Act for its cultural heritage value and meets the criteria for municipal designation prescribed by the Province of Ontario under the three categories of design, associative and contextual values. The Alexander Johnston House (1858) is significant as a rare surviving example of an urban town house in downtown Toronto that was designed by notable Toronto architect John Tully. In the early 20th century, it was adaptively reused for manufacturing purposes.

The owner of 24 Mercer Street has appealed the Intention to Designate to the Conservation Review Board. No hearing has been scheduled, however, the Board planner recently contacted City Legal staff in order to do so.

Community Consultation

The proposal was presented at a community meeting hosted by the local Councillor on September 12, 2011. The Community Consultation meeting was held on May 1, 2012. The applicants' presentation at these meetings focused on the unique interior spaces which would be created by the project and its lower height in comparison to other tall buildings approved in the neighbourhood. Although no significant objections to the project were raised at these meetings, it should be noted that the nearby residential developments which could be impacted by the proposed tower have not yet been constructed.

Agency Circulation

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

COMMENTS

Planning Act, Provincial Policy Statement and Provincial Plans

Planning Act

The proposed development does not have adequate regard to matters of Provincial interest as required by Section 2 of the *Planning Act*.

Section 2(d) refers to the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest. Policies pertaining to items of Provincial interest are contained within the Provincial Policy Statement and the Growth Plan for the Greater Golden Horseshoe.

Provincial Policy Statement

The proposal is not consistent with the PPS. Section 2 contains policies related to the conservation of heritage resources.

Section 2.6 of the PPS contains policies related to cultural heritage and archaeology. Policy 2.6.1 states that "Significant built heritage resources and significant cultural heritage landscapes shall be conserved." Properties included on the City's Inventory of Heritage Properties are considered to be "significant" in this context. The heritage building on the site has been listed since 1983. In the PPS 2005, *conserved* means "the identification, protection, use and/or management of cultural heritage and archaeological resources in such a way that their heritage values, attributes and integrity are retained. This may be addressed through a conservation plan or heritage impact assessment". The definition for *built heritage resource* includes both designated and listed buildings. *Significant* resources are those that are valued for the important contribution they make to our understanding of the history of a place, an event, or a people.

The proposed development would result in the significant alteration of the heritage building on the property and the cantilever and insufficient setbacks proposed do not retain the heritage value, attributes and integrity of the building.

Land Use

The proposed residential uses is consistent with the land use provisions of the Official Plan, Secondary Plan and Zoning By-law.

Height and Massing

Height

The proposed building height of approximately 78 metres (excluding mechanicals) with a total height of 83.6 metres including mechanical elements exceeds the permitted height of 30 m plus 5 m for mechanical, by approximately 49 metres. Notwithstanding that the height of the proposed building is well below that approved for several other towers in the area, the site is too small to accommodate a tower. Official Plan Policy 3.1.3.2 requires new tall development to address key urban design considerations, including demonstrating how the proposed building and site design

relate to the existing and/or planned context. The tall building proposed for this site would undermine the planning and policy framework that seeks to protect the East Precinct's development as an emerging tower neighbourhood. Its approval could set a precedent for similar built form on similar sites with similar locational and contextual attributes, which can be found throughout the general area. This could encourage the erosion of the built form of the King-Spadina area which the Official Plan seeks to protect by permitting an incompatible tall building that could then encourage similar over-intensification on other sites where tall development would be inappropriate.

Massing

The subject site is approximately 8.0 metres (26 feet 4 inches) wide, approximately 24.5 metres (80 feet) deep and has an area of 193.5 square metres (2,083 square feet). It is similar or smaller than many detached housing lots in many parts of the City. The small size of the lot creates a challenge for achieving the proposed density of 21.9 times the lot area. The proposed tower, which covers virtually the entire lot with no setbacks to the east or west lot line to the top of the 7th storey and only a 0.2 metre (8 inch) setback above the 7th floor to the top of the mechanical penthouse. The proposed tower has no step back from Mercer Street and cantilevers over the façade of the existing heritage building on the site. The proposal represents an inappropriate response to the constraints of the site.

The distance between the applicants proposed tower and the 33-storey tower approved to the east of the site at 60 John Street and 12-18 Mercer Street (The Mercer) is 39 metres, or approximately 37.5 metres to the face of the western facing balconies. The applicant has submitted a limiting distance agreement with the owner of this property. This agreement is currently under review by City legal staff. A properly drafted limiting distance agreement and the existing site-specific zoning of The Mercer will prevent a tower being erected too close to the applicants proposed tower. The limiting distance agreement may (subject to review by Toronto Building staff) permit windows on the east elevation of the proposed tower, (see Attachment 8 - East and West Elevations).

The applicant has not provided a limiting distance agreement with the owners of the property to the west, the 10-storey Hotel le Germain. The approval of a tower at 24 Mercer Street with no meaningful setback to the Hotel le Germain property and no limiting distance agreement in place to ensure future development will provide for acceptable tower separation distances, may result in towers with little or no separation. A minimum separation distance of 25 metres is recommended in the City's Design Criteria for the Review of Tall Buildings Proposals. As that study indicated, there are several consequences to constructing buildings too close together, "...resulting wind conditions, distortion and sense of pedestrian scale, lack of access to sunlight and blockage of sky views creates an uncomfortable pedestrian environment".

With regard to the broader impact of placing towers on properties which are too small to provide sufficient tower setbacks (or in this case any meaningful setbacks), the 2006 King-Spadina Urban Design Guidelines noted that in a high density neighbourhood such as the East Precinct of King-Spadina, access to natural light and reasonable views are particularly important for quality of life. This is particularly true given the small size of many of the units proposed in King-Spadina.

The King-Spadina Urban Design Guidelines and the tall building guidelines mentioned above contain provisions related to the importance of protecting privacy in a high density neighbourhood. Light, view and privacy are described as "quality of life" issues, which must be evaluated based on the existing and potential development.

This approach of over-developing one site at the expense of others raises important area-wide and City-wide planning issues. If this proposal were approved and the approach replicated on similarly small sites, there could be significant impacts on the City's urban structure and streetscapes, including protecting the character and quality of the public realm, and on the pedestrian experience, particularly if tower forms create additional wind impacts. This approach can compromise the redevelopment potential of adjacent landowners, and raises issues related to preventing unnecessary demolition of buildings in a low scale context to free up a site for one tall building. This approach has the potential to threaten the stability of areas whose built form attributes the planning policies seek to conserve.

Sun, Shadow, Wind

Shadow studies submitted by the applicant showed a slim shadow that did not impact any public parks. The major potential shadow impact associated with the development is the precedent created by the approval of a tall building on a site which is too small to comfortably accommodate it.

A wind study is required by the City as part of a development application that seeks to develop a building higher than 6-storeys or 20 metres in height. The application included a pedestrian level wind study which makes assumptions regarding wind impacts without conducting any actually wind tunnel testing. The study concluded that the location of the building on a narrow street and the incorporation of wind mitigating design elements (which are not described in the report) will eliminate the negative impacts of wind at the pedestrian level. The report notes that the wind washing down the sides of the proposed tower would be mitigated to some extent by the adjacent buildings.

As is outlined in the Design Criteria for Review of Tall Buildings Proposals (June 2006) there is the opportunity to reduce the impact of wind created by a tower building (referred to as "downwashing flow") by providing a larger step back between the face of the tower and the podium. In this case, the adjacent properties are expected to act as the podium for the building and perform this function. The proposal provides no step back to the south side of the building on Mercer Street, providing no protection for pedestrians from wind conditions and limited opportunity for mitigating measures such as awnings to be considered at the site plan stage. Again, the major potential for wind impacts associated with the proposed tower is the precedent created by the approval of a tall building on a site too small to accommodate it.

Heritage

The cultural heritage value of the Alexander Johnston House (1858) lie in its significant as a rare surviving example of an urban town house in downtown Toronto. The building was designed as a residence by notable Toronto architect John Tully. In the early 20th century, it was adaptively reused for manufacturing purposes. The property is worthy of designation under Part IV, Section 29 of the *Ontario Heritage Act* for its cultural heritage value and meets the criteria for municipal

designation prescribed by the Province of Ontario under the three categories of design, associative and contextual values.

The proposal will see the retention of the first two storeys of the south façade in its current location (set back approximately 2.5 metres from the front property line). What is proposed to be retained is insufficient. Heritage Preservation Services staff would typically require a substantial step back to allow the three-dimensional qualities of the original building to be retained. Instead of a step back the tower is proposed to cantilever over the heritage façade above the second storey. This will visually overshadow the retained portion of the heritage façade (see Attachment 8 – East and West Elevation).

One of the fundamental goals of the Official Plan and Secondary Plan for this area is to reinforce and maintain the special heritage character of *Regeneration Areas* in general, and the King-Spadina area in particular. The PPS policy 2.6.1 and Official Plan policies 3.1.5.1 and 3.5.1.2 require significant heritage resources to be conserved.

Applicable preservation standards and guidelines that address the treatment of historic properties, as adopted by Toronto City Council, provide that where a building's exterior form has been identified as a character-defining element, interventions should have minimal impact. The exterior form of a building is not limited to its facade but includes elements such as scale, massing, surroundings, spatial relationships with adjacent buildings and views.

Attachment 5 illustrates the location of heritage buildings surrounding the site and within the larger King Spadina East Precinct area.

Traffic Impact, Access, Parking, Servicing

The Parking, Traffic and Loading Study provided with the submission failed to provide sufficient rationale to justify the lack of any on-site parking for the project. Transportation Services staff have determined that the required parking supply is 21 spaces. The applicant has recently indicated that they will be providing a parking survey to justify the provision of off-site parking through agreements with nearby owners. Transportation Services staff have advised the applicant that off-site parking must be surplus to the requirements of the Zoning By-law for the donor site and secured through a long-term lease.

City staff have required that garbage pick-up for the project be from the Mercer Street frontage. This arrangement would reduce the impact of the development on the rear laneway, which also serves the nearby restaurants on King Street West to the north and provides servicing and vehicular access for nearby approved developments.

The applicant is required to provide a 0.87 metre laneway widening. The required laneway widening was not shown on earlier versions of the plan but the revised plans submitted by the applicant on August 13, 2012 do show the laneway widening and eliminate encroachments noted in earlier submissions.

The applicant is required to submit a revised Functional Servicing Report and Stormwater Management Report to address deficiencies in their submitted studies and to confirm that the City's watermain, sanitary and storm sewers can support the development.

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 1020-2010.

The application proposes 27 residential units on a total site area of 193.5 square metres. At the alternative rate of 0.4 hectares per 300 units specified in By-law 1020-2010, the parkland dedication would have been 0.036 hectares or 186% of the site area. However, for sites that are less than 1 hectare in size, a cap of 10% is applied to the residential use. In total, the parkland dedication requirement is 19 sq. m.

The applicant proposed to satisfy the parkland dedication requirement through cash-in-lieu. This is appropriate as an on-site parkland dedication requirement of 19 sq. m. would not be of a useable size. The actual amount of cash-in-lieu to be paid will be determined at the time of issuance of the building permit, should the development proceed in some form.

Toronto Green Standard

The application was submitted in August of 2011 and is subject to the new mandatory Green Development Standard. The applicant has indicated that the building would comply with the mandatory Green Standards.

Section 37

Section 37 benefits were not discussed in the absence of an agreement on acceptable height and massing. The proposed development is below the City's threshold of 10,000 square metres of gross floor area. However, as the proposal would result in a significant increase in permitted height and the substantial alteration of an identified heritage resource, it is recommended that staff be authorized to negotiate an appropriate package of Section 37 benefits, in consultation with the Ward Councillor, should this proposal be approved in some form by the Ontario Municipal Board. Staff would request that the Ontario Municipal Board withhold its order until Section 37 benefits has been agreed to and appropriately incorporated into a Zoning by-law amendment, and a Section 37 agreement has been entered into between the applicant and the City and registered to the City Solicitor's satisfaction, should the OMB approve the proposed development in some form.

Development Charges

It is estimated that the development charges for this project would be approximately \$218,344. This is an estimate. The actual charge is typically assessed and collected upon issuance of a building permit.

CONCLUSION

The proposal represents an inappropriate development for reasons including:

- The proposal represents over-development of the site. The lack of setbacks of the proposed tower from its lot lines, the lack of parking and the lack of appropriate conservation of the listed heritage building on the site, overwhelm the retained façade and do not comprise good planning;
- The proposal does not conform with nor maintain the intent of Official Plan policies, including policies related to heritage, built form, or tall buildings;
- The proposal could set a negative precedent which could encourage demolition or significant changes to heritage buildings on small sites within King-Spadina where more comprehensive development plans on larger site provided greater opportunities for appropriate treatment of heritage resources;
- The proposal does not provide appropriate separation from adjacent sites and does not preserve or enhance the setting of heritage buildings, as required by the Tall Buildings Guidelines. The approval of this proposal could compromise the application of the Tall Buildings Guidelines to other sites; and
- The proposal provides insufficient setback from the side lot lines, which can compromise quality of life for future residents, and the development rights of adjacent landowners.

The proposed height and massing would overwhelm the portion of the heritage building proposed to be retained on the site and could provide a negative precedent for other sites which are too small to accommodate towers. Such developments would undermine the planning framework for King-Spadina and the objective of ensuring that towers are appropriately spaced to provide for adequate sunlight, sky views and privacy and to reduce shadowing and wind on the public realm. The proposal is inappropriate and unsupportable, is not in the public interest and does not represent good planning.

CONTACT

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E-mail: dnichol2@toronto.ca

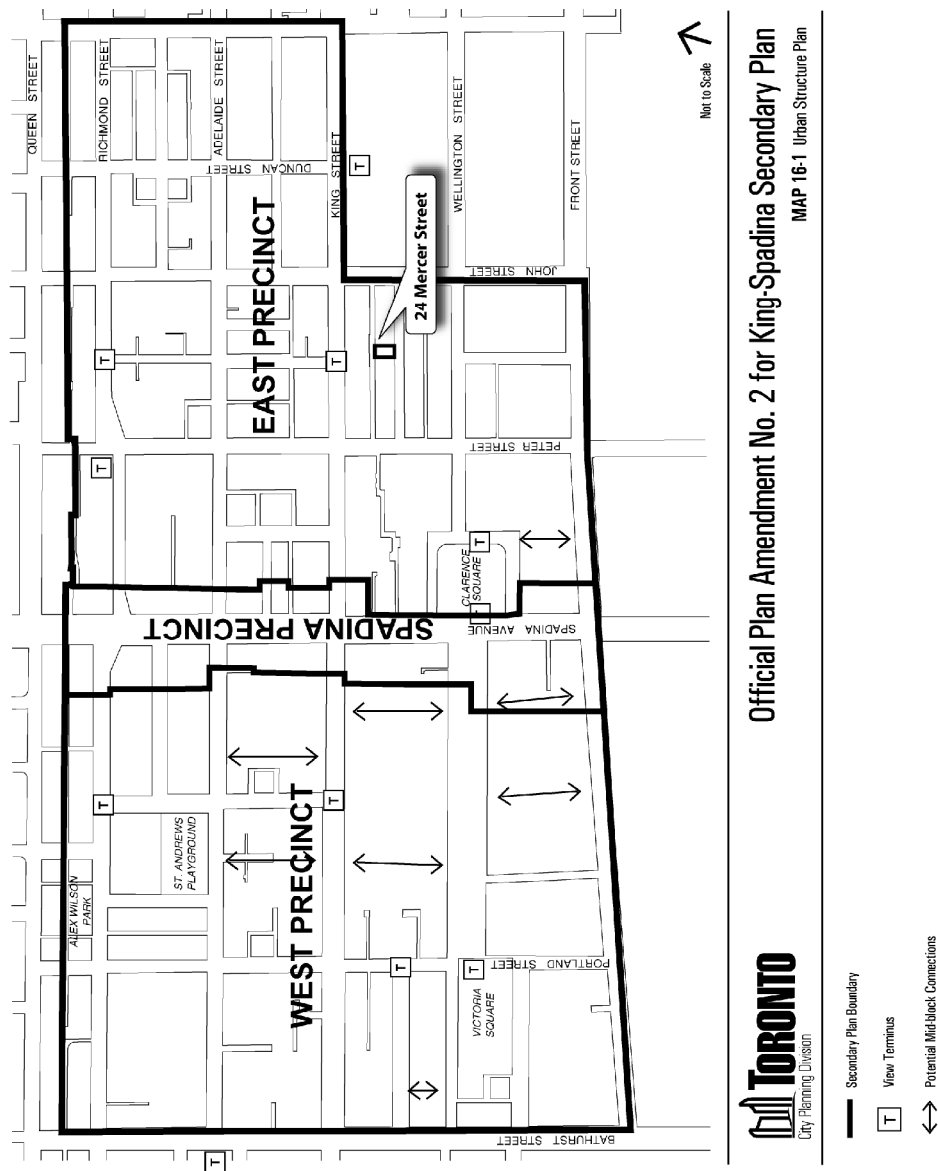
SIGNATURE

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

ATTACHMENTS

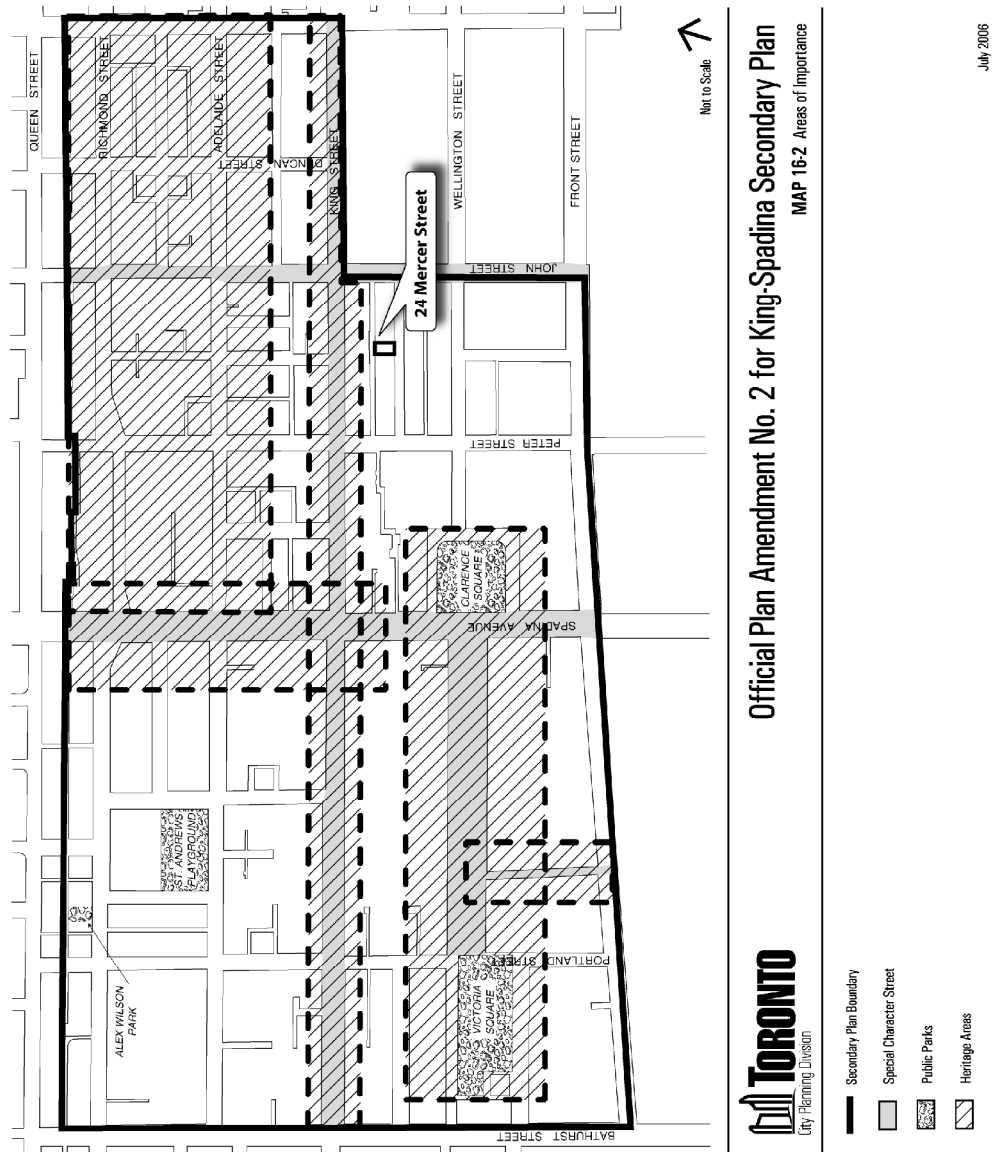
- Attachment 1: King-Spadina Secondary Plan Review – Urban Structure Plan
- Attachment 2: King-Spadina Secondary Plan Review – Areas of Importance
- Attachment 3: King-Spadina East Precinct Character Areas
- Attachment 4: King-Spadina East Precinct Height Areas
- Attachment 5: King-Spadina Heritage Built Form
- Attachment 6: Site Plan
- Attachment 7: North and South Elevations
- Attachment 8: East and West Elevations
- Attachment 9: Zoning
- Attachment 10: Official Plan
- Attachment 11: King-Spadina Secondary Plan
- Attachment 12: Application Data Sheet

Attachment 1: King-Spadina Secondary Plan Review – Urban Structure Plan

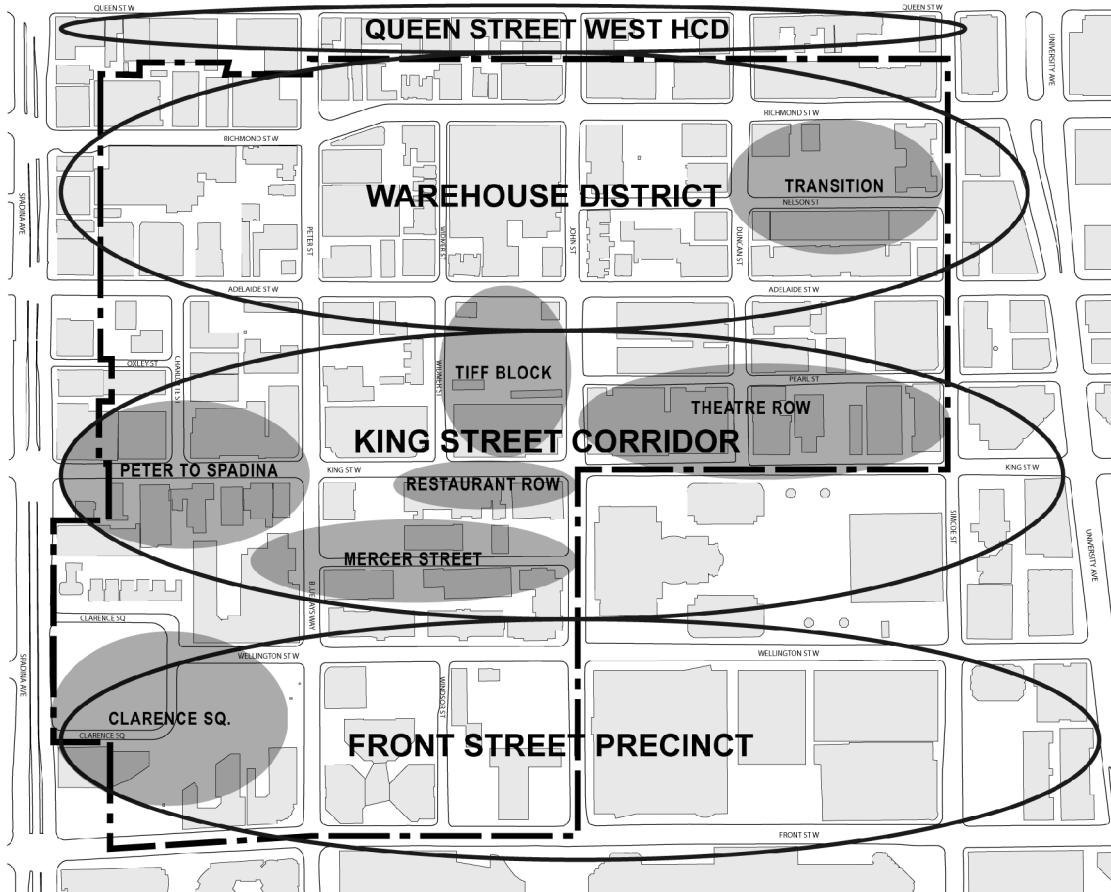


July 2008

Attachment 2: King-Spadina Secondary Plan Review – Areas of Importance



Attachment 3: King-Spadina East Precinct Character Areas



Character Areas



Sub-Character Areas



East Precinct Boundary

Character Areas

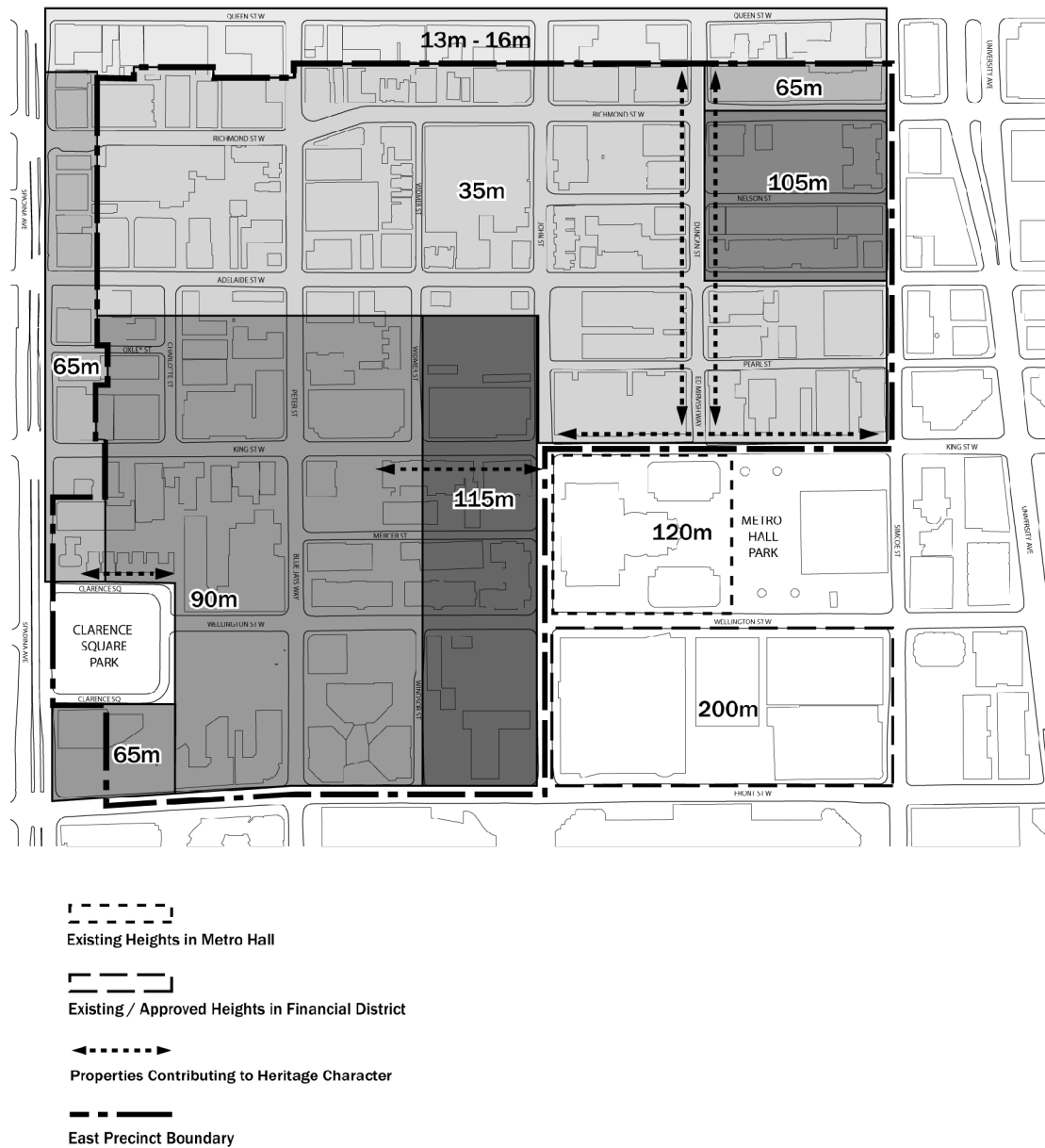
24 Mercer Street

Not to Scale
08/09/2012



File # 11 261965 02

Attachment 4: King-Spadina East Precinct Height Areas



Height Area

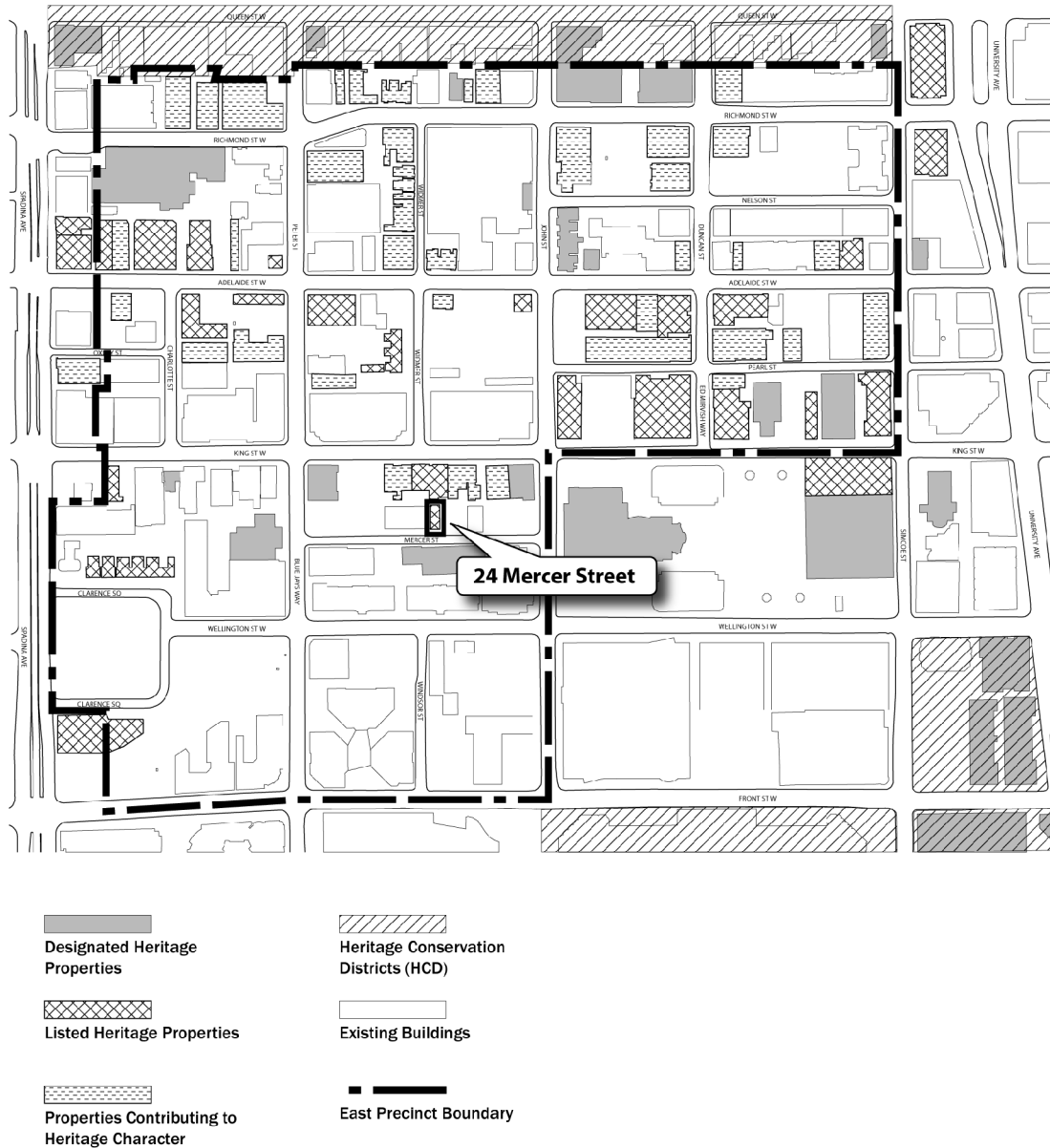
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Not to Scale
08/09/2012



File # 11 261965 02

Attachment 5: King-Spadina Heritage Built Form



Heritage Context

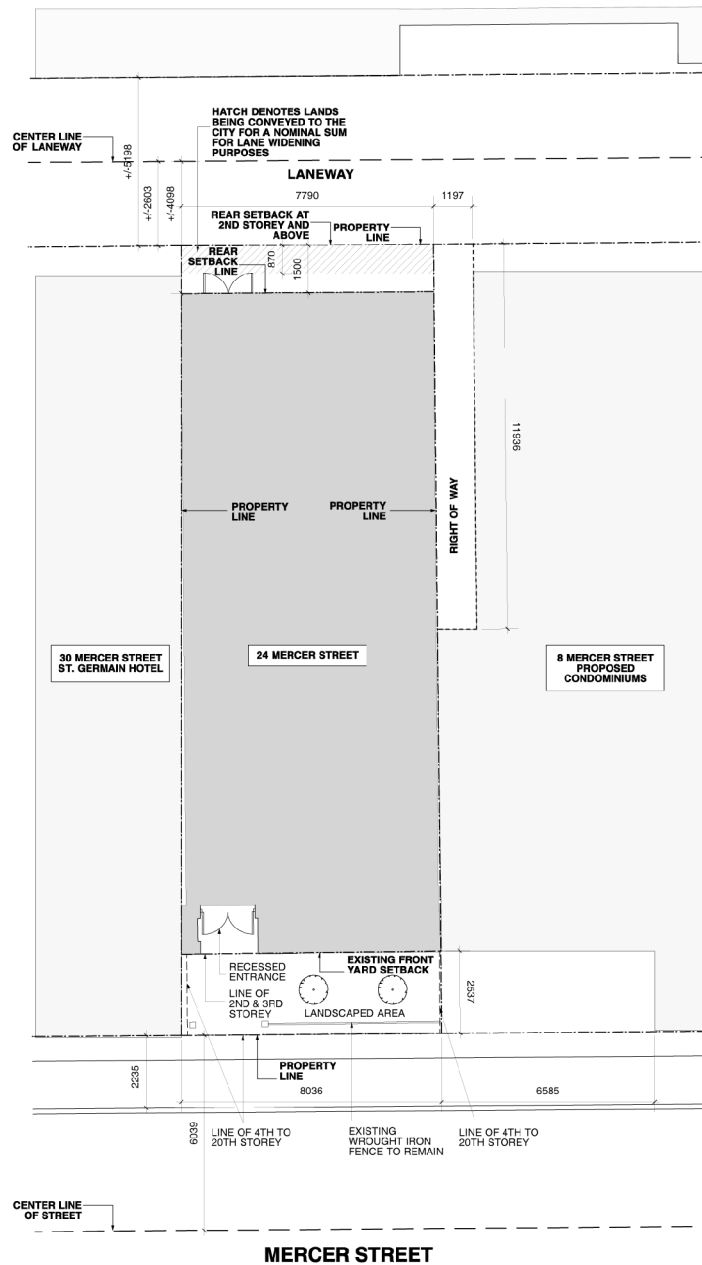
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File # 11 261965 02

Attachment 6: Site Plan



Site Plan

24 Mercer Street

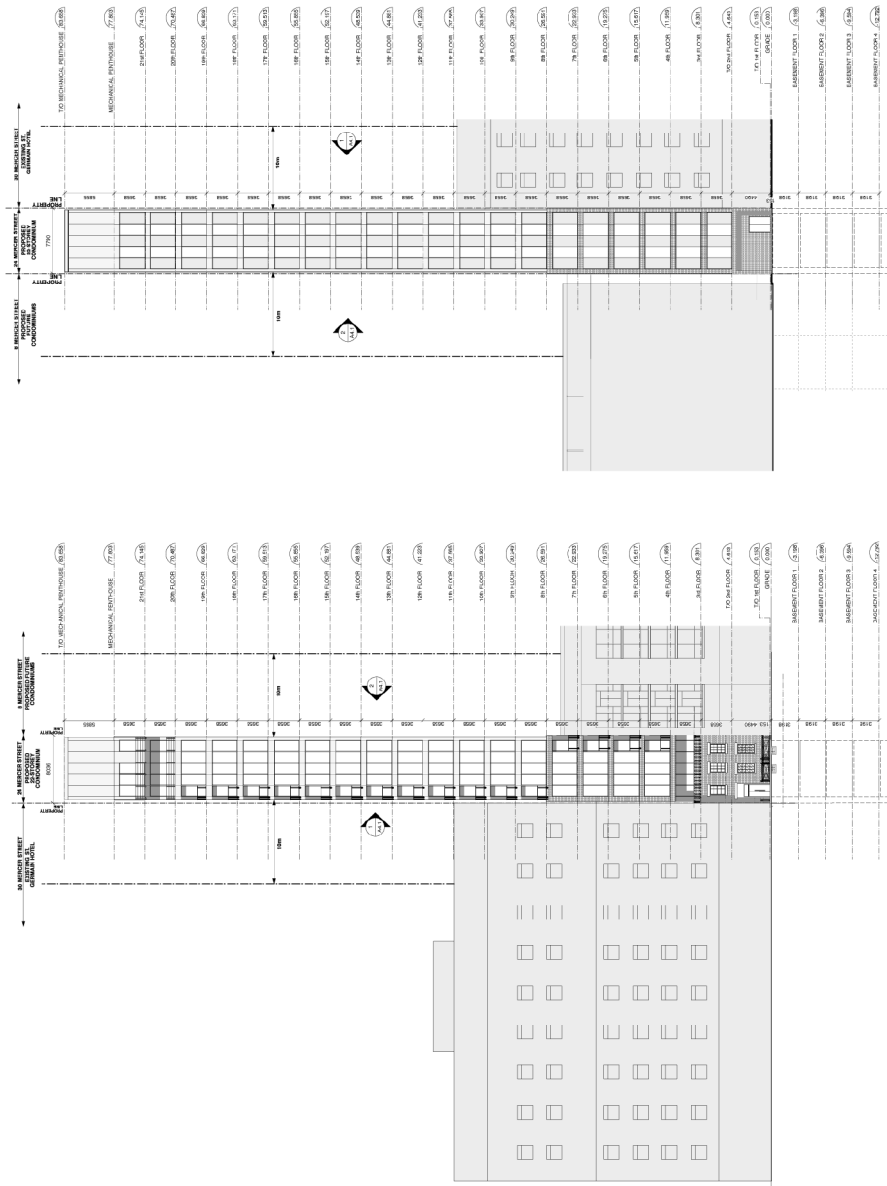
Applicant's Submitted Drawing

Not to Scale
08/09/2012



File # 11 261965 02

Attachment 7: North and South Elevations



Front Elevation (South) at Mercer St.

Rear Elevation (North) at Laneway

Elevations

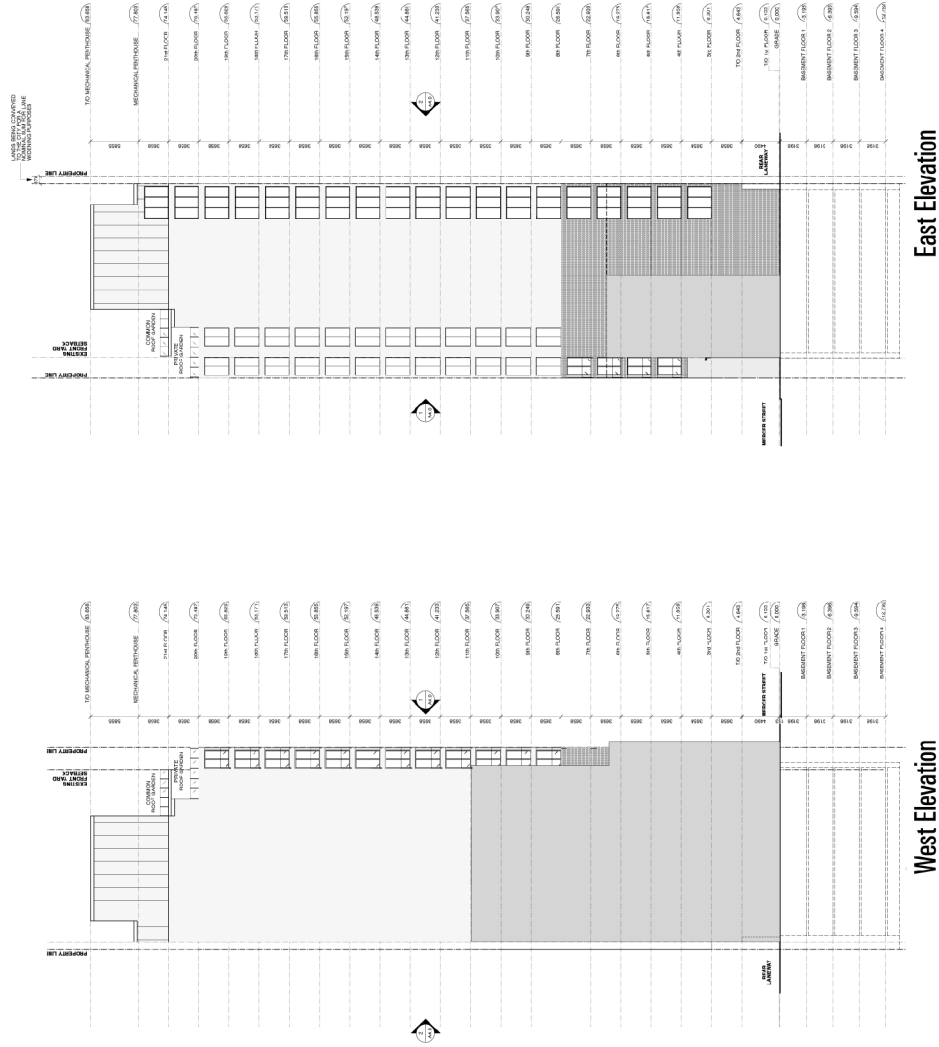
24 Mercer Street

Applicant's Submitted Drawing

Not to Scale
08/09/2012

File # 11 261965 02

Attachment 8: East and West Elevations

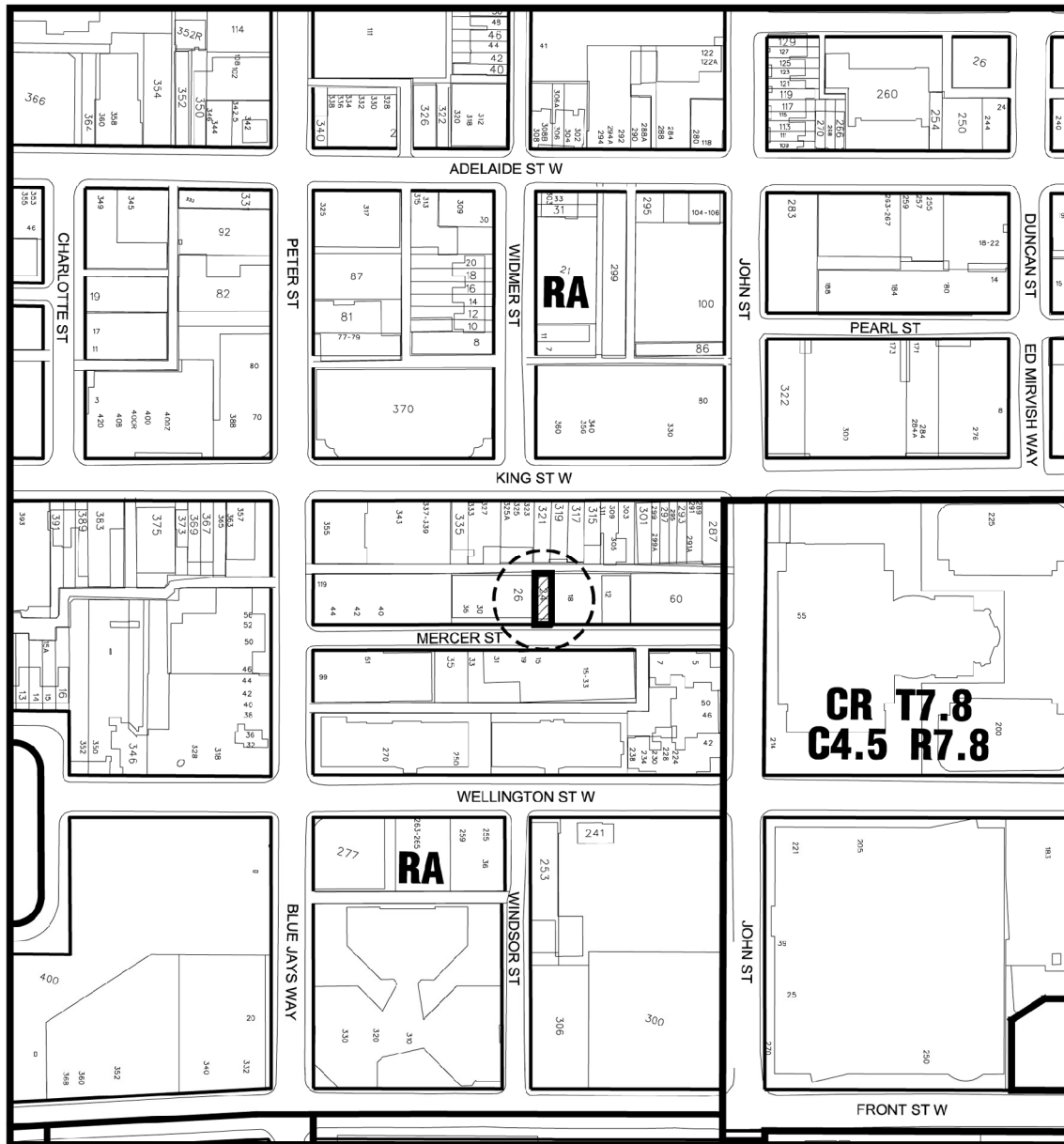


24 Mercer Street

File # 11 261965 02

Elevations
Applicant's Submitted Drawing
Not to Scale
08/09/2012

Attachment 9: Zoning



Toronto City Planning
Zoning

24 Mercer Street

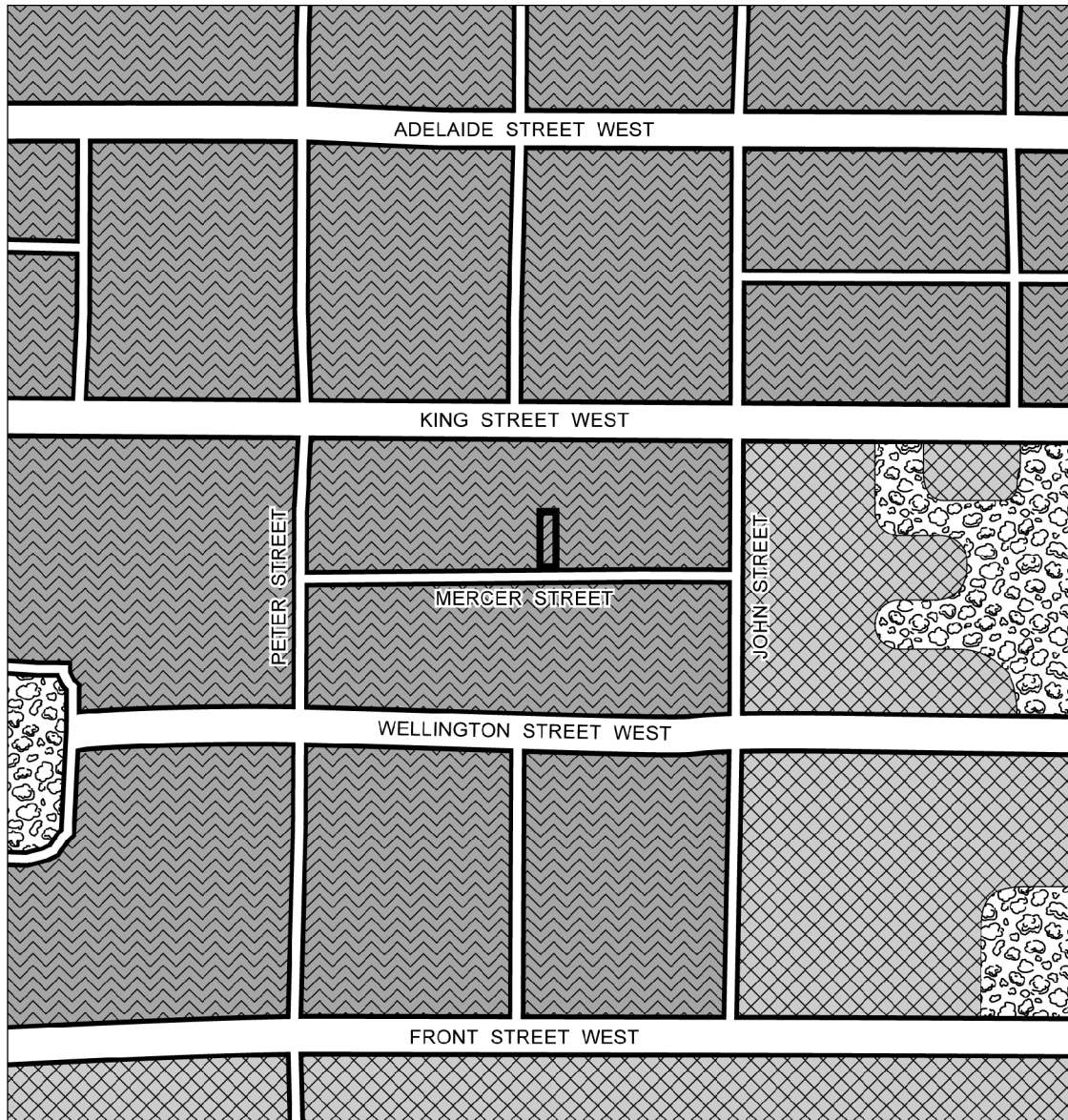
File # 11 261965 0Z

RA Mixed-Use District
CR Mixed-Use District



Not to Scale
Zoning By-law 438-86 (as amended)
Extracted 11/25/2011

Attachment 10: Official Plan



Toronto City Planning
Official Plan

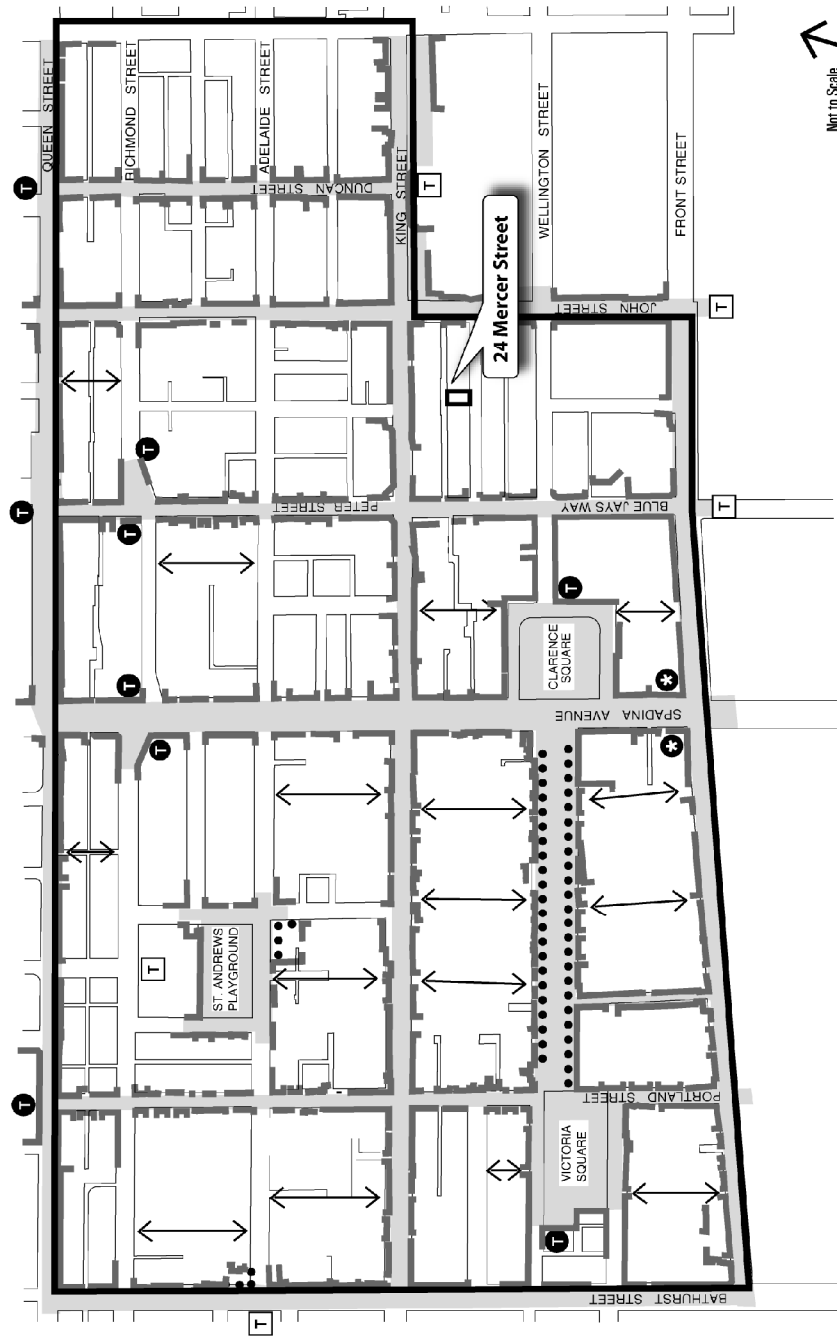
24 Mercer Street

File # 11 261965 0Z



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Not to Scale
11/25/2011

Attachment 11: King-Spadina Secondary Plan



King-Spadina Secondary Plan MAP 16-1 Urban Structure Plan

- Secondary Plan Boundary
- Potential Gateway
- Potential View Terminus
- Existing View Terminus
- Existing and Potential Building Edge
- Potential Mid-block Connections
- Significant Street & Open Space
- Landscape Edge

June 2006

Attachment 12: Application Data Sheet

Application Type	Rezoning	Application Number:	11 261965 STE 20 OZ
Details	Rezoning, Standard	Application Date:	August 23, 2011
Municipal Address:	24 MERCER ST		
Location Description:	PLAN 57 LOT 14 **GRID S2015		
Project Description:	Proposal to demolish an existing listed heritage building at 24 Mercer Street (facade to be retained) and construct a new 21-storey residential building. The building would include 27 units and 4 levels of below-grade accessory use. No vehicular parking is proposed. 27 Bicycle parking spaces are proposed on the ground floor. Servicing is to provided from the rear lane.		
Applicant:	Agent:	Architect:	Owner:
Scott Morris Architects			2071430 Ontario Inc.

PLANNING CONTROLS

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

PROJECT INFORMATION

Site Area (sq. m):	193.5	Height: Storeys:	21	
Frontage (m):	8.036	Metres:	73.99	
Depth (m):	24.453			
Total Ground Floor Area (sq. m):	157.6			Total
Total Residential GFA (sq. m):	4,257.0	Parking Spaces:	0	
Total Non-Residential GFA (sq. m):	0	Loading Docks	0	
Total GFA (sq. m):	4,237.8			
Lot Coverage Ratio (%):	81.4			
Floor Space Index:	21.9			

DWELLING UNITS

FLOOR AREA BREAKDOWN (upon project completion)

Tenure Type:	Condo		Above Grade	Below Grade
Rooms:	0	Residential GFA (sq. m):	4,257.0	0
Bachelor:	0	Retail GFA (sq. m):	0	0
1 Bedroom:	8	Office GFA (sq. m):	0	0
2 Bedroom:	8	Industrial GFA (sq. m):	0	0
3 + Bedroom:	11	Institutional/Other GFA (sq. m):	0	0
Total Units:	27			

CONTACT: PLANNER NAME: Dan Nicholson, Senior Planner
TELEPHONE: (416) 397-4077