ISSUE DATE:

August 27, 2013

PL130416

Ontario

Ontario Municipal Board

Commission des affaires municipales de l'Ontario

Mizen Holdings Corporation has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 7625 of the city of Toronto to rezone lands respecting 2522-2542 Keele Street from "Local Shopping Centre (C2)" to "Residential Multiple Dwelling Zone 6-RM6(xxx)" to permit the development of an eight-storey mixed-use building
OMB File No. PL130416

IN THE MATTER OF subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

Subject:	Site Plan
Referred by:	Mizen Holdings Corporation
Property Address/Description:	2522-2542 Keele Street
Municipality:	City of Toronto
OMB Case No.:	PL130416
OMB File No.:	PL130416

APPEARANCES:

Parties	**Counsel**
Mizen Holdings Corporation	Ira Kagan
Alexandra De Gasparis	
City of Toronto	Frank Di Giorgio

DECISION DELIVERED BY R. ROSSI AND ORDER OF THE BOARD

[1] Mizen Holdings Corporation ("Applicant") has appealed to the Ontario Municipal Board ("Board") the decision of the City of Toronto ("City") not to approve its proposed Zoning By-law Amendment and Site Plan application, despite a staff planning recommendation to support the development with conditions. The proposal contemplates amending Zoning By-law No. 7625 in order to permit the development of an eight-storey mixed-use building comprised of 128 condominium dwelling units together with 1,195 square metres of ground floor commercial/retail space.

[2] Neither the City, which did not appear, nor any other entity was granted party status. However, Mr. Frank DiGiorgio, Toronto City Councillor for the ward in which the subject property is located, appeared to express concerns with the municipal processes related to the Applicant's application to the City. Without status, the Board nevertheless listened to Mr. DiGiorgio's request that the hearing be adjourned so that the applications could be referred back to Community Council, which was bypassed due to short timeframes, in order for the public to provide input into the applications. The Applicant's counsel, Mr. Ira Kagan, responded persuasively that the adjournment should not be granted. Mr. Kagan furnished the Board with an uncontested chronology of events related to the Applicant's filing of, work on and revisions to the original application. The evidence was persuasive to the Board that at all times the Applicant had proceeded with its applications appropriately and in fulfilment of both the municipal and the present Board processes. After careful deliberation, the Board dismissed the Councillor's request to adjourn the hearing on the grounds that his concerns stemmed almost exclusively from his criticism of the City's internal management of the applications and not from any deficiency in the Board's process or the Applicant's actions. The hearing proceeded and Mr. DiGiorgio was granted interested participant status as were two other residents.

[3] The only two planning witnesses spoke in support of the appeals: the Applicant's planner, James Okawa and City planner, Philip Carvalino, who appeared under summons. Both witnesses were qualified to provide their professional land use planning evidence and expert opinions in this case and their evidence was unshaken in all respects. Both planners testified that they had worked closely along with other municipal representatives in the development and shaping of the final iteration of the planning instrument and site plan presented to the Board. Mr. Carvalino was especially helpful to the Board by outlining the internal chronology of work and actions of City planning staff on the applications – all provided in response to Mr. DiGiorgio's allegations that the file was mishandled at the City and that planning staff did not have exclusive authorship of the planning report. Mr. Carvalino confirmed he was the sole author of the report (see Exhibit 1, Tab 6B).

[4] Mr. Okawa provided contextual information about the area; he reviewed the design elements of the site plan as presented; he examined the contents of the proposed Zoning By-law Amendment for the Board; and he (and Mr. Carvalino)

addressed specific concerns that residents had raised regarding issues of site access, privacy and shadows.

[5] The subject property is located at the northwest corner of the intersection of Keele Street and Maple Leaf Drive. There is a single-storey commercial plaza operating on the site. To the north are three and four-storey apartment buildings, single family houses to the west and south with a 12-storey apartment building farther south and situated in a valley.

[6] Despite the Applicant's ongoing request for full-turn access in and out of the site from Keele Street, and despite some interested participants' support of such full movement, City Transportation Services staff will only permit right in/right out turning movements for the new development. There will be 41 surface parking spaces and 14 underground parking spaces on two levels. Bicycle parking stalls will be provided and the number exceeds the by-law performance standard for the area.

[7] Setbacks from the ground floor to the west property line are generous and are further enhanced by the Applicant's proposal to plan deciduous trees of some 16 feet in height along the site's three-metre landscape strip that separates the site with the handful of west-abutting residences, providing privacy. The building will be stepped back and balconies facing westward will have opaque glass installed to obscure views further (a response to comments from the City's Urban Design staff).

[8] The Board was furnished with a list of possible retail and commercial uses that are currently permitted under the zoning. The Applicant proposes to continue to offer such uses as well as adding the residential component. Exhibit 2 contains the proposed Zoning By-law Amendment, which recognizes the Mixed Use Areas designation. Mr. Okawa explained – and Mr. Carvalino added – that the proposal does not require an Official Plan Amendment and this fact was communicated to the Applicant during the municipal pre-submission process. As the July 9, 2013 planning staff report stated, staff were of the opinion that the proposed development is consistent with Official Plan policies, demonstrates an appropriate transition in building height and scale to the abutting *Neighbourhoods* area and is an appropriate built form for the site. The only planning evidence proffered at this hearing established persuasively through specific Official Plan policy references – and specifically, through the Mixed Use Areas policies

as referenced – that the proposed redevelopment and intensification of this site is appropriate, is compatible with abutting properties and it achieves the goals and objectives of the Official Plan.

[9] Appropriately, Mr. Okawa referenced the direction of the 2005 Provincial Policy Statement (Exhibit 1, Tab 8) through various excerpts to show how the application is consistent with this upper-tier planning instrument and specifically, how the application complies with the direction to build strong communities through intensification and by offering a range of housing types. He also opined that the proposal conforms to the policies of the Growth Plan (Exhibit 1, Tab 9) that directs growth to built up areas, to develop compact and vibrant communities and to reduce people's dependence on cars through mixed-use transit supportive development such as what the Applicant intends to build.

[10] It is relevant to note that City planning staff presented comprehensive reasons for supporting the development in principle and like Mr. Okawa, staff referenced numerous planning policies and provided supportive and favorable findings through analysis of these provincial and municipal planning documents. The Board determines that the planning merits of this development as envisaged are established.

[11] The Board reviewed the shadow studies (Exhibit 1, Tab 14) and the report's author, architect Alan Tregebov, testified as to the methodology employed. The Board was persuaded that the shadow impacts from the proposed building on the west-lying properties are marginal at best. The trees that the Applicant intends to plant along the three-metre buffer strip will create over time diffused lighting conditions that are not likely to diminish the enjoyment of the rear yards. Improvement of the verdant condition of this area must be seen as a benefit and not an impact. As one interested participant whose property abuts the site on the west side opined, he would like the currently-existing west-lying laneway to be sold to the Applicant (which the Applicant had in fact negotiated with the City before someone at the City stopped the transaction) so that the entire three-metre buffer could be planted with trees.

[12] Mr. DiGiorgio raised the matter of s. 37 of the *Planning Act,* which deals with the provision of facilities, services or other matters as set out in a by-law in exchange for a municipality's allowance of increased height and density of development otherwise

permitted in the by-law. Despite planning staff's report recommendation that any City solicitor attending the Board's hearing attempt to secure an agreement registered on title for such benefits, absolutely no reference to s. 37 benefits as a matter of approval or as a condition for approval was presented to the Board. Other than conditions from various municipal commenting agencies, which the Applicant intends to meet in exchange for the City's approval of the development through the Zoning By-law Amendment and site plan approval, no s. 37 request has been made and no solicitor appeared on behalf of the City at this hearing. The Board has no jurisdiction to impose such conditions other than those general (non-s. 37) conditions already agreed to by the Applicant. Accordingly, s.37 benefits will not be attached to the Board's allowance of these appeals.

[13] As stated, various municipal commenting agencies were afforded opportunities to review these applications. The proposed development was viewed favorably by them as long as various conditions were attached to the City's approval. The Applicant has agreed to Notice of Approval Conditions ("NOAC"). These conditions are being compiled into a comprehensive list of final conditions that will be presented to the Board within six weeks of the Applicant's submission to the City of its finalized drawings. Some minor tweaking of and revisions to the site plan drawings (such as the inclusion of requisite notations and dimensions – customary in cases of site plan approval – are required). Mr. Carvalino added that the Zoning By-law Amendment will require a further clarification to reflect permissions related to the outdoor display of goods (part of the C2 Local Shopping Centre zoning designation).

[14] The Board considered the wealth of documentary evidence that establishes the principles of good planning that this development embodies. The planning evidence from both planners was augmented by relevant analysis and expert opinions that were uncontradicted. In the Board's determination, the proposed development contributes to and does not destabilize the adjacent residential properties. As contemplated, its design ensures appropriate transitions of scale and use along Keele Street as well as with the neighbouring residential uses to the north, the south and the west.

The Board determines that the appeals are allowed. Zoning By-law No. 7625 is amended as per the Zoning By-law Amendment contained in Exhibit 2 (Attachment 1) and the Site Plan (Attachment 2) is approved. At the Applicant's request, the Board withholds its Order, directing that City staff furnish the Board with the final list of approved NOAC conditions within six weeks from the date of staff receiving from the Applicant the final Site Plan documents. The Board may be spoken to should an issue arise with the conditions once presented. Note that the Board will not entertain any condition that seeks a s. 37 benefit for the reasons stated. The Order will remain withheld until the City advises the Board that the Applicant's requested zoning instrument has been passed.

"R. Rossi"

R. ROSSI
MEMBER

ATTACHMENT 1

OMB File : PL130416 EXHIBT #_____

Zoning Bylaw Amendment to the former City of North York
Zoning Bylaw No. 7625

As enacted by the Ontario Municipal Board: ~, 20~

CITY OF TORONTO

BY-LAW No. ~2013

To amend the former City of North York Zoning By-law 7625, as amended, With respect to the lands municipally know as 2522-2542 Keele Street.

The Ontario Municipal Board HEREBY ENACTS as follows:

1. Schedules "B" and "C" of By-law 7625 of the former City of North York are hereby amended in accordance with Schedule "1" of this By-law.

2. Section 64.20-A of By-law No. 7625 of the former City of North York is amended by adding the following subsection:

64.20-A (xxx) RM6(xxx)

DEFINITIONS

a. For the purpose of this exception, "Established Grade" shall mean 171.58 metres above sea level.

b. For the purpose of this exception, "Floor Area, Gross" shall mean the aggregate area of each floor, measured between the exterior faces of the exterior walls of the building or structure as the level of each floor, but excluding:
   i. The floor area of unenclosed residential balconies and/or terraces;
   ii. Lobbies and vestibules;
   iii. Stairwells;
   iv Indoor and outdoor recreational amenity area;
   v All floor areas below established grade including storage, garbage/recycling rooms, bicycle storage rooms, vehicular parking spaces, and parking aisles; and

vi. Any part of a building used for mechanical floor area including the mechanical penthouse.

c. For the purpose of this exception, "Mechanical Floor Area" shall mean floor area within a building or structure used exclusively for the accommodation of mechanical equipment necessary to physically operate the building, such as heating, ventilation, air conditioning, electrical, plumbing, fire protection, telephone, television/security areas and elevator equipment.

PERMITTED USES

d. The following uses shall be permitted:

Apartment House Dwelling;
Art Gallery;
Artist Studio;
Automatic Laundry Shop;
Banks and Financial Institutions;
Business and Professional Offices;
Clinic;
Club;
Commercial Gallery;
Commercial Recreation;
Commercial School;
Communication and Broadcasting;
Custom Workshop;
Day Nursery;
Dry Cleaning and Laundry Collecting Establishment;
Fitness Centre;
Grocery store with limited outdoor display area;
Laundry;
Museum;
Outdoor Café in conjunction with a Restaurant or Take-out Restaurant on the same lot, subject to the provisions of Subsection 6(22);
Personal Service Shop;
Private-Home Day Care;
Professional Medical Office;
Restaurant;
Retail Store;
Service Shop;
Take-out Restaurant; and
Veterinary Clinic.

EXCEPTIONS

DWELLING UNITS

e. A maximum of 128 dwelling units shall be permitted.

LOT AREA

f. The provisions of Section 20-A.2.1 (Lot Area) shall not apply.

g. For the purposes of this exception, any lands acquired for the purposes of a road widening or any other public purposes it shall be deemed that the remaining portion of the lot and any building erected on it shall be deemed to comply with the provisions of this By-law respecting minimum yard setbacks, landscaping, lot coverage, lot frontage, and gross floor area provided these standards were in lawful compliance prior to the acquisition.

LOT COVERAGE

h. The provisions of Section 20-A.2.2 (Lot Coverage) shall not apply

LOT FRONTAGE

i. The provisions of Section 20-A.2.3 (Lot Frontage) shall not apply

YARD SETBACKS

j The minimum yard setbacks for buildings and structures above Established Grade shall be as shown on Schedule "RM6(xxx)".

k. Notwithstanding (i) above, the minimum yard setback for parking structures and structures associated thereto below Established Grade shall be 0.6 metres.

l. Notwithstanding (i) above, the minimum yard setback for structures associated with parking structures above Established Grade shall be 0.6 metres

GROSS FLOOR AREA

m. Notwithstanding Section 20-A.2.5, the gross floor area of a building shall not exceed two hundred and fifty (250) per cent.

BUILDING HEIGHT

n. Notwithstanding Section 20-A.2.5, the maximum building height, excluding parapets, shall be the lesser of 8 storeys or 26.5 m.

LANDSCAPING

o. Notwithstanding Section 15.8 Landscaping, a minimum of 400 m2 of landscaping shall be provided.

PARKING

p. Notwithstanding Section 6A(2) Parking Requirements; parking shall be provided based on the following rates:
   i. 0.80 parking spaces for each bachelor dwelling units;
   ii. 0.90 parking spaces for each one bedroom units;
   iii. 1.00 parking spaces for each two bedroom units;
   iv. 1.20 parking spaces for each dwelling unit have three or more bedrooms;
   v. A minimum of 0.2 parking spaces per residential dwelling unit shall be provided for use of visitors; and
   vi. 1.0 parking space per 28 m2 GFA for commercial/retail
   vii. For the purposed of this By-law, a minimum of 27 residential visitor parking spaces may be shared. All shared spaces must be available to residential visitors between the hours of 7:00 pm and 7:00 am, seven days a week, with each of the designated visitor/commercial parking stalls being signed to this effect.

q. The provisions of Section 6A(8) Parking Regulations for RM Zones other than RM2 Zones; shall not apply

LOADING SPACE REQUIREMENTS

r. Notwithstanding Section 6A(16) Loading Space Requirements, a minimum of two (2) loading spaces shall be required.

BICYCLE PARKING

s. Bicycle parking for residential uses shall be provided at a minimum rate of 0.6 spaces per dwelling unit for residents and at a minimum rate of 0.15 spaces per dwelling unit for visitors.

t. Bicycle parking for commercial uses shall be provided at a minimum rate of 0.13 spaces per 100 m2 of commercial gross floor area and at a minimum rate of 0.15 spaces per 100 m2 of commercial gross floor area or 6 spaces whichever is greater for visitors.

DIVISION OF LANDS

u. Notwithstanding any severance, partition or division of the lands shown on Schedule "RM6(xxx)", the regulations of this exception shall continue to apply to the whole of the said lands as if no severance, partition or division had occurred.

3. Section 64.20-A of By-law No. 7625 is amended by adding Schedule "RM6(xxx)", attached to this By-law.

4. Within the lands shown on Schedule "RM6(xxx)" attached to this By-law, no person shall use any land or erect or use any building or structure unless the following municipal services are provided to the lot line and the following provisions are complied with:

a) all water mains and sanitary sewers, and appropriate appurtenances, have been installed and are operational.

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

THE CORPORATION OF THE CITY OF TORONTO

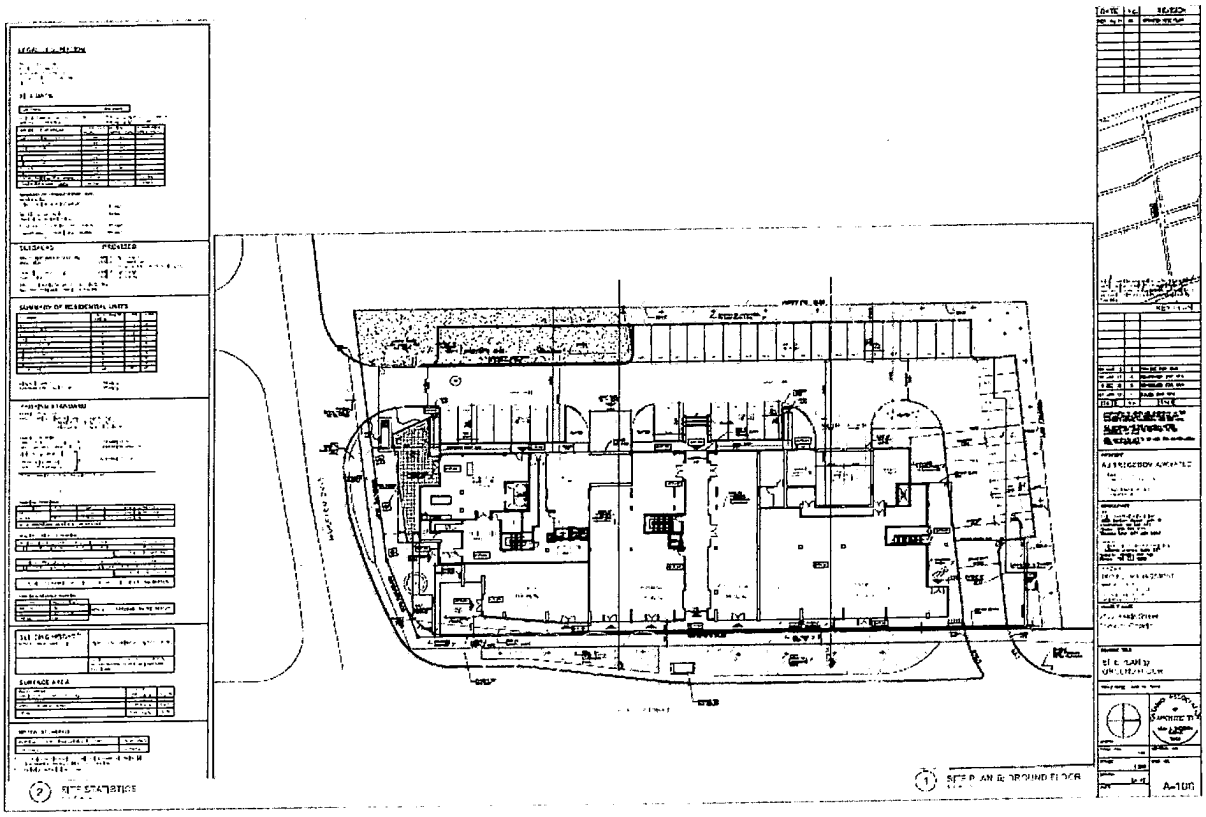
EXPLANATORY NOTE TO BY-LAW NO. xxx-20~

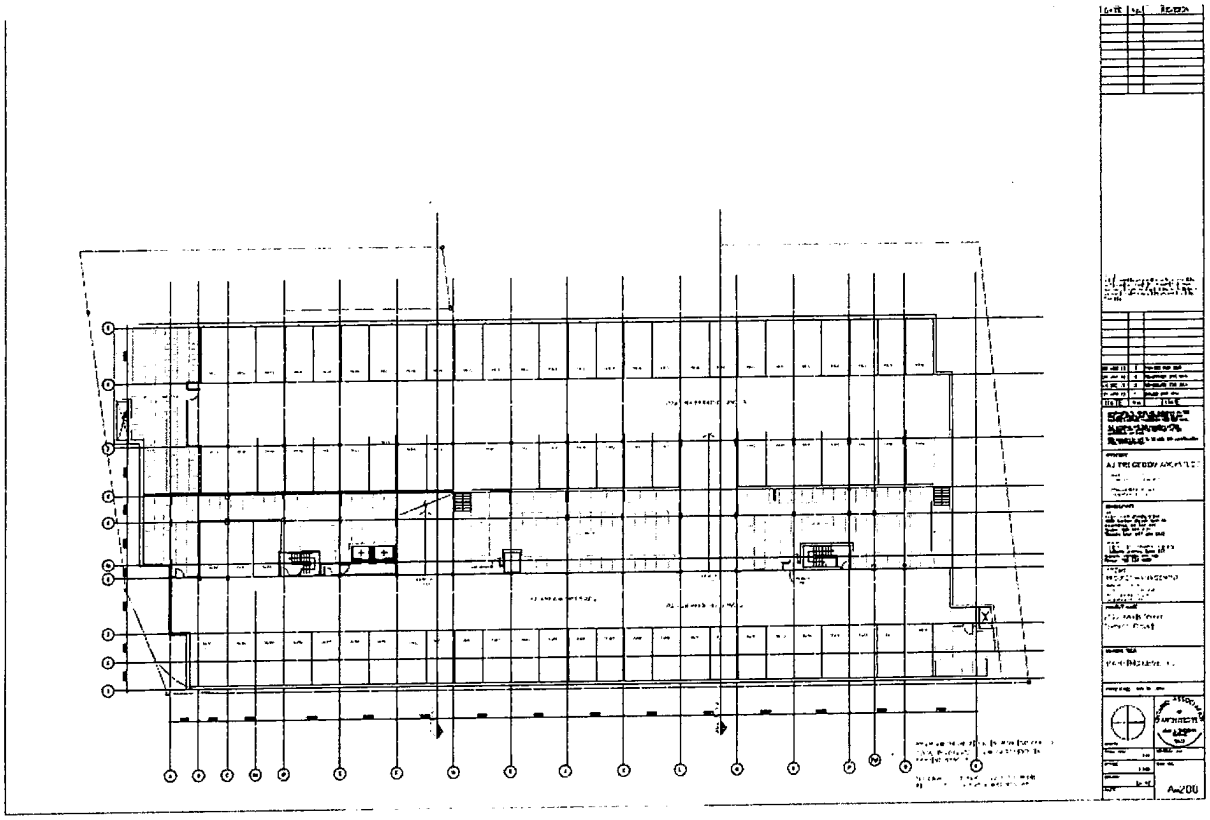
By-law No. xxx-20~ affects the lands known municipally as 2522-2542 Keele Street on the northwest intersection at Maple Leaf Drive.

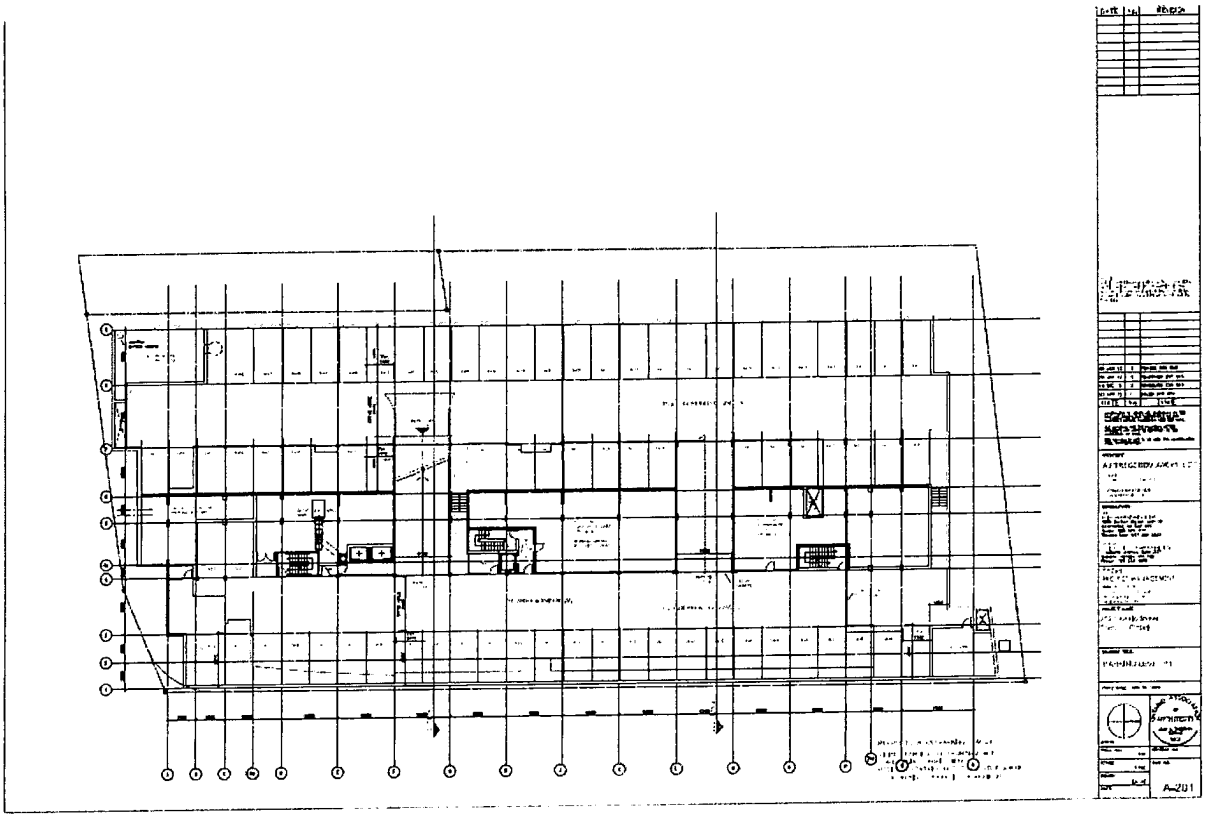
Section 64.20-A of By-law No. 7625 of the former City of North York, currently zones the subject lands "Local Shopping Centre (C2)"." which permits permit a wide variety of commercial uses, as well as an apartment hotel. By-law No. xxx-20~ would amend By-law No. 7625 of the former City of North York, by rezoning the subject lands to "Residential Multiple Dwelling Zone 6 - RM6(xxx)", to facilitate the development of an 8 storeys mixed use building with 1195 m2 of commercial retail and128 condominium apartment units.

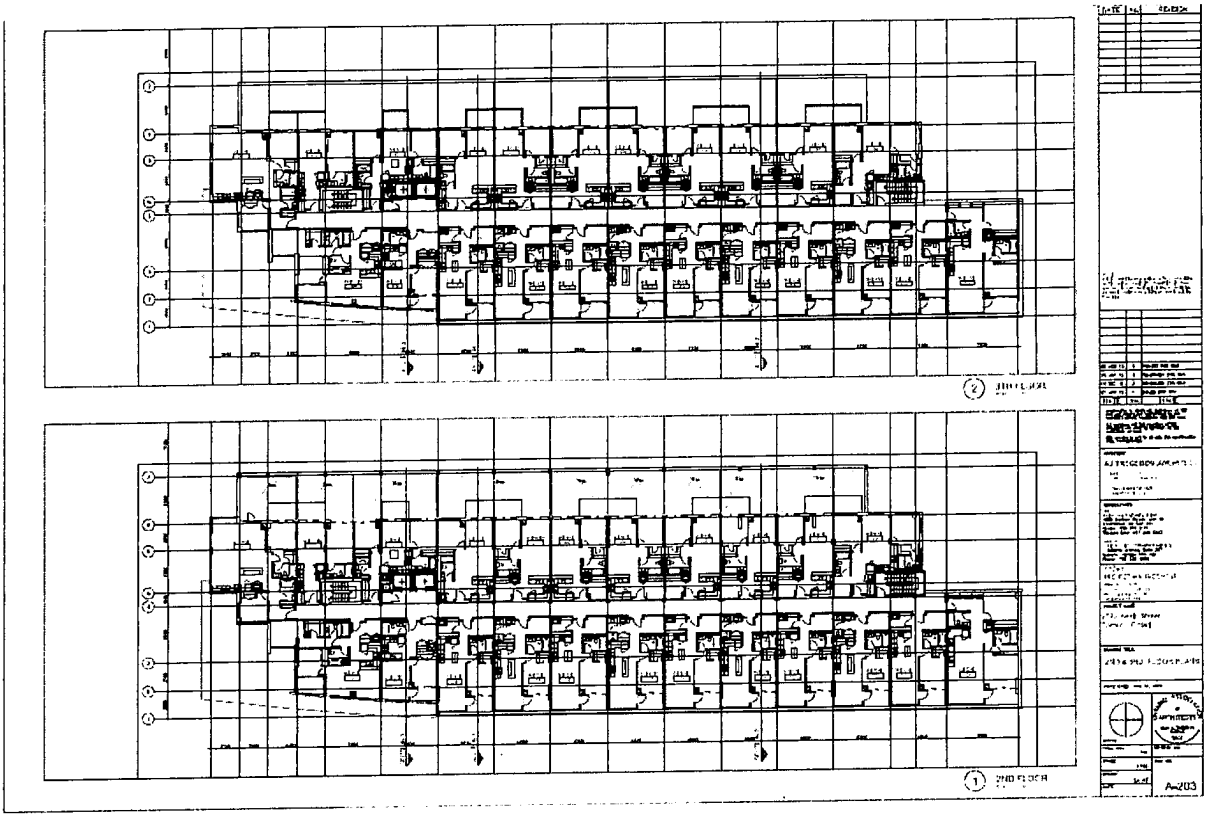
By-law No. xxx-20~ also sets out specific development provisions including but not limited to permitted commercial uses, maximum number of units, minimum yard setbacks, maximum gross floor area, maximum building heights, minimum landscaped open space, and minimum parking requirements as they pertain to the proposed development to be constructed on the subject lands.

ATTACHMENT 2





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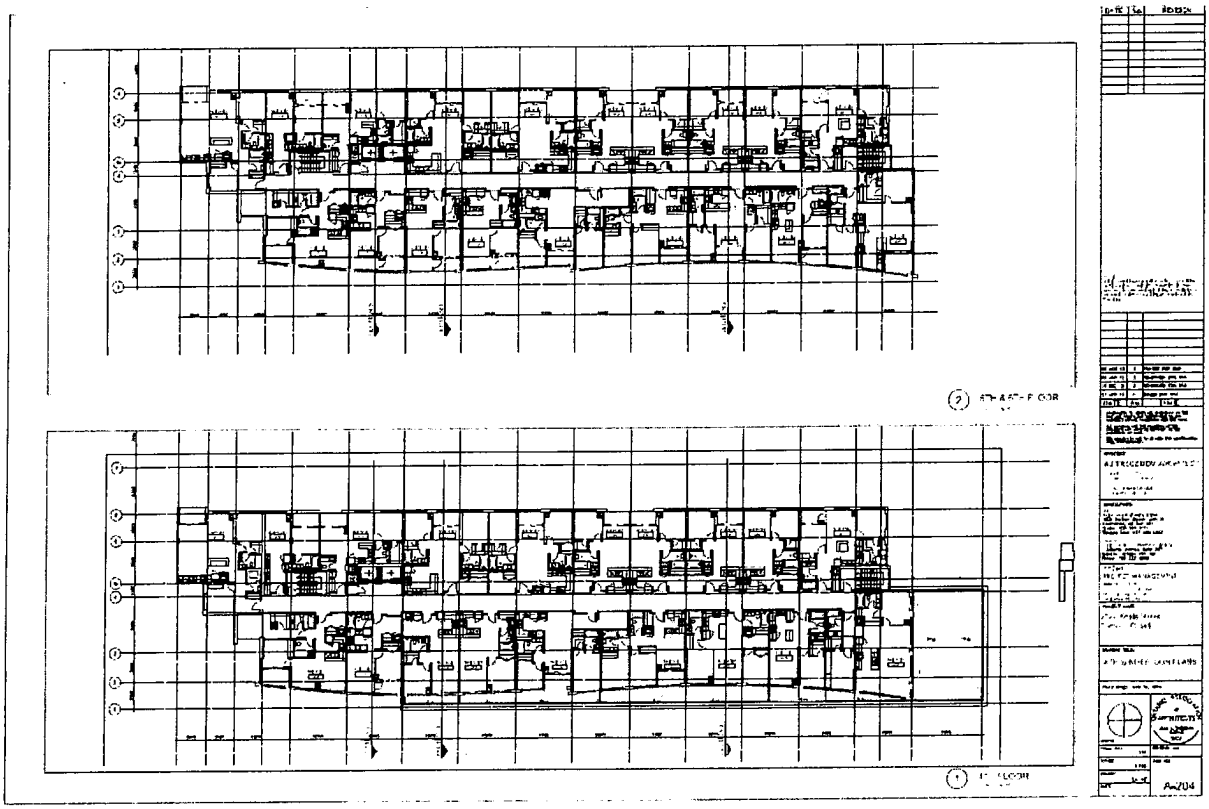
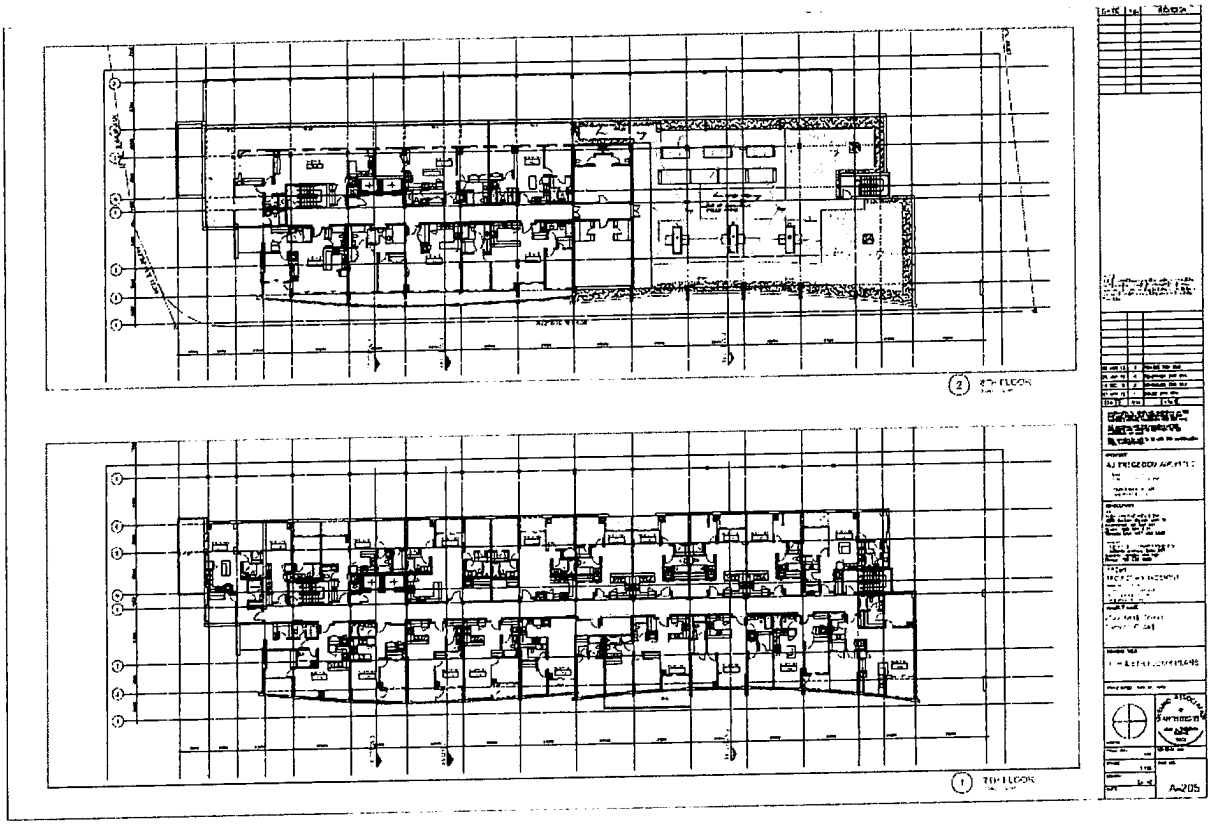
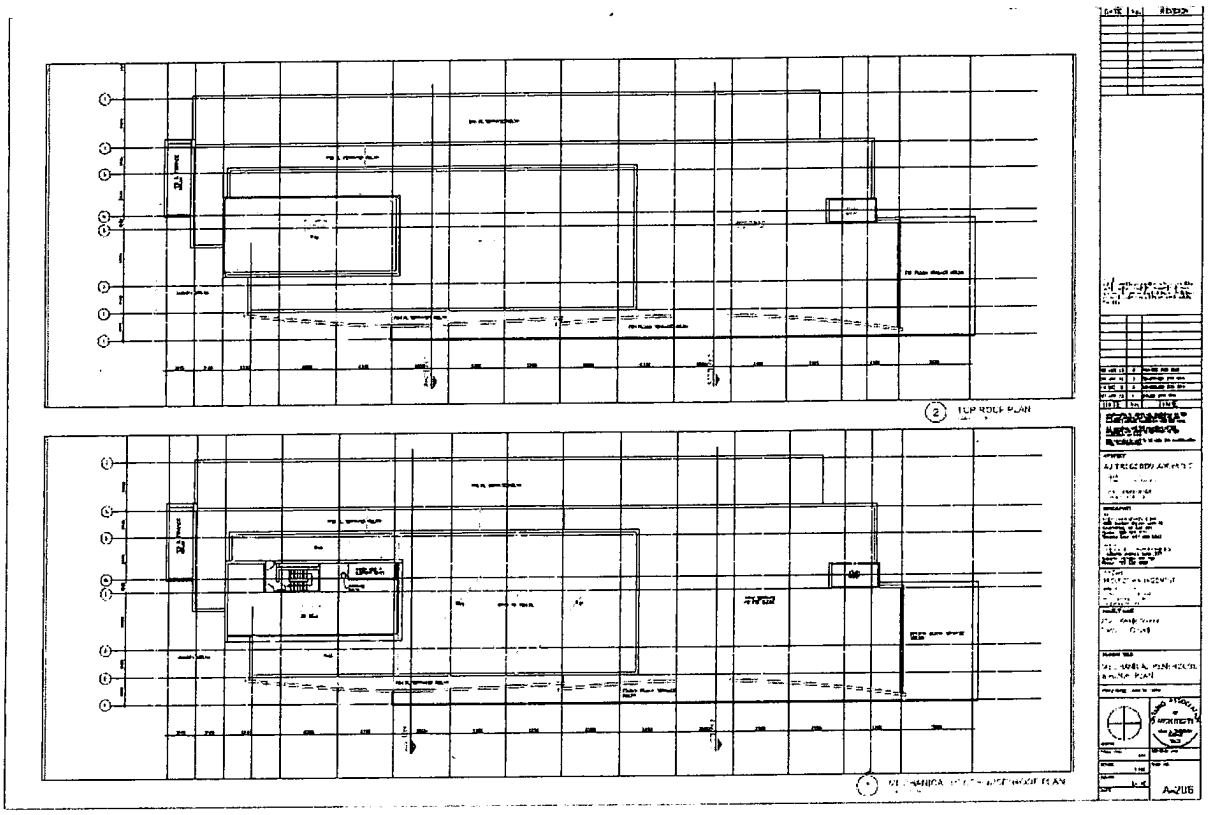
A-203



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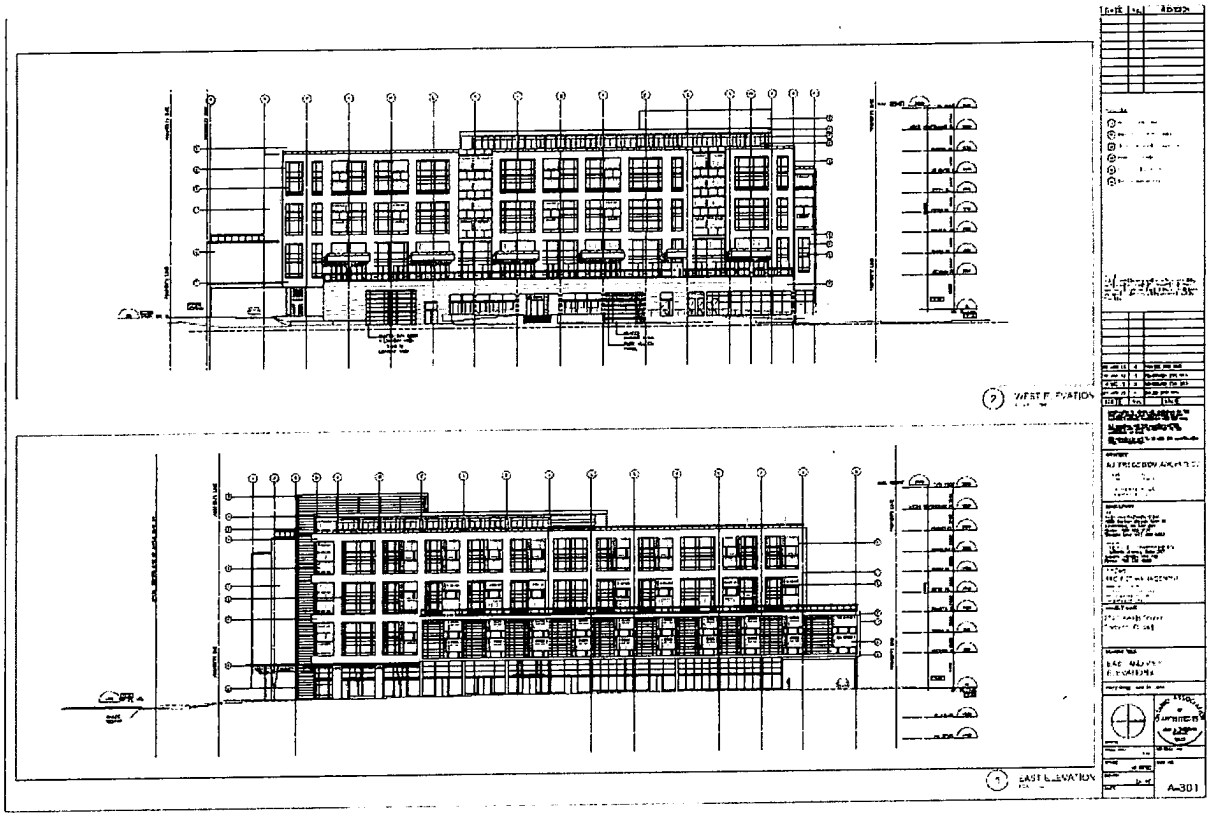
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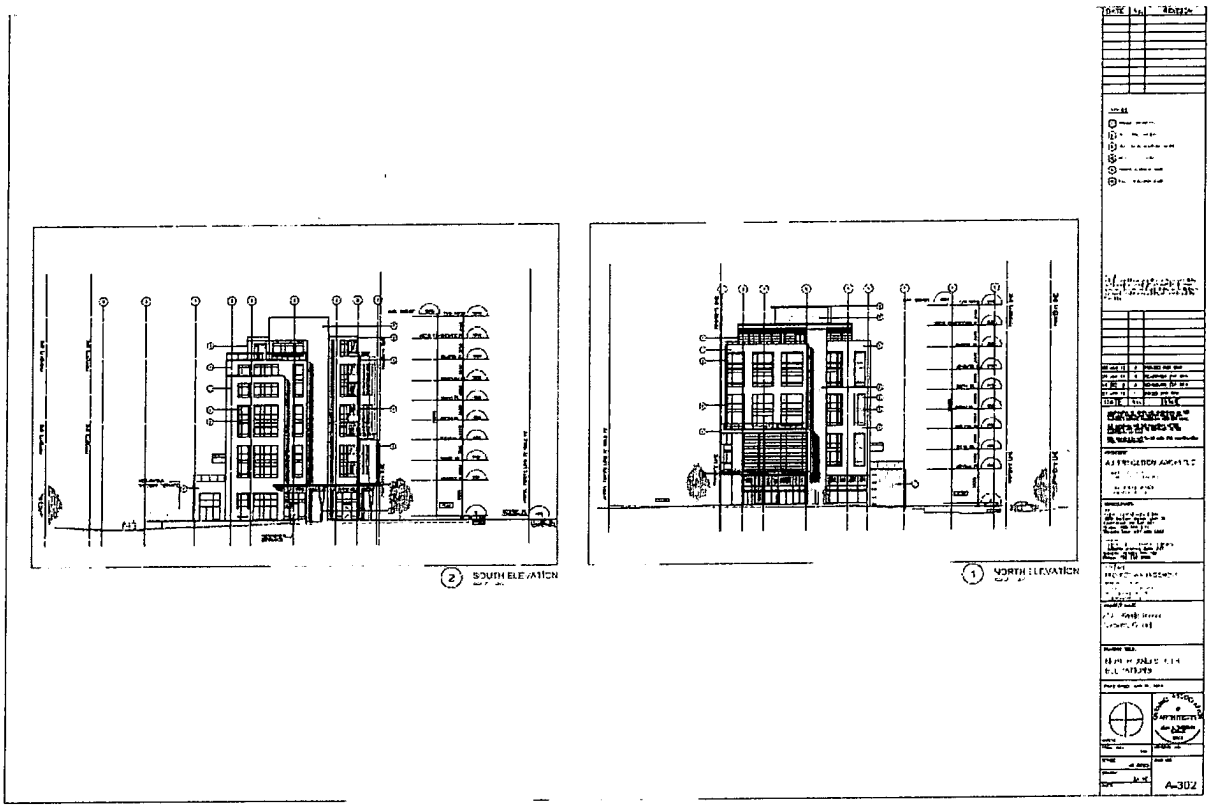
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