

October 4, 2016

**DELIVERED BY E-MAIL**

**TE18.7.189**

Mayor and Members of Council  
c/o City Clerk's Office  
Toronto and East York Community Council  
City Hall, 2<sup>nd</sup> Floor  
100 Queen Street West  
Toronto, Ontario M5H 2N2

**Attn: Marilyn Toft, Manager, Council and By-laws**

**Re: TEYCC Agenda Item 18.7  
City-Initiated Request to Amend the Official Plan and Zoning By-Law Nos. 438-86  
and 569-2013  
Final Report - TOcore: Updating Tall Building Setbacks in the Downtown**

We are solicitors for the owner of the property known municipally as 40 Temperance Street in the City of Toronto (the "Property"). The Property is located on the north side of Temperance Street mid-block between Yonge Street and Bay Street and is the planned location of the third and final tower of the Bay Adelaide Centre precinct.

The Property is subject to By-law No. 998-88, as amended by By-laws No. 74-93, 1994-0605 and 460-2006, which permits a hotel/residential tower with a maximum height of 120 metres on a base podium of 20 metres to be erected on the Property. On September 3, 2014, the Committee of Adjustment approved a number of minor variances which modify the permitted built form on the Property to allow a tower with a height of 141.05 metres along the easterly part of the Property, as well a podium with a height of 43.0 metres. The minor variance decision permits the tower to abut the northerly, southerly and easterly property lines, and allows the 43.0 metre podium to abut the westerly property line. Please refer to Decision A0189/14TEY, which is enclosed as Schedule 1.

These permissions conflict with the provisions of the proposed TOCore zoning by-law amendments, which would require that the tower be setback 12.5 metres from the easterly lot line and 3.0 metres from the northerly and southerly lot lines (which abut Richmond Street West and Temperance Street), and would also require the portion of the podium above 24 metres in height to be setback 12.5 metres from the westerly lot line.

The proposed exemption for buildings constructed pursuant to a building permit issued prior to October 4, 2016 would not apply in this case as a permit has not yet been issued. Further, the minor variances would not apply to the proposed TOCore zoning by-law amendments.

As the built form approved by Decision A0189/14TEY was reviewed and deemed to represent good planning by Community Planning staff and the Committee of Adjustment, and as the minor variances are in full force and effect, the Property should be exempted in its entirety from the provisions of the proposed TOCore zoning by-law amendments. Should this not be done, it will be necessary for our client to appeal the zoning by-law amendments to the Ontario Municipal Board to protect the existing planning permissions on the Property.

Yours very truly,

**GOODMANS LLP**



David Bronskill

DJB/

Encls.

## Schedule 1



City Planning Division

Committee of Adjustment  
Toronto and East York District

100 Queen Street West, 1<sup>st</sup> Floor  
Toronto, Ontario M5H 2N2  
Tel: 416-392-7565  
Fax: 416-392-0580

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

File Number:	A0189/14TEY	Zoning	CR T12.0 C8.0 R11.7 & By-laws 998-88 and 460-2006 (Waiver)
Owner:	BAC SURFACE INC	Ward:	Toronto Centre-Rosedale (28)
Agent:	DAVID BRONSKILL		
Property Address:	40 TEMPERANCE ST	Community:	Toronto
Legal Description:	PLAN TOWN OF YORK PT LOTS 2 & 3 RP 66R16814 PARTS 1,6,9,14 AND 15		

Notice was given and a Public Hearing was held on Wednesday, September 3, 2014, as required by the Planning Act.

#### PURPOSE OF THE APPLICATION:

To alter the redevelopment plan for a 32-storey mixed-use office building with retail at grade, approved under By-law 998-88 and further amended by By-law 460-2006, by decreasing the number of loading spaces, as well as street related retail and service uses aggregate areas along Temperance Street and Richmond Street West, while increasing the non-residential and residential gross floor areas of the Bay-Adelaide lands, and the building heights for Parcel B as outline on Map B in By-law 460-2006.

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

- Section 4(4)(a), By-law 998-88 as amended by By-law 460-2006**  
Office use located above grade is not permitted in a G district.  
A portion of the office building shall be located above grade in the portion of the lands zoned G.
- Section 4(1), By-law 998-88 as amended by By-law 460-2006**  
The aggregate amount of non-residential gross floor area and residential gross floor area to be erected and used on the Bay-Adelaide Lands, exclusive of public pedestrian walkways, shall not exceed 277,096 m<sup>2</sup>.  
Decision A0618/12TEY approved a maximum aggregate amount of non-residential gross floor area and residential gross floor area, exclusive of public pedestrian walkways, of 289,074 m<sup>2</sup>.  
The Bay-Adelaide Lands will have an aggregate amount of non-residential gross floor area and residential gross floor area, exclusive of public pedestrian walkways, of 322,761 m<sup>2</sup>.
- Section 4(1)(b), By-law 998-88 as amended by By-law 460-2006**  
The maximum permitted combined non-residential gross floor area and residential gross floor area for Parcel B is 47,030 m<sup>2</sup>.  
Parcel B will have a combined non-residential gross floor area and residential gross floor area of 86,261 m<sup>2</sup>.

4. **Section 4(1)(e), By-law 998-88 as amended by By-law 460-2006**  
The maximum permitted non-residential gross floor area, in the aggregate, for Parcel B and Parcel C is 236,539 m<sup>2</sup>.  
Decision A0618/12TEY approved a maximum aggregate non-residential gross floor area for Parcel B and Parcel C of 248,517 m<sup>2</sup>.  
Parcel B and Parcel C will have an aggregate non-residential gross floor area of 286,061 m<sup>2</sup>.
5. **Section 4(1)(f), By-law 998-88 as amended by By-law 460-2006**  
The maximum permitted combined non-residential gross floor area and residential gross floor area for Parcel B and Parcel C is 240,396 m<sup>2</sup>.  
Decision A0618/12TEY approved a maximum combined non-residential gross floor area and residential gross floor area for Parcel B and Parcel C of 252,374 m<sup>2</sup>.  
Parcel B and Parcel C will have a combined non-residential gross floor area and residential gross floor area of 286,061 m<sup>2</sup>.
6. **Section 4(3), By-law 998-88 as amended by By-law 460-2006**  
The maximum permitted heights are 20.0 m, 120.0 m, 20.0 m and 12.0 m, as shown on Map B, By-law 460-2006.  
Parcel B will have heights of 43.0 m, 141.05 m and 12.0 m, as shown on attached Revised Map B (date stamped received by Committee of Adjustment on July 15, 2014).
7. **Section 4(4)(a), By-law 998-88 as amended by By-law 460-2006**  
Buildings erected or used on the Bay-Adelaide Lands shall contain street related retail and service uses having a minimum aggregate length of 95 m of frontage on Temperance Street.  
Parcel B will have an aggregate length of 82.0 m of street related retail and service uses of frontage on Temperance Street.
8. **Section 4(4)(b), By-law 998-88 as amended by By-law 460-2006**  
Buildings erected or used on the Bay-Adelaide Lands shall contain street related retail and service uses having a minimum aggregate length of 20 m of frontage on the south side of Richmond Street West.  
Parcel B will have an aggregate length of 18.1 m of street related retail and service uses on the south side of Richmond Street West.
9. **Section 4(5)(h)(d), By-law 998-88 as amended by By-law 460-2006**  
The owners of the Bay-Adelaide Lands shall provide not less than 5 loading spaces – Type A and 15 loading spaces – Type B, located below grade within the lands comprising Temperance Street and the aforesaid Parcel B and Parcel C.  
There will be 6 loading spaces – Type A, 8 loading spaces – Type B and 6 loading spaces – Type C, located below grade within the lands comprising Temperance Street and the aforesaid Parcel B and Parcel C. A minimum of four Type C loading spaces will have a length of 8.0 m.
10. **Section 4(5)(h)(e), By-law 998-88 as amended by By-law 460-2006**  
The owners of Bay-Adelaide Lands shall provide a minimum of 9 courier parking spaces.  
There will be no courier parking spaces provided.

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

**The Minor Variance Application is Approved on Condition**

It is the decision of the Committee of Adjustment to approve this variance application for the following reasons:

- The general intent and purpose of the Official Plan is maintained.
- The general intent and purpose of the Zoning By-law is maintained.
- The variance(s) is considered desirable for the appropriate development of the land.
- In the opinion of the Committee, the variance(s) is minor.

This decision is subject to the following condition(s):

- (1) Prior to the issuance of a demolition and/or building permit, the applicant shall satisfy all matters relating to City and privately owned trees, to the satisfaction of the Supervisor, Urban Forestry, Tree Protection and Plan Review.
- (2) Prior to the issuance of a building permit, building permit drawings, including plans, elevations and details shall be submitted to the satisfaction of the Manager of Heritage Preservation Services and a heritage permit shall be obtained under the provision of Section 42 of the Ontario Heritage Act.
- (3) The overall height of 141.05 m for the building shall be inclusive of mechanical penthouse elements, screens, fences, safety railings and/or parapets.
- (4) Pursuant to Section 45(9) of the *Planning Act*, the heights and density of development permitted in this decision are permitted subject to compliance with the conditions set out in this decision and in return for the provision by the owner of the lot of the facilities, services and matters substantially as set out in Appendix 1 (attached), the provisions of which shall be secured by an agreement or agreements pursuant to Section 45(9.1) of the *Planning Act*.
- (5) Upon execution and registration of an agreement or agreements with the owner of the lot Pursuant to Section 45(9) of the *Planning Act*, the following provisions shall be included:
  - (a) The owner agrees to retain the architect of the original park design Baird, Sampson Neuert Architects in conjunction with a landscape architect in order to execute a detailed Landscape Plan for the redesign and reinstatement of "Cloud Gardens Park". The landscape architect will be selected by the General Manager, Parks, Forestry & Recreation from a list of three landscape architects (minimum) put forward by the architect.
  - (b) Baird Sampson Neuert Architects shall be the primary contact with the General Manager, PF&R regarding the design and construction of "Cloud Gardens Park";
  - (c) The owner agrees to retain artist Margaret Priest and Tony Sherman as consultants to redesign and re-instate the public art components at "Cloud Gardens Park" as part of final Site Plan Approval;
  - (d) The owner shall, prior to Site Plan Approval, submit a detailed Landscape Plan and Tree Preservation Plan addressing the redesign and reinstatement of "Cloud Gardens Park" to the satisfaction of the General Manager, Parks, Forestry and Recreation.
  - (e) All design and working drawings shall be submitted for review and approved by the General Manager, PF&R at the 30%, 60%, 90% stages (or as deemed suitable) before any agreement is entered into for the construction of the Park Improvements.

- (f) Prior to the issuance of the first above grade building permit, the Owner is required to submit a design and cost estimate for the Above Base Park Improvements and a budget to the satisfaction and approval of the General Manager, Parks, Forestry & Recreation.
  - (g) The owner shall, prior to the issuance of the first above grade building permit, provide a Letter of Credit, in a form and an amount satisfactory to the General Manager, Parks, Forestry & Recreation to secure all work required for the redesign and re-instatement of the parkland known as "Cloud Gardens Park".
- (6) Upon execution and registration of an agreement or agreements with the owner of the lot Pursuant to Section 45 (9) of the *Planning Act* securing the provision of the facilities, services and matters set out in Appendix 1, the lot is subject to the provisions of this decision, provided that in the event the said agreement(s) requires the provision of a facility, service or matter as a precondition to the issuance of a building permit, the owner may not erect or use such building until the owner has satisfied the said requirements.

## **APPENDIX 1**

### **SECTION 45(9) PROVISIONS**

The facilities, services and matters set out herein are the facilities, services and matters required to be provided by the owner of the site to the City of Toronto (the City) in accordance with an agreement or agreements, pursuant to Section 45(9.1) of the *Planning Act*, in a form satisfactory to the City with conditions providing for indexed escalation of all financial contributions, no credit for development charges, indemnity, insurance, GST, termination and unwinding, and registration and priority of agreement:

- (a) Within thirty (30) days of the requested minor variances being final and binding, the owner shall provide a cash contribution to the City in the amount of One Hundred Thousand Dollars (\$100,000) towards the redevelopment of the St. Lawrence Market North, to the satisfaction of the Chief Planner and Executive Director, City Planning Division, in consultation with the local councillor;
- (b) Prior to the release of above grade permits, the owner shall provide a financial contribution, indexed upwardly in accordance with the Statistics Canada Non-residential Construction Price Index for Toronto, calculated from the date of execution of the Section 45(9.1) Agreement to the date of submission of the financial contribution to the City, as follows:
  - i. Eighty One Dollars and Fifty Seven Cents (\$81.57) per square metre of non-residential gross floor area above the as-of-right density permission of 47,030 square metres for Parcel B as identified in By-law 998-88, as amended, to a maximum of Three Million and Two Hundred Thousand Dollars ("the Initial Financial Contribution"), to secure streetscape and local parkland improvements within proximity of the site, which may include public realm improvements on Temperance Street beyond City standards, as outlined in the City's Streetscape Manual, and improvements to the City-owned parkland improvements on lands known as "Cloud Gardens" at 14 Temperance Street beyond re-instating "Cloud Gardens" to as-built conditions (collectively, defined as the "Public Realm and Parkland Improvements"). Notwithstanding the foregoing requirement for the submission of a cash contribution, at the discretion of the City the owner may be required to submit a letter of credit in such amount as the City may require for the Public Realm and Parkland Improvements of this contribution, in which case, the owner shall install such improvements to the satisfaction of the City and shall be entitled to release of its letter of credit;
  - ii. A Letter of Credit in the amount of Twenty Dollars and Thirty Nine Cents (\$20.39) per square metre of non-residential gross floor area above the as-of-right density permission of 47,030 square metres for Parcel B as identified in By-law 998-88, as amended (the "Additional Financial Contribution") to secure an additional voluntary contribution by the owner towards the Public Realm and Parkland Improvements;
  - iii. The Additional Financial Contribution shall only be used for the Public Realm and Parkland Improvements in the event that:
    - a. The City directs all of the Initial Financial Contribution towards the Public Realm and Parkland Improvements; and
    - b. Should the City direct some or all of the Initial Financial Contribution towards the Public Realm and Parkland Improvements, the amount of the Additional Financial Contribution to be released for the Public Realm and Parkland Improvements shall equal 25% of any portion of the Initial Financial Contribution used towards the Public Realm and Parkland Improvements;
  - iv. Any unused portion of the Additional Financial Contribution shall be returned to the owner no later than ten (10) years after completion of the Public Realm and Parkland Improvements, or

after occupancy of any building constructed on the site if no Public Realm and Parkland Improvements are needed as determined by the City; and

- v. If all or any part of the Initial Financial Contribution have not been used for the intended purposes within three (3) years of the date of the execution of this agreement, the Initial Financial Contribution or remaining portions thereof may be redirected towards other streetscape and local parkland improvements within proximity of the site, at the discretion of the Chief Planner and Executive Director, City Planning Division, in consultation with the local Councillor, at which time any remaining portion of the Additional Financial Contribution shall be returned to the owner;
- (c) The owner shall enter into a Site Plan Agreement under Section 41(16) and Section 114 of the *City of Toronto Act* for 40 Temperance Street and 37 Richmond Street West;
- (d) Prior to final Site Plan Approval, the owner shall submit detailed landscape plans (the "Landscape Plans") and a tree preservation and replacement plan (the "Tree Plan") for the City-owned parklands known as "Cloud Gardens" and the pedestrian walkway at 14 Temperance Street, which mitigate adjacency and interface issues from the proposed building, to the satisfaction of the Chief Planner and Executive Director, City Planning Division, and General Manager, Parks, Forestry and Recreation;
- (e) The owner shall be responsible for the costs of the conceptual and schematic design process as part of the development and finalization of the Landscape Plans and Tree Plans identified in (d);
- (f) Following approval of the Landscape Plans and the Tree Plan by the City, the owner shall be responsible for the construction of the City-owned parklands known as "Cloud Gardens" and the pedestrian walkway at 14 Temperance Street, in accordance with the Landscape Plans and the Tree Plans, with the costs of such construction allocated as follows:
  - i. The owner shall be responsible for all costs associated with the construction of "Cloud Gardens" and the pedestrian walkway at 14 Temperance Street to as-built conditions;
  - ii. Structural and architectural changes required as a result of the development on the City-owned parklands which are not directly related to the improvement of "Cloud Gardens" will not be considered as costs associated with the construction of "Cloud Gardens"; and
  - iii. The Initial Financial Contribution and the Additional Financial Contribution shall be used for all hard and soft costs associated with the construction of the Public Realm and Parkland Improvements, as shown on the approved Landscaping Plans and Tree Plan; and
- (g) The owner shall enter into (i) an agreement (or shall amend existing agreement(s)) with the City of Toronto and (ii) any construction staging agreement(s) required by the owner and as permitted by the City, in accordance with Site Plan Approval for the subject site, regarding the City-owned parklands known as "Cloud Gardens" and the pedestrian walkway at 14 Temperance Street, to the satisfaction of the Chief Corporate Officer, and the General Manager, Parks, Forestry and Recreation, acting reasonably, in consultation with the City Solicitor. Any agreement referenced in this subsection (g) shall require the owner to pay fair market value consideration for the use of City-owned parklands.

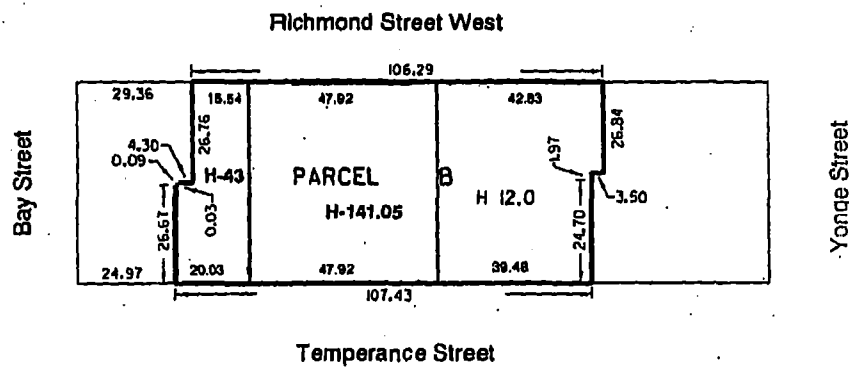


Revised

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COMMITTEE OF  
ADJUSTMENT



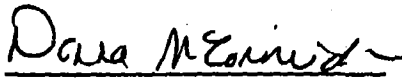
Bay Adelaide Centre North Tower  
Proposed Height Map

**SIGNATURE PAGE**

File Number:	A0189/14TEY	Zoning	CR T12.0 C8.0 R11.7 & By-laws 998-88 and 460-2006 (Waiver)
Owner:	BAC SURFACE INC	Ward:	Toronto Centre-Rosedale (28)
Agent:	DAVID BRONSKILL	Community:	Toronto
Property Address:	40 TEMPERANCE ST		
Legal Description:	PLAN TOWN OF YORK PT LOTS 2 & 3 RP 66R16814-PARTS 1,6,9,14 AND 15		




Barbara Leonhardt



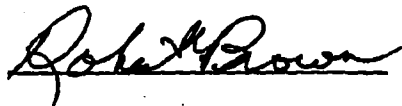
Donna McCormick



Mary Pitsitikas



Christian Chan



Robert Brown

**DATE DECISION MAILED ON: Tuesday, September 9, 2014**

**LAST DATE OF APPEAL TO THE ONTARIO MUNICIPAL BOARD: Tuesday, September 23, 2014**

**CERTIFIED TRUE COPY**



Anita M. MacLeod  
Manager & Deputy Secretary-Treasurer  
Toronto and East York Panel

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).