

**REPORT FOR ACTION****373 Front Street East and 90 Mill Street - Zoning Amendment and Lifting of the "(h)" Holding Symbol Applications – Supplementary Report**

Date: October 27, 2020

To: City Council

From: Chief Planner and Executive Director, City Planning

Ward 13 - Toronto Centre

**Planning Application Number:** 19 228307 STE 13 OZ; 20 138382 STE 13 OZ

**SUMMARY**

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This report provides an update to Council advising that, pursuant to Section 47 of the Planning Act, the Province enacted a Minister's Zoning Order (Ontario Regulation 596/20) on October 22, 2020 for provincially owned lands at 373 Front Street East and 90 Mill Street. The lands are subject to a rezoning application by a development partner.

The Minister's Zoning Order has the effect of replacing any municipal zoning for these properties, including the draft amending zoning by-laws that were to come before City Council as part of Item TE 19.5 and that included certain matters, services and facilities to be secured in a Section 37 Agreement as a result of the increase in height.

Given that the report went forward without recommendations, new recommendations are proposed to ensure that the community benefits and infrastructure that were expected as part of the development of these properties might still be realized through other agreements between the City, owner and partner developer.

The report also responds to several questions that were posed at Community Council.

**RECOMMENDATIONS**

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The Chief Planner and Executive Director, City Planning, recommends that:

1. City Council authorize the Chief Planner and Executive Director, City Planning and City Solicitor to work with the owner and partner developer to implement such mechanisms and/or determine agreement(s) to be entered into, to secure various community benefits and infrastructure to support a complete community as outlined in the Final Report identified in Recommendation 6, all to the satisfaction of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor.

Terms shall include provisions relating to timing, financial securities, as well as use and build out standards and specifications necessary in order protect the City's interests.

2. City Council authorize the Chief Planner and Executive Director, City Planning with other appropriate City Officials to initiate appropriate discussions respecting the Minister's Zoning Order (O.Reg.596/20), including with the owner and the partner developer, and to request such amendments to the Order as the Chief Planner and Executive Director, City Planning determines to be necessary to clarify and implement the contemplated development.

3. City Council direct the Chief Building Official to consult with the Chief Planner and Executive Director, City Planning prior to issuing any building permits in advance of final site plan approval, in order to ensure that all contemplated agreements have been entered into to the City's satisfaction.

4. City Council authorize appropriate City Officials to take such actions as are required to implement City Council's decision, including the execution and implementation of Agreements reflective of Council's direction.

5. City Council authorize appropriate City Officials to discuss with the owner any potential amendment to the Minister's Zoning Order, should the Minister's Zoning Order be amended in the future.

6. City Council receive the Final Report (September 22, 2020) from the Director, Community Planning, Toronto and East York District, Item TE 19.5.

## **FINANCIAL IMPACT**

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The City Planning Division confirms that there are no financial implications resulting from the recommendations included in this report in the current budget year or in future years.

## **DECISION HISTORY**

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On October 15, 2020, Toronto and East York Community Council directed the Director of Community Planning, in consultation with relevant City divisions, to report directly to the October 27, 2020 meeting of City Council on information requested by Community Council, and did not endorse the recommendations of the staff Final Report to approve the Zoning By-law amendment and lifting of the "(h)" applications to permit the two 9-13 storey buildings and one 11-storey building. The decision document can be found here: <http://app.toronto.ca/tmmis/viewAgendaItemHistory.do?item=2020.TE19.5>

## MINISTER'S ZONING ORDER

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On October 22, 2020, the Minister of Municipal Affairs and Housing enacted a Minister's Zoning Order (Ontario Regulation 596/20) (the "Zoning Order" or "MZO") setting out the Zoning permissions for development of the subject lands. See Attachment 1 for the Zoning Order.

The Zoning Order has the effect of replacing any municipal zoning. No public notice is required prior to the issuance of the Zoning Order and, once in place, it cannot be appealed in the usual course to the Local Planning and Appeal Tribunal ("LPAT"). The Minister may refer the matter to LPAT but only for recommendations with the final decision remaining with Minister. The Minister may consider requests to amend or revoke the Order where substantiated in some cases.

The zoning permissions set out in the MZO include maximum gross floor area, height of buildings, community space size requirements, mix of housing units, size of pedestrian walkways, and building separation, among other matters.

The majority of the permissions are consistent with what was contained in the City's draft zoning by-laws that were before Community Council on October 15, 2020, with the exception of the following:

- The draft by-laws included building setbacks from the property lines and prohibitions on building projections into the public realm. The MZO has eliminated these requirements;
- The draft zoning by-laws identified a general area that would be used for public use in the form of a privately owned and publicly accessible space ("POPS") with a minimum area of 1,480 square metres comprised of a pedestrian walkway having a minimum width of 18.5 metre and two courtyards flanking the walkway. The MZO includes the contemplated minimum area for public use but only in the context of a pedestrian walkway. It does not include the minimum 18.5 metres walkway width nor does it include provision for the publicly accessible courtyards;
- The draft zoning by-laws identified specific areas along Front Street East, Cherry Street and the new 18.5 metre public street where road widenings were required based on the Environmental Assessment completed for the West Don Lands. These areas were identified on the maps/diagrams that accompanied the draft by-laws. The widenings on Front Street East and Cherry Street were intended to be conveyed through the site plan approval process in usual course. The widening for the new public street was proposed to be required in the context of the design and construction requirements to be set out in the Section 37 Agreement. It is not clear if the MZO accounts for these areas, particularly in connection with building setbacks; and
- In addition to the draft zoning by-laws, there were provisions included to secure community benefits and infrastructure relating to the increased height. These

included, but were not limited to: a new 18.5 metre public street, including below grade services; additional provisions relating to the POPS including providing two additional courtyards and conveyance of a public access easement to the City; ensuring that 30% of the total residential unit mix and a minimum of 30% of the total residential gross leasable area shall be for affordable housing units; the delivery of the community centre to the satisfaction of the City; and provision for obtaining the necessary securities. The MZO does require a pedestrian walkway for public access as well as community space but no details relating to how those would be secured or implemented.

Going forward, the City will still want to ensure that many of the original requirements are secured in the absence of the implementing zoning by-laws and a Section 37 agreement. Proposed recommendations have been added to authorize the Chief Planner and Executive Director, City Planning and the City Solicitor to facilitate discussion relating to potential amendment to the Zoning Order to address aspects of clarity, if necessary and also to help to protect the City's interests by utilizing alternative mechanisms and other agreements with the owner and the partner developer on terms satisfactory to the Chief Planner and Executive Director, City Planning, given that the original Section 37 agreement which secured community contributions and City infrastructure is no longer available.

## **RESPONSE TO QUESTIONS POSED BY TORONTO AND EAST YORK COMMUNITY COUNCIL**

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The inquiries raised by Community Council and staff's response are provided below based on the circumstances prior to the issuance of the MZO.

### **a. What is the role of the Province of Ontario in this application?**

The lands are owned by the Province of Ontario, which entered into a 99 year lease with the development partner - WDL 3/4/7 LP to submit the necessary applications under the Planning Act.

The rezoning application was the result of the Provincial Affordable Housing Lands Program to leverage provincial land assets to build affordable housing. The City's Open Door incentive is to work as part of the Provincial Program to realize affordable housing units as contemplated in the West Don Lands Precinct Plan.

### **b. How does the Province's role impact the role of City Planning in considering this application?**

The role of the Province has no impact on the role of City Planning's staff in reviewing the subject applications.

City Planning staff were not privy to the legal agreements executed between the Province and the development partner, except for the information provided by the application, which include the requirement to provide 30 percent of the total gross

leasable floor area for affordable residential units - where a range of affordability will be subject to either 100%, 80% or 40% of the average market rent, and a community space to serve the residents of the area.

**c. Is there enough parkland or greenspace on the application site?**

The subject site is within the West Don Lands Precinct Plan, where parkland dedication was previously established through the West Don lands Parks and Public Spaces Conveyance and Phasing Plan.

The West Don Lands Precinct Plan anticipated 6,000 residential units for the entire Precinct. Over 8 hectares of parkland were planned throughout the entire Precinct. Additional small open spaces were also planned throughout the Precinct.

At this time, the proposal at 373 Front Street East and 90 Mill Street, together with the rest of the developed lands within the Precinct cumulatively result in less than 6,000 residential units envisioned by the Precinct Plan.

Further, as part of the Open Door program, the subject site is exempt from parkland dedication for up to 390 affordable residential units. The proposal contemplates 261 affordable units.

**d. What is the planning rationale for a 5.5 metre separation between 80 Mill Street and 90 Mill Street?**

The proposal at 90 Mill Street subject to the Final Report dated September 22, 2020 provides a 5.5 metre building setback from the west property line up to a height of 9 storeys (31.3 metres). Staff finds this condition acceptable as the as-of-right zoning provisions does not require a building setback to the west property line for a height of up to 26 metres. Staff do not generally accept a facing condition of 5.5 metres between building walls with operable windows, but find the result of this condition acceptable in

this instance given the underlying as-of-right building envelope permissions. It is anticipated the facing conditions will be minimized by locating the windows of the west wall of 90 Mill Street off-set from the existing windows of the east wall of the 80 Mill Street building.

## **CONTACT**

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## **SIGNATURE**

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Gregg Lintern, MCIP, RPP  
Chief Planner and Executive Director  
City Planning Division

## **ATTACHMENT**

Attachment 1: Ontario Regulation 596/20

## Attachment 1 - Ontario Regulation 596/20

### Planning Act

Loi sur l'aménagement du territoire

ONTARIO REGULATION 596/20

ZONING ORDER — CITY OF TORONTO

Consolidation Period: From October 22, 2020 to the e-Laws currency date.

No amendments.

This Regulation is made in English only.

### Definitions

1. In this Order,

“bicycle parking space” means an area or secure room that is equipped with a bicycle rack, locker or bicycle stacker for the purposes of parking and securing bicycles;

“bicycle stacker” means a device where a bicycle parking space is positioned above or below another bicycle parking space and can be accessed by means of an elevating device;

“Block 7” means the lands described in clause 2 (1) (b);

“Blocks 3 and 4” mean the lands described in clause 2 (1) (a);

“community centre” means premises operated by or on behalf of a government or non-profit organization providing community activities, such as arts and crafts and recreational, social, charitable and educational activities;

“grade” means Canadian Geodetic Datum elevation of 79.5 metres for Blocks 3 and 4, and 77.5 metres for Block 7;

“green roof” means an extension of an above grade roof, built on top of a human-made structure, that allows vegetation to grow in a growing medium and which is designed, constructed and maintained in accordance with the City of Toronto Green Roof Construction Standard;

“height” means the vertical distance between grade and the highest point of a building or structure;

“non-residential gross floor area” means the sum of the total area of each floor level of the non-residential portion of a mixed-use building, above and below the ground, measured from the exterior of the main wall of each floor level, reduced by the area in the building used for,

- (a) parking, loading and bicycle parking below ground,
- (b) required loading spaces at the ground level and required bicycle parking spaces at or above ground,
- (c) storage rooms, washrooms, electrical rooms, utility rooms, mechanical rooms and ventilation rooms below grade,
- (d) shower and change facilities for required bicycle parking spaces,
- (e) amenity space,
- (f) elevator shafts,
- (g) garbage shafts,
- (h) community centre uses,
- (i) mechanical penthouse, and
- (j) exit stairwells.

“residential amenity space” is a communal space made available for mutual use by all residents of buildings on the lands described in section 2.

“residential gross floor area” means the sum of the total area of each floor level of the residential portion of a mixed-use building, above and below the ground, measured from

the exterior of the main wall of each floor level, reduced by the area in the building used for,

- (a) parking, loading and bicycle parking below ground,
- (b) required loading spaces at the ground level and required bicycle parking spaces at or above ground,
- (c) storage rooms, washrooms, electrical rooms, utility rooms, mechanical rooms and ventilation rooms below grade,
- (d) shower and change facilities for required bicycle parking spaces,
- (e) amenity space,
- (f) elevator shafts,
- (g) garbage shafts,
- (h) mechanical penthouse, and
- (i) exit stairwells;

“small parking space” means a parking space with a minimum width of 2.6 metres and a maximum width of 3.0 metres and a minimum length of 5.6 metres and a maximum length of 6.7 metres;

“temporary leasing office” means a building, structure, facility or trailer used for the purpose of the leasing of dwelling units to be erected on the lands;

“Zoning By-law” means the City of Toronto Zoning By-law No. 438-86.

#### Application

2. (1) This Order applies to,

(a) lands in the City of Toronto, in the Province of Ontario, described as Lots 7, 8, and 9, and parts of Lots 10, 11, and 12, South Side of Front Street East, and part of Lots 7 to 12 inclusive, North Side of Mill Street, on Registered Plan 108, and Lots 1 to 3 inclusive, private lane and two foot reserved, on Registered Plan 611, designated as Part 1 on Reference Plan 66R-30367 and further identified by Property Identification Number 21077-0295 (LT) registered in the Land Registry Office for the Land Titles Division of Toronto (No. 80); and

(b) lands in the City of Toronto, in the Province of Ontario, described as part of Lot 12, North Side of Mill Street, on Registered Plan 108, designated as Part 2 on Reference Plan 66R-30367 and further identified by Property Identification Number 21077-0291 (LT) registered in the Land Registry Office for the Land Titles Division of Toronto (No. 80).

(2) For the purposes of this Order, the lands described in clause (1) (a) shall be considered a single lot.

(3) For the purposes of this Order, the lands described in clause (1) (b) shall be considered a single lot.

#### Permitted uses

3. Every use of land and every erection, location or use of any building or structure is prohibited on the lands described in section 2, except for:

- (a) the uses permitted in section 7 (1) of the Zoning By-law;
- (b) a temporary leasing office;
- (c) a community centre;
- (d) a commercial parking garage; and
- (e) a car-share.

#### Zoning requirements

4. (1) The zoning requirements for Blocks 3 and 4 and Block 7 are as follows:

1. A maximum of three buildings is permitted on the lands described in section 2.



2. The maximum total residential gross floor area and non-residential gross floor area is 81,300 square metres.
3. The maximum residential gross floor area is 77,800 square metres.
4. The minimum non-residential gross floor area is 3,500 square metres.
5. A mezzanine level located above the first floor and below the second floor of a building, and a room containing mechanical equipment that is located on the roof shall not be considered a storey for the purposes of paragraphs 2 and 3 of subsection (2).
6. A minimum of 30 per cent of the dwelling units must contain two or more bedrooms and a minimum of 10 per cent of the dwelling units must contain three or more bedrooms.
7. Residential amenity space shall be provided and maintained above grade in accordance with the following requirements:
  - i. A minimum of 2 square metres of indoor residential amenity space shall be provided for each dwelling unit in a multipurpose room or rooms at least one of which contains a washroom and a kitchen.
  - ii. A minimum of 2 square metres of outdoor residential amenity space shall be provided for each dwelling unit.
  - iii. At least 40 square metres of the required outdoor residential amenity space shall be provided in a location adjoining or directly accessible from the indoor residential amenity space.
8. Parking spaces shall be provided and maintained in accordance with the following requirements:
  - i. A minimum of 0.18 parking spaces per dwelling unit shall be provided for use by residents of the building.
  - ii. A minimum of 50 parking spaces are required for residential visitors and commercial uses, which may be provided in a parking garage.
  - iii. A maximum of 10 per cent of the required parking spaces may be small parking spaces.
9. Bicycle parking spaces shall be provided and maintained in accordance with the following requirements:
  - i. A minimum of 0.9 bicycle parking spaces per dwelling unit.
  - ii. A minimum of 0.1 bicycle parking spaces per dwelling unit for visitors.
  - iii. A minimum of 40 bicycle parking spaces shall be provided for non-residential uses.
  - iv. Bicycle parking spaces may be shared between Blocks 3 and 4 and Block 7.
10. The following zoning requirements apply to bicycle parking spaces:
  - i. Where bicycles are to be parked on a horizontal surface, the spaces shall have horizontal dimensions of at least 0.46 metres by 1.8 metres and a vertical dimension of at least 1.22 metres.
  - ii. Where bicycles are to be parked in a vertical position, the spaces shall have horizontal dimensions of at least 0.6 metres by 1.2 metres and a vertical dimension of at least 1.9 metres.
11. The following provisions of the Zoning By-law do not apply to the lands described in subsection 2 (1) of this Regulation:
  - i. Clause 4 (2) (a).
  - ii. Clauses 4 (5) (b) and (c).
  - iii. Clause 4 (5) (h).

- iv. Subsection 7 (3).
- v. Paragraph 246 of subsection 12 (2).
- vi. Paragraph 260 of subsection 12 (2).

(2) In addition to the zoning requirements set out in subsection (1), the zoning requirements for Blocks 3 and 4 are as follows:

- 1. No minimum setback is required from lot lines.
- 2. The maximum height of any portion of a building or structure within 61 metres of the north lot line is as follows:
  - i. Within 26.7 metres of the west lot line, the maximum height is 51.8 metres and 13 storeys.
  - ii. Beyond 26.7 metres from the west lot line to 55.7 metres from the west lot line, the maximum height is 47 metres and 13 storeys.
  - iii. Beyond 55.7 metres from the west lot line to 117.5 metres from the west lot line, the maximum height is 38.7 metres and 11 storeys.
  - iv. Beyond 117.5 metres from the west lot line to 139.5 metres from the west lot line, the maximum height is 42.4 metres and 12 storeys.
  - v. Beyond 139.5 metres from the west lot line, the maximum height is 51.8 metres and 13 storeys.
- 3. The maximum height of any portion of a building or structure beyond 61 metres of the north lot line is as follows:
  - i. Within 27 metres of the west lot line, the maximum height is 38.7 metres and 11 storeys.
  - ii. Beyond 27 metres of the west lot line to 49.2 metres from the west lot line, the maximum height is 35.2 metres and 10 storeys.
  - iii. Beyond 49.2 metres from the west lot line to 111.6 metres from the west lot line, the maximum height is 31.6 metres and 9 storeys.
  - iv. Beyond 111.6 metres from the west lot line to 141.6 metres from the west lot line, the maximum height is 35.2 metres and 10 storeys.
  - v. Beyond 141.6 metres from the west lot line, the maximum height is 38.7 metres and 11 storeys.
- 4. Despite paragraphs 2 and 3, the following may project by a maximum of 2.1 metres beyond the maximum height set out in those paragraphs:
  - i. Parapets.
  - ii. Terrace or balcony guardrails.
  - iii. Balustrades.
  - iv. Railings and dividers.
  - v. Access hatches.
  - vi. Roof assemblies.
  - vii. Roof drainage.
  - viii. Roof pavers.
  - ix. Elements of a green roof.
- 5. Despite paragraphs 2 and 3, the following located on the roof may project by a maximum of 4.5 metres beyond the maximum height set out in those paragraphs:
  - i. Wind screens.
  - ii. Pergolas, trellises and signage.
  - iii. Planters.
  - iv. Eaves.
  - v. Privacy screens.
  - vi. Stair enclosures.

- vii. Skylights.
  - viii. Architectural elements and screens.
  - ix. Landscape elements.
  - x. Window washing equipment.
  - xi. Chimneys and vents.
  - xii. Lightning rods.
  - xiii. Light fixtures.
6. From 55.7 metres beyond the west lot line to 141.6 metres beyond the west lot line, if a line projected at a right angle from an external building wall intercepts the external building wall of another building,
- i. from ground to 6.3 metres, a minimum separation distance of 18.5 metres is required between the walls, and
  - ii. above 6.3 metres from ground, a minimum separation distance of 15.0 metres is required between the walls.
7. A pedestrian walkway with a minimum area of 1,480 square metres shall be provided for public pedestrian access.
8. A community centre shall be provided on the ground floor of a building with a minimum interior floor area of 465 square metres.
9. A minimum of one loading space – type “B”, two loading spaces – type “C”, and one loading space – type “G” shall be provided and maintained.
- (3) In addition to the zoning requirements set out in subsection (1), the zoning requirements for Block 7 are as follows:
- 1. The maximum height of any part of a building or structure is 43.7 metres.
  - 2. Any part of a building or structure shall be located with,
    - i. no minimum setback up to 31.3 metres in height from the north lot line,
    - ii. a minimum of 2.8 metres above 31.3 metres in height from the north lot line, and
    - iii. a minimum of 7.5 metres above 35.2 metres in height from the north lot line.
  - 3. Any part of a building or structure shall be located with,
    - i. no minimum setback at or below 7 metres in height from the west lot line,
    - ii. a minimum of 5.5 metres above 7 metres in height from the west lot line,
    - iii. a minimum of 7.6 metres above 31.3 metres in height from the west lot line, and
    - iv. a minimum of 10.2 metres above 35.2 metres in height from the west lot line.
  - 4. No minimum setback is required from the east lot line and the south lot line.
  - 5. Despite paragraphs 1, 2 and 3 the following vertical and horizontal projections may project by a maximum of 2.1 metres above the permitted building height and may encroach into any building setback:
    - i. Parapets.
    - ii. Terrace or balcony guardrails.
    - iii. Balustrades.
    - iv. Railings and dividers.
    - v. Access hatches.
    - vi. Roof assemblies.
    - vii. Roof drainage.
    - viii. Roof pavers.

ix. Elements of a green roof.  
6. Despite paragraphs 1, 2 and 3 the following vertical and horizontal projections may project by a maximum of 4.5 metres above the permitted building height and may encroach into any building setback:

- i. Wind screens.
- ii. Pergolas, trellises and signage.
- iii. Art.
- iv. Planters.
- v. Eaves.
- vi. Privacy screens.
- vii. Stairs.
- viii. Enclosures.
- ix. Skylights.
- x. Architectural and ornamental elements and screens.
- xi. Landscape features and elements.
- xii. Chimneys, vents and ventilation shafts.
- xiii. Lightning rods.
- xiv. Light fixtures.
- xv. Structures located on the roof.

7. Despite paragraphs 1, 2 and 3 the following vertical and horizontal projections may project by a maximum of 0.5 metres above the permitted building height and may encroach into any building setback:

- i. Cornices.
- ii. Window sills.
- iii. Mullions.
- iv. Mechanical equipment, mechanical enclosures and screens.

8. Despite paragraphs 1, 2 and 3 the following vertical and horizontal projections may encroach into any building setback:

- i. Wheelchair ramps.
- ii. Site servicing features.
- iii. Window washing equipment.
- iv. Underground garage ramps and associated structures.
- v. Awnings.
- vi. Canopies.

9. A minimum of one loading space – type “G” shall be provided and maintained.

#### Terms of Use

5. (1) Every use of land and every erection, location and use of buildings or structures shall be in accordance with this Order.

(2) Nothing in this Order prevents the use of any land, building or structure for any use prohibited by this Order if the land, building or structure is lawfully so used on the day this Order comes into force.

(3) Nothing in this Order prevents the reconstruction of any building or structure that is damaged or destroyed by causes beyond the control of the owner if the dimensions of the original building or structure are not increased and its original use is not altered.

(4) Nothing in this Order prevents the strengthening or restoration to a safe condition of any building or structure.

6. Omitted (provides for coming into force of provisions of this Regulation).