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Mayor John Tory and City Councillors
Chair Perks and Toronto & East York
Community Council Members
Toronto City Hall
100 Queen Street West
12th Floor, West Tower
Toronto, ON M5H 2N2

Attention: Ms. Ellen Devlin, Secretariat

Dear Mayor Tory, Chair Perks and Members of Council:

**Re: 483 – 491 Bay Street and 20 Albert Street, Toronto
Zoning By-Law Amendment
City File No.: 19 239929 STE 13 OZ
Item TE34.46 - TEY Community Council Meeting June 30, 2022**

We are the solicitors for the Church Wardens of the Church of the Holy Trinity, who are currently, Katherine Assad, Joan Heeler and Richard Moore. The Church of the Holy Trinity (“**Holy Trinity**”) is the beneficial owner of the land and church building known municipally as 19 Trinity Square (the “**Church Property**” and the “**Church**” respectively). 483-491 Bay Street and 20 Albert Street (the “**Subject Property**”) is located on the periphery of the Trinity Square Park, across from the Church Property, and is the subject of the above noted zoning by-law amendment application (the “**Application**”). The Application is scheduled for consideration at the above noted Toronto and East York Community Council Meeting and we expect may also be considered at the City of Toronto Council meeting to be held on July 19 and 20, 2022.

The Subject Property, Trinity Square Park, the Marriott Hotel lands and the Eaton’s Centre are all the subject of several carefully crafted agreements limiting the manner and character of their redevelopment given their proximity and the crucial role they play in defining the character of this entire block, centered around Trinity Square Park. Furthermore, the development of these properties and the creation of Trinity Square Park were brought about through the conveyance of lands by Holy Trinity and the covenants for limiting any additional impacts on Trinity Square Park and the Church. The arrangements set out in those agreements inform and motivate our client’s position with the Application.

Heritage Toronto records this crucial event in City planning in its highlights of Yonge Street Architecture thusly:

The Trinity Church community also negotiated with Eaton Centre developers to guarantee a certain amount of sunlight reach Trinity Square each day. The agreement was among the first of its kind in Toronto and led to current municipal guidelines requiring new buildings to provide access to sunlight to nearby properties and public spaces.

We are writing on behalf of the Church Wardens and Holy Trinity to provide the following comments and concerns about the proposed development of the Subject Property and the Application:

1. Trinity Square is a public park that is unique in its location in the midst of an urban environment. Portions of the park were donated by Holy Trinity to the City solely so it could function as a park and designed to ensure members of the public with a place to pause refresh and enjoy sunlight and peace during the middle of their day. It provides significant amenity to the entire area due in large part to the deliberate arrangements and restrictions agreed to in the 1970s and 1980s to guarantee the almost complete availability of sunlight in the park during the lunch hours for those working and visiting this block, one of the key destinations in the City of Toronto.
2. The proposed development's shadow impacts on Trinity Square are most severe during the periods when it is used the most by the public and those visiting the Church, the lunch time hours between the spring and the fall of the year.
3. In fact, at the summer solstice, June 21, Trinity Square currently experiences almost no shadow impact between 11:30 a.m. and 2:00 p.m. when it is most heavily used. Those working in the office building on the Subject Property and people visiting the Eaton Centre and the Church currently enjoy Trinity Square in the summer with effectively no shadow impacts. Trinity Square is an urban oasis benefiting from almost full sun and light when it is most used.
4. Between one half and one third of Trinity Square would be shadowed if the proposed development is allowed to proceed. Almost all of that additional shadow is not permitted, as the as-of-right shadow was carefully considered when the park was established and the existing buildings constructed. Only a tiny portion of the Trinity Square park is subject to as-of-right shadow.
5. At the spring and autumn equinoxes, the proposed shadowing is worse. The proposed development would roughly double the length and even amount of shadow on Trinity Square during the mid-day hours and in particular between noon and 2:00 p.m.
6. The proposed development would cast significant new net shadows on Trinity Square Park, contrary to Section 3.2 of the Downtown Tall Buildings: Vision and Supplementary Design Guidelines. Policy 3.2.b (Guideline #2) requires:
 - “Locate and design tall buildings to not cast new net shadows on ...b.
 - All other parks located within and adjacent to the Downtown Tall Buildings: Vision and Supplementary Design Guideline Boundary Area, between 12 Noon and 2:00 PM on September 21.”
7. The shadow also negatively affects the Church and its functions during those hours. The Church building is designated under Part IV of the *Ontario Heritage Act* for architectural interest. A key component of the Church's architectural value is its nave, which runs east-west along the north side of Trinity Square and the four



stained glass windows in its south wall between the narthex and the transept. Those stained glass windows represent each of the persons of the Holy Trinity, for which the Church is named. Liturgical architecture relies upon the orientation of the nave and the south-facing windows to provide significant natural light to the interior of the Church. Currently the Church operates during the middle of the day without artificial lighting, relying on the light that streams through those windows, casting coloured patterns across the floor of the Church nave. The shadowing will jeopardize the original architectural vision of a solely naturally lit nave.

8. Furthermore, the designers of the Church placed those signature stained glass windows, denoting the theological concepts of the Church's name on the south side of the nave to ensure that they would be lit by southern light. Those visiting the Church during the mid-day, if the proposed development is allowed to be constructed as currently designed, would no longer be able to properly appreciate this key architectural feature of the Church of the Holy Trinity. This is true for those coming to the Church for midday services/mass, prayer or even to appreciate this heritage property for its architectural and contextual merit.
9. The nave of the Church has been configured to serve more than Christian worship services. It serves a community function as well, a hub of support providing health support, distribution of food, harm reduction supplies, inner City survival gear, practical supports and spiritual counselling. It is occupied every day of the week during the noon hours, so the impact will be significant.
10. Holy Trinity would no longer be able to point to the beauty of this intentional design feature which references its reason for existence, the triune God, to those it serves during these periods of time.
11. Exacerbating the inequity of a decision to permit the rezoning is the fact that Holy Trinity agreed with the City to carry out a series of heritage restoration measures, which ultimately included the installation between 1979 and 1982 of the four Trinity windows, as a result of the covenants by all of the landowners and the City at that time to constrain development and ensure Trinity Square Park and the Church would enjoy undisturbed sunlight.
12. The proposed development fails to conform to various policies in the City's Official Plan intended to preserve its heritage properties. Policy 3.1.5.26 clearly requires:
New construction on, or adjacent to, a property on the Heritage Register will be designed to conserve the cultural heritage values, attributes and character of that property and to mitigate visual and physical impact on it.
13. The proposed development is *adjacent* to the Church, being "directly across from and near to a [heritage] property and separated by land used as a private or public road, highway, street, lane, trail, right-of-way, walkway, green space, park" ... or an intersection of any of these."
14. The Church is obviously a religious heritage property and is granted ultimate status by the Official Plan's Policy 3.1.5.47:
Religious heritage properties constitute a substantial portion of the City's cultural and architectural heritage. Those religious heritage properties that remain in active use for worship purposes will be subject to the policies of this Section of the Plan which, **in the event of any conflict, will take precedence over the other policies of this Plan**" (emphasis added).



15. The applicant and its consultants have not considered or addressed the impacts on the Holy Trinity heritage property in a fulsome manner. Their dismissal of impacts appears to simply have been accepted without any further comment by City planning staff. With appropriate consideration, it should be clear that the conservation principles should outweigh the goals of intensification and redevelopment in order to preserve the integrity of the heritage property and its attributes. The City should recognize the City's own policy language that "not all sites with or adjacent to heritage properties are appropriate for tall building development" (Section 1.6 of Tall Buildings Design Guidelines).
16. There are numerous Official Plan policies addressing the need to minimize shadows, maximize access to direct sunlight, daylight and open views of the sky, and the preservation of their utility, including Policies 3.1.2.8, 3.1.3.10, 3.1.3.11, and 3.2.3.3. Those policies find their clearest expression in the Tall Building Design Guidelines and the Downtown Tall Buildings: Vision and Supplementary Design Guidelines, adopted by City Council to implement the Official Plan.
17. The general objective to "maximize access to sunlight and sky view for surrounding street, parks" and "minimize shadow impacts" found throughout the Tall Building Design Guidelines (Sections 1.4 and 3.2.2 and 3.2.4 for example) is minimized and subsumed without the consideration of the existing conditions and useage of the adjacent park or impacts on important heritage properties like the Church, which cannot be redeveloped into equally tall buildings where the impacts can be more reasonably absorbed.
18. The proposed tower is not even located on a street where tall buildings are permitted. Even if the tower were to truly be located on Bay Street (which in this location is specifically **not** designated a High Street capable of hosting tall buildings pursuant to the Downtown Tall Buildings: Vision and Supplementary Design Guidelines). Instead it is proposed to be located close to the centre of the block and Trinity Square Park where its negative impacts will be greatest.
19. The existence of other tall buildings in the area do not form a good rationale or precedent for the appropriateness of the proposed tower. The closest tall building, 250 Yonge Street, is located to the east of the Church, where shadowing of the Church presents no concerns whatsoever, given the early morning hours when those would fall and the windows they would affect. Indeed, that tall building's design was the subject of the negotiations and covenants that led to Holy Trinity's participation in establishing Trinity Square Park and carrying out its restoration works, because it demonstrates the appropriate balancing of design impacts that are not present with this development.
20. Even where a site is assigned a height suitable for a tall building, Policy 1.3 of the Downtown Tall Buildings: Vision and Supplementary Design Guidelines provide that any one of three mitigating factors take precedence and "overrides the ability to locate a tall building on a particular site if it is deemed to negatively impact any of the following: **heritage properties** located on or adjacent to the development site; **sunlight on parks and open spaces**; and **views of prominent and heritage properties, structures and landscapes.**"
21. The identification of this location in the Supplementary Design Guidelines as a location where a tall building is **not** permitted is clearly intentional. Policy 1.9 states that "streets and street segments not identified as High or Secondary High Streets.... are streets or street segments that abut significant parks or contain a critical mass of heritage properties and contributing heritage fabric, or have an existing or planned



context which does not contemplate tall buildings as a suitable form of development”. We note that effectively every building that interfaces with the proposed development is a designated heritage property, including the Church, Scadding House, the Rectory and the Eaton Centre.

22. The introduction of this tower and its interaction with Trinity Square Park will interfere with and jeopardize the purpose, utility and function of the park: a sunny contemplative place for the public to pause, rest and reflect during the middle of the day. The character and intent of the Trinity Square Park is most clearly seen in the installation, with the cooperation of both Holy Trinity and the City itself, of a labyrinth that serves to facilitate contemplation, meditation and prayer in the heart of the square.
23. The Tall Building Design Guidelines (2013) contain requirements for tall buildings to provide publically accessible open spaces at grade “within the tall building site” to increase the amount of public open space (Section 2.4) that is to “include[e] access to sunlight”. The proposed development fails this requirement, since the site is too small to provide publicly accessible open spaces, as even the applicant acknowledges. Instead of adding additional publicly accessible open spaces to the neighbourhood, the residents and visitors to the development will, due to its proximity to the park, rely upon the park for their open space needs, which the development site is incapable of providing. That obligation of the developer and the development site will be exported from the building site itself into a public park that serves and was intended to serve a completely different purpose.
24. Trinity Square Park is effectively being co-opted to serve the new residents of the proposed residential tower.
25. With the proposed increased density and scale of activity this 538 unit tower will introduce to this location, there should be increased public facilities, such as that publicly accessible open space. The shoehorning of the new tall tower into an existing base building form resulted in the inability of the architects to deliver those necessary elements of a significant tall building. In addition to its failure to comply with Section 2.4 of the Tall Building Guidelines, the proposal fails to comply with:
 - a. Section 3.1.1’s requirement to “Design the base building to fit harmoniously within the existing context of building heights at the street and to respect the scale and proportion of adjacent streets, parks and public or private open space” (emphasis added); or
 - b. the requirement to provide “high-quality, sustainable streetscape and landscape design between the tall building and adjacent streets, parks and open space” (emphasis added) as found in Sections 3.1.2, 4.1, and 4..

Request

For those reasons, our clients request that Community Council recommend refusal of the Application and that City Council refuse the Application.

Please register either the undersigned or Mr. Jesse White of our office as a deputant before Toronto & East York Community Council at its meeting of June 30, 2022.

Holy Trinity is not opposed to all development on these lands. In particular, the provision of public good, including those factors discussed in this letter and further minimization of shadow impacts on Trinity Square Park and the Church may help change the calculus of



private versus public benefit. Revisions to the proposed Application and the development it would implement may very well satisfy Holy Trinity's concerns. An adjournment of the Application, if the Applicant is open to such discussions, would allow that further discussion between the City, the Applicant and Holy Trinity to occur.

Please accept this letter as a written submission from our client with respect to the requested Zoning By-law Amendment required by Subsection 34(19)2 of the *Planning Act*, R.S.O. 1990, c.P.13, as amended.

Please provide us with notice of any Zoning By-law Amendment in accordance with subsection 34(18) of the *Planning Act* so our client may exercise its appeal rights as required.

Potential Court Proceedings

The submission of these comments and Holy Trinity's participation in the planning process through the submission of land use planning reasons for opposing the Application do not constitute a waiver of any legal rights it may have with respect to preventing the development of the Subject Property as proposed by the Applicant. This letter is thus filed without prejudice to Holy Trinity's ability to seek injunctions, declarations or damages for breach of contract or any tortious activity or inactivity by any person, including but not limited to those who were party to agreements with Holy Trinity at the time Trinity Square Park, the restoration of the Church and the existing development was carried out.

Thank you for your consideration.

Yours very truly,

MILLER THOMSON LLP

Per:



David Tang
Partner
DT/jw/ac

cc Client
Jesse White

