



March 13, 2023

Planning and Administrative Law  
City of Toronto  
Metro Hall  
55 John Street, 26<sup>th</sup> Floor  
Toronto ON M5V 3C6

Attention: Mr. Mark Piel/Mr. Daniel Elmadany, City Solicitors

Dear Sirs:

**Re: "WITHOUT PREJUDICE" OFFER TO SETTLE**

**Zoning By-law Amendment appeal with respect to the properties municipally known as 399-405 Yonge Street, Toronto**

We are the solicitors for 399Y Corporation, the owners of the properties municipally known as 399-405 Yonge Street (the "Site") in the City of Toronto. The Site is located at the north-east corner of Yonge Street and Gerrard Street East, in the area commonly referred to as "Downtown Yonge". The Site is located within the "Downtown and Central Waterfront" pursuant to the Urban Structure map of the City's Official Plan, which Site is designated as a "Mixed Use Area" pursuant to the Land Use Map of that same Official Plan and "Mixed Use Areas 2" in the Downtown Plan.

The Site is in an area that is well served by transit, within walking distance of two subway stops at the corners of College and Yonge and Dundas and Yonge and is located within three delineated Protected Major Transit Station Areas, being Wellesley Station, College Station and Dundas Station.

A block planning exercise was undertaken to consider Covenant House to the east and the 409-415 Yonge Street application to the north. In addition, the delivery of two storeys of non-profit housing units (two floors located on the 2<sup>nd</sup> and 3<sup>rd</sup> storey of the building, fully fit-out and capable of providing up to 40 residential units, at "no cost" to Covenant House) for the exclusive use of Covenant House was also considered through this process.

The Official Plan Amendment (the "**Proposed OPA**") submitted by 409-415 Yonge Street has expanded to apply to the Site and 20 Gerrard Street East. One purpose of the Proposed OPA is to ensure any future development of the Covenant House lands is not adversely affected by the approved tall building tower setbacks on 409-415 Yonge Street and the Site. For clarity, the Proposed OPA does not permit a tall building as of right, but instead establishes a policy that if Covenant House ever decides to pursue a redevelopment of their site (proceeding through a

fulsome rezoning process), the agreed upon setbacks on the 409-415 Yonge Street lands and this Site as provided for through the Proposed OPA will not be the reason used to oppose their proposal.

On account of the above, our client has proposed revisions to their development proposal to:

- Adjusted the overall building height in various locations to eliminate any net new shadow during the prescribed times on Allan Gardens as set out in the proposed Official Plan Amendment;
- Highlighted the existing 3-storey built-form along Yonge Street by retaining the heritage building at 401 Yonge Street (entrances at 403 and 405A Yonge Street);
- provided a setback at grade adjacent to the retained heritage building to improve the perceived pedestrian perception of the existing building adjacent to the new addition;
- increase the setback from Yonge Street up to a certain height above the retained heritage building at approximately the 9<sup>th</sup> storey (6 storeys above the 3-storey heritage building), and the upper levels of the building project back out to Yonge Street;
- widened the sidewalk along Gerrard Street East by 1.7 metres, which sidewalk expansion will be fully weather protected; and
- attempted to better relate the lower components of the building along Gerrard Street East to 20 Gerrard Street East (being a designated heritage property).

These changes are reflected in the architectural plans and drawings, along with site statistics dated March 12, 2023 prepared by Teeple Architects (the "**Revised Proposal**").

Our client agrees that a minimum of 15% of the total number of units as two bedroom units, a minimum of 10% of the total number of units as three bedrooms units and an additional 15% per cent of the total number of units will be a combination of two bedroom and three bedroom units, or units that can be converted to 3 two and three bedroom units through the use of accessible or adaptable design measures.

As part of the within Offer to Settle, we require Council's approval "in principle" of the design solution proposed herein, with direction that both the City's Heritage Staff and our client's heritage consultants work cooperatively together to revise the Heritage Impact Assessment and Conservation Plan to reflect same.

In addition to the above changes to the Revised Proposal, below our client proposes a means by which the City can secure social housing on the site as a part of this settlement offer and how the settlement can be implemented.

### **Securing Social Housing & Implementation of Settlement**

Based on submissions made by Covenant House before the Toronto and East York Community Council on January 26, 2023 and our previous letter of February 18, 2023, we understand that City staff are concerned that the development will be approved without securing a social housing

program on the Site. We understand that a concern of the City is being able to secure any social housing program on the Site. Currently, we understand that the only tool available to the City to secure social housing through a planning process pursuant to a rezoning application is the enactment of Zoning By-law Amendment pursuant to Section 453.1 of the City of Toronto Act, 2006 (the "COTA"). However, only Council is vested with the authority to enact these By-laws and an appeal before the Tribunal could not facilitate the approval of a Zoning By-law Amendment that secures and requires the social housing proposed. We also understand that should Council enact the Zoning By-law Amendment under s. 453.1 of the COTA, there is no right to appeal from by-law to the Tribunal that secures the social housing program.

In responding to the City's direction to ensure the proposed rezoning legally secures the non-profit housing for the benefit of a non-profit organization like Covenant House, our client was asked to consider a creative approach to implement our proposed settlement. In order to facilitate securing the social housing for Covenant House and implementing the Revised Proposal, we are requesting Council direct the following:

1. the City Solicitor to attend the Ontario Land Tribunal in support of an Official Plan Amendment as it applies to 399-405 Yonge Street and 20 Gerrard Street East, with the final form and content to the satisfaction of the City Solicitor, as revised to state:

"Any approval of a zoning by-law amendment for the lands known municipally as 399-405 Yonge Street permitting a tall building shall require, pursuant to section 453.1 of the City of Toronto Act, 2006, the provision of a social housing program and the owner of the lands and the operator of the social housing program shall be required to enter into an agreement with the City and register it in priority against title to the lands which secures the provision of the social housing program in accordance with this Policy and the requirements of the zoning by-law amendment.

A mixed-use tall building within the lands known municipally as 399-405 Yonge Street having a maximum height of 249.8 metres, a total maximum height of 252.8 metres inclusive of any mechanical projections for a part of the roof area of the building, and a minimum tall building setback of 5.5 metres from its east property line, is permitted provided that the mixed-use tall building includes a social housing program within the building on the lands in accordance with Policy (b) above.

The minimum tall building setbacks contemplated in Policies (a) and (c) above shall not preclude the development of the lands known municipally as 20 Gerrard Street East for the purpose of a potential tall building (with a 12.5 metre setback to its westerly lot line and a 5.5 metre setback to its easterly lot line) authorized by a zoning by-law amendment provided that any potential tall building proposal within the lands shall not be approved unless it conforms and is consistent with all other municipal policies and all provincial policies (including, without limitation,

all policies pertaining to heritage conservation) For the purpose of this Policy (d), the minimum tall building setbacks set out may be increased or decreased as determined through the zoning by-law amendment review process of any such proposed tall building, without an Official Plan Amendment to this Policy.

Development on 399-405 Yonge Street will not cast net-new shadow as measured at hourly increments on March 21st from 9:18 a.m. – 6:18 p.m. and at hourly increments on September 21st from 9:18 a.m. – 4:18 p.m. on Allan Gardens."

We understand that the amendments above will be included in the Proposed OPA and read in concert with the amendments that apply to 409-415 Yonge Street which is generally reflected below as follows (and which is provided in this letter for reference only):

"A mixed-use tall building within the lands known municipally as 409-415 Yonge Street and 9 and 17 McGill Street having a maximum height of 230.5 metres, including any mechanical penthouse, a minimum tall building setback of 10 metres from its south property line shared with the lands municipally known as 407 Yonge Street, a minimum tall building setback of 13.5 metres from its south property line shared with the lands known as 20 Gerrard Street East, and a minimum tall building setback of 10.0 metres from its east property line shared with 20 Gerrard Street East, is permitted."

2. That the Acting Director, Community Planning, Toronto and East York District to bring forward a revised Zoning By-law Amendment that implements the Revised Proposal to a statutory public meeting pursuant to s. 34 of the Planning Act, subject to any agreement(s) as may be required under s. 453.1(3) of the COTA to secure a social housing program on the Site, with the final zoning by-law amendment implementing the endorsed settlement plans which is anticipated to be before City Council at its meeting of July 19-21, 2023.
3. Our client understands and agrees that in order to implement Item 2 above, they will need to:
  - resubmit a draft Zoning By-law Amendment to incorporate the requirements of s. 453.1 of the COTA to the satisfaction of the City Solicitor, Housing Secretariat, City's Zoning Division and Toronto Building to secure two storeys on the 2<sup>nd</sup> and 3<sup>rd</sup> storeys of the building (excluding the mezzanine) for the purpose of a social housing program and implement the Revised Proposal, which shall not include any specified number of storeys, which shall not include the maximum number of units and which shall not include any minimum unit sizes;

- resubmit an updated complete set of architectural plans based on the Revised Proposal to facilitate the finalization of the Zoning By-law Amendment (copies of which are attached hereto as part of the within Offer);

- to make an application under s. 33 of the *Ontario Heritage Act* for the proposed alterations to the on-site heritage properties subject of the Notice of Intention to Designate for 401 Yonge Street proceeding at the same meeting of this matter, which our Client understands will need to proceed to the Toronto Preservation Board, prior to consideration by City Council which, again, is anticipated to be at its meeting on July 19-21, 2023; and

- an updated set of engineering reports, satisfactory to the Chief Engineer and Executive Director, Engineering and Construction Services.

4. Upon City Council's endorsement of the above and following receipt of confirmation from the City Solicitor, our Client agrees to immediately withdraw its appeal of its zoning by-law amendment application.

Enclosed herewith are the following materials in support of this settlement offer:

- Revised architectural plans dated March 12, 2023, which include the revised shadow studies which demonstrate no net new shadows on Allen Gardens as permitted by the proposed Official Plan amendment.

Should you have any questions or require any additional information, please do not hesitate to contact the writer or Jessica Smuskowitz, a lawyer in our office.

Yours very truly,



Adam J. Brown

Cc: City Clerk

Councillor Chris Moise