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October 4, 2023

VIA EMAIL

Mayor Olivia Chow and Members of City Council
Toronto City Hall
100 Queen Street West
Toronto, ON M5H 2N2

Attention: John Elvidge, City Clerk

Dear Sirs/Mesdames:

**RE: 399-405 Yonge Street – Zoning By-law Amendment Application – Decision Report
– Approval
(City File No. 22 162248 STE 13 OZ)
Item 2023 TE7.7**

We are the lawyers for Jencel 407 Yonge Street Inc. (“**Jencel**”), the owner of the property at 407 Yonge Street (“**Jencel Site**”), located immediately north of the property at 399-405 Yonge Street that is the subject of the above-noted application (the “**399 Yonge Property**”).

On behalf of Jencel, we previously submitted correspondence to the Toronto East York Community Council (“**TEYCC**”) meeting, dated September 14, 2023, outlining its concerns with the proposed tower on the 399 Yonge Property at a “0-m setback” and the “zero lot line windows condition”, which did not take into account the as-of-right development permissions of the Jencel Site. A copy of the September 14, 2023 correspondence is publicly available here on the City’s website: (<https://www.toronto.ca/legdocs/mmis/2023/te/comm/communicationfile-172211.pdf>).

Additionally, my colleague Ms. Ast made a deputation consistent with the correspondence at the September 19, 2023 TEYCC Meeting, requesting that the below provision be added to the proposed implementing Zoning By-law Amendment:

“No windows are permitted on the north elevation of the building at or below a height of 20 metres above grade, unless the windows are setback a minimum of 5.5 metres from the north property line.”

At the TEYCC meeting, a motion was moved to amend the Zoning By-law Amendment as:

“1. Section 4 in Attachment 2- Draft Zoning By-law Amendment be amended by:

...

b. adding the following provision:

“On the north side of the building or structure below a Canadian Geodetic height of 115.6 metres, no windows are permitted unless the building or structure is set back from the north lot line by 1 metre or more”

Jencel’s Position on the Revised Provision

After being reviewed by our client’s land use planner, it has been determined that a 1 metre set back from the north lot line for windows on the north side of the proposed building, up to a geodetic height of 115.6 metres is not sufficient to address Jencel’s concerns and protect for its future development potential. Nor would it result in an appropriate condition for residential windows on the 399 Yonge Property.

Based on current zoning, the Jencel Site may develop to a height of 20 metres as-of-right. A development at this as-of-right scale would accommodate the potential for the Jencel Property to redevelop as a medical or other office building type, up to a height of 20 metres, or approximately 6 storeys.

Importantly, as we noted in our earlier letter, the development immediately to the north of the Jencel Site at 415 Yonge Street will have restrictions on south-facing podium windows where the building abuts the south property line to provide an appropriate interface and to respect Jencel’s as-of-right permissions.

Windows on the 399 Yonge Property set back at only 1 metre still poses significant interface issues. These windows at the 2nd and 3rd storeys are currently being proposed as residential windows for the Covenant House social housing component. In this case, residential units being delivered for Covenant House’s clientele (young people in need) would potentially interface with a blank wall of a 6 storey building on the Jencel Site a mere 1 metre (3 feet) to the north. Furthermore, in the absence of any agreements between the properties, the Ontario Building Code would impose significant restrictions on the allowable size of windows set back only 1 metre.

We submit that Council should consider our client’s original request to either prohibit windows in this location in order to address compatibility issues between the two buildings, or to require a minimum 5.5 metre setback, consistent with the mixed-use building zoning standards in the former City of Toronto Zoning By-law 8(3) II 1(b) (1977-0275). This will protect for the future comprehensive development of this block and assist in providing for an appropriate interface for Covenant House’s potential residential uses.

Technical Problem with Geodetic Height in Revised Provision

It has further been determined that the proposed geodetic height limitation of “115.6 metres” is not sufficient to protect for a for a future building at the Jencel Site at a permitted height of 20.0 metres.

It appears that the proposed geodetic height has been based on the geodetic elevation at the **south west** corner of the 399 property which is approximately 95.5 m. ($95.5 + 20 = 115.5$). However, because Yonge Street slopes up to the north in this location, this geodetic height should instead be calculated from the height at grade at the **north west** corner of the 399 Yonge Property or based on the average of the elevation along the south property line of the Jencel Site.

Our client's planner has provided the below analysis:

- The geodetic elevation of the southwest corner of the Jencel Site: approximately 96 m
- The geodetic elevation of the southeast corner of the Jencel Site: approximately 96.54 m
- The average elevation would be $(96 + 96.54)/2 = 96.27$ m
- A 20-metre building would have a geodetic elevation of $96.27+20 = 116.27$ m

As a result, we would request at minimum that Council amend the TEYCC motion to account for the 116.27 m geodetic height:

However, we reiterate that this is a technical correction to accurately reflect the appropriate geodetic height for a window restriction. Our client does not agree that the 1 metre set back from the north lot line is appropriate, or that it will resolve Jencel's issues with respect to compatibility and interface as between the Jencel Site and the 399 Yonge Property, or that it will result in an appropriate condition for residential windows, including residential windows that are part of the Covenant House social housing program.

Jencel Request

If there are to be windows in the north wall of the proposed development, a more appropriate restriction would be the 5.5 metre separation found in the former City of Toronto Zoning By-law which was proposed in our original correspondence. Therefore, using the formulation of the TEYCC motion and correcting the geodetic height as noted above, we respectfully request the following restriction be added to the proposed Zoning By-law Amendment:

On the north side of the building or structure below a Canadian Geodetic height of 116.3 metres, no windows are permitted unless the building or structure is set back from the north lot line by 5.5 metres or more

At this time, we are reiterating that there are no agreements between our client and the applicant for the 399 Yonge Property that would facilitate residential windows on the property line where they would conflict with our client's as-of-right development permissions.

Should you have any questions or require any further information, please do not hesitate to contact the undersigned, or in his absence, Natalie Ast (nast@overlandllp.ca).

Yours truly,

Overland LLP

A handwritten signature in black ink, appearing to read 'C. J. Tanzola', with a large, sweeping flourish extending to the right.

Per: Christopher J. Tanzola
Partner