

36 to 40 Ellesmere Road Zoning Amendment Application – Appeal Report

Date: August 21, 2023

To: Scarborough Community Council

From: Acting Director, Community Planning, Scarborough District

Wards: 21- Scarborough-Centre

Planning Application Number: 21 240661 ESC 21 OZ

SUMMARY

On December 6, 2021, a Zoning By-law Amendment application was submitted to permit the construction of an 11-storey residential building with 187 units at 36-40 Ellesmere Road. The proposed gross floor area was 14,794 square metres resulting in a Floor Space Index of 3.53 times the area of the lot. A total of 220 vehicular parking spaces and 172 bicycle parking spaces were proposed.

On March 16, 2023, the Applicant appealed the application to the Ontario Land Tribunal (the "OLT") due to City Council not making a decision within the prescribed timelines under the *Planning Act*.

Subsequent to the appeal, the applicant submitted a revised proposal on July 16, 2023 ("the Revised Proposal") which addresses the majority of the rezoning issues that were identified by staff during the first circulation. The Revised Proposal contemplates a 12-storey mixed-use building with 14,331 square metres of residential gross floor area for a total of 187 units and 202 square metres of ground floor retail space at 36 to 40 Ellesmere Road. The proposal would have a net Floor Space Index of 3.47 times the area of the lot.

This report recommends that the City Solicitor with the appropriate City staff attend the OLT hearing in support of a settlement on the application based on recommendations and comments contained within this report.

RECOMMENDATIONS

The City Planning Division recommends that:

1. City Council direct the City Solicitor, together with appropriate staff, to attend the Ontario Land Tribunal in support of the Revised Proposal for the Zoning By-law Amendment application substantially in accordance with the revised architectural plans

and drawings prepared by BDP Quadrangle dated June 29, 2023, subject to the conditions below.

2. In the event that the Ontario Land Tribunal allows the appeals in part, City Council instruct the City Solicitor to request the Ontario Land Tribunal to withhold its Order on the Zoning By-law Amendment until such time as the Ontario Land Tribunal has been advised by the City Solicitor that:

a. the proposed Zoning By-law Amendment is in a final content and form satisfactory to the Chief Planner and Executive Director, City Planning and the City Solicitor;

b. the Owner has at its sole cost and expense:

1. submitted a revised Functional Servicing Report, Stormwater Management Report, and Hydrogeological Review, including Foundation Drainage Report or addendums ("Engineering Reports"), to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services, in consultation with the General Manager, Toronto Water;

2. secured the design and provision of financial securities for any upgrades or required improvements to the existing municipal infrastructure identified in the accepted Engineering Reports, to support the development, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Toronto Water, should it be determined that improvements or upgrades are required to support the development, according to the accepted Engineering Reports, accepted by the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager, Toronto Water;

3. ensured the implementation of the accepted Engineering Reports does not require changes to the proposed amending By-laws or any such required changes have been made to the proposed amending By-laws, to the satisfaction of the Chief Planner and Executive Director, City Planning and the City Solicitor, including the use of a Holding ("H") By-law symbol regarding any new or upgrades to existing municipal servicing infrastructure as may be required;

4. submitted a revised Transportation Impact Study or addendum, acceptable to, and to the satisfaction of, the General Manager, Transportation Services and the Chief Engineer and Executive Director, Engineering and Construction Services and that such matters arising from such study, be secured if required; and

5. submitted a revised Arborist Report or addendum and Tree Protection Plan acceptable and satisfactory to the General Manager, Parks, Forestry and Recreation;

3. City Council authorizes the City Solicitor and City Staff to take and necessary steps to implement City Council's decision.

FINANCIAL IMPACT

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.

SITE AND SURROUNDING AREA

Site Description

The site is located on the north side of Ellesmere Road, approximately 60 metres to the east of the intersection of Victoria Park Avenue and Ellesmere Road. The site is comprised of the addresses 36 to 40 Ellesmere Road. The site is generally rectangular in shape and has a frontage of approximately 50.15 metres along Ellesmere Road and an area of approximately 4,190.0 square metres. The site has frontage on both Ellesmere Road and Waringstown Drive.

Existing Uses:

Two single-storey commercial buildings with a surface parking lot at the front of the buildings.

Surrounding uses include:

North: The area to the north and east of the site is generally comprised of 1 to 2-storey residential dwellings. To the immediate northwest there is a 2-storey commercial building at 2167 to 2175 Victoria Park Road.

East: To the immediate east, fronting on Ellesmere Road there is a 1-storey house-form building that is occupied by a dentist's office at 42 Ellesmere Road. Further east are single detached dwellings and retail plazas fronting on to Ellesmere Road.

South: To the immediate south, on the south side of Ellesmere Road, is Parkway Mall. Parkway mall is a community shopping centre with a large concentration of retail and commercial uses deployed within a large mall building and a number of stand alone single storey buildings amidst the surface parking lots.

West: To the immediate west there is a gas station at 20 Ellesmere Road.

THE APPLICATION

The initial application was submitted on December 6, 2021 and contemplated an 11-storey residential building with 187 units. The proposed gross floor area was 14,794 square metres resulting in a Floor Space Index of 3.53 times the area of the lot. A total of 220 vehicular parking spaces and 172 bicycle parking spaces were proposed.

The application was appealed to the OLT on March 16, 2023 due to City Council not making a decision within the 90-day time frame in the *Planning Act*. The first case management conference was held on July 7, 2023.

On July 16, 2023, the Revised Proposal was submitted. The Revised Proposal was submitted in response to staff comments on the original application. Below is a description of the Revised Proposal and a comparison of the original application and the resubmission.

Height: 12-storeys (39.9 metres)

Density (Floor Space Index): 3.47 times the area of the lot.

Uses: 14,331 square metres of residential uses and 202 square metres of retail uses.

Unit count: The proposed 187 dwelling units include, 20 bachelor units (10.7%), 102 one-bedroom units (54.5%), 43 two-bedroom units (23.0%) and 22 three-bedroom units (11.8%).

Access, Parking and Loading: Vehicular access to the site is proposed off of Ellesmere Road on the east end of the site via one curb cut. The proposed building would cantilever over the driveway. The internal driveway has a vehicular turn around area and drop-off and would provide access to the Type 'G' loading space and to the underground ramp which is proposed approximately in the centre of the site.

Two surface parking spaces are proposed in addition to 218 vehicular parking spaces proposed in three levels of underground parking. A total of 178 bicycle parking spaces are proposed to be located at the ground floor and the P1 level.

Table 1 below provides a comparison between the original application and the Revised Proposal.

Table 1 - Comparison of Submissions

	Original Application (December 6, 2021)	Revised Proposal (July 16, 2023)
Height	11-storeys (36.75 metres)	12-storeys (39.9 metres)
Gross Floor Area		
Residential	14,794	14,331
Retail	0	202
Total	14,794	14,533
Density (FSI)	3.53	3.47
Unit Count		
Studio	21	20
1 bedroom	90	102
2 bedroom	57	43
3 bedroom	19	22
Total	187	187
Amenity Space		
Indoor	311	378
Outdoor	424.7	401
Parking Spaces	220	220
Bicycle Parking Spaces	172	178

Additional Information

For more information see attachments 1-5 of this report for the location map, Application Data Sheet, 3-D images of the proposal in context and a site plan for the proposal. The Application Data Sheet contains additional statistics including: site area, gross floor area, unit breakdown and parking counts.

Detailed project information is found on the City's Application Information Centre at: <https://www.toronto.ca/city-government/planning-development/application-information-centre/>

Site Plan Control

A Site Plan application (File No. 21 240659 ESC 21 SA) was filed concurrently with the rezoning application and is also under review. The Site Plan application has not been appealed to the OLT.

Reasons for the Application

A Zoning By-law amendment application is required as the application proposes to exceed the maximum building height and density permitted by the existing Zoning By-

law. The application is also required to establish the appropriate site-specific development standards (building setbacks, massing, height, density and parking rates among others) for the proposed development.

POLICY CONSIDERATIONS

Provincial Land-Use Policies

All decisions of Council in respect of the exercise of any authority that affects a planning matter shall be consistent with the Provincial Policy Statement (PPS) and shall conform to provincial plans.

Official Plan Designation: The site is designated *Mixed Use Areas* on Map 20 of the Official Plan. (See Attachment 6: Official Plan)

Zoning: The property is subject to the City of Toronto Zoning By-law No. 569-2013, as amended and the former City of Scarborough Maryvale Community Zoning By-law No. 9366, as amended. (See Attachment 7: Zoning By-law Map)

The City of Toronto Zoning By-law 569-2013, as amended zones the subject lands as Commercial Residential CR 0.4 (c0.4; r0.0) SS3 (x666). This zone permits a variety of uses including Art Gallery, Artist Studio, Automated Banking Machine, Community Centre, Courts of Law, Education Use, Financial Institution, Fire Hall, Library, Automobile Sales, Service and Maintenance Uses, Funeral Homes, Fraternal Organizations, Hotels and Motels, Place(s) of Worship, Retail Uses and Professional and Business Offices. This zoning category does not permit residential uses as shown by the numerical value or zero density for residential uses in the zoning standards noted above.

The Commercial Residential zoning permits a maximum building height of 11 metres, a maximum building coverage of 33%, and a floor space index of 0.4 times the lot area for non-residential uses. This By-law contains a 45 degree angular plane requirement measured from the rear property line. This By-law also establishes minimum building setbacks from Ellesmere Road.

The Maryvale Community Zoning By-law 9366, as amended, zones the subject site as Highway Commercial (HC) and is subject to the performance standards 26-28-75-92. The Highway Commercial Zone permits uses such as Day Nurseries, Automotive Sales, Service and Maintenance, Fraternal Organizations, Hotels and Motels, Place(s) of Worship, Professional Business Offices, Recreational Uses and Specialized Commercial Uses. The performance standards concern minimum building setbacks and maximum lot coverage.

Design Guidelines

The following design guidelines have been used in the evaluation of this application:

- Mid-Rise Building Guidelines;
- Growing Up Guidelines Planning for Children in New Vertical Communities;

- Pet Friendly Design Guidelines;
- Best Practices for Effective Lighting;
- Retail Design Manual; and
- Toronto Accessibility Design Guidelines.

Toronto Green Standard

The TGS is a set of performance measures for green development. Applications for Zoning By-law Amendments, Draft Plans of Subdivision and Site Plan Control are required to meet and demonstrate compliance with Tier 1 of the Toronto Green Standard. The TGS can be found here: <https://www.toronto.ca/citygovernment/planning-development/official-plan-guidelines/toronto-green-standard/>

COMMUNITY CONSULTATION

A Virtual Community Consultation meeting to discuss the proposal at 36 to 40 Ellesmere Road was held on June 27th, 2022. Presentations were made by staff and the Applicant. Approximately 18 people participated, as well as the Ward Councillor. Residents provided comments related to the following concerns:

- Noise dust and fumes from the potential construction.
- The retention of existing commercial businesses on site.
- Increased traffic generated from the development.
- Height and shadow impact.
- Density and scale.
- Adequate vehicular and bicycle parking.
- The need for outdoor amenity spaces and a playground.
- The need for affordable housing and rental units.
- Pedestrians walking though the site to the neighbourhood to the north and issues of loitering and crime.
- Concerns around school capacity.

COMMENTS

The proposal has been reviewed against the *Planning Act*, PPS, Growth Plan and Official Plan policies, planning studies and design guidelines.

Provincial Policy Statement and Provincial Plans

Staff's review of this application has had regard for the relevant matters of provincial interest set out in the Planning Act. Staff have reviewed the Revised Proposal against the Provincial Policy Statement (PPS) and the Growth Plan and have found it to be consistent with the PPS and in conformity with the Growth Plan.

Land Use

The subject site is designated *Mixed Use Areas* in the Official Plan.

The Revised Proposal includes retail space which better supports the land use objectives of the Official Plan. The proposal complies with the land use policies of the Official Plan and staff are satisfied with the amount and location of the retail space provided.

Height, Density, Built Form and Site Organization

The Revised Proposal was informed by height and built form direction provided by City Planning staff. The overall height of the building has increased slightly, however the massing of the building has been revised to have a better relationship with the existing and planned context. The mass at the rear of the building was reduced at the 8th to 11th floors to create greater separation distances from the massing of the building to lands to the north which is currently characterized with low-rise single-detached dwellings and designated *Neighbourhoods*. A greater setback from the eastern building wall and property line was introduced at the 4th and 5th storeys to create a strong 3-storey street wall condition along Ellesmere Road and to incorporate better transition to the low-rise built form on lands to the east. Staff are satisfied with these revisions.

The original application included a mid-block connection to Warington Drive. A number of residents at the virtual community consultation meeting raised concerns regarding this mid-block connection and safety. City staff reviewed the issue and noted the short distance to the Pollard drive which is a public street which intersects with Warington Drive and determined that mid-block connection is not needed. The Revised Proposal does not include the mid-block connection.

The Revised Proposal includes a reduction in the total gross floor area of the project and the addition of retail space to create a mixed use development.

Unit Mix and Amenity Space

The Revised Proposal includes 23% 2-bedroom units and 11.8% 3-bedroom units for a total of 34.8% large units. Guideline 2.1 of the Growing Up Guidelines states that a residential building should provide a minimum of 25% large units. Specifically, the Guidelines state that 10% of the total residential units should be three-bedroom units and 15% should be two-bedroom units. The Revised Proposal exceeds the minimum proportion of large units stated in the guideline. A significant proportion of 2 and 3-bedroom units meet the ideal unit size from Guidelines 3.0 of the Growing Up Guidelines. This is a significant improvement over the original proposal where only 5 2-bedroom units and 1 3-bedroom unit met or exceeded the ideal unit size for large units. The proposed unit mix and proposed unit sizes are consistent with the Growing up Guidelines.

The Revised Proposal results in an increase of the indoor amenity space and a net increase in total amenity space by 43.3 square metres over the original submission. The

proposed amenity space exceeds the total By-law requirement of 748 square metres (4.0 square metres per unit) by providing 779 square metres. Staff are satisfied with the proposed amenity space.

Sun and Shadow

A revised shadow study was submitted with the resubmission. Staff are satisfied that the proposed built form adequately limits shadow impact on the surrounding properties. On March and September 21st, the nearby properties designated *Neighbourhoods* would have 5 or more hours of continuous sunlight.

Wind

A Pedestrian Level Wind Study was submitted in support of the application. The study indicates there will be no uncomfortable wind conditions and all areas will be suitable for their intended uses throughout the year.

Parks

In accordance with Chapter 415, Article III of the Toronto Municipal Code, the applicant is required to satisfy the parkland dedication requirement through a cash-in-lieu payment. The value of the cash-in-lieu of parkland dedication will be appraised through Real Estate Services. Payment will be required prior to the issuance of the first abovegrade building permit.

Toronto Transit Commission

The TTC indicated that their comments from the initial submission have been addressed by the Revised Proposal.

Urban Forestry

Urban Forestry is not opposed in principle to development of this site, however at this time they do not support the zoning by-law amendment proposal, because aspects of the overall plan/concept for the site are, in Urban Forestry's opinion, inconsistent with parts of the City Council's objectives concerning tree canopy cover and do not demonstrate compliance with Tier 1 of TGS Version 3 (ecology section).

In the event the Ontario Land Tribunal (OLT) allows the appeal in whole or in part, it is recommended that City Council direct the City Solicitor to request that the OLT withhold its final order until a revised Arborist Report or addendum and Tree Protection Plan acceptable to the General Manager, Parks, Forestry and Recreation is submitted that addresses all outstanding issues raised by Urban Forestry, Tree Protection and Plan Review in their commenting memo dated August 16, 2023 as they relate to the Zoning By-law amendment application.

Infrastructure and Servicing Capacity

A Functional Servicing and Stormwater Management Report, Hydrogeological Review Report and associated plans were submitted with the application. As part of the comments on the initial submission, Engineering and Construction Services staff indicated the need for revisions and additional information to complete their review of the application. As part of the Revised Proposal, the applicant has submitted the required updated materials to the City for review and acceptance. These materials are currently under review and must be resolved to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services.

In the event that the OLT allows the Zoning By-law Amendment appeal in whole or in part, the final Order should be withheld pending the confirmation of water, sanitary and stormwater capacity from the Chief Engineer and Executive Director, Engineering and Construction Services, or the determination of whether holding provisions are required in the Zoning By-law amendment.

Traffic Impact, Access and Parking

Staff are reviewing the revised Transportation Impact Study submitted by the applicant, the purpose of which is to evaluate the effects of the proposed development on the transportation system, but also to suggest any transportation improvements that are necessary to accommodate the travel demands and impacts generated by the development. If these improvements are required, they will generally be secured as part of the Site Plan Approval process. The revised Transportation Impact Study remains under review by Transportation Services staff. In the event that the OLT allows the Zoning By-law Amendment appeal in whole or in part, this report recommends the final Order should be withheld pending the completion of this review to the satisfaction of the General Manager, Transportation Services.

Toronto Green Standard

The applicant is required to meet Tier 1 of the Toronto Green Standard, and is encouraged to achieve Tier 2 or higher to advance the City's objectives for resilience and achieving net-zero emissions by 2040 or sooner. Should the proposal be approved by the OLT, applicable performance measures for the Tier 1 development features would be secured in the site-specific Zoning By-laws at a minimum and others through the Site Plan Control application.

School Boards

The Toronto District School Board (TDSB) advised that sufficient capacity at the local schools is anticipated by the time this development is occupied, based on the data available at this time.

The Toronto Catholic District School Board (TCDSB) advised that sufficient space exists within the local elementary schools. The local secondary schools are operating at capacity and may not accommodate additional students from the development as proposed.

Conclusion

The Revised Proposal has been reviewed against the policies of the PPS (2020), the Growth Plan (2020), the Official Plan and applicable City guidelines intended to implement Official Plan policies. Staff are of the opinion that the proposal is consistent with the PPS (2020) and conforms with the Growth Plan (2020). Furthermore, the proposal conforms to the Official Plan, particularly as it relates to mid-rise building design and transition. Overall the proposal has been revised to meet the intent of the Mixed Use Areas development policies.

This report recommends that the City Solicitor, with appropriate staff, attend the OLT in Support of the Revised Proposal based on the recommendations and comments contained within this report and subject to the fulfilment of certain pre-conditions prior to any OLT Order on the Zoning By-law Amendment.

CONTACT

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SIGNATURE

Christian Ventresca, MScPL, MCIP, RPP, Acting Director
Community Planning, Scarborough District

ATTACHMENTS

City of Toronto Drawings

Attachment 1: 3D Model of Proposal in Context Looking Southwest

Attachment 2: 3D Model of Proposal in Context Looking Northwest

Attachment 3: Location Map

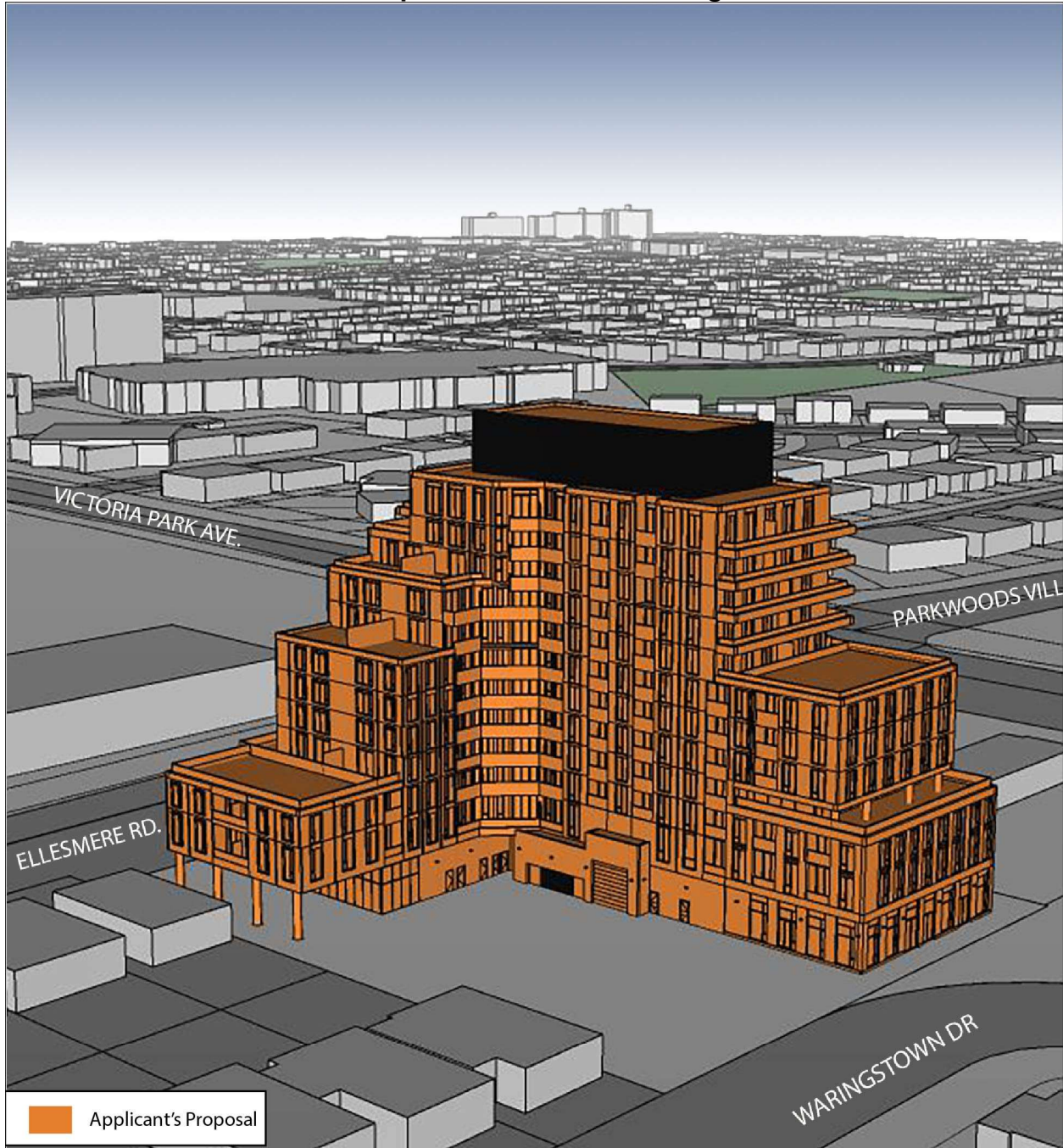
Attachment 4: Application Data Sheet

Attachment 5: Site Plan

Attachment 6: Official Plan Map

Attachment 7: Zoning Bylaw Map

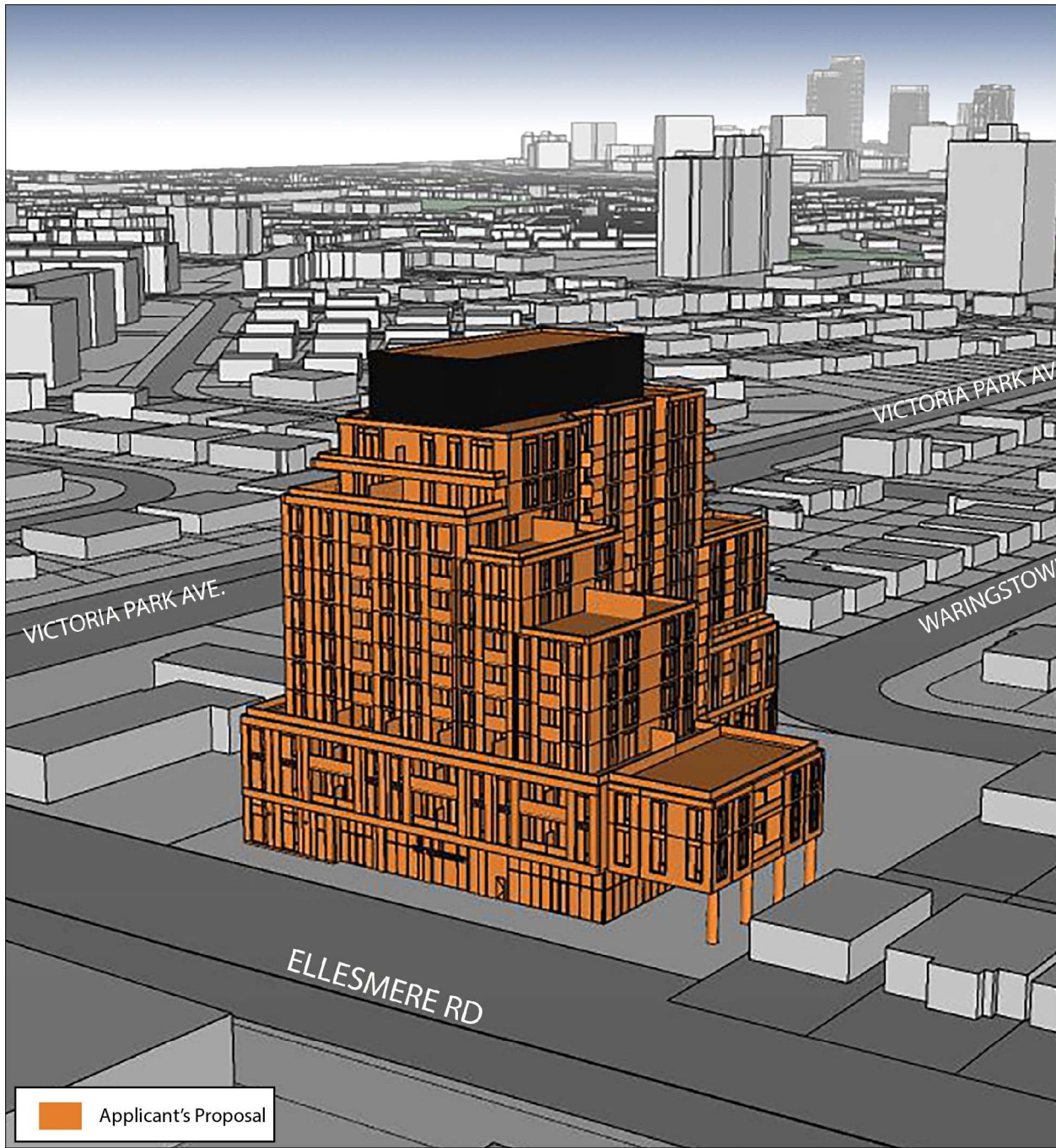
Attachment 1: 3D Model of Proposal in Context Looking Southwest



View of Applicant's Proposal Looking Southwest

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08/18/2023

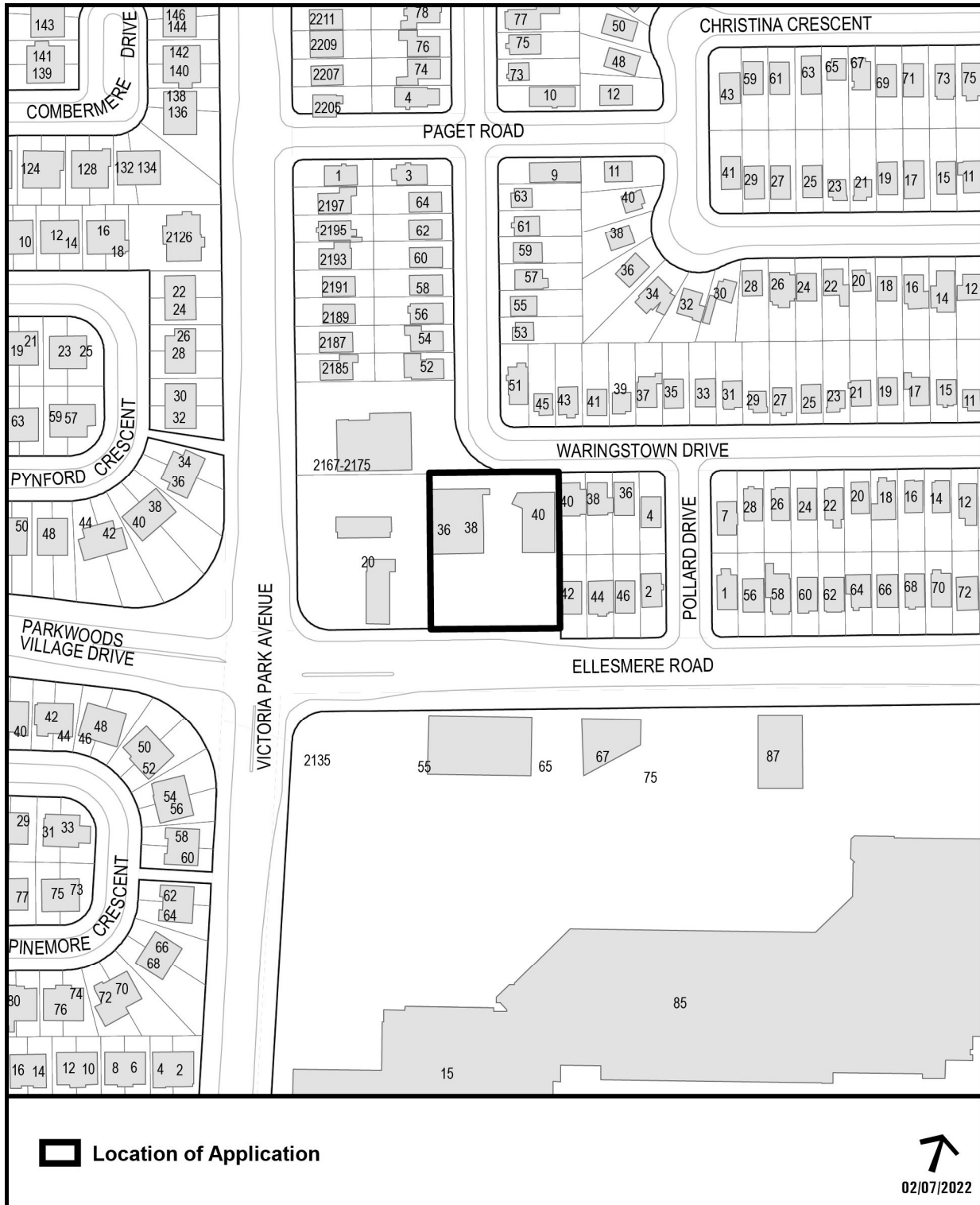
Attachment 2: 3D Model of Proposal in Context Looking Northwest



View of Applicant's Proposal Looking Northwest

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08/18/2023

Attachment 3: Location Map



Attachment 4: Application Data Sheet

APPLICATION DATA SHEET

Municipal Address: 36 ELLESMERE RD Date Received: December 6, 2021

Application Number: 21 240661 ESC 21 OZ

Application Type: Rezoning

Project Description: Zoning By-law Amendment resubmission to permit a 12-storey mixed-use building with 187 dwelling units retail at-grade and three levels of below-grade parking containing 218 vehicular parking spaces. The proposed total gross floor area is 14,533 square metres, resulting in a floor space index of 3.47 times the area of the lot.

Applicant	Agent	Architect	Owner
GOLDBERG GROUP			STARBANK DEVELOPMENTS 36 CORP

EXISTING PLANNING CONTROLS

Official Plan Designation:	Mixed Use Areas	Site Specific Provision:
Zoning:	CR 0.4 (c0.4; r0.0) SS3 (x666)	Heritage Designation:
Height Limit (m):	11	Site Plan Control Area: Y

PROJECT INFORMATION

Site Area (sq m): 4,190 Frontage (m): 50 Depth (m):

Building Data	Existing	Retained	Proposed	Total
Ground Floor Area (sq m):	972		1,780	1,780
Residential GFA (sq m):			14,331	14,331
Non-Residential GFA (sq m):	972		202	202
Total GFA (sq m):	972		14,533	14,533
Height - Storeys:	1		12	12
Height - Metres:			39	39

Lot Coverage Ratio (%)	42.48	Floor Space Index:	3.47
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Floor Area Breakdown	Above Grade (sq m)	Below Grade (sq m)
Residential GFA:	14,331	
Retail GFA:	202	
Office GFA:		
Industrial GFA:		
Institutional/Other GFA:		

Residential Units by Tenure	Existing	Retained	Proposed	Total
Rental:				
Freehold:				
Condominium:			187	187
Other:				
Total Units:			187	187

Total Residential Units by Size

	Rooms	Bachelor	1 Bedroom	2 Bedroom	3+ Bedroom
Retained:					
Proposed:		20	102	43	22
Total Units:		20	102	43	22

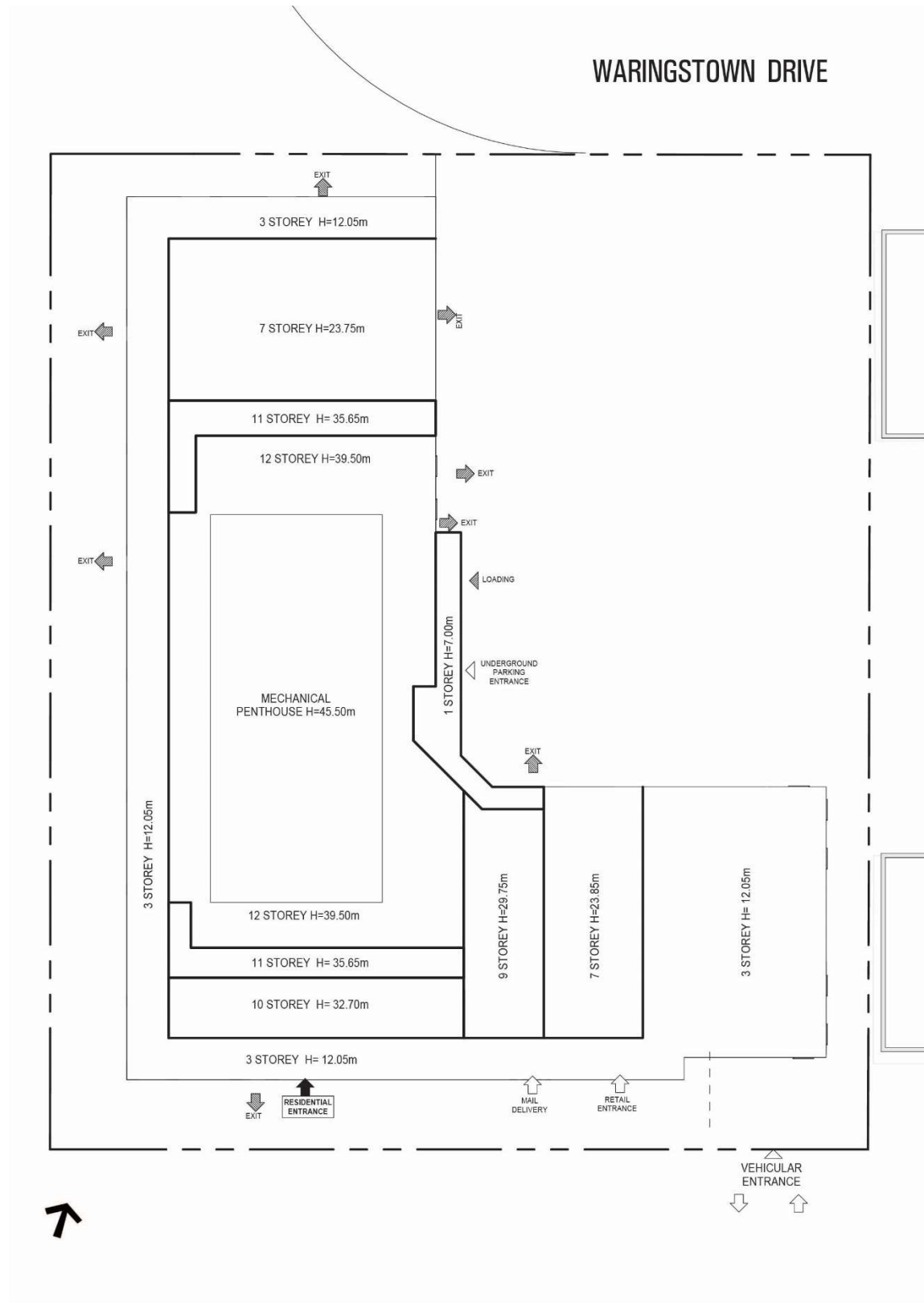
Parking and Loading

Parking Spaces:	220	Bicycle Parking Spaces:	178	Loading Docks:	1
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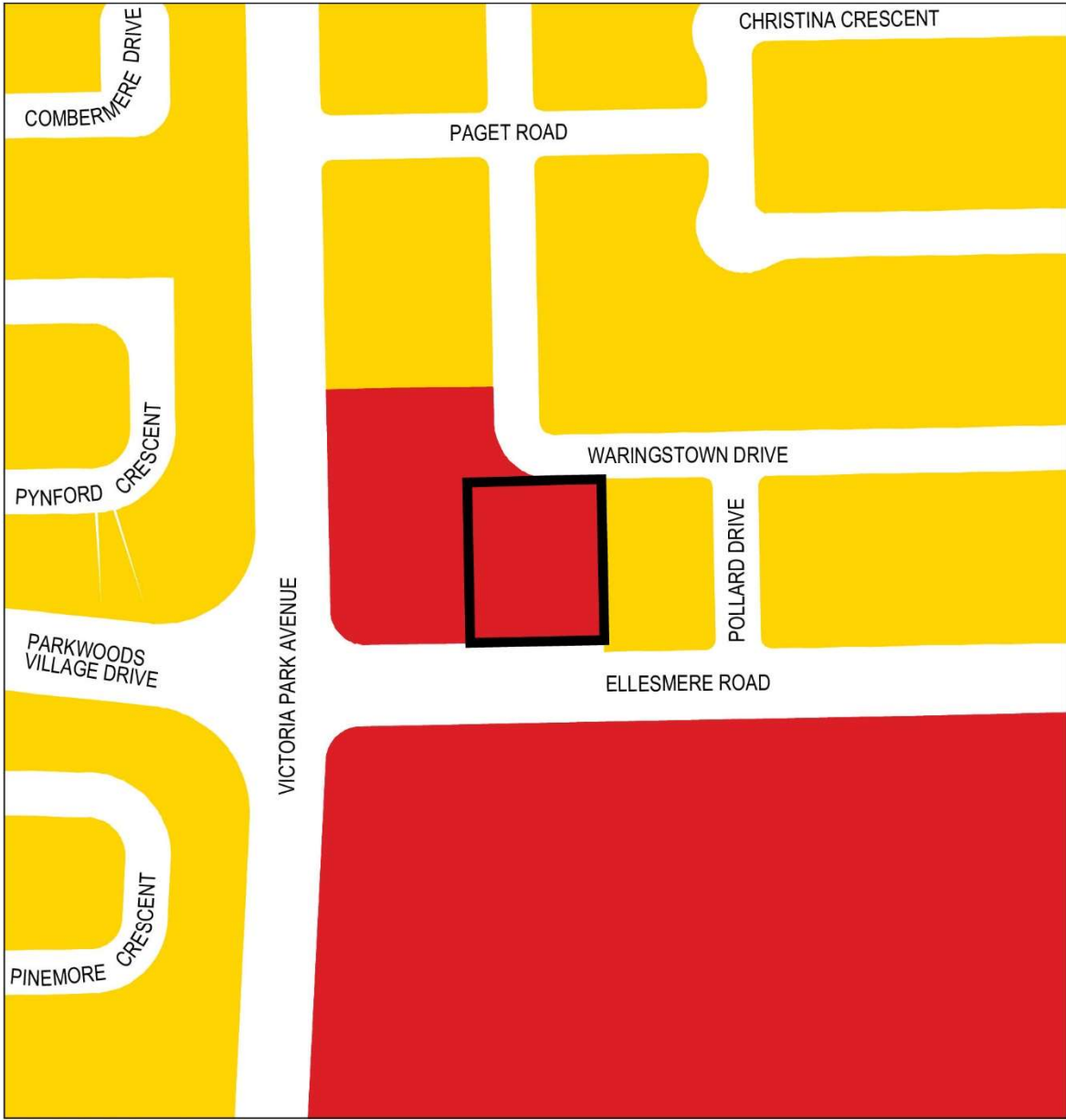
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Attachment 5: Site Plan



Attachment 6: Official Plan Map




Official Plan Land Use Map 19

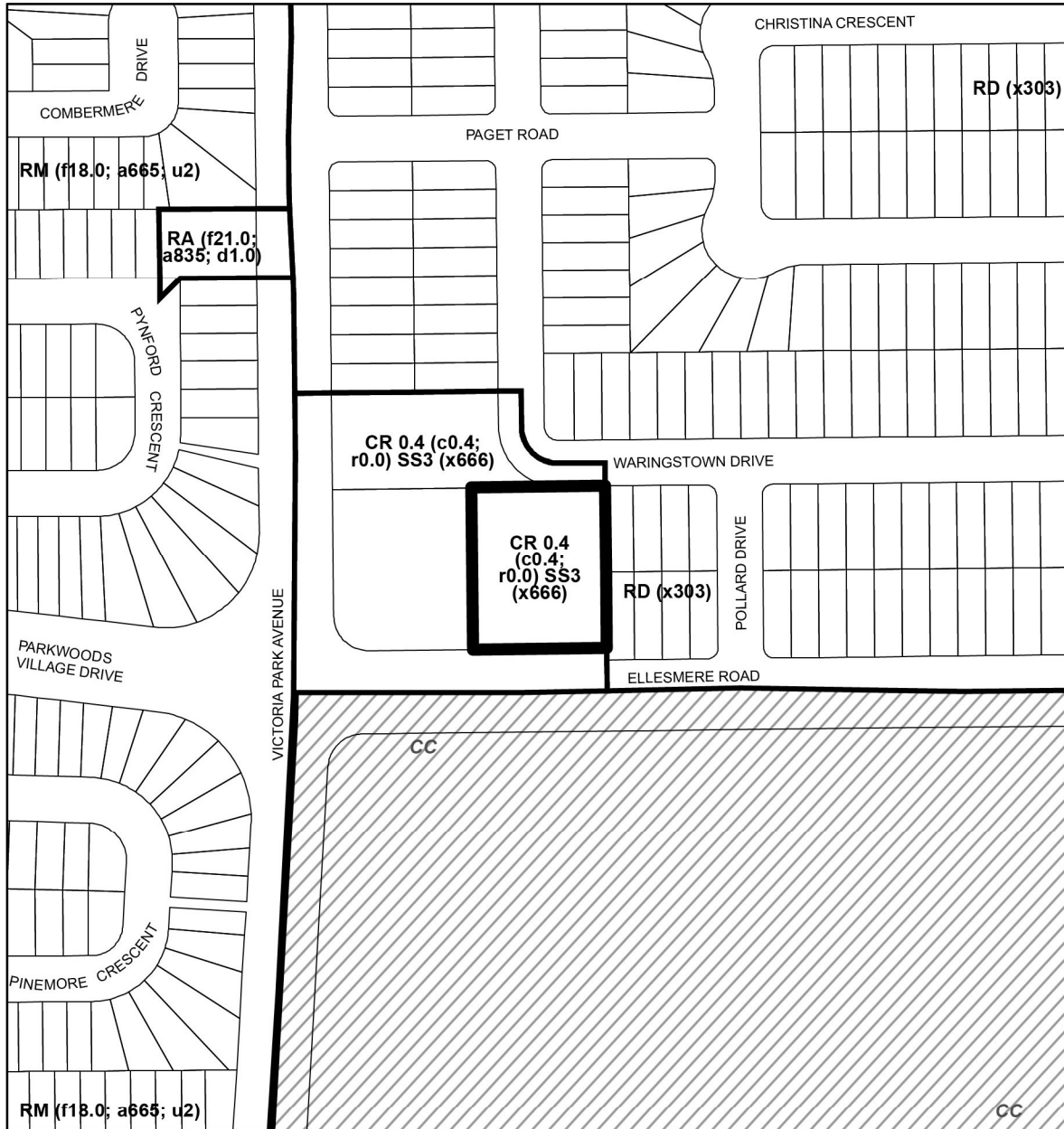
36 Ellesmere Road

File # 21 240661 ESC 21 0Z

-  Location of Application
-  Neighbourhoods
-  Mixed Use Areas


Not to Scale
Extracted: 11/30/2021

Attachment 7: Zoning By-law Map




Zoning By-law 569-2013

36 to 40 Ellesmere Road

File # 21 240661 ESC 21 OZ

-  Location of Application
- RD** Residential Detached
- RM** Residential Multiple
- RA** Residential Apartment
- CR** Commercial Residential

-  See Former City of Scarborough Maryvale Community By-law No.9366
- CC** Community Commercial


 Not to Scale
 Extracted: 02/08/2022