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via email (bldapplications@toronto.ca)

Anita MacLeod, Manager and Deputy Secretary-Treasurer
Committee of Adjustment - Toronto and East York
City of Toronto
Toronto City Hall, Ground Floor, West Tower
100 Queen Street West
Toronto, ON M5H 2N2

Dear Ms. MacLeod:

**Re: Minor Variance Application
1144 Davenport Road, Toronto**

We are the solicitors for Percy Ellis Holdings Inc., the owner of the property municipally known as 1144 Davenport Road (the “**Property**”), in the City of Toronto. On behalf of our client, we are submitting a minor variance application (the “**Application**”) that requests relief from various performance standards in the City of Toronto Zoning By-law No. 438-86 (“**By-law 438-86**”) in order to permit gentle infill residential density in the form of an addition to an existing building in an area in need of additional quality rental housing. A total of 6 residential rental units are proposed in the renovated building.

The existing 2 storey building on the Property was constructed in the early 1900’s and is currently used for the purposes of dwelling units (1st and 2nd floors) and a vacant small commercial kiosk (1st floor). Our client desires to facilitate minor changes to the overall interior and external design of the existing building, including an enlargement/reconfiguration of the residential uses and to remove the vacant small commercial kiosk. Apartment Building (a residential building of 6 units) is an as-of-right use on the Property. The variances are minor built-form variances and a variance to permit the use of the existing building plus addition as an Apartment Building, as opposed to tearing the existing building down and rebuilding it identically, which would not require a variance for use.

Three variances have been identified on the attached Zoning Notice produced by City Staff and identified as Application Number 18 168297 ZC 00 ZR dated May 11, 2020.

Background and Planning Context

The Property is located on the north side of Davenport Road between Alberta Avenue (west) and Winona Drive (east), at the Ossington Avenue intersection. This stretch of Davenport Road (going east and west in either direction) is characterized by a varied mix of uses and building types. In particular, commercial and residential uses typically exist on the same blocks and are mixed in amongst one another. This specific block of Davenport Road where the Property is

located features mainly commercial storefronts, some of which that have been vacant for years, and the gated off vacant lot at the corner of Winona Drive and Davenport Road features prominently.

The City of Toronto Official Plan (the “**Official Plan**”) identifies the Property as *Neighbourhoods*, a designation consistent with stable low-rise residential neighbourhoods in particular 6-unit rental buildings. Pursuant to By-law 438-86 the Property is zoned Mixed Use (MCR). The Property is not zoned in City of Toronto Zoning By-law No. 569-2013 (“**Bylaw “569-2013”**”).

Proposed Variances

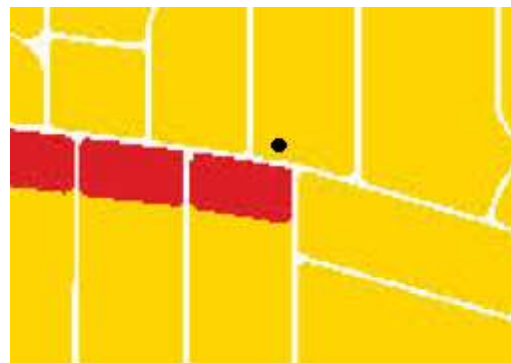
In accordance with the Zoning Notice, the following variances are requested:

1. The by-law requires that the residential gross floor area be not more than 1.5 times the area of the lot: 307.4 square metres. The proposed residential gross floor area of the building will be 2.53 times the area of the lot: 517.5 square metres.
[8(3) Part I 3(A) - Residential Gross Floor Area]
2. (A) The permitted maximum height of a building or structure is 12.0 metres. The proposed height of the altered building is 12.5 metres.
[4(2) Height Limits: Buildings and Structures]
3. One or more dwelling units in a building are permitted provided the building contains uses permitted in the CR, MCR or Q district in which the building is located. The proposed dwelling units will be the only use in the building and will not contain other uses permitted in the MCR district.
[8(2)1.(a) - Qualifications for Uses - Dwelling Units]

We believe the variances meet the four tests of s.45 of the *Planning Act* because:

1. Meets the general intent and purpose of the Official Plan

As noted above, the Property is designated *Neighbourhoods* in the Official Plan. Section 4.1.1 of the Official Plan states that *Neighbourhoods* are considered physically stable areas made up of residential uses in lower scale buildings that are no higher than four storeys. The *Neighbourhoods* designation reflects the City’s vision of the area where the Property is located changing from its former predominantly commercial character at grade to mixed, or even predominantly residential character. This is reflective of the actual trajectory of change on Davenport Road and *Neighbourhoods* is the correct designation for the Property.



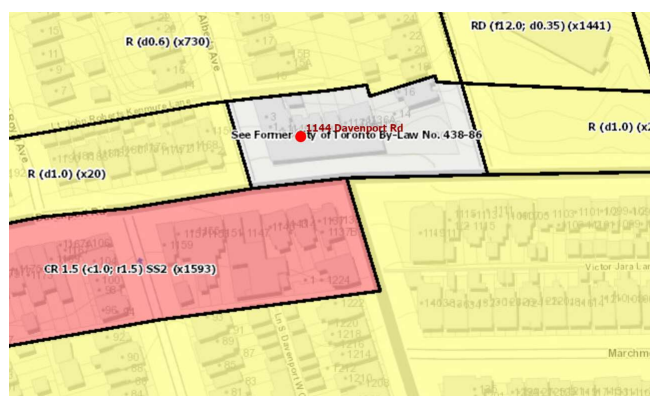
In our view, it is enough to simply say that this criteria of the Official Plan is clearly met as a small scale residential building, including the modest height and GFA for an Apartment Building, is completely in keeping with the intent and purpose of the *Neighbourhoods* designation. This also directly dispels any assertion that the long-term planning vision of this street might be to retain a predominantly commercial character.

Other portions of Davenport Road (including across the street) are designated *Mixed Use* in the Official Plan in order to preserve its commercial character. The North side is not. Therefore, it is appropriate that these variances be granted as they meet the general intent of the Official Plan.

2. Meets the general intent and purpose of the Zoning By-law

The variances will simply permit minor modifications to the zoning requirements in By-law 438-86 regarding density, height and a use qualification (i.e. requiring commercial on the ground floor) to permit the proposed addition to the existing building. The proposed building height increase of 0.5 metres is a common minor variance and the increased density proposed for the Property is supported by provincial policy for incremental increases in density in neighbourhoods, such as this, and are both modest for an Apartment Building. There are no shadow, wind or privacy issues that arise from the development proposal or the variances. The general intent of the zoning is to prevent such problems and these variances meet that general intent.

As noted above, the Property is not yet subject to Bylaw 569-2013 and is zoned Mixed Use (MCR) in By-law 438-86. In our view, the reason these lands were likely not brought forward into By-law 569-2013 is that if they had been, the new zoning would have by law had to conform to the Official Plan, which would have likely meant Residential (R) zoning, like the surrounding neighbourhood. As a result, the existing commercial buildings in the immediate area would have likely been rendered legal non-conforming.



Apartment Building (including a 6 unit exclusively residential building) is a permitted use, without qualifications, as-of-right in bylaw 438-86 in the MCR Zone:

CHART

(a) RESIDENTIAL USES

(i) HOUSING COMPRISING DWELLING UNITS

apartment building

artist live/work studio

converted house

detached house

duplex

dwelling units in a building - one or more

Acc.	CR	MCR	Q
*	P	<u>P</u>	
*	P	P	
*	P	P	
*	P	P	
*	P	P	
*	q1	<u>q1</u>	

The definition of Apartment Building in Bylaw 438-86 is:

"apartment building"

means a building, other than a *converted house, triplex, a semi-detached duplex, a semi-detached triplex, a rowplex* or an apartment-hotel, originally constructed so as to provide therein three or more *dwelling units* but does not include a building coming within the definition of tourist establishment as defined in the Tourism Act, R.S.O. 1980, Chapter 507, as amended, as such definition is amended or re-enacted from time to time; (909-88)

Therefore, if the building on the Property were demolished and rebuilt exactly as proposed it would be permitted without a use variance. However, since the proposal for the Property contemplates retaining the existing façade, it is considered to be "*dwelling units* in a building – one or more" (because the building was not "originally constructed" as an Apartment Building) and is therefore subject to qualification 1:

(2) **QUALIFICATIONS TO BE COMPLIED WITH BEFORE CERTAIN USES ARE PERMITTED IN MIXED-USE DISTRICTS**

1. (a) One or more *dwelling units* in a building are permitted provided the building contains uses permitted in the CR, MCR, or Q district in which the building is located. (909-88) (425-93) (1994-0178)

The intent and purpose of this use qualification is obviously not to prevent 6-unit residential apartment buildings, which are permitted as-of-right (especially in light of the Official Plan *Neighbourhoods* designation on the Property). It seems it was only to prevent commercial storefronts in existing buildings from being converted to residential units in an unsightly manner. It is not to prevent commercial buildings from being replaced with residential ones (which again, can be done as-of-right). In this case the existing building (in particular the façade) is proposed to be preserved explicitly at the request of City Planning who believe maintaining the continuity of the existing façade with neighbouring properties has planning merit. We are prepared to do so, but that triggers a variance. (If however this variance were refused or the City withdrew its request to preserve the façade, and our client tore down the facade and rebuilt it exactly as proposed, the proposed use, being an Apartment Building, would be permitted as-of-right).

The use qualification (i.e. requiring commercial on the ground floor) in By-law 438-86 clearly intended to avoid the unsightliness common when a commercial storefront converts to a residential use. However, in the case of this development proposal the entire 1st floor of the existing building is being redesigned so as not to have any such unsightly appearance that the zoning is clearly attempting to avoid, which meets the general intent and purpose. One of the benefits of this development proposal is that the exterior 2nd storey of the existing building is being maintained which keeps the building fitting in nicely with the balance of the block visually. In summary, if an Apartment Building is permitted as-of-right without qualifications, clearly this development proposal is within the intent and purpose of the Zoning By-law. Finally, the way in which this 6-unit apartment building is being proposed (maintaining the existing façade) is in fact a preferred method for the keeping of the character of the street versus an as-of-right full

newly constructed 6-unit apartment building which would be unlikely to stitch its way into the fabric of the street with such success.

3. Appropriate Development

The proposal to create 6 residential rental units is appropriate with the variances being desirable from a planning and public interest perspective as they have no impact and represent good planning and urban design. The general surrounding area of the Property consists of similar building types containing residential uses mixed in among commercial and mixed uses (please see attached Surrounding Building Typology Graphic). It is appropriate therefore that these variances be granted.

It is noteworthy that there is a deficiency of new high quality rental housing in the subject neighbourhood. However, the strip of formerly commercial storefronts is no longer commercially viable, and has not been for some time – and is most likely why the block in question was re-designated *Neighbourhoods* in the Official Plan. Some adjacent retail properties have been vacant for many years such as 1136 Davenport Road and 1147 Davenport Road. Another example of what is happening along this stretch is occurring at 1146 Davenport Road, the property directly adjacent to the west of the Property. It is a private design studio on the ground floor. It is not a retail location and is accessed by appointment only, not unlike a residential suite. This is a “work around” to the current zoning that is not working effectively for the success of this small node of Davenport Road.

Graffiti, boarded up windows and vandalism are also typical along this stretch. A few fledgling businesses come and go but this strip of Davenport Road was not viable even before pandemic pressures exacerbated those pressures. As the Official Plan indicates, a commercial strip is definitely not the approved long-term vision for the Property and block it is on, and rightly so in our opinion. In our view, there is a need and very strong demand for quality rental housing (that, at 6 units, will be protected by s. 111) in the area, but not an oversupply of retail. This is a high quality development proposal that will pick up an otherwise forlorn block. Furthermore, a walk up and down Davenport Road between the Property and Dufferin Street reveals the already very common condition of residential mixed in with retail and vice versa, and generally successfully so, allowing the retail that remains to stand a better chance. In terms of the use variance triggered by the City request to retain the existing façade, we believe granting the City’s request to retain the façade (and the variance that goes along with it) is also appropriate development.

4. Minor

The variances requested are minor in size, importance and impact. It is appropriate therefore that these variances be granted.

The 0.5 metre height variance is *di minimis* and is not controversial, particularly in light of the Property’s location at the bottom of a hill. The GFA variance will leave the building consistent with the density and massing of other existing buildings on the street, such as the 1139-1145 Davenport Road range of buildings, and be conservative for an Apartment Building (please see attached Comparable Building Precedents Graphic). Regarding the use qualification variance, if the exact same building were being built from scratch without utilizing parts of the existing building on the Property this would be an as-of-right Apartment Building and not require this variance at all. However, preserving the

existing facade on the Property fits in much better and is what the City has requested that we do, which is what triggers this variance.

Application Details

In support of the within Application, we enclose the following materials:

1. Completed and executed 2020 Committee of Adjustment Application form;
2. Zoning Notice, issued on May 11, 2020;
3. Architectural Plans, prepared by Brander Architects Inc., dated February 21, 2020;
4. Survey, prepared by Avanti Surveying Inc., dated November 9, 2016;
5. Surrounding Building Typology Graphic; and
6. Comparable Building Precedents Graphic.

A cheque for \$4,807.28, representing the fee for the Application will be provided, when requested.

Therefore, we submit that the zoning relief requested meets the general intent and purpose of the Zoning By-law and the Official Plan, is appropriate development for the Property and is minor. Should you have any questions or require further information with respect to the Application and supporting materials, we are available to discuss them at your convenience. Please contact the undersigned, or in his absence, Robert Jefferson at (416) 601-4339.

Sincerely,



Michael Foderick

Enclosures