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April 17, 2012

Our File No. 110523

WITHOUT PREJUDICE

DELIVER VIA EMAIL

Town of Markham
101 Town Centre Boulevard
Markham, Ontario
L3R 9W3

**Attention: Catherine Conrad,
Town Solicitor**

Dear Madam:

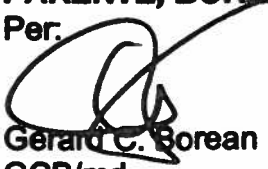
**RE: PROPOSED ZONING BY-LAW AMENDMENT
MALVERN CHINESE FREE METHODIST CHURCH – 22 ESNA PARK DRIVE
(the "Applicant's Property")**

My client, Davencourt Investments Inc. ("Davencourt"), is now satisfied with the proposed zoning by-law amendment relating to the above-noted property, as provided by you by email this afternoon. For clarity, I have attached a copy of this version of the proposed by-law. Should the by-law be enacted by the Town Council with further revisions, we retain our rights to appeal the by-law pursuant to the *Planning Act*.

If you have any questions, please do not hesitate to contact me.

Yours very truly,

PARENTE, BOREAN LLP

Per. 

Gerard C. Borean

GCB/md

cc: client

Enc.

cc: Quinto Anibale

cc: Sean Gosnell

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cc: May Luong
cc: Lucy Hau



BY-LAW 2012-XX

A By-law to amend Zoning By-law No. 108-81, as amended

THE COUNCIL OF THE CORPORATION OF THE TOWN OF MARKHAM
HEREBY ENACTS AS FOLLOWS:

By-law 108-81, as amended, is hereby further amended as follows:

1. Notwithstanding any other provisions of By-law 108-81, as amended, the following provisions shall apply to those lands outlined on Schedule 'A' attached hereto, municipally known as 22 Esna Park Drive:
 - 1.1 The Part 1 lands shown on Schedule "A" attached hereto, remain Select Industrial (M).
 - 1.2 The Part 2 lands shown on Schedule "A" attached hereto, are rezoned from Select Industrial (M) to HOLD Select Industrial [(H)M].
 - 1.3 By adding to Section 8 – Exceptions the following new subsection:

"8.97 Markham Free Methodist Church
22 Esna Park Drive

Permitted Uses

In addition to the permitted uses within a Select Industrial (M) Zone by By-law No. 108-81, as amended, provided that any use permitted by this by-law shall comply with the requirements contained herein, the following uses are permitted;

8.97.1 Prior to the removal of the HOLD provisions as set out in Section 2.3 of by-law no. 2012-XX, and subject to site specific requirements as described in Sections 8.97.3 and 8.97.4 herein;

- a) one (1) *place of worship* within the Part 1 Lands, having a maximum *net floor area* of 555m², and accessory uses, such *place of worship* to be wholly contained within the building existing on the lands as of the day of the passing of By-law 2012-XX;
- b) storage for a *place of worship* to a maximum *gross floor area* of 2520m², such storage to be wholly contained within the building existing on the lands as of the day of the passing of By-law 2012-XX, such storage areas shall not be accessible to the general public and no outdoor storage is permitted;

- c) *warehouse storage to a maximum gross floor area of 2520m² and accessory office to a warehouse to a maximum gross floor area of 30m², shall be permitted, such warehouse storage to be wholly contained within the building existing on the lands as of the day of the passing of By-law 2012-XX, such storage areas shall not be accessible to the general public and no outdoor storage is permitted.*

For the purpose of Section 8.97.1 of this by-law, storage shall be excluded from the calculation of *net floor area*.

8.97.2 Subject to HOLD provisions as set out in Section 2.3 of by-law no. 2012-XX;

- a) *one (1) place of worship and accessory uses which are normally and naturally incidental to the primary use, such place of worship to be wholly contained within the building existing on the lands as of the day of the passing of By-law 2012-XX.*

Site Specific Parking Provisions

8.97.3 Notwithstanding the parking requirements of By-law No. 28-97, as amended, a minimum of 65 and a maximum of 75 parking spaces shall be provided for those uses described in Section 8.97.1(a), (b) and (c) above.

Site Plan Approval Provisions

8.97.4 Use permissions as described in Section 8.97.1(a) and (b) above are subject to the following provision:

- a) *The Owner shall enter into a site plan control agreement for the subject lands for a place of worship, having a maximum net floor area of 555m², to the satisfaction of the Commissioner of Development Services, such site plan control agreement containing, among other things, the following provisions;*
 - i) *only sealed inoperable windows with an appropriate STC rating required to attain 40 dBA interior sound level,*
 - ii) *the Owner shall not install windows in any of the exterior walls within those lands delineated and identified as Part 2 on Schedule "A" attached hereto,*
 - iii) *the Owner shall ensure that all interior areas used for the purposes of a place of worship, save and except for those uses described in Section 8.97.1(b) and (c) of by-law 108-81, as amended, shall be enclosed such that the interior sound level from off-site sources shall not exceed 40dBA,*
 - iv) *the Owner shall demonstrate compliance with the requirements of Section 8.97.4(a)(i) and (iii) above, certified by an acoustical engineer, and peer*

reviewed, to the satisfaction of the Commissioner of Development Services, all at the Owner's expense, and

- v) the Owner shall register on title to the subject lands an appropriate warning clause and restrictive covenant with respect to noise from surrounding industrial uses, including a covenant by the Owner that the interior sound level from outdoor stationary noise sources shall not exceed 40dBA for areas within the building used as a *place of worship*, save and except for areas used as storage or M zone uses.

8.97.5 For the purposes of Section 8.97.1 and 8.97.2 of this by-law, an outdoor amenity space is not considered an accessory use to a *place of worship*."

2. HOLDING PROVISION

- 2.1 For the purpose of this By-law, a HOLD (H) zone is hereby established and is identified on Schedule "A" attached hereto by adding the letter (H) in parenthesis preceding the zoning symbol.
- 2.2 No person shall hereafter use, erect or alter any building or structure on lands subject to a HOLD (H) provision for the purpose permitted under this By-law until an amendment to this by-law to remove the HOLD (H) has come into effect pursuant to the provisions of Section 36 of the Planning Act.
- 2.3 Prior to removing the '(H)' HOLD provision from those lands outlined on Schedule "A" attached hereto, the following conditions shall be met to the satisfaction of the Town of Markham:
 - i) The Owner shall obtain site plan approval and enter into a site plan control agreement for the subject lands for any permitted use or extension of any permitted use beyond those use permissions described in Section 8.97.1 of by-law 108-81, as amended, to the satisfaction of the Commissioner of Development Services, such site plan control agreement containing, among other things, the following provisions:
 - a) The Owner will not install windows in any of the exterior walls within those lands delineated and identified as Part 2 on Schedule "A" attached hereto,
 - b) the Owner will seal ventilation openings in the facade at the north-west corner of the building to prevent noise intrusion from outdoor stationary noise sources,
 - c) the Owner shall ensure that all interior areas used for the purposes of a *place of worship* shall be enclosed such that the interior sound level from off-site sources shall not exceed 40dBA, and that all interior areas used as storage or as a gym and/or basketball court shall be enclosed such that the interior sound level from off-site sources shall not exceed 45dBA,

- d) the Owner shall demonstrate compliance with the requirements of Section 2.3(i)(c) above, certified by an acoustical engineer, and peer reviewed, to the satisfaction of the Commissioner of Development Services, all at the Owner's expense, and
 - e) the Owner shall register on title to the subject lands an appropriate warning clause and restrictive covenant with respect to noise from surrounding industrial uses, including a covenant by the Owner that the interior sound level from off-site sources shall not exceed 45dBA for areas used as storage or as a gym and/or basketball court and 40dBA for all other spaces.
- ii) The Owner shall submit traffic and functional servicing studies for review and approval by the Town's Director of Engineering;
3. All other provisions of By-law 108-81, as amended, not inconsistent with the provisions of this by-law shall continue to apply.

READ THIS FIRST, SECOND, AND THIRD TIME AND PASSED THIS
_____ DAY OF _____, 2012.

KIMBERLEY KITTINGHAM
TOWN CLERK

FRANK SCARPITTI
MAYOR

