

ISSUE DATE:

November 07, 2012



PL090996

Ontario Municipal Board
Commission des affaires municipales de l'Ontario

Aryeh Construction Limited has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the Town of Markham as it specifically pertains to the "Community Amenity Area – Major Urban Place" designation of the Markham Centre Secondary Plan to seek an interpretation of the Secondary Plan policies for the purpose of addressing issues of height and density as well as to seek permission for the proposed development to proceed in advance of the approval of a precinct plan in order to allow for the development of an 8-storey, 125-unit residential building, a 20-storey, 313-unit residential building and a 20-storey, 507-unit residential building on a 1.86 hectare (4.6 acres) parcel of land located at the east side of Warden Avenue, south of Highway 7, legally described as Part of Lot 10, Concession 5, Town of Markham, municipally known as 8293 & 8303 Warden Avenue and located within Precinct 5 of the Markham Centre Secondary Plan

Town of Markham File No.: OP 08 1092285
O.M.B. File No.: PL090996

Aryeh Construction Limited has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 304-87, as amended, of the Town of Markham to rezone a 1.86 hectare (4.6 acres) parcel of land located at the east side of Warden Avenue, south of Highway 7, legally described as Part of Lot 10, Concession 5, Town of Markham, municipally known as 8293 & 8303 Warden Avenue and located within Precinct 5 of the Markham Centre Secondary Plan, from "Rural Residential 2" to "MC – D2" to permit the development of an 8-storey, 125-unit residential building, a 20-storey, 313-unit residential building and a 20-storey, 507-unit residential building

Town of Markham File No.: ZA 07 118026
O.M.B. File No.: PL091008

Aryeh Construction Limited has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from the failure of the Town of Markham to make a decision respecting a proposed plan of subdivision on lands composed of Part of Lot 10, Concession 5, Town of Markham, located at the east side of Warden Avenue, south of Highway 7, municipally known as 8293 & 8303 Warden Avenue and located within Precinct 5 of the Markham Centre Secondary Plan for the purpose of dividing the subject lands into 3 blocks, "A", "B", and "C" and to allow for the creation of an east-west public collector road through Block B in

order to permit the development of an 8-storey, 125-unit residential building, a 20-storey, 313-unit residential building and a 20-storey, 507-unit residential building

Town of Markham File No.: SU 06 135184

O.M.B. File No.: PL090997

IN THE MATTER OF subsection 41(12) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

| | |
|-------------------------------|-----------------------------|
| Referred by: | Aryeh Construction Limited |
| Subject: | Site Plan |
| Property Address/Description: | 8293 and 8303 Warden Avenue |
| Municipality: | Town of Markham |
| OMB Case No.: | PL090996 |
| OMB File No.: | PL110052 |

IN THE MATTER OF subsection 69(3) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended

| | |
|-------------------------------|--|
| Referred by: | Aryeh Construction Limited |
| Subject: | Protest of the levying of fees in relation to an application for site plan |
| Property Address/Description: | 8293 and 8303 Warden Avenue |
| Municipality: | Town of Markham |
| OMB Case No.: | PL090996 |
| OMB File No.: | MM100042 |

APPEARANCES:

Parties

Counsel

| | |
|--------------------------------------|---|
| Aryeh Construction Limited | L. Townsend (<i>absent</i>) and J. Meader |
| City of Markham | I. Andres |
| Regional Municipality of York | B. Montgomery |
| Markham Centre Landowners Group Inc. | S. Snider (<i>absent</i>) |
| York Region District School Board | J. Peake (<i>absent</i>) |
| Times Group Inc. | I. Kagan (<i>absent</i>) |

**MEMORANDUM OF ORAL DECISION DELIVERED BY R. ROSSI ON
OCTOBER 25, 2012, AND ORDER OF THE BOARD**

[1] This is a continuation of a site plan matter flowing from two previous appearances before the Board. In late January 2012, the Board held a settlement hearing to conclude the appeals of Aryeh Construction Limited ("Aryeh") from the refusal of the Council of the City of Markham ("City") to enact the proposed amendments to the Markham Official Plan and to Zoning By-law No. 304-87, and from the failure of the City to make a decision respecting a proposed plan of subdivision to permit one eight-storey and two 20-storey residential buildings on the Appellant's 1.86-hectare site located at 8293 and 8303 Warden Avenue. The Board allowed the appeals, approved the amendment to the zoning by-law and approved the draft plan subject to conditions presented at the settlement hearing

[2] In April 2012, a pre-hearing conference was held in order to set a date for a hearing to deal with the proposed site plan. At that time, Ms. L. Townsend advised the Board that an old agreement with the Markham Centre Landowners Group Inc. (represented by Mr. S. Snider) would be replaced by a new agreement. Neither Mr. Snider nor Mr. I. Kagan (who represents Times Group Inc.) attended this hearing.

[3] Appearing for Ms. Townsend today, Ms. J. Meader advised the Board that her client has reached a settlement with the City and the Regional Municipality of York ("Region") in respect of the site plan matter. Both the City and the Region attached conditions for approval of the site plan.

[4] The Board had withheld its final approval of these matters earlier this year pending completion of the conveyance of the heritage lot to Aryeh's possession and finalization of the heritage easement approvals associated with moving that heritage building to the lot. Now, all preconditions have been satisfied and the Board is able to issue its final Order.

[5] Planner Mr. P. Swinton was in attendance and he was qualified to provide his professional land use planning evidence and expert opinion in support of the settlement reached and the planning instruments. Ms. Meader provided the Board with a comprehensive document book (Exhibit 1) containing all relevant matters to facilitate the Board's disposition of these matters.

[6] Mr. Swinton advised the Board that the site plan before the Board has been revised to include the heritage lot previously acquired by Aryeh. He explained that the site plan, the heritage lot and the heritage house all conform to the zoning for these lands. He reviewed the minutes of settlement (Tab 6) with the Board. It was his opinion that the proposed design for the site as outlined in the documents represents good urban design and site planning and the amended draft plan is reflective of the conditions required to acquire the heritage site. The proposed zoning by-law amendment and the draft plan of subdivision meet all of the policies and standards of the applicable planning instruments.

[7] Accordingly, having considered the minutes of settlement, the proposed conditions and the planning opinion proffered in support of this development:

[8] **The matter** of the official plan amendment having been withdrawn by Aryeh Construction Limited on December 19, 2011;

[9] **And the matter** of protesting the levying of fees in relation to the site plan application having been withdrawn by Aryeh on December 19, 2011;

[10] **And the matters** of the zoning by-law amendment and draft plan of subdivision appeals having come on for a public hearing, and the Board in its decision issued on February 6, 2012 having withheld its Order on these two matters pending conveyance of the heritage lot and finalization of the heritage easement approvals, and the Board having since been provided with confirmation that:

- the conveyance of the heritage lot to Aryeh has been completed;

- the heritage easement approvals have been addressed; and
- the draft plan of subdivision has been revised to include the heritage lot;

[11] **And the matter** of site plan approval having come on for public hearing, and the Board having heard uncontested planning evidence and submissions in support of the site plan appeal;

ORDER

[12] The Board orders that the amendment to the zoning by-law filed with the Board on January 27, 2012 as Exhibit 4 is approved;

[13] **And the Board orders that:**

- the draft plan of subdivision filed with the Board on October 25, 2012 as Tab 7 of Exhibit 1 is approved, subject to the conditions filed with the Board on January 27, 2012 as Exhibit 3; and
- pursuant to s. 51(56.1) and 51(58) of the *Planning Act*, the City shall have the authority to clear the conditions of draft plan approval and to administer final approval of the plan of subdivision;
 - And the Board orders that: Aryeh's site plan appeal is allowed, and the site plan and related drawings filed with the Board on October 25, 2012 as Tab 15 of Exhibit 1 are approved in principle, subject to the related conditions of site plan approval filed with the Board on October 25, 2012 at Tabs 12 and 13 of Exhibit 1, and subject to any minor revisions to the site plan and related drawings as may be necessary to fulfill the conditions of site plan approval;
 - the Final Order of the Board with respect to Aryeh's site plan appeal is withheld until the Board has been notified by the City that the conditions of site plan approval have been satisfied;

- the Board may be spoken to if any issues arise regarding the clearing of any conditions, whether site plan or draft plan related.

"R. Rossi"

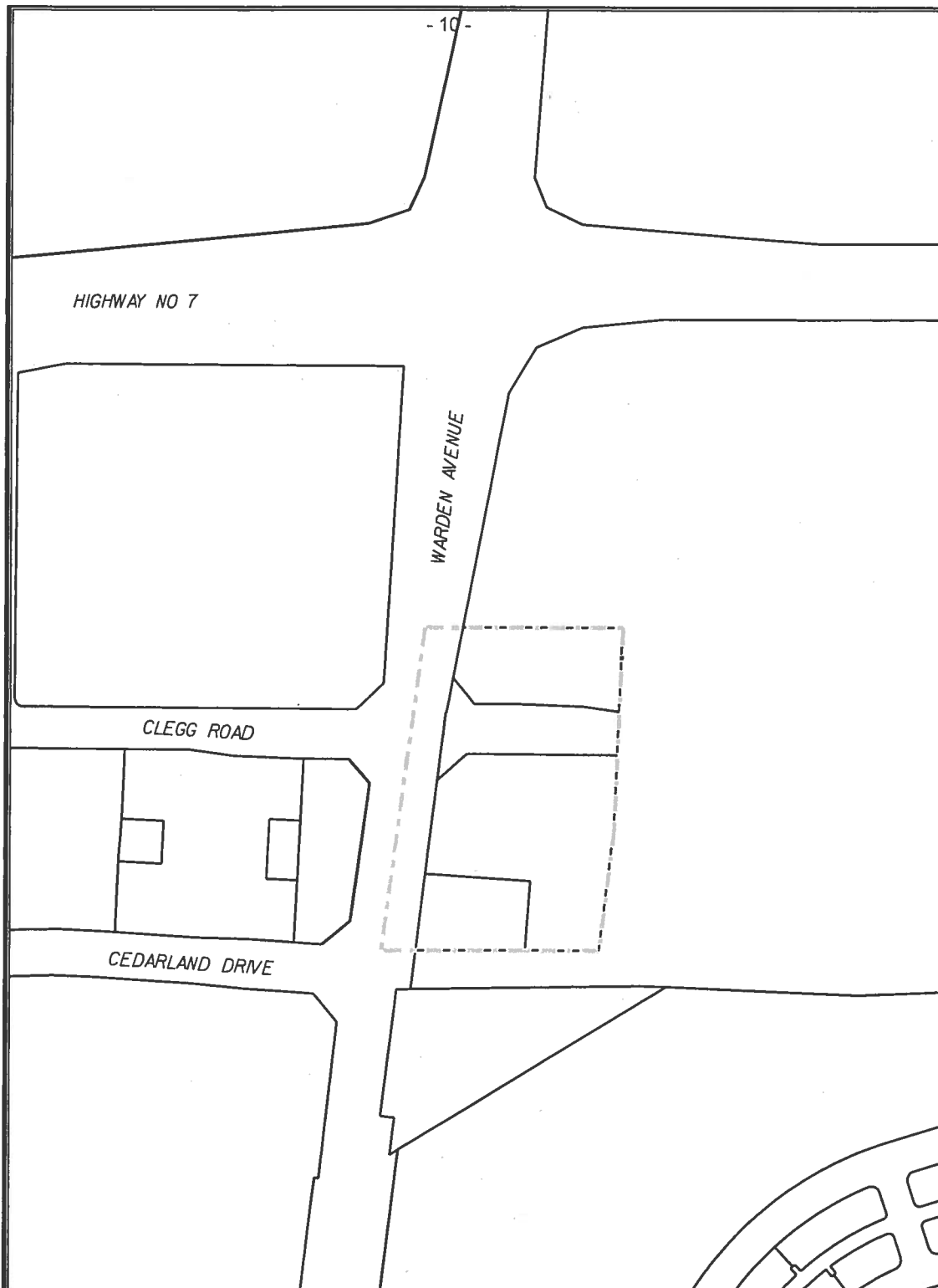
R. ROSSI-
MEMBER

SCHEDULE "B"
ZONING BY-LAW AMENDMENT

A By-law to amend By-law 304-87, as amended.

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

1. By-law 304-87, as amended, is hereby further amended by deleting the lands identified as Part of Lot 10, Concession 5 as shown on Schedule 'A' attached hereto from the designated area of By-law 304-87, as amended.
2. This By-law shall not come into effect until By-law 2012-XXXX amending By-law 2004-196, as amended, comes into effect, and the lands as shown on Schedule 'A' attached hereto, are incorporated into the designated area of By-law 2004-196, as amended.
3. All other provisions of By-law 304-87, as amended, not inconsistent with the provisions of this By-law shall continue to apply.



THE MARKHAM DEVELOPMENT SERVICES COMMISSION

A BY-LAW TO AMEND BY-LAW 304-87



BOUNDARY OF AREA COVERED BY THIS BY-LAW

THIS IS SCHEDULE 'A' TO BY-LAW
PASSED THIS DAY

.....MAYOR

.....CLERK

NOTE: 1) DIMENSIONS ARE IN METRES
2) REFERENCE SHOULD BE MADE TO
THE ORIGINAL BY-LAW LODGED IN
THE OFFICE OF THE CLERK

SCALE 1: 3000

A by-law to amend the Markham Centre
Zoning By-law 2004-196, as amended

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

1. Zoning By-law 2004-196, as amended, be and the same is hereby further amended as follows:
 - 1.1 By expanding the designated area of By-law 2004-196, as amended, to include those lands comprising Part of Lot 10, Concession 5, as more particularly outlined on Schedule 'A' hereto.
 - 1.2 By zoning the lands:

Markham Centre Downtown Two *XX (Hold)
- MC-D2*XX (H)
Markham Centre Public Space One *XX – MC-PS1*XX

As shown on Schedule '_1' attached hereto;
 - 1.3 By amending Section 1.2 of By-law 2004-196, as amended, by deleting the words "Schedules A1 to __, B1 to __, C1 to __, D1 to __, E1 to __, and F1 to __, ..." and replacing them with the words "Schedules A1 to __, B1 to __, C1 to __, D1 to __, E1 to __, F1 to __ and G1 to __. ..."
 - 1.4 By amending Section 2.2 of By-law 2004-196, as amended, by replacing the words "Schedules A1, B1, C1, D1, E1, F1,..." and replacing them with the words "Schedules A1, B1, C1, D1, E1, F1, G1, ..."
 - 1.5 By amending Sections 2.6, 2.6.1 and 2.6.2 of By-law 2004-196, as amended, by replacing all references to "Schedules X1, X2, X3, X4, X5,..." with "Schedules X1, X2, X3, X4, X5, X6, ..."
 - 1.6 By adding the following new subsection 6.XX (*XX) to Section 6 – Exceptions to By-law 2004-196:

6.XX MC-D2 zoned lands at the south-west corner of Warden Avenue and RougeSide Promenade.

Notwithstanding any other provisions of this By-law, the following provisions shall apply to the lands denoted by the symbol *XX (Exception XX) on the schedules to this By-law. All other provisions, unless specifically modified/amended by this section, continue to apply to the lands subject to this section.

6.XX.1 Special Site Provisions

The following special site provisions shall apply:

- a) *Dwelling units* are permitted on any *storey*, including the first *storey*, of an *apartment building*.
- b) Special Provision (2) to Table A1 shall not apply.

- c) In the case of a *corner lot* with a daylighting triangle, the *exterior side lot line* shall be deemed to extend to its hypothetical point of intersection with the extension of the *front lot line* for the purposes of calculating minimum and maximum *setbacks* from *streetlines*. Notwithstanding the above, in no case shall any *building* or *structure* extend into the *public street* right of way.
- d) Awnings are permitted to extend to any *streetline* or *lot line*.

6.XX.2 Special Parking Provision

The following special parking provision shall apply:

- a) The *parking space* requirement for *Apartment Dwellings* and *Multiple Dwellings* shall be as follows:
 - A minimum of 0.8 parking space per *dwelling unit* and a maximum of 1 *parking space* per *dwelling unit* plus 0.2 *parking spaces* per *dwelling unit* for visitors. The provision of additional *parking spaces* is not permitted. A maximum of 5% of the *parking spaces* required shall be located in a surface parking area.
- b) Where development of a *lot* is phased, the number of *parking spaces* provided in a *parking garage* on the *lot* during the earlier phase(s) may exceed the maximum number permitted under Section 6.15.2(a), provided that the total number of *parking spaces* on the *lot* shall at no time exceed the maximum number that would be permitted if all approved *dwelling units* were constructed in a single phase.

6.XX.3 Special Holding Provisions

The following special holding provisions shall apply:

Holding provision H shall only be lifted on all or part of the lands shown on Schedule 'X' hereto when all of the following criteria have been met:

- i. A Subdivision Agreement, and any other agreement identified as being required in that Subdivision Agreement or by Council has been entered into that satisfies all of the conditions of the Town.
- ii. Appropriate water supplies and sewage capacity are available, and have been allocated by Council and/or the Developers Group to support the development.
- iii. Site Plan Approval has been granted by the Town.

- iv. A developers' group agreement or other alternative cost sharing arrangements for required municipal infrastructure, as supported by legislation, have been entered into, to the satisfaction of the Town.
- v. Execution of a Section 37 Agreement between the Town and the Owner regarding a contribution of \$706,490 by the Owner pursuant to Section 37 of the Planning Act and in accordance with the Town's official plan policies regarding Section 37 contributions, to the satisfaction of the Town.
- vi. Execution of an amendment to the existing Heritage Easement Agreement, to the satisfaction of the Town.
- vii. A traffic impact study and a TDM (Travel Demand Management) plan have been approved by the Town within the prior 6 months for the lands from which the holding provision is to be removed.

Driveways and underground *parking garages* are permitted to be constructed prior to the removal of Holding provision H.

- 1.7 By adding the following new subsection to **Section 6 – Exceptions** to By-law 2004-196:

**6.XX Public park blocks on the north and south sides of
Rougeside Promenade, east of Warden Avenue.**

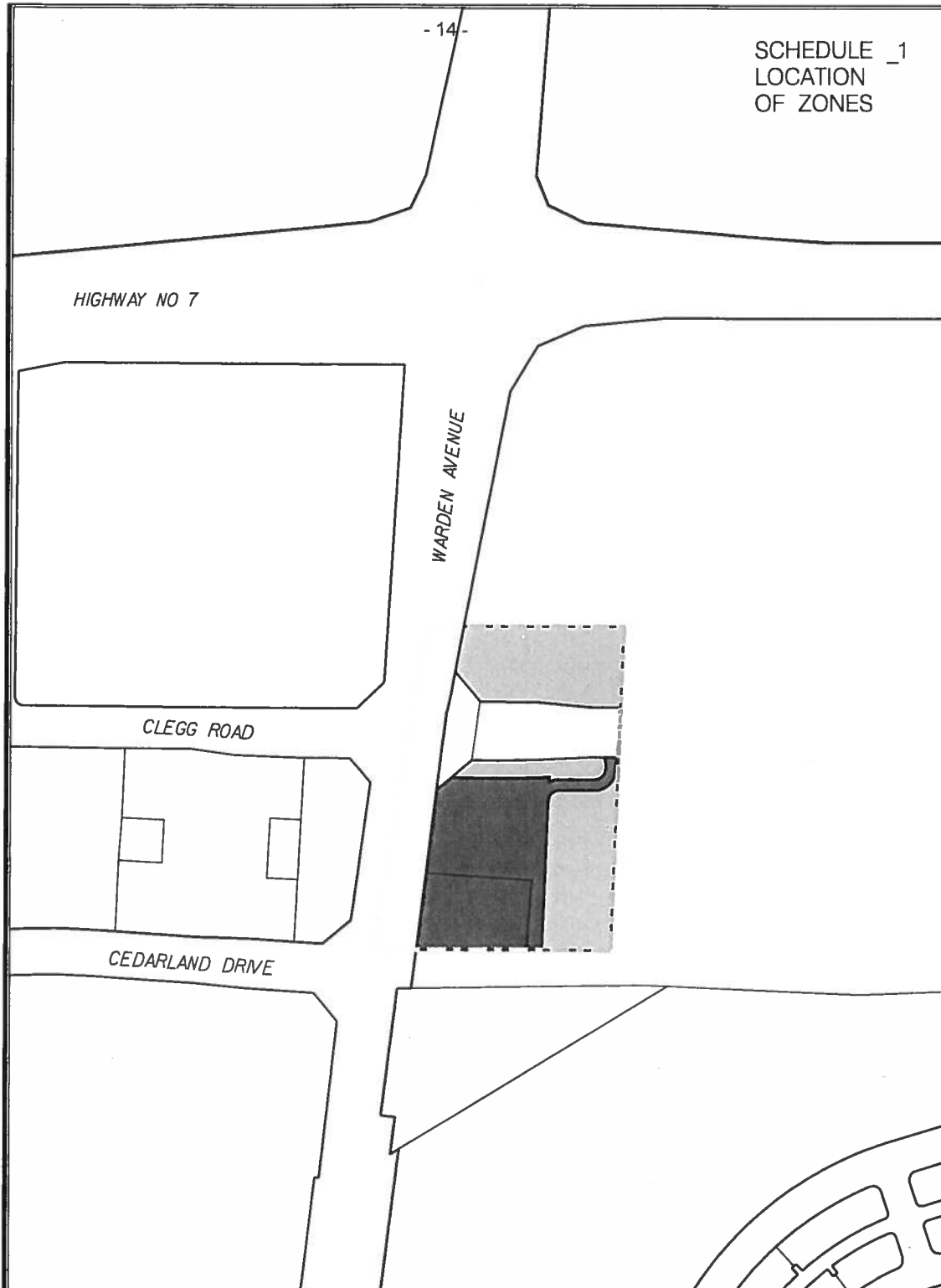
Notwithstanding any other provisions of this By-law, the following provisions shall apply to the lands denoted by the symbol *XX (Exception XX) on the schedules to this By-law. All other provisions, unless specifically modified/amended by this section, continue to apply to the lands subject to this section.

6.XX.1 Special Site Provision

The following additional use is permitted:

Parking garages constructed completely below the *established grade*, including associated ventilation shafts and housings, stairways and other similar facilities associated with below grade *parking garages* that extend from below *established grade*.

- 1.10 By adding the following schedules to By-law 2004-196, as amended
Schedule __1, __2, __3, __4 and __6.
2. All other provisions of By-law 2004-196, as amended, not inconsistent with the provisions of this by-law shall continue to apply.



DEVELOPMENT SERVICES COMMISSION

A BY-LAW TO AMEND BY-LAW 2004-196



BOUNDARY OF AREA COVERED BY THIS BY-LAW



MC-PS1*XX



MC-D2*XX

THIS IS SCHEDULE 'A' TO BY-LAW
PASSED THIS DAY

.....MAYOR

.....CLERK

NOTE: 1) DIMENSIONS ARE IN METRES
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SCHEDULE 2
MAXIMUM PERMITTED
NET FLOOR AREA
& DWELLING UNITS

HIGHWAY NO 7

WARDEN AVENUE

CLEGG ROAD

CEDARLAND DRIVE

| Number on Schedule G2 | Maximum Net Floor Area (M2) | Maximum Number of Dwelling Units |
|--------------------------|--------------------------------|-------------------------------------|
| 1 | n/a | 530 |

1



DEVELOPMENT SERVICES COMMISSION

A BY-LAW TO AMEND BY-LAW 2004-196



BOUNDARY OF AREA COVERED BY THIS BY-LAW

THIS IS SCHEDULE '2' TO BY-LAW
PASSED THIS DAY

.....MAYOR

.....CLERK

NOTE: 1) DIMENSIONS ARE IN METRES
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THE ORIGINAL BY-LAW LODGED IN
THE OFFICE OF THE CLERK

SCALE 1: 3000

SCHEDULE 3 MINIMUM AND MAXIMUM HEIGHTS

HIGHWAY NO 7

WARDEN AVENUE

CLEGG ROAD

CEDARLAND DRIVE

The following provisions shall also apply:

- 1) Notwithstanding any height permission shown on this schedule, no part of any building shall have a height greater than 238.00 G.S.C. (Geological Survey of Canada)
- 2) For any portion of a residential building with a height of greater than 30 m, the maximum net floor area, per storey, shall be 750 sq. m, not including balcony areas.
- 3) Any portion in excess of 30 metres in height of any residential building shall be not less than 34 metres from any portion in excess in height of any other residential building.



DEVELOPMENT SERVICES COMMISSION

A BY-LAW TO AMEND BY-LAW 2004-196



BOUNDARY OF AREA COVERED BY THIS BY-LAW

①



MIN 6.0m - MAX 60.0m

②



MIN 6.0m - MAX 30.0m

THIS IS SCHEDULE '3' TO BY-LAW
PASSED THIS DAY

.....MAYOR

.....CLERK

NOTE: 1) DIMENSIONS ARE IN METRES
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SCALE 1: 3000

HIGHWAY NO 7

WARDEN AVENUE

CLEGG ROAD

CEDARLAND DRIVE



The minimum building setback shall be 2 metres except where any part of any dwelling unit within the first storey of a building is located within 10 metres of the streetline or lot line, the minimum building setback shall be 3 metres



The minimum building setback shall be 1.0 metre



DEVELOPMENT SERVICES COMMISSION

A BY-LAW TO AMEND BY-LAW 2004-196



BOUNDARY OF AREA COVERED BY THIS BY-LAW

THIS IS SCHEDULE '_4' TO BY-LAW
PASSED THIS DAY

.....MAYOR

..... CLERK

NOTE: 1) DIMENSIONS ARE IN METRES
2) REFERENCE SHOULD BE MADE TO
THE ORIGINAL BY-LAW LODGED IN
THE OFFICE OF THE CLERK

HIGHWAY NO 7

WARDEN AVENUE

STREET 'D'

STREET 'C'

CLEGG ROAD

CEDARLAND DRIVE



DEVELOPMENT SERVICES COMMISSION

A BY-LAW TO AMEND BY-LAW 2004-196



BOUNDARY OF AREA COVERED BY THIS BY-LAW



H

THIS IS SCHEDULE 'A' TO BY-LAW
PASSED THIS DAY

.....MAYOR

..... CLERK

NOTE: 1) DIMENSIONS ARE IN METRES
2) REFERENCE SHOULD BE MADE TO
THE ORIGINAL BY-LAW LODGED IN
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