

CITY OF TORONTO

BY-LAW No. 5-2010(OMB)

To amend By-law No. 1994-0396 of the former City of Toronto with respect to lands municipally known as Part of 55 Mill (390 Cherry Street), Gooderham and Worts Distillery Site.

WHEREAS the Ontario Municipal Board pursuant to its Order dated March 31, 2009 upon hearing the appeal of Distillery SE Development Corp. determined to amend the former City of Toronto By-law No. 1994-0396, as amended, with respect to lands municipally known as Part of 55 Mill Street (390 Cherry Street);

THEREFORE the Ontario Municipal Board orders as follows:

1. The Maps appended to By-law No. 1994-0396 are amended as follows:
 - (a) Plan 1 is deleted, and replaced with Plan 1 attached hereto and forming part of this by-law;
 - (b) Plan 3 is deleted, and replaced with Plan 3 attached hereto and forming part of this by-law;
 - (c) Plan 3B is deleted, and replaced with Plan 3B attached hereto and forming part of this by-law;
 - (d) Plan 4B is deleted, and replaced with Plan 4B attached hereto and forming part of this by-law;
 - (e) Plan 5 is deleted, and replaced with Plan 5 attached hereto and forming part of this by-law;
 - (f) Plan 6 is deleted, and replaced with Plan 6 attached hereto and forming part of this by-law; and
2. Section 1 of By-law No. 1994-0396 is amended by deleting the words "*Cherry Street Commercial District*" and replacing them with the words "*Cherry Street Mixed Use District*".
3. Section 4(1)(c) of By-law No. 1994-0396 is deleted in its entirety and replaced with the following:

"Not more than 91,700 square metres is erected and used within the *Cherry Street Mixed Use District*, of which,

 - (i) not more than 29,1000 square metres is erected or used on the lands shown as Parcel "A" on Plan 3B, of which:
 - (a) not more than 1,100 square metres of *non-residential gross floor area* is erected or used on Parcel "A"; and

- (ii) not more than 27,9000 square metres is erected or used on the lands shown as Parcel "B" on Plan 3B, of which:
 - (a) not more than 1,900 square metres of *non-residential gross floor area* shall be erected and used on Parcel "B"; and
 - (iii) not more than 15,000 square metres of *non-residential gross floor area* is erected or used on the lands shown as Parcel "C" on Plan 3B; and
 - (iv) not more than 75,000 square metres of *non-residential gross floor area* and *residential gross floor area* is erected or used on the lands shown as Parcels "A", "B" and "C" on Plan 3B."
4. Section 4(4) of By-law No. 1994-0396 is deleted in its entirety and replaced with the following:
- "Not more than 1,549 *dwelling units* are erected or used within the *Gooderham and Worts Special Identity Area*, of which:
- (a) Not more than 300 dwelling units are erected or used within the *Mill Street Residential District*;
 - (b) Not more than 669 dwelling units are erected or used within the *Cherry Street Mixed Use District*;
 - (c) Not less than 25% of the *dwelling units* erected or used within the *Area* contain at least two bedrooms, provided nothing in this provision shall require that this percentage be met on a building by building basis;
 - (d) Not less than 55% of the *dwelling units* located in any building used for the purposes of *non-profit home equity housing* contain two or more bedrooms; and
 - (e) Not less than 25% of the *dwelling units* erected or used within the *Area*, other than in the *Cherry Street Mixed Use District*, comprise *social housing*, *non-profit home equity housing*, or a combination thereof provided that this requirement shall be deemed to be complied with if Section 5(6)(j) of this By-law is complied with."

5. Section 4(6) of By-law No. 1994-0396 is amended by the adding the following subsection:

 - (6) no portion of any building or structure within the *Gooderham and Worts Special Identity Area* is located above the *height* limits shown on Plans 3A and 3B, exclusive of:
 - (i) the south wall of Building No. 25 (or reconstructed portions thereof);
 - (ii) existing overhead bridges, pipes and chutes;

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- (iii) roof top structures and elements permitted pursuant to Section 4(2)(a)(i) or (ii) of By-law No. 438-86, except that:
 - A. rooftop structures and elements required by any *district heating and cooling facility* established within the *Area* are permitted to exceed the *height* limits shown on Plans 3A and 3B by up to 7.0 metres;
 - B. a structure used for noise attenuation purposes on the roof of a building on Parcel C may exceed the height limits by 5 metres, and be located less than two metres from the adjacent outside wall or a vertical projection of the wall; and
 - C. the maximum aggregate horizontal area of such rooftop mechanicals may exceed 30 percent of the roof of a building, provide it does not exceed 30 per cent of the area of Parcel C.
 - (iv) reinstated chimneys or dormers, cupolas or other rooftop elements located on any building listed in Appendix I.
 - 6. Section 4(7)(a) of By-law No. 1994-0396 is deleted in its entirety.
 - 7. Section 4(7)(d) (ii) of By-law No. 1994-0396 is amended by deleting the words "*Cherry Street Commercial District*" and replacing them with the words "*Cherry Street Mixed Use District*".
 - 8. Section 4(9)(c) of By-law No. 1994-0396 is deleted in its entirety and replaced by the following:

"in the *Cherry Mixed Use District*, not less than 2 *loading spaces-type B*, 2 *loading spaces-type C*, 1 *loading space-type G* and a further loading space of at least 182 square metres in area;"
 - 9. Section 4(10) of By-law No. 1994-0396 is deleted by adding thereto a new paragraph (e) as follows:
 - (e) within Area E identified on Plan 6, not less than 2 square metres for each dwelling unit located within such area.

Of which not less than 40 square metres of such *outdoor amenity space* in each of Areas A, B, C, D and E identified on Plan 6 is provided in a location adjoining or directly accessible from an indoor *residential amenity space* required pursuant to Section 4(12) of By-law No. 438-86.

10. Section 4(11)(i) of By-law No. 1994-0396 is amended by deleting the words "*Cherry Street Commercial District*" and replacing them with the words "*Cherry Street Mixed Use District*".
11. Section 4(13) of By-law No. 1994-0396 is amended by deleting the semi-colon and the period at the end of the sentence and replacing them with semi-colon.
12. Section 4(14) of By-law No. 1994-0396 is amended by deleting the period at the end of the sentence and replacing it with a semi-colon and add the word "add".
13. Section 4 of By-law No. 1994-0396 is amended by adding a new subsection (15) to read as follows:

"(15) the *bicycle parking spaces* required in Section 4(13) of By-law No. 438-86, as amended, shall apply to the *Gooderham and Worts Special Identity Area* except that, despite the provisions of such Section 4(13):

 - (a) a maximum of 320 *bicycle parking space – occupant* shall be provided in accordance with the ratios required in Section 4(13) of By-law No. 438-86 shall be provided and maintained for Parcels "A", "B" and "C" within the *Cherry Street Mixed Use District* for exclusive use of residents of residential gross floor area in said district and in accordance with the following requirements:
 - (i) *bicycle parking spaces* shall be provided and maintained on the ground floor of a building containing *residential gross floor area* and the first level immediately below *grade* in the *parking garage*; and
 - (ii) *bicycle parking spaces* shall not be combined with storage lockers for *dwelling units*; and
 - (b) a minimum of 60 *bicycle parking space – visitor* are provided and maintained only at *grade* and on the ground floor of a building containing *residential gross floor area*.
14. Section 5 of By-law No. 1994-0396 is amended by deleting the following words "and the maximum *height limits* and the maximum *non-residential gross floor area* permitted within Parcel "A" and Parcel "B" shown on Plan 4B within the *Cherry Street Commercial District*".
15. Section 5(2) of By-law No. 1994-0396 is deleted in its entirety.
16. Section 5(6)(c)(vi) of By-law No. 1994-0396 is amended by deleting the phrase "*Cherry Street Commercial District*" and replacing them with the words "*Cherry Street Mixed Use District*".

17. Section 5(6)(e) of the By-law No. 1994-0396 is deleted and replaced by the following:

"provide and maintain a *Site Interpretation Program*, including the provision and maintenance of a publicly accessible *Site Interpretation Centre*, as outlined in the "Distillery District Site Interpretation 10 Year Review" report dated November 14, 2007 and prepared by E.R.A. Architects;"

18. Section 5(6)(j) is amended by adding following the words "*Gooderham and Worts Special Identity Area* the following: "other than in the *Cherry Street Mixed Use District*".

19. Section 5 of By-law No. 1994-0396 is amended by adding the following new subsection:

Section 5(8) – "The owner of Parcels "A", "B" and "C" as shown on Plan 3B enter into an agreement with the City pursuant to Section 37 of the *Planning Act* to secure the following facilities, services and matters and consent to such agreement be registered on title to Parcels A, B and C:"

- "(a) prior to site plan approval, provide a detailed Conservation Plan, prepared by a qualified heritage architect to the satisfaction of the Manager of Heritage Preservation Services, to include: documentation through photographs of the as-found condition of Rack Houses "G" and "J" including photographs of the interior roof structure and racking system, Building 63 (Paint Shop), and Building 74 (Case Goods Warehouse), all as pertaining to the Reasons for Identification; detailed descriptions/specification for all proposed heritage conservation work including measures to be taken to protect all heritage structures within an area adjacent to the development site during construction; an exterior lighting and signage plan; and an estimate of costs for the implementation of the Conservation Plan. The section 37 agreement will reference the owner's commitment to use reasonable best efforts to move the two north facades of Rack Houses "G" and "J" on a temporary basis and to return them after construction of the foundation of the new structure. In the event that it becomes necessary to dismantle any portion of these walls, the applicant acknowledges that it is required to apply for a further approval to alter under the *Ontario Heritage Act*."
- "(b) provide a Letter of Credit in a form and an amount satisfactory to the Manager of Heritage Preservation Services, to secure the work identified in the Conservation Plan";
- "(c) provide a detailed landscape plan including all at and above-grade outdoor amenity space that is proposed as part of the development, to the satisfaction of the Manager of Heritage Preservation Services";
- "(d) provide building permit drawings to the satisfaction of the Manager of Heritage Preservation Services";
- "(e) prior to the release of the Letter of Credit, complete the heritage conservation work to the satisfaction of the Manager of Heritage Preservation Services";

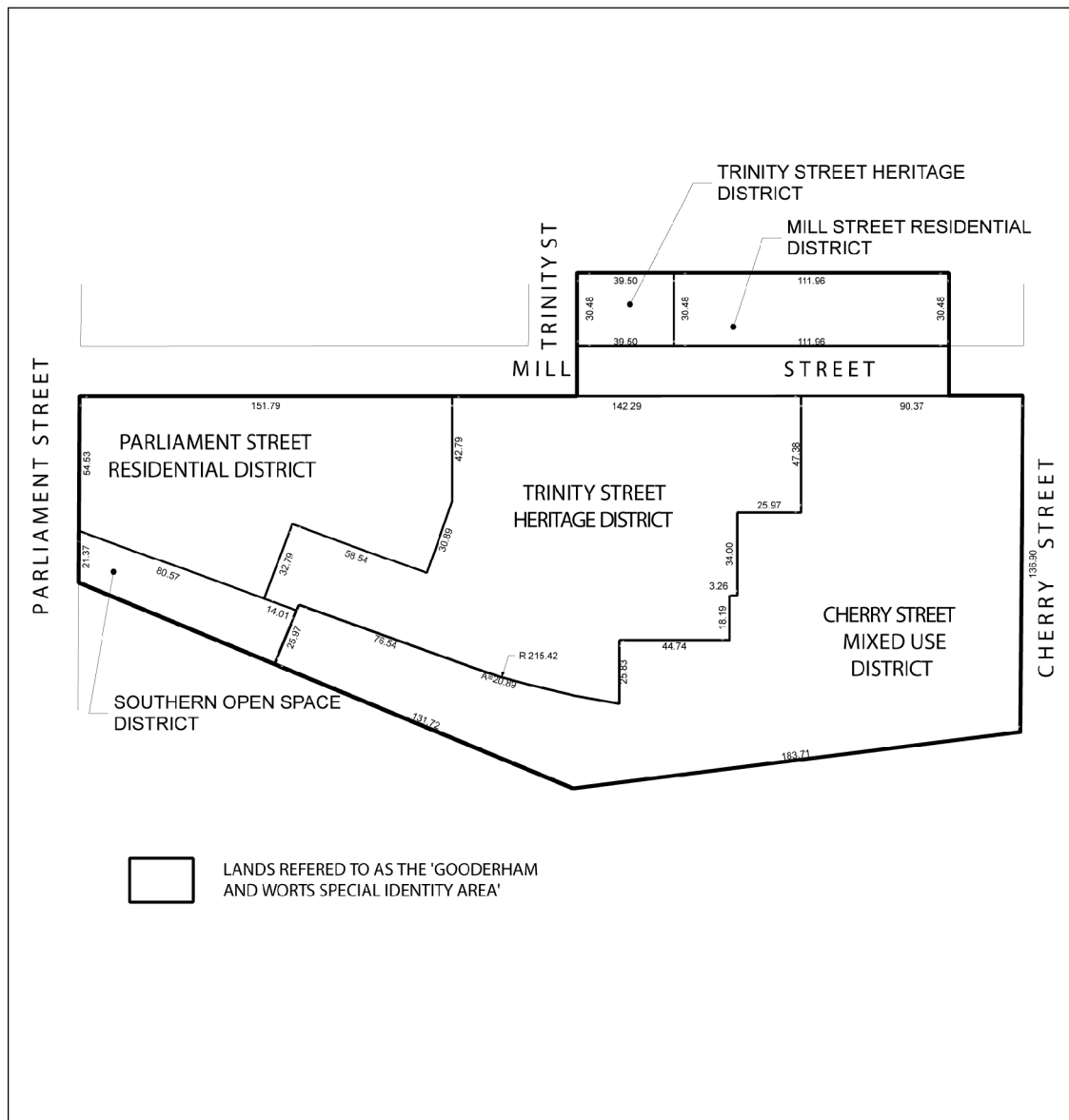
- "(f) retain a consultant archaeologist, licensed by the Province's Ministry of Culture, to provide an update to the materials cited in the existing Section 37 Agreement for Gooderham and Worts, being Report No. 1 "Aboriginal and Early European Settlement" and Report No. 6 "Industrial Heritage Assessment of the Heritage Master Plan" which together constituted a Stage 1 Archaeological Assessment in accordance with the Archaeological Assessment Technical Guidelines, 1993, Ministry of Culture. This Stage 1 Archaeological Assessment update is to be in accordance with the Final Draft – Standards and Guidelines for Consulting Archaeologists, September, 2006, Ministry of Culture such that:
- i. the consultant archaeologist shall submit any recommendations for Stages 2-4 mitigation strategies, should the archaeological assessment proceed beyond a Stage 1 Assessment, to the City Planning Division (Heritage Preservation Services) to be approved prior to commencement of the site mitigation and any construction activities, including excavation, for the development;
 - ii. the consultant archaeologist shall submit a copy of the relevant assessment report(s) to City Planning Division (Heritage Preservation Services) in both hard copy format and as an Acrobat PDF file;
 - iii. prior to the issuing of any building permits including an excavation permit, the City Planning Division (Heritage Preservation Services) and the Ministry of Culture (Heritage Operations Unit), shall confirm in writing that all archaeological licensing and technical review requirements have been satisfied; and
 - iv. prior to the release of the Letter of Credit, the applicant shall incorporate into the development, through preservation and interpretation or through commemoration and exhibition development, any significant archaeological resources and findings on site to the satisfaction of the City Planning Division (Heritage Preservation Services)";
- "(g) provide, prior to the issuance of the first above grade building permit, an indexed financial contribution to the City in the amount of \$1,000,000 to be used for future capital improvements for Young Centre for the Performing Arts, Toronto Artscape's facilities at Gooderham and Worts and neighbourhood streetscape beyond the site to the satisfaction of Chief Planner and Executive Director, City Planning Division, provided that the manner in which the funds spent on the capital improvements is agreed to by the City, the owner and the tenant, each acting reasonably; and the funds spent on the street improvements are spent in the vicinity of the Gooderham and Worts site, after consultation with the owner and the community";
- "(h) the public art contribution required as a community benefit in connection with the development of the *Cherry Street Mixed Use Area* shall be capped such that it cannot exceed \$900,000, and the parkland contribution required in connection with the development of the *Cherry Street Mixed Use Area* shall be capped such that it cannot exceed \$1,700,000";

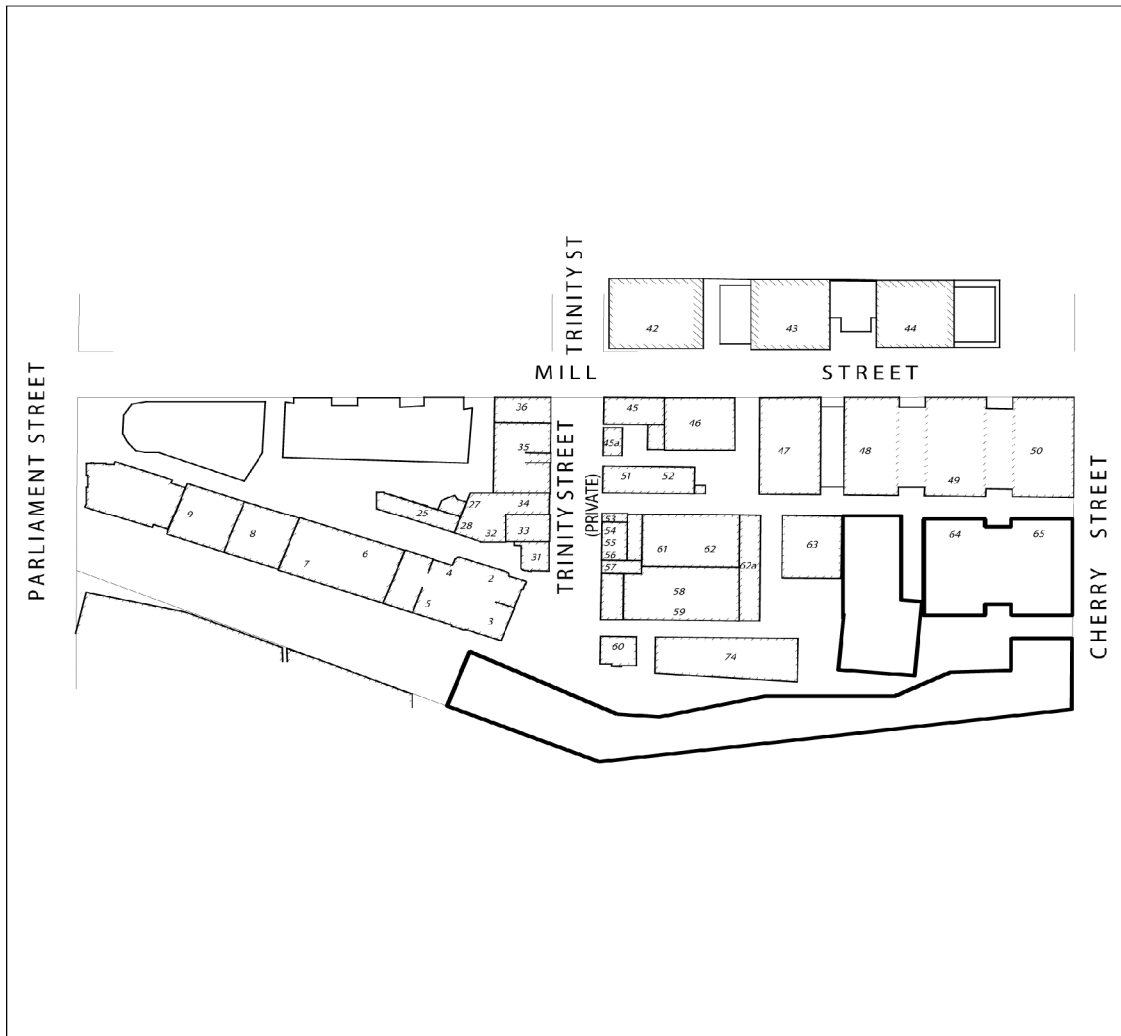
- "(i) the owner shall not permit residential occupancy of the buildings until the Toronto and Region Conservation Authority deems the flood protection landform in the West Don Lands complete and functional from a floodplain management perspective";
- "(j) if the flood protection landform in the West Don Lands is not complete and functional from a floodplain management perspective at the time of the building permit request, development in the *Cherry Street Mixed Use Area* will be constructed subject to flood proofing up to the Regional Storm event or, if this is not practical or feasible, to at least the 1:350 flood proofing requirement as described in policy 8 of subsection 15 of the King Parliament Secondary Plan and policy 2.68 of the former City of Toronto Official Plan. However, if the flood protection landform is deemed complete by the Toronto and Region Conservation Authority, the building permit can be amended to remove the flood proofing requirement;"

20. Section 7(2)(o) of By-law No. 1994-0396 is deleted and replaced by the following:

"Site Interpretation Centre means facilities, accessible to the public free of charge, located both inside and outside of historic buildings throughout the *Gooderham and Worts Special Identity Area*, the principal role of which is to educate the public regarding the heritage of the *Area*, through methods such as the display of artifacts, equipment, archival material, photographs and plans, and the provision of audio-visual material as part of an overall *Site Interpretation Program*".

PURSUANT TO DECISION/ORDER OF THE ONTARIO MUNICIPAL BOARD ISSUED ON MARCH 31, 2009 UNDER BOARD CASE FILE NO. PL070831.





Toronto City Planning
Plan 3

Amendment to Plan 3 of By-law 1994-0396

File # 06_189754



Not to Scale
 04/29/09

