

Authority: Toronto and East York Community Council Item 35.5, as adopted by City of Toronto Council on July 6, 7 and 8, 2010 and Motion MM52.1, moved by Councillor Walker, seconded by Councillor Thompson, as adopted by City of Toronto Council on August 25, 26 and 27, 2010
Enacted by Council: August 27, 2010

CITY OF TORONTO

BY-LAW No. 1140-2010

To amend the General Zoning By-law No. 438-86 of the former City of Toronto and By-law No. 236-2009 with respect to lands municipally known as 54-74 Berwick Avenue and 191-211 Duplex Avenue.

WHEREAS authority is given to Council by Section 36 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, for use of a holding symbol ("H") to specify the use to which lands, buildings or structures may be put at such time as the holding symbol is removed by amendment to the zoning by-law; and

WHEREAS it is appropriate that City of Toronto By-law No. 236-2009 be amended to remove the "H" in relation to the *lot*; and

WHEREAS authority is given to Council by Section 34 of the *Planning Act* to pass this By-law; and

WHEREAS Council has provided adequate information to the public and has held at least one public meeting in accordance with the *Planning Act*; and

WHEREAS pursuant to Section 37 of the *Planning Act*, the council of a municipality may in a by-law under Section 34 of the *Planning Act*, authorize increases in the height or density of development beyond those otherwise permitted by the by-law in return for the provisions of such facilities, services or matters as are set in the by-law; and

WHEREAS Subsection 37(3) of the *Planning Act* provides that, where an owner of land elects to provide facilities, services or matters in return for an increase in height and density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services or matters; and

WHEREAS the *owner* of the lands has elected to provide the facilities, services and matters, as hereinafter set forth; and

WHEREAS the increases in the density or height, beyond those otherwise permitted, are to be permitted in return for the provision of the facilities, services and matters set out in this By-law and are to be secured by one or more agreements between the *owner* of such lands and the City of Toronto; and

WHEREAS Council has required the *owner* to enter into one or more agreements dealing with certain facilities, services and matters in return for the increases in height and density in connection with the aforesaid lands as permitted in this By-law;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. City of Toronto By-law No. 236-2009 is amended as follows:

- (1) Section 1.(2) is deleted in its entirety and replaced with the following:

"redesignating to 'R2 Z4.0' the lands identified as 'R2 Z4.0(H)' and as outlined by heavy lines on Map 1 attached to and forming part of this By-law";

- (2) The introductory paragraph of Section 2 is deleted in its entirety and replaced with the following:

None of the provisions of Section 2(1) with respect to the definition of the words *grade* and *height* and none of the provisions of Section 4(2), 4(4)(b), 4(11), 4(16), 8(3), 12(2) 118, and 12(2) 119 of By-law No. 438-86, as amended, shall apply to prevent the uses or the erection or use of any buildings or structures for any purpose permitted in Section 8(1) of By-law No. 438-86, as amended, on *Blocks A* and *B*, shown on Map 3 attached hereto, and neither shall any of the provisions of 6(3) Part I 1, 6(3) Part II 2, 3, 4, 5 and 6 of By-law No. 438-86 as amended, apply to prevent the uses or the erection or use of any buildings or structures for any purpose permitted in Section 6(1) of By-law 438-86 as amended, on *Block C*, shown on Map 3 attached hereto, provided that:"

- (3) Section 2(4) is deleted in its entirety and replaced with the following:

"The total *residential gross floor area* on *Block C* shall not exceed 19,550 square metres."

- (4) Section 2(6) is amended by adding the following subsections:

(v) in addition to the elements outlined in (i), for buildings on *Block C*, entry features, underground garage ramps and associated structures, parapets, safety or wind protection;

(vi) notwithstanding (ii), for buildings on *Block C*, balconies and balcony piers to a maximum horizontal projection of not more than 2.5 metres;

- (5) Section 2(7) is amended by adding the following after the words "Map 2":

", except for the following elements of the building on *Block C*, only:

(i) the mechanical penthouse of the building;

(ii) parapets extending to a maximum vertical projection of 1.1 metres;

(iii) window washing equipment, aircraft warning lights, chimneys, heating/cooling/ventilation stacks and equipment, stair enclosures and fences;"

(6) Section 7(4)(iii) is deleted and replaced with the following:

"Block C – 155.5 metres Canadian Geodetic Datum."

2. None of the provisions of By-law No. 438-86, as amended, with respect to the definition of *lot* and Section 4(12) of By-law No. 438-86, being "A By-law to regulate the use of land and the erection, use, bulk, height, spacing of and other matters relating to buildings and structures and to prohibit certain uses of land and the erection and use of certain buildings and structures in various areas of the City of Toronto", shall apply to prevent the erection and use of an *apartment building* with underground parking on the *lot* delineated by heavy lines on the attached Map 1, provided that:
- (1) the *lot* upon which the proposed building and structure is erected or used is delineated by heavy lines on Map 1 attached to and forming part of this By-law;
 - (2) no portion of the building or structures above *grade* are located otherwise than wholly within the area delineated by heavy lines on the attached Map 2;
 - (3) indoor residential amenity space will not be provided in contiguous rooms;
 - (4) outdoor residential amenity space will not be provided in a location adjoining or directly accessible from the indoor residential amenity space; and
 - (5) the maximum number of dwelling units on the lot shall be 237 units.
3. Pursuant to Section 37 of the *Planning Act*, the height and density of development permitted on the *lot*, are permitted in return for the provision by the *owner* of the following facilities, services and matters to the City at the *owner's* sole expense:

Agreement

- (1) the *owner* enters into one or more agreements with the City pursuant to Section 37 of the *Planning Act* which shall be registered on title to the land by the City to secure the facilities, services and matters required to be provided by this Section of the by-law and consents to the registration of such agreement or agreements against title to the *lot*;

Cash Contribution

- (2) a payment of \$100,000.00 for deposit prior to the introduction of the necessary Bills to City Council for enactment and indexed to the non-residential Construction Price Index for Toronto for the period from the date of Council approval of the development and the date of payment. Such payment will be directed to the parkland acquisition and development fund that will be established to purchase, design and construct a new park on the lands south of the TTC bus barns at Yonge Street and Eglinton Avenue West;

Rental Housing Replacement

- (3) the *owner* shall provide and maintain on the site not less than 12 new replacement rental dwelling units, comprising six (6) one-bedroom units and six (6) two-bedroom units all of which shall have mid-range rents, to the satisfaction of the Chief Planner and Executive Director, City Planning Division, subject to the following:
- (a) the 12 replacement rental *dwelling units* shall be provided entirely on the *lot*;
 - (b) the replacement rental *dwelling units* shall be maintained as rental units for at least 20 years, beginning with the date that each unit is occupied and until the *owner* obtains approval for a zoning by-law amendment removing the requirement for the replacement rental units to be maintained as rental units. If the tax rate were to increase such that the *owner* is paying more tax than they would if the rental replacement units were registered as a condominium, the *owner* will have the right to apply for a zoning by-law amendment removing the requirement for the designated rental units to be maintained as rental units prior to the expiry of this 20-year period provided the 12 designated replacement rental *dwelling units* remain as rental *dwelling units* until the *owner* obtains approval for a zoning by-law amendment removing the requirement that the *owner* provide and maintain the designated *dwelling units* as rental *dwelling units*;
 - (c) the 12 replacement rental *dwelling units* shall be ready and available for occupancy no later than the date by which not more than 60% of the other *dwelling units* erected on the *lot* are available and ready for occupancy;
 - (d) the *owner* shall provide and maintain rents no greater than mid-range rents charged to the tenants who rent each of the 12 replacement rental *dwelling units* during the first 10 years of its occupancy, such that the initial rent shall not exceed an amount that is 1.5 times average rent for the City of Toronto by unit type as based on the most recent Fall Update Canada Mortgage and Housing Corporation Rental Market Report and, upon turn-over, the rent charged to any new tenant shall not exceed the greater of the most recently charged rent or 1.5 times the most recently reported Rental Market Report average rent for the City of Toronto by unit type and over the course of the 10-year period, annual increases shall not exceed the Provincial rent guideline increases;
 - (e) rents charged to tenants occupying a replacement rental *dwelling unit* at the end of the 10-year period set forth in subsection (d) shall be subject only to annual increases which do not exceed the Provincial rent guideline and, if applicable, permitted above guideline increases, so long as they continue to occupy their *dwelling unit* or until the expiry of the rental

tenure period set forth in subsection (b) with a phase-in period of a least three years for rent increases;

- (f) rents charged to tenants newly occupying a replacement rental dwelling unit after the completion of the 10-year period set forth in subsection (d) will not be subject to restrictions by the City of Toronto under the terms of subsection (d);
- (4) the *owner* shall make a cash payment to the City in the amount of \$440,000 in lieu of replacing four (4) residential rental units contained on the subject properties, prior to the issuance by the Chief Planner of preliminary approval of the application under Chapter 667. This payment is to be directed to the Capital Revolving Fund for Affordable Housing.

Other Matters to be Secured

- (5) the *owner* shall incorporate in the construction of the building, exterior materials shown on 1:50 scale drawings, approved by the Chief Planner and Executive Director, submitted for the development's frontages along Duplex Avenue and Berwick Avenue;
- (6) the *owner* shall submit a wind tunnel analysis to the satisfaction of the Chief Planner and Executive Director and provide any required mitigation measures contained therein to the satisfaction of the Chief Planner and Executive Director prior to the issuance of site plan approval;
- (7) prior to registration of the condominium, the *owner* shall convey to the City, at a nominal cost, a 6.0 metre wide strip of land to the full extent of the site abutting the east limit of the site. The subject lands to be conveyed must be free and clear of all encumbrances subject to an easement for access purposes in favour of the *owner* until such time as the said lands have been laid out and dedicated for public highway purposes and any other such encumbrances as the City Solicitor may permit;
- (8) the *owner* shall maintain the easement lands, insure said lands, accept liability, and fully indemnify the City against all claims in respect of the easement lands such that the City will have no responsibility for the maintenance and no liability for the easement lands, until such time as a public road is established at this location;
- (9) prior to the enactment of this By-law, pay all costs associated with and/or provide adequate securities to cover the subject *owner's* share of the construction costs of the future road, including applicable engineering review and inspection fees;
- (10) convey 290 square metres of land as noted on the plans to the City as parkland and submit the remaining parkland dedication requirement and stratified value adjustments in the form of a certified cheque prior to the issuance of the first above grade building permit;

- (11) complete a Toronto Transit Commission "TTC") Level 2 Technical Review of the proposed development, prior to starting any demolition or construction or the issuance of the first or any building permit, as applicable to the particular permit under application, and obtain the TTC's written acknowledgement that the *owner* has satisfied all of the conditions arising out of the review. As part of the review process, the *owner* shall provide the requisite information, and pay the associated review fee to the TTC;
 - (12) insert warning clauses regarding TTC operations in all offers to purchase, agreements of purchase and sale or agreements to lease, and condominium declaration document(s) for each affected residential or commercial unit, and/or block within the proposed development. Such warning clauses shall advise of the potential for noise, vibration, smoke, particulate matter, electromagnetic interference and stray current impacts on the proposed development, and that the TTC accepts no responsibility for such effects; and
 - (13) prepare a Construction Management Plan and Neighbourhood Communication Strategy, prior to the issuance of the first building permit (including demolition and/or excavation permit), to the satisfaction of the Chief Planner and Executive Director of the City of Toronto Planning Division.
4. For the purpose of this By-law, the following expressions shall have the following meaning:
- (1) "*By-law No. 438-86*" means By-law No. 438-86, as amended, of the former City of Toronto being, "A By-law to regulate the use of land and the erection, use, bulk, height, spacing and other matters relating to buildings and structures and to prohibit certain uses of lands and the erection and use of certain buildings and structures in various areas of the City of Toronto";
 - (2) "*owner*" means the registered owner of the *site* or any part thereof; and
 - (3) "*lot*" means those lands outlined by heavy lines on Map 1 attached hereto.
5. Each word or expression which is italicized in this By-law, shall have the same meaning as each word or expression as defined in By-law No. 438-86, as amended, unless otherwise defined in this By-law.

ENACTED AND PASSED this 27th day of August, A.D. 2010.

DAVID R. MILLER,
Mayor

ULLI S. WATKISS
City Clerk

(Corporate Seal)



