

Authority: Ontario Municipal Board Decision issued on November 4, 2013 and Ontario Municipal Board Order issued November 10, 2014 in Board File No. PL120669

CITY OF TORONTO

BY-LAW No. 1081-2014(OMB)

To amend former City of Toronto Zoning By-law No. 438-86 and By-law No. 569-2013 with respect to lands municipally known in the year 2013 as 24 Mercer Street.

Whereas pursuant to Section 37 of the *Planning Act*, the Council of a municipality may, in a by-law passed under Section 34 of the *Planning Act*, authorize increases in the height or density of development beyond that otherwise permitted by By-law No. 438-86, as amended, in return for the provision of such facilities, services or matters as are set out 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 any increase in the height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with the facilities, services and matters; and

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

Whereas the increases in the density and height permitted hereunder, beyond those otherwise permitted on the lands by By-law No. 438-86, as amended, are to be permitted subject to 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 (hereinafter referred to as the "City"); and

Whereas the Official Plan of the City of Toronto contains provisions relating to the authorization of the height and density of development; and

Whereas Council of the City of Toronto at its meetings of July 16, 17, 18 and 19, 2013, October 8, 9, 10 and 11, 2013 and May 6, 7 and 8, 2014 determined to support the coming into force of this By-law; and

Whereas Council of the City of Toronto has required the owner of the lands to enter into one or more agreements to secure 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; and

Whereas the Ontario Municipal Board, by way of Order issued on November 10, 2014 following an appeal pursuant to Section 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, determined to amend the former City of Toronto Zoning By-law No. 438-86, the General Zoning By-law and By-law No. 569-2013, with respect to the lands municipally known in the year 2013 as 24 Mercer Street;

The Ontario Municipal Board authorizes By-law No. 438-86, the General Zoning By-law of the former City of Toronto, as amended, to be further amended as follows:

1. Pursuant to Section 37 of the *Planning Act*, the *heights* and density of development permitted by this By-law on the lands known municipally in the year 2013 as 24 Mercer Street and more particularly shown outlined on Map 1 forming part of this By-law (hereafter referred to as the "*lot*") are permitted subject to compliance with all of the conditions set out in this By-law including the provision by the *owner* of the *lot* of the facilities, services and matters set out in Appendix 1 hereof, to the *City* at the *owner's* sole expense and in accordance with and subject to the agreement referred to in Section 2 and in clause 6 of Appendix 1 of this By-law.
2. Upon execution and registration of an agreement or agreements with the *owner* of the *lot* pursuant to Section 37 of the *Planning Act* securing the provision of the facilities, services or matters set out in Appendix 1 hereof, the *lot* is subject to the provisions of this By-law, provided that in the event the said agreement requires the provision of a facility, service or matter as a precondition to the issuance of a building permit or a permit issued under the *Ontario Heritage Act*, the *owner* may not erect or use such building until the *owner* has satisfied the said requirements.
3. Wherever in this By-law a provision is stated to be conditional upon the execution and registration of an agreement entered into with the *City* pursuant to Section 37 of the *Planning Act*, then once such agreement has been executed and registered, such conditional provisions shall continue to be effective notwithstanding any subsequent release or discharge of all or any part of such agreement.
4. Except as otherwise provided herein, the provisions of By-law No. 438-86, as amended, shall continue to apply to the *lot*.
5. None of the provisions of Section 2 with respect to *height* and *grade*, Sections 4(2)(a), 4(13)(a) *visitor*, 4(14), 7(3) Parts I, II, III and IV and 12(2) 246 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 lands and the erection and use of certain buildings and structures in various areas of the City of Toronto", as amended, shall apply to prevent the erection or use of a *mixed-use building* and uses *accessory* thereto, on the *lot*, provided that:
 - (1) the *lot* comprises at least the lands delineated by heavy lines as shown on Map 1 attached to and forming part of this By-law, identified as "24 Mercer Street";
 - (2) the total combined *residential gross floor area* and *non-residential gross floor area* erected or used on the *lot* shall not exceed 3,368.0 square metres, of which:
 - (a) there shall be a minimum *non-residential gross floor area* erected and used on the *lot* of at least 308 square metres; and
 - (b) the *residential gross floor area*, including *live-work units*, shall not exceed 2,973.0 square metres;
 - (3) no portion of the building or any structure erected or used above grade is located otherwise than within the lot and wholly within the areas delineated by heavy

lines on Map 2 attached to and forming part of this By-law, provided, with the exception of the area identified on Map 2 as "Mechanical Penthouse", this does not prevent spires, awnings, lighting fixtures, ornamental or architectural elements, trellises, window sills, balustrades, stairs, stair enclosures, stair towers, elevator overruns, mechanical equipment or enclosures, wheelchair ramps, window washing equipment, parapets, cornices, balconies subject to Section 5(7) herein, eaves, planters, guardrails, railings, wind mitigation screens and features, monuments, arbours, patios, vents, retaining walls, fences, screens and landscape and public art features, which may extend horizontally within the lot a maximum of 1.5 metres beyond the heavy lines shown on Map 2 provided the maximum vertical projection of any such structure or element is no higher than 2.5 metres above that portion of the building to which it is attached;

- (4) no portion of any building or structure erected or used above *grade* on the *lot*, including the mechanical penthouse, mechanical and roof top elements, shall exceed the *height* limits in metres specified by the numbers following the symbol "H" as shown on Map 2, with the exception of the following structures and elements provided such structures and elements are located only within the 57.5 metre *height* limit areas shown on Map 2:

structures used for outside or open air amenity space, safety or wind protection, vents, chimney stacks, balustrades, stairs, stair enclosures, window washing equipment, spires, parapets, trellises, planters, guardrails, railings, lighting fixtures, cornices, eaves, wind mitigation screens and features, monuments, arbours, patios, vents, retaining walls, fences, screens and landscape and public art features, provided the maximum vertical projection of any such structure or element is no higher than 3.5 metres above the portion of the building to which it is attached and further provided this exception does not apply to patios, vents, chimney stacks, stairs or stair enclosures located above a *height* of 57.5 metres;

- (5) despite Section 5(4) and Map 2 of this By-law;
- (a) no building or structure erected on the *lot* shall exceed 17 storeys; and
- (b) the maximum vertical projection of the mechanical penthouse, including any stair and elevator areas shall be no higher than 5.5 metres above that portion of the building on which it is located;
- (6) despite Sections 5(3), 5(4) and Map 2 of this By-law, the total area of the mechanical penthouse located within the area identified as "Mechanical Penthouse" on Map 2 of this By-law together with a stair enclosure adjacent to such Mechanical Penthouse area, shall not exceed 113.0 square metres;
- (7) despite any other provision of this By-law, balconies shall not be erected or used below a *height* of 11.96 metres on the south facing wall of any building erected or used on the *lot*; and

- (8) despite any provisions of By-law No. 438-86, as amended, no parking shall be required for such building.
6. None of the provisions of By-law No. 438-86, as amended, shall apply to prevent a temporary *sales office* on the *lot*.
7. Despite any existing or future consent, severance, partition, or division of the *lot*, the provisions of this By-law shall apply to the whole of the *lot* as if no consent, severance, partition or division occurred.
8. Building permit issuance with respect to the lands to which this By-law applies shall be dependent upon satisfaction of both the provisions of this By-law and the provisions of the agreement referred to in Section 2 and Appendix 1 of this By-law, including the provision of monetary payments and the provision of financial securities.
9. Within the lands shown on Map 1 attached to this By-law, no person shall use any land or erect or use any building or structure unless the following services are provided to the lot line and the following provisions are complied with:
- (a) all new public roads have been constructed to a minimum base curb and base asphalt and are connected to an existing public highway; and
 - (b) all water mains and sanitary sewers and appropriate appurtenances, have been installed and are operational.
10. In accordance with the City of Toronto Transition Protocol, By-law No. 569-2013 is amended to remove the area of 24 Mercer Street, being the lands identified on Map 1 of this By-law.
11. For the purposes of this By-law, all italicized words and expressions have the same meanings as defined in By-law No. 438-86, as amended, except for the following:
- "*Building Code Act*" means the *Building Code Act, 1992*, S.O. 1992, c. 23 as amended or re-enacted from time to time;
- "*City*" means the City of Toronto;
- "*Commemoration Plan*" means a commemoration plan satisfactory to the *Manager, HPS* that includes interpretive elements regarding the *lot's* heritage values, site history and archaeological resources, an implementation schedule and a budget;
- "*Conservation Plan*" means the Heritage Conservation Plan prepared by Golder Associates Ltd. for Scott Morris Architects Inc. dated June 2013 and date stamped received by the *City* June 4, 2013, on file with the *Manager HPS*;
- "*existing building*" means the heritage building existing on the *lot* on December 31, 2013, including any permitted alterations;

"*grade*" means 85.13 metres Canadian Geodetic Datum;

"*height*" means the vertical distance in metres between *grade* and the highest point of the building or structure, including mechanical penthouse;

"*live - work unit*" means a *dwelling unit* having an area of not more than 200 square metres that contains a subsidiary business and personal services occupancy or a subsidiary low hazard industrial occupancy, and which is used and operated by one or more persons of a single household;

"*Manager HPS*" means the *City's* Manager, Heritage Preservation Services;

"*Ontario Heritage Act*" means the *Ontario Heritage Act*, R.S.O. 1990, c. O.18, as amended or re-enacted from time to time;

"*owner*" has the same meaning as in Zoning By-law No. 438-86, as amended, except it shall not include the *City*; and

"*sales office*" means an office used exclusively for the initial marketing, the initial sale and/or the initial leasing of the *dwelling units* and/or *non-residential gross floor area* to be erected on the *lot* pursuant to this By-law, and which office is located in either the *existing building*, or in a temporary building, structure, facility or trailer satisfactory to the *City's* Chief Planner and Executive Director, City Planning.

Appendix 1
Section 37 Provisions

The facilities, services and matters set out herein are the matters required to be provided by the *owner* of the *lot* at its expense to the *City* in accordance with an agreement or agreements, pursuant to Section 37 of the *Planning Act*, in a form satisfactory to the *City* with conditions providing for no credit for development charges, indexing escalation of both any financial contributions and letters of credit, indemnity, insurance, HST, termination and unwinding, and registration and priority of the agreement:

1. in the event the *existing building* is demolished, the *owner*, at its expense shall reconstruct in accordance with the *Conservation Plan*, to the satisfaction of the *City's* Chief Planner and Executive Director, *City Planning* as part of the south elevation of the building permitted by this By-law, and thereafter maintain, the heritage attributes of the *lot* being the historic façade comprising the south elevation of the *existing building*, with such reconstruction to be completed prior to the earlier of:
 - (a) 5 years from the date of issuance of the first permit under the *Ontario Heritage Act* for all or any portion of the *lot*, excluding any permit for works associated with repairs, maintenance and usual and minor works acceptable to the *Manager HPS*, or
 - (b) any residential use of the *lot* or any portion thereof following such demolition;
2. the *owner*, at its expense, prior to the issuance of the earlier of any site plan approval for all or any portion of the *lot* pursuant to Section 114 of the *City of Toronto Act, 2006*, and any permit for all or any portion of the *lot*, including a permit under the *Ontario Heritage Act* or the *Building Code Act* but excluding any permit for the *existing building* for works associated with repairs, maintenance and usual and minor works acceptable to the *Manager, HPS*, shall provide to the *City* a *Commemoration Plan* for the *lot* satisfactory to the *Manager HPS*; the *owner* shall implement the approved *Commemoration Plan* on the *lot* to the satisfaction of the *Manager HPS* prior to any residential or commercial use of any building erected on the *lot* after the enactment of this By-law, and thereafter the *owner* shall maintain such *Commemoration Plan* on the *lot*;
3. the *owner*, at its expense, shall provide a letter of credit to the *City* in a form, from a bank, with content and in an amount, satisfactory to the *Manager HPS*, prior to the issuance of any permit required for all or any portion of the *lot*, including a permit under the *Ontario Heritage Act* or the *Building Code Act* but excluding any permit for the *existing building* for works associated with repairs, maintenance and usual and minor works acceptable to the *Manager HPS*, for the purpose of securing the satisfactory preparation and implementation of the *Commemoration Plan* required in Section 2 of this Appendix 1;
4. the *owner*, at its expense, shall provide a letter of credit to the *City* in a form, from a bank, with content and in an amount, satisfactory to the *City's* Chief Planner and Executive Director *City Planning*, prior to the issuance of any permit required for all or any portion of the *lot*, including under the *Ontario Heritage Act* or the *Building Code Act*

but excluding any permit for the *existing building* for works associated with repairs, maintenance and usual and minor works acceptable to the *Manager HPS*, for the purpose of securing the satisfactory completion of the reconstruction required in Section 1 of this Appendix 1. Prior to the release of such letter of credit, the *owner* shall provide evidence and documentation that the reconstruction has been implemented in accordance with the approved *Conservation Plan*, all to the satisfaction of the *Manager HPS*;

5. the *owner*, at its expense, prior to the issuance of the earlier of any site plan approval for all or any portion of the *lot* pursuant to Section 114 of the *City of Toronto Act, 2006*, and any permit for all or any portion of the *lot*, including a permit under the *Ontario Heritage Act* or the *Building Code Act* but excluding any permit for the *existing building* for works associated with repairs, maintenance and usual and minor works acceptable to the *Manager, HPS*, shall provide to the *City* a record of the as-found condition of the *existing building* on the *lot* including architectural drawings and photographs keyed to the plans and elevations of all visible interiors and exteriors, to the satisfaction of the *Manager HPS*; and
6. the *owner*, at its expense, shall enter into and register on title to the *lot* one or more agreements with the *City* pursuant to Section 37 of the *Planning Act*, to the satisfaction of the *City Solicitor*, in consultation with the *City's* Chief Planner and Executive Director, *City Planning Division*, to secure the facilities, services and matters set forth in this Appendix 1.

PURSUANT TO DECISION OF THE ONTARIO MUNICIPAL BOARD ISSUED ON NOVEMBER 4, 2013 AND ORDER OF THE ONTARIO MUNICIPAL BOARD ISSUED ON NOVEMBER 10, 2014 IN OMB FILE NO. PL120669.



