

Authority: Ontario Municipal Board Decision/Order issued on March 27, 2017 in Board Files PL130686 and PL130877

## CITY OF TORONTO

### BY-LAW 972-2017(OMB)

#### **To amend Zoning By-law 438-86 of the former City of Toronto, as amended, with respect to lands municipally known as 2360-2376 Yonge Street and 31-37 Helendale Avenue.**

Whereas the Ontario Municipal Board, by way of a Decision issued on March 27, 2017, determined to amend the former City of Toronto Zoning By-law 438-86, as amended with respect to lands known municipally in the year 2014 as 2360-2376 Yonge Street and 31-37 Helendale Avenue; and

Whereas authority is given to the Ontario Municipal Board under Section 34 of the *Planning Act*, R.S.O. 1990, c. P.13, as amended; and

Whereas pursuant to Section 37 of the *Planning Act*, a by-law passed under Section 34 of the *Planning Act* may authorize increases in the height or density of development beyond that otherwise permitted by the by-law that will be permitted 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 lands elects to provide facilities, services or matters in return for an increase in the height or density of development, a 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 known at the date of enactment of this By-law as 2360-2376 Yonge Street and 31-37 Helendale Avenue (the "Lands") has elected to provide the facilities, services or matters as are set out in this By-law; and

Whereas the increase in height and density of development permitted under this By-law beyond that otherwise permitted on the lands by Zoning By-law 438-86, as amended, is to be permitted in return for the provision of the facilities, services and matters set out in this By-law and to be secured by one or more agreements between the owner of the Lands and the City of Toronto;

The Ontario Municipal Board orders that former City of Toronto By-law 438-86, as amended, is further amended as follows:

1. Pursuant to Section 37 of the *Planning Act*, and subject to compliance with this By-law the increase in height and density of development is permitted beyond that otherwise permitted on the lands shown on Map 1 attached to and forming part of this By-law in return for the provision by the owner, at the owner's expense of the facilities, services and matters set out in Appendix 1 hereof as secured by one or more agreements pursuant to Section 37(3) of the *Planning Act* that are in a form and registered on title to the lands, to the satisfaction of the City Solicitor.
2. Where Appendix 1 of this By-law requires the owner to provide certain facilities, services or matters prior to the issuance of a building permit, the issuance of a building permit shall be dependent on satisfaction of the same.

3. The owner shall not use, or permit the use of, a building or structure erected with an increase in height and density pursuant to this By-law unless all provisions of Appendix 1 are satisfied.
4. Except as otherwise provided herein, the provisions of Zoning By-law 438-86 shall continue to apply to the lands shown on Map 1.
5. Within the lands shown on Map 1, no person shall use any land or erect or use any building or structure unless the following municipal services are provided to the lot line and the following provisions are complied with:
  - (a) all water mains and sanitary sewers, and appropriate appurtenances, have been installed and are operational.
6. For the purposes of this By-law, all italicized words and expressions have the same meanings as defined in By-law 438-86 of the former City of Toronto, as amended, with the exception of the following:
  - (a) "*bicycle parking space – occupant*" has the same meaning as in the definition set forth in By-law 438-86, except that *bicycle parking spaces* may be provided in the form of a *stacked bicycle parking space*. A *stacked bicycle parking space* shall mean a horizontal bicycle parking space positioned above or below another bicycle parking space and equipped with a mechanical device providing floor level access to both bicycle parking spaces with a minimum vertical dimension of at least 1.0 metre and minimum horizontal dimensions of at least 0.25 metres width and 1.6 metres length;
  - (b) "*bicycle parking space – visitor*" has the same meaning as in the definition set forth in By-law 438-86, except that *bicycle parking spaces* may be provided in the form of a *stacked bicycle parking space*. A *stacked bicycle parking space* shall mean a horizontal bicycle parking space positioned above or below another bicycle parking space and equipped with a mechanical device providing floor level access to both bicycle parking spaces with a minimum vertical dimension of at least 1.0 metre and minimum horizontal dimensions of at least 0.25 metres width and 1.6 metres length;
  - (c) "*car-share*" means the practice whereby a number of people share the use of one or more cars that are owned by a profit or non-profit car-sharing organization and where such organization may require the use of cars to be reserved in advance, charge fees based on time and/or kilometers driven, and set membership requirements of the car-sharing organization, including the payment of a membership fee that may or may not be refundable;
  - (d) "*car-share parking space*" means a *parking space* that is exclusively reserved and actively used for car-sharing;
  - (e) "*City*" means the City of Toronto;

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- (f) "*dwelling unit*" has the same meaning as in the definition set forth in By-law 438-86 but excludes a guest suite;
  - (g) "*grade*" means 169.0 metres Canadian Geodetic Datum;
  - (h) "*height*" means the vertical distance between *grade* as defined in this By-law and the highest point of the roof except for those elements prescribed in this By-law;
  - (i) "*lot*" means the lands outlined with heavy lines on Map 1;
  - (j) "*owner*" means the fee simple owner(s) of the lot;
  - (k) "*replacement rental dwelling units*" means the replacement rental dwelling units to be secured pursuant to Appendix 1 to this By-law;
  - (l) "*temporary sales office*" mean a building, structure, facility or trailer on the lot used exclusively for the initial sale and/or leasing of *dwelling units or non-residential gross floor area* to be erected on the *lot*.
7. None of the provisions of Section 2(1) with respect to the definitions of *bicycle parking space - occupant*, *bicycle parking space - visitor*, *dwelling unit*, *grade*, *height* and *lot*; Sections 4(1)(a), 4(2)(a); 4(3); 4 (4)(b), 4(8); 4(12); 4(13), 4(16); 6(3) Part I; Part II, Part III, Part IV, Part VI, Part VII, and Part XI; 8(1); 8(3) PART I 1, 2 and 3(a); 8(3) PART II 4(a) and 4(c), 8(3) Part XI 1,; 12(2)118(iv); 12(2)119(ii) - (iv) and (viii); and 12(2)270(a)(ii) of Zoning By-law 438-86, of the former City of Toronto, as amended, shall apply to prevent the erection or use of a *mixed-use building* on the *lot*, including accessory uses thereto provided that:
- (a) the *lot* comprises the lands identified with heavy lines on Map 1;
  - (b) the following uses are permitted on the *lot*:
    - (i) a *mixed-use building*;
    - (ii) artist or photographers studio, bake-shop, branch of a bank or financial institution, caterer's shop, clinic, club, community centre, courier service, day nursery, custom workshop, dry cleaning shop, dry cleaner's distributing station, duplicating shop, fitness club, fitness studio, grocery store, laundry shop, office, performing arts studio, personal grooming establishment, pet shop, premises of a charitable institution or non-profit institution, public art gallery, private art gallery, retail store, restaurant, service rental or repair shop, showroom, software and design establishment, tailoring shop, take out restaurant, theatre uses and yoga studio;
    - (iii) rooftop terraces and patios used for the exclusive use of a restaurant, take-out restaurant and bake shop; and
    - (iv) guest suites;

- (c) the total combined *residential gross floor area* and the *non-residential gross floor area* of the building shall not exceed 33,170 square metres, subject to the following:
- (i) The total *residential gross floor area* shall not exceed 27,120 square metres; and
  - (ii) The total *non-residential gross floor area* shall not exceed 6,100 square metres;
- (d) a maximum of 378 dwelling units shall be permitted, of which 20 dwelling units shall be secured as replacement rental dwelling units, of which 18 shall have at least one bedroom, and 2 shall have at least three bedrooms;
- (e) no above-grade portion of any building or structure erected or used on the lot shall be located otherwise than wholly within the areas delineated by heavy lines on Map 2, except for the type of structures and elements listed in the column entitled "STRUCTURE" in the following Table, provided that the restrictions set out opposite the structure in the columns entitled "MAXIMUM PERMITTED PROJECTION" and "OTHER APPLICABLE QUALIFICATIONS" are complied with;

STRUCTURE	MAXIMUM PERMITTED PROJECTION	OTHER APPLICABLE QUALIFICATIONS
A. light fixtures, cornices, sills, eaves, bay windows, mullions, ornamental or architectural elements, and aircraft warning lighting	1.0 metres	Provided the <i>height</i> of such "STRUCTURE" is no higher than that portion of the building to which it is attached.
B. balconies	2.0 metres	Provided the <i>height</i> of such "STRUCTURE" is no higher than that portion of the building to which it is attached.
C. canopies	3.0 metres	Provided the <i>height</i> of such "STRUCTURE" is no higher than that portion of the building to which it is attached.
D. parapets and guards	1.2 metre	Provided the <i>height</i> of such "STRUCTURE" is not greater than 2.0 metre above that portion of the building to which it is attached.
E. fences, safety railings and guardrails	No restriction	Provided the <i>height</i> of such "STRUCTURE" does not exceed 3.0 metres above finished ground level.

STRUCTURE	MAXIMUM PERMITTED PROJECTION	OTHER APPLICABLE QUALIFICATIONS
F. wind protection features for exterior amenity areas		Provided the height of such "STRUCTURE" does not exceed 3.0 metres above that portion of the building to which it is attached and is setback 3.0 metres from any wall surrounding the exterior amenity area.
G. stairs, stair enclosures, ramps, wheel chair ramps and/or stairs (and associated structures), underground garage ramps and their associated structures, garbage and servicing areas and their associated structures, retaining walls, air shafts, transformer vaults and building code elements required for the functional operation of the building, including but not limited to free standing Siamese connections, and free standing accessibility door operators	No restriction	Provided the <i>height</i> of such "STRUCTURE" does not exceed 2.0 metres above finished floor level.

- (f) no part of any building or structure erected or used on the *lot*, shall exceed the height in metres specified by the numbers following the symbol "H" on the attached Map 2, with the exception of the following structures and elements:
- (i) to a maximum of 2.0 metres above the height limits established by this By-law:
    1. a structure used for window washing equipment, lighting fixtures, ornamental elements, trellises, planters, partitions dividing outdoor recreation areas, guard rails and railings, stairs, stair enclosures, wheelchair ramps, vents, fences, screens, architectural features, parapets, landscaping elements, roofing materials, elements of a green roof, lightning rods, and exhaust flues;
  - (ii) to a maximum of 6.7 metres above the *height* limits established by this By-law in the area identified on Map 2 with a dashed line, provided the

overall height of the building within the area of Map 2 outlined with a dashed line does not exceed 100.6 metres:

1. heating, ventilation, mechanical or cooling equipment, including vents, chimneys and stacks as well as fence, wall or structure enclosing such structures and elements; and
  - (iii) the structures and elements identified in subsection (e) above, subject to the restrictions therein;
- (g) parking *spaces* shall be provided and maintained on the *lot* in accordance with the following:
- (i) a minimum of 0.42 parking spaces per dwelling unit;
  - (ii) a minimum of 3 car-share parking spaces;
  - (iii) a minimum of 7 of the residential parking spaces provided within the site shall be allocated for residents of the replacement rental dwelling units;
  - (iv) for each car-share parking space provided on the lot, the minimum number of required residential parking spaces shall be reduced by 4 parking spaces;
  - (v) a minimum of 0.1 visitor parking spaces per dwelling unit for visitors to the building;
  - (vi) a minimum of 4 non-residential visitor parking spaces for non-residential uses in the building;
  - (vii) a minimum of 2 short-term parking spaces at the ground level;
  - (ix) for the purposes of parking space calculations, if the calculation of the number of required parking spaces results in a number with a fraction, the number is rounded down to the nearest whole number, but there may not be less than one *parking space*;
- (h) a minimum of one *loading space - Type G* and two *loading spaces - Type B* shall be provided on the lot;
- (i) bicycle *parking spaces* shall be provided on the *lot* as follows:
- (i) for residential uses, a minimum of 0.90 *bicycle parking spaces-occupant* per dwelling unit. Notwithstanding the foregoing, 21 *bicycle parking spaces-occupant* shall be assigned and available for the *replacement rental dwelling units*. In addition, a minimum of 0.1 *bicycle parking spaces-visitor* shall be provided per dwelling unit;
  - (ii) for retail uses, a minimum of 0.2 bicycle parking spaces-occupant per 100 square metres of interior floor area and a minimum of 3 plus 0.3 bicycle parking spaces-visitor per 100 square metres of interior floor area;
  - (iii) for restaurant uses, a minimum of 0.2 bicycle parking spaces-occupant per 100 square metres of interior floor area and a minimum of 3 plus

0.3 *bicycle parking spaces-visitor* per 100 square metres of interior floor area;

- (j) *residential amenity space* shall be provided as follows:
  - (i) a minimum of 2.0 square metres of indoor *residential amenity space* shall be provided per *dwelling unit* and the required *residential amenity space* may be provided in separate multi-purpose rooms, provided at least one room characterized as *residential amenity space* contains a kitchen and a washroom; and
  - (ii) a minimum of 2.0 square metres of outdoor *residential amenity space* shall be provided per *dwelling unit*.
- 8. Notwithstanding the requirements of section 7(e) of this By-law, no portion of the building at the ground floor shall be situated within the area identified as 'Area A' on Map 1 of this by-law except for columns and architectural and landscape features.
- 9. None of the provisions of Zoning By-law 438-86 shall apply to prevent a *temporary sales office* on the *lot*.
- 10. Despite any existing or future severance, partition or division of the *lot*, the provisions of this By-law shall apply to the whole of the *lot* as if no severance, partition or division had occurred.

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**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* or as otherwise specified in this Appendix, in accordance with an agreement, pursuant to Section 37(3) of the *Planning Act*, in a form satisfactory to the *City*:

1. Prior to the issuance of the first above-grade building permit, the *owner* shall provide a financial contribution in the amount of one million dollars (\$1,000,000.00) to be used by the *City* in its sole discretion for local community improvements, which may include local streetscaping improvements and/or public realm improvements and/or for improvements to the Northern District Library. Such funds shall be indexed upwardly from the date of execution of this Agreement.
2. Prior to the issuance of the first above-grade building permit, the *owner* shall provide a letter of credit in the *City's* standard form to secure the cost of the following obligation: The owner shall design and install streetscape improvements to the Yonge Street and to the Helendale Avenue public realm abutting the *lot*. These improvements shall have a value of not less than five hundred thousand dollars (\$500,000.00) indexed upwardly from the date of execution of this Agreement. Such streetscape improvements shall be in accordance with designs to be approved by the Chief Planner and Executive Director, City Planning Division with reference to the Midtown in Focus, Parks, Open Space and Streetscape Master Plan for Yonge-Eglinton. The details of such streetscape improvements shall be determined in association with site plan approval.
3. Prior to the issuance of the first above-grade building permit, The *owner* shall provide a financial contribution in the amount of one hundred thousand dollars (\$100,000.00) indexed upwardly from the date of execution of this Agreement, to be used by the *City* in its sole discretion for public realm improvements along Helendale Avenue.
4. Prior to the issuance of the first above-grade building permit, the *owner* shall provide a financial contribution to the *City* in the amount of sixty-five thousand dollars (\$65,000.00) indexed upwardly from the date of execution of this Agreement for parking demand management measures, as set out below:
  - (a) fifty thousand dollars (\$50,000.00) for the installation of one (1) bike share station in the area of the development proposal;
  - (b) twelve thousand dollars (\$12,000.00) for the installation of two or more bike repair station(s) in the area of the development proposal, with at least one such station located on-site; and
  - (c) three thousand dollars (\$3,000.00) for additional on-street bicycle parking rings along Yonge Street.
5. The financial contributions and letter of credit required in paragraphs 1- 4 inclusive above shall be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for Toronto calculated from the date of execution of



the Section 37 Agreement to the date the payment is made and/or the letter of credit is provided.

6. In the event that the above financial contributions (with the exception of the community benefits referenced in paragraph 2) have not been used for the intended purpose within three years of this By-law coming into full force and effect, said funds may be redirected for another purpose, in the discretion of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor, provided that the purpose is identified in the Toronto Official Plan and will benefit the community in the vicinity of the *lot*.
7. The *owner* shall provide and maintain not less than 20 *replacement rental dwelling units* on the *lot* in accordance with an agreement pursuant to section 37 of the *Planning Act* and in accordance with an agreement pursuant to section 111 of the *City of Toronto Act*. A minimum of 10 *replacement rental dwelling units* shall have rents no higher than affordable rents and a minimum of 9 *replacement rental dwelling units* shall have rents no higher than mid-range rents. All *replacement rental dwelling units* shall be subject to the following requirements:
  - (a) The 20 *replacement rental dwelling units* shall be provided entirely on the *lot*, and shall comprise a unit mix of at least eighteen (18) one-bedroom, and two (2) three-bedroom units. The *replacement rental dwelling units* shall generally be of similar size as the existing units on the subject site at the date of enactment of this By-law to the satisfaction of the Chief Planner, subject to the following:
    - i. six (6) one-bedroom units shall be at least 61 square metres in area;
    - ii. four (4) one-bedroom units shall be at least 68 square metres in area;
    - iii. eight (8) one-bedroom units shall be at least 71 square metres in area;
    - iv. two (2) three-bedroom units shall be at least 98 square metres in area; and
    - v. the total area of all the *replacement rental dwelling units* shall be at least 1,324 square metres;
  - (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 requirements for the *replacement rental dwelling units* to be maintained as rental units. No application may be submitted for condominium or for any other conversion to non-rental housing purposes, or for demolition without providing for replacement during the 20 year period;
  - (c) All of the replacement rental dwelling units shall be ready and available for occupancy no later than the date by which 80 percent of the other dwelling units erected on the lot after the date of enactment of this By-law are available and ready for occupancy;
  - (d) The owner shall provide and maintain affordable rents charged to the tenants who rent each of the ten (10) affordable *replacement rental dwelling units* during the

first 10 years of its occupancy, such that the initial rent shall not exceed an amount based on the most recent Fall Update Canada Mortgage and Housing Corporation Rental Market Report average rent for the City of Toronto by unit and over the course of the 10 year period, annual increases shall not exceed the Provincial Rent Guideline, and, if applicable, permitted above-Guideline increases. Upon turn-over during the 10 year period, the rent charged to any new tenant shall not exceed an amount based on the initial rent, increased annually by the Provincial Rent Guideline, and any above-Guideline increase, if applicable;

- (e) The owner shall provide and maintain rents no greater than mid-range rents charged to the tenants who rent each of the nine (9) mid-range replacement rental dwelling units, of which two (2) may be three-bedroom units during the first ten years of its occupancy, such that the initial rent shall not exceed an amount based on the most recent Fall Update Canada Mortgage and Housing Corporation Rental Market Report average rents times 1.5 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 and, if applicable permitted above-Guideline increases. Upon turn-over during the 10 year period, the rent charged to any new tenant shall not exceed an amount based on the initial rent, increased annually by the Provincial Rent Guideline, and any above-Guideline increase, if applicable;
  - (f) The owner is entitled to charge an unrestricted rent for one (1) of the one-bedroom replacement rental dwelling units;
  - (g) Rents charged to tenants occupying an affordable replacement rental dwelling unit or a mid-range replacement rental dwelling unit at the end of the 10 year period set forth in subsection (d) and (e) 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 the tenant continues 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 at least three years for rent increases; and
  - (h) Rents charged to tenants newly occupying a replacement rental dwelling unit after the completion of the 10 year period set forth in subsection (d) and (e) will not be subject to restrictions by the City of Toronto under the terms of subsections (d) and (e).
8. Prior to the issuance of any building permit, the Owner shall demonstrate to the satisfaction of the City Solicitor in consultation with the General Manager of Transportation Services that it has made satisfactory arrangements with the owners of adjacent properties to the south that are entitled to access over existing easements on the site. Without limiting the generality of the foregoing, the *owner* shall demonstrate that it is entitled to construct the building over the parking garage under the existing easements on the site and that such owners to the south shall have easement access to their properties during and following completion of construction.



