

Authority: Toronto East York Community Council Item  
TE9.5, as adopted by City of Toronto Council on  
October 29 and 30, 2019

## CITY OF TORONTO

### BY-LAW 105-2020

**To amend Zoning By-law 438-86, as amended, with respect to the lands municipally known in the year 2019 as 26-40 Birch Avenue.**

Whereas Council of the City of Toronto has the authority pursuant to Section 34 of the Planning Act, R.S.O. 1990, c. P. 13, as amended, to pass this By-law; and

Whereas Council of the City of Toronto 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, a by-law under Section 34 of the Planning Act, may authorize increases in the *height* and density of development beyond those otherwise permitted by the by-law and 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 land elects to provide facilities, services and matters in return for an 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 aforesaid lands has elected to provide the facilities, services and matters hereinafter set out; and

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

The Council of the City of Toronto enacts:

1. Except as otherwise provided herein, the provisions of former City of Toronto By-law 438-86, as amended, shall continue to apply to the *lot*.
2. None of the provisions of Section 2(1) with respect to the definition of "*grade*", "*height*", "*lot*", Section 4(2), Section 4(12), Section 6(3) PART I, 6(3) PART II, 6(3) PART III, 6(3) Part IV 2, 3 & 4, and 6(3) Part VII of By-Law 438-86 of the former City of Toronto, being, "A By-law to regulate the use of land and the erection, use, bulk, *height*, spacing of land and other matters relating to *buildings* and *structures* in various areas of the City of Toronto", as amended, shall apply to prevent the erection and use of the lands known municipally as 26-40 Birch Avenue for an *apartment building*, provided that:
  - (a) the *lot* consists of the lands delineated by heavy lines on Map 1 attached to and forming part of this by-law;

- (b) the *residential gross floor area* erected on the *lot* does not exceed 6,800 square metres;
- (c) no part of any *building* shall exceed the *height* limits in metres specified by the numbers following the symbol "H" as shown on Map 2 attached hereto with the exception of any of the items listed below:
  - (i) access hatches, air shafts, sky lights, ornamental or architectural features and parapets, all of which may project up to a maximum of 1.1 metres;
  - (ii) elevator equipment and elevator upstands, all of which may project up to a maximum of 1.0 metres;
  - (iii) privacy fences and structures used for safety and wind protection, railings, landscape retaining walls and planters, trellises, wood privacy fences, balcony railings, all of which may project up to a maximum of 2.0 metres;
- (d) no portion of any *building* or *structures* erected or used above *grade* is located otherwise wholly within the areas delineated by heavy lines on Map 2 attached hereto, with the exception of the following:
  - (i) covered or uncovered decks, porches, patios or other similar platforms and associated structures, balconies, canopies, canopy support structures, roofs, awnings or similar structures above a platform, all of which may encroach up to a maximum of 3.0 metres;
  - (ii) exterior stairs, ramps, covered stairs or stair enclosures, all of which may encroach up to a maximum of 3.0 metres;
  - (iii) wall mounted equipment such as, vents, pipes, utility equipment, mechanical fans, satellite dish, antenna and/or pole used to hold an antenna, architectural or ornamental features, and cladding, all of which may project up to a maximum of 1.0 metres;
- (e) the minimum required *landscaped open space* on the *lot* must be no less than 875 square metres, of which a minimum of 200 square metres of the *lot* will be provided as *soft landscaping*; and
- (f) the maximum permitted *building depth* is 37.0 metres.

### 3. Section 37 Provisions

- (a) pursuant to Section 37 of the Planning Act, and subject to compliance with this Bylaw, the increase in *height* and density of the development is permitted beyond that otherwise permitted on the lands shown Map 2 of By-law 105-2020 in return for the provision by the owner, at the owner's expense of the facilities, services and matters set out in Schedule A hereof and which are 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;

- (b) where Schedule A of By-law 105-2020 requires the owner to provide certain facilities, services or matters prior to the issuance of a *building* permit, the issuance of such permit shall be dependent on satisfaction of the same; and
  - (c) the owner shall not use, or permit the use of, a *building* or *structure* erected with an increase in *height* and density pursuant to By-law 105-2020 unless all provisions of Schedule A are satisfied.
4. For the purposes of this By-law, each word or expression that is italicized in the By-law shall have the same meaning as each such word or expression as defined in By-law 438-86, as amended, with the exception of the following terms:
- (a) "*lot*" means those lands outlined on Map 1 attached to this By-law; and
  - (b) "*grade*" means 124.23 metres Canadian Geodetic Datum; and
  - (c) "*height*" means the vertical distance between grade and the highest point of the roof, *building* or *structure*, exclusive of any elements described in 2(c) to this By-law.
5. Notwithstanding any severance, division, or conveyance of the *lot* subject to the exception, the regulations of this exception shall continue to apply to the whole of the *lot*.

Enacted and passed on January 29, 2020.

Frances Nunziata,  
Speaker

Ulli S. Watkiss,  
City Clerk

(Seal of the City)

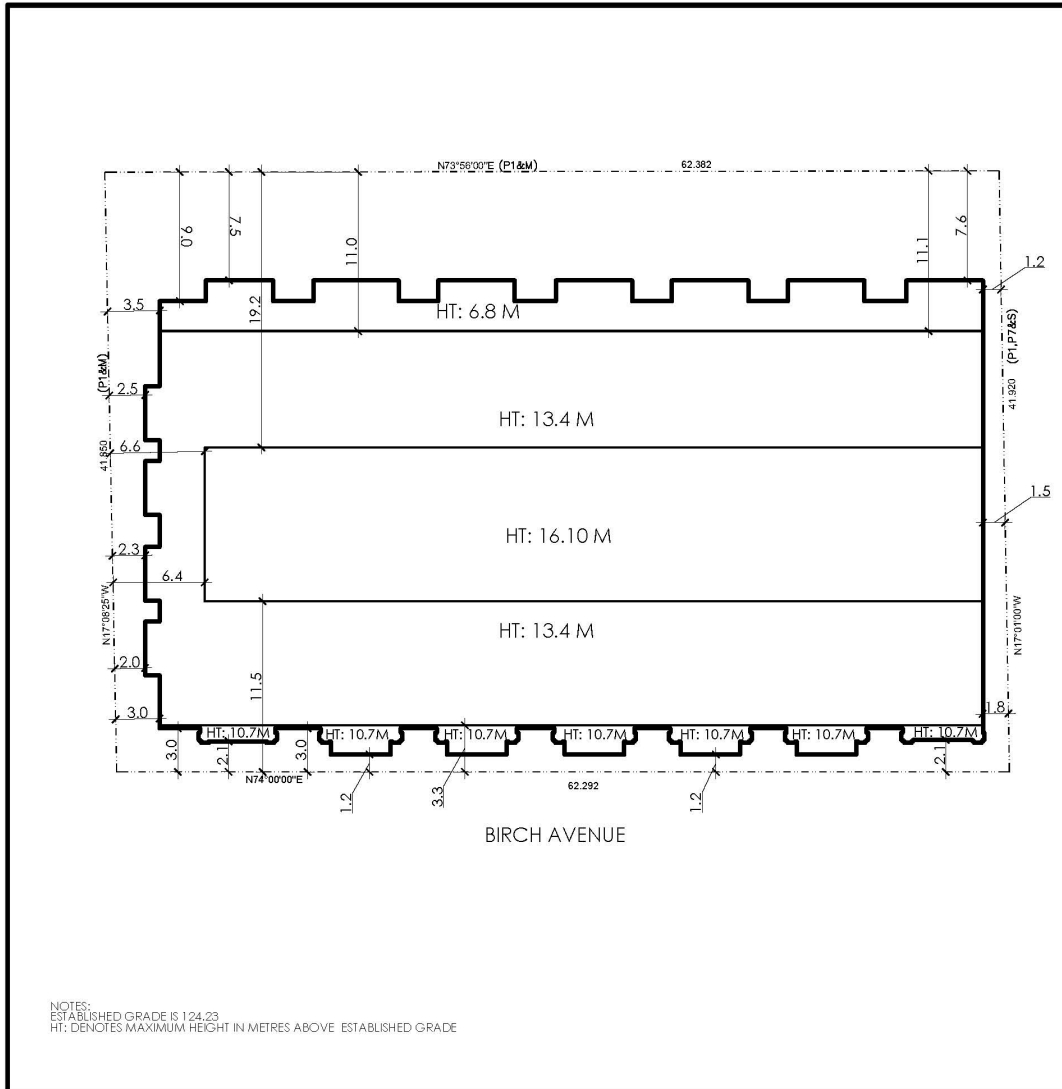


26-40 BIRCH AVENUE

MAP 1

File # 18 212287 STE 22 OZ





## SCHEDULE A

### Section 37 Provisions

The facilities, services and matters set out below are required to be provided to the City at the Owner's expense in return for the increase in *height* and density of the proposed development on the *lot* and secured in an agreement or agreements under Section 37(3) of the Planning Act whereby the owner agrees as follows:

- (a) A financial contribution in the amount of \$250,000.00 payable to the City prior to issuance of the first above-grade building permit, with such amount to be indexed upwardly in accordance with Statistics Canada Residential Building or Non-Residential Building Construction Price Index, as the case may be, for the Toronto Census Metropolitan Area, reported by Statistics Canada in the Building Construction Price Indexes Publication 327-0058, or its successor, calculated from the date of the Section 37 Agreement to the date of payment. The funds shall be directed as follows:
  - (i) towards capital improvements for new or existing cultural and/or community space within the vicinity of the application site, to the satisfaction of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor; and/or
  - (ii) towards local area park or streetscape improvements within the vicinity of the application site, to the satisfaction of the Chief Planner and Executive Director, City Planning, in consultation with the General Manager, Parks, Forestry and Recreation, and the Ward Councillor.
  
- (b) The following matter(s) are also recommended to be secured in the Section 37 Agreement as a legal convenience to support development:
  - (i) the owner shall develop a Construction Mitigation Plan prior to the issuance of the first below grade building permit for the proposed development of the site to the satisfaction of the Chief Planner and Executive Director, City Planning in consultation with the Ward Councillor.