

Authority: Toronto and East York Community Council
Item TE18.7, adopted as amended, by City of Toronto
Council on September 30, October 1 and 2, 2020

CITY OF TORONTO

BY-LAW 218-2021

To amend former City of Toronto Zoning By-law 438-86, as amended, with respect to the lands municipally known in the year 2021 as 90-104 Queen Street East and 3 Mutual Street.

Whereas Council of the City of Toronto has the authority to 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 the Official Plan for the City of Toronto contains provisions relating to the authorization of increases in height and density of development; 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 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 "*grade*", "*height*", "*residential gross floor area*", and "*lot*", and Sections 4(2)(a), 4(5), 4(8), 4(12), 4(13), 4(14), 8(3) Part I, 8(3) Part II 1, 8(3) Part III 1, 8(3) Part XI 1, 12(1)3(B), 12(2)132, 12(2)216, 12(2)259, 12(2)380, 13(333-02), 13(138-03) of By-law No. 438-86 of the former City of Toronto, as amended shall apply to prevent 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", shall apply to prevent the erection and use of a *mixed-use building* on the *lot*, including a *temporary sales office* and uses *accessory* thereto, provided that:

- (a) The *lot* on which the buildings are to be located comprises the lands outlined by heavy lines on Map 1 attached to and forming part of this By-law;
- (b) The permitted maximum number of above-ground *storeys* in a *mixed-use building* is 34, excluding the mechanical penthouse;
- (c) The total *gross floor area* on the *lot* must not exceed 23,500 square metres, in accordance with the following:
 - i. a maximum of 23,100 square metres may be used as *residential gross floor area*;
 - ii. no *residential gross floor area* may be located above the 34th above-ground *storey*;
 - iii. notwithstanding the definition of *gross floor area* under 4.(d) below, *gross floor area* may also be reduced by 345.7 square metres of space, to be conveyed to the City and secured by one or more agreements pursuant to Section 37(3) of the Planning Act, as may be amended; and
 - iv. the space described in (c)iii. above, must be measured on each above-ground *storey* from the interior side of the main wall and the interior side of the demising wall, including dedicated lobbies and elevator shafts;
- (d) The total number of *dwelling units* must not exceed 369;
- (e) The provision of *dwelling units* is subject to the following:
 - i. a minimum of 10 percent of the total number of *dwelling units* must contain three bedrooms;
 - ii. a minimum of 15 percent of the total number of *dwelling units* must contain two bedrooms;
 - iii. an additional 15 percent of the total number of *dwelling units* will be any combination of two bedroom and three bedroom units, or *dwelling units* that can be converted into any combination of two and three bedroom *dwelling units*; and
 - iv. convertible *dwelling units*, as described in (e)iii. above, may be converted using accessible or adaptable design measures such as knock-out panels;

- (f) *Residential amenity space* must be provided on the *lot* at a minimum of 4.0 square metres for each *dwelling unit*, of which:
- i. a minimum of 2.6 square metres per *dwelling unit* is indoor *residential amenity space*;
 - ii. a minimum of 1.4 square metres per *dwelling unit* is outdoor *residential amenity space*; and
 - iii. a minimum of 35 square metres of the total outdoor *residential amenity space* required for the building, must be dedicated for use by pets;
- (g) No portions of a building or structure located above ground shall be located otherwise than wholly within the areas delineated by heavy lines on Map 2 attached to and forming part of this By-law, with the exception of the following:
- i. guardrails, railings or dividers, canopies or davit arms, wheelchair ramps, site servicing features, window sills, vents, and public art features, may encroach up to a maximum of 2.5 metres; and
 - ii. architectural features and elements, shafts, retaining walls, windscreens, stairs, lighting fixtures, may encroach up to a maximum of 1.5 metres;
- (h) No portion of a *mixed-use building*, including mechanical penthouses, erected on the *lot*, shall be located above the *heights* shown on Map 2 and within the applicable coordinates identified on Map 3 attached to and forming part of this By-law, with the exception of the following:
- i. hatch doors, roof drainage, davit arms, chimneys, vents, lightning rods, nautical lighting, light fixtures, telecommunication equipment, and antennas, may project above the maximum *height* in metres specified by the number following the symbol "HT" within the area labelled "ZONE (A)" on Map 2, to a maximum of 3.0 metres or a Canadian Geodetic Datum (CGVD2013) of 190.84 metres, whichever is less;
 - ii. hatch doors, roof drainage, davit arms, chimneys, vents, lightning rods, nautical lighting, light fixtures, telecommunication equipment, and antennas may project above the maximum *height* in metres specified by the number following the symbol "HT" within the area labelled "ZONE (B)" on Map 2, to a maximum of 3.0 metres or a Canadian Geodetic Datum (CGVD2013) of 193.13 metres, whichever is less;
 - iii. hatch doors, roof drainage, davit arms, chimneys, vents, lightning rods, nautical lighting, light fixtures, telecommunication equipment, and antennas, may project above the maximum *height* in metres specified by the number following the symbol "HT" within the area labelled "ZONE (C)" on Map 2, to a maximum of 3.0 metres or a Canadian Geodetic Datum (CGVD2013) of 195.14 metres, whichever is less;

- iv. parapets may project above the maximum *height* in metres specified by the number following the symbol "HT" within the areas labelled "ZONE (A)", "ZONE (B)", and "ZONE (C)", on Map 2, to a maximum of 0.5 metres; and
 - v. Except for where the above (h)i. to iv. inclusive apply, the following may project above the *height* limits shown on Map 2 by a maximum of 3.0 metres: wind screens, mechanical equipment and any associated enclosure structures, parapets, awnings, fences, railings and dividers, screens, stairs, roof drainage, window washing equipment, flues, chimneys, vents, terraces, retaining walls, lightning rods, nautical lighting, light fixtures, architectural features, landscaping, landscaping features, telecommunication equipment, antennas, roof assembly, elements of a green roof, including required *residential amenity space*;
- (i) *Parking spaces* must be provided and maintained on the *lot* in accordance with the following:
 - i. a minimum of 0.16 *parking spaces* per *dwelling unit* for the use of residents of the *mixed-use building*;
 - ii. no *parking spaces* are required for visitors to residents of the *mixed-use building*; and
 - iii. no *parking spaces* are required for non-residential uses;
 - (j) Notwithstanding the definition of *parking space* in Section 2(1) or the *parking space* dimensions in Section 4(17)(a) to (c) inclusive, a maximum of 10 *parking spaces* may be obstructed on one or two sides in accordance with Section 4(17)(c) without a requirement to increase the minimum width by 0.3 metres;
 - (k) The number of required *parking spaces* in (i)i. above may be reduced up to a maximum of 12 *parking spaces*, not including accessible *parking spaces*, at a rate of one *parking space* for every five *bicycle parking spaces - occupant* provided on the lands in excess of the minimum number of *bicycle parking spaces - occupant* required;
 - (l) *Car-share* parking may be provided on the *lot*, in accordance with the following:
 - i. a maximum of six *car-share parking spaces* may be provided;
 - ii. for each *car-share parking space* provided, the resident parking required in (i)i. above, may be reduced by a maximum of four *parking spaces* that do not include accessible *parking spaces*, in addition to any reduction in the resident parking requirement in accordance with (k) above; and

- iii. notwithstanding the definition of *parking space* in Section 2(1) or the *parking space* dimensions in Section 4(17)(a) to (c) inclusive, *car-share parking spaces* must have a minimum length of 5.6 metres, a minimum width of 2.6 metres, and a minimum vertical clearance of 2.0 metres;
- (m) Access to *parking spaces* and *car-share parking spaces*, in the *mixed-use building* may be provided by vehicle elevators, in accordance with the following:
 - i. each vehicle elevator must have a minimum platform width of 2.4 metres;
 - ii. vehicle elevators are readily accessible at all times for the parking and removal of a vehicle; and
 - iii. not less than two vehicle elevators must be provided and maintained in the *mixed-use building* for the use of residents;
- (n) An accessible *parking space* must have the following minimum dimensions:
 - i. length of 5.6 metres;
 - ii. width of 3.4 metres;
 - iii. vertical clearance of 2.1 metres; and
 - iv. the entire length of an accessible *parking space* must be adjacent to a 1.5 metre accessible barrier free aisle or path;
- (o) The nearest point of an accessible *parking space* must be located no more than 9.0 metres, unobstructed by walls, from the nearest door of a vestibule or lobby which leads to a barrier-free elevator that provides access to the first above-ground *storey* of the *mixed-use building*;
- (p) One *loading space - type G* must be provided and maintained on the *lot*;
- (q) Notwithstanding Section 4(13), *bicycle parking spaces* must be provided and maintained on the *lot* in accordance with the following:
 - i. a minimum of 0.9 *bicycle parking spaces - occupant* for each *dwelling unit* for use by the residents of the *mixed-use building*; and
 - ii. a minimum of 0.1 *bicycle parking spaces - visitor* for each *dwelling unit* for use by visitors to residents of the *mixed-use building*;
- (r) Where required *bicycle parking spaces* are located in a *storey* of the *mixed-use building*, other than the first above-ground *storey*, a bicycle ramp, elevator, or similar dedicated mechanism must be provided on such a *storey*, which allows bicycle access to the first above-ground *storey* of the *mixed-use building*;

- (s) The nearest point of a *bicycle parking space - visitor* located within the *mixed-use building*, must be in accordance with the following:
- i. located up to a maximum distance of 12.5 metres from the nearest door of a vestibule which leads to a bicycle-dedicated mechanism as described in (r) above; and
 - ii. for the purposes of (s)i. above, the maximum distance must be measured along a path inclusive of doors, and unobstructed by walls and *bicycle parking spaces*; and
- (t) Notwithstanding Section 4(13) and the definitions of *bicycle parking space - occupant* and *bicycle parking space - visitor* in Section 2(1), *bicycle parking spaces* must be provided in accordance with the following:
- i. *bicycle parking spaces* may be located in *stacked bicycle parking spaces* below grade;
 - ii. each *stacked bicycle parking space* must have a minimum width of 0.24 metres, minimum length of 1.8 metres, and a minimum vertical clearance of 1.2 metres; and
 - iii. *bicycle parking spaces - visitor* may be located indoors or outdoors in an enclosed or secured room or enclosure.
3. None of the provisions of By-law 438-86, as amended, shall apply to prevent a *temporary sales office* on the *lot*.
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) "*car-share*" means the practice whereby a number of people share the use of one or more motor vehicles that are owned by a profit or non-profit organization. Such car-share motor vehicles are to be made available for short-term rental, including hourly rental. Car-share organizations may require that the car-share motor vehicles be reserved in advance, charge fees based on time and/or kilometres driven and set membership requirements of the car-sharing organization, including the payment of a membership fee that may not be refundable;
 - (b) "*car-share parking space*" means a *parking space* exclusively reserved and only used for *car-share* purposes whereby the vehicle is accessible to at least the occupants of the building;
 - (c) "*grade*" shall mean Canadian Geodetic Datum elevation of 85.48 metres above sea level;

- (d) "*gross floor area*" shall mean the sum of the total area of each floor level of a building, above and below the ground, measured from the exterior side of the main wall of each floor level. The *gross floor area* of the *mixed-use building* is reduced by the area in the building used for:
- i. Parking, loading and bicycle parking below *grade*;
 - ii. Loading spaces at the ground level and *bicycle parking spaces* at or above *grade*;
 - iii. Storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms below *grade*;
 - iv. Shower and change facilities required by this By-law for required *bicycle parking spaces*;
 - v. *Residential amenity space* required by this By-law;
 - vi. Elevator shafts;
 - vii. Garbage shafts;
 - viii. Mechanical penthouse; and
 - ix. Exit stairwells in the building;
- (e) "*height*" shall mean, the vertical distance between *grade* and the highest point of the structure, except for those elements otherwise expressly permitted in this By-law;
- (f) "*lot*" shall mean the parcel of land outlined by heavy lines on Map 1 attached to and forming part of this By-law;
- (g) "*non-residential gross floor area*" shall mean the *gross floor area*, that is solely for non-residential uses;
- (h) "*residential gross floor area*" shall mean the *gross floor area*, that is solely for residential uses;
- (i) "*stacked bicycle parking space*" means a horizontal *bicycle parking space* that is positioned above or below another *bicycle parking space* and may be equipped with a mechanical device providing floor level access to both *bicycle parking spaces*;
- (j) "*temporary sales office*" means a building, structure, facility or trailer on the *lot* used for the purpose of the sale of *dwelling units* to be erected on the *lot* and/or the administration and management of construction activity related to the construction on the *lot*.

Prevailing By-laws and Prevailing Sections: (None Apply)

5. Despite any existing or future severance, partition, or division of the *lot*, the provisions of this By-law shall continue to apply to the whole of the *lot* as if no severance, partition, or division occurred.
6. The provisions of this By-law respecting the *height* of any building or structure, including permitted exceptions, are subject to any further limitations as may be set out in a by-law passed under an agreement pursuant to Section 5.81 of the Aeronautics Act, R.S.C. 1985, c. A-2.
7. Section 37 Provisions
 - (a) Pursuant to Section 37 of the Planning Act, and subject to compliance with this By-law, the increase in height and density of the development is permitted beyond that otherwise permitted on the lands shown on Map 1 in return for the provision by the *owner*, at the *owner's* expense of the facilities, services and matters set out in Appendix I 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 Appendix I 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 such permit shall be dependent on satisfaction of the same.
 - (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 this By-law unless all provisions of Appendix I are satisfied.

Enacted and passed on April 8, 2021.

Frances Nunziata,
Speaker

John D. Elvidge,
Interim City Clerk

(Seal of the City)

Appendix I
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 lands as shown in Map 1 in this By-law and secured in an agreement or agreements under Section 37(3) of the Planning Act whereby the owner agrees as follows:

Community Benefits:

- (A) Prior to the issuance of the first above grade building permit for the lands, the owner shall pay to the City a cash contribution of one million (\$1,000,000.00) dollars to be allocated as follows:
- (i) five hundred thousand (\$500,000.00) dollars towards capital improvements in Toronto Community Housing buildings and/or new or existing affordable housing units within proximity of the lands in the Ward, in consultation with the Ward Councillor; and
 - (ii) five hundred thousand (\$500,000.00) dollars towards local streetscape, parkland and/or community facilities within proximity of the lands in the Ward, in consultation with the Ward Councillor;

The cash contribution referred to in this section shall be indexed upwardly in accordance with the Statistics Canada Residential or Non-Residential, as the case may be, Building Construction Price Index for the Toronto Census Metropolitan Area, reported quarterly by Statistics Canada in Building Construction Price Indexes Table 18-10-0135-01, or its successor, calculated from the date of the Agreement to the date of payment;

- (B) In the event the cash contribution referred to in this section has not been used for the determined purpose within three years of the amending Zoning By-law coming into full force and effect, the cash contribution may be redirected for another purpose, at the discretion of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor, provided the purpose is identified in Official Plan Policy 5.1.1 and will benefit the community in the vicinity of the lands;
- (C) The Owner shall design, construct, finish, and convey to the City, in an acceptable environmental condition, for nominal consideration and at no cost to the City, a minimum 345.7 square metres Community Agency Space constructed and finished to Base Building Condition and in accordance with the terms and specifications to be secured in the Section 37 Agreement, all satisfactory to the Executive Director, Social Development, Finance and Administration, Executive Director, Corporate Real Estate Management, the Chief Planner and Executive Director, City Planning, and the City Solicitor (the "**Community Space**") and subject to the following:
- (i) prior to the issuance of the first above grade building permit, the owner shall provide a letter of credit in the amount sufficient to guarantee 120 percent of the estimated cost of the design, construction and handover of the Community Space

complying with the specifications and requirements of the Section 37 Agreement, to the satisfaction of the Executive Director, Corporate Real Estate Management, the Executive Director, Social Development, Finance and Administration, the Chief Planner and Executive Director, City Planning, and the City Solicitor;

- (ii) prior to conveyance of the Community Space to the City, the owner shall provide a one-time cash contribution in the amount of \$280,000.00 towards operating costs of the Community Space;
- (iii) prior to conveyance of the Community Space to the City, the owner shall provide a one-time cash contribution in the amount of \$560,000.00 in accordance with the Section 37 Agreement;
- (iv) the one-time cash contributions referred to in (C) of this section shall be indexed upwardly in accordance with the Statistics Canada Residential or Non-Residential, as the case may be, Building Construction Price Index for the Toronto Census Metropolitan Area, reported quarterly by Statistics Canada in Building Construction Price Indexes Table 18-10-0135-01, or its successor, calculated from the date of the Agreement to the date of payment; and
- (v) in accordance with the Section 37 Agreement, the owner and the City shall enter into, and register on title to, the appropriate lands an Easement and Cost Sharing Agreement at no cost to the City, that is in a form satisfactory to the City Solicitor; the Easement and Cost Sharing Agreement shall address and/or provide for the integrated support, use, operation, maintenance, repair, replacement, and reconstruction of certain shared facilities, and the sharing of costs, in respect thereof, of portions of the subject lands to be owned by the City and the owner as they pertain to the Community Space.

Matters Required to Support the Development:

Withdrawal of appeals

- (D) The Owner has withdrawn its appeal(s) of Official Plan Amendment 352, and By-laws 1106-2016 and 1107-2016.

Tenant relocation and assistance plan

- (E) An acceptable tenant relocation and assistance plan shall be developed and implemented to mitigate hardship for existing tenants of the existing five (5) rental dwelling units proposed to be demolished. The tenant relocation and assistance plan shall be developed in consultation with, and to the satisfaction of, the Chief Planner and Executive Director, City Planning;

Helicopter flight path

- (F) Prior to the issuance of the first building permit on the site, the owner shall provide confirmation from St. Michael's Hospital, or their representative, that any temporary

(including construction cranes or related construction machinery) and permanent structures are below or outside the protected flight path, as per By-law 1432-2017, to the satisfaction Chief Building Official and Executive Director, Toronto Building;

Toronto Green Standard

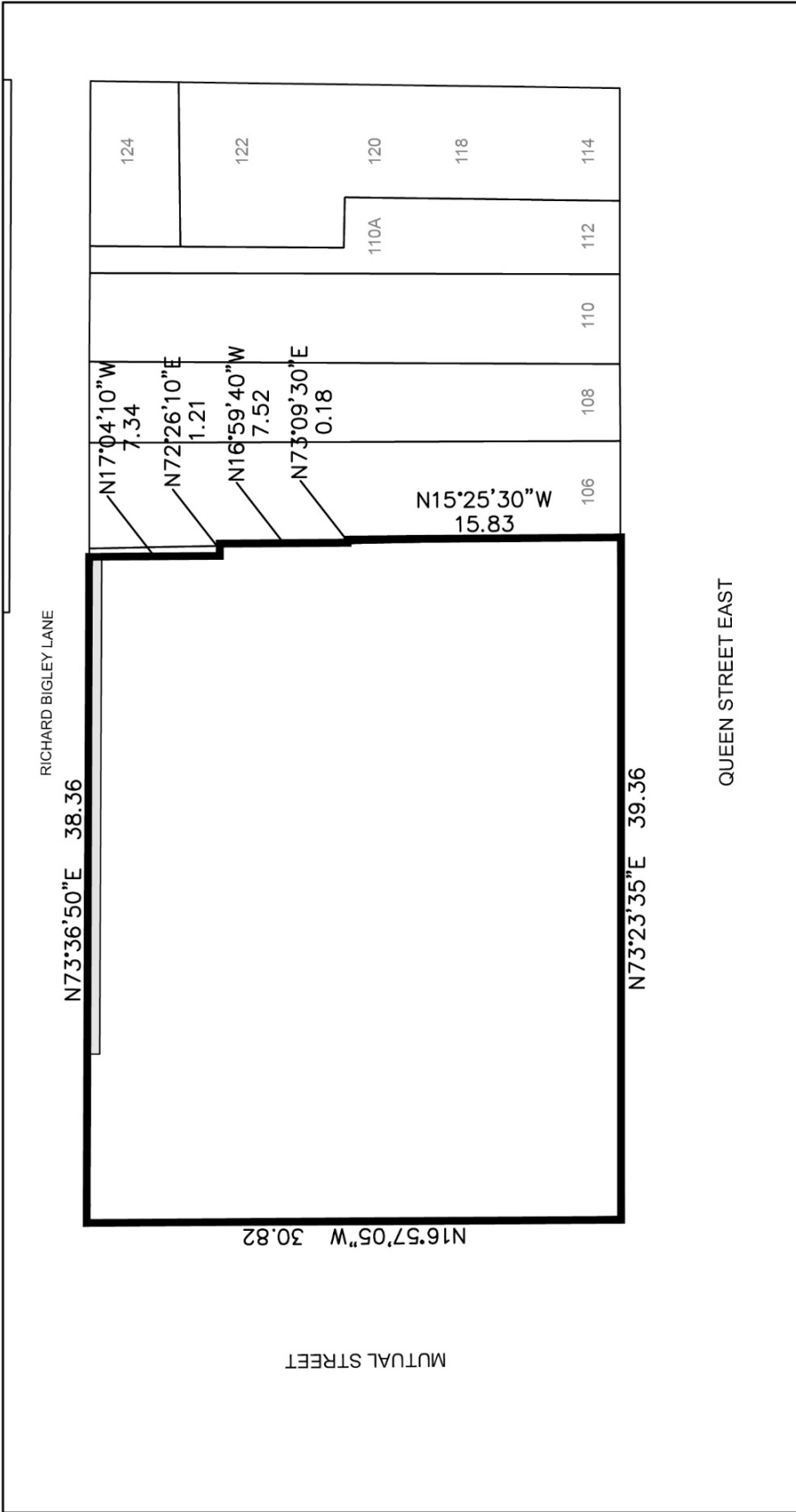
- (G) The owner will construct and maintain the development of the site in accordance with Tier 1, Toronto Green Standard, and the owner will be encouraged to achieve Tier 2, Toronto Green Standard, or higher, where appropriate, consistent with the performance standards of Toronto Green Standards applicable at the time of the site plan application for each building on the site;

Construction Management Plan

- (H) Requirements for a construction management plan with the general matters included in the Section 37 Agreement, including but not limited to, noise, dust, size and location of staging areas, location and function of gates, dates of significant concrete pouring, lighting details, vehicular parking and queuing locations, street closures, coordination with adjacent on-going development construction, parking and laneway uses and access, refuse storage, site security, site supervisor contact information, and a communication strategy with the surrounding community, and any other matters requested by the Chief Planner and Executive Director, City Planning, and the General Manager, Transportation Services, in consultation with the Ward Councillor;

Ontario Line

- (I) Prior to any site plan approval for the site, the owner shall obtain from Metrolinx, or its successor, written confirmation to the Chief Planner and Executive Director, City Planning and City Solicitor, that the owner has satisfied any required technical or related review for any proposed below grade structural elements, including the manner of excavation and shoring for the development of the site as these matters relate to the Ontario Line tunnel; and
- (J) Prior to site plan approval for the site, should Metrolinx, or its successor, provide a recommendation related to any tiebacks, or similar mechanism, that may impact the City's right-of-way, the owner shall first obtain any required approvals from the City prior to agreeing to implement any recommendations from Metrolinx that may impact the City's right-of-way.



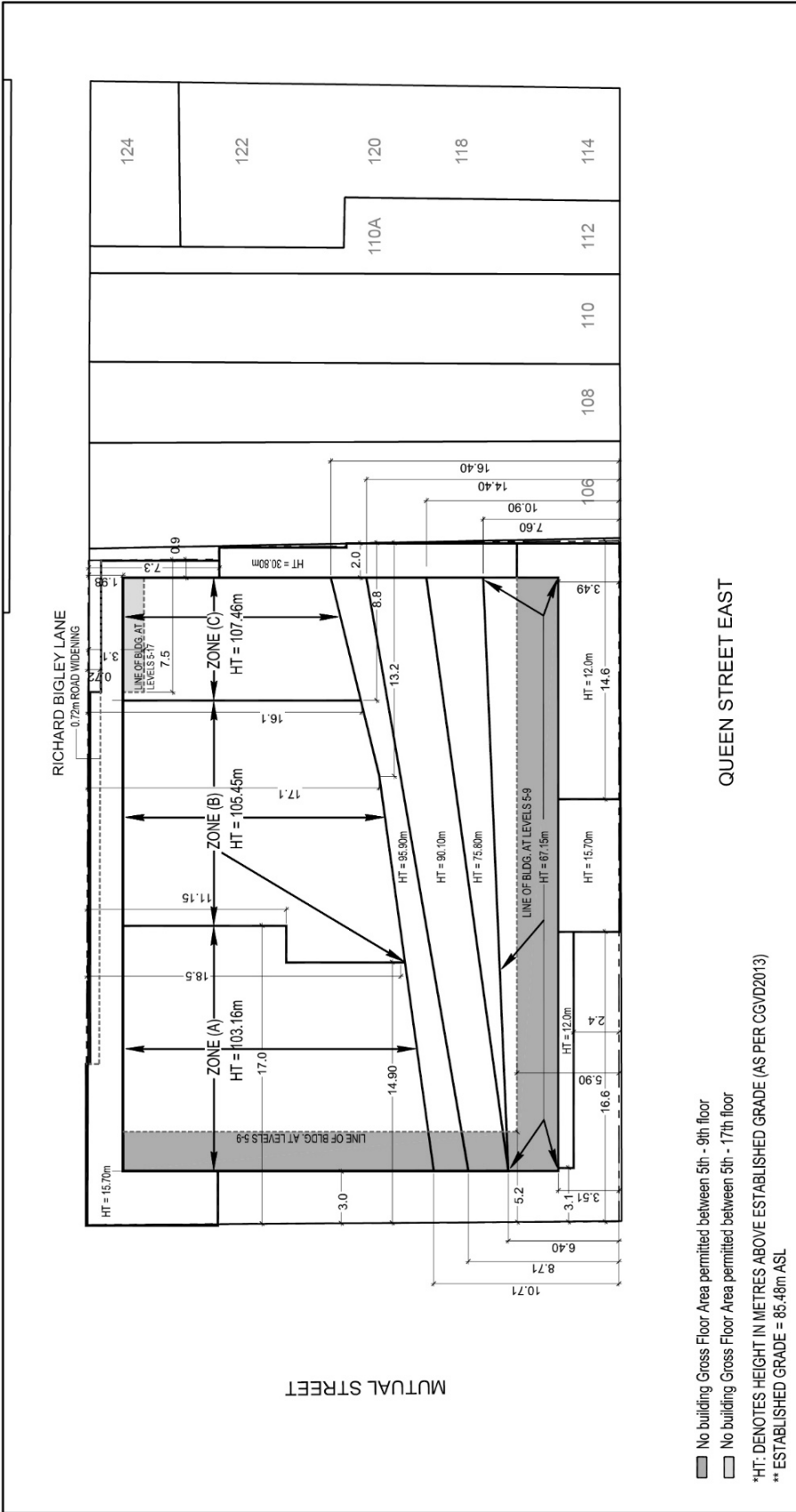
90-104 Queen Street East and 3 Mutual Street

File # 18 271140 STE 13 0Z

0.72 metre lane widening



Former City of Toronto By-law 438-86
 Not to Scale
 08/25/2020

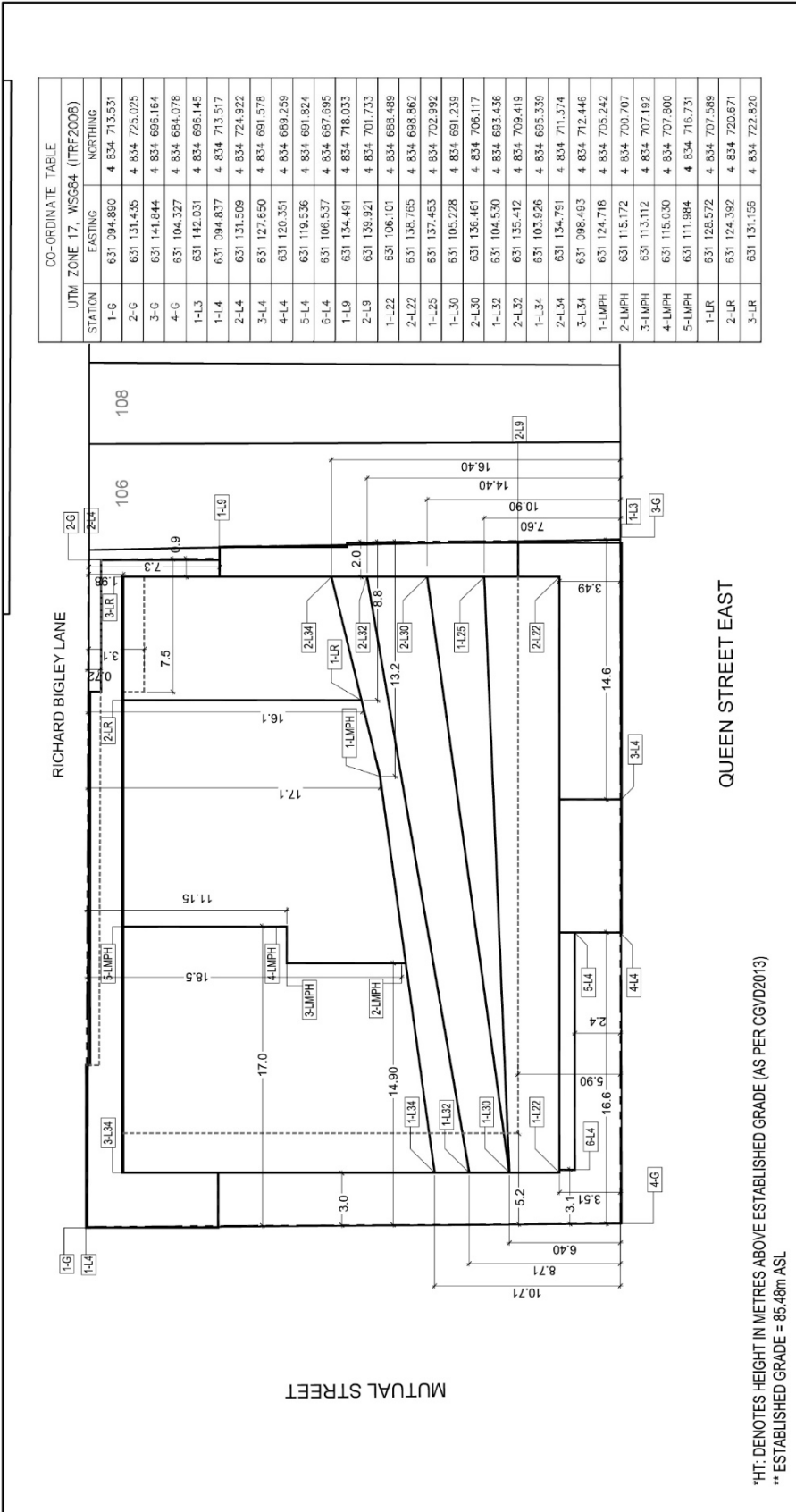


90-104 Queen Street East and 3 Mutual Street

File # 18 271140 STE 13 0Z



Former City of Toronto By-law 438-86
 Not to Scale
 08/25/2020



*HT: DENOTES HEIGHT IN METRES ABOVE ESTABLISHED GRADE (AS PER CGVD2013)
** ESTABLISHED GRADE = 85.48m ASL



90-104 Queen Street East and 3 Mutual Street
File # 18 271140 STE 13 0Z

Formal City of Toronto By-law 438-86
Not to Scale
08/25/2020