Bill 507

BY-LAW - 2018

To amend former City of Toronto Zoning By-law 438-86, as amended, with respect to lands municipally known as 826-834 Yonge Street and 2-8 Cumberland Street.

Whereas authority is given to Council of the City of Toronto by Section 34 of the Planning Act, R.S.O. 1990, c. P.13, as amended, to pass this By-law with respect to the lands known municipally in the year 2017 as 826-834 Yonge Street and 2-8 Cumberland Street; 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 or density of development beyond those otherwise permitted by the by-law in return for the provision 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 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, service and matters hereinafter set out; and

Whereas the increase in the density and heights permitted hereunder, beyond that otherwise permitted on the aforesaid lands by By-law 438-86, as amended, are to be permitted in return for the provision of the facilities, services and matters set out in this By-law and to be further secured by one or more agreements between the owner of such lands and the City of Toronto; and

Whereas Council of the City of Toronto at its meeting on April 26, 27 and 28, 2017 and December 5, 6, 7 and 8, 2017 determined to amend Zoning By-law 438-86, as amended, of the former City of Toronto with respect to the lands known municipally in the year 2017 as 826-834 Yonge Street and 2-8 Cumberland Street;

The Council of the City of Toronto enacts:

1. Pursuant to Section 37 of the Planning Act, the heights and density of development permitted by this By-law 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 of this By-law.

2. Upon execution and registration of an agreement or agreements between the City and the owner of the lot pursuant to Section 37 of the Planning Act securing the provision of the facilities, services and 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(s) requires the provision of a facility, service or matter as a precondition to the issuance of a building permit or a permit issued pursuant to the Ontario Heritage Act, such building may not be erected or used until the owner of the lot 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(s) entered into with the City pursuant to Section 37 of the Planning Act, then once such agreement(s) 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 438-86, as amended, shall continue to apply to the lot.

5. None of the provisions of Section 2 with respect to the definitions of bicycle parking space – visitor, lot, grade, height and residential gross floor area and Sections 4(2), 4(5), 4(8), 4(12), 4(13), 4(17), 8(3) Part I, 8(3) Part II 1 and 2, 8(3) Part III, and 12(2) 260, 12(2)380 of By-law 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 a mixed-use building with accessory underground parking on the lot delineated by heavy lines on the attached Map 1, provided that:

(a) the lot upon which the proposed building and structure is erected or used comprises at least the lands shown outlined by heavy lines on the attached Map 1;

(b) the aggregate of the residential gross floor area and non-residential gross floor area of buildings and structures erected or used on the lot shall not exceed 29,500.0 square metres, subject to the following:

i. The total residential gross floor area of buildings and structures erected or used on the lot shall not exceed 28,250.0 square metres; and

ii. The total non-residential gross floor area of buildings and structures erected or used on the lot shall not exceed 1,250.0 square metres;

(c) a minimum of 2.0 square metres of indoor residential amenity space for each dwelling unit and 1.0 square metres of outdoor residential amenity space for each dwelling unit shall be provided and maintained on the lot, of which at least one such indoor residential amenity space shall contain a kitchen and a washroom and be accessible from an outdoor residential amenity space;

(d) no portion of any building or structure erected above grade on the lot shall have a greater height in metres than the heights in metres specified by the numbers following the symbol H on the attached Map 2 except that:

i. The maximum height for mechanical equipment and any associated enclosure structures, parapets, guard rails, railings and dividers, pergolas, trellises, eaves, screens, stairs, roof drainage, window washing equipment, lightning rods, architectural features, ventilation shafts, public art, landscaping and elements of a green roof, each having a maximum height of the sum of 3.0 metres and the applicable height limit shown on Map 2 shall be permitted within any area on the attached Map 2; and

ii. An architectural feature located along the western edge of the roof level within the 163.0 metre height area shown on the attached Map 2 may extend a maximum of 8.5 metres above the heights shown on the attached Map 2;

(e) no portion of any building or structure erected or used above grade on the lot shall be located otherwise than wholly within the areas delineated by heavy lines on the attached Map 2, with the exception of the following:

i. Balconies located west of the dashed line shown on the attached Map 2 which are on the north and south facades of the building above the sixth storey of the building above-ground may encroach into the required minimum building setback a maximum of 1.0 metre; and

ii. Cornices, landscape features at grade level, architectural features fronting the laneway at grade level, ventilation shafts forming part of a landscape feature or at a height of at least 5.0 metres above grade, light fixtures, guardrails, balustrades, railings, doors, wheelchair ramps, awnings and canopies, all of which may extend beyond the dashed line shown on the attached Map 2;
(f) parking shall be provided and maintained underground on the lot in an accessory underground parking garage for residents of the dwelling units erected on the lot, in accordance with the following minimum requirements:

i. 0.28 parking spaces for each dwelling unit;

ii. No parking is required for the non-residential uses; and

iii. No visitor parking spaces are required on the lot;

(g) a parking space shall have a minimum width of 2.6 metres, a minimum length of 5.6 metres, and a minimum height of 2.0 metres;

(h) despite (g) above, up to 30 of the parking spaces may have a minimum width of 2.4 metres, a minimum length of 5.0 metres, and a minimum height of 2.0 metres, and up to 4 of the parking spaces may have a minimum width of 2.6 metres, a minimum length of 5.2 metres, and a minimum height of 2.0 metres;

(i) a minimum of 379 bicycle parking spaces shall be provided and maintained on the lot, of which:

i. A minimum of 334 bicycle parking spaces occupant shall be for residents of the lot; and

ii. A minimum of 38 bicycle parking spaces - visitor shall be for residential and non-residential visitors to the lot; and

(j) a minimum of one loading space - type G shall be provided and maintained on the lot.

Definitions

6. For the purposes of this By-law:

(a) "above-grade permit" means a building permit issued respecting all or any part of the lot that permits the erection of any above grade portion of a building or structure, or portion thereof, but, for clarity, does not include a building permit solely for the demolition, excavation, shoring or foundation of a building, or a building permit for the construction of a temporary sales centre, or a building permit for repairs and maintenance and usual and minor works as are acceptable to the Senior Manager, Heritage Preservation Services for buildings existing on the lot on the date of enactment of this By-law;

(b) "bicycle parking space – visitor" means an area that is equipped with a bicycle rack for the purpose of parking and securing bicycles and may be located in a secured room on Level P1;

(c) "building permit" means a permit issued under the Building Code Act, 1992, S.O. 1992, c.23 as amended or re-enacted from time to time, including a permit for excavation or shoring and including a conditional permit, and including a permit issued pursuant to the Ontario Heritage Act for all or any part of the lot, but it does not include any permit issued to construct a temporary sales centre or a portion thereof or for usual an minor works, repairs and maintenance as are acceptable to the Senior Manager, Heritage Preservation Services for buildings existing on the lot on the date of enactment of this By-law;

(d) "grade" means 116.00 metres Canadian Geodetic Datum;

(e) "height" means the vertical distance between grade and the highest point of any building or structure;

(f) "lot" means the lands shown delineated by heavy lines on Map 1 of this By-law;
(g) "residential gross floor area" means the aggregate of the areas of each floor, measured between the exterior faces of the exterior walls of the building or structure at the level of each floor, but excluding:

i. Indoor residential amenity space required in this By-law;

ii. Parking, loading and bicycle parking located below grade;

iii. Loading and bicycle parking at or above established grade;

iv. Storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms, provided all of the foregoing are located in the basement;

v. Shower and change facilities required for required bicycle parking spaces;

vi. Elevator shafts;

vii. Garbage shafts;

viii. Mechanical penthouse; and

ix. Exit stairwells in the building;

(h) "temporary sales centre" means a building, structure, facility or trailer on the lot used exclusively for the initial sale and/or initial leasing of dwelling units to be erected on the lot; and

(i) each word or expression which is italicized in this By-law shall have the same meaning as each word or expression as defined in the aforesaid By-law 438-86, as amended, unless otherwise defined in this By-law.

7. Notwithstanding 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.

8. Within the lands shown on the attached 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 new public roads have been constructed to a minimum of 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.

Enacted and passed on April , 2018.

Frances Nunziata,  Ulli S. Watkiss,
Speaker  City Clerk

(Seal of the City)
Appendix 1: Community Benefits

Section 37 Provisions

The facilities, services and matters set out below are required to be provided to the City by the owner of the lot at the owner’s expense in accordance with this By-law and as further specified in one or more agreements pursuant to Section 37 of the Planning Act, in a form satisfactory to the City with conditions providing for indexing escalation of both the financial contributions and letters of credit, development charges, indemnity, insurance, HST, termination and unwinding, and registration and priority of agreement, all to the satisfaction of the Chief Planner and Executive Director, City Planning Division:

1. Prior to the issuance of the first above-grade permit for all or any part of the lot, the owner shall pay to the City the sum of FOUR MILLION TWO HUNDRED THOUSAND DOLLARS ($4,200,000.00) and the funds are to be allocated as follows, toward community benefits in the vicinity of the lot, all to the satisfaction of the Chief Planner and Executive Director, City Planning Division and subject to upwards indexing as set out in Item 1 f. below:
   a. the sum of TWO HUNDRED AND FIFTY THOUSAND DOLLARS ($250,000.00) to be allocated towards the expansion of the Toronto Bike Share program;
   b. the owner will provide and maintain public art on the lot in accordance with the City of Toronto Public Art Program to a minimum value of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00):

Prior to the issuance of the first above-grade permit for all or any part of the lot, the owner shall:

i. Prepare a public art plan detailing the proposed design and construction of any public art installations on the lot, to the satisfaction of the Chief Planner and Executive Director, City Planning Division in consultation with the Ward Councillor, and obtain the approval of the City Council to such public art plan; or

ii. In the alternative to i. above, the owner shall pay to the City the sum of FIVE HUNDRED THOUSAND DOLLARS ($500,000.00) towards the City’s capital budget for public art programs;

   c. the sum of THREE HUNDRED FORTY FIVE THOUSAND DOLLARS ($345,000.00) to be allocated towards capital improvements for new or existing Toronto Community Housing and/or affordable housing, in consultation with the Ward Councillor;
   d. the sum of THREE HUNDRED FORTY FIVE THOUSAND DOLLARS ($345,000.00) to be allocated towards capital improvements for new or existing cultural and/or community space, to the satisfaction of the Chief Planner and Executive Director, City Planning Division, in consultation with the Ward Councillor;
   e. the sum of TWO MILLION SEVEN HUNDRED AND SIXTY THOUSAND DOLLARS ($2,760,000.00) towards local area park or streetscape improvements, to the satisfaction of the Chief Planner and Executive Director, City Planning Division, in consultation with the General Manager, Parks, Forestry and Recreation, and the Ward Councillor;
   f. the payments and public art requirements in Items 1, a. to e. above shall be increased by upwards indexing in accordance with the Non-Residential Building Construction Price Index for the Toronto CMA, reported by Statistics Canada or its successor, calculated from the date of the Section 37 Agreement to the date each such payment is made; and
g. in the event the cash contribution(s) required in Items 1 a., c., d. and e. above have not been used for the intended purpose within three (3) years of the date of the issuance of the first above-grade permit, the cash contribution may be directed to another purpose, at the discretion of the Chief Planner and Executive Director, City Planning Division, 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.

2. a. the owner shall provide, construct and maintain, at its sole own expense, a privately owned and publicly-accessible open space (“POPS”) on the south and west frontage of the lot, extending approximately 37.16 metres in depth from the Cumberland Street property line of the lot, having a width of approximately 7 metres running along the widened public lane (with additional widths at the 4th, 5th and part of the 6th storeys), and a height of not less than 21.5 metres, with a pedestrian walkway at the west portion of the lot with the specific location, configuration, and design of the POPS to be determined in the context of the Site Plan Approval process and further secured in a Site Plan Agreement with the City to the satisfaction of the Chief Planner and Executive Director, City Planning Division and the City Solicitor, and including provision by the owner of insurance and indemnity;

b. prior to the issuance of the first above-grade permit for all or any part of the lot, the owner shall at its expense convey and register to the satisfaction of the City Solicitor in consultation with the Chief Planner and Executive Director, City Planning Division a non-exclusive easement in perpetuity respecting the POPS, in favour of the City of Toronto for use by the City and the general public 24 hours a day, 7 days a week, as publicly accessible, privately owned, open space for pedestrian, cycling and open space use, for nominal consideration, free and clear of encumbrances other than encumbrances permitted to the satisfaction of the Chief Planner and Executive Director, City Planning Division; and

c. prior to any residential use of lot, excluding the residential use of any building erected on the date of enactment of this By-law and a temporary sales centre, the owner shall complete the construction of the POPS to the satisfaction of the Chief Planner and Executive Director, City Planning Division.

3. The owner shall at its sole expense provide, construct and maintain on the lot, on-site off-leash dog amenities with proper disposal facilities and/or dog relief stations within the building for building residents, to the satisfaction of the Chief Planner and Executive Director, City Planning Division.

4. The owner shall provide at least ten percent (10 percent) of the total number of dwelling units on the lot as family sized units, and these units shall each have a minimum residential gross floor area of 79.0 square metres and contain at least two bedrooms, all to the satisfaction of the Chief Planner and Executive Director, City Planning Division.

5. Prior to the issuance of any building permit, the owner shall, at its sole expense:

a. provide a functional servicing report, stormwater management report and hydrogeological report satisfactory to the Chief Engineer and Executive Director, Engineering and Construction Services and the General Manager of Transportation Services; pay for and construct any improvements to the municipal infrastructure in connection with the site servicing assessment, should it be determined that upgrades are required to the infrastructure to support this development; and

b. design, and provide financial securities for any upgrades or required improvements to the existing municipal infrastructure identified in the accepted functional servicing report, stormwater management report, and hydrogeological
report to support the development permitted by this By-law, all to the satisfaction of the Chief Engineer and Executive Director of Engineering and Construction Services and the General Manager of Transportation Services, should it be determined that improvements or upgrades are required to support such development, according to the functional servicing report, stormwater management report and hydrogeological report accepted by the Chief Engineer and Executive Director of Engineering and Construction Services and the General Manager of Transportation Services.

6. Prior to the issuance of the earlier of any site plan approval or any building permit issuance, the owner shall pay for, construct, complete and make operational any upgrades or required improvements to the existing municipal infrastructure identified in the accepted functional servicing report, stormwater management report, and hydrogeological report to support the development permitted by this By-law, all to the satisfaction of the Chief Engineer and Executive Director of Engineering and Construction Services and the General Manager of Transportation Services, should it be determined that improvements or upgrades are required to support such development, according to the functional servicing report, stormwater management report, and hydrogeological study, accepted by the Chief Engineer and Executive Director of Engineering and Construction Services and the General Manager of Transportation Services.

7. The owner at its sole expense shall pay to the City any and all costs for and associated with expropriation of the approximately 52 square metre area of lands adjacent to the westerly boundary of the lot (the "Expropriation Lands") intended to be expropriated by the City, save and except that in no event shall the owner’s payment of such expropriation costs exceed the amount set out in Confidential Attachment 1 to the report (December 4, 2017) from the Deputy City Manager, Internal Corporate Services, adopted by City Council at its meeting on December 5, 6, 7 and 8, 2017 (Item MM35.27), (hereafter "Item MM35.27"), all to the satisfaction of the Director, Real Estate Services, as follows:

a. prior to the earlier of:
   i. The publishing of any Notice of Application for Approval to Expropriate; and
   ii. The issuance of any building permit for all or any part of the lot,

the owner shall pay to the City by certified cheque half of the amount set out in Item MM35.27, and provide the City a letter of credit in the amount equal to the remaining half of the amount set out in Item MM35.27 to secure the full payment of the costs, all to the satisfaction of the Director, Real Estate Services.

8. The owner at its sole expense shall be responsible for an environmental assessment of the Expropriation Lands and any associated costs and remediation works required as a result of such assessment. The owner shall pay any and all costs for and associated with the environmental remediation of the Expropriation Lands to City standards for laneway purposes and shall provide the City with security for such costs and carry out such works as follows:

a. prior to the earlier of:
   i. the publishing of any Notice of Application for Approval to Expropriate; and
   ii. issuance of any building permit for all or any part of the lot,
the owner shall provide the City a letter of credit in an amount satisfactory to the Director, Real Estate Services, to secure the costs of remediation of the Expropriation Lands; and

b. prior to the earlier of:
   i. any new residential use of the lot; and
   ii. any condominium registration of all or any part of the lot,

the owner shall submit all required documentation, to satisfy the Chief Engineer and Executive Director, Engineering and Construction Services that such lands meet the City's environmental standards for laneways and as to the satisfactory completion of any required remediation.

9. Prior to the commencement of any excavation and shoring work, and prior to the issuance of any building permit, for all or any part of the lot the owner shall submit a Construction Management Plan, to the satisfaction of the Chief Planner and Executive Director, City Planning Division, the General Manager of Transportation Services, and the Chief Building Official, in consultation with the Ward Councillor, and thereafter shall implement the plan during the course of construction.

The Construction Management Plan will include, but not be limited to, the size and location of construction staging areas, location and function of gates, information on concrete pouring, lighting details, construction vehicle parking and queuing locations, refuse storage, site security, site supervisor contact information, a communication strategy with the surrounding community, and any other matters requested by the Chief Planner and Executive Director City Planning or the General Manager of Transportation Services, in consultation with the Ward Councillor.

10. Prior to the issuance of final Site Plan approval pursuant to section 114 of the City of Toronto Act, 2006 and section 41 of the Planning Act ("site plan approval") for all or any part of the lot the owner shall:

a. provide final site plan drawings that are satisfactory to the Senior Manager, Heritage Preservation Services, including drawings related to a Conservation Plan approved by such Senior Manager that is satisfactory to such Senior Manager and is prepared by a qualified heritage consultant, and that is consistent with the conservation strategy set out in the Heritage Impact Assessment for 862, 828, 830, 832, and 834 Yonge Street and 2, 4, 6, and 8 Cumberland Street prepared by GBCA Architects, dated November 8, 2016 (the "Approved Conservation Plan);

b. provide an Interpretation Plan for the lot, to the satisfaction of the Senior Manager, Heritage Preservation Services and thereafter shall implement such Plan to the satisfaction of the Senior Manager, Heritage Preservation Services;

c. provide a Heritage Lighting Plan that describes how the heritage properties on the lot will be sensitively illuminated to enhance their heritage character, to the satisfaction of the Senior Manager, Heritage Preservation Services and thereafter shall implement such Plan to the satisfaction of the Senior Manager, Heritage Preservation Services;

d. provide a detailed Landscape Plan for the lot, to the satisfaction of the Senior Manager, Heritage Preservation Services and thereafter shall implement such plan; and

e. submit a Signage Plan for the proposed development, to the satisfaction of the Senior Manager, Heritage Preservation Services.
11. Prior to the issuance of any permit for all or any part of the lot, including a heritage permit pursuant to the Ontario Heritage Act or a building permit, the owner shall:

a. obtain final approval for the necessary zoning by-law amendments required for the alterations to the properties at 862, 828, 830, 832, and 834 Yonge Street and 2, 4, 6, and 8 Cumberland Street, such that such amendments have been enacted by City Council and have come into full force and effect in a form and with content acceptable to the City Council as determined by the Chief Planner, and the Executive Director, City Planning Division, in consultation with the Senior Manager, Heritage Preservation Services;

b. provide full building permit drawings, including notes and specifications for the conservation and protective measures keyed to the Approved Conservation Plan, including a description of materials and finishes, to be prepared by the project architect and a qualified heritage consultant to the satisfaction of the Senior Manager, Heritage Preservation Services;

c. provide a letter of credit, including provision for upwards indexing, in a form and amount and from a bank satisfactory to the Senior Manager, Heritage Preservation Services, to secure all work included in the Approved Conservation Plan, the approved Heritage Lighting Plan, the approved Landscape Plan, and the approved Interpretation Plan. Prior to the release of the letter of credit, the owner shall:

i. have obtained final site plan approval for the proposed development permitted by this By-law, issued by the Chief Planner and Executive Director, City Planning;

ii. provide a letter of substantial completion prepared and signed by a qualified heritage consultant confirming that the required conservation work, required heritage lighting work, and the required interpretive work has been completed in accordance with the Approved Conservation Plan, the approved Heritage Lighting Plan, Landscape Plan, and the approved Interpretation Plan and that an appropriate standard of conservation has been maintained, all to the satisfaction of the Senior Manager, Heritage Preservation Services; and

iii. provide replacement Heritage Easement Agreement photographs to the satisfaction of the Senior Manager, Heritage Preservation Services; and

d. provide full documentation of the existing heritage properties at 862, 828, 830, 832, and 834 Yonge Street and 2 Cumberland Street, including two (2) printed sets of archival quality 8” x 10” colour photographs with borders in a glossy or semi-gloss finish and one (1) digital set on a CD in tiff format and 600 dpi resolution keyed to a location map, elevations and measured drawings, and copies of all existing interior floor plans and original drawings as may be available, to the satisfaction of the Senior Manager, Heritage Preservation Services.

12. The owner 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 Chief Planner and Executive Director, City Planning Division and the City Solicitor, to assist with securing the facilities, services and matters set forth in this Appendix 1.
826-834 Yonge Street and 2-8 Cumberland Street

Map 1

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