

CITY OF TORONTO

BY-LAW No. 26-2007(OMB)

To amend the General Zoning By-law No. 438-86 of the former City of Toronto with respect to lands municipally known as 40 The Esplanade.

WHEREAS the Ontario Municipal Board, by way of an Order No. 2799 issued on the October 3, 2006, determined to amend the former City of Toronto Zoning By-law No. 438-86 with respect to lands municipally known in the year 2005 as 40 The Esplanade; 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 land 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 40 The Esplanade (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 By-law No. 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;

THEREFORE the Ontario Municipal Board orders as follows:

1. None of the provisions of Section 2 with respect to the definition of "*grade*" and Sections 4(2)(a), 4(8), 4(13), 8(3) PART I 1, 2 and 3, 8(3) PART II 1(a)(ii), 8(3) PART III 1(a) and 12(2) 132 of Zoning By-law No. 438-86, being "A By-law to regulate the use of land and the erection, use, bulk, height, spacing of an 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 and use of a *mixed-use building* and *commercial parking garage* on the lands shown on Plan 1 attached to and forming part of this By-law, provided that:
 - (1) the *lot* comprises not less than the lands outlined by heavy lines on Plan 1, attached to and forming part of this By-law;

- (2) no above *grade* portion of any building or structure, excluding
- (a) balconies, and
 - (b) decorative raised brick pilasters projecting 0.25 metres or less,
- is located otherwise than wholly within the areas delineated by heavy lines as shown on Plan 2, attached to and forming part of this By-law;
- (3) the *height* of any building or structure, or portion thereof, including those elements referred to in Section 4(2)(a)(i) and (ii) of Zoning By-law No. 438-86, as amended, with the exception of transparent parapets, does not exceed the *heights* in metres shown on Plan 2 attached to and forming part of this By-law, and further provided
- (i) no *residential gross floor area* or *non-residential gross floor area* shall be erected or used above a *height* of 101.3 metres in the westerly tower shown on Plan 2; and
 - (ii) the *height* in storeys of the easterly tower shown on Plan 2 shall not exceed 15 storeys;
- (4) the aggregate of the *residential gross floor area* and the *non-residential gross floor area* erected or used on the *lot* does not exceed 43,079 square metres, of which:
- (a) not less than 1,600 square metres of *non-residential gross floor area* shall be provided and maintained on the *lot*; and
 - (b) not less than 60 percent of The Esplanade ground floor frontage, and not less than 30 percent of the Scott Street ground floor frontage shall comprise non-residential uses;
- (5) the maximum number of *parking spaces* provided and maintained on the *lot* does not exceed the following:
- | | | |
|---------------------------------|---|--|
| Bachelor <i>dwelling units</i> | - | 0.30 spaces per <i>dwelling unit</i> ; |
| 1-bedroom <i>dwelling units</i> | - | 0.70 spaces per <i>dwelling unit</i> ; |
| 2-bedroom <i>dwelling units</i> | - | 1.00 spaces per <i>dwelling unit</i> ; |
| 3-bedroom <i>dwelling units</i> | - | 1.20 spaces per <i>dwelling unit</i> ; |
| visitors | - | 0.06 spaces per <i>dwelling unit</i> , |
- of which up to 34 such spaces may be substandard in size provided they have dimensions not less than 5.0 metres in length and 2.6 metres in width;

- (6) the *commercial parking garage* is located below *grade* and, inclusive of the *visitor parking spaces* for both the residential and non-residential uses, contains not more than 150 *commercial parking spaces*;
- (7) at least one *loading space-type B* and one *loading space-type G* shall be provided and maintained on the *lot*;
- (8) one *bicycle parking space - occupant* for each *dwelling unit* shall be provided and maintained on the *lot*;
- (9) 0.085 *bicycle parking space - visitor* for each *dwelling unit*, or fraction thereof equal to or greater than 0.5 shall be provided and maintained on the *lot*;
- (10) the majority of *bicycle parking spaces - occupant* are provided and maintained on the ground floor, and levels P1, P2 and P3;
- (11) all *bicycle parking spaces - visitor* are provided and maintained on the ground floor;
- (12) *bicycle parking spaces - occupant* shall not be combined with storage lockers for residential units;
- (13) a minimum of 40% of the *dwelling units* erected and used on the *lot* shall be 2-bedroom or larger *dwelling units*;
- (14) continuous weather protection for pedestrians with a minimum depth of 3 metres shall be provided and maintained along the frontages of Scott Street and The Esplanade, including the corner wrap-around, with the exception that the portion of the continuous weather protection provided along The Esplanade may have a minimum depth of 2.1 metres within 13 metres of the east property line of the *lot*;
- (15) the owner of the *lot* at its expense and in accordance with and subject to the agreement referred to in paragraph (16) herein;
 - (a) pays to the City the sum of \$700,000 prior to the issuance of the first *foundation building permit*, towards the creation of a *public park* on the lands bordered by The Esplanade, Market Street, Wilton Street and Lower Jarvis Street;
 - (b) pays to the City the sum of \$50,000 prior to the issuance of the first *foundation building permit*, towards streetscape improvements on the eastside of Scott Street between Scott Lane and Front Street East, including weather protection along the west wall of the St. Lawrence Centre for the Arts;

- (c) pays to the City the sum of \$50,000 prior to the issuance of the first *foundation building permit*, towards the establishment of senior's facilities in the St. Lawrence neighbourhood;
- (d) makes a public art contribution to the City of a value not less than one percent of the gross construction cost of the development, in compliance with the City's public art program, and provided the public art plan shall be approved by the City's public art committee prior to the issuance of the first *concrete/superstructure permit*, and the implementation of the plan shall be completed prior to the first occupancy of any *dwelling unit* on the *lot*;
- (e) pays to the City the costs related to the improvements to the municipal lighting required to support the development to the satisfaction of the City's Executive Director of Technical Services, prior to the issuance of the first *foundation building permit*;
- (f) submits a site servicing review satisfactory to the City's Executive Director of Technical Services prior to the issuance of the first *foundation building permit* to determine the storm water runoff, sanitary flow and water supply demand resulting from the development and demonstration of how the *lot* can be serviced and whether the existing municipal infrastructure is adequate;
- (g) pays to the City the costs for improvements to the municipal infrastructure in connection with the site servicing review to the satisfaction of the City's Executive Director of Technical Services, prior to the issuance of the first *foundation building permit*, should the site servicing review required in paragraph (f) herein determine that upgrades are required to the infrastructure to support this development;
- (h) constructs improvements to The Esplanade and Scott Street rights-of-way abutting the *lot*, including streetscaping and tree installation, to City standards to the satisfaction of the City's General Manager of Transportation Services prior to the first occupancy of any *dwelling unit* on the *lot* and provides a Letter of Credit to secure such work to the City's satisfaction prior to the issuance of the first *foundation building permit*;
- (i) provides an irrigation system for all street trees in the public right-of-way adjacent to the *lot*, with automatic timers, such irrigation system to be designed to be water efficient by a Certified Landscape Irrigation Auditor (CLIA) and constructed with a back flow preventer to the satisfaction of the City's General Manager of Parks, Forestry and Recreation prior to the first occupancy of the development, provides a Letter of Credit to secure such work to the City's satisfaction prior to the issuance of the first *foundation building permit*, and maintains the entire system in continuing good order and operation;

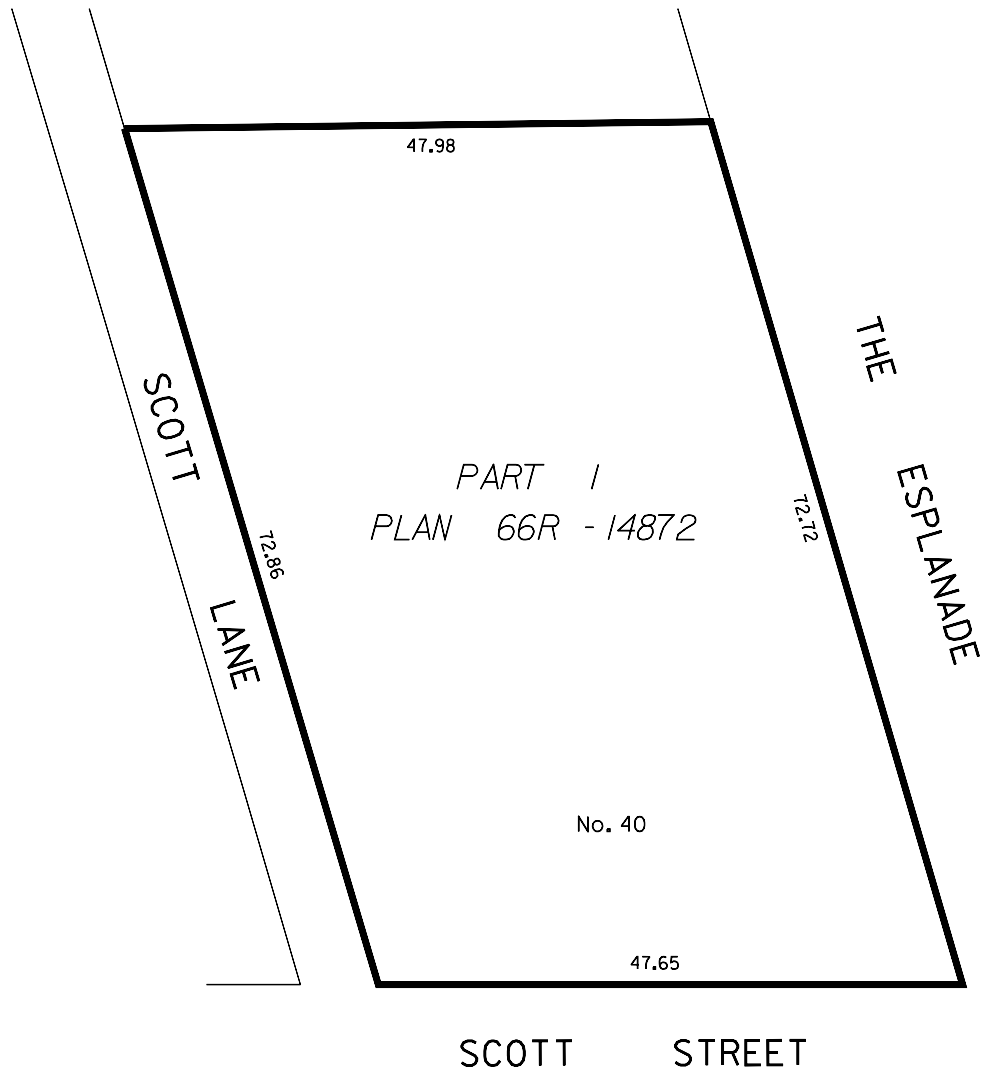
- (j) provides and maintains a minimum of 30 percent of the north wall of the podium above the ground floor as windows;
 - (k) provides and maintains a minimum of 50 percent of the east wall of the podium above the ground floor as windows; and
 - (l) provides and maintains architectural design and exterior materials, including the east wall of the podium, satisfactory to the City's Chief Planner and Executive Director of City Planning; and
- (16) the owner of the *lot* enters into an agreement with the City pursuant to Section 37 of the *Planning Act* to secure all the facilities, services and matters required in paragraph (15) herein and those matters deemed appropriate for the orderly development of the Lands, and registers such agreement against title to the Lands as a first charge, all to the satisfaction of the City Solicitor prior to this Zoning By-law coming into full force and effect.

2. For the purposes of this By-law:

- (i) “*concrete/superstructure permit*” means the first building permit for the above ground concrete structure of the development as detailed on structural consultants’ drawings;
- (ii) “*foundation building permit*” means the first building permit that permits the erection of any below ground concrete structure;
- (iii) “*grade*” means 77.42 metres Canadian Geodetic Datum;
- (iv) “*height*” means the height above *grade* as shown on Plan 2; and
- (v) each word or expression that is italicized in the By-law herein shall have the same meaning as each such word or expression as defined in By-law No. 438-86, as amended, unless otherwise defined herein.

PURSUANT TO THE ORDER/DECISION NO. 2799 OF THE ONTARIO MUNICIPAL BOARD ISSUED ON OCTOBER 3, 2006 IN BOARD FILE NO. PL040887.

PLAN 1

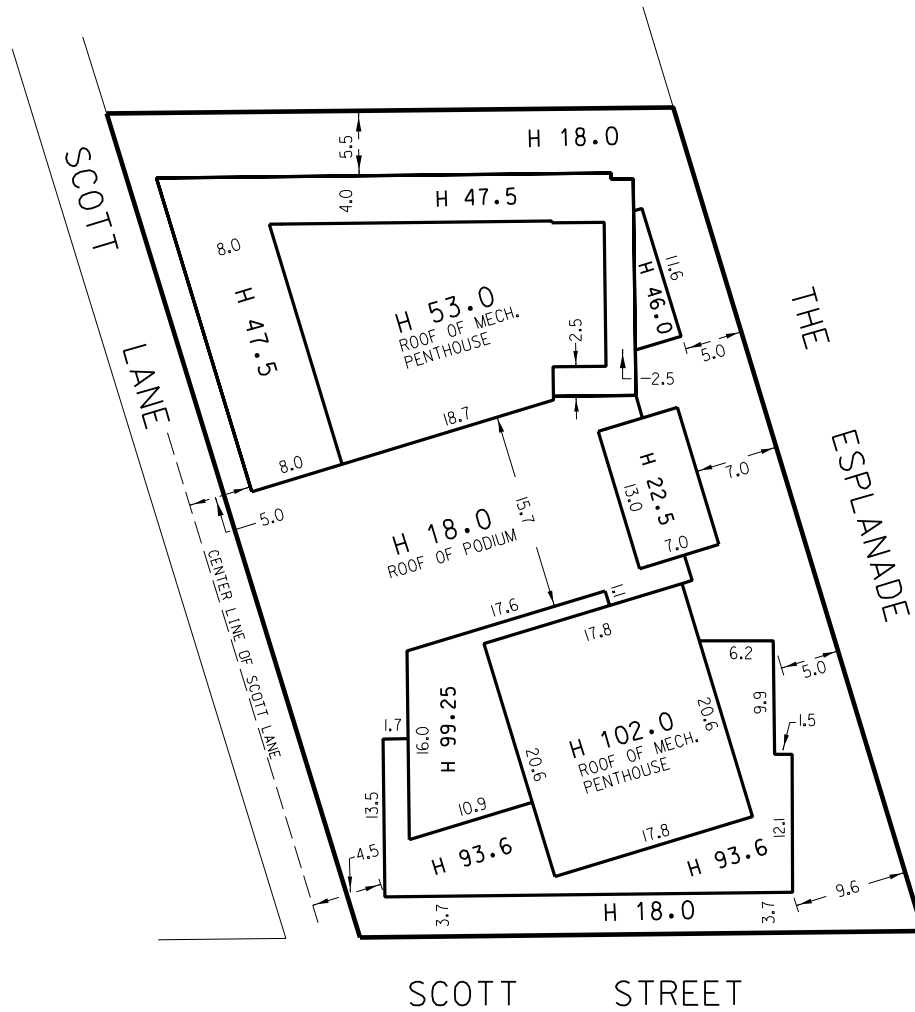


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WORKS AND EMERGENCY SERVICES
SURVEY AND MAPPING SERVICES
TORONTO NOVEMBER, 2004
BL04/40esplan1.DGN
FILE: E13-24
MAP No. 51G-321 DRAWN: VG

PLAN 2



SURVEY AND MAPPING SERVICES
 TORONTO MARCH 2006
 BLO6/40ESP2.DGN
 FILE: E13-24
 MAP No. 516-321 DRAWN: VG