

Authority: Toronto and East York Community Council Item 13.5,
adopted as amended, by City of Toronto Council on March 5, 6 and 7, 2012
Enacted by Council: April 11, 2012

CITY OF TORONTO

BY-LAW No. 523-2012

To amend the General Zoning By-law No. 438-86, as amended, of the former City of Toronto with respect to the lands municipally known as 94 Cumberland Street.

WHEREAS authority is given to Council by 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*, the Council or a municipality may in a By-law under Section 34 of the *Planning Act*, 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 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 any 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 lands hereinafter referred to has elected to provide the facilities, services and matters, as hereinafter set forth; and

WHEREAS the increases in density or height permitted hereunder, beyond those otherwise permitted in the aforesaid lands by By-law No. 438-86, as amended, are to be permitted in return for the provisions of the facilities, services and matters set out in this By-law and are to be secured by one or more agreements between the owner of such lands and the City of Toronto (hereinafter referred to as the "City"); and

WHEREAS the Official Plan of the City of Toronto contains provisions relating to the authorization of the height and density of development; and

WHEREAS Council has required the owner of the aforesaid lands to enter into one or more agreements dealing with certain facilities, services and matters in return for the increases in height and density in connection with the aforesaid lands as permitted in this By-law;

The Council of the City of Toronto HEREBY ENACTS as follows:

1. Pursuant to Section 37 of the *Planning Act*, the *heights* and density of development permitted in 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 with the *owner* of the *lot* pursuant to Section 37 of the *Planning Act* securing the provision of the facilities, services or matters set out in Appendix 1 hereof, the *lot* is subject to the provisions of this By-law. Building permit issuance with respect to the *lot* shall be dependent upon satisfaction of the provisions of this By-law and in the Section 37 Agreement relating to building permit issuance, including the provision of monetary payments and the provision of financial securities.
3. Wherever in this By-law a provision is stated to be conditional upon the execution and registration of an agreement entered into with the *City* pursuant to Section 37 of the *Planning Act*, then once such agreement 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. None of the provisions of Section 2 with respect to "*bicycle parking space – occupant*", "*bicycle parking space – visitor*", "*lot*" and "*grade*" and Sections 4(2), 4(5)(b), 4(10)(a), 4(14), 8(3)Part I, 8(3)Part II(1)(a)(ii), and 8(3)Part III(1)(a) of By-law No. 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 lands and the erection and use of certain buildings and structures in various areas of the City of Toronto", as amended, and none of the provisions of By-law No. 22192, shall apply to prevent the erection and use of a *mixed-use building* on the lands delineated by heavy lines on the Map 1 attached to and forming part of this ((hereinafter referred to as the "*lot*"), being municipally known as 94 Cumberland Street, provided:
 - (a) the *lot* comprises the lands delineated by heavy lines on Map 1 attached to and forming part of this By-law;
 - (b) the total combined *residential gross floor area* and *non-residential gross floor area* erected or used on the *lot* shall not exceed 16,250 square metres, of which:
 - (i) the *residential gross floor area* shall not exceed 13,600 square metres; and
 - (ii) the *non-residential gross floor area* shall not exceed 2,650 square metres;
 - (c) no portion of any building or structure above *grade*, is located other 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) canopies, cornices, lighting fixtures, awnings, ornamental elements, parapets, trellises, eaves, window sills, window washing equipment, guardrails, balustrades, railings, stairs, stair enclosures, wheel chair ramps, vents, underground garage ramps and their associated structures, fences, screens, landscape and public art features may project to a maximum of 1.2 metres beyond the heavy lines on the attached Map 2; and
 - (ii) despite Section 4(c)(i) above, balconies may project beyond the heavy lines on the attached Map 2 provided they are located wholly within the shaded areas delineated on the attached Map 2, save and except that within

the shaded hatched area delineated on the attached Map 2 no balconies are permitted above the 18th storey of any building;

- (d) the *height* of any building or structure, or portion thereof erected or used on the *lot*, including the elements provided for in Section 4(2) (a) (i) does not exceed the *heights* in metres as shown on the attached Map 2, with the exception of the following:
- (i) bollards, bicycle racks, underground garage ramps and their associated structures, retaining walls, fencing, decks, railings, planters, window washing equipment, decorative screens, terrace and balcony guards and dividers, landscape and public art features, outdoor furniture, lighting fixtures, safety railings, roof access hatches, vents, stacks, pipes, stairs, stair enclosures and chimneys may extend above the *heights* in metres as shown on the attached Map 2;
 - (ii) parapets and ornamental elements may extend up to 1.2 metres above the *heights* in metres as shown on the attached Map 2; and
 - (iii) structures on the roof of such building or structure used for safety or wind protection purposes, provided
 - A. the maximum *height* of the top of such structure is no higher than the sum of 5 metres plus the *height* limit otherwise applicable as shown on the attached Map 2;
 - B. such structure may be located adjacent to an outside wall or any vertical projection of such wall; and
 - C. such structure does not enclose space so as to constitute any form of penthouse or other room or rooms;
- (e) the minimum number of *parking spaces* provided and maintained on the *lot* shall be:
- Resident's Parking:
0.3 *parking spaces* for each *bachelor dwelling unit*;
0.5 *parking spaces* for each one *bedroom dwelling unit*;
0.75 *parking spaces* for each two *bedroom dwelling unit*;
1.2 *parking spaces* for each three or more *bedroom dwelling unit*; and
- Visitor's Parking:
0.06 *parking spaces* for each *dwelling unit* shall be provided for visitors.
- (f) no *parking spaces* shall be required for any portion of the *mixed-use building* that contains *non-residential gross floor area*;

5. For the purposes of this By-law:
- (a) each word or expression that is italicized in the By-law herein shall have the same meaning as each word or expression as defined in By-law No. 438-86, as amended unless the contrary is expressed in this By-law;
 - (b) "*bicycle parking space – occupant*" means an area that is equipped with a bicycle rack, *stacker* or locker for the purpose of parking and securing bicycles; and
 - (i) where the bicycles are to be parked on a horizontal surface, has horizontal dimensions of at least 0.6 metres by 1.8 metres and a vertical dimension of at least 1.9 metres;
 - (ii) where the bicycles are to be parked in a vertical position, has horizontal dimensions of at least 0.6 metres by 1.2 metres and a vertical dimension of at least 1.9 metres;
 - (iii) despite (i) and (ii) above, where the bicycles are to be parked in a *stacker*, the *bicycle parking space* within the *stacker* shall have a length of at least 1.6 metres and the *stacker* shall be located in an area with a vertical dimension of at least 2.5 metres; and
 - (iv) in the case of a bicycle rack or *stacker*, is located in a secured room or area;
 - (c) "*bicycle parking space – visitor*" means an area that is equipped with a bicycle rack or *stacker* for the purpose of parking and securing bicycles; and
 - (i) where the bicycles are to be parked on a horizontal surface, has horizontal dimensions of at least 0.6 metres by 1.8 metres and a vertical dimension of at least 1.9 metres;
 - (ii) where the bicycles are to be parked in a vertical position, has horizontal dimensions of at least 0.6 metres by 1.2 metres and a vertical dimension of at least 1.9 metres;
 - (iii) despite (i) and (ii) above, where the bicycles are to be parked in a *stacker*, the *bicycle parking space* within the *stacker* shall have a length of at least 1.6 metres and the *stacker* shall be located in an area with a vertical dimension of at least 2.5 metres; and
 - (iv) may be located outdoors or indoors but not within a secured room, enclosure or bicycle locker;
 - (d) "*grade*" means 116.75 metres Canadian Geodetic Datum;
 - (e) "*lot*" means those lands delineated by heavy lines on the attached Map 1; and

- (f) "*stacker*" means a device that allows *bicycle parking spaces* to be positioned above or below one another with the aid of an elevating mechanism.
6. Except as otherwise provided herein, the provisions of By-law No. 438-86, as amended, shall continue to apply to the *lot*.
7. Despite any existing or future severance, partition, or division of the *lot*, the provisions of this By-law shall apply to the whole *lot* as if no severance, partition or division occurred.

ENACTED AND PASSED this 11th day of April, A.D. 2012.

FRANCES NUNZIATA,
Speaker

ULLI S. WATKISS,
City Clerk

(Corporate Seal)

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 in accordance with an agreement or agreements, pursuant to Section 37(3) of the *Planning Act*, in a form satisfactory to the City with conditions providing for no credit for development charges or park levy, indexing escalation of both the financial contributions and letters of credit, indemnity, insurance, taxes, termination and unwinding, and registration and priority of the agreement:

1. The *owner* shall pay to the City the sum of ONE MILLION ONE HUNDRED THOUSAND DOLLARS (\$1,100,000.00) as follows:

(a) THREE HUNDRED THOUSAND DOLLARS (\$300,000.00) shall be paid to the City prior to the earlier of;

- i. within thirty (30) days of this By-law becoming final and binding with all appeal periods having expired; and
- ii. the issuance of any building permit for all or any portion of the *lot*, excluding any permit issued for the repair of any building existing on the *lot* on the date of this By-law or to construct a temporary sales office.

Such funds to be used towards a heritage conservation district study for the Yonge-Yorkville area as determined by the *City's* Manager of Heritage Preservation Services and any remaining funds from this payment shall be used towards improvements to the Village of Yorkville Park, as determined by the *City's* Chief Planner in consultation with the Ward Councillor; and

(b) EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00) shall be paid to the City prior to the issuance of the first above *grade* building permit for all or any portion of the *lot*, excluding any permit issued for the repair of any building existing on the *lot* on the date of this By-law or to construct a temporary sales office.

Such funds to be used for area streetscape and parkland improvements, as determined by the Chief Planner in consultation with the Ward Councillor.

All such amounts in Sections 1 (a) and (b) and 2 of this Appendix 1 to be indexed upwardly in accordance with the Statistics Canada Non-Residential Construction Price Index for Toronto, calculated from the date of the Section 37 Agreement to the date of payment;

2. The Owner shall provide and maintain at the base of the building to be erected on the *lot* pursuant to this By-law, lighting, artwork and/or upgraded materials having a total value of not less than THREE HUNDRED THOUSAND DOLLARS (\$300,000.00), the details of which shall be secured in the site plan agreement for the *lot* pursuant to Section 114 of the *City of Toronto Act, 2006*;

3. Prior to the earlier of:
- (a) the issuance of any site plan approval for all or any portion of the *lot* pursuant to Section 114 of the *City of Toronto Act, 2006*; and
 - (b) the issuance of the first above *grade* building permit for all or any portion of the *lot*, excluding any permit issued for the repair of any building existing on the *lot* on the date of this By-law or to construct a temporary sales office;
- the *owner* shall convey to the City a public pedestrian walkway easement of indefinite term and including rights of support, within the 1.5 metre setback along Bellair Street shown on the attached Map 2, for nominal consideration, all to the satisfaction of the Chief Planner and the City Solicitor; and
4. 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 City Solicitor, in consultation with the Chief Planner, to secure the facilities, services and matters set forth in this Appendix 1.



