

Authority: Ontario Municipal Board Order issued March 7, 2013 in Board File No. PL110553

CITY OF TORONTO

BY-LAW No. 1117-2013(OMB)

To amend former City of Toronto Zoning By-law No. 438-86, as amended, with respect to the lands municipally known as 36 Eglinton Avenue West.

Whereas the Council of the City of Toronto has been requested to amend its Zoning By-law pursuant to Section 34 of the *Planning Act*, R.S.O. 1990, c.P. 13, as amended, with respect to lands municipally known in the year 2012 as 36 Eglinton Avenue West; and

Whereas Premium Properties Limited has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P. 13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law No. 438-86, as amended, of the former City of Toronto to rezone lands respecting 36 Eglinton Avenue West to permit the redevelopment of a mixed-use building with ground floor retail, O.M.B. File No.: PL110553; and

Whereas the Ontario Municipal Board directed the parties to draft a zoning by-law to reflect the Board's direction in its Decision issued on June 19, 2012; 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 this By-law as 36 Eglinton Avenue West (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; and

Whereas the Ontario Municipal Board, by its Decision issued June 19, 2012, and by its Order issued on March 7, 2013 in Board File No. PL110553, determined to amend the former City of Toronto Zoning By-law No. 438-86, as amended with respect to lands known municipally in the year 2012 as 36 Eglinton Avenue West;

Therefore pursuant to the Order of the Ontario Municipal Board issued on March 7, 2013 in Board File No. PL110553 the Ontario Municipal Board orders as follows:

1. Except as otherwise provided herein, the provisions of By-law No. 438-86, as amended, shall continue to apply to the *lot*.
2. For the purpose of this By-law, the *lot* shall consist of the lands delineated by heavy lines on Map 1 attached to and forming part of this By-law, save and except any required property corner rounding.
3. None of the provisions of Sections 2 with respect to *bicycle parking space – occupant*, *bicycle parking space – visitor*, *height*, *grade*, *parking stacker* and *residential amenity space*, 4(2)(a), 4(2)(a)(i) and (ii), 4(4)(b), 4(4)(d), 4(6), 4(13), 4(16), 8(3) PART I 1, 8(3) PART I 3(a), 8(3) PART II 1, 12(2)118(iv), 12(2)119(iii), 12(2)119(vii) and 12(2)269 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, shall apply to prevent the erection and use of a *mixed-use building* and uses *accessory* thereto, including an underground *parking garage* which may contain *car-share parking spaces*, on the lands municipally known in the year 2012 as 36 Eglinton Avenue West (hereafter referred to as the "*lot*") provided:
 - (1) The total combined *residential gross floor area* and *non-residential gross floor area* of the building does not exceed 25,500 square metres provided that:
 - (a) the maximum *residential gross floor area* shall be 25,165 square metres; and
 - (b) the minimum *non-residential gross floor area* shall be 338 square metres.
 - (2) No person shall erect or use any building on the *lot* unless the first *storey* of the building, being the finished ground level *storey*, has a minimum floor-to-floor *height* of 6.0 metres.
 - (3) The maximum number of *dwelling units* does not exceed 320 units, of which a minimum of twenty percent (20%) of the residential *dwelling units* in the building must be at least two bedroom units.
 - (4) No part of any building above *grade* on the *lot* is located otherwise than wholly within the areas delineated by the heavy lines on Map 2 attached to and forming part of this By-law, except for the following permitted projections into the required setback areas to a maximum of 1.2 metres:
 - (a) cornices, lighting fixtures, window washing equipment, awnings, canopies, ornamental or architectural elements, trellises, eaves, window sills, bay windows, guardrails, balustrades, railings, wind mitigation screens and features, monuments, arbours, patios, decorative features,

stairs, stair enclosures, wheel chair ramps, vents, underground garage ramps and their associated structures, underground garage stair enclosures, retaining walls, fences, screens, and landscape and public art features;

- (b) notwithstanding (4)(a), first floor canopies are permitted to extend beyond the building envelopes areas delineated by the heavy lines on Map 2 attached to and forming part of this By-law beyond 1.2 metres; and
 - (c) balconies shall not be permitted to project beyond the main wall of the west, north and east facades of the building, and may project a maximum of 1.5 metres beyond the main wall of the south façade.
- (5) No part of any building or structure erected on the *lot* shall be located above the building *heights* shown in metres specified by the number following the symbol "H" on Map 2 provided that this paragraph does not prevent the erection and use of:
 - (a) safety railings located at each of the roof levels of the building provided the maximum vertical distance of any such railing does not exceed 1.1 metres;
 - (b) a parapet, including roof drainage, thermal insulation and roof ballast, at each of the roof levels of the building provided the maximum vertical dimension of any such parapet does not exceed 0.7 metres, and having a maximum combined vertical dimension with (a) above of 1.8 metres above the *height* of each of the roof levels of the building; and
 - (c) structures on the roof of the building used for outside or open air recreation, window washing equipment, stair towers, partitions dividing outdoor recreation areas, trellises or a fence, wall or structure enclosing such elements, lightning rods and exhaust flues located above the *height* of each of the roof levels of the building provided the maximum vertical dimension of any such element does not exceed 1.2 metres, except that such elements shall be permitted to a maximum height of 2.5 metres if located on the podium.
- (6) On the side of the building facing the east *lot* line, windows of a *dwelling unit*, other than the window of a kitchen, den or bathroom, shall only be permitted to be located within the first 2.5 metres of a corner of the building.
- (7) The window of a *dwelling unit*, other than a window of a kitchen, den or bathroom in the building shall not be closer than 8.0 metres to the east *lot* line, unless the window or windows are at an angle equal to or greater than 90 degrees to the east *lot* line and located within the podium of the building.
- (8) The minimum number of *parking spaces* provided and maintained on the *lot* shall not be less than the number calculated in accordance with the following minimum ratios (calculation to include fractions to be rounded down to the closest whole

number) and *parking spaces* shall be located in the *underground parking garage*:

Residential:

- | | | |
|-----|------------------------------------|--------------------------------------|
| (a) | bachelor <i>dwelling unit</i> | 0.30 spaces per <i>dwelling unit</i> |
| (b) | one bedroom <i>dwelling unit</i> | 0.50 spaces per <i>dwelling unit</i> |
| (c) | two bedroom <i>dwelling unit</i> | 0.75 spaces per <i>dwelling unit</i> |
| (d) | three bedroom <i>dwelling unit</i> | 1.00 spaces per <i>dwelling unit</i> |
| (e) | visitor parking | 0.06 spaces per <i>dwelling unit</i> |

Non-residential – Retail and Service Shop:

- (f) for *non-residential* retail and service shop uses, a minimum of 1.0 space for each 100 square metres of *gross floor area* is required, to a maximum of 4.0 spaces for each 100 square metres of *gross floor area*.
- (9) For each on-site *car-share parking space* provided on the lot, the minimum residential parking requirement shall be reduced by 3.5 *parking spaces* (calculation to include fractions to be rounded down to the closest whole number).
- (10) The maximum number of *car-share parking spaces* shall be 6.
- (11) Notwithstanding the preceding subsection (8), non-residential *parking spaces* and residential visitor *parking spaces* may be shared and commingled, and made available to the general public, and a charge may be imposed for the use of such spaces.
- (12) Notwithstanding the preceding subsection (8), a maximum of 20% of all *parking spaces* may be provided in *parking stackers* to a maximum of 38 *parking spaces*.
- (13) A minimum of one *Type-G loading space* shall be provided on the lot.
- (14) No person shall erect or use a building within the lot unless:
 - (a) 0.75 *bicycle parking spaces* for each *dwelling unit*, or a fraction thereof equal to or greater than 0.5, to a maximum of 200 *bicycle parking spaces*, are provided and maintained on the lot, of which 80% are provided as *bicycle parking spaces – occupant* and 20% are provided as *bicycle parking spaces – visitor*;
 - (b) *bicycle parking spaces* may be provided and maintained below *grade* in the *parking garage*, at-grade, or above *grade* within the mezzanine level; and
 - (c) a minimum of 25 *bicycle parking spaces – visitor* shall be located within the first *underground parking garage* level.

- (15) No building or structure shall be erected on the *lot* unless *residential amenity space* is provided as follows:
- (a) a minimum of 2.0 square metres of indoor *residential amenity space* for each *dwelling unit* in a multi-purpose room or contiguous multi-purpose rooms, at least one of which contains a kitchen and a washroom;
 - (b) a minimum of 2.0 square metres of outdoor *residential amenity space* for each *dwelling unit*, of which at least 40 square metres is provided in a location adjoining or directly accessible from indoor *residential amenity space*; and
 - (c) for purposes of this By-law, outdoor *residential amenity space* may also include a dog station facility for the exclusive use of residents of the building.

4. DEFINITIONS

For the purposes of this By-law, all italicized words and expressions have the same meanings as defined in By-law No. 438-86, as amended, with the exception of the following:

- (1) "*car-share*" means the practice whereby a number of people share the use of one or more cars that are owned by a profit or non-profit car-sharing organization and to use a car-share vehicle, a person must meet the membership requirements of the car-sharing organization, including the payment of a membership fee that may or may not be refundable. Cars are reserved in advance and fees for use are normally based on time and/or kilometers driven and do include use of cars on an hourly basis;
- (2) "*car-share parking space*" means a *parking space* used exclusively, reserved and signed for a car used only for car-share purposes and such *car-share parking space* is for the use of at least the occupants of the buildings;
- (3) "*grade*" shall mean 160.0 metres Canadian Geodetic Datum;
- (4) "*height*" shall mean the vertical distance between *grade* and the highest point of the roof, except for those elements prescribed in section 3(5);
- (5) "*parking stacker*" means *parking stacker* as defined in *By-law No. 438-86*, with the exception that the overall dimensions may be reduced to not less than 2.6 metres by 5.6 metres;
- (6) all terms appearing in italics shall have the same meaning as those terms have for the purpose of the aforesaid By-law No. 438-86, except as hereinbefore provided.

5. SECTION 37 – INCREASED HEIGHT AND DENSITY

- (1) Pursuant to Section 37 of the *Planning Act*, and subject to compliance with the provisions of this By-law, the increase in *height* and density of development on the *lot* is permitted in return for the provision by the Owner of the following facilities, services and matters to the City at the Owner's sole expense.
- (2) The *owner* shall enter into one or more agreements with the City pursuant to Section 37 of the *Planning Act*, which shall be registered on title to the land by the City to secure the facilities, services and matters required to be provided by this Section of the by-law and the owner shall consent to the registration of such agreement or agreements against title to the *lot*:
 - (i) Prior to the release of the first above grade building permits, the owner shall provide a cash contribution of \$740,000.00 to the City, which shall be used for the following:
 - (a) \$50,000.00 for non-profit licensed daycare; and
 - (b) \$690,000.00 for general streetscape and pedestrian improvements along Duplex Avenue (between Eglinton Avenue West and Orchard View Boulevard), the intersection of Orchard View Boulevard and Duplex Avenue, along Orchard View Boulevard (between Yonge Street and Eglinton Park) and/or along Eglinton Avenue West (in front of the subject lot), including improvements to sidewalks, street landscaping, lighting and street furnishings, such as seating or other pedestrian amenity facilities, improvements to the North District Library, improvements to the pool at the North Toronto Memorial Community Centre, or improvements to Eglinton Park.
 - (ii) The general allocation of the above contribution shall be determined by the City in consultation with a working group consisting of the Chief Planner and Executive Director, the property owner, the local Councillor, the Oriole Park Association, the Eglinton Park Residents' Association, and the Avenue Road-Eglinton Community Association.
 - (iii) The cash amounts identified above shall be indexed quarterly in accordance with the Non-Residential Construction Price Index for the Toronto CMA, reported quarterly by Statistics Canada in Construction Price Statistics Publication No. 62-007-XPB, or its successor, calculated from the date of execution of the Section 37 Agreement to the date of submission of the funds by the *owner* to the City.
 - (iv) As part of the Site Plan Approval Process, the *owner* shall provide a 1:50 scale drawings illustrating the 4-storey podium portion of the building for the north, west and south elevations with building materials labeled, to the satisfaction of the Chief Planner and Executive Director.

- (v) The *owner* shall incorporate in the construction of the building, and thereafter maintain, exterior building and landscape materials, to the satisfaction of the Chief Planner and Executive Director.
 - (vi) The *owner* shall prepare a Construction Management Plan and Neighbourhood Communication Strategy, prior to the issuance of the first building permit (including demolition and/or excavation permit), to the satisfaction of the Executive Director Technical Services in consultation with the Chief Planner and Executive Director.
 - (vii) The owner shall provide a wind assessment from a qualified wind consultant on the specific wind mitigation measures identified through the Site Plan Approval process, and agree to incorporate any measures into the building and landscape design, to the satisfaction of the Chief Planner and Executive Director.
 - (viii) The owner shall provide, if required by the City, knock-out panels on the Eglinton Avenue West portion of the *lot*, to accommodate a potential future connection to the Eglinton Subway/LRT system, to the satisfaction of the Toronto Transit Commission in consultation with the Chief Planner and Executive Director.
 - (ix) Notwithstanding the foregoing, the *owner* and the City may, from time to time and upon the consent of the City and the owner, modify or amend the agreement(s) entered into under Section 37 of the *Planning Act* with respect to this By-law without further amendment to those provisions of this By-law which identify the facilities, services and matters to be secured.
- (3) Prior to the release of the first above grade building permits, the *owner* shall provide a cash contribution of \$740,000.00 to the City, which shall be used for the following:
- (a) \$50,000.00 for non-profit licensed daycare; and
 - (b) \$690,000.00 for general streetscape and pedestrian improvements along Duplex Avenue (between Eglinton Avenue West and Orchard View Boulevard), the intersection of Orchard View Boulevard and Duplex Avenue, along Orchard View Boulevard (between Yonge Street and Eglinton Park) and/or along Eglinton Avenue West (in front of the subject lot), including improvements to sidewalks, street landscaping, lighting and street furnishings, such as seating or other pedestrian amenity facilities, improvements to the North District Library, improvements to the pool at the North Toronto Memorial Community Centre, or improvements to Eglinton Park.

- (4) The *owner* shall prepare a Construction Management Plan and Neighbourhood Communication Strategy, prior to the issuance of the first building permit (including demolition and/or excavation permit), to the satisfaction of the Executive Director, Technical Services in consultation with the Chief Planner and Executive Director.
 - (5) The owner shall provide, if required by the City, knock-out panels on the Eglinton Avenue West portion of the *lot*, to accommodate a potential future connection to the Eglinton Subway/LRT system, to the satisfaction of the Toronto Transit Commission in consultation with the Chief Planner and Executive Director.
6. Notwithstanding any 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.

PURSUANT TO THE ORDER OF THE ONTARIO MUNICIPAL BOARD ISSUED ON MARCH 7, 2013 IN BOARD FILE NO. PL110553.



