

Authority: Etobicoke York Community Council Item EY12.1, as adopted by City of Toronto Council on March 10, 2016

CITY OF TORONTO

BY-LAW No. 430-2016

To amend Chapters 320 and 324 of the Etobicoke Zoning Code, with respect to lands municipally known as 144 and 150 Berry Road.

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 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 the Etobicoke Zoning Code 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. That the zoning map referred to in Section 320-5, Article II of the Zoning Code, and originally attached to the Township of Etobicoke By-law No. 11,737, be and the same is amended by changing the classification of a portion of the lands located in the former Township of Etobicoke as described in Schedule 'A' annexed hereto from CPL (Planned Commercial Local Zone) to R6 (Sixth Density Residential Zone) provided the following provisions shall apply to the development of the (R6) and (CPL) lands identified in Schedule 'A' attached.
2. Notwithstanding the provisions of 320-18C, 320-18D, 320-23, 320-79, 320-81, 320-87, 320-88 and 320-89 the following development standards shall apply to the (CPL) lands described in Schedule 'A' attached.

3. Notwithstanding the provisions of 320-18B, 320-39, 320-40, 320-41, 320-42, 320-44, 320-76 and 320-77 the following development standards shall apply to the (R6) lands described in Schedule 'A' attached.

4. Definitions

The provisions of Section 304-3 Definitions of the Zoning Code shall apply unless inconsistent with the provisions of this By-law. For the purposes of this By-law the following definitions shall apply:

"Bicycle Parking Space" - shall mean an area used for parking or storing a bicycle;

"Building Envelope" - shall mean the building area permitted within the setbacks established in this By-law, as shown on Schedule 'B', attached;

"Community Centre" - means premises operated by or on behalf of a government or non-profit organization providing community activities, such as arts, crafts, recreational, social, charitable and educational activities. A club is not a community centre;

"Established Grade" - shall mean the following for each building identified on Schedule 'B', attached:

- (a) 87.00 metres Canadian Geodetic Datum for Building A;
- (b) 88.00 metres Canadian Geodetic Datum for Building B;
- (c) 89.10 metres Canadian Geodetic Datum for Building C; and
- (d) 89.90 metres Canadian Geodetic Datum for Building D;

"Gross Floor Area" - shall mean 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:

- (a) Indoor amenity space;
- (b) Parking, loading and bicycle parking at, above or below established grade;
- (c) Storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms in the basement;
- (d) Shower and change facilities required by this By-law for required bicycle parking spaces;
- (e) Elevator shafts;
- (f) Garbage shafts;
- (g) Mechanical penthouse; and
- (h) Exit stairwells in the building;

"Height" - shall mean the vertical distance between *Established Grade* of the *Lot* and the highest point of the building, but excluding:

- (a) Architectural features, eaves, elevator overruns, green roof elements, guardrails, landscaping, lighting rods, mechanical equipment and any associated enclosure

structures, parapets, railings and dividers, roof drainage, screens, stair enclosures, stairs, trellises and window washing equipment;

"Indoor Amenity Space" - shall mean indoor space in a building that is communal and is provided for use by occupants of a building and their guests, on the *Lot* for recreational or social activities;

"Landscaped Open Space" - shall mean a yard or court on a lot located at grade, above an underground parking area, above an above ground parking structure, or rooftop, which is suitable for landscaping. It shall include any part of the lot occupied by accessory recreational buildings, surfaced walks, patios or similar areas, sports or recreational areas and ornamental or swimming pools, but shall exclude driveways, ramps or motor vehicle parking areas;

"Lot" - shall mean the parcel of land outlined by heavy lines in Schedule 'A' attached;

"Mechanical Floor Area" - shall mean a room or enclosed area, including its enclosing walls, within a building or structure above or below Grade, that is used exclusively for the accommodation of heating, cooling, ventilating, electrical, mechanical (other than escalators), elevator shafts, or telecommunications equipment that serves only such building;

"Minor Projections" - shall mean minor building elements which may project from the main wall of a building into required setbacks beyond the *Building Envelope*, including architectural elements, parapets, landscape features, elements of a Green Roof, roof eaves, window sills, lights, vents, railings and guard rails, cornices, doors, canopies, balustrades, terraces and balconies, and exterior stairs, to a maximum projection of 1.5 metres;

"Outdoor Amenity Space" - shall mean outdoor space on the *Lot* located at grade or on a landscaped roof of a building that is communal and is provided for the use of occupants of the building and their guests for recreational or social activities;

"Outdoor Patio" - shall mean an outdoor patron area that is ancillary to a non-residential use;

"Personal Service Shop" - shall mean premises used to provide personal grooming services or for the cleaning or care of apparel;

"Privately-Owned Publicly-Accessible Space" - shall mean a *Landscaped Open Space* area, as shown on Schedule 'B', attached, which is open and accessible to the public at all times;

"Retail Store" - shall mean premises in which goods or commodities are sold, rented or leased to include all uses such as grocery store and pharmacy, but not limited to; and

"Temporary Sales Office" - shall mean 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*.

5. Permitted Uses

In addition to the uses permitted in the CPL zone, the following uses shall be permitted on the lands designated CPL on the *Lot*:

- (a) Outdoor Patio;
- (b) Personal Service Shop;
- (c) Retail Store;
- (d) Community Centre;
- (e) Library; and
- (f) Temporary Sales Office.

6. Gross Floor Area

A maximum of 33,100 square metres of *Gross Floor Area* for residential uses shall be permitted on the *Lot* in a (R6) zone.

A maximum of 3,006 square metres of *Gross Floor Area* for non-residential uses shall be permitted on the *Lot* in a (CPL) zone.

7. Maximum Density

The maximum total *Floor Space Index* (FSI) permitted on the *Lot* shall be 1.7.

8. Number of Units

A maximum of 505 residential units shall be permitted on the *Lot* in a (R6) zone.

9. Maximum Coverage

The maximum lot coverage permitted on the *Lot* shall be 27 percent times the area of the lot.

10. Maximum Height

- (a) The maximum building *Heights* to be permitted on the *Lot* shall be shown following the letter H as shown on Schedule 'B', attached; and
- (b) Notwithstanding the foregoing clause, the maximum building *Heights* permitted on the *Lot* as shown on Schedule 'B', attached, shall exclude architectural features, eaves, elevator overruns, green roof elements, guardrails, landscaping, lighting rods, mechanical equipment and any associated enclosure structures, parapets, railings and dividers, roof drainage, screens, stair enclosures, stairs, trellises and window washing equipment.

11. Setbacks/Building Envelopes

Notwithstanding the provisions of this By-law:

- (a) No portion of any building or structure which is located above the finished exterior ground level immediately adjoining such building or structure within the *Lot* shall be located other than within the *Building Envelopes* as shown on Schedule 'B', attached; and
- (b) Notwithstanding the foregoing clause, art and landscape features, awnings and canopies, balconies, balustrades, cornices, decks, doors, eaves, fences, guardrails, light fixtures, ornamental elements, parapets, patios, pillars, planters, railings, screens, site servicing features, stairs, stair enclosures, terraces, trellises, underground garage ramps and associated structures, ventilation shafts, wheelchair ramps and window sills may extend beyond the *Building Envelopes* as shown on Schedule 'B'.

12. Parking, Loading and Bicycle Parking Requirements

- (a) Vehicle parking for residential uses shall be provided on the *Lot* at a minimum rate of:
 - (i) 0.8 parking spaces for each bachelor dwelling unit;
 - (ii) 0.9 parking spaces for each one bedroom dwelling unit;
 - (iii) 1.0 parking spaces for each two bedroom dwelling unit;
 - (iv) 1.2 parking spaces for each dwelling unit having three or more bedrooms; and
 - (v) a minimum of 0.2 parking spaces per residential dwelling unit shall be provided for the exclusive use of visitors;
- (b) Vehicle parking for retail uses, as defined within this By-law, shall be provided on the *Lot* at a minimum ratio of 1.5 parking spaces per 100 square metres of Gross Floor Area;
- (c) Vehicle parking for medical and office uses shall be provided on the *Lot* at a minimum ratio of 1.0 parking spaces per 100 square metres of Gross Floor Area;
- (d) A minimum of one parking space for every 100 parking spaces, or part thereof, shall be provided on the *Lot* for use by the physically disabled;
- (e) Loading spaces shall be provided on the *Lot* as follows:
 - (i) a minimum of three loading spaces with dimensions of 13 metres in length by 4.0 metres in width and a vertical clearance of 6.1 metres to serve the residential use;

- (ii) a minimum of one loading space with dimensions of 11 metres in length by 3.5 metres in width and a vertical clearance of 4.0 metres to serve the non-residential uses; and
 - (iii) a minimum of one loading space with dimensions of 6.0 metres in length by 3.5 metres in width and a vertical clearance of 3.0 metres to serve the non-residential uses. Should the non-residential Gross Floor Area of office uses exceed 2,000 square metres, a second loading space with dimensions of 6.0 metres in length by 3.5 metres in width and a vertical clearance of 3.0 metres shall also be provide;
- (f) Bicycle parking spaces shall be provided on the *Lot* as follows:
- (i) long-term bicycle parking spaces will be provided at a minimum ratio of 0.68 parking spaces for each dwelling unit. Short-term bicycle parking spaces will be provided at a minimum ratio of 0.07 parking spaces for each dwelling unit;
 - (ii) long-term bicycle parking spaces for non-residential uses will be provided at a minimum ratio of 0.13 parking spaces for each 100 square metres of Gross Floor Area. Short-term bicycle parking spaces for non-residential uses will be provided at a minimum ratio of 3 parking spaces plus 0.25 parking spaces for each 100 square metres of retail Gross Floor Area; and
 - (iii) long-term bicycle parking spaces for non-residential uses will be provided at a minimum ratio of 0.10 parking spaces for each 100 square metres of non-residential Gross Floor Area. Short-term bicycle parking spaces for non-residential uses will be provided at a minimum ratio of 3 parking spaces plus 0.10 parking spaces for each 100 square metres of non-residential Gross Floor Area.

13. Area Requirements

The following amenity space requirements shall apply to the *Lot*:

- (a) A minimum 2.0 square metres for each dwelling unit of *Indoor Amenity Space* shall be provided;
- (b) A minimum of 2.0 square metres for each dwelling unit of *Outdoor Amenity Space* shall be provided;
- (c) A minimum of 40 percent of the *Lot* area shall be reserved for outdoor *Landscaped Open Space*; and
- (d) A minimum of 3,600 square metres will be provided as *Privately-Owned Publicly-Accessible Space (POPS)*, as shown on Schedule 'B', attached.

14. Section 37 Provisions

- (a) The owner shall provide the following in accordance with the terms set out in Schedule 'C' attached:
 - (i) leased Premises for a not-for-profit food co-operative in the project having an area of no less than 810 square metres to be constructed and provided on the terms set out in Schedule 'C' attached, at the expense of the owner, or such alternate cash contribution as is described in Schedule 'C' attached;
 - (ii) a splash pad within the privately-owned publicly-accessible space to be constructed and provided on the terms set out in Schedule 'C' attached. The public access easement(s) are to be conveyed to the City for nominal consideration and are to be free and clear of all physical and title encumbrances. The owner shall own, operate, maintain and repair the splash pad; and
 - (iii) the cash amounts referred to in Schedule 'C' attached will be indexed upwardly 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 expenditure of the sum by the owner;
- (b) The following matters are also recommended to be secured in the Section 37 Agreement as a legal convenience to support development:
 - (i) the owner shall provide, at its own expense, a minimum area of 3,600 square metres of privately-owned publicly-accessible space (POPS) and public access easements to and over the POPS for members of the public. The public access easements are to be conveyed to the City for nominal consideration and are to be free and clear of all physical and title encumbrances. The owner shall own, operate, maintain and repair the POPS. The owner shall install and maintain a centralized sign, at its own expense, stating that members of the public shall be entitled to use the POPS from 6:00 a.m. to 12:01 a.m. 365 days of the year;
 - (ii) the owner shall design and construct a 2.1 metre wide municipal sidewalk along the north side of Berry Road, the west side of Stephen Drive and the east side of Bell Manor Drive, all to the satisfaction of the Executive Director, Engineering and Construction Services and the General Manager of Transportation Services and at no cost to the City;
 - (iii) the owner shall construct and maintain the development in accordance with the Tier 1 performance measures of the Toronto Green Standard, as adopted by Toronto City Council at its meeting of October 26 and 27, 2009;

- (iv) the owner shall satisfy the requirements of the Toronto District School Board regarding warning clauses and signage with respect to school accommodation issues; and
 - (v) the owner shall construct improvements and upgrades to the municipal water and sewer infrastructure at no cost to the City, should the Functional Servicing Report that has been submitted to the satisfaction of the Director, Engineering and Construction Services determine that the improvements and upgrades are necessary to accommodate the proposed development;
 - (c) 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 Schedule 'A' in return for the provision by the owner, at the owner's expense of the facilities, services and matters set out in Schedule 'C' 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;
 - (d) Where Schedule 'C' 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; and
 - (e) 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 Schedule 'C' are satisfied.
- 15.** Where the provisions of this By-law conflict with the provisions of the Etobicoke Zoning Code, the provisions of this By-law shall apply.
- 16.** Nothing in this By-law shall apply to prevent the Phased construction of the development, provided that the requirements of the By-law are complied with upon the completion of each Phase.
- 17.** Within the lands shown on Schedule 'A' attached to this By-law, 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 water mains and sanitary sewers, and appropriate appurtenances, have been installed and are operational.
- 18.** 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 occurred.

19. Chapter 324, Site Specifics, of the Zoning Code is amended to include reference to this By-law.

BY-LAW NUMBER AND ADOPTION DATE	DESCRIPTION OF PROPERTY	PURPOSE OF BY-LAW
430-2016 May 5, 2016	Lands municipally known as 144 and 150 Berry Road	To amend the former Etobicoke Zoning Code to permit the development of a mixed-use development including a 2-storey commercial building and three residential buildings with heights of 6, 7, 8 and 10 storeys.

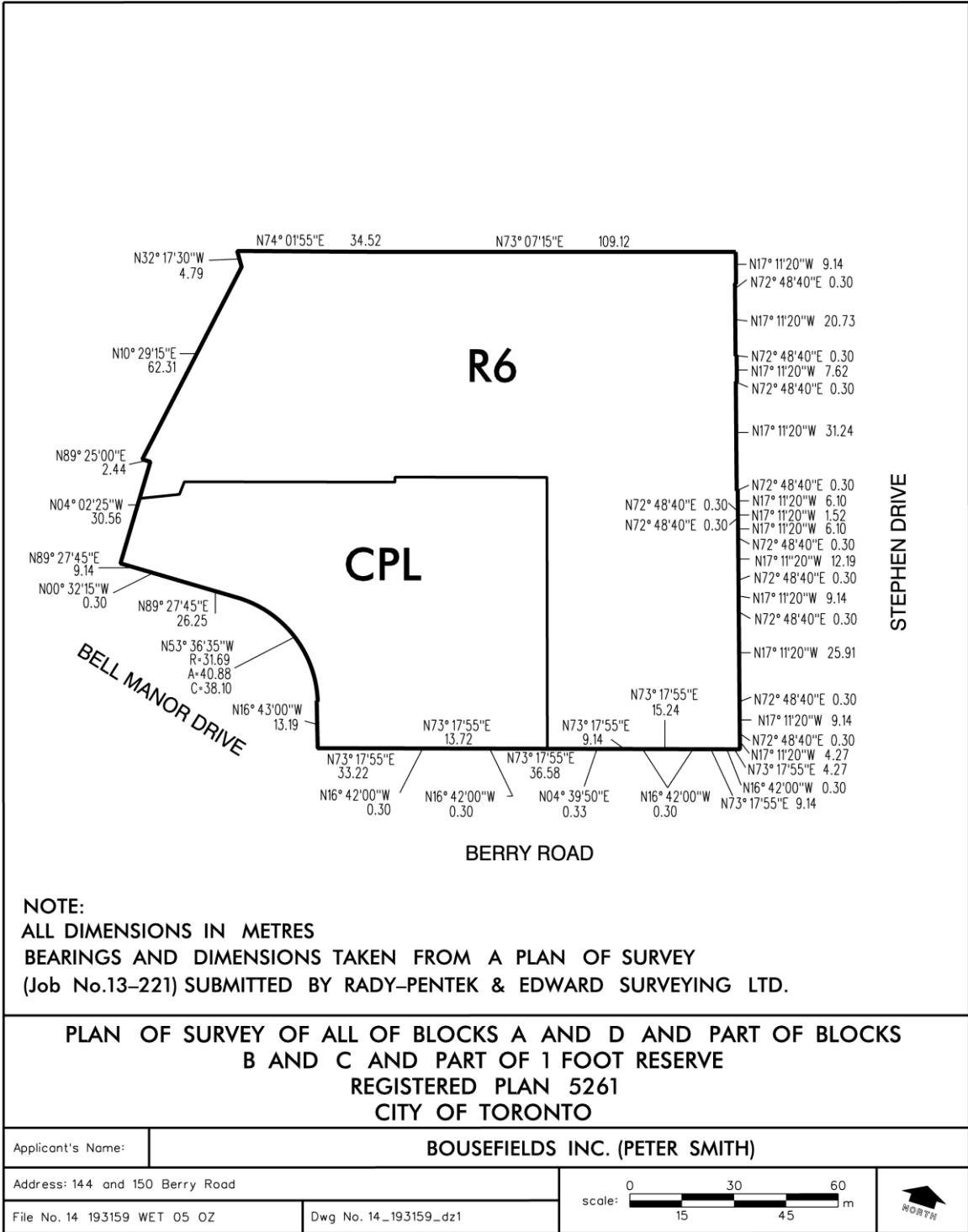
Enacted and passed on May 5, 2016.

Frances Nunziata,
Speaker

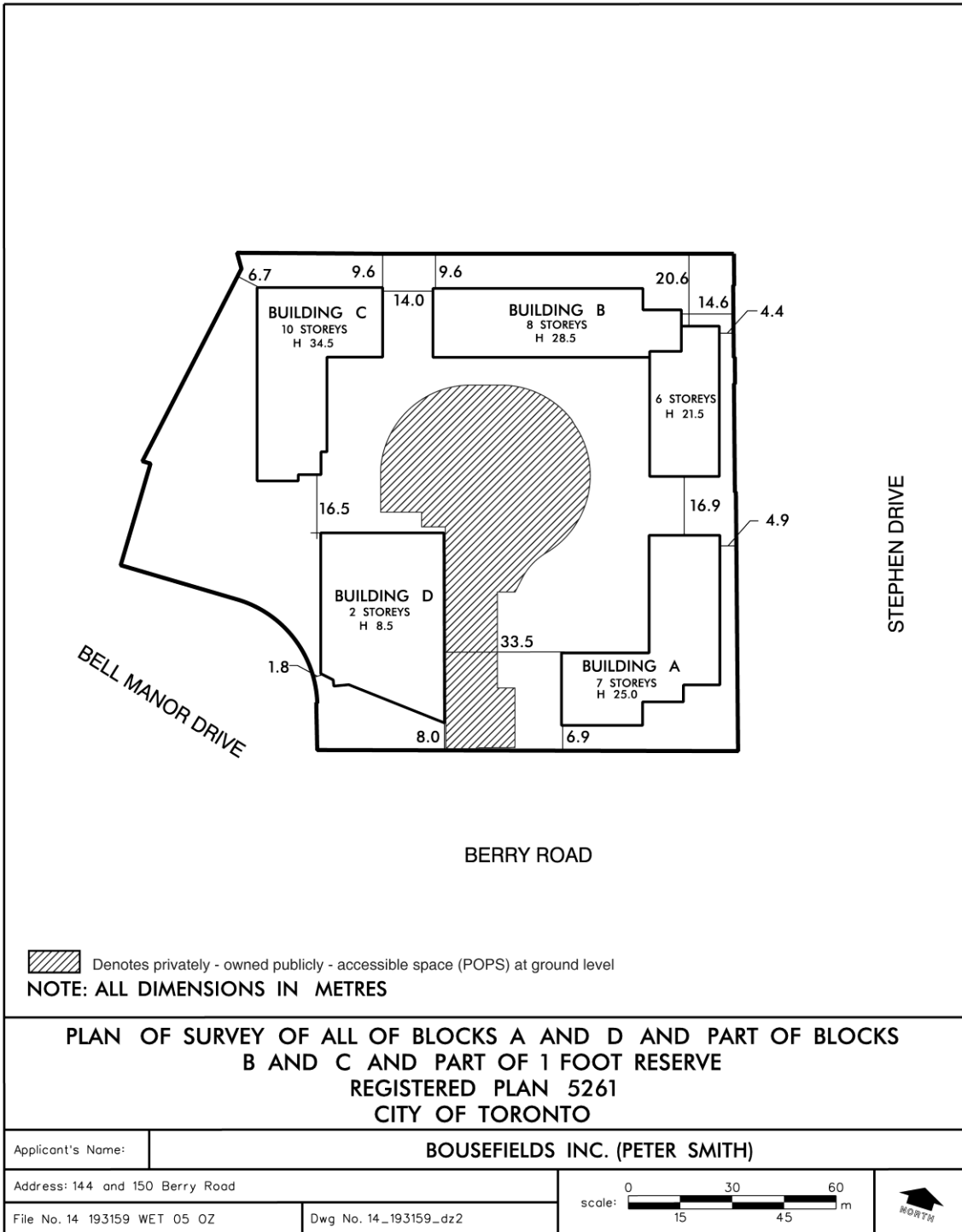
Ulli S. Watkiss,
City Clerk

(Seal of the City)

Toronto Schedule 'A' BY-LAW



Toronto Schedule 'B' BY-LAW



Schedule 'C'
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 and secured in an agreement or agreements under Section 37(3) of the *Planning Act* whereby the owner agrees as follows:

- (1) Prior to the registration of the condominium containing the 325th residential unit constructed on the property, the owner shall complete construction of a privately owned, publicly accessible open space having a minimum size of 3,600 square metres substantially in the location shown on Schedule 'B', and including a splash pad having a minimum value of \$300,000.00, with the details of the location, design and construction to be determined in the context of site plan approval for the first building containing residential units in the proposed development, and the owner shall convey a public access easement to the City, together with support rights as applicable, for the publicly accessible open space in a form satisfactory to the City Solicitor. In order to secure this obligation, a letter of credit in the amount of \$300,000.00 shall be provided to the City prior to the issuance of an above grade building permit for the first building containing dwelling units;
- (2) The owner will provide a minimum of 810 square metres of non-residential gross floor area on the ground floor of Building D on the property. The owner will enter into a 10 year lease with any registered not-for-profit food co-operative acceptable to the City and the owner for said 810 square metres;
- (3) For the term of the 10 year lease the tenant will pay rent at \$20.00 per square foot for the leased space, discounted to \$15.00 per square foot, the \$5.00 per square foot discount representing a Section 37 contribution. It is estimated that this will result in a benefit of \$43,635.00 annually and \$436,350.00 over the term of the lease;
- (4) The tenant shall have the opportunity to renew the lease at the end of the 10 year term at market rental rates;
- (5) The owner shall finish the leased space to include concrete floors (ready for application of a final finish), drywall (taped, sanded and primed) to demising partition, electrical panel, electrical service to a disconnect, HVAC system not including internal distribution, plumbing services to the demised premises, and life safety systems and emergency lighting for an open concept vacant space at the owner's cost, and in addition, the owner shall construct tenant space improvements having a value of \$300,000.00 to be used toward the interior buildout of the leased space for the purposes of the tenant. The \$300,000.00 in tenant space improvements shall be considered a Section 37 contribution;
- (6) For the duration of the 10 year lease the owner shall be responsible to cover maintenance and insurance to a maximum of \$8 per square foot, representing a Section 37 contribution. It is estimated that this will result in a benefit of \$69,816.00 annually and \$698,160.00 over the term of the lease;

- (7) The owner shall provide the leased space on a rent and TMI free basis for the first 6 months of the lease term having a value of \$152,722.00 which shall be considered a Section 37 contribution;
- (8) If for any reason the City and the owner are not able to select a suitable not-for-profit food co-operative to enter the lease, or the tenant has elected not to enter into the lease, then in addition to the privately owned publicly accessible open space and splash pad referenced in Section (1) above, prior to issuance of the first above grade building permit for a building containing residential units on the property, or such other date as may be mutually agreed by the parties, the owner shall provide a cash contribution to the City in the amount of \$700,000.00 to be used for streetscape improvements on The Queensway in Ward 5;
- (9) If for any reason the tenant or another not-for-profit food co-operative is unable to maintain its tenancy in the leased space, the value of the Section 37 contribution provided to date, including \$300,000.00 referenced in Section (1), \$43,635.00 annually referenced in Section (3), \$300,000.00 referenced in Section (5), \$69,816.00 annually referenced in Section (6) and \$152,722.00 referenced in Section (7), shall be determined and if the total contributed to date is less than \$1,000,000.00, the owner shall pay the City the difference between the total provided to date and \$1,000,000.00, with such funds to be used for streetscape improvements on The Queensway in Ward 5;
- (10) No residential unit may be occupied nor may a condominium containing residential units be registered until the 810 square metres of non-residential gross floor area in Building D is ready for occupancy; and
- (11) If at the earlier of occupancy or registration of the building containing the 325th residential unit on the property the leased space is occupied by the tenant and the value of the Section 37 contribution provided to date, as described in Section (9) above, is less than \$1,000,000.00, then the owner shall provide a letter of credit to the City to secure the difference between the contribution provided to date and \$1,000,000.00, which letter of credit may be reduced four times a year until the full \$1,000,000.00 has been provided.