

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. 431-2016

To amend Zoning By-law No. 569-2013, with respect to the lands municipally known in the year 2016 as 144 and 150 Berry Road.

Whereas Council of the City of Toronto has the authority pursuant to 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 By-law No. 569-2013 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. The lands subject to this By-law are outlined by heavy black lines on Diagram 1 attached to this By-law.
2. The words highlighted in bold type in this By-law have the meaning provided in Zoning By-law No. 569-2013, Chapter 800 Definitions.
3. Zoning By-law No. 569-2013, as amended, is further amended by amending the zone label on the Zoning By-law Map in Section 990.10 respecting the lands outlined by heavy black lines to CL (x3) and RA(x50), as shown on Diagram 2 attached to this By-law.

4. Zoning By-law No. 569-2013, as amended, is further amended by adding Article 900.10.10(3), Exception Number CL(x3) so that it reads:

Exception CL(x3)

The lands, or a portion thereof as noted below, are subject to the following Site Specific Provisions, Prevailing By-laws and Prevailing Sections.

Site Specific Provisions:

- (A) On 144 and 150 Berry Road, if the requirements of this By-law are complied with, none of the provisions of Chapters, Sections, Articles, Clauses or individual regulations apply to prevent the erection or use of a building, structure, addition or enlargement permitted in this By-law;
- (B) Clauses and Regulations 5.10.40.70, 30.5.40.10, 30.20.30.40, 30.20.40.10, 30.20.40.40, 30.20.40.60, 30.20.40.70, 30.20.40.80, 30.20.50.10, 30.20.80.20(1), 200.5.10.1, 220.5.1.10, 220.5.10.1, 230.5.1.10(7), and 230.5.10.1 do not apply;
- (C) The height of a **building** or **structure**, as measured from 89.90 metres Canadian Geodetic Datum, must not exceed the height in metres specified by the numbers following the symbol H as shown on Diagram 3 attached to this By-law;
- (D) Despite (C) above, the following **building elements** and **structures** are permitted to exceed the maximum heights as shown on Diagram 3 attached to this By-law:
- (i) 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, stairs, stair enclosures, trellises and window washing equipment;
- (E) The portions of a **building** or **structure** above ground must be located within the area outlined by heavy black lines on Diagram 3 attached to this By-law, except that:
- (i) 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 heavy black lines shown on Diagram 3 of this By-law;
- (F) A maximum **gross floor area** of 3,006 square metres must be within a **non-residential building**;

- (G) **Parking spaces** must be provided at a minimum rate of:
- (i) 1.5 **parking spaces** per 100 square metres of **gross floor area** used for retail store purposes; and
 - (ii) 1.0 **parking space** per 100 square metres of **gross floor area** for all other non-residential use;
- (H) Despite regulation 200.5.10 (1), **parking spaces** must be provided at a rate of 1.5 for each 100 square metres of **gross floor area** for a grocery store;
- (I) **Parking spaces** must be located in a **below-ground parking garage**, with the exception of a maximum of 13 **parking spaces** located at grade and required for non-residential purposes;
- (J) **Bicycle parking spaces** must be provided at a minimum rate of:
- (i) 3 "short-term" **bicycle parking spaces** plus 0.25 "short-term" **bicycle parking spaces** per 100 square metres of retail **gross floor area**;
 - (ii) 0.13 "long-term" **bicycle parking spaces** per 100 square metres of retail **gross floor area**;
 - (iii) 3 "short-term" **bicycle parking spaces** plus 0.10 "short-term" **bicycle parking spaces** per 100 square metres of non-residential **gross floor area**; and
 - (iv) 0.10 "long-term" **bicycle parking spaces** per 100 square metres of non-residential **gross floor area**;
- (K) All "short-term" **bicycle parking spaces** must be located at grade; and
- (L) A minimum of one Type "B" **loading space** and one Type "C" **loading space** must be provided for Building D.

Prevailing By-laws and Prevailing Sections (None Apply).

5. Zoning By-law No. 569-2013, as amended, is further amended by adding Article 900.7.10, Exception Number RA(x50) so that it reads:

Exception RA (x50)

The lands, or a portion thereof as noted below, are subject to the following Site Specific Provisions, Prevailing By-laws and Prevailing Sections.

Site Specific Provisions:

- (A) On 144 and 150 Berry Road, if the requirements of this By-law are complied with, none of the provisions of Chapters, Sections, Articles, Clauses or individual

regulations apply to prevent the erection or use of a building, structure, addition or enlargement permitted in this By-law;

- (B) Clauses and Regulations 5.10.40.70, 15.5.30.40, 15.5.40.10, 15.5.40.40, 15.5.40.60, 200.5.10.1, 220.5.1.10, 220.5.10.1, 230.5.1.10(7), and 230.5.10.1 do not apply;
- (C) The height of a **building** or **structure**, as measured from 87.00 metres Canadian Geodetic Datum for Building A; 88.00 metres Canadian Geodetic Datum for Building B; and 89.10 metres Canadian Geodetic Datum for Building C, must not exceed the height in metres specified by the numbers following the symbol H as shown on Diagram 3 attached to this By-law:
 - (i) 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, stairs, stair enclosures, trellises and window washing equipment;
- (D) The portions of a **building** or **structure** above ground must be located within the area outlined by heavy black lines on Diagram 3 attached to this By-law, except that:
 - (i) 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 heavy black lines shown on Diagram 3 of this By-law;
- (E) In addition to the uses permitted in Clauses 15.10.20.10 and 15.10.20.20, the following use shall be permitted in a RA(x50) zone:
 - (i) a temporary sales office;
- (F) A maximum of 505 **dwelling units** are permitted;
- (G) A maximum **gross floor area** of 33,100 square metres must be within **residential buildings**;
- (H) **Parking spaces** must be provided at a minimum rate of:
 - (i) 0.8 **parking spaces** per bachelor unit;
 - (ii) 0.9 **parking spaces** per 1 bedroom **dwelling unit**;
 - (iii) 1.0 **parking spaces** per 2 bedroom **dwelling unit**;
 - (iv) 1.2 **parking spaces** per 3 bedroom **dwelling unit**; and

- (v) 0.2 **parking spaces** per **dwelling** unit for visitor use;
- (I) **Parking spaces** must be located in a **below-ground parking garage**;
- (J) **Bicycle parking spaces** must be provided at a minimum rate of:
 - (i) 0.07 "short-term" **bicycle parking spaces** per **dwelling unit**; and
 - (ii) 0.68 "long-term" **bicycle parking spaces** per **dwelling unit**;
- (K) All "short-term" **bicycle parking spaces** must be located at grade; and
- (L) A minimum of 3 **loading spaces** must be provided, in accordance with the following minimum requirements:
 - (i) one Type "G" **loading space** for Building A;
 - (ii) one Type "G" **loading space** for Building B; and
 - (iii) one Type "G" **loading space** for Building C.

Prevailing By-laws and Prevailing Sections (None Apply).

6. Section 37 Provisions

- (A) 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 Diagram 2 in return for the provision by the owner, at the owner's expense of the facilities, services and matters set out in Schedule 'A' hereof and which are secured by one or more agreements pursuant to Subsection 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;
- (B) Where Schedule 'A' 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;
- (C) 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 'A' are satisfied;
- (D) The owner shall provide the following in accordance with the terms set out in Schedule 'A' of this By-law:
 - (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 'A' of this By-law at the expense of the owner, or such alternate cash contribution as is described in Schedule 'A' of this By-law;

- (ii) a splash pad within the privately-owned publicly-accessible space to be constructed and provided on the terms set out in Schedule 'A' of this By-law. 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 'A' of this By-law 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;
- (E) 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

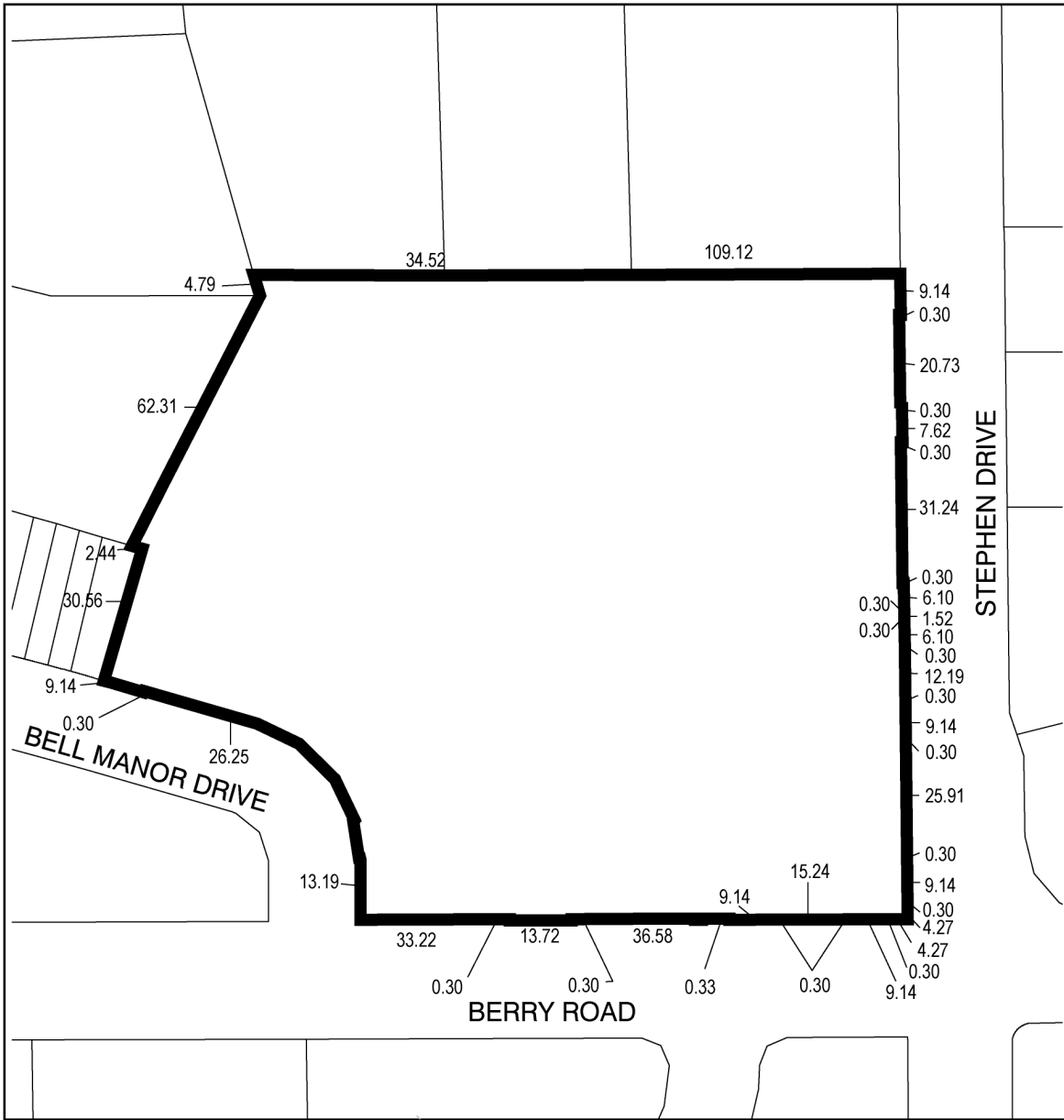
improvements and upgrades are necessary to accommodate the proposed development.

Enacted and passed on May 5, 2016.

Frances Nunziata,
Speaker

Ulli S. Watkiss,
City Clerk

(Seal of the City)



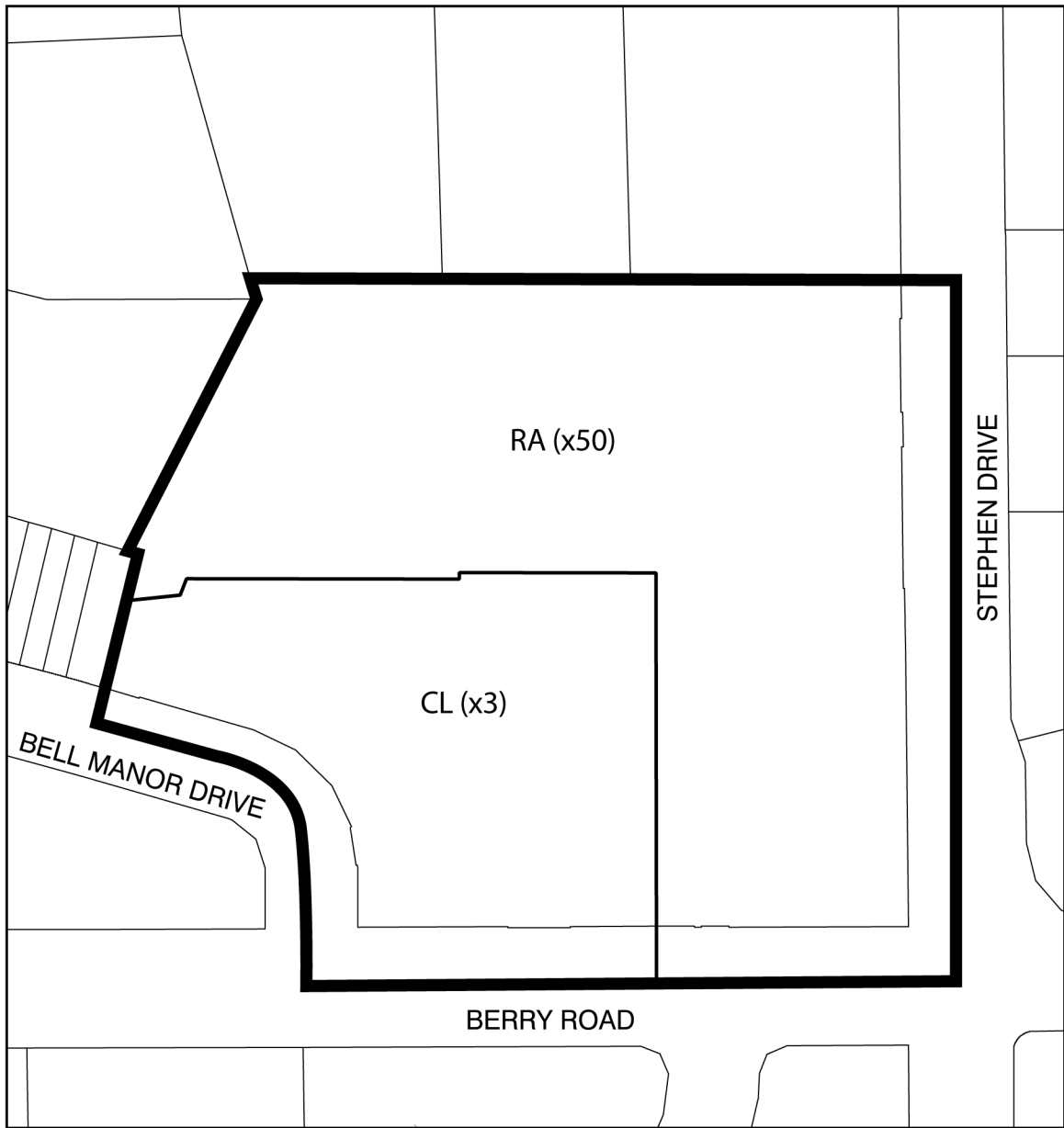
144 & 150 Berry Road

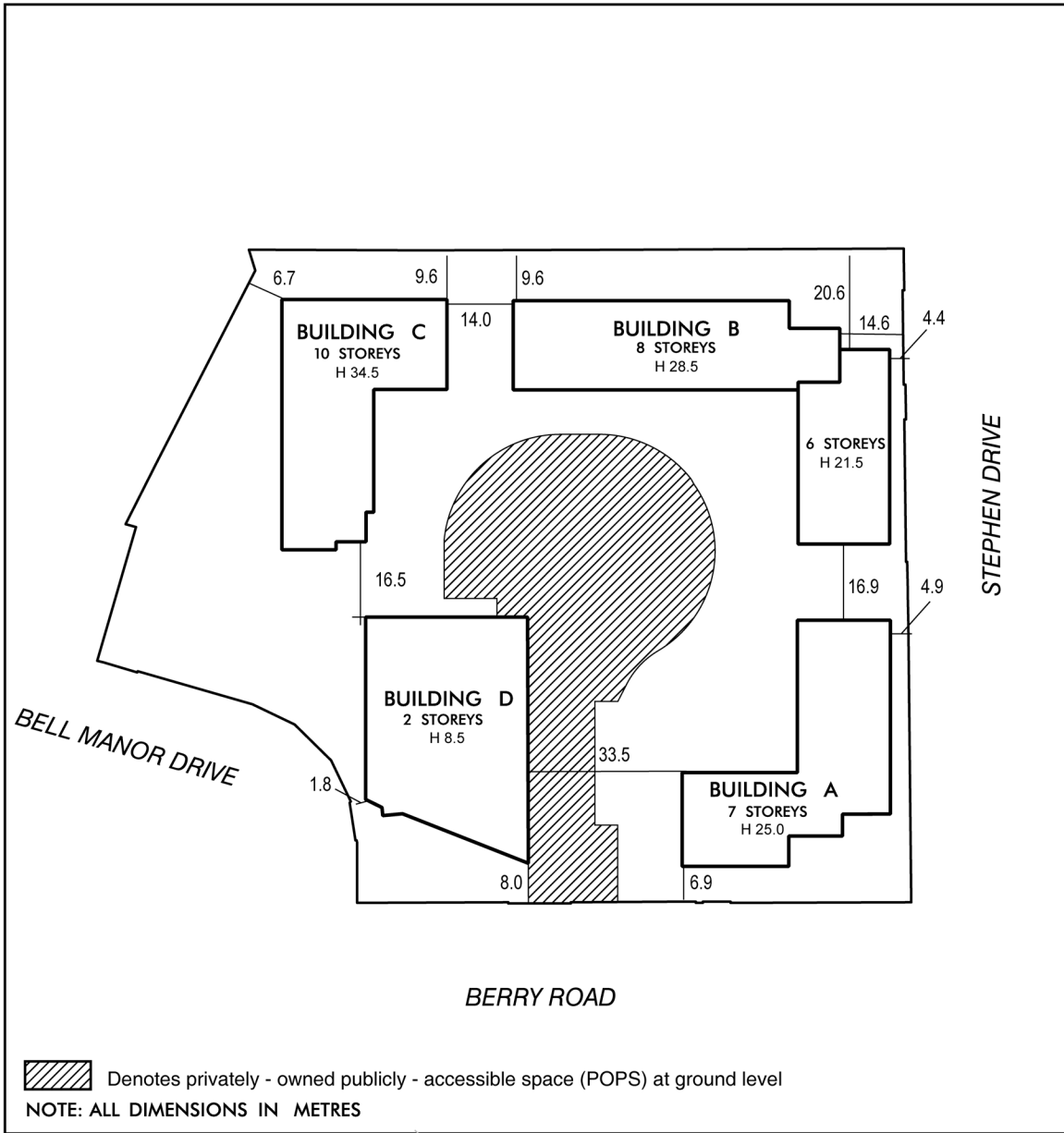
Diagram 1

File # 14 193159 WET 05 02



City of Toronto By-Law 569-2013
Not to Scale
01/26/2016





SCHEDULE 'A'
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 on the lands as shown in Diagram 3 in this By-law 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 Diagram 3, 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.