

CITY OF TORONTO

BY-LAW 854-2017(OMB)

To amend former City of Toronto Zoning By-law 438-86, as amended, with respect to the lands municipally known as 387-403 Bloor Street East and 28 Selby Street.

Whereas after hearing the appeal under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, and pursuant to its Decision in respect of Board File PL141371 issued on July 20, 2015 and its Order issued April 6, 2017, the Ontario Municipal Board deems it advisable to amend former City of Toronto By-law 438-86, as amended; and

Whereas the Official Plan for the City of Toronto contains such 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* or 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 matter 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, and the Ontario Municipal Board on appeal, 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 438-86, 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;

Former City of Toronto Zoning By-law 438-86, as amended, is amended as follows:

1. Pursuant to Section 37 of the *Planning Act*, the *heights* and density of development permitted by this By-law on the *lot* as shown on Map 1 attached to and forming part of this By-law are permitted subject to compliance with the conditions set out in this By-law and in return for the provision by the *owner* of the *lot* of the facilities, services and matters set out in Appendix 1 hereof, the provisions of which shall be secured by an agreement or agreements with the *City* pursuant to Section 37(3) of the *Planning Act*.
2. Upon execution and registration of an agreement between the *City* and the *owner* of the *lot* pursuant to Section 37 of the *Planning Act* securing the provision of the facilities, services and matters set out in Appendix 1 hereof, the *lot* is subject to the provisions of this By-law, provided that in the event the said agreement(s) requires the provision of a facility, service or matter as a precondition to the issuance of a *building permit* or a

permit pursuant to the *Ontario Heritage Act*, the *owner* may not erect or use such building until the *owner* has satisfied the said requirements.

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*", "*grade*", "*height*", "*lot*", "*residential gross floor area*", and Sections 4(2)(a), 4(5)(b), 4(5)(h), 4(8)(b)(d) and (e), 4(12), 4(13)(a) and (c), 8(3) Part I 1,2 and 3, 8(3)Part II 1(a)(ii) and 8(3)Part III 1(a) of By-law 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, on the lands delineated by heavy lines on the Map 1 attached to and forming part of this By-law (hereinafter referred to as the "*lot*"), being municipally known as 387-403 Bloor Street East and 28 Selby Street, provided:
 - (a) The *lot* comprises at least 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 43,250 square metres, of which:
 - (i) the total *residential gross floor area* erected or used on the *lot* shall not exceed 30,000 square metres; and
 - (ii) the total *non-residential gross floor area* erected or used on the *lot* shall not exceed 14,000 square metres;
 - (c) A maximum of 487 *dwelling units* are to be erected or used on the *lot*;
 - (d) A maximum of 188 hotel suites are to be erected or used on the *lot*;
 - (e) The average floor area of the *dwelling units* erected on the *lot* shall be at least 48 square metres;
 - (f) 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) cornices, lighting fixtures, eaves and vents may project 0.65 metres beyond the heavy lines on Map 2;

- (ii) ornamental elements may project 1.0 metre beyond the heavy lines on Map 2;
 - (iii) balconies may project 2.0 metres beyond the heavy lines on Map 2, provided they do not project beyond the *lot* line;
 - (iv) canopies may project 2.5 metres beyond the heavy lines on Map 2 provided that they may not project beyond the *lot* line without City permission; and
 - (v) window washing equipment may project 3.0 metres beyond the heavy lines on Map 2;
- (g) No portion of any building or structure is located above the *height* in metres specified by the numbers following the symbol H shown on the attached Map 2, with the exception of the following:
- (i) retaining walls to a maximum of 0.5 metres above the permitted *height*;
 - (ii) stacks and pipes, to a maximum of 1.0 metre above the permitted *height*;
 - (iii) railings, fencing, planters, parapets, roof access hatches and skylights, to a maximum of 1.5 metres above the permitted *height*;
 - (iv) stairs and stair enclosures, ornamental elements, vents, gas meters, terrace and balcony guards and dividers, window washing equipment, flues and mechanical equipment, and wind or privacy screens, to a maximum of 3.0 metres above the permitted *height*;
 - (v) landscape and public art features, structures used for outdoor recreation, seating, safety or wind protection purposes, elevator overrun and lighting fixtures, to a maximum of 4.0 metres above the permitted *height*;
 - (vi) window washing equipment to a maximum of 4.5 metres above the permitted *height*;
 - (vii) a decorative screen located adjacent to the publicly accessible open space to a maximum of 6.2 metres above *grade*; and
 - (viii) notwithstanding subsections (i)–(vi) above, only railings and parapets, window washing equipment, elevator overrun, elements of a green roof, roof access hatches, vents, stacks, pipes, chimneys and structures used for safety or wind protection purposes shall be permitted above the roof of the portion of the *mixed-use building* shown on Map 2 as having a permitted *height* of 17.75 metres by a maximum of 3 metres and by a maximum of 3.5 metres in the case of window washing equipment;

- (h) Notwithstanding subsection (g)(i)-(vi) above, no portion of any building or structure may project above a *height* of 179.0 metres except window washing equipment which may project above the permitted *heights* by a maximum of 4.5 metres;
- (i) No *residential gross floor area* shall be located above a *height* of 168 metres and 52 *storeys*;
- (j) No window of a *dwelling unit* (other than a window of a kitchen or bathroom) in the *mixed-use building* shall be closer than:
 - (i) 6.0 metres to the east *lot* line; and
 - (ii) 10.0 metres to the west *lot* line;
- (k) No balconies shall be permitted below a geodetic elevation of 179.0 metres on the east facing wall of the *mixed-use building*;
- (l) The roof of the portion of the *mixed-use building* shown on Map 2 as having a permitted *height* of 17.75 metres shall not be used for purposes other than for building maintenance and repair, emergency access and for installation and maintenance of a green roof;
- (m) A minimum of 230 square metres of outdoor privately-owned publicly accessible open space shall be provided and maintained on the *lot* as shown on Map 2;
- (n) A minimum of 92 *parking spaces* shall be provided and maintained on the *lot* for the shared use of the non-residential uses on the *lot* and visitors to the *dwelling units* on the *lot*;
- (o) A minimum of 88 *parking spaces* shall be provided and maintained on the *lot* for the use of residential occupants of the *mixed-use building*;
- (p) A minimum of 18 *bicycle parking spaces* shall be provided and maintained on the *lot* for visitors to the *dwelling units* of the *lot*, located outdoors or indoors but not within a bike locker;
- (q) *Residential amenity space* shall be provided and maintained on the *lot* in accordance with the following:
 - (i) a minimum of 635 square metres or 1.3 square-metres per dwelling unit of indoor *residential amenity space*, in a multi-purpose room or multi-purpose rooms, at least one of which contains a kitchen and a washroom; and
 - (ii) a minimum of 613 square metres or 1.25 square metres per dwelling unit of outdoor *residential amenity space*, of which at least 40 square metres is

to be provided in a location adjoining or directly accessible from the indoor *residential amenity space*;

- (r) A minimum of one *loading space-type B*, one *loading space- type C* and one *loading space type G* shall be provided and maintained on the *lot*;
 - (s) A minimum of five per cent of the *dwelling units* constructed on the *lot* shall contain a minimum of two bedrooms and shall have a minimum *residential gross floor area* of 79 square metres and have the ability to be converted to three bedroom units;
 - (t) A temporary *sales presentation centre* shall be permitted on the *lot*, and none of the other provisions of this By-law or By-law 438-86 shall apply to such use.
5. Despite any existing or future severance, partition or division of the *lot*, this By-law shall continue to apply to the whole of the *lot* as if no severance, partition or division occurred.
6. The *owner* shall ensure that all water mains, sanitary and storm sewers and appropriate appurtenances required for the development of this site have been built or secured via a letter of credit acceptable to the Director of Technical Services prior to the issuance of a building permit, which for clarity, shall not include any permit for demolition, excavation or shoring.
7. None of the provisions of Section 12(2) 380 of the former City of Toronto By-law 438-86, as amended, shall apply to the *lot*.
8. For the purposes of this By-law, all italicized words and expressions in this exception have the same meanings as defined in By-law 438-86, as amended, with the exception of the following:

"bicycle parking space - occupant" means an area that is equipped with a bicycle rack, locker or bike 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; and
- (iii) bike stackers are permitted in which case the foregoing dimensions shall not apply;

"grade" means an elevation of 115.00 metres Canadian Geodetic Datum;

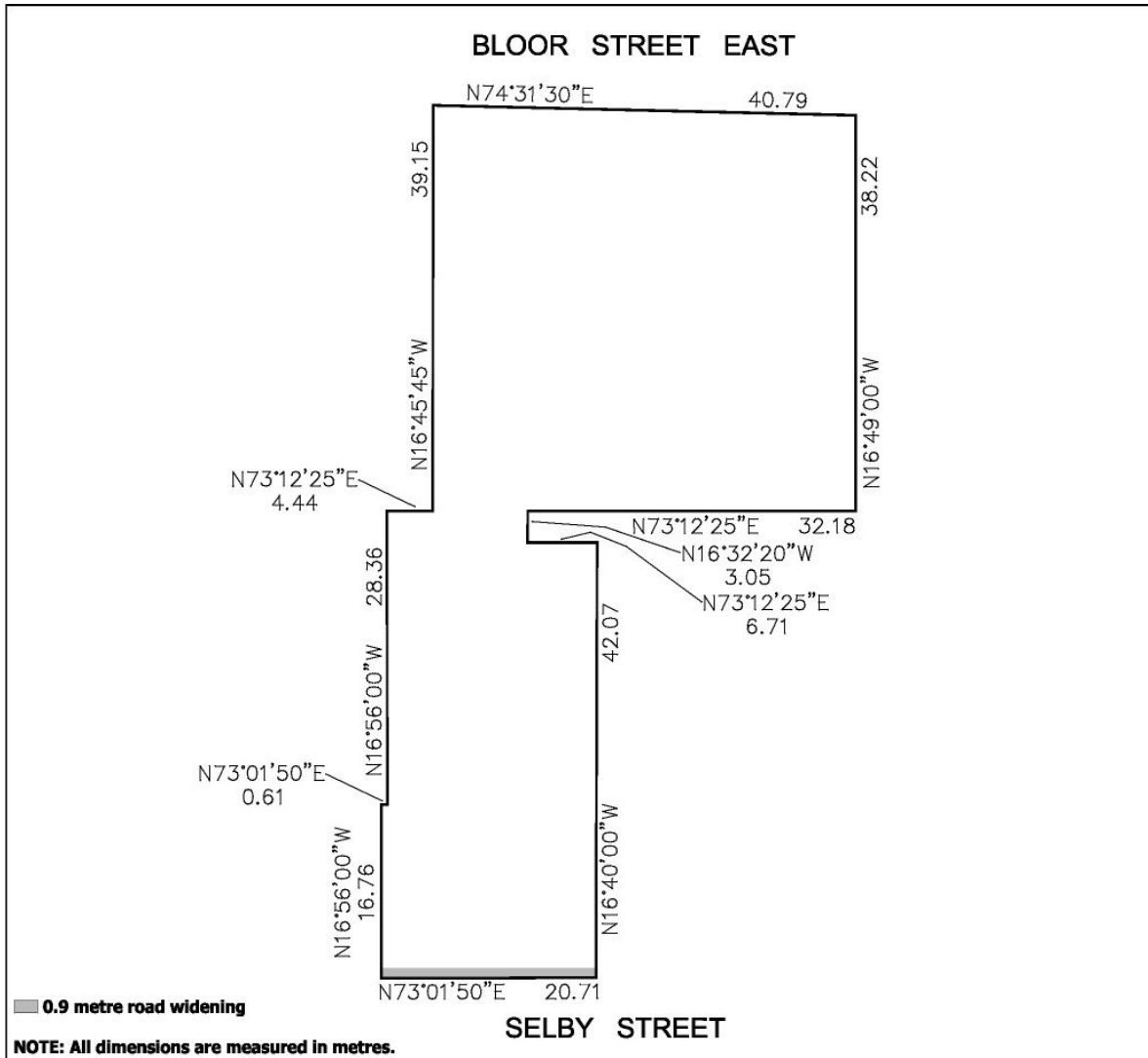
"height" means the vertical distance between *grade* and the highest point of the roof except for those elements prescribed in this By-law;

"lot" means those lands outlined by heavy lines on Map 1 attached hereto;

"residential gross floor area" shall be as defined in By-law 438-86 except that all areas used for *residential amenity space* shall be excluded from the calculation of *residential gross floor area*; and

"sales presentation centre" shall mean an office provided for the marketing or selling and/or leasing of *dwelling units* located or to be located on the *lot*.

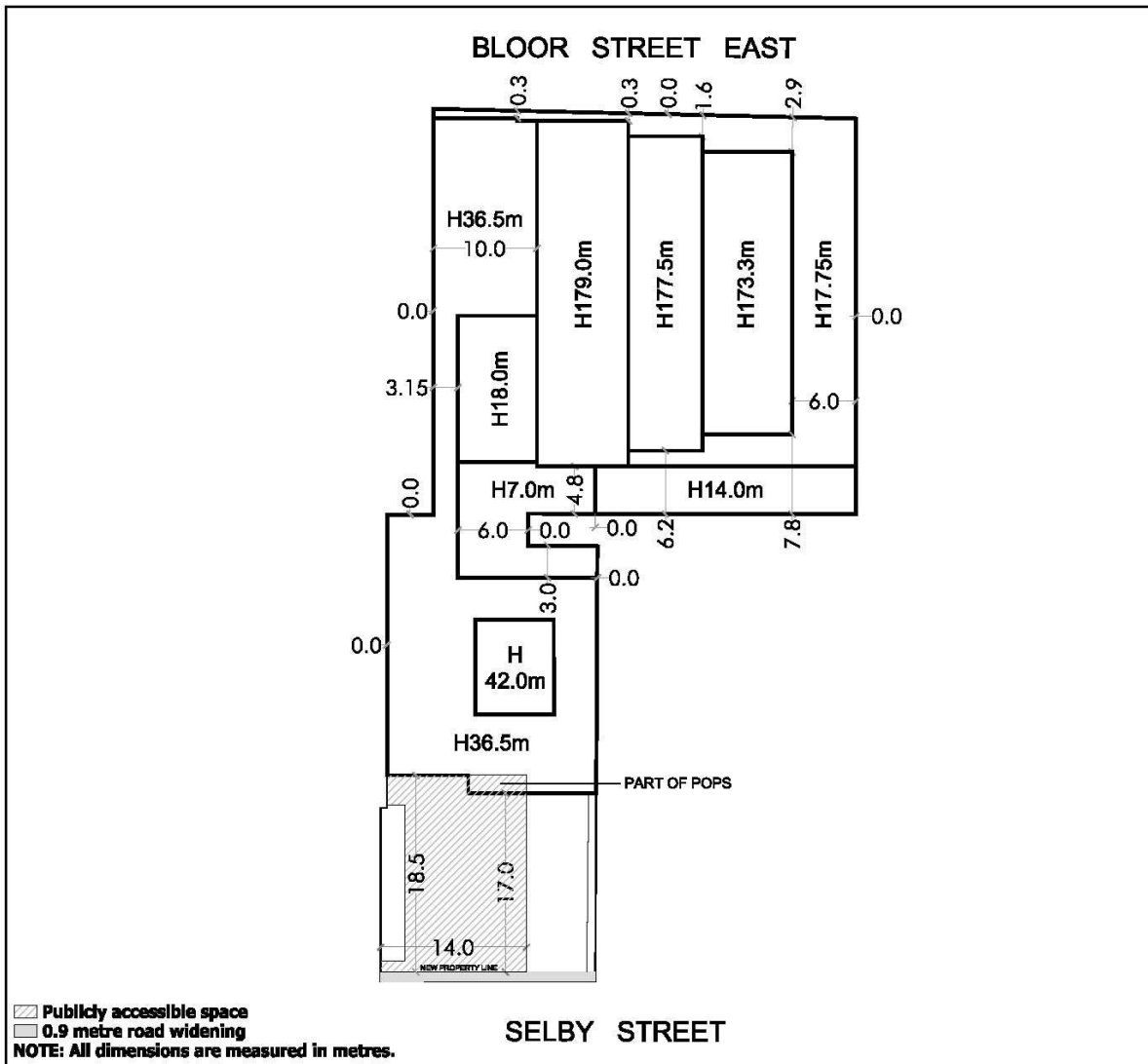
Ontario Municipal Board Decision/Order issued on April 6, 2017 in Board Case PL141371.



**387-403 Bloor Street East
& 28 Selby Street, Toronto**

Map 1

File #15 _____



**387-403 Bloor Street East
& 28 Selby Street, Toronto**

Map 2

File #15



Not to Scale

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 Subsection 37(3) of the *Planning Act*, in a form satisfactory to the City with conditions providing for indexing escalation of both the financial contributions and letters of credit, development charges, indemnity, insurance, GST, HST, termination and unwinding, and registration and priority of agreement:

1. Prior to the issuance of the first above grade building permit for the *mixed use building* on the *lot*, the *owner* shall pay to the City the sum of Three Million, Three Hundred Thousand Dollars (\$3,300,000.00) by certified cheque, with the contribution to be used by the City towards the following capital improvements, all to the satisfaction of the Chief Planner, Executive Director, City Planning in consultation with the local Councillor:
 - (a) a cash payment of \$330,000.00 for the capital improvement of existing or the creation of new affordable housing Ward 27;
 - (b) a cash payment of \$330,000.00 for the capital improvement of existing or the creation of new community and/or cultural space in Ward 27;
 - (c) a cash payment of \$640,000.00 for capital improvements of local parkland; and
 - (d) a cash payment of \$2,000,000.00 for local area streetscape improvements.
2. In the event any of the cash contribution in Section 1(a) – (d) above have not been used for the intended purpose within three (3) years of this By-law coming into full force and effect, the cash contribution may be redirected for another purpose, at the discretion of the Chief Planner and Executive Director of City Planning, in consultation with the local Councillor, provided that the purpose is identified in the Toronto Official Plan and will benefit the community in the vicinity of the subject site.
3. The required cash contribution pursuant to Section 1(a) – (d) above are to be indexed upwardly in accordance with the Statistics Canada Non-Residential building Construction Price Index for Toronto, calculated from the date of the Section 37 Agreement to the day the payment is made.
4. Prior to the issuance of any permit for all or any part of the property at 403 Bloor Street East, but excluding permits for repairs and maintenance and usual and minor works for the existing heritage building as are acceptable to the Manager, Heritage Preservation Services, the *owner* shall provide full documentation of the existing building, including archival quality photographs of all exterior elevations and features keyed to a location map to the satisfaction of the Manager Heritage Preservation Services.
5. The *owner* shall provide for the tenant relocation and assistance for the tenants of this rental property to the satisfaction of the Chief Planner, Executive Director, City Planning.

6. The *owner* enters into and registers on title to the *lot* one or more agreements with the City pursuant to Section 37 of the *Planning Act*, to the satisfaction to the City Solicitor, in consultation with the Chief Planner, to secure the facilities, services and matters set forth in this Appendix 1.