

Authority: Ontario Municipal Board Decision/Order issued November 2, 2016 and  
Local Planning Appeal Tribunal Decision/Order issued September 7, 2018 in  
Tribunal File PL151029

## CITY OF TORONTO

### BY-LAW 1349-2018(LPAT)

#### **To amend former City of Toronto Zoning By-law 438-86, as amended, with respect to the lands municipally known as 15-35 Mercer Street.**

Whereas the Ontario Municipal Board by its decision issued on November 2, 2016 and the Local Planning Appeal Tribunal, by its Order issued on September 7, 2018, in File PL151029 approved amendments to the former City of Toronto Zoning By-law 438-86, as amended, with respect to the lands; 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 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, 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 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;

Pursuant to the Order of the Local Planning Appeal Tribunal, By-law 438-86 of the former City of Toronto, as amended, is further amended 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 Schedule 1 of this By-law, to the *City* at the *owner's* 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 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 Schedule 1 of this By-law, 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*, the *owner* may not erect or use such building until the *owner* has satisfied the said requirements.

3. Except as otherwise provided herein, the provisions of Zoning By-law 438-86 shall continue to apply to the *lot*.
4. None of the provisions of Section 2(1) with respect to the definition of '*height*', '*grade*' '*parking spaces*' and '*lot*' and Sections 4(2)(a), 4(5), 4(8), 4(12), 4(13), 4(14), 4(16), 7(3), Part I 1, 7(3) Part II 4, 7(3) Part II 5, 7(3) Part III, 12(2)132, 12(2)246 (a) to (i) and 12(2) 339 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 or use of a *mixed-use building* on the *lot* provided that:
  - (a) the aggregate of the *residential gross floor area* and *non-residential gross floor area* of buildings and structures shall not exceed 69,800 square metres, of which the *non-residential gross floor area* of buildings and structures shall not exceed 15,900 square metres;
  - (b) *non-residential gross floor area* below *grade* shall not exceed 2,000 square metres;

#### Permitted Height Exceptions

- (c) no portion of a building or structure erected on the *lot* shall have a greater *height* in metres than the *heights* in metres specified by the numbers following the symbol H on the attached Map 2 except:
  - (i) That the maximum *height* for public art, safety railings, parapets, roof drainage, thermal insulation and roof ballast, structures for outside or open air recreation, partitions dividing outdoor recreation areas, terrace guards and dividers, planters, railings, decorative screens, stairs, stair enclosures, elevator shafts, elevator shaft enclosures, wall or structure enclosing such elements, lightning rods and exhaust flues and window washing equipment having a maximum height of the sum of 3.0 metres and the applicable *height* limit shown on Map 2 shall be permitted within any area on Map 2; and
  - (ii) That the maximum *height* for trellises having a maximum height of the sum of 4.0 metres and the applicable *height* limit shown on Map 2 shall be permitted within any area on Map 2;

### Yard Setbacks and Exceptions

- (d) no portion of a building or structure erected or used above *grade* is located otherwise than wholly within the areas delineated by heavy solid lines on the attached Map 2 except:
- (i) Awnings, lighting fixtures, ornamental elements, window sills, balustrades, columns, support structures, mechanical equipment, exhaust flutes, exhaust fans, wheelchair ramps, underground garage ramps, landscape and public art features, safety railings, thermal insulation, roof ballast, structures for outside or open air recreation, partitions dividing outdoor recreation areas, terrace guards and dividers, planters, railings, decorative screens, stairs, stair enclosures, trellises, wall or structure enclosing such elements, lightning rods and exhaust flues may extend to a maximum of 2.0 metres beyond the heavy solid lines shown on Map 2;
  - (ii) Projecting architectural features may extend to a maximum of 0.5 metres beyond the heavy solid lines shown on Map 2; and
  - (iii) Portions of the existing heritage building encroachment;
- (e) notwithstanding (d), no portion of a building or structure erected or used for the *storeys* between 17 metres and 24 metres above *grade* is located otherwise than wholly within the areas delineated by heavy solid lines on the attached Map 3 except that:
- (i) Awnings, lighting fixtures, ornamental elements, window sills, balustrades, columns, support structures, mechanical equipment, exhaust flutes, exhaust fans, wheelchair ramps, underground garage ramps, landscape and public art features, safety railings, thermal insulation, roof ballast, structures for outside or open air recreation, partitions dividing outdoor recreation areas, terrace guards and dividers, planters, railings, decorative screens, stairs, stair enclosures, trellises, wall or structure enclosing such elements, lightning rods, mechanical equipment and exhaust flues may extend to a maximum of 2.0 metres beyond the heavy solid lines shown on Map 3;
- (f) despite the provisions of Section 12(2)380 of By-law 438-86 as amended by By-law 1106-2016, every *tower*, including platforms, such as a balcony, must be no closer than 20 metres to another *tower* on the *lot*; excluding roofing materials;

### Amenity Space

- (g) a minimum of 820 square metres of indoor *residential amenity space* shall be provided on the *lot* in a multi-purpose room or rooms, at least one of which contains a kitchen and a washroom;

- (h) a minimum of 362 square metres of outdoor *residential amenity space* shall be provided on the *lot*; and
- (i) a minimum of 40 square metres of outdoor *residential amenity space* shall be adjacent to the indoor *residential amenity space* which contains a kitchen and a washroom;

#### Parking

- (j) a minimum of 0.2 *parking spaces* per dwelling unit for residents shall be provided on the *lot*;
- (k) a *commercial parking garage* is permitted on the *lot* below *grade* and shall not exceed 30 spaces;
- (l) Despite the provisions of Section 4(17) of By-law 438-86, a maximum number of 10 *parking spaces* on the *lot* are permitted to have the following minimum dimensions:
  - (i) Vertical clearance of 1.75 metres;
  - (ii) Width of 2.5 metres, and
  - (iii) Length of 5.5 metres;
- (m) a minimum of 20 *parking spaces* shall be provided on the *lot* for the shared use of residential visitors, *hotel* guests and non-residential uses and may be provided and maintained within or outside of a *parking stacker*;
- (n) parking spaces required for residential visitors, *hotel* guests and non-residential uses, as referenced in (m), may be provided and maintained within the *commercial parking garage*;

#### Loading

- (o) a minimum of two loading space – type "C" that may be located on P1, and one *loading space - type "G"*, shall be provided and maintained on the *lot*;

#### Bicycle Parking

- (p) a minimum of 1.0 *bicycle parking spaces* per unit shall be provided within or outside of a *parking stacker – bicycle* on the *lot*, of which 0.9 resident *bicycle parking spaces - occupant* per unit shall be provided, 0.1 residential *bicycle parking spaces - visitor* per unit shall be provided;
- (q) *bicycle parking spaces – occupant* or *bicycle parking spaces – visitor* may be provided in a secured room or bicycle locker above or below *grade* and may be provided in a *parking stacker - bicycle*;

### Temporary Sales Office

- (r) a *temporary sales office*, used exclusively for the initial sale and/or initial leasing of *dwelling units* or *non-residential gross floor area* to be erected on the *lot*, shall be permitted;

### Definitions

- (s) for the purposes of this By-law, each word or expression that is italicized in the By-law shall have the same meaning as each such word or expression as defined in By-law 438-86, as amended, with the exception of the following terms:
- (i) "*Above-grade building permit*" means the first *building permit* issued respecting all or any part of the *lot* that permits the erection of any above *grade* portion of a building;
  - (ii) "*Building permit*" means a permit issued under the *Building Code Act, 1992, S.O. 1992, c.23* as amended or re-enacted from time to time, including a permit for excavation or shoring and including a conditional permit, but it does not include any permit issued to construct a *temporary sales office* or a portion thereof or for usual and minor works, repairs and maintenance of the existing designated heritage buildings on the *lot* acceptable to the Senior Manager. Heritage Preservation Services;
  - (iii) "*City*" means the City of Toronto;
  - (iv) "*Floorplate*" shall mean the total floor area of a storey measured to the exterior walls of that storey;
  - (v) "*Grade*" means 85.4 metres Canadian Geodetic Datum;
  - (vi) "*Height*" means the vertical distance between *grade* and the highest point of the roof except for those elements prescribed in Section 2(d) of this By-law;
  - (vii) "*Lot*" means the lands delineated by heavy lines on Map 1 attached to this By-law;
  - (viii) "*Owner*" means the registered fee simple owner(s) of the *lot*;
  - (ix) "*Parking stacker - bicycle*" means a mechanical bicycle parking facility with *bicycle parking spaces* which:
    - (A) are positioned above each other;
    - (B) the platform of such *bicycle parking spaces* may have dimensions of not less than 0.37 metres by 1.80 metres and a height allowance of 1.2 metres; and

- (C) may not be readily accessible at all times without maneuvering another bicycle or device;
  - (x) "*Temporary sales office*" means a building structure, facility or trailer on the *lot* used exclusively for the initial sale and/or initial leasing of Dwelling Units to be erected on the *lot*; and
  - (xi) "*Tower*" means the portions of a building which collectively enclose the entirety of a *storey* higher than 43.3 metres above *grade*.
5. Despite any future severance, partition or division of the *lot* as shown on Map 1, the provisions of this By-law shall apply as if no severance, partition or division occurred.
6. Within the lands shown on Map 1 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 new public roads have been constructed to a minimum of base curb and base asphalt and are connected to an existing public highway; and
  - (b) all water mains and sanitary sewers, and appropriate appurtenances, have been installed and are operational.

Ontario Municipal Board Decision/Order issued November 2, 2016 and Local Planning Appeal Tribunal Decision/Order issued September 7, 2018 in Tribunal File PL151029

**SCHEDULE 1**  
**Section 37 Provisions**

The facilities, services and matters set out herein are the matters required to be provided by the *owner* of the site 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 indexing escalation of all financial contributions from the passage of the zoning by-law, no credit for development charges, indemnity, insurance, HST, termination and unwinding, and registration and priority of agreement whereby the *owner* shall agree as follows:

1. Prior to the issuance of the first *above-grade building permit* for a building on the *lot* the *owner* shall make a cash contribution to the City in the amount of five million five hundred thousand dollars (\$5,500,000.00 CAN) to be allocated, toward the following:
  - (A) \$2,750,000.00 toward the construction of the YMCA facility to be constructed at 505 Richmond Street West;
  - (B) \$1,650,000.00 for above base streetscape improvements on Mercer Street between John Street and Blue Jays Way, to the satisfaction of the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor;
  - (C) \$550,000.00 for the maintenance of or the provision of new rental housing units as part of the Alexandra Park and Atkinson Housing Co-operative Revitalization, to be directed to the Capital Revolving Fund for Affordable Housing;
  - (D) \$550,000.00 toward the Toronto Community Housing (TCHC) revolving capital fund for repairs to TCHC housing in Ward 20 as it exists on the date of this agreement, or such future Ward in which this Site is located; and
  - (E) in the event the cash contributions referred to in Section (A), (B), (C), and D) above has 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, City Planning, in consultation with the local Councillor, provided that the purpose is identified in the Official Plan and will benefit the community in the vicinity of the lands.

The above noted \$5,500,000.00 cash contribution is to be indexed upwardly in accordance with the Non-Residential Construction Price Index for the Toronto CMA, reported by Statistics Canada or its successor, calculated from the November 2, 2016 Ontario Municipal Board decision to the date of payment. All cash contributions will be payable prior to issuance of the first *above-grade building permit*.

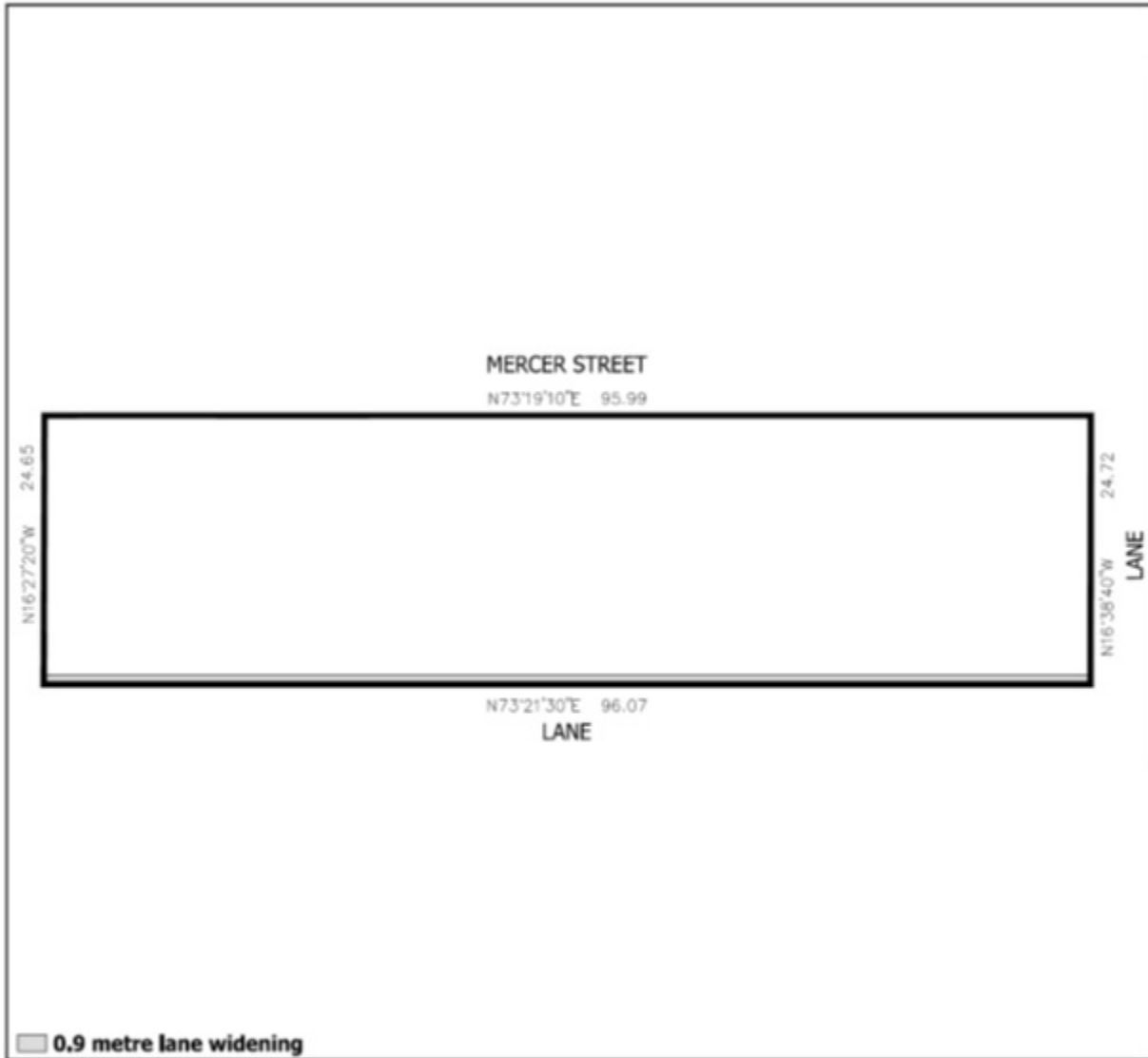
2. The following additional services, facilities or matters pursuant to Section 37 of the Planning Act, as may be required by the Chief Planner and Executive Director, City Planning, in consultation with the Ward Councillor be secured in the Section 37 Agreement as a legal convenience to support the development:

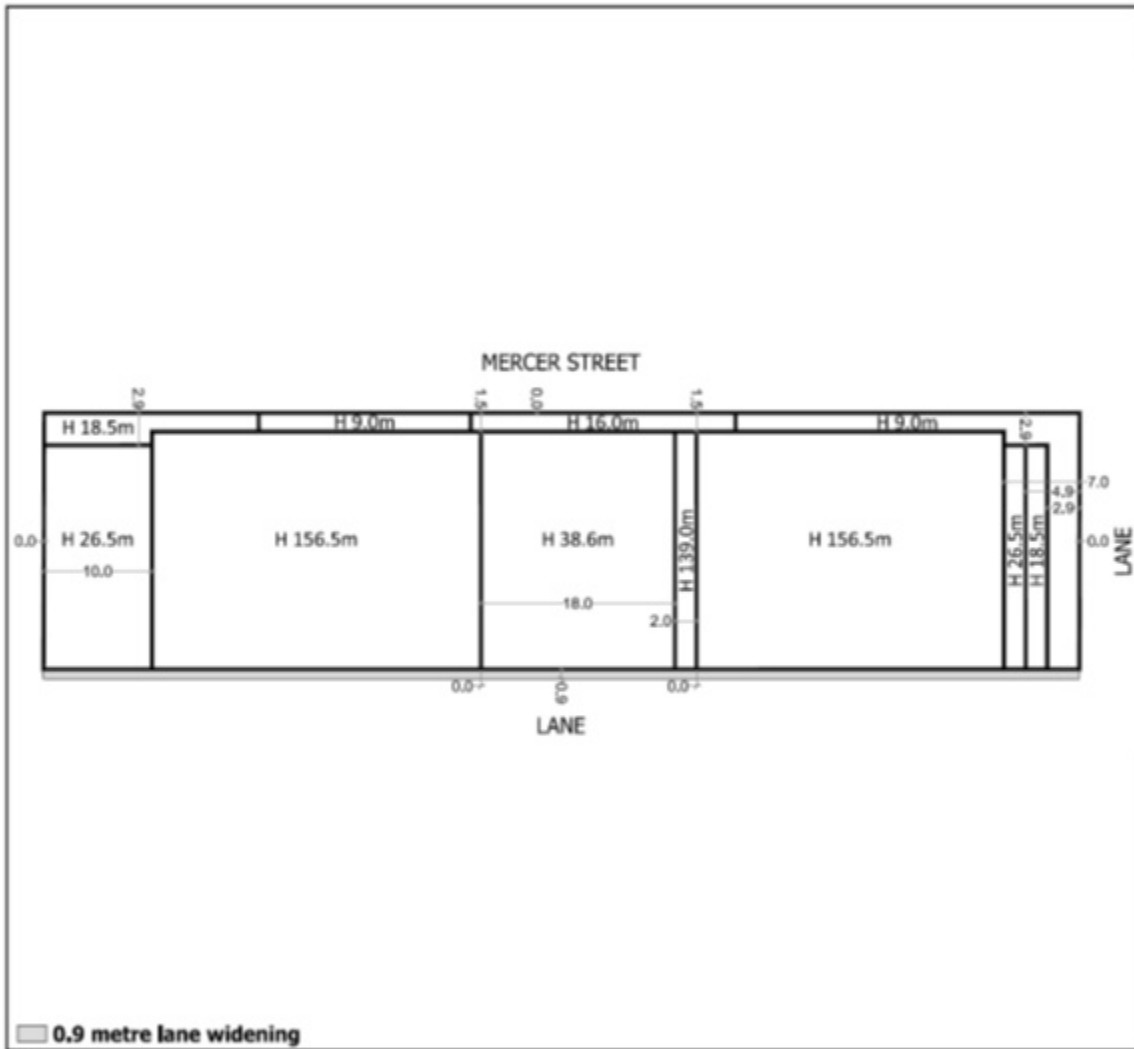
- (A) the *owner* shall provide a minimum of 10 percent of the residential units in the building having at least three bedrooms;
- (B) prior to Site Plan approval, the *owner* shall, at its sole expense, submit to the City a functional servicing report to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services. The *owner* covenants and agrees that should any improvements or upgrades to municipal infrastructure be required to support the development on the *lot* as determined by the Chief Engineer and Executive Director, Engineering and Construction Services, based on the accepted functional servicing report, the *owner* shall at its sole expense, prior to the issuance of the first above grade building permit, design, financially secure, construct and make operational, any such improvements to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services. The details for the payment and construction of any such improvements or upgrades shall be determined in the course of the Site Plan Approval process for the *lot* and shall be further secured in the Site Plan Agreement(s) for the development on the *lot*, all to the satisfaction of the Chief Engineer and Executive Director, Engineering and Construction Services;
- (C) the *owner* shall, at its sole expense, design and construct streetscape improvements to the public street right-of-way abutting the *lot*, including but not limited to, sidewalk bump-outs, street lighting, pavers, street furniture and tree trench installation all to the satisfaction of the Chief Planner, in consultation with the Chief Engineer and Executive Director, Engineering and Construction Services, all of which shall be further secured and detailed through the Site Plan approval process and shall be secured in the Site Plan Agreement(s) for the development on the *lot*, all to the satisfaction of the Chief Planner;
- (D) the *owner* shall implement any wind mitigation measures required as identified by the applicant's wind study, satisfactory to the Chief Planner and Executive Director, City Planning, to be submitted as part of an application for Site Plan Approval;
- (E) prior to Final Site Plan approval for the properties at 15-35 Mercer Street:
  - (i) The *owner* shall provide Final Site Plan drawings, consistent with the proposed development which is the subject of the settlement by City Council and consistent with any City Council approval of alterations pursuant to the Ontario Heritage Act, including drawings related to an approved Conservation Plan, all as determined by and to the satisfaction of the Senior Manager, Heritage Preservation Services; and
  - (ii) This site specific Zoning By-law amendment giving rise to the proposed heritage alterations shall be in full force and effect in a form and with content acceptable to City Council, as determined by the Chief Planner and Executive Director, City Planning, consultation with the Senior Manager, Heritage Preservation Services;

- (iii) The *owner* shall at its sole expense provide a Heritage Lighting Plan that describes how the properties on the *lot* which are designated under the Ontario Heritage Act will be sensitively illuminated to enhance their heritage character, to the satisfaction of the Senior Manager HPS, and the *owner* shall thereafter at its sole expense implement such plan to the satisfaction of such Senior Manager;
  - (iv) The *owner* shall at its sole expense provide a detailed Landscape Plan for the *lot*, including the properties which are designated under the Ontario Heritage Act, to the satisfaction of the Senior Manager HPS, and the *owner* shall thereafter at its sole expense implement such plan to the satisfaction of such Senior Manager;
  - (v) The *owner* shall provide a detailed Signage Plan for the *lot*, including the properties which are designated under the Ontario Heritage Act, to the satisfaction of the Senior Manager HPS; and
  - (vi) The *owner* shall at its sole expense provide an Interpretation Plan for the properties on the *lot* designated under the Ontario Heritage Act to the satisfaction of the Senior Manager HPS and the Owner shall thereafter at its sole expense implement such plan to the satisfaction of such Senior Manager.
- (F) prior to the issuance of any permit for all or any part of the properties at 15-35 Mercer Street, including a permit pursuant to the Ontario Heritage Act or a building permit, but excluding permits for repairs and maintenance and usual and minor works for the existing heritage buildings as are acceptable to the Senior Manager, Heritage Preservation Services:
- (i) This site specific Zoning By-law amendment giving rise to the proposed heritage alterations shall be in full force and effect in a form and with content acceptable to City Council, as determined by the Chief Planner and Executive Director, City Planning in consultation with the Senior Manager, Heritage Preservation Services;
  - (ii) The *owner* shall register the Heritage Easement Agreement on 15-35 Mercer Street and the Section 37 Agreement on 15-35 Mercer Street, all to the satisfaction of the City Solicitor;
  - (iii) The *owner* of 15-35 Mercer Street shall provide full building permit plans and drawings, including notes and specifications for the rehabilitation, restoration, conservation, and protective measures keyed to an approved Conservation Plan, including a description of materials and finishes, to be prepared by the project architect and a qualified heritage consultant, all the to satisfaction of the Senior Manager, Heritage Preservation Services;
  - (iv) The *owner* of 15-35 Mercer Street shall provide a Letter of Credit, in a form and amount and from a bank acceptable to the Senior Manager,

Heritage Preservation Services, to secure all work included in the approved Conservation Plan, the approved Lighting Plan and the approved Interpretation Plan (the "Heritage Letter of Credit"), and such amount shall thereafter be increased by upwards indexing in accordance with the Non-Residential Construction Price Index for the Toronto CMA, reported by Statistics Canada or its successor, all to the satisfaction of the Senior Manager, Heritage Preservation Services;

- (G) prior to the release of the Letter of Credit required in paragraph 2.(F).(iv) above, the *owner* of 15-35 Mercer Street shall:
- (i) Provide a letter of substantial completion prepared and signed by a qualified heritage consultant confirming that the required conservation work and the required interpretative work have been completed in accordance with the approved Conservation Plan, the approved Lighting Plan, and the approved Interpretation Plan, and that an appropriate standard of conservation has been maintained, all to the satisfaction of the Senior Manager, Heritage Preservation Services; and
  - (ii) Provide replacement as-built photographs, as described in the Heritage Easement Agreement for the properties at 15-35 Mercer Street to the satisfaction of the Senior Manager, Heritage Preservation Services.



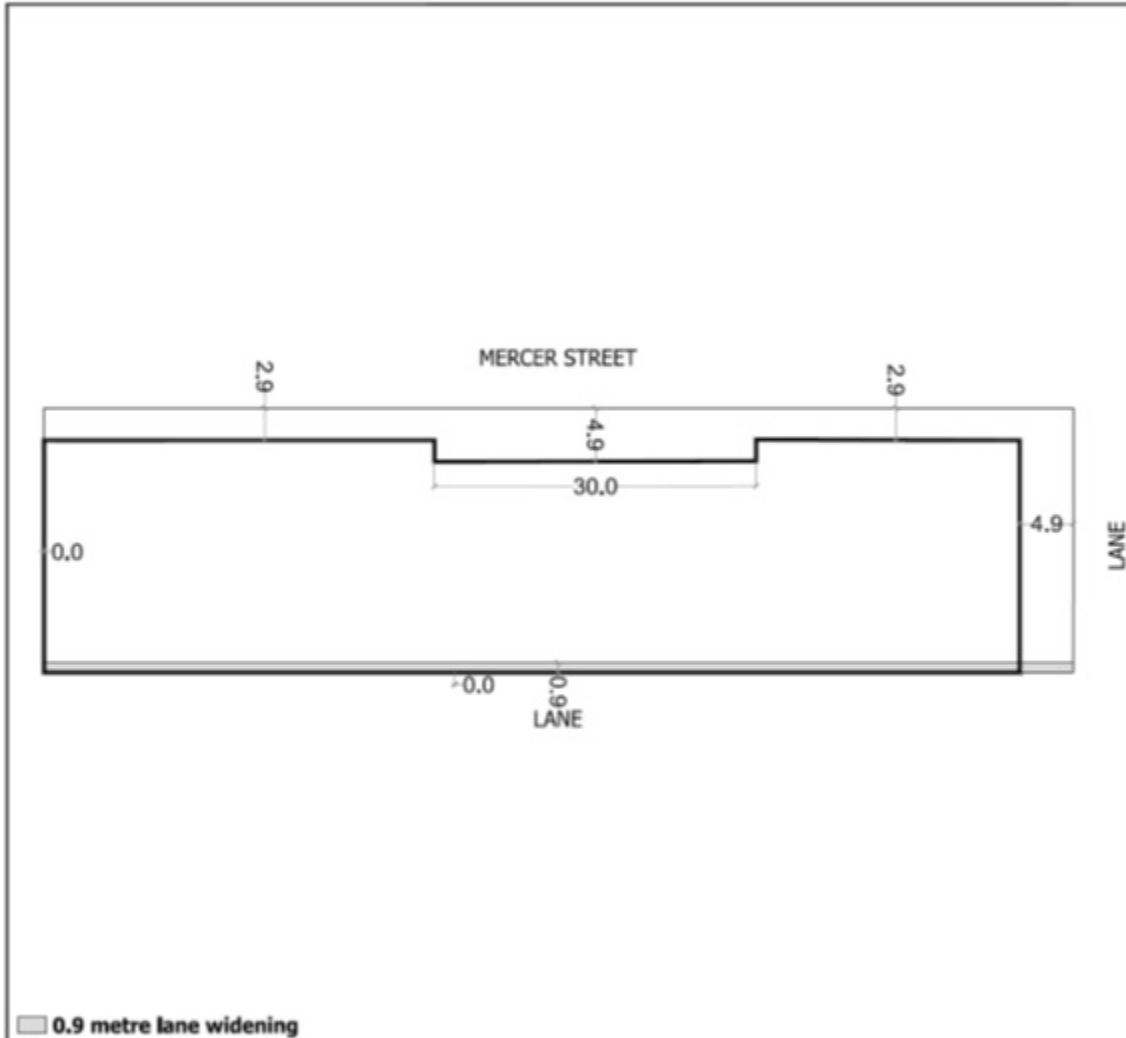


15-35 Mercer Street, Toronto

Map 2

File #10 \_\_\_\_\_





15-35 Mercer Street, Toronto

Map 3

File #10 \_\_\_\_\_

