

Authority: Local Planning Appeal Tribunal Decision
issued May 10, 2018 and Decision/Order issued
January 21, 2020 in Tribunal File PL160873

CITY OF TORONTO

BY-LAW 23-2021(LPAT)

To amend former City of Toronto Zoning By-law 438-86, as amended, respecting lands municipally known in the year 2021 as 55 and 65 Broadway Avenue.

Whereas the Local Planning Appeal Tribunal pursuant to its Decision issued May 10, 2018, and Decision/Order issued January 21, 2020 in respect of Tribunal File PL160873, upon hearing an appeal under Section 34(11) of the Planning Act, R.S.O. 1990, c. P.13, as amended deems it advisable to amend By-law 438-86, as amended, for the City of Toronto with respect to lands municipally known in the year 2021 as 55 and 65 Broadway Avenue; 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/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 matters as are set out in the by-law; and

Whereas Subsection 37(3) of the Planning Act provides that where an owner of lands elects to provide facilities, services or matters in return for an increase in height or density of development, the municipality may require the owner to enter into one or more agreements with the municipality dealing with such facilities, services or matters; and

Whereas the owner has elected to provide the facilities, services and matters as are hereinafter set forth; and

Whereas the increase in the height and density of development permitted hereunder, beyond that otherwise permitted on the aforesaid lands by City of Toronto By-law 438-86 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 and the City of Toronto (hereinafter referred to as the "City"); and

Whereas pursuant to Section 39 of the Planning Act, the council of a Municipality may, in a by-law passed under section 34 of the Planning Act, authorize the temporary use of land, buildings, or structures for any purpose set out therein that is otherwise prohibited by the by-law;

Therefore pursuant to the Decision/Order of the Local Planning Appeal Tribunal, By-law 438-86 is further amended as follows:

1. The lands subject to this By-law are outlined by heavy lines on Map 1, attached to and forming part of this By-law.

2. None of the provisions of Section 2(1) with respect to the definition of '*height*', '*grade*', '*lot*', '*residential gross floor area*', '*bicycle parking space – occupant*', '*bicycle parking space – visitor*' and '*commercial parking garage*', and Sections 4(2)(a)(i)(C), 4(2)(a)(iii), 4(4), 4(13), 4(17)(a), Sections 6(1)(b), 6(3) PART I, 6(3) PART II, 6(3) PART III, Sections 12(2) 118 and 12(2) 119 of Zoning By-law 438-86, as amended, 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", shall apply to prevent the erection and use of two *apartment* buildings and *accessory* uses thereto, on the *lot* provided that:
- a. the *lot* on which the buildings are to be located comprises at least those lands within the heavy lines on Map 1, attached to and forming part of this By-law;
 - b. despite section 6(1)(b), a *commercial parking garage* is a permitted use;
 - c. the aggregate of the *residential gross floor area* and *non-residential gross floor area* of buildings and structures on the *lot* shall not exceed 60,950 square metres, subject to the following:
 - i. The *residential gross floor area* of buildings and structures shall not exceed 60,100 square metres; and
 - ii. The *non-residential gross floor area* of buildings and structures shall not exceed 850 square metres;
 - d. no portion of any building or structure on the *lot* shall have a *height* in metres greater than the *height* limits specified by the numbers following the symbol H on Map 2 attached to and forming part of this By-law, except for:
 - i. Safety railings, privacy screens, parapets, window washing equipment, guardrails, planters, public art features, stacks, ornamental elements, ventilation shafts, landscape elements, green roof elements, roof access hatches, stairs, and covered stairs, all of which may project to a maximum of 2.0 metres;
 - ii. Lighting fixtures and trellises, all of which may project to a maximum of 3.0 metres; and
 - iii. A decorative screen above the portion of the building shown as H 126.0 metres on Map 2, may project to a maximum of 9.0 metres;
 - e. the number of *storeys* of each portion of the buildings on the *lot* must not exceed the numbers as shown following the symbol ST on Map 2 of this By-law, excluding mechanical and roof top elements;

- f. no portion of any building or structure erected and used above *grade* on the *lot* is located otherwise than wholly within the areas delineated by heavy lines shown on Map 2 attached to and forming part of this By-law, except for:
- i. Eaves, cornices, lighting fixtures, bay windows, mullions, ornamental, decorative or architectural elements, and window sills, all of which may encroach to a maximum of 1.0 metres;
 - ii. Balconies and terraces, both of which may encroach to a maximum of 1.8 metres;
 - iii. Canopies and awnings, both of which may encroach to a maximum of 3.0 metres; and
 - iv. Safety railings, guardrails, ramps, stairs, stair enclosures, privacy screens, public art features, wheelchair ramps (and associated structures), underground garage ramps and associated structures, garbage and servicing areas and associated structures, structures for day nursery storage, air shafts, and elements required for the functional operation of the building;
- g. a minimum of fifteen percent of the area of the *lot* shall be *landscaped open space*;
- h. a minimum of ten percent of the total number of *dwelling units* constructed in the buildings on the *lot*, excluding the rental replacement *dwelling units*, shall contain three bedrooms or more;
- i. *parking spaces* shall be provided and maintained below grade on the *lot* in accordance with the following ratios:
- i. A minimum 0.45 *parking spaces* for each dwelling unit; and
 - ii. A minimum of 0.10 *visitor parking spaces* for each dwelling unit;
- j. *parking spaces* required by (h)(ii) above, may be provided on a non-exclusive basis in a *commercial parking garage*;
- k. *bicycle parking spaces* shall be provided and maintained on the *lot* in accordance with the following rates:
- i. For *bicycle parking spaces - occupant*, a minimum of 0.9 *bicycle parking spaces* shall be provided for *each dwelling unit*; and
 - ii. For *bicycle parking spaces – visitor*, a minimum of 0.1 *bicycle parking spaces* shall be provided for *each dwelling unit*; and
- l. two *loading spaces – type G* shall be provided and maintained on the *lot*.

3. For the purpose of this By-law:
- a. "*bicycle parking space – occupant*" means an area that is equipped with a bicycle locker or a room or bicycle rack for the purpose of parking and securing bicycles:
 - i. Where the bicycles are to be parked on a horizontal surface, has a horizontal dimension 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, a *bicycle parking space* must have a horizontal dimension of at least 0.45 metres by 1.2 metres and a vertical dimension of at least 1.9 metres; and
 - iii. Where the bicycles are to be parked in a *stacked bicycle parking space*, the *bicycle parking space* is not subject to the dimensions outlined in (i) and (ii) above;
 - b. "*bicycle parking space – visitor*" means an area or room that is equipped with a room or a bicycle rack for the purpose of parking and securing bicycles, and may include spaces in a secured room, and:
 - i. Where the bicycles are to be parked on a horizontal surface, has a horizontal dimension 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, a *bicycle parking space* must have a horizontal dimension of at least 0.45 metres by 1.2 metres and a vertical dimension of at least 1.9 metres; and
 - iii. Where the bicycles are to be parked in a *stacked bicycle parking space*, the *bicycle parking space* is not subject to the dimensions outlined in (i) and (ii) above;
 - c. "*height*" means the vertical distance between *grade* and the highest point of the buildings or structures, excluding permitted projections identified in section 1(c) of this By-law;
 - d. "*grade*" means 162.3 metres Canadian Geodetic Datum;
 - e. "*lot*" means the parcel of land outlined by heavy lines on Map 1 attached to and forming part of this By-law;
 - f. "*residential gross floor area*" means the sum of the total area of each floor level of a building, above and below the ground, measured from the exterior of the *main wall* of each floor level, but excluding:
 - i. Indoor *residential amenity space*;

- ii. Parking, loading and bicycle parking below *grade*;
 - iii. Parking, loading and bicycle parking at or above *grade*;
 - iv. Storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms in the basement;
 - v. Shower and change facilities required by this By-law for required bicycle parking spaces;
 - vi. Elevator shafts;
 - vii. Garbage shafts;
 - viii. Mechanical penthouse; and
 - ix. Exit stairwells in the building;
- g. "*stacked bicycle parking space*" means a horizontal *bicycle parking space* that is positioned above or below another bicycle parking space and equipped with a mechanical device providing floor level access to *both bicycle parking spaces*; and
- h. each other word or expression that is italicized in this By-law shall have the same meaning as that word or expression as defined in By-law 438-86, as amended.
4. Despite any existing or future severance, partition or division of the *lot*, the provisions of this by-law shall apply to the whole lot as if no severance, partition or division occurred.
5. 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 Map 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 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;
 - 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; and
 - 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.

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/or density] of the proposed development on the lands as shown in Map 1 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 issuance of the first above-grade building permit, the owner shall provide, at its sole election, one of the following:
 - a. a cash contribution of two million nine hundred thousand dollars (\$2,900,000.00) by certified cheque to be used by the City toward a non-profit licensed daycare centre, public realm and parks improvements in the Yonge-Eglinton Secondary Plan area, upgrades to the Davisville Community Centre recreational facilities, or additional community services and facilities in the Yonge-Eglinton Secondary Plan area, all to the satisfaction of the Chief Planner and Executive Director, City Planning in consultation with the Ward Councillor. The cash contribution in this subsection shall be indexed upwardly in accordance with the Construction Price Index, commencing from the date of the Local Planning Appeal Tribunal Order approving the By-law to the date of payment of the respective funds by the owner to the City; or
 - b. the owner shall advise the City in writing that it will provide a child care facility to the City together with a Letter of Credit in an amount sufficient to guarantee 120 percent of the estimated cost of the design, construction and provision of the child care facility, to the satisfaction of the General Manager of Children Services and the Chief Financial Officer and Treasurer and in accordance with the Section 37 Agreement. The financial security set out in this subsection shall be indexed upwardly in accordance with the Construction Price Index for Toronto and calculated from the date of the registration of the Section 37 Agreement to the date of submission of the Letter of Credit by the owner to the City.

Child Care Facility

2. If the owner elects to provide the City with a child care facility in accordance with section 1(b) above, then the owner shall provide the following:
 - a. the owner shall design, construct, finish, furnish and fully equip (fixtures and appliances) the child care facility comprising of 776.1 square metres of interior space and 381.5 square of outdoor space on the lot, entirely at its sole cost, and in accordance with the plans and specifications approved in writing by the Chief Planner and Executive Director, City Planning in consultation with the General Manager, Children's Services;
 - b. prior to issuance of the first above-grade building permit, working drawings and specifications for the child care facility shall be to the satisfaction of the Chief Planner and Executive Director, City Planning, the General Manager, Children's

Services, the Chief Medical Officer of Health and the Province's Ministry of Education's Early Learning Child Care Licensing System;

- c. prior to the issuance of the final building permit, the owner shall enter into a lease agreement for the child care facility for a term of ninety-nine (99) years and such facility shall be rent free with no cost to the Child Care Facility Operator as tenant or the City;
- d. prior to the issuance of the final occupancy permit for the development, the owner shall complete the child care facility and have it ready for occupancy and available to the Child Care Facility Operator;
- e. the owner shall pay the following cash contributions upon the earlier of the issuance of any above-grade building permit, or within thirty (30) days of the owner being notified in writing by the City that Site Plan Notice of Approval Conditions have been issued:
 - i. A one-time time cash contribution in the amount of \$250,000 to fully equip the child care facility in accordance with provincial and municipal standards based on an inventory list provided by Children's Services and finalized by the Childcare Facility Operator and Children's Services;
 - ii. A one-time time cash contribution in the amount of \$180,000 towards a replacement reserve fund for the child care facility to replace appliances and large equipment due to wear and tear; and
 - iii. A one-time time cash contribution in the amount of \$150,000 for the defrayment of operational deficits incurred during the first year of operation; and
- f. the payments in section 2.e. above shall be indexed to reflect increases in the Construction Price Index from the date of Site Plan Notice of Approval Conditions issuance to the year of substantial performance under the Construction Act;

Public Park

- 3. Prior to the first above-grade building permit, the owner shall convey a minimum of 709.5 square metres of land located at the properties known municipally as 70, 72, 74, and 76 Soudan Avenue to the City for public parkland purposes.
- 4. Prior to issuance of the first above-grade building permit, the owner shall post an irrevocable Letter of Credit in the amount of 120 percent of the value of the Base Park Improvements for the parkland to the satisfaction of the General Manager, Parks Forestry and Recreation.

Rental Housing

5. The owner shall provide and maintain one hundred and thirty (130) rental replacement *dwelling units*, comprised of ten (10) bachelor units, one hundred (100) one-bedroom units and twenty (20) two-bedroom units on the subject site, as illustrated on the plans submitted to the City Planning Division dated November 12, 2018, for a period of at least twenty years beginning from the date that each replacement rental *dwelling unit* is first occupied; any revision to these plans must be to the satisfaction of the Chief Planner and Executive Director, City Planning.
6. The owner shall provide and maintain not less than one (1) bachelor, eighteen (18) one-bedroom and six (6) two-bedroom rental replacement *dwelling units* at affordable rents and not less than nine (9) bachelor, eighty-two (82) one-bedroom and fourteen (14) two-bedroom rental replacement *dwelling units* at mid-range rents for a period of at least ten years beginning from the date that each *rental replacement dwelling unit* is first occupied.
7. The owner shall provide tenants of the rental replacement *dwelling units* with access to all indoor and outdoor amenities located within the rental tower as illustrated on the plans submitted to the City Planning Division on November 12, 2018, and any revisions shall be to the satisfaction of the Chief Planner and Executive Director, City Planning.
8. The owner shall provide at least fifty (50) vehicle *parking spaces* to tenants of the rental replacement *dwelling units*, and any revisions shall be to the satisfaction of the Chief Planner and Executive Director, City Planning.
9. The owner shall provide storage lockers to tenants of the rental replacement *dwelling units*; the number, size, location and monthly rent of the storage lockers shall be to the satisfaction of the Chief Planner and Executive Director, City Planning.
10. The owner shall provide ensuite laundry facilities in each of the rental replacement *dwelling units*, at no additional cost to the tenants.
11. The owner shall provide tenant relocation and assistance to all eligible tenants, including the right to return to a rental replacement *dwelling unit*, to the satisfaction of the Chief Planner and Executive Director, City Planning.

Publicly Accessible Walkway

12. Prior to the earlier of any residential use or occupancy, including interim occupancy, or any condominium registration of all or any part of the development on the site, the owner shall convey in perpetuity for nominal consideration and at no cost to the City, one or more easements, including right of support, in favour of the City for use by the City and the general public, a public pedestrian walkway with a minimum width of 6 metres on the west portion of the site, to the satisfaction of the City Solicitor in consultation with the Chief Planner and Executive Director, City Planning.



