

Authority: Local Planning Appeal Tribunal Decision
issued on October 23, 2020 and Ontario Land Tribunal
Order issued on October 7, 2021 in Tribunal File PL180387

CITY OF TORONTO

BY-LAW 754-2021(OLT)

To amend former City of Toronto Zoning By-law 438-86, as amended, in respect to the lands known municipally in the year 2020 as 400-420 King Street West.

Whereas Local Planning Appeal Tribunal Decision issued on October 23, 2020 and Ontario Land Tribunal Order issued on October 7, 2021 in Tribunal File PL180387, 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 the Zoning By-law for the City of Toronto, being By-law 438-86, as amended, with respect to lands municipally known in the year 2020 as 400-420 King Street West; 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 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; 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;

Now therefore pursuant to the Order of the Ontario Land Tribunal, By-law 438-86 is further amended as follows:

1. None of the provisions of Section 2(1) with respect to "*grade*", "*height*", "*residential gross floor area*", "*commercial parking garage*" and "*lot*", and Sections 4(2)(a), 4(5)(b), 4(8), 4(12), 4(13)(a), (c), and (d), 7(3) Part II 1(i), 7(3) Part II 3, 7(3) Part II 7, 12(2)132,

12(2)204, 12(2)246, 12(2)270, 12(2)339 and 12(2)380 of By-law 438-86 of the former City of Toronto, 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 on the *lot*, provided that:

- (a) The *lot* on which the buildings are to be located comprises the lands outlined by heavy lines on Map 1 attached to and forming part of this By-law;
- (b) In addition to the uses permitted in Section 7(1), *commercial parking garage* is permitted on the *lot* if located entirely below ground;
- (c) The total aggregate *residential gross floor area* and *non-residential gross floor area* on the *lot* does not exceed 43,200 square metres, provided:
 - i. the *residential gross floor area* does not exceed 39,850 square metres; and
 - ii. the minimum *non-residential gross floor area* shall be 3,335 square metres, excluding the area associated with *commercial parking garage*;
- (d) A minimum of ten percent of the *dwelling units* must contain three or more bedrooms and a minimum of thirty-four percent of the *dwelling units* must contain two or more bedrooms;
- (e) No portion of any building or structure on the *lot* shall have a *height* greater than the *height* in metres specified by the number following the "H" symbol as shown on Map 2 attached to and forming part of this By-law, excluding:
 - i. parapets, roof access, including roof hatch and the access ladder, chimneys, vents, and water supply facilities, pipes, roof drainage, antennae, telecommunication equipment, satellite dishes, lightning rods, guard rails, railings, dividers, screens, balustrades, unenclosed structures providing safety or wind protection, privacy and wind screens, elements of a green roof, pergolas, trellises, light fixtures, and landscape elements which may project up to a maximum of 4.0 metres;
 - ii. window washing equipment may project up to a maximum of 6.0 metres;
 - iii. architectural features, which may project no higher than the second *storey*;
 - iv. canopies, which may project no higher than the second *storey*; and
 - v. support cables, which may project no higher than the fourth *storey*;
- (f) Despite (e)(i) above, only the following equipment and structures are permitted to be located on top of the roof for the portion of the building labelled as "HT 156.9" on Map 2 of By-law 754-2021(OLT):

- i. parapets, roof access, including roof hatch and the access ladder, vents for garbage and mechanical shafts, antennae, telecommunication equipment, satellite dishes, lightning rods, and elements of a green roof which may project up to a maximum of 4.0 metres; and
 - ii. window washing equipment may project up to a maximum of 6.0 metres;
- (g) The portions of a building or structure above ground must be located within the areas delineated by heavy lines on Map 2 attached to and forming part of this By-law, except that:
 - i. canopies and supports, awnings, decks, balconies, terraces, patios, pergolas, trellises, privacy and wind screens, unenclosed structures providing safety or wind protection to rooftop *residential amenity space*, architectural features including piers and fins, art and landscaping features, and ornamental elements, up to 3.0 metres;
 - ii. cornices, parapets, light fixtures, window sills, eaves, doors, site servicing features, ventilation shafts, railings, guards, terrace platforms, landscape planters, underground garages and associated structures, and wheelchair ramps, up to 0.5 metres; and
 - iii. guards, railings, parapets, terraces, wind screens, landscape planters and terrace platforms may project beyond the required building setback to the extent of the main wall of the *storey* below;
- (h) *Residential amenity space* shall be provided and maintained on the *lot* at a minimum rate of 4.0 square metres for each *dwelling unit*, of which:
 - i. at least 2.0 square metres for each dwelling unit is indoor *residential amenity space*;
 - ii. at least 40.0 square metres is outdoor *residential amenity space* in a location adjoining or directly accessible to the indoor *residential amenity space*; and
 - iii. no more than 25 percent of the outdoor component may be a green roof;
- (i) *Parking spaces* for the *mixed-use building* shall be provided and maintained on the *lot* in accordance with the following:
 - i. a minimum of 0.15 *parking spaces* per unit for the use of the residents of the building;
 - ii. a minimum of 22 *parking spaces* for non-residential uses; and
 - iii. no *parking spaces* shall be required residential visitors;

- (j) *Parking spaces* for non-residential uses, as required by (i)(ii) above may be located within a *commercial parking garage*;
- (k) A maximum of 10 percent of the *parking spaces* required by (i)(i) and (ii) above may be small car *parking spaces* with a minimum width of 2.4 metres, length of 5.4 metres and vertical clearance of 1.8 metres;
- (l) Where the calculation of the number of *parking spaces* required to be provided and maintained by (i) above results in a number with a fraction, the number is rounded down to the nearest whole number, but there may not be less than one *parking space*;
- (m) A minimum of 6 accessible *parking spaces* must be provided and maintained below ground;
- (n) An accessible *parking space* shall be provided with the following dimensions:
 - i. a minimum length of 5.6 metres;
 - ii. a minimum width of 3.4 metres; and
 - iii. a minimum vertical clearance of 2.1 metres;
- (o) Notwithstanding Section 4(17) of By-law 438-86, Electric Vehicle Infrastructure, including electric vehicle supply equipment, does not constitute as an obstruction to a *parking space*;
- (p) *Bicycle parking spaces* shall be provided and maintained on the *lot* in accordance with the following:
 - i. a minimum of 0.9 *bicycle parking spaces – occupant* shall be provided per dwelling unit;
 - ii. a minimum of 0.1 *bicycle parking spaces – visitor* shall be provided;
 - iii. a minimum of 0.2 *bicycle parking spaces – occupant* per 100 square metres of *interior floor area* used for non-residential uses; and
 - iv. a minimum of 3 plus 0.3 *bicycle parking spaces – visitor* per 100 square metres of *interior floor area* used for non-residential uses;
- (q) If a building has uses, other than *dwelling units*, for which a *bicycle parking spaces – occupant* is required, shower and change facilities must be provided for each gender at the following rate:
 - i. none if less than 5 required *bicycle parking spaces – occupant*;
 - ii. 1 for 5 to 60 required *bicycle parking spaces – occupant*;
 - iii. 2 for 61 to 120 required *bicycle parking spaces – occupant*;

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- iv. 3 for 121 to 180 required *bicycle parking spaces – occupant*; and
 - v. 4 for more than 180 required *bicycle parking spaces – occupant*;
 - (r) Notwithstanding the definitions of *bicycle parking spaces – occupant* and *bicycle parking space – visitor* in Section 2(1) of Zoning By-law 438-86, as amended, where the bicycles are to be parked in a vertical position, has horizontal dimensions of at least 0.45 metres by 1.2 metres and a vertical dimension of at least 1.9 metres;
 - (s) Notwithstanding the definitions of *bicycle parking spaces – occupant* and *bicycle parking space – visitor* in Section 2(1) of Zoning By-law 438-86, as amended, a *bicycle parking space* may be located in a secured room, enclosure or bicycle locker and in a *stacked bicycle parking space*, provided that such space is accessible to visitors;
 - (t) *Bicycle parking spaces – occupant* may be located on the first or second *storey* of the building and anywhere below ground;
 - (u) Despite (t) above, *bicycle parking spaces – occupant* below ground shall be provided in accordance with the following:
 - i. a minimum of 50 percent of the *bicycle parking spaces – occupant* will be located on the first level below ground;
 - ii. a minimum of 90 percent of the *bicycle parking spaces – occupant* for non-residential uses will be located on the first level below ground; and
 - iii. no *bicycle parking spaces* will be located on the third level below ground;
 - (v) A maximum of one *loading space - Type "G"* and one *loading space - Type "B"* shall be provided and maintained on the *lot*;
 - (w) In addition to the required *residential amenity space*, a maximum of 4 guest suites may be permitted, provided that they:
 - i. have no food preparation facilities; and
 - ii. are available for use on a temporary basis as overnight accommodation exclusively for persons visiting residents of the building; and
 - (x) None of the provisions of By-law 438-86 shall apply to prevent a *Temporary Sales Office and Temporary Construction Office* on the *lot* for a period not to exceed 3 years from the date of this By-law coming into full force and effect.
2. 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:

- (a) "*commercial parking garage*" shall mean premises having an area for the parking of one or more vehicles as a principal use and the parking of a vehicle is available for public use with or without a fee;
- (b) "*grade*" shall mean 86.58 metres Canadian Geodetic Datum;
- (c) "*height*" shall mean, the vertical distance between *grade* and the highest point of the building or structure, except for those elements otherwise expressly permitted in this By-law;
- (d) "*interior floor area*" shall mean the floor area of any part of a building, measured to:
- i. the interior side of a main wall;
 - ii. the centerline of an interior wall; or
 - iii. a line delineating the part being measured;
- (e) "*lot*" shall mean the parcel of land outlined by heavy lines on Map 1 attached to and forming part of this By-law;
- (f) "*non-residential gross floor area*" means the aggregate of the areas of each floor of a *non-residential building* or the non-residential portion of a *mixed-use building*, measured between the exterior faces of the exterior walls of the building or structure at the level of each floor, but excluding:
- i. parking, loading and bicycle parking below-ground;
 - ii. required *loading spaces* on the ground level and required *bicycle parking spaces* at or above-ground;
 - iii. storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms in the basement;
 - iv. mechanical rooms above and below ground;
 - v. shower and change facilities that are required by this By-law for required *bicycle parking spaces*;
 - vi. amenity space required by this By-law;
 - vii. elevator shafts;
 - viii. elevator machine rooms above and below ground;
 - ix. garbage shafts;
 - x. mechanical penthouse; and
 - xi. exit stairwells in the building;

- (g) "*residential gross floor area*" means the aggregate of the areas of each floor of a *residential building* or the residential portion of a *mixed-use building*, measured between the exterior faces of the exterior walls of the building or structure at the level of each floor, but excluding:
- i. parking, loading and bicycle parking below-ground;
 - ii. required *loading spaces* on the ground level and required *bicycle parking spaces* at or above-ground;
 - iii. storage rooms, washrooms, electrical, utility, mechanical and ventilation rooms in the basement;
 - iv. mechanical rooms above and below ground;
 - v. shower and change facilities that are required by this By-law for required *bicycle parking spaces*;
 - vi. amenity space required by this By-law;
 - vii. elevator shafts;
 - viii. elevator machine rooms above and below ground;
 - ix. garbage shafts;
 - x. mechanical penthouse; and
 - xi. exit stairwells in the building;
- (h) "*Temporary Sales Office and Temporary Construction Office*" means a building, structure, facility or trailer on the lot used for the purpose of the sale of dwelling units or *non-residential gross floor area* uses to be erected on the lot and/or the administration and management of construction activity related to construction on the *lot*;
- (i) "*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 has a minimum vertical clearance of 1.2 metres, a minimum width of 0.4 metres, and a minimum length of 1.8 metres; and
- (j) "*storey*" means a level of a building, other than a basement, located between any floor and the floor, ceiling or roof immediately above it.
3. 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.
4. Except as otherwise provided herein, the provisions of By-law 438-86, as amended, shall continue to apply to the *lot*.

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 of this By-law are satisfied.

Pursuant to the Local Planning Appeal Tribunal Decision issued on October 23, 2020 and Ontario Land Tribunal Order issued on October 7, 2021 in Tribunal File PL180387.

SCHEDULE A**Section 37 Provisions**

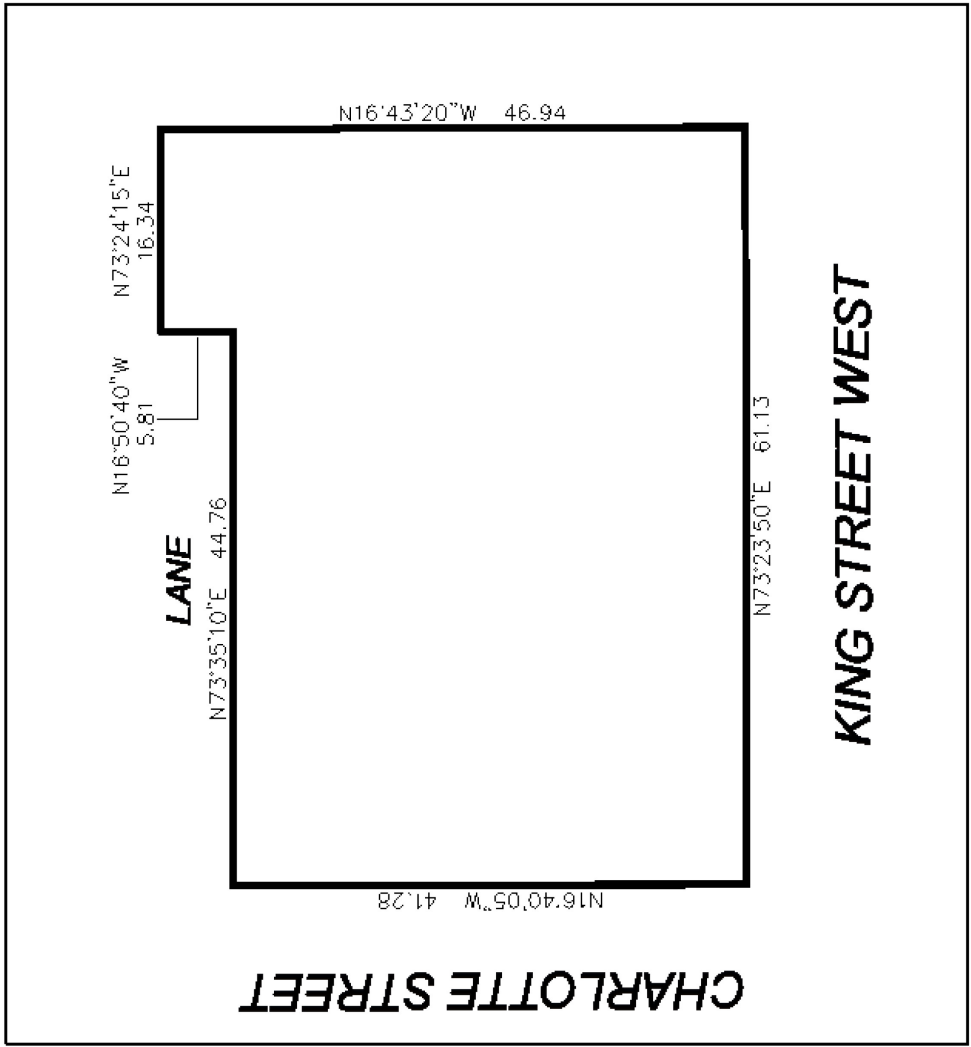
The facilities, services and matters set out below are required to be provided to the City at the Owner's expense in return for the increase in height and density of the proposed development on the lot and secured in an agreement or agreements under Section 37(3) of the Planning Act whereby the owner agrees as follows:

- (1) A cash contribution of six million dollars (\$6,000,000.00) to be paid by the Owner prior to the issuance of the first above-grade building permit and to be allocated as follows: 10 percent toward new affordable housing, 10 percent toward Toronto Community Housing Corporation ("TCHC") capital repairs, 40 percent toward arts and culture in Ward 10, and 40 percent toward parks and community services and facilities within the vicinity of the Site, at the discretion of the Chief Planner and Executive Director, City Planning and in consultation with the Ward Councillor;
- (2) The cash contribution referred to in (1) above shall be indexed upwardly in accordance with the Statistics Canada Residential or Non-Residential, as the case may be, Building Construction Price Index for the Toronto Census Metropolitan Area, reported quarterly by Statistics Canada in Building Construction Price Indexes Table 18-10-0135-01, or its successor, calculated from the date of the Agreement to the date of payment;
- (3) In the event the cash contribution referred to in (1) above has not been used for the determined purpose within three (3) years of the amending Zoning 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 Ward Councillor, provided the purpose is identified in Official Plan Policy 5.1.1 and will benefit the community in the vicinity of the lands.

The Section 37 Agreement will also secure the following matters as a legal convenience to support the development:

- (1) the Owner will comply with the City's tree by-laws to the satisfaction of the Supervisor, Tree Protection and Plan Review, Urban Forestry, Parks, Forestry and Recreation division;
- (2) the Owner will provide and maintain a Privately-Owned and Publicly-Accessible Space ("POPS") with an approximate area of 115.9 square metres at the southwest corner of the property, with the specific location, configuration and design secured in a Site Plan Agreement with the City to the satisfaction of the City Solicitor, pursuant to Section 114 of the City of Toronto Act, 2006, as amended and as applicable, Section 41 of the Planning Act, as amended; and
- (3) prior to the issuance of Site Plan Approval, the Owner shall convey to the City for nominal consideration a public pedestrian easement over the three-metre unobstructed pedestrian clearways along both King Street West and Charlotte Street, to the satisfaction

of the Director, Community Planning, Toronto and East York District, and registered to the satisfaction of the City Solicitor.



Map 1

400 King Street West, Toronto

File #18



North Arrow

